

Heritage Council Regulatory Committee

Former Bryant & May Industrial Complex (H0626) [PR20226]

560 Church Street Cremorne, Yarra City

REPORT OVERVIEW

Opportunity and Importance of this Place

The former Bryant and May Industrial Complex (VHR H0626) ('the place') is of State significance for historical, architectural and social reasons. It is an iconic site in the rapidly growing Cremorne area. Heritage character and fabric are among the key ingredients in Cremorne's attraction, evolution and success. Much new development involving technology, creative and commercial enterprises has respected and reinterpreted the area's distinctive industrial roots through high-quality building and public-space design. Adapting and redeveloping the iconic Bryant and May site can similarly be part of, and advance, the growth and success of Cremorne. It can do so in a way that protects and conserves the place's cultural heritage and the key attributes that underpin its contribution to Cremorne and the State, as sought by the *Heritage Act 2017 (Vic)* ('the Act').

Findings

Heritage permit application P37853 ('permit application') proposes a major redevelopment of part of the industrial complex. Broadly, the proposal includes demolition of all 1980–90s infill development, works to conserve and adapt retained buildings, two towers of 12 and 13 storeys for a workplace and hotel, and public realm improvements. The Executive Director of Heritage Victoria ('Executive Director') determined to refuse a permit. The permit applicant sought review of that decision by the Heritage Council ('review'). A Regulatory Committee of the Heritage Council ('Committee') was constituted to determine the review, a review that is scoped by the Act.

This report is provided to the Minister for Planning ('Minister'), following the Minister's request made by letter dated 13 April 2024. A report was requested within 30 days. The letter said that the Minister did not require the Heritage Council to hold a hearing or receive submissions. The Committee has consequently reviewed the written material available to it against the relevant matters in the Act, including two letters of advice ('the advice') from the Office of the Victorian Government Architect ('OVGA'), and has conducted a site inspection.

The permit application offers heritage gains which are well acknowledged in submissions made to the Executive Director and by the Executive Director. These relate to the removal of the 1980s and 1990s additions, adaptive re-use of the place, the intent for conservation works to retained fabric, and the provision of public realm improvements.

Assembling new buildings, with podium/tower forms, around the retained heritage fabric is an appropriate response to the place. That approach should be able to protect and conserve

the place's cultural heritage values. Notable among the cultural heritage values are the complex of architecturally integrated significant buildings and landmark features. However, there are overriding heritage impacts and insensitivities in this permit application, individually and collectively, including:

- the impact of the proposed development on the setting of the heritage complex, in particular on Brymay Hall and the Boiler House and chimney;
- transitions between retained/revealed heritage buildings and new built form that are impactful because of the siting, scale, massing and height of the new structures; and
- insufficient respect that new built form gives to the landmark chimney and clock tower, because of the proposed parapet and podium heights and setbacks to these features.

Further negative or deficient aspects of the permit application include the following:

- A lack of information in relation to relevant heritage considerations for this permit application. For example, proposed changes to significant internal fabric; and details regarding structural implications for the chimney of nearby demolition and excavation to enable development to be built.
- Although the Executive Director's refusal grounds in relation to reasonable and economic use are incorrectly founded in law, the proponent's case in relation to the same consideration is not substantiated to justify a permit being granted.

The required timing and process for this report has not enabled the Committee to invite submissions from parties to explore issues and consider modifications. Many (but not all) of the gaps and issues are not new, having been identified in submissions received by the Executive Director and in the Executive Director's determination report. The Committee emphasises the importance of key information that should not be deferred to a future time, to be required through permit conditions. For example, it does not accept that a 'Heritage Construction Management Plan' can fill a gap created by missing information so as to give confidence that physical impacts are known and without material consequences.

Office of the Victorian Government Architect ('OVGA') Design Review Panel reports

The Committee recognises the urban design merits identified by the OVGA. However, for the purposes of this Committee's report to the Minister, the weight to be given to that advice is qualified and limited. Although 'heritage' is cited in the advice, the reports do not analyse the statement of significance for VHR H0626, nor matters under the Act. The advice does not identify the heritage context nor values to be protected, and does not articulate any weighting of cultural heritage values against other factors that have informed the opinions.

Next Steps

The Committee does not recommend a permit be issued because the proposal does not protect and conserve the place's cultural heritage. Central to this conclusion are:

- the impact on the place's setting as a complex of structures, as well as the crowding and visual domination of landmark elements by proposed new development; and
- critical gaps in relation to what and how some of the significant and iconic heritage fabric is to be retained and protected.

There may be many ways to modify and amend the proposal – but for a substantial site of State significance and a very important project in Cremorne's evolution, specific changes must be considered with an understanding of the implications for the whole site and project. The Committee has not been able to explore design modifications and options with the parties.

The Minister could request additional information and design options/amended plans to respond to the matters raised in this report and inform a decision. Or the matter could be remitted to the Executive Director for reconsideration accompanied by directions to provide further information and review the proposal to overcome the identified issues and concerns.

BACKGROUND

PERMIT APPLICATION AND REVIEW

1. The background facts outlining the process leading to this report to the Minister are set out in **Annexure 1** to this report.

MATERIAL CONSIDERED BY THE COMMITTEE

Plans

2. The documents that the Executive Director used in his assessment are listed on pages 2–8 of the officer's report and recommendation on heritage permit application no. P37853 ('officer's report') (**Attachment 1.5**).¹
3. The officer's report notes that minor amendments were made to the permit application during the process, but these were considered not substantial enough to require a formal amendment under section 96 of the Act.
4. A drawing list filed by permit applicant and dated 8 March 2024 clarifies the architectural plans for the development proposal upon which the permit applicant seeks to rely and which are the subject of this report (**Attachment 2.7**).

Documents

5. **Annexure 2** lists the documents the Committee has considered in its preparation of this report. These documents have been provided to the Minister as attachments to this report.
6. The OVGA design review reports of May 2023 (dated 15 June 2023) and August 2023 are provided at **Attachment 4**.
7. Forms and associated material filed with the Heritage Council as part of this review are provided at **Attachment 1**.
8. **Attachments 1.8.(5)&(6), 1.9.(7)&(9)** include development budget information and reasonable and economic use reports provided as part of the permit application that are confidential. Some include redactions.
9. **Attachment 2.2(3)** is a letter dated 30 January 2024, whereby notice of the review was mistakenly given to the Minister by the Heritage Council purportedly pursuant to section 106(5) of the Act. In response, the Manager of Development Facilitation with the Department of Transport and Planning ('DTP') confirmed that Yarra City Council ('Yarra Council') is the responsible authority for the purpose of section 100 of the Act, not the Minister for Planning, and that the Minister has no statutory responsibility relating to this proceeding in that regard. The letter from DTP said the Minister is considering preparing an amendment to the Yarra Planning Scheme (draft Amendment C319yara) under the *Planning and Environment Act 1987* (Vic) to guide the use and development of the land at 560 Church Street, Cremorne. The proposal is said by the Executive Director to be consistent with the current permit application, the subject of this review.
10. The Committee has also considered ['The Burra Charter: the Australia ICOMOS Charter for Places of Cultural Significance, 2013'](#) ('Burra Charter') and ['Heritage Victoria's Principles for considering change to places in the Victorian Heritage Register \(December 2022\)'](#) which are not attached to this report, but are available by the links.

¹ Attachment numbers throughout this report relate to attachments listed in Annexure 2, provided to the Minister along with this report.

COMMITTEE'S SITE INSPECTION

11. The Committee undertook a site inspection to inform itself and to assist the consideration of material available to it. This was undertaken by the Committee on 1 May 2024, accompanied by the Hearings Manager, Heritage Council Secretariat.
12. The Senior Development Manager for the permit applicant facilitated access to the subject site, including the interior of the Bryant and May Hall, Dining Hall, current furniture store, and Boiler House.
13. A model and display boards relating to the proposal were being displayed in one of the buildings at that time. The Committee was unaware of that physical model until the time of its site inspection.
14. The Committee comments on 3D modelling and visualisations later in his report.

STATE REGISTRATION

15. On 19 February 1986, the former Bryant and May Industrial Complex ('complex') was included in the Victorian Heritage Register ('Register') as registered place H0626. The place is listed as being of architectural, historical and social significance to the State.
16. The place comprises Historic Building No. 626 – Bryant and May Industrial Complex, 560–570 Church Street, Richmond (to the extent of the land bounded by Adelaide, Balmain, Church and Walnut Streets and all the buildings but excluding the 1976 factory and the factory north of Hotham Place). This is shown in Figure 1.



Figure 1: Extent of Victorian Heritage Register registration (left), with the relevant land outlined in red, and images of key heritage buildings and an aerial image marking their location. Source: Executive Director's determination report at Figure 1.

17. As Figure 1 indicates, permit application P37853 relates to the northern part of the registration area and Bryant and May Industrial Complex.
18. It is important to highlight that the permit application material and visualisations include a multi-level building to the west of the registration area that is not part of the Register listing and is not the subject of permit application P37853, the subject of this report. The Committee refers to this again below.

Statement of significance

19. The statement of significance for the place sets out the relevant history and identified cultural heritage significance of the place:

“What is significant?”

The former Bryant and May Industrial Complex in Richmond is a superb, largely intact Edwardian factory complex. The existing complex was built in 1909 to a design by William Pitt. The builder was Clements Langford. A further section was added behind it in 1910 and in 1917 a dining hall was constructed. The machinery for the factory was made in the USA, but none of it survives. A further building programme in 1921-22 included the western extension of the factory, a new chimney stack and boiler house, and offices and Brymay Hall, all designed by Klingender and Hamilton. The builder for the extension was T. Donald and Co. The 1909 offices were extended in 1934 by Arthur and Hugh Peck, architects. The 1920s saw the introduction of many staff amenities, including the tennis courts, basketball courts and a bowling green.

How is it significant?

The former Bryant and May Industrial Complex is of historical, architectural and social significance to the State of Victoria.

Why is it significant?

The former Bryant and May Industrial Complex is of historical significance as evidence of the development of industry in Melbourne from the early 20th century. The history of the Bryant and May complex reveals a great deal about the history of manufacturing in Victoria. The English firm Bryant and May began manufacturing matches in Australia in 1885. It occupied two sites in Richmond and amalgamated with another British match manufacturer operating in the suburb before the growing size of its operations and workforce necessitated the construction of the existing complex. With 280 employees, Bryant and May had become a major employer, and in 1909, as a result of the merger and to accommodate new processes and increased production, a new factory was built adjacent to its old factory, a former brewery. These initial years show the importance of British capital in the development of Victoria's industry. The various changes in the buildings over the years can be directly related to the introduction of protective tariffs, their removal and the dumping of matches from overseas, and technological innovations. Machinery was regularly updated to cope with new processes and the declining use of wax matches. The consumption of matches generally had declined and together with strong overseas competition forced the firm to diversify and merge yet again. By the late-1980s, the company had vacated the factory, reinforcing the pattern of de-industrialisation of Melbourne's inner suburbs.

The former Bryant and May Industrial Complex is of historical significance as a rare surviving example of model factory conditions and amenities. The complex was run as a model factory and reflected the Quaker principles of the original English founders. Evidence of the amenities provided for its workers such as the tennis courts and dining room is still substantial. One of the first industrial nurses in Australia was employed at the factory from 1922.

The former Bryant and May Industrial Complex is of architectural significance for the quality and cohesion of its architectural development and for its association with the important Melbourne architect, William Pitt. The factory complex is one of the finest remnants of Richmond's industrial heyday and its substantial intactness provides an excellent indication of industrial organisation and design of the early 20th century. Pitt designed the complex towards the end of an eminent career that was innovative, prolific and wide ranging. Other significant industrial buildings for which he was responsible were the Denton Hat Mills in Abbotsford and the Foy and Gibson complex in Collingwood.

The former Bryant and May Industrial Complex has social significance as an important long-term part of the Richmond and inner Melbourne landscape. The factory was initially important as a large employer in working class Richmond, but has over the years also become a prominent landmark for both local residents and other residents of Melbourne. Its clock tower has been a familiar sight to generations of train travellers and visitors to the Melbourne Cricket Ground, and the complex has featured in films and television programs set in Melbourne. Bryant and May's 'Redheads Matches', intimately associated with the factory, are still a well-known commercial icon in Victoria."

SITE CONTEXT

20. The place is located in the eastern part of Cremorne, fronting the west side of Church Street. Cremorne has been and is subject to substantial change in its urban character and scale of built form in recent years. Substantial infill development is being encouraged for Cremorne through various local and State planning frameworks. Completed development and new buildings in construction have been observed on the Committee's inspection.
21. Church Street is an arterial road which enjoys varied built form and land uses, from low-scale historical hotels, and low- to high-rise office and retail development. To the west of Church Street and the proposal, built form includes traditional fine-grain terrace housing and buildings of a lower scale, and other office and industrial buildings which are predominantly low to medium scale. This western area is part of the Cremorne area that is expected to be redeveloped over time.
22. The key heritage buildings for the purpose of the land affected by permit application P37853 are the chimney stack ('chimney') and Boiler House, Brymay Hall, the Dining Hall and Administration Building. It appears common ground from the material available to the Committee, that the buildings are generally in good condition. Apart from the chimney, the permit application material states that these buildings are either being used, or were in use, within the last year.
23. Other parts of the complex, outside the area in permit application P37853 and to the south of Russell Street, include the large heritage factory building, as well as a tennis court and pavilion, and contemporary infill forms. The four-faced clock tower is part of the factory building. It is adjacent to Russell Street and positioned toward the west, near to Walnut Street. That this is outside the proposed development area has not been identified as an issue in any of the material, all documents having referred to the proposal's response to this feature.

THE PROPOSAL

24. The permit application proposes the demolition of all 1980–90s infill development on the subject site, including connecting structures and existing roof plant on the Administration Building and Dining Hall. All hard surface landscaping is also proposed for demolition (the officer's report at **Attachment 1.5** references the demolition plans).
25. Alterations are also proposed to the Administration Building, Brymay Hall, Dining Hall and Boiler House for their adaptive re-use. However, no internal fit-out works are proposed. The Heritage Impact Statement (June 2023) ('HIS') refers to internal works, including demolition of internal partition walls and an existing stair in Brymay Hall and the Dining Hall, with other internal modifications to the Administration Building. The report specifies internal fabric to be retained and modified, some of which the Committee observes is original fabric. Retention or removal of some original internal fabric does not appear to be cited in the permit application material.
26. More specifically:

- the Administration Building is proposed for retail use, with plans for internal renovations including the removal of partition walls and doors and the addition of a lift and a new bathroom on the first floor, while preserving early internal features such as fireplace tiles, mantles, and timber stairs. External modifications proposed include installing glazed windows and pivot doors on the northern section of the west elevation, reconstructing historic windows on the east elevation, and repairing timber windows and doors, brickwork, vents, downpipes, and rendering. Interior works include repairing and varnishing retained timber features.
- the Brymay Hall and Dining Hall are proposed to be used as a hotel food and beverage area on the ground level, with meeting rooms on the first floor. The proposal involves partially filling in an existing door opening on the west elevation, installing a window above it, demolishing internal walls and the existing stairwell, removing current bathrooms and kitchens, and installing new kitchen and bathroom facilities, and the introduction of airlocks at two entrances, a lift and staircase. External works akin to those outlined for the Administration Building are also proposed along with removing salt and paint from the west elevation. Internally, repairs will focus on timber trusses, timber ceiling lining, and stained finishes.
- the Boiler House is intended for retail use, with proposed works including removing the existing door and windows to the north, creating a new window, replacing roller doors, demolition of the later internal wall on the ground floor, internal stairs and the mezzanine level.

27. It is proposed to construct two new buildings on the subject site:

- a 13-level hotel tower (plus two basement levels and one level for plant) on the north-east section of the subject site. The proposed podium is to a height of 25.3m and the tower to a height of 61.09m. The permit applicant refers to this tower as Building B, shown on the right in the forefront of Figure 2 below;
- a 12-level workplace tower across an L-plan form (plus 2-level basement). The proposed podium is to a height of 27.5m and the tower to a height of 66.4m and 47.265m. The permit applicant refers to the tower as Building C, shown as the building in the background with the wedged roof in Figure 2 below; and
- new landscaping is also proposed to create a series of landscaped streets, lanes, courtyards, and plazas to support the mixed-use development. This includes rooftop gardens on the proposed towers and paving, steps, seating, garden beds, canopy trees, water features and an interpretive log stack seating feature at ground level, with a portion of landscape works designed as a contemporary interpretation of the historic landscaping of the place. Chimney Lane is bridged over at Level 3, with the floor plan of Building C connecting the sections to the south of the "lane". Areas of proposed landscaping is depicted in Figure 3.



Figure 2: Elevated render of the proposed development (13-level hotel tower on the right (Building B) and the 12-level workplace tower (capped with the wedge-shaped building; Building C) directly behind. Source: Officer's Report, p. 20.

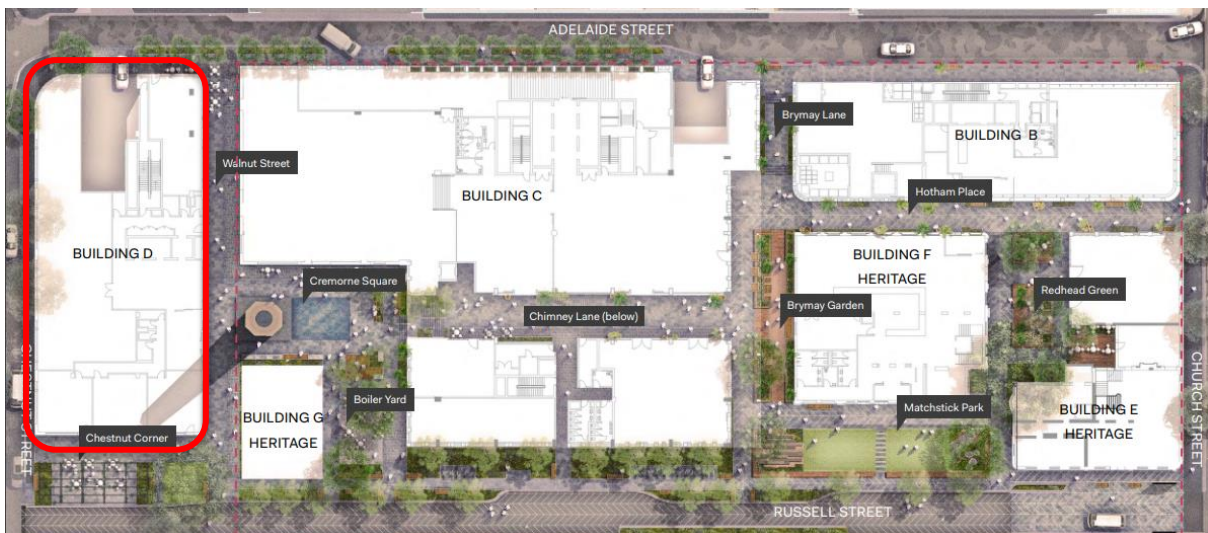


Figure 3: Extract from Masterplan showing landscape zones, including a range of proposed courtyard/plaza spaces, and new streetscapes. Source: Officers Report, p. 21.

- 28.** Additional works are proposed on the south-west corner of the wider property, which includes demolition of a warehouse building and construction of a workplace tower of seven storeys. The applicant refers to this tower as Building D, depicted on the very left of Figure 3 above (outlined by the Committee in red). These works are proposed on land that is not subject to the registration and therefore are not considered under the Act. As far as the Committee is aware, that building does not have any planning approval. Hence, it cannot be relied upon or a presumed outcome as part of the context for assessment.

HERITAGE COUNCIL ASSESSMENT

BASIS FOR ASSESSMENT

29. The Committee's assessment is based on the requirements of the Act and specifically section 101(2) which requires the consideration of 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;*
 - ...
 - f) *any matters relating to the protection and conservation the registered place ... [considered] relevant.”*
30. The Committee's assessment of sections 102(a) and 102(b) of the Act are set out below.

ADEQUACY OF DOCUMENTS AND INFORMATION

Identified gaps

31. The Committee has considered the written material available to it.
32. As a consequence of the call-in request, the Committee has not been in a position to request further information or explore issues with parties as would normally occur through submissions, expert evidence, and a hearing. Submissions by parties set out in **Annexure3** were provided to the Executive Director and analysed in the officer's report, but they pre-date the amended plans cited in that officer's report.
33. In addition, 'gaps' have been identified in the material recorded through the officer's report that would have been ventilated through a hearing.
34. The Committee observes that for a State registered place of the size and complexity of the former Bryant and May Industrial Complex, and the major development that is the subject of permit application P37853, there is an evident lack of information in relation to relevant heritage considerations associated with a permit application. Specific information that would have assisted the Committee's consideration includes:
- responses by parties to the amended (decision) plans;
 - information about a 'master plan' which is referred to in the available material and is understood to include the southern part of the complex. This would have assisted the Committee to understand development being contemplated in the immediate environs of the land that is the subject of the permit application;
 - related to the above, insufficient analysis of view lines and the impact on view lines having regard to the current development and approved development in the wider area of Cremorne and Church Street;
 - information about the retention, reconstruction or works to the external fabric of significant buildings where demolition of non-significant fabric is proposed to be removed;
 - further detail with respect to aspects of the proposed materials and finishes;
 - information about works to the interiors of significant buildings to facilitate services and re-use of heritage fabric. In particular:
 - in relation to the interior of the Administration Building, a comprehensive list of the heritage fabric to be retained (for example, the HIS cites the proposal as retaining all early interior fabric, namely the fireplace tiles and

mantle in the former boardroom and the timber stairs, but is silent on retention of other timber panelling or the timber floors);

- detail on works to the interior of the Brymay Hall; and
 - information with respect to structural works that may be required and may impact on heritage fabric, such as any protective or remedial works required for the chimney stack.
- details of retention and works to the Dining Hall as part of the proposed hotel;
 - information about the structural requirements to retain, conserve and adapt the heritage buildings, given the potential for works to/around these elements to require alterations to fabric and/or reinstatement or reconstruction;
 - the impact of demolition and excavation works necessary in the vicinity of the heritage buildings, and particularly the chimney, through vibration;
 - information about the effect of wind on heritage fabric;
 - greater detail with respect to the proposed landscape treatment and evidence of historic conditions which the proposal plans to mimic;
 - further information on the economic use of the place including current tenancies given the documents indicate most were leaving by the end of 2023 or early 2024; and
 - draft permit conditions.
- 35.** The Committee has sought to inform itself, to the extent possible, on its site visit. For example, with respect to existing view lines and seeing the interior of heritage buildings that are the subject of the permit application.

Weight to Visualisations and Renders

- 36.** The permit application documents are accompanied by a large number of visualisations or 3D renders.
- 37.** The architectural renders prepared by the project architect provide some insight into the design intent and concept. However, they must be viewed carefully and should not be relied on in understanding the concept and in reaching a decision. The same is the case with the model seen by the Committee during the site inspection. The Committee notes that the model did not incorporate the most recent changes, for example, the reduction in the podium height of Building B.
- 38.** The Committee particularly observes that:
- multiple renders or visualisations are framed at viewing points that do not equate to sightlines and/or present as realistic viewing opportunities;
 - multiple renders or visualisations contain representations of a building to the west of the VHR registration area that is not part of the VHR listing, is not the subject of permit application P37853, and does not have any formal approval as far as the Committee is aware;
 - not all of the images may represent the amendments made to the permit application during its processing prior to the Executive Director's determination.
- 39.** The Committee has considered the material, but relies on the facts and documented plans in assessing the permit application and providing this report.

OVGA (Design Review Panel) Advice

- 40.** The OVGA was asked by DTP to provide an independent design review.
- 41.** Various meetings and exchanges took place, as set out in two reports.

42. The OVGA's first response in June 2023 (**Attachment 4(3)**) sets out the following as a summary issue and recommended 'further reframing and refinement':
- “Alongside other high profile heritage sites in Victoria, the proposal for 560 Church Street raises a broad question about how to appropriately balance the sensitivity of significant heritage places with new development in a city facing substantial growth pressures. We do not question whether this site should be developed; rather, the scale, density, nature and long-term legacy of the proposal needs interrogation. The panel agrees the site, and its locale, will benefit from new development, and this can be contemplated provided it achieves a sense of ‘design equivalence’ between heritage and contemporary amenity and structures.”*
43. In its second report dated August 2023 (**Attachment 4(5)**), the Design Review Panel ('DRP'), following revisions to the proposal seeking to respond to a first review/meeting process, is generally supportive of the design and architectural expression. In its summary issues the report includes:
- “The scheme more successfully responds to the site history as a ‘model factory’, which prioritised amenity for its workers. An emphasis on public open space amenity, together with strategic changes to built form, has enabled a more successful ‘design equivalence’ between heritage and the contemporary amenity and structures.”*
44. The Committee has taken account of the complimentary and positivity in the responses.
45. The OVGA/DRP reports provide urban design comments and advice. For the purposes of this report to the Minister, the two reports must be considered with caution as their scope is different to the assessment before the Heritage Council. While 'heritage' has been part of their assessment, the reports do not analyse the statement of significance nor any offer any indication or the approach or weighting the cultural heritage values, nor what is regarded as the heritage context. It is unstated as to what has informed its approach – such as the comment that “An emphasis on public open space amenity, together with strategic changes to built form, has enabled a more successful ‘design equivalence’ between heritage and the contemporary amenity and structures”.
46. That is, the OVGA advice is not an assessment under the requirements of the Act, none of which have been recited in the reports. Reference is made in the reports to heritage, but the criteria underpinning that consideration are not stated.
47. It is, therefore, unfortunate that this Committee cannot specifically assess how heritage has informed and been weighed in the OVGA's conclusions, notwithstanding that the OVGA had heritage reports such as that by GJM Heritage (**Attachment 1.6(1)**).
48. The OVGA and its review panel necessarily have a different focus to that required of the Heritage Council. Consequently, while the Council has carefully considered the June and August 2023 reports and has also carefully assessed changes made by the applicant in that process, the reports must be understood in their own context. That context is distinguished from heritage assessments such as the HIS and the Executive Director's report, whose analyses are founded in the requirements of the Act. Submissions to the Executive Director and grounds filed with the Heritage Council have been expressed within the scope of the Act rather than other considerations.

CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE – SECTION 101(2)(a)

Significance of the Place

49. The statement of significance is not in contention between the parties. The place is of historical, architectural and social significance.

50. Some aspects of significance have, however, been differently weighted and emphasised in submissions provided to the Executive Director and in the Executive Director's report. These key matters are highlighted next.

Several Disputed Aspects of the Significance of the Place

Role of Brymay Hall and the Dining Hall

51. The permit applicant submits that the significant buildings on the site, including the Tennis Pavilion, Brymay Hall and Dining Hall, are "ancillary to the factory building in scale and historic function" and that the contrasting scale of the factory to the historic buildings on the subject site would remain strongly legible, as would the demarcation of work and re-creation.
52. The Executive Director disagrees, stating that this assessment diminishes the significance of buildings like Brymay Hall and the Dining Hall, which are integral to understanding the industrial complex's history including its model factory conditions.
53. The Committee prefers the view of the Executive Director, which places weight on the historical significance of role that Brymay Hall and the Dining Hall in the industrial complex. They may be physically smaller, but their historical role and contribution to the architectural composition and integrity of the complex as a whole, which are expressed in the statement of significance, should not be underplayed or diminished. Amenities such as the Dining Hall are expressly cited in the statement of significance.

Northern part of the site

54. The permit applicant's material refers to the proposed development on the northern part of the site as being appropriate because it facilitates the reinstatement of the historic 'Hotham Place' built on by the 1980–90s infill development. It considers the proposed hotel tower, and a substantial proportion of the workplace tower, is on part of the registered place that is "not associated with the initial development of the Bryant and May Industrial Complex in the early twentieth century, which is the historical period of particular importance for the industrialisation of Richmond" and that the land was "divided from the land north of Hotham Place by a brick boundary wall".
55. The Executive Director disagrees with this approach. He considers this is a narrow view of the period of significance. The officer's report states the northern land parcel was developed between approximately 1930 and 1945, with operation by Bryant and May on it from 1901 to 1988. Therefore the 1930s and 1940s buildings are part of the early development of the place. In the Executive Director's view, historically significant development continued to occur throughout this period, demonstrating the expansion of manufacturing and associated conditions for the factory workers.
56. Having said that, the officer's report states that given the removal of the early industrial buildings on the northern strip of land adjacent to Adelaide Street, the reporting officer generally agrees with the assessment made in the HIS that development on this portion of land could be appropriate. It is also agreed that the reinstatement of the historic alignment of Hotham Place is positive, along with the design approach of new built form reinforcing that. The assessment does not accept the scale of proposed development, to which the Committee refers below.
57. The Committee supports the removal of the infill form to reveal and then reconstruct and/or reinstate original fabric. The Committee also agrees that development of the northern area of land can be considered. In so doing, it must be of a scale, design, form, and of materials/finishes that respond to the lower heritage buildings and streetscape, when considered collectively or in relation to each part of the place. A sense of setting is critical to the values of this industrial complex, which requires sufficient horizontal and vertical separation in building form.

Values of landmark structures

58. The applicant's position that the landmark status of the place is "fortuitous rather than designed" is disputed in the officer's report, which argues that the clock tower was clearly designed as a landmark, evident from its clock faces intended for viewing beyond the complex.
59. The officer disagrees with the notion of contemporary towers becoming the new landmark, emphasising that the proposal should prioritise the cultural heritage significance of the site rather than solely focusing on development viability. The massing, height, and location of the proposed towers are criticised for shifting focus away from heritage structures and dominating views, despite attempts to mitigate impacts with design features like a wedge and atrium void. This impact extends to the chimney stack, which would be constrained and enclosed by new development, resulting in limited visibility and compromised long-range views.
60. The Committee agrees with the permit applicant insofar that it may be suggested that the height and scale of the clock tower, chimney and water tower must be influenced by their function and purpose. However, this does not lessen the role given to them in the statement of significance and the values ascribed to them. The Committee agrees with the officer that the four faces of the clock tower were designed to be seen and the statement explains why the landmarks have a range of cultural heritage values.

Approach to landmark forms and buildings

61. Differences also exist in the material with respect to the approach to landmark forms and buildings.
62. Based on the HIS, the applicant has approached the proposal on the basis of retaining important views to and from the place. It is said that the 1909 William Pitt offices fronting Church Street, the associated clock tower and chimney stack all currently retain landmark status, and are distinctive forms viewed from surrounding streets and within the place. The HIS fairly recognises that the ability to view these elements is changing over time as intervening development takes place in the surrounding area.
63. The HIS states:

"Considering the changes to the setting of the heritage place both as a result of this project and surrounding development, the generosity of space around the factory and its clock tower is sufficient to ensure that it will remain a dominant landmark form. The visibility of the chimney from within and outside the site will be impacted to a greater degree, but this also still will be able to be observed in both closer and longer views along Walnut Street and from within the site. As relevant to the impacts on cultural heritage significance the changes are not ones which will unacceptably alter that significance."
64. The OVGA places weight on the significance of the vertical landmark forms and promotes "restoring views to and prominence of key vertical heritage landmarks". It contends that "stronger protection of these vertical elements is a key signifier of whether this development successfully integrates within its sensitive heritage context."
65. The Executive Director considers this to be narrow view of the landmark status of the place – while the verticality of the clock tower and chimney contribute to landmark values, in the Executive Director's view so does the horizontal scale and cohesive design of the factory building that runs from Church Street to Walnut Street, as well as the Administration Building facing Church Street. Moreover, the Executive Director considers the landmark values of the place do not only reside in architectural elements of vertical height, but also in the recognisable and consistent architectural form and presentation of the complex within the streetscape and the broader suburb.

66. The Committee considers that the statement of significance makes it clear that the taller landmark forms have multiple heritage values. Such values are architectural, historical and social. This Committee considers these values should not be discounted or devalued, and it is a matter of judgment as to whether the proposal sufficiently responds to these elements of the cultural heritage significance of the place.
67. Having said that, the Committee has particular and strong concerns about an approach adopted in the material, which appears to emphasise and rely on a relationship between a potential Building D. That form unreasonably closes in the chimney landmark and its setting. The proposed Building C appears to take some of its design cues (e.g. parapet and setbacks) from the main factory building south of Russell Street.

Response to the Cultural Heritage Significance of the Place

Adaptive re-use of the place

68. The parties agree, and the Committee accepts, that adaptive re-use of the place is appropriate, desirable and a positive outcome.
69. There are limitations in the material about the scope and extent of some internal changes and works, as has been highlighted earlier. The HIS states that permit exemptions may apply, but, the Committee is not able to comment on or verify this.

Conservation works

70. The parties agree, and the Committee accepts, that conservation works to the place would be appropriate, desirable and a positive outcome. This is, however, a matter upon which further information is necessary.

Demolition/alteration/removal of fabric

71. The parties agree, and the Committee accepts, that demolition of the late 20th century building and works – such as the 1990s infill building wrapping around the northern portion of the site and extant heritage structures – is appropriate, desirable and a positive outcome.
72. This is, however, a matter upon which further information would be necessary to ensure that the nature, extent and impact on exposed heritage fabric is sufficiently documented and assessed. For example, the Committee refers to:
- insufficient detail of the proposed changes to the interior of Brymay Hall and the Dining Hall to provide confidence that this aspect of significance will not be impacted negatively;
 - insufficient structural assessment of the heritage buildings and, in particular, with respect to the chimney (eg. purpose and condition of rings, whether the structure is vertical/plumb) whether bracing or works/alterations/fixtures are required to support the structure during construction and in the longer term.
73. Unspecified works may not be exempt from a heritage permit and may give rise to alterations that result in the need for reconstruction and reinstatement of fabric.

Public realm improvements

74. The parties agree, and the Heritage Council accepts, that public realm enhancements such as the laneway network are appropriate, desirable and a positive outcome. This is, however, a matter upon which further information may be of assistance.

Site layout and approach to proposed new buildings including towers

- 75.** Historically, the setting of the heritage buildings on the north side of Russell Street has been compromised by the construction of later buildings to the north of the site, including incorporation of the rear of the Administration Building, and parts of the Brymay Hall and Dining Hall, into later additions. The demolition of these later additions and the reinstatement of missing elements enabling these buildings to be seen again as freestanding is one of a number of positive aspects of the proposed development.
- 76.** The Committee accepts the overall architectural approach to the design of new buildings by using a podium to provide a sympathetic form adjacent to the heritage buildings with a setback light grey/glass tower or wedge form, subject to further comments on the main new proposed buildings below that focus on siting, scale and bulk. The main impact of the proposed development is, however, on the setting of the heritage buildings, in particular, Brymay Hall, the Boiler House and chimney. This is part of the Committee's key focus next.

Hotel building

- 77.** The overall form, with a podium and a tower set back from the façade of the podium, and elevated above it, is respectful of the heritage buildings. The curved ends to the podium form reflect the curved ends of the main Bryant and May factory building and the Administration Building.
- 78.** The height of the podium in the amended proposal is slightly lower than the height of the factory building (noting the factory is not the subject of this application), but higher than the Administration Building on the site. Viewed from Church Street, the siting of the hotel building to the northern end of the site of the proposed hotel building means there is a transition from south to north of the higher original factory building south of Russell Street, the lower Administration Building and the new hotel podium at a higher level than the Administration Building, but not as high as the main factory building to the south. This transition is reasonable and does not have a significant negative effect on the setting of the Administration Building. This current proposed podium height is acceptable. The tower element above is set slightly back, and its form is relatively narrow (north to south), reducing the overall bulk.
- 79.** The permit applicant submits that the "factory would retain its dominant presence from the perspective of a pedestrian in former Russell street, the historical central access through the complex". The officer's report states that the addition of the tower components results in impacts on other significant views to the place – including short-range views within the complex such as the middle of former Russell Street and longer-range views toward the place from Church Street. The Committee agrees that in these views, the dominance of the factory building in the streetscape and as a landmark would be diminished, largely due to the dominance of the tower forms. The Committee considers a more graduated response may be beneficial and other issues it raises could be reviewed holistically in this regard.

Central Workspace

- 80.** The podium height of the Central Workspace has been designed to match the parapet height of the main factory building on the southern side of Russell Street, rather than to relate to the heights of the heritage buildings on the subject site. This is mentioned in the HIS:

"In responding to the existing built form the factory is recognised as the central and dominant building within the complex and has informed the podium with tower design response. The proposed hotel podium has a lower height than the 1909-10 factory parapet and the proposed workplace podium has the same height as the 1909-10 factory parapet, lower than the 1921 factory parapet. The use of the factory parapet for the datum maintains its primacy."

81. It is higher than the podium of the hotel. The building also has a much larger footprint, and as a result, a much larger overall bulk. The impact of the proposed Central Workspace building, and in particular its podium, on the setting of Brymay Hall and the Boiler House and chimney, is greater than that of the hotel. It rises vertically to a significant height above the hall. There is an abrupt transition between the two buildings. This will have a negative impact on the cultural heritage values of the place, as it will visually dominate the hall building, and compromise its setting. This will be most noticeable from Russell Street and within the site.
82. Similarly, the lower office tower (on the west of the wedge form) which rises vertically above the podium and behind the chimney, compromises the setting of the Boiler House building and the chimney, with the podium rising well above the Boiler House, and the tower element providing a glazed backdrop to the chimney. The transition is abrupt. The removal of this lower office tower and the lowering of its podium would greatly reduce the negative impact on the setting of the Boiler House and open up/retain view lines to the chimney from the north, from within the site.
83. The overall bulk and height of the Central Workspace podium and the dramatic transition between the lower heritage buildings and the podium have a negative effect on the setting of these buildings and therefore on the cultural heritage significance of the place. The Committee considers that a significant reduction of the height of the Central Workspace podium and resultant reduction in overall height of “the wedge”, discussed further below, could lessen the negative effect.

Wedge form

84. The wedge form has been mentioned in both the Executive Director’s reasons for refusal, and in the submissions from Yarra Council and the Royal Historical Society of Victoria. These submissions note the wedge form as being a negative aspect of the proposal. The submission from the National Trust of Australia (Victoria) (‘National Trust’) does not specifically mention the wedge form. The wedge form has been supported in the OVGA report.
85. The wedge form of the office building tower is set well back from Church Street in the centre of the site, and allows light into the pedestrian spaces, as well as providing space to the clock tower. While it is a contemporary form that is “foreign” to the heritage buildings on the site, it is a matter of individual professional opinion as to whether or not the wedge form is an acceptable intrusion. There are obvious international precedents such as the glass pyramid at the Louvre. Local examples include the Museum building to the north of the Royal Exhibition building (‘REB’), including the large inclined roof structure between the REB and the museum. It is readily identifiable as new work. The northern addition to the GPO in Elizabeth Street (Williams Boag Architects) includes a vertical glazed wedge element. And there is a two-storey folded glazed addition to the roof of the former strongroom at the former Registry Office in Queen Street. These are all considered acceptable (successful) contemporary additions to significant heritage buildings. They all involve the introduction of a modern/foreign geometric form.
86. The Burra Charter principles, particularly Article 22, provide some guidance on new work or additions, but are open to interpretation and professional judgement. These articles should not be considered in isolation, but taking into account the other principles in the Charter.

“Article 22” New work

22.1 New work such as additions or other changes to the place may be acceptable where it respects and does not distort or obscure the cultural significance of the place, or detract from its interpretation and appreciation.

22.2 New work should be readily identifiable as such, but must respect and have minimal impact on the cultural significance of the place.

New work should respect the significance of a place through consideration of its siting, bulk, form, scale, character, colour, texture and material. Imitation should generally be avoided.

New work should be consistent with Articles 3, 5, 8, 15, 21 and 22.1.”

- 87.** On balance, the Committee regards the wedge form as acceptable, provided the overall building envelope is modified to mitigate the negative impacts on the cultural heritage values of the place.

View lines

- 88.** Currently, the landmark vertical elements – the clock tower, water tower and chimney – are still clearly visible from the surrounding area. In terms of impact on the view lines of the landmark elements, of the three – the chimney, the clock tower and the water tower – the impact on the view lines to the chimney is the most negative.
- 89.** The “hemming in” of the chimney on both its north and east sides by the Office Workspace podium (and to the west with the proposed Chestnut Workspace outside the registered land) will have a negative impact on the view lines to this significant structure. The western tower of the Central Workspace, with its vertical glazed façade, would form a backdrop to the chimney, and has a significant negative impact on the views of the chimney both from within the site and from the north. The increased setback from the west above Level 4, following OVGA consideration, provides a very minor opening of the view from the north. The negative impact is still considered significant. The overall height of the Central Workspace, with the wedge form above the podium, also largely obscures views of the chimney from the east.
- 90.** The clock tower and water tower sit on the southern side of Russell Street, in the main factory building, not the part of the site subject to this application. The clock tower and water tower will remain visible from Church Street (from the east and north-east), from Russell Street that divides the subject site from the main Bryant and May factory building, and from the west, but will no longer be visible from the north. It is unlikely that views of the landmark structures will still be visible from the train line on the city side of East Richmond Station. The view of the clock tower for train travellers and visitors to the Melbourne Cricket Ground is mentioned under social significance in the statement of significance, although it is also understood that some approved projects and new buildings in construction may already have impacts in this regard.

Fenestration

- 91.** Fenestration to the proposed podium structures is regular, with a vertical emphasis. The rhythm and proportions are sympathetic to the fenestration of both the original factory building and the Administration Building. The heritage buildings have strong vertical fenestration patterns, with full height brick pilasters between the windows. The fenestration to the proposed tower element of the hotel, with projecting windows, has been mentioned as a negative aspect of the proposal in the submission by the Yarra Council, due to its visual competition with the original fenestration. Other submissions did not remark on this aspect of the proposal. Setting back the tower element and height above the podium further would reduce the visual impact. However, the Committee has not had the opportunity explore this with the permit applicant, Executive Director and other participants in the review process. The east and west sides of the wedge element are fully clad in plain glazing. These are the most visible aspects of this element, and the treatment is relatively neutral.

Materials and finishes

- 92.** The Committee finds the approach to materials for the new buildings is appropriate. The podium sections are clad with a clay red glass-reinforced concrete-cladding system, of various finishes (not specified). The structures above the podium level are a combination of grey metallic cladding, and glazing (various-grey, clear). The clay red of the podium cladding is obviously designed to reflect the red brickwork of the heritage buildings and is a sympathetic response. The grey/glass upper structures (the hotel tower and workspace wedge) provide a lighter contemporary contrast.

Conclusion

- 93.** For the reasons given, the Committee accepts positive outcomes for the cultural heritage values of the place that can be achieved by this permit application. However, it also finds that there are impacts and insensitivities in this permit application, with respect to individual parts of the place and collectively with respect to the place as a whole that outweigh potential positive outcomes.

REASONABLE ECONOMIC USE – SECTION 101(2)(b)

Executive Director's Grounds

- 94.** The Executive Director determined to refuse the application on two related grounds, that:
- the proposal has started with the highest and best use of the place and not the cultural heritage significance of the place. In its current form, the proposal is an overdevelopment of the heritage place; and
 - it has not been demonstrated that refusal would affect the reasonable or economic use of the registered place.
- 95.** Both grounds of refusal reflect a misunderstanding of the Act.

Highest and Best Use

- 96.** The first ground of refusal appears to rest upon a number of unstated but implied assumptions that find no support in the Act. At the outset it must be noted that:
- the Act does not prescribe a sequence of consideration, or dictate a starting point for design or assessment;
 - neither does the Act admonish consideration of the highest and best use, whether as a starting point for design or as part of the circumstances which describe the manner in which the proposal in question came into existence; and
 - the Act must be taken to contemplate the possibility that the highest and best use of land on the Register might also be consistent with the proper conservation, protection and management of the place.
- 97.** The term 'highest and best use' is one borrowed from the lexicon of land valuation. Broadly, the term describes the full extent to which land can be developed having regard to its natural condition, location and the limitations and opportunities created by the regulatory framework, including heritage constraints.
- 98.** The first ground of refusal misapplies the term in a conceptual sense. The Committee understands the ground of refusal to imply that the proposal has been developed in a conceptual sense without regard to the limitations which might be imposed by the fact that the land and the buildings are in the Register.
- 99.** The concept of the highest and best use depends for its proper application on an understanding of the heritage limitations that might constrain development. Any

application for works to a heritage place which proposes a change to the existing condition will necessarily challenge the status quo, but the question is not whether the application represents the highest and best use. Rather the question is whether the change to that place is an appropriate conservation and protection outcome. The outer limits of acceptable change to a place might define the highest and best use, but whether or not it does is irrelevant to the ultimate question: is the proposal an acceptable conservation and protection outcome?

100. This application asks the question: is the proposed form of development within the limit of appropriate intervention.
101. Whether or not the proposal represents the highest and best use of the land is not really to the point. The real question is whether the proposal is worthy of approval in all the circumstances.
102. As a matter of principle, the Committee finds this ground of refusal should be rejected lest it create the impression that examining the most productive possible use of buildings of State significance is inappropriate. Rather, the better view is that owners of land on the Register should be encouraged to achieve the highest and best, or the most economically productive, use of the place possible, because it is the ongoing economic use of places of State significance which provides the best chance of their sustainable conservation.
103. The real question is the extent to which the application, if approved, would affect the significance of the registered place. Whether the proposal was designed to achieve the highest and best use of the land is not relevant. The matter of central importance is the acceptability of the proposed works on the cultural heritage significance of the place.

Reasonable or Economic Use

104. The second ground of refusal assumes that a precondition to approval requires demonstration that refusal would affect the reasonable and economic use of the registered place. The reasons advanced by the Executive Director in support of its recommendation to refuse the application make explicit that he assumes that this is a matter which must be considered in all applications.
105. Nothing in the Act supports that construction.
106. Section 101(2) of the Act provides that in making a determination about whether to approve an application the Executive Director must consider:
 - a) *“The extent to which the application, if approved, would affect the cultural heritage significance of the registered place;*
 - b) *The extent to which the application, if refused, would affect the reasonable or economic use of the registered place.”*
107. The better view is that set out by the Victorian Civil and Administrative Tribunal in *Staged Developments Australia Pty Ltd v Minister for Planning*² where it considered the equivalent provision in the *Heritage Act 1995*:

“Failure to establish [the matters set out in s 73(1)(b) of the Heritage Act 1995] is not a valid reason or ground for refusal. In fact the failure to show undue financial hardship is irrelevant in this case. It is only ever relevant as a fact that might weigh in favour of granting a permit that might otherwise be refused. ...

We understand the Executive Director to want to argue that there are other less drastic modifications to the building which would accommodate one or some of those three uses and that it is appropriate to refuse this application to force upon the Applicant to a reduced project. Again this fails to recognise that consideration (b) is a

² [2001] VCAT 1447.

consideration, where relevant, that may justify the grant of a permit that might otherwise be refused rather than being, of itself, a reason for refusal.”

- 108.** The Act contemplates that a proposal could be approved on the basis that its impact on the significance of the heritage place is acceptable irrespective of whether the reasonable or economic use would be affected by refusal.
- 109.** Section 101(2)(b) is engaged when there is a proper basis for refusal on all other grounds. The provision invites consideration of the effect of refusal on the reasonable and economic use of the registered place in circumstances where refusal might otherwise result.
- 110.** The question is not whether there are other uses, including the existing use of the land, which are reasonable, or economic – though these facts may be relevant in establishing an understanding of the context in which the application is made. Rather, the question is whether the refusal of the application under consideration would affect the reasonable or economic use of the land.
- 111.** The provision makes consideration of the effect on the reasonable or economic use of the land contingent upon possible refusal. It might be observed that a potential refusal is only likely to be in contemplation in circumstances where the works proposed unacceptably and adversely affect the cultural heritage significance of the place.
- 112.** In this case, the Committee has found that the proposal would have a significant adverse effect on the cultural heritage significance of the place for reasons set out earlier in this report.
- 113.** The permit applicant has sought to advance an argument that refusal of the application would adversely affect the reasonable or economic use of the place.
- 114.** As there was no hearing in this matter, the Committee has not had the advantage of careful legal argument as to the application of section 101(2)(b) in this case, nor has it been able to review any evidence which would be relied upon by the permit applicant, or test that evidence. This necessarily qualifies the advice in this report.
- 115.** Section 101(2)(b) requires consideration of how refusal might affect the “reasonable or economic use” of the place. These two words “reasonable” and “economic” are not defined by the Act. Consequently, they are to be given their ordinary meaning having regard to the context in which they appear.
- 116.** Words like “reasonable” and “economic” can have very broad meanings. The content of the meaning of these words as they appear in section 101(2)(b) is informed by the purposes of the Act. It would be inappropriate to lay down any rules or criteria which purport to be of universal application, but given the purposes of the Act, it must be the case that in the calculus of reasonableness the following factors are relevant:
 - the Act applies to the registered place because it is regarded as being of significance to the State;
 - the framework of the Act is made known to owners and purchasers of the land by the Land Titles system which records that the place is on the Register and that the Act applies;
 - the purpose of the Act is to conserve and protect the place;
 - in the name of protecting and conserving places of cultural heritage significance to the State, the Act operates to create a layer of control that is separate from and potentially more constraining than planning legislation, which in many cases might facilitate considerably more intensive development but for the existence of the heritage place (for instance, the GPO);
 - registered places are often privately owned and managed. Private owners are often exposed to the significant costs of maintaining significant places without

assistance from government, and are subject to restrictions on what can be done with the place. Private owners bear a burden in the management and maintenance of places in the Register, and this burden is borne for the benefit of the broader community; and

- the framework of the Act recognises that it is the ongoing economic use of places of State significance that provides the best chance for sustainable conservation.

117. Section 101(2)(b) contemplates that approval might be given on the basis of the effect of refusal on either the reasonable or economic use of the place. It is therefore appropriate to consider both.

Reasonable Use

118. In the present case, it is apparent that at a broad conceptual level the application draws on the general planning settings which apply (or might apply in the future) to the land and the surrounding Cremorne area, while at the same time purporting to respond to the heritage settings of the place.

119. It should be noted that section 101(2)(b) is concerned with the “reasonable use” of the place rather than the reasonableness of the extent of development proposed. There could be little argument that the uses proposed by the application are reasonable. Some of the proposed uses are currently in existence or have been allowed over time on the site. Even where that is not the case, the proposed uses fit comfortably within the range of uses which are expected to populate the Cremorne area, and there is nothing about them per se which would not be reasonable.

120. Unfortunately, acknowledging that fact does not take the application much further.

121. That this land could be an appropriate location for these uses, but for the existence of the registered place, might to some extent justify interventions to make the heritage place fit for those uses. The appropriateness of the uses might also justify adding new buildings. In the end though, the extent of intervention – the “reasonableness” of the extent of the additional new buildings – must be informed by the purposes of the Act: to conserve and protect the heritage place.

122. In assessing whether the refusal would adversely affect the reasonable use of the place, it must be observed that the place is a highly significant building which is subject to stringent controls upon the development potential of the land. While no objection might be taken to the uses proposed – the question is whether the proposed form of development to facilitate those uses is a proportionate response to the heritage significance of the place.

123. A balance must be struck between allowing changes to the built form of the heritage place to facilitate reasonable uses of land on the one side and, on the other side, ensuring that the changes do not so compromise the significance of the place such that the intervention is the antithesis of protection and conservation of the place.

124. The purpose of section 101(2)(b) insofar as it invites consideration of reasonableness, can be discerned from the framework of the Act. Once in the Register, a heritage place cannot be altered in any way (save for permit exempt activities) without approval. The provision implicitly permits consideration of works which would facilitate reasonable uses even if the cultural heritage significance of the place might to some extent be compromised.

125. It follows that a proposal which corresponds with the underlying planning settings of the broader area cannot be regarded as necessarily “reasonable” for the purposes of the Act if the end result is to significantly compromise the protection or conservation of the place. It is not reasonable to assume that land which is subject to the Act can be developed in a way which is inconsistent with the primary purpose of the Act. Allowing development which would negatively affect the cultural heritage significance of the

place would only be reasonable if it could be said that in allowing such a development, there was some conservation or protection.

- 126.** For the reasons that have been set out elsewhere in this report, the proposed built form outcome here will have a substantial impact on the heritage significance of the place. Nothing about the nature of the proposed uses makes the impact of that built form reasonable from a conservation or protection perspective.

Economic use

- 127.** The HIS does not express any view as to the operation of section 101(2)(b), but rather defers to the opinions of others.

- 128.** The permit applicant submitted two reports to the Executive Director which were directed to economic matters, both prepared by Macroplan:

- Economic Impact Assessment – 13 June 2023; and
- Reasonable Economic Use – 18 August 2023 ('August report').

- 129.** It is apparent that the June 2023 report is not directed to the matters required for consideration under the Act. The report appears to have been prepared to supplement materials submitted with an application under the *Planning and Environment Act 1987 (Vic)* and is directed to examining the impact of the proposed development in economic terms in the surrounding context.

- 130.** The August 2023 report purports to address the considerations made relevant by section 101(2)(b) of the Act. In saying that, the report misdescribes the statutory inquiry in that it says:

"This report addresses requirements set out under s101(2)(b) of the Heritage Act 2017 and provides assessment on the reasonable and economic use for the heritage place supporting the application." [emphasis added]

- 131.** The report is framed to address a request by Heritage Victoria for information regarding the application of section 101(2)(b). In particular, Heritage Victoria sought information that it considered relevant to the matters arising under section 101(2)(b), including:

- *"An understanding of the current economic functioning of Former Bryant & May Industrial Complex (the extent of the applicant's ownership) for current and/or future owner(s) and why this does not support the economically sustainable ongoing use of the registered place.*
- *The economic functioning post development of the following scenarios are of interest:*
 - o *The proposed development;*
 - o *Alternative development scenario(s) that substantially reduce the proposed built form.*
- *Evidence to support why a significant expansion of the existing use of the place with the addition of commercial offices and hotel is necessary to economically support the place.*
- *Costing of the conservation works proposed.*
- *It should be demonstrated why the place cannot continue to be used, protected and conserved without the substantial scale of the proposed development. It is noted that this property currently has a commercial use, so the application should address how the current economic activity on the site is no longer viable."*

- 132.** The report makes clear that it was prepared to respond to what Heritage Victoria regarded as relevant to its assessment.

- 133.** As discussed above, the Executive Director’s refusal ground proceeds upon the misapprehension that section 101(2)(b) is a mandatory consideration in all cases, and that consequently a permit applicant must establish that the existing use of land is unviable to obtain approval. It is this starting premise which perhaps explains the nature of the request for further information.
- 134.** It is important to note that the Act does not prescribe a test for the consideration of economic matters that arise under section 101(2)(b). Insofar as relevant, the Act merely requires that, in appropriate circumstances, the Executive Director considers whether refusal of the application affects the economic use of the place. The scope of the considerations that might be relevant are much broader than the request for further information sought by Heritage Victoria.
- 135.** It is appropriate to reiterate that the Act does not require that the existing use of the land be continued unless it can be demonstrated that the use will be unviable, nor does it demand refusal of an application which cannot demonstrate that the existing use is unviable.
- 136.** The Act is sufficiently flexible to permit consideration of alternative uses, and development which results in changes to heritage fabric which facilitate new uses that are more economically productive than those existing.
- 137.** The scope of that flexibility in any given case is informed by the primary purpose of the Act, which is to provide for the protection and conservation of heritage places of State significance.
- 138.** It must follow that uses that are more economically sustainable than those which presently exist can be contemplated, particularly when the evidence establishes that those uses offer a significantly more sustainable opportunity for protection and conservation.
- 139.** That said, it is not the economic performance of the proposed development which is central to the inquiry.
- 140.** Applying the language of the Act – the refusal of an application may affect the economic use of place in any number of ways. By refusing to allow the development of the place, the future economics of maintaining and conserving the place may be put at risk. This might be a factor which militates in favour of approval. That said, by refusing an application, an important opportunity to secure long-term restoration and preservation of a place, might result in consigning its protection and conservation to the bare minimum.
- 141.** While the Act would permit development which adversely affects the heritage significance of a place because refusal would adversely affect the economic use of the place, the limit of what might be justified on economic considerations must be informed by the primary purpose of the Act – which is to protect and conserve places of significance.
- 142.** The Committee is of the view that the Act does not limit the nature or manner of economic considerations which may be taken into account when considering the effect of the refusal on the economic use of the land.
- 143.** This stands in contrast to the request for further information made by Heritage Victoria and the consequential limitations in the scope of the August report responding to that request.
- 144.** Some of the matters raised in the August report are relevant to the operation of section 101(2)(b) of the Act, but the way in which the report is framed and the inability to integrate the assumptions and instructions upon which the report is based leave the Committee unable to reach any concluded view.

- 145.** The August report sets out some of the matters which the authors consider the Executive Director could take into account in assessing the economic use of the place:
- *“Whether the proposed works would facilitate an economically sustainable use of the registered place or object. An economically sustainable use could be one that can continue for the medium to long term, mitigating the possibility of continual proposed changes to the registered place or object.*
 - *Evidence of the forecast impacts on future economic use of the registered place or object should the application be refused, showing the degree of impact over a relevant timeframe with an explanation of assumptions used in the modelling.*
 - *Evidence of forgone income necessary to cover the cost of:*
 - *Conservation and maintenance of the registered place or object; and/or*
 - *Rates and land tax directly associated with the registered place; and/or*
 - *Capital improvements to ensure the continued use of the registered place or object, where that use contributes to its significance (including reasonable debt repayment and interest costs). For example, improving infrastructure or services to ensure that an existing compatible commercial use continues to attract tenants and/or customers.”*
- 146.** The August report was prepared based upon the instructions given by the permit applicant as to key matters which have not been the subject of evidence before this Committee, and which have not been tested as they might have been in a conventional hearing process.
- 147.** The principal method by which the August report seeks to address these matters is by comparison of alternative scenarios. There has been no means by which these scenarios could be interrogated. The August report offers a comparison between three broad scenarios:
- leaving the building as is;
 - developing the place in a manner which is consistent with the direction proffered by the Executive Director; and
 - the Developer’s model.
- 148.** The August report asserts that leaving the building as is will be so expensive once existing tenants vacate the building that ongoing maintenance of the building will be unfeasible.
- 149.** Absent proper testing of these assertions in the context of an adversarial hearing, it is difficult to take them at face value. In this Committee’s experience, assertions of this kind are often made but later found to be unsubstantiated. The reasons for leasing vacancies, the appetite for the market to lease the property and the values at which the property may be re-let, as well as the costs (in the form of leasing incentives) of doing so all require careful consideration.
- 150.** It is apparent that other parts of the Bryant and May complex remain let even though the subject land is approaching a period where existing tenants are vacating. Why this is so is not explained in the material, but that consequences of this condition are significant for the analysis.
- 151.** The subject buildings are impressive and it is difficult to accept at face value that the existing facility could not be viably let.
- 152.** The Committee has not been able to interrogate the assertions made about viability. It notes that the purchase price for the property has been brought to account in assessments of viability. The Committee believes that this should be considered with caution. As a matter of principle, when revenue derived from a property of the kind

under consideration is not sufficient to keep pace with the combined costs of acquisition and maintenance, the problem lies with the purchase price rather than the extent of permissible development. Put another way, economic inefficiency or hardship arising from the price paid for the property is not a proper justification for permitting development which would have a substantial impact on the significance of the place.

- 153.** The August report establishes that the developer's model will be profitable. This conclusion is drawn taking into account revenue from the floor area proposed and deducting from that the costs of development including land acquisition costs, building costs other incidental costs. It is anticipated that the developer will enjoy a 20 % profit margin. The profitability of such an extensive development is neither surprising nor particularly informative.
- 154.** On the strength of the report, this outcome is more favourable than leaving the building undeveloped, or developing the land more modestly along the lines of that proposed by the Executive Director.
- 155.** Leaving aside the inability to test the underlying assumptions upon which the August report has been based, the utility of the report is limited by the scenarios that it considers.
- 156.** The Committee considers that the proposed development will have a substantial effect on the significance of the heritage place such that it should not be approved in its current form for the reasons already stated.
- 157.** The economic evidence advanced by the permit applicant would not alter that conclusion because, in the Committee's view, the scale and form of the proposed development could not be considered consistent with the overarching purpose of the Act – to protect and conserve the place.
- 158.** The Committee could see scope for a lesser form of development – more intense than that contemplated by the Executive Director and modelled as a comparator in the August report, but less than the developer's scenario.

CONCLUSION

MERITS OF THE PROPOSAL

- 159.** The former Bryant and May Industrial Complex is a very important and substantial heritage place. There is no doubt that redevelopment of the site is achievable and could positively contribute to the growth and evolution of Cremorne.
- 160.** The positive elements and approach in the permit application have been acknowledged and given weight by parties and the Committee in its assessment.
- 161.** Putting to one side the detailed matters upon which there is limited information, the key focus areas in relation to the proposed new built form is with respect to transitions between the old and new built fabric and the scale, massing, height and design of the new built form. The impacts on the significance and setting of the place as a complex, and important landmark and architectural elements associated with the place are central to this consideration.
- 162.** The overview at the start of this report summarises the Committee's findings on these matters. The Committee considers that the proposed development will have a substantial effect on the significance of the heritage place such that it should not be approved in its current form for the reasons already stated. The absent information adds to this because there are multiple aspects of the proposal upon which the Committee cannot be satisfied that significant fabric of the place can or will be protected by the proposal and in its implementation if approved.

- 163.** The Committee’s findings, above, address reasonable and economic use. Although the Executive Director’s refusal grounds in relation to reasonable and economic use are incorrectly founded in law, the proponent’s case in relation to the same consideration is not substantiated to justify a permit being granted.
- 164.** Having regard to the requirements of the Act, and specifically section 101(2) of the Act, and based on the available material, the Committee does not recommend a permit issue. If accepted, this results in the Executive Director’s refusal being affirmed.

NEXT STEPS

- 165.** There may be multiple ways to modify the proposal. But for a complex site and project of this kind, the Committee considers changes cannot be recommended in isolation for specific buildings without understanding the potential implications for the whole site and the whole project.
- 166.** The Council has not been able to explore design modifications and options with the parties to the review process. Two approaches are set out in the Executive Director’s officer’s report and the advice of GJM Heritage that informed the Yarra Council’s position prior to amended plans (section 1.1.4 of the GJM Heritage Report **(Attachment 1.6(1))**).
- 167.** The Minister could request additional information and design options/amended plans to respond to the matters raised in this report to inform a decision.
- 168.** The matter could be remitted to the Executive Director for reconsideration accompanied by directions to provide further information and review the proposal to overcome the identified issues and concerns with respect to transitions between the old and new built fabric, and the scale, massing, height and design of the new built form.

Heritage Council Regulatory Committee:

Ms Margaret Baird (Chair)

Mr Adrian Finanzio SC

Ms Megan McDougall

Report Date – 13 May 2024

ANNEXURE 1

PERMIT APPLICATION AND REVIEW PROCESS PRIOR TO MINISTER'S CALL- IN

1. On 19 June 2023, an application for heritage permit P37853 was made to the Executive Director.
2. The permit application was advertised between 13 September 2023 and 26 September 2023 and formally referred to the Yarra City Council, the Responsible Authority for the registered area in accordance with section 100(1) of the Act.³
3. Responses to the advertisement of the permit application were received from:
 - Yarra CC with supporting expert material from GJM Heritage;
 - the National Trust;
 - Emleigh Pty Ltd (owners of the southern half of the registered place); and
 - the Royal Historical Society of Victoria ('RHSV').
4. The permit application was referred to the Office of the Victorian Government Architect's ('OVGA') Victorian Design Review Panel ('VDRP'). It was the subject of two VDRP reports, which also refer to discussions and meetings.
5. On 23 November 2023, the Executive Director determined to refuse to grant the permit on the following grounds:
 - a. *"The proposed positive heritage outcomes do not outweigh the substantial adverse impacts on the cultural heritage significance of the place.*
 - b. *The combined massing, height and siting of the two proposed towers would visually overpower the Former Bryant and May Industrial Complex and detract from the cultural heritage significance of the place as a prominent landmark. The new built form would dominate in both close and long-range views and disrupt the historical setting of the place as well as visual connections between the heritage buildings.*
 - c. *The place has the capacity to absorb new development but not to the extent which is being proposed. The proposal as submitted was considered. The applicant did not provide meaningful alternatives of less intensive development for consideration.*
 - d. *The wedge form would be an obviously new addition to the place but its form conflicts with the heritage buildings and structures. The focus of the place would be shifted to the wedge form and away from the heritage buildings and structures.*
 - e. *The proposal has started with highest and best use of the place and not the cultural heritage significance of the place. In its current form, the proposal is considered to be an overdevelopment of the heritage place.*
 - f. *It has not been demonstrated that refusal would affect the reasonable or economic use of the registered place."*
6. On 6 December 2024, an application was lodged pursuant to section 108(4) of the Act for a review of the Executive Director's determination to refuse heritage permit P37853 on the following grounds:

³ The Executive Director of Heritage Victoria referred the application to the Minister for Planning in accordance with section 110(1) of the *Heritage Act 2017* (Vic). This was done in error, as the Minister for Planning is not the Responsible Authority for the area subject to registration under the Victorian Heritage Register.

- a. *“The proposal has been designed with heritage outcomes as a principal guiding factor both as reflected in conservation works and new development. The integrated design response is not one which will result in adverse impacts on the cultural heritage significance of the Place.*
 - b. *The massing, height and siting of the proposal will not visually dominate the Place and will not detract from the cultural heritage significance of the Place as a prominent landmark. The taller forms of the proposal have been sited to appropriately and sensitively manage the interface with the landmark features of the Place. The proposal is appropriate and maintains a generous setting for the Place.*
 - c. *In developing the proposal, alternative designs were considered and the preferred outcome was determined to be an appropriate response having regard to impacts on cultural heritage.*
 - d. *The proposed receding wedge architectural form complements rather than conflicts with the Place and allows the factory and its clock tower to maintain their landmark qualities. The wedge form reinforces the centrality of the clock tower.*
 - e. *The proposal is not an overdevelopment.*
 - f. *The refusal adversely impacts on the reasonable and economic use of the Place.”*
7. On 21 December 2024, a Regulatory Committee was appointed by the Heritage Council, pursuant to section 15(3) of the Act, to conduct the review comprising Ms Margaret Baird (Chair), Ms Megan McDougall and Dr Mark Burgess.
 8. On or around 30 January 2024, pursuant section 106(5) of the Act, interested parties were notified of the review and asked to advise the Heritage Council if they sought to participate in the hearing.
 9. Requests to make submissions and be heard at the hearing were received from:
 - the Executive Director of Heritage Victoria – represented by Nicola Stairmand, Manager Statutory Approvals, and Jessica Hood, Principal Heritage Permits, both of Heritage Victoria.
 - the Permit Applicant, Alfasi Property Development Pty Ltd – represented by Rhodie Anderson of Rigby Cooke Lawyers.
 - Yarra City Council – represented by Kristin Richardson of Maddocks Lawyers, and instructed by Kathryn Pound, Manager Statutory Planning, Yarra City Council.
 10. The National Trust (represented by Samantha Westbrooke, Executive Manager, Conservation & Advocacy and Maddie Moore, Advocacy Strategic Manager both of the National Trust (Victoria)) advised that they did not wish to appear at the hearing but would provide detailed written hearing submissions for the Committee’s consideration.
 11. On 16 January 2024, requests to participate were circulated to interested parties and the matter was listed for a directions hearing.
 12. A directions hearing was held on 1 March 2024 to make arrangements for the hearing and to discuss procedural issues. At the directions hearing, the permit applicant made a request that the Committee be reconstituted to include a legal member.
 13. On 6 March 2024, the Committee was reconstituted pursuant to section 15(3) of the Act, appointing Ms Margaret Baird (Chair), Ms Megan McDougall and Mr Adrian Finanzio SC to conduct the review.

- 14.** On 6 March 2024, the Committee issued directions to parties requiring submissions and expert evidence be filed by 6 May 2024 and reply to submissions and evidence to be filed by 20 May 2024. The matter was also listed for a three-day hearing, to commence on 3 June 2024.
- 15.** By letter dated 13 April 2024 (received by the Heritage Council on 16 April 2024), the Minister advised that the review had been called in pursuant to section 109(1)(a) of the Act. Pursuant to section 113 of the Act, the Minister asked that the Council provide a report of the review of the Executive Director's determination to refuse heritage permit application P37853. The Minister has stated that she does "not require the Heritage Council hold a hearing or receive submissions".
- 16.** Consequently, on 17 April 2024, the Committee vacated its directions regarding the service of submissions and evidence, and the hearing dates in June.
- 17.** The Minister requested a report be provided within 30 days of the letter, being 13 May 2024.

ANNEXURE 2

DOCUMENTS CONSIDERED BY THE COMMITTEE

1. Application material	
1.1	<p>Application for Review – dated 6 December 2023</p> <ol style="list-style-type: none"> 1. Application Form Rigby Cook Lawyers (Rhodie Anderson).pdf 2. Reason For Review Document.pdf 3. Executive Directors Determination.pdf
1.2	<p>Hearing Participation Forms (Form D) Received</p> <ol style="list-style-type: none"> 1. National Trust of Australia (Vic) – Application Form.pdf 2. Heritage Victoria – Application Form.pdf 3. Rigby Cooke Lawyers – Application Form (Rhodie Anderson).pdf 4. City of Yarra – Application Form (Kathryn Pound).pdf
1.3	<p>Application Lodgement – 19 June 2023</p> <ol style="list-style-type: none"> 1. Application Form (Lydia Dillon).pdf 2. Architectural-1 (Denton Corker Marshall).pdf 3. Architectural-2 (Denton Corker Marshall).pdf 4. Architectural-3 (Denton Corker Marshall).pdf 5. Certificate of Title-1 (Lydia Dillon).pdf 6. Certificate of Title-2 (Lydia Dillon).pdf 7. Certificate of Title-3 (Lydia Dillon).pdf 8. Certificate of Title-4 (Lydia Dillon).pdf 9. Certificate of Title-5 (Lydia Dillon).pdf 10. Certificate of Title-6 (Lydia Dillon).pdf 11. Certificate of Title-7 (Lydia Dillon).pdf 12. Certificate of Title-8 (Lydia Dillon).pdf 13. Certificate of Title-9 (Lydia Dillon).pdf 14. Certificate of Title-10 (Lydia Dillon).pdf 15. Certificate of Title-11 (Lydia Dillon).pdf 16. Certificate of Title-12 (Lydia Dillon).pdf 17. Consent of Owner (Lydia Dillon).pdf 18. Scope of Conservation Works – Lovell Chen.pdf 19. Economic Impact Assessment - Macroplan.pdf 20. DCM Urban Design Report optimised Part1.pdf 21. DCM Urban Design Report optimised Part2.pdf 22. DCM Urban Design Report optimised Part3.pdf 23. DCM Urban Design Report optimised Part4.pdf 24. DCM Urban Design Report optimised Part5.pdf 25. DCM Urban Design Report optimised Part6.pdf 26. Building Services Report – ADP Consulting Engineering 5 April 2023.pdf 27. Sustainable Management Plan – ADP Consulting Engineering 5 April 2023.pdf 28. Further information email from Lydia Dillon (23June2023).pdf 29. Heritage Impact Statement – Lovell Chen – June 2023.pdf 30. Proof of payment (Lydia Dillon).pdf 31. Landscape Design Report – OCULUS 11 April 2023.pdf 32. Initial Traditional Owner Consultation Insights Report – Greenshoot Consulting March 2023.pdf

	<p>33. Town Planning and Urban Context Report – Contour Town Planners – April 2023.pdf</p> <p>34. Structural Inspection & Audit Report – Robert Bird Group 12 May 2023.pdf</p> <p>35. Certificate Titles June 2023.pdf</p>
1.4	<p>Further Information Receipt – 21 June 2023</p> <p>1. EMAIL: Further Information 21June2023.pdf</p>
1.5	<p>Heritage Victoria Officers Report – 26 June 2023</p> <p>1. HV Permit Application P37853 Officer Report & Recommendation.pdf</p>
1.6	<p>Referral Response – 21 July 2023</p> <p>1. GJM Heritage Memo 12July2023.pdf</p> <p>2. Yarra City Council 21July2023.pdf</p>
1.7	<p>Referral Permit Application s100 – 4 August 2023</p> <p>1. LETTER: to Emily Harrod RE Hermes No 975 – Event P37853 – Step Referral.pdf</p> <p>2. LETTER: to Lachlan Forsyth RE Hermes No 975 – Event P37853 – Step Referral.pdf</p> <p>3. LETTER: to Minister for Planning RE Hermes No 975 – Event P37853 – Step Referral.pdf</p>
1.8	<p>Further Information Receipt – 21 August 2023</p> <p>1. EMAIL: from Lydia Dillon 21 August 2023.pdf</p> <p>2. LETTER: from Lovell Chen to Heritage Victoria 21 August 2023.pdf</p> <p>3. Sustainable Management Plan – ADP Consulting Engineering 14 August 2023.pdf</p> <p>4. Building Services Report – ADP Consulting Engineering 15 August 2023.pdf</p> <p>5. Reasonable & Economic Use Confidential – Macroplan 18 August 2023.pdf</p> <p>6. Reasonable & Economic Use Redacted – Macroplan 18 August 2023.pdf</p> <p>7. Town Planning and Urban Context Report – Contour Town Planners August 2023.pdf</p> <p>8. Revised Heritage Impact Statement – Lovell Chen – August 2023.pdf</p> <p>9. 560 Church St Cremorne Landscape Design Report REV D.pdf</p> <p>10. 560 Church St Cremorne Landscape Design Report REV D reduced.pdf</p> <p>11. 560 Church Urban Design Report P3 20230818.pdf</p> <p>12. 560 Church Urban Design Report P3 20230818 reduced.pdf</p> <p>13. 560 Church Design Drawings P3 20230810.pdf</p>
1.9	<p>Further information Receipt – 8 September 2023</p> <p>1. HV Permit Application P37853 RFI June 2023.pdf</p> <p>2. Application Form (Lydia Dillon).pdf</p> <p>3. Alexander Robertson Outgoing Budget 2021-22.pdf</p> <p>4. Alexander Robertson Tenancy Schedule.pdf</p> <p>5. CKC Site Plan 3 September 2021.pdf</p> <p>6. Hodyl Co Cremorne Built Form Review May 2022.pdf</p> <p>7. Wilde and Woollard Replacement Cost Valuation October 2022.pdf</p> <p>8. VPA Cremorne Place Implementation Plan December 2022.pdf</p> <p>9. Macroplan Economic Impact Assessment June 2023 FINAL.pdf</p> <p>10. EMAIL: from Matt Cooper to Anothny Choi 10 May 2023.pdf</p> <p>11. DCM Drawings DRAFT 8 August 2023.pdf</p> <p>12. DCM Precinct Area Schedule P3 8 August 2023.pdf</p> <p>13. VDRP Presentation RETURNED REVIEW 16 August 2023.pdf</p> <p>14. LETTER: Lovell Chen re RFI request 21 August 2023.pdf</p> <p>15. Memo: Denton Corker Marshall Summary of Changes 6 September 2023.pdf</p>

	<ul style="list-style-type: none"> 16. VDRP Presentation VIEW ANALYSIS 6 September 2023.pdf 17. City of Yarra Annual Budget 2023-24.pdf 18. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building B Hotel.pdf 19. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building C Central Workplace.pdf 20. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building D Chestnut Workplace.pdf 21. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building E Heritage F B.pdf 22. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building F Heritage Restaurant Bar.pdf 23. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building G Heritage Retail.pdf 24. PR-017602 560 Church Street – Town Planning Estimate No 3 – Development Summary.pdf 25. PR-017602 560 Church Street – Town Planning Estimate No 3 – Ext Works Landscaping.pdf
1.10	<p>Further information Receipt – 8 September 2023 (WTP Cost Plan May 2023)</p> <ul style="list-style-type: none"> 1. EMAIL: FW 560 Church Street - Town Planning Estimate No 3.msg 2. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building B (Hotel).pdf 3. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building C (Central Workplace).pdf 4. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building D (Chestnut Workplace).pdf 5. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building E (Heritage F&B).pdf 6. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building F (Heritage Restaurant&Bar).pdf 7. PR-017602 560 Church Street – Town Planning Estimate No 3 – Building G (Heritage Retail).pdf 8. PR-017602 560 Church Street – Town Planning Estimate No 3 – Development Summary.pdf 9. PR-017602 560 Church Street – Town Planning Estimate No 3 – Ext Works & Landscaping.pdf
1.11	<p>Heritage Victoria Public Submissions Received – October 2023</p> <ul style="list-style-type: none"> 1. Submission – National Trust of Australia (Victoria).pdf 2. Supporting Documents – National Trust of Australia (Victoria).pdf 3. Submission – Stephen Ingram (Senior Development Manager).pdf 4. Supporting Documents – Stephen Ingram (Senior Development Manager).png 5. EMAIL: Submission – Royal Historical Society of Victoria.pdf 6. Supporting Documents – Royal Historical Society of Victoria.pdf
1.12	<p>Further Information Receipt – 22 November 2023</p> <ul style="list-style-type: none"> 1. EMAIL: from Lydia Dillon 2 October 2023.pdf 2. HV Submission Response Letter.pdf
2. All Correspondence sent from Heritage Council to Parties	
2.1	20 December 2023 – Notification of Permit Review (via HC Hub)

	<ol style="list-style-type: none"> 1. LETTER: PR20226 Hearing Notification Former Bryant and May Industrial Complex.pdf 2. Attachment 1. Executive Directors Determination.pdf 3. Attachment 2. Application Form.pdf 4. Attachment 3. Heritage Council Protocol 2 Permit Reviews and Hearings 12Septemer2022.pdf
2.2	30 January 2024 – Letter to various Parties (via email) <ol style="list-style-type: none"> 1. LETTER: to National Trust.pdf 2. LETTER: to s95 Submitters.pdf 3. LETTER: to Minister for Planning.pdf
2.3	2 February 2024 – Letter regarding Act Amendments (via HC Hub) <ol style="list-style-type: none"> 1. LETTER: HCV Correspondence Act Amendments.pdf
2.4	16 February 2024 – Directions Hearing Scheduled (via HC Hub) <ol style="list-style-type: none"> 1. LETTER: PR20226 Directions Hearing Notification.pdf 2. Attachment 1 HCV Guidance Note using MSTeams for HCV Hearings.pdf
2.5	26 February 2024 – Directions Hearing Link (via HC Hub) <ol style="list-style-type: none"> 1. LETTER: PR20226 Directions Hearing Link.pdf 2. Attachment 1 HCV Guidance Note using MSTeams for HCV Hearings.pdf 3. Attachment 2 HCV Protocol 5 Directions Hearings Adopted 2 November 2017.pdf
2.6	6 March 2024 – Directions Hearing Follow Up (via HC Hub) <ol style="list-style-type: none"> 1. LETTER: PR20226 Directions Hearing Follow Up.pdf
2.7	13 March 2024 – Email & Attachment form Rigby Cooke Lawyers (via HC Hub) <ol style="list-style-type: none"> 1. EMAIL: Rigby Cooke Lawyers 8March2024.pdf 2. Attachment: 560 Church Street Cremorne – Drawing List 07 03 24.pdf
2.8	3 April 2024 – Heritage Victoria Letter & Office of the Victorian Government Report May 2023 (via HC Hub) <ol style="list-style-type: none"> 1. LETTER: PR20226 HCV Correspondence to Parties.pdf <p><i>(NOTE: OVGA Design Review Reports provided in Folder 4 – as Attachments 3 & 5)</i></p>
2.9	17 April 2024 – Notification of Ministerial Call In (via Hub) <ol style="list-style-type: none"> 1. LETTER: PR20226 Notification of Ministerial Call In.pdf
3. Hearing Submissions Received	
3.1	22 March 2024 – Maddocks Lawyers (Kristin Richardson) <ol style="list-style-type: none"> 1. Hearing Submission Cover Form.pdf 2. Hearing Submission on behalf of Yarra City Council.pdf
4. Office of the Victorian Government Architect – Design Reviews – May and August 2023	
	<ol style="list-style-type: none"> 1. LETTER: PR20226 HCV Correspondence to Parties.pdf 2. Attachment 1 Heritage Victoria Letter to HCV 3 April 2024.pdf 3. Attachment 2 Office of the Victorian Government Report May 2023.pdf 4. EMAIL: From Melany Hayes 30 August 2023.pdf 5. REPORT: OVGA VDRP 560 Church Street Panel Report 30 August 2023.pdf

ANNEXURE 3

SUMMARY POSITIONS OF THE PARTIES TO THE REVIEW BASED ON THE MATERIAL PRIOR TO THE MINISTER'S CALL-IN

EXECUTIVE DIRECTOR OF HERITAGE VICTORIA

1. The officer's report is provided as **Attachment 1.5** to this report. It explains the permit application process and documents it the officer considered in their assessment. It also outlines the evolution of the project through this process and, relevantly, includes responses by the permit applicant to concerns and submissions.
2. The Executive Director's position is that the proposed development would visually overpower the place so that the heritage buildings are reduced to secondary elements. On this basis, the Executive Director considers that the adverse impacts of the proposal are substantial and that the benefits to the heritage buildings and public realm proposed in the permit application are not so great as to outweigh the impacts.
3. The Executive Director's position is summarised in its grounds for refusal extracted in **Annexure 1** above.
4. The Executive Director accepts that the proposed demolition works to the non-registered 1980s buildings on site would provide a positive benefit to the place, particularly in recovering Brymay Hall, the Dining Hall, the Administration Building and the Boiler House to their historic presentation as free-standing buildings. The proposed public realm response is a considered and appropriate contemporary interpretation of the historic landscape and streetscapes of the place and would result in a good heritage outcome.
5. However, the Executive Director considers that the massing, height, bulk and scale of the two proposed towers would visually overpower the former Bryant and May Industrial Complex, detracting from the heritage elements of the place. The Executive Director considers that the new built form is substantially higher than the heritage buildings, occupies most of the land of the subject site and would impact on the landmark status of the former Bryant and May Industrial Complex. The Executive Director considered that the proposal would isolate and obscure historic and spatial links between historic buildings across the complex and the new built form would dominate in both close- and long-range views.
6. The Executive Director does not support the contemporary landmark proposition – where contemporary towers are dominant at the expense of the landmark heritage place. The level of development does not appear to be based on what is appropriate for a State level significant place, but rather on the requirements of the hotel operator, what is considered viable and will achieve a satisfactory rate of return for the current owner. While the demarcation of work and re-creation would still be legible in the proposal, the Executive Director considers that the proportional scale and density of new development to historic built form is detrimental to the significance of the place in its entirety. The tower forms significantly contribute to this impact and are greatly disproportionate to the single- and double-storey heritage buildings. The extent of footprint of new built form is also believed to contribute to this impact.
7. The Executive Director considers that the proposal has not responded to consistent feedback provided by Heritage Victoria about the adverse impacts of the proposal at pre- and post-application stages.
8. In relation to the assessment under section 101(2)(a) of the Act, the Executive Director found that:

“The development proposal is for a mixed-used development with hotel, office, hospitality and retail uses. On the face of it, expanding the existing use of the place

retail, carpark, and fitness centre for such offerings could be a reasonable use of the place, however the impacts of works required for the intensification of the existing use and the addition of new uses are substantial, as assessed under s101(2)(a).

The heritage buildings of the Administration Building, Brymay Hall, the Dining Hall, Boiler House and Chimney Stack do not currently have substantial conservation requirements, nor require highly specialised or costly conservation techniques. The buildings are still in use and are generally in good condition. There is no demonstrated economic need for substantial economic returns to achieve heritage conservation outcomes.

The removal of the non-significant infill development which is impacting the significance of the place is acknowledged as a conservation action and that a level of financial incentive by way of development of the place to achieve that outcome is of benefit. However, the benefits of that conservation action currently are not considered sufficient to justify the impacts of the scale of the proposed development on the cultural heritage significance of the place. It has not been demonstrated that this scale of development is the only financial model which could achieve a good heritage outcome.

The economic use assessment prioritises the economic functioning of the development, rather than the economic functioning of the place. Limited meaningful analysis has been undertaken to demonstrate that a substantially reduced development of less scale, could not also achieve a sustainable economic outcome for the place, including reasonable profit for the owner(s)."

YARRA CITY COUNCIL

- 9.** The Committee has not had the benefit of an updated position as to the suitability of the amended proposal by Yarra City Council, nor further submissions or evidence.
- 10.** In July 2023, Yarra City Council did not support the development as proposed then, due largely to issues identified by the Yarra City Council's heritage consultant GJM Heritage in the report dated 12 July 2023. Again, it is noted that the report by GJM Heritage pre-dates amended plans.
- 11.** Although Yarra City Council acknowledges positive aspects of the proposal (particularly the demolition of the 1990s infill development, the landscape design and new public realms within the site), it was not able to support the permit application. It considered that the proposed new built form would detrimentally impact the heritage significance of the place as follows:
 - the substantial scale and height of Buildings B & C do not provide a sensitive transition between the new built form and the lower-scale adjacent heritage buildings and they visually dominate the heritage place. The form and bulk of these buildings is likely to extinguish the visibility of the Bryant & May clock tower from the north-west, which is noted as being of particular significance in the statement of significance for the place, and limits its prominence in views from the south in the context of the new built form backdrop;
 - the massing of the tower of Building C into a chamfered 'wedge' shape does not relate to the massing, form or scale of the heritage built form and visually competes with the heritage fabric;
 - the articulation of the projecting windows to the tower element of Building B is unnecessarily visually complex and competes with the architectural detailing of the heritage buildings; and
 - the setbacks of both the podium and tower elements at the western end of Building C are not sufficient to retain the prominence of the significant heritage chimney.

- 12.** The report also noted concerns with the insufficient detail within the permit application of the following:
- internal demolition and alterations to heritage buildings;
 - the economic use of the place that has been provided to justify the level of impact to the heritage place;
 - alternative designs considered that reduce impact from new built form;
 - clarifications/detail about conservation works to any historic signs; and
 - detail of proposed works to rainwater goods to heritage buildings.
- 13.** Yarra City Council suggests revisions to the proposed new built form to achieve an acceptable heritage outcome as follows:
- the reduction of the podium height of Buildings B & C;
 - breaking up the massing of Buildings B & C to provide visual permeability through to the clock tower and chimney from the west and north-west and maintain their prominence in views from the south;
 - the deletion of the wedge form and the adoption of a more recessive and sympathetic form against the architecturally significant heritage buildings;
 - simplification of the complex articulation of the projecting windows at the tower element of Building B; and
 - increased setbacks of both the podium and tower elements at the western end of Building C.

NATIONAL TRUST OF AUSTRALIA (VICTORIA)

- 14.** The National Trust opposes the issue of P37853 . As set out on pages 25 and 36 of the Executive Director's report, the National Trust considers that:
- the tower additions would detract from the landmark qualities of the heritage buildings and threaten important views;
 - the height and bulk of the towers would threaten the intactness and architectural elements of the complex;
 - the design does not respond to the heritage context and would overwhelm and obscure it; and
 - the impacts are not justified by the case for reasonable or economic use.
- 15.** The National Trust is critical of parts of the HIS and suggests that view lines to the landmark heritage buildings and impacts of the development are downplayed by the applicant and disagrees with the assertion that the proposed architecture responds to the heritage context. In particular, the National Trust submits the increasing restrictions on viewing the landmark features due to surrounding development changes is a salient reason to avoid further viewing obstructions.

ROYAL HISTORICAL SOCIETY OF VICTORIA

- 16.** The Royal Historical Society of Victoria opposes a permit being issued. As set out on page 40 of the officer's report, this is because:
- the height and bulk of the development may overwhelm the heritage buildings on site and undermine their value as a remarkably intact industrial complex;
 - the two towers would create a wall to the north and north-west of the site, partially isolating original buildings and obscuring important views of the landmark clock tower and chimney stack;

- the removal of non-contributory development and restoration and adaptive re-use of heritage buildings is commended but the positive impacts are negated by the bulk of the proposal;
- protection of context and primacy is required to avoid heritage buildings becoming “islands in a forest of high-rise buildings that conceal their significance” and the proposal fails in this regard;
- the ultra-contemporary wedge shape detracts from the heritage buildings;
- the “dynamic context” of the surrounding area is a reason to prevent further diminishment of view lines and prominence of the heritage buildings; and
- the economic use arguments are difficult to respond to with heavy redaction and arguments regarding tenancy limitations and building maintenance are too insubstantial to place weight on the impact of refusal on economic use.

17. The permit applicant’s response to those submissions is set out in the Executive Director’s report and has been considered by the Committee.

EMLEIGH PTY LTD

18. Emleigh Pty Ltd owns the southern half of the complex. Emleigh broadly supports the proposal and its aspirations for the public realm. It has sought to ensure access and servicing requirements are considered and protected for its land.

PERMIT APPLICANT

19. The permit applicant’s position is set out in a number of documents it submitted along with and comprising the permit application. These documents are itemised in pages 2-4 in the officer’s report, and in summary include:

- permit application material lodged 19 June 2024 – enclosing March 2023 Architectural Plans and supporting material;
- further Information received 21 August 2023 – revised architectural plans dated 18 August 2023;
- further Information received 8 September 2023 – updated permit application material for amended proposal; and
- further Information received 12 September 2023 – updated Reasonable and Economic Use reports prepared by Macroplan.

20. No further material was filed with the Heritage Council to accompany the application for Review.

21. The permit applicant’s position is put succinctly in its grounds for review (see **Annexure 1** above).

22. Further to its grounds, and summarised in the amended HIS, the permit applicant is of the view that the permit should issue because:

- the proposed development is directed at positively retrieving currently part subsumed and altered heritage buildings and introducing new built form in areas of the site which have been the subject of later works;
- the podium and tower format has a podium height responding to the original factory parapets, and the taller forms have been sited to the northern portion of the site to manage the interface with the landmark features recognised as significant;
- the design has been refined to better address the proximity of the workplace building to the factory, and the setting of the chimney and to respond to advice and comments received through the consultation process and included lowering

the podium for both the hotel and workplace tower buildings. It submits that these changes go to managing the interface between the heritage buildings and the sensitivities of the heritage place as a whole;

- as revised, it submits that the proposal will not result in an adverse impact on the assessed cultural heritage significance of this place; it is a development which will deliver significant heritage gains and benefits and enhance an understanding of the former urban industrial place; and
- the permit applicant submits that 'while taller new built form in such a context is inevitably challenging, the forming and placement of the new towers is responsive to the context and will maintain the pre-eminence of the retained heritage buildings'.