

**Mayday Hills Hospital, H1189, Permits P21496 and P21170  
Albert Road, Beechworth**

**Heritage Council Permits Committee  
Hearing – Wednesday, 28 April 2015**

DECISIONS OF THE HERITAGE COUNCIL

After considering the appeal and conducting a hearing, pursuant to Section 76(4)(b) of the *Heritage Act 1995* the Heritage Council has determined to confirm the decision of the Executive Director in relation to the appeal against P21496 for the Mayday Hills Hospital

After considering the appeal and conducting a hearing, pursuant to Section 76(4)(c) of the *Heritage Act 1995* the Heritage Council has determined to vary the Conditions of P21170 for the Mayday Hills Hospital.



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**Emma Russell (Chair)**



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**Lindsay Merritt**



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**Trish Vejby**

Decision Date: 30 June 2015

## **APPEARANCES**

### **Executive Director, Heritage Victoria**

Ms Renae Jarman – Manager Heritage Register and Permits, Heritage Victoria, represented the Executive Director. Mr John Hawker – Heritage Officer (Horticulture) was available to take questions.

### **Appellant**

The first appeal, against P21496 relates to the proposed reconstruction of a front fence. The first appeal was lodged 31 October 2014 by Mr George Fendyk, the owner of the Place.

The second appeal, against P21170 relates to the proposed subdivision of part of the Place. The second appeal was lodged on 17 December 2014 by Matt Grogan of Halliday Solicitors on behalf of Mr George Fendyk, the owner of the Place.

A hearing in relation to both appeals was held in Beechworth on 28 April 2015. Mr Fendyk represented himself at the hearing.

### **Indigo Shire Council**

The Committee received submissions from Indigo Shire Council (Indigo Shire) in relation to the appeals against P21496 and P21170. Indigo Shire provided detailed submissions in relation to both appeals. They were represented at the hearing by Mark Florence, Director Development and Planning, and Ian Scholes, Manager Planning and Sustainable Development.

### **National Trust of Australia (Victoria)**

The Committee received submissions from the National Trust of Australia (Victoria) in relation to the appeals against P21496 and P21170. The Trust was represented by Mr Paul Roser, Senior Manager – Advocacy and Conservation and Ms Anna Foley – Advocate, Environmental Heritage.

## INTRODUCTION/BACKGROUND

### The Place

1. The Mayday Hills Hospital is a large site, located to the north of Beechworth township. The Hospital is listed on the Victorian Heritage Register (H1189). The statement of significance comments that:

*Mayday Hills Hospital is architecturally significant as a particularly fine example of an extensive complex of Italianate asylum buildings dating from the 1860s, and in the case of the cottages, the 1880s. The design is based on the influential asylum at Colney Hatch in England and, in common with other contemporary institutions notably Willsmere in Kew and Aradale at Ararat, displays key characteristic features such as the E shaped plan of the main administration, kitchen and dormitory block with its airing courts, covered walkways, as well as the gatehouse, mortuary and ha-ha wall. The restrained design of the 1860s buildings is attributed to the important Public Works Department architect, JJ Clark.*

*Mayday Hills Hospital is historically and socially important for its physical manifestation of the changing approaches to the treatment of mental illness in Victoria from institutional confinement to treatment and rehabilitation, and from barracks, through cottages to wards. Beechworth was a key component in a system of nineteenth century asylums which included those at Kew and Ararat. The Mayday Hills Hospital has been crucially important in the social history of Beechworth and has, along with the gaol, contributed significantly to the economic viability and survival of this historically important town. Its size and prominent siting have had an important and long lived social and economic impact on the town and region.*

*Mayday Hills Hospital is aesthetically important for the beauty of its picturesque setting on a prominent hill among extensive parklands made up of native and introduced trees and shrubs. The curved drive with its avenue of large oaks is particularly noteworthy.*

2. The Hospital closed in the mid 1990s. The property was initially sold to La Trobe University, before being purchased by Indigo Shire. It was bought by the current owner, Mr Fendyk, in 2013.

### Permit Appeal relating to P21496

3. On 2 September 2014, the Executive Director issued permit P21496 for the reconstruction of the front fence. The permit outlined 12 conditions that were required to be satisfied.
4. On 31 October 2014, the Heritage Council received an appeal from Mr Fendyk objecting to the proposed permit conditions. The initial objection simply noted that the permit 'went beyond what we asked for'. The appeal implied that conditions relating to the reinstatement of the gates were unnecessary because the gates themselves were modern and that conditions requiring studies into the condition of the fence were unnecessary because the fence was only a 'replica'.
5. In accordance with the *Heritage Act 1995* (Act), a hearing was required to be held. Notification of the submission dates was sent to the parties, the National Trust and Indigo Shire on 8 December 2014.

6. Further information about the grounds of appeal was provided to the Heritage Council in Mr Fendyk's submission – received via email on 15 December 2014. The further information consisted of half a page of text, outlining Mr Fendyk's view that key elements of the fence were not original and implying that the proposed replacement of the fence with a 'replica' was a better heritage outcome for the Mayday Hills site.

### **Permit Appeal relating to P21170**

7. Meanwhile, on 12 November 2014, the Executive Director issued permit P21170 for the subdivision of the Place 'generally in accordance with Plans of Subdivision PS722240D and PS722238P.' The permit outlined 20 conditions that had to be met 'prior to the lodgment of the Plans of Subdivision' with Land Victoria.
8. On 18 December 2014, the Heritage Council received an appeal from Mr Fendyk against conditions imposed on P21170 by the Executive Director. The particular conditions being appealed were not detailed, but the reasons for the appeal were stated as: 'Conditions imposed on the permit deviate significantly from the strategy developed for Mayday Hills at a meeting held on 1 August 2014 and attended by all relevant parties' and 'Conditions imposed on the permit alter the Plan of Subdivision application to such an extent that the project is now unviable for the developer'.
9. The Heritage Council determined that it was in the interest of all parties for the earlier appeal (against P21496 issued in relation to the reconstruction of the fence) and P21170 (against the proposed subdivision) to be heard together. Parties were advised on 31 December 2014 that the appeals would be heard together, a call for submissions in relation to both appeals was made and a hearing date of 24 February 2015 was set.
10. On 31 December, the Heritage Council received a request from Ms Renae Jarman (Manager – Heritage Register and Permits, Heritage Victoria) seeking clarification about which conditions of P21170 Mr Fendyk was appealing.
11. On 5 January 2015, at the request of the Committee Chair, the Manager – Secretariat contacted Mr Fendyk to seek clarification of the specific permit conditions that were being appealed. Later the same day, Mr Fendyk emailed through a list of his objections to the permit as issued. Mr Fendyk's response was circulated to all parties on 12 January 2015.
12. On 12 February 2015, Mr Fendyk contacted the Heritage Council requesting an adjournment of four weeks. The request was made on the basis that the Executive Director and Mr Fendyk were close to reaching agreement in relation to both permits. The Committee considered the request and determined to grant the adjournment.
13. Submission and Submission in Reply dates were amended to allow for the adjournment. The hearing was re-scheduled for 28 April 2015. Submissions in relation to both appeals were due on 17 March 2015 and Submissions in Reply were due on 14 April 2015. Submissions were received from the Executive Director, Indigo Shire and the National Trust. Mr Fendyk chose not to make submissions and on 19 March 2015 advised the Manager – Heritage Council Secretariat that he was happy to rely (in relation to both appeals) upon the submissions that he had already made [to the Executive Director, as part of the permit application process].
14. Despite indicating that he would not be making further submissions during the course of the appeal process, significant additional material was provided by representatives of Mr Fendyk in relation to the appeal against P21170. Some of the additional material was requested by the Committee and other material was provided by the Applicant's

representatives. Additional material was also received from the Executive Director and from Indigo Shire. To ensure that it is fully informed of matters relating to the Place and proposed developments, the Committee determined to consider all material received prior to the hearing itself.

#### **Appeal against P21496 – Reconstruction of the Fence**

15. In relation to P21496, Mr Fendyk failed to identify the specific conditions being appealed, but in his submission to the Heritage Council (submitted on 15 December 2014) he made a number of assertions about the originality and condition of the fence. Mr Fendyk expressed the view that the replacement fence would be a better outcome for the site. On the basis of Mr Fendyk's submissions, the Committee has determined that his appeal relates to Conditions 1, 2, 3, 4 and 5 of P21496.

#### **Appeal against P21170 – Subdivision of the Place**

16. In relation to P21170, Mr Fendyk's written submissions also failed to identify which of the permit's conditions he was appealing. The Committee notes that, even during the hearing, Mr Fendyk appeared to change his position, but that it was finally agreed by Mr Fendyk that his appeal related to Conditions: 1(i), 3, 4, 5, 6, 9, 10, 11 and 12 of the Permit.

#### **Clarification of Grounds of Appeal**

17. The Committee notes its considerable frustration that the grounds of appeal were not clarified prior to the hearing. The uncertainty has forced the Executive Director, National Trust and Indigo Shire to spend a good deal of time preparing submissions in relation to matters that were never (or at least are no longer) the subject appeal. This has led to a significant waste of time and resources and could easily have been avoided.

#### **Site Inspection**

18. The members of the Heritage Council Permit Appeals Committee ('the Committee') conducted a site inspection of the Place on 27 April 2015. The Committee revisited the site on 28 April 2015, immediately following the conclusion of the hearing.
19. At the site inspection of 27 April 2015, the Committee was provided with access to the Place by Mr Fendyk. The Committee determined to invite all other parties to the hearing to the site inspection. Representatives from the Executive Director and Indigo Shire chose to attend.
20. The Committee was unaccompanied on its site inspection of 28 April 2015.

#### **Preliminary matters**

21. The Committee notes that, under the Heritage Act, only the owner / applicant and Executive Director have an automatic right to make submissions in relation to the matter. The Committee is, however, of the view that both the National Trust and Indigo Shire have specialist knowledge in relation to the Place and that their submissions will assist the Committee in making its decision. As a result, the Committee sought feedback from both parties in relation to the appeal. The issue of the standing of the National Trust and Indigo Shire was raised, by the Chair, at the hearing. Neither the Executive Director nor Mr Fendyk objected to the parties being heard and the Committee determined that it would consider written and verbal submissions from both the National Trust and Indigo Shire Council.

## ISSUES

### Summary of Issues

22. This section is not intended to be a complete record of submissions that were made to the Committee. It is a summary of what the Committee considers to be the key issues, followed by an explanation of the position the Committee takes on each issue. As there are two permit appeals to be considered, the Committee has determined to address each appeal separately.

### **P21496 – RECONSTRUCTION OF A FENCE**

23. Mr Fendyk's submissions related to Conditions 1, 2, 3, 4 and 5 of the approved permit. Conditions 1, 2, 3 and 4 all relate to the investigation of the fence's current condition and the preparation of drawings and specifications once a conclusion about the viability of the fence's retention has been reached. Condition 5 relates to the requirement to reinstate the original metal gates.
24. As they all relate to the investigation of the fence prior to the commencement of works and the preparation of drawings following the conclusion of that assessment, the Committee has considered Conditions 1-4 together.

### **Conditions 1-4: Investigation of Fence's condition and preparation of drawings / specifications following assessment**

25. Submissions from Mr Fendyk argued that the condition of the fence was so poor that restoration was no longer viable and that the fence was no longer original as components had been replaced over time.
26. The Executive Director submitted that it was usual practice to ascertain the condition of a structure before removing it completely and that this approach was consistent with the provisions of the Burra Charter.

### *Submissions and evidence*

27. Mr Fendyk noted that much of the fence was not original, that it was in extremely poor condition and that the proposed replacement of the fence with a replica would better preserve the cultural heritage significance of the Place.
28. The Executive Director noted that 'the front fence at Mayday Hills Hospital is a handsome structure and – as the first part of the place encountered on entering the site – is an important landmark within the heritage precinct.' The Executive Director commented that it is usual practice [if full or partial reconstruction is required] to undertake analysis 'to determine what the historic form of the structure was and what materials are appropriate to use in its reconstruction'.

### *Discussion and conclusion*

29. The Committee, in accordance with s73(1) of the Act, has weighed the extent to which proposed work reconstruction of the fence affects the cultural heritage significance of the Place against the arguments made by Mr Fendyk to the effect that the proposed investigation was unnecessary.
30. The Committee is of the view that the approach adopted by the Executive Director is entirely reasonable. Conditions 1-4 simply require Mr Fendyk to engage a suitably qualified consultant or contractor to investigate the history and condition of the fence

and for a decision on the reconstruction of the fence to be based upon this expert assessment. In the view of the Committee this is not only a preferred approach it is an approach that is necessary to ensure that the feature is properly protected. The Committee declines to vary Conditions 1-4.

#### **Condition 5 Reinstatement of metal gates**

31. In written submissions, Mr Fendyk argued that the condition requiring 'the original gates once used at the entrance of the place and which currently stand in front of the old stables at the place' to be reinstated was unnecessary, as the gates were never part of the original place.
32. The Executive Director argued that the gates were original, had been located at the front entry to the property and had been an important feature of the place.

#### *Submissions and evidence*

33. In written submissions Mr Fendyk noted that the gates were 'in front of the superintendents house that stood near Kerford Clinic'. Mr Fendyk notes that 'Doug Craig ... remembers them being put up in approx. 1986.' In verbal submissions, Mr Fendyk suggested that the dates were, in fact from the 1980s.
34. In verbal submissions to the Committee, Ms Jarman argued that the gates were original and noted an image in the Conservation Management Plan (CMP) for the Place, prepared by Lovell Chen, which shows the gates in situ. The photograph is undated, but is clearly from post 1936 (when the Pines building visible in the background was constructed). Nonetheless, Ms Jarman submitted that the gates were in place well before the 1980s.

#### *Discussion and conclusion*

35. The Committee viewed the gates during its site inspection in their current location outside the stables. The Committee is satisfied, based upon the evidence provided in the CMP, that the gates were in place well before 1980, and are likely to be part of the original fabric of the Place.
36. The Committee, in accordance with s73(1) of the Act, has weighed the extent to which proposed reinstatement of the gates would affect the cultural heritage significance of the Place. In the Committee's view the reinstatement of the gates would improve the cultural heritage value of the Place. As the Committee was not presented with other arguments by Mr Fendyk about why the gates should not be reinstated, the Committee declines to vary the Condition.

#### **Conclusion in relation to Permit P21496**

37. After considering the matter the Committee has determined, pursuant to s76(4)(b) to confirm the decision of the Executive Director. The permit approved by the Committee is at Attachment 3A.

## **P21170 – SUBDIVISION OF PART OF THE PLACE**

38. Mr Fendyk's submissions related to Conditions 1(i), 3, 4, 5, 6, 9, 10, 11 and 12 of the permit.

### **Condition 1(i) The addition of the verandah (movement spaces) to common property**

39. The Condition originally required that: 'The verandahs (movement spaces) between Lots 14, 15, 16, 19 S3 and 13 be added to Common Property. The Common Property was to be up to, but not including, the building facades'.

#### *Submissions and evidence*

40. Submissions prepared by Select Planners on behalf of Mr Fendyk, argued that 'the Condition is impractical as it fails to take into account the realities of building and facilities management'.
41. In written submissions, an alternate proposal was put forward by Select Planners. The alternate proposal was that:
- The boundary of Lot 14 be brought back so that only the concrete path is included with the lot;
  - Verandahs that are connected to a building will be managed by the building owner. Works relating to these verandahs will be regulated by the Management Plan and Design Guidelines and the Owners Corporation rules which will set out a requirement for these verandahs to remain unenclosed;
  - Verandahs which are freestanding will be regulated solely by the Owners Corporation rules which include a requirement for such verandahs to remain unenclosed, to ensure clear, unobstructed movement around the central core of the registered buildings;
  - Covered walkways will also act as movement spaces between the specified lots, will be similarly regulated by the Management Plan and Design Guidelines and Owners Corporation rules, which will include a requirement for these covered walkways to remain unenclosed so as not to impede access and visibility around the central area of the Site.
42. In his Submission in Reply, the Executive Director noted that the proposed amendments were 'supported in principle, however, the proposed Owners Corporation Rules were not provided and have not yet been made available for review.' The Executive Director also noted that 'the realignment of the boundaries needs to be reviewed on site... to confirm suitability'.
43. The Committee is aware that a copy of the Owners Corporation Rules was provided to the Executive Director on 10 April 2015. A copy was also provided to the Committee for review on 23 April 2015.
44. At the accompanied site inspection an amended version of the proposed permit conditions was provided by Ms Renae Jarman. The amended Condition 1(i) provided that the plans must be amended to:
- 'Relocate the eastern boundary of Lot 15 to approximately 3m east of the Kiosk building. Relocate the northern boundary of Lot 14 to the northern edge of the verandah of the Fmr Toy Shop Building and provide an access easement along the length of this

verandah to maintain the pedestrian “desire line” of access from east – west across the site. Relocate the southern boundary of Lot 13 north to run adjacent to the southern edge of the building and to include the free-standing walkway in common property. Include the free-standing walkways in Lot S3 and to the north and south of Lot 16 in common property.’

45. Mr Fendyk indicated that he strongly objected to both the original and amended version of the Condition (as provided to the Committee at its accompanied site inspection) and that it would make the development commercially unviable.

#### *Discussion and conclusion*

46. The Committee notes submissions made by the Owner’s representative that the Condition was ‘impractical because it fails to take into account the realities of building and facilities management’. The Committee also noted Mr Fendyk’s verbal submissions to the effect that the Condition, as amended, would still make the project unviable.
47. S73(1)(b) of the Act requires the Committee to balance the cultural heritage impact of the proposed condition against ‘the extent to which the application, if refused, would affect the reasonable or economic use of the registered place, or cause undue financial hardship to the owner in relation to that Place’.
48. The Committee notes that arguments were made about the commercial impact of the proposal, but that no detail was provided by either Select Planners or Mr Fendyk about the extent or nature of the commercial impact of the condition.
49. In contrast, the Committee was presented with evidence by the Executive Director that the proposed Condition was necessary to, in the words of the Executive Director’s original submission: ensure ‘clear, unobstructed movement around the central core of the registered buildings’.
50. The Committee is satisfied that the Condition will assist in allowing access to the Place. The Committee accepts the Executive Director’s version of the Condition, as submitted at the accompanied site inspection, but has made minor changes to allow the owner of Lot 13 access to external mechanical plant adjoining the building and to allow for external building maintenance.

#### **Condition 3: Provision of a report and car parking plan**

51. The Condition requires that: ‘prior to the lodgment of Plan of Subdivision PS722240D with Land Victoria, the applicant is to provide to the Executive Director and the Indigo Shire Council for approval, a report and car parking plan prepared by a suitably qualified practitioner accurately allocating car parking spaces (number and location) to each Lot. The report must have a regard to the heritage significance and design and character objectives of the site.’

#### *Submissions and evidence*

52. Submissions lodged by Select Planners on behalf of Mr Fendyk argued that they had prepared a car parking plan which, in their view satisfied the Condition and was ‘sufficient to satisfy the current and anticipated uses of the site’. The car parking plan was provided to the Executive Director.

53. In his submission, the Executive Director noted that ‘the car parking provided should show a basic allocation of car parking spaces to proposed Lots. Failure to allocate parking spaces will result in *ad hoc* applications for car parking’. The Executive Director noted that ‘this would have a negative impact on the landscape qualities of the place.’

#### *Discussion and conclusion*

54. The landscaped surrounds of the Hospital site are one of the most striking and significant features of the Place and are independently identified as significant within the Statement of Significance. Clearly the proposed development will introduce significant traffic into the precinct. The Committee is of the view that unless it is properly managed, the traffic will have a detrimental impact upon the cultural heritage value of the Place – both by compacting tree root zones and limiting the site’s visual amenity.
55. Submissions lodged on behalf of the owner did not specifically object to the provision of a car parking plan, they merely argued that the Plan provided was adequate and that the allocation of car spaces prior to the development / sale of the apartments was premature and unnecessary.
56. The Committee has reviewed the latest version of the Plan. The Committee notes that while car parking areas have been set aside the Plan does not allocate car parks to each Lot.
57. The Committee is of the view that the intention of the Condition is to contain car parking to specific areas and to minimise the impact that the car parking will have upon the landscape of the Place. The Committee has determined to vary the Condition to remove the requirement that the individual spaces be allocated, but has introduced a provision that vehicle parking within the outdoor areas of the registered place must be contained generally to the paved portion of the parking areas shown in cross hatching on the Plan titled Mayday Hills Existing Road Network Extended Scheme and dated 13/3/2015.

#### **Condition 4: Requirement that a consultant or contractor with demonstrable experience oversee the works.**

58. The Condition requires that: ‘prior to lodgment of Plan of Subdivision PS722240D with Land Victoria, a consultant or contractor with demonstrable experience and skill in heritage conservation methods and techniques is to be nominated in writing for the approval of the Executive Director. Once approved, the consultant/contractor shall be engaged by the permit holder to undertake or oversee the works required by Conditions 5, 6 and 7 of this permit. The consultant/contractor shall advise the permit holder on the appropriate means of achieving minimal detriment to significant fabric by compliance with best conservation practice.

#### *Submissions and evidence*

59. Submissions made by Select Planners on behalf of Mr Fendyk did not specifically challenge the Condition, but argued that Mr Kraus who had ‘worked on major heritage and conservation projects’ was a consultant/contractor who satisfied Condition 4.
60. The Executive Director disagreed, noting that according to the *Curriculum Vitae* provided, Mr Kraus is not an experienced heritage consultant or contractor and does not

have the requisite expertise to identify what conservation works are required and what techniques and materials are appropriate for use. The Executive Director noted that once the necessary works have been identified, ‘Mr Kraus will be able to undertake them under supervision.’

*Discussion and conclusion*

61. The Committee notes that it is not the Condition itself that is in dispute, but the question of whether Mr Kraus is suitably qualified to identify the conservation works that are required.
62. The Committee is aware that the condition that necessary works be undertaken by a consultant/contractor with demonstrable expertise approved by the Executive Director is a standard requirement of permits issued by the Executive Director. In the Committee’s view this Condition is critical to ensure that a proper assessment of the Place is conducted prior to works commencing. The Committee believes that it is entirely appropriate that places included on the Victorian Heritage Register are managed in this way.
63. The Committee supports the right of the Executive Director to determine which consultant/contractor possesses the necessary qualifications to undertake the work.
64. The Committee declines to vary the permit Condition.

**Condition 5: Requirement that a Conservation Analysis and Condition Report for all registered structures and for the front fence be submitted to the Executive Director**

65. The Condition requires that: ‘Prior to lodgment of Plan of Subdivision PS722240D with Land Victoria, a conservation analysis and condition report for all heritage registered structures and features and for the front fence is to be submitted for the written approval of the Executive Director and the Indigo Shire Council. The report is to include a fully detailed and costed schedule of works required to conserve the registered structures and features within the place. Works that shall be addressed by the conservation analysis and schedule of works shall include, but not be limited to:
  - a) All roof structures and cladding repaired and made good;
  - b) All rainwater goods repaired and made good; all rising damp and its causes investigated and the causes addressed and impact of the rising damp repaired and made good;
  - c) All other water damage and its causes investigated and the causes addressed and impact of the water damage repaired and made good;
  - d) All intrusive works causing damage and deterioration to any registered structures repaired or removed and remaining fabric made good;
  - e) All damaged or decayed timber, external and internal, structural and decorative repaired or replaced and made good;
  - f) All structural failures and potential failures and their causes addressed and affected fabric made good;
  - g) All windows and glazing repaired and made good, all damaged stone and brickwork repaired and made good;
  - h) All damaged or deteriorated mortar joints repaired and made good;

- i) All external rendering repaired or replaced and made good;
- j) All intrusive vegetation, moss and moulds and their causes removed;
- k) All lost and peeling paint work repaired or replaced and made good;
- l) Any other conservation works that, if not addressed within two years of the date of the endorsement of the conservation analysis, will cause a detrimental impact on the significant fabric of the place.

Once approved, the report will be endorsed by the Executive Director and will form part of this permit’.

*Submissions and evidence*

- 66. Submissions lodged by Select Planners on behalf of Mr Fendyk argued that the Condition had effectively been satisfied by the submission of the Building Condition and Scope of Works Report. Select Planners argued that the Report details the conservation measures required to each of the heritage registered structures and features and the front fence.
- 67. The Executive Director argued that ‘the schedule does not satisfy the requirements of the Condition. An experienced heritage consultant will be able to prepare the required documentation.’ Copies of Conservation Schedules for other Victorian Heritage Register listed places (previously endorsed by Heritage Victoria) were provided to assist the applicant.

*Discussion and conclusion*

- 68. Once again, the appeal did not go to the Condition, but to whether the information already provided satisfied the Condition.
- 69. The Committee believes that it is entirely appropriate that the Executive Director require the applicant to submit a detailed and considered Conservation Analysis and Condition Report as per the normal procedure.
- 70. The Committee believes that the Executive Director is best placed to determine whether the Reports as provided by Mr Fendyk are of sufficient quality to ensure the proper management of the Place and the protection of its cultural heritage values.
- 71. The Committee declines to vary the permit Condition.

**Condition 6: Requirement that plans and specifications detailing how conservation works will be completed are to be submitted for the approval of the Executive Director and Indigo Shire Council**

- 72. The Condition requires that: ‘Prior to the commencement of conservation works outlined by the documents required by Condition 5, plans and specifications detailing how those conservation works are to be undertaken shall be submitted for the written approval of the Executive Director and Indigo Shire Council’.

*Submissions and evidence*

- 73. Submissions lodged by Select Planners on behalf of Mr Fendyk argued that ‘the building and scope of works’ [already provided] also sets out the works that are required to be done to rehabilitate and maintain these structures.

74. The Executive Director argued that ‘the schedule provided does not constitute plans and specifications for conservation works. An experienced heritage consultant will be able to prepare the required documentation’.

*Discussion and conclusion*

75. As previously indicated, the Committee is satisfied that the preparation of proper documentation in relation to the works is a prerequisite for the proper development and management of the Place.
76. The Committee is satisfied that the Executive Director has the requisite expertise to determine the quality of the documentation required and notes that the Executive Director has attempted to work with Mr Fendyk to identify suitably qualified contractors to undertake the work.
77. The Committee declines to vary the permit Condition.

**Condition 9: Requirement that Owners Corporations are established to take control of the grounds and landscaping of the place and for the management of buildings and features**

78. The Condition requires that: ‘Prior to the lodgment of the Plan of Subdivision PS722240D with Land Victoria, Owners Corporations are to be established that will take control of the grounds and the landscaping of the place and for the management of all buildings and features in Lots 13, 14, 15, 16, 19, S3 and Common Property 1, shown as B1, B2, B3 & B13 in the extent of registration’.

*Submissions and evidence*

79. Submissions lodged by Select Planners on behalf of Mr Fendyk argued that ‘the commercial realities of managing a site such as Mayday Hills which has been subdivided to enable the various lots to be owned by different individuals makes Condition 9 difficult to satisfy ... [and stated that] we are of the opinion that it would be commercially impracticable for the Owners Corporation to manage all the buildings and features in the Lots as specified in Condition 9.’
80. Submissions from Select Planners proposed that ‘the owners of the individual lots bear the management responsibility for their own buildings and part of the grounds and that these activities be determined by the Building Management Plan and Design Guidelines’.
81. Select Planners went on to request that: ‘the wording of Condition 9 ... be revised to reflect that the key elements being the Site’s grounds, accessways and other infrastructure be regulated by the Owners Corporation while the building management regime be regulated by the Building Management Plan and Design Guidelines.’
82. In written submissions the Executive Director noted that an error had occurred in drafting the Condition and that it should have read: ‘...Owners Corporations Rules are to be established...’. The Executive Director also noted that the proposed Owners Corporation Rules had not been provided at the time of preparing submissions (they were provided subsequently) but that the proposal from Select Planners was ‘agreed in principle’.

*Discussion and conclusion*

83. The management of large and complex sites is often facilitated by Owners Corporations and Owners Corporation Rules. The creation of Owners' Corporations and the adoption of Owners Corporation Rules is an effective way of ensuring consistency in the management of various elements of the site.
84. The Committee was not presented with any further information on why it would be 'commercially impracticable' to require Owners Corporations to manage part of the Mayday Hills site.
85. In the view of the Committee it is important that significant elements of the Place be managed in a consistent fashion. The Committee is of the view that the condition, as modified by the Executive Director, will assist in this regard.
86. The Committee determines to vary the permit Condition in accordance with the revised wording proposed by the Executive Director.

### **Condition 10: Preparation of a Landscape Maintenance and Management Plan**

87. This Condition requires that: 'Prior to lodgment of the Plan of Subdivision PS722240D with Land Victoria a Landscape Maintenance and Management Plan (LMMP) is to be prepared which:
  - (a) Provides for cyclical landscape maintenance works over one, five and ten year cycles to ensure the grounds of the place are kept in good condition;
  - (b) Ensures maintenance and future management of the landscape continues to reflect the significant heritage values of the place;
  - (c) Includes guidelines to ensure new landscaping works are appropriate within the landscape values of the place;
  - (d) Identifies a mechanism by which landscape maintenance is to be undertaken, for example, through the raising of a levy of all members of the Owners Corporation;
  - (e) Provides for a regular (minimum 5 years) reporting mechanism to the Executive Director with information on the condition and heritage values of the landscape;
  - (f) The LMMP is to be submitted to the Executive Director and the Indigo Shire Council for their approval and, once approved, will be endorsed and form part of this permit. The LMMP is to be administered by an Owners Corporation formed to oversee the management of the grounds, landscaping, gardens and landscape features of the place.'

#### *Submissions and evidence*

88. Submissions lodged by Select Planners on behalf of Mr Fendyk argued that the Mayday Hills Grounds Management Program (which had already been submitted to the Executive Director), was sufficient to satisfy the requirement.
89. The Executive Director noted that in his view the Condition had not been satisfied and that Heritage Victoria provided verbal feedback to this effect in late 2013.

#### *Discussion and conclusion*

90. The Committee recognizes the importance of the landscape setting to the Place. The Committee also recognizes that the preservation of the cultural heritage significance of the Place will, in part, depend upon the proper maintenance and management of the

setting. As such, the Committee fully supports the Executive Director's decision to seek the preparation of a Land Maintenance and Management Plan.

91. The Committee understands that the Executive Director is not yet satisfied with the form of the Plan. The Committee is of the view that the Executive Director is best placed to determine whether the Plan as submitted is sufficient to meet the management needs of the Place. The Committee notes the Executive Director's willingness to work with Mr Fendyk to 'bring the documentation to a standard that will provide a robust framework for the ongoing care and maintenance' of the landscape.
92. The Committee declines to vary the permit Condition.

### **Condition 11: Preparation of a Building Management Plan and Design Guidelines**

- Condition 11 requires that: 'Prior to lodgment of the Plan of Subdivision PS722240D approved by this permit with Land Victoria, a Building Management Plan and Design Guidelines (BMP&DG) for all buildings in Lots 13, 14, 15, 16, 19, S3 and Common Property 1, shown as B1, B2, B3 & B13 in the extent of registration is to be prepared which:
  - a) Provides for cyclical building maintenance works over one, five and ten year cycles to ensure the building fabric is kept in good condition;
  - b) Ensures maintenance and future management of the building continues to reflect the significance heritage values of the place;
  - c) Includes Design Guidelines to ensure new works to the buildings are appropriate within the heritage values of the place. The Design Guidelines should encompass principles to guide works such as exterior painting, other external alterations (including window and door treatments, service installation, roof-mounted solar cells, antennae and the like), and new structures on the land (including car parking, bin closures, fencing, gates, out-buildings and services installation). In preparing these Design Guidelines reference should be had to the recommendations set out in the Conservation Management Plan prepared by Lovell Chen dated July 2012;
  - d) Identifies a mechanism by which building maintenance is to be undertaken, for example, through the raising of a levy of all members of the relevant Owners Corporations; and
  - e) Provides for a regular (minimum 5 year) reporting mechanism to the Executive Director with information on the condition and heritage values of the buildings.
  - f) The BMP&DG is to be submitted to the Executive Director and the Indigo Shire Council for their approval and, once approved, will be endorsed and form part of this permit. The BMP&DG is to be administered by the Owners Corporation/s formed to oversee the management of the subject buildings'.

#### *Submissions and evidence*

93. Submissions from Select Planners on behalf of Mr Fendyk argued that the Mayday Hills Management Plan and Design Guidelines contain a 'clause 8' that requires the implementation of certain Design Guidelines to ensure consistency across the Site.

Select Planners argued that ‘this will allow for permit exemptions to buildings with Primary and Contributory significance under the *Heritage Act 1995*.’

94. The Executive Director noted that some material had already been submitted and that he was willing to work with the owner to make changes to the material to bring it up to a standard that would enable the proper management of the cultural heritage values of the Place.

*Discussion and conclusion*

95. For the reasons previously outlined, the Committee is of the view that the preparation of detailed material in relation to the management of the Place is a prerequisite for the preservation of its cultural heritage values.
96. In the absence of strong evidence to the contrary, the Committee believes that the Executive Director is best placed to ascertain whether the material provided is sufficient to preserve the cultural heritage values of the Place.
97. The Committee was not presented with any such evidence and, as a result declines to vary the permit Condition.

**Condition 12: Entering into a Heritage Covenant under the Heritage Act 1995**

98. The Condition requires that: ‘the endorsed LMMP shall be binding on all current and future owners of the registered place and the BMP&DG shall be binding on all current and future owners of those buildings in Lots 13, 14 15, 16, 19, S3 and Common Property 1, shown as B1, B2, B3 and B13 in the extent of heritage registration. Prior to lodgment of the Plan of Subdivision PS722240D approved by this permit with land Victoria, a Heritage Covenant under the Heritage Act, or an equivalent instrument to the satisfaction of the Executive Director, shall be drafted by the applicant to give effect to the LMMP (to be applied to all titles and the BMP&DG (to be applied to all relevant titles). Once the terms of the Covenant or equivalent instrument are agreed between the owner, the Executive Director and the Indigo Shire Council, the instrument is to be applied to all relevant titles created by the permitted subdivision.’

*Submissions and evidence*

99. Submissions from Select Planners on behalf of Mr Fendyk argued that the elements of the proposed covenant referred to ‘be included into the Plan of Subdivision as a Restriction on Use or in a Memorandum of Common Provisions to consolidate the documents pertaining to the development of the site’.
100. The Executive Director opposed this suggestion, noting that ‘A Memorandum of Common Provisions can not be enforced and is therefore not an equivalent instrument to a Heritage Covenant’.

*Discussion and conclusion*

101. The Committee recognizes the importance of having an enforceable instrument to give effect to the LMMP. S85 Heritage Act specifically allows for covenants of this sort. The Committee is of the view that a covenant, pursuant to s85, is the instrument best adapted to ensuring the delivery of the LMMP and the BMP&DG and the protection of the Place’s cultural heritage values.
102. The Committee declines to vary the permit Condition.

## **CONCLUSION**

103. After considering the matter the Committee has determined, pursuant to s76(4)(c) of the Act to vary conditions of the permit as shown in the marked up changes in Attachment 3B. Other conditions not the subject of this decision have been re-numbered and amended, where necessary, to ensure that they remain consistent.

## ATTACHMENT 1

### What is significant?

The Mayday Hills Hospital was initially constructed as the Beechworth Lunatic Asylum between 1864 and 1867 by contractor Abraham Linacre probably to the design of Public Works Department architect JJ Clark. The buildings from this early period are cement rendered, one and two storeyed Italianate structures set within what is now an extensive parkland containing mature exotic and native trees and remnants of the original encircling ha-ha wall. The main asylum building features typical covered walkways and airing courts. The detached cottages which were constructed in the 1880s have enclosed courtyards. The nurses' quarters and the ward now known as Turquoise were built to the design of Public Works Department architect Percy Everett in 1936. In the post-war era the treatment of the mentally ill underwent radical change and many buildings were added to the hospital and earlier buildings modernised. Despite this, the hospital displays a high degree of physical integrity and is in generally good condition.

### How is it significant?

Mayday Hills Hospital is architecturally, historically, socially and aesthetically important to the State of Victoria.

### Why is it significant?

Mayday Hills Hospital is architecturally significant as a particularly fine example of an extensive complex of Italianate asylum buildings dating from the 1860s, and in the case of the cottages, the 1880s. The design is based on the influential asylum at Colney Hatch in England and, in common with other contemporary institutions notably Willsmere in Kew and Aradale at Ararat, displays key characteristic features such as the E shaped plan of the main administration, kitchen and dormitory block with its airing courts, covered walkways, as well as the gatehouse, mortuary and ha-ha wall. The restrained design of the 1860s buildings is attributed to the important Public Works Department architect, JJ Clark.

Mayday Hills Hospital is historically and socially important for its physical manifestation of the changing approaches to the treatment of mental illness in Victoria from institutional confinement to treatment and rehabilitation, and from barracks, through cottages to wards. Beechworth was a key component in a system of nineteenth century asylums which included those at Kew and Ararat. The Mayday Hills Hospital has been crucially important in the social history of Beechworth and has, along with the gaol, contributed significantly to the economic viability and survival of this historically important town. Its size and prominent siting have had an important and long lived social and economic impact on the town and region.

Mayday Hills Hospital is aesthetically important for the beauty of its picturesque setting on a prominent hill among extensive parklands made up of native and introduced trees and shrubs. The curved drive with its avenue of large oaks is particularly noteworthy.

## ATTACHMENT 2

### 73. Matters to be considered in determining applications

- (1) In determining an application for a permit, the Executive Director must consider-
  - (a) the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object; and
  - (ab) if the application relates to a listed place or to a registered place or registered object in a World Heritage Environs Area, the extent to which the application, if approved, would affect -
    - (i) the world heritage values of the listed place; or
    - (ii) any relevant Approved World Heritage Strategy Plan; and
  - (b) the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object, or cause undue financial hardship to the owner in relation to that place or object; and
  - (c) any submissions made under section 69; and
  - (d) any decision of the Heritage Council under section 72 which has been received; and
  - (e) if the applicant is a public authority, the extent to which the application, if refused, would unreasonably detrimentally affect the ability of the public authority to carry out a statutory duty specified in the application; and
  - (f) any matters relating to the protection and conservation of the place or object that the Executive Director considers relevant.
- (1A) In determining an application for a permit, the Executive Director may consider-
  - (a) the extent to which the application, if approved, would affect the cultural heritage significance of any adjacent or neighbouring property that is -
    - (i) subject to a heritage requirement or control in the relevant planning scheme; or
    - (ii) included in the Heritage Register; and
  - (b) any other relevant matter.

## ATTACHMENT 3A

### **PERMIT NO: P21496. THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:**

- 1.** Prior to the commencement of works approved by this permit, a consultant or contractor with skill in historic research, a demonstrated understanding of nineteenth century timber and fence construction, with ability and experience in assessing the condition of timber and demonstrable experience and skill in heritage timber conservation methods and techniques is to be nominated in writing for the endorsement of the Executive Director, Heritage Victoria. Once endorsed, the approved consultant/contractor shall be engaged by the permit holder to undertake the works required by the Conditions two, three and four of this permit and to carry out or supervise the conservation and construction works for the reconstruction of the fence and gates. The consultant/contractor shall advise the permit holder on the appropriate means of achieving minimal detriment to significant fabric by compliance with best conservation practice.
- 2.** Prior to the commencement of works, research is to be undertaken to determine the historic form of the fence and gates and the design of the fence and gates are to be re-drawn based on this research. This research is to be provided for the written approval of the Executive Director.
- 3.** Prior to the commencement of works, the extant timber of the existing fence is to be investigated to determine what members can be retained, repaired and reused. This information is to be provided for the written approval of the Executive Director.
- 4.** After approval of conditions two and three and prior to the commencement of works, drawings and a specification for the reconstruction of the fence and gates based on the research undertaken through conditions two and three, detailing the proposed form of the reconstructed fence and gates, the proposed conservation methods to retain, reuse and conserve the serviceable timber and the proposed methods of joining and assembling the proposed fence and gates is to be submitted for the written approval of the Executive Director.
- 5.** The original metal gates once used at the entrance of the place and which currently stand in front of the old stables at the place are to be reinstated at the front gates.
- 6.** The box hedge noted on the submitted drawings is not endorsed and does not form part of this permit.
- 7.** This permit shall expire if the permitted works have not commenced within two (2) years of the date of issue of this permit, or are not completed within four (4) years of the date of issue of this permit unless otherwise agreed in writing by the Executive Director, Heritage Victoria.
- 8.** The Executive Director is to be given five working days notice of the intention to commence the approved works.
- 9.** Approved works or activities are to be planned and carried out in a manner which prevents damage to the registered place / object. However, if other previously hidden original or inaccessible details of the object or place are

uncovered, any works that may affect such items shall immediately cease. The Executive Director shall be notified of the details immediately to enable Heritage Victoria representatives to inspect and record the items, and for discussion to take place on the possible retention of the items, or the issue of a modified approval.

- 10.** All works must cease and this office be contacted if historical archaeological artefacts or deposits are discovered during any excavation or subsurface works. Should any munitions or other potentially explosive artefacts be discovered, Victoria Police is to be immediately alerted whilst the site is cleared of all personnel.
- 11.** The Executive Director is to be informed when the approved works have been completed.
- 12.** The development approved by this permit is to be carried out in accordance with the endorsed drawings, unless otherwise agreed in writing by the Executive Director, Heritage Victoria.

## ATTACHMENT 3B

### **PERMIT NO: 21170. THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:**

- 1) Prior to lodgement of the Plan of Subdivision PS722240D with Land Victoria, an amended plan of subdivision is to be submitted for the written approval of the Executive Director, Heritage Victoria and the Indigo Shire Council. When approved, the plan shall be endorsed and will form part of this permit. The plan must be generally in accordance with the plans submitted with ~~the application~~ Version N prepared by Select Surveyors, but must be amended to:
  - a) Amend boundaries to remove conflict between the proposed boundary lines and significant vegetation.
  - b) Amend the boundary between Lot 7 and Lot S11 to realign it with the existing fence line to the south of the significant vegetation.
  - ~~c) Amend the boundary line between Lot 9 and Lot S11 so that the boundary conforms with the Victorian Heritage Register extent of registration. This will result in an enlarged S11 and will place Lot 9 outside of the extent of heritage registration.~~
  - ~~d) Relocate the boundary of Lot S4 adjacent to Lot 6 to increase common property.~~
  - e)c) Relocate the northern boundary of Lot 10 and the adjoining northern boundary of Common Property No 1 (CP1) 3.6 metres to the south to 10 metres north of the building on Lot 10 and include the remaining land as part of the adjacent Public Open Space Reserve No.1 in order to maximise access and visibility to the Ha Ha Wall. The western end of the northern boundary of Lot 10 is to be deviated to the south so as to include the entrance of the carpark within the Public Open Space.
  - ~~f) Relocate the northern boundary of Lot 12 to the drip line of the southern most tree growing beside the Ha Ha Wall and include the remaining land as part of the adjacent Public Open Space in order to maximise access and visibility to the Ha Ha Wall.~~
  - ~~d) Include the land shown as Lot S2 (part) north of Lot 12 as part of the adjacent Reserve No.1 in order to maximize access and visibility to the Ha Ha wall.~~
  - ~~e) Include the above ground width of the Ha Ha Wall and a curtilage of 3 metres to the western and northern sides of the wall adjacent to Lots 10 and 11 within Reserve No.1. Provide a 3 metre wide access easement on the east side of the wall within Lot 12 to ensure access to the wall for inspections and maintenance in accordance with the Mayday Hills Proposed Outcome Plan dated 01/04/2015.~~
  - ~~f) Relocate the eastern boundary of Lot 15 to approximately 3 metres east of the Kiosk Building. Relocate the northern boundary of Lot 14 to the northern edge of the verandah of the former Toy Shop building and provide an access easement along the length of the verandah to maintain the pedestrian "desire line" of east-west access across the site. Relocate the southern boundary of Lot 13 to a straight line 1.5 metres south of and parallel to the southern edge of the building in such lot and include the remaining land in Common Property~~

No.1 (CP1), inclusive of the free-standing walkway. Include the free-standing walkways within Lot S3 and north and south of Lot 16 and west of Lot 14 in Common Property No.1 (CP1).

- ~~g) Add the width of the front fence adjacent to Lot 2 and a curtilage of land not less than 1 metre from the southern edge of such fence to Road R1.~~
- ~~g) Relocate the southern boundary of Lot 12 north to the currently existing fence line and include the remaining land as common property in order to maximise access and visibility to the Ha Ha Wall.~~
- ~~h) Include the Ha Ha Wall and a curtilage of land 3 metres either side of the wall in Lots 10, 11 and 12 within common property to ensure access to all parts of the wall for inspections and maintenance.~~
- ~~i) Add the verandahs (movement spaces) between Lots 14, 15, 16, 19, S3 and 13 to common property. Common property is to be up to, but not including, the building facades.~~
- ~~j) Add all of the land around the buildings on Lots 15 and 16, all of the land in the northern part of Lot 14 and all of the land between the northern boundary of the southern part of Lot 14 to the building in Lot 14 to common property to facilitate movement through and around the place.~~
- ~~k) Add the front fence and the curtilage of land removed from Plan of Subdivision PS722238P to common property.~~

2) Vehicle parking within outdoor areas of that part of the registered place contained within the Plan of Subdivision PS722240D must be solely confined to existing paved parking spaces constructed to all-weather seal coat or concrete standard as of 28 April 2015 and to those locations generally shown in cross-hatching on the plan titled "Mayday Hills Existing Road Network Extended Scheme" dated 13/3/2015 and prepared by Select Surveyors. Such plan is to be submitted for approval of the Executive Director, Heritage Victoria and Indigo Shire Council. When approved, the Plan shall be endorsed and will form part of the permit.

~~2) Prior to lodgement of the Plan of Subdivision PS722238P with Land Victoria, an amended plan of subdivision is to be submitted for the written approval of the Executive Director, Heritage Victoria and the Indigo Shire Council. When approved, the plan shall be endorsed and will form part of this permit. The plan must be generally in accordance with the plans submitted with the application, but must be amended to:~~

- ~~a) Remove the front fence and a curtilage of land, not less one metre, or otherwise agreed in writing, to each side of it from Plan of Subdivision PS722238P and include it as common property within Plan of Subdivision PS722240D.~~

~~3) Prior to lodgement of the Plan of Subdivision PS722240D with Land Victoria the applicant is to provide to the Executive Director and the Indigo Shire Council for approval, a report and car parking plan prepared by a suitably qualified practitioner accurately allocating car parking spaces (number and location) to each Lot. The report must have a regard to the heritage significance and design and character objectives of the site.~~

4)3) Prior to lodgement of the Plan of Subdivision PS722240D with Land Victoria, a consultant or contractor with demonstrable experience and skill in heritage conservation methods and techniques is to be nominated in writing for the approval of the Executive Director. Once approved, the consultant/contractor shall be engaged by the permit holder to undertake or oversee the works required by Conditions 54, 56 and 67 of this permit. The consultant/contractor shall advise the permit holder on the appropriate means of achieving minimal detriment to significant fabric by compliance with best conservation practice.

5)4) Prior to lodgement of the Plan of Subdivision PS722240D with Land Victoria, a conservation analysis and condition report for all heritage registered structures and features and for the front fence is to be submitted for the written approval of the Executive Director and the Indigo Shire Council. The report is to include a fully detailed and costed schedule of works required to conserve the registered structures and features within the place. Works that shall be addressed by the conservation analysis and schedule of works shall include, but not be limited to:

- a) All roof structures and cladding repaired and made good;
- b) All rainwater goods repaired and made good; all rising damp and its causes investigated and the causes addressed and impact of the rising damp repaired and made good;
- c) All other water damage and its causes investigated and the causes addressed and impact of the water damage repaired and made good;
- d) All intrusive works causing damage and deterioration to any registered structures repaired or removed and remaining fabric made good;
- e) All damaged or decayed timber, external and internal, structural and decorative repaired or replaced and made good;
- f) All structural failures and potential failures and their causes addressed and affected fabric made good;
- g) All windows and glazing repaired and made good, all damaged stone and brickwork repaired and made good;
- h) All damaged or deteriorated mortar joints repaired and made good;
- i) All external rendering repaired or replaced and made good;
- j) All intrusive vegetation, moss and moulds and their causes removed;
- k) All lost and peeling paint work repaired or replaced and made good;
- l) Any other conservation works that, if not addressed within two years of the date of the endorsement of the conservation analysis, will cause a detrimental impact on the significant fabric of the place.

Once approved, the report will be endorsed by the Executive Director and will form part of this permit.

6)5) Prior to the commencement of conservation works outlined by the documents required by Condition 45, plans and specifications detailing how those conservation works are to be undertaken shall be submitted for the written approval of the Executive Director and the Indigo Shire Council.

7)6) The conservation works outlined in the report and documents required by Conditions 45 and 56 are to be completed within two years of the Executive

Director's endorsement of the report, or by an alternative date agreed in writing by the Executive Director and the Indigo Shire Council.

~~8)7)~~ Prior to lodgement of the Plan of Subdivision PS722240D with Land Victoria an unconditional Bank Guarantee in favour of the **Heritage Council of Victoria** (ABN 87 967 501 331) to ensure the satisfactory completion of the works and documentation required by Conditions ~~45~~, ~~56~~, ~~67~~ and ~~134~~ of this permit, regardless of the financial status of the Principal, is to be lodged with the Executive Director. The amount guaranteed shall be equivalent to the cost of the required conservation works as estimated in the documents required by Condition ~~45~~ and the implementation of the Heritage Interpretation Plan required by Condition ~~134~~. The period of validity of the Bank Guarantee is to be unspecified. The Bank Guarantee is a Completion Bond to ensure completion of conservation and interpretation works to the place required by Conditions ~~67~~ and ~~134~~. The Bank Guarantee shall be released on written application to the Executive Director, subject to completion of the approved works to their satisfaction. The Bank Guarantee may be in multiple parts to allow for staged release as works progress. The Bank Guarantee shall be forfeit to the **Heritage Council of Victoria** if the approved works are not completed to the satisfaction of the Executive Director within two years from the Executive Director's approval of documents required by Condition ~~54~~ of this permit or as otherwise agreed in writing by the Executive Director.

~~9)8)~~ Prior to lodgement of the Plan of Subdivision PS722240D with Land Victoria, Owners Corporation Rules are to be established that will take control of the grounds and landscaping of the place and for the management of all buildings and features in Lots 13, 14, 15, 16, 19, S3 and Common Property 1, shown as B1, B2, B3 & B13 in the extent of registration. The Rules must be submitted to the Executive Director for approval.

~~10)9)~~ Prior to lodgement of the Plan of Subdivision PS722240D with Land Victoria a Landscape Maintenance and Management Plan (LMMP) is to be prepared which:

- a) provides for cyclical landscape maintenance works over one, five and ten year cycles to ensure the grounds of the place are kept in good condition;
- b) ensures maintenance and future management of the landscape continues to reflect the significant heritage values of the place;
- c) includes guidelines to ensure new landscaping works are appropriate within the landscape values of the place;
- d) identifies a mechanism by which landscape maintenance is to be undertaken, for example, through the raising of a levy of all members of the Owners Corporation; and
- e) provides for a regular (minimum 5 year) reporting mechanism to the Executive Director with information on the condition and heritage values of the landscape.
- f) The LMMP is to be submitted to the Executive Director and the Indigo Shire Council for their approval and, once approved, will be endorsed and form part of this permit. The LMMP is to be administered by an Owners Corporation

formed to oversee the management of the grounds, landscaping, gardens and landscape features of the place.

- ~~11)~~10) Prior to lodgement of the Plan of Subdivision PS722240D approved by this permit with Land Victoria, a Building Management Plan and Design Guidelines (BMP&DG) for all buildings in Lots 13, 14, 15, 16, 19, S3 and Common Property 1, shown as B1, B2, B3 & B13 in the extent of registration is to be prepared which:
- a) provides for cyclical building maintenance works over one, five and ten year cycles to ensure the building fabric is kept in good condition;
  - b) ensures maintenance and future management of the buildings continues to reflect the significant heritage values of the place;
  - c) includes Design Guidelines to ensure new works to the buildings are appropriate within the heritage values of the place. The Design Guidelines should encompass principles to guide works such as exterior painting, other external alterations (including window and door treatments, service installation, roof-mounted solar cells, antennae and the like), and new structures on the land (including car parking, bin enclosures, fencing, gates, out-buildings and services installation). In preparing these Design Guidelines reference should be had to the recommendations set out in the Conservation Management Plan prepared by Lovell Chen dated July 2012;
  - d) identifies a mechanism by which building maintenance is to be undertaken, for example, through the raising of a levy of all members of the relevant Owners Corporations; and
  - e) provides for a regular (minimum 5 year) reporting mechanism to the Executive Director with information on the condition and heritage values of the buildings.
  - f) The BMP&DG is to be submitted to the Executive Director and the Indigo Shire Council for their approval and, once approved, will be endorsed and form part of this permit. The BMP&DG is to be administered by the Owners Corporation/s formed to oversee the management of the subject buildings.
- ~~12)~~11) The endorsed LMMP shall be binding on all current and future owners of the registered place and the BMP&DG shall be binding on all current and future owners of those buildings in Lots 13, 14, 15, 16, 19, S3 and Common Property 1, shown as B1, B2, B3 & B13 in the extent of heritage registration. Prior to lodgement of the Plan of Subdivision PS722240D approved by this permit with Land Victoria, a Heritage Covenant under the *Heritage Act 1995*, or an equivalent instrument to the satisfaction of the Executive Director, shall be drafted by the applicant to give effect to the LMMP (to be applied to all titles) and the BMP&DG (to be applied to all relevant titles). Once the terms of the Covenant or equivalent instrument are agreed between the owner, the Executive Director and the Indigo Shire Council, the instrument is to be applied to all relevant titles created by the permitted subdivision.
- ~~13)~~12) Prior to lodgement of the Plan of Subdivision PS722240D with Land Victoria a restrictive covenant prohibiting inappropriate development throughout the site shall be drafted to the written satisfaction of the Executive Director and the

Indigo Shire Council. The covenant shall restrict development as shown on Sheet 12 of Plan of Subdivision PS722240D lodged as part of this permit and amended to ensure no building, hard landscaping or tree planting occurs within 20 metres of the western side of the Ha Ha Wall and between the roadway and wall on the eastern side of the Ha Ha Wall.

- | ~~14)~~13) Prior to lodgement of the Plan of Subdivision PS722240D with Land Victoria, a Heritage Interpretation Program is to be approved in writing by the Executive Director, Heritage Victoria and Indigo Shire Council. The Heritage Interpretation Program is to be prepared by a suitably qualified interpretation specialist and is to provide as a minimum: a scheme showing adequate fixed, permanent and indelible pictorial and textual information on the history of the place. Once approved, the Heritage Interpretation Program is to be implemented to the satisfaction of the Executive Director, Heritage Victoria within the period of validity of this permit. A covenant or equivalent instrument on title is to be entered into to require the Owners Corporation[s]/s responsible for the land on which the interpretation is located to maintain the fixed components of the interpretation program into the future.
- | ~~15)~~14) This permit shall expire if the permitted works have not commenced within two (2) years of the date of issue of this permit, or are not completed within four (4) years of the date of issue of this permit unless otherwise agreed in writing by the Executive Director, Heritage Victoria.
- | ~~16)~~15) The Executive Director is to be given five working days notice of the intention to commence the approved works.
- | ~~17)~~16) Approved works or activities are to be planned and carried out in a manner which prevents damage to the registered place / object. – However, if other previously hidden original or inaccessible details of the object or place are uncovered, any works that may affect such items shall immediately cease. – The Executive Director shall be notified of the details immediately to enable Heritage Victoria representatives to inspect and record the items, and for discussion to take place on the possible retention of the items, or the issue of a modified approval.
- | ~~18)~~17) All works must cease and this office be contacted if historical archaeological artefacts or deposits are discovered during any excavation or subsurface works. Should any munitions or other potentially explosive artefacts be discovered, Victoria Police is to be immediately alerted whilst the site is cleared of all personnel.
- | ~~19)~~18) The Executive Director is to be informed when the approved works have been completed.
- | ~~20)~~ The development approved by this permit is to be carried out in accordance with the endorsed drawings, unless otherwise agreed in writing by the Executive Director, Heritage Victoria.

| 21)19)