

**Richmond Maltings (H2050)
2 & 15 Gough Street, Cremorne, Victoria**

**Heritage Council Registrations Committee
Hearing – Thursday 20 October, Friday 21 October and Tuesday 25 October, 2016**

DECISION OF THE HERITAGE COUNCIL

After considering the Executive Director's recommendation, all submissions received and after conducting a hearing, pursuant to Sections 42(4) and 54(1) of the *Heritage Act 1995*, the Heritage Council has determined to amend the item H2050, the Barrett Burston Richmond Maltings Site, in the Victorian Heritage Register by removing the heritage permit exemption (demolition) that had applied to building B9 (the 1960s silos).

Heritage Council Registrations Committee:

Lucinda Peterson (Chair)

Penelope Smith

Andrew May

Decision Date: 23 December 2016

APPEARANCES / SUBMISSIONS

Executive Director, Heritage Victoria ('the Executive Director')

Mr Ian Munt of counsel appeared and made verbal submissions representing the Executive Director. Mr Munt was instructed by Ms Katerina Axiarlis of the Department of Environment, Land, Water and Planning. Mr Geoff Austin, Manager - Heritage Register and Permits, was also present at the hearing. The Executive Director's written submissions included a statement of evidence from Prof Miles Lewis. Mr Munt appeared, made verbal submissions and called Prof Lewis to give expert evidence.

The owner of the Place, Caydon Cremorne Developments Pty Ltd ('the Owner')

The Owner was represented by Mr John Cicero of Best Hooper Lawyers. Ms Carol Daicic of Best Hooper Lawyers, was also in attendance and assisted Mr Cicero. The Owner's written submissions included statements of evidence from the following persons:

- Mr Peter Lovell of Lovell Chen
- Mr Bryce Raworth of Bryce Raworth Pty Ltd
- Mr David Sutherland of Fender Katsalidis Architects
- Mr Roger Gibbins
- Mr Les Brown

Mr Cicero appeared, made verbal submissions and called Mr Lovell, Mr Raworth, Mr Gibbins, Mr Brown and Mr Sutherland to give expert evidence.

Yarra City Council ('Yarra')

Yarra was represented by Mr Terry Montebello of Maddocks Lawyers. Yarra's written submissions included a statement of expert evidence from Mr Bruce Trethowan of Trethowan Architecture. Mr Montebello appeared, made verbal submissions and called Mr Trethowan to give expert evidence.

Mr Michael Coffey, Chair, ERA Apartments Owners' Corporation

A written submission was received from Mr Michael Coffey. Mr Coffey appeared and made verbal submissions. He was assisted by Mr Barry Nathan, who also made verbal submissions.

Save Dimmeys

Save Dimmeys were represented by Ms Nelly Verstoep and Mr Allan Harris. Ms Verstoep and Mr Harris appeared and made verbal submissions.

The National Trust of Australia (Victoria) ['the Trust']

The Trust was represented by Ms Anna Foley, Acting Manager - Conservation and Advocacy. Ms Foley appeared and made verbal submissions.

INTRODUCTION/BACKGROUND

The Place

1. The Barrett Bursting Richmond Maltings site is located at 2 and 15 Gough Street, Cremorne.
2. The land at 2 Gough Street is an irregularly shaped parcel of 11,025 square metres in area with an abuttal to the southern side of Gough Street of 161 metres and a 68.7 metre abuttal to the western side of Cremorne Street. It is bounded on the south by Harcourt Parade and the Monash Freeway, both of which run beside the Yarra River immediately further south. The land is situated immediately east of Punt Road. It forms part of an area formerly used for industry and warehousing and associated workers' housing but now increasingly used for residential and office purposes.
3. The Barrett Burston Richmond Maltings site was initially developed as a brewing and malting site in the 1850s-60s. By 1879 the site was exclusively used for malting, being the artificial germination and kilning of grain used in the fermentation process. Malting continued and evolved on the site up until the mid-2000s. Malt houses, stores, silos (including some from the 1960s which support the illuminated Nylex sky sign and clock) and offices remain on the land at 2 Gough Street today. The land is currently used for a variety of purposes, including as a grain store, as office space and for the display of advertising signs.
4. The site at 2 and 15 Gough Street ('the Place') was included in the Victorian Heritage Register ('the Register') on 25 March 2004 (H2050).
5. The Place is included in the Register as a heritage place of historic, aesthetic, social, archaeological and scientific (technical) significance to the State of Victoria. The following is taken from the Statement of Cultural Heritage Significance ('Statement of Significance') for the Place:

Why is it significant?

The Barrett Burston Richmond Maltings site is historically significant as the oldest surviving independent sale (as opposed to brewing) maltster site in Australia. It has been continuously associated with the brewing and malting industry since 1852. It is the earliest and most intact of the four remaining nineteenth century sale maltster sites still operating in Victoria, the others being the former James Hood & Co site, Islington Street, Collingwood (1878), the Barrett Burston Gibdon Street site, Burnley (1892), and Joe White Maltings, Gregory Street site, Ballarat (1898).

The site is historically important for its strong associations with significant malting companies such as Smith, Mitchell & Co, which developed and operated the site between 1912 and 1972, and Barrett Burston, one of the largest malting companies in Australia. The site is of historical interest for its association with Charles Smith, who was involved in the site until his death in 1903. Smith, one of the earliest sale maltsters in Victoria, was Mayor of Richmond 1873-74 and Lord Mayor for Melbourne 1883-84, and was a member of the Legislative Assembly.

The Barrett Burston Richmond Maltings site is scientifically (technologically) significant for its pivotal role in understanding the industrial production of malt both by the pneumatic and the floor processes. The 1880 malt house is the only nineteenth century pneumatic malt house surviving in Australia, and is of outstanding

technological significance as one of the earliest pneumatic malt houses in the world. While the building was substantially re-modelled following fires in 1950 and again in 1965, the existing mechanised Saladin box process with two parallel germinating boxes and perforated floors is very similar to the original Galland box process described in the opening of the malt house in 1880.

The 1920 malt house, with its low floor to ceiling height of 9 feet, a large open concrete floor, with open storeroom above, and timber louvred windows set opposite each other in the side walls to control air flow, is scientifically (technologically) important for its demonstration of many of the essential characteristics of a traditional floor maltings. While once relatively common in Victoria, with many having been demolished and others adapted to pneumatic malting systems from the 1930s onwards, or adapted to alternative uses, it now represents a very rare surviving example of its type.

The 1952 pneumatic drum malting building, originally built with six drums imported from the United Kingdom, later replaced by drums constructed in Victoria by Vickers Ruwolt Pty Ltd, demonstrates the earliest use of this malting technology on a sale maltster site in Victoria. The 1939-40 building for storing barley was supplemented in 1952 by 11 concreted silos, which represent an early surviving example of this form of barley storage system on a sale maltster site in Victoria with only the 1937 silos in Abinger Street Richmond (now converted to residential use) being older.

*The Barrett Burston Richmond Maltings site is aesthetically and socially significant as a substantial Melbourne landmark. This collection of four brick malt houses dating from 1880, 1920, late 1939s and 1942 together with the 1952 and 1960s concrete silos present a distinctive industrial aesthetic, which has formed a significant part of the townscape of Richmond, the adjoining River Yarra and South Yarra, for many years. Three of the malt houses retain distinctive external evidence of malt kilns, a feature found on only two other remaining malt houses in Victoria. The 1952 and 1960s concrete silos by reason of their height scale and bulk visually dominate the immediate townscape, and are also viewed over a wide distance in eastern Melbourne. Together with the Nylex sign, which sits atop the silos, they have become a significant cultural iconic feature in the Melbourne landscape and psyche and even feature in the song *Leaps and Bounds* by musician Paul Kelly.*

The Barrett Burston Richmond Maltings site is archaeologically significant not only for its visible remnants of the malt houses constructed in 1903 and 1928 but also for the potential archaeological remains of the brewing buildings of the 1852 Cremorne Brewery and 1860s malt house.

6. The Nylex Sign is a separately registered heritage place (H2049) located within the registered extent of the Barrett Burston Richmond Maltings (H2050). The sign is located atop the 1960s concrete silos (referred to as building B9). It is comprised of electric lights, a large digital clock display and features the words 'Nylex Plastics' ('the Nylex Sign'). The following is taken from the Statement of Significance for the Nylex Sign:

Why is it significant?

The Nylex sky-sign is of historical significance as one of a collection of signs marking Victoria's industrial heritage in Richmond. Richmond has the greatest concentration of surviving sky-signs in the state. Of all the signs, which include the Skipping Girl, Victoria Bitter, Slade Knitwear and the Pelaco signs, the Nylex sign is the most

prominent. These large sky-signs which used to be a prominent feature of the Melbourne skyline are increasing in rarity with the demolition of such notable signs such as Allen's at Southbank and Atlantic Ethyl and Shell Petroleum's rolling dice at St Kilda Junction. The Nylex sign is of further rarity as it the only major sky sign in Melbourne that uses such a range of lighting media. These signs have strong associations with the industrial base of the former City of Richmond, important in the economy of Melbourne but which also contributed to the wellbeing of the national economy. Nylex, the largest plastics manufacturer in Australia, and the first to be established (1927), grew from premises below the sign in Cremorne Street.

The Nylex sign is of social significance for its landmark qualities. The sign dominates the view along the major thoroughfares of Punt Road and Hoddle Streets and because of its location at the entrance to the South Eastern Freeway the Nylex sign is considered the unofficial gateway into Melbourne. The clock and temperature display is a constant point of reference for residents and motorists. This recognition factor has entered the sign as a part of popular culture and has given the sign an iconic quality. Its mention in the Paul Kelly song Leaps and Bounds has given the sign an identity that extends beyond Melbourne.

7. The Place is also subject to a Heritage Overlay in the Yarra Planning Scheme, HO350, which applies to the Nylex Sign specifically and to the Place generally. No permit is required under clause 43.01-2 of the Heritage Overlay because the Place as a whole and the sign are included in the Register and are subject to the heritage permit requirements of the Register.

Application to amend the entry for the Place in the Register

8. On 26 May 2016 the Executive Director accepted an Application from Save Dimmeys to Amend an Item in the Register that related to the Place ('the Application'). The Application sought to remove the following s42(4) permit exemptions in the entry for the Place in the Register:
 - 1) *Subject to the full recording to the satisfaction of the Executive Director, the demolition of the 1960-62 and later silos, [B9] fronting Harcourt Parade.*
 - 2) *Subject to the full recording to the satisfaction of the Executive Director, the demolition of the 1922 and later office building, including the remnant of the 1903 malting [B3] fronting Gough Street.*
 - 3) *Subject to the full recording to the satisfaction of the Executive Director, the demolition of the remaining walls to the 1903 malt house [B2] fronting Gough Street.*
 - 4) *Subject to the full recording to the satisfaction of the Executive Director, the demolition of the remaining walls to the 1928 malt house [B1] fronting Gough Street and Cremorne Street.*
 - 5) *Subject to the full recording to the satisfaction of the Executive Director, in the late 1930s former pneumatic malt house [B4], the removal of the partitions to the ground floor workshop, and the removal of the laboratory area and staff amenities room to the first floor.*

Recommendation of the Executive Director

9. On 10 June 2016 the Executive Director recommended that the registration of the Place be amended ('the Recommendation'), to:

- Retain the s.42(4) permit exemptions associated with buildings/structures B1, B2, B3 and B4.
 - Remove the s.42(4) permit exemption associated with the building B9, on which the Nylex sign sits (VHR H2049).
10. The reasons given by the Executive Director for the Recommendation in relation to the retention of the permit exemptions for B1, B2, B3 and B4 were:
1. *These permit exemptions were issued by the Heritage Council of Victoria at the time of registration in 2004.*
 2. *The registration of this place went to a hearing and the Heritage Council of Victoria considered submissions from all parties and made a determination based on the available evidence and relevant considerations under the Heritage Act 1995.*
 3. *These permit exemptions have been associated with the Richmond Maltings since March 2004 (for over 12 years).*
 4. *Subsequent owners have in good faith accepted the registration of this place in the VHR with its associated suite of s.42(4) permit exemptions.*
11. The reasons given by the Executive Director for the Recommendation in relation to the removal of the permit exemption for the B9 silos were:
1. *It is the view of the Executive Director that there are particular and compelling reasons to remove the permit exemption for B9.*
 2. *The Richmond Maltings Statement of Significance explicitly identifies the B9 silos and the illuminated Nylex sky sign and clock as being of state level cultural heritage significance in the context of the place:*
 - a. *‘What is significant? ... The complex consists of malt houses, stores, silos (including the illuminated Nylex sky sign and clock) and offices.’*
 3. *The Richmond Maltings Statement of Significance identifies the B9 silos together with the Nylex sign as an area of particular aesthetic and social significance:*
 - a. *‘[The] Richmond Maltings site is aesthetically and socially significant as a substantial Melbourne landmark... The 1952 and 1960s [B9] concrete silos by reason of their height scale and bulk visually dominate the immediate townscape, and are also viewed over a wide distance in eastern Melbourne. Together with the Nylex sign which sits atop the silos [B9], they have become a significant cultural iconic feature in the Melbourne landscape and psyche...’ [Criterion E & G]*
 4. *The Nylex sign is also a registered Heritage Place in its own right (VHR H2049). It was registered concurrently with the Richmond Maltings by the Heritage Council of Victoria in March 2004.*
 5. *The Statement of Significance for the Nylex Sign (VHR H2049) refers to the sign’s social significance as a landmark by virtue of its position on the B9 silos:*
 - a. *‘Erected in 1961 on top of the No2 Silos [B9] of the Richmond Maltings, Gough St, Richmond, the Nylex Sign is a double sided sky-sign mounted on a cross braced frame of steel L-section angle, approximately 15m high... The Nylex sign is of social significance for its landmark qualities. The sign dominates the view along the major thoroughfares of Punt Road and Hoddle Streets and because of its location at the entrance to the South*

Eastern Freeway the Nylex sign is considered the unofficial gateway into Melbourne.'

6. *It is the Executive Director's view that the demolition of B9, a registered building, would substantially diminish the cultural heritage values of the Richmond Maltings (VHR H2050). It would also have a massive and undesirable impact on the Nylex sky sign, also a registered place identified in two registrations (VHR H2050 and VHR H2049).*
7. *Both Statements of Significance (VHR H2050 and VHR H2049) identify the high level inherent cultural heritage values of the B9 silos and the Nylex sign, as well as their interdependence on each other in their present form, location and siting.*
8. *It should be noted that the Nylex sign is registered as a Heritage Place and not a Heritage Object.*
9. *The Executive Director's recommendation in relation to B9 is consistent with the findings of a Heritage Council Permits Committee in January 2007. In determining a permit application for the Richmond Maltings (P10986) the Committee stated that the B9 permit exemption was inconsistent with the registration:*
 - a. *'The Committee regards the [B9] permit exemption ... which allows the demolition of the silos subject to recording as somewhat anomalous. There is nothing in the reasons of the Registration Committee [of 2004] which determined to register the Maltings complex which explains the exemption [for B9]. The exemption appears inconsistent with the express references to the heritage significance of the silos in the statement of significance and incongruous with the subsequent decision to register the Nylex sign which sits on the silos ... This Committee is not prepared to accept that the permit exemption policy implies that the silos are of no significance at all.'*
10. *The Executive Director recommends that the permit exemption for B9 should be removed. This is consistent with the Executive Director's original recommendation of August 2003. The Executive Director did not recommend a permit exemption allowing the demolition of B9. This was a s.42(4) permit exemption issued by the Heritage Council of Victoria in March 2004 when it determined to include the Richmond Maltings in the Victorian Heritage Register.*
11. *The Executive Director is of the view that any proposed demolition of B9 should be properly subject to a permits process under s.67 of the Heritage Act 1995 for the above reasons.*

Request that a hearing be held

12. An objection to the Recommendation and request to be heard in relation to the Recommendation was lodged with the Heritage Council, pursuant to s38 of the Act, by the Owner on 8 August 2016. Yarra and the Trust also made s38 submissions, generally in support, in relation to the Recommendation. Other relevant parties were notified that a hearing was to be conducted and a registration hearing was scheduled for 20 and 21 October 2016 ("the Hearing"). In the letter notifying parties that the Hearing had been scheduled, the Committee also advised that a directions hearing would be held on 22 August 2016. A third day of the hearing was subsequently scheduled for 25 October 2016

Site Inspection

13. Members of the Heritage Council Permit Appeals Committee (“the Committee”) conducted a site inspection of the Place on the afternoon of 19 October 2016. The Committee was accompanied by representatives of the Owner and by the Heritage Council Hearings Coordinator. The site inspection was arranged by the Owner, as requested by the Committee, and was led by Ms Georgia Willis, a representative of the Owner. No submissions were sought or received at the time of the site inspection.

Planning and heritage processes and proceedings relating to the land at 2 and 15 Gough Street, Cremorne

14. The Committee is aware that prior to, concurrent with and subsequent to this hearing process, there have been, are and will be applications and proceedings relating to the Place in other forums.
15. In making its determination the Committee has not had regard to any past or present applications or proceedings relating to the Place that have been, or are being, considered in other forums.
16. The material the Committee has considered in making its determination relates only to the Place, its cultural heritage significance and the Recommendation and submissions received by this Committee. The Committee has made its determination in the context of the Place as it is today.

Procedural matters

Directions Hearing

17. The Owner in its s38 submission, requested that a directions hearing be held. As noted above the Committee determined to hold a directions hearing in relation to certain procedural and preliminary matters. All parties attended a directions hearing on 22 August 2016 (‘the Directions Hearing’).
18. Submissions made at the Directions Hearing included a request from the Owner for a ruling in relation to what the Committee would permit by way of submission and evidence.
19. The Owner made submissions to the Directions Hearing arguing that the Committee should consider matters relating to provisions in Part 4, Division 1 of the Act, specifically s73(1)(b), and that the Committee should take into account the effects of any decision it might make on the Owner in the terms of s73(1)(b) of the Act.
20. Following the Directions Hearing and after considering all submissions made to it, the Committee, in a letter dated 29 August 2016, advised all parties of confirmed arrangements for the Hearing and undertook to prepare a timetable for the Hearing, which was subsequently provided.
21. In its 29 August 2016 letter, the Committee, amongst other matters, advised parties of the following:

“The Committee notes that the above hearing is a registration matter and NOT a permit appeal matter. The Committee further notes, as previously advised, that the Committee is required to conduct registrations hearings in accordance with Heritage Council Hearings Protocol 1, and that as per that protocol, the relevant issues for the Committee are:

a) *Whether or not the place is of cultural heritage significance in accordance with section 8(2) of the Heritage Act 1995.*

b) *The extent of registration.*

c) *Categories of work/activities able to be carried out without the need for a permit.*

The Committee notes that its role is to determine the cultural heritage significance of the Place in its current state along with related permit policy, permit exemption and extent of registration questions. If submissions are made by a party that relate to the future development or use of the above Place, its reasonable or economic use or any financial hardship caused to an owner in the terms of s73 of the Heritage Act 1995, all parties to the hearing will of course be given the opportunity to reply to those submissions. The Committee will determine the weight to be given to any submissions relating to these matters and will determine whether or not it considers submissions relating to these matters to be relevant in making its determination.”

22. The Committee makes further comment below in relation to submissions made by parties that referred to s73(1)(b) of the Act.

Request that the Committee be reconstituted

23. On 31 August 2016 the Owner wrote to the Heritage Council stating it was of the view that none of the Committee members appeared to have the qualification and/or experience to appropriately deal with certain matters, including matters of law, before it and requested the Committee be reconstituted ('the request'). The Committee sought submissions from hearing parties in relation to the request. After considering all submissions received in relation to the request, the Committee determined that it would not reconstitute. The Committee notified all parties that the Hearing would proceed as scheduled.

HEARING ISSUES AND SUBMISSIONS

24. The following summary of issues, submissions and evidence sections are not intended to be a complete record of submissions and evidence that were considered by the Committee. A summary of the position taken by parties in relation to key issues is included followed by a discussion of the issues and the conclusion reached by the Committee.
25. The central question which was the subject of submissions made to the Committee was whether or not a permit exemption for the demolition of the 1960s B9 silos ('B9') should exist. The parties disagreed on this question and on related questions of cultural heritage significance, Permit Policy and Permit Exemptions in relation to the Place.

Summary of submissions by parties

26. The Executive Director submitted, in accordance with the Recommendation, that the entry for the Place in the Register should be amended to remove the permit exemption for the B9 silos. The Executive Director submitted that, as the Statements of Significance for both the Place and the Nylex Sign identify the cultural heritage significance of the B9 silos, and as any demolition of the B9 silos would have the capacity to reduce the cultural heritage significance of the Place, it is appropriate that the permit exemption for the B9 silos be removed.
27. Yarra agreed with the submission of the Executive Director that the B9 silos should not be exempt from the permit requirements of the Act. Yarra submitted that the cultural

heritage significance and landmark qualities of the B9 silos support the Executive Director's recommendation to remove the permit exemption for the B9 silos.

28. Mr Coffey agreed with the Executive Director's submission that the permit exemption for the B9 silos be removed.
29. Save Dimmeys submitted that the permit exemptions for B1, B2, B3, B4 and B9 should be removed out of consideration for the cultural heritage significance of those parts of the Place.
30. The Trust submitted that it agreed with the position of Save Dimmeys that none of buildings B1, B2, B3, B4 nor the B9 silos should be permit exempt given their cultural heritage significance.
31. The Owner submitted there should be no amendment to the entry for the Place in the Register as there has been no material change in circumstances to justify a change to the registration and the level of cultural heritage significance of buildings B1, B2, B3, B4 and B9 are not such as to warrant the removal of the permit exemptions in relation to them. The Owner further submitted that the potential effect on the Owner of any decision to amend the registration of the Place, in terms of an effect on the reasonable or economic use of the Place or the causation of any financial hardship, should be taken into account by the Committee in making its decision.

Submissions relating to s73 of the Act

Submissions and evidence

32. The Owner made submissions relating to the provisions of Part 4, Division 1 of the Act, specifically s73(1)(b), submitting that the Committee should take into account the effects of any decision it makes on the Owner in the terms of s73(1)(b) of the Act. The Owner submitted that it is within the remit of the Committee to consider these matters and referred the Committee to part of the second reading speech, relating to s42(4) of the Act, of the *Heritage Bill 1995* prior to the Act coming into operation.
33. The Owner submitted that the removal of a permit exemption, in particular in relation to the B9 silos, would not enable the reasonable or economic use of the Place and would result in undue financial hardship to the Owner in the terms of s73(1)(b) of the Act. The Owner called on Mr Gibbins and Mr Brown to provide evidence as to the Owner's submissions in relation to s73(1)(b) of the Act.
34. Mr Gibbins provided evidence as to the potential financial viability of a variety of potential proposals for development of the Place that he had been presented with by the Owner. Mr Gibbins stated the current use of the Place is not financially viable in the long term and provided economic modeling positing that of those potential proposals he had seen, only the option comprising the demolition and replacement of B9 is a financially feasible one.
35. Mr Brown provided evidence in relation to the financial impact of a variety of potential development proposals on the land value of the Place. Mr Brown stated that the retention of B9 as part of any potential proposal would not be financially viable to the Owner and that the removal of the permit exemption in place for B9 would have a negative impact on the land value of the Place.
36. Mr Lovell and Mr Sutherland also provided evidence that the retention of B9 as part of any potential development proposal would present design, architectural, practical and financial difficulties. Mr Sutherland provided design and architectural evidence in relation to potential future development scenarios, including proposals that incorporated B9.

37. The Executive Director submitted that the arguments made by the Owner in relation to s73(1)(b) are not relevant considerations for the Committee in making its decision under ss42 and s54 of the Act, as registration decisions are intended by the Act to be separate to the consideration of a specific proposal and of any impact a permit appeal decision may have on an Owner.
38. Yarra submitted that submissions and evidence relating to the reasonable or economic use of the Place and any cause of financial hardship to the Owner by a decision of the Committee are not relevant to this Hearing and no weight should be given to such evidence. Yarra submitted one of the purposes of a registration hearing is to determine whether a permit process is required in relation to a place or parts of a place, by reference to its cultural heritage significance, as opposed to the consideration of matters that relate properly to a permit application decision by the Executive Director which may trigger the permit appeal process. Yarra submitted that s73(1)(b) considerations are triggered only by the consideration of a refusal to issue a permit in relation to a proposal for works, not the consideration of the registration of a place.
39. Save Dimmeys supported the submissions of the Executive Director and Yarra in relation to s73(1)(b) matters.
40. The Trust supported the submissions of the Executive Director and Yarra in relation to the question of economic impacts on the Owner and further submitted, providing examples, that Heritage Council registration committee decisions have consistently determined that s73(1)(b) matters cannot be considered by a registrations committee.

Discussion

41. The Committee noted in its 29 August 2016 letter that the Heritage Council's Hearing Protocol 1 ('Protocol 1') had been provided to all parties and provides instructions to parties on the considerations that are relevant to a registrations hearing. Protocol 1 guides the Heritage Council and all hearing parties in relation to Heritage Council hearing practice under the Act and notes that specific development proposals that may affect a place in the future ought not be considered by the Committee. The Committee noted in the 29 August 2016 letter that if submissions were to be made in relation to s73 of the Act, all parties to the hearing would be given an opportunity to reply to those submissions. That opportunity was given.
42. The Committee's role is to consider the cultural heritage significance of the Place in its current context and in its current state. The cultural heritage significance of the Place, including B9, is not influenced by a consideration of a potential reasonable and economic use of the Place or by any consideration of a potential undue financial hardship that may be suffered by the Owner.
43. The Committee notes the Act mandates the consideration of s73(1)(b) matters in relation to the consideration of permit applications. S73(1)(b) matters, however, are not considered in making a registration determination. Further to the statutory context, the Committee notes the former s18(7) of the *Historic Buildings Act 1981* did expressly provide for considerations relating to reasonable and economic use of a place and financial hardship to an owner in considering the registration of places. However, Parliament expressly excluded such considerations in the construction of the Act which replaced the *Historic Buildings Act 1981*.
44. The Committee is of the view that the second reading speech referred to by the Owner clearly explains that, as part of a registration determination, the Heritage Council is to determine the circumstances in which a permit process is required in relation to a place or specific parts of a place by reference to its cultural heritage significance. This includes any amendment to the registration of the place subsequent to the initial

registration. This can be contrasted with the consideration of s73(1)(b) matters, which specifically relate to a decision by the Executive Director on a permit application and which would trigger the permit appeal process. In the latter case, permit exemptions would have already been established by the registrations process. S73(1)(b) considerations are triggered only by a refusal to issue a permit in relation to a proposal for works or the imposition of a condition in relation to a permit issued.

45. The Committee is a registrations committee of the Heritage Council carrying out its function in accordance with Part 3, Division 1 of the Act. The Committee is not a permit appeal committee and there is no permit appeal before it which would trigger a consideration of s73(1)(b) matters. The Committee cannot speculate on any potential development proposal relating to the Place. This issue of speculation as to potential development scenarios and their potential impact on the current owner was particularly borne out in the cross examination of Mr Gibbins, which highlighted the many variables to consider in determining the internal rate of return and other economic factors that may influence the Owner as to potential proposals for development of the Place.
46. The Committee finds it difficult to give the submissions that were made relating to s73(1)(b) of the Act any weight in making its determination in relation to ss42 and 54 of the Act. Furthermore, the Committee is of the view that if Parliament had intended for s73(1)(b) matters to be taken into account by the Heritage Council in making a determination under ss42 and 54 of the Act, it would have made that intention explicitly clear.
47. The Committee also notes, as submitted by Yarra and the Trust, that previous Heritage Council decisions, namely the 2010 decisions in relation to *Lorne Cinema* and *Dromana Drive In*, also determined that the Heritage Council is not required to consider the economic impact of a registration decision on the future use or viability of a place or required to consider any financial hardship caused to an owner as a result of a registration decision.
48. On this matter the Committee concludes that it has made its determination pursuant to Part 3, Division 1 of the Act and, as such, matters relating to the effect of any decision to refuse a permit application on the reasonable and economic use of the Place, or any undue financial hardship caused to an owner by such a decision, are not relevant matters for this Committee. Having considered all of the submissions and evidence put to it on this matter, the Committee determines that, in making its decision under ss42 and 54 of the Act, it is clearly not the intention of the Act that the Committee consider s73(1)(b) matters.

Submissions relating to the Executive Director's Recommendation and in relation to the cultural heritage significance of the Place

Submissions and evidence

49. The Executive Director submitted that the permit exemption for B9 should be removed in accordance with the Recommendation on the basis of the significant contribution B9 makes to the aesthetic and social significance of the Place, a contribution which is reinforced by the relationship between the B9 silos and the Nylex Sign. The Executive Director submitted that because the demolition of B9 could have the capacity to diminish the cultural heritage significance of the Place and of the Nylex Sign, it is not appropriate for a permit exemption for demolition to apply. The Executive Director submitted that any proposal to demolish B9 should rightly be assessed as part of the heritage permit application and appeal process. The Executive Director submitted that

the permit exemptions for B1, B2, B3 and B4 should be retained as their significance is not such that would warrant the removal of the exemptions relating to them.

50. Mr Lewis gave his view that B9 should not be permit exempt and gave evidence that its industrial aesthetic and landmark qualities contribute to the cultural heritage significance of the Place in contributing to its industrial aesthetic. Mr Lewis stated that, as the demolition of B9 would impact substantially and detrimentally on the significance of the Place, the permit exemption relating to B9 should be removed.
51. Yarra agreed with the Recommendation and with the submissions of the Executive Director. Yarra submitted the significance of B9 warrants the removal of the permit exemption in relation to it. Yarra expressed the view that the B9 silos contribute to the cultural heritage significance of the Place, that the cultural heritage significance of the Place is the only relevant consideration for determining whether a permit exemption should apply and that the permit application process is the rightful place for consideration of whether works can or cannot be carried out in respect of the B9 silos. Yarra also submitted that the permit exemptions for B1, B2, B3 and B4 should be retained.
52. In his statement of evidence, Mr Trethowan agreed with the Recommendation and expressed the view that B9 clearly contributes to the landmark status of the Place and to the prominence and iconic status of the Nylex Sign. Mr Trethowan gave his view that, as B9 contributes to the cultural heritage significance of the Place, the demolition of B9 should not be exempt from the heritage permit application process.
53. Mr Coffey submitted that people identify with B9 as a landmark and that the permit exemption for B9 should be removed from the entry for the Place in the Register.
54. Save Dimmeys submitted that the permit exemptions for buildings B1, B2, B3, B4 and B9 should be removed, in part on the basis that the buildings span many years, demonstrate the industrial history of the Place, may provide archeological evidence of former processes and are part of the distinctive industrial aesthetic of the Place.
55. The Trust, in written submissions, had given its view that further permit exemptions relating to the Place, beyond those which were the subject of the Recommendation, should be removed. In verbal submissions, however, the Trust agreed with the submissions of Save Dimmeys that the permit exemptions for buildings B1, B2, B3, B4 and B9 should be removed.
56. The Owner submitted that the cultural heritage significance of B9 is not such to warrant the removal of its permit exemption and that there had been no material change relevant to the Place that should result in the amendment of the entry in the Register for the Place. The Owner also submitted that the permit exemptions for B1, B2, B3 and B4 should be retained.
57. Both Mr Lovell and Mr Raworth gave evidence about the relative importance of parts of the Place, stating B9 is not of a level of cultural heritage significance to warrant the removal of the permit exemption.
58. Mr Raworth stated in his evidence that B9 does contribute to the industrial aesthetic of the Place and does have landmark status, but stated that these aspects of significance are not of cultural heritage significance at a threshold level such that it would be a reason for the removal of the B9 permit exemption.
59. Mr Sutherland provided evidence relating to the design of works proposed at the Place, and gave evidence that the fabric of B9 presented particular difficulties in terms of architectural responses incorporating them.

Discussion

60. The Committee is of the view that B9 contributes to the cultural heritage significance of the Place and is clearly an iconic feature within the Place. The prominence and landmark quality of B9 is recognised in the Statement of Significance as an element of the aesthetic and social significance of the Place, and B9 (together with the Nylex Sign) is noted as having become a significant and culturally iconic feature in the Melbourne landscape and psyche. B9 contributes to the significance of the Place by way of its height, scale, bulk and visual prominence, as noted in the Statement of Significance, and in particular contributes to the ascribed aesthetic and social significance of the Place.
61. The Committee concurs with the view of the Executive Director, Yarra, Mr Coffey, Save Dimmeys and the Trust that, on the basis of the significance of B9 to the Place and to the State of Victoria, the permit exemption in relation to B9 should be removed from the registration of the Place and the permit application process is the appropriate process to consider any proposal for works to, or demolition of, B9.
62. The Committee agrees, however, with the Executive Director, with Mr Coffey, with Yarra and with the Owner in respect of the retention of the existing permit exemptions that apply to buildings B1, B2, B3 and B4. The Committee is of the view that the Statement of Significance for the Place provides no clear basis for acting on the Application to amend the Register by removing the permit exemptions for those parts of the Place. The contribution to the cultural heritage significance of the Place made by buildings B1, B2, B3 and B4 is not clearly noted in the Statement of Significance in a way that would justify the removal of the permit exemptions that currently exist in relation to those buildings.

Submissions pertaining to ‘material changes’ in relation to the Place

Submissions and evidence

63. Parties made submissions responding to the Owner’s submission that there has been no ‘material change in circumstances’ in relation to B9 that would provide a basis for the removal of the B9 permit exemption as recommended.
64. The Executive Director submitted that material changes had occurred in relation to the Place in the 12 years since its inclusion in the Register, including changes to planning controls, to ownership, to the surrounding townscape and to the use of the Place. The Executive Director also referred to documents that have been produced, such as the 2005 Conservation Management Plan, since the registration of the Place to guide its development.
65. Mr Lewis gave his view that public appreciation of B9 and its industrial aesthetic has grown over time.
66. Yarra submitted there have been a number of changes since the inclusion of the Place in the Register that support a review of permit exemptions that apply, including the end of the use of the site for maltings, the application of a Heritage Overlay, the preparation of the 2005 Conservation Management Plan, the rezoning of the land relating to the Place for local planning purposes and the 2007 and 2016 Heritage Council decisions relating to the Place. Yarra submitted that buildings can become more significant over time.
67. Mr Trethowan gave his view that changes of use at the Place since its inclusion in the Register present risks to B9. Mr Trethowan noted that when the Place was initially included in the Register it was still operating as a maltings site but since that time

operations had come to an end. He considered the change of circumstance warrants greater scrutiny of the permit policy and permit exemptions relevant to the Place.

68. Save Dimmeys submitted that development in the inner suburbs of Melbourne has increased the rarity of the Place and also that the storage of grain at grade level in rural areas was causing silos in particular to become rarer. Save Dimmeys also noted, as an example of a change, that the Owner took possession of the Place approximately one decade after its inclusion in the Register.
69. The Trust submitted it is reasonable to revisit the registration of the Place after 12 years and that the recent pace of development in Melbourne's inner suburbs warranted a reassessment in this context. In particular, The Trust submitted that, of the five places noted by Lovell Chen in comparison with the Place, three silos have been demolished, one place is still industrially operational and the other has had its silos adaptively reused. The Trust submitted that silos are increasing in their iconic status generally and the presence of B9 in Melbourne's psyche as a socially significant landmark has increased with time. The Trust provided recent examples of artworks and pop culture paraphernalia depicting B9 artistically.
70. The Owner submitted there has been no material change in circumstances at the Place since the inclusion of the Place in the Register that would warrant a change to the Permit Exemptions. It submitted that B9 was found to be one of the features contributing to the significance of the Place but nevertheless was found to warrant a permit exemption. The Owner submitted that there is nothing new about the landmark status of B9, that public policy demands consistency in decision making, that the B9 permit exemption is effectively an accrued right to the Owner and that the registration of the Place should only be amended if there has been a material change of circumstances.
71. In cross examination, Mr Lovell acknowledged that maltings sites are diminishing in number and this does elevate the importance of the Place. However in relation to B9 Mr Lovell noted that many comparable silos still exist in a landmark setting in Victoria. Mr Lovell agreed in principle that cultural heritage significance does change over time, but the Statement of Significance for the Place appropriately recognises the significance of the Place.
72. In relation to B9, Mr Raworth considered the passage of time has not resulted in any increased landmark status and only the revelation of something new or the occurrence of an event in relation to its fabric could cause this to come about. He advised the industrial aesthetic and heritage of B9 was considered in 2004 and, although there is an evolution of thinking in every area of heritage as time moves on, he did not consider there has been a noticeably greater appreciation of industrial heritage since 2004.

Discussion

73. The Act clearly provides for the registration of places to be revisited and reviewed from time to time and for a variety of reasons. This is clearly a function of the Heritage Council and is consistent with the purposes of the Act. The Heritage Council regularly amends places in the Register, including through the addition and removal of land, the amendment of statements of significance, the amendment of permit policy, permit exemptions and other elements of items in the Register. The role of the Committee is to consider the Recommendation and submissions received in relation to it and this Hearing is the context for that to occur in relation to the Place and the permit exemptions that apply to it. The Committee notes that changes to the registration of a place, including the removal of any permit exemptions, should be appropriately justified.

74. The Committee has noted the variety of submissions made in relation to the 2004 Heritage Council decision to apply a permit exemption for demolition to B9 and has considered arguments made by parties to the Hearing as to what the registrations committee had in mind at that time. The Committee notes Yarra and the Owners' submissions in particular that there is no effective explanation as to how the 2005 registrations committee came to its view in relation to the B9 permit exemption. The Committee shares this view. In any case the Committee notes its role in this instance is not to revisit the rationale of the 2004 decision, but to consider the present Recommendation, submissions received in relation to it and submissions made to the Hearing before making a determination. On that basis, the Committee is satisfied it is appropriate that the Committee now make a determination, pursuant to the provisions of Part 3, Division 1 of the Act, in relation to the Recommendation and submissions received in with respect to it.
75. The Committee does not agree with the submissions of the Owner that there has been 'no material change in circumstances' in relation to the Place since its 2004 registration. Having regard to the submissions made to it, the Committee notes the evidence of Mr Lovell and the submissions of the Trust as to the demolition of several large silos across Victoria and the potential increased rarity of the Place by reason of the loss of similar maltings sites in Melbourne since the registration of the Place in 2004. The Committee also notes submissions made by the Trust with respect to the changing appreciation in Victoria for industrial landscapes and in particular silos. While the Committee notes the current Statement of Significance clearly recognises the contribution of B9 to the significance of the Place and for its own landmark qualities, it considers its cultural heritage significance has been elevated as comparative examples have been demolished.

Submissions relating to Permit Policy and Permit Exemptions

Submissions and evidence

76. The Trust and Yarra submitted that although there are no guidelines for the Heritage Council to determine the application of permit exemptions, the extent of registration and permit exemptions for the Place should be supported by the Statement of Significance and confined to works that do not detrimentally impact on the cultural heritage significance of a registered place as a whole.
77. The Owner submitted, responding to The Trust and Yarra's submissions in relation to the purpose of permit exemptions, there is nothing in the Act that limits the use of permit exemptions to only non-contributory buildings or for minor works to a place.
78. The Owner also submitted that the practical ramifications of any proposal to demolish B9 would be the consideration of the cultural heritage impacts on the Nylex Sign affixed to it and on buildings B6 and B8 directly neighbouring it prior to any demolition works. The Owner nevertheless noted the benefit of the current permit exemption to it, as a specific requirement for a permit to demolish B9 is not necessary and instead, consideration of impacts on the Nylex sign and other buildings could be managed through other permit requirements or consents.
79. Mr Lovell gave evidence that there are few places in the Register where elements of a place are identified as significant but are also subject to a permit exemption for demolition. He considered, however, that nothing precludes this situation.
80. Mr Raworth in his evidence drew comparisons with the registration of the Royal Agricultural Showgrounds, Flemington, H1329 ('the Showgrounds'), to illustrate the existence of other places in the Register where permit exemptions applied to buildings within an extent of registration despite their stated contribution to the cultural heritage

significance of a place. During cross examination Mr Raworth agreed that a clear rationale had existed for the application of a permit exemption for those buildings, noting a Conservation Management Plan had been developed contemporaneously to the Place's registration to inform and provide for the exemptions in that context.

Discussion

81. The Committee does not view the comparison made by the Owner with the registration of the Showgrounds as instructive in terms of the application of permit exemptions to places on the Register. The Showgrounds and the Place are distinct in terms of their current use and their significance. The parts of the Showgrounds that have been subject to permit exemptions over time bear no comparison with the landmark, iconic and prominent qualities of B9 or with its contribution to the aesthetic and social significance of the Place. In addition, it appears that at the time of the Showgrounds exemptions, the exemptions required some retention of examples of the (several and similar) buildings and therefore did not contemplate the demolition of all of the buildings in their entirety.
82. The Committee notes the Owner's submission that the demolition of B9 in practice could not occur without managing impacts on the cultural heritage significance of neighbouring significant buildings and elements, including impacts on the separately registered Nylex Sign. The Committee is of the view that, given the cultural heritage significance of B9 and buildings in its proximity, potential impacts on the cultural heritage significance of those features should be adequately considered. In this context the Place should not be exempt from the requirement to make a heritage permit application for demolition works to B9.
83. The Committee appreciates the desire for guidance on the application of permit exemptions to places in the Register and notes the Act does not provide specific guidance on this matter. The Committee is of the view that, in principal, exemptions from the need for a heritage permit should result from a consideration of the cultural heritage significance of a place and any detrimental impact on the cultural heritage significance of that place.
84. In relation to the Place specifically, the Committee expresses its dismay that a permit exemption currently applies for the demolition of B9 where a proposed demolition might potentially have a detrimental impact not only other significant parts of the Place but on the Nylex Sign atop it. The Committee is of the firm view that this is not a desirable outcome of a s42(4) permit exemption. The Committee notes the Owner's submission that an assessment of that impact would of course most likely be made in the context of a heritage permit application relating to a proposed demolition.
85. In any case, the Committee is of the view that B9, which is documented in the Statement of Significance as clearly contributing to the cultural heritage significance of the Place, should be subject to the requirement for a heritage permit under Part 4, Division 1 of the Act. The use of demolition exemptions for whole buildings or elements within the registered extent of a place should not be the preferred approach where those buildings are noted in the Statement of Significance as making a contribution to the cultural heritage significance of the Place.

CONCLUSION

86. The Committee determines that B9 contributes to the cultural heritage significance of the Place, remains a prominent, iconic and landmark feature of the Place and is of aesthetic and social significance to the State of Victoria.

87. The Committee determines that any proposal for works or demolition works in relation to B9 should be assessed as part of a heritage permit application process and after a consideration of the matters listed in s73 of the Act.
88. The Committee determines therefore that a heritage permit exemption should not apply with respect to B9 nor with respect to any alteration, demolition or construction relating to the fabric of B9.
89. The Committee determines, pursuant to ss42(4) and 54(1) of the *Heritage Act 1995*, to amend the registration of the Place in the Register to the effect that works and activities cannot be carried out in relation to B9 (the 1960s silos) without a heritage permit under the Act.
90. The Committee amends the entry for the Place in the Register to remove the permit exemption that had to this point existed in relation to building B9 at the Place.