

HERITAGE ACT 1995

REPORT AND RECOMMENDATION TO EXECUTIVE DIRECTOR ON APPLICATION FOR A PERMIT

NOTE: The subject of the following Report and Recommendation assessment - permit application P27642 - was lodged with Heritage Victoria on 22 September 2017. The *Heritage Act 1995* was repealed with the commencement of the *Heritage Act 2017* ("the Act") on 1 November 2017 (s.2 of the Act refers). Furthermore, s.270(2) of the Act provides, regarding permit applications in respect of which determinations have not been made that, "*Despite the repeal of the old Act, on and after the commencement day, the old Act continues to apply to the permit application as if the old Act had not been repealed.*" (Part 14 – Repeal, savings and transitional provisions).

The following Report and Recommendation assessment is therefore written with reference to s.73 of the old Act titled, "*Matters to be considered in determining applications*".

Fee Received: Yes **Amount:** \$7,835-00

Owner/s: Melbourne City Council

Address: GPO Box 1603
MELBOURNE VIC 3001

Applicant/s: [REDACTED]
for Melbourne City Council

Address: Melbourne City Council
QVMPR Program Office
456 Queen Street
MELBOURNE VIC 3000

VHR No.: H0734

Permit: Application No. P27642

File No.: FOL/15/36746-03

Name of place/object: Queen Victoria Market

Address/Location: 65-159 Victoria Street WEST MELBOURNE VIC 3003

Application received: 22 September 2017 **60 days expires (as shown in HERMES):** 12 May 2018

Clock stopped: The statutory 'clock' was stopped on 2 October 2017 when the applicant was advised that public notice of the application was required to be given. The 'clock' was stopped for a second time on 30 October 2017 when Heritage Victoria sought the applicant's response to the redacted public submissions. The third stopping of the statutory 'clock' was on 21 December 2017 when further relevant information on economic matters was sought from the applicant to assist the Executive Director in determining the application.

Restart: The statutory 'clock' was restarted on 30 October 2017 on confirmation being received that advertising of the permit application had been carried out in accordance with the instructions of Heritage Victoria as set out in its letter of 2 October 2017. The 'clock' was again restarted on 6 December 2017 on receipt of the applicant's comments on the referred submissions. The third 'clock' restart occurred on 7 February 2018 on receipt from the applicant's consultants (Lovell Chen Pty Ltd) of the further information sought on behalf of the Executive Director.

Was public notice required? Yes

If yes, where was it advertised? On Wednesday 11 October 2017 in "The Age" newspaper public notices section. In addition, three public notices with the required format and text were displayed on site by the applicant as directed for the duration of the 14-day advertising period.

Notice period ended: Wednesday 25 October 2017.

Officer reporting: [REDACTED]

Description of application: *To dismantle and store off-site the western section of Sheds A to D to facilitate construction of a three-level basement and part mezzanine floor accommodating customer car parking plus facilities, operational areas and associated works. Reinstate repaired Sheds A, B and C in their original locations but reconstruct the demolished section of Shed D in a wider and taller format to accommodate the basement access ramp and vehicle access. In situ conservation and Code compliance works to the eastern section of Sheds A to D.*

Site inspection: An unaccompanied site inspection was conducted by the reporting officer on Friday 10 November 2017 for the purposes of assessing the current application. Photo-images were recorded during the visit. Familiarity with Queen Victoria Market (QVM) had already been gained from numerous previous visits over several years for unrelated permit application purposes.

CONFLICT/INTEREST DECLARATION:

I have considered whether there is a conflict of interest in assessing this permit and I have determined that I have:

No Conflict

Officer's name: [REDACTED]

Signature: [REDACTED]

Date: 26 March 2018

ASSESSMENT AGAINST S.73 OF THE HERITAGE ACT 1995

Mandatory considerations

1. S.73(1)(a) - HOW CULTURAL HERITAGE SIGNIFICANCE OF REGISTERED PLACE OR OBJECT IS AFFECTED BY PROPOSAL:

Statement of cultural heritage significance: [Extracted from the H0734 entry in the Victorian Heritage Register]

"What is significant?"

The Queen Victoria Market comprises two separate blocks: a western rectangular block bound by Franklin, Peel, Victoria and Queen Streets, known as the Upper Market; and the eastern triangular block bound by Queen, Victoria, Elizabeth and Therry Streets, known as the Lower Market. The market began operating in 1859, and progressively acquired the Old Melbourne Cemetery site to allow for its expansion.

The Market comprises the Meat Market (1869), Sheds A-F (1878), Sheds H and I (1878), Sheds K and L (1923), Elizabeth Street Stores, Victoria Street Shops (1887, 1891, and 1923), Dairy Produce Hall (1928), Franklin Street Stores (1929-1930), M Shed (1936), John Batman Memorial (1881), and the site of the Old Melbourne Cemetery (1837-1917).

In 1837, ten acres of land bound by Peel, Fulton, Queen and Franklin Streets were set aside for the purposes of establishing a cemetery for the growing township of Melbourne; the Melbourne Cemetery was officially gazetted in 1839. The cemetery site was surveyed by Robert Hoddle, and divided into seven sections: Presbyterian, Episcopalian, Roman Catholic, Wesleyan, Jewish, Independent, and the Society of Friends. The Society of Friends' (Quaker) section was soon divided in half, to accommodate a section for Aboriginal burials. Concerns about the cemetery's proximity to the increasingly populated areas of the city, led to its closure in 1854, following the opening in the previous year of the Melbourne General Cemetery in Carlton. Despite the closure those who had claims on family plots continued to be interred in the Cemetery until 1917. An estimated 8,000 to 10,000 people were buried at the site from 1837 to 1917.

In March 1859, the Melbourne Town Council was granted the eastern triangular block for use as a market. The earliest surviving building is the wholesale Meat Market building. In 1874 it also began operating as a meat and produce retail market, and Sheds H and I were built for use by fruit and vegetable growers. The market was granted permission to take over some of the cemetery land under legislation in 1877, and following the exhumation of 45 burials, Sheds A-F were constructed in 1878. The market was officially opened as the 'Queen Victoria Market' in March of that same year. Sheds A-E were open on all sides with each divided by a service roadway, and Shed F was constructed with a brick wall on its southern side which divided the market from the remainder of the cemetery.

Two-storey terrace shop buildings constructed along Elizabeth and Victoria Streets in 1884 and 1887 respectively, provided a 'public' face to the market. Additional shops were also constructed on Victoria Street between 1890 and 1905.

Legislation in 1917 provided for the remainder of the cemetery land to be acquired for market purposes. The final burial took place in 1917, and as part of the transition from cemetery to market, 914 bodies are known to have been exhumed and relocated from 1920 to 1922.

Developments from this time included the construction of Sheds K and L in the Upper Market in 1923 and in the Lower Market the Dairy Produce Hall in 1928 which provided dairy producers with dedicated accommodation. On the Upper Market site, the Market Square

development of 1929-1930 provided storage for market traders and merchants in two rows of sixty brick stores. This development, of which only the Franklin Street Stores survive, enclosed the market site along Franklin Street, and resulted in the market taking over the last of the former cemetery land. Shed M was constructed in 1936 on the Upper Market site.

The John Batman Memorial, in the north-east of the carpark, was erected by public subscription in 1881. While no longer in its original location, the memorial recognises John Batman who was buried in the cemetery in 1839, with his remains relocated to Fawkner Cemetery in 1922.

In more recent years some of the buildings have been renovated to accommodate the changing needs of market stall holders and shoppers. The Queen Victoria Market is on the traditional land of the Kulin Nation.

How is it significant?

The Queen Victoria Market is of historical, archaeological, social, architectural and aesthetic significance to the State of Victoria.

Why is it significant?

The Queen Victoria Market is of historical significance as one of the great nineteenth century markets of Victoria and the only one surviving from a group of important central markets built by the corporation of the City of Melbourne. It is also of historical significance for remaining in operation from the 1870s.

The Queen Victoria Market is of historical significance as the site of Melbourne's first official cemetery, which was in use between 1837 and 1854, and intermittently from 1854 until its final closure in 1917.

The former cemetery site is of archaeological significance because it contains an estimated 6,500 to 9,000 burials. The site has the potential to yield information about the early population of Melbourne, including the Aboriginal and European communities, and their burial practices and customs.

The Queen Victoria Market is of social significance for its ongoing role and continued popularity as a fresh meat and vegetable market, shopping and meeting place for Victorians and visitors alike.

The Queen Victoria Market is of architectural significance for its remarkably intact collection of purpose built nineteenth and early twentieth century market buildings, which demonstrate the largely utilitarian style adopted for historic market places.

The Elizabeth Street and Victoria Street terraces are of aesthetic significance for their distinctive demonstration of an attempt to create a more appealing 'public' street frontage and increase revenue by enclosing the market and concealing the stalls behind a row of nineteenth century shops.' [End of quoted extract from the Victorian Heritage Register – (VHR)].

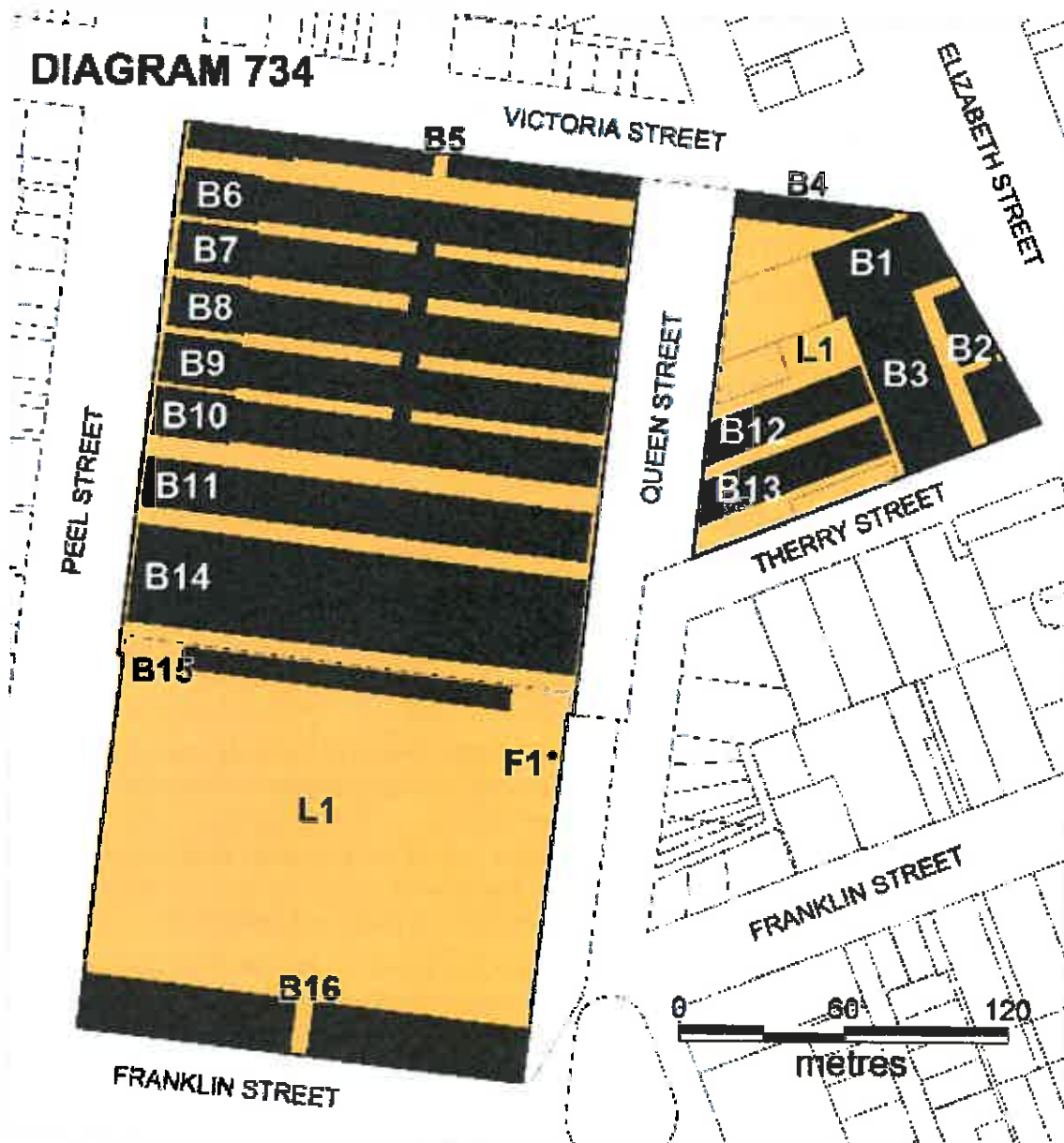
The registered land is coloured yellow in diagram 734 attached below and designated 'L1'. The diagram forms part of the VHR entry. The footprints of the built structures of heritage significance are denoted in black and designated by a number prefixed with 'B'. These are listed as follows:

- B1 Meat Market
- B2 Shops at 507-523 Elizabeth Street
- B3 Dairy Hall
- B4 Shops at 65-81 Victoria Street (between Elizabeth and Queen Streets)
- B5 Shops at 83- 159 Victoria Street (between Queen and Peel Streets)

- B6 Shed A
- B7 Shed B
- B8 Shed C
- B9 Shed D
- B10 Shed E
- B11 Shed F
- B12 Shed H
- B13 Shed I
- B14 Sheds K and L
- B15 Shed M
- B16 Franklin Street Stores at 154-190 Franklin Street

An individual feature, the John Batman Memorial – a basalt obelisk dated 1881- is designated F1.

The registered land is in two separate parcels, the larger one (often referred to as the "Upper Market") bounded by Peel, Victoria, Queen and Franklin Streets and the smaller one (often referred to as the "Lower Market") bounded by Queen, Victoria, Elizabeth and Therry Streets.



Applicant justification for the proposed works: The permit application was supported by the following documents, as enumerated in a covering letter to the application provided by consultants Lovell Chen Pty Ltd (acting for the applicant) and as presented in tabulated form at Section 1.2 of the Heritage Impact Statement (pages 2 to 4):

- The completed application form
- A copy of the current land title
- Two copies of each of the following:
 1. A *Heritage Impact Statement (HIS)* by Lovell Chen Pty Ltd (Lovell Chen) in 52 pages.
 2. Attachments A and B, the former comprising *architectural drawings and repair schedules* by Lovell Chen, namely a *Schedule of Repair Works* in 12 drawing sheets, plus a *Menu of Methods and Repair* in three pages and a *Post Repair Schedule* in 21 pages. Attachment B comprising a *Drawing Package* by Grimshaw Architects (Grimshaw) titled *QVM Precinct Renewal* in 19 sheets.
 3. Appendices A to E consisting of:
 - A – *QVM Precinct Renewal Master Plan (2015)* in 19 pages and *Implementation Framework (2016)* in 14 pages, both by City of Melbourne.
 - B – *QVM Precinct Renewal Program Business Case (207)* in 80 pages by [REDACTED] with Appendix 8.1 *QVM Pty Ltd Melbourne's Marketplace Retail Plan* in 42 pages.
 - C – *QVM Conservation Management Plan (2017)* in 112 pages by Lovell Chen
 - D – *QVM Precinct Renewal: Structural Engineering Interface (2017)* in four parts, namely: Part A in 27 pages, Part B in 19 pages, Part C in 36 pages and Part D in 13 pages, all by Mott MacDonald consultancy.
 - E – *Urban Context Report (2017)* in 45 pages by Grimshaw.

In addition, a colour photo-montage illustration was provided showing the Peel Street façade of the Market viewed from the north after renewal (one sheet).

Essentially, the applicant contends in the Heritage Impact Statement (HIS) that, "*The works proposed in this application form part of a broader strategy to ensure the ongoing viability of the QVM.*" (page 1). At page 13 of the HIS it is asserted that, "*A steady decline in the economic position of the QVM in recent years has prompted a review of the inadequacies of its facilities and infrastructure. This identified a series of operational and regulatory issues associated with the complex and a need to provide new facilities including infrastructure, retail and back of house spaces and expanded activities. These facilities are required to support the ongoing use of the QVM as a market place consistent with current regulatory requirements and contemporary user expectations.*"

At page 14 the HIS goes on to state that, "*Many of the identified issues at the QVM relate to the decline in the existing market infrastructure. There is a need to provide appropriate amenities and infrastructure to comply with contemporary health and safety requirements and food safety standards and position the market to cater for the expectations of contemporary small business. The specific works proposed in this application are directed at addressing these issues and would occur in the area known as Quarter 2 (Q2) in the QVM Master Plan and Implementation Plan.*"

Summary of impacts on cultural heritage: It is noted that this permit application is for works which form the first part of a staged redevelopment of the Market. In the words of the HIS, "*This application forms part of a larger strategy for the future of the QVM and should be understood in that context.*" (Page 13).

For the purposes of the overall redevelopment project the QVM and some adjoining non-registered land has been divided by the QVM Precinct Renewal project (QVMPR) into four "Quarters". Quarter 1 (Q1) is the area of the Lower Market bounded by Queen, Victoria, Elizabeth and Therry Streets together with those parts of the Queen Street and Therry Street roadways facing the Market which are not included within the registered land. Q1 incorporates the Meat Market (B1), the Elizabeth Street Shops (B2), the Dairy Hall (B3), the Victoria Street shops between Queen and Elizabeth Streets (B4) and Sheds H and I (B12 and B13 respectively). The Food Court, the western extension to the Meat Market and a toilet block are also located on the registered land but are not accorded any heritage significance for the purposes of the Victorian Heritage Register (VHR) entry.

Quarter 2 (Q2) is the northern part of the Upper Market from Victoria Street as far south as Shed F and including the former cemetery wall which marks its south boundary. This area is the subject of the current permit application although the works as documented appear to be limited to Sheds A, B, C and D. Approximately 70% of Sheds A, B and C measured from their western (Peel Street) end is proposed for dismantling and off-site storage. A little less than half of Shed D measured from its western end is to be demolished (48%) with reconstruction to follow in new materials but with details and dimensions differing somewhat from that of the demolished section. Most of the aggregate area on which these dismantled or demolished sections of Sheds A, B, C and D stand is to be excavated to allow construction of three floor levels below ground plus a part mezzanine floor level above part of the upper basement level, save for a strip of land east of the proposed north-south alignment of lift shafts. The remainder of these sheds is retained in situ but with repair works to be carried out to them together with upgrade works to achieve compliance with current Building Code of Australia (BCA) and other mandatory standards. Where lift, stairway and vent cores are to be located within the sheds there would be no reinstatement of original built fabric. These works are described and examined in greater detail later in this report.

Quarter 3 (Q3) is the area of the Upper Market south of the F Shed wall but extending beyond the southern limit of the registered land to include Franklin Street (a divided road) and the irregular area of land in between its two roadways. This irregular area consists of a row of trees on the eastern side and a public car parking area on the western side.

Quarter 4 (Q4) is an area on the opposite side of Therry Street to the Lower Market with a frontage also to Queen Street on the west but not extending to Elizabeth Street on the east. Q4 is frequently referred to as the 'Munro site' in reference to its previous ownership but was recently purchased by the City of Melbourne for the purposes of better controlling its redevelopment. No works on this land parcel require approval under the Heritage Act.

An examination of the components of the permit application identifies the following impacts of the Q2 proposal on the existing significant built fabric and its setting:

1. Partial dismantling of Sheds A, B, C and D and their removal from site and safe storage to enable repair and Code compliance works to all but the Shed D component.
2. Excavation of most of the footprint beneath the dismantled sheds to create three sub-floor levels plus a part mezzanine floor above the west end of the upper of the three basement levels.
3. Reconstruction of the dismantled sections of Sheds A, B and C incorporating new components to replace perished components, an insulated roof in lieu of the previous single skin of corrugated sheet steel cladding, insertion of steel portal frames at intervals to achieve compliance with current BCA requirements and incorporation of a lift shaft, stairway and/or ventilation shaft in four locations within Sheds A, B and C which penetrate the roof.

In these locations there would be no reinstatement of the original built fabric, these portions of the sheds, including the steel framework, being in all-new materials.

4. Vehicle access to the new basement is intended to be down a ramp from Peel Street which requires the pairs of Shed D columns supporting roof trusses to be more widely spaced than on the existing shed. Its height also needs increasing at the western end to accommodate the larger transport vehicles, (HIS, page 32). Reconstruction of the demolished section of Shed D would therefore be in all-new materials with steel portal frame construction instead of the existing timber post and beam with steel truss system. This would replace approximately 48 metres of the shed measured from the Peel Street frontage. A further 26 metre length would be replaced by a public amenity block immediately east of the ramp although the demolished roof trusses would be reinstated within this section, (HIS, page 33).
5. With regard to the setting of the Market, a safety barrier would be required to flank each side of the new basement ramp. This is depicted as a glazed panel in the application documents. The new amenities block would be a solid form whereas currently there is no impediment to views for the full length of the shed. Similarly, the four lift and stairway shafts penetrating the roofs of Sheds A, B and C would prevent views through them. These shafts would also incorporate air intake or exhaust vents extending above the roof cladding, (HIS, page 32). The roof penetration shown located at the western end of Shed A is intended to accommodate air vents adjacent to a new stairway. New steel portal frames would interrupt the timber post and steel truss frames at the locations of the new lifts and at other locations for purposes of compliance with current BCA standards.
6. Repairs and Code-compliance upgrades to those sections of Sheds A, B, C and D that are to remain in situ would result in loss of significant fabric by replacement with new elements and insertion of new features and materials. For example, as with the dismantled sheds, the new roof cladding would consist not only of an outer corrugated sheet steel layer as at present but a multi-layered insulating material contained beneath it and an underside lining also of corrugated sheet steel. This would add 110mm in thickness, (Lovell Chen drawing No. A036). In addition, the insertion of steel portal frames to replace the existing timber posts and steel trusses at selected locations to achieve BCA compliance represents a loss of significant built fabric and a change to the existing appearance.

Two further potential impacts on the heritage values of the place require mention: the first relates to the mass excavation in an area of archaeological significance. The HIS notes at pages 43-44 in this regard that, "*...the works for this project have been scoped in a manner that avoids impacts on sub-surface disturbance of the Old Melbourne Cemetery. The only area where burials are documented that is affected by the works is the area formerly reserved for the Jewish Cemetery in the western section of Shed D. In that case, historical records indicate that burials in the former Jewish Cemetery were carefully exhumed in the early 1920s. With this exception the subsurface work maintains a 5 metre buffer from the boundary of former burial areas of the Old Melbourne Cemetery.*"

As several buildings are recorded as having existed in the north-west area of the site to be excavated for the basement, an archaeological testing phase is proposed as part of the works, (HIS, pages 43-44). Regarding the destruction of the archaeological record consequent to excavation the HIS advises that, "*...the loss of the archaeological record in this part of the site, will be mitigated by the realisation of the research potential of these areas of the QVM. This is consistent with the policy recommendations of the CMP and with the approach of Heritage Victoria to the management of archaeology.*" (Page 44).

The second further potential impact on the heritage values of the place is the effect of the extensive interruption of traditional market operations as a consequence of the five-year redevelopment period envisioned by the applicant (refer HIS, page 14 and QVMRP Business Case by [REDACTED], page 66). The usual Market activities within the Q2 phase of the works affecting Sheds A, B, C and D would cease during those works - being relocated elsewhere on the site; namely, within a two-storey retail and administration building to be constructed within the Queen Street road reserve for use during the redevelopment works. This is termed the "Queen Street Plaza" and would be retained permanently, (QVM Retail Plan, page 38). Being outside the registered area it would not be subject to the Heritage Act.

The row of shops facing Victoria Street would also need to be vacated during the Q2 works, according to Appendix A of the HIS: *QVMRP 'Implementation Framework'* at page 8. There is also mention of this at page 38 of the *QVM Retail Plan* of May 2017 with reference to the shops being integrated with Shed A and at page 66 of the [REDACTED] Business case report but no detail of the physical impact of the works is provided. The [REDACTED] Business Plan report also notes at page 66 the restoration of Sheds E and F as part of the Q2 works but these works are not depicted on any of the drawings submitted as part of the application.

If the remainder of QVM is to operate during the Q2 works it is also not clear how the hoarded-off building area would be adequate to accommodate temporary site sheds and amenities for meetings, site induction, lunchrooms, changing rooms and toilets in addition to areas where trucks carrying off the demolished and excavated material would wait. Possibly these amenities are intended to be located above the scaffolding over the Peel Street footpath with tip-truck and heavy equipment parked on the cleared strip immediately adjacent to the easternmost extent of the excavation with access from Victoria Street. Nevertheless, during the five-year construction phase this area of the Market would present a much-altered appearance. Post-construction the physical changes to Sheds A, B, C and D already described would be permanent. The trading area of half of Shed D would be lost to the new ramp and services block.

No public roadways are included as part of the registered land for the purposes of the H0734 entry in the Victorian Heritage Register; however, the visual impact on the Market setting of a new permanent two-storey structure in Queen Street with a significant longitudinal footprint would be considerable, creating a visual barrier between the two parcels of the registered land. Additionally, permit exemption approval was recently (26 February 2018) sought by Melbourne City Council for the placement of 20 cargo containers in the laneway between Sheds L and M known as 'Stringbean Alley' (Permit Event P28249). The Executive Director declined to deal with this proposal as a permit exemption due to its clear impact on the setting of the place. The applicant was therefore advised to submit the proposal as a formal permit application. This would allow a full assessment of the project for the purposes of the Heritage Act and may involve the giving of public notice.

Applicant position: The HIS at page 1 summarises the works in the application as follows:

- *the dismantling of the western section of Sheds A-D and temporary storage of this fabric*
- *excavation of this area, including archaeological investigation prior to bulk excavation*
- *the construction of a three-level basement accommodating two levels of operational areas associated with the QVM and one level of customer carparking. Associated with this are above ground structures comprising vehicular entry and ramp, lift and services cores, toilets and other structures*
- *the reconstruction of the dismantled sheds (western section of Sheds A-D) including structural remediation and active conservation works*
- *reroofing, conservation and structural remediation works to the eastern portion of Sheds A-D*

- *upgrading of existing services and integration of new into the retained and reconstructed sheds*
- *associated works to reinstate ground surface treatment (paving and hard surfaces).*

The HIS explains the context for the application and sets out the rationale for the proposed works, as well as providing an assessment of the heritage impacts of the proposal against the values of the registered place and mitigation measures where adverse impacts would occur because of the works."

"The works proposed in this application form part of a broader strategy to ensure the ongoing viability of the QVM. This is explained in section 2 of this HIS." (HIS, page 1).

The applicant's position on the impacts on the cultural heritage values of the QVM in consequence of the proposed renewal works is principally expressed in the HIS and illustrated in the architectural and structural drawings of Lovell Chen/Grimshaw and Mott MacDonald respectively.

The HIS at page 13 refers to the proposed works as being instigated by economic factors, *"A steady decline in the economic position of the QVM in recent years has prompted a review of the inadequacies of its facilities and infrastructure. This identified a series of operational and regulatory issues associated with the complex and a need to provide new facilities including infrastructure, retail and back of house spaces and expanded activities. These facilities are required to support the ongoing use of the QVM as a market place consistent with current regulatory requirement and contemporary user expectations."*

In this context the HIS notes in conclusion at page 52 that, *"... the concept of the economic use of the place is also relevant taking a long-term view of the implications of not upgrading the existing facilities at the QVM. These issues are explored in the QVMPR program Business Case at Appendix B and this document is relevant to the consideration of the reasonable or economic use of this heritage place."*

The matter of *reasonable or economic use* with reference to s.73(1)(b) of the Heritage Act is dealt with later at Section 3 of this report.

The HIS discusses the impact of the proposed works on the cultural heritage values of the place in tabulated form between pages 45 and 50 (Section 5.6) where compliance of the works with key policies identified in the Conservation Management Plan (CMP) is assessed. The revised CMP, prepared by Lovell Chen Pty Ltd and dated April 2017, *"... has been commissioned by the City of Melbourne and Queen Victoria Market Pty Ltd..." This report reviews and revises an earlier CMP prepared in 2003 by Allom Lovell & Associates (now Lovell Chen) and updated with an addendum in 2011..."* (CMP, page 1).

Regarding the tabulated comments of the CMP comparing the identified policies in the left column and the degree of compliance on the right there are numerous entries for "Complies" but others for "Generally complies". At 6.2.1 *Conservation of fabric* the assessment summary provided is *"Generally complies."* This is also the assessment for 6.9 *Environmental performance and sustainability* and for parts of *Specific policies for Sheds A-E* at page 48. Although at 6.5 under the policy heading *Market Development*, the assessment summary is "Complies", the comments column includes the text, *"The works represent a significant physical intervention but will deliver an outcome that conserves significant fabric above ground and maintains existing layout and characteristics of the place and its patterns of use."*

Officer assessment: The entry for the Queen Victoria Market in the VHR (H0734) includes guidance on permit policy. This is extracted as follows:

PERMIT POLICY

The site has had two distinct uses, being the Old Melbourne Cemetery and the Queen Victoria Market. Each is significant in its own right, and the whole of the site is integral to the significance of the place. The Old Melbourne Cemetery occupied land between Franklin Street and D Shed, and it is estimated that between 6,500 and 9,000 burials remain under the carpark and other market structures. The Queen Victoria Market site comprises two sections: The Lower Market and the Upper Market, both of which contain buildings dating from the nineteenth and twentieth centuries.

The purpose of the Permit Policy is to assist when considering or making decisions regarding works to the place. This policy encourages the conservation of the nineteenth and twentieth century buildings, form and planning of the market; and the appropriate management of the Old Melbourne Cemetery site. It is recommended that any proposed works be discussed with an officer of Heritage Victoria prior to making a permit application. Discussing proposed works will assist in answering any questions the owner may have and aid any decisions regarding works to the place. Works to the registered place (including subsurface work) may also require the approval under legislation outside of the Heritage Act 1995. This can include the Aboriginal Heritage Act 2006, Coroners Act 2008 (Vic), Cemeteries and Crematoria Act 2003, and Food Act 1984.

Any alterations, aside from those identified below as permit exempt, are subject to permit application. The purpose of this requirement is not to prevent further development or change to this site, but to enable control of possible adverse impacts on heritage significance during the process of change.

The Queen Victoria Market Conservation Management Plan (Allom Lovell & Associates, 2003, updated 2011) can provide guidance in relation to the consideration of any alterations to the Market's buildings and structures, and the site of the Old Melbourne Cemetery.

The different phases of the Queen Victoria Market's historic use and activity are reflected in the diversity of site fabric. As a result, a range of management responses are required. Separate Permit Policies for the Old Melbourne Cemetery site, the Market buildings and structures, and the Market Operations are detailed below.

Permit Policy for the Old Melbourne Cemetery site

The land associated with the Old Melbourne Cemetery is situated between D Shed to the north, Franklin Street to the south, Peel Street to the west and Queen Street to the east. Between 6,500 and 9,000 bodies remain interred in the former cemetery, under the Sheds A-F, Sheds K, L and M, market carpark and Franklin Street Stores.

The guiding principle for development should be avoiding disturbance to burials. Increased interpretation of the site is encouraged. The Conservation Management Plan, with particular reference to Appendix D, and the report Conservation Policy for the Former Old Melbourne Cemetery at the Queen Victoria Market (Austral Archaeology, 2000) can guide any development proposals for the Old Melbourne Cemetery site.

All sub-surface works (being works which are greater than 20cm below ground level) will require approval from the Executive Director, Heritage Victoria. This is due to the high potential for human remains, and associated artefacts, to be located at shallow depths across the site of the Upper Market.

Permit Policy for the Market Buildings and Structures

The Queen Victoria Market site comprises buildings and structures which date from the nineteenth and twentieth centuries. The retention of elements which reflect the market's establishment in the

nineteenth century, and evolution into the twentieth century, will assist in maintaining evidence of the form, planning and development of the market as a whole. The Conservation Management Plan provides guidance on the conservation and management of these buildings and structures.

Permit Policy for Market Operations

The ongoing operation of the Queen Victoria Market within its purpose-built buildings and structures is strongly encouraged.

The report Queen Victoria Market - Guidelines for refrigerated storage within the Open Sheds, (Allom Lovell & Associates, 2002) can assist in proposed alterations to refrigeration in the open sheds. The Queen Victoria Market Guidelines for Food stalls in Sheds A, B, H and I (October 2011) may also be consulted.

The report, "Dairy Produce Hall, Queen Victoria Market, Melbourne, Guidelines for Tenancy Works" (Allom Lovell & Associates, 2000) can assist in proposed alterations to the Dairy Hall. [End of VHR Extract].

Three particularly relevant extracts from the above Permit Policy are: *'The guiding principle for development should be avoiding disturbance to burials', 'The ongoing operation of the Queen Victoria Market within its purpose-built buildings and structures is strongly encouraged' and 'The Queen Victoria Market site comprises buildings and structures which date from the nineteenth and twentieth centuries. The retention of elements which reflect the market's establishment in the nineteenth century, and evolution into the twentieth century, will assist in maintaining evidence of the form, planning and development of the market as a whole.'*

The historical record relating to the removal of human remains from below Sheds A, B, C and D would indicate only a low probability of finding further remains in the area intended for deep excavation to create three basement levels, (Allom Lovell CMP April 2017, pages 8 and 12). Any evidence found of building footings would of course enhance knowledge of the former historical uses of the site. Regarding the continued operation of the QVM within its purpose-built buildings and structures, this would not be the case with Shed D which would in effect be a new construction approximating the dimensions and details of the existing Shed D which would no longer accommodate traditional market activities for at least half of its total footprint.

In assessing the impacts on the cultural heritage values of the QVM represented by the proposed works it must be remarked that the situation is complicated by the fact that these works are the first part of a three-stage redevelopment on the registered land. Although the works for the Q2 area appear to be depicted in considerable detail in the supporting documents (with the omission of works to the Victoria Street shops already mentioned) this is not the case for the works proposed in the Q1 and Q3 areas as approval for those works is not currently being sought. It is however apparent that any approval for the works in the Q2 area will pre-empt to a large extent the as-yet undocumented works in the Q1 and Q3 areas. This is potentially a serious matter in relation to the intended operation of the Heritage Act in that the integrity of the determination process for subsequent permit applications for the remaining stages of the redevelopment project may be seen to be compromised by approval of the initial stage.

The point at issue here is considered to be compounded by the fact that the works intended to follow in the remaining stages, although not presented in any detail in the current application, represent a potentially major impact on the existing fabric. For example, in Volume 1 of the HIS Appendices, Appendix A contains the QVM Precinct Renewal Masterplan (2015) and Implementation Framework (2016). This describes a notional vision for Q1 at page 19 where basement services are suggested as an option but no firm idea of their location is provided. Elsewhere in the supporting documentation the footprints of Sheds H and I are suggested for the basement [redacted] Business Case, page 45). Given that these sheds exist in a truncated form, following the loss of their eastern ends to

accommodate the 1928 Dairy Hall (B3), a basement at this location would leave no floor area for trading. Whether or not Sheds H and I would need widening and the Queen Street ends raised to facilitate vehicle access as intended with Shed D is not immediately clear.

The vision for Q3 includes a 'New Franklin Street' running through the south area of the former cemetery to link the current termination of Franklin Street to the east with the existing Dudley Street to the west. Shed M is presumably demolished to create an open space between Shed L and the New Franklin Street. This is briefly mentioned at page 14 of the HIS where the proposed new public space is designated 'Market Square'. The Franklin Street Stores are to be repurposed with no identified new use and no indication of the physical impact of any adaptive reuse. (page 23).

It is noted that some elements of error and contradiction exist in the supporting documentation. For example, although the current registration details of the Market as recorded in the VHR are correctly shown at pages 5-8 of the HIS, drawing number A001 Revision HV1 by Lovell Chen Pty Ltd excludes Shed M, the Franklin Street Stores and the sealed car parking area in between them. The VHR entry for the Market was amended in 2012 to include the area south of Shed L and north of the Franklin Street road reserve, (page 999, Victoria Government Gazette 17 May 2012.) Also, drawing number A0001 Revision A by Grimshaw shows the project extent for Q2 extending north of Shed A to include the row of shops facing Victoria Street. Although the HIS does not describe any works to these shops in its dot-point summary of the proposal at page 1, they are also referenced as part of the Q2 stage at page 66 of the [redacted] Business Case report as follows, "*Transform the Victoria Street Terraces to enable them to act as portals to the market experience, drawing a better connection between Victoria Street and Shed A behind it.*"

The Mott MacDonald (MM) report for the QVMPR (*Heritage Victoria Submission: Structural Engineering Interfaces: Part A*) notes at page 4 that, "*Columns graded F14 and below and with a section of 140 x 140 will require replacement. Columns graded F17 and above and with a section loss no greater than 140 x 140 may be retained. Columns are yet to be graded.*" MM drawing SK-0197 depicts the locations of 14 steel portal frames to be inserted into Sheds A, B, C and D additional to the pair to be located at each of the four lift locations. Existing spliced columns will be unable to be structurally graded and will require replacement, according to the MM report at page 8. Clearly a large proportion of the columns will be new.

Each of the existing timber columns of the sheds is supported on a chamfered bluestone pad except for a small number which have been repaired due to mechanical or other damage. "*Where sheds are being disassembled and a new ground plane slab is being constructed, a new shoe detail will be developed.*" (MM report, page 1).

The retrospective compliance with current building and engineering standards of sheds dating from 1878 would seem to be mandated by the intention to demolish and reassemble/reconstruct more than half of those affected. As the owner of infrastructure in long-term public use, the City of Melbourne presumably would regularly inspect and repair the sheds as necessary as is the case with the many other heritage buildings and structures in both private and public ownership. Such a prudent approach by any owner might be expected at a minimum to be motivated by public liability concerns. It is somewhat alarming in this context to note the comment at page 9 of the [redacted] Business Case that, "*Its heritage buildings are ... in a state of disrepair.*"

Even ignoring the single-storey row of shops facing Victoria Street, the works include the complete rebuilding of at least the western half of Shed D but with the spacing of the north-south column pairs wider than existing and the Peel Street façade raised to allow access by the larger type delivery vehicles. It has been noted that Sheds A, B and C together with the remainder of Shed D would be altered by the inclusion of steel portal frames at intervals to comply with current structural requirements. Sheds A, B and C would have their roof surfaces penetrated at four locations to

provide for lift over-runs and/or air intake and exhaust vents. These penetrations would be between two-and-a-half and more than 3 metres high at the eaves.

The Lovell Chen 2017 update of the CMP was commissioned by the City of Melbourne and QVM Pty Ltd, (page 1), and states at page 91, *“As with Quarter 1, a proposal to dismantle and then reconstruct the sheds in order to build the new basement levels, will also have a significant impact. Again, practical and workable alternatives to dismantling the sheds, including alternatives with lesser impacts, should be explored to achieve these outcomes.”*

When considered in combination with the potential risks attending demolition and storage of the shed components off site for a prolonged period, the alterations proposed to their fabric and the insertion of lifts, ramp to Shed D and a visitor amenities centre, the overall impact to the significant fabric is assessed as severe. Ignoring the extent of the alterations proposed in the remaining stages of the renewal for which approval is not yet being sought, the site-wide impact on the QVM of the Q2 scheme is plainly of a high order.

2. S.73(1)(ab) EXTENT TO WHICH THE APPLICATION IF APPROVED WOULD AFFECT THE WORLD HERITAGE VALUES OR ANY RELEVANT WORLD HERITAGE STRATEGY PLAN:

Applicant position: N/A

Officer assessment: N/A

3. S.73(1)(b) – EFFECT REFUSAL WOULD HAVE ON REASONABLE OR ECONOMIC USE OF THE PLACE OR OBJECT (refer to policy guideline “Matters to be considered in determining a permit application under s.73(1)(b) of the Heritage Act 1995”): This policy guideline was adopted on 1 May 2012.

Applicant position: The application documents include the previously cited Business Case prepared by external consultants [REDACTED] This is a 78-page document with an appendix (Appendix 8.1) titled “Melbourne’s Marketplace Retail Plan” in 42 pages dated May 2017 prepared by QVM Precinct Renewal office.

The [REDACTED] Business Case commences with an Executive Summary at pages 6-7. At paragraph 3 of page 6 it is stated that ... *“the market is in a state of physical and financial decline and is in need of significant renewal. The market is lacking in amenities, facilities and spaces to adequately provide for present day and future needs. The site faces increasing challenges in terms of complying with modern day operating standards and legislative requirements, including with respect to work, health and safety and food safety. There is significant potential to make greater use of the 7 ha site, with new and enhanced public open spaces and a more diverse market offer, including events and activities that complement the traditional market.”*

At paragraph 5 it is stated that, *“The rationale for undertaking the QVMPR Program is first and foremost predicated on securing the market’s place as a traditional open air market – retaining its heritage, traditions, unique offer and authenticity by making it more financially viable and equipped to support contemporary business requirements into the future.”*

The Executive Summary goes on to mention that the Business Case evaluates three key options for delivering the QVMPR vision, these being: Option 1 (base case) “business as usual” with progressive tackling of safety, security and maintenance issues; Option 2 involves limited below-ground trader infrastructure and Option 3 is a broader intervention across the four identified quarters and is

promoted in the Business Case as the only option addressing all the identified problems facing the QVM.

The Executive Summary in the Business Case is followed by commentary on the perceived shortcomings of the QVM, a discussion of the relative merits of the three identified response options, the background to the commissioning of the Business Case report, analysis of the Market's financial performance, perceived benefits of the selected redevelopment option (Option 3), program delivery projections and costings and funding strategy.

At page 19 is the statement that, *"In addition to the Business Case, the Option 3 funding model's key variables (capital outlays and future returns based on the Queen Victoria Market Pty Ltd Retail plan) have been independently reviewed for reasonableness by [REDACTED]"* The only further reference to this independent review of the funding model appears at page 10 of the Appendix to the Business Case in the statement that, *"Following the preparation of the initial draft in November 2016, [REDACTED] undertook a peer review of the Retail Plan finding it to be sound. Following that peer review, [REDACTED] were engaged by the City of Melbourne to undertake a further assessment of the risks associated with the delivery of the Plan. This review concluded that the Plan is broadly achievable but noted that it contains a number of aspirations that must be monitored closely over the ensuing five year period of the delivery of the renewal program."*

The [REDACTED] peer review report was not included as a supporting document in the permit application. Further enquiry revealed it to be a 'Commercial-in-Confidence' document.

The [REDACTED] Business Case commences its background comments at page 20 with the following paragraph, *"Owned by the City of Melbourne and managed by a wholly owned subsidiary company, Queen Victoria Market occupies a 7 ha hectare site within Melbourne's central city, with 140 leasehold premises and more than 600 temporary licence stallholders."*

"Having traded since 1878, the Queen Victoria Market is one of Melbourne's few remaining public markets. With a longstanding tradition of selling fresh produce and merchandise, the market has for many years been a cultural icon and major visitor attraction in the city. This is also one of the key reasons why the market is currently being considered for possible inclusion in the National Heritage List."

"Initially one of a small number of inner city markets, Queen Victoria Market's expansion in subsequent decades saw it become Melbourne's primary wholesale produce market in the 1930s. When this wholesale function was relocated to Footscray in 1969, the market took on a real focus, selling a variety of fresh produce and specialty foods to shoppers who sometimes travelled across metropolitan Melbourne. In recent decades, the market has been impacted by changing retail conditions, including the rise of convenient, local supermarkets. While it remains the top destination for international visitors to Melbourne and maintains a strong local resident pull, there is a need to ensure the market is able to adapt to and build on changing retail conditions into the future."

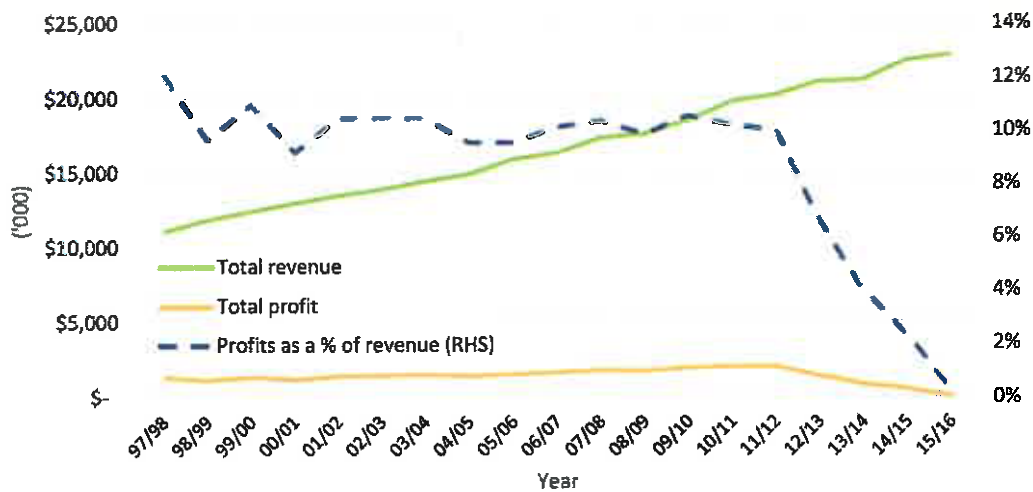
The Business Case argues that the market is in significant need of renewal as it is *"...sorely lacking in amenities, facilities and space to adequately provide for present day and future needs. It also faces increasing challenges in terms of complying with current day operating standards and legislative requirements, including in work, health and safety and food safety."* ([REDACTED] Report, page 20).

At page 31 it is stated that the profitability of QVM Pty Ltd has consistently declined since the late 1990s, due partly to increasing maintenance costs and high waste management costs. *"While*

revenue has steadily increased during this period, this has been driven by non-core market trading such as car parking and the night market, not from traditional, open air market trading comprising fruit and vegetable and general merchandise traders.

“Expenditure has also grown at a disproportionate rate, with the market’s overall profitability dropping significantly over this period. Annual capital contributions to maintenance of the market are no longer sufficient to sustain the ageing heritage buildings, and provide the trader infrastructure and customer amenity required to support the market’s day-to-day operations and viability. Over the past five years, the market’s profitability has declined to zero per cent. This is illustrated in the figure below.

FIGURE 9. QUEEN VICTORIA MARKET PL TOTAL REVENUE VS. TOTAL PROFIT (1997/98-2015/16)



Source: [redacted] (2017) based on Queen Victoria Market Pty Ltd profit and loss statements.
 Note: Car parking and night market revenues have been increasingly important over the past 5 years.
 Note: State government congestion levies and stagnant market rentals/ licence fees have also contributed significantly to the deteriorating financial performance over the past 5 years.

A number of key challenges are significantly impacting on the market’s viability and potential.”

The two principal challenges are then identified as *Inadequate waste management systems* and *Increasing facilities repairs and maintenance costs*. With reference to the first the Business Case report states at page 32 that, “Currently, a significant proportion of Queen Victoria Market’s \$4.4 million cleaning costs²³, one of the largest contributors to its total expenditure, is dedicated to the removal of waste as a result of inadequate waste removal systems and facilities. The market has no centralised waste transfer area or recycling station. This results in considerable spending on the collection and disposal of waste generated by market operations, including fish and meat offal, organics and packaging.²⁴ Cleaning costs at the market have increased by \$1.8 million (71 per cent) over the past 10 years.”

Regarding costs of repairing and maintaining facilities, these are stated to have...”increased by more than 70 per cent over the past 10 years.²⁵ This is a result of the low level of capital improvements made in the precinct since the 1990s. In 2015/16 expenditure on facilities repairs and maintenance costs amounted to over \$1.1 million. While at present this figure only comprises 5 per cent of total market expenditure, the trend over recent years suggests that repairs and maintenance costs are likely to escalate significantly in future.” (Page 32).

Other factors claimed to limit the market's productivity are identified as: *Inefficient operating modes and business attractiveness*, (p. 33), and *Underproductive central city land*, (p. 34). The first of these factors is claimed to relate to a lack of back-of-house facilities in relation to storage and loading of merchandise plus limited access to power, water and internet connection. The second factor is summarised at page 35 of the report as follows: "*Queen Victoria Market's spatial inefficiencies and inadequate infrastructure compromise efforts to optimise the productivity of the market and its surrounds, while also contributing to the issues of poor retail competitiveness and visitor attractiveness described in Problem 1.*"

Subsequent sections of the report are titled as follows: "Benefits", "Project Options", "Options Analysis" and "Program Delivery". Within the "Program Delivery" section under the heading "Detailed costings" at page 67 the estimated cost of the project is discussed. The commencing paragraph reads as follows, "*The gross cost of delivering the QVMPR Program is \$308 million, excluding funding contributions from other asset sales. Accounting for these proceeds, and in accordance with the State Agreement which requires reinvestment of these funds back into the renewal program, the QVMPR Program will be delivered for approximately \$238 million. This is within Council's publicly announced commitment to spend up to \$250 million on renewal.*"

Officer assessment: The matter required to be considered under s.73(1)(b) of the Act is... "*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...*" The financial hardship provision is dealt with separately at Section 4 below.

Firstly, the matter of the reasonable use of the place is not at issue by either the applicant or the Executive Director appointed under the Heritage Act. The [redacted] Business Case within its Executive Summary at page 6 states that, "*The rationale for undertaking the QVMPR Program is first and foremost predicated on securing the market's place as a traditional open air market – retaining its heritage, traditions, unique offer and authenticity by making it more financially viable and equipped to support contemporary business requirements into the future.*" The Appendix to the Business Case (The Retail Plan of May 2017) states, "*Our Retail Plan recognises that heritage protection is contingent on maintaining Queen Victoria Market as an 'authentic working market'. Retaining the authenticity of our traditional marketplace is central to our planning and first and foremost requires respect for the market's traders and loyal customers. Understanding and nurturing our heritage ultimately requires the definition of a sustainable, viable future for the businesses that come together to create the marketplace.*" (Page 6).

The new facilities represented by the permit application according to the HIS, "*...are required to support the ongoing use of QVM as a market place consistent with current regulatory requirements and contemporary user expectations.*" (Page 13).

The VHR records in part that, "*The Queen Victoria Market is of historical, archaeological, social, architectural and aesthetic significance to the State of Victoria.*

Why is it significant?

The Queen Victoria Market is of historical significance as one of the great nineteenth century markets of Victoria and the only one surviving from a group of important central markets built by the corporation of the City of Melbourne. It is also of historical significance for remaining in operation from the 1870s.

The Queen Victoria Market is of historical significance as the site of Melbourne's first official cemetery, which was in use between 1837 and 1854, and intermittently from 1854 until its final closure in 1917. "

In relation to its social significance the VHR notes that, *"The Queen Victoria Market is of social significance for its ongoing role and continued popularity as a fresh meat and vegetable market, shopping and meeting place for Victorians and visitors alike."*

There is clearly no basis for doubting that the applicant considers the market to have a reasonable use and is not seeking to change that use. The remaining issue in this category is whether or not refusal would affect the economic use of the place.

Paragraph 13 of the Policy Guideline previously referred to on page 14 explains in relation to "economic use" that, *"The Act does not provide a timeframe for which the assessment of the economic use of the heritage place is to be considered. If the permit applicant contends that the future economic use of the registered place or registered object may be affected for some time in the future, they must provide the Executive Director with evidence to substantiate this contention, the basis of their suggested timeframe and the likely impacts on the economic use of the heritage place or object."*

The [redacted] Business Case is taken to be the primary instrument amongst the documents supporting the permit application arguing the need to carry out the proposed works in the interests of securing the ongoing viability of the Market measured in terms of profitability.

The Business Case states at page 6 that, *"Moderate investment will not address the market's challenges in the long-term, and a business as usual approach will result in a continued loss of profitability and a requirement for Council to subsidise Queen Victoria Market Pty Ltd's operations over time."* This opinion is further emphasised at page 7 with words to the effect that a business as usual scenario with progressive tackling of safety, security and maintenance issues... *"will not address the current problems facing the market and will result in Council being required to subsidise the operations of the market at a cost of more than \$100 million over the next 30 years."*

However, this view may be contradicted by examining the Annual Report 2016-2017, which although not submitted as part of the permit application is a publicly accessible document. It may be considered by the Executive Director under s.73(1A)(b) allowing "any other relevant matter" to be assessed in reaching a determination.

The Executive Chairperson's Report prefacing the Annual Report records at page 6 that, *"Despite a modest growth in revenue over recent years, the Queen Victoria Market's management costs such as maintenance, cleaning, utilities and other operational expenses have increased at a greater rate. The result for 2016-17 was poor, with Queen Victoria Market Pty Ltd recording a loss of \$2.3 million. Our result reflects the increased costs associated with operating the market and maintaining its ageing infrastructure, and the costs of additional resourcing and consultancy as we plan for renewal."*

An examination of the Income Statement at page 21 reveals under "Expenses" for 2016-17 over \$2.21 million for "consultancy" and \$0.403 million for "Directors fees". The equivalent figures for the previous year were \$0.827 million and \$0.348 million respectively. Compared with the \$2.293 million loss for 2016-17 there was a modest profit of \$39,848 the previous year. Repairs and maintenance costs actually declined from \$1.027 million in 2015-16 to \$0.786 in 2016-17. The consultancy costs over both years were in relation to the proposed renewal project and serve to noticeably skew the actual financial performance of the market over the last few years. The consultancy costs are a "one off" expense unrelated to the usual ongoing expenses to be met in operating the market.

It is relevant that the claim made in the Annual Report previously quoted that the "poor result" of 2016-17 reflected the increased costs of maintaining ageing infrastructure as this cost was significantly higher the previous year when a small profit was made. The Annual Report also includes the admission that, *"... there is no doubt we took on too many projects, and the concern for achieving*

financial targets was lost. The company took on many projects in many areas, and in some cases perhaps too much was taken on given the resources available.” (Page 6).

The statement previously quoted from the [redacted] Business Case claiming that profitability had declined over the past five years to zero per cent (illustrated by the chart extracted at page 16 above) is somewhat mollified in the knowledge of the large non-recurring expenditure on consultants made over the previous two years.

The [redacted] Business Case at page 9 states that, *“Queen Victoria Market is sorely lacking in amenities, facilities and spaces to adequately provide for present-day needs. Its heritage buildings are in a state of disrepair. Plant and equipment, where it exists, is outdated and fails to meet contemporary standards for sustainable building management.”* At page 32 this theme is emphasised with the statement that, *“Facilities repairs and maintenance costs at Queen Victoria Market have increased by more than 70 per cent over the past 10 years²⁵. This is a result of the low level of capital improvements made in the precinct since the 1990s. In 2015/16 expenditure on facilities repairs and maintenance costs amounted to over \$1.1 million. While at present this figure only comprises 5 per cent of total market expenditure, the trend over recent years suggests that repairs and maintenance costs are likely to escalate significantly in future.”*

These statements strongly indicate that any perceived higher maintenance costs being borne at present are a result of poor management of this matter in the past. With maintenance costs only representing 5 per cent of total annual expenditure at present, any escalation in the future would appear to suggest a catch-up situation resulting from a period of neglect rather than any other cause.

It was considered necessary to have the [redacted] Business Case independently peer-reviewed given its status as the principal application document supporting the economic justification for the proposed works. Accordingly, [redacted] management and business advisory consultancy was engaged for this purpose, its report being received in December 2017. The co-authors of the report were managing director [redacted]

Some initial observations of the [redacted] Business Case cited by [redacted] appear at page 1 of the report and are quoted as follows:

- *While the overall outcomes expected from Option 3 are possible to be achieved, their likelihood cannot be assessed without more information about underpinning assumptions.*
- *Overall the development options appear to rest on extremely effective management of some project risks which appears to be optimistic.*
- *The overall claim of a strong economic justification for the project is opaque due to lack of transparency in the data which is provided in the [redacted] report and the lack of supporting reporting and analysis.*

At page 4 [redacted] report states that, *“The evidence presented in the business case does not prove that the current situation is unsustainable in a financial or an economic manner. While investment of capital and more intensive utilisation of the site as proposed may increase net financial and economic returns over the long term (subject to a number of assumptions, many of which are not explained), the data presented does not prove that the ‘base case’ is inherently unviable.”*

“There is a question regarding the current and potential future need for full compliance with contemporary building / plant and equipment and food handling standards, which the current form may not be able to meet – and could render it unsustainable unless addressed. Economic viability is

therefore potentially at risk under the base case as a consequence of these compliance requirements, not the other way around. This issue requires some consideration, but the development proposal as offered extends well beyond a compliance upgrade."

"The evidence which is presented in the business case is not sufficient to draw a conclusion that it would be more economically or financially viable than continuing the current trend."

At page 5 appears the recommendation that, *"The business case alone does not provide sufficient evidence to support its core contentions that Option 3 would provide a sustainable economic or financial return over the 30 year life that it is modelled, nor does it prove that the status quo is unable to support a reasonable economic [use] for the foreseeable future."*

The Executive Director sought further information from the applicant in a letter dated 22 December 2017 in order to clarify some of the claims made in the Business Case. The most pertinent section of the letter has been extracted as shown in the attachment below:

To this end and to assist me in determining your application, I require the following additional information or (equivalent documents) in accordance with s.73(2) of the *Heritage Act 1995*:

1. Financial Cash-flow models for the status quo case and Option 3, including detailed operating costs and revenues to 2047
2. The Business Plan/Model referred to in the Retail Plan May 2017
3. Development Capital Cost plans indicating the treatment of cost uncertainty and risk cost factors
4. Economic model for the project proposals including assumptions (and reference documents if applicable) which applied to employment impact, productivity benefits, tourism benefits and existing shopper enhanced experience

Furthermore, it is not clear how only three of a presumably much larger number of possible development options were selected for closer analysis and scrutiny. It would be appreciated if you could advise on this aspect of your research leading up to the lodgement of your permit application. There were presumably a

range of possibilities available between the 'Do Nothing' scenario of Option 1 and the major redevelopment under Option 3, besides the 'limited development' of Option 2.

The applicant responded to the request through consultants Lovell Chen Pty Ltd whose 7-page covering letter of 7 February 2018 prefaced a 6-page Memorandum from QVM's [REDACTED] which in turn presented a 138-page document comprising eight attachments. An extract from the Memorandum is included on the following page to illustrate the point that QVM management regards the QVM Precinct Renewal Agreement, being, "... a legally binding document between the State Government of Victoria and City of Melbourne..." as a justification for approval of the proposed works by an independent third party such as the Executive Director under the Heritage Act.

The further information provided in the response to the request from Heritage Victoria is assessed as adding little if anything of substance to the key issue of the extent to which refusal would affect the economic use of the place. Much of the material in the response consisted of projections and assumptions about future financial performance to support the view that the renewal project would result in greatly enhancing the profitability of QVM.

The extract from the QVM letter referred to above follows:



c. The scope of the permit application

It is QVM P/L's clear understanding that any statutory approvals required for projects associated with the delivery of the Queen Victoria Market Precinct Renewal Master Plan (2015) and Implementation Framework (2016) will be sought on an individual basis, over the course of the five-year delivery programme.

In light of this, QVM P/L understands that at this stage, City of Melbourne is seeking permission to progress proposed below ground works, infrastructure improvements and heritage restoration to Queen Victoria Market's Upper Market area (aka Quarter 2).

These particular works are critical to enable the delivery of the Queen Victoria Market Precinct Renewal Agreement (the Agreement), a legally binding document between the State Government of Victoria and City of Melbourne dated September 2014 put in place to define the scope, timing and parameters of the Queen Victoria Market Precinct Renewal.

The significance of this Agreement can not be understated, as it has formed the basis of all assumptions relating to the planning of the QVMPR Program, and the strategic considerations for future operations of the market to ensure its long term sustainability as an authentic working market.

The Agreement sets out the project components to be delivered by City of Melbourne as part of the Market Renewal as follows (Clause 3 (a) (i)):

- (A) construction of service areas for the Market, including customer car parking and Market trader storage;*
- (B) upgrading of Market trader facilities and amenities;*
- (C) provision of a broader range of retail and hospitality offerings within the Market Precinct compared to that existing as at the date of this Agreement;*
- (D) making the Market components of the Market Precinct pedestrian only during core market trading times;*
- (E) provision of new and varied public spaces within the Market Precinct; and*

A further excerpt of the Memorandum is included below to identify the topics covered in the attachments:

Attachment List

Attachment 1 - QVM Financial History 97-98 to 15-16

Attachment 2 - Business Plan Financials to 2023

Attachment 3 - Business Plan Financials to 2023 - Forecast profit & loss

Attachment 4 - Business Plan Financials to 2023 - Lease Licence Summary

Attachment 5 - Q2 Cost breakdown including risk cost factors

(Separate documents)

Attachment 6 - Market Infrastructure Strategy Options Review (12 February 2016)

Attachment 7 - Market Infrastructure Feasibility Study + Options Review (9 February 2017)

Attachment 8 - Q2 Below ground area Operational Review (25 August 2017)

Sub-attachment 4 to Attachment 7 consists of a further report by [REDACTED] dated December 2016 and titled, "*Peer Review of Queen Victoria Market Draft Retail Plan*".

It is noted that the [REDACTED] Business Case partly justifies the Q2 phase of the renewal program as documented in the current application and the subsequent two stages of the project (as yet undocumented) by reference to the State Agreement (page 11) and to the attainment of broader strategic planning objectives in the City North urban renewal area, which evidently encompasses the whole of the market site (page 20).

The parties to the State Agreement of 2014 are cited as the Victorian Government and the Melbourne City Council. "*Under this Agreement, the State has agreed that proceeds from the sale of public land parcels to the market's south will be reinvested into the market's renewal on the condition that Council commits to fully deliver on the outcomes stipulated in the Agreement...*" (Page 11).

Any agreement the applicant may have with a third party cannot be accepted as a valid matter for inclusion in the assessment criteria for determining the current application. The assessment of any proposal on registered land under the Heritage Act is confined to consideration of the circumstances affecting that particular land as set out in the Act and not to the need for compliance with obligations stemming from voluntary agreements, binding or otherwise, entered into with other parties.

A similar situation arises with any attempt to justify the renewal project in pursuit of broader planning objectives for the surrounding area. At page 21 the Business Case states, "*There is significant potential to make greater use of the 7 ha market site, with new and enhanced public open spaces and a more diverse market offer, including events and activities that complement the traditional market.*" This theme is further pursued at page 29 where it is stated under the heading: **Underperforming public assets at Queen Victoria Market hamper City North's liveability** that, "*Given its premium, central city location, a large proportion of the Queen Victoria Market site is significantly underutilised, with a large amount of space currently allocated to car parking and roadway.*"

The Business Case at page 13 refers to the Market's "Employment potential", noting that, "*Compared to other areas of the central city, the level of employment generated by the Queen Victoria Market is quite low. While the Queen Victoria Market has 314 jobs per hectare, other areas of the city accommodate 875 to 1,506 jobs per hectare. This underutilisation of land and the consequently low level of employment that it generates is a suboptimal use of an important Council asset.*"

Setting aside the spurious reasoning comparing worker density in the wholly at-ground-level QVM with the general city area containing multi-storey office complexes, the possibility that the registered land might return a higher profit if commercially redeveloped is not a matter relevant to the Executive Director in determining a permit application.

No reference is made to the availability of the Flagstaff Gardens as a local amenity which is located very close to the market's south-west corner, nor to the fact that the car park area is a former cemetery. The intention in stage Q3 of linking Franklin Street to Dudley Street by running a connecting section of road through the south part of the existing parking lot would need to address the provision of in-ground services in such a development, including stormwater drainage, planting of trees and installation of light poles. The area south of the F Shed wall is estimated to contain between 6,500 to 9,000 interments, (CMP, 2017), page 41). The HIS at page 47 notes that the CMP recommended policy with respect to this matter includes the proviso, "*Disturbance of human*

remains is an action of last resort, and where it occurs the remains should be re-interred as close as possible to their original burial location."

Other factors dealt with in the [redacted] Business Case which may be taken as potentially relevant to the economic use criterion provided at s.73(1)(b) are cited as "...*safety and security risks in terms of vehicle and fork lift access and operation in pedestrian areas and, and appropriate food handling and storage practices.*" (Page 24). This latter theme is further discussed at page 30 where the remoteness of the Franklin Street storage facilities from the traders' retail stalls is referred to. "*Mandatory separation of vehicles from public areas is necessary to comply with contemporary safe work practices, particularly as outlined in the Occupational Health and Safety Act.*

"In 2012, a confidential report found that "the absence of separation between pedestrians, through traffic and unloading zones in Queen Street increases risk for people/vehicle interactions and incidents".

Food safety is mentioned at page 31 of the Business Case and lack of compliance with the Food Act identified as a matter of concern. "*A number of recorded incidents of poor food safety have been identified by Council health inspectors at Queen Victoria Market. These can partly be attributed to a lack of appropriate infrastructure available to traders, including lack of vermin-proofed food storage space, food preparation space and poor waste management systems. Moreover, stallholders have no access to dedicated hand washing facilities*".

No further detail or statistical information is provided to substantiate the extent of these problems, nor any assessment of the likely level of compliance that would be attained if the proposed works were implemented. There would also be the option of retro-fitting wash basins within the retail stalls if necessary. With regard to separating pedestrians from fork lift traffic this is achieved at present by marking with on-ground painting those laneways used for transport of goods. Even under the proposed works the lifts from the basement floors would not access every stall directly – only those immediately adjacent to the lifts. More remote stalls supplied from underground would still need to be moved by forklift or pallet jacks sharing the circulation space with pedestrians.

The previously cited Annual Report 2016 – 2017 records at page 21 that the major source of the QVM's revenue was 'Market rentals' at \$17.1 million. Car parking fees at \$3.8 million were the next largest revenue source. Despite this, the [redacted] Business Case states at page 6 that, "... *existing traders will not need to pay more to fund renewal. Average annual increases in lease and licence fees for existing traders will be no greater than 3 per cent per annum, and this is the basis on which the Business Case has been modelled.*" With the cost of the renewal project identified at \$250 million on the same page, a massive subsidy of the renewal driven by an agenda unrelated to the individual financial performance of the QVM would appear necessary. The description of the QVM as an, "*Underperforming public asset*" hampering City North's liveability at page 24 of the Business Case might be seen to identify a broader agenda irrelevant to the determination of a permit application under the Heritage Act.

With regard to the problem of inadequate waste management systems cited at page 32 of the Business Case, it is noted that permit P12205, now expired, was issued in December 2007 under the Heritage Act and provided for the replacement of the loading bay and toilet block adjacent to the Meat Market building with a waste recycling building. The works were never commenced.

The City of Melbourne as sole owner of the QVM would appear to be in a similar position to the operator of a typical shopping centre in that retail spaces are leased to numerous traders who pay rent at a sufficient level collectively to result in a profit after covering operating and any capital expenditure. With the loss of trading space in half of Shed D it is not clear that the overall rental income of the market would significantly increase, even with a new trader pavilion on Queen Street.

Even a hypothetical tenfold increase in sales by each trader would presumably not benefit the financial position of the QVM whose income is principally derived from rent and not from sales volumes achieved by its tenants. The Annual Report confirms that rental fees are by far the largest source of income for the market, as previously referenced.

In summary, it is considered that refusal of the application would not result in an inability to achieve the economic use of the place. The Business Case as the principal document arguing the necessity of approval being granted for the proposed works in order to ensure ongoing economic viability is considered to be unconvincing. A claim that a greater financial return could be achieved as a consequence of carrying out works of considerable detriment to the heritage values of the place is not of itself adequate for the purposes of a determination under the Act to overrule all other considerations. Essentially, it is not considered that the application has demonstrated decisively that the Market is not viable in its current condition or that its economic viability could not be enhanced by improved management. It is not considered that the high level of change proposed has been adequately justified on the basis of a predicted enhancement of the economic performance of the business occupying the heritage place.

4. S.73(1)(b) - EXTENT OF UNDUE FINANCIAL HARDSHIP ON THE OWNER IF THE APPLICATION IS REFUSED (refer to policy guideline "Matters to be considered in determining a permit application under s.73(1)(b) of the Heritage Act 1995"):

Applicant position: The application does not claim that refusal would result in undue financial hardship to the owner. Rather, the argument in the application seeks to demonstrate that refusal would result in a continuing decline in the economic performance of the market.

Officer assessment: As above.

5. S.73(1)(c) - ANY SUBMISSIONS MADE FOLLOWING ADVERTISEMENT OF AN APPLICATION (s.69 SUBMISSIONS): A total of 1508 signed pro-forma submissions were received plus 190 individual submissions.

Detail of submissions made: The arguments advanced in the pro-forma category of submissions are summarised as follows:

- that the underground trader facilities and car park would detrimentally impact the heritage value of the sheds and their open aspect
- the proposed works do not comply with best practice principles of good conservation
- that the unique traditional atmosphere of the market would be lost with the result mimicking a modern shopping mall
- that traders and the public were not consulted despite the place being a community-owned asset.

The pro-forma submissions each contained identical text as illustrated in the insert below:

original submission (SCF received)

Submission to Heritage Victoria objecting to the City of Melbourne's 'renewal' plans for QVM

Submission reference: VHR0734 Queen Victoria Market, Permit Application Number P27642

I object to the proposed underground trader facilities and customer car park which will be extensive and create permanent damage to the sheds, to the open appearance of the market and to the way it traditionally operates.

The Burra Charter (which the Heritage Council endorses) suggests that good conservation requires "a cautious approach of changing as much as necessary but as little as possible" (Article 3). This proposal goes far beyond necessary change.

The outcome is a replica; a market-themed shopping mall akin to a theatre set; a Disney market, whose sheds have been re-jigged to accommodate the Council's desired intentions. Very Las Vegas!

'Saving' QVM should be about reviving the market heritage rather than 'renewing' the market as proposed by the City of Melbourne.

Although QVM is a community owned asset there has been no advice taken from traders or the public regarding underground trader facilities and customer parking. Both traders and customers are against these changes. In short, those plans will sanitise, homogenise, minimise and gentrify a historic market to create an environment similar to a supermarket.

With regard to the 190 individual submissions, these were primarily from private individuals but included a number received on behalf of organisations including:

- [REDACTED]
- [REDACTED]
- Royal Historical Society of Victoria
- [REDACTED]
- National Trust of Australia (Vic)
- [REDACTED]

These organisational submissions were detailed and analytical in nature with numerous matters of common concern identifiable including: loss of significant fabric, inadequate financial justification, bias favouring large traders, poor management, inadequacy of interim trader facilities, operational inadequacy of underground facilities, loss of intangible heritage and alleged trader support for change exaggerated by the proponents of the renewal project.

The majority of submissions were from private individuals and varied in length and complexity of analysis from short unsubstantiated objections against the proposal to considered discussion of its various components. The main points expressed were:

- lack of any credible cost analysis
- no depiction of the visual impacts at pedestrian level
- impact on tourism during construction
- reduction of parking
- extravagant cost
- destruction of existing businesses
- loss of traditional at-grade market
- unknown details re fixed stalls
- basement floors introduce operational problems
- excessive loss of significant built fabric
- prolonged disruption to normal operations
- evolution of the market does not require intervention
- threat to the valued intangible atmosphere of the market
- changes not supported by traders
- convenience of the current at-grade layout
- all sheds can be repaired in situ
- change being driven top-down
- management board lacking retail experience
- traders already running profitable small businesses
- QVM should not be required to run at a profit
- Business Case examined only three options
- fears of a sterile modern supermarket experience replacing the unique feel of the market
- loss of historic patina
- loss of contrast between old and new
- high daily turnover of fresh produce replaced by refrigerated storage

Applicant position on submissions made: Copies of the submissions were redacted to remove identifying details of the authors to comply with privacy legislation and were made available to the applicant on 30 October 2017 with an invitation to comment in accordance with s.73(2) of the Act. The 'clock' was stopped until a response was received. On 6 December 2017 comments on the submissions were received via Lovell Chen acting on behalf of the applicant.

The response to the request for further information was in the form of a 27-page report containing numerous photo-images plus tabulated responses to specific points made in the submissions. A 34-page appendix to this document presents revised methods of repairs to the sheds in tabulated form following introductory comments. Paragraph 2 of the report's introduction states, "*Consistent with the request of 30 October correspondence, the primary purpose of the report is to provide comments/responses on issues raised in submissions received by the Executive Director under s. 69 of the Heritage Act 1995.*" This is followed by paragraph 3 as follows, "*Additionally, the report provides clarification on some minor anomalies in the application documentation (identified in submissions). Related to this, a revised and updated version of the Lovell Chen Schedule of Repairs is provided at Attachment A to this report.*"

The report advises at page 2 that all submissions have been reviewed and that, "*The choice has been made not to respond to all issues raised in submissions. Rather, the approach has been to identify key issues raised, and to respond to those that are most relevant to heritage and to considerations under the Heritage Act.*" The report notes that most of the issues raised have been dealt with in the HIS but that further clarification has been offered where relevant. The report also notes that issues irrelevant to a permit determination under the Heritage Act have been ignored including future

works proposals outside the Q2 area, criticism of management of the QVM and works to areas outside the registered land.

Some responses were provided by the City of Melbourne in relation to matters for which detail has not as yet been finalised including, location of visitor amenities, wayfinding and heritage interpretation.

Officer assessment: Matters outside those required to be considered and permitted to be considered at the discretion of the Executive Director under the Heritage Act were ignored in assessing the submitted objections.

It is considered that the applicant's response to the public submissions provided little in the way of comment on criticisms of the financial justification put forward primarily in the Business Case. The emphasis in the response was on the practicalities of the shed refurbishments and the possibility of retaining more of the original fabric such as timber columns.

The large number of submissions received were all opposed to the works intended in the renewal project for Q2. There was an indignant tone to many of the individual submissions which in summary advocate the general position that the market works well at present, that it evolves naturally in response to changing conditions (e.g. loss of the wholesale function) and that as reputedly the premier place for tourist visitation its economic multiplier effect is significant but unacknowledged.

Setting aside the emotive flavour of many submissions and the matters outside those which the Act requires and allows the Executive Director to consider in making a determination, some very cogently expressed responses were received, typically from but by no means limited to those from public interest groups. These frequently emphasised that the degree of alteration to the sheds would undermine their integrity and impact upon their cultural heritage significance queried the cost-benefit analysis and other aspects of the planned expenditure in relation to the alleged poor current economic performance of the market.

6. **S.73(1)(d) – ANY DECISION OF THE HERITAGE COUNCIL UNDER S.72: N/A**
7. **S.73(1)(e) - IF THE APPLICANT IS A PUBLIC AUTHORITY, THE EXTENT TO WHICH THEIR ABILITY TO CARRY OUT A STATUTORY DUTY SPECIFIED IN THE APPLICATION WOULD BE AFFECTED BY REFUSAL OF THE APPLICATION:** Melbourne City Council is not a *public authority* under the definition of the term in either the Heritage Act 1995 or the Heritage Act 2017.

Applicant position: N/A

Officer assessment: N/A

8. **S.73(1)(f) - ANY RELEVANT MATTERS RELATING TO PRESERVATION OR CONSERVATION OF THE PLACE OR OBJECT** (policy guidelines to consider, as relevant, "The consideration of recommendations of the Victorian Design Review Panel under section 73(1)(f) and 73(1A)(b) of the Heritage Act 1995", "Ruins: a guide to conservation and management", "The Burra Charter", the "Victorian Government Cultural Heritage Asset Management Principles", "Access for all to Heritage Places"):

Applicant position: The dismantling and off-site refurbishment of the sheds is explained at page 14 of the HIS as an unavoidable consequence of providing various back-of-house trader facilities

underground: "The [underground] works will require the dismantling and reconstruction of the western portions of Sheds A-D, where the basement is located."

Officer assessment: It is assumed on the basis of the above quote that had no excavation below the sheds been contemplated, market management would have continued to repair the sheds in situ consistent with the obligations of Melbourne City Council to maintain its building assets in a safe condition. The need to alter them in order to obtain compliance with current structural code standards is linked with the extent of the intended demolition and not with their current lack of compliance as such. Section 28 of the *Building Act 1993* allows a building surveyor to issue a building permit for works to a building which does not comply with the building regulations if the works are to be carried out on a building included on the VHR, provided that the structural adequacy of the building has been taken into account. If therefore the level of intrusive works proposed to the sheds is not based on any statutory necessity it would appear that the market management could continue to repair and maintain the sheds as necessary as it has done for upwards of the past 140 years.

Discretionary considerations

9. S.73 (1A) EXTENT TO WHICH THE PROPOSAL WOULD AFFECT THE CULTURAL HERITAGE SIGNIFICANCE OF ANY ADJACENT OR NEIGHBOURING PROPERTY THAT IS SUBJECT TO A HERITAGE CONTROL OR INCLUDED IN THE VICTORIAN HERITAGE REGISTER

Applicant position: This matter was not referenced in the permit application documents.

Officer assessment: The Flagstaff Gardens (H2041) is relatively close to the subject site but not adjacent to it. It is not considered that the Gardens or any other place subject to a heritage control would be affected by the proposed Q2 works.

10. S.73(1A)(b) – ANY OTHER RELEVANT MATTER:

Applicant position: The applicant did not raise any matter eligible for consideration under this provision of the Act.

Officer assessment: It has previously been noted in this report that the QVM Annual Report for 2016 – 2017 was not submitted as part of supporting documentation but was referenced in the Business Case although not quoted. Figures from the Annual Report have been quoted in this Assessment and Recommendation Report for the purpose of assessing claims made in the Business Case.

11. S.71 ANY COMMENTS FROM THE RESPONSIBLE AUTHORITY: A response to the statutory referral of the permit was received from Melbourne City Council (MCC) on 30 October 2017. On 1 November 2017 further advice was received from MCC to the effect that the response previously received was sent without correct delegation and assurance was sought that it would not be considered in the determination. The assurance was given but no replacement response to the original was subsequently received.

Officer assessment: No follow-up response to the referral was received by Heritage Victoria after MCC advised that the first was sent without delegated authority and was to be discarded. It is not unusual for a municipal council when applicant for a permit under the Heritage Act to reserve comment when sent the statutory referral under s.71.

OTHER CONSIDERATIONS

12. **Has the applicant advised whether the works trigger the need for a Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006* and has one been approved?** The Heritage Victoria permit application form contains a section seeking to establish whether or not any relevant Cultural Heritage Management Plan (CHMP) obligations under the *Aboriginal Heritage Act 2006* have been satisfied. The applicant indicated on the application form that two CHMPs were required for the works, namely one for the area relating to Sheds A to C and one for the Old Melbourne Cemetery. The applicant advised on the form that the first had been approved by Aboriginal Victoria in September 2017 and the second was due to be lodged in September 2017. No confirmation had been provided to Heritage Victoria that the second CHMP has been approved by Aboriginal Victoria at the time this report was completed.
13. **Has the applicant advised whether the works contravene any existing Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006*?** The applicant advised on the permit application form that the works did not contravene any existing CHMP.

COMMENTS AND SUMMARY FROM REPORTING OFFICER: In determining an application to carry out works in relation to a place listed in the Victorian Heritage Register the Executive Director is required to consider under s.73(1)(a) *"...the extent to which the application, if approved, would affect the cultural heritage significance of the registered place..."*

For the reasons previously detailed in this report the effect of the works has been assessed as severe with regard to their detrimental impact on Sheds A, B, C and D being major components of the significant built fabric and of high integrity.

In addition, the Executive Director is required to consider under s.73(1)(b), *"... 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..."*

As the owner is not seeking to make changes in order to use the place for any purpose other than to continue its existing and ongoing use, this aspect of s.73(1)(b) is not relevant and does not need to be addressed. Furthermore, the applicant has not claimed in the application that refusal would cause undue financial hardship to the owner in relation to that place. The only aspect of s.73(1)(b) needing to be considered is therefore the extent that refusal would affect the economic use of the place.

From the independent economic assessment referenced in this report, it is considered that the application has failed to demonstrate that refusal would affect the economic use of the registered place to a degree that would render its continuing operation uneconomic or that would justify the very high order of physical change with its attendant risks, for which approval is sought.

Under s.73(1)(c) the Executive Director is required to consider any submissions resulting from public notice being given to the application under the Act. The lodgement of 1508 individually signed and addressed pro-forma submissions plus 190 unique submissions uniformly opposed to the project indicates a very high level of community interest and concern with the proposed changes. Moreover, a significant number of the submissions are considered to have raised objections to the proposed works, primarily on the impact to heritage significance and ongoing financial viability of the place, that were not convincingly refuted in the applicant's response.

Other matters that the Executive Director **must** consider in determining an application are in the current circumstances not applicable; being, sections 73(1)(ab), 73(1)(d), 73(1)(e) and 73(1)(f):
Matters which the Executive Director **may** consider in determining a permit application are set out at s.73(1A) of the Act. At sub-section (b) the Executive Director may consider any other relevant matter and the QVM Annual Report for the 2016 – 2017 year was examined under this provision although it was not submitted as part of the permit application.

At s.73(2) the Executive Director may ask the applicant for additional information considered necessary to assist the determination of the application. The additional information provided by the applicant on request in order to assist with establishing the extent to which refusal of the permit would affect the economic use of the place was able to be considered under s.73(1A)(b).

In summary it is considered that the application fails to convincingly establish that refusal would prevent economic use of the registered place or that its viable economic use requires the level of change proposed. The detrimental impact on the integrity of the significant fabric that would result from the Q2 works and the high level of opposition expressed by interested parties to the carrying out of those works together with the potency of the arguments contained in a number of the more detailed submissions give further weight to a recommendation to refuse the permit.

RECOMMENDATIONS: That a permit not be issued.

COMPLIANCE MONITORING: N/A

Has the permit been identified as a high or medium risk approval in accordance with Heritage Victoria's Internal Policy Guideline "Compliance Monitoring Policy"? N/A

Yes – High/Medium or No

If yes, what compliance measures have been put in place? N/A

OFFICER



DATE: 26 March 2018

PERMIT: P27642