

**IN THE MATTER OF THE HERITAGE ACT 1995
HERITAGE COUNCIL OF VICTORIA
HEARING TO CONSIDER THE APPLICATION TO LIST THE FORMER
ORIENTAL HOTEL, WILLIAMSTOWN ON THE VICTORIAN
HERITAGE REGISTER**

BETWEEN

NELSON PLACE VILLAGE PTY LTD

LANDOWNER

AND

SAVE WILLIAMSTOWN INC

APPLICANT FOR LISTING

**OUTLINE OF INITIAL SUBMISSIONS ON BEHALF
OF THE LANDOWNER**

INTRODUCTION

1. This outline of initial submissions is made on behalf of Nelson Place Village Pty Ltd (NPV).
2. NPV is the owner of the land known as 57 Nelson Place Williamstown, being the land on which the building known as the former Oriental Hotel is situate.

NPV'S POSITION

3. NPV supports the decision of the Executive Director that the former Oriental Hotel does not meet Heritage Council criteria for inclusion in the Victorian Heritage Register.

4. The Executive Director's reasons neatly identify the key aspects militating against registration. The former Oriental Hotel:
 - (a) Is an architecturally undistinguished building;
 - (b) Has been significantly altered;
 - (c) Is in very poor condition, both internally and externally;
 - (d) Is one of a large number of buildings in Victoria which demonstrate the principal characteristics of a gold rush era corner hotel (and gold rush era hotels are also well represented in the Victorian Heritage Register) and therefore is not rare;
 - (e) Demonstrates these principal characteristics less clearly than other examples;
 - (f) Has less architectural interest and intactness than other examples of three storey hotels, such as those in Geelong; and
 - (g) Has significance only at a local level.

5. Relevantly:
 - (a) The Executive Director's determination is consistent with the determination of Senior Member Rickards and Member Cimino in the VCAT Proceedings *Green v Hobsons Bay CC (Red Dot)* [2013] VCAT 2901, (*Green Case*) in that the Tribunal was called upon to make a decision in that case as to the level of significance of the building in the context of an application for demolition under the planning scheme;

- (b) In the *Green Case* four expert heritage witnesses gave evidence. While the witnesses disagreed on a number of aspects of the proposal as a whole, the witnesses for the landowner (Mr Lovell and Mr Raworth) and the witness for the Council (Ms Lardner) all expressly agreed that the building was no more than locally significant. The only witness called on behalf of some of the objectors (Mr Taylor) in this proceeding refused to be drawn on whether or not the building might enjoy a higher level of significance than local – notwithstanding that he had been expressly engaged by his clients to prepare an application for registration;¹
- (c) Though the ultimate question before the Tribunal was different to the question now before this Council, both the Tribunal and the witnesses in the *Green Case* were required to turn their mind to the level of significance of the building. In the course of the hearing, each of the witnesses were questioned as to whether or not the building was of more significance than just local. On a number of occasions witnesses were expressly asked whether in their opinion the building was a candidate for inclusion on the State Register;
- (d) The Tribunal was also called upon to consider the state of repair of the building. It heard evidence from three building surveyors.

¹ The *Green Case* at [212] – [213]. In particular, it was telling that despite being asked whether the former Oriental Hotel should be placed on the Victorian Heritage Register, both Ms Lardner and Mr Taylor were unable to express a view that the significance of the building was anything other than “local.” Refer also to for Mr Taylor, transcript 4 July 2013 at 2.25PM p.14 at lines 10 – 31, p.21 at lines 25 – 31, p.21 lines 1 – 31, p.22 at lines 1 – 31 and p.24 at lines 1 – 14; for Ms Lardner, transcript 25 June 2013 p.29 at lines 10 – 26 transcript 26 June 2013 p.113 at lines 24 – 31, p114 at lines 1 – 4.

Again, the ultimate questions before the Tribunal were slightly different to those before the Heritage Council, but in approaching the exercise of its discretion the Tribunal was required to form a view as to the current state of repair of the building. While there was a difference of opinion between the building surveyors as to the efficacy of attempting to save the building, the techniques which might be applied to do so and the potential cost involved – all of the witnesses agreed that the building was in a very poor condition internally and externally such that in order to salvage any of the building it would be necessary to:

- (i) Demolish all of the eastern and most of the southern wall;
 - (ii) Demolish most of the northern façade and at least some of the western façade; and
 - (iii) Remove the whole of the roof and completely removed most of the internal walls;
- (e) In the *Green Case*, the Tribunal:
- (i) Noted that it was in effect common ground, as between the heritage experts, that the former Oriental Hotel was of local significance only;²
 - (ii) Noted that there was a reasonably high degree of agreement between the structural engineers that substantial works would be required to repair the building;³

² The *Green Case* at [212] - [213].

³ The *Green Case* at [214], [220].

- (iii) Where there was a dispute between experts, generally accepted the evidence of Mr Raworth, Mr Lovell and Mr Sheldon in preference to that of Ms Lardner, Mr Taylor and Mr Halls;
 - (f) The Executive Director's determination is consistent with those findings of the Tribunal that are relevant to the question of registration, namely that the former Oriental Hotel:
 - (i) Is of local significance only;⁴
 - (ii) Is in a poor state of repair;⁵
 - (g) The Tribunal's findings resulted from an extensive hearing at which evidence was called and tested. The findings of the Tribunal concern matters which are both recent and squarely before the Council. Though it is true that the Council is not bound by a decision of the Tribunal in a strict legal sense, it is important as a matter of public policy that decision making bodies pay due regard to the findings of other bodies where there is a coincidence of issue, evidence and parties;
6. There is not now any new or materially different evidence which would warrant a departure from the reasoning adopted by the Tribunal on 10 December 2013 (being the date the Tribunal made its original orders).

⁴ The *Green Case* at [212] - [213].

⁵ The *Green Case* at [214], [218] - [221].

7. NPV continues to rely on the evidence of Mr Raworth, Mr Lovell and Mr Sheldon which was accepted by the Tribunal. NPV also relies upon the evidence given by Ms Lardner as to the significance of the building.

CONCLUSION

8. Save Williamstown's application to have the building listed is misguided.
9. Consistent with the Executive Director's decision, and the evidence of all of the heritage experts in *Green*, the former Oriental Hotel has local heritage significance only.
10. Further, that local heritage significance is compromised by the current state of repair of the building.
11. The Heritage Council is therefore respectfully requested to uphold the Director's decision, and recommend that the former Oriental Hotel not be placed on the Victorian Heritage Register.

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ADRIAN J FINANZIO SC
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Instructed by Planning and
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