

16 December 2019



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Re: Bacchus Marsh Eastern Link Road planning study

Dear Ms Carr,

Thank you for the opportunity to respond to the above project, which aims to identify a feasible route for an eastern bypass in Bacchus Marsh, in order to alleviate congestion caused by significant population growth.

The National Trust of Australia (Victoria) (National Trust) is the state's largest community-based heritage advocacy organisation actively working towards conserving and protecting our heritage for future generations to enjoy, representing approximately 27,000 members across Victoria. As Victoria's premier heritage and conservation organisation, the National Trust has an interest in ensuring that a wide range of natural, cultural, social and Indigenous heritage values are protected and respected, contributing to strong, vibrant and prosperous communities.

The National Trust also maintains a Heritage Register of Significant Places, including buildings, landscapes, gardens, trees, and public art. Included on the National Trust's Register of Significant Trees is the Bacchus Marsh Avenue of Honour (File No: T11282), classified in 1982 for aesthetic and historical significance at the State level.

As discussed at our meeting in Ballarat on December 10th, the National Trust has been a key stakeholder in previous bypass proposals affecting the Bacchus Marsh Avenue of Honour, most notably the 2010 Woolpack Rd extension proposal, which was ultimately rejected by the Planning Minister, Matthew Guy, following a hearing into the application by the Heritage Council.

This submission highlights the National Trust's concerns and recommendations in regard to the four study areas proposed in the eastern link road planning study, including the cultural heritage impact of the proposed works and the consideration of alternate designs.

1. Cultural Heritage Impacts

1.1. Bacchus Marsh Avenue of Honour

The Bacchus Marsh Avenue of Honour is listed in the Victorian Heritage Register (File No: H2238), being of historical, aesthetic, and scientific (research and botanical) significance to the State of Victoria. The Avenue is also included in the Heritage Overlay for the Moorabool Planning Scheme (HO47). It is of high social significance as a living memorial to community

members who enlisted in World War I, and as an impressive aesthetic feature at the entrance of Bacchus Marsh.¹

Study Areas A, B, and C all cross the Avenue and will impact both the historical and aesthetic significance of the Avenue as detailed in the Victorian Heritage Register statement of significance. The National Trust opposes all route options that compromise the integrity of this important heritage site.

1.2. Irrigation District

The irrigation district of Bacchus Marsh is of state significance as one of Victoria's biggest producers of vegetables. In operation since 1889, the irrigation district forms an important part of Bacchus Marsh's economy and history, and contributes to the cultural landscape of the area. We recommend that steps are taken to minimise the impacts on this important area.

1.3. Aboriginal Heritage

We understand that Regional Roads Victoria has begun consultation with the two Registered Aboriginal Parties (RAPs) in the area, Wathaurung and Wurundjeri. We encourage Regional Roads Victoria to pursue additional consultation, and undertake a Cultural Heritage Management Plan as soon as possible.

2. Environmental Impacts

Of the four proposed study areas, only Study Area D avoids the Avenue of Honour. However, based on the desktop environmental assessment provided by Regional Roads Victoria, this route presents significant environmental impacts, cutting through areas of very high ecological sensitivity, and is the longest route presented in the planning study. While the National Trust is expressly concerned with conservation of the Avenue of Honour, we also advocate for minimising impacts on other elements of the cultural landscape, particularly in regards to habitat conservation for threatened species that inhabit the area.

According to the desktop assessment, Study Area B includes areas of high and very high ecological sensitivity, and Study Area C includes areas of high ecological sensitivity. The National Trust recommends that Regional Roads Victoria seriously consider route options that avoid these areas.

3. Recommendations

3.1 Design

The National Trust has a strong preference for a road design which causes minimal impact to the cultural landscape values of the area. We submit that Regional Roads Victoria consider routes beyond the four study areas presented in the initial public consultation, as well as amalgamated routes that incorporate several study areas, and aim to maximise use of the existing infrastructure of the Western Freeway.

One such option is a route that incorporates a northern entrance point at Gisborne Road within Study Area A, connects to the Western Freeway, and has a southern exit off the freeway within Study Area D. This route option maximises use of the existing freeway, avoids

¹ For additional information regarding the significance of the Avenue, see attachment 1 - *Heritage Council hearing expert witness statement – Dr Gregory Moore*.

areas of high and very high ecological sensitivity, and does not affect the Avenue of Honour.² This route is less direct than Study Area A alone, but significantly shorter than Study Area D. Furthermore, this option would not impact on the irrigation district or the Merrimu Precinct Structure Plan. It is the opinion of the National Trust that such a design will have the least impact on the cultural landscape of the area.

The National Trust also encourages Regional Roads Victoria to revisit the “Strawberry Farm” option put forth by Mr Digby Thackeray at the 2011 Heritage Council hearing, which involves a southern alignment of the Bacchus Marsh-Geelong Road south of the Avenue of Honour. We recommend that Regional Roads Victoria widen the southern study area to fully investigate all options around Parwan that might connect to the Geelong-Bacchus Marsh Rd.

3.2 Community Consultation

As part of the community consultation process, we urge Regional Roads Victoria to contact all key stakeholders, including those that may not live in the immediate area. In particular, we recommend that Regional Roads Victoria directly contact those stakeholders that made appearances at the 2011 Heritage Council hearing regarding the Woolpack Road extension, such as the Australian Garden History Society and the Avenue of Honour Preservation Society.³

4. Conclusion

The National Trust acknowledges the need for a road link to support the population growth of Bacchus Marsh, and ease congestion by diverting heavy vehicles and through traffic away from the town centre. However, this need must be balanced against the identified heritage values of the area and ecological sensitivities. The National Trust encourages Regional Roads Victoria to explore all routes which will minimise impacts on the landscape, such as a route that combines Study Area A in the north and Study Area D in the south, the Strawberry Farm alignment, and additional potential connections around Parwan.

Should you have any questions regarding the above, please contact me on 9656 9823, or at eloise.dowd@natstrust.com.au. We look forward to providing additional feedback as the plans progress.

Yours faithfully,



Eloise Dowd
Environmental Heritage Advocate
National Trust of Australia (Victoria)

² See attachment 2 – *Proposed alternative routes as advised by John Hawker.*

³ See attachment 3 - *Heritage Council Bacchus Marsh Avenue of Honour Decision Report.*

Bacchus Marsh Avenue of Honour

Expert Witness Statement by Dr Gregory Moore

25 May 2010

Significance of the avenue nationally and internationally

INTRODUCTION

The trees that most of us know as elms are several different species of *Ulmus*. The elm is amongst the largest of the commonly grown landscape species, and can have a dramatic effect on the created environment.

The natural ranges of the species of *Ulmus* are in the Northern hemisphere. There are eight species in North America, five in Europe and about twenty in Asia. There are even two tropical species growing in Central America and Southern Asia. The genus, however, has been cultivated for centuries and has been extensively planted throughout the countries of the Southern hemisphere.

Although there is great variation in the size and lifespans of the various elm species, two of the largest species, the English (*M. procera*) and the American (*M. americana*) elms, can live for well over 300 years and exceed 40m in height. The great size and longevity of the elms contributes to their significance in the landscape.

In the countries of the Northern hemisphere, the great contribution of elms to the landscape in avenues, roadsides, parks and boulevards has been diminished by the occurrence of serious elm diseases and particularly Dutch Elm Disease (DED) which has decimated populations.

An English survey of 1974 estimated that there were 22 million elms in southern Great Britain. By 1978, some 70% of the trees or 15.5 million elms, were either dead or dying. In the United States, DED was found first in 1930 and over the next fifty years some 40 million trees died, leaving a residual population of about 30 million trees. The European species of elms are more sensitive to DED than are the American trees, and both are more sensitive than the Asian species.

In Australia, we have known about the elm bark beetle for several decades and the presence of the elm leaf beetle has been confirmed. The arrival of DED in New Zealand is a cause for much greater concern, however there has been no DED occurrence recorded in Australia. Thus the mature populations of Dutch elms (*Ulmus hollandica*) found in places like Bacchus Marsh are globally rare.

ELMS IN AUSTRALIA:

There are significant numbers of elms in Melbourne, Canberra and in Tasmanian cities. The numbers in cities like Sydney and Adelaide are large, but their landscape contributions are not so great. In Melbourne, the Melbourne City Council alone has responsibility for some 6000 elms, and there would be at least that number in private and other public ownership. There are some 3000 elms in Ballarat and significant populations of trees in provincial towns like Camperdown, Bendigo and Bacchus Marsh. It is not difficult to reach estimates that within the state of Victoria there would be some

20,000 elms in public and private ownership and there could be as many as 35,000 elms in the state.

If we take the more conservative estimate of some 20,000 mature trees, we can calculate their amenity value (using the Burnley Method of Valuation) at some \$400 million. This gives some idea of the value of a major asset to the people of Victoria. From their monetary value alone our elm trees deserve proper management and protection.

The trees in the Avenue of Honour at Bacchus Marsh have been planted as a memorial to the fallen. It is often forgotten that the trees were the only opportunity that many families had for commemorate a death, when soldiers were buried overseas. Despite their status as a memorial planting, the trees have been subjected to repeated damage from vehicles and major damage to their root systems from services installation regular road widening, compaction of the soil, and farm and business practices. It is a tribute to the toughness of the elms that they have survived to be the impressive avenue of today.

The avenue at Bacchus Marsh of about 290 trees is without a doubt one of the finest avenues of mature Dutch elms in the world. It is unmatched in the uniformity of its age, trunk diameter and canopy development. It is particularly impressive for the way in which major branches arch and join to form a natural cathedral like ceiling, which seems so appropriate for a memorial to the fallen.

Condition of the trees forming the Avenue of Honour Bacchus Marsh

My inspection of the elms and the various arborist reports would confirm that the elm trees forming the avenue are in variable condition. Some are showing both poor structure and vigour and it is likely there will be the need for replacements. The majority however are still in relatively good condition despite the prolonged period of below average rainfall over the past 13 years.

For the most part the arborist reports and Tree Management Plans are of good calibre and their recommendations seem professionally appropriate, fair and reasonable. The latter of course assumes that the road works will proceed and there are plans to protect trees during construction. Such plans are usually done with good intent but it is very disappointing how often the recommendations are either deliberately or accidentally ignored and tree damage results. There is usually no follow up action or penalty when such action occur.

I am also aware of situations where development along roadsides has taken place after appeals to VCAT. VCAT has subsequently granted approval for works to be undertaken subject to certain conditions. However, the conditions were either breached or simply not policed so that they were never implemented. This is particularly the case where recommendations for longer term maintenance and management are imposed, but never implemented once site works have been completed. So I have grave concerns not only for the eight trees that are scheduled for removal but for other trees in the avenue that may be affected by construction works.

FUTURE LONGEVITY AND USEFUL LIFE OF THE ELMS

Many of the elms have been irrigated in the past or have at least received the benefit of the irrigation that was widely practiced in their vicinity under the irrigated farm production systems that were once common in Bacchus Marsh. Many trees are now stressed due to the long period of below average rainfall experienced in the region.

Many of the specimens have also had repeated and extensive damage caused to their root systems from roadworks, compaction and farm works.

However elms have relatively shallow and fibrous root systems, which would respond to future root protection and occasional summer irrigation. This could see a rapid improvement in the condition of many of the trees in the avenue. Such an approach would seem appropriate as many of these trees have a useful life expectancy of at least 50 years, and it is possible that properly managed the trees could have a century of useful and production growth ahead of them.

WHAT ARE THE THREATS

The future of elms in Australia in general is clouded by many threats. There tends to be a focus on some of the more potentially spectacular problems, but it is usually the more mundane issues that spell the demise of the elm.

The major threats can be summarised as

- Age and declining vigour
- Exposure to major stresses such as drought and compaction
- Poor management leading to compaction, root damage and mechanical damage.
- Poor maintenance such as poor pruning technique, soil aeration and inappropriate irrigation.
- Failure to recognise that trees like elms are significant assets, with a real monetary value.
- Loss of elms during building development and the loss of parkland and roadside trees during major project works
- People who are making decisions about the trees have no appreciation of the trees on their roles in the landscape.
- The elm bank beetle
- The elm leaf beetle
- Dutch elm disease (DED)

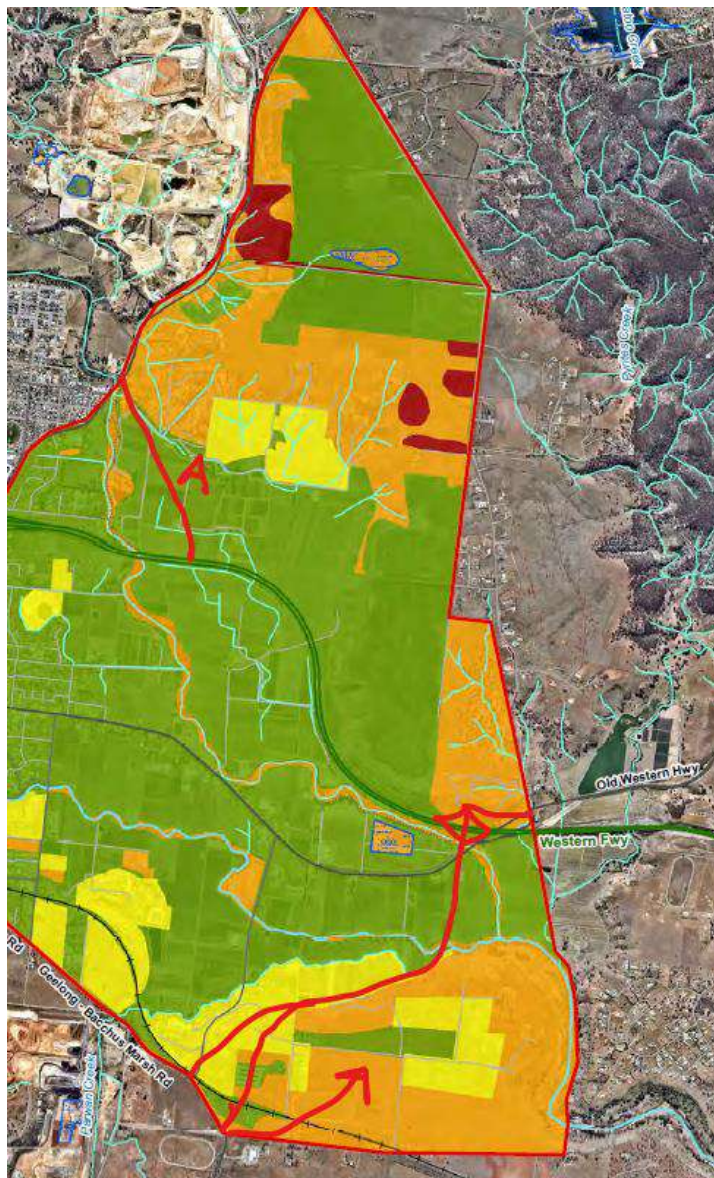
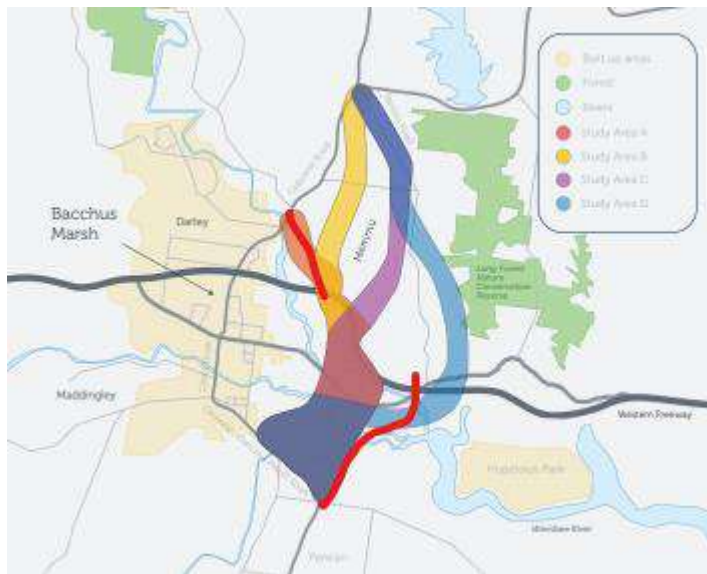
Many of these threats clearly apply to the elms of the Avenue of Honour Bacchus Marsh. The greatest threat is not biological, however, it is Vicroads tree clearing policy.

Conclusion

The debate is not about preserving trees to the risk of human safety and the preservation of human life. It is really about economics. We should be able to have safe roads and preserve an avenue of national and international significance. We can indeed meet both objectives. It is a matter of whether we are prepared to pay a little more to achieve both outcomes.

Greg Moore
25 May 2010

Attachment 2: Proposed alternative routes as advised by John Hawker



Permit Appeal Numbers P16792 and P17021

Avenue of Honour, Bacchus Marsh (H2238)
Bacchus Marsh Road, Bacchus Marsh

Heritage Council Permits Committee

Hearing – Friday, 4 June; Friday, 10 June and Friday, 24 June 2011

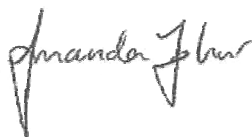
Members – Ms Amanda Johns (Chair), Mr James Norris, Ms Oona Nicolson

Recommendation of the Heritage Council

In accordance with the Minister for Planning's letter to the Chair of the Heritage Council dated 7 April 2011 and received on 8 April 2011 directing the Council to refer the appeals to him for determination the Committee appointed by the Heritage Council (**the Committee**) has considered the submissions and held a hearing in relation to whether a permit should be granted for the works proposed by VicRoads to the Avenue of Honour.

The majority of the Committee, comprised of Ms Amanda Johns and Ms Oona Nicolson, consider that the proposed works would not have a significant impact upon the cultural heritage significance of the place. As a result, they recommend that a permit be granted for the works by the Minister, subject to conditions.

The minority of the Committee, comprised of Mr James Norris considers that the proposed works would have a significant impact upon the cultural heritage significance of the place and on this basis a permit should be refused. Further, Mr Norris is of the view that the refusal of a permit for the proposed works will not affect the reasonable use of the place pursuant to s73(1)(b) of the *Heritage Act 1995* (**the Act**). Mr Norris also believes that the refusal of the permit will not affect the ability of VicRoads to carry out its statutory duties under s73(1)(e) of the Act. As a result, Mr Norris recommends that a permit be refused by the Minister.



Ms Amanda Johns
(Chair)



Mr James Norris



Ms Oona Nicolson

Report Date –27 October 2011

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APPEARANCES

Executive Director, Heritage Victoria

Mr John Hawker appeared for the Executive Director. Mr Hawker was supported by Ms Janet Sullivan.

Shire of Moorabool – Appellant 1

Mr John Rantino of Maddocks Lawyers appeared on behalf of the Shire of Moorabool. Mr Rantino called Mr Keith Linard (Manager, Asset Strategy, Shire of Moorabool) and Cr Pat Griffin (Mayor, Shire of Moorabool), to give expert evidence.

VicRoads – Appellant 2

Mr Chris Wren SC instructed by Ms Alice Skipper of DLA Piper, appeared on behalf of VicRoads. Mr Wren called Mr Chris Butler (Cardno), Ms Kate Gray (Lovell Chen) and Mr John Patrick, a landscape architect (John Patrick P/L) to give expert evidence. He relied on an audio-visual presentation prepared by Mr Joseph Austin-Crowe of 3D Advanced Modelling.

The National Trust of Australia (Victoria)

Mr Anthony Southall QC (for part of the hearing) and Ms Megan Fitzgerald instructed by Mr James Davaris appeared on behalf of the National Trust of Australia (Victoria) (the National Trust). Mr Southall called Dr Greg Moore as a witness.

The Australian Garden History Society

Dr John Dwyer QC appeared on behalf of the Australian Garden History Society.

The Avenue of Honour Preservation Society

Mr Romauld Andrew appeared on behalf of the Avenue of Honour Preservation Society.

Other Submitters

In addition, a number of members of the community sought leave to make oral submissions to the Committee. The following people were granted such leave by the Committee:

Mr Barry Cook appeared on behalf of Mr Adrian Rowell

Dr Damien Strangio

Mr Peter Lawford

Ms Belinda Dellios

Mr Martin Ball

INTRODUCTION

The Registered Place

1. The registered place is the Avenue of Honour at Bacchus Marsh Road, Bacchus Marsh (**the Avenue**). It is located on the eastern side of the Bacchus Marsh township and extends for approximately 2.9 km along Bacchus Marsh Road from Pearce Street in the west to the flag poles on either side of the road, approximately 300m before the Lerderderg River.
2. The place contains predominantly mature Dutch and Huntington elm trees, with some replacement planting, and cast aluminium or cast bronze name plaques dedicating each tree to a soldier associated with the area who had volunteered to serve in World War I.
3. The Avenue of Honour is included in the Victorian Heritage Register for its historical, aesthetic and scientific (research and botanical) significance to the State of Victoria. A copy of the Statement of Significance is at Attachment 1 to this report.

Permit Application

4. On 5 May 2010, VicRoads lodged permit application P15769 to construct a roundabout at the intersection of Woolpack Road and Bacchus Marsh Road. It involved removal of a number of trees in the Avenue of Honour. More specifically, the proposal involved the following works:
 - (a) The removal of nine elms (eight mature and one juvenile), and associated commemorative plaques
 - (b) The realignment of Woolpack Road
 - (c) The construction of a roundabout in Bacchus Marsh Road and turning lanes
 - (d) The transplantation of one young elm, the planting of 17 new elms and the reinstatement of 19 commemorative plaques.
5. The proposal is part of the Western Highway (Anthonys Cutting) Realignment Project.

Determination of the Executive Director

6. The Executive Director advertised the application and a substantial number of submissions were received, including a 1600 person petition opposing the proposal. A Notice of Refusal of a Permit was issued by the Executive Director on 20 December 2010 (Attachment 2).
7. On 28 January 2011, Moorabool Shire Council lodged an appeal against the decision pursuant to s75(2) of the Act, as 'a person with a real and substantial interest in the registered place'. On 4 February 2011, an appeal from VicRoads, as the owner and applicant, was also received pursuant to s75(2) of the Act. The Committee notified all parties that the appeals would be heard together.

Amended Plans

8. On 15 March 2011, the Heritage Council received a copy of amended plans from VicRoads together with formal notice that the applicant intended to seek leave to amend the plans. The amended plans showed the following:
 - (a) The proposed roundabout was moved approximately 25 m to the west along the centreline of Bacchus Marsh Road.
 - (b) A reduction in the overall size of the centre island roundabout from 27.5 m to 20 m.
 - (c) The splitter islands on Bacchus Marsh Road were shortened by 3 m on the west side and 1 m on the east side.

- (d) Changes to the boundary on the western side, north of Bacchus Marsh Road to accommodate the revised roundabout design.
 - (e) Safety barriers were added to shield tree S158 to the south west of the roundabout.
 - (f) The removal of the lighting previously situated in the centre of the roundabout and the addition of lighting to suit the new roundabout design.
 - (g) A reduction in the number of elm trees to be removed to five (all mature). Specifically, the amended plans show the removal of tree N157 (which had previously been retained), N159, N161, S160 and S162, that is, three trees on the north side and two on the south side of the Avenue.
 - (h) Planting of eight replacement trees (closer to the intersection), five of which would be dedicated (servicemen nameplates).
9. These works are described in the Statement Describing the Changes from the Previous Plans which was provided to the Heritage Council on 15 March 2011 (Attachment 3).
 10. Copies of the proposed amended plans were distributed to all parties and notice of VicRoads' intention to seek to amend the plans was given to those who had lodged submissions. No objections were received.
 11. On 6 March 2011, Ms Christine Bronchinetti lodged a submission with the Heritage Council. It states:

I object to Vic Roads putting in a round about through the Bacchus Marsh Avenue of Honour, no matter how many trees VicRoads wishes to take out & replace, no matter how big the proposed round about will be, it is still the same argument, it will still destroy the 3.6kms of unbroken canopy, it will destroy the history and beauty of the Avenue of Honour. Lest we forget.
 12. On 1 April 2011, Mr Kon Kesoglidis made a submission to the amended plans. The submission maintained that the 'Avenue of Honour should not be subject to any alteration whatsoever' and that 'to divide the avenue in to two separate roads by a roundabout and break the ranks of trees, dissolves the memorials purpose'. He also drew attention to the potential for future increases in the population of the town to generate a need for further works at the heritage place and maintained that granting a permit for the works as outlined in the amended set of plans would act as a catalyst for future development and harm to the Avenue.
 13. In the Committee's view, both submissions were objections to the proposal itself rather than to the application to lodge amended plans.
 14. On 7 April 2011, the Committee notified all parties that it had agreed to allow the application to amend the plans and that it would consider those plans at the hearing. The Committee accepted the plans on the basis that the proposal is substantially similar to the original plans, but reduces the impact upon the heritage place.

Ministerial 'call in'

15. On 8 April 2011, the Heritage Council received a letter dated 7 April 2011 from the Minister for Planning, Mr Matthew Guy MLC directing it to refer the appeals to him for determination pursuant to s78(1) of the Act.
16. The Minister specifically directed that the Council:

...give the applicant and each appellant an opportunity to be heard and make submissions regarding:

- *the amended plans lodged by VicRoads with the Heritage Council and served on the parties to the appeal and the submitters to the permit application as listed in the letter from DLA Phillips Fox on behalf of VicRoads to the Heritage Council dated 11 March 2011; and*
- *any written objection to the amended plans received by the Heritage Council in response to the application to amend plans.*

17. As the Minister's letter has instructed the Council to consider *any* written objection received in relation to the amended plans, the Committee has determined to consider the objections of Ms Bronchinetti and Mr Kesoglidis.

Site Inspection

18. The Committee conducted two unaccompanied inspections of the Avenue on 3 and 24 June 2011.

The Hearing

19. A hearing was held on 4, 10 and 24 June 2011 at Bacchus Marsh.

Preliminary Matters

Standing of Shire of Moorabool

20. Section 75(2) of the Act provides that 'The applicant, the owner of a registered place...or a person with a real and substantial interest in the registered place...may appeal to the Heritage Council against':
- (a) *a determination by the Executive Director to refuse to issue a permit in respect of that place... or*
 - (b) *a determination by the Executive Director to refuse to issue a permit for some of the proposed works and activities in respect of that place..."*
21. The appeal lodged by the Shire of Moorabool relied upon it having a 'real and substantial interest' in the place. In this instance, the Minister's intervention makes the point moot; however, the Council is of the view that the Shire of Moorabool (as the responsible local government authority) has a real and substantial interest in the place for the purposes of s75(2) and therefore has standing to lodge an appeal.

Submissions from persons not a party to the proceedings

22. Following the lodging of the appeals, a number of persons sought to make submissions to the Heritage Council. The Council instructed all persons who wished to seek leave to be heard at the hearing to comply with the Heritage Council hearing protocols for lodging written submissions but that a decision about whether their submissions would be considered and whether they would be given leave to be heard would be determined at the hearing.
23. The Minister's letter instructed the Heritage Council to hear from both appellants and consider submissions made in relation to 'any written objection to the amended plans received by the Heritage Council in response to the application to amend plans'. The Minister also reminded the Council of 'its powers under s11 of the Heritage Act when carrying out a statutory function' to 'consult with any person or body, carry out any investigation the Heritage Council thinks fit and have regard to any information the Heritage Council considers relevant'.
24. At the commencement of the hearing, the Committee indicated that in order to gain the broadest understanding of the issues, it would consider all written submissions that had been

made to the Heritage Council in accordance with the Heritage Council hearing protocols. The Committee also asked parties who had made such submissions who wished to make oral submissions to apply to be heard. Submissions to be heard were made by the National Trust, the Australian Garden History Society, the Avenue of Honour Preservation Society, Mr Barry Cook (on behalf of Mr Adrian Rowell), Dr Damien Strangio, Mr Peter Lawford, Ms Belinda Dellios and Mr Digby Thackeray.

25. The Committee considered that the National Trust, the Australian Garden History Society, the Avenue of Honour Preservation Society, Mr Cook, Dr Strangio, Mr Lawford, Ms Dellios should all be granted leave to make oral submissions.
26. Mr Martin Ball did not request the right to be heard. Mr Thackeray had not lodged a written submission in relation to the appeal in accordance with the Heritage Council's hearing protocols and, as a result, was denied the right to make an oral submission at the hearing. On the last day, the Committee gave Mr Ball an opportunity to make an oral submission.

Evidence of Mr Henry Turnbull

27. In its written submission dated 18 April 2011, the National Trust included reference to the evidence of an expert witness, Mr Henry Turnbull. The National Trust advised that a report by Mr Turnbull had not been completed because he was overseas. The National Trust requested that the Heritage Council accept and distribute his evidence at a later date, contrary to the Heritage Council hearing protocols which require exchange of evidence prior to a hearing.
28. A letter dated 3 May 2011 received from DLA Piper for VicRoads requested that the Committee 'refuse to accept Mr Turnbull's expert report given the significant delay in its finalisation and the prejudice caused to our client and all parties to these appeals by such a delay'.
29. The Committee was concerned that the National Trust had not provided any indication of why the report had not been prepared prior to Mr Turnbull's departure overseas or why another individual with suitable expertise could not have been engaged. It was concerned about possible prejudice to other parties of late receipt of such material. For these reasons the Committee decided that the application to lodge such late evidence should be rejected.

Evidence of Mr Keith Linard

30. A witness statement by Mr Keith Linard was included in the materials circulated by Maddocks Lawyers on behalf of VicRoads on 20 April 2011. It subsequently came to the attention of the Heritage Council that the final five pages of the witness statement had been omitted. Maddocks advised that the omission was the result of an administrative error. The Committee allowed the missing pages to be circulated.

Evidence of Mr Ross Holton

31. Though the Shire had circulated Mr Holton's evidence prior to the hearing he was not available to attend. As he was therefore not subject to cross-examination his evidence was not given the same weight as other witnesses who appeared at the hearing.

Circulation of Further Material

32. On the second day of the hearing, Mr Wren made reference to several emails and documents pertaining to traffic volumes, road grades and the capacities of Fiskin Street and Woolpack Road. Mr Wren offered to circulate the material and, in order to better understand the details of the proposal, the Committee agreed to accept the documents. The material was forwarded to the Heritage Council on 20 June 2011 and circulated to all parties on 21 June 2011.

33. On 11 May 2011, the Heritage Council received a request from Mr Adrian Rowell for a copy of the *Bacchus Marsh Eastern Interchange and Road Link Options Assessment Review* dated 7 October 2010 by SKM prepared for the Executive Director and referred to in his submission (**the SKM Report**). The Executive Director consented to the circulation of the report. Copies of the report were circulated to all those who had lodged submissions on 16 May 2011.
34. Neither the Executive Director nor either appellant had submitted a copy of the original permit application. On the first day of the hearing by Mr Wren submitted that the Committee should be provided with a copy of it including the documents lodged supporting it. All parties agreed and copies were provided to the Committee on the second day of the hearing.

Submission of Material after the Hearing

35. The Heritage Council has received a number of submissions following the conclusion of the hearing. They have not been considered for the purposes of this report.

ISSUES

36. The Committee has considered all matters set out in the relevant subsections in s73(1) of the Act (Attachment 4), including all submissions made under s69 of the Act. All written material is retained on the Heritage Council file.

THE EXTENT TO WHICH THE APPLICATION, IF APPROVED, WOULD AFFECT THE CULTURAL HERITAGE SIGNIFICANCE OF THE REGISTERED PLACE – S73(1)(a)

Why is the Avenue of Honour Significant?

37. The Statement of Significance (Attachment 1) provides that the Avenue of Honour is of historic, aesthetic and scientific (research and botanical) significance to the State of Victoria. In relation to the historical significance, the statement provides that:

The Bacchus Marsh Avenue of Honour is of historic significance as a World War I Avenue of Honour and as one of the earliest examples of this important form of memorial planting in Victoria. The Bacchus Marsh Avenue of Honour is significant for its representation of the phenomenon of commemorating individual sacrifice for the World War I effort through the planting and maintenance of a tree in an Avenue of Honour.

The Bacchus Marsh Avenue of Honour is of historic significance for the egalitarian treatment of the individuals commemorated by each tree within the Avenue. The name plaques associated with each tree are arranged in alphabetical order along the Avenue of Honour, keeping families together and symbolising the idea that each individual's contribution to the war effort was equally important, regardless of rank.

38. In relation to the aesthetic significance, the statement provides:

The Bacchus Marsh Avenue of Honour is aesthetically significant for the dramatic, continuous and unbroken cathedral-like arching of the canopy, making it one of the most distinctive elm avenues in Victoria. The trees form a visually impressive colonnade effect in all seasons. The regular spacing and pairing of trees on either side of the road is a strong design element reflecting the dual purposes of

commemoration and amenity enhancement. These design elements contribute to the Avenue of Honour being a cultural landmark at entrance of Bacchus Marsh.

39. In relation to the scientific (research and botanical) significance, the statement notes that the Avenue is significant:

...for its potential to tell us about how Victorians dealt with the effects of war, and as an increasingly rare elm avenue due to the decimation of elms through Dutch elm disease in Europe and North America.

Submissions

Effect of the Works on the Significance of the Place

The Executive Director

40. Mr Hawker for the Executive Director submitted that the proposed works would adversely affect the cultural heritage significance of the Avenue of Honour to such an extent that a permit should be refused. In relation to the historical significance, Mr Hawker observed that the Avenue of Honour is one of the earliest Avenues planted in Victoria and that the individuals commemorated by each tree are arranged in alphabetical order, keeping family members together and removing notions of social or military hierarchy. The egalitarian nature of the memorial was intended to act as a reminder of the universal nature of the loss suffered.
41. It was Mr Hawker's submission that the disruption of this pattern would compromise the historical significance of the place by severing the line of trees and the connection between the various soldiers commemorated.
42. Mr Hawker further argued that the petition of over 1600 signatures which had been forwarded to the Hon John Brumby, the then Premier of Victoria, in response to the original permit application was evidence of the strong community connection to the place and its history.¹ In his oral submission, Mr Hawker implied that the proposed works had the capacity to weaken this link.
43. In relation to the aesthetic and scientific (research and botanical) significance of the place, Mr Hawker drew attention to the long and largely unbroken nature of the Avenue and the rarity of such an extended row of elm trees which 'form a continuous and unbroken cathedral-like arching of the canopy which makes it one of the most distinctive elm avenues in Victoria'.²

Shire of Moorabool

44. Mr Rantino submitted that the proposed works would not adversely affect the aesthetic and historical significance of the Avenue.

VicRoads

45. Mr Wren made submissions and relied upon the expert evidence of Ms Gray and Mr Patrick, and an audio-visual presentation by 3D Advanced Modelling. Mr Wren's submission was that the proposed works would not have an adverse impact on the cultural heritage significance of the Avenue of Honour.

¹ Executive Director, Submission to Heritage Council, p 2.

² Executive Director, Submission to Heritage Council, p 2.

46. In terms of the historic significance, VicRoads urged the Committee to take into account:
- (a) *the dedications of the 50 or so trees that have so far been replaced have been relocated without the historical significance of the Avenue being diminished;*
 - (b) *the dedications on the five trees to be removed will be, similarly, relocated to new trees albeit it on a slightly different alignment and the servicemen will continue to be honoured;*
 - (c) *the alphabetical order of the dedications will be maintained and remain legible;*
 - (d) *the relocation will have minimal impact on an understanding and appreciation of the alphabetical order and locational sequence of the trees. Families will still be kept together and each individual's contribution will still be regarded as equally important;*
 - (e) *the Avenue will retain its ability to demonstrate – both through the historical documentation in association with the place and its physical form and presentation – the key characteristics of WWI Avenues of Honour.*³
47. In relation to the aesthetic significance of the Avenue of Honour, VicRoads provided a detailed assessment of the visual impact of the proposed works. It argued that:
- (a) *Trees have a finite lifespan and will need to be replaced from time to time and accordingly, any assessment of impact needs to reflect a time frame commensurate with the anticipated life of the trees in question.*
 - (b) *Each replacement [of a tree] means a gap will be created in the existing alignment but such gap[s] will gradually recede as the new tree matures.*
 - (c) *The existing 3.3 km of elms contains approximately 50 sections with gaps in the planting due to tree replacement. Given that trees will need to be continuously replaced from time to time the Avenue will continue to experience gaps in its canopy.*
 - (d) *The continuous and unbroken cathedral-like arching of the canopy and the colonnade effect of the trees is a product of perspective i.e., the visual aesthetic is gained by an east-west lineal observation along the Avenue (and in any event, only in certain sections of the Avenue) in contrast to north-south observations which vary dependent upon the particular location of the viewer i.e., whether between two trees, adjacent [to] a newly planted tree or in front of name-plated trunk.*
 - (e) *The length of the Avenue of Honour is 2.9 km whilst the length of the elm grove is 3.3 km.*
 - (f) *The amended proposal would see three dedicated trees removed and replaced in slightly different locations on the north side of the Avenue and two on the south side.*
 - (g) *The impact of the relocation of the trees on the cathedral like arching and colonnade aesthetic will only be observed when the viewer is almost upon the intersection.*
 - (h) *As the relocated trees age, their canopy will envelope the gap, and over time, reduce it to a negligible level.*

³ VicRoads, Submission in Reply to the Heritage Council, p 4.

- (i) *In terms of the visual aesthetic, the experience is created over the entire 3.3km (including the 2.9km of the Avenue) and at 60kph would take 3 minutes and 18 seconds to drive. It would take a few seconds to traverse the Woolpack Road North intersection (recognising that Woolpack Road South already exists) and recognising that the impact of the intersection is on a north-south axis, not an east-west axis.*⁴

Evidence of Ms Kate Gray

48. In relation to historic significance, Ms Gray gave evidence that the significance of the Avenue would not be unduly compromised by the proposed works. Specifically, she noted that ‘In terms of the historical significance of the place... the replacement of trees over time is not considered to in any sense negate either the broader historical associations of the place or the associations with the individual servicemen, nor does it diminish the historical significance of the place as a whole’.⁵ Ms Gray noted that in 1951 the theft of a large number of the name plates meant that not all the names had been retained. Ms Gray maintained that, the minor disruption to the sequence caused by the introduction of a small number of additional trees would not damage the historical significance of the place.
49. In relation to the visual (aesthetic) impact Ms Gray noted that the Avenue contained localised gaps and that one section of the road had also been re-aligned. In her submission she stated:
- ...while the avenue is largely intact, it has undergone a number of changes. Aerial photographs show changes to the Avenue over time, including the removal in the order of eight or so mature trees to the north side of the Avenue (where the road kinks east of Woolpack Road) in the 1960s and their subsequent replanting in the early 1970s. The reason for these tree removals has not been confirmed; however there appears to have been a realignment and widening of the road in this location. A similar situation is evident west of the Lerderderg River (relatively close to the township) where there is a series of relatively young tress specimens on the south side of the road and the road itself appears to have been widened and realigned as it curves.*⁶
50. In addition, Ms Gray noted that the Shire of Moorabool has advised that since 2003 it has replaced 33 trees within the Avenue and that it had recently received permission to replace another eight. She acknowledged that the existing proposal would have an impact upon the significance of the place but maintained that ‘...it is considered that this impact will be limited when considered in the context of the place as a whole’.⁷ Ms Gray went further, noting that the replacement of the trees would play an important part in preserving the Avenue: ‘the replacement is a process that has substantial implications for the presentation and aesthetic qualities of the Avenue as a whole, particularly in the short to medium term’.⁸
51. Ms Gray suggested that an amendment be made to the plans. She suggested that the proposed new tree south of replacement tree N162 should be deleted. She also suggested that the light on the central island be deleted and replaced with lights at the perimeter of the intersection (which was addressed in the amended plans). She suggested that the tree next to tree 164 be moved closer to tree 164. This can be dealt with by a condition on any permit.

⁴ VicRoads, Submission in Reply, pp 2-3.

⁵ Statement by Kate Gray with respect to an appeal against a Refusal to Grant a Permit, p 10.

⁶ Statement by Kate Gray, p 17.

⁷ Statement by Kate Gray, p 19.

⁸ Statement by Kate Gray, p 10.

Evidence – Advanced 3D Modelling

52. The Committee was shown some 3D modelling of the proposed works prepared by Advanced 3D Modelling, though the author was not called to give evidence. The modelling showed the impact of the proposed works, including the trees proposed to be planted, their appearance at planting, after 5 years, after 10 years and after 20 years. Mr Wren used the modelling to argue that the proposed works would only affect one part of the Avenue and that the impact of the proposal would be localised. A photomontage of the Avenue if the works were completed was provided.

Evidence of Mr John Patrick

53. Mr Patrick provided expert evidence as to the condition of the trees it is proposed to remove.
54. Mr Patrick had reviewed a series of studies that have been conducted in relation to the Avenue in recent times. The most significant of these is a report from April 2010 prepared by Homewood Consulting being *An Assessment of twelve elms along the Bacchus Marsh Avenue of Honour*. In his assessment, Mr Patrick focused upon the five mature trees that are to be removed and noted that a tomographical analysis of each tree indicated that:

...the trees proposed to be removed are not in an advanced state of decline, however they do contain preliminary columns of rot that will develop to weaken the tree and ultimately lead to its collapse. These rot areas generally result from past vehicle impact points.⁹

55. Mr Patrick estimated that the mature trees identified above have a projected life span of approximately 20 years, based upon:
- (a) *The presence of large wounds that reveal extensive areas of trunk decay. This is supported in general by evidence from Tomograph analysis which shows that there is very limited healthy tissue within many trunks.*
 - (b) *The limb loss that has clearly occurred to a number of trees and the evidence that this is visible in the form of scars at various points on trunks. Loss of limbs and branch debris is of such significance that the Avenue was closed to through traffic during strong winds on five occasions in 2010.*
 - (c) *The form of the trees which, because of their extensive vertical growth form tends towards a twisting of branches when exposed to winds. This tends to lead to vertical splits through the trunks of mature trees, and, because of the extent of internal rot which forms large columns within the tree, this leads to splitting of the trunk with impending collapse of the tree; and,*
 - (d) *The inevitable impact of tree removal on remaining trees. The Homewood Consulting report discusses the effects of protection provided to adjacent trees by the presence of other trees. If you like, each tree acts as a windbreak to the next. Removal of mature specimens removes this windbreak and exposes neighbouring trees to wind thrusts not previously experienced and for which the tree has not developed a mechanical structure to tolerate. Termed “windthrow”, the effects of this can be devastating especially in the context of a tree of the form of the Elms with their extended vertical branches. The effect of this compounds. The more trees are removed, the greater the risk becomes and, the fact that trees will be removed*

⁹ Statement by John Patrick, p 7.

*and replaced steadily over the next 20 years or so leads me to believe that most of the existing mature Avenue trees will need to be replaced in this time.*¹⁰

56. Mr Patrick also noted that trees have been replaced due to the realignment of the road and the creation of vehicular crossovers, signage and parking, all of which he submits ‘...detracts from the qualities of the Avenue’.¹¹ As a result, he maintained that the impact of the proposed works would be relatively localised. His assessment of the impact of the proposed works was as follows:

...the impact of the roundabout is quite limited. While it is visible from 180/190 metres as an element of the Avenue this is scarcely intrusive in one’s reading of the Avenue as a continuous landscape element. Clearly there will be a modification to one’s experience of light and shade in the Avenue but from this distance I do not believe the impact will be greatly different from one’s experience in other parts of the Avenue where tree replacement or a widening of the planting has occurred.

*From a closer distance, that is 70/80 metres, a similar observation can be made, tree removals appear to have no greater effect than has occurred when recent tree replacements have been made, the sense of continuity of the Avenue is generally maintained as is visual cohesion of the tree canopies.*¹²

57. Mr Patrick concluded that

*It is my opinion that the removal of five elm trees from the Bacchus Marsh Avenue of Honour and the construction of a roundabout as proposed as an extension to Woolpack Road is acceptable in aesthetic terms within the Heritage Registered Bacchus Marsh Avenue of Honour.*¹³

58. Mr Patrick suggested that the removal of heavy traffic from the greater part of the Avenue and the resulting reduction in damage to the trees from parking and vehicle strikes will improve the health of the majority of the trees in the Avenue.¹⁴

The National Trust of Australia (Victoria)

59. The National Trust argued that the proposed works would adversely impact both the historical and aesthetic significance of the Avenue. In relation to the historical significance, the Trust argued that its significance was diminished if the evidence of the associations between particular trees and servicemen is lost and that the ‘...significance is greatest where the individual dedications and uninterrupted alphabetical order survives in situ’.¹⁵ The Trust maintained that the addition of undedicated trees (as proposed in the amended plans) would result in the clear intention of the original planting being forgotten.
60. The National Trust noted the importance of the Avenue for commemorating individual sacrifice and the egalitarian treatment of individuals with name plaques associated with each tree. The Trust argued that the insertion of additional undedicated trees means that these significant elements will be seriously compromised. The Trust maintained that the impact would be significant and would compromise the cultural heritage values of the place.
61. In relation to the aesthetic significance of the place the National Trust considered that the impact was not of localised and limited scale and argued that ‘...realignment of trees or the

10 Statement by John Patrick, April 2011, p 7.

11 Statement by John Patrick, April 2011, p 5.

12 Statement by John Patrick, April 2011, p 11.

13 Statement by John Patrick, April 2011, p 12.

14 Statement by John Patrick, April 2011, p 12.

15 National Trust of Australia (Vic) Submission to the Heritage Council, p 3.

removal of any particular tree or trees, other than for reasons of senescence or disease will compromise the “unbroken arching of the canopy”¹⁶

62. The Trust argued that the effect of ‘windthrow’ created by the removal of trees will potentially have a devastating effect on the trees in the vicinity of those removed to construct the roundabout. It concluded that if the proposed works go ahead, the significance of the place as detailed in the statement of significance will be compromised. In particular, the Trust argued that the ‘continuous, impressive visual link...characterised by overarching canopies’ will no longer exist and the Avenue will no longer possess a ‘dramatic, continuous and unbroken cathedral-like arching of the canopy...forming a visually impressive colonnade in all seasons’.¹⁷
63. The Trust relied on the evidence of Dr Greg Moore whose view is that the Avenue of elms is of significance nationally and internationally.

The Australian Garden History Society (AGHS)

64. The AGHS submitted that the proposed works would adversely impact the historical and aesthetic significance of the place.
65. The AGHS submitted that ‘the works would desecrate commemorative values of the place and diminish its historic and social significance as a memorial to those who enlisted in World War I...the tangible involvement of ordinary people in commemorating soldiers who enlisted to serve their country at war would be in part set at naught’.¹⁸
66. The AGHS argued that the proposed works would ‘forever change the Avenue’. They argued that the removal of five trees, as required by the proposal would have the effect of removing ‘the continuous and unbroken cathedral-like arching of the canopy which makes it one of the most distinctive elm avenues in Victoria’.¹⁹
67. The AGHS drew attention to, Ms Gray’s acknowledgement that ‘siting of the new trees will be such that the change is discernable and it will be an interruption both to the overarching canopy and to the formal paired arrangement of the trees’. The AGHS argued that the ‘description of the impact as modest cannot be sustained’, particularly in light of its impact upon the linear form of the Avenue and its resulting impact upon the heritage place.²⁰ The AGHS concluded that:

*There are two key features of the Avenue of Honour, first that it is an avenue, and secondly that it honours the servicemen memorialised in it. The proposed works would for ever change the avenue, in that they insert a roundabout of an alien character one third of the way along it, and introduce a cross road bisecting the avenue. The trees to be removed have honoured their respective servicemen for almost 90 years and should continue to do so. To relocate the commemorative name-plates to replacement elms which would no longer be part of the avenue is an unhistorical token.*²¹

Avenue Preservation Group (APG)

68. The APG submitted that the proposal will adversely impact upon the historical and aesthetic significance of the Avenue of Honour. The APG submitted that the proposal will

16 National Trust, Submission to the Heritage Council, p 2.

17 National Trust, Submission in Reply, p 11.

18 Australian Garden History Society, Submission to Heritage Council, p 3.

19 AGHS, Submission in Reply, p 3.

20 AGHS, Submission in Reply, p 2.

21 AGHS, Submission in Reply, p 3.

‘...substantially affect the sense of local history for the community. Several children of the Great War diggers commemorated in the Avenue remain living in the area’.²²

69. In relation to the aesthetic significance of the place, the APG argued that the arching over-canopy of the trees will be lost and that, far from being dying or diseased, the trees have a life span of 20-40 years and are ‘healthy and thriving 92 year old elms in a world where a 50-year-old healthy elm is a rarity’.²³

Other Submitters – against the proposal

70. A number of other parties also lodged submissions to the hearing. These included: Mr Peter and Ms Maxine Lawford, Dr Damien Strangio, Ms Alison Strangio, Mr Adrian Rowell, Friends of the Elms, Ms Belinda Dellios, Ms Christine Bronchinetti and Ms Loris Hine.
71. In addition the Committee has considered submissions lodged in relation to the original permit application. In that instance specific submissions were received from Dr Damien Strangio, Mr Jamie Jordan, Mr Martin Ball, Ms Leanne Fitzsimons, Ms Christine Bronchinetti, Ms Marion Ingram, Mr Ian Wren et al, Ms Alison Strangio, the National Trust of Australia (Victoria), Avenue Preservation Group, Mr John Dwyer, Ms Christine Bronchinetti, Bacchus Marsh and District Garden Club, Mr Adrian Rowell, Ms Lynne Percy, Mr Stuart Percy, Mr Jon Durham, Ms Tessa Dickie, Ms Margot Dickie, Middle Grevillea – St Bernard’s Parish Primary School, Mr Chris Jackson, Ms Kay Dench, Mr David Miller, Ms Claire Miller, Mr Graham Hooper, Didyabringyarodalong Angling Club, Australian Garden History Society, Ms Belinda Dellios, Ms Janie Garner, Mr Kon Kesoglidis, Mr Peter and Ms Maxine Lawford, ‘Save the Avenue Committee’, Western Highway Action Committee, the RSL and Mr Digby Thackeray as well as a 1600 strong petition addressed to the then Premier, John Brumby.
72. Many of these submissions were about the adverse impact upon the historical and aesthetic significance of the Avenue of Honour of the proposed works. The Committee has identified several of the major themes running through the submissions; a summary is provided below.

Historical Significance

73. There were many submissions that the proposed works will have an adverse impact on the historical significance of the Avenue of Honour.
74. The historical significance of the Avenue to the town was noted. In his letter in relation to the original permit application, Mr Jamie Jordan noted that:

*Planted on August 10 1918, one thousand people witnessed the small beginning of what, today, is a monumental memorial to the service people of Bacchus Marsh and the surrounding district. In all, two hundred and thirty two trees were planted. No preference was given to rank or contribution to the war itself, significant in itself, as it represents the humanity of the group of people, rather than the deeds of the individual. Significantly the majority of the cost involved in establishing the Avenue of Honour was provided by the local community.*²⁴

75. Dr Damien Strangio noted that:

The Avenue of Honour is also an unsurpassed living war memorial, planted by the community to represent two columns of diggers standing together along the entry to Bacchus Marsh. For almost one hundred years they have stood together, united as

22 Avenue Preservation Group, Submission to Heritage Council, p 3

23 APG, Submission to Heritage Council, p 3.

24 Jamie Jordan, Submission to Heritage Victoria in relation to Permit Application P15769.

*they were in their battles in the Great War. Now we are being told to push them apart, to remove their unity, divide their columns – something that was never achieved in their struggles in World War One.*²⁵

76. The Friends of the Elms commented that:

*It is absolute vandalism for the Victorian Government to be contemplating bisecting the Bacchus Marsh Avenue of Honour by installing a roundabout for trucks through the middle of the magnificent Avenue of elms, planted to honour the memory of those who served in World War 1 and those who gave their lives from the Bacchus Marsh area.*²⁶

77. The impact of the proposed works upon the significance of the Avenue as a war memorial was also raised by Ms Christine Bronchinetti, who stated that:

*Our iconic Avenue is something to admire, no one else around the world has a living memorial of Elm trees to their soldiers that is 3.3ks long with an unbroken canopy. Our Avenue is history, heritage & beauty for all ages, religions and races to appreciate. What a sad world this would be if the Turks and French are the only ones who preserve historical [sic] significant Australian war sites and memorials.*²⁷

Aesthetic Significance

78. Many of the submissions were that the proposed works will have an adverse impact on the aesthetic significance of the Avenue. For example, the Friends of the Elms argued:

*The Bacchus Marsh Avenue is considered by many to be the finest avenue of Dutch Elms in the world. The experience of walking or driving along this 3.3 km Avenue, with 312 huge majestic elms is a memory most people retain of Bacchus Marsh. The golden tunnel in autumn and the cool green shades of summer make a wonderful contrast to the majestic cathedral like structure of the branches in winter.*²⁸

79. Mr Adrian Rowell said that:

*The cultural landmark that is the Avenue of Honour in Bacchus Marsh will be severely impacted, even by the downsized Option 2 redesign, as it both cuts into “the visually impressive colonnade effect in all seasons” and marginalises the entire road as an entrance to Bacchus Marsh.*²⁹

Other Submitters – in favour of the proposal

80. There were a small number of submissions from community members that were supportive of the proposed works. In relation to the historical significance of the place, Mr Graham Hooper saw the proposal as an opportunity to re-visit the conflicts commemorated by the Avenue and argued that the proposal ‘provides for a progressive renewal of the Avenue and a new memorial avenue either side of the extension for those lost in later conflicts’.³⁰
81. Mr Peter Lawford argued that the proposed works had the capacity to improve the cultural heritage significance of the place.

25 Dr Damian Strangio, Submission to the Heritage Council.

26 Friends of the Elms, Submission to the Heritage Council.

27 Christine Bronchinetti, Submission to the Heritage Council.

28 Friends of the Elms, Submission to the Heritage Council.

29 Adrian Rowell, Submission to the Heritage Council.

30 Graham Hooper, Submission to Heritage Victoria in relation to Permit Application P15769.

*Two hundred and eighty-one (281) individuals will still be commemorated within the Avenue and the positioning will still be paired and arranged alphabetically. The new design [detailed in the amended plans] has lessened the gap in the canopy, making it no more obvious than any of the gaps which already exist.*³¹

82. It was argued by a number of those in support that the works would improve the significance of the heritage place by reducing the traffic volumes along the Avenue of Honour.

Discussion and Reasons

To what extent will the proposed works result in an adverse effect upon the cultural heritage significance of the Avenue of Honour?

83. The Committee must consider whether the proposed works will have an impact upon the cultural heritage significance of the registered place to an extent that warrants refusal of the permit sought.
84. The matter was considered in some detail in the decision of the Heritage Council in relation to a proposal for works at the Hotel Windsor (H0764). In that matter the Permits Committee concluded:

*The Committee considers that the starting point for an assessment is the effect of a proposal on the cultural heritage significance of the registered place. In undertaking that assessment the task should be approached with no preconceived notion that there should be no effect on cultural heritage significance. Rather, the question is if a proposal will have an effect upon the cultural heritage significance of a place whether that effect upon the cultural heritage significance is reasonable and acceptable. Secondly, if it is established that a proposal would have an adverse effect upon the cultural heritage significance of a registered place, consideration must be given to whether there are other factors which outweigh or balance any adverse impacts on cultural heritage significance.*³²

The majority view

85. The Committee does not believe that the proposed removal of five trees will have a significant impact upon the historical value of the place. The Avenue will remain one of the longest and oldest in Victoria; it will continue to act as a memorial to the sacrifice of those who served in World War I. While there will be a minor disruption to the order of the names, the vast majority will not be affected, and the family groupings will remain. The proposal only involves five out of 281 trees, in a context where 33 trees have been replanted since 2003 and trees will continue to need replacing.
86. The Avenue of Honour is an impressive visual spectacle. Clearly the removal of trees from the Avenue and the construction of a roundabout will have an impact. However, it is the task of the Committee to consider the extent of this impact within the context of the whole place. In this regard, the graphic display prepared by 3D Advanced Modelling was helpful. What it indicated was that the impact of the proposed roundabout would be relatively localised. The images show that even from 70 or 80 metres, the roundabout is modest initially, and reduces significantly with the gradual growth of the trees. After 15 years the trees are projected by John Patrick to be approximately 18 metres in height. There was some dispute about the rate at which the trees would grow, but the proposition remains that they will, over time, mitigate

³¹ Peter and Maxine Lawford, Submission to Heritage Council.

³² HotelWindsor Permit Appeal Decision (P15781), 8 November 2010, p 23, paragraph 118.

the effect of the proposed works. The ‘golden tunnel in autumn and the cool green shades of summer [which] make a wonderful contrast to the majestic cathedral like structure of the branches in winter’³³ as described in the submission of the Friends of the Elms, will be largely retained.

87. The proposed intersection will only be visible for a comparatively short portion of the 2.9 kilometre registered portion of the Avenue. Leaving aside arguments about exactly how many years it could be anticipated that the trees will survive, it seems clear that at some point in the next two to three decades (and possibly a lot sooner) many of the mature elm trees would need to be replaced in any case. When the trees are replaced, there will be a visual impact upon the Avenue of Honour.
88. Another issue from an aesthetic perspective is the slight realignment of the Avenue and the construction of the roundabout. As Ms Gray has observed, the re-alignment is minor and is significantly smaller than the realignment undertaken in the c1960s when the road was straightened. The amended plans have also seen a reduction in the size and scale of the roundabout, which is now relatively modest.
89. We are not convinced that the additional new signage will detract from the visual impressiveness of the Avenue, as has been suggested. A large number of signs already exist along the Avenue of Honour; there are crossovers for access to driveways, road signs and signs promoting businesses. In the Committee’s view the addition of roundabout signage and the construction of the roundabout will have only a limited localised impact.
90. We consider that the proposed works will not have an adverse impact on the aesthetic significance of the Avenue to an extent to warrant refusal of a permit. The aesthetic impact will be minimal. The proposed works involve the removal and replacement of five mature elm trees. The proposed works will actually see a net increase in the number of elm trees, and evidence was presented that the decrease in traffic along part of the Avenue may result in a reduction in the rate of ‘car strikes’ and, thus the damage to the Avenue’s trees.
91. The Committee also considers that the works will not adversely affect the scientific significance of the Avenue of Honour. The Avenue as a whole will remain.

The minority view

92. The significance of the place is attached to the order of the trees as they currently stand. Any disruption to the order of the trees will necessarily compromise the cultural heritage significance of the place as identified in the Statement of Significance.
93. Further, the introduction of a major intersection and roundabout breaks and the removal of the trees diminishes the importance of the memorial and will, in my view, have a negative impact upon the historical significance of the Avenue of Honour.
94. The Statement of Significance makes reference to the ‘continuous’ and ‘unbroken’ character of the canopy. It is this characteristic which distinguishes the Avenue of Honour from other smaller and less aesthetically significant avenues of honour. It has been argued that, as a result of existing gaps in the trees, varying in size, and existing crossover and signage, the proposed construction of the roundabout and crossroads represents a relatively minor disturbance.
95. However, there is a considerable difference between the existing gaps and signage and the scale of the proposed works and the construction of a by-pass that will be used to divert vehicles (many of them heavy vehicles) across the Avenue of Honour involving the

³³ Friends of the Elms, Submission to the Heritage Council.

construction of a roundabout in the centre of the Avenue. As a result, in my view, the proposed works will have a significant impact upon the aesthetic significance of the Avenue.

REASONABLE USE OF THE PLACE - S73(1)(b)

96. S73(1)(b) of the Act requires the Committee to consider:

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 or object.

97. As was noted in the decision of the Victorian Civil and Administrative Tribunal in *Staged Developments Australia Pty Ltd v Executive Director of Heritage Victoria*, this is a ground for granting a permit when it would otherwise have been declined.³⁴

Submissions

98. VicRoads made submissions that the reasonable use of the registered place is a consideration in favour of granting a permit; that is, a refusal to grant a permit would affect the reasonable use of the registered place. VicRoads' letter to the Executive Director dated 22 September 2010 in response to submissions lodged during advertising of the permit application notes the following:

The reasonable and preferred use of the road is as a local road which no longer carries freight traffic and is therefore safer...

The requirement for the Woolpack Road roundabout and extension arises due to current conflicting uses of the Bacchus Marsh Road. Whilst cultural heritage aspects of the Avenue of Honour can be enjoyed by traffic travelling along this route, Bacchus Marsh Road has increasingly become an alternative route for heavy vehicles and other commuter traffic. The consequences of this conflict include an unacceptable accident rate, including fatalities, and major operational inefficiencies...

If the Executive Director were to refuse the Application and by implication any course of action which removed a related number of trees, the reasonable use of Bacchus Marsh Road will be significantly affected. In effect the existing 'unreasonable' and unsustainable use and its consequences will remain.³⁵

99. VicRoads argued that the works will ultimately lead to a more reasonable use of the Avenue of Honour than other options which, in the future, would further compromise the Avenue of Honour's heritage significance.

100. In response, the AGHS argued that the proposed works do not constitute reasonable use of the Avenue. They submitted that the proposal to divert trucks across the heritage place was not a reasonable use of the registered place and that other measures to reduce congestion and the risk of accidents could easily be introduced.

The users of the road are members of the public. Motorists, other road users such as cyclists and pedestrians, including residents of Bacchus Marsh, should all be able to use the road, subject only to measures necessary to conserve the Avenue of Honour. It is submitted that to conserve the Avenue as a heritage place, use of the road by heavy vehicles such as semi-trailers and B-Doubles should not be

34 [2001] VCAT 1447 paragraphs 119 & 122).

35 John Moylan (VicRoads), letter to Executive Director, 22 September 2011.

*permitted. Speed should be limited to 40kph. Reasonable use of the road includes being able to enjoy the experience of passing through the Avenue.*³⁶

Discussion and Reasons

The majority view

101. The majority do not consider that this consideration is relevant to their decision, as they have decided that a permit should be granted. This is only relevant if the Committee considers a refusal is warranted. The majority does note however if that this subsection is considered it relates to the reasonable or economic use of the Avenue of Honour. That is, the assessment is, if minded to refuse the application, to what extent will that affect the reasonable use of the registered Avenue. The majority believe that it cannot be said that a refusal will affect the reasonable use of the Avenue.

The minority view

102. It is anticipated that the VicRoads' proposal may reduce the volume of traffic using the road, but there is no proposal to stop it operating as a road. As no change in the use is proposed, it is difficult to see how the proposal if refused could unreasonably affect the reasonable use of the place. Without further information, I am not prepared to accept that there is a sufficiently strong case to justify the granting of a permit.

AFFECT ON STATUTORY DUTY OF PUBLIC AUTHORITY - S73(1)(e)

103. Pursuant to s73(1)(e) of the Act, the Heritage Council must consider:

If the applicant is a public authority, the extent to which the application, if refused, would unreasonably detrimentally affect the ability of the public authority to carry out a statutory duty specified in the application.

Submissions

Statutory Duty

104. As a preliminary matter, the Committee notes the arguments of Dr John Dwyer QC for the National Trust that as VicRoads had failed to identify the relevant duty in its initial application that they could not rely upon s73(1)(e).
105. There was argument as to what is the relevant 'statutory duty'. The term 'statutory duty' is not defined in the Act and there were submissions about what the statutory duty of VicRoads might be in this instance. In a letter from Mr John Moylan to the Executive Director dated 22 September 2010 it was submitted that:

The statutory responsibilities of a public authority are to be ascertained by reference to its 'functions' as set out in its enacting legislation and any other relevant legislation for which it is required to administer.

106. VicRoads urged the Committee to interpret 'statutory duty' in a broad sense and to consider the statutory duties of the organisation within the *Transport Act 1983*, the *Transport Integration Act 2010* and the *Road Management Act 2004*.
107. Mr Moylan concluded on this issue:

We consider that the role of VicRoads is to provide for and improve the safe and efficient movement of traffic through implementation of road safety strategies and

³⁶ AGHS, Submission in Reply, p.5.

*Government policy, use of transport in ways that are most beneficial to the community, upgrading infrastructure to enhance safety and efficiency and designing and constructing new infrastructure in line with policy objectives. VicRoads role has been broadened by the Transport Integration Act which requires development and implementation of policies and plans to improve road safety and efficiency in line with the 'transport system objectives' and emphasises the need for a sustainable transport system.*³⁷

108. The AGHS argued that Acts relied on by VicRoads set out functions and objects, which do not necessarily give rise to statutory duties. Even if the functions and objects are deemed to give rise to a statutory duty then they do this in the broadest sense, so for example if the Committee found that VicRoads had a duty to 'provide for safe and efficient transport' then the duty is to 'provide a transport outcome which satisfies VicRoads functions and objects, not to engage in any particular project'.³⁸

Affect on statutory duty

109. VicRoads argued that to provide for safety and efficiency, as its statutory duty, the proposed works were the preferred option for it to manage traffic in a manner that enhances the safe and efficient operation of roads.
110. An initial assessment of traffic management options, the *Bacchus Marsh Eastern Interchange and Road Link Options Assessment*, May 2010 (**the Assessment**), was submitted to the Executive Director as part of the original permit application. The assessment detailed different options (some with variations) that could allow for the implementation of an interchange and access road to the Bacchus Marsh township in light of the broader Western Highway – Anthonys Cutting Realignment Project that is currently taking place between Melton and Bacchus Marsh. In brief the options were:
- Option 1(a) Upgrade the interchange at the existing location;
 - Option 1(b) Place the new interchange immediately to the west of the existing interchange
 - Option 2 Extend Woolpack Road to the Western Highway
 - Option 3(a) Direct connection to Bacchus Marsh Road - approximately 400m to the east of Pearce Street.
 - Option 3(b) Connect the Western Highway to Bacchus Marsh Road via Pearce Street
 - Option 4 Upgrade of Halletts Way, involving the addition of easterly oriented ramps to the existing Halletts Way overpass bridge.
111. The Assessment conducted an analysis of each of these options in accordance with eight weighted criteria. The weighting of each criteria was as follows:
- (a) Transport Efficiency/Functionality 20%
 - (b) Road Safety 20%
 - (c) Land Use Planning 10%
 - (d) Social Impacts 10%
 - (e) European Cultural Heritage 10%

³⁷ John Moylan (VicRoads), letter to Executive Director, 22 September 2011.

³⁸ AGHS, Submission in Reply to the Heritage Council.

- (f) Aboriginal Cultural Heritage 10%
 - (g) Environmental Aspects 10%
 - (h) Cost 10%
112. Using this system, the VicRoads report found Option 2 (a version of which is the subject of this appeal) to be the most effective solution. VicRoads called Mr Chris Butler to support its position. Mr Butler referred to his written submissions in which he concluded a detailed comparison between Option 2 and Option 1(a) – the next preferred option in the *Bacchus Marsh Eastern Interchange and Road Link Options Assessment*. Mr Butler concluded that “I am of the opinion that Option 2 provides superior transport benefits over Option 1(a).”³⁹ Seven reasons for Option 2 being preferred were identified. These were
- (a) A reduction in traffic volumes on the existing Bacchus Marsh arterial road network, including heavy vehicles using the Grant Street-Gisborne Street corridor and the Avenue of Honour.
 - (b) Option 2 reduces the crash risk associated with the eastern end of the Avenue of Honour which is only expected to increase with growth in traffic volumes under Option 1(a).
 - (c) Option 2 results in a logical and time saving north-south regional bypass route of Bacchus Marsh which is located at an appropriate distance from the commercial and residential areas of the town to avoid any significant amenity impacts.
 - (d) Option 2 results in a more intuitive interchange than option 1(a), which is likely to result in a better safety and operational outcome over Option 1(a).
 - (e) Option 2 is located further from the steep grade towards Anthonys Cutting which will result in lower speed differentials for heavy vehicles Melbourne bound and hence a reduced crash rate is likely compared to Option 1.
 - (f) Under Option 1(a) it is most likely that an improved intersection treatment will be required at the Avenue of Honour/Woolpack Road intersection in the future to regulate traffic flows and increase road safety. Such a treatment would include turning lanes at a minimum which would most likely result in the removal of trees.
 - (g) VicRoads has provided a redesign of the roundabout that has resulted in the number of trees needing removal reduced down to five to minimise the heritage impact of the proposal.
113. In oral submissions Dr Dwyer QC questioned why the analysis conducted by Mr Butler had only considered Option 1(a) and Option 2 and why other simpler options (for example the construction of traffic lights, or placing a heavy vehicle ban on the Avenue) had not been considered.
114. VicRoads drew attention to traffic problems facing the Avenue of Honour and the way in which Option 2 would address those problems.
115. VicRoads argued that the construction of the Woolpack Road extension will ‘result in reduced freight traffic along the entire Avenue of Honour by providing a north-south connection to the Western Highway’. The precise volume of the reduction was discussed in

³⁹ Cardno Grogan Richards, *Bacchus Marsh Eastern Interchange Options*, p 27.

the evidence of Mr Chris Butler who referred to Shire of Moorabool figures, which assumed a 75% reduction in existing freight traffic.⁴⁰

116. VicRoads indicated that the Avenue of Honour had been defined as an ‘accident blackspot’. It submitted that the refusal of the application would adversely impact on its duties to provide safe and efficient roads. VicRoads argued that this option also had minimal impacts on the registered place and there are no better alternatives which are realistic and viable that are safe and efficient. Therefore VicRoads submitted that refusal of the permit would unreasonably detrimentally affect its ability to carry out its duties.
117. The Shire supported VicRoads’ position that these works were the preferable option and are necessary to provide for the long term efficient and safe movement of road traffic. Mr Linard and Cr Griffin gave evidence to support this.
118. Mr Linard commented that the percentage of commercial vehicles involved in accidents along the Avenue of Honour is 9%, being more than double the percentage of commercial vehicles involved in accidents elsewhere in Bacchus Marsh.⁴¹ When comparing the Avenue of Honour to other areas, Mr Linard noted that on an Australia-wide basis there is a substantially greater risk of a casualty occurring on the Avenue of Honour than on the other roads surveyed. Both VicRoads and the Shire argued that the proposed works would reduce the casualty rate.
119. While there was general acceptance among the parties that the proposal would reduce traffic and congestion, there was also debate about the level of the reduction that would be occasioned. Mr Cook argued that many of the vehicles for which the proposed road was to be built needed to move east-west rather than north-south and the construction of a north-south extension of Woolpack Road would be of little assistance in this regard.
120. There were also submissions about whether there were other alternative proposals available to VicRoads that would be equally successful in reducing traffic levels and not compromise the heritage values of the Avenue. Some submitters maintained that the reduction in traffic could be achieved either through one of the options identified in the Assessment, another option that had not been investigated (for example the Strawberry Fields option put forward by Mr Thackeray which essentially involves the duplication of the Bacchus Marsh Road next to the Avenue of Honour), or simple road management. Dr Dwyer asked why trucks could not simply be prohibited from travelling along the Avenue of Honour.
121. The Executive Director submitted that a refusal would not detrimentally affect VicRoads’ ability to provide a safe and efficient road system. The SKM Report supported these submissions, to the extent that it showed that small changes in the variables used to select the preferred option could lead to the identification of a different preferred option. The report suggested that the option being pursued by VicRoads was not necessarily the most beneficial.
122. The Executive Director submitted that:

[VicRoad’s duties] ...include the provision of efficient and safe movement of road traffic, the improvement of road safety strategies and practices and the improvement of the State’s principal road network to facilitate vehicular movement of people and goods. The applicant has described other alternatives (albeit these are less preferred by the applicant) that provide similar road transport outcomes.

40 Cardno Grogan Richards, *Bacchus Marsh Eastern Interchange Options*, p 25.

41 Statement of Keith Linard [unnumbered page titled ‘Accident Rates and Traffic Safety’].

*In this case, the statutory duties of the applicant do not outweigh the need to protect the cultural heritage significance of the Avenue of Honour.*⁴²

Discussion and Reasons

The Committee's View

123. In relation to Dr Dwyer's argument that as the applicant had failed to identify the relevant duty in its initial application they could not rely upon s73(1)(e), the Committee does not share this view given the letter dated 6 May 2010 from VicRoads which formed part of the application and which referred to this issue. In any case the Committee could consider these considerations under s73(1)(f) or s73(1A)(b) of the Act.

The majority view

124. The majority does not consider that this consideration is relevant to its decision. As the majority considers that a permit should be granted, it is not necessary to consider the implications of a refusal to grant a permit. It does note however that it does not consider that a refusal would unreasonably affect the ability of VicRoads to carry out its statutory duties in terms of road management, as other options exist to provide safe and efficient roads to cater for the relevant traffic.

The minority view

125. Even if it is accepted that, as VicRoads suggests, its statutory duty is 'to provide for and improve the safe and efficient movement of traffic through implementation of road safety strategies' then while the proposed works might be one way of meeting those duties they cannot be considered the only way in which to meet those duties. The presence of other reasonable options (a number of which are identified in the Assessment) indicates that there are alternatives. Alternatively, there may be the opportunity for VicRoads to explore further options. In order to find that a permit should be issued pursuant to s73(1)(e) I would need to be convinced that there had been a detailed investigation of other available options. While I recognise that VicRoads has spent some time and effort in preparing the Assessment, I am not convinced that all options have been adequately explored.

OTHER RELEVANT MATTERS RELATING TO THE PROTECTION AND CONSERVATION OF THE PLACE – S73(1)(f)

126. S73(1)(f) provides that the Executive Director must also consider 'any matters relating to the protection and conservation of the place or object that the Executive Director considers relevant'. In the submissions lodged by VicRoads it was argued that pursuant to this section the Committee must consider 'social and economic effects' if the circumstances require. VicRoads submitted that 'issues concerning traffic efficiency, road safety and the like must be considered'.

Submissions

127. The AGHS noted that the 'issues concerning traffic efficiency, road safety and the like' relate to statutory duties and have already been considered in accordance with s73(1)(e). The AGHS submitted that it is inappropriate for the Committee to re-consider these matters.

⁴² Executive Director, Submission in Reply, p 3.

Discussion and Reasons

128. The Committee does not consider that there are any other issues not previously dealt with relating to the protection and conservation of the place that it needs to consider.

ANY OTHER RELEVANT MATTER – S73(1A)(b)

129. The Committee may consider any other relevant matters. It considers that there are no other relevant matters not already raised. VicRoads submitted that we must consider issues of traffic efficiency and road safety and the like. These issues have already been considered in the relevant context.

CONCLUSION

Conclusion of the majority

130. There will be an impact upon the cultural heritage significance of the Avenue of Honour by virtue of VicRoads' proposed works; however, the extent of this impact is minimal in the context of the place as a whole and in the context of an ever-changing landscape. The historic, aesthetic and scientific significance of the place as set out in the Statement of Significance will remain. The Avenue will remain as a war memorial, commemorating the service of individuals. It will retain its impressive visual spectacle as an avenue of elm trees. The proposed works will not adversely impact on this significance to an extent to warrant refusal of the permit sought.
131. We recommend that if a permit is granted that it be subject to the following conditions:
- (a) That prior to commencement of the works amended plans be submitted to the Executive Director for approval showing:
 - I. The proposed new tree south of replacement tree N162 deleted in accordance with the recommendation of Kate Gray of Lovell Chen and the tree next to tree N164 moved closer to tree N164;
 - (b) That prior to the commencement of the works the following be submitted to the Executive Director for approval:
 - I. a tree management plan for the duration of the works;
 - II. a Construction Management Plan for the works.
- All works must be undertaken in accordance with the approved plans.

Conclusion of the minority

132. The proposed works will have an unacceptable negative net impact upon the cultural heritage significance of the Avenue of Honour. I am not satisfied that the refusal of the permit will have an unreasonable impact upon the reasonable use of the place. I accept that VicRoads has statutory duties that involve the development and maintenance of roads and the provision of a safe and efficient road transport network. I do not, however, believe that the refusal of this particular proposal will compromise the ability of VicRoads to carry out its statutory duties, given the number of viable alternative proposals that have been shown to the Committee. I would recommend that the Minister refuse to grant the permit sought by VicRoads.

ATTACHMENT 1

Statement of Significance for the Avenue of Honour

What is significant?

The Bacchus Marsh Avenue of Honour is a combination of 281 Dutch elms (*Ulmus X hollandica*) and Huntington elms (*Ulmus X hollandica* 'Vegeta') planted in pairs approximately 20 metres apart. It is the second largest Avenue of Honour in Victoria and is largely intact.

The Avenue of Honour is a cultural landmark located on the eastern side of the Bacchus Marsh township and extends for approximately 2.9 km along Bacchus Marsh Road from Pearce Street in the west to the flag poles on either side of the road approximately 300 metres before the Lerderderg River. The dedicated Avenue of Honour sits within a longer avenue of elms and provides a continuous, impressive visual link between the town and the river. The Avenue of Honour is a key landscape feature of the district and is characterised by the curved road with the overarching canopies of the mature elms.

The Avenue of Honour is on the traditional land of the Wathaurong people.

The Avenue of Honour was planted in the afternoon of 10 August 1918 to commemorate locals who volunteered to serve in World War 1. The tree planting was a community effort attracting one thousand spectators, with workers from the Darley Firebrick Company and other volunteers digging the holes and erecting tree guards in readiness for the planting. After a bugle call 281 elms were simultaneously planted with each tree representing an individual volunteer soldier. In a display of egalitarianism, the name plaques associated with each tree were arranged in alphabetical order along the Avenue. This kept families together and symbolised the idea that each individual's contribution to the war effort was equally important.

Each tree was originally protected by timber guards with attached copper embossed name plaques mounted on a wooden block giving the soldier's name, rank and battalion details. As the guards collapsed and timber frames were removed, many of the name plaques were either lost or attached to the trees by the 1950s. In the early 1960s the Country Roads Board replanted some new trees after road realignment work and installed new green bevel-edged hardwood name plaques on white hardwood posts. In the late 1960s and 1970s missing name plaques were replaced with embossed aluminium name plaques on hardwood backing plaques which was likely to be the first systematic replacement of the name plaques. By the late 1980s cast aluminium name plaques were being attached to the trees. In the late 1990s some cast bronze name plaques were mounted on the trees. In 2009 the plaques were removed for restoration and remounted in 2010. The 84 remaining original plaques are in varying condition are held in storage at the Shire Offices.

How is it significant?

The Bacchus Marsh Avenue of Honour is of historical, aesthetic and scientific (research and botanical) significance to the State of Victoria.

Why is it significant?

The Bacchus Marsh Avenue of Honour is of historic significance as a World War 1 Avenue of Honour and as one of the earliest examples of this important form of memorial planting in Victoria. The Bacchus Marsh Avenue of Honour is significant for its representation of the phenomenon of commemorating individual sacrifice for the World War 1 effort through the planting and maintenance of a tree in an Avenue of Honour.

The Bacchus Marsh Avenue of Honour is of historic significance for the egalitarian treatment of the individuals commemorated by each tree within the Avenue. The name plaques associated with each tree are arranged in alphabetical order along the Avenue of Honour, keeping families together and symbolising the idea that each individual's contribution to the war effort was equally important, regardless of rank.

The Bacchus Marsh Avenue of Honour is aesthetically significant for the dramatic, continuous and unbroken cathedral-like arching of the canopy, making it one of the most distinctive elm avenues in Victoria. The trees form a visually impressive colonnade effect in all seasons. The regular spacing and pairing of trees on either side of the road is a strong design element reflecting the dual purposes of commemoration and amenity enhancement. These design elements contribute to the Avenue of Honour being a cultural landmark at entrance of Bacchus Marsh.

The Bacchus Marsh Avenue of Honour is of scientific (research and botanical) significance for its potential to tell us about how Victorians dealt with the effects of war, and as an increasingly rare elm avenue due to the decimation of elms through Dutch elm disease in Europe and North America.

While not of State-level social significance, the Bacchus Marsh Avenue of Honour is of high local social significance for its relationship with the community as a living memorial to those who enlisted in World War 1. The planting of trees was seen as a symbol of hope and a tangible way for local people to become involved in commemorating soldiers who enlisted to serve their country at war.

ATTACHMENT 2

Refusal of Permit, issued by Executive Director

NOTICE OF REFUSAL TO GRANT A PERMIT

HERITAGE ACT 1995



File No.	10/001444 [07 - 08]
Application Dated	5 May 2010
Applicant's Name	Mr John Moylan Roads Corporation [Trading as Vic Roads]
Applicant's Address	Level 1 2-8 Lake Street Caroline Springs Vic 3023
Heritage Register No.	H2238
Registered Category	Heritage Place
Name of Place/Object	AVENUE OF HONOUR
Location	BACCHUS MARSH ROAD BACCHUS MARSH

WHAT HAS BEEN REFUSED?

Construction of a new roundabout intersection, removal of trees and planting of replacement elms, relocation of commemorative name plates and associated landscaping works.

REASONS FOR REFUSAL:

1. The works will have an adverse impact on the aesthetic significance of the Avenue of Honour. The removal of nine (9) commemorative elm trees will remove the continuous and unbroken cathedral-like arching of the canopy which makes it one of the most distinctive elm avenues in Victoria. The trees form a visually impressive colonnade effect in all seasons. The regular spacing and pairing of trees on either side of the road is a strong design element reflecting the dual purposes of commemoration and amenity enhancement. These design elements contribute to the Avenue of Honour being a cultural landmark at the entrance to Bacchus Marsh, and would be significantly diminished if a permit was to be issued.
2. The removal of nine (9) commemorative elm trees will have an adverse impact on the historical significance of the Avenue of Honour. Two hundred and eighty-one (281) individuals are each commemorated by an individual tree within the Avenue and each tree is arranged in alphabetical order along the Avenue of Honour, keeping families together and symbolising the idea that each individual's contribution to the war effort was equally important, regardless of rank. One tree that is proposed for removal is dedicated to Lt Rupert V Moon who was awarded the Victoria Cross. Further, the form and open character of the roundabout will be experienced as a distinct gap and will contrast with the linear and enclosed nature of the Avenue of Honour.

3. Refusal of the proposed works do not unreasonably detrimentally affect the ability of VicRoads to fulfil its statutory duties; including the provision of efficient and safe movement of road traffic, the improvement of road safety strategies and practices and the improvement of the State's principal road network to facilitate vehicular movement of people and goods. There were other alternatives (albeit these are less preferred by the applicant) presented that provide similar road transport outcomes. In this case, the statutory duties of the applicant do not outweigh the need to protect the cultural heritage significance of the Avenue of Honour.

cc. Statutory Planner, Moorabool Shire Council

HERITAGE VICTORIA
PO BOX 2392 MELBOURNE, VIC 3001

Signed  Executive Director

Date 20 Dec 2010

ATTACHMENT 3

Statement Describing the Changes from the Previous Plans

STATEMENT DESCRIBING THE CHANGES FROM THE PREVIOUS PLANS

Overview

The amended plans show a revised concept for the proposed roundabout at the intersection of Bacchus Marsh Road (Avenue of Honour) and Woolpack Road. In summary, the revised plans show the proposed roundabout shifted approximately 25m to the west along the centerline of Bacchus Marsh Road, a reduction in the overall size of the roundabout and a series of associated changes to its design. When compared with the original application, the amended proposal would result in a reduction in the number of registered trees to be removed from the Avenue of Honour. The original application proposed the removal of up to nine trees (eight mature and one juvenile) while the amended proposal is for the removal of five trees (all mature).

The statement is in two parts.

List of Plans

This table lists the original and amended plans. The original plans submitted with this application are listed in the first column. The second column of the table lists the amended plans including revision numbers of revised plans and new drawings (where applicable). The third column provides comments and refers to the descriptive notes which follow the table (Description of Changes).

Description of Changes

Following the table all the amended plans are listed together with notes describing changes from the original application.



LIST OF PLANS

Original Application Plans	Amended Plans	Comment
SK-Z-006 Overall Scope Plan (Rev. A) Overall Scope Plan	SK-Z-006 Overall Scope Plan (Rev. A) Overall Scope Plan	No change
SK-Z-545 (Rev. A) Melton to Bacchus Marsh Development Plan Sheet 5	SK-Z-545 (Rev. B) Melton to Bacchus Marsh Development Plan Sheet 5	For a list of amendments refer to the descriptive notes below.
SK-W-031 (Rev. B) Woolpack Rd Roundabout Plan	Not included. This drawing has been replaced by four new drawings showing the amended design. Refer to: SK-Z-1272 (Rev. A) Bacchus Marsh Rd/Woolpack Rd Roundabout: Existing Conditions/Tree Removals SK-Z-1273 (Rev. A) Bacchus Marsh Rd/Woolpack Rd Roundabout: Proposed Works SK-Z-1274 (Rev. A) Bacchus Marsh Rd/Woolpack Rd Roundabout: Proposed Signage SK-Z-1271 (Rev. A) Bacchus Marsh Rd/Woolpack Rd Roundabout Typical Sections	New drawings. For a list of amendments from the original proposal refer to the descriptive notes below.
Woolpack Rd Roundabout Longsection (Rev. A) Woolpack Rd Roundabout Longsection.	Not included.	
SK-W-LS-109 (Rev. D) Proposed Woolpack Road Intersection Landscape Concept Plan	Not included.	Refer to SK-W-LS-110 (Rev. F)
SK-W-LS-110 (Rev. D) Proposed Avenue of Honour Intersection – Landscape Concept Plan – Option 1 – Double Row	SK-W-LS-110 (Rev. F) Proposed Avenue of Honour Intersection – Landscape Concept Plan – Option 1 – Double Row	For a list of amendments refer to the descriptive notes below.
SK-W-LS-113 (Rev. A) Proposed Avenue of Honour Intersection – Landscape Concept Plan	SK-W-LS-113 (Rev. D) Proposed Avenue of Honour Intersection – Landscape Concept Plan	For a list of amendments refer to the descriptive notes below.
SK-W-LS-116 (Rev. C) Proposed Avenue of Honour Intersection – Landscape Render	Not included.	
SK-W-LS-210 (Rev. B) Proposed Woolpack Road Interchange Sections	SK-W-LS-210 (Rev. C) Proposed Woolpack Road Interchange Sections	For a list of amendments refer to the descriptive notes below.

DESCRIPTION OF CHANGES

Drawing No. SK-Z-006 (Rev. A) Overall Scope Plan

No change has been made to this drawing.

Drawing No. SK-Z-545 (Rev. B) Melton to Bacchus Marsh Development Plan Sheet 5

1. The drawing is now Revision B.
2. The design has been changed south of chainage 25700 to the intersection with Bacchus Marsh Road. The design change shows the revised roundabout concept at the Bacchus Marsh Road/Woolpack Road intersection.
3. A proposed amendment to the ROW boundary on the western side, north of Bacchus Marsh Road to accommodate the revised roundabout design is shown.
4. Superfluous chainages at the interchange and at Bacchus Marsh Road have been removed.

Drawing No. SK-Z-1272 (Rev. A) Bacchus Marsh Rd/Woolpack Rd Roundabout: Existing Conditions/Tree Removals

1. This drawing shows existing conditions and the extent of the registered area.
2. The drawing shows the proposed tree removals and extent of demolition of the existing roadway.
3. The number of trees to be removed has been reduced from nine (eight mature, one juvenile) to five (all mature).

The amendments to proposed tree removals are tabulated below:

Tree No.	SK-W-1270 Rev. A (Amended design)	SK-W-031 Rev. B (Original design)
N157	To be removed.	While noted on drawing as 'further investigation required,' the tree was to be retained.
N159	To be removed.	To be removed.
N161	To be removed.	To be removed.
N163 (juvenile)	To be retained.	To be removed.
N165	To be retained.	To be removed.
N167	To be retained.	To be removed.
S160	To be removed.	To be removed.
S162	To be removed.	To be removed.
S164	To be retained.	To be removed.
S166	To be retained.	To be removed.
S168	To be retained.	While noted on drawing as 'further investigation required,' the tree was to be retained.
TOTAL TREE REMOVALS	5	9

Note that the unregistered tree P001 is also to be removed.

Drawing No. SK-Z-1273 Bacchus Marsh Rd/Woolpack Rd Roundabout Proposed Works (Rev. A).

This drawing shows the revised concept design for a roundabout at the intersection of Bacchus Marsh Road and Woolpack Road. The drawing scale is the same as that used for the previous Drawing No. SK-W-031.

The differences between the roundabout designs are:

1. The centre of the roundabout has been shifted approximately 25m to the west along the centreline of Bacchus Marsh Road.
2. The diameter of the central island has been reduced from 27.5m to 20m.
3. The splitter islands on Bacchus Marsh Road have been shortened by 3m on the west side and 1m on the east side of the roundabout.
4. The boundary of the registered area is shown.
5. The location of typical sections to show the kerb types and mountable concrete aprons proposed with the revised roundabout design have been added. These typical sections are shown on a new drawing, No. SK-Z-1271.
6. A proposed amendment to the ROW boundary on the western side, north of Bacchus Marsh Road to accommodate the revised roundabout design is shown.



7. Safety barriers (impact absorbing bollards) have been added to shield the tree (No. S158) in the south west corner of the roundabout.
8. A different arrangement of lighting is shown to suit the new roundabout design.
9. The number and location of replacement trees proposed has been amended to suit the new roundabout design.

Drawing No. SK-Z-1274 Bacchus Marsh Rd/Woolpack Rd Roundabout: Proposed Signage (Rev. A)

The arrangement and type of signage required for the proposed new intersection is shown.

Drawing No. SK-Z-1271 (Rev. A) – Bacchus Marsh Rd/Woolpack Rd Roundabout Typical Sections

This drawing shows typical sections of the approach to the roundabout (on Bacchus Marsh Road) and the central island and outer kerb. Refer to Drawing No. SK-Z-1273.

Drawing No. SK-W-LS-110 (Rev. F) – Proposed Avenue of Honour Intersection Landscape Concept Plan – Option 1 – Double Row

1. The drawing is now Revision F.
2. The roundabout position and design has been changed to that shown in Drawing No. SK-Z-1273 (Rev. A).
3. The number and location of replacement trees proposed has been amended to suit the new roundabout design.

Drawing No. SK-W-LS-113 (Rev. D) – Landscape Concept Plan

1. The drawing is now Revision D.
2. The roundabout position and design has been changed to that shown in Drawing No. SK-Z-1273 (Rev. A).
3. The number and location of replacement trees proposed has been amended to suit the new roundabout design.
4. The proposed location of replacement dedicated trees is shown.

Drawing No. SK-W-LS-210 (Rev. C) – Landscape Proposed Woolpack Road Interchange Sections

1. The drawing is now Revision C.
2. The length of the roundabout zone shown and no. of Avenue trees affected has been reduced to reflect the revised roundabout design.

ATTACHMENT 4

Section 73 matters to be considered in determining applications

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