

**FORMER HOFFMAN BRICKWORKS, 72 - 106 DAWSON STREET,  
BRUNSWICK**

RFI Response - P31711 17<sup>th</sup> July 2020 & 22<sup>nd</sup> July 2020

**In relation to Demolition of the Brick Pressing Shed (Buildings 5 and 6) and  
construction of a new building including an interpretation centre.**

*Victorian Heritage Register Number: H 0703 Date: 2 October, 2020*

Prepared by Sungrove Corporation Pty Ltd

## Decontamination issues

1. The Sampling and Analysis Quality Plan submitted in the application (Compass Environmental, 19 April 2020) provides recommendations to achieve decontamination of the project area under the premise that the buildings must and will be demolished as part of the site's redevelopment. In this framework, the report does not consider alternative methodologies to decontaminate the site whilst retaining the buildings in situ. This gap in assessment should be addressed and all decontamination options investigated to allow the retention of the buildings were they to be made structurally adequate prior to decontamination works commencing.

Please see attached Compass Environmental report dated 1 October 2020. As requested, this explores the various decontamination options that are generally available with respect to the removal of contaminated soil and assesses their suitability for this site. In addition, we have also provided a letter from Aecom prepared Todd Mitchell dated 30 September 2020, the environmental auditor appointed to manage the clean up process, which gives some further information as to his expectations for how the site can achieve Clean Up to the Extent Practicable (CUTEP).

These documents confirm the following:

- The soil and groundwater pollution is determined to be "high risk" pollution, having regard to a number of on-site and off-site receptors. This includes potential on-site and off-site vapour risk, impact to underground services and associated risks to human receptors, seepage of NAPL to adjacent building structures and continued adverse impact on the groundwater. These risks are not related to the nature of the buildings or uses above ground level, i.e. the structural integrity of Buildings 5 and 6.
- The environmental auditor's expectation is that Hoffman Brickworks Pty Ltd will present a Clean Up Plan (CUP) which removes all primary and secondary sources of pollution (i.e. both the source and all associated soil) and effectively remediates the impacted groundwater.
- There are a number of significant limitations associated with potential remediation methods. Again, these limitations are not associated with the status of Buildings 5 and 6, but are related to the nature and extent of the contamination (non-aqueous phase liquids, or NAPL, associated with the former use of the site as a brickworks). These are compounded by the type of soil that is found beneath the ground, which makes a number of alternative methods not feasible.
- As a result, the most effective option for removal of NAPL that is present within the upper soil profile in the fill material underlying the site would be excavation of the entire site to depths ranging as a minimum between 2 and 6 m below ground level.
- As is confirmed by the environmental auditor within the letter enclosed, given the practicability and the magnitude of both the NAPL at the site and the risks its poses, it is unlikely that a CUTEP and a Statement of Environmental Audit will be able to be achieved without excavation of NAPL

impacted soils beneath the site, including beneath the existing Buildings 5 and 6.

For completeness, Compass has also provided a brief assessment and comparison of this site (refer to report dated 1 October 2020) to the other sites mentioned by Heritage Victoria in our meeting on 24 July 2020, referred to as examples of where heritage buildings have been retained during a decontamination process.

Hoffman Brickworks is available to facilitate further discussions between Heritage Victoria and the environmental auditor if it would be of assistance.

**2. A draft copy of the Clean-Up Plan under preparation, required to be submitted to the Environmental Protection Agency (EPA) by 20 December 2020 under the Clean Up Notice issued 3 February 2020, must be provided for information**

We are not in a position to provide you with a draft CUP at this time, as it is yet to be prepared in any significant form. The ultimate proposal put to the environmental auditor in the CUP will depend on the outcome of further testing which is required pursuant to the approved Sampling Analysis and Quality Plan (SAQP) provided to Heritage Victoria with our original submission. We are unable to prepare the CUP until the requirements of the SAQP are satisfied.

The letter provided by the environmental auditor also details his expectations for the CUP, and expresses concern as to the delays caused by this process.

As noted above, we are willing to facilitate further discussions between Heritage Victoria and the environmental auditor if this would be of assistance.

**3. A detailed options assessment must be provided considering alternative re-uses to that proposed in the permit application for Building 5 (Brick Pressing Shed) and Building 6 (Engine House). This assessment should present what options are available to achieve a less-sensitive use of the site which may require a lesser level of remediation and enable the retention of the heritage buildings of primary and contributory significance.**

The critical element to satisfy the Clean Up Notice (CUN) will be remediation of groundwater impacts, and removal of sources of groundwater impacts to achieve CUTEP. CUTEP is not negotiable, and is not predicated on the building form or use of the site – either existing or proposed.

Both the Compass report and letter from the environmental auditor submitted with this RFI response confirm that the level of remediation required does not turn on the proposed future use of the site. It is triggered by the nature and extent of the contamination which currently exists, which was created by the former use of the site as a brickworks.

Contaminated soil must be removed due to the heavier chain petroleum hydrocarbons and several other contaminants with material prescribed waste as per EPA IWRG guidelines, as such needs to be disposed appropriately off-site to EPA licensed facilities. Large areas of the site are also impacted by perched water contaminated with product (to 6 m depth) which also requires removal.

The intended future use of the site would not impact the expectations for remediation. Further, as is noted in response to Question 1, the nature of the soils significantly limit the remediation methods available.

Notwithstanding this, the Heritage Impact Statement (**HIS**) prepared by Anthemion Consultancies which accompanies this response notes that Hoffman Brickworks will retain and re-use as much of the original building fabric as possible into the new building. As we have done successfully throughout both Kilns and the Pottery precinct. This, in addition to an expanded heritage interpretation centre (featuring six of the existing brick pressing machines), is expected to provide an improved outcome which allows the visitor to enjoy a better "read" of the former uses of the site.

### **Structural assessment**

**4. An updated structural assessment prepared by a qualified heritage engineer must be provided. The report must assess the structural condition of Buildings 5 and 6 in their current form and their ability to be made structurally sound to allow investigation and decontamination works to take place.**

**A previous structural assessment (Beauchamp Hogg Spano Consultants , May 2014) assessed the construction of the buildings to be of an excellent standard and that the fundamental structural fabric of the buildings was good and sound. A fire event in 2018 damaged the roof and structure of Building 5 to an extent. However, a structural assessment (Hawthorn Consulting Engineers, September 2018) since deemed the remediation of damaged structural members feasible and provided recommendations for suitable repair works.**

**In light of the previously documented structural adequacy of the buildings, the structural report required as part of this permit application should document the following issues:**

**a. An assessment of the structural condition and adequacy of the buildings in their current form**

As a preliminary comment, we note that the Beauchamp Hogg Spano Consultants (BHSC) scope was specific to current condition with respect to potential condemnation and did not give any consideration to an adaptive and future use. We also note that BHSC also concluded that:

*The challenges that soil contamination presents at the site are significant. The removal to significant depths over an extensive area under and around the buildings to address this contamination may not allow retention of the buildings.*

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As Heritage Victoria will be aware, Hawthorn Consulting Engineers (HCE) has been appointed to undertake a structural assessment of Building 5, Building 6 and Kiln 1 at the site pursuant to an Emergency Order issued by Moreland City Council (**Council**). These works are summarized as:

- Stage 1 – Make Safe Works relating to the Building 6 – Engine Shed, which have been completed.
- Stage 2 – Temporary strengthening and access works to allow structural inspections to be carried out of the Building 5 – Pressing Shed building, which have been completed. Structural advice will be prepared as part of Stage 2 regarding the structural Make Safe Rectification Works required to Building 5.
- Stage 3 – Make Safe Rectification Works (if possible) of the Building 5 – Pressing Shed building, as per the recommendations provided as part of the Stage 2 works.

As a result, we are unable to provide this updated information to Heritage Victoria at this time as it is still underway.

**b. An outline schedule of works required to achieve structural safety and enable safe internal access for investigation purposes (including decontamination investigations)**

*Structural safety works*

Please see enclosed the schedule of structural works completed required to allow HCE to undertake its assessment pursuant to Item (a) above. As Heritage Victoria will be aware, this has been prepared by Johns Lyng Make Safe Builders and has been approved by Council's Municipal Building Surveyor as satisfying its requirements.

*Decontamination investigations*

As you will be aware, Compass was able to conduct further soil investigations in accessible areas of Buildings 5 and 6 following completion of the structural safety works mandated by HCE (stages 1 and 2 above).

The tested fill material ranged in thickness between 0.7 and 1.4 m depth. All test pits were installed to a maximum depth of 2.5-3.0 m (maximum reach for excavator that could fit inside the buildings) in natural soil, with the exception of refusal on a subsurface drainage channel at 1.3 m depth.



The test pits revealed significant soil contamination which will require remediation pursuant to the CUN.

Further investigations contemplated by the SAQP cannot occur until the removal of the brick pressing equipment. The brick pressing machines must be removed as they are the point sources of contamination with investigations confirming significant contamination beneath this infrastructure, with oil sumps present. The equipment especially the base and subsurface is likely to be heavily impacted by petroleum hydrocarbons and free phase product.

After the removal of all primary sources of pollution (such as tanks and pits, or pollution sources within machines or equipment – such as petrol, oil, asbestos etc), the Auditor and EPA verified SAQP document requires 21 test pits (19 target and two grid) and 9 wells (30 locations) across the Buildings 5 and 6 area. The test pits are to be completed up to 3-4 m depth, but if contamination is identified (odours, staining, elevated PID readings) as expected then deeper test pits will be required, as vertical delineation of any contamination is necessary.

To complete these test pits with the buildings in-situ post removal of the brick pressing machines, we would need larger cuts in the concrete slabs (3.5x1.5 m) and approximately 70% of machinery cleared to allow appropriate access. Another issue is 8 test pits are required directly adjacent the site boundaries (ideally within 0.5 m). To complete these test pits and bulk out the contaminated material to 6.0 m depth would likely require a 15-17 tonne excavator (minimum) with a width of 2.8 m, height of 4.0-5.0 m, and length of 8.7 m. You would also need minimum 1.0 m clearance around the rig and access routes for OH&S.

The wells have to target to 16 m depth and use an air hammer through the rock, as such the smallest drilling rig would be a Geoprobe, image below:

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We will require a minimum of 7.0 m length clearance, 4.0 m width clearance and 4.5 - 5.0 m height clearance to drill the wells.

Excavation works will need to ensure that any material excavated is disposed off-site the same day, and that there is odour management on-site during these works to control odour impact to nearby properties. There will not be an option to stockpile material on-site or leave excavations open and exposed to ambient air without management, as this would pose not only an amenity issue (odours/dust), but also a health issue as the material is heavily impacted with volatiles and semi-volatiles which can be breathed in at considerable distances.

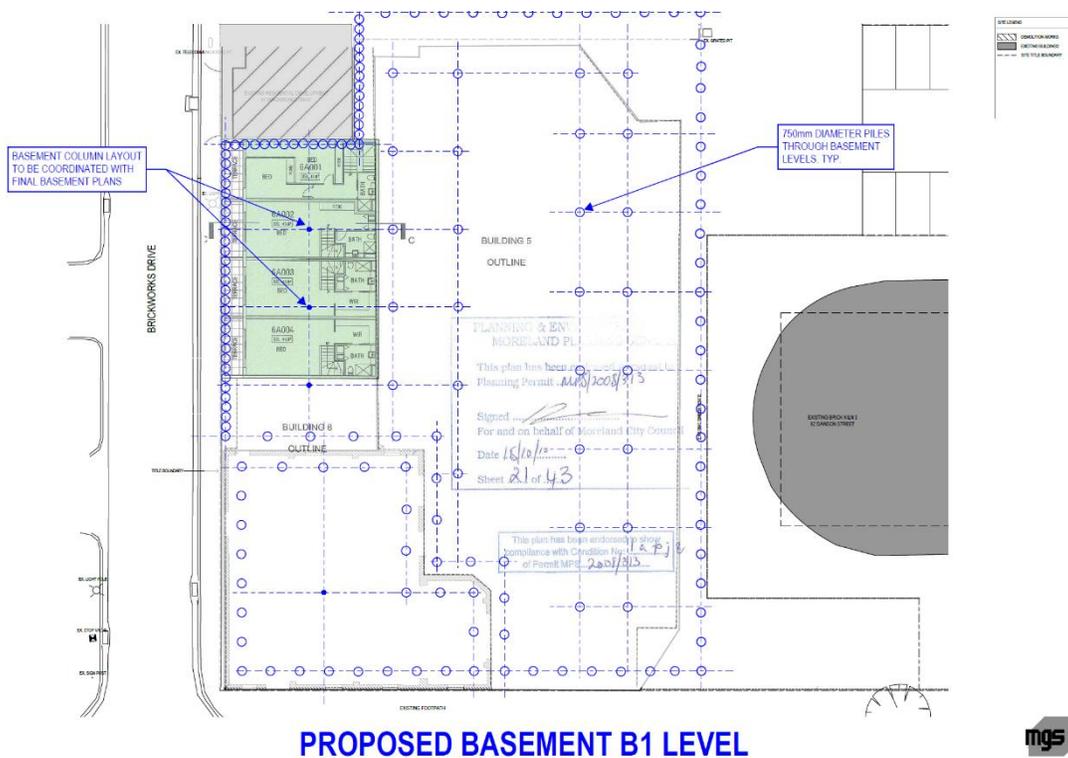
We look forward to engaging further with Heritage Victoria regarding these works.

- c. The ability of the building to be retained in situ whilst decontamination works take place, and recommendations on additional structural bracing or measures required to enable this**

Please see the attached report prepared by Irwin Consult dated 2 October 2020 which sets out a proposed methodology for retaining Buildings 5 and 6 during the decontamination of the site. Based on our proposed SAQP sequence of works (refer to following sketches) Irwin Consult have found that it is technically possible to retain elements of the existing primary structure (roof trusses, floor beams, columns, and walls) but almost all the roof sheeting, façade sheeting, and flooring will need to be removed.

The Irwin Consult report only considers an assumed satisfactory temporary condition of Buildings 5 and 6 structural members, i.e. retaining them as they currently are in place. Once the contaminated soil has been removed and the site either filled or a new suspended ground floor has been built over the excavation, the existing buildings will still require structural strengthening works to consider adaptive re-use and compliance with current Australian Standards. This is detailed in the report.

This structural assessment is further supported by a cost plan prepared by WT Partnership dated 1 October 2020 have provided a cost plan which captures the scope up to and including the basement being infilled, the new ground slab being poured and connecting the existing structure of Building 5 to the new ground slab. This cost plan does not include building a new superstructure frame for Buildings 5 and 6, and has assumed the temporary structural support to Building 5 and 6 will be left in place.



Please note that albeit difficult to both qualify, significant Occupational Health and Safety concerns remain with this strategy.

- d. An outline schedule of structural conservation works required to enable the adaptive re-use of the buildings, in particular of Building 5 as an interpretation centre, as per the original intent of the site's development plan.

***NB: In responding to the decontamination and structural assessment requirements above, it is essential that the appointed environmental consultant and structural engineer are aware of all parameters and requirements under this Request for Further Information, and that they engage with each other on how to best meet their respective objectives. These aspects of the project are intrinsically related and should not be investigated in isolation.***

At this stage, we are not able to determine the structural conservation works which may be required to enable adaptive re-use of the buildings. As noted in previous RFI responses, the various environmental assessment undertaken has indicated that excavation is expected to be the only feasible option for decontaminating the site pursuant to the CUN.

This is then further impacted by the extent of structural works and iterative nature tying in old structures with new, required to enable the retention of Buildings 5 and 6 through this process, as set out in the Irwin Consult material. We will provide further commentary in response to the attached New Structural Grid Overlay of this RFI response which deals with the reasonableness and economic viability of undertaking these works.

In relation to the interpretation centre proposed as part of this permit application, we refer to the following comparisons:

	Ground - internal (m2)	Ground - external (m2)	First (m2)	Second (m2)	Total
<b>2008 Endorsed scheme</b>	415	179	184		778
<b>2020 Proposal</b>	534	797	0	0	1331

Insofar as Buildings 5 and 6A are concerned, the original development contemplated in the late 1990's and approved by Permit No. 2008/313, was for a total of 28 apartments, 19 strata offices/commercial retail space at the ground floor together with a double-height interpretation area in which six brick pressing machines and associated flywheels, motors and the like, were to be retained inside the building and one outside the building at the north end;

We are of the view that the current proposal is consistent with the previous with Residential and Office uses and maintains the original intent of site's interpretation objectives but provides them in an expanded, improved and relevant fashion. This reflects the effluxion of time since the preparation of the original heritage interpretation response over 22 years ago, and also the previously unknown status of contamination immediately beneath the site.

The heritage interpretation not only exceeds its earlier submissions by 71% in area, but we believe will also be superior in terms of experience and human engagement. The revised HIS goes to these matters.

## Archaeological assessment

- 5. The project area is located within an archaeological place included in the Victorian Heritage Register, and within an archaeological site listed in the Victorian Heritage Inventory. The permit application does not address archaeological requirements under the Act. An assessment of impacts on historical archaeological remains must be submitted comprising the following:**
- a. Background history: The report should describe the phases of the site's establishment, development, use and abandonment that may have led to the formation of historical archaeological deposits across the project area. It should also provide the results of previous archaeological investigations at the site, and analyse how these previous findings inform the management of the subject area.**
  - b. Assessment of current site condition: The report should assess whether the site contain any known archaeological features, deposits and/or artefacts, and if any parts of the site have the potential to contain currently unknown archaeological remains.**
  - c. Significance Assessment: The report should evaluate the significance of the site's demonstrated and potential historical archaeology.**
  - d. Recommendations for site management: The report should outline what program of archaeological investigations and/or monitoring is recommended.**

Please see attached an updated archaeological assessment prepared by Alliance Archaeology dated August 2020.

The proposed works (demolition and ground soil remediation) will involve deep excavation to an anticipated depth of 6 metres. Archaeological monitoring is required for those works associated with the ground surface disturbance, including the removal of existing concrete and other surfaces. This monitoring is to occur to a depth where historic archaeological material is no longer visible, and the archaeologist has conferred with Heritage Victoria.

All monitoring works must make provision for hand excavation to occur should significant archaeological deposits or features be identified, or to clarify remains in order for an assessment to take place.

The methodological approach setting out how archaeological involvement will occur as well as any subsequent artefact management and reporting requirements during the demolition and excavation process will need to be submitted to and endorsed by Heritage Victoria prior to demolition works commencing.

## Heritage Impact Statement

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**6. An updated Heritage Impact Statement or Supplementary Heritage Impact Assessment must be re-submitted assessing the following heritage issues of the proposal:**

Hoffman Brickworks has engaged Anthemion Consultancies to prepare a revised HIS which responds to the various requests in relation to heritage matters. This report is comprehensive and provides a response to the below questions, however we have sought to summarise its conclusions below.

We would be pleased to facilitate further discussions with Robyn Riddett should Heritage Victoria find it of assistance at this stage.

**a. Impact of the loss of a rare remnant brick-making sequence of production in Victoria and Australia, including loss of the specific brick-making processes and techniques used at the Former Hoffman Brickworks.**

Please see the attached revised HIS prepared by Anthemion Consultancies. As is stated in that report, there will be no “loss of a rare remnant brick-making sequence of production ... including loss of the specific brick-making processes and techniques used at the Former Hoffman Brickworks” beyond what exists now.

Importantly, this permit application proposes to retain six of the existing brick pressing machines, three hoppers and parts of the conveyor belt/mechanism in a 3-dimensional arrangement, almost exactly as per the existing layout and spacings, in the proposed new building which will house a publicly accessible interpretation centre together with additional displays, and interpretative signage.

It is anticipated that this will be augmented with archival items, or copies thereof, from the Hoffman Brickworks held by the University of Melbourne Archives in Dawson Street, Brunswick which will be on permanent display. In effect, most of the existing arrangement will be retained in the interpretation facility and will be augmented by additional information, artefacts and relevant objects.

Given the integration of this proposed use with other active uses available to the public (e.g. café, office), we are of the view that the proposal will enhance the appreciation and knowledge of the former uses of the site beyond what was originally contemplated.

**b. Impact of the loss of legibility of that process in the redevelopment scheme proposed, and of the fragmentary approach associated with the proposed interpretation strategy.**

This interpretative programme together with retention of six of the brick pressing machines and other elements will be comprehensive and not fragmentary. The process will be quite legible, but in a different context. The two significant differences between what exists now and what is proposed is that:

- the machines will be located in a new building, with artefacts currently in storage also being added to the space. This will create a more complete picture of the site than what is presently evident to a visitor; and

- the site will be activated by the café, interpretation materials and use of other parts of the new building by residents and workers.

As discussed above, the “legibility of ... [the] process in the redevelopment scheme” will not be lost. The existing layout of the machines will be dismantled and six machines, flywheels, engines, three hoppers and a section of the conveyor belt will be reinstated inside the new building proposed.

**c. Consistency of the proposal against the relevant conservation policies for Building 5 and Building 6 provided in the Conservation Management Plan (Helen Lardner Conservation & Design, April 1999).**

In addressing the Conservation Policies contained in the Conservation Management Plan (**CMP**), we note that:

- it has been 22 years since the CMP was reviewed, noting that a review has not occurred since its preparation in 1999. This extends well beyond the expectation that a CMP is generally reviewed every five years; and
- the CMP does not address a number of previously unknown factors, such as the extent and nature of the contamination below the site, nor does it take into account modern standards around structural adequacy or OH&S requirements. It is not responsive to the current legislative regime. These matters, which have now been investigated in significant detail (and are the subject of a Clean Up Notice), must be addressed in the proposed response.

Our position has always been that the historic buildings must be living and capable of producing a long-term, viable income stream to not only support the additional capital investment required to finance the additional works to enable the income to be produced, but to support the ongoing capital needs of the buildings to preserve the restoration works that are proposed to be undertaken. This approach, which is explicitly set out in the CMP, has not changed.

As is detailed in the HIS, there are some elements of the previous CMP that have not been incorporated into this application. The HIS assesses these as being less important in terms of the CMP's objectives, and that a non-achievement of those matters will not result in any adverse impacts on heritage values. Further, the addition of a larger, more effective interpretation space will assist in achieving the policies in the CMP.

It remains our position that the proposal has a high degree of compliance with the policies set out in the CMP.

**d. A cumulative impact assessment on the State heritage values of the Place resulting from the successive stages of the site's redevelopment, which have comprised the removal of buildings and structures (including though not limited to the Gatehouse and Kiln 1), the adaptation of Kilns 2 and 3, contemporary residential infill throughout the Place, the**

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**registration extent update as a result of these changes, and the now proposed demolition of Buildings 5 and 6. This assessment should assess whether the Place would continue to meet the criteria for State heritage significance under the Victorian Heritage Register Criteria and Threshold Guidelines (Heritage Council Victoria, 2012) if the proposal was to be approved.**

The HIS prepared by Anthemion Consultancies assesses the proposal against each of the criteria for State Heritage Significance. The position as outlined in that report is that even with the demolition of Buildings 5 and 6 and reconstruction as proposed by this permit application, the site will still meet each of the criteria for State heritage significance.

Therefore, on this basis an explicit "cumulative impact assessment" is not required, as it is considered that each State heritage significance criterion is met.

### **Statement of Reasonable or Economic Use**

**7. The Statement of Reasonable or Economic Use submitted (Deep End Services, July 2020) assesses the reasonability and economic viability of the project in the context of the current project area alone, which is centred around Buildings 5 and 6. The Statement of Reasonable or Economic Use should rather address how the proposal is justified to enable the reasonable or/and economic use of the whole of the VHR Place, and how its refusal would detrimentally affect the use of the Former Hoffman Brickworks site as a whole. The reasonable and/or economic use assessment should take into consideration previous uses granted at the place, including permitted adaptation of heritage buildings and demolition of buildings to allow construction of infill residential development. The assessment should consider the use and the economic contributions of these previous developments to the overall viability of the site.**

We note that HV has raised questions of the Statement of Reasonable or Economic Use prepared by Deep End Services dated July 2020 (the Deep End Statement).

Hoffman Brickworks has not prepared a revised report contemplating the reasonable or economic use of the entire heritage place, as it remains our reasonable view that the correct legal interpretation of the test under the *Heritage Act 2017* (Vic) only requires consideration of the use of the portion of the place which is subject of the application.

In any event, the addendum letter prepared by Deep End Services (referred to below in response to Question 8 demonstrates that the significant costs associated with remediating the site, with the building in situ, would not allow for a reasonable or economic use of the place.

**8. The submitted Statement of Reasonable or Economic Use is prepared under the premise that the buildings must be demolished as part of the site's redevelopment to comply with the**

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**clean-up notice issued by the EPA. Further decontamination and structural assessments have been requested in this letter (items 1-4) to question the necessity of demolishing the buildings to achieve decontamination. The Statement of Reasonable or Economic Use will need to be updated to take into consideration the findings of these assessments.**

Please see attached letter from Deep End Services dated 2 October 2020 which takes into account the outcomes of:

- the Irwin Consult structural assessment undertaken to evaluate works required to complete remediation works contemplated by Option 3;
- costing of those works undertaken by WT Partnership; and
- a revised valuation report prepared by M3 Property to take into account the costings within the WT Partnership material.

Each of these supporting documents is attached to this RFI response.

It remains the position that decontamination by excavation is expected to be the only acceptable way of achieving CUTEF at the site, as confirmed by the material included with this response from Compass and the environmental auditor. As a result, this is the costing that has been factored into Deep End Services' assessment. As noted in the Deep End Services letter annexed to this RFI response, the additional costs reinforce the non-viability of Option 2.

It remains Hoffman Brickworks' position that a failure to grant a permit for demolition would prevent a reasonable and economic use of the site, reinforced by the costings undertaken in respect of the structural works required to retain Buildings 5 and 6 should they be kept during decontamination processes.

As noted above, Hoffman Brickworks is willing to facilitate further discussions with Heritage Victoria and the EPA in relation to these matters.

## **Planning matters**

9. **Moreland City Council (MCC) provided pre-application advice on the proposal in a letter issued 31 March 2020 (PPA/2020/34). At page 4, they stated:**

***Council is very concerned that the loss of Buildings 5 and 6 would result in a substantial loss of important heritage fabric and would further degrade the ability to spatially understand the heritage significance of the site.***

***Having regard to the matters above, Council does not support the grant of a permit for the demolition of Buildings 5 and 6 because:***

- ***Demolition would detrimentally affect the cultural heritage significance of the registered place on the basis that it:***
  - o ***Demolishes a building which is of primary significance to the heritage place; and***

- o Erodes the ability to spatially interpret the historical heritage significance of the site.*
- The demolition conflicts with the Development Plan Overlay and approved Development Plan which has been endorsed to comply with Clause 43.04-3 of the Moreland Planning Scheme, which shows the retention of Buildings 5 and 6. Buildings 5 and 6 are now the last remaining intact buildings of primary heritage significance on the site.*  
**Information is required to be provided assessing how the application submitted to Heritage Victoria responds to the concerns outlined by MCC above.**

Please see our responses in relation to the various, related questions from Heritage Victoria, including the HIS prepared by Anthemion Consultancies.

In relation to compliance with the Development Plan, we note that this is a separate consideration for Council pursuant to the *Planning and Environment Act 1987* (Vic). It is normal practice heritage permits and planning permits to be granted separately. Hoffman Brickworks is aware that it will need to satisfy Council in respect of various planning matters (including compliance with the Development Plan) at the relevant time.

As is generally noted below, Hoffman Brickworks considers that given the amount of time that would be required to remediate the site in accordance with the Clean Up Notice, it will have sufficient time available to it to obtain the necessary approvals from Council, including any subsequent adjustments to the form of the heritage permissions required as a result. We note that this is a normal part of the planning process for sites affected by heritage and planning issues.

- 10. MCC also outlined in their advice a number of requirements under the Moreland Planning Scheme which will require to be addressed for a planning permit to be granted. These related to:**

**Requirement to amend Development Plan**

***Clause 43.04-2 of the Moreland Planning Scheme (Development Plan Overlay) states that a permit granted must be generally in accordance with the development plan. The endorsed development plan states that Buildings 5 and 6 will be retained at their current height. The development is therefore not generally in accordance with the development plan. The plan must be amended before a planning permit can be issued for the proposed development.***

***An application to amend the development plan could be made concurrently with a planning permit application for the development.***

**Requirement for a planning scheme amendment**

***Point 3 of Schedule 3 to the Development Plan Overlay (DPO3) states that any new permit for any new building to the west of Building 5 within the historic core (Lot P on PS502822H) must include a condition requiring that an agreement be entered into between the responsible authority and the landowner pursuant to section 173 of the Planning and Environment Act 1987. The agreement must provide for the following matters:***

- a) A comprehensive schedule for the restoration, adaptation and re-use of the Kilns and Buildings 5 and 6 and the interpretation plan for the heritage site ensuring that these works occur in advance or in parallel with the various construction stages of the proposed new buildings so that restoration, adaptation and re-use of the Kilns and Buildings 5 and 6 is completed to a commercially leasable standard prior to the completion or occupation of the new buildings.***
- b) The establishment of a 'Heritage Maintenance Fund'.***
- c) The costs of preparing and executing the agreement must be borne by the land owner.***

***The granting of a planning permit which allowed the demolition and Buildings 5 and 6 would conflict with part a) of this requirement. A Planning Scheme amendment would be required to alter this requirement.***

**Requirement to amend Concept Plan Hoffmans Brickworks Redevelopment**

***Point 1 of DPO3 states that the development plan for the site must be generally in accordance with the Development Concept Plan titled Concept Plan Hoffmans Brickworks Redevelopment (dated 6/5/02, Revised 25/9/06 and prepared by Glenvill) or any subsequent approved concept plans to the satisfaction of the Responsible Authority. This Concept Plan shows Buildings 5 and 6 as being retained. The proposal is therefore not generally in accordance with the Concept Plan. The Concept Plan must be amended before a planning permit can be issued by the proposed development. An application to amend the Concept Plan could be made concurrently with a planning permit application for the development.***

**Decision Guidelines of DPO3**

***The decision guidelines at Point 5 of DPO3 list a number of documents which must be considered in deciding on a planning permit application. Any planning permit application should include a detailed assessment of how the proposal responds to each document. In particular, the relevant conservation management plan (Conservation Management Plan prepared by Helen Lardner Conservation and Design and dated April 1999) recommends the retention of Buildings 5 and 6. Any planning permit application will need to demonstrate why the proposal is acceptable having regard to the recommendations of this document.***

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**S173 agreements**

***An assessment of the requirements of the section 173 agreements on title and how the development accords with those requirements should be undertaken at a preliminary stage. Of particular concern to Council is agreement AK092274J. Point 1.1.5 of this agreement states that the owner must manage and maintain the heritage assets on the Subject Land in accordance with the Heritage Audit Management Plan. The Heritage Audit Management Plan shows Buildings 5 and 6 as retained. An amendment to this section 173 agreement is therefore required. An application to amend the agreement would be decided at a Council meeting rather than by officers under delegation. It is recommended that you seek legal advice as to the viability of the project if Council does not agree in principle to amendment of the s173 agreement.***

***Given the complex planning history of this site, it is recommended that an analysis of all permissions required and the proposed timing of each one should be submitted now so agreement can be reached on the best process.***

**Information is required to be provided to Heritage Victoria on how the applicant intends to respond to the matters raised above by MCC. The applicant should also provide a timeframe for obtaining the amendments required.**

Hoffman Brickworks acknowledges the commentary provided by Council in respect of the permit application.

Respectfully, a number of the matters raised by Council do not fall within the purview of the considerations Heritage Victoria ought to turn its mind to pursuant to the *Heritage Act*. It is Heritage Victoria's task, as it will be aware, to determine whether the works contemplated by the permit application are consistent with the objectives of the *Heritage Act* and the relevant tests within it.

Conversely, it is Council's role to consider planning matters in the context of the *Planning and Environment Act 1987* (Vic) when the relevant applications are put to it – it is not entitled to have regard to heritage issues, as these properly fall within the purview of Heritage Victoria.

Hoffman Brickworks acknowledges that there are specific planning issues that it will need to address when making the relevant applications to Council. This may or may not include the need to make multiple applications in respect of the works, which could include applications to amend the relevant Development Plan and other associated documents applying to the site. At this point in time, Hoffman Brickworks continues to take advice on these matters, as they will at least in part be dependent on the outcome of this application and also the requirements of the Clean Up Notice.

It is also important to note that on a practical level, the clean up works likely to be required to appropriately remediate the site to the satisfaction of the environmental will take a significant amount of time – potentially multiple years. This will leave appropriate time to satisfy Council in respect of the

planning pathway forward. Should it be that as a result of that planning pathway, we are required to seek amendments to its heritage permit to contemplated changes required by Council, we will have time to seek these amendments.

We also note that we could have sought to apply only for demolition of Buildings 5 and 6. We were, and remain, of the view that it was more appropriate to seek approval for the redevelopment proposal for Buildings 5 and 6 at the same time, as it considered that Heritage Victoria would want as much certainty as possible in relation to what would effectively "replace" those buildings, and how the ultimate heritage interpretation scheme would be delivered.

We otherwise look forward to continuing to engage with all stakeholders regarding the intended outcome for Buildings 5 and 6.

#### **Permit application drawings**

**11. The set of architectural drawings provided in the application (MGS Architects, June 2020) appear to have inconsistencies in the naming of elevation drawings (existing vs. proposed). An updated set of drawings should be provided that corrects these errors for greater clarity in the permit assessment process.**

Please refer to the attached amended plans prepared by MGS Architects.

**12. A detailed response to the matters and grounds of objections raised by Moreland City Council in their referral response letter.**

Please see above answers to Questions 9 and 10.

**Dean Rzechta**

**Managing Director**

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