

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *The Uniting Church in Australia Property Trust (Q.) ABN 25 548 385 225 v Queensland Heritage Council* [2023] QPEC 40

PARTIES: **THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (Q.) ABN 25 548 385 225**
(Appellant)
v
QUEENSLAND HERITAGE COUNCIL
(Respondent)

FILE NO/S: 2024/21

DIVISION: Planning and Environment Court

PROCEEDING: Appeal against entry in the Queensland Heritage Register

ORIGINATING COURT: Planning and Environment Court of Queensland, Brisbane

DELIVERED ON: 17 October 2023

DELIVERED AT: Brisbane

HEARING DATE: 22 June 2022 to 24 June 2022

JUDGE: McDonnell DCJ

ORDER: **I order that the decision of the Queensland Heritage Council to enter the Ashgrove Methodist Church (former) in the Queensland Heritage Register as a State Heritage Place is set aside and replaced with a decision not to enter the Ashgrove Methodist Church (former) in the Queensland Heritage Register.**

CATCHWORDS: PLANNING AND ENVIRONMENT – APPEAL – Appeal against entry of building in State Heritage Register – where the basis of entry in the Register was criterion (a) and criterion (e) – whether the former church building is important in demonstrating the evolution or pattern of Queensland’s history – whether the former church building is important because of its aesthetic significance – whether the former church building should be entered in the Register

CASES: *Clissold v Perry* (1904) 1 CLR 363
Currie v Dempsey [1967] 2 NSWLR
Downs Regional Council v Homeworthy Inspection Services (as agents for Robert and Cheryl Newman) [2021] QPELR 1085
Enco Precast Pty Ltd v Construction, Forestry, Maritime, Mining

and Energy Union & Ors [2022] QCA 94
Gladstone Ports Corporation v Queensland Heritage Council
 (2012) 191 LGERA 6
Goldicott House Pty Ltd v Brisbane City Council & Ors (2020)
 QPELR 1153
Green v Victorian Workcover Authority [1997] 1 VR 364 [380]
Highgate Partners Pty Ltd v Sunshine Coast Regional Council
 [2021] QPELR 112
Hungtat Worldwide Pty Ltd v Chief Executive of the Department of
Environment and Heritage Protection (2018) QPELR 162
ISPT Pty Ltd v Brisbane City Council & Anor (2017) QPELR 1117
JL Smallcombe as Trustee for the Cotton Tree Trust v Queensland
Heritage Council [2010] QPELR 68
Joseph Constantine Steamship Line Ltd v Imperial Smelting
Corporation [1942] AC 154
Kostas v HIA Insurance Services Pty Ltd (as Home Owner's
Warranty) (2019) 241 CLR 390
Lonie v Brisbane City Council & Ors (Lonie) [1998] QPELR 206.
Oakley v Chief Executive Administering Coastal Protection and
Management Act 1995 [2015] QPELR 157
Queensland Heritage Council v The Corporation of the Sisters of
Mercy of the Diocese of Townsville [2015] 1 Qd R 146
Reelaw v Queensland Heritage Council [2005] QPELR 335
Scenic Rim Regional Council v Queensland Heritage Council
 [2022] QPEC 42
The Corporation of the Sisters of Mercy of the Diocese of
Townsville v Queensland Heritage Council (No. 2) (2017) QPELR
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LEGISLATION: *Planning Act 2016* (Qld)
Planning and Environment Court Act 2016 (Qld), s 43, s 45, s46, s
 47
Queensland Heritage Act 1992 (Qld) , s 2(1), s 2(2), s35(2),
 s161(1), s 162

COUNSEL: M Batty and J Bowness for the Appellant
 R Litster QC and W McIntosh for the Respondent

SOLICITORS: Thynne & Macartney for the Appellant
 Crown Solicitor for the Respondent

Introduction

- [2] The Uniting Church in Australia Property Trust (Q.) ABN 25 548 385 225 (the Appellant) appeals against the decision of the Queensland Heritage Council (QHC) made on 25 June 2021 to enter the Ashgrove Methodist Church Complex (former) located at 24-30 Ashgrove Avenue, Ashgrove, in the Queensland Heritage Register (Register) as a State Heritage Place under s 53(1) of the *Queensland Heritage Act 1992* (Qld) ('*QHA*').

Background to the appeal

- [3] On about 9 February 2021, a third-party application was made under s 36 of the *QHA* to have the former Church complex, comprising the former church building and the hall, entered in the Register (the application). Seven submissions were received during the submission period for the application. One (from the Appellant) was not in support of the application. Six were in support of the application.¹
- [4] On or about 25 June 2021, QHC resolved pursuant to s 53(1) of the *QHA* to enter the former church building in the Heritage Register as a State Heritage Place (the Decision). The hall was not entered in the Register. The Appellant was informed of the Decision by letter dated 9 July 2021.
- [5] The entry in the Register states that the former church building satisfies one or more of the criteria specified in s 35(1) of the *QHA* as evidenced by, but not exclusive to, the following selective statement of alleged cultural heritage significance, based on criteria (a) and (e):
- (a) Criterion a – the place is important in demonstrating the evolution or pattern of Queensland’s history. The Statement of Significance provides:
- The Ashgrove Methodist Church (former) (1962) is important in demonstrating the growth and expansion of the Methodist Church and the evolution of church architecture in the post-World War II (WWII) period in Queensland. Through its ecclesiastical architectural form, it is a representative example of a suburban Methodist Church of this period, illustrating the post-war mission of the Church to become more relevant to modern society, and its progressive building program in the 1950s and early 1960s.²
- (b) Criterion (e) – the place is important because of its aesthetic significance. The Statement of Significance provides:
- The Ashgrove Methodist Church (former) has aesthetic importance for its expressive attributes and architectural qualities. Through its siting, distinctive tapered A-frame form, main front elevation with large, coloured glass cross, and features of its modernist architectural style including its metal framed windows, face brick walls with extruded brick pattern, and green tiled roof, the place expresses the optimism, renewal and relevance of the Methodist Church at the time.³
- [6] The Appellant appealed the Decision, filing a Notice of Appeal on 4 August 2021.
- [7] Mr Litster QC appropriately indicated that the QHC pursued the listing of the Church on the Register only on the basis of criterion (a) and (e). Accordingly, the Appellant was not required to demonstrate that the other criteria are not satisfied and QHC did not ask the Court to make a ruling about satisfaction of those criteria.⁴ Further, Mr

¹ Ex. 2.03 Submission of Australian Institute of Architects, Ex. 2.05 Submission of Jonty Bush MP, Ex. 2.06 Submission of Lynne Parker, Ex. 2.07 Submission of National Trust of Australia (QLD), Ex. 2.08 Submission of Lisa Marie Daunt, Ex. 2.09 Submission of the Ashgrove Historical Society, Ex. 2.10 Submissions of Thynne + Macartney on behalf of The Uniting Church in Australia Property Trust.

² Ex. 2.16 Entry in the QLD Heritage Register, 2.

³ Ibid.

⁴ T1-20[12]– [12].

Litster indicated that the building's relevance is as a Methodist Church, not a Uniting Church building.⁵ I proceed on the basis that only criteria (a) and (e) are relevant to my consideration and the building's relevance is as a Methodist Church.

What is the legislative framework?

- [8] The Appellant, as owner of a place that is entered as a State Heritage Place on the Register, has a right of appeal against the decision to enter the place.⁶
- [9] Section 162 of the *QHA* provides that:
 “An appeal by a person mentioned in s 161(1)(a) or (b) may only be made on the grounds that the place the subject of the appeal does or does not satisfy at least one of the cultural heritage criteria.”
- [10] Section 164 of the *QHA* applies Part 5, Division 1, of the *Planning and Environment Court Act 2016* (Qld) (*PECA*) to this appeal as if it were a planning appeal under the *PECA*, with any changes the Planning and Environment Court considers appropriate.
- [11] The appeal is by way of hearing anew.⁷ In deciding the appeal, the Court must confirm the decision appealed against, change the decision appealed against, or set it aside and either make a decision replacing it or return the matter to the QHC with directions the Court considers appropriate.⁸
- [12] The *QHA* provides a place may be entered on the Register if it meets any one of eight criteria in s 35(1). A place is not excluded from entry on the Register on the ground that places with a similar character are already entered on the Queensland Heritage Register.⁹

What are the issues to be determined in the appeal?

- [13] The issues in dispute were identified by order of the Court as whether or not the Ashgrove Methodist Church (former) located at 24-30 Ashgrove Avenue, Ashgrove, satisfies criteria (a) or (e) of the cultural heritage criteria identified in s 35(1) of the *QHA*.¹⁰
- [14] Despite this order, the Appellant contended at the commencement of the hearing that the issues for determination by the Court are:
- “1. Whether the former Ashgrove Methodist Church at 24 – 30 Ashgrove Avenue, Ashgrove (the church) is important in demonstrating the evolution or pattern of Queensland's history: s 35(1)(a) *Queensland Heritage Act 1992* (Qld).
 2. whether the church is important because of its aesthetic significance: s 35(1)(e) *Queensland Heritage Act 1992* (Qld).

⁵ T2-60[17] – T2-61[41].

⁶ *Queensland Heritage Act 1992* (Qld) s161(1)(a) ('QHA').

⁷ *Planning and Environment Court Act 2016* (Qld), s 43 ('PECA').

⁸ PECA, s 47.

⁹ QHA, s 35(2).

¹⁰ Ex. 1.02 Order of his Honour Judge Jones, 17 September 2021 [1].

3. whether, if issue 1 or 2 is resolved in the Appellant's favour, the court can exercise any discretion in determining whether the church ought be entered on the Queensland Heritage Register as a State heritage place.
4. whether, if issue 3 is resolved in the Appellant's favour, the church ought be entered in the Queensland Heritage Register as a State heritage place."¹¹

[15] It urged that the ratio of the Court of Appeal in *Queensland Heritage Council v The Corporation of the Sisters of Mercy of the Diocese of Townsville*¹² (*Sisters Of Mercy* (COA)), and in particular the reasoning of Douglas J¹³ supports its contention that the Court should consider discretionary matters upon being satisfied that one of criterion (a) or criterion (e) is not made out. It said this approach would be consistent with the nature of the appeal as a hearing anew.

[16] The QHC contended that the ground that a place “does not satisfy at least one of the cultural heritage criteria”¹⁴ means that the place “does not satisfy any of the cultural heritage criteria” and that the Appellant can be successful only if it establishes the Church does not satisfy any of the cultural heritage criteria. It acknowledged there is a discretion to be exercised in deciding whether a place which it is established satisfies at least one of the cultural heritage criteria should be entered in the Register. The QHC expressed concern that if an appellant was required to disprove the satisfaction of only one of those cultural heritage criteria in order to be successful in an appeal, an appellant would target a criterion which a place is less likely to satisfy without engaging with other specified criteria that a place is more likely to satisfy. Further, it said that a construction which granted an appellant success in the appeal notwithstanding that a place still satisfies at least one of the cultural heritage criteria goes decidedly against the object of the *QHA*, which is to provide for the conservation of Queensland's cultural heritage.

[17] The Court in the *Sisters of Mercy* (COA) considered what were the appropriate grounds of appeal. The issue before it was whether the physical condition or structural integrity of the place was relevant and could be a ground of appeal.

[18] Each of the members of the Court there separately discussed the ground of appeal in s 162 of the *QHA*, which then relevantly provided that:

“(1) An appeal by a person mentioned in s 161(1)(a) or (b) may only be made on the ground that the place the subject of the appeal does or does not satisfy the cultural heritage criteria”.

[19] Their Honours observed as follows:

¹¹ Ex. 4.06 Appellant's Proposed List of Issues in Dispute.

¹² [2015] 1 Qd R 146.

¹³ Ibid 162, [35] – [37].

¹⁴ QHA, s 162.

- (a) Margaret McMurdo P observed that “[discretionary considerations] become relevant only if the respondent is successful in the appeal to the P & E Court by demonstrating that the convent does not satisfy the cultural heritage criteria”¹⁵;
- (b) Gotterson JA observed at [7] that: “the only permissible ground for challenging in the Planning and Environment Court the decision of the...Queensland Heritage Council to enter St Patrick’s (sic) Convent on the Heritage Register is that set out in s 162(1) of the [QHA]”¹⁶; and
- (c) Douglas J (with whom Gotterson JA agreed) observed that:

[35] When one approaches the issue here, the proper resolution of the potential conflict between the two statutes – looking at the provisions as a whole and seeking to give them harmonious goals – leads to the conclusion that a ground of appeal asserting the place the subject of the appeal did not satisfy the cultural heritage criteria referred to in s 162(1) of the Queensland Heritage Act must be made out in order for it to be open to the Planning and Environment Court to exercise any powers under s 496(1) or s 496(2) of the Sustainable Planning Act.

[36] If such a ground of appeal is made out, however, it then seems to be appropriate to permit the court, in exercising its powers, to hear the matter anew pursuant to s 495(1) and, for example, to set aside the decision appealed against and make a decision replacing it under s 496(2)(c), to examine the issues which the Council itself had to examine under s 51(3) of the Queensland Heritage Act...

[37] The success of a ground of appeal may throw quite a different light on the particular issues related to the physical condition or structural integrity of the place justifying the Council, were it considering the matter anew, in reaching a different decision. If it is the case that error can be shown in the Council’s assessment of the cultural heritage criteria relevant to the place then that is also likely to throw doubt on the decision generally, justifying a reconsideration of the issues, including those related to physical condition or structural integrity.

[38] It would be wrong to preclude a litigant from arguing that the court should make a decision replacing the decision set aside without reference to all the issues actually considered by the Council itself. Where it is not clear even that the matter may be remitted to the Council to make its decision according to law because of the contrasting powers provided by s 496(2) and s 496(4) that view is more compelling. Accordingly the better view is that a broad view should be given to those grants of power to permit such issues related to physical condition or structural

¹⁵ *Queensland Heritage Council v The Corporation of the Sisters of Mercy of the Diocese of Townsville* [2015] 1 Qd R 146, [5].

¹⁶ *Ibid* [7].

integrity of the place to be litigated if one of the statutory grounds of appeal is made out.

- [20] The Court in *Sisters of Mercy* (COA) determined that it was necessary for the cultural heritage criterion to be considered before moving onto the matters for consideration under s 51 of the *QHA*, which included physical condition or structural integrity. This approach confirmed that there is a discretion to be exercised by the Court. Section 162 of the *QHA* has been amended since that decision and now provides:

“Grounds for appeal”

An appeal by a person mentioned in section 161(1)(a) or (b) may only be made on the ground that the place the subject of the appeal does or does not satisfy at least 1 of the cultural heritage criteria.”

- [21] Section 35(1) of the *QHA* provides eight cultural heritage criteria. Each criterion is directed towards Queensland’s cultural heritage in separately identified respects. Pursuant to s 53(1) of the *QHA*, the QHC may decide to enter a place in the Register only if it considers that the place satisfies one or more of the cultural heritage criteria. If a place is entered in the Register on the basis that it satisfies several of the cultural heritage criteria and on appeal it is established that one criterion does not apply, the entry must be able to be amended to reflect this. To adopt the approach urged by QHC could lead to the outcome that, despite the Court determining that one of the criterion for which the place is listed on the Register does not apply, the entry could not be amended to reflect this unless none of the criteria is met. This would be an absurd outcome and is not consistent with the appeal being by way of a hearing anew. Nor is it consistent with there being a discretion to be exercised in the event that a place satisfies one or more of the criteria listed. Adopting the QHC’s approach, there would be no discretion to exercise because the place does not satisfy any criteria.
- [22] However, as I have found that the former church building does not satisfy either criteria (a) or (e) it is not necessary for me to determine this issue.

Who bears the onus of proof?

- [23] The parties disagreed about who bears the onus of proof in the proceedings. Each party said it was borne by the other.
- [24] While the Appellant acknowledged that previous cases have proceeded on the basis that the appellant bears the onus, it said that, to the extent the matter had been explored in the past, the cases have been determined under repealed statutory regimes. In support of its submission that the QHC bears the onus, the Appellant made three points:
- (a) the orthodox principle that the party desiring the Court to “take action” must prove the case to its satisfaction is not necessarily inconsistent with QHC bearing the onus of proof. It said this is so in the context of an appeal which is a hearing anew, where the question is whether the Court ought be satisfied that a particular power (the power of the QHC to enter the former church building in the Register) has been established. It says, in this case, the QHC is the party seeking

to change the “status quo” by entering the building on the Register, not the Appellant;

- (b) the question of onus must ultimately turn on the terms of the legislation under which the proceedings are constituted.¹⁷ The nature of the burden assumed by the Appellant and the proper function of the appeal court should be determined by reference to the enabling legislation.¹⁸ The right of appeal to this Court from decisions of the QHC is conferred by s 161 of the *QHA* and is limited to two kinds of appeal:
- (i) appeals by owners entitled to be given a notice under s 54(3) of the *QHA* resulting from a change to the Register (owner appeal); or
 - (ii) appeals by applicants who may appeal from a “deemed” decision of QHC about which notice is given under s 56(2) of the *QHA*, where there has been no change to the Register (applicant appeal).

In either of those two types of appeal, the *QHA* applies the *PECA*, Part 5, Division 1 “with any changes the Planning and Environment Court considers appropriate ...as if the appeal were a Planning Act appeal...”. Thus ss 45, 46 and 47 of the *PECA* are called up as applicable to *QHA* appeals.

The Appellant said that s 45 specifically provides for the onus of proof to be shifted to parties other than the appellant in a *Planning Act* appeal. In support of its position that there is an ascertainable legislative intent that the party seeking to disturb the status quo (in particular with respect to the exercise of private property rights) bears the onus of proof in planning appeals, it said:

- (i) that the types of appeals listed under s 45 intend to “cover the field” in respect of *Planning Act* appeals having regard to s 229 and Schedule 1 of the *Planning Act*;
- (ii) the provision places the onus of proof in an appeal with the party seeking to disturb the status quo, as opposed to the party which institutes the appeal;
- (iii) the “shifting” of the onus in this manner is not limited to criminal or quasi criminal matters; and
- (iv) the general presumption of statutory interpretation is that legislation should be assumed not to interfere with vested property right interests.¹⁹

It said this interpretation of s 45 is supported by the reasoning of Rackemann DCJ in *Oakley v Chief Executive Administering Coastal Protection and Management Act 1995*²⁰ where his Honour said, in respect of an appeal under an act which was not specifically referred to in the equivalent of s 45 *PECA*:

¹⁷ *Green v Victorian Workcover Authority* [1997] 1 VR 364 [380].

¹⁸ *Kostas v HIA Insurance Services Pty Ltd (as Home Owner’s Warranty)* (2019) 241 CLR 390 [89]; applied by Kefford DCJ in *Southern Downs Regional Council v Homeworthy Inspection Services (as agents for Robert and Cheryl Newman)* [2021] QPELR 1085.

¹⁹ *Clissold v Perry* (1904) 1 CLR 363,373.

²⁰ [2015] QPELR 157,160.

“While it is the person who is dissatisfied with the decision to give the notice who brings the appeal, it does not necessarily follow that that person bears the onus. In conducting a *de novo* hearing, the court will be concerned about whether a notice ought issue. That notice disturbs the pre-existing status quo, by requiring the recipient to comply with a notice. Failure to do so is punishable by a maximum of 3,000 penalty units.

Prior to the issue of the notice it was for the chief executive to determine whether such a notice should issue. Such a notice ought not have issued unless the chief executive was satisfied that it was appropriate in the circumstances. Similarly, the court, on a *de novo* hearing, ought not dismiss the appeal unless it is so satisfied. In such circumstances the onus properly falls upon the respondent.” (footnotes omitted).

- (c) to the extent that Jones DCJ dealt with the above arguments in *Gladstone Ports Corporation v Queensland Heritage Council* (*‘Gladstone Ports’*)²¹, his Honour adopted the underlying reasoning of Rackemann DCJ in *Hungtat Worldwide Pty Ltd v Chief Executive of the Department of Environment and Heritage Protection*.²² While Rackemann DCJ distinguished *Gladstone Ports* on the basis of the “potential consequences which might have befallen the appellants”,²³ his Honour did not make any other material qualifications to the reasoning in *Oakley*.

[25] The Appellant said, applying the principles expressed by Rackemann DCJ in *Oakley*, that:

- (a) for an owner appeal, the QHC bears onus of establishing the cultural heritage criteria are or are not satisfied, such that the Register should be altered; and
- (b) for an applicant appeal, the applicant bears the onus of establishing whether the cultural heritage criteria are or are not satisfied, such that the Register should be altered.

[26] For these reasons, the Appellant submitted that the QHC bears the onus of proof in the proceeding. However, the Appellant said that in the event the Appellant bears the onus, the evidence establishes that neither criterion (a) nor criterion (b) are satisfied by the former church building, on the balance of probabilities.²⁴

[27] The QHC maintained that the Appellant bears the onus in accordance with the *Gladstone Ports* decision.²⁵ In *The Corporation of the Sisters of Mercy of the Diocese of Townsville v Queensland Heritage Council (No. 2) (Sisters of Mercy (PEC))*,²⁶ Durward SC DCJ accepted that the onus rested on the appellant, having had the benefit of the earlier decision in *Gladstone Ports*. Since *Sisters of Mercy (PEC)* and *Gladstone*

²¹ (2012) 191 LGERA 6.

²² (2018) QPELR 162,174.

²³ *Ibid* [37].

²⁴ Written Submissions on behalf of the Appellant dated 24 June 2022, [66].

²⁵ *Gladstone Ports Corporation v Queensland Heritage Council* (2012) 191 LGERA 6, [46] – [48].

²⁶ (2017) QPELR 391.

Ports, the *Planning Act 2016* (Qld) and the *PECA* have come into effect and the *QHA* has been amended. The *QHA* had provided:

s164 Court process for appeal

The *Planning Act*, Chapter 7, Part 1, Division 13, with any changes the Planning and Environment Court considers appropriate, applies to an appeal under this part.

[28] The *QHA* now provides:

s164 Court process for appeal

The *Planning and Environment Court Act 2016*, Part 5, Division 1, with any changes the Planning and Environment Court considers appropriate, applies to an appeal under this part as if the appeal were a *Planning Act* appeal under that Act.

[29] The QHC submitted that the relevant provisions of the *Integrated Planning Act 1997* (Qld), the *Sustainable Planning Act 2009* (Qld), and now s 45 of *PECA*, do not identify which party bears the onus of proof in an appeal under the *QHA*, and in that sense there has been no change, in principle, since *Gladstone Ports* was decided. Rather, it said the underlying principles have remained the same – that “the person who desires the court to take action must prove the case to its satisfaction”.²⁷

[30] It submitted that the Court should reject the Appellant’s submission that the Appellant does not bear the onus because:-

- (a) section 161(1)(a) of the *QHA* confers a right of appeal on an owner who is given a notice under s 54(3) about a decision by the QHC under s 53(3)(a) to enter a place in the Register. Section 162 identifies the ground on which the owner may make the appeal against the decision. Nothing in the language of those sections suggests that the decision-maker is required to demonstrate anything;
- (b) the Appellant’s submission that the question about which the “the Court ought be satisfied” – whether “the power of the Respondent to enter the former church building in the Register ...has been established” incorrectly identifies the question. Where a decision is the subject of an appeal, the status quo for the purposes of the appeal is the state of affairs that arises from the decision. It is not the state of affairs that existed prior to the decision. It says that this is consistent with the decision being appealed having determined that the place satisfies one or more of the criteria set out in s 35 of the *QHA* and the limited ground on which the owner of a place is permitted to make an appeal under s 162 of the *QHA*.
- (c) the Appellant is incorrect when it submits that “there is an ascertainable legislative intent that the party seeking to disturb the status quo...bears the onus of proof in *Planning Act* appeals”. The QHC raised, as an example, a submitter appeal where the submitter seeks to disturb the status quo created by a Council’s approval and the *PECA* provides that the development proponent bears the onus to prove that the appeal should be dismissed. As to the general presumption of

²⁷ A statement from Cross on Evidence cited approvingly by Chesterman JA in *Attorney-General (Qld) v Lawrence* [2010] 1 Qd R 505, [30].

statutory interpretation that legislation should be assumed not to interfere with vested property interests, *Clissold v Perry*²⁸ has been referred to incompletely. The complete quote is:

“In considering this matter it is necessary to bear in mind that it is a general rule to be followed in construction of Statutes such as that with which we are now dealing, that they are not intended to be construed as interfering with vested interests **unless that intention is manifest**”.²⁹ (Emphasis added).

The QHC submitted that the manifest intention of the *QHA*, identified in s 2, is to provide for the conservation of places satisfying one or more of the criteria set out in s 35, for the benefit of the community and future generations;

- (d) the decision in *Oakley v Chief Executive Administering the Coastal Protection and Management Act 1995*³⁰ does not assist. The quote provided by the Appellant was incomplete and should have included in the quote at the end of [24](b) above “as the authority contending that it is appropriate that the notice be given. The respondent properly accepts that it bears the onus in such appeals.”³¹ Further, the *Coastal Protection and Management Act 1995* (Qld) did not specify the ground on which the appeal could be made. Further, it submitted that the nature of the process leading to a decision to enter a place in the Register is distinguishable from the circumstances leading to the authority’s decision to issue the notice in *Oakley*; and that the distinction identified in *Hungtat Worldwide Pty Ltd v Chief Executive of the Department of Environment and Heritage Protection*³² between that matter and *Gladstone Ports* decision by Jones DCJ is relevant. However, that he did not identify other reasons is not, as the decision did not require this.

- [31] The common law position with respect to the onus of proof in proceedings was recently considered by the Queensland Court of Appeal in *Enco Precast Pty Ltd v Construction, Forestry, Maritime, Mining and Energy Union & Ors*.³³ In that case, Sofronoff P, with whom Bond JA and Brown J agreed, observed:

“[18] In general, it is the rule that the party who asserts a conclusion must prove the facts that lead to that conclusion.³⁴ Courts and tribunals do not make orders affecting persons just for the asking; *something* must be shown to move the court or tribunal to exercise its jurisdiction to make an order to bind another person. Hence the old maxim ‘He who moves, proves’.”

- [32] There is no legislative provision that displaces the position at common law. Neither the *QHA* nor the *PECA* specify who bears the onus of proof in an appeal against the decision of the QHC to enter a place in the Register. The decision has been made by

²⁸ (1904) 1 CLR 363.

²⁹ (1904) 1 CLR 363,373.

³⁰ [2015] QPELR 157.

³¹ Ibid 160 [33]-[34].

³² (2018) QPELR 162.

³³ [2022] QCA 94.

³⁴ *Ei qui affirmat non et qui negat incumbit probatio*. See *Currie v Dempsey* [1967] 2 NSWLR; *Joseph Constantine Steamship Line Ltd v Imperial Smelting Corporation* [1942] AC 154, 174.

the QHC to enter the place in the Register. The status quo for the purposes of the appeal is the state of affairs resulting from that decision. The Appellant has exercised its right of appeal with the sole ground being “that the place the subject of the appeal does or does not satisfy at least one of the cultural heritage criteria”. The place is entered in the Register unless the Appellant is successful in this appeal.

- [33] The nature of the process leading to a decision to enter a place in the Register is distinguishable from the circumstances leading to the authority’s decision to issue the notice under the *Coastal Protection Management Act 1995* (Qld) in matters such as *Oakley*. As that decision dealt with different legislation, I found it to be of limited assistance in the present circumstances.
- [34] In the absence of a clear legislative intent to shift the onus from the party seeking to change the status quo, I see no basis for displacing the position at common law. I am satisfied that QHC is the decision-maker, not the moving party. The decision to list the former church building in the Register has been made. The Appellant has appealed that decision. Thus, the status quo sought to be disturbed is the listing.
- [35] In the circumstances, I am satisfied that the Appellant bears the onus. However, who bears the onus is not determinative of the issues in the appeal. I have made findings based upon the evidence which I accept.

Should the Statement of Significance be the primary focus in determining the significance of the place?

- [36] The Appellant urged that, consistent with recent authority of this Court, the content of the Statement of Significance in the Register should be the primary, if not only, focus of the Court in determining the significance of the place. In so saying, the Appellant relied upon the decisions in *Goldicott House Pty Ltd v Brisbane City Council & Ors*³⁵ (*Goldicott House*) and *ISPT Pty Ltd v Brisbane City Council & Anor*³⁶ (*ISPT*).
- [37] While it acknowledged the Court must, in a hearing anew, have regard to the evidence in determining whether either of the criteria are satisfied, it said that the nature of QHC’s case meant that, to the extent cultural heritage significance is alleged, it is contained within the Statement of Significance. Thus, the focus should be on the Statement of Significance.
- [38] QHC said whether the Church does not satisfy criterion (a) and (e) must be determined having regard to the whole of the admissible evidence before the Court.
- [39] With respect, I gain little assistance from the cases to which the Appellant referred. They deal with a different legislative regime and did not deal with whether a place should be entered in the Register under the QHA.
- [40] In *Goldicott House* the place was already listed in the Register and the appeal was in respect of a development application. The Court examined the content of the statement of significance in the entry in the Register for a State heritage place to assess whether the proposed development complied with State Code 14: Queensland Heritage.³⁷ The

³⁵ (2020) QPELR 1153,1183-1195.

³⁶ (2017) QPELR 1117,1130[74].

³⁷ (2020) QPELR 1153, [116], [126].

Court did not consider whether a place satisfied the cultural heritage criteria for the purpose of assessing whether a place should or should not be entered in the Register. Similarly, in *ISPT* the Court was examining whether the proposed development complied with heritage-related planning controls in the planning scheme.

[41] The matter was considered by Durward SC DCJ in *Sisters of Mercy* (PEC) who observed:

“The appeal is by way of hearing anew...The decision of the Council does not mandate or fetter the discretion of the Court.... Nor am I bound by the language of the criteria (in the Statements of Significance) relied on by the Council for the listing of the Convent in the *Register*. I am informed by the evidence of the witnesses in the appeal and my determination is based on the evidence, including the documents tendered in the appeal hearing, to the extent that they (sic) informative and relevant.”³⁸

[42] This approach was also taken by Kefford DCJ in *Scenic Rim Regional Council v Queensland Heritage Council*³⁹ who observed in respect of the Statement of Significance “although this is of some interest, I am not bound by the entry in the Queensland heritage register. I am to decide whether the Saleyard satisfies this criterion having regard to the evidence before me in this hearing.”⁴⁰

[43] I respectfully agree with and adopt this approach. Pursuant to s 162 of the *QHA*, the ground of appeal is that the former church building does not satisfy at least one of the cultural heritage criteria. This appeal is by way of hearing anew. The Court is not bound by the opinion of the Queensland Heritage Council as recorded in the entry in the Register. Whether either of criterion (a) or (e) is satisfied must, in my view, be determined having regard to all the admissible evidence before the Court.⁴¹

What is the role of the Guideline?

[44] The Chief Executive made the Guideline “Assessing cultural heritage significance – Using the cultural heritage criteria”⁴² (Guideline) pursuant to s 173 *QHA*. Section 173 of the *QHA* provides:

- (1) The chief executive may, after consultation with the council, make guidelines to provide guidance to persons about any of the following—
 - (a) making an application under part 4;
 - (b) the administration of part 6, division 1, for the carrying out of development on a Queensland heritage place;
 - (c) the giving of an exemption certificate under part 6, division 2 by the chief executive;

³⁸ *The Corporation of the Sisters of Mercy of the Diocese of Townsville v Queensland Heritage Council* (No. 2) (2017) QPELR 391 [9] (*‘Sisters of Mercy (PEC)’*).

³⁹ [2022] QPEC 42.

⁴⁰ *Ibid* [185].

⁴¹ *Sisters of Mercy (PEC)* [153].

⁴² Ex. 5.01.

- (d) carrying out an archaeological investigation of a place;
 - (e) another matter relating to the administration of this Act.
- (2) The chief executive may, after consultation with the council and local governments, make guidelines to provide guidance to local governments about identifying or managing local heritage places.
 - (3) If the chief executive makes a guideline under this section, the chief executive must publish the guideline, as in effect from time to time, on the department's website.

[45] The Guideline states that it was prepared to provide a framework for entering places in the Register,⁴³ and offers a model for professional assessment of historical cultural heritage significance in Queensland.⁴⁴ Further, the Guideline states that it:

“provides a methodology for identifying and assessing places eligible for entry in the Queensland Heritage Register as State heritage places...is intended to aid heritage professionals and others interested in the conservation of Queensland's cultural heritage” and

“It is anticipated that the application of the interpretations and methodology explored in this guide will...provide clarity when places are under appeal regarding entry in or removal from the Register, on how assessments of cultural heritage significance are made”.⁴⁵

[46] The experts have referred to the Guideline in undertaking their analysis, the historians less so.

[47] Durward SC DCJ observed in *Sisters of Mercy* (PEC):⁴⁶

“The assessment of cultural heritage significance of a place is informed by the Guideline... The Guidelines sets out the “method for determining state cultural heritage significance”. Whilst the Guideline was not in force at the time of decision by the Council...it should be given some weight. The witnesses have referred to it. Counsel have referred to it. Nevertheless, I accept that it is the words of the Act, of course, that inform my approach to the issues in the appeal.”

[48] The Court's assessment of the cultural heritage significance of the former church building is to be determined by reference to the *QHA*. The Court may have regard to the Guidelines but it is the *QHA* which binds the Court.

[49] It is similar to the approach adopted by the Court with respect to the Development Assessment Rules published under s 68 of the *Planning Act 2016* (Qld) in considering a change to a development application, or development approval, and whether it would result in “substantially different development”. In considering the Development

⁴³ Ex. 5.01 Guideline, (i)

⁴⁴ Ex. 5.01 Guideline, [3].

⁴⁵ Ex. 5.01 Guideline, [4].

⁴⁶ *Sisters of Mercy* (PEC), [17].

Assessment Rules, Kefford DCJ in *Highgate Partners Pty Ltd v Sunshine Coast Regional Council*⁴⁷ said:

“There is no stated legislative requirement to consider these matters. They are also not an exhaustive statement of the circumstances that might be relevant to the determination of whether something is substantially different development. Nevertheless, applying a purposive approach to the reading of the planning legislation, I accept that it is appropriate to have regard to them.”

What does the Guideline provide?

[50] Part A of the Guideline recognises 4 levels of cultural heritage significance: local, State, national and world, and that a place may have significance at one or more levels. In determining whether places are of State cultural heritage significance, the Guideline supports the adoption of a two-stage process:

- (a) employing significance indicators to identify the cultural heritage significance of a place; and
- (b) applying threshold indicators to determine the level of this significance.

Application of the significance indicators qualified by the threshold indicators then determines whether the place is “important in demonstrating”.⁴⁸

[51] Part B of the Guideline provides guidance as to the assessment of cultural heritage significance. It relevantly provides that:

- (a) a place need not be important to everyone in Queensland to be of cultural heritage significance and worthy of entry in the Register;⁴⁹
- (b) aesthetic significance, which is most connected with criterion (e), is not synonymous with “beauty” but rather; “...those sensual qualities of a place or object that invite judgment against various ideals including beauty, picturesqueness, evocativeness, expressiveness, grotesqueness or sublimeness and any number of other descriptors of aesthetic judgment.”⁵⁰
- (c) a place will have architectural significance, which is connected with criterion (e), if: “...it is important in demonstrating the principal characteristics of architectural planning, design, style, decorative detailing or construction technique of a particular class of cultural places, or in demonstrating innovation or extrapolation in terms of architectural planning, design, style, decorative detail or construction technique.”⁵¹
- (d) historical significance which is associated most closely with relevantly criterion (a), is not limited to places that are historically “exceptional” or “elite”;⁵² and

⁴⁷ [2021] QPELR 112,[13].

⁴⁸ Ex. 5.01 Guideline, [9].

⁴⁹ Ex. 5.01 Guideline, 13.

⁵⁰ Ex. 5.01 Guideline, 14 – 15.

⁵¹ Ex. 5.01 Guideline, 15.

⁵² Ex. 5.01 Guideline, 16.

- (e) the historical significance of a place is not limited to that which is embodied in its fabric, because:

“a place may possess historical significance that is not demonstrable in the fabric, if the place is the site of an important historical event, or because it is associated with events, processes, groups and individuals of importance in the evolution of our society or our environment.

...

Assessing historical significance is the process of identifying those aspects of the history of a place and its contextual history (geographic, social, economic, political, scientific, architectural, technological, aesthetic or other context) that are important in helping us to understand how the past has shaped the present. The historical significance of a place can be determined only when the historical context is understood.”

⁵³

- [52] Part C of the Guideline provides guidance as to each of the cultural heritage criteria.

Criterion (a)

- [53] The Guideline adopts the following wider interpretation of the words of criterion (a):

“A place is important in demonstrating the evolution or pattern of Queensland’s history if that place is the product of, or is an example of, or is influenced by, or has influenced, or is associated with, or has a symbolic association with, or is the site of an event, phase, movement, process, activity or way of life (including values, aspirations, tastes and fashions) which has made a strong, noticeable or influential contribution to the evolution or pattern of development of our society or of our environment.”⁵⁴

- [54] The Guideline reiterates that the significance of a place may not be simply because of its fabric, but because it combines with other sources of historical information to demonstrate an aspect of the past that has made a strong, noticeable or influential contribution to Queensland’s history.⁵⁵

- [55] The Guideline identifies the following significance indicators relevant to criterion (a), being whether the place:

- (a) is the product, result or outcome of an event, phase, movement, process, activity or way of life that has made a strong, noticeable or influential contribution to the evolution or pattern of development of our society or of our environment;
- (b) was influenced by an event, phase, movement, process, activity or way of life that has made a strong, noticeable or influential contribution to the evolution or pattern of development of our society or of our environment; or

⁵³ Ex. 5.01 Guideline, 17.

⁵⁴ Ex. 5.01 Guideline, 23.

⁵⁵ Ex. 5.01 Guideline, 25.

- (c) has a symbolic association with an event, phase, movement, process, activity or way of life that has made a strong, noticeable, or influential contribution to the evolution or pattern of development of our society or of our environment.⁵⁶

[56] The Guideline then identifies the following threshold indicators that may identify the State significance of the importance of a place:

- (a) earliness, which may be related to activity and building type rather than settlement pattern or era;
- (b) representativeness, being a place that “represent[s], or [is] a good example of, an aspect of our past that has been important in shaping our present”. To be representative implies a place will demonstrate a reasonable degree of intactness and integrity;
- (c) regional importance, which can be important to “our understanding of the development of a State as vast and diverse...as Queensland”;⁵⁷
- (d) distinctiveness/exceptionality, because it holds a highly distinctive or exceptional place in Queensland’s history;
- (e) Rarity, such as “the last surviving”, when a place is significant because little else survives to illustrate a particular aspect of Queensland’s history⁵⁸

Criterion (e)

[57] The discussion of criterion (e) in the Guideline reinforces that aesthetic significance includes its visual merit or interest. The Guideline interprets criterion (e) as:

“A place is important because of its aesthetic significance if that place exhibits sensual qualities that can be judged against various ideals including beauty, picturesqueness, evocativeness, expressiveness, landmark presence, streetscape contribution, symbolism or some other quality of nature or human endeavour, to be of significance.”⁵⁹

[58] The Dictionary in the *QHA* states, “Aesthetic significance of a place or artifact, includes its visual merit or interest.”⁶⁰ Thus, it is apparent that aesthetic significance is intended to be more than beauty.

[59] The significance indicators for criterion (e) include:

- (a) beautiful attributes, which might emanate not only from formal design qualities but also “relationships between components or from the juxtaposition of components;”
- (b) picturesque attributes, which emanate from experiential contact with a place and imply a sense of mystery, intrigue or complexity;

⁵⁶ Ex. 5.01 Guideline, 26 - 27.

⁵⁷ Ex. 5.01 Guideline, 27 – 29.

⁵⁸ Ex. 5.01 Guideline, 26 – 27.

⁵⁹ Ex. 5.01 Guideline, 49.

⁶⁰ *Queensland Heritage Act 1992* (Qld) sch Dictionary (definition of ‘aesthetic significance’).

- (c) evocative qualities, which “inspire an emotional response”, noting that churches are often deliberately designed to evoke feelings of awe and reverence;
- (d) expressiveness attributes, which “...include symbolism, metaphor or associations that reinforce the character of the place and are often associated with particular styles and classes of cultural places”;
- (e) landmark quality, being “the presence of a place in a vista or townscape inspiring an emotional response”; and
- (f) symbolic meaning, being those places that “usually inspire a particular emotive response”.⁶¹

[60] The identified threshold indicators are:

- (a) intactness, being a degree to which “intrusions to the place (i.e. additions and alterations) have affected the place;
- (b) degree of deterioration;
- (c) setting and location context; and
- (d) demonstrated representation, being the ability of a place to be “demonstrated through representations in art, literature, or photography or by inclusion in tour guides and brochures or by some other means”.⁶²

What does “important” mean?

[61] Both criteria use the word “important”, a term not defined in the *QHA*. The Macquarie Dictionary definition of “important” is, relevantly:

1. Of much significance or consequence: “*an important event*”.
2. Of more than ordinary title to consideration or notice: “*an important example*”.

The Australian Concise Oxford Dictionary 2004 (Fourth Edition) definition of “important” is “of great effect or consequence; momentous.”

[62] The meaning of the term as used in s 35(1) of the *QHA* has been the subject of consideration by the Planning and Environment Court. The approach taken by the Court in applying the term in the context of the cultural heritage criteria can be summarised as follows:-

- (a) the word “important” takes the application of the criteria beyond the “commonplace” but not to the extent that it may mean “out of the ordinary” or “exceptional”. The word is to have its ordinary dictionary meaning;⁶³ and

⁶¹ Ex. 5.01 Guideline, 49 – 52.

⁶² Ex. 05.01 Guideline, 53 – 54.

⁶³ *Sisters of Mercy* (PEC), [24].

- (b) the Court should not create a gloss on the words in the relevant criteria, however the use of the word “important” clearly takes the application of the criteria beyond the common place;⁶⁴ and
- (c) “more than mere presence or existence at the relevant times is required otherwise all buildings would qualify. Any contribution, role, involvement or information must be more than existential, it must be significant in the sense of being important. A passing, passive presence would not be sufficient. Something more is required. It is in this context that a determination should be made as to the building’s significance to the past, present or future generations.”⁶⁵

[63] Thus, both criterion (a) and criterion (e) must be viewed through the lens that their satisfaction requires qualities that are more than just commonplace, but not qualities that are out of the ordinary or exceptional. I adopt this approach.

[64] There is a difference between what is of importance to Queensland at the State level under the *QHA*, as against what may be the focus of local importance. This is apparent from the object of the *QHA* and the means by which the object is to be primarily achieved including by the keeping of a register of places and areas of State cultural heritage significance.⁶⁶

[65] As to the criteria, in *Sisters of Mercy* (PEC), Durward SC DCJ observed the following general principles, which I respectfully adopt:

- (a) consideration of cultural heritage significance is not limited to visual assessments of the place, and the historical context of the place, informed by documentary and anecdotal records that comprise a “history” of a place, can properly assist in the assessment;⁶⁷
- (b) a demonstration of evolution or pattern of Queensland’s history is not limited to the physical evidence or fabric of the place and may, in a wholistic sense, include many other historical elements;⁶⁸ and
- (c) the alteration of a place over time is not a “disqualifying feature” but may be properly seen as response to changing needs.⁶⁹

⁶⁴ *JL Smallcombe as Trustee for the Cotton Tree Trust v Queensland Heritage Council* [2010] QPELR 68, [13] – [14].

⁶⁵ *Reelaw v Queensland Heritage Council* [2005] QPELR 335, [109].

⁶⁶ *QHA*, s 2(1), s 2(2)(b).

⁶⁷ *Sisters of Mercy* (PEC), [158].

⁶⁸ *Sisters of Mercy* (PEC), [160].

⁶⁹ *Sisters of Mercy* (PEC), [174].

What are the rulings on the objections to evidence?

- [66] The Appellant objected to aspects of the evidence of Mr Richards, and the QHC objected to parts of the evidence of Dr Bell, Mr Olsson and Reverend Gunton in accordance with Exhibit 4.05 and 5.05 respectively. The Appellant appropriately withdrew its previous objections to the evidence of Dr Daunt.⁷⁰ The QHC indicated it did not press particular evidence of Mr Richards to which objection was taken.⁷¹ I have taken that to mean that the QHC does not seek to rely upon that evidence and a ruling on it is not required. It is not in dispute that Mr Richards, Dr Bell and Mr Olsson are experts in their respective nominated areas of expertise.
- [67] The rulings on the objections are contained in Schedule A to these reasons.

What is the relevant history?

- [68] The historians, Dr Peter Bell (called by the Appellant) and Mr Scott Richards (called by the QHC) agreed the historical context of the former church, accepting the information in the Entry in the Register as generally accurate and useful. The following comprises their views:

- “3.3 Urban development of Ashgrove began in the 1880s when a residential estate called ‘The Grove’ was surveyed. It became an upmarket suburb through the late 19th century. The first Methodist Sunday School opened in a private home in the suburb in 1889. Methodist Church services in Ashgrove were held in a tent that was pitched opposite the current church site from 1891.
- 3.4 This same year (1891) the Methodist congregation of The Grove bought a small timber building (the former Wesleyan Methodist Church in Red Hill), which was relocated from Red Hill to a site in Harry Street, Ashgrove, on land the congregation had recently acquired. This was the first church in Ashgrove. Additions were made to The Grove Estate Church in 1904. In 1918 this church was relocated to the current Ashgrove Avenue site, which the congregation bought that same year.
- 3.5 After World War I the suburban tram network was extended to Ashgrove. The suburb grew considerably in the 1920s, with its population increasing from 1,725 persons to 4,482 over the decade. Much of this growth occurred to the west of the intersection of Ashgrove Avenue and Waterworks Road and away from the existing church.
- 3.6 The Grove Estate Church was initially part of the Ithaca Methodist Circuit. With the growth of the congregation into the 1920s, a separate Ashgrove Methodist Circuit was established within the church organisation. The Ashgrove Methodists constructed a church hall at West Ashgrove in 1931 to serve that part of the community where much of the growth of the suburb had occurred.

⁷⁰ T3-36, [11] – [12].

⁷¹ Respondent’s’s Written submissions dated 24 June 2022, [124](c), (f), (j) (m).

- 3.7 In 1934 the main Ashgrove church was given a large extension to the rear, which later became the existing church hall. With the population of Ashgrove increasing in the post-war era, plans for new, larger Methodist churches in Ashgrove were being discussed in the 1950s. Building funds had been established for new churches for both Ashgrove and West Ashgrove. While the Ashgrove Methodist Church was much older than West Ashgrove, the West Ashgrove Methodist Church was much smaller and the strong growth of its congregation meant that it had a greater need. Therefore, a new brick church was constructed at West Ashgrove in 1953 to a design by the regular Methodist architects Cooke and Kerrison.
- 3.8 At Ashgrove Methodist, a different architectural firm, Cross and Bain were commissioned to plan a new church there in 1958. The architect who drew the plans was James Gibson.
- 3.9 A site for the new church was created by moving the 1934 hall extension to the old church further north, close to Devoy Street, where it became the church hall. The new church was located on the Ashgrove frontage of the site, but the main entrance to the church was within the site and did not face the street. The foundation stone of the new church was laid in October 1961. Gibson had drawn up an architecturally modernist design, an A-framed structure with a green-tiled roof, with a large glass wall making up the western end. The building was not rectangular in plan, but tapered down to its eastern end. The new church opened in April 1962.
- 3.10 In 1977 the Methodist Church in Australia amalgamated with the Presbyterian and Congregational churches to become the Uniting Church. Since that time the building operated as the Ashgrove Uniting Church.
- 3.11 Alterations were made to the church in the 1990s, including removing some of its ecclesiastical features such as the sanctuary and vestry, removing some furniture and adding a stained glass window to the eastern wall.
- 3.12 Congregation numbers declined, and in 2010 the church closed. It(sic) interior was fitted with partitions and furniture, and it has most recently been used as office space. The hall has been leased since 1980 by the Ashgrove Dance Studio which has more than 180 students enrolled for its activities.”⁷²

[69] The site on which the former church building is constructed comprises four irregularly shaped parcels of land bounded by Ashgrove Avenue to the south and Devoy Street to the north. The land slopes away from Ashgrove Avenue to the south towards Devoy Street, with the building located on the higher part of the land. The southern side of the former church building is parallel to Ashgrove Avenue. The northern side of the four

allotments, closest to Devoy Street is occupied by the timber church hall.⁷³ The hall is excluded from the heritage register entry and no cultural heritage significance is attributed to it.

- [70] The architects, Mr Russell Olsson and Dr Lisa Daunt, described the former church building as:

“...an A-frame building standing with its long sides parallel to Ashgrove Avenue on the highest part of the site. It is single storey and its roof has a sloping ridgeline, taller and wider at its front (south west gable end), where the church’s main entrance is. The steeply-pitched main roof is clad in green-coloured cement tiles with eaves extending low to the ground on both sides. The shape is formed by metal portal frames, which extend from below the eaves clear of the exterior walls and meet the ground on concrete footings. Both gable ends of the building have face brick walls and are glazed, with the front featuring a coloured glass cross pattern. The side walls on the south east are face brick, the north west walls are clad in timber vertically jointed (VJ) boards and the sub-floor is enclosed by hit-and-miss concrete blocks.

A wide concrete path leads from Ashgrove Avenue through gardens to the main entrance of the church. The entry vestibule retains original tiled floors and a brick wall with decorative openings into the nave. The nave is a very tall space with raked ceilings and exposed A-frame portal frames. Its width and height diminish toward the sanctuary at the far (north eastern) end. Original metal-framed windows run almost the entire length of the nave and form a sanctuary on both sides. Projecting from the roof on the norther-eastern side is the choir stall, a box-like room open to the nave near the sanctuary.

In 2021, the Church is used as an office building. The original layout of the Church was reorganised in the 1990s and again when it was converted to offices in the 2010s. The entry vestibule has been partitioned to create a toilet and the original doors and windows removed or replaced. An office structure has been inserted in the centre of the nave. The original sanctuary plinth and partition between the sanctuary and vestry have been replaced further to the rear of the church, creating a large nave. (c. 1990s, re-using original timber doors in new locations). A kitchenette and partition have been added to the former vestry to form a lunch-room and separate plant and equipment room. Part of the vestry’s rear wall has been demolished and a lean-to extension added to accommodate storage and a rear entrance.”⁷⁴

- [71] The present interior of the former church building is depicted in Figures 11, 12 and 13 of Dr Bell’s individual report.⁷⁵ The roof/ceiling form, the beams and the fan layout of the interior of the building remain intact. In addition to the changes observed by the architects in [70], the furnishings designed by the architect, Mr Gibson, including

⁷³ Ex. 3.02 Historian JER,[2.2][2.3].

⁷⁴ Ex. 3.01 Architecture JER, 3.

⁷⁵ Ex. 4.02 Individual Expert report of Peter Bell.

bespoke maple pews, communion table and rail, pulpit, baptismal font, choir stall and minister's chair, considered by Mr Gibson to be of equal importance to the building itself⁷⁶ are long gone and are not able to be replaced.⁷⁷ The stained glass window to the eastern wall was added in the 1990s.⁷⁸ Unsympathetic additions have been made to the exterior of the building including an elevated walkway linking to the hall, fence, air-conditioning ducting and unit, and a shed. There is no suggestion that the Appellant has acted inappropriately in managing and owning the former church building and there is no criticism of the changes that have been made.

Does the Church satisfy Criterion (a) of s 35(1) of the *QHA*?

- [72] Criterion (a) is “the place is important in demonstrating the evolution or pattern of Queensland’s history.”
- [73] The historians prepared a joint expert report addressing criterion (a).⁷⁹ Dr Bell also prepared an individual report.⁸⁰
- [74] In cross-examination, Dr Bell said that to meet the test of importance, it was necessary for a place to be “out of the ordinary or exceptional”.⁸¹ This is not consistent with the approach that I accept which is set out in paragraph [63] above. However, I am satisfied that his approach in the JER did not elevate the test to this point.⁸²
- [75] Dr Bell responded to criticism from QHC saying he had reviewed the same material as Mr Richards, formed his own views based on this material and there was nothing in the material which suggested that the former Church building was of sufficient importance either historically or architecturally, compared with any other modernist post-war church.⁸³ I am satisfied that having regard to his evidence he has considered whether criterion (a) is satisfied.
- [76] Mr Richards relied upon other criteria important to him, in forming his opinions. Although the QHC did not contend for the listing of the former church building on this basis, in undertaking his analysis Mr Richards addressed criteria (d) and (f). He rebutted Dr Bell's claims that the failure to list the building as satisfying criteria (d) and (f) undermined the application of criteria (a) and (e), opining that the church satisfied both criteria (d) and (f).⁸⁴ He acknowledged the criteria (d) and (f) were critical in his overall analysis.⁸⁵ In taking this approach, Mr Richards considered matters not relevant to issues in the appeal. For these reasons, where they differ, I prefer the evidence of Dr Bell.
- [77] Construction of the building finished in 1962 and the union of the Methodist and Presbyterian Churches took place in 1977.⁸⁶ It ceased use as a church only 33 years

⁷⁶ Ex. 2.16 Entry into the Queensland Heritage Register, 6.

⁷⁷ T3-17[35]–T3-18[20], T2-47[9]-T2-48[30], T2-50[1] – [10].

⁷⁸ Ex. 3.02 Historian JER, [3.01].

⁷⁹ Ex. 3.02 Historian JER.

⁸⁰ Ex. 4.02 Individual Expert Report of Peter Bell.

⁸¹ T1-41[35]–[36].

⁸² Ex. 3.02 Historian JER, 11, [5.11].

⁸³ T1-49[8]–[12]; T2-5 [24]-[26].

⁸⁴ T2-27[19]–[21] ; Ex. 3.02 Historian JER [5.46].

⁸⁵ T2-27[42]; T2-28[6].

⁸⁶ Ex. 3.02 Historian JER, 3 [1.6].

later in 2010. Thus, the former Ashgrove Methodist Church operated as a Methodist church for only 15 years.

- [78] The QHC pursued the listing on the basis of the former church building's history as a Methodist Church.⁸⁷ The Appellant questioned whether a building which operated as a Methodist Church for only 15 years can be important in demonstrating the evolution or pattern of Queensland's history. While I accept that length of time may be a factor relevant to importance, brevity alone is not indicative of lack of importance.
- [79] Dr Bell and Mr Richards agreed that there was a progressive building program across the churches in the 1950s and 1960s.⁸⁸ I accept that the evolution of the Methodist Church in Queensland is part of the evolution or pattern of Queensland's history. The historians disagreed about whether the former Ashgrove Methodist Church is important in demonstrating the evolution or pattern of Queensland's history.
- [80] Dr Bell accepted that:
- (a) the Church, being the first A-frame church in Brisbane, demonstrates the evolution of church architecture in Brisbane, and therefore Queensland, post-World War II;⁸⁹
 - (b) there was a post-war mission of the Methodist Church to become relevant to modern society;⁹⁰ and
 - (c) the Church is representative of the pattern of development that was occurring with Methodist churches in the 1950s and 1960s.⁹¹
- [81] However, the building must be important in demonstrating the evolution of Queensland's history, which Dr Bell disputes. That the building has been altered to its detriment reinforced his opinion.⁹² It is no longer the church built in 1962.⁹³ He considered that, if it were more intact, its importance would be elevated.⁹⁴
- [82] Mr Richards opined that the church being an early South-East Queensland example of a modern style is sufficient to support its listing pursuant to criterion (a).⁹⁵ He accepted that there were other churches in the State and in Brisbane adopting that form. He opined that the former church building was "clearly at the forefront of the modernist design for churches in this period and was one church among other contemporaries demonstrating those stylistic traits and modern forms."⁹⁶
- [83] A-frame churches built in Queensland before this one include St Peter's Catholic Church in Halifax built in 1960, and St Andrews Presbyterian Memorial Church in Innisfail built in 1961. Other A-frame churches built across Brisbane in the period 1962 – 1964 include the Holland Park Methodist Church (1962), the Chapel at

⁸⁷ T2-61[35]–[46].

⁸⁸ T2-7[13]; T2-59[7].

⁸⁹ T2-61[45] - T2-62[3].

⁹⁰ T2-63[8]–[9].

⁹¹ T2-9[9]–[12].

⁹² T2-11[7]–[8].

⁹³ T2 – 11[7]–[8].

⁹⁴ T2 – 11[3]–[4].

⁹⁵ T2-35,[6].

⁹⁶ Ex. 3.02 Historian JER, [3.38].

Stuartholme Catholic Girls College at Mt Coot-tha (1963) and the Memorial Church of Our Lady of Mt Carmel Catholic Church at Coorparoo (1964). Mr Richards observed that the St Paul's Anglican Church, Proserpine (1958 – 1959), the Mareeba Uniting Church (former Methodist) (1959 – 1960), St Andrew's Presbyterian Memorial Church (1961) and St Johns Lutheran Church, Bundaberg (1960) are modernist churches and pre-date this building.

- [84] Mr Richards opined that the former church building “ demonstrates the extent across Queensland and the variety of modernist designs for church buildings in the post-war period.”⁹⁷ In so saying, he relied upon Dr Blake, (who prepared the application for the listing of the building), who in turn referred to a quote by Mr Hilliard which asserted to relate to the growth of the Methodist Church in Brisbane. Mr Richards acknowledged in cross-examination that Mr Hilliard's quote in fact referred to all major denominations.⁹⁸
- [85] The Guideline's threshold indicators are: regional importance, earliness, representativeness, distinctiveness/exceptionality, and rarity.
- [86] The importance of the site is not apparent from publications.⁹⁹ It is not mentioned in the National Trust of Australia's Queensland Register, the Australian Heritage Database, RAI Register of Significant 20th Century Architecture, Brisbane City Council's Local Heritage Register or Dr Daunt's publications. That the former church building is not mentioned in these publications is a factor relevant to the assessment of the importance of the building. To the extent that regional importance may be demonstrated by listing on a local heritage register, the Church is not listed on the Brisbane City Council Heritage Register. I accept that at its highest the building has importance to the Ashgrove Methodist community because it was built to accommodate that population.
- [87] The building is not associated with early settlement and post-dates development of Ashgrove.¹⁰⁰ While not the first A-frame church in Queensland, it was the first (ie. the earliest) A-frame church to be built in Brisbane. For this reason, I am satisfied that the building type is considered early for Brisbane.
- [88] The former Church building is not a rare example of a post-war modern church building built across Queensland. Nor is it “the last surviving” or “rare early evidence of” as there are other post-war A-frame churches in Brisbane.¹⁰¹ As Mr Richards acknowledged, there are a number of other churches throughout the State and in Brisbane that adopted an early modernist architectural form.¹⁰²
- [89] Relevant to representativeness is whether the building represents, or is a good example of, an aspect of our past that has been important in shaping our present.¹⁰³ Intactness of the Church is relevant in considering whether it is representative. I rely

⁹⁷ Ex. 3.02 Historian JER, [5.30].

⁹⁸ T2-59[6]-[7].

⁹⁹ T2-34, [10]-[12].

¹⁰⁰ Ex. 3.02 Historian JER, [3.3].

¹⁰¹ T2-11[7]-[8].

¹⁰² T2-34[39]-[41].

¹⁰³ Ex. 5.01 Guidelines, 26.

upon the findings in relation to intactness at paragraph [123]. For these reasons, I do not consider that the building is representative.

- [90] This is not to suggest that a building that has been modified cannot be entered in the Register, but that, in this particular instance the features which have been altered are factors which, amongst others, impact adversely on the building's importance.
- [91] There is no suggestion, on the evidence, that the building holds a highly distinctive or exceptional place in Queensland's history.
- [92] While the building has importance to the Ashgrove Methodist community and the building type is early for Brisbane, I am satisfied that the former Church building is not important in demonstrating the evolution or pattern of Queensland's history and so does not satisfy criterion (a). This is so because:
- (a) The Methodist Church was one church among many that pursued a progressive building program growth in the 1950s and 1960s;
 - (b) The optimism, renewal and relevance of the Methodist Church at that time was consistent with other major denominations;¹⁰⁴
 - (c) The building is not a rare example. There are other A-frame church buildings in Brisbane and, more broadly, in Queensland;
 - (d) The building does not hold a highly distinctive or exceptional place in Queensland's heritage; and
 - (e) The intactness of the building has been substantially compromised.

Does the Church satisfy the Criterion (e) of s 35(1) of the QHA?

- [93] Criterion (e) is "the place is important because of its aesthetic significance".
- [94] The Appellant urged that the Court must stand in the shoes of the ordinary passer-by undertaking its assessment of aesthetic significance. It relied upon the test expressed by Skoien SJDC in *Lonie v Brisbane City Council & Ors (Lonie)*¹⁰⁵ as applied by Robertson DCJ in *JL Smallcombe as Trustee for the Cotton Tree Trust v Queensland Heritage Council (Smallcombe)*,¹⁰⁶ that the criteria is to be assessed by the court from the perspective of "the average person walking the street and looking about, with a perception which falls somewhere between that of a PhD in architectural history on the one hand and that of a philistine on the other."¹⁰⁷
- [95] In taking this position it said:-
- (a) the QHC's test is inconsistent with the principles of statutory interpretation that words be given their plain and ordinary meaning, unless a contrary intention is shown;

¹⁰⁴ T2-51[37].

¹⁰⁵ [1998] QPELR 206.

¹⁰⁶ [2010] QPELR 68, [10].

¹⁰⁷ [1998] QPELR 206, [212].

- (b) that while determining the general historical significance of a place might require reference to extraneous source material, an assessment of visual attributes should not be subject to a heightened standard based on extrinsic information. It said that the approach taken by the Respondent does not provide for an objective analysis of the visual merit or interest of a place. Rather, it would contaminate the visual assessment with extraneous matters more properly considered as part of other criteria;
- (c) there is a long line of cases applying Skoien SDCJ's observation in *Lonie*; and
- (d) The approach in *Lonie* does not detract from the court's need to be satisfied on the balance of probabilities on the evidence before it that at least one criteria is satisfied. To the extent the court determines the matter on the evidence before it, it is acting as "an informed Council" in whose shoes the court stands. However, it contends that to the extent that there is tension, the approach in *Lonie* should prevail. The Appellant acknowledged that the issue was not determined by the Court in that case, but rather was framed that way by the parties.

[96] The QHC said that the decision to enter a place in the Register is to be made not from the perspective of an ordinary passer-by, but by a person with an informed interest in heritage conservation, informed by submissions and other material relevant to whether the place should be entered in the Register. As this is the decision the QHC makes, the Court, standing in the shoes of the QHC, should approach the appeal in a similar way.

[97] It relied upon *Sisters of Mercy (PEC)* in which Durward SC DCJ:

"[169] *Lonie v BCC* [1998] QPELR 209 involved an appeal against a local authority decision to refuse an application for demolition of a 'worker's cottage' built between about 1910 and 1915. It was not a heritage case per se. Skoien SJ DC was persuaded that the building was as thus described and had been "adapted to the needs of 1950's or 1960's owner". His Honour in the judgment equated 'significance' with 'importance'. However, the case is better known for the passage about the perception of a building or streetscape by an average observer on the street that 'falls somewhere between that of a PhD in Architectural History on the one hand and that of a Philistine on the other.

[170] Mr Litster submitted that this was not the appropriate test. The test was not that of '*the ordinary man in the street*' but was of an 'informed council' in whose shoes the Court stands in this appeal. I agree. *Loni* is distinguishable on that basis."¹⁰⁸

[98] *Lonie* was a demolition case. In *Smallcombe* the Court considered whether to list the place in the Register and applied the *Lonie* test. However, the correctness of the test was not argued in *Smallcombe*. Rather in that case, it was "common ground" that the *Lonie* formulation was accepted. This issue was the subject of argument in *Sisters of Mercy (PEC)*. I accept and rely upon his Honour's reasoning in that decision. I am satisfied that this Court, "standing in the shoes of the QHC" should approach this consideration in the same manner and I proceed on that basis.

¹⁰⁸ *Sisters of Mercy (PEC)* [169]-[170].

- [99] In taking this approach I have regard to matters in the *QHA* which indicate that consideration of the criterion involves a level of sophistication beyond that of the “ordinary passer-by” including:
- (a) the QHC’s functions in s 8 *QHA* include the giving of advice about Queensland’s cultural heritage;
 - (b) s 10 *QHA*, which requires that the QHC must include among its members a representative from the National Trust of Australia (Queensland) Limited and seven persons with appropriate knowledge, expertise and interest in heritage conservation;
 - (c) s 44 *QHA*, which requires the Chief Executive of the Department to give a recommendation to the QHC; and
 - (d) s 51 *QHA*, which requires that the QHC, in making a decision whether or not to enter a place into the Register, take into account the application, all submissions, written representations, and oral representations and any heritage response from the owner of the place.
- [100] The architects engaged to address criterion (e) were Dr Daunt for the QHC, and Mr Olsson for the Appellant. They agreed the relevant significance indicators and threshold indicators from the Guideline¹⁰⁹ While it is the provisions of the *QHA* with which I am concerned, for ease of reference I consider the experts’ evidence on this basis.
- [101] Dr Daunt wrote a submission in support of the listing of the Church in the Register.¹¹⁰ It included information directly from her doctoral dissertation, supplemented with further information specific to the Church. The Appellant did not challenge Dr Daunt’s credit or her honesty, but said difficulties arose with Dr Daunt’s conclusions, being largely judgement based on the appropriate legal test. The QHC submitted that while Dr Daunt made a submission supporting the listing, her purpose in making the submission was to provide information to assist the QHC.
- [102] Since obtaining her qualifications as an architect, Dr Daunt has worked in the field of heritage conservation and adaptive re-use. She acknowledged that she is an advocate for the protection and care of religious buildings.¹¹¹ Dr Daunt’s primary research interest is post-war ecclesiastical architecture. Clearly, she is knowledgeable in her area of expertise. Dr Daunt’s expertise was accepted and endorsed by Dr Bell and Mr Olsson. Mr Olsson accepted and relied upon Dr Daunt’s historical research, accepting that it assisted in understanding the church.¹¹² I accept Dr Daunt’s evidence was factually sound.
- [103] It is unsurprising that someone of Dr Daunt’s experience readily observes significance in a place of worship. In my view, Dr Daunt set the bar too low in ascribing importance to the building, which impacts on my evaluation of the probative value of her evidence. In the circumstances, I give less weight to Dr Daunt’s evidence than might ordinarily attach to evidence from an independent architect retained by a party

¹⁰⁹ Ex. 3.01 Architecture JER, 4 – 5.

¹¹⁰ Ex. 3.01 Architecture JER, Appendix F.

¹¹¹ T3-14[17].

¹¹² T2-68[1]–[5].

to an appeal, as it relates to the importance of the Church for the purposes of criterion (e). This is not a reflection on Dr Daunt's experience or competence as an architect. Rather, it stems from her lively interest in the subject matter as evidenced by the submission she wrote in support of the listing of the Church in the Register and her role as an advocate for the protection and care of religious buildings.

- [104] As recorded by Dr Daunt, in excess of 1350 church buildings were built in Queensland in the period 1945 – 1977.¹¹³ The A-frame design was favoured only for a short period with less than 20 A-frame churches built in Queensland.¹¹⁴
- [105] Dr Daunt conceded that views to the former Church building “are not readily described as picturesque”¹¹⁵ but there was otherwise disagreement between the experts about the application of the significance indicators.
- [106] Mr Olsson said that the unfolding of views occurs as one approaches a place, creating a picturesque quality. He opined that the picturesque attributes of the building are “very limited by its visibility”. He formed this opinion on the basis of the analysis of views. He observed that from Devoy Street, when the building is visible the metal shed and air conditioning ducting can be seen. On approach from Ashgrove Avenue, trees block the view and when opposite the site the view is dominated by the large dark unarticulated roof.¹¹⁶ Due to its orientation, the front entry does not provide visual cues that this is the main entry. Approaching the building from the south on Ashgrove Avenue, a large building with a steeply pitched roof is observed in the distance.¹¹⁷
- [107] I accept that the views to the building are not picturesque. This is supported by the photographs, in particular Ex. 5.04 and Appendix B of the Architecture JER.¹¹⁸
- [108] In relation to beautiful attributes, Mr Olsson observed:

“Ashgrove Methodist Church embodies the formal qualities of symmetry, cohesion, completion and a degree of unity of scale, form, materials and texture. The building has a limited palette for forms being an A Frame roof form, low side walls and two glazed ends. The side walls are diminished in their role due to the predominance of the roof, reducing the articulation of forms predominantly to the roof and the two end glazed walls...

The building also has a limited palette of materials, with a concrete tiled roof, glazed curtain walls and brickwork at the entrance canopy and lower part of the southern end wall. The lower part of the northern end is comprised of unattractive air-conditioning ducts, a metal clad wall and metal clad shed attached to the church building.

The formal qualities of the building itself are compromised by the poor quality of its surrounds. The front entry metal fence and gates at the

¹¹³ Ex. 3.01 Architecture JER, 71.

¹¹⁴ Ex. 3.01 Architecture JER, 7.

¹¹⁵ Ex. 3.01 Architecture JER, 9.

¹¹⁶ Ex. 3.01 Architecture JER, 32, Fig. 5, Fig. 7.

¹¹⁷ Ex. 3.01 Architecture JER, 33, Fig. 9

¹¹⁸ Ex. 3.01 Architecture JER, 35 – 48.

Ashgrove Street entry, the metal southern side fence with the Presbytery office and the concrete footpath at the main Church entry are poor quality materials. The elevated metal walkway from the Church Hall to the Church building visually cuts across the southern façade, impeding views to the main entry façade.”¹¹⁹

- [109] Dr Daunt observed that in considering beautiful attributes it is important to recognise the building as a Methodist Church,¹²⁰ and that form and function, rather than ornateness and decoration, are the important factors in considering the beauty of a modern church.¹²¹ She acknowledged the pared-back material palette, and considered the church has beautiful attributes being its “simple A-frame form tied directly to its church function and modern coloured-glass front façade window”. She considered the quality of the external surrounds did not directly impact on the beauty of the Church itself.¹²²
- [110] Beauty can arise from the relationship between components. The experts agreed the building has a limited colour and materials palette. The quality of the external surrounds impact on the beauty of the Church itself. While the concrete path does not impact on the beauty of the Church, the elevated metal walkway, air conditioning ducting and unit, and shed impede the view of the building and adversely impact upon its setting. This is apparent from the images of the building.¹²³
- [111] With respect to evocative qualities, Mr Olsson said that while the building has some visual presence viewed from a distance:
- “as a public building in the townscape its poor relationship to surrounding streets would not support the idea that Evocative Qualities are a significant indicator of heritage values.”¹²⁴
- [112] Dr Daunt took the view that the Church’s architecture is evocative of its ecclesiastical function through its external form, the volume of its exterior and the stained-glass front façade.
- [113] Dr Daunt opined that it was the building’s expressive attributes that are the “strongest indicator” of its cultural heritage significance. The qualities relied upon by Dr Daunt as demonstrating those expressive attributes are:
- (a) the unconventional siting of the Church allowing the A-frame end to be prominent within the streetscape for passers-by;¹²⁵
 - (b) the main front elevation with its large, coloured cross, expressing the Church’s liturgical function;¹²⁶

¹¹⁹ Ex. 3.01 Architecture JER, 6.

¹²⁰ Ex. 3.01 Architecture JER, 8.

¹²¹ Ex. 3.01 Architecture JER, 7.

¹²² Ex. 3.01 Architecture JER, 8.

¹²³ Ex. 3.01 Architecture JER, 51; Ex. 4.02 Individual Expert Report of Peter Bell, 28, Fig. 9.

¹²⁴ Ex. 3.01 Architecture JER, 10.

¹²⁵ Ex. 3.01 Architecture JER, 12.

¹²⁶ Ex. 3.01 Architecture JER, 15.

- (c) the slope of the roof form deployed to “express its Methodist church function”,¹²⁷focussing worship on the sanctuary; and
- (d) the architectural qualities of the Church, being its narrow metal-framed windows, face brick walls with extruded brick pattern, and green tiled roof.

[114] Dr Daunt considered that these features combined to create “a very expressive piece of architecture and an articulated building.” She accepted that the metal framed windows, face brick walls, green tiled rooves and coloured eaves were features commonly used in other churches.¹²⁸ She noted that the “whole building has been designed as... in its entirety as an object and expressed so that each of the different bits are read against each other.”¹²⁹

[115] Mr Olsson acknowledged that the A-frame form became one of the representative symbolic forms of the Church post-World War II, but in his opinion the expressive attributes of the Church are limited to this and the sloping roof ridge.¹³⁰ He did not consider the main elevation with large coloured-glass cross, which he described as a common symbol, and the tapered A-frame form exhibit sufficient expressive attributes and architectural quality to achieve the threshold for listing on the Register.¹³¹ Neither the overall form, nor the extruded brick pattern were, in his view, highly visible.

[116] I accept that the building demonstrates expressive attributes by the combination of its features including the A-frame, sloping roof ridge and coloured glass cross.¹³² However, the limited visibility of the building impacts adversely upon the demonstration of these attributes.¹³³

[117] The landmark quality refers to the visibility of the heritage place within a vista or townscape inspiring an emotional response, usually created by the combination of particular evocative qualities with recognition.¹³⁴ Mr Olsson considered that the siting limited the visibility of the building and the building’s orientation does not assist with the appreciation of a major façade¹³⁵ in relation to the surrounding townscape. Further, he opined that the unarticulated roof form does not elicit an emotional response. Dr Daunt considers that the “unconventional” siting of the Church, parallel to Ashgrove Avenue gives the A-frame gable ends of the Church a greater prominence for passers-by with long vistas from Ashgrove Avenue, Devoy Street and Holmesbrook Street. Further, she opined that the location of the building on a prominent ridgeline and its A-frame form caused the building to be a landmark.

[118] Places that contribute to streetscape can have a strong aesthetic significance,¹³⁶ and do this by contributing an important component to the streetscape through consistency of form, scale and materials. Mr Olsson considered that the steep pitch of the roof viewed

¹²⁷ Ex. 3.01 Architecture JER, 14.

¹²⁸ T3 – 24 [32]–[37].

¹²⁹ T3 – 25[24]–[25].

¹³⁰ Ex. 3.01 Architecture JER, 11.

¹³¹ Ex. 3.01 Architecture JER, 27, [2],[3].

¹³² Ex. 3.01 Architecture JER, 49.

¹³³ Ex. 3.01 Architecture JER, 35-48.

¹³⁴ Ex. 3.01 Architecture JER, 10.

¹³⁵ Ex. 3.01 Architecture JER,16.

¹³⁶ Ex. 5.01 Architecture JER, 52.

from the north and south indicates that the building is a different type to others in the street, contributing to a hierarchy of public and private structures in the street.¹³⁷ He opined that the unarticulated roof form fronting Ashgrove Avenue contributes little to the visual interest of the streetscape. He accepted that the sloping ridge line adds some interest, but not enough to create an interesting streetscape. From the public realm, the building's architectural expression was limited to the gently sloping roof form and the upper part of the glazed walls¹³⁸ and that it is only once on the property that the glass wall at the western end can be appreciated. Dr Daunt considered the building to be prominent and interesting within its streetscape. She relied upon its expressive attributes and landmark qualities as contributing a strong aesthetic significance. Due to the building's poor visibility from the public realm, which impacts on its expressive attributes and landmark qualities, I consider the building makes a limited contribution to the streetscape.

- [119] As to symbolic meaning, Mr Olsson said that because of the orientation of the building away from the public domain, the symbolism of the form is limited. He acknowledged that "the A Frame form does take the place of the more historic elements of a bell tower and spire."¹³⁹ Mr Olsson agreed as to the symbolism of the cross and considered the A-frame interprets traditional symbols. Internally, the A-frame created a vertical space engendering emotions of reverence. Dr Daunt relied upon the symbolism of the A-frame and the cross and the front glazed façade to opine that the A-frame is symbolic and legible.¹⁴⁰
- [120] The building exhibits symbolism, particularly through the use of the A-frame. However, the siting of the building means that its symbolism in the public realm is limited.
- [121] Turning then to the threshold indicators being intactness, setting and location and demonstrated representativeness.
- [122] Dr Daunt recognised the intrusive objects and changes which have occurred to the building over time. She considered the building in terms of its current use and presentation internally and externally. Externally, the Church is presently compromised by a raised walkway, an unsympathetic fence, air-conditioning ducting and unit and a shed attached to an external wall. She acknowledged that Mr Gibson who designed the church building considered the internal furniture equally as important as the building itself,¹⁴¹ saying that "when an architect designs a building, they think of it as an overall item..."¹⁴² Dr Daunt opined that the building's original use as a church is still legible, despite changes to the building internally and externally. Dr Daunt opined that despite the significant changes to the interior of the building, the interior space reflected by the remaining internal features being the ceiling and the fanned floor still marked it as an ecclesiastical building. Mr Olsson opined that these changes meant the building was only very minimally recognisable as a place of worship.¹⁴³ Mr Olsson considered the main elements of the external form to be reasonably intact. He

¹³⁷ Ex. 3.01 Architecture JER,18.

¹³⁸ T2-75[45]-T2-76[2].

¹³⁹ T2-80[19]-[20].

¹⁴⁰ Ex. 3.01 Architecture JER, 19.

¹⁴¹ T3-20[3].

¹⁴² T3-24[46]-T3-25[1].

¹⁴³ T2-77[13].

accepted that the alterations caused by the building's conversion to an office may be reversible.¹⁴⁴ However, he considered the internal and external changes substantially compromised the intactness of the building.

- [123] The alterations which have occurred to the building taken together have resulted in its intactness being substantially compromised". The focus is on intactness. This must be a reference to its intactness relevant to its original construction, not merely whether it remains recognisable for its original function. The interior of the church in 1962 is shown in Fig. 4 of the Architecture JER.¹⁴⁵ The present interior is frankly different.¹⁴⁶ The effect of the loss of the interior features is readily apparent. While the building remains recognisable as an ecclesiastical building and the external form including the tiled roof and glazed wall are reasonably intact,¹⁴⁷ it does not retain a reasonable degree of intactness. The building may be able to be partially restored with the removal of the fencing, shed, air conditioning and internal partitioning, but other significant internal elements cannot be restored. The significance of these features was acknowledged by Dr Daunt.
- [124] When considering setting and location, Dr Daunt considered the low scale development in the surrounding area did not impact on the setting. Rather, that the "setting and location...enhances its landmark qualities and evocative and expressive qualities".¹⁴⁸
- [125] The Church has limited demonstrated representation in art, literature or photography. Two Courier Mail articles from 14 March 1962 and 3 January 1963 and the Methodist Times from March 1962 were the only articles proffered. There is no mention of the building in Dr Daunt's thesis or her significant literature on post-war modernist religious buildings in Queensland.¹⁴⁹ While I accept Dr Daunt's evidence that the limited quality architectural material about the Church available at the time and the limit on words meant this building was not included in her thesis, its absence from her thesis suggests that the building lacks importance. Dr Daunt's thesis is an extensive study on modern church architecture in Queensland in the period 1945 – 1977. It includes 90 case studies, 12 different denominations and 40 different architectural practices.¹⁵⁰ Her extensive research included interviewing Mr Gibson, the Church's architect. While Mr Gibson's work is mentioned, this Church is not.
- [126] Mr Olsson fairly acknowledged that the building exhibited some of the significance indicators, but ultimately concluded that:

¹⁴⁴ Ex. 03.01 Architecture JER, 20.

¹⁴⁵ Ex. 3.01 Architecture JER.

¹⁴⁶ Ex. 4.02, Individual Export Report of Peter Bell, Figs 11, 12 and 13.

¹⁴⁷ Ex. 3.01 Architecture JER, 20.

¹⁴⁸ Ex. 3.01 Architecture JER, 22.

¹⁴⁹ Ex. 6.01 Brisbane church architecture of the 1960s: Creating modern, climatic and regional responses to liturgical change; Ex.6.02 Technologies of Brisbane church architecture in the 1960s; Ex. 6.03 An architecture of complexity and contested value; Ex. 6.07 Pitching Paper - Lisa Daunt; Ex. 6.08 Uneasy heritage: Australia's modern church buildings are disappearing; Ex. 6.09 Constructing faith: Postwar religious buildings in Australia.

¹⁵⁰ T2-92[5]–[29].

“The Ashgrove Church does not exhibit sufficient expressive attributes and architectural quality to achieve the threshold for listing on the Queensland Heritage Register.”¹⁵¹

[127] Dr Daunt concluded that:

“located on a prominent Brisbane suburban ridgeline and adopting an expressive modern A Frame form The Grove is a Landmark. Its landmark quality is one of its greatest assets and enables us to still recognise its former use as a Methodist place of worship.”¹⁵²

[128] The internal space created by the A-frame engenders an emotional response. I am satisfied that the sloping ridge of the roof, some of the roof itself and some of the A-frame has some visibility from some perspectives, as is apparent from Appendix B to the Architecture JER. This may enable the building to be identified as a church, but the building’s orientation means the form does not have a readily ascertainable presence in the landscape. It was difficult for the parties to provide a photograph of the building, as is apparent from Ex. 5.04, the photographs of the building taken from the public realm. These photographs demonstrate the limited visibility of the building and the limited contribution it makes to the streetscape. The siting of the building significantly impedes its visibility causing it to have poor landmark quality and limited picturesque attributes.

[129] The building’s limited visibility from the public realm also adversely impacts upon its evocative qualities and the expressive attributes conveyed by the symbolism of the A-frame and the cross. Its beautiful attributes are adversely impacted by the poor quality of the external surrounds and its setting. While the symbolism of the A-frame and the cross contribute to its expressive attributes, these too are impacted by their limited visibility. The original building fabric has been meaningfully changed over time such that its intactness and integrity are substantially compromised. The building has limited representation in art, literature and photographs. For these reasons, I am satisfied that the Church is not important because of its aesthetic significance and does not satisfy criterion (e).

Conclusion

[130] Having determined that the former church building does not satisfy either criteria (a) or (e) being the basis upon which the QHC pursued listing, it is not appropriate that it remain listed in the Register.

[131] I order that the decision of the Queensland Heritage Council to enter the Ashgrove Methodist Church (former) in the Queensland Heritage Register as a State Heritage Place is set aside and replaced with a decision not to enter the Ashgrove Methodist Church (former) in the Queensland Heritage Register.

¹⁵¹ Ex. 3.01 Architecture JER, 28.

¹⁵² Ex. 3.01 Architecture JER, 17.

Schedule A – Rulings on Objections to Evidence

Number	Evidence objected to	Objection	Response/Submissions	Ruling
1	<p>Historian Joint Expert Report [5.16] (<i>Part paragraph</i>)</p> <p>“It is almost redundant to note that religious observance and church-going have been an important part of Australian (and Queensland) society since the beginning of European settlement...</p> <p>Many churches were built in the cities, towns, and suburbs around Australia of these denominations, and even the smallest villages and settlements in country areas had a church or two – a Catholic and a Protestant. The reach and presence of the ‘church of whatever denomination was great, and extended to all parts of the country.”</p>	(A) No demonstrated factual or intellectual basis	<p><i>Respondents Submissions [122], [124]</i></p> <p>to the extent that the Court was to consider aspects of Mr Richards’ evidence (which was necessarily prepared without lawyers’ input) does not strictly comply with the rules of evidence, the Court can order that the rules of evidence do not apply to proving these facts when the Court considers that those facts are not seriously in dispute despite the importance of those facts.</p> <p>It is unclear but we proceed on the basis that the entirety of paragraph [5.16] is opposed. Otherwise these matters are plainly within Mr Richards’ experience as identified. In any event, the majority of paragraph [5.16] is referenced by footnote 1. The balance of these paragraphs are hardly a matter seriously in dispute.</p>	I accept this is Mr Richards opinion based upon the referenced facts in the paragraph. Objection dismissed.
2	<p>Historian Joint Expert Report [5.17] (<i>Part paragraph</i>)</p> <p>“In my opinion, this omnipresence of the church of the church in Australia as an institution easily translates into a dominance of churches in the built form and townscape of the cities, towns, suburbs, villages and settlements of Australia. As churches were built from the earliest days of European settlement in Australia, churches are well represented in heritage registers across the count.”</p>	(A) No demonstrated factual or intellectual basis	<p><i>Respondents Submissions [122], [124]</i></p> <p>The sentences are plainly a matter within experience and in any event is sourced, relevant to Queensland, in footnote 2.</p>	Objection dismissed.
3	Historian Joint Expert Report [5.17] (<i>Part paragraph</i>)	(A) Opinion – outside nominated area of	<i>Respondents Submissions [124]</i>	Sentence not pressed by QHC

	<p>“The ubiquity of churches has meant that this building typology has been a constat source of work for architects for many years, and in my opinion, a typology where the practice of architecture can be fully expressed.”</p>	expertise	The last sentence of [5.17] is not pressed.	[124(c)]. No ruling required.
4	<p>Historian Joint Expert Report [5.18] (<i>whole paragraph</i>)</p> <p>“Most of these churches entered in the QHR were constructed in the nineteenth century or early to mid-twentieth. Indeed the Additional Notes prepared by Blake as part of his further presentations for the registration process of this place indicates that nearly all churches entered in the QHR were constructed before 1944. Blake found that only five post-war churches built after 1945 (excluding the current building) were entered in the QHR, and only one of those was constructed after 1960”</p>	(A) Hearsay	<p><i>Respondents Submissions [124]</i></p> <p>The first sentence of [5.18] is founded on the researched reference in footnote 2. The references to Blake are to facts said by Mr Richards to be very easy to identify, which he did. (see T2-40 [19-12])</p>	Mr Richards analysed the evidence himself. Objection dismissed.
5	<p>Historian Joint Expert Report [5.20] (<i>whole paragraph</i>)</p> <p>“Blake has also analysed the denominations of these churches entered in the QHR in the Additional Notes. Anglican churches dominate the entries and indeed the Anglican and Catholic churches combined represent 70% of the churches entered in the QHR. A mere 7% of the churches entered in the QHR are Methodist churches (and 11% Presbyterian churches).”</p>	(A) Hearsay	<p><i>Respondents Submissions [124]</i></p> <p>The first sentence of [5.18] is founded on the researched reference in footnote 2. The references to Blake are to facts said by Mr Richards to be very easy to identify, which he did.</p> <p><i>As above</i></p>	Mr Richards analysed the evidence himself. Objection dismissed.
6	<p>Historian Joint Expert Report [5.22] (<i>whole paragraph</i>)</p> <p>“While the church and religion had a strong influence in social and indeed political life in Australia for many years, this influence has waned considerably since the 1960s and 1970s. There is a myriad of reasons for this which relate to the major and irrevocable changes in society in the later 1960s, in terms of morality, independence of thought, changing legislation, the Vietnam War, changes in gender roles and the like. The combined percentage of the three churches that created the Uniting Church (in 1977) was 19.4 per cent in 1966. The</p>	(A) No demonstrated factual or intellectual basis	<p><i>Respondents Submissions [122], [124]</i></p> <p>It is unclear but we proceed on the basis that the entirety of paragraph [5.16] is opposed. Otherwise these matters are plainly within Mr Richards’ experience as identified. In any event, the majority of paragraph [5.16] is referenced by footnote 1. The balance of these paragraphs are hardly a matter seriously in dispute.</p>	I dismiss the objection on the basis that these matters are within Mr Richards’ expertise and the source of the statistics is stated.

	Uniting Church has not grown since its inception in 1977 – it fell from a peak of 8.2 per cent of the Australian population in 1991 to 7.5 per cent in 1996 according to census figures, or 11.2 per cent of the population in 1996 when the Presbyterians were added to this mix.”			
7	<p>Historian Joint Expert Report [5.24] (<i>Part paragraph</i>)</p> <p>“In his nomination report of February 2021 the growth of the Ashgrove Methodist congregation is noted – a 40% increase from 1950 to 1960. Blake also quotes an article by David Hilliard about religion in Brisbane in the 1950s that states Methodist membership in Brisbane grew by 25% from 1955 to 1960...</p> <p>The growth in the Methodist Church, as one of the major denominations in the state, grew considerably in this post-war period of the 1950s and 1960s as did the Presbyterians, the Catholics and the Anglicans (or Church of England). This growth in church congregations across the four major denominations in Queensland in the 1950s and 1960s was demonstrated in the construction of new churches for these denominations in this period, as Blake attests in the nomination report. I agree with these observations.”</p>	(A) Hearsay	<p><i>Respondents Submissions [124]</i></p> <p>Reliance on Hilliard, as referenced by Dr Blake, involves reference to a primary source. The reference is subsidiary to analysis of Census figures in [5.23] which also supports the second aspect of [5.24] that is challenged.</p>	Mr Richards refers to a primary source Objection dismissed.
8	<p>Historian Joint Expert Report [5.24] (<i>Part paragraph</i>)</p> <p>“Clearly the growth of the Methodist Church congregation in Ashgrove in the post war period was matched by that of Brisbane, and indeed across the whole State of Queensland.”</p>	(A) No demonstrated factual or intellectual basis	<p><i>Respondents Submissions [124]</i></p> <p>Reliance on Hilliard, as referenced by Dr Blake, involves reference to a primary source. The reference is subsidiary to analysis of Census figures in [5.23] which also supports the second aspect of [5.24] that is challenged.</p>	The evidence follows from the earlier analysis of the Census figures. The objection is dismissed.
9	<p>Historian Joint Expert Report [5.26]-[5.28] (<i>whole paragraphs</i>)</p> <p>“5.26 Further, Blake again quotes the article by Hilliard about the growth of the Methodist Church in Brisbane in this period and how this generated a feeling of optimism and confidence which translated into an identifiable building program: <i>By the late 1950s the atmosphere in church circles was buoyant. With increased incomes, big building programmes were in full swing—new</i></p>	(A) Hearsay	<p><i>Respondents Submissions [124]</i></p> <p>The material in [5.26] was interrogated in cross-examination and is supported. The opinion in the first sentence of [5.27] relies on material otherwise identified that the facts identified as reference to Dr Blake is not pressed in paragraph [5.27] & [5.28]</p>	<p>Mr Richards was cross-examined on paragraph [5.26], The first sentence in [5.27] follows from the earlier material. I allow the evidence other than the facts identified as referable to Dr Blake which were not pressed by QHC.</p> <p>The first sentence in [5.27] follows from the earlier material.</p>

	<p><i>churches, new houses for ministers, church halls for new housing areas. In established suburbs a large number of spacious brick churches were designed in modern style, to replace small and often shabby wooden buildings.</i></p> <p>5.27 Based on the above documentary evidence and observations it follows then, as Blake has noted in his nomination report, that Brisbane (and by extension Queensland) experienced a , sharp increase in church construction in 1950s and early 1960s. Blake notes that between 1950 and 1962 a total of 117 churches were constructed in the city in this period. Blake also notes that these churches were built predominantly by the four main denominations – the Methodist Church constructed 26, the Catholic Church constructed 22, the Anglicans 21 and the Presbyterians 14. While I have not sited this research and cannot confirm these numbers I am confident that this research is sound and agree with the observations made in this regard.</p> <p>5.28 Blake has also analysed the numbers and locations of Methodist churches constructed in the post war period from 1950 to 1965. A total of 97 churches were constructed by Queensland Methodists in this period – many were small timber buildings in the country, while some were larger brick churches in the Brisbane suburbs and the major towns in the state. These were still largely traditional in design and appearance. Very few were modernist designs like the former Ashgrove Methodist.”</p>			
10	<p>Historian Joint Expert Report [5.30] (<i>Part paragraph</i>)</p> <p>It would appear the design of the church was determined between the architect (Jim Gibson) and the local parish or the Ashgrove congregation, to arrive at an impressive design for this Brisbane suburban church in isolation of these other modernist designs in regional Queensland.”</p>	(A) Opinion – outside nominated area of expertise. No demonstrated factual or intellectual basis	<p><i>Respondents Submissions [124]</i></p> <p>The facts are not seriously in dispute and are demonstrated in other evidence.</p>	Objection allowed on the basis that this is outside Mr Richards nominated area of expertise.
11	<p>Historian Joint Expert Report [5.33] (<i>Part paragraph</i>)</p> <p>It would appear that the Ashgrove Methodist Church congregation was seeking something different for their church – a more modern design that would make a different statement</p>	(A) No demonstrated factual or intellectual basis	<p><i>Respondents Submissions [124]</i></p> <p>The acceptance of these statements is common to both historians. The words “as demonstrated by Blake” are not</p>	Mr Richards opinion is based upon the facts contained in the paragraph. The objection is dismissed.

	to the congregation and the wider suburb.”		relied on. The balance of [5.33] is not seriously in dispute or is demonstrated in other evidence. See Ex 2.08 p11-13, T2-86 I29 & T2-87 I12, Ex 2.16, Ex 3.01, App F p 80-82	
12	<p>Historian Joint Expert Report [5.33] (<i>whole paragraph</i>)</p> <p>“SR accepts the statements made in the register entry that the Ashgrove Methodist congregation began discussing a new church in 1958.16 It is telling that the congregation did not commission the firm of Cook and Kerrison, who had been the longstanding Methodist architects since the late 1930s and had designed a large number of Methodist churches including those nearby at West Ashgrove (1953), Rainworth (1955), Bardon (1958) and The Gap (1960). As has been demonstrated by Blake, Cook and Kerrison’s churches were fairly conservative in their design for the period. It would appear that the Ashgrove Methodist Church congregation was seeking something different for their church – a more modern design that would make a different statement to the congregation and the wider suburb. They commissioned the firm Cross and Bain, and specifically an architect in that firm James Gibson, to design their new church.”</p>	(A) Hearsay	<p><i>Respondents Submissions [124]</i></p> <p>The acceptance of these statements is common to both historians. The words “as demonstrated by Blake” are not relied on. The balance of [5.33] is not seriously in dispute or is demonstrated in other evidence.</p>	This is Mr Richards’ opinion. Objection dismissed.
13	<p>Historian Joint Expert Report [5.34] (<i>Part paragraph</i>)</p> <p>The brief to the architect was to take into the account the retained and relocated hall building on the site, deal with the restricted size of the site, and provide a new church that would mean less traffic noise internally for the congregation. ...Between them, as architect and client, a design for a new church was prepared and delivered that was modern, different...</p>	(A) No demonstrated factual or intellectual basis	<p><i>Respondents Submissions [124]</i></p> <p>The paragraph is not seriously in dispute and demonstrated in other evidence. To the extent that the paragraph is founded in footnotes, the objection is not made good.</p>	No demonstrated factual or intellectual basis. Objection allowed.
14	<p>Historian Joint Expert Report [5.35] (<i>Part paragraph</i>)</p> <p>“Nowhere is the evolution, or the cleave in church design, from the more traditional to the modern, in the few short years in the latter half of the 1950s better expressed than the Ashgrove Methodist congregation itself.”</p>	(A) Opinion – outside nominated area of expertise	<p><i>Respondents Submissions [124]</i></p> <p>The first sentence of [5.35] is not pressed.</p>	Ruling not required.

15	Historian Joint Expert Report [5.38] (<i>Part paragraph</i>) “...it was clearly at the forefront of modernist design for churches in this period, and was one church among other contemporaries demonstrating these stylistic traits and modern forms.”	(A) No demonstrated factual or intellectual basis	<i>Respondents Submissions [124]</i> [5.38] is an opinion based on facts otherwise proved or accepted However QHC did not press this paragraph.	Paragraph not pressed. Ruling not required.
16	Historian Joint Expert Report [5.38]-[5.43] (whole paragraphs)	Opinion – outside nominated area of expertise	Paragraphs not pressed	Ruling not required.
17	Historian Joint Expert Report [5.47]-[5.70] (whole paragraphs)	Irrelevant. Opinion – outside nominated area of expertise	Paragraphs not pressed	Conclusion about criterion (d) & criterion (f) are not pressed. Ruling not required.
18	Historian Joint Expert Report [6.2] (<i>Part paragraph</i>) “SR also considers that the former Ashgrove Methodist Church satisfies criteria d) and f) of section 35 (1) of the Queensland Heritage Act 1992.”	(A) Irrelevant	<i>Respondents Submissions [124]</i> The discussion and conclusion about criterion (d) and criterion (f) are not pressed.	Conclusion about criterion (d) & criterion (f) are not pressed. Ruling not required.
19,20,21 removed– objection withdrawn				
22	Statement of Russell Olsson [29]-[37], [40] (<i>whole paragraphs</i>) 29 This individual statement addresses Criterion (a) – The place is important in demonstrating the evolution or pattern of Queensland's history. 30 The entry to the Queensland Heritage Register regarding Criterion (a) states : The Ashgrove Methodist Church (former) (1960) is important in demonstrating the growth and expansion of the Methodist Church and the evolution of church architecture in the post-World War II (WWII) period in Queensland. Through its modernist ecclesiastical architectural form, it is a representative example of a suburban Methodist church of this period, illustrating the post-war mission of the Church to become more relevant to modern society, and its progressive building program in the 1950s and early 1960s.	(R) Introduces a opinions not addressed in the joint report – does not comply with rule 34(3) of the Planning and Environment Court Rules 2018 (Qld)	<i>4.10 Appellants Written Submissions [90]</i> “...it is acknowledged that Mr Olsson's expertise as an architect is primarily relevant to criterion (e). To the extent he deals explicitly with criterion (a) for the first time, those opinions should be taken to be limited to providing architectural historical context. Mr Olsson confirmed in cross-examination that he would defer to Dr Daunt's historical research on this topic. While	The Respondent objected to paragraphs 29 – 37 and 40 of Exhibit 4.01. Exhibit 4.01 is Mr Olsson's individual report prepared pursuant to Rule 34(2)(b) of the Planning and Environment Court Rules 2018 (Qld), to deal with any issue of disagreement recorded in the joint report. In these paragraphs Mr Olsson addresses criterion (a). Mr Olsson was nominated as an expert to deal with criterion (e). He acknowledged in cross-examination that he would defer to Dr Daunt's historical research in relation to the architectural historical context. This evidence strayed outside

<p>31 This building does not demonstrate the growth and expansion of the Methodist Church in Queensland. There were up to 20 Methodist churches and approximately 18 A-Frame churches built in Queensland in the post- World War II period. The built form of the Church is regular, not special or exceptional.</p> <p>32 The Ashgrove Church was one of the A-Frame Methodist churches from the period, which included Holland Park Methodist (1962), Southport Methodist (1964), Lindum Methodist (1963) and Beachmere Methodist (1969). A-Frame churches of other denominations in the same period are Mt Isa Presbyterian (1960), St Peters Catholic Church, Halifax (1960), Indooropilly Presbyterian (1960), St Andrews Presbyterian Memorial Church, Innisfail (1961), Immanuel Lutheran Maroochydore (1962), Stuartholme Catholic Girls School Chapel, Toowong (1961), Lindum Methodist (1963), Holy Cross Catholic Church (1964), Our Lady of Mt Carmel Catholic, Coorparoo (1962), St Alban's Church of England, Yarrabah (1961), St Johns Lutheran Toowoomba (1964), StPeter's Lutheran, Petrie (1965), Trinity Lutheran, Chinchilla (1969) and Deagon Seventh Day Adventist (1969).</p> <p>33 The above list of 18 A-Frame Churches were built between 1960 and 1969, which is, in the history of Queensland, a short period of time. Eighteen churches in 9 years is, on average, 2 churches per year. The Ashgrove Church is one church among many A-Frame churches demonstrating that the Ashgrove Church is not exceptional as an A-Frame church.</p> <p>34 To meet the requirements of Criterion (a) the Ashgrove Church must be "important in demonstrating the growth and expansion of the Methodist Church and the evolution of Church architecture in the Post WWII period in Queensland". This Church does not achieve this requirement. A number of these churches had similar architectural features. At least 5 churches had visible ground level external buttresses, such as Our Lady of Mt Carmel Catholic Coorparoo, Mt Isa Presbyterian, Holy Cross Catholic Church, Eton, St Albans Church of England, Yarrabah and Deagon Seventh Day Adventist Church. At least 9 churches had glazed end walls, often with decorative glass, such as Southport Methodist, Mt Isa Presbyterian, St Peters Catholic Church, Halifax, St Andrews Presbyterian Memorial Church, Innisfail, Lindum Methodist Church, Holy Cross Catholic Church, Eton, Our Lady of Mt Carmel Catholic, Coorparoo, St Johns Lutheran,</p>		<p>satisfaction of criterion (a) was not specifically considered in the joint report, Dr Daunt gave her opinion substantively on the historical significance of the former Ashgrove Methodist Church. To the extent the architectural opinions expressed by Mr Olsson were based on the historical facts asserted by Dr Daunt in the joint report, those matters were matters of disagreement between the parties and appropriately dealt with in a separate report. Whether criterion (a) is satisfied is ultimately a matter for the Court to determine."</p>	<p>Mr Olsson's nominated area of expertise and does not arise out of issues of disagreement in the joint historians' report and therefore does not comply with Rule 34(3). Accordingly, the objection is allowed in respect of paragraphs 29 – 37 and paragraph 40 to the extent it refers to criterion (a).</p>
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	<p>Toowoomba and St Peters Lutheran, Petrie. Given that the A-Frame roof form, the exposed external ground level buttresses and decorative, glazed end walls comprise almost all the external appearance of the Ashgrove Church, the number of other churches exhibiting these characteristics demonstrates that Ashgrove Church is one of many and is not important or exceptional within this church typology. The only characteristic of the Ashgrove Church that could be considered different is the fan shaped plan and gently sloping roof ridge, however fan shaped plan forms had existed at least since the First Church of Christ Scientist, North Quay (1938). The Katamatite Church, Victoria, has a sloping roof ridge. Whilst a sloping roof ridge is less common than many of the other characteristics in the A-Frame church typology, it is not sufficient in itself to place the Ashgrove Church on the Queensland Heritage Register. The Ashgrove Church is one church within a typology of A-Frame Churches.</p> <p>35 The range of up to 20 Methodist churches in post-WWII Queensland contains churches of more modern style, such as Mareeba Methodist Church (1960), Ashgrove Church (1960), Southport Methodist (1964), Atherton Methodist (1961), Charters Towers Methodist, Atherton Methodist (1961) and Yeronga Methodist (1956). It also includes churches of more traditional style, such as Coorparoo Uniting Church and Hall (1952) and Wilston Methodist Memorial church (1956). Other non-Methodist Churches designed by James Gibson in a more traditional style are St Matthews Holland Park (1957) and Toowong Presbyterian Church (1959).</p> <p>36 The modernist ecclesiastical architectural form of the Ashgrove Church is one example of a suburban Methodist church of this period, however it is not a representative example, nor is it an example of significance. The Charters Towers and Atherton Methodist churches have octagonal plan forms, the Mareeba Methodist has a square plan form and the Coorparoo Uniting Church and Wilston Methodist Memorial Churches have traditional architectural styles, with small windows in face brick walls and traditional roof forms. The Ashgrove Church is not representative of this diverse range of Methodist church plan forms and styles. It is only one part of the Church's building program in the 1950's and 1960's, which included a range of plan forms and modern and traditional styles.</p> <p>37 When considering the criteria for inclusion on the</p>			
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	<p>Queensland Heritage Register, architectural style is only one consideration. Other considerations are its siting and relationship to the public realm, the design quality of the church grounds and the building's materials and detailing. For the reasons stated above regarding these other design considerations, the Ashgrove Church is not of sufficient design quality to be placed on the Queensland Heritage Register. Further, the Church also does not warrant inclusion on the Register on the basis of its architectural style.</p> <p>...40 The Ashgrove Church does not achieve the threshold for listing in terms of Criterion (e) or Criterion (a) in my professional opinion as an architect.</p>			
23	Statement of Peter Bell Attachment A (<i>Whole attachment</i>)	<p>(R) Hearsay – author of email not called</p> <p>Irrelevant to the issue in dispute</p>	<p><i>4.10 Appellants Written Submissions [90]</i></p> <p>“The objections to Dr Bell’s statement are made on the basis of hearsay, in that the two documents attached are not sworn to by their creators. As indicated in the Appellant’s opening, the report of Mr McDonald is not relied on for the truth of its contents. Some matters expressed therein were adopted “<i>broadly</i>” by Mr Richards in cross-examination. That is the extent to which it is relied upon. In relation to the email received by representatives of the Appellant from Thom Blake, it does not appear to be alleged that the copy of the email is false or untrue. Such was not put to Dr Bell in cross-examination. In those circumstances, the email is relied on as a document which an historian (upon being made aware that such a document existed) would have pause to consider the biases of their source material. That also appeared to be conceded by Mr Richards in cross-examination. The Document is relevant to the approach of Mr Richards in this matter.”</p>	<p>The Respondent objected to Attachments A and B of Mr Bell’s individual statement. Attachment A is an email from Dr Blake which is objected to on the basis that it is hearsay and irrelevant to the issues in dispute. The Appellant said it is relied upon as a document which would cause an historian aware of the document to pause to consider the basis of their source material. I dismiss the objection and allow Attachment A on the basis for which it is contended by the Appellant.</p>
24	Statement of Peter Bell Attachment B (<i>Whole attachment</i>)	<p>(R) Hearsay – author not called</p> <p>Note - Part of 2.10 to be admitted on limited basis</p>	<p>Attachment B was objected to as hearsay. It is the report by Mr McDonald for the purposes of submission by the Appellant during the assessment process and so was before the QHC at the time it was considering the application. Some matters expressed in Attachment B were broadly adopted by Mr Richards. It is to that extent that the Appellant’s document is relied upon. I allow the document on that limited basis.</p>	
25	Affidavit of Andrew Gunton [8]-[12] (<i>whole paragraphs</i>)	(R) Irrelevant	<p><i>4.10 Appellants Written Submissions [90]</i></p>	<p>Paragraphs 8 – 12, 19 – 23, 24 – 26 and 28 – 34 of Reverend Gunton’s</p>

	<p>8. A key doctrine of the Uniting Church is that the embodiment of church is the congregation, worshipping, witnessing, and serving as a fellowship.</p> <p>9. Places and buildings hold no special significance. They are merely a tool used to facilitate the church's mission, and are a place to gather and worship God.</p> <p>10. In the Basis of Union (which is the UCA founding document) the Church is referred to as a 'people' and a 'fellowship' – the emphasis is that the Church are people who are called to serve the mission of God to renew and reconcile humanity.</p> <p>11. There is no mention of buildings in our foundation document as they have no special significance.</p> <p>12. Church Buildings are not consecrated. In fact, in Uniting In Worship 2 (The official book of UCA Liturgies) there is no service for recognising a church building.</p>	to the issue in dispute	<p>“the objections to the affidavit of Reverend Gunton go to the issue of relevance. The document is not tendered for the Court to receive the Reverend's opinions about architectural or historical matters. However, the Reverend is entitled to give evidence on behalf of the Appellant about its intent for the Land, and how the ideals of the Uniting Church faith are applied in Queensland. At the very least the Affidavit is of relevance to a determination of the discretion to be exercised in the Appeal.”</p>	<p>evidence are objected to on the basis that they are irrelevant to the issues in dispute. The statement of Reverend Gunton discloses that he is the “spiritual head” and the main spokesperson for the Uniting Church in Queensland. The Appellant in this proceeding is the property holdings arm of the Uniting Church in Queensland.</p> <p>As observed by Durward SC DCJ in <i>The Sisters of Mercy (PEC)</i>: “(It) was submitted...that the Sisters, by reason of their special association with the place, should be regarded differently from other owners of the places. However, I do not consider that the Sisters should be treated any differently from any other owner of the place the subject of, or nominated for, heritage listing insofar as the future of the place is concerned in an appeal to this Court. The opinion of any owner of a place is not relevant to the determination of an appeal involving heritage listing. It seems to me that it would be uncommon for an owner to favour a heritage listing, unless the owner was a proponent for the listing.”</p> <p>I agree with this approach. Further, the listing is pursued on the basis that it is a Methodist church, not a Uniting Church. The opinions of Reverend Gunton are not relevant and I allow the objection.</p>
26	<p>Affidavit of Andrew Gunton [19]-[23] (<i>whole paragraphs</i>)</p> <p>19. Similarly, entering the Church on the register, as a tribute to a person, goes against the theological purpose of the original design of the church.</p> <p>20. I find it difficult to accept that the building is being defined significant due to its aesthetic importance and a tribute to a particular person or their skills.</p> <p>21. The Uniting Church comes from the “reformed tradition”, and therefore sees its church buildings as a place to worship God and not a tribute or memorial to any other person or entity, unless consecrated.</p> <p>22. To enter the property on the register on this basis therefore goes against the theological purpose of the original design of the church.</p> <p>23. The church architectural design is meant to point people to God and not the building – a building that referenced itself would have been seen as idolatrous.</p>	(R) Irrelevant to the issue in dispute		
27	<p>Affidavit of Andrew Gunton [24] (<i>whole paragraph</i>)</p> <p>24. The architect, Jim Gibson, who also designed Indooroopilly UCA and was a worshipping member of Indooroopilly UCA, supported significant redesign and adaption of the building he designed at Indooroopilly as he recognised it no longer served its purpose to support the needs and mission of the congregation.</p>	(R) Speculation – basis not established		
28	<p>Affidavit of Andrew Gunton [24]-[26] (<i>whole paragraphs</i>)</p>	(R) Irrelevant to the issue in dispute		

	<p>24. The architect, Jim Gibson, who also designed Indooroopilly UCA and was a worshipping member of Indooroopilly UCA, supported significant redesign and adaption of the building he designed at Indooroopilly as he recognised it no longer served its purpose to support the needs and mission of the congregation.</p> <p>25. Gibson stayed a worshipping member after the buildings he designed were significantly altered.</p> <p>26. An inspection of many foundation stones or plaques will reveal who officiated at the ceremony of opening or stone laying, and does not record the name of the architect nor the builder.</p>			
29	<p>Affidavit of Andrew Gunton [28]-[32] (<i>whole paragraphs</i>)</p> <p>28. The Uniting Church believes in good stewardship of their properties, and on this basis has reviewed the development options of the Ashgrove site.</p> <p>29. After careful consideration and investigation (including a thorough Economic Needs Analysis Study in 2019/20), it has been identified that there is a distinct need in the community for a purpose-built childcare centre and that demolition of the existing church and church hall structures is required to make a redevelopment project feasible.</p> <p>30. The proceeds would provide the Uniting Church with a reasonable return to fund other church activities in other locations within the Presbytery.</p> <p>31. The Uniting Church has engaged in extensive consultation with the Brisbane City Council in preparation for the Development Application in which no concerns were raised about the demolition of the church and church hall.</p> <p>32. The Church has invested significant resources into the project and the project consultant team (around \$200,000). The proposed redevelopment of the site has been through the numerous committees and councils of the church and has obtained the appropriate endorsements to proceed. A well-made DA has been lodged with the BCC in December 2020 and commercial discussions with a preferred operator are well advanced.</p>	(R) Irrelevant to the issue in dispute		