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Subject: Fw: Melbourne Planning Scheme Amendment C258: Heritage Revisions [KWM-Documents.FID2901957] - from King & Wood
Date: Monday, 30 July 2018 5:49:03 PM
Attachments: [ATT00001.gif](#)
[ATT00002.gif](#)
[ATT00003.gif](#)
[ATT00004.gif](#)
[ATT00005.gif](#)
[ATT00006.gif](#)
[Melbourne Business School C258 Panel Raworth .pdf](#)
[A Biacsi Evidence Amendment C258.pdf](#)

Regards,

Adrian Williams | Planning Panels Victoria

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Date: 30/07/2018 01:55 PM
Subject: Melbourne Planning Scheme Amendment C258: Heritage Revisions [KWM-Documents.FID2901957]

Dear Sir/Madam

We act for Melbourne Business School, a submitter in relation to Melbourne Planning Scheme Amendment C258.

Please find attached expert witness statements of Andrew Biacsi of Contour Town Planners and Bryce Raworth, which our client intends to rely upon at the upcoming Panel Hearing.

Kind regards

**James Bryce | Solicitor
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Amendment C258 to the Melbourne Planning Scheme

Date of Inspection: various (most recent **20 July 2018**)

Date of Report: **27 July 2018**

Report prepared for **Melbourne Business School Limited**

Report prepared by **Andrew Biacsi**



Amendment C258 to the Melbourne Planning Scheme

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Contents

1	Introduction	3
2	The Amendment.....	5
2.1	Amendment Land	5
2.2	Proposed Changes to the Planning Scheme 6	
2.3	Relevant Background Amendments	7
2.4	Impact on the MBS Land	10
3	Planning Context.....	13
3.1	State Planning Policy Framework.....	13
3.2	Local Planning Policy Framework.....	14
3.3	Zone and Overlay Provisions	15
3.4	Particular and General Provisions.....	17
3.5	Other Considerations	17
4	Planning Assessment.....	20
4.1	Overview of Issues	20
4.2	Assessment of Implications of the Amendment.....	22
5	Conclusion	32

Attachment 1 Expert Witness Declaration

1 Introduction



- 1 I have been requested by **King & Wood Mallesons**, on behalf of Melbourne Business School Limited, to prepare a statement of evidence that considers the town planning implications of Amendment C258 (**the Amendment**) to the Melbourne Planning Scheme (**Planning Scheme**).
- 2 Melbourne Business School Limited (**MBS**) own and occupy a group of properties that are affected by the Amendment. More specifically, the properties owned by MBS and affected by the Amendment being referred to herein as the 'MBS Land' include the following:
 - 160-170 Pelham Street, Carlton;
 - 168 Leicester Street, Carlton;
 - 174-180 Leicester Street, Carlton;
 - 183-189 Bouverie Street, Carlton;
 - 193-195 Bouverie Street, Carlton; and
 - 150-154 Pelham Street, Carlton.
- 3 In general terms, the Amendment seeks to implement the findings of the *Heritage Policies Review 2016* through changes to the provisions of the Planning Scheme including:
 - revisions to the two local heritage policies (Clauses 22.04 and 22.05),
 - amendments to the Schedule to the HO to introduce new heritage places and revise descriptions,
 - replacement of the existing Incorporated Document with a new Incorporated Document being the 'Melbourne Planning Scheme, Heritage Places Inventory 2017' which grades all heritage places within a heritage overlay using the Significant/Contributory/Non-Contributory grading system; and
 - amendment of the Schedule to Clause 81.01 to reflect the introduction of two new Incorporated Documents.
- 4 In preparing this report, I have undertaken the following:
 - Inspection of the MBS land and surrounds;
 - Reviewed the provisions of the Planning Scheme;
 - Reviewed the exhibited documentation as part of the Amendment;
 - Reviewed the submission lodged by MBS (dated 8 May 2017) to the Amendment and summary of submissions set out in the Agenda for the 20 February 2018 FMC meeting;

1 Introduction

-
- Reviewed the Council Meeting reports relevant to the Amendment dated 5 July 2016, 16 May 2016, 21 November 2017 and 20 February 2018;
 - Reviewed the Amendment documentation adopted by Council at the Future Melbourne Committee Meeting held on 20 February 2018;
 - Reviewed the report of the Panel in Amendment C198 to the Planning Scheme which implemented the recommendations of the *City North Heritage Review 2013* and introduced a HO across the MBS Land;
 - Reviewed Planning Practice Note Nos. 1 (Applying the Heritage Overlay), 8 (Writing a Local Planning Policy), 13 (Incorporated and Reference Documents) and 46 (Strategic Assessment Guidelines); and
 - Reviewed the Part A submission of the Council dated 23 July, 2018.

5 I understand that expert heritage evidence is to be provided to the Panel by Mr. Bryce Raworth, Heritage Architect in respect of the MBS Land.

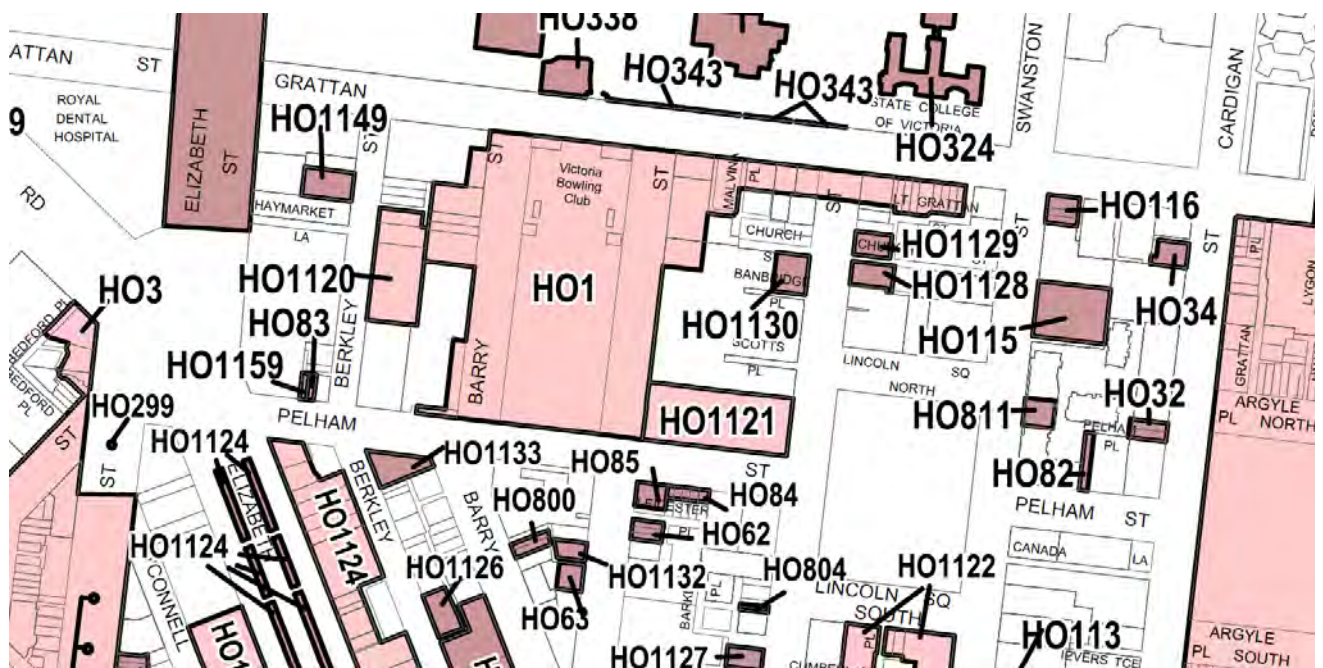
2 The Amendment

2.1 Amendment Land

- 6 As outlined in the exhibited Explanatory Report, the Amendment applies to all land within the Melbourne municipal area affected by a Heritage Overlay.
- 7 A number of properties within West Melbourne (identified in Attachment 1 to the exhibited Explanatory Report) are also proposed to be added/alterd to the Schedule to the Heritage Overlay as part of the Amendment.
- 8 The MBS Land is included in Schedule 1121 to the Heritage Overlay (H01121) which applies to the '*Little Pelham Street Precinct*' and as such is affected by the Amendment. (Refer to Figure 2.1) The HO which affects the MBS Land was introduced by Amendment C198 to the Melbourne Planning Scheme on 15 October, 2015.

Figure 2.1
EXISTING HERITAGE OVERLAY MAP 5HO

Image obtained from http://planning-schemes.delwp.vic.gov.au/_data/assets/pdf_file/0019/416161/melbourne05ho.pdf



2

2 The Amendment

2.2 Proposed Changes to the Planning Scheme

- 9 In summary, the changes to the Planning Scheme proposed by the Amendment include:
 - Revision of the content of the two local heritage policies (Clause 22.04 and Clause 22.05);
 - Modification of Schedule to the Heritage Overlay to introduce 20 new heritage places and revision of the description of five of the existing heritage places, in West Melbourne;
 - Replacement of the existing Incorporated Document (*'Heritage Places Inventory June 2016'*) which grades heritage places using an A to D heritage grading system with a new Incorporated Document (*'Melbourne Planning Scheme, Heritage Places Inventory 2017'*) which grades all heritage places within a Heritage Overlay using the Significant/Contributory/Non-Contributory grading system;
 - Amendment of the Schedule to Clause 81.01 (Incorporated Documents) to introduce two new Incorporated Documents; and
 - Amendment of Planning Scheme maps as relevant to West Melbourne.
- 10 Based on a comparison between the two current local heritage policies with the content of the proposed two new local heritage policies (based on the version adopted by Council on 20 February 2018), the key changes appear to include:
 - Revisions to the policy basis, including reference to the Australia ICOMOS Burra Charter;
 - Expansion of the policy objectives;
 - Introduction of Permit Application Requirements;
 - Revision of the existing definitions, including the terms of; concealed, context, contextual design, enhance, facadism, front or principal part of a building, heritage place, individual heritage place, respectful and interpretive, setting and significance streetscape (as referred to in this policy).
 - Revision of the existing 'Performance Standards' and introduction of additional requirements under the headings of Demolition, Alterations, New Buildings, Additions, Restoration and Reconstruction, Subdivision, Relocation, Vehicle Accommodation and Access, Fences and Gates Services and Ancillaries, Street fabric and infrastructure and Signage;
 - Revision of the grading of heritage places from the existing grading system used being A-D buildings and Level 1-3 Streetscapes to Significant/Contributory and Non-Contributory Heritage Places; and

2 The Amendment

- Removal of the provision within the existing local policy that specifically excludes Schedule 5 to the Capital City Zone (City North) from the 'Concealment of Higher Rear Parts (Including Additions)' and 'Façade Height and Setback (New Buildings)' performance standards.

2.3 Relevant Background Amendments

- 11 There are a number of Planning Scheme Amendments that are of relevance to the Amendment and more specifically the MBS Land. These Amendments include C196, C198 and C269 which are discussed further below.

Amendment C196

- 12 Amendment C196 to the Planning Scheme was gazetted on 15 October 2015. The Explanatory Report for Amendment C196 outlines that the Amendment applies to land in the 'City North Precinct'. The Amendment implements the *City North Structure Plan, February 2012*, including rezoning land (including the MBS Land) to Schedule 5 to the CCZ and Mixed Use Zone (MUZ) and applying Schedule 61 to the DDO to the CCZ5 area. It also updated Clauses 22.01, 22.02, 22.04 and 22.05, the latter of which (i.e. Clause 22.05) applies to the MBS Land.
- 13 The Explanatory Report for Amendment C196 outlines the strategic basis as to why the amendment is required:

'The amendment is required to facilitate the re-development and use of land in accordance with the City North Structure Plan 2012 (adopted February 2012). The Plan provides a framework to guide the development of City North as an extension of the Central City and consolidate the State significant knowledge precinct with a range of commercial, residential and retail activities.'

City North is already undergoing renewal, with catalysts for change including the redevelopment of the former Carlton and United Brewery site, the hospitals, universities and scientific research institutions. The area is transitioning to a high intensity mixed use area based around health, education and research, with residential, commercial, and retail activities. The proposal for a new metro underground passenger rail service including two new stations will significantly increase the accessibility of the area.

The key directions of the City North Structure Plan are:

- *Integrate the knowledge cluster into the Central City;*
- *Boost transport infrastructure;*
- *Create a compact, liveable precinct that builds on the existing urban heritage qualities;*
- *Develop four new major civic places;*

2 The Amendment

-
- *Make City North an energy, water and waste efficient precinct.'*

14 An Independent Panel was appointed to consider Amendment C196 before it was ultimately approved.

15 As relevant to the Amendment and the MBS Land, the Panel report dated 18 October 2013 identified that 'The City North Structure Plan 2012 establishes heritage qualities as a key attribute of the precinct's character to be maintained and respected. The policy tension however between the aspirations of the regeneration and renewal of City North and the retention of heritage fabric was evident in a number of submissions.'¹

16 The Panel acknowledged in its report '...that there is a tension between DDO61 and the existing and proposed heritage controls which seek to preserve heritage fabric. The Panel agrees with the Council's assessment that the heritage qualities of City North provide important character elements to the area and commends Council in their efforts through the Structure Plan to provide guidance as to how the goal of intensification and development can respond to heritage buildings and streets.'²

17 The Panel also commented that:

'The Panel however considers that the tension between properties with Heritage Overlays in addition to DDO61 has not been adequately addressed by Council, and that Clause 22.05 Heritage Places is inadequate to provide policy guidance when decision makers are required to resolve this tension. Ideally, this tension should have been addressed as part of the City North Heritage Review by reviewing the application of Clause 22.05 Heritage Places outside the Capital City Zone and its 'fit' with DDO61. However, it appears that the horse may have bolted for this to occur given the exhibition of Amendment C198.

The Panel sees that there is a need to provide decision makers with some clear guidance in relation to the development of heritage buildings in the City North area. Given that Clause 22.05 currently exists, the Panel supports this policy continuing to apply to the City North area. It does however, agree with Mr Pitt and others that a number of the requirements for the design of new buildings are inconsistent and at odds with DDO61. The sections in Clause 22.05 which deal with the concealment of higher rear parts, as well as façade height and setbacks are problematic, and the Panel believes these

¹ Refer to pg. 63 of the Amendment C196 Panel Report

² Refer to pg. 64 of the Amendment C196 Panel Report

2 The Amendment

requirements should be expressly excluded from applying to the City North precinct.³

- 18 The form of Clause 22.05 as approved as part of Amendment C196 outlined that Schedules 1, 2, 3 and 4 to the Capital City Zone are excluded from this policy and in respect of the performance standards relating to 'Concealment of Higher Rear Parts (including Additions) and Façade Height and Setback (New Buildings) included the words: These provisions do not apply to land within Schedule 5 to the Capital City Zone (City North).

Amendment C198

- 19 Amendment C198 to the Planning Scheme was gazetted on 15 October 2015. As outlined in the Explanatory Report for Amendment C198, the Amendment affects land in the North and West Melbourne, Carlton and Melbourne areas, including the MBS Land.
- 20 The Amendment is said to implement the findings of the *City North Heritage Review 2013* by applying the Heritage Overlay to new individual heritage places and heritage precincts, removing existing heritage overlays and altering a number of existing heritage overlays (i.e. adding to and deleting properties from a precinct, altering the description or property grading).
- 21 An Independent Panel considered the Amendment and prepared a report dated 11 July 2014. The Panel subsequently prepared a supplementary report (dated 19 November 2014) following a reconvened Panel to consider Submission 26, a submitter who had not been notified of the original Panel hearing.
- 22 The MBS participated in the Panel hearing, including the calling of independent expert heritage evidence of Mr Peter Lovell of Lovell and Associates.
- 23 The Panel prepared a report dated 11 July 2014 which includes commentary relating to the tension between heritage objectives and those of City North espoused through DDO61 and Amendment C196. With respect to proposed 'heritage management policy' at Clause 22.05 (as proposed through C198) the Panel commented that:

'...in so far as its policy statements on concealment of 'Higher Rear Parts (including Details)', 'Façade height and Setback (New Buildings)' and 'Building Height' clearly contradict the Design and Development Overlay and therefore recommends that these aspects of the Policy should not apply in the City North area. Alternatively, the Panel agrees that Ms Heggen's suggestion to apply Clause 22.04 to the CCZ area in City North as well as the DDO61A1 – The Haymarket would provide an interim solution until Council has completed the review of its heritage policies. The Panel therefore recommends that the

³ Refer to pg. 65 of the Amendment C196 Panel Report

2 The Amendment

*provisions of Clause 22.04, or alternatively Clause 22.05 be amended in this way as an interim position. In addition, following the adoption of the Amendment, the Council prepare a heritage policy for the City North area which reflects the Structure Plan's aim to integrate the area's heritage into urban renewal in the City North area.*⁴

Amendment C269

- 24 Amendment C269 to the Planning Scheme was gazetted on 14 January 2016. As outlined in the Explanatory Report, Amendment C269 applied to all land identified within the Heritage Places Inventory June 2015. It is a largely administrative amendment with the Explanatory Report noting that the Inventory was approved as part of Amendment C198 however the revised date, from March 2013 to June 2015, was not updated at the Schedule to Clause 81.01.

2.4 Impact on the MBS Land

- 25 As previously outlined, the Amendment proposes to replace the existing grading of the properties forming part of the MBS Land to reflect the proposed new grading system of significant/contributory/non-contributory gradings.
- 26 The proposed gradings are set out in the 'Amendment C258: Heritage Places Inventory 2017 corrected for re-exhibition, November 2017' and as relevant to the MBS Land are summarised as follows:

Property Address (Refer to Figure 2.2)	Prior to Amendment C198	Current (following Amendment C198)	Proposed (as part of Amendment C258)
(1) 160-170 Pelham Street, Carlton	No HO or grading	HO1121 D Graded Building / Level 2 Streetscape	Contributory Unlisted streetscape
(2) 168 Leicester Street	HO Schedule 1 (Carlton Precinct) applied to front portion of property only. Ungraded.	HO1121 D Grade Building / Level 2 Streetscape	Contributory Unlisted streetscape
(3) 174-180 Leicester Street	HO Schedule 1 applied to front portion of property only.	HO1121 C Grade Building / Level	Contributory Unlisted streetscape

⁴ Refer to pg. 40 and 41 of the Amendment C198 Panel Report dated 11 July 2014

2 The Amendment

	Ungraded.	2 Streetscape	
(4) 183-189 Bouverie Street	No HO or grading	HO1121 C and D Graded Building ⁵ / Level 2 Streetscape	Contributory Unlisted streetscape
(5) 193-195 Bouverie Street	No HO or grading	HO1121 C Grade Building / Level 2 Streetscape	Significant Unlisted streetscape
(6) 150-154 Pelham Street (vacant)	No HO or grading	HO1121 Ungraded	Not listed

Figure 2.2
MBS LAND

Aerial image as at 4 April 2018 obtained from Nearmap Pty Ltd



27 The 'City North Heritage Review, RBA Architects 2013' (City North Heritage Review) and *City North Heritage Review 2013: Statements of Significance (Revised June 2015)* which were introduced as reference documents under Clause 22.05 by Amendment C198 and continue to be listed as a reference document.

⁵ The Panel in Amendment C198 recommended that the building on this property be 'ungraded', refer to Pg. 61 of Panel Report dated 11 July 2014

2 The Amendment

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- 28 The 'C258 Heritage Precincts Statements of Significance 2017 Incorporated Document' does not apply to the MBS Land.
- 29 The Amendment also proposes to introduce a new local policy at Clause 22.05 (Heritage Places Outside the Capital City Zone) which would apply to the MBS Land. Clause 22.05 (as adopted by Council) outlines that *'this policy applies to all places within the Heritage Overlay Area excluding the Capital City Zone Schedules 1, 2, 3 and 4 and the Docklands Zone'* and therefore is proposed to continue to apply to the MBS Land being that it is within the CCZ5 which is specifically excluded from Clause 22.04.
- 30 On this basis, the CCZ5 – City North Area (inclusive of the MBS Land) will be subject to the same heritage policies as any other HO area throughout the municipality, other than those than that are located in the Central City (within CCZ1-4) and the Docklands Zone. Somewhat incongruously, this means the City North Area, being located within the Capital City Zone will be subject to a policy titled Heritage Places Outside the Capital City Zone.
- 31 The key impacts of the Amendment on the MBS Land relate to the:
- Revised status of a number of the properties forming part of the MBS Land, including the proposed 'significant' classification of 193-195 Bouverie Street, having regard to the proposed new performance standards set out in Clause 22.05-4, particularly in relation to demolition (Clause 22.05-5), new buildings (Clause 22.05-7) and additions (Clause 22.05-8); and
 - Removal of the existing qualifications contained within Clause 22.05 relating to land within Schedule 5 to the Capital City Zone (City North). These qualifications were introduced through Amendment C196⁶ in an attempt to respond to the 'tension' between the objectives of DD061 (City North) and the heritage controls/policies.

⁶ Introduced at the recommendation of the Independent Panel who considered Planning Scheme Amendment C196 to the Planning Scheme. Refer to pg. 63-65 of the C196 Panel Report dated 18 October 2013

3 Planning Context

3.1 State Planning Policy Framework

32 The following clauses within the State Planning Policy Framework as relevant to an assessment of the Amendment and the impacts on the MBS Land include:

- Clause 09 Plan Melbourne
- Clause 10 Operation of the State Planning Policy Framework
- Clause 10.01 Integrated Decision Making
- Clause 11 Settlement
- Clause 15 Built Environment and Heritage
- Clause 15.01 Urban Environment
- Clause 15.03 Heritage
- Clause 16 Housing
- Clause 17 Economic Development
- Clause 18 Transport
- Clause 19 Infrastructure
- Clause 19.02 Community Infrastructure

33 *Plan Melbourne 2017-2050: Metropolitan Planning Strategy (Department of Environment, Land Water and Planning, 2017) (Plan Melbourne)* must be considered and applied by the planning and responsible authorities, where relevant. I discuss Plan Melbourne with reference to the MBS Land further in Section 3.5 of this Report.

34 In summary, having regard to the various clauses within the SPPF the MBS land is strategically located within an identified urban renewal precinct that offers good access to jobs, services and transport (including Metro Tunnel), being a location where new housing is expressly encouraged to locate. City North is also appropriately deemed a 'Housing Opportunity Area' under Clause 16.01-3 and located within an area designated as a National Employment and Innovation Cluster (NEIC).

35 State policy also directs investment and growth be focussed in places of state significance, including NEIC's, Health and Education Precincts and Major Urban Precincts (see Clause 11.01-1 and Clause 11.06-1).

36 Furthermore, Clauses 19.02-1 and 19.02-2 provide guidance with respect to health and education facilities, including encouragement of these to locate in designated precincts and areas which are highly accessible to public transport, such as the MBS Land.

37 Built form and heritage policy at Clause 15 sets out guidance in relation to urban design, character and heritage conservation.



3 Planning Context

3.2 Local Planning Policy Framework

38 The following clauses within the Local Planning Policy Framework as relevant to an assessment of the Amendment and the impacts on the MBS Land include:

- Clause 21.03 Vision
- Clause 21.04 Settlement
- Clause 21.06 Built Environment and Heritage
- Clause 21.07 Housing
- Clause 21.08 Economic Development
- Clause 21.11 Local Areas
- Clause 21.14 Proposed Urban Renewal Areas
- Clause 21.17 Reference Documents
- Clause 22.04 Heritage Places within the Capital City Zone
- Clause 22.05 Heritage Places outside the Capital City Zone

39 It is noted that the MBS Land (being within Schedule 5 to the Capital City Zone) is specifically excluded from Clause 22.04 (Heritage Places within the Capital City Zone) and as such Clause 22.05 (Heritage Places Outside the Capital City Zone) applies to the MBS Land.

40 The policy references listed under Clause 22.05 include:

- *Urban Conservation in the City of Melbourne 1985*
- *East Melbourne & Jolimont Conservation Study 1985*
- *Parkville Conservation Study 1985*
- *North & West Melbourne Conservation Study 1985, & 1994*
- *Flemington & Kensington Conservation Study 1985*
- *Carlton, North Carlton and Princes Hill Conservation Study 1994 & 1985*
- *South Yarra Conservation Study 1985*
- *South Melbourne Conservation Study 1985 & 1998*
- *Harbour, Railway, Industrial Conservation Study 1985*
- *Kensington Heritage Review, Graeme Butler 2013*
- *Review of Heritage Buildings in Kensington: Percy Street Area, Graeme Butler 2013*
- *City North Heritage Review, RBA Architects 2013*
- *Arden Macaulay Heritage Review, Graeme Butler 2012*

3 Planning Context

-
- 41 As outlined previously, the Amendment proposes to introduce additional reference (and incorporated) documents.
- 42 Under the LPPF, City North is identified as an Existing Urban Renewal Area (see Clause 21.04-1) and also located within the Parkville Knowledge Precinct (see Clause 21.08).
- 43 In terms of growth, local policy supports ongoing urban renewal and Central City expansion in designated areas such as City North (see Clause 21.04-2).
- 44 Local policy also encourages the most significant housing and population growth in the Central City and Urban Renewal areas such as City North (see Clause 21.07-1).
- 45 Local policy directed at guiding changes to the built environment and heritage is included at Clauses 21.06 and Clause 22.05 (Heritage Places outside the Capital City Zone). In relation to Clause 22.05, the Planning Scheme specifically excludes land within Schedule 5 to the Capital City Zone (City North) from the provisions relating to Concealment Of Higher Rear Parts (Including Additions) and Facade Height and Setback (New Buildings), which arose out of Amendments C196 and C198 (more comment on this later).
- 46 In relation to City North specifically, Clause 21.14-1 of the LPPF acknowledges that transition and change is already underway. The University of Melbourne, RMIT University, hospitals and research institutions are investing in expansions and renewal of their facilities and the redevelopment of the former Carlton United Brewery site has commenced. Further potential for urban renewal exists between the existing Central City and the world renowned knowledge precinct in the south area of Parkville.

3.3 Zone and Overlay Provisions

- 47 The MBS Land is included within the Capital City Zone Schedule 5 (CCZ5) which applies to City North.
- 48 The MBS Land is also subject to three overlays, including:
- Heritage Overlay Schedule 1121 (HO1121), as already outlined;
 - Design and Development Overlay Schedule 61 (DDO61) that relates to 'City North'; and
 - Parking Overlay Schedule 1 (PO1) that relates to 'Capital City Zone – Outside the Retail Core'.

HO1121

- 49 As identified above, HO1121 applies to the 'Little Pelham Street Precinct'. The HO was introduced through Amendment C198 to the Planning Scheme.
- 50 External Paint controls apply under HO1121.

3 Planning Context

DDO61

- 51 DDO61 applies to 'City North' and includes a number of design objectives, including as relevant to the Amendment:
- *To establish a mid-rise scale of buildings (6 to 15 storeys) that is distinct from the tall built form in the Hoddle Grid area to the south, which steps down at the interface to the lower scale surrounding established neighbourhoods in North and West Melbourne.*
 - *To ensure development responds appropriately with suitable building scale, heights and setbacks to the existing character, context, and interfaces with established residential areas, and immediate amenity.*
 - *To ensure that new buildings respect the rich heritage fabric of the area and that new buildings that adjoin the heritage buildings respect their height, scale, character and proportions.*
- 52 Clause 2.0 of DDO61 outlines that all buildings and works should be constructed in accordance with the preferred maximum street edge height, preferred maximum building height and preferred upper level setback requirements for the specific areas as identified in Part 1.0 and Table 1 of this Schedule and meet the Design Objectives and Design Requirements as set out in Table 2 of this Schedule.
- 53 Furthermore, an application to exceed the preferred maximum building height should demonstrate achievement of the relevant the Design objectives and Built Form Outcomes as identified in Part 1.0 and Table 1 of this Schedule.
- 54 The MBS Land is included within DDO61 Area 4.1. Table 1 sets out the following preferred built form outcomes for Area 4.1:
- Preferred building height of 40m
 - Street edge height of 24m and upper level setback of 6m to Buildings fronting Grattan, Pelham, Queensberry, Bouverie, Leicester, Barry, Berkeley and Lincoln Square North and South streets.
- 55 Table 2 of DDO61 includes design requirements that apply to all DDO areas including (inter alia) 'To ensure that new buildings and works adjoining individually significant heritage buildings or buildings within a heritage precinct respects the character, form, massing and scale of heritage buildings.'
- 56 The decision guidelines within DDO61 require the responsible authority to consider, as appropriate:
- *Whether the proposal achieves the design objectives in Part 1.0 of this Schedule.*

3 Planning Context

- *Whether the proposal achieves the built form outcomes contained in Table 1.*
- *Whether the proposal achieves the design requirements contained in Table 2.*
- *Whether the development maintains and enhances the character and amenity of the streetscape.*
- *The wind effect at ground level as demonstrated by wind effects studies as necessary.*

57 Clause 6.0 of Schedule 61 to the DDO outlines that ‘An application to construct a building or carry out works on land located within the Capital City Zone (CCZ5) is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.’

58 The *City North Structure Plan 2012* is listed as a reference document at Clause 7.0 of Schedule 61 to the DDO.

3.4 Particular and General Provisions

59 The following particular and general provisions of the Planning Scheme are of relevance to the Amendment as it applies to the MBS Land:

- Clause 52.06 Car Parking
- Clause 81.01 Table of Documents Incorporated in this Scheme

60 The *Heritage Places Inventory March 2018* and *City North Heritage Review 2013: Statements of Significance (Revised June 2015)* are listed as incorporated documents at Clause 1.0 of the Schedule to Clause 81.01 being the Table of Documents Incorporated in this Scheme.

3.5 Other Considerations

61 In addition to the matters outlined above, Plan Melbourne and the *City North Structure Plan 2012* are also of particular relevance to the Amendment and its implications for the MBS Land.

Plan Melbourne

62 Vision outlined for Melbourne is that of ‘a *global city of opportunity and choice*’.

63 Directions and policy within Plan Melbourne reinforce the role that the central city (and specifically urban renewal areas) will play in supporting the growth of Melbourne as Australia’s ‘*largest commercial and residential centre by 2050*’.⁷

64 The MBS Land is included within the ‘Parkville National Employment and Innovation Cluster’ (Parkville NEIC)⁸, a nationally significant and

⁷ Refer to pg. 25 of Plan Melbourne

⁸ Refer to pg. 28 of Plan Melbourne

3 Planning Context

internationally renowned research centre on the doorstep of the CBD. In this regard, Plan Melbourne outlines a direction which seeks to ‘*facilitate the development of national employment and innovation clusters*’⁹ and identifies that the Parkville NEIC has significant potential to keep growing and diversifying.

65 Policy 1.1.4 seeks to ‘support the significant employment and servicing role of health and education precincts across Melbourne’ with Parkville identified as an ‘anchor point for health and medical research’.¹⁰

66 Housing growth and choice (including medium and higher density housing) is directed to locations that are close to jobs and public transport, including ‘*areas designated as national employment and innovation clusters*’.¹¹

67 Plan Melbourne clearly seeks to encourage significant change and growth within the area of City North generally, including the MBS Land.

68 Also of note in Plan Melbourne, heritage is recognised as one of Melbourne’s competitive strengths, contributing to its distinctiveness and liveability and attracting visitors, new residents and investors. Heritage is acknowledged as an important component of Victoria’s tourism industry and benefits the economy.

69 Policy 4.4.1 references a policy to ‘*Recognise the value of heritage when managing growth and change.*’ In this regard, the following is noted under this policy:

‘With all three levels of government sharing responsibility for protecting Melbourne’s post-settlement cultural heritage, decision-making must be consistent and credible and be based on clear and widely accepted heritage conservation principles and practices.

Realising the community benefit of heritage will require careful management of the ongoing processes of change to the urban environment. Decisions must be based on an appreciation of Melbourne’s past as well as an understanding of its future needs.

There will need to be continuous identification and review of currently unprotected heritage sites and targeted assessments of heritage sites in areas identified as likely to be subject to substantial change.’¹²

City North Structure Plan 2012

70 The ‘Principals of urban renewal’¹³ outlined in the City North Structure Plan include to ‘create a vibrant and distinct precinct connected to the

⁹ Refer to pg. 25 of Plan Melbourne

¹⁰ Refer to pg. 34 of Plan Melbourne

¹¹ Refer to pg. 50 of Plan Melbourne

¹² Refer to pg. 85 of Plan Melbourne

¹³ Refer to pg. 6 and 7 of the City North Structure Plan

3 Planning Context

Central City' and 'strengthen the knowledge economies to cultivate prosperity and creativity', amongst other things.

- 71 The MBS Land is included within an identified 'Parkville bio-medical precinct' being a 'Knowledge cluster' within the City North Structure Plan area.
- 72 The MBS Land is also included within 'Precinct 8. Little Carlton'. This Precinct is said to be characterised by a strong mix of heritage and contemporary buildings. Proposed built form is said to need to conserve, enhance and maintain this significant small scale, heritage fabric, while accommodating residential and employment growth and the expansion of the universities.
- 73 Figure 3.8 (on pg. 43 of the City North Structure Plan) shows the MBS Land as having a 24m height to Leicester, Pelham and Bouverie Streets and a maximum height of 40m. These 'proposed' built form controls are now reflected in DDO61.

4 Planning Assessment

4.1 Overview of Issues

- 74 Having reviewed the Amendment documentation including the background material that led to and supported its preparation, I acknowledge that there is strategic justification for an Amendment which seeks to implement the findings of the Heritage Policies Review 2016 by updating the existing heritage policy grading system to align with current best practice.
- 75 In this regard, I consider the Amendment and supporting documentation as a matter of general application satisfies the Strategic Assessment Guidelines and relevant Ministerial Directions.
- 76 It must be recognised that the Amendment proposes to maintain the MBS Land (and other land also within Schedule 5 to the CCZ) within the ambit of the policy at Clause 22.05 titled 'Heritage Places Outside the Capital City Zone'. As I noted earlier, there is a discordance or incongruity in this arrangement given the Capital City zoning of City North and its nominated role in strategic planning terms.
- 77 The inclusion of the CCZ5 land within Clause 22.05 for example causes an obvious distinction to be drawn between City North (as a NEIC and Urban Renewal Area) in the CCZ5 and other equally significant Urban Renewal Areas (i.e. Southbank, Fishermans Bend and Docklands) that are also located within the CCZ or Docklands Zone. This distinction serves to establish a notably different heritage policy framework between these vitally important areas within the City of Melbourne.
- 78 What the distinction also serves to do is to place heritage policy considerations relevant to the established and/or stable areas throughout the City of Melbourne on the same footing as those which would apply to City North, without regard for the strategic significance of City North as a designated area for major urban renewal and as a Nationally significant employment and innovation cluster.
- 79 The policy or planning tension that obviously exists and has been remarked upon previously in this context is substantive and material to determining the merits of the Amendment.
- 80 The comments and recommendations for example made by previous Panels in Amendment C196 and C198 ought not be ignored by the Amendment. The recommendations of these Panels identified the clear and unambiguous tension that exists between strategic policy aspirations for City North and heritage considerations, a matter that was said to be sufficiently important for the Council to be given time and the opportunity to resolve.
- 81 Despite the recommendations of previous Panels (in Amendment C196 and most recently in C198) the opportunity provided to the Council to deliver the further work that was called for to reconcile the evident policy tension does not appear to have been taken up. That is, the preparation of '*...a heritage policy for City North area which reflects the Structure Plan's aim to integrate the area's heritage into urban renewal*



4 Planning Assessment

in the City North area appears to me to have been ignored or overlooked in this instance.¹⁴

- 82 It is important that whatever decisions are taken in the interests of advancing heritage policy for the City North area, that these occur in a framework that clearly understands the broader strategic implications of such decisions.
- 83 As a general observation, the strategic context relevant to the designation of City North as an extension to the Central City, an urban renewal area, being part of a designated NEIC and supplemented by new regionally significant transport services aided by the new Metro station ought to be relevant in the exercise of framing policy for that particular area.
- 84 The essence of the strategic planning that has preceded the Amendment and the designation of City North should inform the exercise of reconciling heritage policy. A superficial overview of the Amendment and its potential implications would at least lead to clarification of the following being required:
- How has the Amendment reconciled the strategic planning intentions for City North and the opportunity to integrate heritage into the change management process of this urban renewal area?
 - What justification is there in heritage policy terms, to distinguish so emphatically between City North and the other CCZ/urban renewal areas?
 - What justification is there to apply the same heritage policy settings to City North as you would all other HO areas of the municipality, including stable areas?
 - What implications in policy terms will the Amendment have for City North, particularly noting the significant change in emphasis embodied in the performance standards for assessing planning applications in Clause 22.05?
- 85 At its most basic, it seems plainly absurd to have a policy titled 'Heritage Places Outside the Capital City Zone' that applies to land within the CCZ. Similarly, a policy titled 'Heritage Places within the Capital City Zone' expressly excludes land that is in the CCZ.
- 86 It remains an issue for this Panel to enquire as to whether the further work called for by previous Panels has been done and whether the tension that clearly exists in strategic planning and policy terms has been adequately addressed by the Amendment.

¹⁴ Refer to pg. 41 of the Panel Report dated 11 July 2014 for Amendment C198

4 Planning Assessment

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- 87 In terms of the matters specific to the MBS Land, questions as to the grading of buildings and streetscapes or the grading system being advocated, these are for others expert in those areas to address.
- 88 My focus is on simply commenting on the strategic opportunities afforded by City North and the potential implications of changes to the Planning Scheme that may impact on or advance those opportunities either way.
- 89 I am aware that evidence presented on behalf of the MBS will outline the significance of the MBS Land, the opportunities afforded by the location and concepts for its planned redevelopment. This serves to underscore the significance of MBS to the broader functioning and designation of the precinct as a NEIC.
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4.2 Assessment of Implications of the Amendment

- 90 In terms of my assessment of the Amendment as it relates specifically to the MBS Land, I have focused on the following matters for further discussion:
- Planning framework and strategic context of the MBS Land, including the designation of City North, its role and opportunities;
 - The drafting and application of the proposed policy at Clause 22.05 in particular, and its consequences for the MBS Land.

Strategic Planning Context and Framework

- 91 As I have indicated previously, the strategic significance of City North in policy terms at both State and local levels is beyond question. As the City North Structure Plan observes the area displays strong characteristics of a Central City environment, with a diverse mix of uses, including well-established industrial, commercial, retail and residential uses dispersed throughout the area, alongside major health, education and research institutions.¹⁵
- 92 It is recognised that significant built form change and land use intensification is underway. The education, hospitals and research institutions are investing in significant expansion and renewal of their facilities. Other major investment has also occurred and this trend is ongoing. The NEIC is said to host '*the world renowned knowledge precinct*' such is its importance.
- 93 As Plan Melbourne notes, Melbourne needs to create jobs close to where people live. It is State policy to facilitate the development of national employment and innovation clusters. It is a requirement of locations such as the Parkville NEIC that they be investment-ready for knowledge-intensive firms and jobs.¹⁶
- 94 The process of accommodating major investment, growth and change is not without its constraints and limitations. Heritage forms part of a

¹⁵ Refer to pg. 4 containing the Executive Summary of City North Structure Plan

¹⁶ Refer to pg. 25 of Plan Melbourne

4 Planning Assessment

myriad of considerations relevant to the process of managing growth and change. It is neither the most or the least important consideration in the assessment equation when it comes to balancing policy outcomes.

- 95 However, as Plan Melbourne notes ...'realising the community benefit of heritage will require careful management of the ongoing processes of change to the urban environment. Decisions must be based on an appreciation of Melbourne's past as well as an understanding of its future needs.'¹⁷
- 96 Planning policy for City North recognises the strategic significance of the precinct in terms of the integration and prosperity of knowledge-based enterprises, set within a dense, vibrant urban culture. It will be a liveable precinct, distinct in its character, and underpinned by a mix of commerce, retail, residential and recreational activities.
- 97 Aside from accommodating an expansion of the Central City and perpetuating the rezoning of land to CCZ, Amendment C196 which implemented the City North Structure Plan introduced a suite of planning controls and policies befitting the strategic importance of the precinct.
- 98 These provisions recognise the opportunity provided by City North for accommodating substantial growth and change which in broad terms provides for the following:
- An acknowledgement that City North is to be developed as a mixed use extension of the Central City.
 - An acknowledgment that City North is to provide for a range of educational, research and medical uses as part of an internationally renowned knowledge district.
 - Built form controls that establish a mid-rise scale of buildings (6 to 15 storeys) that is distinct from the tall built form in the Hoddle Grid area to the south, which steps down at the interface to the lower scale surrounding established neighbourhoods in North and West Melbourne.
 - In the case of the MBS Land, built form parameters that support a preferred building height of 40m and a preferred street edge height of 24m.
 - Objectives that require new buildings to respect the rich heritage fabric of the area and that new buildings that adjoin heritage buildings respect their height, scale, character and proportions.
- 99 The policy tension that has been identified between heritage policy and the aspirations for urban renewal for City North is plainly evident and has not been resolved by the Amendment in this case. Council's Part A

¹⁷ Refer to pg. 85 of Plan Melbourne

4 Planning Assessment

Submission to this Panel (dated 23 July 2018) serves little in terms of rationalising the policy tension identified by the Panel in Amendments C196 and C198.

- 100 The manner in which City North is to be dealt with under the proposed version of Clause 22.05 does not address the fundamental concerns identified by previous Panels in reconciling the policy tension. In heritage policy terms, City North is simply to be lumped in with all other areas affected by HO's throughout the municipality which happen to be outside the CCZ seemingly without regard for the significance of the precinct.
- 101 As the Panel in Amendment C198 noted....'it is not good practice to propose changes to a Planning Scheme which perpetuate policy conflicts or tensions.'¹⁸
- 102 The Panel in Amendment C198 also went on to comment:

'Whilst the Panel acknowledges that Planning Schemes are subject to change, it is also cognisant of the need to ensure a consistency between various provisions. The level of consistency ought to be tested at the Planning Scheme Amendment stage, and ideally Council should have considered its heritage policy and the strategic aims of City North's renewal together.'

The Panel to C196 discussed this same issue extensively in their report, and provided a recommendation which Council has chosen not to accept. Council has stated that they are concerned about unintended consequences of amending Clause 22.05 as recommended by the Panel which heard C196. They also submitted that decision makers at the permit stage are quite capable of balancing the competing demands of the various provisions of the Scheme.

The Panel acknowledges that Clause 22.05 currently applies to the bulk of the City North area – in fact in areas where tall buildings exist and where Design and Development Overlay controls which facilitate tall buildings have been in place for some time. Decision makers clearly use the provisions of Clause 22.05 in this built form context, and presumably ignore the requirements for concealment of additions when assessing heritage buildings. The Panel questions the point of having provisions in a policy if they are simply to be ignored because they do not fit the site context. Although this might be a practical approach at the permit stage, it is not good practice when implementing new strategic directions.'¹⁹

¹⁸ Refer to pg. 40 of the Panel Report for Amendment C198

¹⁹ Refer to pg. 40 of the Panel Report for Amendment C198

4 Planning Assessment

103 As I have noted previously, the Panel in Amendment C198 identified the distinction to be drawn between City North and other non-CCZ areas in heritage terms and recommended that *‘the Council prepare a heritage policy for the City North area which reflects the Structure Plan’s aim to integrate the areas heritage into urban renewal in the City North area.’*

104 That policy has not been prepared nor has the policy tension identified by the Panel been resolved by the current Amendment. Until that work has been done, the options open to the Panel in this regard appear to be similar to those which the Panel in Amendment C198 had identified:

- Amend the provisions of Clause 22.04 so that they also apply to CCZ5 (City North) just as they already do to CCZ1-4; or
- Amend the provisions of Clause 22.05 so that CCZ5 (City North) is excluded from this policy.

Drafting of Local Planning Policy Clause 22.05

105 Planning Practice Note No. 8 relates to ‘Writing a Local Planning Policy’ and includes principles that should be applied to the drafting or reviewing of an LPP.

106 The principles include that *‘An LPP should not repeat or contradict controls in an overlay’* and *‘An LPP should not contain mandatory requirements’* noting with respect to the latter that *‘an LPP is a guideline about how discretion is likely to be decided and cannot prescribe mandatory requirements.’*

107 The checklist for writing an LPP includes *‘is an LPP necessary or are the decision guidelines in zones and overlays, and the use of schedules sufficient to achieve its objectives?’* and *‘has the LPP been assessed against the principles set out in this practice note?’*

108 The significance of heritage to the City North area is acknowledged just as it is to other areas throughout the municipality.

109 It is also already acknowledged in the CCZ5 provisions and DD061 applicable to the City North area.

110 Some of these provisions include the following:

- An application requirement in the CCZ5 that requires the urban context report to document the effect of the development on heritage character of adjacent and nearby heritage places.
- An application requirement in the CCZ5 that requires an application for a permit in the Heritage Overlay to be accompanied by a conservation analysis and management plan in accordance with the principles of the Australian ICOMOS Charter for the Conservation of Places of Cultural Significance 1992 (The Burra Charter) to the satisfaction of the responsible authority.

4 Planning Assessment

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- A design objective in DD061 that seeks to ensure that new buildings respect the rich heritage fabric of the area and that new buildings that adjoin the heritage buildings respect their height, scale, character and proportions.
 - A design objective that seeks to ensure that new buildings and works adjoining individually significant heritage buildings or buildings within a heritage precinct respect the character, form, massing and scale of the heritage buildings.
 - Built form outcomes and design requirements in DD061 that require new development to respect heritage character, to respect the scale of existing heritage buildings, that achieve street edge heights that integrate new development with lower scale heritage buildings.

111 Whilst I am of the view that these references are useful in guiding the process of built form change and the integration of heritage into urban renewal in the City North area, there remains a place for heritage policy in aiding the assessment of planning applications from broader strategic and statutory viewpoint.

112 That said, the Council adopted version of the proposed Clause 22.05 in my opinion, is not sufficient or appropriate in its present form.

113 In terms of the drafting of the proposed Clause 22.05 heritage policy and its implications for the MBS Land and the broader City North precinct, the main concern relates to policy statements and provisions referencing the concealment, partial concealment and visibility of new buildings, alterations and additions.

114 These concerns are similar to those expressed previously by earlier Panels including the Panel in Amendment C198 where it found:

‘The Panel also finds however, that the heritage management policy Clause 22.05 proposed by C198 in so far as its policy statements on Concealment of Higher Rear Parts (including Details), Façade Height and Setback (New Buildings)’ and ‘Buildings Height’ clearly contradict the Design and Development Overlay and therefore recommends that these aspects of the Policy should not apply in the City North area. Alternatively, the Panel agrees that Ms Heggen’s suggestion to apply Clause 22.04 to the CCZ area in City North as well as the DD061A1 – The Haymarket would provide an interim solution until Council has completed the review of its heritage policies. The Panel therefore recommends that the provisions of Clause 22.04, or alternatively Clause 22.05 be amended in this way as an interim position.’²⁰

115 In terms of the specific provisions in Clause 22.05 relevant to concealment, partial concealment and visibility, it is noted that these

²⁰ Refer to pgs. 40-41 of the Panel Report for Amendment C198

4 Planning Assessment

provisions are not found in the policy applicable to land covered by Clause 22.04. I am of the view that there is good reason for this not least of which is the fact that similar to City North, the land contained in the CCZ includes areas earmarked for substantial change and major urban renewal.

- 116 The MBS Land is a strategically located parcel of land capable of significant further development and the MBS has already embarked on a process concerning the potential redevelopment of its landholding. Its activities and interests are directly aligned with the strategic focus of the Planning Scheme and Metropolitan Strategy in terms of the furtherance of urban renewal in City North and the outcomes sought for the NEIC under Plan Melbourne.
- 117 The prospect of a heritage policy unfairly impacting on the strategic potential of the MBS Land by establishing a threshold for assessing heritage applications that clearly contradict the outcomes sought under the relevant zone and DDO provisions or unreasonably fetter the prospect of attaining a fair and balanced assessment of planning applications in the future, ought to be resisted. In my opinion, such provisions ought to be opposed for similar reasons given by the Panels in Amendments C196 and C198.
- 118 Aside from concerns about the above stated provisions and their compatibility with the broader strategic objectives for City North, in my opinion other issues also need to be addressed in terms of the drafting of heritage policy. These generally relate to the following:
- Definitions relevant to the interpretation of certain policies e.g. Concealed/Partly Concealed, Front or Principal Part of a Building etc.
 - Provisions relevant to the circumstances when/where demolition may be allowed.
 - Use of absolute expressions such as the word 'must' in circumstances where policy is intended to guide and not mandate or prescribe.
- 119 As is commonly the case in Panel proceedings, I expect that there will be an opportunity to further explore the drafting of the proposed heritage policy.

Recommended Interim Solutions

- 120 It appears to me from a planning perspective that until such time as the Council has undertaken the further work called for by previous Panels, the status quo should at least be maintained for the City North area.
- 121 This means that at the very minimum, provisions which would unduly restrict development potential of City North, being 'Additions' and 'New Buildings', should not apply to land within Schedule 5 to the CCZ (City North).

4 Planning Assessment

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- 122 Again, an alternative could be rather than Clause 22.04 specifically excluding land within the CCZ5, as is currently the case, that CCZ5 is included within Clause 22.04 (being Heritage Places within the Capital City Zone), thereby the heritage policy that is proposed to apply is consistent with that which also applies to other land within the CCZ.

5 Conclusion

123 Having considered the issues relevant to my instructions in this matter, I have concluded that:

- There is strategic justification for an Amendment that reinforces the importance of the heritage fabric within the municipality and addresses the preferred heritage grading system.
- The Amendment does not reconcile the existing tension between heritage policy and the strategic objectives for City North (including the MBS Land and land within the Parkville NEIC).
- On the basis of the above, I question the acceptability of removing the existing qualifications with respect to concealment/partial concealment and visibility particularly in respect of 'Additions' and 'New Buildings' with CCZ5.
- As drafted the Amendment unfairly prejudices the potential of the MBS Land and wider City North area. I find that the Amendment in its current form to be unjustified and do not support the current version of the Amendment.
- I consider that from a planning perspective that until such time as the Council has undertaken the further work called for by previous Panels, the status quo should at least be maintained for the City North area in relation to heritage policy.
- As outlined above, an alternative could be rather than Clause 22.04 specifically excluding land within the CCZ5, as is currently the case, that CCZ5 is included within Clause 22.04 (being Heritage Places within the Capital City Zone).

124 I am not supportive of the exhibited (or adopted) Amendment in its present form.



Andrew Biacsi
Director

Attachment 1

Expert Witness Declaration

A1

Attachment 1 - Expert Witness Declaration

Name and Address	Andrew Biacsi is a Director of Contour Consultants Australia Pty Ltd, Town Planners and practices from Level 1, 283 Drummond Street, Carlton Victoria, 3053
Professional Qualifications	<ul style="list-style-type: none"> • Bachelor of Applied Science (Planning) • Graduate Diploma in Urban and Regional Planning • Director –Contour Consultants Australia Pty Ltd • Member of Planning Institute of Australia (PIA)
Professional Experience	First employed as a town planner in 1980. I have been employed in both public and private practice for a period of more than 35 years in Victoria, the A.C.T. and New South Wales. I have been in private practice since 1989 and at Contour Consultants since 1991.
Areas of Expertise	<ul style="list-style-type: none"> • Statutory and strategic planning and urban design. • Advice and assessment of land use and development proposals to planning authorities, government agencies, corporations and developers (including major residential, retail, commercial, industrial, institutional and mixed use projects). • Preparation and presentation of evidence before VCAT, Supreme Court of Victoria, the Magistrates Court, Liquor Licensing Commission, Building Referees Board and various government appointed independent panels and advisory committees.
Expertise to Prepare this Report	My training and experience including involvement with many forms of inner city, mixed use and urban renewal proposals and planning scheme amendments over a period of more than 35 years qualifies me to comment on the town planning and strategic policy implications of the Amendment.
Instructions which Define the Scope of this Report	I received instructions from King & Wood Mallesons dated 5 June 2018, on behalf of Melbourne Business School Limited, to consider the town planning implications of proposed Amendment C258 to the Melbourne Planning Scheme.
Facts, Matters and Assumptions Relied Upon	<ul style="list-style-type: none"> • Inspection of the MBS land and surrounds; • Reviewed the provisions of the Planning Scheme;

Attachment 1 - Expert Witness Declaration

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- Reviewed the exhibited documentation as part of the Amendment;
 - Reviewed the submission lodged by MBS (dated 8 May 2017) to the Amendment and summary of submissions set out in the Agenda for the 20 February 2018 FMC meeting;
 - Reviewed the Council Meeting reports relevant to the Amendment dated 5 July 2016, 16 May 2016, 21 November 2017 and 20 February 2018;
 - Reviewed the Amendment documentation adopted by Council at the Future Melbourne Committee Meeting held on 20 February 2018;
 - Reviewed the report of the Panel in Amendment C198 to the Planning Scheme which implemented the recommendations of the *City North Heritage Review 2013* and introduced a HO across the MBS Land;
 - Reviewed Planning Practice Note Nos. 1 (Applying the Heritage Overlay), 8 (Writing a Local Planning Policy), 13 (Incorporated and Reference Documents) and 46 (Strategic Assessment Guidelines); and
 - Reviewed the Part A submission of the Council dated 23 July, 2018.

Documents Taken into Account

Refer to documents described above and in report.

Identity of Persons Undertaking the Work

Report prepared by Andrew Biacsi with assistance of Angela Ash, Associate of Contour.

Relationship with Proponent

I personally have no private or business relationship with the Proponent, other than being engaged to prepare this report although my firm has worked on this project and others for the proponent of the Amendment and continue to do so.

Summary of Opinions

Refer to Report

I have made all enquiries that I believe are desirable and appropriate and that no matter of significance which I regard as relevant have to my knowledge been withheld from the Panel.



Andrew Biacsi
Director

Contour Consultants Australia Pty Ltd

Melbourne Business School
Carlton

Expert Witness Statement to Panel
Amendment C258 to the Melbourne Planning Scheme

Bryce Raworth

Conservation Consultant and Architectural Historian

Prepared under instruction from King & Wood Malletsons

July 2018

Expert Witness Statement to Panel
Amendment C258 to the Melbourne Planning Scheme

July 2018

1.0 Introduction

1. This report was prepared under instruction from King & Wood Mallesons on behalf of the Melbourne Business School (MBS). MBS are the owners of the subject site comprising properties at: 183-189 & 193-195 Bouverie Street, 168 & 174-180 Leicester Street and 150-154 & 160-170 Pelham Street, Carlton.
2. I have been asked to provide comment on the heritage considerations associated with Amendment C258 to the *Melbourne Planning Scheme*, which proposes, amongst other changes, to apply new heritage gradings to the subject site and update the heritage policy at Clause 22.05.
3. This statement has been prepared with assistance from Martin Turnor of my office. The views expressed are my own.

2.0 Sources of Information

4. The analysis below draws upon inspections of the subject site, and a review of the relevant Amendment C258 documentation, including the *City of Melbourne Heritage Review: Local Heritage Policies and Precincts Statements of Significance Methodology Report* (Lovell Chen, Updated May 2016). Reference has also been made to the *Melbourne Planning Scheme's Heritage Places Inventory* (March 2018), the *City North Heritage Review 2013 Statements of Significance (Revised June 2015)* and the current Heritage Overlay provisions in the *Melbourne Planning Scheme* (Clauses 43.01 and 22.05). A statement of evidence of Peter Lovell, prepared in relation to the significance of the buildings in question and dated April 2014, has also been reviewed along with the Panel Reports for Amendments C196 and C198 to the *Melbourne Planning Scheme* and the *City North Structure Plan* (2012).
5. The Amendment C258 documentation, including a corrected version of the *Heritage Places Inventory*, was re-exhibited in November 2017. Council made a range of changes to the C258 Amendment documentation, including Clause 22.05, as a result of submissions received, and these were adopted as a result of the Future Melbourne Committee Resolution of 20 February 2018. These changes have been reviewed, as has Council's Part A Submission, recently circulated.

3.0 Author Qualifications

6. A statement of my qualifications and experience with respect to urban conservation issues is appended to this report. Note that I have provided expert witness evidence on similar matters before the VCAT, Heritage Council, Planning Panels Victoria and the Building Appeals Board on numerous occasions in the past, and have been retained in such matters variously by municipal councils, developers and objectors to planning proposals.

4.0 Declaration

7. I declare that I have made all the inquiries that I believe are desirable and appropriate, and that no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.

A handwritten signature in black ink, appearing to read 'B. Raworth', with a stylized flourish at the end.

BRYCE RAWORTH

5.0

Description

8. Located in south Carlton, the subject site is bound by Leicester Street to the west, Bouverie Street to the east and Pelham Street to the south. Little Pelham Street bisects the site on an east west axis. The buildings on the site comprise interwar/postwar factory buildings and warehouses that have been repurposed for use by the Melbourne Business School (MBS). Individual buildings on the subject site are described in further detail below.



Figure 1 Aerial photograph of the subject site.

183-189 Bouverie Street

9. An architecturally undistinguished double-storey industrial building, constructed 1941 and substantially remodelled in the postwar period. As originally built, the principal façade was orientated to Pelham Street and had face brick walls and regularly spaced steel-framed windows. The main entrance/stair tower at the west end of the façade had a typical Moderne style porthole window and horizontal banding to the parapet. The Bouverie Street elevation was more utilitarian in appearance with face brick walls and sawtooth roof profile. The building was substantially remodelled in 1956 when a first floor addition was made to the Bouverie Street elevation. The Pelham Street façade was extended to the west, a flagpole added to the stair tower and the original porthole window replaced with a rectilinear opening.
10. Further alterations have been made to the street facades since that time with painting over of face brickwork, a new glazed entry created on the Bouverie Street elevation, modern aluminium framed doors to the Pelham Street entry, and modern glazed doors to the entry of the 1956 Pelham Street extension.

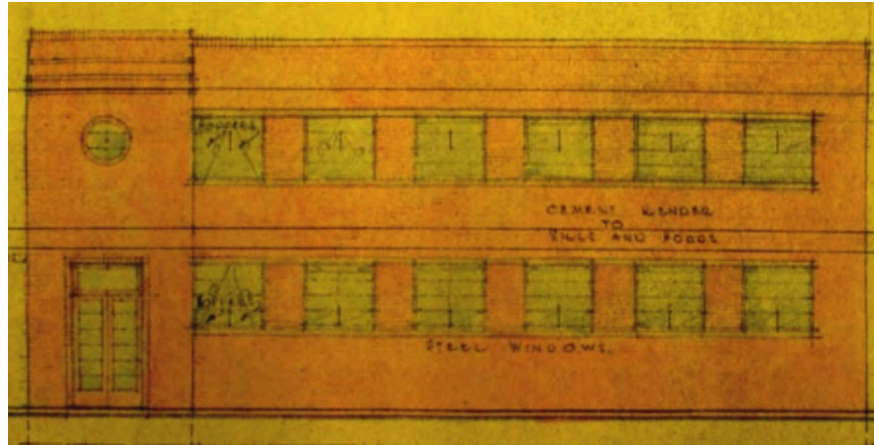


Figure 2 Pelham Street façade to 183-189 Bourne Street as originally designed 1941. Source: Public Records Office Victoria.

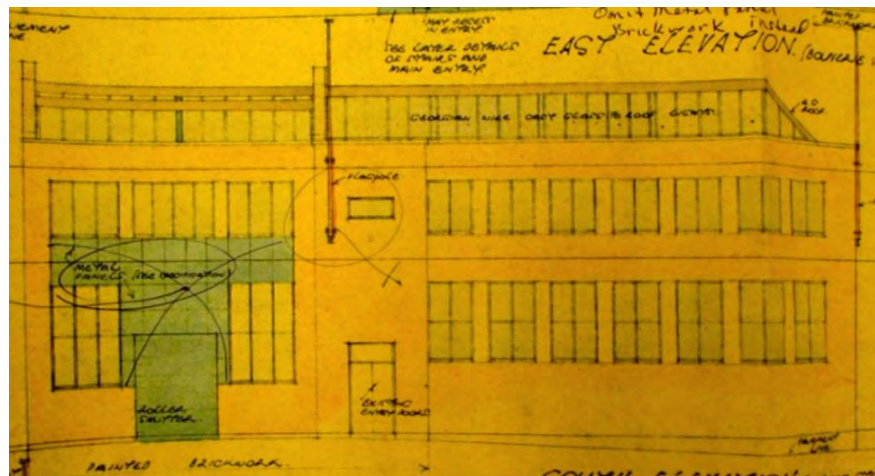


Figure 3 1956 permit drawings showing additions and remodelling to the Pelham Street façade. Source: Public Records Office Victoria.



Figure 4 Current photograph of the Pelham Street façade.

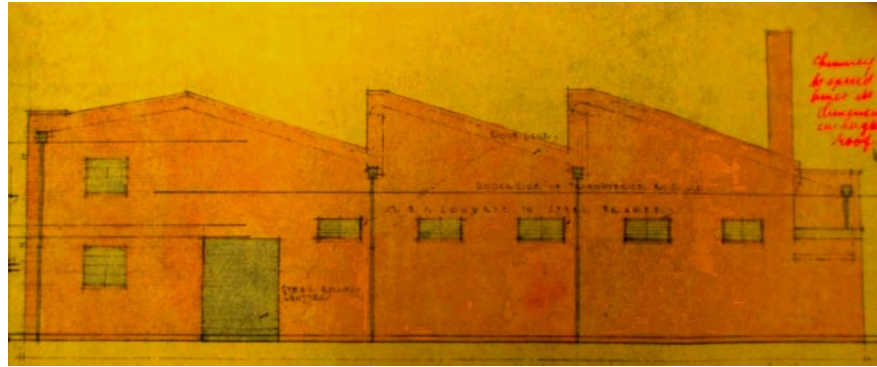


Figure 5 Pelham Street façade to 183-189 Bouverie Street as originally designed 1941. Source: Public Records Office Victoria.

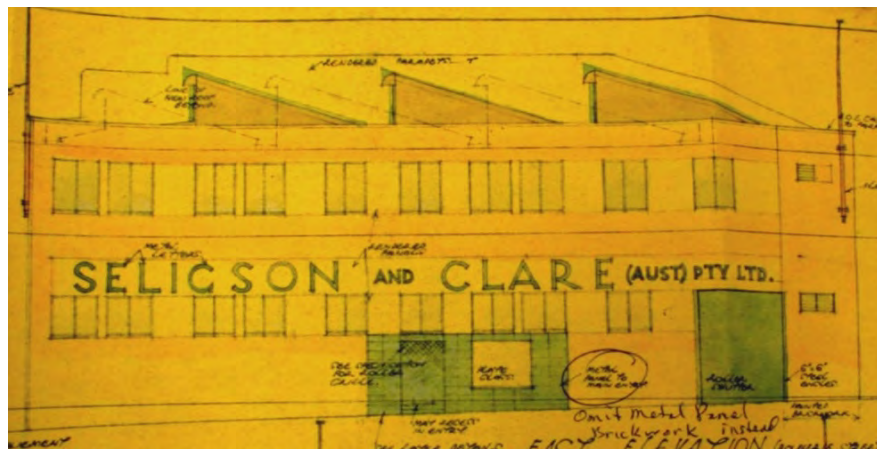


Figure 6 1956 permit drawings showing first floor additions to the Bouverie Street elevation. Source: Public Records Office Victoria.



Figure 7 Current photograph of the Bouverie Street façade.

193-195 Bouverie Street

11. A former factory with brick walls and a sawtooth roof concealed by parapets. It was constructed in multiple stages from 1934. The building was initially a single-storey structure occupied by C Huppert Engineering Works. Single-storey additions were made to the rear c1936. Plans for a first floor addition were prepared in 1937 by architect Norman C Smith and a double-storey addition was built to the rear c1939 to designs by architect Frederick Morsby.

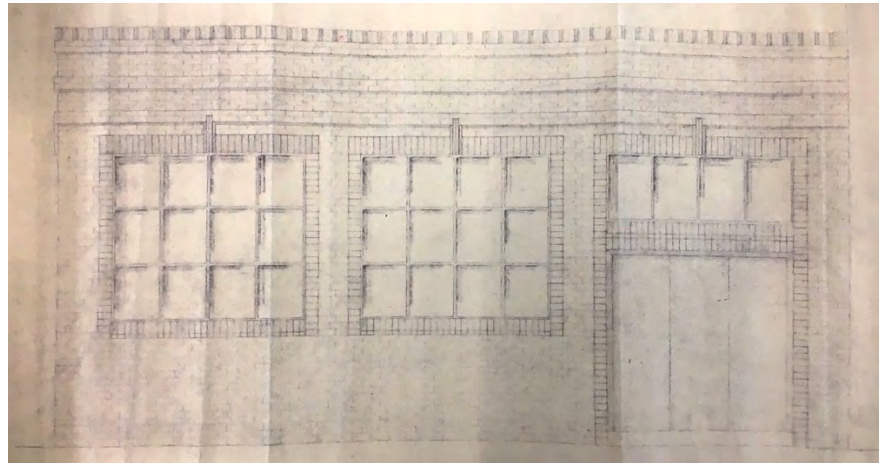


Figure 8 The façade of 193-195 Bouverie Street as originally designed 1934. Source: Public Records Office Victoria.

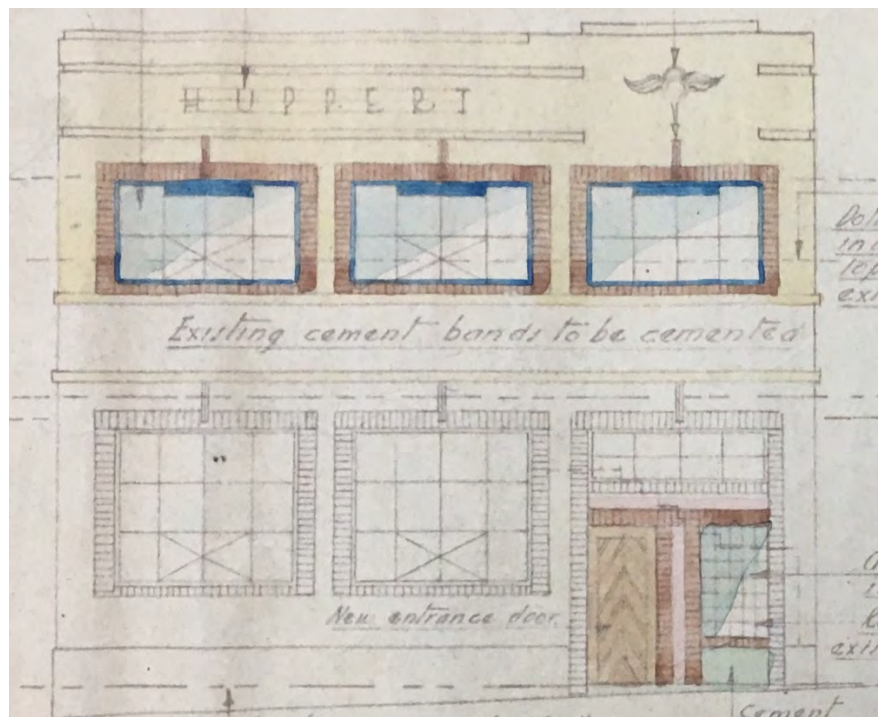


Figure 9 1937 permit drawing showing first floor additions to the Bouverie Street façade. Source: Public Records Office Victoria.



Figure 10 Current photograph of the Bouverie Street façade.



Figure 11 (left) The south elevation to Little Pelham Street.



Figure 12 (right) The c1939 addition at the rear of the building.

12. The Bouverie Street façade is of a fairly simple design with decorative elements generally limited to a dog-tooth brick course along the parapet, brick string courses, and a simple vertical ornament above the windows. The windows originally had brown manganese brick surrounds in contrast to the red brick walls but this detail has been obscured by overpainting of all of the façade. The steel lettering and decorative element shown on the 1937 drawings above are not present. A fire sprinkler booster cabinet has been installed under a ground floor window and the main entry has been infilled with a glazed steel-framed door/window. Several of the original steel framed windows to the side elevation have been replaced with aluminium window frames.

168 Leicester Street

13. A single-storey former workshop, built in 1923 to designs by Joy & McIntyre, engineers and architects. It was extended to the east in 1926 and occupied by A E Liester, Motor Car Painter and Trimmer until the late 1930s. The building was heavily damaged by fire in May 1946 and subsequently partly rebuilt, including reconstruction of the roof. It has face brick walls and a hipped corrugated iron clad roof partly concealed by a parapet. The Leicester Street elevation is symmetrical with a simply detailed triangular pediment with a recessed panel. The main entrance at the centre of the façade is surmounted by a moulded cornice. The original permit drawings show a slightly curvilinear pediment treatment (although this was presumably simplified in the design/construction phase).
14. The building has been subject to a number of changes. All window openings to the Leicester Street façade have been bricked up, the timber doors to the main entrance have been removed and the opening fitted with a modern glazed door (behind a steel roller door). A new pedestrian entry has also been created to the south side of the main entrance. An original doorway at the eastern end of the Pelham Street elevation has been bricked up.



Figure 13 The Leicester Street façade as shown in the 1924 permit drawings. Source: Public Records Office Victoria.



Figure 14 Current photograph of the Leicester Street façade.

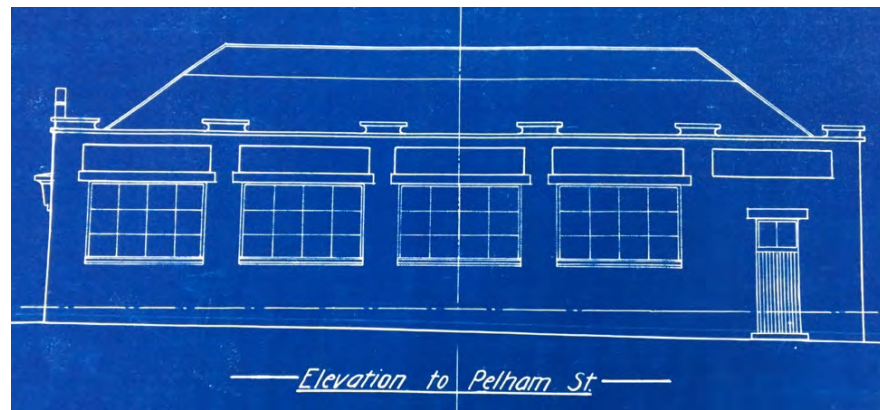


Figure 15 The Pelham Street façade as shown in the 1924 permit drawings. Source: Public Records Office Victoria.



Figure 16 Current photograph of the Pelham Street façade.

174-178 Leicester Street

15. Originally a knitting mill, this building was constructed in 1940 to designs by architect Archibald Ikin. The Moderne style Leicester Street facade has bands of multi-pane steel-frame windows with continuous concrete hoods providing a horizontal emphasis. This is counterpoised by the vertical entrance bay with a parapet featuring typical Moderne style vertical ornament. The side elevations to Little Pelham Street have a utilitarian industrial character with plain face red brick walls and multi-pane steel framed windows. Double storey additions have been made to the rear in 1952 with exposed concrete frame and red-brick walls. The factory was extended further to the rear in 1964, again using red brick walls in a utilitarian design.
16. The façade is largely intact apart from overpainting of the tapestry brickwork. The original drawing shows terracotta cladding around the main entry, but this has been replaced (or covered) by mosaic tiles. Several of the original steel framed windows on the side elevation have been replaced with aluminium window frames.

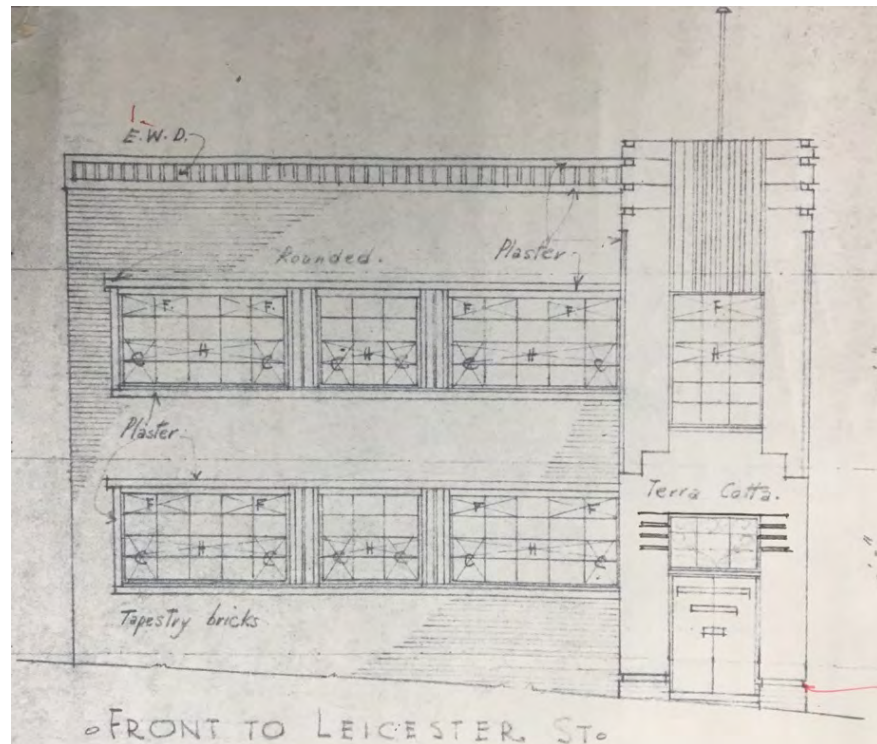


Figure 17 The façade to 174-178 Leicester Street as shown on the 1940 permit drawings. Source: Public Records Office Victoria.



Figure 18 Current photograph of the Leicester Street façade.

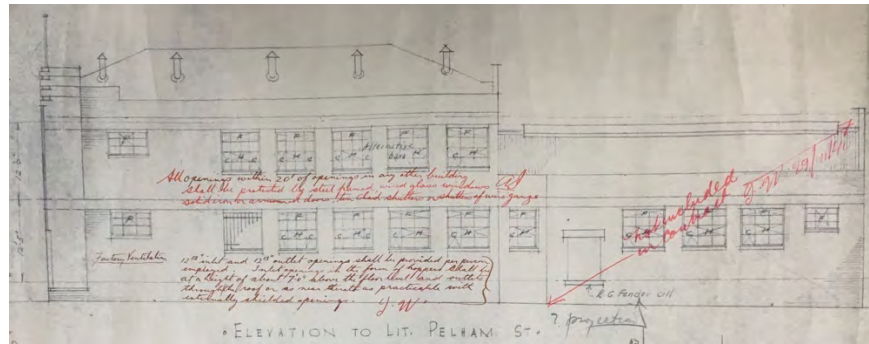


Figure 19 The Little Pelham Street elevation as shown on the 1940 permit drawings. Source: Public Records Office Victoria.



Figure 20 The Little Pelham Street elevation showing the c1964 additions in the foreground.

160-170 Pelham Street

17. A single-storey former workshop constructed in 1928 to designs by architects Berry and San Miguel. It was initially occupied by an engine re-conditioner and later by T B McDiarmid, stereotypers. The original 1928 permit drawings show the Pelham Street façade adopting a basic stripped classical expression with a triangular pediment above the main entry doors. The façade also had multi-pane windows set between simply detailed brick piers. All of the original façade windows have been replaced with large modern fixed sash windows, and the original door opening has been infilled. The rear elevation to Little Pelham Street has brick pilasters as per the front elevation but is otherwise more simply detailed. Most of the original window frames to the rear elevation have been removed and an original door opening has been part infilled and fitted with a modern glazed sliding door. The east side elevation is a blank brick wall, exposed by the demolition of adjoining buildings at 150-154 Pelham Street.

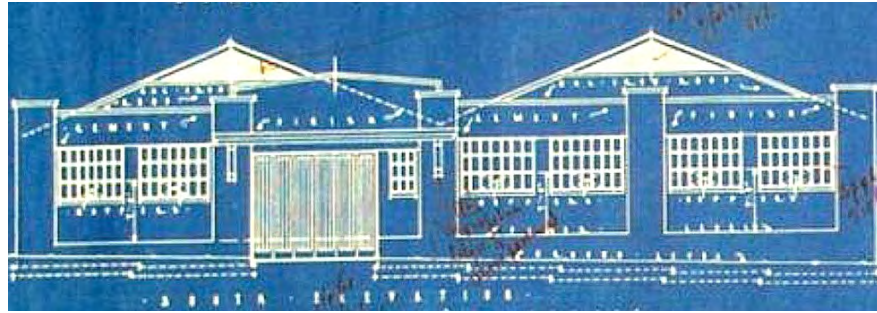


Figure 21 The front elevation of 160-170 Pelham Street as shown on the 1928 permit drawings.
Source: Public Records Office Victoria.



Figure 22 Current photograph of the Pelham Street façade.

Context

18. The site sits within a relatively mixed urban context. The landscaped open space of University Square is located opposite the site to the west, while Lincoln Square is located opposite to the east. To the north is the substantial four-storey building designed for the MBS in the 1980s by architect Daryl Jackson. To the south, Pelham Street contains vacant land to the corner of Leicester Street, a double and triple storey modernist brick factory at 157-165 Pelham Street and two double storey modern buildings with largely glazed facades to the corner of Bouverie Street. In addition, to the south west is the multi-storey University of Melbourne Law School building. Further west, the site at 221 Pelham Street is being redeveloped with a multi-storey apartment retaining a double-storey interwar factory façade. Large scale development can also be found on Barry Street on the west side of University Square, where the University of Melbourne has a multi-storey building sitting behind the front parts of a Victorian terrace row. There is also a current proposal for large scale redevelopment of the nearby land at 182-210 Berkeley Street and 131-151 Barry Street involving a multi-storey student accommodation building with retained heritage facades.
19. It is readily apparent that this part of Carlton is undergoing a period of major transformation in its urban character. The area's traditionally low rise industrial streetscapes are changing to adopt a character strongly influenced by multi-storey modern development with an educational or residential purpose, sometimes incorporating retained heritage facades as a podium element.



Figure 23 *Modern University of Melbourne buildings on the west side of University Square, sitting in part behind retained Victorian terrace house frontages.*



Figure 24 *The south side of Pelham Street, opposite the subject site, with a background of multi-storey development.*



Figure 25 *Modern development on the south side of Pelham Street, diagonally opposite the subject site.*

6.0 Current Heritage Listings

20. The subject site forms a small Heritage Overlay precinct known as the Little Pelham Street Precinct (HO1121). External paint controls apply as a result of the Heritage Overlay listing, internal alterations and tree controls do not.

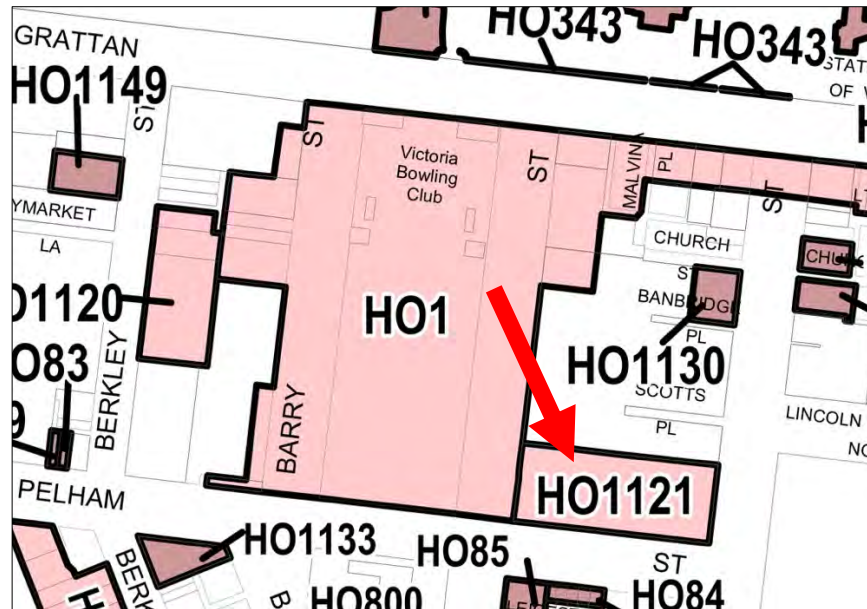


Figure 26 Extract from the Heritage Overlay map showing HO1121 applying to subject site.

7.0 Significance

21. The statement of significance for Little Pelham Street Precinct, as set out in *City North Heritage Review 2013 Statements of Significance (Revised June 2015)*, is as follows:

What is Significant?

The land and the factory/warehouse buildings located in Bouverie Street (nos 193-195), Leicester Street (nos 168-172 and 174-178), and Pelham Street (nos 150-170) all of which back onto Little Pelham Street. Elements of note are the original external treatments such as face red and brown brick combined with areas of cement render and metal-framed, multi-paned windows.

How is it Significant?

The Little Pelham Street precinct is of historic significance to the City of Melbourne.

Why is it Significant?

The Little Pelham Street precinct is of historic significance for being illustrative of the industrial development that occurred in this part of Carlton and adjacent parts of Melbourne during the Interwar period and which radically transformed it from a largely residential suburb. At this time, there was extensive replacement of the pre-existing building stock, being mostly 19th century cottages and terrace houses with some small industrial sites, to larger scale factories and warehouses. (AHC Criteria A4).

The Little Pelham Street precinct is of representative aesthetic significance as a largely intact and a rare surviving cluster of light industrial buildings from the Interwar and Post-war periods (along with the Lincoln Square South Precinct). Although individual buildings undergone

varying degrees of change and some are undistinguished examples, they are evocative of this key development phase, and in particular, Little Pelahm Street provides a rare opportunity to experience a streetscape of mid-20th century buildings. Of this group of buildings, the most impressive is the Modern style, former factory (174-178 Leicester St) however the original detailing to the rear part of 193-195 Bouverie Street, where it is unpainted along Little Pelham Street is also noteworthy. (AHC Criteria D2)

22. Council's *Heritage Place Inventory* (June 2016) grades the buildings covered by the Heritage Overlay within subject site as follows (based upon the *City North Heritage Review*):

*183-189 Bouverie Street: C & D Building, Level 2 Streetscape
(including alternate addresses 168-180 Leicester Street and 156- 162 Pelham Street)
193-195 Bouverie Street: C Grading Building, Level 2 Streetscape
168 Leicester Street: D Grade Building, Level 2 Streetscape
174-180 Leicester Street: C Grade Building, Level 2 Streetscape
(excluding the rear of the site)
160-170 Pelham Street: D Grade Building, Level 2 Streetscape
(and also vacant land at 150-154 Pelham Street)*

23. As per the current Heritage Policy at Clause 22.05 of the Melbourne Planning Scheme, the relevant parts of the current grading scheme are defined as follows:

'C' buildings. Demonstrate the historical or social development of the local area and /or make an important aesthetic or scientific contribution. These buildings comprise a variety of styles and building types. Architecturally they are substantially intact, but where altered, it is reversible. In some instances, buildings of high individual historic, scientific or social significance may have a greater degree of alteration.

'D' buildings are representative of the historical, scientific, architectural or social development of the local area. They are often reasonably intact representatives of particular periods, styles or building types. In many instances alterations will be reversible. They may also be altered examples which stand within a group of similar period, style or type or a street which retains much of its original character. Where they stand in a row or street, the collective group will provide a setting which reinforces the value of the individual buildings.

Level 2 streetscapes are of significance either because they still retain the predominant character and scale of a similar period or style, or because they contain individually significant buildings.

24. It is noted that prior to the implementation of Amendment C198, none of the buildings on the subject site were graded.

8.0 Amendment C258

25. As part of Amendment C258 (which went on exhibition 30 March 2017) the City of Melbourne is proposing to replace the current A-D grading system with a system that utilises 'significant', 'contributory' and 'non-contributory' gradings. A draft version of the heritage inventory (revised post exhibition), using the new gradings system, identifies the buildings on the subject site as follows:

<i>183-189 Bouverie Street:</i>	<i>Contributory</i>
<i>193-195 Bouverie Street:</i>	<i>Significant</i>
<i>160-170 Pelham Street:</i>	<i>Contributory</i>
<i>168 Leicester Street:</i>	<i>Contributory</i>
<i>174-180 Leicester Street:</i>	<i>Contributory</i>

26. Significant and Contributory are defined thus:

A 'significant' heritage place is individually important at state or local level, and a heritage place in its own right. It is of historic, aesthetic, scientific, social or spiritual significance to the municipality. A 'significant' heritage place may be highly valued by the community; is typically externally intact; and/or has notable features associated with the place type, use, period, method of construction, siting or setting. When located in a heritage precinct a 'significant' heritage place can make an important contribution to the precinct.

A 'contributory' heritage place is important for its contribution to a heritage precinct. It is of historic, aesthetic, scientific, social or spiritual significance to the heritage precinct. A 'contributory' heritage place may be valued by the community; a representative example of a place type, period or style; and/or combines with other visually or stylistically related places to demonstrate the historic development of a heritage precinct. 'Contributory' places are typically externally intact, but may have visible changes which do not detract from the contribution to the heritage precinct.

27. Further to the change in gradings system, existing numerical streetscape levels would be reclassified as either significant or not significant. No part of the subject site is identified as a significant streetscape.
28. Amendment C258 also proposes to revise the existing heritage policy at Clause 22.05 (noting that the proposed Clause 22.05 has been further revised by Council in response to submissions).
29. I support the general thrust of the re-grading process proposed by Amendment C258, noting that this approach is recommended in the VPP Practice Note *Applying the Heritage Overlay* (January 2018). However, the Amendment has given rise to issues which have seen at least two of the MBS buildings re-graded in a manner that suggests their significance is greater than can readily be justified.
30. As discussed below, Amendment C258 also unreasonably 'raises the bar' with regard to heritage status and the difficulty of developing the MBS buildings. That is to say, aspects of the revised Clause 22.05 heritage policy in relation to both demolition and development are countenanced that may be prejudicial to the form of development that is presently considered under the masterplan concept for the MBS.

9.0 Analysis

Gradings

31. An analysis of the significance of the buildings on the subject site usefully begins with an overview of the Little Pelham Street Precinct. The precinct was listed on the Heritage Overlay in 2015 as part of Amendment C198 to the *Melbourne Planning Scheme*. MBS objected to the Amendment and engaged Peter Lovell to give expert witness at the C198 Panel hearing on their behalf. Peter Lovell's statement of evidence includes the following commentary on the significance of buildings on the subject site:

160-170 Leicester Street:

While its interwar origins are evident, the level of alteration has considerably impacted the overall appreciation and presentation of the building. It is also not located in a streetscape which retains its original character. The building is not considered to warrant a building grading or inclusion in the Heritage Overlay

168 Leicester Street:

This building is a modest, and undistinguished workshop of the 1920s which has undergone a significant degree of external alteration. The interwar origins are clear, however the altered state of the building has impacted the original/early design and presentation of the building, and the understanding of the building's historical use. It is not considered to warrant a building grading or inclusion in the Heritage Overlay.

174-180 Leicester Street:

... a relatively intact and representative example of a Moderne styled factory of the late interwar period. The façade design to Leicester Street displays the characteristics of the style as applied to both industrial and commercial buildings in the later 1930s. Its presentation has been compromised to a degree by the overpainting of the façade, but in this case the impact is not considered to be such that it fundamentally undermines an appreciation of the overall design of the building. The C grading proposed in Council's documentation is considered appropriate in relation to the front portion of the building, as is the ungraded status of the rear 1964 portion of the building.

183-189 Bouverie Street:

This building is extensively altered, over a number of construction phases, and reveals relatively little of its original form. Its industrial origins remain evident however it is not an intact representative of the area's post-war period of development, nor is it located in a streetscape 'which retains much of its original character' as required by the D grading if a building has been altered. The alteration and modification of the building has significantly impacted on the overall presentation and understanding of the building, and it is not considered to warrant a building grading or inclusion in the Heritage Overlay.

193-195 Bouverie Street:

... presents as a representative example of an interwar factory building. It is relatively intact physically but its primary presentation to Bouverie Street is compromised by the impact of the overpainting to the front facade. It is more intact to the rear where the building fronts onto the private laneway (Little Pelham Street). While it is a building which could contribute to a

precinct of related buildings based on an industrial theme, the proposed Little Pelham Street Precinct does not meet the threshold for historical and aesthetic significance which would warrant inclusion in the Heritage Overlay. Despite the building meeting the definition of the C grading (as identified above), in that it is demonstrative of the historical development of the area and provides some aesthetic contribution, the overall presentation of the building, itself, has been compromised by the overpainting of the facade and it is not considered to be of an appropriate level of historical and aesthetic significance that would warrant individual inclusion in the Heritage Overlay.

32. Peter Lovell concluded that none of the buildings on the subject site south of Little Pelham Street (ie 168 Leicester Street, 160-170 Pelham Street and 183-189 Bouverie Street) warranted the application of the HO, either individually or as part of a precinct. The front portion of 174-180 Leicester Street was considered worthy of inclusion in a HO (it being part of HO1 at that time). The building at 193-195 Bouverie Street had the potential to be a contributory element within a precinct [notwithstanding that Peter Lovell's recommendation for the site as a whole would effectively reduce the HO to so small an extent as to void any potential for this to be a heritage precinct].
33. The C198 Panel was not persuaded by the evidence and submissions made on behalf of MBS regarding the Little Pelham Street Precinct and ultimately recommended that it be listed on the Heritage Overlay. That said, the Panel were of the view that the precinct could not be listed on the basis of aesthetic significance:

In reaching its conclusion the Panel takes the view that [sic] of humble, ordinary or undistinguished architectural resolution can, nonetheless, display important historic or aesthetic (as for example landmarks or social reference points) significance. In this case the buildings involved are not of special architectural interest but rather represent a utilitarian aspect of Melbourne's growth.

34. The Panel further concluded that the integrity of 183-189 Bouverie Street as a representative example of interwar development is so reduced that, while its land should be included in the precinct, the building should be ungraded. The Panel also recommended that the statement of significance be amended to remove reference to aesthetic significance.
35. I concur with the views of Peter Lovell as expressed in his expert witness statement to the C198 Panel. The Little Pelham Street Precinct is comprised of modest and/or heavily altered buildings of limited heritage value, which collectively do not demonstrate the level of integrity and significance normally required of a HO precinct.
36. Accepting that the question of whether a HO should have been applied to the Little Pelham Street Precinct is no longer a matter for debate (and is not an issue that can be considered for the purposes of Amendment C258) the proposed C258 gradings can reasonably be called into question.
37. In particular, there is no obvious basis for 193-195 Bouverie Street to be elevated to 'significant' grading. Rather than a neutral transition from the C2 grading of C198 to a contributory grading, this is an upgrade, effectively identifying the former factory at 193-195 Bouverie Street as being equivalent to an A or B grade building

in the existing system. No justification for this regrading was provided in the exhibited Amendment C258 documentation. The Lovell Chen gradings methodology mentions an Excel spreadsheet of gradings with a brief explanation where properties were reclassified as 'significant'. The spreadsheet does not include properties in recently reviewed heritage precincts (ie precincts introduced as part of Amendment C198). Consequently, the site at 193-195 Bouverie Street is not listed on the spreadsheet.

38. The Lovell Chen *Methodology Report*, page 11, provides the following commentary that possibly provides some insight to how the upgrade for 193-195 Bouverie Street come about:

- *The transfer to 'significant' is a relatively straightforward matter for all A and B properties, for all precincts (there are no A graded properties in Kensington).*
- *In Parkville, the transfer is straightforward for all alphabetical gradings.*
- *C grade properties require review in all precincts except Parkville (total of 2113 properties). Some of these properties appear to warrant a 'significant' grading, although the great majority will likely remain 'contributory'. Issues which warrant review include the C grading being given to a comparatively high number of properties from the early period 1850-75 (e.g. in Carlton, some 425 properties); interwar properties generally (161 properties across all precincts); and the very high proportion of C grade properties relative to other gradings in Carlton and North and West Melbourne. The work undertaken in preparing the precinct statements of significance also highlighted important themes and types of places in precincts, which is another consideration in reviewing the relative significance of places.*

39. That is to say, 193-195 Bouverie Street *may* be one of the C grade places and/or interwar properties that were deemed to warrant review by Lovell Chen.
40. However, such a review is contrary to Peter Lovell's own expert witness statement of 2014 wherein 193-195 Bouverie Street was only identified as a building with the potential to be a contributory place in a precinct.
41. Lovell Chen's gradings review for HO1121 is also at odds with the findings of a heritage study prepared by Allom Lovell and Associates for the University of Melbourne in 2005 – their finding being that all of the properties now in HO1211 were of little or no heritage value (*The University of Melbourne Heritage Management Strategy Volume 1: Main Report*, April 2005) [accepting that the 2005 report predated the introduction of the HO to the subject site].



Figure 27 Extract of a map prepared by Allom Lovell and Associates identifying all buildings on the subject site as 'little or no heritage value' (reproduced from the 'University of Melbourne Heritage Management Strategy Volume 1', 2005).

42. The methodology for regrading seems questionable in that it seems to be predicated in part on a statistical analysis showing a higher proportion of C graded buildings in Carlton relative to other parts of the municipality. This is not necessarily indicative of flaws or irregularities in past assessments and could reasonably be explained by particular built form characteristics and historical patterns of development that are specific to Carlton. In the present instance, if this was the basis of the upgrade, it would seem arbitrary and questionable in the face of earlier assessments by both Peter Lovell and Roger Beeston.
43. Accepting that the heritage value of interwar buildings, and interwar factories in particular, might have underappreciated in the past, I do not think this can be said of 193-195 Bouverie Street, given that the C198 assessments of the contributory value of the place by Lovell and Beeston occurred only a few years ago.
44. The building at 193-195 Bouverie Street has contributory status under the current heritage policy. It does not meet the criteria for a 'significant place as defined in the Amendment C258 documentation:

A 'significant' heritage place is individually important at state or local level, and a heritage place in its own right. It is of historic, aesthetic, scientific, social or spiritual significance to the municipality. A 'significant' heritage place may be highly valued by the community; is typically externally intact; and/or has notable features associated with the place type, use, period, method of construction, siting or setting. When located in a heritage precinct a 'significant' heritage place can make an important contribution to the precinct.

45. While the building remains broadly intact to its interwar state (notwithstanding that the original 1934 design was substantially altered by upper storey additions in 1937) it is not individually important. The building has no notable features in terms of its detailing, construction or past uses. Peter Lovell's C198 statement of evidence describes the building as a 'representative' (ie typical) example of an interwar factory. With this I would agree.

46. The building at 193-195 Bouverie Street compares poorly with nearby interwar factories with a significant grading. Peter Lovell' statement of evidence mentions two examples at 157-165 Pelham Street and 1-29 Barry Street as being more intact, with more interesting and significant historical associations.
47. Within the immediate context of HO1121, the Moderne style building at 174-180 Leicester Street is arguably more intact and more architecturally impressive than 193-195 Bouverie Street (albeit that the Leicester Street building is, in and of itself, a fairly basic and unremarkable example of industrial architecture of the period).
48. The conclusion of the C198 Panel that the Little Pelham Street Precinct was of no aesthetic significance can be taken as further evidence of the low heritage/aesthetic value of 193-195 Bouverie Street, and other buildings in the precinct.



Figure 28 Former C Huppert & Co Factory, 157-165 Pelham Street, Carlton. Originally D graded, it was regraded C3 as part of Amendment C198 and given an individual HO listing. Proposed for a significant grading under Amendment C258.



Figure 29 Former Myer dispatch buildings, 11 and 31-47 Barry Street Carlton. They have site specific Heritage Overlays and are proposed for significant grading under Amendment C258.

49. A case can also be made that the former factory at 183-189 Bouverie Street should be reclassified as non-contributory within the terms of C258 as per the C198 Panel recommendations. As described in section 4.0 of this statement, the original interwar character of this building was effectively erased in the 1950s when substantial alterations and additions were made. The 1950s works were carried out to designs by noted architects Bates Smart & McCutcheon, but these works are in no way representative of the quality of this firm's work in the post war era.
50. Despite the recommendations of the C198 Panel, the building at 183-189 Bouverie Street was graded by Council (albeit lowly). The statement of significance for the Little Pelham Street Precinct was also amended by Council to reference postwar industrial buildings. Assigning contributory value to postwar elements within this precinct is difficult to justify given that the precinct was originally identified as a HO area solely on the basis that it was representative of interwar factory development. While the major changes to 183-189 Bouverie Street occurred in the postwar period, the result is architecturally non-descript and does not demonstrate any particular or notable characteristics of postwar factory design, such that is difficult to understand for what purpose it was originally built. Notwithstanding the amendments to the statement of significance, the present grading of this building seems inappropriate, as does the proposed grading under C258.

Proposed Heritage Policy

51. In addition to proposed changes to the grading system, and as already noted, Amendment C258 proposes to change Clause 22.05 of the Melbourne Planning Scheme, Heritage Places outside the Capital City Zone, introducing heritage policy that provides more specific guidance with regards to heritage places and development.
52. The application of the 'significant' grading to 193-195 Bouverie Street has implications in terms of how development applications would be assessed. Under the existing heritage policy at Clause 22.05, the demolition of the rear parts of a C grade building is generally permitted.
53. Where a C graded building becomes 'significant' under the new grading system there would at face value be a much greater restriction on the permissible extent of demolition. The proposed Clause 22.05 heritage policy (as exhibited) generally seeks to preserve all original external fabric of significant buildings:

Full demolition of significant or contributory buildings will not normally be permitted. Partial demolition will not normally be permitted in the case of significant buildings or the front or principal part of contributory buildings.

54. It is noted that Council are now proposing further revisions to this aspect of Clause 22.05 in response to submissions:

Full demolition of significant or contributory buildings would only be permitted in exceptional circumstances. Partial demolition will not generally be permitted in the case of significant buildings, and of significant elements or the front or principal part of contributory buildings.

55. Further to this, it is not clear in what manner discretion is to be exercised in relation to the concept of ‘significant elements’ of ‘contributory’ buildings. There is no definition of ‘significant elements’ within the proposed Clause 22.05, nor do Council’s data sheets consistently or clearly identify ‘significant elements’. Moreover, the manner in which it is drafted, with an apparent emphasis upon ‘significant elements’ ahead of ‘the front or principal part’ is such as to suggest a relatively profound departure from precedent in relation to the weight or interest ascribed to elements that may not be part of the ‘the front or principal part’ of a ‘contributory’ building.

56. The application of a significant grading to C graded places also has implications in terms of new works, particularly in terms of the visibility of rear additions. Under the existing heritage policy at Clause 22.05, the degree of concealment encouraged for upper storey additions was influenced by streetscape levels:

Higher rear parts of a new building, and of an addition to an existing graded building, should be concealed in a Level 1 streetscape, and partly concealed in a Level 2 and 3 streetscape. Also, additions to outstanding buildings (‘A’ and ‘B’ graded buildings anywhere in the municipality) should always be concealed. In most instances, setting back a second-storey addition to a single-storey building, at least 8 metres behind the front facade will achieve concealment.

57. The proposed heritage policy as exhibited states that additions to significant or contributory buildings should be concealed in significant streetscapes, and:

In other streetscapes, additions to significant buildings should always be concealed, and to contributory buildings should be partly concealed.

58. The post-exhibition version of the proposed Clause 22.05 remains more or less the same:

In other streetscapes, additions to significant buildings must be concealed. In other streetscapes, additions to contributory buildings should be partly concealed – some of the addition or higher rear part may be visible, provided it does not dominate or reduce the prominence of the building’s façade(s) and the streetscape

59. It is important to note that the current policy settings at Clause 22.05 in relation to the concealment of higher rear parts (including additions) and of facade heights and setbacks are not applicable to land covered by Schedule 5 to the Capital City Zone (CCZ5) – this includes the subject site and surrounding parts of south Carlton (generally bound by Grattan Street to the north, Elizabeth/Peel Street to the west, Victoria Street to the south and Swanston Street to the east).

60. The exclusions in Clause 22.05 for heritage sites in CCZ5 were suggested by the C196 Panel and then introduced in the relatively recent past on the recommendation of the C198 Panel. These provisions have not been translated to Clause 22.05 as currently proposed by Amendment C258.

61. The current heritage policies at Clause 22.05 appropriately recognise that visible upper level additions, and visually dominant tall built form, are reasonably anticipated and encouraged by other aspects of Council policy relating to CCZ5.

62. Council submitted to the C198 Panel that decision makers at the permit stage are quite capable of balancing the competing demands of the various provisions of the Planning Scheme for the City North area, to which the Panel made the following remark:

The Panel acknowledges that Clause 22.05 currently applies to the bulk of the City North area – in fact in areas where tall buildings exist and where Design and Development Overlay controls which facilitate tall buildings have been in place for some time. Decision makers clearly use the provisions of Clause 22.05 in this built form context, and presumably ignore the requirements for concealment of additions when assessing heritage buildings. The Panel questions the point of having provisions in a policy if they are simply to be ignored because they do not fit the site context. Although this might be a practical approach at the permit stage, it is not good practice when implementing new strategic directions (p.40).

63. The C198 Panel further recommended that Council prepare a heritage policy for the City North area which reflects the City North Structure Plan's aim to integrate the area's heritage into urban renewal.

64. Contrary to the C198 Panel recommendation, the heritage policy proposed under Amendment C258 does not sufficiently recognise the specific circumstances relating to the redevelopment potential of heritage sites in the City North area. This has the potential to create conflicts between the heritage policy and broader non-heritage planning objectives in CCZ5, conflicts that were at least partly resolved through previous changes to Clause 22.05 resulting from Amendment C198. The C198 Panel were of the view that it was '*not good practice to propose changes to a Planning Scheme which perpetuate policy conflicts or tensions*' (p.40).

65. Amendment C258 can also be seen to prejudicial to future development on MBS sites and in other sites in CCZ5 in respect to requirements for setbacks above heritage buildings. Under the proposed Clause 22.05 it would be policy to:

Not build over or extend into the air space above the front or principal part of the significant or contributory building.

66. For non-residential sites, the 'front or principal part' is defined as 'one full structural bay in depth' complete with roof cladding. This is a fairly imprecise measure given that the depths of structural bays might vary considerably from building to building according to the method of construction, and these depths would not necessarily fall within the 8-10 metres range of setbacks generally considered acceptable under the proposed policy. This aspect of the proposed policy fails to recognise that there are built and approved precedents in CCZ5 to demonstrate that upper level additions at lesser setbacks from the heritage façade can be acceptable with regard to heritage considerations.

67. The proposed C258 Clause 22.05, as adopted post-exhibition in the *Report to the Future Melbourne (Planning) Committee* (20 February 2018), introduces a new emphasis against facadism. A definition of facadism is provided in the definitions section of the Clause, and a strongly worded policy against facadism is included in the Policy Objectives at Clause 22.05-2:

Term & Definition

Facadism: The retention of the exterior face/faces of a building without the three-dimensional built form providing for its/their structural support, and, without retention of an understanding of the function of the three-dimensional building form.

Policy Objective

- *To encourage retention of the three dimensional fabric and form of a building and to discourage façadism.*

68. Facadism is also discouraged at Clause 22.05-5, in relation to demolition:

Retention of the three dimensional form is encouraged; facadism is discouraged.

69. It is acknowledged that facadism is not always an appropriate outcome for heritage places. Nonetheless, it has been found to be appropriate in a range of instances, both with respect to buildings subject to the Heritage Overlay and those subject to the Heritage Act. Notably, it is a technique that has often been found appropriate in terms of the redevelopment of industrial sites of relatively low significance that are broadly similar to some of the MBS building stock, permitting the retention of buildings as visible elements that inform the character and appearance of their streetscape, while also allowing substantial development. Having regard for this, it is not appropriate to include such a broad discouragement of facadism within policy.

70. Another aspect of Amendment C258 that is of concern is the proposal to delete the provision from the current heritage policy at Clause 22.05 which requires the responsible authority to consider:

Whether the demolition or removal is justified for the development of land or the alteration of, or addition to, a building.

71. This provision is of particular relevance where an argument is to be made in favour of an application to partially or fully demolish a graded building to allow for a form of development that could be said to offer appreciable benefits to the wider community – such as the development of modern educational facilities of the kind contemplated for the MBS site, being development that is specifically encouraged by the Structure Plan and DDO for this area.

72. The issue of net community benefit arose in relation to the development of the Peter Doherty Institute for Infection and Immunity at 792 Elizabeth Street (which is located on the corner of Grattan Street, opposite the University of Melbourne). This involved the demolition of a C graded building with a site-specific Heritage Overlay. Melbourne City Council was an objector to this development. In granting a permit for demolition, the VCAT determined that a greater community benefit for present and future generations would ensue from the establishment of the Peter Doherty Institute than from retention of the heritage building (VCAT Ref. No. P3374/2010). The Tribunal recognised that when a conflict arose between heritage planning objectives and other planning objectives, they must balance those conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

73. Having regard for far reaching implications arising from this issue, it is appropriate that Clause 22.05 retain the provision which requires Council to consider whether demolition or major change to a Heritage Overlay site is justified for the development of the land – this is especially pertinent in parts of South Carlton that have been identified as a ‘knowledge hub’ where future growth in medical research and educational uses is strongly encouraged by state planning policies. Without commenting on any specific proposal, development of this kind has specific needs that can be difficult to accommodate within existing building stock.

10.0 Conclusion

74. As discussed above, some grading changes and policy changes as proposed by Amendment C258 have the potential to be prejudicial to future change on the subject site in a manner that is not justified by any site-specific analysis or judgement in relation to significance.
75. Having regard for these matters, it would be appropriate for the grading proposed under Amendment C258 for 193-195 Bouverie Street to be amended to ‘contributory’ and for the ‘contributory’ grading for 183-189 Bouverie Street to be amended to ‘non-contributory’. The proposed heritage policy should be amended as suggested above, inter alia to provide policy provisions that reflect the special circumstances of areas of strategic importance such as land within Schedule 5 to the Capital City Zone.

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Bryce Raworth has worked with issues relating to heritage and conservation since the mid-1980s, and has specialised in this area since establishing his own consultant practice in 1991. **Bryce Raworth Pty Ltd, Conservation•Urban Design**, provides a range of heritage services, including the assessment of the significance of particular sites, preparation of conservation analyses and management plans, design and/or restoration advice for interventions into significant buildings, and detailed advice regarding the resolution of technical problems relating to deteriorating or damaged building fabric.

From 2004-2011 Raworth was a member of the Official Establishments Trust, which advises on the conservation and improvement of Admiralty House and Kirribilli House in Sydney and Government House and The Lodge in Canberra. As a member of the former Historic Buildings Council in Victoria, sitting on the Council's permit, planning and community relations committees, Raworth has been involved with the registration and permit processes for many registered historic buildings. In 1996 he was appointed an alternate member of the new Heritage Council, the successor the Historic Buildings Council, and in 1998 was made a full member. At present he provides regular advice to architects and private owners on technical, architectural and planning issues relative to the conservation and adaptation of historic buildings, and is occasionally called upon to provide expert advice before the VCAT. He is currently the conservation consultant for the cities of Kingston, Frankston and Stonnington.

Bryce Raworth Pty Ltd has prepared conservation plans for a number of registered historic buildings, including Walter Burley Griffin's Essendon Incinerator. The company's experience with institutional buildings has led to preparation of conservation plans for the MacRobertson Girls' High School, Castlemaine Gaol, J Ward, Ararat, the former Russell Street Police Headquarters, Ballarat State Offices, Camberwell Court House, Shepparton Court House and the Mont Park asylum precinct.

With respect to historic precincts, the company has provided detailed advice towards the resolution of heritage issues along the Upfield railway line. The company is currently contributing to redevelopment plans for the former Coburg Prisons Complex (comprising Pentridge Prison and the Metropolitan Prison) and the former Albion Explosives Factory, Maribyrnong. In 1993 Bryce Raworth led a consultant team which reviewed the City of Melbourne's conservation data and controls for the CBD, and in 1997 **Bryce Raworth Pty Ltd** revised the former City of South Melbourne Conservation Study with respect to the area within the present City of Melbourne.

In recent years **Bryce Raworth Pty Ltd** has also provided documentation and advice during construction on the restoration of a number of key registered and heritage overlay buildings, including the Ebenezer Mission church and outbuildings, Antwerp; the former MMTB Building, Bourke Street West, Melbourne; the former Martin & Pleasance Building, 178 Collins Street, Melbourne; the former Uniting Church, Howe Crescent, South Melbourne; Heide I & II, Heide Museum of Modern Art, Bulleen; Melbourne Grammar School, South Yarra; various guard towers and other buildings, Pentridge Prison, Coburg; and Coriule Homestead, Curlewis.

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Professional Experience:	<p>independent practice as conservation consultant and architectural historian from January 1991 (ongoing). Services include: identification and assessment of the significance of sites and complexes; preparation of guidelines regarding the safeguarding of significant sites; provision of technical, design and planning advice to architects, owners and government on issues relating to the conservation of sites of cultural significance; expert witness advice on conservation issues before the VCAT</p> <p>member, Historic Buildings Council (architectural historian's chair) 1993-1996; member, Heritage Council (architect's chair) 1998-2002</p> <p>conservation consultant to the cities of Brighton, Northcote and Sandringham (1989 only), Essendon, Hawthorn and Kew (1989-1994), Melbourne (1992-2009) and Prahran (1992-1994)</p> <p>established the Metropolitan Heritage Advisory Service on behalf of the Ministry for Planning & Environment - this service was offered to the cities of Brighton, Essendon, Hawthorn, Kew, Northcote and Sandringham in 1989-90</p>
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