

# Planning Panel Submission

## Amendment C258 - Heritage Revisions

15-21 Lincoln Square, Carlton

Prepared on behalf of Nitzal Investment Trust

0317-0981

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# 1 INTRODUCTION

1. Tract Consultants Pty Ltd has prepared this submission on behalf of Nitza Investment Trust.
2. This submission relates to proposed Amendment C258 to the Melbourne Planning Scheme (**Amendment**).
3. The Site is located within the City of Melbourne approximately 1.5km north of the Melbourne CBD.
4. The existing and proposed controls allow for a discretionary building of 40m in height under the Design and Development Overlay – Schedule 61 (DDO61).
5. There are several areas of the Amendment which we take issue with, these are:
  - a. The upgrading of 15-17 Lincoln Square South; and
  - b. The proposed policy requirements of Clause 22.05 – Heritage Places outside the Capital City Zone.
6. We say that the context of this site allows for a greater height to be achieved as envisaged by the City North structure plan and planning controls which currently prevail. This includes the current outcomes permissible under the local planning policy of Clause 22.05 as it exists in the Melbourne Planning Scheme.
7. The intention of the amendment to upgrade the heritage significance of 15-17 Lincoln Square South poses a significant constraint on the future development of the subject site, and City North precinct at large.
8. The report of GJM Heritage provides the following opinions in relation to the amendment:
  - *Both 15-17 and 19-21 are 'Contributory' within the context of the Lincoln Square South Precinct (HO1122), although the building at 19-21 Lincoln Square South makes a more marginal contribution architecturally to the precinct; and*
  - *Clause 22.05 should include policy for the redevelopment of former industrial buildings, which acknowledges their generally more robust form and capacity for a greater level of redevelopment than other types of heritage places.<sup>1</sup>*
9. We submit to the panel that these opinions should be taken into consideration and given weight. This is within the context that the subject buildings were reviewed less than five years ago (at the date of the panel hearing) under the City North Heritage Review (Amendment C198).
10. The provisions of Clause 22.05 (Heritage Places outside the Capital City Zone) need to be revised to separate the development expectations of heritage places which are located within the City North Precinct from the rest of the municipality.

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<sup>1</sup> See Section 1 of GJM Heritage report

## 2 SITE CONTEXT AND SURROUNDING AREA

11. The subject site is shown highlighted red within **Figure 1** – Image of subject site (source: NearMap). The site is some 257m<sup>2</sup> in size and is rectangular in dimensions.



*Figure 1 – Image of subject site (source: NearMap)*

12. The subject site is located on the south side of Lincoln Square South. Directly opposite the site on the northern side of this street is Lincoln Square which is a vast expanse of public open space.
13. Located on the site are two buildings. The buildings are best described in the report prepared by the office of GJM Heritage (see Section 2 and 3 of the GJM Heritage report).
14. Contextually there are a number of significant developments which have been granted permits in the immediate surrounding area which have relevance to the development potential of heritage places within the City North Precinct. There are shown in **Figure 2** – Map showing surrounding approvals below, and are described as follows:
1. 625 Swanston Street, Carlton. TP-2018-761 (full demolition of a 'D' grade building, retention of a 'C' grade building and construction of a 14 storey student accommodation building and education facility).
  2. 123-135 Bouverie Street, Carlton. TP-2017-188 (part demolition of a 'C' grade building, and construction of a 14 storey student accommodation building).
  3. 599 Swanston Street, Carlton. TP-2016-259 (part demolition of a 'C' grade building, and construction of a 14 storey student accommodation building).
  4. 100-102 Bouverie Street. TP-2015-273/B (demolition of an ungraded building, and construction of a 13 storey residential building on a 180m<sup>2</sup> site).



15. These sites are all located within the same height control under the Design and Development Overlay – Schedule 61. Examples 1, 2 and 3 have been issued permits which allow for midrise buildings to be constructed above retained heritage buildings.
16. See Attachment 1 for images of these developments.

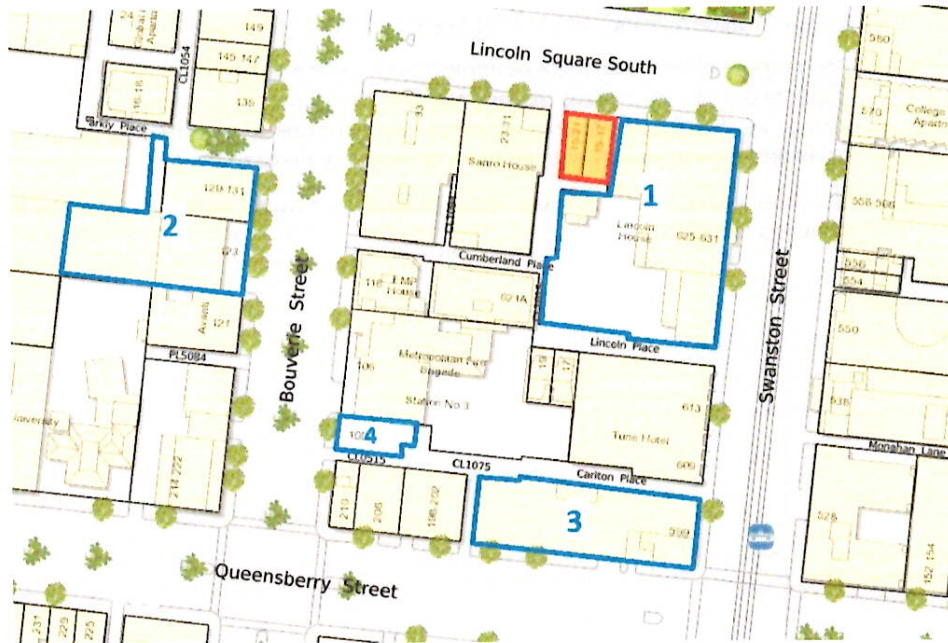


Figure 2 – Map showing surrounding approvals

17. It is also worth noting that the application shown as number 1 in **Figure 1** – Image of subject site (source: NearMap) above has resulted in a significant change in the Lincoln Square Heritage Overlay conditions. TP-2018-761 allows for the full demolition of the 'D' grade building located at 625 Swanston Street on the corner of Lincoln Place South and Swanston Street.
18. TP-2018-761 retains the 'C' grade building on the site (shown in Green below) to a depth of 6.0m from the façade. Contextually this alters the heritage precinct somewhat.



Figure 3 – Lincoln Place conditions

19. Approval number 4 is shown in **Figure 2** – Map showing surrounding approvals as a reference to development of small sites within the precinct. This permit demonstrates that buildings extending to the full extent of the height limit are permissible where they are not constrained by heritage buildings.
20. We also note a recent approval at 656 Elizabeth Street which allowed a 13 storey building, cantilevering over a 'C' grade building (TP-2017-23). See Attachment 2 for images.
21. The purpose of providing these examples to the panel is to appropriately set the context of what is being supported under the current controls, and how these controls are allowing the statutory planning officers of the City of Melbourne to appropriately balance the objectives of the City North area in relation to the additional growth sought, and retention of important heritage character.
22. It is worth noting, that all of these decisions have been issued under delegation by the City of Melbourne's planning officers.

### 3 SUBMISSIONS

23. We acknowledge the statement which has been prepared by the office of GJM Heritage consultants. Although this report is not being brought to the panel as expert evidence, the authors of this report are highly respected within their field and have appropriately assessed the significance of the site and precinct which the buildings are located within.
24. This submission focuses on the following changes proposed by the amendment which have specific impact on the development potential of the subject site. This includes:
  - Revised grading of 15-17 Lincoln Square South as significant is not appropriate; and
  - Revised version of Clause 22.05 does not adequately balance the overall outcomes sought for the City North area.
25. In support of the above, we have already outlined a number of other development approvals which have been achieved within this precinct under the current version of Clause 22.05 and the planning controls which appropriately balance the needs of the redevelopment of City North and conservation of heritage fabric within this precinct.
26. Ultimately, these outcomes are relevant considerations in the revised wording of Clause 22.05 and its practical application within the City North precinct.

#### 3.1 Revised grading of 15-17 Lincoln Square South as 'significant' is not appropriate

27. It is the opinion of GJM heritage that *"both 15-17 and 19-21 are 'Contributory' within the context of the Lincoln Square South Precinct (HO1122), although the building at 19-21 Lincoln Square South makes a more marginal contribution architecturally to the precinct"*.
28. Section 6.1 of the report prepared by GJM heritage outlines the following in relation to the subject site:
 

*The building does not have any historical associations of note beyond "being illustrative of the industrial development that occurred in this part of Melbourne during the Interwar period" (as per the Statement of Significance for the precinct).*

*It is our opinion that the building at 15-17 Lincoln Square South does not satisfy the threshold for inclusion in the Heritage Overlay on an individual basis and that it is currently appropriately graded 'C' in the 2016 Inventory on the basis of RBA's 2013 Heritage Study.*

*The building at 15-17 Lincoln Square South strongly accords with the definition for 'Contributory' proposed through Amendment C258 for the following reasons:*

  - *It makes an important contribution to the Lincoln Square South Precinct but is not of individual heritage significance.*
  - *It contributes to the historic and aesthetic significance to the precinct.*



- *It is a representative example of an Interwar factory building and, in combination with the other buildings in the Lincoln Square South Precinct, demonstrates the historic development of the precinct.*
  - *It is externally intact.*
29. We do not oppose the direct translation of the building from 'C' graded to a 'Contributory' building. This assessment correctly represents the significance of the building and the findings which were made in Amendment C198 – City North Heritage Review.
  30. We also wish to make it known that we do not oppose the 'Contributory' grading of the 'D' grade building.
  31. Just over four years ago the panel for Amendment C198 found that the:
    - *Former factory 15-17 Lincoln Square South, Carlton – as C2*
    - *Former factory 19-21 Lincoln Square South, Carlton – as D2*
  32. In undertaking this assessment, the panel attended the site, observed the buildings in question, and heard evidence from a range of experts in relation to the significance of these two buildings and what their contribution was to the proposed heritage precinct.
  33. In the attachment "Attachment 4 to Evidence Statement (Anita Brady - Lovell Chen) - Amendment C258 (Heritage Policies Review & West Melbourne Review)" there is no mention of the subject site, and why it is being upgraded.
  34. No justification appears to be 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' or 'Contributory'. The spreadsheet does not include properties in recently reviewed heritage precincts (i.e precincts introduced as part of Amendment C198). Consequently, the subject is not listed in the spreadsheet.
  35. On page 11 of the Lovell Chen Methodology Report the following commentary is provided:
    - *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.*
  36. In our view, the current upgrading of 15-17 Lincoln Square does not represent a proper review process into the significance of the building and its contribution to the heritage precinct. The amendment seeks to upgrade the building without proper consideration of the significant elements and disregard the most recent findings of a panel into its significance.
  37. The statement of significance in Panel C198 lists in the "what is significant" for this heritage precinct (our emphasis added):
 

*The other buildings are good examples of the Moderne/Functionalist style/s (especially nos 11-13 and 15-17 Lincoln Square South).*
  38. The definition of a 'Contributory' heritage place under this amendment is:
 

*"Important for its contribution to a precinct. It is of historic, aesthetic, scientific, social or spiritual significance to the 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 precinct. 'Contributory' places are typically externally intact, but may have visible changes which do not detract from the contribution to the precinct."*



39. As per the advice of GJM heritage and reflected in the statement of significance for this precinct, 15-17 Lincoln Square South are 'good' (not individually important) examples of "Moderne/Functionalist style/s". We submit to the panel that there is no justification for the upgrade in significance of this building to be 'significant'.

### 3.2 Revised version of Clause 22.05 does not adequately balance the overall outcomes sought for the City North area

40. There is a clear policy tension between the proposed version of Clause 22.05 under Amendment C258 and the overall ambitions of the Capital City Zone – Schedule 5.
41. Clause 22.05 is a broad ranging policy which applies to a variety of different built form environments within the City of Melbourne. It is important to acknowledge that the City of Melbourne has a highly varied character within the municipality which arises from the highly urbanised areas close to the Capital City Zone (Melbourne CBD) through to quieter residential streets which resemble suburbia (such as Kensington).
42. Given the above, it is essential that Clause 22.05 is robust enough to recognise and actively deal with the tensions which can arise between heritage and other requirements of the planning scheme through the differing areas of the municipality.
43. Specifically, the City North area has direct tensions with achieving the future growth of the area envisaged under the Zoning and Design and Development controls for properties which are located within a Heritage Overlay.
44. Primarily these tensions have been addressed within the panel findings for Amendment C198, which were as follows:
- *The Panel agrees with Mr Pitt that it is not satisfactory for Council as Planning Authority to acknowledge on the one hand the issues with Clause 22.05 in the context of City North and assert that these will be dealt with by way of a review of the heritage policies in the coming months. The Panel is also of the view that it is not good practice to propose changes to a Planning Scheme which perpetuate policy conflicts or tensions.<sup>2</sup>*
45. As noted within Amendment C198 (our emphasis added):
- *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.<sup>3</sup>*
46. One of the key recommendations of the panel was to:
- *Amend the provisions of Clause 22.05 so that land within the adopted CCZ5 and DDO61A1 are exempt from the policy statements pertaining to 'Concealment of Higher Rear Parts (including Additions)', 'Façade height and Setback (New Buildings)' and 'Building Heights'.<sup>4</sup>*
47. It appears by the drafting of Council's Part A submission in relation to the amendment that these tensions are sought to be reintroduced into the City North Area. This once again is an unsatisfactory outcome being sought to be imposed by the City of Melbourne in dealing with heritage outcomes within the municipality in areas where there are competing issues.
48. We put it to the panel that the principles found within Amendment C198 must be reinstated and appropriately incorporated into the revised version of Clause 22.05 under Amendment C258. The future development of the City North Precinct hinges on these findings being in place to ensure that a consistent development approach is taken over all periods of the precincts development.

<sup>2</sup> Refer to Page 40 of the C198 Panel Report

<sup>3</sup> Refer to Page 40 of the C198 Panel Report

<sup>4</sup> Refer to Page 41 of the C198 Panel Report

49. In response to the proposed reintroduction of this conflict to the planning scheme Council's Part A submission outlines at Point 115 that this issue was raised by submitters during the exhibition process:
- *Onerousness of policies and failure to strike appropriate balance to facilitate modern development.*
50. In response to this issue council sets out in point 116 of their Part A submission:
- *Feedback has been sought from Council development planners in relation to the application of the policies to ensure they operate in a manner that will facilitate the appropriate development of heritage places. Through this feedback it has been determined that the proposed policies strike the right balance between allowing redevelopment and ensuring heritage is protected and respected.*
51. Further, Point 128 of Council's Part A submission further outlines in addition to issues that were raised in submissions other issues were raised:
- *Contradiction between heritage overlays and other planning controls, such as design and development overlays, and the need for guidance on which provision is to be prioritised.*
52. In response to this issue council sets out in point 128 (our emphasis added):
- *It is not uncommon for one property to have multiple overlays applying to it, such as a heritage overlay, a design and development overlay, an environmental audit overlay and a special building overlay. All of these requirements apply for different reasons and each must be factored into a decision maker's consideration when determining acceptable planning outcomes for a given property. These requirements are not mutually exclusive, and contribute to a layered and nuanced planning system that guides decision makers in the exercise of discretion.*
53. We drawing on the findings of the Amendment C198 panel report which outlines that this same line of argument has been advanced by the council before (our emphasis added):
- *When questioned about the appropriateness of having provisions in the Planning Scheme which have contradictory aspirations, Mr O'Farrell stated that decision makers are capable of making sensible decisions and balancing the requirements of the different provisions<sup>5</sup>.*
54. We restate the findings of the Amendment C198 panel report to address this issue (our emphasis added):
- *The Panel agrees with Mr Pitt that it is not satisfactory for Council as Planning Authority to acknowledge on the one hand the issues with Clause 22.05 in the context of City North and assert that these will be dealt with by way of a review of the heritage policies in the coming months. The Panel is also of the view that it is not good practice to propose changes to a Planning Scheme which perpetuate policy conflicts or tensions.<sup>6</sup>*
55. For these reasons we request that the panel for this amendment uphold the principles found within the Panel report for Amendment C198.

### 3.3 Clause 22.05 in relation to demolition

56. The upgrading of the subject building also has specific implications in relation to the future development of the site in relation to demolition.
57. Where a 'C' graded building becomes 'significant' under the new grading system there is (in a policy context) a much greater restriction regarding the extent of demolition permissible. 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.*

<sup>5</sup> Refer to Page 37 of the C198 Panel Report

<sup>6</sup> Refer to Page 40 of the C198 Panel Report



58. Council has proposed 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.*
59. Further to this, it is not clear what a 'significant elements' of a 'contributory' buildings is. There is no definition of 'significant elements' within the proposed Clause 22.05.
60. It can be observed that Council's data sheets do not consistently or clearly identify 'significant elements', especially those older Building Identification Sheets which read as a tick a box format, rather than descriptive in nature (see Attachment 3).
61. The manner in which Clause 22.05 is drafted places an emphasis upon 'significant elements' (which is and unknown quantity) in preference to the existing "front part" or proposed "front or principal part of a building" be required to be retained.
62. This proposed demolition standard unreasonably layers confusion into the policy. It creates conflict as to which part should prevail in relation to demolition to 'contributory' buildings. This proposed change creates a departure from the current policy context where weight is now attached to elements that may not form part of the 'the front or principal part' of a 'contributory' building which are appropriate for demolition on one hand, but inappropriate potentially inappropriate on another hand.
63. The logic above creates policy tension for decision makers, and should not be allowed by the panel.
64. For non-residential sites, the 'front or principal part' is defined as:
- *For most non-residential buildings, the front part is generally considered to be one full structural bay in depth complete with the structure and cladding to the roof. This is generally 8 – 10 metres in depth*
65. 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.
66. Specifically this aspect of Clause 22.05 fails to recognise that there are built and approved precedents within the City North Precinct which demonstrate that upper level additions at lesser setbacks from the heritage façade are acceptable outcomes. These are provided earlier in this report and demonstrate the status quo of what is acceptable within this precinct under the current controls, and what should be allowed under any revised version of Clause 22.05.
67. 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.*
68. The supreme court's decision regarding 1045 Burke Rd Pty Ltd v Boroondara CC & Ors [2013] VCAT 1108 outlines that integrated decision making is a key factor in assessing demolition and replacement buildings. There are numerous examples where decisions have been made under both delegation by the council and at VCAT where the decision maker has given weight to the replacement building and how this is contemplated against removal of heritage fabric.
69. Specifically we note the approval of the full demolition of 'D' grade building at 625 Swanston Street which was a delegated council decision. This has been undertaken on the basis that the replacement building (a student accommodation and education facility) has far outweighed the retention of a graded building.



### 3.4 Clause 22.05 in relation to cantilevers and additions

70. We have provided the panel with several examples in which Tract Consultants have assisted clients in obtaining permits for developments which retain the existing heritage fabric and allow for the construction of a midrise building in accordance with the Design and Development Overlay with the City North precinct.
71. These are perfectly reasonable development outcomes, and are allowed under the current planning controls which guide development within the area. We reiterate again, these are all delegated decisions and are not inappropriate in any sense. Future controls should not be moving towards creating policy which would actively discourage these types of development within this area.
72. The proposed version of Clause 22.05 seeks to provide direct conflict between the heritage outcomes sought and development potential allowed under the other controls of the Melbourne Planning Scheme within the City North Precinct.
73. Clause 22.05 is proposed to require that *"additions to significant or contributory buildings should:*
  - *Not build over or extend into the air space above the front or principal part of the significant or contributory building."*<sup>7</sup>
74. In streetscapes which are not "significant" Clause 22.05 is proposed to require:
  - *"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:*
    - *For a second-storey addition to a single storey building, concealment is often achieved by setting back the addition at least 8 metres behind the front facade.*
    - *A ground level addition to the side of a building should be set back behind the front or principal part of the building."*<sup>8</sup>
75. The proposed wording of Clause 22.05 contravenes proper and orderly planning within the area. It creates conflict which would mean that decision makers would have significant issue in granting permits such as those already approved in the precinct.
76. Once again, for these reasons we request that the panel for this amendment uphold the principles found within the Panel report for Amendment C198.

<sup>7</sup> Refer to Clause 22.05 as presented in Council's Part A submission

<sup>8</sup> Refer to Clause 22.05 as presented in Council's Part A submission

## 4 CONCLUSION

77. The development of the City North precinct within the City of Melbourne has been fast paced to say the least. There has been fierce competition from various student accommodation providers, apartment buildings, office space and also residential hotels. This development has been facilitated by controls which are appropriately worded directly avoiding conflicts between policies. As such, the balancing required by decision makers is much clearer and has led to informed decisions being made by the council under delegation.
78. Our client does support the broad principles of the Amendment. What we take issue with and invite the panel to consider is the broad range of impacts that the proposed amendment would have on the future development of many heritage properties within the City of Melbourne, and in particular the City North Precinct. Approval of this amendment which arises in conflicts does not allow for fair and orderly planning of this area.
79. There must be a balance in preserving heritage within our city as a valued asset, but this must be done in a transparent manner which appropriately tests and considers the significance afforded to each heritage place within the municipality within different contexts.
80. This amendment comprises elements which do not appropriately address the significance of the properties at 15-21 Lincoln Square and results in an outcome which upgrades one of the properties without proper consideration of the significance of this building which was recently investigated at a panel hearing and ascribed a grading.
81. We also draw issue with the proposed drafting of Clause 22.05 which appears to undo many of the policy findings of the Amendment C198 which actively sought to avoid conflicts between the development of heritage properties within the City North Precinct.
82. We thank the Panel for the opportunity to present this submission.



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