

**MELBOURNE CITY COUNCIL**

**AMENDMENT C258**  
**MELBOURNE PLANNING SCHEME**

**SUBMISSIONS ON BEHALF OF**  
**BARDSVILLE PTY LTD**

**14 AUGUST 2018**



**BEST HOOPER**  
**LAWYERS**

**BEST HOOPER**  
Lawyers  
Level 9, 451 Little Bourke Street  
MELBOURNE 3000

Tel: 9670 8951  
Fax: 9670 2954  
DX: 38215, Flagstaff  
Ref: TLC:MF:180789

## INTRODUCTION

1. These submissions are made on behalf of Bardsville Pty Ltd ("Bardsville"), the registered proprietor of the land at 309-325 Bourke Street, Melbourne known as "The Walk Arcade" ("the subject site") within the City of Melbourne Central Business District located along the Bourke Street Mall.
2. In respect of Amendment C258 ("C258") to the Melbourne Planning Scheme ("the Planning Scheme"), the exhibited C258 seeks to change the existing gradings and ungradings of buildings on the subject site and attribute a 'significant' grading to the entire site.
3. Bardsville submits that there is simply no strategic basis for the application of a significant grading to all buildings within the subject site, which now appears to be acknowledged by the expert evidence circulated on behalf of the Melbourne City Council ("Council") and Council's submissions to this Panel.
4. Bardsville relies upon the expert evidence of Mr Jim Gard'ner in support of its submissions.

## IMPOSITION OF HERITAGE GRADINGS

5. It is submitted that the Council as Planning Authority and the Proponent of C258 bears the burden of establishing a sound basis upon which a property is to be considered of such significance to warrant heritage protection, and the appropriate heritage grading when considering in this instance a transition of grading system from the existing A to D grading system to the new grading system.
6. Planning Practice Note 1 – Applying the Heritage Overlay – January 2018 ("PN1") sets out guidance about the use and application of a Heritage Overlay.
7. In terms of the places that should be included within a Heritage Overlay, it states, *inter alia*:
 

*"... places identified in a local heritage study, provided the significance of the place can shown to justify the application of the Overlay."*
8. Further, it states:
 

*" ... the heritage process leading to the identification of the place needs to clearly justify the significance of the place as a basis for its inclusion in the Heritage Overlay. The document for each place shall include a Statement of Significance that clearly establishes the importance of the place and addresses the heritage criteria".*
9. There have been many Panel reports that have dealt with proposed Heritage Overlays that have expressed concern about the quality and rigor of the heritage studies used to justify the application of the Overlay.

10. No doubt given the Panel's experience, it is familiar with these Panel reports. However, in brief, we draw the Panel's attention to Amendment's C5 and C6 to Stonington Planning Scheme (July 2003) where it stated the following at Page 42:

*"It seems to the Panel that "the system of heritage planning in conservation" involves striking an appropriate balance between four competing issues:*

- *Council's obligation under Section 4(1)(d) of the Planning and Environment Act 1987 being "to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interests or otherwise of special cultural value".*
- *The requirement to only protect those places that are of appropriate heritage value – the application of appropriate rigour and not places of lesser value.*
- *The economic and social consequences of applying a Heritage Overlay to properties, particularly of individual properties, which could be best ... to invoke objections under Section 4(1)(a) of the Planning and Environment Act namely "to provide for the fair ... use and development of the land".*
- *The resources Council requires to satisfy the first obligation, taking into account the second and third issues."*

11. It is submitted that those principles equally apply where as is the case here there is a general precinct Heritage Overlay ("HO") in place and the heritage gradings of properties with the existing gradings are being revisited.

#### **APPROACH TO HERITAGE GRADINGS FOR THE SUBJECT SITE**

12. Whilst Bardsville supports C258 in relation to the translation of the existing A to D heritage grading system to the new grading system based on significant, contributory and non-contributory gradings, it is submitted that it is important that there is strategic justification for gradings to be implemented in relation to the proposed new Incorporated Document – "Melbourne Planning Scheme, Heritage Places Inventory 2017" ("the Heritage Inventory"). It is this Heritage Inventory that will identify the specific gradings for buildings and sites including the subject site, based on the proposed Heritage Policy Clause 22.04.
13. Whilst the subject site is currently within a consolidated title, this was historically not the case and it is common ground that there are 8 separate and distinct buildings that form the subject site, which are separately rated by the Council.



14. The existing gradings of the buildings on the subject site are treated separately under the existing heritage studies and set out in Table 1 in Mr Jim Gardner's expert report as follows:

Building Name	Address	1985 Building Grading	Streetscape Grading	1993 Building Grading
Edments Store	309-311 Bourke Street	Ungraded	Ungraded	Ungraded
Diamond House	313-317 Bourke Street	C (façade only)	Not identified	C (upper façade only)
Single-storey infill	319-321 Bourke Street	Ungraded	Ungraded	Ungraded
Public Benefit Bootery	323-325 Bourke Street	C (upper façade only)	1	C
The Book Buildings	288-290 Little Collins Street	D	2	B
York House	292-298 Little Collins Street	D	2	C
Allan's Building	300-302 Little Collins Street	D	2	C
Arco House	Internal to this site	Ungraded	Ungraded	Ungraded

15. The Council's exhibited Heritage Inventory as it relates to the subject site sought to attribute a significant grading to the whole of the site, notwithstanding that the Lovell Chen property gradings review only identified two significant buildings on the subject site, being the Diamond House and Public Benefit Bootery building.
16. The Council Officer response to the submission lodged by Bardville in its report dated 20 February 2018 was as follows:

*"All of the properties noted in this submission are known as The Walk Arcade, 309-325 Bourke Street, Melbourne which is in the Post Office Precinct Heritage Overlay HO509.*

*Because this is identified as the one property in Council's address system, it is listed just once in the exhibited C258 heritage inventory as 309-325 Bourke Street, Significant.*

*Having one property address, the whole property has been converted to Significant, even though there are multiple buildings with different gradings on the property. It must be noted that this was a gradings conversion, not a full heritage assessment of the property and the converted gradings are an interim measure until a full heritage assessment occurs. Under a full heritage assessment of the property, the heritage*

*grading of all properties of the site would be reassessed and it may be found that this site should be a precinct rather than an individual heritage place. Council is currently undergoing the Hoddle Grid Heritage Review for all land in the Hoddle Grid and the heritage of all buildings on this property will be reassessed as part of this review."*

17. It is submitted that the Council Officer assessment and the exhibited attempt to include all 8 buildings within a significant grading is blatantly misconceived, has no strategic basis, would not result in fair and orderly planning, would have significant economic disbenefits on Bardsville, is an abuse of process and is not supported by any heritage evidence upon which to effectively upgrade all 8 buildings of the site to a significant grading.
18. The suggestion that this is an interim measure that can be dealt with later is fundamentally flawed, inappropriate and unfair. The Heritage Inventory once incorporated into the Planning Scheme would dictate the applicable grading that applies to this whole site and as initially proposed by the Council would have attributed a significant grading to 8 buildings where it is clearly common ground that only 2 of those buildings have or warrant a significant grading.
19. This is made clear in Mr Gard'ner's evidence as follows:
  - *"I believe that it would assist property owners, statutory decision makers and other stakeholders if the discrete or individual buildings that make up larger sites or complexes are provided with separate gradings (ie "Significant", "Contributory" or no grading [thereby being "Non-contributory"] and (within the heritage places inventory 2017)." (page 45)*
  - *"While I accept that the 8 buildings that make up the Walk Arcade are identified as a single property in the City of Melbourne's address system, this does not negate the appropriateness of defining the individual gradings of each building as has occurred in earlier heritage studies for the subject land and for other heritage places discussed in Section 5.5 above ... " (page 49)*
20. Clearly there are significant implications in the statutory assessment of planning permit applications whether it be for demolition, alterations and additions or new buildings under the Heritage Overlay and Council's proposed heritage policy based on different heritage gradings. The implication of the exhibited 'significant' grading would result in policy discouraging even the non-contributory buildings on the site. This is entirely inappropriate.
21. It is not appropriate for buildings to be upgraded on the basis that it is only 'interim' and it is equally not appropriate to afford the same heritage status to buildings quite clearly of different and some instances no heritage value.

22. The importance of getting the gradings right for the subject site is particularly pertinent given these are valuable buildings within the CBD and which are currently the subject of a planning permit application for demolition, alterations and additions and new buildings that is being considered by the Minister for Planning. Indeed Lovell Chen prepared the Heritage Impact assessment statement that accompanied the application that has supported demolition of some of the buildings on the subject site and the new development.

#### **WHAT SHOULD THE GRADINGS FOR THE SUBJECT SITE BE?**

23. There is now common ground as between Mr Jim Gard'ner on behalf of Bardsville and Ms Anita Brady and Mr David Helms on behalf of Council that the appropriate gradings for the buildings on the subject site is as follows (as set out in page 7 of Mr Gard'ner's expert witness statement):

“• *It is my view that the following gradings should be applied to the buildings that occupy the subject land:*

- |  |                         |
|--|-------------------------|
| ○ <i>Edments Building<br/>(309-311 Bourke Street)</i>                        | <i>Non-contributory</i> |
| ○ <i>Diamond House<br/>(313-317 Bourke Street)</i>                           | <i>Significant</i>      |
| ○ <i>Infill building<br/>(319-321 Bourke Street)</i>                         | <i>Non-contributory</i> |
| ○ <i>Public Benefit Bootery Building<br/>(323-325 Bourke Street)</i>         | <i>Significant</i>      |
| ○ <i>Arco House<br/>(internal to the site)</i>                               | <i>Non-contributory</i> |
| ○ <i>Book Buildings<br/>(288-290 Little Collins Street)</i>                  | <i>Contributory</i>     |
| ○ <i>York House<br/>(292-298 Little Collins Street)</i>                      | <i>Contributory</i>     |
| ○ <i>Allan's Building (Sonora House)<br/>(300-302 Little Collins Street)</i> | <i>Contributory"</i>    |

24. It is not accepted that the gradings of the subject site should await any further Planning Scheme Amendment for the Hoddle Grid Heritage Review. Three separate heritage experts have now reviewed and assessed the existing buildings on the site and in particular Mr Helms



on page 44 has provided an assessment of the buildings on the site, including the non-contributory buildings.

25. The evidence of Mr Gard'ner is that in relation to the former Edments building (309-311 Bourke Street) the structure of the building and the common brick east wall facing Union Lane is late 19<sup>th</sup> Century fabric and the aluminium frame curtain wall was added to the earlier building in 1956 justifying its non-contributory status. It is not accepted that this building warrants 'further investigation' as suggested by Mr Helms.
26. Further, it is not accepted that there should be a Statement of Significance prepared for the entire subject site. Rather Bardsville supports the position now accepted by the Council that the Heritage Inventory should be amended in the manner identified in Appendix A3 of Mr Helms' evidence statement which is extracted below:

Street	Name and Number	Building Place Grading	Significant Streetscape
Bourke Street	"The Walk" complex 309-325, includes:		-
	• 313-317 (former Diamond House)	Significant	-
	• 323-325 (former Public Bootery)	Significant	-
	• 288-290 Little Collins Street (former Book Buildings)	Contributory	-
	• 292-296 Little Collins Street (former York House)	Contributory	-
	• 300-302 Little Collins Street (Allan's building (also Senora House)	Contributory	-

27. The effect of amending the Heritage Inventory in this manner is that the other buildings on the subject site will be attributed a non-heritage grading which on the evidence before the Panel is appropriate.
28. It is submitted that now is the appropriate time to address the final gradings of the buildings on the subject site rather than await any deferral or revisitation of that issue in any future Hoddle Grid Heritage Review given the heritage evidence before the Panel. As Mr Gard'ner has commented in his witness statement:

"... although I applaud the City of Melbourne for commissioning the Hoddle Grid Heritage Review in its own aim to create a more holistic appreciation of heritage values within the CBD, there is no reason to await the conclusion of this study to clearly articulate the significance of the component buildings that make up The Walk Arcade."

(page 49)

- *"While the Hoddle Grid Heritage Review may (or may not) undertake a finer-grained assessment of the component elements of the subject land, there is no clear information about when and how this is to occur. In my view the gradings of these buildings should be resolved at this point in time to provide clarity to owners and statutory decision makers including the City of Melbourne and the Minister for Planning."*

(page 49)

- *"I can see no reason why such consideration should await the conclusion of the Hoddle Grid Heritage Review, and it is therefore my opinion that it is appropriate for the heritage grading of 8 buildings that occupy the subject land be clarified now as is the appropriate, and timely, forum to resolve this matter."*

29. It is submitted that there is before the Panel sufficient evidence to enable it to make recommendations in relation to permanent gradings of all buildings on the subject site.

## CONCLUSION

30. It is submitted that Amendment C258 insofar as it seeks to attribute a significant grading over the entire subject site was fundamentally flawed and had no strategic basis.
31. Bardsville supports the position now advanced to the Panel by the Council that the Heritage Inventory should be amended in relation to the subject site in accordance with Appendix A3 to Mr Helms' expert witness statement that seeks to identify individually the gradings of those buildings of significant or contributory grading, in circumstances where there is common agreement between the heritage evidence before the Panel in relation to the heritage significance of the individual buildings on the subject site.

DATED: 14 August 2018

*Tania Cincotta*  
 .....  
**Tania Cincotta, Principal**  
**BEST HOOPER**, for and on  
 behalf of Bardsville Pty Ltd