

**Planning Scheme Amendment C258 to the  
Melbourne Planning Scheme**

**Submissions on behalf of the Lost Dogs' Home**

**2 Gracie Street, North Melbourne**

4 September 2018

Ref DV:KM:884309

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## 1. Introduction

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- 1.1 This submission is made on behalf of the Lost Dogs' Home (**LDH**), the owner of 2 Gracie Street, North Melbourne (**Subject Site**) a submitter to proposed Planning Scheme Amendment C258 (**Amendment**) to the Melbourne Planning Scheme (**Scheme**).
- 1.2 The LDH is a non for profit charitable organisation dedicated to the welfare of animals. The LDH Subject Site is currently affected by Schedule 869 to the Heritage Overlay (**HO869**) under the Scheme and has a D3 grading pursuant to the Heritage Places Inventory.
- 1.3 The Amendment, as it relates to the LDH and the Subject Site seeks to:
  - (a) revise the content of Clause 22.05: Heritage Places Outside the Capital City Zone (**Clause 22.05**), in particular, in relation to demolition and concealment; and
  - (b) replace the existing A to D grading systems with a significant, contributory, non contributory grading system as outlined in Planning Practice Note 1: Applying the Heritage Overlay (**PN1**). This will affect the heritage grading of the Subject Site and influence how future built form is treated and assessed.
- 1.4 The Amendment initially proposed to regrade the Subject Site to a 'significant' heritage place. However, in response to submissions, Melbourne City Council (**Council**) reconsidered its position and identified the Administration Building and Residence of 1934 - 1935 (**Administration Building and Residence**) as a contributory building in a precinct that affects the entirety of the Subject Site and includes a number of other ungraded buildings.
- 1.5 Our Client submits that the Amendment:
  - (a) unjustifiably elevates the heritage significance of the Subject Site by identifying the Administration Building and Residence as a contributory building within a site specific Precinct;
  - (b) proposes inappropriate policy provisions in relation to the demolition of lowly graded buildings that are subject to a site specific heritage overlay;
  - (c) does not appropriately identify 'significant elements' in relation to 'contributory buildings'; and
  - (d) requires review and in particular, the definition of 'contributory' heritage places in Clause 22.05 needs to be broadened to encompass places within an individual heritage overlay such as the LDH.
- 1.6 Our Client has raised these issues in its submission to the exhibition of the Amendment.

- 1.7 Given the content of this submission, we respectfully request that this Panel recommend that:
- (a) Council immediately undertake a review of all 'C' and 'D' graded properties that are affected by an individual heritage overlay to assess these properties against the proposed significant, contributory and non contributory grading to ensure compliance with approach identified in PN1 and that the outcomes of this review be re-exhibited prior to the adoption and/ or approval of the Amendment;
  - (b) the definition of 'contributory' place as defined in the proposed Clause 22.05 be amended to state that sites, such as the Subject Site, which is affected by an individual heritage overlay may be categorised as a 'contributory' place;
  - (c) until such time as the review of all individual heritage overlay controls constituted by 'C' and 'D' graded buildings is undertaken or finalised, the Administrative Building and Residence be identified as a contributory building and other ungraded buildings on the Subject Site form part of a precinct; and
  - (d) the proposed Clause 22.05 be amended to more appropriately address the demolition of lowly graded heritage properties such as the Subject Site and no longer include a reference to 'significant elements'.

## 2. The Lost Dogs' Home

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- 2.1 The Lost Dogs' Home is governed by a charter and constitution and has the following vision:

*'To be the pre-eminent animal welfare organisation in caring for lost and unwanted dogs and cats and in enhancing the responsible ownership of these animals in the community.'*<sup>1</sup>

- 2.2 The mission of the LDH is to:

*'To work with the community in promoting the welfare of dogs and cats by reducing the number of lost cats and dogs, alleviating their pain and suffering and enhancing the responsible pet ownership and enjoyment of pets.'*<sup>2</sup>

- 2.3 The LDH fulfils its vision and mission through a range of activities including:

- (a) providing animal shelter services including quality veterinary services;
- (b) managing its finances and resources in a manner that furthers its vision and mission;
- (c) educating the public and promoting public awareness for the LDH; and
- (d) fostering and gathering research into matters affecting animal welfare.

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<sup>1</sup> The Lost Dogs' Home, <https://dogshome.com/about-us/vision-mission/>, accessed 28 August 2018

<sup>2</sup> As above.



- 2.4 Consequently, the LDH is not in a position to be expending significant funds in instances where these resources can be better spent on furthering its cause and mission.

### 3. The Subject Site

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- 3.1 The LDH is located at 2 Gracie Street, North Melbourne. The Subject Site is irregular in shape and bound by Gracie Street to the north west, Henderson Street to the north east, Green Street to the south and Langford Street to the west. The elevated part of the Citylink Freeway is to west of the Subject Site. Consequently the buildings on the Subject Site can be viewed from five different public streets and the Citylink Freeway.
- 3.2 A number of buildings currently exist on the Subject Site including the main administration building, a range of single storey kennels, exercise yards and various outbuildings.
- 3.3 Of relevance to this Planning Panel is the Administration Building which is located in the centre of the Subject Site. This building is described by Mr Raworth in his expert evidence as,

*'...a double-storey gable roofed building flanked by two small single-storey wings which also have gabled roofs. External walls are rendered with face brick accents. The roof is clad in glazed terracotta tiles and punctuated by two simply detailed chimneys with rendered shafts and face brick caps. Stylistically, the building draws primarily on domestic bungalow sources with certain details suggestive of the interwar Moderne style - such as the bands of horizontal face brick on the rear elevation and the sash windows with horizontal glazing bars.'*

- 3.4 However, this building has undergone changes which include:
- (a) the enclosure of the front loggia with timber framed windows;
  - (b) flat roofed, single storey additions which have been built at the front and rear of the building;
  - (c) a modern steel staircase and walkway which are located at the eastern end of the front elevation; and
  - (d) a concrete paved access ramp.
- 3.5 **Map one** illustrates the boundaries of the Subject Site, **Map two** illustrates the aerial image of the Subject Site and **images one to ten** illustrate the buildings on the Subject Site.
- 3.6 The Subject Site is located in the Industrial 3 Zone (**IN3Z**) and is affected by the following overlays pursuant to the Scheme:
- (a) HO869; and
  - (b) Schedule 1 to the Land Subject to Inundation Overlay (**LSIO1**).



- 3.7 **Map three** illustrates the zone that affects the Subject Site and **map four** illustrates the HO869 as it applies to the Subject Site.
- 3.8 Currently, the Subject Site is identified as having a D3 grading pursuant to the Heritage Inventory and is therefore not a contributory building in accordance with the existing Clause 22.05 of the Scheme as it applies to the Subject Site.
- 3.9 The Arden Macaulay Structure Plan (**Structure Plan**) identifies the Subject Site as an existing industrial site that will require rezoning to enable the future expansion of operations. The Subject Site is identified as part of the second stage of the Structure Plan which is to be implemented from 2025 onwards. The Subject Site is expected to transition to a mixed use area with up to 20 to 30 metre high built form. Consequently, we observe that Council's long term strategy for the Subject Site is one that involves a mixed use high density outcome.<sup>3</sup>

#### 4. Planning Scheme C258 to the Melbourne Planning Scheme

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- 4.1 The following aspects of the Amendment are of relevance to this submission:
- (a) revision of the content of Clause 22.05 in particular, in relation to demolition and concealment; and
  - (b) replacement of the existing A to D grading systems with a significant, contributory, non contributory grading system in accordance with PN1 which will affect the heritage grading of the Subject Site and influence how future built form is treated and assessed.

#### 5. Overview of Submissions

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- 5.1 The LDH's concerns are as follows:
- (a) the conversion methodology unjustifiably elevates the heritage significance of the Subject Site by identifying the Administration Building and Residence as a contributory building within what is essentially a site specific precinct;
  - (b) the definition of "contributory heritage place" requires review so that the definition of 'contributory' heritage places is broadened to encompass places that are affected by an individual heritage overlay such as the LDH; and
  - (c) the Amendment:
    - (i) proposes inappropriate policy provisions in relation to the demolition of lowly graded buildings that are affected by an individual heritage overlay; and

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<sup>3</sup> Melbourne City Council, *Arden Macaulay Structure Plan*, 2012 Pages 23, 25, 35, 57.

- (ii) does not appropriately identify 'significant elements' in relation to 'contributory buildings'.

5.2 The remainder of this submission will address these matters.

## 6. The Conversion Methodology

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6.1 As noted in the Lovell Chen *City of Melbourne Heritage Review: Local Heritage Policies and Precinct Statements of Significance: Methodology Report*, dated September 2015 and updated May 2016 (**Methodology Report**), Lovell Chen did not review places with an individual heritage overlay when undertaking their conversion to the new three tier grading system. Rather, such sites, including the Subject Site, were automatically translated to a 'significant' grading as it is viewed that their individual heritage overlay status identified their heritage significance. Consequently, the Subject Site was not assessed by Lovell Chen to determine its regrading value but was initially converted to a 'significant' grading.

6.2 In response to submissions, Council identified that the Administration Building and Residence was the only building on the Subject Site of heritage significance on the Subject Site. Given that there are a number of buildings on the Subject Site; Council now proposes a precinct control with the Administration Building and Residence identified as a contributory building.

6.3 Currently, the Subject Site is identified as having a D3 grading and is not a contributory building given that the definition of contributory, pursuant to the exiting policy at clause 22.05 of the Scheme, is:

*Contributory building means a 'C' grade building anywhere in the municipality, or a 'D' grade building in a Level 1 or Level 2 streetscape.'*

6.4 In adopting the conversion methodology it has, Council has essentially afforded the same level of protection to the Subject Site as an A or B grade building, if the Subject Site maintained its 'significant' grading, and some C graded buildings now that it is a 'contributory' place.

6.5 While Council may argue that this Amendment does not include a review of the heritage significance of buildings, in not assessing the heritage significance of properties affected by individual heritage overlays and automatically converting these properties, it has unjustifiably elevated the heritage significance of these buildings, including the Subject Site.

6.6 Council has stated that it relied on the work undertaken as part of Amendment C207 to the Scheme to inform the current Amendment. This work identified which properties warranted protection through the use of a heritage overlay and identified the A to D, and streetscape grading of buildings in the Arden Macaulay area. It did not identify the significant, contributory or non contributory status of the buildings in this area, as defined by the proposed Clause 22.05, as suggested by Council in its submissions.

6.7 The Planning Panel for Amendment C207 considered the Subject Site and noted:



*'However, the Panel agrees with the evidence given by Mr Raworth for the Lost Dogs' Home that the Lost Dogs' Home is not of great architectural importance being quasi-domestic in appearance and unremarkable. It does not in our view 'make an important aesthetic or scientific contribution' as envisaged for a C graded building.*

*Having come to this conclusion the Panel was faced with the difficulty of 'shoe-horning' the building into the currently defined D Grading. The problem faced is that the D grade definition refers to 'representative buildings' for the area, and in our view the building is not typical of the locality.*

*However, the task of the Panel is to grade the site as a whole. This has proven more difficult. Not only does the significance of the place rely upon its social and historical significance rather than any aesthetic or other values that might attach to building fabric, but the gradings in the Planning Scheme relate to buildings.*

*Given our view that the building does not add to the basis of significance, we consider that the site's grading should remain as D.*

*The Panel would comment in passing that during the inspection and the Hearing there was some faint suggestion that there may be some other early building elements of note on the site including parts of early walls. In these circumstances and given the extant Administrative Building it might have been better for HO869 to have been designated as a heritage precinct with contributory elements identified.'*

- 6.8 Consequently, that Planning Panel recommended a D3 grading for the LDH. Having regard to this grading and the assessment, it is submitted that it is inappropriate for this Amendment to propose to elevate the significance of the buildings on the Subject Site through the conversion process. Further, it is inappropriate for Council to rely on such an argument as the general public, including our Client were not given the opportunity to comment on the perceived regrading of their site but rather commented on the application of a site specific heritage overlay, the A to D grading and streetscape grading proposed by Amendment C207.
- 6.9 Amendment C207, as approved and introduced into the Scheme did not grade the Subject Site as significant, contributory or non contributory as defined in the proposed Clause 22.05. We submit that it is inappropriate to put this conclusion before this Planning Panel or rely on internal work that may have been undertaken by Council officers and/or others as this work has not been critically assessed or tested in an open public forum. Further, we submit that it is inappropriate to identify such work as the strategic justification or basis to support the conversion proposed as part of this Amendment.
- 6.10 Council has also stated that given the size and scale of the task before it, it did not have the time or resources to review all buildings in an individual heritage overlay. Council indicated that this task would take too long and be too expensive for Council to undertake as part of this review. This was the view also held by Ms Anita Brady. However, as indicated by Mr Helms and reaffirmed by Council in its part B submission, there are some 280 properties that require review. An even smaller number of these properties are C and D graded properties affected by individual heritage overlay controls. While this may appear to be a significant number, when compared to the fact



that Council and Lovell Chen considered some 9,318 properties, this additional work would have been inconsequential to the overall time and cost of this project.

- 6.11 We are of the view that it would have been prudent for Council to have undertaken this review at the outset rather than attempt to argue and justify a flawed methodology. This is particularly important given that Council, up until midway through this hearing, maintained that the Department of Environment, Land, Water and Planning (**DELWP**) had stated that it would not support any further heritage reviews until the A to D gradings were converted. It later emerged that this was not the case. Irrespective of this, it is imperative that the methodology utilised by Council is robust given that it has significant consequences for how buildings and new development will be treated and facilitated.
- 6.12 Consequently, we respectfully request that the Panel recommend that Council immediately undertake a review of C and D graded properties affected by an individual heritage overlay in the Arden Macaulay area to assess their heritage significance in line with the significant, contributory and non contributory grading system advocated for in PN1 and proposed as part of this Amendment.

## 7. Creation of a precinct with the Administrative Building and Residence and the definition of Contributory Place

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- 7.1 As detailed in this submission, Council now proposes a precinct control over the Subject Site which identifies the Administrative Building and Residence as a contributory building.

- 7.2 In his expert evidence, Mr Raworth notes that identifying the Subject Site in this manner seems to be,

*'...an artificial device through which to respond to the relatively low significance of this site specific heritage place within the terms of the proposed Amendment and the associated gradings and heritage policy....Furthermore, if the Lost Dogs' Home property is to be considered a precinct, it should be questioned what the value of a precinct with only one contributory building...if the 'contributory' building was not graded, there would be no precinct.'*

- 7.3 Consequently, Mr Raworth suggests that the definition of 'contributory' place should be amended so as to recognise and address sites such as this which are subject to a site specific heritage overlay but are lowly graded.
- 7.4 Alternatively, Mr Raworth suggests that a more appropriate outcome would be to apply a serial listing to lowly graded sites affected by an individual heritage overlay.
- 7.5 Given the above, the LDH submits that the definition of 'contributory place' should be amended to recognise sites affected by a heritage overlay or a serial listing should be further explored by Council.
- 7.6 However, it is in the interim, the LDH accepts Council's proposed approach in identifying the Administrative Building and Residence as a contributory place and the Subject Site as a precinct that includes a number of other ungraded buildings.

## 8. Other changes required to the Amendment in relation to demolition and significant elements

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### **Demolition**

- 8.1 The proposed clause 22.05 includes new provisions that guide the demolition of heritage built form and:
  - (a) only allows for the full demolition of significant or contributory buildings in exceptional circumstances; and
  - (b) generally does not permit the partial demolition of significant buildings and of significant elements or the front or principal part of contributory buildings.
- 8.2 The existing Clause 22.05 gives Council, as the responsible authority, the discretion to consider the demolition of the rear parts of a D graded building or, in some circumstances, the whole building. The existing policy also requires consideration of whether the demolition or removal of the building is justified for the development of the land or the alteration of, or addition to, a building.
- 8.3 The LDH submits that the changes proposed to Clause 22.05 in relation to demolition significantly alters how existing built form and future proposed built form are treated.
- 8.4 Further, the policy creates uncertainty when attempting to implement it in relation to contributory places as there is no clear definition of 'significant elements' and no information is provided in Council's heritage studies, citations or the i-heritage database in relation to this element. Consequently, we are of the view that this provision should be deleted from the proposed policy.
- 8.5 Given that the Administrative Building and Residence are already identified as low graded properties and no new information has come to light to alter this view, we submit that such provisions in relation to demolition are inappropriate. Our Client does not want to be placed in a position where they are financially penalised by way of the expense associated with the planning permit process if, in the future, they choose to upgrade the facilities on the Subject Site.
- 8.6 Consequently, we submit that clause 22.05 should be amended to:
  - (a) reintroduce the requirement to consider whether demolition or removal is justified for the development of the land or the alteration of, or addition to a building;
  - (b) remove reference to 'significant elements'; and
  - (c) provide a more appropriate provision in relation to the full or partial demolition of low graded buildings that are affected by a site specific heritage overlay such as the Subject Site.

## 9. Conclusion

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- 9.1 Having regard to the matters set out above and the evidence of Mr Raworth, for the intervening period our Client accepts that the Administrative Building and Residence be identified as a contributory building and other ungraded buildings on the Subject Site form part of a heritage precinct.
- 9.2 However, we respectfully request that this Panel recommend that:
- (a) Council immediately undertake a review of all 'C' and 'D' graded properties that are affected by an individual heritage overlay to assess these properties against the proposed significant, contributory and non contributory grading to ensure compliance with approach identified in PN1 and that the outcomes of this review are implemented through the planning scheme amendment process;
  - (b) the definition of 'contributory' place as defined in the proposed clause 22.05 be amended to state that sites, such as the Subject Site, which are affected by an individual heritage overlay may be categorised as 'contributory' places; and
  - (c) the proposed Clause 22.05 be amended to more appropriately address the demolition of lowly graded heritage properties such as the Subject Site and no longer include a reference to 'significant elements'.



**David Vorchheimer**  
**HWL Ebsworth Lawyers**  
**On behalf of The Lost Dogs' Home**  
**4 September 2018**



## Planning Scheme Amendment C258 to the Melbourne Planning Scheme

Lost Dogs' Home

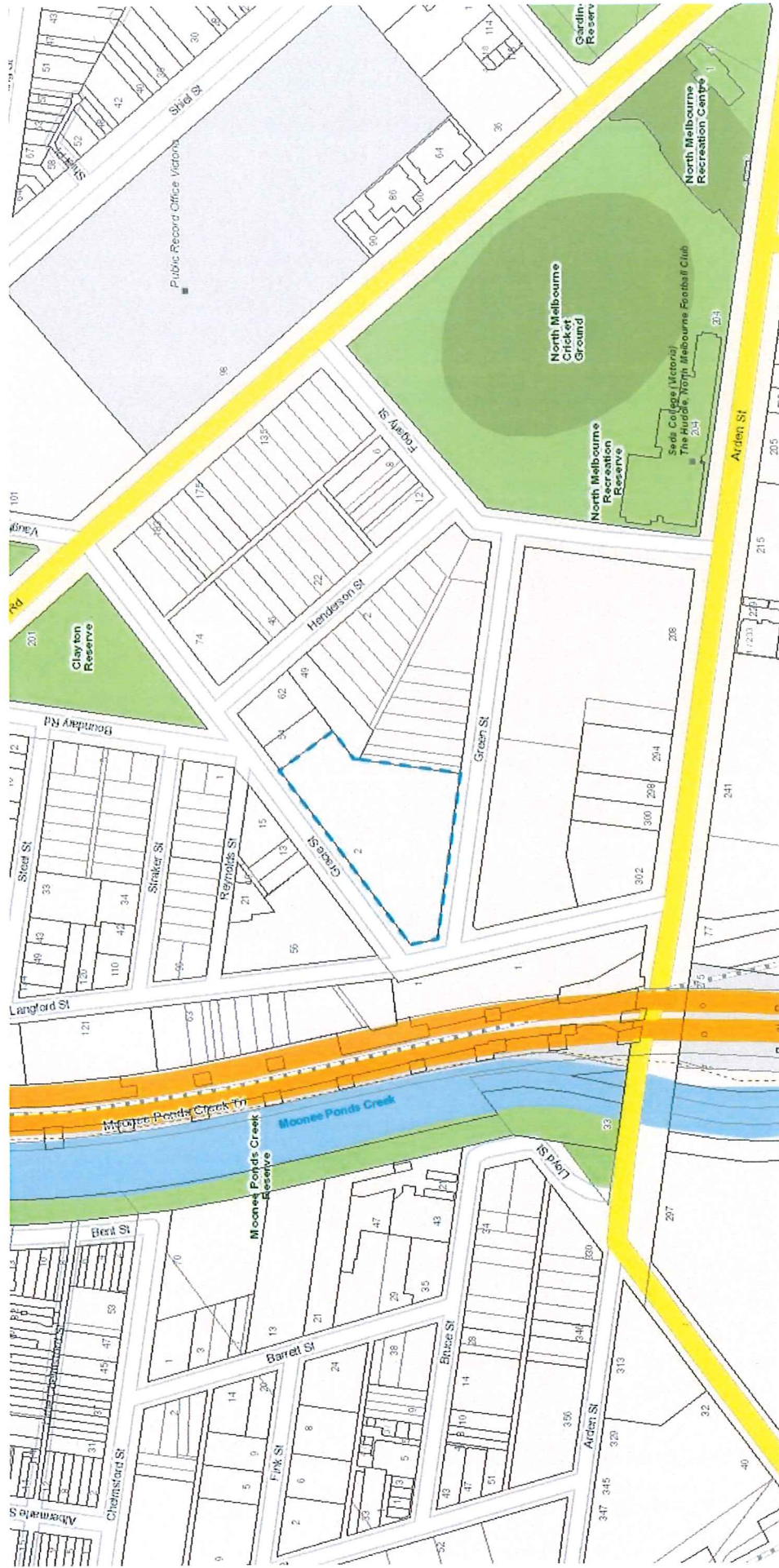
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Map 1: Cadastral Map of Subject Site









Map 3: Zone controls affecting the Subject Site

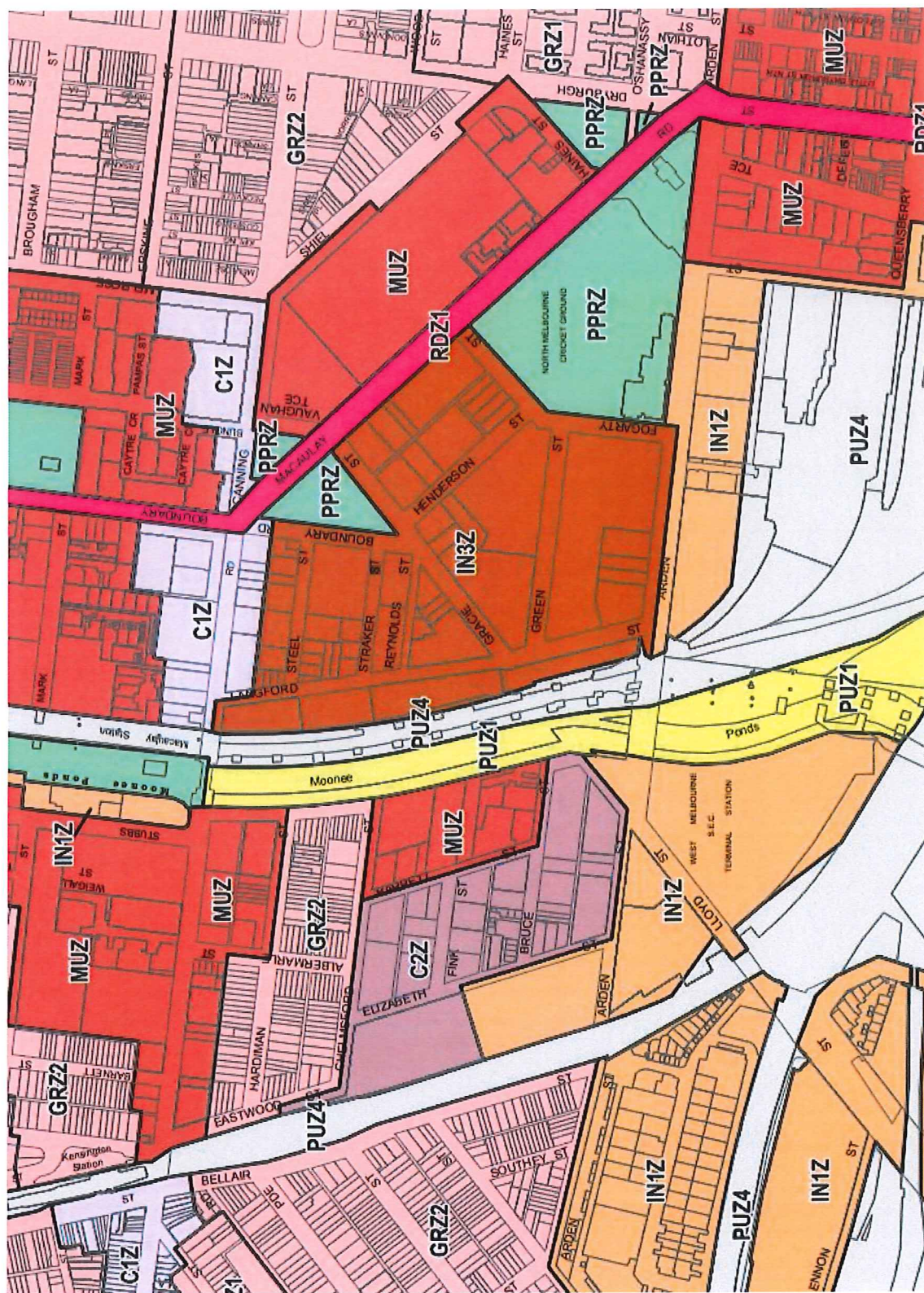






Image One







Image Two



Image Three



Image Four



Image Five





Image Six





Image Seven



Image Eight





Image Nine





Image Ten

