

INDEPENDENT PLANNING PANEL  
APPOINTED BY THE MINISTER FOR PLANNING  
PLANNING PANELS VICTORIA

IN THE MATTER of Amendment C258 to the Melbourne Planning Scheme

BETWEEN:

**MELBOURNE CITY COUNCIL**

Planning Authority

-and-

**VARIOUS SUBMITTERS**

**AFFECTED LAND:** All land within the Melbourne municipal area affected by a heritage overlay and particular properties in West Melbourne

**PART B SUBMISSIONS OF THE PLANNING AUTHORITY  
RESPONSE TO ADDITIONAL SUBMISSIONS**

**I. INTRODUCTION**

1. The City of Melbourne (**Council**) is the Planning Authority for Amendment C258 (the **Amendment**) to the Melbourne Planning Scheme (the **Scheme**).
2. This *Part B – Response to additional submissions*, addresses additional submissions made to Amendment C258 (the **Amendment**) and further evidence called in the hearing of the Amendment. This submission is to be read in conjunction with the Part A submission dated 23 July 2018, the Part B submission dated 14 August 2018 and the expert evidence called by Council to date, and the supplementary evidence of:
  - (i) Anita Brady of Lovell Chen (in relation to heritage policy in the CCZ);
  - (ii) Sophie Jordan of Sophie Jordan Consulting (in relation to planning and heritage policy in the CCZ).

## II. BACKGROUND

3. As detailed in Council's written submissions to the Panel dated 19 September 2018, notice of the Amendment was sent to all owners of properties within a heritage overlay (approximately 50,000 properties) in March 2017. While not statutorily obliged to do so, Council sought to afford any property owners affected by the introduction of interim heritage overlay controls based on the *Hoddle Grid Heritage Review 2018* (**Amendment C327**), the *Guildford and Hardware Laneways Heritage Study 2017* (**Amendment C301**) or the *Southbank & Fishermans Bend Heritage Review 2017* (**Amendment C304 and C276**) the same opportunity to participate in the Panel that had been afforded to original submitters whose properties were within a heritage overlay at the time the required statutory notice of the Amendment was provided.
4. On 21 September 2018, the Panel made directions that this information be provided.
5. By letter dated 3 October 2018, owners of properties which were proposed to be included within a heritage overlay pursuant to these planning scheme amendments were provided with all information contained within the Panel directions, including an explanation of the Amendment, a link to the exhibited documents and the most recent version of the Clause 22.04 policy incorporating changes by Ms Brady and Ms Jordan (the **3 October 2018 Policy**) was provided. The Participate Melbourne website for Amendment C258 lists the 3 October 2018 Policy as Clause 22.05 Heritage Policy.

## III. ADDITIONAL SUBMISSIONS

6. Council received submissions and requests to be heard by the Panel in regard to the following properties:
  - a) 17-21 Bennetts Lane, 23 Bennetts Lane, 134-144 Little Lonsdale Street, 146-148 Little Lonsdale Street (together referred to as the **Bennetts Lane properties**);
  - b) 31-35 Flinders Lane;
  - c) 96-98 Flinders Street;
  - d) 134-136 Flinders Street;
  - e) 577-583 Little Collins Street;

- f) 243-249 Swanston Street;
  - g) 263-267 William Street;
  - h) 146-158 Bourke Street; and 139 Little Bourke Street (both owned by Choi Wing On & Co Pty Ltd).
7. These submissions were referred to the Panel.
8. Council also received submissions for a number of properties which were:
- a) listed on the Victorian Heritage Register (and are accordingly unaffected by the proposed heritage policy considered by the Amendment); or
  - b) related to properties which were originally affected by the Amendment and were initially notified (and were not affected by Amendments C327, 304, C301 or C276) but whose owners had elected not to participate at that time.
9. These submissions were not referred to the Panel.
10. It is noted that:
- a) On 8 January 2018, Russell Kennedy, on behalf of Choi Wing On & Co Pty Ltd being the owner of 146-158 Bourke Street and 139-141 Little Bourke Street wrote to the Panel to advise that their client no longer wished to participate in the hearing for the Amendment.
  - b) On 4 February 2018, Ms Natalie Ann Reiter, on behalf of owners of 134-136 Flinders Street, advised that she wished to withdraw the submission made in relation to that property.
  - c) By letter dated 6 February 2018, Best Hooper, acting for Metro Pol Investment Pty Ltd the registered proprietor of 263-267 William Street, Melbourne advised that while the landowner no longer wished to participate in the panel hearing process, it continues to rely upon submissions previously made to the panel and enclosed a further written submission for consideration.
  - d) On 11 February 2019, the Panel was advised that Notron Nominees Pty Ltd, owners of 243-249 Swanston Street, no longer wished to participate in the Panel hearing.

A. ISSUE RAISED IN ADDITIONAL SUBMISSIONS

11. The additional submissions raised a number of issues to be addressed by the Panel. These include that the proposed 3 October 2018 Policy:
  - a) should not apply to land identified as being of heritage significance in Amendment C327 until such time as the heritage significance of those buildings has been tested through the Amendment C328 process;
  - b) will unreasonably elevate heritage considerations above other planning considerations;
  - c) is deficient in supporting strategic and background work;
  - d) does not support the adaptive reuse of heritage places;
  - e) has the effect that full or partial demolition of buildings identified as having heritage significance would be unlikely to be supported; and
  - f) is excessive and inappropriate as it relates to setting back of additions or not building into airspace directly above the front or principal part of the building; and
  - g) will negatively impact upon future development opportunities of specific sites and economic development within the Capital City Zone (**CCZ**) as a whole.
12. Each of these issues is discussed further below.
13. Alleged ‘procedural shortcomings’ related to the progress of the Amendment through the Panel process were also raised in a number of submissions. Council reiterates its previous submissions that the Amendment has not been the subject of any procedural shortcomings, defects or irregularities, and whilst this allegation has been made on numerous occasions, it has not been sustained before the Panel, and no submitters have sought to pursue any such allegation with the Victorian Civil and Administrative Tribunal (the **Tribunal**) by way of an application brought under section 39 of the *Planning and Environment Act 1987*.
14. A summary of the additional submissions, and the response from Council’s management is provided at Appendix A.

#### **IV. DISCREPANCY ARISING FROM 20 FEBRUARY 2018 RESOLUTION**

15. Some submitters have asserted that Council’s intention in relation to heritage policy in the CCZ in February 2018 was to remove an important component of policy relating to additions and that Council now seeks to reinstate this policy. The relevant policy statement provides:

New additions must not build over or extend into the air space above the front or principal part of a significant or contributory building.

16. The basis for this assertion is the resolution of Council on 20 February 2018.

17. Council refutes this characterisation of the resolution on 20 February 2018.

18. As explained previously to the Panel, the version of the heritage policy which was presented to the February 2018 meeting of Council was included in Attachment 4 of the report from management. Attachment 4 contained two provisions under the heading Additions in clause 22.04-7. They are subtly different and provide:

Additions should not build over or extend into the air space above the front or principal part of a significant or contributory building.

...

- New additions must not build over or extend into the air space above the front or principal part of a significant or contributory building.

19. In order to remove the duplication in the text, Council agreed that the version of the policy to be presented to the Panel would be “generally in accordance with Attachment 4 of the report from management”, subject to the following changes:

...

In proposed policy 22.04-7, deletion of the dot point “New additions must not build over or extend into the air space above the front or principal part of a significant or contributory building”.

20. Regrettably, in Appendix A to the Part A submission of Council to the Panel, headed Changes to C258 Amendment documents as a result of the Future Melbourne Committee resolution of 20 Feb 2018, the freestanding sentence extracted above was

in error shown as a track change deletion and the second dot point was not shown at all.

21. Ms Jordan’s statement of evidence of July 2018 annexed a version of the policy which combined clauses 22.04 and 22.05 and included in relation to additions:

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.

22. The Part A Appendix A version of the policy has understandably and regrettably contributed to confusion.

23. However, the resolution of Council was to remove *the dot point* (which includes the term “must”). There was no resolution of Council to remove the freestanding sentence (which is not a dot point and includes the term “should”).

24. This position is consistent with the language of the resolution and with the remaining policy paragraph in 22.04-7 which provides:

- Maintain the prominence of the building by setting back the addition behind the front or principal part of the building and from other visible parts.

25. For the record, Council’s position has always been that the heritage policy for land within and outside the CCZ should include a provision that:

Additions should not build over or extend into the air space above the front or principal part of a significant or contributory building.

## **V. TIMING OF POLICY PENDING RESOLUTION OF AMENDMENT C328**

26. The heritage significance and grading of the subject buildings has been identified and assessed in the *Hoddle Grid Heritage Review 2018* and will be implemented and properly tested through Amendment C328, which will be publically exhibited in due course.

27. Interim heritage controls were applied to the subject properties via Amendment C327, for the purpose of providing places with interim heritage protection until such time as Amendment C328 is tested through the panel process. No transitional provisions have been applied such that heritage policy should not be applied until C328 has been finalised. Nothing in the Practice Note, the text of clause 43.01 or the content of heritage policies in other planning schemes provides any basis for distinguishing between permanent and interim heritage overlay controls in the application of heritage policy. It would be irregular and confusing to have two heritage policies in operation: one for interim heritage overlays and one for permanent heritage overlays.
28. It is proper and appropriate that the 3 October 2018 Policy applies to places affected by the Amendment C327 interim controls until the application of permanent heritage controls has been tested through the C328 panel process.

## **VI. THE RELATIONSHIP BETWEEN HERITAGE AND OTHER PLANNING CONSIDERATIONS**

29. The purpose of heritage policy is to guide the exercise of discretion that exists under a planning scheme control. Heritage policies properly focus upon the retention and enhancement of the identified heritage places within a municipality, specifically on their protection, conservation and restoration.
30. In any permit application, heritage policies must be balanced with other policies applicable to a site under consideration.
31. Principles of integrated decision-making were explored at length in Council's Part B submission (pages 54-60) and it is not proposed to reiterate those principles here. The 3 October 2018 Policy does not, and cannot, impose mandatory requirements and must be applied in the context of the application in question and the Melbourne Planning Scheme as a whole.
32. Nothing in the 3 October 2018 Policy suggests that heritage policies are to be given precedence over other considerations. The 3 October 2018 Policy also clearly acknowledges the broader growth and development objectives of the Central City,

which reinforces that heritage policies are but one part of the balancing exercise that is required in the assessment of any given application.

## **VII. SUPPORTING STRATEGIC AND BACKGROUND WORK FOR THE AMENDMENT, AND SPECIFICALLY THE 3 OCTOBER 2018 POLICY**

33. The Amendment is the result of substantial strategic work undertaken by Council over recent years. This strategic work supports and underpins the Amendment and is detailed extensively in the Part A submission made to the Panel. It is submitted that this strategic work provides appropriate justification for the proposed modifications to the policy framework that form part of the Amendment.
34. The 3 October 2018 Policy is both well founded and strategically justified. It is supported by and implements the relevant sections of the State and Local Planning Policy Framework and is consistent with relevant Ministerial Directions and Practice Notes.
35. The 3 October 2018 Policy is the result of:
  - a) the evidence statement of Ms Jordan dated 30 July 2018, and oral evidence before the Panel, that the two policies initially proposed as part of the Amendment were not sufficiently different to justify two separate policies; and
  - b) the recommendations of Council's expert witnesses through the panel process.
36. At page 25 of Ms Jordan's 30 July 2018 statement of evidence:

### ***Recommendation 1: Two policies condensed into one***

66. *From a review of the documentation prepared by the City of Melbourne and its consultants regarding the development of the two new local policies, it is evident that maintaining two separate local policies for heritage places within and outside of the Capital City Zone was the starting position. This general view is based on the premise that given the central city is a unique urban environment where density and building height is vastly different to the environment outside of the central city, a separate local policy for each is warranted. This is consistent with the approach taken to urban design in the MPS at present.*
67. *In a theoretical sense I consider this position has merit, given it is clear there are different built form standards within Capital City Zone when compared to the more established residential precincts and it is a zone that can deliver vastly different*

*outcomes to any other commercial area or activity centre. Undoubtedly the juxtaposition of taller built form adjacent to, or behind, a graded building within the Capital City Zone is more accepted than for land outside of the Capital City Zone, and this leads to a different approach being necessary in the consideration of alterations and additions to identified heritage places.*

68. *However, in my view the two policies as drafted do not pose such significant differences to warrant this approach. In fact, in nearly all circumstances the policy objectives and performance criteria drafted are equally as applicable to heritage places within the Capital City Zone as they are outside of this zone. Furthermore, I have been instructed that the City of Melbourne has no strategic plan to refine or modify Clause 22.04 in the future to further any point of difference regarding the assessment of heritage within the Capital City Zone.*

69. *Therefore, my review has led me to recommend that consideration be given to combining Clause 22.04 and 22.05 into a single local policy that would apply to all land within a Heritage Overlay, irrespective of the zone. Although this recommendation may appear to be a significant change to the Amendment, in reality it requires minimal redrafting. This is largely due to the fact that 13 of the 14 sub clauses addressing policy requirements and objectives are virtually identical between Clause 22.04 and 22.05.*

37. The recommendation of Mr Jordan to combine the two policies, and her subsequent draft of one combined policy, was the result of a detailed examination of both policies, a recognition that 13 of the proposed 14 policies were effectively the same and a recognition that there was no intention on the part of Council to further differentiate the two policies in the future.

38. Any suggestion that combining the two policies in to one has resulted in the distinctive environment of the Central City being disregarded, is rejected. Key policy differences are evident with regards to, inter alia, concealment of additions and new built form.

39. The 3 October 2018 Policy holds precisely the same strategic justification as the two separate policies proposed as part of the Amendment.

40. With regard to the further modification of the proposed policy on the basis of recommendations of Council's expert witnesses, for any planning scheme amendment of this size, it could not be regarded as unusual or inappropriate that the proposed controls benefit from further refinement throughout the planning panel process.

41. Ultimately, Council submits that it is the substantive content of the policy, not whether it is found in a combined or separate clauses of the Scheme, which matters.

### **VIII. SUPPORT FOR ADAPTIVE REUSE OF HERITAGE PLACES**

42. The adaptive reuse of heritage places is explicitly encouraged in the Policy Objectives of the 3 October 2018 Policy (as well as in Clause 15.03-1S), and adaptive reuse is encouraged in policy relating to demolition as an alternative to demolition. It should also be noted that there are no internal controls proposed for the vast majority of buildings subject to the Heritage Overlay, enabling wholesale reconfiguration of the interior of buildings without planning oversight.
43. The Council submits that there is sufficient flexibility within the proposed heritage policy to allow for a heritage place to be adaptively reused.

### **IX. POLICY IN RELATION TO FULL OR PARTIAL DEMOLITION**

44. The existing policy at Clause 22.04 includes policy objectives regarding demolition:

*“the demolition or alteration of any part of a heritage place should not be supported unless it can be demonstrated that the action will contribute to the long-term conservation of the significant fabric of the heritage place.”*

45. The 3 October 2018 Policy seeks that both significant and contributory buildings are generally to be retained. In the case of partial demolition, the 3 October 2018 Policy distinguishes between the two property gradings:

*Partial demolition in the case of significant buildings, and of significant elements of the front or principal part of contributory buildings will not generally be permitted.*

46. The demolition policy provides six additional considerations to be taken into account: the assessed significance of the place or building; the character and appearance of the building or works and its contribution to the values of the place and streetscape; the significance of the fabric of the building and contribution to its three dimensional form; whether demolition contributes to long term conservation; whether demolition is detrimental to the conservation of the place; and whether there are any exceptional circumstances that apply.

47. It is submitted that the 3 October 2018 Policy does not alter the intent of the existing policy, but rather provides greater specificity and guidance about the circumstances in which and the extent to which demolition would generally be considered appropriate.
48. As has always been the case, it is the heritage significance of the fabric proposed for demolition which is the yardstick against which adverse impact on the heritage place must be assessed. Self evidently, the general presumption against partial demolition of Significant heritage places can be rebutted if the fabric to be removed is of no or limited significance. Even if the fabric is significant, countervailing considerations in favour of demolition, including adaptive reuse or conservation of more significant fabric, may weigh in the balance. Non heritage considerations will also be relevant.
49. Pursuant to the principles of integrated decision-making discussed above, each proposal for full or partial demolition of a heritage building will be considered and weighed by a decision-maker in the context of all policy requirements and the proposed development at the relevant time. Nothing within the 3 October 2018 Policy prevents or restricts this exercise of discretion.

## **X. POLICIES RELATING TO SETBACK OF ADDITIONS AND NOT BUILDING INTO AIRSPACE OVER HERITAGE BUILDINGS**

### **A. APPROACH TO POLICY**

50. The proposed heritage policy does not, and is not capable of, imposing mandatory requirements regarding the future development of all heritage places. Policy is developed in order to guide the exercise of discretion, and is to be weighed and considered by decision-makers, along with all other policies at the time a planning application is brought.
51. The policy framework relating to land within the CCZ and the Hoddle Grid seeks to promote development and growth while addressing the valued character of the area, including places of heritage value. While policies related to the anticipated increase in the intensity of development in this area are important, it is incorrect to claim that these elements of the policy framework trump all other policy considerations. A far more sophisticated reading of the policy framework is required, that affords recognition to policies that make clear that where there is historic built form,

development may not achieve the same intensity as may be acceptable in the absence of heritage fabric.

52. The 3 October 2018 Policy acknowledges that a higher level of development is to be expected from land within the CCZ, and excludes CCZ land from the policy which requires concealment of additions and higher rear parts of new buildings.

## **B. RATIONALE FOR POLICY**

53. The 3 October 2018 Policy discourages development that could visually dominate or disrupt the appreciation of heritage buildings as they present to the streetscape. On the basis of extensive consultation and expert heritage advice, Council has formed the view that additions that build or extend into the air space directly above the front or principal part of a heritage building have the potential to compromise the building's character, appearance and assessed significance.
54. There are various examples of development which construct directly above the front or principal part of a heritage building. There are clearly differing views about the quality and desirability of these outcomes from a heritage perspective and in each instance in which this question is debated at the Tribunal, previous approvals are advanced as precedents for the approach. Council routinely opposes this design response on the basis that it is not respectful of the significance of protected heritage places, and that a setback above a retained building is a critical tool in maintaining the prominence of the heritage building. Whilst the use of a setback cannot guarantee good design outcomes and is not a substitute for intelligent and site responsive design, it is a reliable technique for preserving heritage values in conjunction with the other directions of the policy.
55. Council's proposed 3 October 2018 Policy seeks to avoid subjective debates about whether a response is sufficiently respectful and to provide clear direction in favour of the more sensitive treatment of heritage buildings, with greater emphasis being placed on maintaining the prominence of the original form in its presentation to the streetscape. The 3 October 2018 Policy seeks to achieve this outcome with clear space directly above heritage buildings allowing their original scale and appearance to remain the foremost building in important views. In Council's submission a vertical separation is generally not sufficient to adequately protect heritage values and a

horizontal separation is required. Whilst this may reduce the area of a potential tower floor plate, if heritage is to remain a defining characteristic of Melbourne and a major part of its attraction, distinctiveness and liveability, outcomes which overwhelm or dominate retained heritage buildings by literally towering over them should be discouraged.

#### C. OPERATION OF DESIGN AND DEVELOPMENT OVERLAY – SCHEDULE 10 ON SMALL SITES

56. Nine of the twelve sites that are the subject of additional submissions are affected by Design and Development Overlay – Schedule 10 (**DDO10**). The remaining three sites are affected by Design and Development Overlay – Schedule 2 (**DDO2**). DDO10 and DDO2 include design requirements which serve to define the available building envelope for new built form.
57. The requirements of DDO10 include that a new development must provide:
- a) a street wall of between 20-40 metres in height;
  - b) a setback behind the street wall to any higher built form of between 5-10 metres;
  - c) a 5 metres setback (or greater, depending on tower height) from side and rear boundaries; and
  - d) a separation of 10 metres between towers on the same site.
58. Variations are provided for corner sites, some laneway environments and towers over 80 metres.
59. Accordingly, DDO10 already serves to limit the development potential sites within the Central City. On small or narrow sites, it may already be difficult or impossible to achieve the setbacks required by DDO10 and develop a tower above a podium with a serviceable floor plate. This is a function of DDO10 and not heritage policy. It is wrong to characterise heritage policy as the principal constraint on development on small sites in the Scheme.
60. The proposed heritage policy, in contrast to DDO10, does not (and cannot) prescribe mandatory built form requirements. For submitters whose properties are located

within DDO10, the size of the sites will restrict the ability of these sites to comply with the front, side and rear setbacks required by DDO10 to achieve a tower component to a development proposal. Several of the sites are narrow, making it unlikely that a serviceable floor plate would be achievable.

61. The 3 October 2018 Policy would not change these outcomes.
62. Proposed heritage policy discouraging building directly over a retained heritage building will supplement the built form provisions of DDO10 by discouraging the outcome proposed and now approved for the Metropolitan Hotel.
63. In *Metro Pol Investment Pty Ltd v Melbourne CC* [2019] VCAT 128 (the **Metropolitan Hotel case**), the Tribunal considered the operation of DDO10 and the existing heritage policy in relation to land at 263 William Street, otherwise known as the Metropolitan Hotel.
64. At paragraph 65:

***But does the proposal comprise a tower?***

65. *In the above paragraphs, I have carefully set out and assessed the Council's contentions having regard to its characterisation of the building format as a podium and tower format. It suffices to summarise from all that I have stated in the above paragraphs that, if the Council is correct in its characterisation, not all the modified requirements are met. Accordingly, no permit could be granted.*
66. *However, as I have stated, I do not agree with the Council's characterisation of the building format as a podium and tower format.*
67. *To succeed with its contentions regarding characterisation, the Council is completely reliant on the definition of street wall being interpreted to include an implied requirement that it be continuous in a vertical sense. Or perhaps more accurately, continuous in the sense of there being no part setback greater than 300 mm. The Council relies on the 'waist', immediately above the heritage base, being set back more than 300 mm from William Street and Little Lonsdale Street, as forming a critical break in the street wall.*
68. *The Council says this implication can be drawn after applying a purposive approach to construing DDO10.*
69. *I am not persuaded there is such an implication and that it can be drawn from any purposive approach.*

70. *The definition of street wall is ‘any part’ of the building constructed to within 300 mm of a street boundary. The part of the building above the ‘waist’ is constructed less than 300 mm from the two street boundaries and is therefore part of the building. Accordingly, that part comprises part of the two relevant street walls. If that part was set back more than 300 mm from those boundaries, it could not form part of the street wall.*
71. *The definition needs to be applied with a modicum of common sense. If 15 of the 16 levels were set back more than 300 mm and the topmost level was set back less than 300 mm, I accept it would be difficult to accept there was not a podium and tower format. That example would be a very strange one and it is not useful to construe a statutory provision having regard to unrealistic or extremely unlikely examples. The example could also be met with a refusal to contemplate minor departures as being a de minimis departure from an outcome according to an otherwise sensible interpretation.*
72. *I also do not accept there is an implication for policy reasons. If there was an implication, the modified requirement could be said to be met if the proposal included a street wall that was continuous to 40 metres and a tower element was above that and set back 5 metres from side and rear boundaries or zero from one side boundary in the specified circumstances. In other words, the implication could have an undesirable effect with a proposal involving retention of a heritage base in that the new would immediately sit on top of the old with the result of a potential loss of appreciation of the heritage fabric.*
73. *So, I do not think it is necessary to find an implication having regard to a purposive approach to interpretation. Even if I did have regard to purpose, I would have to have primary regard to the design objectives. I see no implication about continuity in built form as being a necessary part of a street wall. It would be a very ‘long bow’ to conclude that pedestrian amenity, public realm attributes, internal amenity or high quality design as containing the implication.*
74. *I find the building format is not a podium and tower format. It is unnecessary to find and identify an alternative format. It suffices to find there is no tower element in the format. DDO10 may encourage a podium and tower format for some developments. But its authors, by implication, accept that other formats might be acceptable having regard to the merits of individual building designs.*
65. Accordingly, the Tribunal found that in legal terms the development was not a podium and tower (where the heritage building street wall would have served as the street wall of the podium), but rather the heritage building street wall was seen as the lower portion of a street wall, the upper part of which continued to the maximum permissible street wall height on a corner of 80m, separated by an indented ‘waist’.
66. Whatever might be said about the correctness of this interpretation or the faithfulness to the intention of the drafters, the consequence of the decision is to provide an

opportunity to construct a new street wall to the maximum permissible street wall height (40m or 80m) directly above an existing heritage building.

67. Council opposed this interpretation and this outcome in the Metropolitan Hotel case and is concerned that the decision creates the serious prospect of default design responses which introduce an addition to the maximum street wall height (which will often be significantly in excess of the height of the heritage building) directly above a retained heritage building without providing any setback. In these circumstances, the 3 October 2018 Policy has important work to do in discouraging these outcomes. In the Council's submission, such outcomes are not consistent with general policy to ensure new development is respectful of the significance, character and appearance of heritage places; and are not consistent with specific policies not to visually dominate or visually disrupt the appreciation of a heritage building as it presents to the streetscape, and to maintain the prominence of heritage buildings by setting back the additions behind the front or principal part of the retained heritage building.

#### D. CONCLUSION

68. The Council submits that the 3 October 2018 Policy, with regard to design, form, scale and setback of additions places an emphasis on new built form which does not visually dominate and instead maintains the prominence of a heritage building and its sense of depth. The 3 October 2018 Policy seeks to ensure that heritage buildings are not overwhelmed by additions which seek to maximise floor space at the expense of heritage values.

### XI. GRADING OF PROPERTIES IN CITY NORTH

69. The Supplementary Expert Witness Statement of Bryce Raworth on behalf of Melbourne Business School took issue with the methodology relied upon by RBA Architects + Conservation Consultants Pty Ltd (**RBA**) to convert heritage properties within City North to the new gradings system.
70. Within the *City North Heritage Review*, RBA identified individually significant properties graded A to C as Significant and D properties as Contributory. This methodology was applied by Council to heritage places within a precinct.

71. Council acknowledges that there is a real dispute about the intended treatment of C grade buildings in precincts in City North and that these properties should be the subject of further assessment before their status as Significant or Contributory is definitely determined.
72. Accordingly, Council intends to refer the C graded properties within City North (123 properties) to Lovell Chen to be assessed according to the new gradings system, pursuant to the methodology adopted by Lovell Chen for other precincts with the Amendment.
73. As a consequence, Council proposes that the Panel recommend the inclusion of transitional provisions within the 3 October 2018 Policy, to allow the C graded buildings within City North to continue to be subject to the current heritage policy within the Scheme, until such time as they are individually reviewed by Lovell Chen, and via a new amendment, converted to the new gradings system on the basis of the methodology adopted by Lovell Chen.
74. Council proposes that the following text be incorporated within the 3 October 2018 Policy:

***22.05-20 Transitional provisions***

*This policy does not apply to properties identified in the incorporated document Heritage Places Inventory 2017 with a C letter grading and notated as 'Transitional'.*

*Properties identified in the incorporated document Heritage Places Inventory 2017 with the notation 'Transitional' are to be assessed against the relevant policy contained in the incorporated document, Transitional Heritage Policies 2019.*

*Expiry of transitional provisions*

*The requirement of Clause 22.05-20 Transitional Provisions cease to have effect after <day> <month> <year>.*

75. It is noted that in regards to the Melbourne Business School, the implications of these proposed transitional arrangements are that identified heritage buildings at 174-180 Leicester Street and 193-195 Bouverie Street would be the subject of transitional provisions.

## **XII. CONCLUSION**

76. The Council submits that the 3 October 2018 Policy is supported by robust background and strategic work and respectfully requests that it be supported by the Panel.
77. The Council will seek to address any further issues which arise over the course of the panel hearing in its 'Rights of Reply' in the form of a Part C submission.

**Susan Brennan**

**Carly Robertson**

**Counsel for the Planning Authority**

**11 February 2019**