

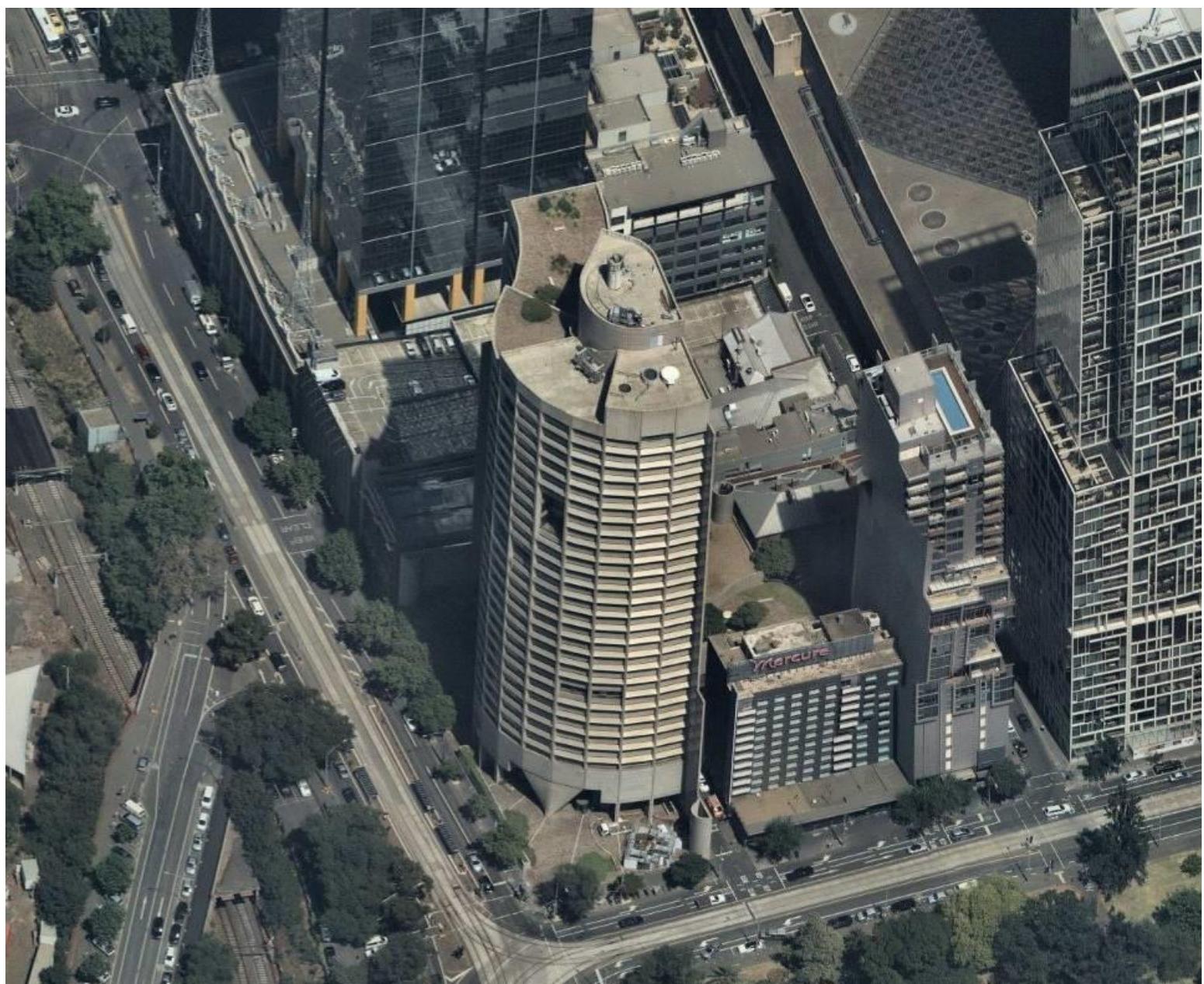
Melbourne Planning Scheme Amendment C308

1 Spring Street and 21-25 Flinders Lane, Melbourne

Urban Design and Planning Evidence
Prepared by C A Heggen BTRP FPIA

Prepared for Phillip Nominees Pty Ltd
Instructed by Norton Rose Fulbright

February 2019



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1 Preamble

1.1 Introduction

Amendment C308 to the Melbourne Planning Scheme applies to land generally within the Hoddle Grid and Southbank.

The explanatory report to (Am C308) notes that the previous Amendment C270 to the Melbourne Planning Scheme (the planning scheme) introduced two types of precincts in the Central City – the Special Character Areas and the General Development Area, each contained “minimum setbacks from streets and laneways, building separation requirements and revised overshadowing and wind requirements.”

Amendment C270 also introduced floor area ratio and uplift requirements and a number of mandatory and discretionary height controls.”

The explanatory report to Am C308 goes on to say:

“Clause 22.01 Urban Design in the Capital City Zone is currently the policy used to assess and negotiate good design outcomes. It is widely acknowledged that a review of clause 22.01 is timely and necessary in order to strengthen the focus on the qualitative experience of the city, in particular the interface of buildings with the street, architectural quality and the impact on the public realm. The policy guidance resulting from Amendment C308 will not focus on yield, massing and built form and most importantly be complementary to the policies introduced through Amendment C270.”

In effect, Am C308 rolls local policy about urban design into a new Schedule 1 to the Design and Development Overlay. The new Schedule 1 will widen the scope of urban design requirements from that which exists at present (including the existing Schedule 1 provisions for Active Frontages), and consolidates the existing Design and Development Overlay Schedule 4 provisions for weather protection into the new Schedule 1. The area to which the new Schedule 1 will apply extends over the whole of the Hoddle Grid and Southbank – a wider area to that which the existing Schedule 1 currently applies.

1.2 What does Am C308 do?

In concise terms, Am C308:

- Deletes Clause 22.01 Urban Design in the Capital City Zone policy;
- Replaces Schedule 1 to the Design and Development Overlay Active Street Frontages with a new Schedule 1 to the Design and Development Overlay Urban Design in the Central City and Southbank. The proposed DDO1 includes development requirements that seeks to ensure a high standard of urban design, architecture and landscape architecture in all new development. The draft ‘Central Melbourne Design Guide’ November 2018 is to be included as a Decision Guideline for the exercise of discretion;
- Deletes Schedule 4 to the Design and Development Overlay (Weather Protection – Capital City Zone) and incorporates the provisions of this Schedule into the proposed DDO1;
- Replaces the Schedule to Clause 61.03 with a new Schedule to Clause 61.03; and
- Deletes Map No 8DDO1 and Map 8DDO4 and replaces them with a new Map No 8DDO1.

1.3 The task and instructions

I have been requested by Norton Rose Fulbright on behalf of Phillip Nominees Pty Ltd, owner of the land at 1 Spring Street and 21-25 Flinders Lane, Melbourne, to review the planning and urban design merits of Am C308 generally and more particularly with reference to the proposed Design Requirement under Table 2 of the proposed DDO1, namely;

“Retain a minimum of 50% of any existing publicly accessible private plaza oriented to a main street or street that contributes to reducing pedestrian congestion or where there is good potential through retrofit and repurposing to achieve a high quality space with opportunities for stationary activity.”

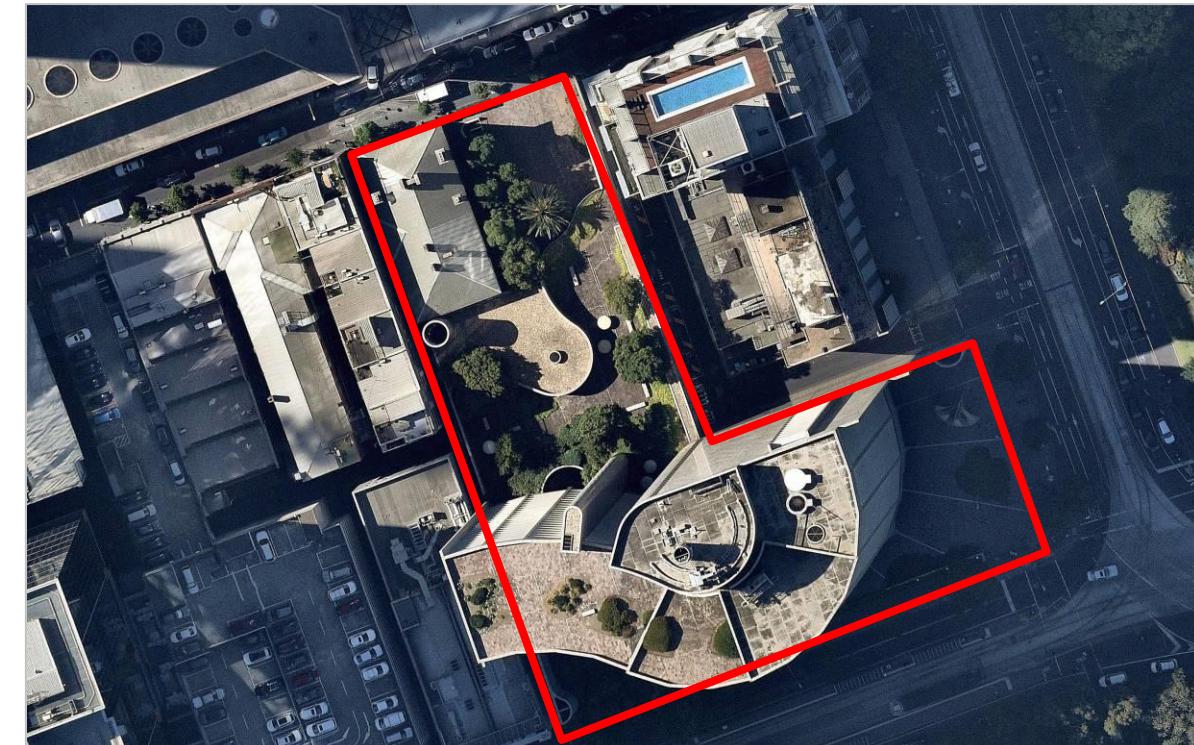
I examine the issues and consequences of this particular provision at a strategic level and then consider the effect of this proposed requirement on the Phillip Nominees land (the Land).

An aerial photograph of the Land is included at **Figure 1** and a lot plan is included at **Figure 2** overleaf.



Source: Nearmap

Friday, 19 October 2018



Source: Nearmap

Tuesday, 16 January 2018

Figure 1 – Aerial photographs of the land

1.4 The Land

The Land comprises a single Certificate of Title, more particularly described as Volume 10644, Folio 888.

That portion of the land known as 1 Spring Street accommodates the former Shell head office building which was designed by Harry Seidler. The Flinders Lane address hosts the three storey art nouveau building known as Milton House and a publicly accessible ground level entry plaza to the rear of the Seidler building. The former shell office and Milton House are physically attached by an inset slender glazed double storey connection.

A pedestrian walkway on the Land runs along the west side of the former Shell office building and Milton House connecting Flinders Lane with Flinders Street. The transition over the difference in levels between Flinders Lane and Flinders Street is managed through a series of stairs and walkways.

The footprint and 3D building form of the former Shell office building is that of a nautilus shell. The curved elevations of the building create 3 publicly accessible plazas at the ground plane namely;

- on the Spring Street / Flinders Street corner on axis with the Wellington Road approach to the Hoddle Grid,
- along the Flinders Street frontage created by the curved tail of the nautilus wrapping away from the Lindrum Hotel on Flinders Street, and
- in the northern setback from Flinders Lane.

Photographs of the land and buildings are depicted in Figures 3, 4, 5 and 6 are located overleaf.

1.5 Existing Statutory Controls

Melbourne Planning Scheme

The Land is zoned Capital City Zone, Schedule 1 (CCZ1) which applies to that part of the Hoddle Grid outside of the retail core. The Land is also affected by two (2) Design and Development Overlay (DDO) provisions of relevance to Am C308 namely;

▪ DDO4 – Weather protection

The map, to DDO4 shows that the weather protection requirement extends across the Flinders Street frontage of the Land but does not apply to the Flinders Lane frontage.

▪ DDO10 – General Development – Built Form

DDO10 sets out built form requirements for new development including building height, overshadowing and tower separation provisions. A number of these requirements were introduced via Am C270 to the planning scheme.

The Land is also partly affected by Heritage Overlay (HO637) and applies to Milton House at 21-25 Flinders Lane. Number 1 Spring Street is not affected by a Heritage Overlay.

Extracts of the relevant planning scheme maps that apply to the land are included at **Appendix A**.

Victorian Heritage Register

Both Milton House and the former Shell office building are included on the Victorian Register as being of State cultural heritage significance, although I note that the planning scheme does not apply a heritage overlay to the former Shell office building site.

The statement of significance for Milton House (Ref VHR H582) notes that it is of architectural significance to the State of Victoria as;

“...one of the rare examples of the application of art nouveau design to a building in Victoria. The building is an exquisite composition drawing substantially on the intricacy and delicacy of art nouveau but also skilfully blending elements of the more robust and powerful American Romanesque and Georgian styles to produce an integrated but unique design.”

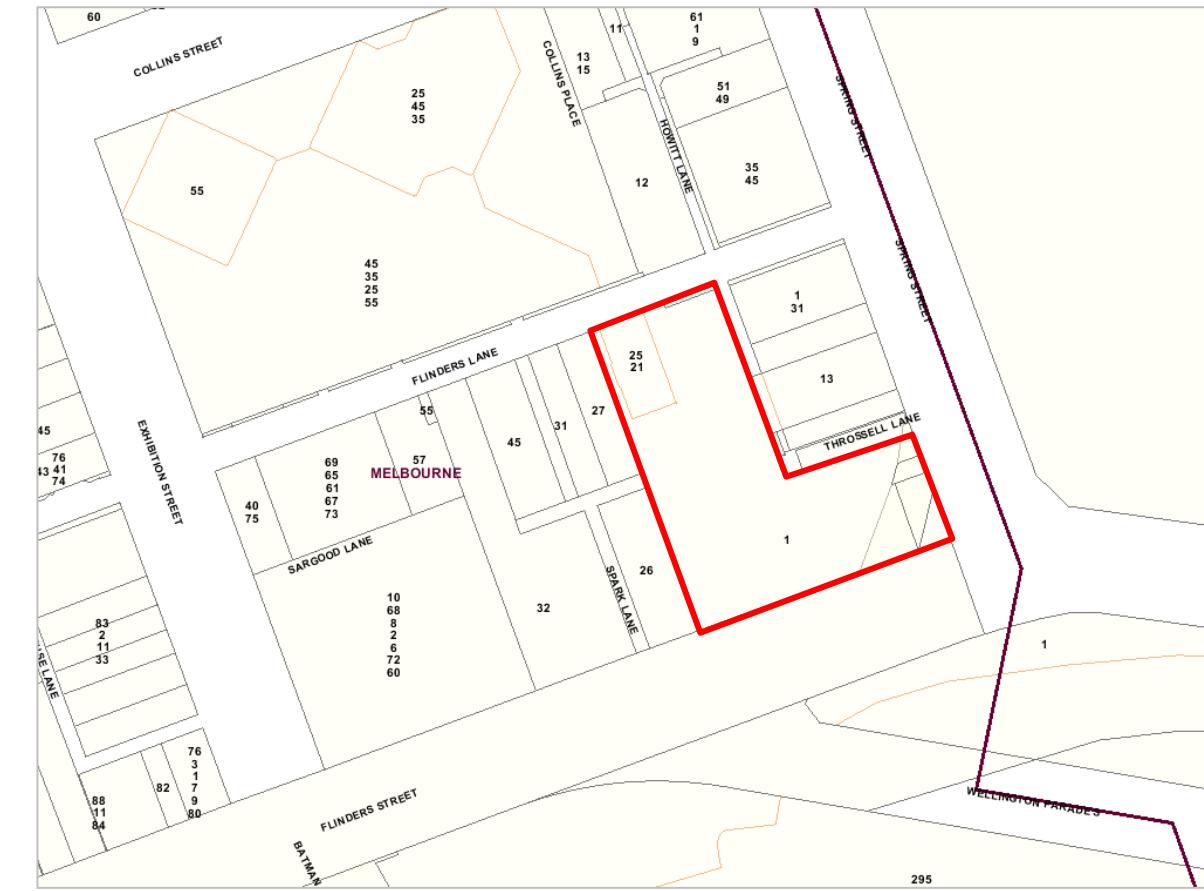


Figure 2 – Lot Plan of the land

The statement of significance for Shell House (Ref VHR H2365) notes that it is of architectural and aesthetic significance to the State of Victoria as;

“...an outstanding example of a late modernist building in Victoria designed by one of the styles most accomplished proponents, the renowned Australia architect Harry Seidler.” (my emphasis)

Further that, *“...the building was conceived very quickly and developed into a complex and sophisticated design. It combined a difficult location with an ongoing commitment to the Modernist ideals that dominated his work. These ideals included geometry, simplicity of form without unnecessary adornment, sculptural form, visual expression of structure and generous civic spaces.*

The latter included the controversial setting of the building back from the street edge, defying City of Melbourne policy for active street frontage. As a result public plazas were provided at the main corner entrance at the corner of Flinders and Spring Streets, in Flinders Lane and on Flinders Street.” (my emphasis)

1.6 Proposed Statutory Controls

Am C308 will affect the Land directly by expanding the application of the existing DDO1 (Active Street Frontages) which currently does not apply to the property, so that the new replacement Schedule 1 with its widened scope applies to all land within the Central City (Hoddle Grid) and Southbank.

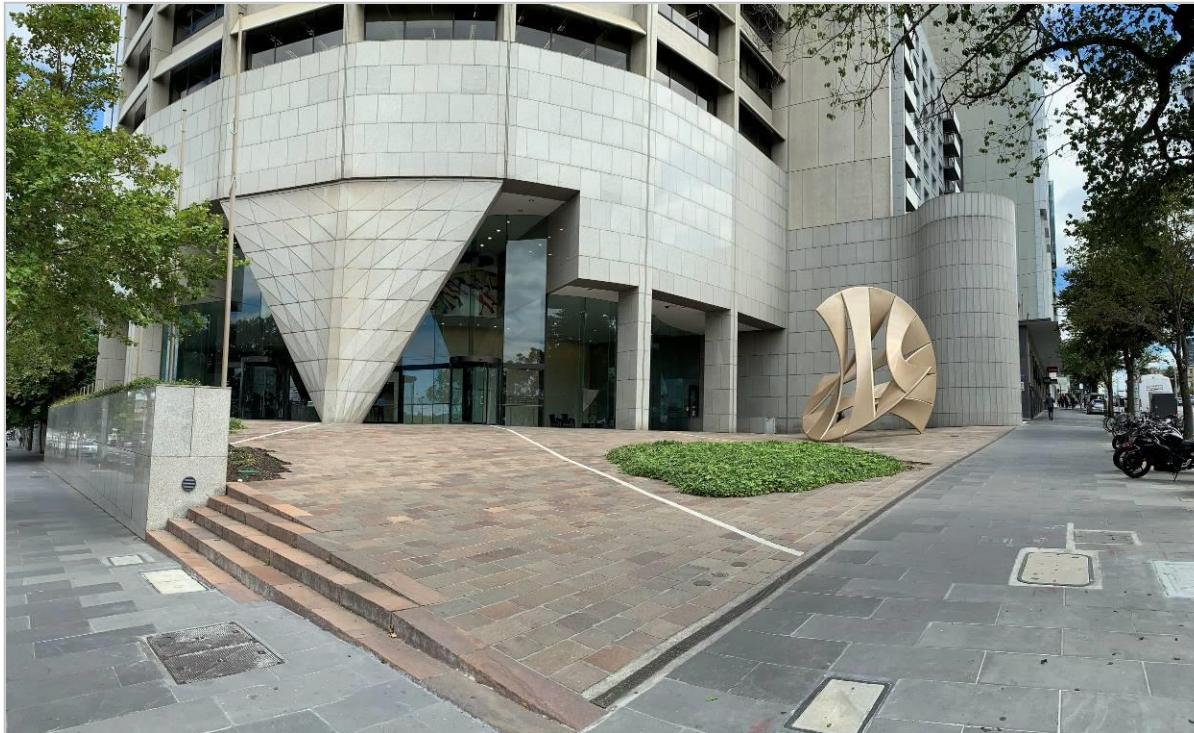


Figure 3 – Corner of Spring Street and Flinders Street

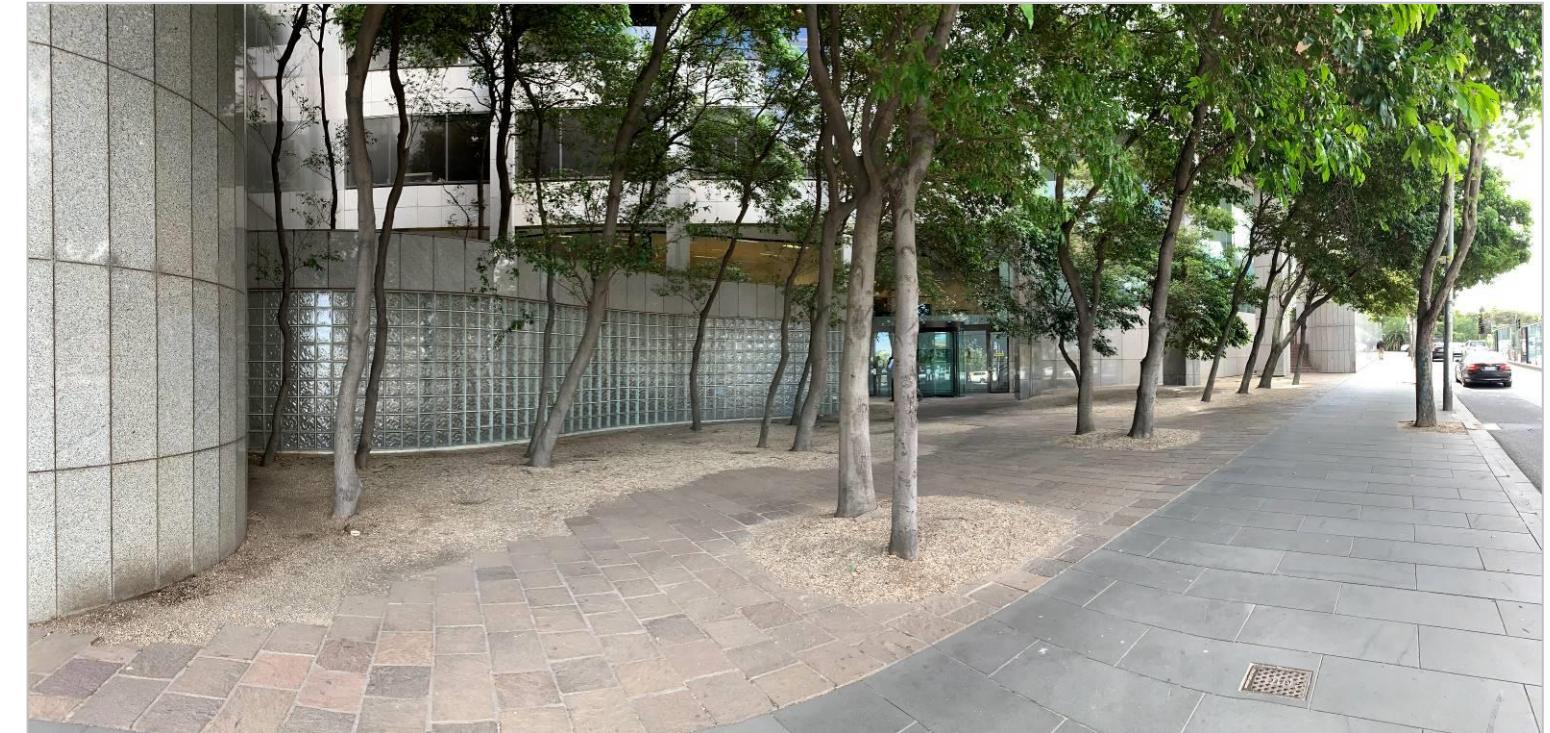


Figure 4 – Looking east along Flinders Street frontage

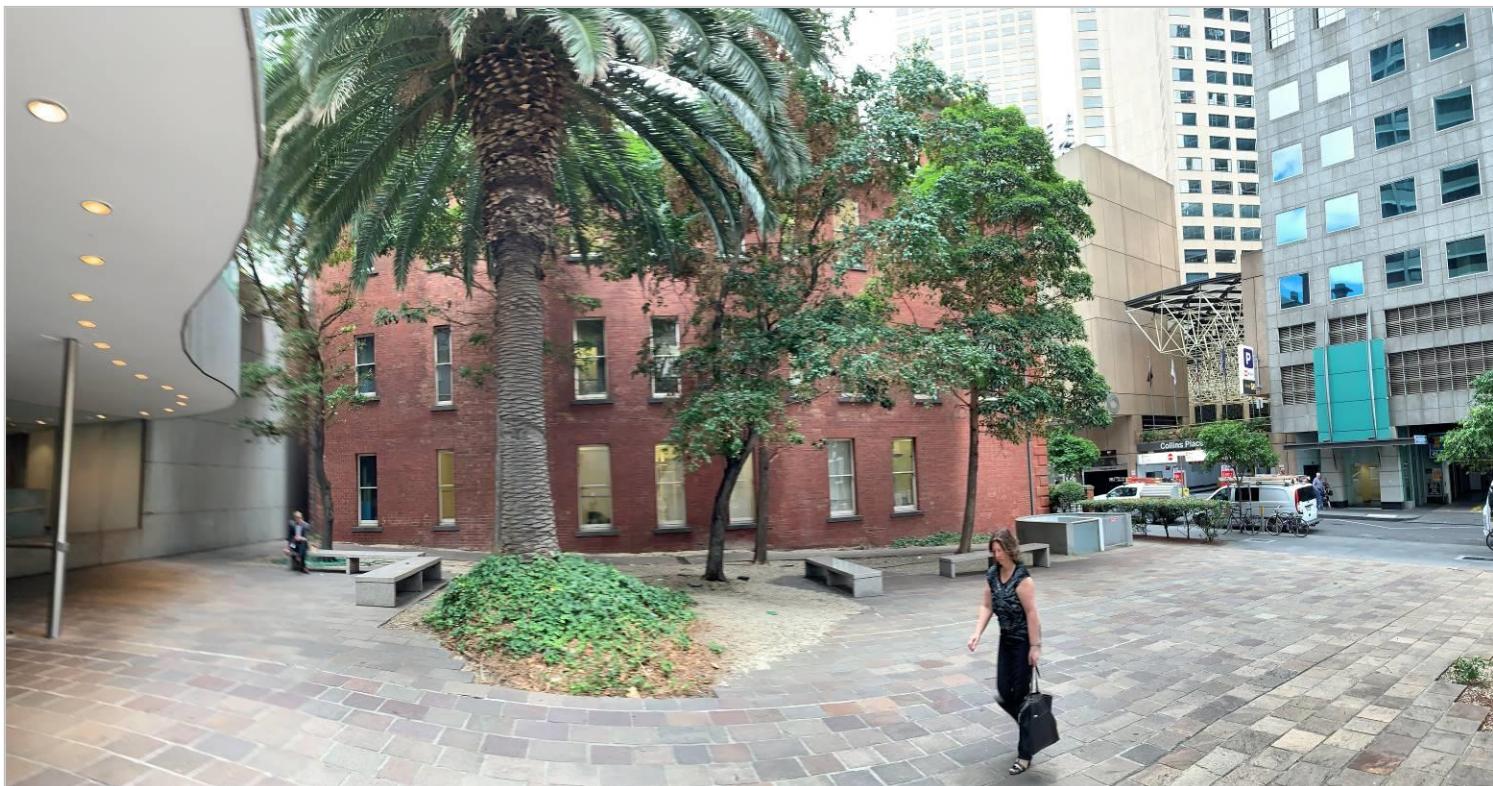


Figure 5 – Flinders Lane Plaza

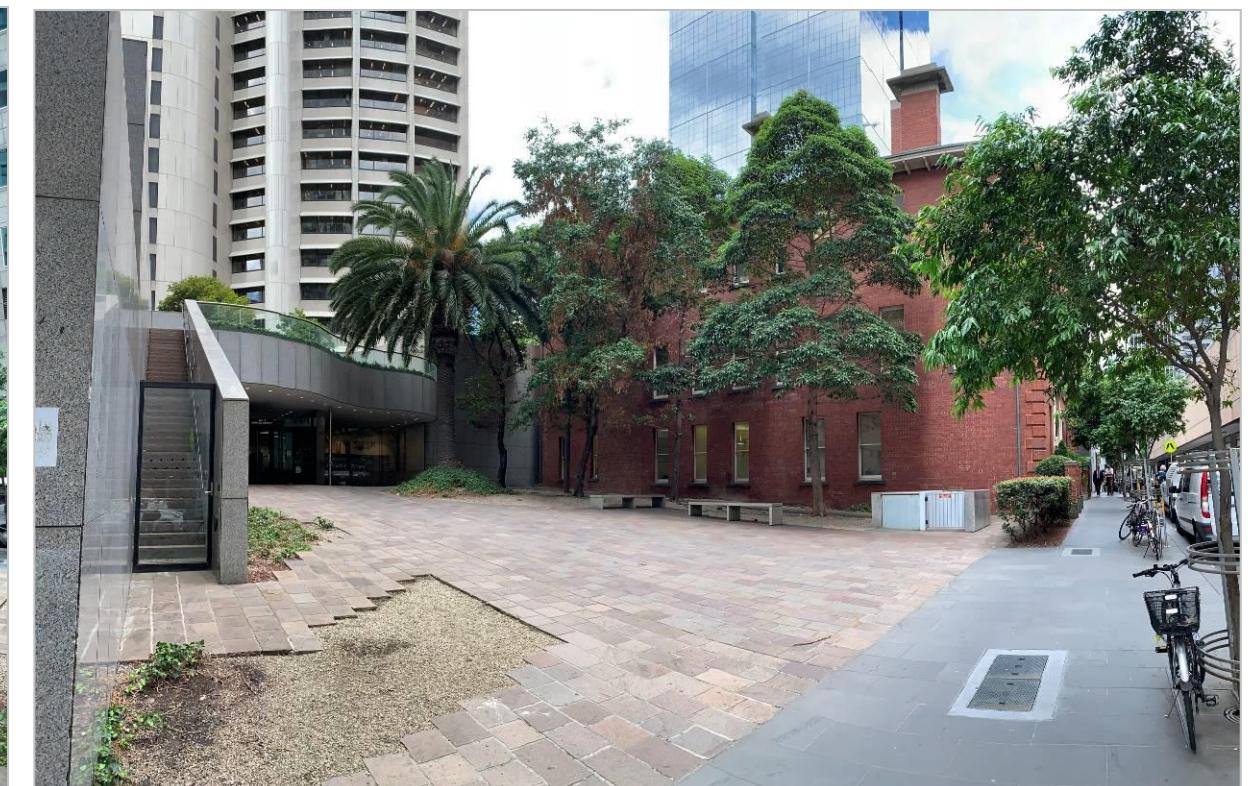


Figure 6 – Flinders Lane Plaza

1.7 Summary of Conclusions

- A review and update of an existing Clause 21.01 and the rationalisation of DDO Schedules 1 and 4 is timely. However, drafting of the consolidated and expanded DDO1 as exhibited is unclear and ambiguous.
- The intrinsic nature of urban design is that it is a qualitative concept and resists easy codification. Similarly moving urban design policy into columns of a DDO does not of itself guarantee improved outcomes. In short, if there are perceived problems of how Clause 21.01 is working then fix the Clause, it does not necessarily follow that local policy should be deleted.
- The VPP's allow for the use of a DDO exclusively without a nexus with a local policy. However there are elements of the proposed DDO1 that are more properly located in policy if they are to be retained at all, such as the provisions relating to publicly accessible but privately owned plazas.
- The proposed provision of 50% of any publicly accessible but privately owned plazas in any future redevelopment, should be deleted from the draft DDO1 as it;
 - Is inequitable,
 - Lacks strategic analysis on the quality and locational merits of the retained area,
 - Could result in retained areas that are token in size at the cost of achieving a more desirable urban design response for site, and
 - Conflicts with other urban design objectives such as "avoiding deeply recessed ground floor facades".
- If the retention of a proportion of an existing publicly accessible but privately owned plaza is to be included in the planning scheme, then I consider such a provision should more properly be located in local policy. In this way, criteria for what can be considered to a qualifying "plaza" could be established and that clear guidelines for design consideration in the securing of such space can be set down.

2 Assessment

2.1 Is the new DDO1 a sound strategic basis for managing urban design in the Central City?

At the core of Am C308 is the ongoing search and interrogation of how best to achieve good urban design outcomes through the statutory framework of a planning scheme.

The background strategic work to Am C308 undertaken by the City of Melbourne is contained in the Synthesis Report and appendices entitled "Promoting High Quality Urban Design Outcomes in the Central City and Southbank" January 2018 (the Synthesis Report).

The central thesis of this document is that the current Clause 22.01, Urban Design in the Capital City and Southbank, is ineffective. This conclusion was arrived at and informed by a legal review of relevant VCAT cases, an audit of existing policy and the benchmarking of urban design approaches in other cities.

Page 14 of the Synthesis Report notes that:

"one of the challenges is implementing an effective urban design policy is the 'performance based' approach unique to the Victorian Planning Provisions [VPPs]. This compromises many layers of indirect policy statements which are required to be balanced against one another, including high level state provisions and more specific local requirements".

Leaving aside whether the 'performance based' approach is in fact unique to Victoria and the VPPs, the question remains, "How is urban design policy to be implemented effectively?"

One of the dilemmas in answering this question is that good urban design is itself, a qualitative concept and not a quantitative or formulaic solution. Whilst there are certainly well accepted urban design principles that have a strong rationale to them, arguably the VPPs performance based approach is the ideal vehicle for expressing

urban design policy. On this basis I disagree with the fundamental assertion in the Synthesis Report that the VPP performance based approach is antithetical to achieving good urban design outcomes.

The danger in approaching the perceived problems of the current Clause 22.01 by way of a new DDO Schedule 1 is that there are excellent examples of good urban design outcomes at the ground plane and within a 20m street wall profile that have been achieved under the current regime and include:

- 50 Lonsdale Street, 'the Urban Workshop' (John Wardle Architects); and
- 121 Exhibition Street, 'Southern Cross Tower' (Woods Bagot).

Photographs of these developments are included in **Appendix B**.

These examples demonstrate the difficulty in attempting to codify good urban design outcomes as these examples also include one or more design attributes that the new replacement Schedule 1 seeks to avoid. Yet the quality of the public realm and more particularly the privately owned but publicly accessible areas of these examples are of excellent design quality and greatly improve the pedestrian experience.

I have no problems per se with a review of the operation of Clause 22.10 and a rationalisation of DDO's applied in the Central City. However, because of the qualitative nature of urban design, one response to the problem identified in the Synthesis Report is that if the existing local policy is considered to be ineffective, then fix the local policy rather than delete it. It is misguided to think that by moving a qualitative concept into DDO columns good urban design outcomes will necessarily follow.

Moreover, local policy and/or overlay controls are but one part of the equation in the delivery of successful urban design outcomes. The other part of the equation is the method of workshopping a design proposal.

The design process by its very nature is an iterative one and requires collaboration rather than the siloed practices of Council internal referral processes.

These elements of the overall urban design equation reflects a broader systematic problem inherent in Victoria's planning system and how both Council's and the private sector often approach an approval process. However, Council internal referral procedures do play a significant part in the retreat to codification rather than the use and application of policy and serves to undermine the basis of the VPP program.

In concise terms, the use of a DDO exclusively in place of local policy is certainly an option that the so called new format planning schemes allows. However, the risk is that this statutory management technique may well be counterproductive to the delivery of creative and worthy design solutions - the very outcomes that the City of Melbourne seeks in the quality of the interface with the public domain. The statutory obligation to apply the nominated Design Requirement irrespective of its relevance to a particular site or desirability, could mitigate against an alternative solution that might be preferable.

Nevertheless, if the use of the DDO Schedule 1 is to be pursued in the delivery of urban design policy, then I make some recommendations in the next section of this evidence regarding its drafting and more particularly the merits of the new provision about existing plazas.

2.2 If DDO1 is to be the new urban design management tool then what should it say?

The document entitled 'A Practitioners Guide to Victorian Planning Schemes' Version 1.1, October 2018 prepared by the Department of Environment, Land, Water and Planning (DELWP) requires that provisions must be 'clear and unambiguous'.

The submission prepared by Norton Rose Fulbright on behalf of Phillip Nominees identifies a number of examples where the drafting of the new DDO Schedule 1 as exhibited is not clear and unambiguous and I agree with this characterisation.

The post exhibition version of the draft DDO1 as prepared by the City of Melbourne clarifies and resolves the repetitive and inconsistent drafting of many of these matters. However, there still remains some inconsistencies and concerns.

One such example is the proposed Design Requirement under Table 2 of the proposed DDO1, namely;

"Retain a minimum of 50% of any existing publicly accessible private plaza oriented to a main street or street that contributes to reducing pedestrian congestion or where there is good potential through retrofit and repurposing to achieve a high quality space with opportunities for stationary activity."

This provision is problematic both in its drafting (if it is to be retained at all) but more particularly its planning merit as follows;

Firstly, it is somewhat ironic that after 30 years of stewardship by the City of Melbourne for the;

- activation of the street edge,
- hard edge delineation of the public domain from private property rather than a weakened street edge created by large building setbacks, and the
- sponsorship of the infill of plazas such as Post Office Square,

that Council is now seeking to retain the very gaps in the streetscape, open street edges and large building setbacks that qualify as plazas which it

has been encouraging the removal of over decades.

Secondly, the provision makes no accommodation or qualification for the quality of the existing plaza regarding such matters as overshadowing, pedestrian desire lines on the outlook and aspect of an existing plaza. Further, the specification of a 50% dedication to a retained open area could result in a token provision of space that serves little purpose. Alternatively the 50% requirement could mitigate against the achievement of more desirable urban design outcomes for a particular site.

Thirdly, this Design Requirement as currently drafted does not make it clear whether the retained plaza area is to be open to the sky or whether it could be covered over in the form of an atrium such as Federation Square or cantilevered structure such as the Urban Workshop. Both examples deliver high quality publicly accessible spaces that are weather protected and activated.

Fourthly, this provision does not appear to have been based on a strategic assessment on where the best location is for such retained plazas in the Hoddle Grid or Southbank.

Fifthly, this provision is in direct conflict with the proposed Design Requirement that "*deeply recessed ground floor facades or low height colonnades are [to be] avoided*"

Sixthly and perhaps most importantly, this provision is seeking to effectively sequester 50% of the area of existing privately owned but publicly accessible plazas in any future redevelopment without any corresponding "public benefit" entitlement for the landowner.

Clause 22.03 establishes a statutory mechanism for the extraction and delivery of a public benefit in exchange for additional floor area above a floor area ratio of 18:1.

A guideline document entitled "*How to calculate floor area uplifts and public benefits*" dated November 2016, prepared by DELWP sets out the categories and valuations of specified Public

Benefits including: "*publicly accessible open areas on site additional to any public open space contribution, such as plazas, laneways, required setbacks and parks directly accessible from a public street or public area.*" (My emphasis).

As matter of principle, it is inequitable that a new development can qualify for a floor space uplift in exchange for the delivery of a privately owned but publicly accessible plaza in accordance with Clause 22.03, but if this plaza is an existing one, then 50% of the area is required to be surrendered and dedicated as such without the benefit of any floor area uplift.

The Synthesis Report notes at page 29 that;

"In light of the increased intensity of use of the city's footpaths, there is a question regarding the appropriateness of infilling remaining plazas on private land that were initially provided as a public benefit in order to access bonus plot ratio and subsequently higher development yield."

Whilst I have not undertaken research in to how central city privately owned but publicly accessible plazas have come about, it is not clear at all that these plazas were delivered in return for "access to higher development yield." In the case of the former Shell office building, it was intrinsic to the modernist design oeuvre of Harry Seidler that created the ground plane plazas at the base of his tower and not any exchange for plot ratio bonuses as far as I can make out.

I consider that the aspiration to retain and refurbish privately owned but publicly accessible plazas to be a worthy public realm improvement objective in principle. However, if the panel is of a mind to recommend approval of Am C308 then this Design Requirement should delete the 50% threshold and be expressed more broadly with the appropriate qualifications that address the matters I have set down above. Moreover, I consider this urban design objective to be more properly accommodated in policy rather than in a DDO1.

2.3 What are the implications for the Phillip Nominees Land?

A plan depicting the Phillip Nominees Land and the position of the former Shell office building and Milton House on the property is included as

Figure 7.

This plan depicts the building footprints and those areas that comprise the privately owned but publicly accessible plazas.

Given that the primary orientation of the Seidler building is to Spring Street and Flinders Street, it is from the corner intersection plaza and forecourt entry that presents the best location from which to view and appreciate the architecture and aesthetic qualities of the former Shell building. Both from a heritage perspective and a sense of address, it is likely that this plaza will be retained as originally conceived into the future.

What presents a greater opportunity to repair the street edge and activate the ground plane in accordance with the current and proposed planning scheme urban design objectives, is the potential presented by the Flinders Lane plaza.

On the Flinders Lane elevation of the Seidler tower the lift core flattens off with the restricted access first floor roof garden cantilevering over the northern entry into the building. This elevation whilst well resolved presents as a back to the building and not its primary frontage.

I have requested Mr E Mitchell architect of Hassell Studio to undertake massing studies of a potential development envelope on the Flinders Lane plaza. The result of this investigation is contained in a separate booklet and which accompanies this evidence.

The Hassell work confirms that;

- There is 1,830sqm of physically accessible but privately owned plazas that are open to the sky.
- The northern forecourt on Flinders Lane, comprises a total of 480sqm that is open to the sky.
- There is potential to fashion a useful floorplate for an infill building that;

- adopts DD01 setbacks and building heights
- respects the heritage significance of Milton House and the former Shell office building
- Repairs the street edge and activates the grand plane
- Allows the potential for a retained section of the existing forecourt plaza behind Flinders Lane infill building and under a cantilevered tower.

The Hassell work demonstrates the potential opportunities that would be closed off by the current drafting of Am C308 to the detriment of a potentially superior urban design outcome.

3 Conclusion

Am C308 should not proceed as exhibited. Whilst a review of the existing Clause 21.01 and a rationalisation of DDO Schedules 1 and 4 is timely, the deletion of local urban design policy and its replacement with a new DDO1 does not guarantee improved outcomes. I consider that if Am C308 is to be advanced then it should be modified to reflect the recommendations I have set down in Section 1.7 of my evidence statement.

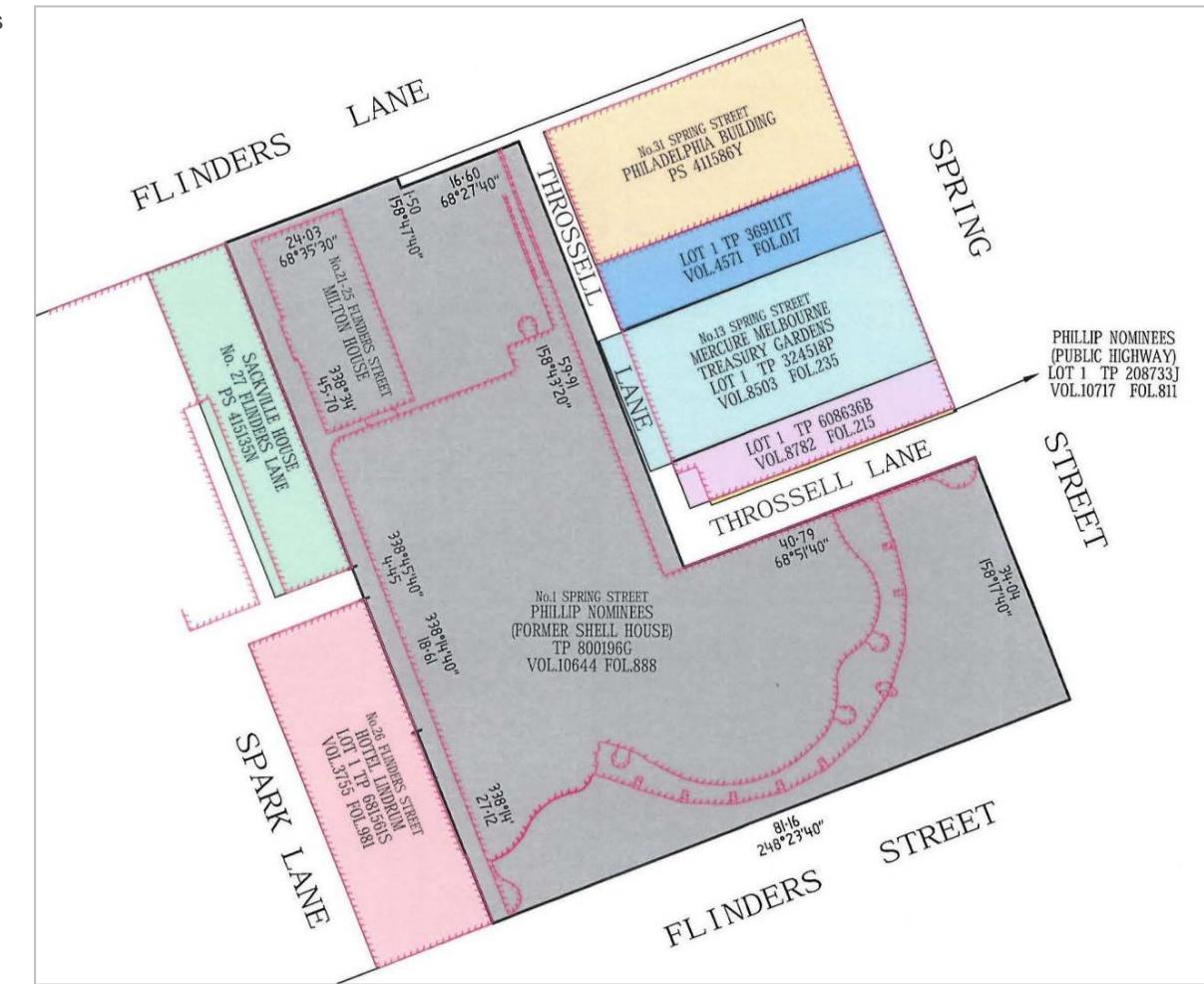


Figure 7 – Title Compilation

Celia Heggen

C A Heggen
BTRP FPIA

Appendix A: Existing controls

The land at 1 Spring Street and 21-25 Flinders Lane, Melbourne is currently affected by the following zone and overlay controls of the Melbourne Planning Scheme.

C1 Zoning

The site is located within the Capital City Zone – Schedule 1 (Outside the retail core) CCZ1 pursuant to Clause 37.04.

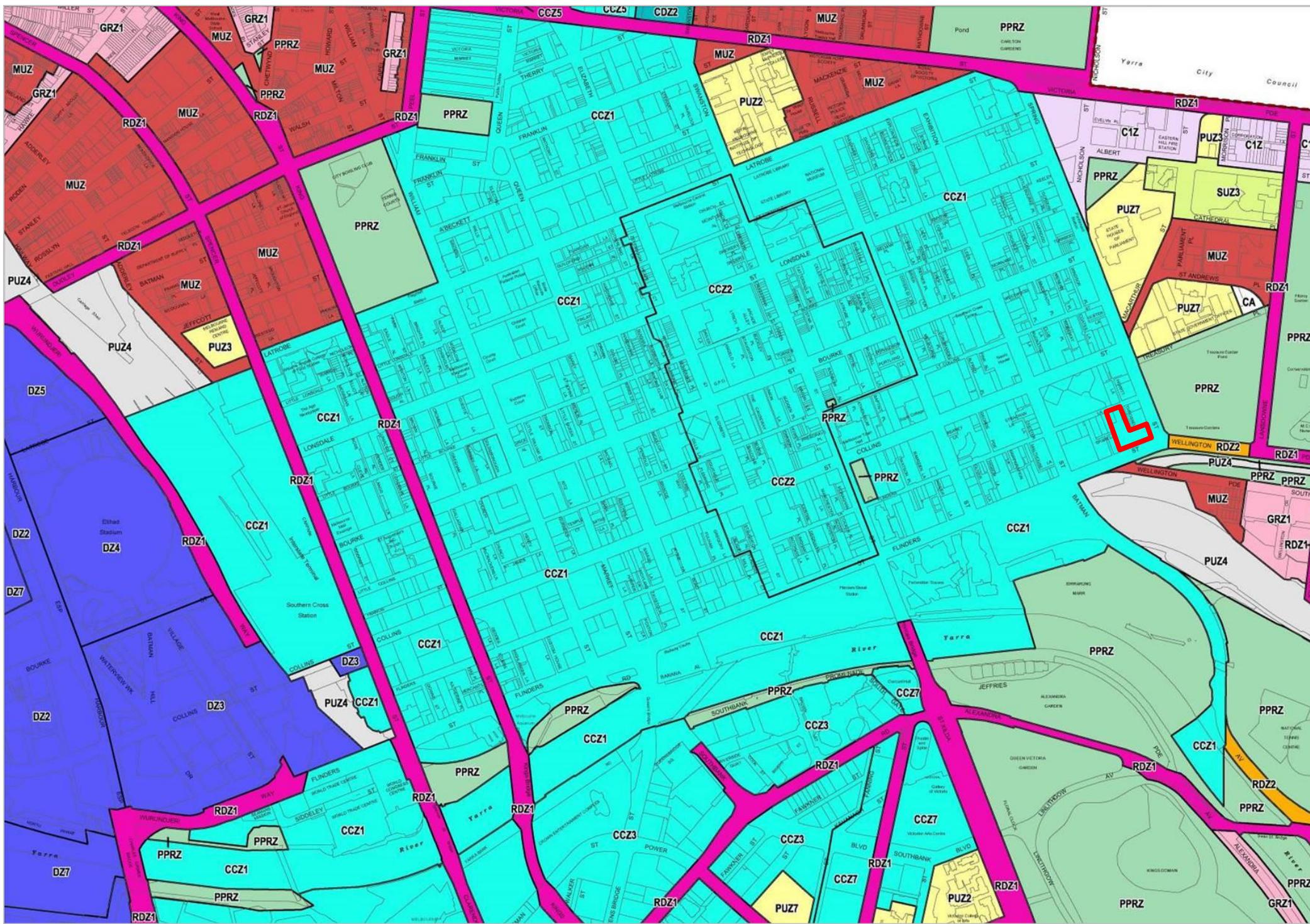


Figure A1 – Zone Map

Appendix A: Existing controls (Continued)

C2 Overlays

Four overlays affect the site, as follows:

- Design and Development Overlays –
 - Schedule 4 (DDO4)
 - Schedule 10 (DDO10)
- Heritage Overlay – Schedule (HO637)
- Parking Overlay – Precinct 1 Schedule (PO1)

Am C308 does not seek to change PO1 and is accordingly not examined as part of this evidence. It is noted above for completeness.



Figure A1 – DDO4 Map



Figure A2 – DDO4 Map

Appendix A: Existing controls (Continued)

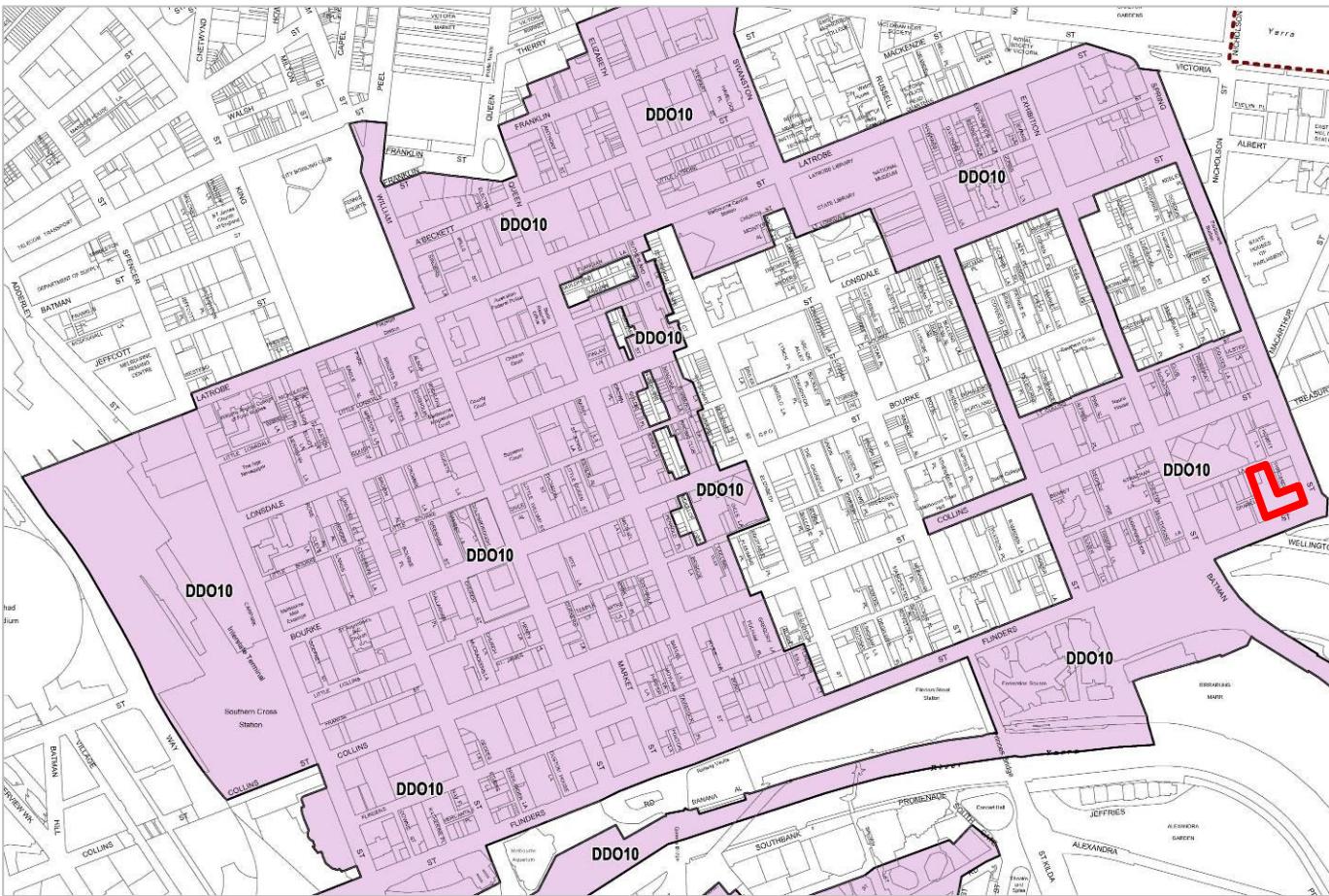


Figure A3 – DDO18 Map



Figure A4 – DDO18 Map

Appendix A: Existing controls (Continued)



Figure A5 – HO Map

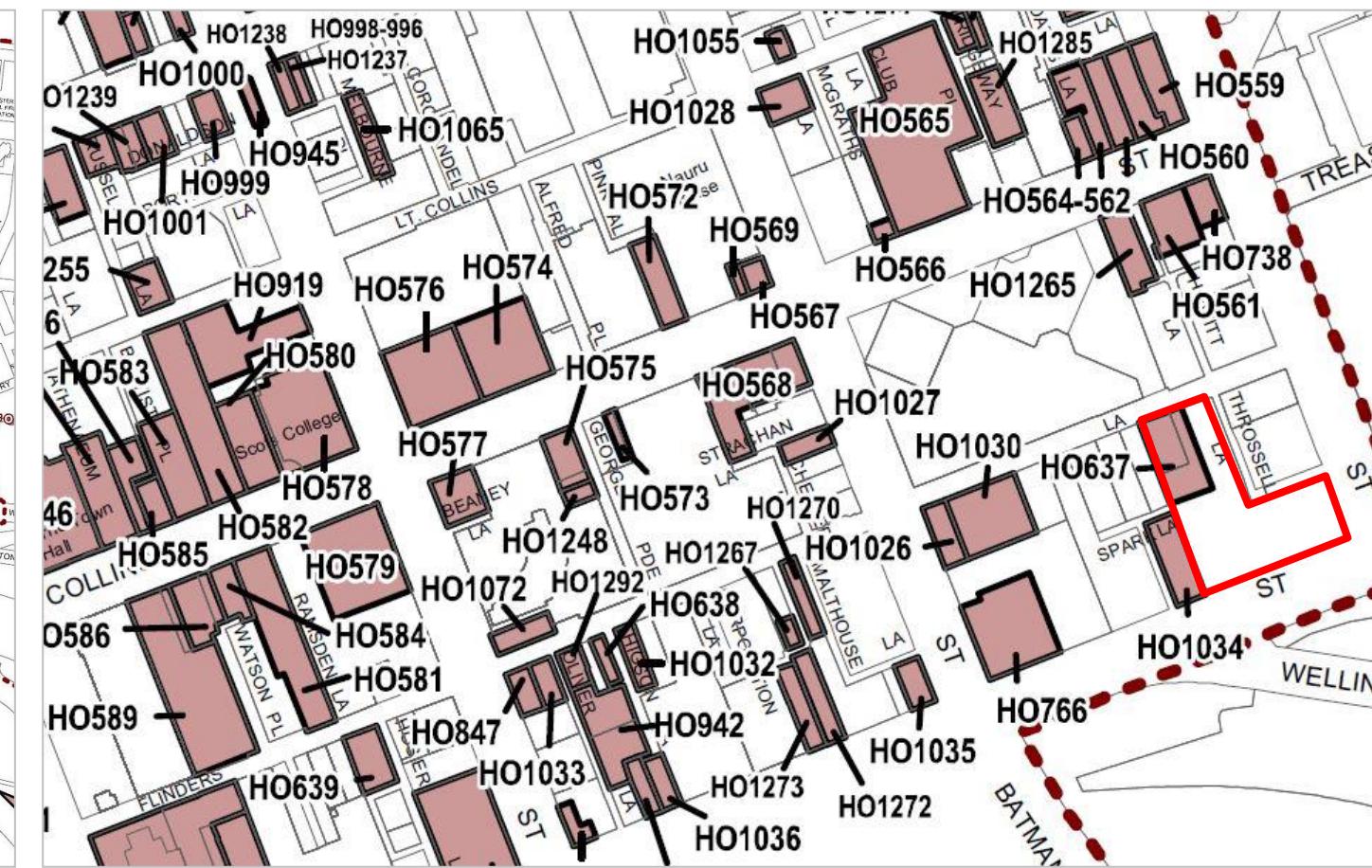


Figure A6 – HO Map

Appendix B: Urban Design Examples



Figure B1 – 121 Exhibition Street – Southern Cross Tower

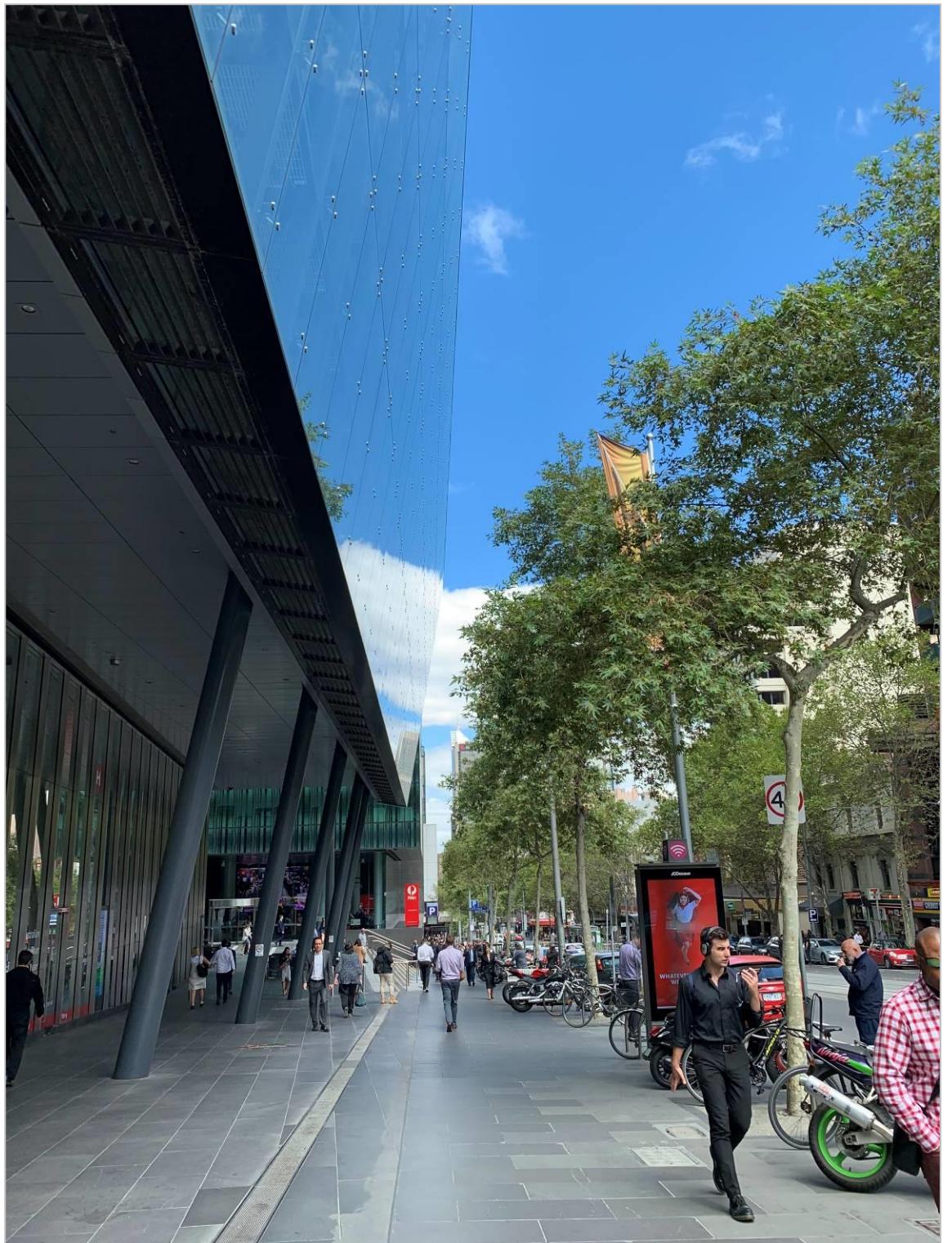


Figure B2 – 121 Exhibition Street – Southern Cross Tower

Appendix B: Urban Design Examples (Continued)



Figure B3 – 50 Lonsdale Street – The Urban Workshop



Figure B4 – 50 Lonsdale Street – The Urban Workshop



Figure B5 – 50 Lonsdale Street – The Urban Workshop

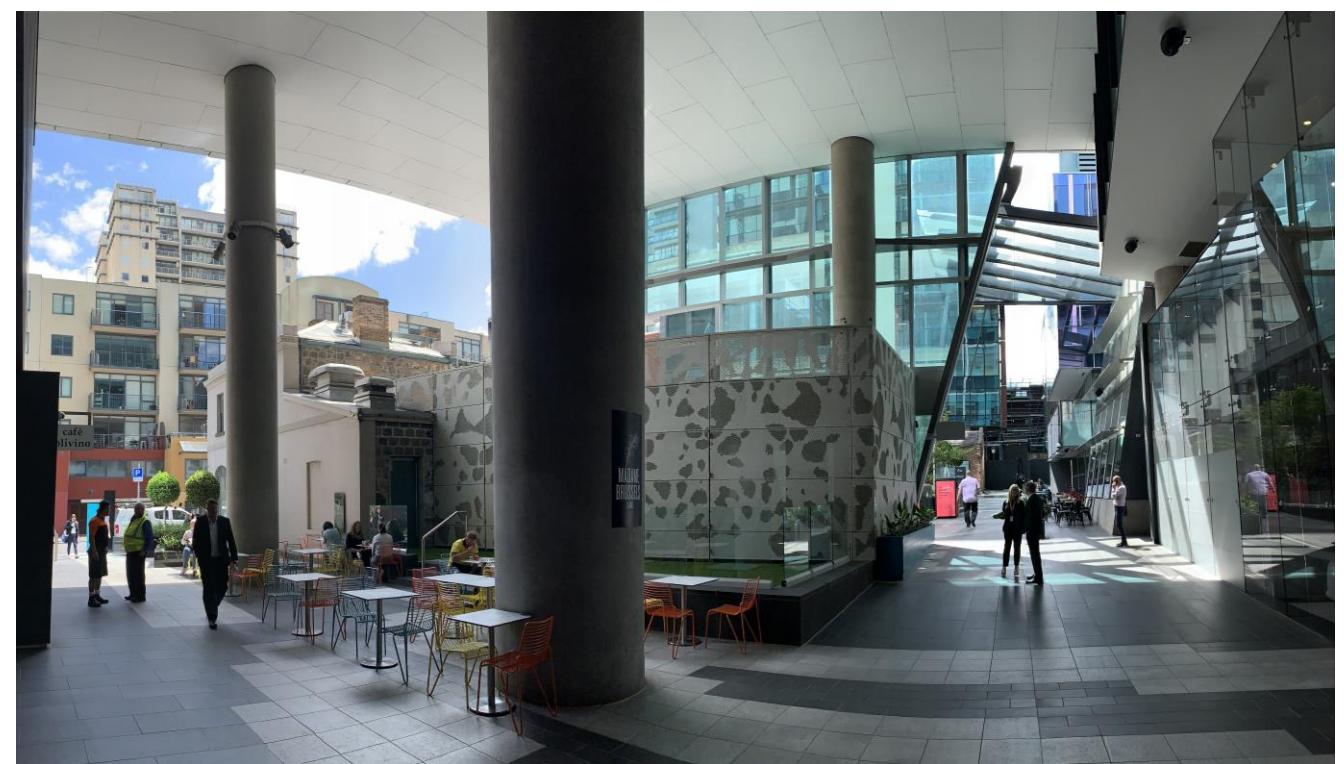


Figure B6 – 50 Lonsdale Street – The Urban Workshop

Appendix B: Urban Design Examples (Continued)



Figure B7 – 50 Lonsdale Street – The Urban Workshop



Figure B8 – 50 Lonsdale Street – The Urban Workshop

Appendix C: Witness statement

Name and Address

Catherine Anne Heggen
Message Consultants Australia Pty Ltd
2/398 Smith Street, Collingwood 3066

Qualifications

- Bachelor of Town and Regional Planning, Melbourne University 1982
- Fellow, Planning Institute of Australia
- Fellow, Victorian Planning and Environmental Law Association

Professional experience

- Current Position: Director, Message Consultants Australia Pty Ltd
- 1985 – Current: Town Planning Consultant
- 1982 – 1985: Town Planner in local government and regional authorities (Australia & overseas)

Professional appointments

- 1996 – 2002: Member, Victoria's Heritage Council
- 1998 – 2002: Chair, Victoria's Heritage Council
- 1998 – 2002: Trustee, Melbourne Heritage Restoration Fund
- 2001 & 2002: Jury Member, Stonnington Urban Design Awards
- 2001: Jury Member, Australian Institute of Landscape Architects (Vic Chapter) Awards
- 2003: Jury Member, Planning Institute of Australia (Vic Division) Awards
- 2004 – ongoing: Member, Heritage Committee to the Building and Estates Committee – University of Melbourne
- 2005 – 2012: Member, Building Committee – Queen Victoria Women's Centre
- 2011 Member, Ministerial Advisory Committee on Planning System Reform

Areas of expertise

- Extensive urban design advice to architects and project managers involved in medium and high density housing and other built form projects.
- Strategic and statutory planning advice to commercial and institutional clients as well as government and alpine management authorities on a range of residential, environmental, tourism, cultural heritage and urban character issues.
- Consulting advice to a wide range of private sector and government clients addressing the management of urban development and rural land use.
- Project planning and coordination of Institutional Master Plans.
- Experience in the preparation of environmental management plans and Environment Effects Statements for extractive industry.
- Preparation and presentation of evidence before VCAT, and various government appointed independent panels and advisory committees.

Expertise to prepare this report

Professional qualifications and expertise in urban design and town planning, including:

- Urban design and building form impact assessment.
- Ongoing involvement in a range of residential, mixed use, institutional, commercial and extractive industry development proposals.
- Ongoing involvement in cultural heritage, urban character and visual and landscape impact issues.
- Experience in new community development, greenfield subdivision projects and institutional Master Plans.
- Specialist experience in medium and high density housing issues.

Investigations and research

In preparing this evidence I have:

- Inspected landholdings of Phillip Nominees Pty Ltd comprising the site.
- Reviewed the exhibited Amendment C308
- Reviewed the Phillip Nominees Pty Ltd submission to the amendment prepared by Norton Rose Fulbright
- Reviewed the City of Melbourne background reports including the 'Synthesis Report' dated January 2018 and the 'Central Melbourne Design Guide' Draft, November 2018
- Reviewed the relevant provisions of the Melbourne Planning Scheme.
- Reviewed and directed the massing studies undertaken by Hassell Studio that accompany this evidence statement.

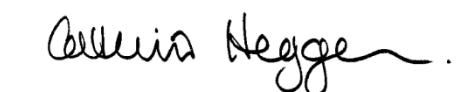
My involvement in this matter commenced in February 2019.

Summary of opinions

My conclusions are summarised in the conclusion of this report.

Declaration

In accordance with Planning Panels Victoria's Guide to Expert Evidence, I declare that I have made all the inquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel. I prepared this report with assistance from Ed Mitchell, Architect of Hassell Studio.



C A Heggen
BTRP FPIA