

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 C SUBMISSIONS OF THE PLANNING AUTHORITY

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 C submission addresses the submissions made in relation to the substantive content of the Amendment that Council has not yet addressed in the Part A submission dated 23 July 2018, the Part B submission dated 14 August 2018, the Part B – Response to additional submitters dated 11 February 2019 and through the expert evidence called by Council, including the supplementary evidence of Anita Brady and Sophie Jordan.

II. PROCESS

3. As detailed within Council's Part A submission, the Amendment implements the recommendations of the *Heritage Policies Review 2016* and the *West Melbourne Heritage Review 2016* by proposing the following changes to the Scheme:

- a) replacing an existing incorporated document *Heritage Places Inventory June 2016*, which grades heritage places using the A to D heritage grading system, with a new incorporated document *C258 Heritage Places Inventory 2017*, which grades all heritage places within a Heritage Overlay using the Significant, Contributory, Non-Contributory grading system;
 - b) amending the Schedule to Clause 81.1 Incorporated Documents to introduce two new incorporated documents: *Melbourne Planning Scheme Amendment C258: Heritage Precinct Statements of Significance 2017* which comprises the statements of significance currently included within Clause 22.04, and additional statements of significance for the six largest existing heritage precincts outside the Capital City Zone; and the *West Melbourne Heritage Review 2016: Statements of Significance*;
 - c) revising the content of the two local heritage policies, Clause 22.04 (Heritage Places within the Capital City Zone) and Clause 22.05 (Heritage Places Outside the Capital City Zone);
 - d) implementing the recommendations of the *West Melbourne Heritage Review 2016* by:
 - i. modifying the Schedule to Clause 43.01 Heritage Overlay to introduce 20 new heritage places and revise the descriptions of five existing heritage places in West Melbourne;
 - ii. amending the planning scheme maps to reflect these changes; and
 - iii. introducing the *West Melbourne Heritage Review 2016: Statements of Significance* as a new incorporated document.
4. Council has demonstrated its commitment to the identification and protection of important heritage places within the municipality with over 30 heritage studies being undertaken to document heritage since the first heritage controls were introduced. There are currently more than 7,000 properties protected under the Heritage Overlay within the Scheme.
5. Council's program of ongoing reviews of heritage places was described within Council's Part A submission. Current reviews of heritage include:

- a) recently completed heritage reviews (*‘Little Lon’ Heritage Review 2010, Central City Heritage Review 2011, Arden Macaulay Heritage Review 2012, the City North Heritage Review 2013 and the Kensington Heritage Review 2013*);
 - b) heritage reviews the subject of current planning scheme amendments (the *West Melbourne Heritage Review 2016, the Guildford and Hardware Laneways Study 2017 (Amendment C271); the Southbank and Fishermans Bend Heritage Review 2017 (Amendment C305); and the Hoddle Grid Heritage Review 2018 (Amendment C328)*);
 - c) heritage reviews currently underway (Carlton); and
 - d) heritage reviews shortly to commence (North Melbourne & Parkville to commence in 2019 and South Yarra proposed for 2019/2020 subject to Council endorsement).
6. To reinforce the importance and the extent of the matters covered by the Amendment, it is worth restating an extract from the *City of Melbourne – Heritage Strategy 2013* which provides at page 6:

Why is heritage important?

Heritage is at the heart of community identity. The intangible aspects of heritage such as traditions, memories, knowledge, creative expressions, performance and rituals help sustain the rich and diverse mosaic of Melbourne’s communities.

Heritage is an essential part of the present we live in – and of the future we will build. It is passed on to us, and it is the inheritance we pass on to future generations. What we do today – how we plan, manage and change the city – will be part of our legacy.

Heritage places, objects and stories give our lives meaning and purpose, as individuals and as communities. They create a strong and enduring sense of community identity.

The City of Melbourne’s role

The City of Melbourne aspires to be a leader in its approach to knowing, protecting, integrating and interpreting the city’s cultural and natural heritage.

This strategy focuses on the responsibilities of the City of Melbourne as well as the areas in which it can exert its influence. The City of Melbourne provides statutory protection for the majority of historic heritage places and some Aboriginal heritage places that have been identified within the city, with State Government legislation covering other places.

The heritage roles and responsibilities of the City of Melbourne include:

- *Understanding the value of our heritage today and for the future.*
- *Identifying places, buildings, objects and stories to be conserved.*
- *Sustaining heritage through protection, adaptation, reuse and creative interpretation.*

- *Communicating through signage, marketing and promotional materials, and various other print and online media.*
- *Celebrating the city's heritage, with events and activities, publicity, community gatherings.*
- *Partnering with communities and other heritage organisations such as Heritage Victoria and the Heritage Council.*

The City of Melbourne is not the only custodian of the city's heritage. State government, private owners and managers of heritage places, community-based organisations such as the National Trust and the many resident and history groups throughout the city all have important roles in sustaining our heritage. Through this strategy, the City of Melbourne will seek to enhance its ability to work in partnership with other custodians and heritage organisations.

7. Since the release of the Review of the Local Heritage Policies in the Melbourne Planning Scheme Discussion paper in mid 2014 and since Lovell Chen was engaged to conduct the Heritage Policies Review in early 2015, the preparation of the Amendment and the Panel process to date has been the product of more than four years of exhaustive investigation, consultation, review, drafting, preparation, evaluation and assessment.
8. The Amendment is an essential step in Council's overall program of heritage identification, protection and management as it seeks to transition the City to an overdue heritage grading system, to update and improve the local policies to meet the needs of contemporary applications and to protect heritage places in West Melbourne.
9. It is no exaggeration to say that the Amendment is a fundamental plank of Council's heritage strategy and program now and into the future.

III. THE STATUS OF THE AMENDMENT

10. The key matters for consideration by the Panel, as detailed within Council's Part B submission, include:
 - a) the justification within the *West Melbourne Heritage Review 2016* for the new heritage overlays in West Melbourne the associated attribution of significance and the contents of the proposed statements of significance;
 - b) the appropriateness of the conversion methodology which has been employed to transition to the new gradings system;

- c) the reliability of the new *Melbourne Planning Scheme, Heritage Places Inventory 2017* (the **Inventory**) proposed for inclusion as the replacement incorporated document;
- d) the suitability of the content of the six new statements of significance; and
- e) the suitability and content of the new local heritage policies.

11. The status of each of these matters is detailed below. Council submits that whilst the Amendment itself has incorporated multiple separate elements with wide-ranging effect, the real issues that remain the subject of contention are relatively confined.

A. *THE WEST MELBOURNE HERITAGE REVIEW 2016*

12. Throughout the Panel process a small number of submitters sought changes to how a place was listed in the Inventory.

13. Where Council has agreed with a submission made to the Panel and recommended a change to the Inventory, these are set out in detail in Council's Part B submission.

14. To the extent that some submitters objected to the inclusion of their properties within the Heritage Overlay, or to the grading applied, Council relies upon the evidence of Mr Butler as to both the level of significance of the heritage place and the appropriateness of its inclusion within the Heritage Overlay.

B. *THE CONVERSION METHODOLOGY*

15. Council submits that the gradings conversion methodology employed by Lovell Chen to convert from the A to D gradings system to the Significant, Contributory and Non-Contributory classification system has been largely uncontroversial amongst submitters to the Panel, with the exception of two specific aspects:

- a) the grading of all heritage buildings in individual heritage overlays as Significant; and
- b) the gradings conversion of C graded buildings in Heritage Overlay precincts in City North.

Grading of heritage buildings in individual heritage overlays as Significant

16. Lovell Chen's gradings conversion focused on graded properties within Heritage Overlay precincts and groups of properties which shared a single Heritage Overlay number. No review was undertaken of individual properties with an individual Heritage Overlay number, on the basis that such properties are properly regarded as individually significant, having warranted a Heritage Overlay of their own and thereby demonstrating that a threshold of Local significance has been achieved. These properties were directly converted to a grading of Significant.
17. A number of submitters have criticised this aspect of the conversion methodology on the basis that they believe their properties, which have been converted to Significant, only warrant a grading of Contributory.
18. The principal concern such submitters appear to have with the classification of Significant is with the stricter management regime of these properties. The gradings conversion exercise concerns the classification of significance of heritage properties, not their management. This distinction is articulated in the Burra Charter.
19. Council rejects the suggestion made orally by several submitters to the effect that the Panel were encouraged to go and visit the various buildings in relation to which the classification system is challenged and to '*see for yourselves whether you think it warrants a Significant grading*'. Such a suggestion implicitly reduces heritage significance to architectural significance alone and entirely dismisses the importance of other heritage significance criteria, for example, the social or cultural significance heritage places. This suggestion also entirely ignores the necessity of reviewing heritage places on a comparative basis with other places, including those presently ungraded or unprotected.
20. It is important to restate that all Significant buildings do not need to be of the same level of significance; some may be more "important" buildings than others but this does not mean that a less important building does not fall within the definition for a Significant building. The Statement of Significance associated with a heritage place has an important role in guiding decision-makers about the nature, level and fabric of significance for any given place.

21. Significance is a threshold question, and for all properties that pass the threshold, there will be a variety of significance levels within that category. It isn't a letter grading that demonstrates where a heritage place will fall within the Significant category, but rather the associated Statement of Significance, which will inform the exercise of discretion with regard to any potential demolition or development of a heritage place.
22. A piecemeal approach to the protection of heritage places with heritage reviews undertaken on a site-by-site basis without the benefit of comparative analysis, would undoubtedly result in uninformed and inappropriate outcomes. The exercise of revisiting the significance of a heritage place should be the result of comprehensive and holistic analysis that enables complete assessment by typology, era and/or area.
23. As detailed within the Part B submission, it is essential to recognise that the gradings conversion is not a heritage review as commonly understood and has not involved an assessment of the significance of all graded properties within the Heritage Overlay. The number of identified heritage properties within the City of Melbourne means that a complete heritage review of the entire City simultaneously combined with a change to the classification system would be of a scale, cost and timeframe that is prohibitive.
24. Comprehensive heritage reviews are undertaken in the City on an area-by-area basis, as detailed above.
25. Council accepts that it may be the case that, when a comprehensive review is undertaken, properties in an individual Heritage Overlay may be confirmed as Significant, included in a serial listing, or a nearby precinct or removed from the Heritage Overlay. If they do not meet the threshold for individual significance, and a serial listing or precinct inclusion is not appropriate, the only proper course will be removal from the Heritage Overlay. Council is not contemplating a further category of "lesser" significance for low letter graded places; this would simply replicate the current hierarchy of significance but give it a different label; the whole intention behind the reclassification is to shift to a system which identifies why a place is significant not whether it is more important than another place.
26. Council's position is that it would be inappropriate to seek to reclassify any individually listed properties as part of the Amendment, in the absence of a complete heritage review. Ad hoc, selective and one-off reclassification based on evidence about a single

place would undermine the process of careful evaluation and comparative analysis that is essential to proper substantive identification of heritage significance.

C graded buildings in City North

27. As detailed within the *Part B* submission and the *Part B – Response to Additional Submissions*, within the *City North Heritage Review*, RBA identified properties graded A to C as Significant, whether in an individual Heritage Overlay or a precinct Heritage Overlay and D properties as Contributory.
28. The University of Melbourne and the Melbourne Business School have challenged the treatment of C graded buildings. In response, Council proposes that C grade buildings in precincts be treated in the same way as the Lovell Chen conversion methodology throughout other suburbs, and accordingly should be the subject of further assessment prior to being classified. C grade buildings in individual Heritage Overlays in City North will be dealt with in the same way as all buildings in individual Heritage Overlays; that is, converted to Significant, reflecting that the threshold for individual significance must have been met to warrant their recent inclusion in an individual Heritage Overlay.
29. Accordingly, for C graded buildings in precincts, Council proposes transitional arrangements within City North to allow those properties to continue to be subject to the current heritage policy within the Scheme until such time as they are individually assessed by Lovell Chen and, via a new amendment, converted to the new gradings system on the basis of the Lovell Chen methodology.
30. The review to be undertaken by Lovell Chen will commence as soon as the Panel for Amendment C258 provides certainty that this process represents the appropriate course of action (i.e. in the form of a recommendation of any report prepared by the Panel).
31. Noting that the University of Melbourne continues to argue that all its C grade buildings in City North should be reviewed, including those in individual Heritage Overlays, Council maintains that it is proper and appropriate that C graded buildings within individual Heritage Overlays be directly translated to Significant.
32. As for the buildings on the University of Melbourne campus north of Grattan Street, Council does not oppose the preparation of a university campus heritage study which reviews the significance of all the assets associated with the Parkville campus; one

potential outcome of this exercise might be the inclusion of the entirety of the campus in a precinct wide heritage overlay with encouragement for the preparation of an incorporated plan to manage heritage assets going forward; another might be preparation of a suitable serial listing of buildings associated with the University. This work is not an immediate priority for Council given other priorities on its program of heritage area reviews but the University is encouraged to employ a suitable heritage professional to undertake this work.

33. Even if the Panel is sympathetic to the need for priority review of C and D graded buildings in individual Heritage Overlays, of the three potential recommendations available to the Panel, Council submits only one is appropriate in the circumstances:
 - (a) the Panel should not recommend that the Amendment be delayed until such reviews are undertaken. The reviews require the new classification system and associated definitions to be approved before reviews can be progressed in reliance on such a system. Although Council is committed to undertaking reviews across all of its suburbs as specified in Actions 2.1, 2.2 and 2.3 of the Heritage Strategy, (see *City of Melbourne Program of Heritage Area Reviews*) there is no current programme or budget for a comprehensive review of all C and D graded buildings in individual heritage overlays, within the immediate term. The number of individual heritage overlays affected has been identified as approximately 267¹, representing 226 heritage places with a building grading ‘C’ in an individual Heritage Overlay that have been converted to ‘Significant’, and 41 heritage places with a building grading ‘D’ in an individual Heritage Overlay that has been converted to ‘Significant’. To delay approval of the Amendment pending this exercise, would bring heritage protection in the municipality to a stand still.
 - (b) the Panel should not recommend that C and D graded buildings in an individual Heritage Overlay be classified as Contributory on an interim basis. This approach is fundamentally incompatible with the concepts of heritage significance embodied in the Amendment. Outside a precinct, there is nothing for a “contributory” building to contribute to.

¹ see Documents 55.01 and 55.02

- (c) the Panel should not recommend the creation of a new category of heritage significance for lowly graded or lesser significant buildings in individual Heritage Overlays. No such category has been conceptually defined, and no management regime for such a category proposed. Such an approach is also not anticipated by the guidance provided in *Planning Practice Note 1: Applying the Heritage Overlay*.
- (d) the Panel should recommend that C and D graded buildings in an individual Heritage Overlay are classified as Significant on the basis that this classification will provide the most appropriate level of heritage protection until a future review determines otherwise. The opportunity to provide further information about significance included in the draft policy ensures that landowners seeking approval for works to a Significant heritage place will be able to provide a more fulsome account of significance and a more thorough analysis of how any works will affect that significance.

C. THE RELIABILITY OF THE INVENTORY

34. A number of submitters have identified alleged errors or inconsistencies within the Inventory.

35. In its submission, the University of Melbourne asserted:

31. Mr Raworth's assessment of the appropriateness of the proposed gradings for the University's heritage assets remains uncontradicted and unchallenged. In her oral evidence in chief, Ms Brady explained that (save for 11 Palmerston Place) she did not dispute, and could not respond to, Mr Raworth's assessment because she had not assessed the properties herself. Mr Raworth's assessment seemed to Ms Brady to be "sound". In fact, Ms Brady's evidence was that the properties assessed by Mr Raworth should be reviewed as a "priority" by the Council. Ms Brady's concession in this respect is supported by Mr Helms' evidence, in which he states, of the methodological approach that has been employed:

...these preliminary assessments are only suitable as an interim measure and should be confirmed following a detailed assessment undertaken either on a precinct-wide or a thematic/typological basis.

32. There has been no attempt by the Council to disprove or to challenge Mr Raworth's evidence that the arbitrary and rigid methodological approach has resulted in error.

36. Melbourne University is not the only submitter who has attempted to characterise the gradings system as resulting in 'error'.

37. Council has been abundantly clear that the purpose of the Amendment is not to undertake a full-scale heritage review of the entire municipality. The only properties that were the subject of complete heritage review are those in West Melbourne.
38. What have been identified as ‘errors’ by submitters, are in fact buildings that have been correctly translated by the conversion methodology employed by Lovell Chen, but, when the subject of complete heritage review, may warrant a different grading. This is not an error in the conversion methodology. It is entirely consistent with the methodology employed.
39. Council has also been clear that it may be the case that some heritage buildings may be been ‘upgraded’ or ‘downgraded’ and must be the subject of complete heritage review in the future. Council has demonstrated its commitment to a program of ongoing heritage reviews such that the Panel should have confidence each building within the municipality will be the subject of such review in due course.
40. There are a small number of genuine errors that have been revealed throughout the Panel process. Where an authentic error has been identified and verified, Council has recommended corrections to the Inventory².

D. THE STATEMENTS OF SIGNIFICANCE

41. As part of the Amendment, Lovell Chen prepared statements of significance for East Melbourne and Jolimont (HO2); North and West Melbourne (HO3); Parkville (HO4); South Yarra (HO6); and Kensington (HO9).
42. These statements of significance have been largely uncontroversial through the process. Where Council has accepted additions or modifications to the statements of significance, these have been set out in the Part B submission.

E. THE NEW LOCAL HERITAGE POLICIES

43. The content of the new local heritage policies has been the subject of submissions in several respects. Submitters have specifically challenged:

² see specifically Documents 34.06, 34.08, 54 and *Response to issues raised by University of Melbourne*.

- a) the appropriateness of one policy or two;
- b) an alleged disconnect between the grading applied to heritage buildings and the management regime recommended by the policy;
- c) necessity for a specific heritage policy for each urban renewal area; and
- d) appropriateness of the policy, including in relation to demolition, additions and façadism.

One policy or two?

- 44. Throughout the process it has become clear that several submitters have strong views as to the appropriateness of the local policies either remaining as two separate policies or being combined into one policy, in the format of the policy circulated on 3 October 2018.
- 45. Council submits that it is inconsequential whether the policies remain as two or are condensed into one, rather it is the appropriateness of the content which is the essential question.
- 46. Council will accept the recommendations of the Panel in this regard.

Disconnect between the grading and the policy

- 47. Submissions made to the Panel include that there is a “disconnect” between the grading of heritage place, which doesn’t seek to establish a hierarchy, and the proposed policies which, submitters contend, are hierarchical in their very nature.
- 48. The gradings system proposed represents a move away from a traditional hierarchy of gradings toward a grading system that seeks to understand how a place is of heritage significance. A building that is identified as Contributory makes a contribution to a larger heritage precinct. A building identified as Significant has significance in its own right.
- 49. This is an important distinction to make in light of how the proposed new policies apply to heritage places.
- 50. For example, Council submits that the proposed demolition policy is not more restrictive for Significant buildings because they are ‘better’ than Contributory

buildings, but rather, it is more restrictive because a Significant building stands alone. Accordingly, the demolition of one heritage place standing alone will be of greater impact than say the demolition of one heritage place within a precinct of many other heritage places.

51. Similarly, policies regarding concealment are not more onerous for Significant buildings because they are of higher value than Contributory buildings. Rather, inappropriate and highly visible additions to one stand alone heritage place will impact upon the heritage value of the place to a greater degree than they would upon one heritage building located amongst a number of heritage buildings.
52. The way in which a decision-maker identifies the heritage value of a site is not through a system whereby all Significant buildings are of higher value than all Contributory buildings and therefore need to be more strictly protected, but rather through the associated Statement of Significance for a heritage place.
53. Council submits that the grading of heritage places and the management of those places guided by the policies are entirely appropriate and consistent.

Need for a heritage policy for each urban renewal area

54. Several submitters have contended that it is appropriate that Council develop a separate heritage policy for City North, consistent with the recommendation of the C198 Panel. It has also been suggested by some witnesses that it would be suitable to have a separate heritage policy for each urban renewal area within the municipality.
55. Council submits that is unnecessary and undesirable to have multiple heritage policies operating for each urban renewal area.
56. The C198 panel report was written in a period of some uncertainty as to how heritage considerations were to be balanced with other planning considerations, particularly economic development and urban consolidation, with regard to proposed demolition of heritage fabric. *Boroondara City Council v 1045 Burke Road Pty Ltd & Ors* [2015] VSCA 27 as applied in *Icon Co (Jessamine Avenue) Land Pty Ltd v Stonnington CC* (Red Dot) [2018] VCAT 1134 firmly establish that heritage considerations are to be balanced against broader objectives within the Scheme when considering an application to demolish a

building that has been afforded heritage protection, irrespective of the terms of specific heritage policy.

57. Accordingly, it is unnecessary for a separate heritage policy for a growth area to specify that growth is to be anticipated and heritage considerations must be balanced with this imperative. This balancing act is to be undertaken regardless of whether it is explicitly stated or not.

Appropriateness of the policy, including demolition, facadism and additions

58. Council made extensive submissions as to the appropriateness of the proposed policies in its Part B submissions, and throughout the Panel process. Council submits that the proposed policy is the result of extensive review and consultation and will appropriately guide decision-making within the municipality in the future.
59. Some submitters have suggested that the revised heritage policies are not based on a genuine review of the policies but rather are based on the views of a few individuals. Council does not accept this because the revised policies are based on extensive review and broad community consultation, which sought engagement from all stakeholders in the planning system (including community, advocacy, and developer groups)³.
60. Beginning in early 2014 with the initial ‘Review of the Heritage Policies in the Melbourne Planning Scheme 2014’ project, the ‘2014 Discussion Paper’ was informed by consultation on previous heritage projects, previous reviews on heritage and planning, recommendations from recent heritage related planning panel hearings and consultation with internal and external users of the policy and peak heritage organisations. Further, broader input was received when the 2014 Discussion Paper was placed on public and stakeholder consultation and submissions were invited from the whole community including heritage groups, resident groups, agencies, developers, advocacy groups (including the Property Council of Australia, who made a submission during this process), and other interested and affected groups. Submissions received included reviews and case studies about the effectiveness of the heritage policies 22.04 and 22.05.

³ Agenda Item 6.1 Draft Amendment C258 Heritage Policies Review – Future Melbourne Committee Meeting No. 85 (5 July 2016)

61. A further round of consultation occurred in 2015 after Lovell Chen had been engaged to conduct the Heritage Policies Review. In the first part of 2015, community consultation and targeted stakeholder consultation informed the drafting of the revised policies. From mid-December 2015 to mid-February 2016, further community engagement was undertaken on draft new heritage policies. Thirty submissions were received, including from the following associations/organisations: North and West Melbourne Association; Carlton Residents Association; East Melbourne Historical Society; National Trust; Melbourne Heritage Action; Hotham History Project; Parkville Association Inc.; RBA Architects + Conservation Consultants; and, Melbourne South Yarra Residents Group. Invitations were also sent to business groups, peak bodies (including advocacy groups for property and development), developer groups, and planning consultancies, however no submissions were received from these groups at this time.
62. Council does not accept submissions made to the Panel to the effect that the absence of policy currently contained within Clause 22.04 is tantamount to a 'flexible' policy, or that this is desirable or appropriate moving forward. The absence of explicit policy in Clause 22.04 has required decision makers to draw inferences about the substance of policy and has allowed decision making in the Central City to be heavily influenced by precedent rather than principle.
63. A key case in point is the so called 'new paradigm' of additions to heritage building which cantilever over retained heritage fabric. No policy directly or indirectly addresses this approach, the absence of policy has been argued to be an intentional vacuum which invites this approach, and in Council's submission inappropriate heritage outcomes that do not maintain the prominence of retained heritage building have resulted. The proposed policies, which seek to discourage these outcomes are appropriate and are consistent with the balance of the planning scheme, the Burra Charter and Guidelines prepared by Heritage Victoria and the Heritage Council. They were part of Ms Brady's version of the policies provided to Council as early as August 2015. They are consistent with her evidence that a setback above retained heritage fabric is a necessity and that setbacks less than the defined front or principal part of a building can be considered as an exception to the policy in accordance with the inherent flexibility of policy. The proposed policies will support consistent decision-making and reduce the prospect of

existing cantilever outcomes being used as a justification, rationale and precedent for similar outcomes in the future.

64. The Panel has invited all submitters to the Panel to submit tracked change versions of the 3 October 2018 policy following the conclusion of the Panel process. Once these tracked-change versions of the policy are received, Council will respond to the proposed modifications in writing in accordance with the Panel direction dated 18 February 2019.
65. Bennetts Lane Custodian Pty Ltd (**Bennetts Lane**) has already presented their preferred version of the policy to the Panel. The Bennetts Lane version of the policy includes the following modifications to Clause 22.04-9 Additions:

Additions to significant or contributory buildings:

...

- *should ~~do~~ not build over or extend into the air space directly above the front or principal part of the significant or contributory building if that will detract from the identified significance or visual prominence of the building, or its appreciation as it presents to its streetscape(s).*
- *Where alternative setbacks or building in the airspace is to be considered, proposals should provide visual separation, setbacks and appropriate design techniques to maintain the prominence of the heritage building.*

66. Council submits that the clause as contained in the 3 October 2018 policy is appropriate, and that, in the context of integrated decision-making, the alterations made by Bennetts Lane are unnecessary, and may encourage disregard for the setbacks intended by the policy to be the primary means by which the prominence of the heritage fabric is maintained.
67. If the Panel were to accept the additional text proposed by Bennetts Lane, Council submits that where the text in the policy is anticipating a departure from an identified performance standard, it is essential that the objectives, which must still be met, are comprehensively stated and clearly expressed.
68. Accordingly, it would be essential that the following text currently contained within performance standards:

- *do not visually dominate or visually disrupt the appreciation of the building as it presents to the streetscape.*
- *maintain the prominence of the building by setting back the addition behind the front or principal part of the building.*

be relocated to the objectives of the policy, such that it is clear what objectives must still be met despite the departure from the identified performance standard.

69. Several submitters have submitted that it is inappropriate to have policy regarding avoiding visual dominance within the context of the Capital City Zone (**CCZ**), due to the nature of the CCZ, specifically the scale of development already apparent and the its economic aspirations.
70. Council submits that it is appropriate that the policy regarding avoiding visual dominance be retained for the CCZ. Ms Brady gave evidence to the Panel that supported the retention of the policy on the basis that visual dominance does not simply refer to height, but rather incorporates considerations such as the nature of the new built form, size, setbacks and visibility, and focuses on the presentation of the built form to the streetscape. It is not simply a matter of the height a proposed tower behind heritage fabric. The proposed policy will also be read in conjunction with other planning controls (including DDO10) and policy which already serves to influence or restrict height and setback.

IV. CONCLUSION

71. The Amendment is an essential step in Council's overall program of heritage identification, protection and management as it seeks to transition the City to an overdue heritage grading system, to update and improve the local policies to meet the needs of contemporary applications and to protect heritage places in West Melbourne, one of Melbourne's urban renewal precincts.
72. While the Amendment has several distinct components, each of which is complex and nuanced in its scope and considerations, the remaining issues in dispute between Council and submitters are limited. For reasons advanced by Council throughout the Panel process, Council submits that the remaining issues have been adequately answered either through explanation and evidence provided during the hearing or by proposed adjustments to the Amendment, specifically corrections to the Inventory,

modifications to the policy and a revised approach to City North C grade buildings in precincts. Council commends the Amendment with the minor adjustments advanced by Council through the hearing to the Panel.

73. Council submits that the Amendment has strategic justification and respectfully requests that the Panel recommend adoption of the Amendment.

Susan Brennan

Carly Robertson

Counsel for the Planning Authority

19 February 2019