

PLANNING PANELS VICTORIA

Proposed Amendment C258 to Melbourne Planning Scheme

Melbourne City Council

Responsible Authority

AND

Oliver Hume property Funds

Submitter

Others

SUBMISSIONS ON BEHALF OF OLIVER HUME PROPERTY FUNDS

Introduction

1. These submissions are made on behalf of Oliver Hume Property Funds (**Oliver Hume**).
2. Oliver Hume is the owner of land known as 172 – 184 Roden Street, West Melbourne ("**subject land**").
3. The subject land is the location of a number of former industrial/commercial buildings which have been collectively described in the amendment documents as the "Brisco and Co warehouse complex" (**Buildings**).
4. The subject land is subject to Heritage Overlay Schedule 3 (**HO3**). It is also:
 - a) Located in a Mixed Use Zone (**MUZ**);
 - b) Subject to schedule 29 of the Design and Development Overlay (**DDO29**).

5. On 21 August 2018, the Council's Future Melbourne Committee resolved to issue a Notice of Decision to Grant a Permit for a proposed redevelopment of the subject land. The proposal is for the partial demolition of existing buildings on the subject land and the construction of new, mixed use buildings.
6. Relevantly with respect to the subject land, Amendment C258 proposes to:
 - a) Incorporate within the Melbourne Planning Scheme (**Scheme**) a new document entitled "Melbourne Planning Scheme, Heritage Places Inventory 2017 (**2017 Heritage Inventory**); and
 - b) Make changes to clause 22.05 – **Heritage Places Outside the Capital City Zone**.
7. The 2017 Heritage Inventory proposes to identify the heritage significance of the Buildings as follows:

Table 1 – Proposed

Land	Proposed under Amendment C258	Statement of Significance reference/West Melb Heritage Review 2016
Roden Street 164-184, Briscoe and Co ironmongers warehouse complex	Significant	Page 295 / page 812
Brisco and Co warehouse complex (164-170 Roden Street), part, (135-141 Hawke Street wing)	Significant	Page 289 / page 814
Brisco and Co warehouse complex (164-170 Roden Street), part, (Roden Street wing – see also 135-141 Hawke Street wing)	Contributory	Page 291 / page 816

Table extract taken from Incorporated Document Amendment C258: Heritage Places Inventory 2017 Corrected for re-exhibition, November 2017 and West Melbourne Heritage Review 2016: Statement of Significance.

8. This represents a significant change from the current level of significance currently attributed to the Buildings. Currently, the Buildings are graded as follows:

Table 2 - Current

Land	Current
Brisco and Co Main warehouse complex (164-184 Roden Street)	D Grade Building / Level 3 Streetscape
Brisco and Co warehouse complex (164-170 Roden Street), part, (135-141 Hawke Street wing)	D Grade Building / Level 3 Streetscape
Brisco and Co warehouse complex (164-170 Roden Street), part, (Roden Street wing – see also 135-141 Hawke Street wing)	D Grade Building / Level 3 Streetscape

9. The effect of these gradings, and the provisions of clause 22.05 (as it now is) is that the Buildings are currently regarded as being non-contributory, in the sense that they do not contribute to the significance of the HO3 area.
10. The proposed grading of the Buildings as proposed cannot be justified.
11. The Buildings should (whether identified individually or as part of a single complex) be graded as “contributory”, and **not** identified in a significant streetscape.
12. This is so for the following reasons.

Changing the Grading System

13. The Amendment proposes the conversion of the existing grading system adopted within the Scheme from the old, “A to D” grading system (**Old System**) with an entirely new grading system. The new system identifies places of heritage significance as either “significant” or “contributory” (**New System**).

14. Oliver Hume agrees that the change in the grading system is desirable, and that the New System represents current best practice in identifying heritage significance.
15. It is important, however, to understand that the change to the New System is not a mere cosmetic change, or simply a change in terminology. Rather it represents a fundamental, and quite significant, shift in the way in which the significance of heritage places is assessed.
16. It therefore requires a significant change in the way in which assessing significance is understood.
17. In order to understand why this is so, it is necessary at first instance to understand the proposed definitions of the terms “significant” and “contributory”.
18. The proposed definitions¹ are as follows:

‘Significant’ heritage place:

A ‘significant’ heritage place is individually important at state or local level, and a heritage place in its own right. It is of historic, aesthetic, scientific, social or spiritual significance to the municipality. A ‘significant’ heritage place may be highly valued by the community; is typically externally intact; and/or has notable features associated with the place type, use, period, method of construction, siting or setting. When located in a heritage precinct a ‘significant’ heritage place can make an important contribution to the precinct.

‘Contributory’ heritage place:

A ‘contributory’ heritage place is important for its contribution to a heritage precinct. It is of historic, aesthetic, scientific, social or spiritual significance to the heritage precinct. A ‘contributory’ heritage place may be valued by the community; a representative example of a place type, period or style; and/or combines with other

¹ Based on the Council’s most recent version of the combined clause 22.05.

visually or stylistically related places to demonstrate the historic development of a heritage precinct. 'Contributory' places are typically externally intact, but may have visible changes which do not detract from the contribution to the heritage precinct.

'Non-contributory' place:

A 'non-contributory' place does not make a contribution to the cultural significance or historic character of the heritage precinct.

19. The definitions are the key to understanding the proposed gradings for the subject land. It is not possible to make an assessment as to whether a heritage place is, or is not "significant" without applying and understanding the proposed definitions of those terms.
20. Further, because both "Significant" and "Contributory" are proposed to be defined terms within clause 22.05, it would be an error to apply a definition which is based on either their:
 - a) ordinary and natural meaning; or
 - b) any accepted form of past usage of those terms amongst planning or heritage experts; or
 - c) different definitions of the same terms in other planning schemes or planning documents.
21. Notably, the Council appears to have rejected Mr. Helms evidence as to the form of those definitions².
22. Oliver Hume supports the revised definitions proposed in Mr Helm's evidence. Further, it agrees with his justification for those changes.

² See page 15-16 of Mr Helms Statement of Evidence

The West Melbourne Heritage Review

23. The revised gradings for the Buildings are a consequence of the recommendations of the West Melbourne Heritage Review (WMHR) undertaken by Mr. Butler.
24. There are some significant issues with the process that was undertaken by Mr. Butler in preparing the WMHR. Those issues include:
- a) First, for reasons that have not been adequately explained, the review adopted both a letter grading system, and a system that assessed places as either significant, contributory or non-Contributory; and
 - b) Second, it did so despite the fact that Council had, at the time it was undertaken apparently “*determined to stop using the letter grading system*”³; and
 - c) the assessment of buildings as being either significant, contributory or non-contributory was done based on definitions of those terms taken by Mr. Butler from the Yarra Planning Scheme; and
 - d) those definitions are not the same as the definitions of those terms that are being proposed by the Council in this Amendment.
25. As a result of the above the current proposed gradings for the Buildings are akin to the final message in a game of Chinese whispers. The proposed gradings are now the end product of a series of conversions of assessments made under different systems, which now being translated for use in the system currently proposed by the Amendment.

³ Council’s Part B Submission at [36]

26. The Panel should not be distracted by these complications. Rather, it should assess the evidence to see whether it supports a grading of “significant” or “contributory” having regard to the definitions of those terms that it decides most appropriate.
27. However, at present it is not possible for the Panel to make this decision in a fair way. This is because the Panel and Oliver Hume have not been provided with a “single Statement of Significance ..” for “164-184 Roden Street, combining all three existing Statements of Significance” for the Buildings, which is what the Council now submit “should be prepared”.⁴
28. In the absence of such a Statement, the proper grading of the Buildings cannot be determined. This is because the grading is dependent upon the contents of that Statement.
29. The concession by the Council that the exhibited Statement of Significance is not being relied upon is fatal to its case with regard to this the subject site.
30. It is entirely unacceptable, not to mention procedurally unfair, for the Council to be proposing to submit a new Statement of Significance for the subject land:
 - a) after it has called all its evidence; and
 - b) after Oliver Hume has led evidence and made its submissions.

Understanding the Definitions

31. In the past, the terms “contributory” and “significant” have been used to signify a difference in terms of the relative importance of a heritage place to the community. Generally, a “contributory” element has been regarded as being of a lesser level of significance to a “significant” element.

⁴ See Council’s Part B Submission at [94].

32. However, under the new system, and terms of the new definitions being proposed, this simplistic, binary distinction now longer applies.
33. This is because, under the new definitions whether a building is “non-contributory” or “contributory” or “significant” is to be determined by reference to how that cultural heritage significance is derived, not by its relative level.
34. In simple, terms, the definitions proceed on the basis that a “contributory” building is one that derives its significance from its context, and by contributing to the cultural heritage significance of a broader “heritage place. It is significant that is derives from a relationship with a wider place, not by intrinsic or inherent values.
35. In contrast, a “significant” building is one that derives its significance from its individual features or attributes and is capable of being regarded as a “heritage place” in and of its own right and not because it contributes to the significance of another place.
36. This distinction is manifest in the proposed definitions of these terms, as well as the definition of “heritage place”. Here, the relevant “heritage place” is H03. This is because it is only H03 that is proposed to be identified as a “heritage place” in the Scheme.

The Buildings are not “Significant”

37. The Buildings cannot be reasonably regarded as “significant” within the terms of the proposed definition of that term. Nor could they be regarded as “significant” having regard to the way in which that term has been traditionally understood.
38. They are not “significant” because the cultural heritage significance of the Buildings derives primarily (if not exclusively) from their context. They are significant because of their location in, and relationship to, the H03 precinct and not “in their own right”.

39. Viewed on their own, individual merits the buildings cannot be regarded as “individually significant”. While the complex as a whole is of a relatively large scale, the Buildings have very limited architectural or aesthetic value. They are of modest historical interest in that they contribute to “telling the story” of the history of the development of West Melbourne. But that is the extent of any meaningful cultural heritage significance.
40. They cannot credibly be claimed to be “significant” as that term is proposed to be defined. This is because, applying that proposed definition:
- a) They are not individually important at state or local level, in “their own right”. To the extent that they have any cultural heritage significance, it derives from the relationship that the Buildings have with HO3.
 - b) They are not highly valued by the community nor do they have any particular notable features associated with the place type, use, period, method of construction, siting or setting.
41. In this regard, the Panel should prefer Mr. Raworth’s evidence to that of Mr. Butler.
42. Mr. Butler’s evidence is:
- a) Not independent. Rather he is simply endorsing and justifying the conclusions of his own work, being the WMHR. In contrast, Mr. Raworth is carrying out an independent peer review.
 - b) Neither comprehensive nor rigorous. The WMHR contains no real justification for the proposed grading. There is no proper comparative review of the Buildings against other similar buildings, whether in the HO3 area, or elsewhere in the City of Melbourne or within Victoria. Nor is there any satisfactory analysis in Mr Butler’s evidence to this Panel, whether written or oral. Instead, he simply makes factual observations about the Building’s features and

asserts (without any real critical analysis) that the buildings are therefore “significant”.

- c) Not based on a proper understanding of the new system, or the proposed definitions of “significant” or “contributory”.

43. The Panel should note that:

- a) Under cross-examination, Mr. Butler accepted that it was necessary to consider and understand the value of the “streetscapes” in which the Buildings sit to understand how they should be graded. However, he had not undertaken that analysis and when challenged about this, asserted that:

- i. the relevant Rodin Street “streetscape” was restricted only to that part of the street that forms part of the boundaries of the subject land, and nothing else; and
- ii. asserted that this meant that the “streetscape” (in this limited sense) should also be regarded as “significant”.

44. This position must be rejected. It is devoid of any justification, and is also inconsistent with the proposed contents of the 2017 Heritage Inventory, which does not identify any of the Buildings as falling within a “significant streetscape”.

45. Mr. Butler has overstated the aesthetic and architectural quality of the Buildings. His evidence that the altered, Moderne styled entry to Roden Street served to elevate the status of the Buildings should be rejected.

46. In contrast to Mr. Butler, Mr. Raworth’s analysis is balanced, independent and free from the sorts of errors that infect Mr. Butler’s assessment. His evidence should be preferred to that of Mr Butler.

47. It is also relevant that:

- a) Mr. Raworth's assessment is consistent with the conclusions of the numerous previous assessments of the type and level of significance of the Buildings. Notably, these include assessments made in the past by Mr Butler.
- b) There is no independent expert that has been produced to support Mr. Butler's evidence, or to peer review his work; and
- c) Neither Ms. Brady (or anyone else at Lovell Chen) Mr Helms were asked to review the WMHR, or Mr Butler's evidence, despite being obviously qualified to do so; and
- d) Lovell Chen specifically examined the grading of the subject and, and concluded that it should continue to be graded "C" in a level 3 streetscape (albeit on a "desktop basis").

The New Policy

48. The Council has consistently misrepresented the proposed (now singular) new policy as being simply a "policy neutral" translation of existing policy which is being modified only to accommodate the New System.

49. It is clear that this is not, in fact, the case. On the contrary, as Ms. Jordan readily conceded, the proposed new policy contains many significant changes in policy direction.

50. In this regard, the Panel will note that no suitably qualified witness has been called by the Council to properly explain, or support, the merits of these changes. In particular:

- a) Ms. Brady had not been asked to comment on the "panel version" of the policies that had been adopted by the Council, or the new, singular policy proposed by Ms. Jordan in her evidence. She eventually gave a very limited (and somewhat impromptu)

commentary about certain aspects of those policies having given them a cursory examination at the invitation of the Panel. Further, the evidence she gave was not fully supportive of the proposed policies; and

- b) Mr. Helms was not asked to give evidence about either the panel version, or Ms. Jordan's version; and
- c) Ms. Jordan conceded that she was not qualified to give evidence as to the merits of the proposed heritage policies, but only as to how they should be expressed or arranged in the planning scheme.

- 51. As a consequence of the above, the Panel has before it no independent, expert evidence that would support the merits of the single policy that is now being proposed by the Council. This is an extraordinary position.
- 52. In the absence of expert evidence that fully justifies the merits of the new heritage policies that are being proposed, the Panel should decline to endorse them. If there are to be changes in policy they should be fully justified, not snuck in under the false premises that they are simply "more of the same".

Conclusion

- 53. Given the above matters, and paying particular regard to the context of this case, and the totality of the evidence presented on issues relevant to it, it is submitted that the Panel should recommend that:
 - a) The Combined Policy not be adopted; or (alternatively)
 - b) The Combined Policy be adopted, subject to changes that will be proposed by the Applicant; and

- c) The 2017 Heritage Review should identify the Buildings as having “contributory” significance in the context of the HO3 area.

Nick Tweedie

Owen Dixon Chambers West

Counsel for Oliver Hume

3 September 2018