

**CITY OF MELBOURNE**

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4 September 2018

Ms Laura Agius  
Panel Coordinator  
Planning Panels Victoria  
Level 5, 1 Spring Street  
Melbourne VIC 3000

Dear Panel Coordinator,

**Amendment C258 to the Melbourne Planning Scheme  
Metro Pol Investment Pty Ltd (263-267 William Street, Melbourne)**

We refer to the letter of 27 August 2018 from Best Hooper to Team Leader – Planning Policy, Melbourne City Council, provided to the Amendment C258 Panel as Document #47 on 28 August 2018 and to the letter of 31 August 2018 from Best Hooper to Planning Panels Victoria, both on behalf of Metro Pol Investment Pty Ltd (**Metro Pol**).

**Referral of late submission**

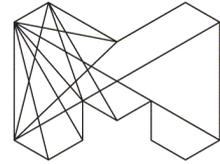
We confirm that the letter of 27 August 2018 was provided by Council to the Panel in order to advise of a request from Metro Pol to make a late submission and to indicate the Council's willingness that the Panel receive a late submission from Metro Pol on the condition that the late submission was heard within the existing hearing timetable and did not require additional hearing dates to be made available. Conditional referral and receipt of late submissions is common practice in Planning Panels and is consistent with the requirements of the *Planning and Environment Act 1987*.

The Council does not accept that referral of a late submission creates an obligation to recall witnesses whose evidence has already been given or to list additional hearing dates or otherwise alter the hearing timetable. The Council does not accept that additional dates should be fixed at the convenience of Counsel or consultants for the person seeking to be heard in relation to a late submission.

On 28 August, the Council also provided to the Panel a copy of the explanatory report for Amendment C326, the incorporated statement of significance for the Metropolitan Hotel and the draft Amendment C328 explanatory report. The Council submits that the proper forum for consideration of the significance of the Metropolitan Hotel is through Amendment C328.

In its ruling of 3 September (Document #57), the Panel records:

- *The Panel was made aware by the Council on Friday 28 August that Metro Pol's solicitor's had written to the Council on the previous day asking that their client be accepted as a late submitter to the present proceeding (Document 47). The Panel heard from the Council in relation to this request. The Council indicated that they did not oppose hearing from Metro Pol but on the condition*



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*that it should be afforded time only within the scheduled Hearing days so as to not delay the conclusion of the proceeding.*

- *The Panel agreed and subsequently wrote to Metro Pol in these terms, adding that in light of the available Hearing times, there was insufficient time to pre-circulate expert evidence and that only submissions were expected.*

On 31 August Metro Pol made submissions to the Panel (Document #53) that concerned the requirement of the Panel to afford procedural fairness.

In its ruling of 3 September (Document #57), the Panel indicated:

- *The Panel heard from Metro Pol, the Council and Melbourne University and made the following ruling (amended from the oral reasons for clarity).*

- *The Panel is not inclined to adjourn the Hearing to wait and see if other parties potentially affected by proposed Amendments C328 or C327 to the Melbourne Planning Scheme, which propose the introduction of new central city Heritage Overlays, wish to be joined in the Amendment C258 Panel proceeding.*

*Amendment C328 is some way off – Panel records indicate a proposed exhibition in March or April 2019.*

*Amendment C327, the associated interim controls, may be approved any day, but there is no known date for this, nor is there any certainty that these controls will be approved at all.*

*If requests to make submissions are made by persons affected by those amendments during the course of the present Panel process, these can be dealt with as they arise.*

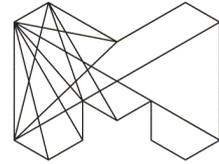
- *So far as Metro Pol itself is concerned, the Panel notes the Council submissions that Metro Pol should have reasonably have been aware of the present Amendment.*

*The Panel invited Metro Pol to make submissions last week on the understanding that the Council had referred the request by Metro Pol to appear at the Panel as a late submitter. Whether or not this was a formal referral of a late submission is a matter for Council.*

*The Panel has now heard additional submissions on behalf of Metro Pol related to this matter and replies by others and the Panel is prepared to extend the time allocated for the Hearing to allow Metro Pol to present their submission and call evidence.*

*The Panel understands that this will delay the Council's reply and the planned workshop day.*

*The Panel requests that Mr O'Farrell seek instructions as soon as possible and arranges for Planning Panels to be advised of the amount of time needed for the Metro Pol presentation and available times, cognisant*



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*of the need to distribute expert witness statements no less than five working days ahead of its scheduled presentation.*

*The Panel is not adjourning or abandoning the matter and it will proceed today.*

*The Panel later advised that all previously received Hearing documents would be made available on line to the late submitter in an endeavour to assist Metro Pol's fair participation in the Hearing.*

In its letter of 31 August Metro Pol indicated:

- a) an intention to call heritage evidence from Mr Bryce Raworth;
- b) the potential to call other lay and expert evidence, subject to a more detailed review of the Amendment.;
- c) an estimate of one day to present its evidence and submissions; and
- d) its request that four Council witnesses be recalled for questioning – Ms Anita Brady, Mr David Helms, Mr Scott Hartley and Ms Sophie Jordan.

### **Content of late submission**

The letter of 27 August refers to future development of the Metro Pol land being assessed under the provisions of Clause 22.04 and that the proposed policy would impose significant restrictions on the redevelopment options for the Metro Pol land (should their submission to the panel appointed to hear Amendment C326 be unsuccessful).

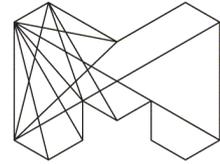
Metro Pol identifies how it says the proposed policy would affect redevelopment of its land:

*Neither version of the proposed policy provision, in our opinion, would support any development that sits above the retained building. Clearly, full demolition of the building if designated as "Significant" is unlikely to be supported and partial demolition is also unlikely to be supported. Accordingly, our client faces the prospect of being required to retain the entirety of the existing built form and not be allowed to develop above the retained building notwithstanding other policy encouragement of development of land within the Capital City Zone.*

Recalling witnesses to the Panel hearing will cause the Council both cost and delay. In those circumstances, the Council submits that the recalling of witnesses must be limited to those whose evidence can be described as relevant to the submission to be made to the Panel by Metro Pol.

The evidence of Ms Brady and Ms Jordan is relevant to the consideration of the proposed policy. The evidence of Mr Helms and Mr Hartley is not relevant to the submissions Metro Pol has foreshadowed making to the Panel.

Mr Helms evidence concerned his opinion as to whether the methodology used by Lovell Chen in the conversion of the 'alphabetic' grading system to the proposed three-level system



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provides a sound and justified basis for the new gradings and a review of submissions where the new level of significance is disputed. The Metro Pol land has not been the subject of a gradings conversion, but rather is proposed for a site-specific Heritage Overlay control by Amendment C328. Accordingly, evidence regarding the conversion of the gradings systems must be regarded as entirely irrelevant.

Similarly, Mr Hartly's evidence provided an independent audit of the C258 Heritage Inventory with a view to providing independent assurance that all properties within the heritage overlay have been converted to the new grading system, the relevant reclassification methodology have been accurately applied to all properties and the 'Corrected C258 Inventory' list is accurate and complete. Again, as the Metro Pol land has not been the subject of a gradings conversion, Mr Hartly's evidence cannot be regarded as relevant to Metro Pol's interests.

### **Future conduct**

Metro Pol first expressed interest as a proposed submitter to the Amendment on 27 August 2018, however Metro Pol was aware of the proposed inclusion of their land within a heritage overlay at least as early as June 2018.

As at 4 September 2018, Metro Pol has elected not to participate in the Panel hearing, while at the same time making a request to recall witnesses and rehear submissions, causing delay and expense to other parties and the Panel.

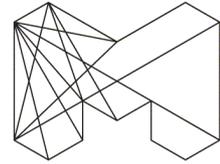
In response to the request for confirmation from the Panel that Metro Pol's submission has been referred to it, the Council submits that the Panel should confirm that the submission has been referred on the basis that:

- a) Metro Pol has had the opportunity and ability to participate in the Panel hearing from 27 August 2018;
- b) Metro Pol will be afforded one day of the Panel hearing to present submissions and call evidence;
- c) Ms Brady and Ms Jordan may be recalled to be cross-examined in relation to their evidence;
- d) Mr Helms and Mr Hartly will not be recalled;
- e) the other experts who presented to the Panel on behalf of other submitters will not be recalled.

### **Outcomes**

In terms of the future hearing dates of the Panel, on the morning of 4 September 2018 the Panel indicated that the additional hearing dates may be listed as follows:

- 21 September 2018: Melbourne University submission.



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- 7 and 9 November 2018: Metro Pol submissions, evidence and examination of Ms Brady and Ms Jordan.
- 28 and 30 November 2018: Council's Part C submission and drafting day.

Council submits that it is appropriate that Metro Pol be confined to the matters relating to policy raised in its letter of 27 August.

Council submits any evidence proposed to be relied upon (by Metro Pol or by Council in relation to the Metro Pol submission) be circulated by 29 October 2018.

Yours sincerely,

**Robyn Hellman**

Team Leader Planning Policy | Urban Strategy

City of Melbourne

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