

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION**

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1427/2013
PERMIT APPLICATION NO. TP-2012-164

CATCHWORDS

Section 77 of the *Planning and Environment Act* 1987; Melbourne Planning Scheme; Capital City Zone Schedule 1; Heritage Overlay; Four storey addition above an existing building; Significance of a heritage place; Character and appearance of a heritage place; Architecture quality and finishes; Visual bulk; Overshadowing of public realm

APPLICANT	FJM Property Pty Ltd
RESPONSIBLE AUTHORITY	Melbourne City Council
SUBJECT LAND	145-149 Flinders Lane, Melbourne
WHERE HELD	Melbourne
BEFORE	G Rundell, Presiding Member Ann Keddie, Member
HEARING TYPE	Hearing
DATE OF HEARING	25-27 September 2013
DATE OF INTERIM ORDER	23 October 2013
CITATION	FJM Property Pty Ltd v Melbourne CC [2013] VCAT 1833

ORDER

- 1 By no later than close of business on **8 November 2013**, the applicant must advise the Tribunal and the responsible authority whether it intends to prepare and circulate amended plans in accordance with this order.
- 2 By no later than close of business on **29 November 2013**, the applicant must file with the Tribunal and the responsible authority a copy of plans which amend the proposal by:
 - i setting back the mesh face of the addition behind the inner face of the parapet to Flinders Lane and Russell Street a distance which can be clearly perceived from those streets.
 - ii Maintaining the clear horizontal separation between the two parts, and
 - iii Maintaining the proportional relationship between the volumes of the upper and lower parts.
- 3 By no later than close of business on **13 December 2013**, the responsible authority must advise the Applicant and the registrar of the Tribunal in

writing whether it opposes the modified plans and whether it wishes to be heard at a further hearing in relation to its opposition to the modified plans. In the event that the responsible authority wishes to be heard, it must provide a written statement that set out the grounds relied upon.

- 4 By no later than close of business on **20 December 2013**, the responsible authority must provide to the Tribunal and the applicant draft planning permit conditions in relation to the amended plans.
- 5 By no later than close of business on **24 December 2013**, the applicant must provide to the Tribunal and the responsible authority its submissions on the draft permit conditions, including amendments shown as tracked changes.
- 6 A further hearing of this case is listed for **10.00am** on **24 January 2014** for half a day if required. The hearing will be confined to consideration of the response of the amended plans to the Tribunal's order and the draft permit conditions.

G Rundell
Presiding Member

Ann Keddie
Member

APPEARANCES

For Applicant

Mr Nick Tweedie, Barrister, instructed by Planning and Property Partners.

He called the following witnesses:

- Mr Bryce Raworth, conservation architect, Bryce Raworth Pty Ltd
- Professor Philip Goad, architectural historian, University of Melbourne
- Mr Robert McBride, Adjunct Professor of Architecture, RMIT
- Ms Anita Brady, conservation consultant, Lovell Chen

For Responsible Authority

Mr David Song, town planner, SongBowden Planning.

He called the following witnesses:

- Mr John Briggs, heritage architect, JBA Architects

INFORMATION

Description of Proposal

A four storey addition to the existing building, including a mezzanine within the fourth level which also contains plant and the lift overrun, This will involve the demolition of the roof and a flagpole.

The additional floors are 13.5 metres above the parapet of the existing building, increasing the overall building height from 17.8 metres to approximately 31.3 metres along Flinders Lane.

Level of the addition is set back 2.3 metres from the existing building parapet to the glazing, as it is at level 4.

The glazing to levels 5 and 6 is set back 1.48 metres to Russell Street and 1.5 metres to Flinders Lane.

Each of these levels incorporates a triangular balcony to Russell Street. All levels incorporate a 970mm setback from the east.

A mesh curtain approximately 600mm proud of the glazing extends at levels 5 and 6 extends from the roof line almost to the top of the existing building over the Flinders Lane and Russell Street facades and returns along part of both the east and south elevations. The mesh screen is roughly in line with the rear face of the existing parapet.

No car parking would be provided.

Nature of Proceeding

Application under section 77 of the *Planning and Environment Act 1987*

Zone and Overlays

Capital City Zone 1

Heritage Overlay HO847

Permit Requirements Clause 37.04 (construct buildings and works in CCZ1)
Clause 43.01–1 (demolition of buildings and works under HO847)

Key Scheme policies and provisions Clauses 10.04, 11.04, 15.01, 15.02, 15.03, 17.01, 21.05, 21.08, 22.01, 22.02, 22.04, 22.19 and 65

Land Description The review site is located on the southeast corner of Flinders Lane and Russell Street. The site is rectangular in shape, with a frontage to Flinders Lane of 12.95 metres, a frontage to Russell Street of 23.16 metres and an area of around 300 square metres.

The site is occupied by a four storey building plus a semi basement. The land falls approximately 2 metres from north to south. The primary frontage and pedestrian entry is from Flinders Lane.

The semi basement and ground floor are occupied by retail tenancies. Levels 1 and 2 are occupied by office tenancies and level 3 is vacant. That level was formerly used as a nightclub and bar.

The site is within Melbourne’s CBD. Adjoining and nearby development is highly varied. It includes the 33 storey Hyatt Hotel, a 12 storey brick building, and other buildings from 3 to 9 storeys. The Forum Theatre is to the southwest, across Russell Street.

Tribunal Inspection We undertook an accompanied inspection on 26 September 2013. We also completed multiple unaccompanied inspections of the review site and other heritage buildings within the CBD referred to in the expert evidence.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 FJM Pty Ltd has requested the Tribunal to review Melbourne City Council's decision to refuse to grant a permit for a four storey addition to an existing building located in central Melbourne. The existing building was constructed as the Metcalfe & Barnard warehouse, but is now known as the "Ivy" building after a nightclub which occupied part of it for some time. It is a building of high heritage significance.
- 2 The Council refused the application on the grounds that:

The proposed addition will be visually dominant and detract from the heritage character of the host building and will be contrary to the relevant provisions of the Melbourne Planning Scheme including clauses 22.04 and 43.01.
- 3 Four people objected to the application. They were concerned with the amenity of apartments in Cavendish House opposite such as overshadowing, noise and vibration during construction, and artificial lighting shining into bedrooms at night.
- 4 The Melbourne Heritage Action Group lodged an objection during the permit application process. They considered that the proposed additions would be visually dominant and would adversely affect the heritage significance of the "Ivy" building. None of the objectors is a party to this review².
- 5 The permit applicant contests the ground of refusal and asserts that the proposed addition would be a respectful and subdued form and it would comply with planning policy. The permit applicant submits that the heritage building's architectural strength would continue to have primacy and the additions above would be recessive and subordinate.
- 6 The key issues are:
 - Will the demolition of the roof and flagpole adversely affect the significance of the heritage place?
 - Will the scale, massing, form and materials adversely affect the significance, character or appearance of the heritage place?
 - Is the proposal of high quality architectural design?

¹ We have considered all submissions presented by the parties although we do not recite all of the contents in these reasons.

² Melbourne Heritage Action lodged a statement of grounds with the Tribunal after the due date. They were advised by correspondence by the Tribunal that they needed to attend the Hearing and could apply to be joined as a party. Ms Vanda Hamilton attended at the end of day 1 of the Hearing. She advised she would not be able to arrange for any person to attend day 2 of the hearing and requested the Tribunal to consider the submission without joining Melbourne Heritage Action as a party. This course of action may not in fact have been open to us, as Melbourne Heritage Action is not an incorporated body.

- Would the proposed buildings and works satisfy the requirements of schedule 1 to the Capital City Zone?
- 7 We must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Melbourne Planning Scheme, we have decided to issue an interim decision to provide the permit applicant with an opportunity to increase the setback of the new structure from the existing parapet, in order to more clearly affirm the primacy of the host building and the separation between the two. Our reasons follow.

REVIEW OF KEY ISSUES

What is the building's heritage significance?

- 8 The heritage significance of the Metcalfe & Barnard warehouse is not in dispute. It was comprehensively described by the three heritage witnesses and in the two conservation management plans prepared by Heritage Alliance in 2002 and 2012. We provide an overview below and otherwise adopt their analysis of the heritage place.
- 9 The building is a four storey structure with the basement level visible along Russell Street due to the slope of the land. It is designed in the American Romanesque Revival style and constructed of red face brickwork above a bluestone plinth with ornate rendered detailing and prominent double height arches to its windows to both Flinders Lane and Russell Street. Cement moulding, cornicing, timber framed windows and a conspicuous parapet add to the building's intricate exterior.
- 10 The ground level is divided from the two upper levels by a prominent cement cornice that extends around both elevations. An unusual detail is a "bartizan" - a cylindrical turret-like element that anchors the top of the corner of the building. It rises from level 2 to above the top of the building. A flagpole is located a small distance behind the bartizan. The roof is not original fabric, having been replaced in the 1970s after a fire.
- 11 The 2012 CMP includes a summary of the building's significance:
- The former Metcalfe and Barnard warehouse is of historical, technological and aesthetic significance for the following reasons:
- It is an early example of the commercial work of architects HW and FB Tompkins, who acquired a reputation as Melbourne's pre-eminent form of commercial architects in the first four decades of the twentieth century.
 - It is a very early example in Melbourne of the American Romanesque style, as applied to a warehouse building in the tradition of the influential Marshal Field Store in Chicago designed by H H Richardson in 1886.

- It is an early (if modestly scaled and structurally unremarkable) example of steel framing in Melbourne, foreshadowing the countless multi storey steel framed buildings which the same architects executed following their informative American tour in 1910.
- 12 The building is classified in the City of Melbourne i-Heritage database as of level “B” significance. A “B” grade building is defined in policy³ as being of:
- regional or metropolitan significance, and stand as important milestones in the architectural development of the metropolis. Many will be either already included on, or recommended for inclusion on the Register of the National Estate.
- 13 The streetscape is classified as “level 2”, which is defined as being:
- Level 2 streetscapes are of significance either because they still retain the predominant character and scale of a similar period or style, or because they contain individually significant buildings⁴.

What is the planning policy framework that applies to the land?

Zones and Overlay

- 14 The land is included in the Capital City Zone Schedule 1 and is affected by an individual Heritage Overlay (HO847). The heritage overlay applies as a site specific overlay rather than a precinct.
- 15 The purpose of Schedule 1 to the Capital City Zone is to provide for uses that complement the capital city function of the locality. Planning approval is required for buildings and works but not to use the land for offices. The schedule requires a wide range of information to be provided with an application. The decision guidelines are extensive and include the internal amenity of the proposed building, its interface with the public realm and any impacts on adjoining properties in terms of both amenity and equitable sharing of development rights.
- 16 The purpose of the heritage overlay is to implement planning policy and:
- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.

³ Defined in an incorporated document listed in the Schedule to Clause 81.01

⁴ Clause 22.05

- 17 The decision guidelines in the heritage overlay⁵ require us to consider planning policy and any applicable heritage study or statement of significance. We are also required to address:

Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.

Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.

Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.

Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.

Planning Policy

- 18 Our discretion in this matter is guided by policy and we provide below an overview of its relevant directions.

- 19 Clause 15 encourages development to respond to its context and to achieve high quality architecture. Clause 15.03 requires development to respond to and protect heritage places. New development should create a worthy legacy for future generations⁶, conserve and enhance such places, and new additions should:

Ensure an appropriate setting and context for heritage places is maintained or enhanced⁷.

- 20 The municipal strategic statement notes that Melbourne is:

One of the great Victorian era cities in the world, the City contains many precincts, intact streetscapes and buildings recognised for their cultural heritage significance. While mostly known for its Victorian and Edwardian streetscapes, there are many examples of outstanding interwar, post war and contemporary architecture in the municipality⁸.

- 21 Clause 21.03 notes that it is essential to protect the existing built form, character and heritage of the city. In addition to providing an attractive and liveable built environment, it is also important to minimise the ecological footprint of the city. Continued growth within the Hoddle Grid is appropriate in some locations, but development may be limited in scale to preserve valued characteristics. The public realm is to be a high priority⁹.

- 22 Although the Hoddle Grid is an area of ongoing change and growth,¹⁰ it is crucial to conserve identified heritage places from the impact of

⁵ Clause 43.01-4

⁶ Clause 15.01

⁷ Clause 15.03

⁸ Clause 21.02-1

⁹ Clause 21.04

¹⁰ Clause 21.04-2

development¹¹ because of the important contribution that individually significant buildings make to Melbourne's character.

23 Clause 21.01 (Urban design within the Capital City Zone) encourages high quality design standards and innovative design that enhance Melbourne's streets and public spaces. Relevant policies include retaining the traditional and vertical character, emphasising street corners, encouraging details and interest to attract the eye of pedestrians, the use of high quality materials and avoiding blank walls.

24 Clause 22.04 relates to heritage places within the Capital City Zone. It confirms that heritage places make Melbourne attractive. It emphasises the contribution groups of older buildings can make and encourages the retention of heritage places in their three dimensional form, rather than as two dimensional facades.

25 The relevant objective is:

To conserve and enhance all heritage places, and ensure that any alterations or extensions to them are undertaken in accordance with accepted conservation standards.

26 Clause 22.04 includes the following policies:

Proposals for alterations, works or demolition of an individual heritage building or works involving or affecting heritage trees should be accompanied by a conservation analysis and management plan in accordance with the principles of the Australian ICOMOS Charter for the Conservation of Places of Cultural Significance 1992 (The Burra Charter).

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

Regard shall be given to buildings listed A, B, C and D in the individual conservation studies, and their significance as described by their individual Building Identification Sheet.

27 The permit applicant submitted that clause 22.04 (Heritage Places within the Capital City Zone) includes a markedly different approach from clause 22.05 that guides change to heritage places in suburbs surrounding the CBD. It is markedly more prescriptive than clause 22.04 with regard to setbacks, concealment, heights and design "freedom". In general, the policy gives greater design discretion in lower graded buildings and streetscapes. The design bar is set high for "A" and "B" graded buildings in level 1 and 2 streetscapes, and design responses need to be highly recessive and secondary.

28 It was suggested the more specific design direction that applies outside the Capital City Zone arises from a strategic objective to retain the prevailing

¹¹ Clause 21.06

one to three storey built form in areas surrounding the CBD. Within the CBD the prevailing built form is considerably greater. New built form is less obvious set against a backdrop of existing buildings rather than against sky and trees that are evident in areas such as Carlton, North Melbourne or South Yarra.

- 29 We agree with the permit applicant that clause 22.04 provides considerable design discretion within the Capital City Zone and it is less prescriptive regarding appropriate design responses than is found in clause 22.05 that relates to areas outside the Capital City Zone. We give weight to policy direction in our assessment of the design response of this particular proposal.
- 30 The relevant objective in clause 22.04 requires additions to enhance the heritage place and to be undertaken in accordance with “accepted conservation standards”. The first policy under this objective requires proposals to be accompanied by a conservation analysis and management plan in accordance with the Burra Charter.
- 31 Mr Briggs argued that the above references refer to “unwritten” standards that he says are commonly applied in the design of additions to heritage places. He said that these unwritten standards include generous setbacks behind parapets, proportions which are less in volume than the heritage place and retain the air rights above the heritage place so as not to diminish their 3 dimensional form. These unwritten standards mean that *“you don’t build over the top of the front part of a heritage place”*. It was his assessment that this addition would be contrary to these accepted conservation standards, and it would usher in a new paradigm in the redevelopment of heritage places that would diminish their value and prominence in central Melbourne.
- 32 We are not persuaded by Mr Briggs’ interpretation of the planning policy framework. We consider the reference in a planning policy objective to “accepted conservation standards” needs to be understood by reference to the planning policy that references the Burra Charter. That document provides general principles regarding the methodology to be applied in designing a redevelopment proposal. It also sets out the principles to be applied in assessing a development proposal.
- 33 In our view the Burra Charter places weight on preparing conservation management plans that identify the site’s heritage significance, the design parameters and context, and the appropriate conservation works. It does not prescribe any particular design approach such as mandatory setbacks, heights, proportions, materials or form. We consider that the reference in policy to accepted conservation standards and the Burra Charter refer to a “code of practice” that has as its central premises undertaking research of the place, preparing a statement of significance, taking a cautious approach, respect for the heritage place, separating the new from the old and documenting conservation works.

- 34 We must apply the planning scheme as we find it. We are not persuaded that the planning scheme prescribes particular responses or design outcomes for heritage places within the Capital City Zone. We are satisfied that policy deliberately provides considerable design discretion. The onus is on the designer to demonstrate that the proposal is a considered, thoughtful and careful response to the particular built form context and the heritage significance of the particular heritage place.
- 35 However, we agree with Council that Clause 22.04 does not say “anything goes”. It requires that proposed additions are based on careful and thorough research of the heritage place and a sensitive design that responds to the particular significance of the heritage place and its context.
- 36 Conservation management plans were prepared for the building in 2002 and 2012. Both regard the building as significant, but diverge in respect to the appropriate scale and form of possible additions. The 2002 CMP recommends that alterations and adaptations should be undertaken in accordance with accepted conservation standards, should have a low level of impact on the identified heritage place and be complementary to the character, scale, form and appearance of the heritage precinct.
- 37 It concluded that any rooftop extensions should not overly dominate or conflict with the building below. The 2002 CMP suggested a two to three level mansard style roof as an appropriate model for any rooftop additions. Rooftop extensions should not be dominant in streetscape views of the site¹².
- 38 The 2012 CMP encourages proposed new floors to complement the existing structure, not overpower it through the addition of too many floors, or interfere with the architectural presentation of the building¹³. New works should not build up the parapet through screens or balustrades.

Directions that arise from policy

- 39 In summary we consider that the policy framework guides us as follows:
- Melbourne’s heritage places are a valued component of the character and attraction of the CBD. They are to be treated with considerable care.
 - Proposed changes should be based on a careful assessment of the heritage attributes of the place and accord with accepted conservation standards. These refer to methodology and general principles calling for respect and care.
 - Change is contemplated within the CBD including to heritage places.
 - Retaining the three dimensional form of a heritage building is important.

¹² Section 5.2 see pp 24 and 26

¹³ 2012 CMP Section 5.2 pp 24

- Additions should be secondary and not detract from the primacy of the original fabric.
- There is considerably greater design discretion within the Capital City Zone than outside, reflecting the prevailing built form within the CDB compared to the low rise built form and streetscapes outside the CBD.
- From an urban design perspective, the notable objectives are to enhance the public realm, be prominent at street corners, avoid bland walls and comprise high quality design.
- New additions should provide high levels of internal amenity and not detract from the amenity of neighbours or unreasonably constrain redevelopment of adjoining sites.
- Two CMPs accept rooftop additions but differ in respect to their form and massing. The more recent contemplates greater scope in the design of additions.

What is the building's physical context?

- 40 The site is located on the southeast corner of Russell Street and Flinders Lane. The building is prominent in the street and is readily visible from all four directions, particularly from Russell Street.
- 41 The site is within an area of mixed form and height. An eight storey building, the Brooks, occupied by apartments, abuts the south. The original building is five floors and three floors above were added in the 1990s. Further south at the intersection of Russell Street and Flinders Street, a multi storey hotel wraps around the side and rear of the two storey historic Duke of Wellington Hotel.
- 42 To the east of the review site on the south side of Flinders Lane is Pawson House at No. 141-143 Flinders Lane, It is a seven storey building constructed in 1935. This is subject to a heritage overlay. Further east, across Oliver Lane, is the three storey former Bank of New South Wales building at No.137 Flinders Lane. A two storey bluestone building constructed in 1858 as a warehouse is at No. 129 Flinders Lane.
- 43 On the northeast corner of Russell Street and Flinders Lane is the former four storey Royal Bank of Australasia, also subject to a site specific heritage overlay. The Grand Hyatt Hotel is located to the north and east of this building.
- 44 The T&G Assurance building is located on the northwest corner of Russell Street and Flinders Lane, diagonally opposite the site. The southwest corner of the intersection is occupied by the 12 storey Cavendish House. The Forum Theatre is on the west side of Russell Street on the corner of Flinders Street. Some of these buildings are within a precinct heritage overlay.

- 45 In summary, the review site's context is mixed and comprises buildings from a variety of eras, with varying architectural styles and heritage value. There are buildings of similar and greater height. A number of the nearby buildings were designed by HW & FB Tompkins and are subject to individual heritage overlays. The site is not included in a heritage overlay that applies to a precinct. Several heritage buildings have additions to their roofs, generally two to three storeys. There are also a number of modern infill buildings.

Will the demolition of the roof and flagpole adversely affect the significance of the heritage place?

- 46 It is proposed to demolish the roof and a flagpole located to the rear of the cylindrical turret (bartizan).
- 47 We are satisfied that the removal of the roof would be acceptable as the CMP and the three heritage experts agree that the original timber framed hipped roof was destroyed by fire in 1976 and it is not of original fabric.
- 48 The demolition of the flagpole is more problematic. The experts disagreed as to whether it is original fabric or significant. The flagpole does not appear on any of the original tender drawings dated October 1901 that are contained in the 2002 CMP. Nor is it mentioned in the City of Melbourne's statement of significance for the building. It does however appear in the November 1901 sketch in the Australian Shopkeeper's Journal. Furthermore, the description of the building in both the 2002 and 2012 CMPs refer to a "plain timber flagstaff" surmounting the small dome on top of the bartizan.¹⁴ The 2002 and 2012 CMPs recommend that it should remain in situ as it is "original fabric".
- 49 Mr Briggs opposed the removal of the flagpole, arguing that it is identified as original in a CMP. Mr Raworth and Ms Brady both said that regardless of whether it is original, it is a minor element in the composition of the building and its removal was acceptable. Whilst Ms Brady acknowledged its depiction in the 1901 publication, her view was that the fabric was not original.
- 50 We conclude that it is unlikely that it is original fabric as the original hipped roof did not include a flagpole and the roof on which it now sits was replaced in 1976. Furthermore, that existing flagpole does not surmount the bartizan. We find its removal acceptable.

¹⁴ CMP 2002 p13

Will the scale, massing, form and materials adversely affect the significance, character or appearance of the heritage place?

The heritage evidence before us

- 51 As noted above, the City of Melbourne¹⁵ describes the Metcalfe & Barnard warehouse as significant as an early American Romanesque Revival building that successfully combines bold arched forms and ornate cement detail, set in contrast to bold brickwork.
- 52 The primary question before us is whether the proposed addition will so distract the observer as to reduce the ability to appreciate the significance of the building as displayed by its form and fabric. Mr Briggs argued that adjacent infill development can so transform the setting of a heritage place that it damages its setting and “*the capacity for visual appreciation of the place and its heritage significance*”.
- 53 We acknowledge the truth in this. It is demonstrated in many parts of the City. His opinion is that the proposed addition would have the same effect and it is important for the original heritage building to maintain its visual primacy. He considers that the applicant has failed to explain how heritage objectives would be served by the proposal.
- 54 Mr Briggs says that the “*wonderfully exuberant and optimistic design*” of the warehouse and its composition generates something much more than a simple massive masonry building. He contends that this building has buoyancy and movement, one which “*lays claim to its air space*”. He fears that the proposed design would result in a prominent, contrasting form presenting as a bulky and overwhelming protrusion over the host building that would lessen its heritage significance. Mr Briggs thought the casual observer would see the additions and express an “*oh my god*” response, that the observer’s eye would be drawn away from the original and thus diminish its significance.
- 55 Ms Brady and Mr Raworth agreed with Mr Briggs’ description and enthusiasm for the Metcalfe & Barnard warehouse. They also agreed that the proposed addition would be visible from many viewpoints. It was their evidence however, that the massing and appearance of the additions is an acceptable heritage response.
- 56 Ms Brady’s evidence is that the clear separation between the old and new elements of the building would be evident when viewed along both Russell Street and, where it could be seen at all, in Flinders Lane. Her view is that the height is acceptable as the area is characterised by variety. The review site is not in a designated heritage precinct, nor one where lower scale buildings contribute to a recognised pattern or character. She said additions above heritage buildings are no longer rare or incongruous in the CBD.

¹⁵ As in the i-Heritage search results

However, she accepts that each proposal should rightly be considered on its merits.

- 57 Her evidence is that the proposed addition is acceptable in heritage terms. The significant original form and architectural detailing of the original would be maintained. The form and expression of the addition, which she described as “*quiet and neutral*”, would not be so large or overwhelming that it would have an adverse impact on the historic and architectural significance of the original building.
- 58 Mr Raworth agrees with Ms Brady. He says that the lightweight appearance of the mesh screen proposed for the exterior of the addition would not compete with the heavy masonry character of the original building. He disagreed with Mr Briggs that the large box would overpower and dominate the existing building or prevent the observer from seeing the original building in its three dimensions.
- 59 Both Mr Raworth and Ms Brady thought that the additions would be of fleeting interest when compared to the robust decoration and gravitas of the original.
- 60 The experts also disagreed as to whether this addition forms part of a new paradigm in redeveloping heritage places. Mr Raworth claimed that the number of historic buildings that have been built-over in the CBD has created a new paradigm. Ms Brady also noted many examples where this was the case, but we think was not arguing for a new paradigm, merely noting a number of site specific responses. Mr Briggs thinks that an extension which aligns with the front of heritage places is a new approach that is neither established nor agreed in terms of its compliance with “established conservation principles” as required by the Burra Charter and planning policy.

Weight to be given to the different heritage evidence

- 61 The responsible authority submitted that we should give limited weight to the evidence from Mr Raworth and Ms Brady.
- 62 With regard to Mr Raworth, the responsible authority tabled copies of referral advice from Mr Raworth to Council over the previous decade regarding proposed additions. The comments were provided when he was the Council’s heritage consultant. In that advice Mr Raworth generally did not support larger additions and commented that any additions should be recessive and set back behind the parapet. The responsible authority submitted this previous advice was contrary to his expert evidence.
- 63 Mr Raworth made clear in both his written evidence and evidence in chief that he did provide the advice described by Council. He then set out his reasons for his support for this proposal and his assessment within the framework of the planning scheme.

- 64 We accept Mr Raworth's evidence as his honestly held professional view about the merits of this particular proposal. We accept that an expert's view can change over time in the light of knowledge of other similar projects, the particular design and materiality of this proposal, and changes in policy and context. From the Tribunal's perspective the change has been declared rather than ignored or hidden and explained, and importantly, the proposal before us assessed on its merits.
- 65 With regard to Ms Brady, the responsible authority submitted that limited weight could be given to her evidence as her firm had prepared a heritage assessment that was submitted with the permit application. The responsible authority submitted that this long and early involvement diminished her independence.
- 66 As with the submission regarding Mr Raworth, we give this submission little weight. It is commonplace for the Tribunal to hear evidence from an expert who works with the firm that completed assessments in the early stages of the planning approval process. The important factors for the Tribunal are that the expert appearing in the merits review has not acted as an advocate and has completed an independent assessment based on "first principles" and sound, transparent methodology. We are satisfied that Ms Brady's assessment meets those criteria.

The evidence regarding architectural merit

- 67 Mr McBride and Professor Goad presented evidence on the scale and massing of the proposed additions. Mr McBride described the Metcalfe & Barnard warehouse as skilfully elaborated. He observed that its most significant architectural elements are its giant vertical brick arches on both facades. These give the building extraordinary mass and weight by virtue of the relationship of their depth and height.
- 68 Mr McBride's evidence is that the most successful contributions to the public realm are made by buildings which have a consistent and clear relationship between the existing and new building mass. He says that the mass of the addition combined with its formal articulation is appropriate for such a prominent corner.
- 69 His opinion is that there is a clear separation between the old and new through the proportions, the difference of language and the modesty and lightness of the materials in the additions. He thought that the stainless steel mesh has the potential to provide a simple external skin which has a translucence that will change with atmospheric conditions and the viewer's position. At night, backlighting will enhance this effect. This variance will add a subtle interest, but not to an extent that it creates the experience feared by Mr Briggs. It will be perceived to be different from the original building, be interesting in its own right, but clearly subordinate to the old.
- 70 Mr McBride's conclusion is that the proposal's proportions, detailing and articulation would be of high architectural merit. The ensemble of the

handsome neo-Romanesque warehouse and elegant contemporary companion will contribute to legibility and memorability at this prominent corner.

- 71 Professor Goad thinks the design is uncontroversial, as the aesthetic approach of complementary proportions and a clear separation through different architectural language creates an integrated yet separate new building. He says that this, together with the separation of the building parts and a new language which does not overpower or compete with the robust and decorative original, would create an addition that is “*polite and silently respectful*”.
- 72 Council submits that this proposal is an inappropriate design response which dominates the heritage fabric of the existing building. It says achieving high quality architectural or even design excellence cannot compensate for a harmful impact upon a heritage asset. It urges us to ignore the evidence of Messrs McBride and Goad as they are not providing heritage analysis or opinion.
- 73 We however accept the evidence on design because it has a clear bearing on whether people in both streets would be likely to view the addition to the building as the dominant or secondary elements relative to the original building. It is for this reason that we have discussed it at some length.
- 74 In terms of urban design policy in the CCZ,¹⁶ we are satisfied the addition clearly fulfils the requirements of the planning scheme. It aligns with the street pattern, respects the continuity of street facades, maintains the vertical rhythm of the streetscape and emphasises the street corner. Importantly, it has paid careful regard to the height, scale, rhythm and proportion of its adjoining heritage building.

Our assessment of the evidence and submissions

- 75 We do not wish to enter into the precedent or new paradigm debate. The examples proffered were disparate in terms of the heritage significance of the host building and scale and design of the additions, and the context of the development. What they did was to explore the many ways in which architects, planners and heritage professionals have sought to conserve and adapt the city’s historic building stock. However, we consider they have limited relevance to this particular development, except to indicate the approach has been used before and there are numerous examples of good and not so good additions. Even the approach advocated by Mr Briggs has produced outcomes that are in the not so good category. We conclude that there is no one size fits all solution and an acceptable outcome is very much dependent on the skill of the architect in collaboration with the heritage consultant.

¹⁶ Clause 22.01

76 We directed all parties in this review to focus on the impact that these proposed additions might have on the original building and its immediate context, guided by the planning scheme. We have carefully examined the drawings and the submissions and evidence before us. We have inspected the review site and its surrounds. We have also inspected many of the heritage places within the CBD that have additions and that were referred to by the experts. All of this material leads us to conclude that:

- The approach before us is legitimate.
- The mansard roof suggestion in the 2002 CMP was simply that – a suggested approach that is non-binding or prescriptive.
- The proposed height is compatible with the varied height found in the surrounding area.
- The clarity of form and clear separation of the addition from the host building means that it will not dominate and thus detract from the original building. Far smaller extensions to buildings can confuse due to the choice of massing and materials in a way that this one does not.
- The key to the success of the proposal lies in both the clear separation between the old and the new and from the proportional relationship with the original building.

77 The applicant explained to the Tribunal the fundamental importance of the proportional relationship between the volume of the addition and the existing building in achieving an acceptable design response. The proportions of the “body”, ie that part between the ground floor cornice and the upper parapet, are repeated in the upper three floors of the addition. We accept that this clear relationship contributes to the harmony of the whole composition.

78 Mr Briggs submitted that the volume of the proposal would be excessive, that it would draw the eye and compete with the heritage place below. He submitted that a smaller addition may be appropriate and referred us to Charter House in Bank Place and 169 Flinders Lane as examples of less prominent additions above a heritage building. He noted that the 2002 CMP and Mr Raworth’s advice to Council urged a recessive response in the order of two to three levels, set back behind the parapet.

79 Notwithstanding our overall support for this proposal, we find that a further reduction is required to preserve the primacy of the host building and to make the proportional relationship more explicit and the addition more self-effacing in its relationship to the host building. This is because the drawings are unclear as to precisely where the mesh face of the building would be located in relation to the existing parapet. We consider that it should be around a metre behind inner face of the existing parapet. Such a setback is required to “lessen the competition” between the overall size of the building components. If the proportional relationship of the “body” of the existing building is applied, the height of the building should also be reduced. We

think that this is also important as it would diminish the prominence of the addition in both the close range views from Flinders Lane and from the more open viewpoints from north and south along Russell Street. The proposal as depicted in the photomontages appears to sit directly on top of the host building, despite the separation provided by the recession above the parapet.

- 80 The proposed addition comprises a glass box enclosed within a stainless steel mesh screen. Professor Goad describes the screen as a semi-transparent light natural metallic colour, a complete contrast to the host building. He says that the consistent treatment in a composition, which is complementary in scale to the original, would produce a building that is *“harmonious and composed”*. Mr McBride observes that the fineness and simplicity of the proposed design requires skilful detailing to achieve the design outcome. He considers that the photographs tendered of the test mock-up demonstrate the subtle changes which would take place as atmospheric conditions and viewing positions vary.
- 81 Professor Goad and Mr McBride both thought that the detailing of the attachment of the mesh to the building requires further work. We note their reservations, but this has not guided our decision. We assess the proposal before us and are persuaded that it is acceptable from heritage and urban design viewpoints. In making that decision the Tribunal assumes that the permit would be complied with and further design development would take place. If in time another “skin” has to be used, it would have to be approved through an application to amend a permit. An alternate skin would be assessed on its particular merits.
- 82 The proposal before us demonstrates considerable care and thought, and we are satisfied that it would be an acceptable outcome. The strict geometry and self-effacing finishes give the building a severe modesty that responds and would be secondary to the exuberance of the host building. We are persuaded that the scale, massing, materials, bulk, form and appearance of the addition would not adversely affect the significance of the warehouse. We consider that with some increase in the setback and consequential reduction in the scale of the addition, the proposal has the potential to enhance both the building and this prominent corner in the CBD.

Would the proposed buildings and works satisfy the requirements of Schedule 1 to the Capital City Zone?

- 83 Heritage is the primary matter before us as Council’s grounds of refusal relate entirely to those matters. However, planning permission is required for new buildings and works in the Capital City Zone. The decision guidelines of schedule 1 to clause 37.04 require the responsible authority and, on review, the Tribunal to consider a wide range of urban design matters. A number of these matters such as scale and massing, and response to its corner location have been addressed above with regard to heritage and design quality. Other matters to be addressed include:

- Impact on the public realm
- Access to and from the site.
- Internal amenity.
- Impact on the amenity of neighbours.
- Impact on the development opportunities for adjoining land.

84 Whilst the responsible authority had no objections with regard to the above matters, some of these matters such as the amenity of neighbours and the impacts on the public realm have been raised by objectors. We address these matters below.

85 With regard to effect on the public realm, the additions would increase the extent of shadow to the southwest corner of Flinders Lane and Russell Street until some time between 9.00am and 11.00am when the shadow from the existing Hyatt Hotel engulfs it. For the rest of the period between 9.00am and 3.00pm the additional shadow from the extension remains within the existing shadow.

86 We consider that the additional shadow in the early morning period would be acceptable as Flinders Lane continues to receive sunlight until affected by the Hyatt Hotel, and the additional shadow occurs only a short section of the west side of Russell Street directly opposite.

87 We accept that the proposal is not so tall that it is likely to cause significant wind tunnels or down draughts.

88 The proposal makes no changes to access arrangements and the legibility of the building's entry, and in our view complies with the outcomes sought by clause 22.01.

89 The additions would be used for an office, and amenity considerations relate to matters of heating, cooling and ventilation for office workers and their visitors. A sustainability report was submitted with the permit application. It does not address the impacts, if any, of the mesh screen on natural light or heating or cooling. We think it is likely to affect heating, cooling and access to daylight. We also think that the screen over all windows could restrict views out of the building and create a constrained internal amenity.

90 On balance however, we think that a somewhat reduced internal amenity and energy efficiency would be an acceptable trade-off to achieve an addition that is appropriately separate and subordinate to the old building and hence is acceptable in heritage and urban design terms. It may be that the internal amenity and efficiency of the addition now needs to be a focus, given that the external design is largely resolved. Our concerns are not sufficient to warrant refusing this proposal.

- 91 The development interfaces with neighbours to its east and south. The existing building is constructed to its boundaries. The adjoining buildings have windows in the interface walls above the existing building.
- 92 The additions have responded by setting back from the windows in the adjoining walls to the east. The windows to the south are to the additions above the roof and these are set back from the common boundary.
- 93 We think the setbacks to the east wall are reasonable to provide ventilation and daylight to the adjoining windows.
- 94 Several residents of the Cavendish building lodged objections with Council proposing that the amenity of their dwellings would be affected by construction noise and additional lighting to bedrooms. The Cavendish building is located on the southwest corner of Flinders Lane and Russell Street, separated by the width of Russell Street.
- 95 Clause 21.06 acknowledges that the CBD is a busy place and residents should not expect an amenity similar to residents of a suburban precinct. However, as far as possible, the amenity of residents within the CBD should be protected. New development should ensure all residents, existing and new, have access to daylight and an outlook and are protected from unreasonable overlooking.
- 96 We think that in the context of the scale and intensity of built form and illumination, this proposal would make little difference to the amenity of dwellings located on the opposite side of Russell Street. As the addition is to be used for offices, its night time illumination may be less than dwellings. Noise and disruption from construction can be managed through permit conditions.
- 97 We are satisfied that the proposal complies with the Capital City Zone and clause 22.01.

CONCLUSION

- 98 It follows from the above reasons that it is our conclusion the proposed addition can be designed to be generally acceptable. However the proposal before us requires further revision.
- 99 We do not accept Council's assertion that our approval of this proposal will "open the flood gates" and may have immense consequences with respect to infilling of the airspace above heritage buildings, such that the Melbourne CBD becomes a city like that envisaged in the film "*Bladerunner*". The planning scheme requires each proposal to be reviewed individually and on its merits. No two cases are alike.
- 100 Indeed, the 1901 commentary in the *Australian Shopkeeper's Journal*¹⁷ noted that:

¹⁷ Quoted in the 2002 CMP

a glance at our accompanying illustration shows that, though it may lack historic charm, it has architectural beauties that must render it an ornament to the city.

- 101 We wonder if the same might not be said of the current proposal (with some modification) in another hundred years, that in time it too may be considered by all a worthy legacy for future generations.
- 102 We have identified in our reasons that the scale and massing of the proposal before us would be too large relative to the heritage building. It needs to be somewhat smaller, with the clear separation between the old and new retained. We think this can be achieved through careful and considered recalibration of the design, particularly keeping the proportionality in place.
- 103 We consider that further revision is needed before it can be granted a permit.
- 104 We have considered directing that a permit be granted subject to conditions that specify the changes required. In view of the heritage significance of this building and its prominent location, and noting that the scope of changes have been defined by the Tribunal and not the responsible authority, we consider it appropriate that the permit applicant be provided an opportunity to respond to our findings, and the review be completed by the Tribunal.
- 105 Hence, we issue an interim order offering the opportunity for further revision. Should this opportunity not be accepted by the applicant, the application will be refused. It should also be appreciated that further plans prepared in response to our order must demonstrate that they meet the outcomes we have described. If they do not, the application will be refused.

G Rundell
Presiding Member

Ann Keddie
Member