

30 August 2018

To The Planning Coordinator
Planning Panels Victoria
Level 5, 1 Spring Street
MELBOURNE VIC 3000
By email planning.panels@delwp.vic.gov.au

Copy All Submitters

Dear Panel Coordinator

**Melbourne Planning Scheme Amendment C258: Heritage Revisions (Panel)
Melbourne Business School Submission**

We continue to act for Melbourne Business School (**MBS**) in the above matter.

We are instructed to write to the Panel to express our client's dissatisfaction with the conduct of Melbourne City Council (**Council**) in this matter following the new information and evidence tendered during Council's Part B Submissions on 28 August 2018, long after MBS presented its submissions, called its expert evidence and closed its case on 15 August 2018. The documents tendered were Documents 49 and 50.

It is our client's position that this late information has severely compromised the procedural fairness that should be afforded to MBS, and we request that the Panel disregard the material.

1 Context

Council presented its Part A Submissions to the Panel and called expert evidence in the week commencing 6 August 2018.

Our client, represented by Chris Wren QC, expressed its frustration from the outset during cross examination of Council's experts that no methodology had been provided by Council for the conversions of the City North properties, and that this handicapped our client's ability to make informed submissions on the impacts of the proposed amendments on the MBS properties.

We heard nothing further on this matter until late afternoon on Day 9 of the hearing, 28 August 2018. Meanwhile, MBS made its submissions and called evidence from Paul Dainty, Andrew Biacsi and Bryce Raworth on 15 August 2018, relying on the exhibited material the subject of this Panel Hearing.

2 Document 49 – An unsound methodology

Council tendered an email dated 18 December 2012 from RBA Architects + Conservation Consultants Pty Ltd (**RBA**) to Council. This email had been in the possession of Council since its receipt and yet it

was not produced until 28 August 2018, even though it was forwarded to the relevant Council contacts on the same day MBS called its evidence.

This email was in the context of a query about seven properties (not MBS properties) in City North that were considered to be individually significant in their own right. The correspondence plainly does not deal with heritage places in precincts, and for Council to have extrapolated the "Discussion" in this email as providing a methodology for the conversion of heritage places and precincts throughout City North was plainly wrong.

In fact, as stated in our submissions, it was in not RBA's brief at all to establish a methodology for the conversion of City North heritage properties to the Significant/Contributory system. For Council to reverse engineer a methodology from a 2012 email such as this is ludicrous.

On this basis, we maintain that no sound methodology has been provided for the translations in City North, especially with regard to heritage precincts. This correspondence serves only to highlight the lack of methodology that has been employed for City North.

3 Document 50 – Errors in Council's conversions

Council tendered Document 50, which is a Council Memorandum dated 23 August 2018. It highlights a number of errors in Council's application of its supposed methodology for City North. We are told that Council now suggests that two of the MBS properties were incorrectly graded in its conversion.

In particular:

- 174-180 Leicester Street was mistakenly translated to Contributory when it should be Significant; and
- 183-189 Bouverie Street was mistakenly translated to Contributory when it should have been removed from the Heritage Inventory entirely.

Until now, our client has expended a great deal of resources in attempting to understand the reasoning behind the puzzling grading of its heritage properties in the exhibited material that is the subject of this Panel Hearing. MBS's case highlighted the obvious error concerning 183-189 Bouverie Street. It also relied upon the exhibited amendment in respect of 174-180 Leicester Street.

4 Timing of production of this material

Documents 49 and 50 did not form part of the exhibited material that is the subject of this Panel Hearing. For Council to present this material at such a late stage during the hearing is plainly unconscionable and lacks procedural fairness. This material was not exhibited, and neither MBS nor its experts had an opportunity to review this material prior to making its submissions.

It is our primary position that the material should not be received by the Panel for this reason.

If anything, the material serves only to highlight how inherently flawed Council's methodology is with regard to City North, and how the Panel should require Lovell Chen be called upon to review the City North citations.

We respectfully request this correspondence be brought to the attention of the Panel.

Yours sincerely



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