

**IN THE MATTER OF AMENDMENT C258
TO THE NORTHERN PLANNING SCHEME**

**SUBMISSIONS ON BEHALF OF
THE MELBOURNE BUSINESS SCHOOL**

Introduction –

1. These submissions are made on behalf of the Melbourne Business School Limited (“MBS”) (Submitter 22) the owner of six properties contained in the Little Pelham Street Precinct (HO1121).
2. The properties abutting Little Pelham Street are shown in figure 1 to the witness statement of Bryce Raworth. Each building is described in detail by him. The properties are fronted by Leicester, Pelham and Bouverie Streets and abut University Square to the west and Lincoln Square to the east.
3. The witness statement of Professor Paul Dainty, the Deputy Dean of the MBS describes its history, background and the nature of the courses run under its auspices. The MBS closely collaborates with the Faculty of Business and Economics of the Melbourne University with its Master of Business Administration course being one of the University degree programs. Like many of the other institutions within the Parkville NEIC, the MBS has a world class ranking of which it is justly proud. Also like many of the above institutions, it has aspirations to develop its site to further its capacity to maintain and enhance the courses offered, housed within world class facilities. These aspirations are discussed by Professor Dainty.
4. The MBS position in response to the proposed Amendments revolve around three issues:-
 - The unjustified upgrade of 193 Bouverie Street from a C grading to Significant and the inclusion of 183 Bouverie Street as a graded building.
 - The inexplicable exclusion of CCZ5 from the new Clause 22.04.
 - The detailed drafting of the proposed amended policies.
5. In support of the first issue, the MBS relies upon the evidence of Mr. Raworth, the assessment of Mr. Lovell and Mr. Hemingway and the Panel’s conclusions in Amendment C198 as demonstrating there is no justification for the upgrade of 193 Bouverie Street to Significant or any grading of 183 Bouverie Street.
6. In respect of the second issue, the MBS relies upon the evidence of Mr. Biacsi. In addition it notes that Ms. Jordan supports Mr. Biacsi’s conclusions. For the first time since the Amendment was mooted, there appears to be some recognition on the part of Council of the issues raised in two

previous Panel reports concerning the tension between competing policies both at the state and local level within the planning scheme.

7. The Council adopts the recommendations made by Ms. Jordan and Ms. Brady in refining the Future Melbourne Committee's policy draft. This issue will be explored in cross-examination and through the above witnesses. It is likely Ms. Jordan's proposed policy will be the subject of further refinement towards the close of this hearing.

The Conversion Factor –

8. Council currently proposes to upgrade 193 Bouverie Street from a C to "Significant" grading. In response to the MBS submission (22), the report to the Future Melbourne Committee of 20 February, 2018 provided (pg. 26):-

"Site Specific Response –

The Melbourne Business School at 183 – 195 Bouverie Street already has heritage protection under HO1121 which was introduced as part of Amendment C198 City North Heritage Review with the current grading listed as C and D.

The proposed grading was determined by the conversion methodology established as part of the City North Heritage Review where a C grading is converted to significant and a D grading was converted to contributory.

Under the proposed grading system and in accordance with the City North Heritage Review conversion methodology, 183 – 189 Bouverie Street is contributory and 193 – 195 Bouverie is significant.

Site Specific –

In response to the submission, no changes are recommended. ...".

9. One of the objectives of the review undertaken by Scott Hartley was to provide independent assurance that:-

"2. The relevant reclassification methodology has been accurately applied to all properties within a Heritage Overlay in the City of Melbourne (noting that different reclassification methodologies applied in the area of the recent Arden-MacCaulay, City North ...).¹

10. Council tendered document 8 comprising seven documents including an extract from the City North Review 2012 (dated January 2013), the RBA Panel evidence statement and extracts of the Amendment C198 Panel Report. Council also tendered document 7 being the "Review of Local Heritage Planning Policies in the MPS July 2014".

11. The chronology of the above documents is telling.

¹ Scott Hartley Witness Statement, page 2.

12. The City North Heritage Review 2012 discusses gradings at pages 5 and 6 in section 2.5.2 where, in particular, it observed:-

“The following tables outline the current definitions in clause 22.05 (Heritage Places outside the Capital City Zone) of the Melbourne Planning Scheme. Buildings graded “A” to “D” and the streetscape value is assigned a level, 1 to 3, both in descending order of significance.

The A – D gradings are the same gradings considered by Ms. Brady in her methodology, which was supported by Council.”

13. There is no reference in the 2012 Review to any conversion methodology that was “established as part of the City North Heritage Review”. Council tendered (document 8) extracts of the Review at pages 4 – 7 that include the grading system adopted by the Review. In addition, the RBA Panel evidence statement was tendered. It had been prepared for the second Planning Panel appointed to consider matters relating to Amendment C198² and related to three properties only.

Section 1.2 described the history of the Review in the following terms:-

“The City North Heritage Review was prepared for the City of Melbourne by RBA Architects + Conservation Consultants. The four part document was first issued as a whole to the planning department in December 2011. A revised report was issued in October 2012 with various corrections to addresses and mapping. The version presented to the Future Melbourne Committee at the meeting on 5 March, 2013 also included some revised citations for existing Heritage Overlays.”

14. The full text of Volume 1 of the Review is contained in Appendix 1. RBA’s brief was set out in section 1.2 and had three ingredients, namely:-

- *Inspect, research and review the listed properties and make recommendations for protection under the Heritage Overlay.*
- *Make recommendations as to whether the property should be included in an existing heritage overlay precinct or a new precinct and/or if it is significant in its own right and provide a statement of significance accordingly.*
- ...
- *Enter this information in the i-heritage database.”*

15. As can be seen from the previously tendered section 2 dealing with the grading, there is a complete absence of any reference to establishing a conversion methodology as part of its overall review. It was not part of its brief! As previously described, the four part document was dated December 2011, i.e., 2½ years prior to the July 2014 Discussion Paper, after presumably taking some time prior to prepare. It preceded the C186 report of July 2012 and Council’s Heritage Review Strategy 2013. The latter identified the need to review the letter grading system (Part B [5]). (Note (page 29, Action 2.10 – Timeframe 2013 – 2017).

² Expert Witness Statement – Heritage Planning Panel Hearing No. 2, 30 October, 2014, Section 1.1, page 1.

16. Section 3 of the Review contains an Overview of Development, section 4 contains the recommendations noting that the three geographical areas of Carlton, Melbourne and West Melbourne were contained in their own individual volumes comprising four volumes (first issued in December 2011).
17. Volume 2 dealt with the Carlton properties including the Little Pelham Precinct, Appendix 2. It is apparent from this assessment that the second briefing requirement of the Review to make recommendations if a property is “*significant in its own right and provide a Statement of Significance accordingly*” was not undertaken for 193 Bouverie Street.
18. Six sites are included in the table at pages 20 – 21, five of which contain buildings, two of which had a proposed grading of C2 with the balance D2. 174 – 180 Leicester Street was also classified C2, noting the Heritage Places Inventory 2017 grades it as contributory (page 30 of 225).
19. The Review discussion of “*Why is it Significant?*” D17 stated:-
- “The Little Pelham Street precinct is of historic significant for being illustrative of the industrial development that occurred in this part of Melbourne during the Interwar period. At this time, there was extensive replacement of the pre-existing building stock, being mostly 19th century cottages and terrace houses with some small industrial sites, to larger scale factories and warehouses.*
- (AHC Criteria A4)*
- The Little Pelham precinct is of representative and aesthetic significance as a largely intact group of Interwar and Post-War period buildings. Other contemporary buildings of this type in the area have undergone a much greater degree of external change so that although more distinctive examples can be found elsewhere, a consistent streetscape of such buildings is rare. Of this group of buildings, the most impressive is the Modern style, former factory (174 – 178 Leicester Street) however the original detailing of the rear part of 193 – 195 Bouverie Street, where it is unpainted along Little Pelham Street is also noteworthy.*
- (AHC Criteria D2 and D1).”*
20. As previously observed, this conclusion was reached in 2011, at least 2½ years prior to the July 2014 “*Discussion Paper*”. The Discussion Paper is just that – a discussion paper. It has no status, has not been tested and, we now know, has been specifically rejected by Ms. Brady, and Council, as a methodology for converting the standard A to D classifications.
21. The Discussion Paper (Document 7) July 2015, contained an introduction in the following terms:-
- “The City of Melbourne Strategy 2013 Implementation Plan has a priority action (Action A2.8) to review and update Melbourne Planning Scheme Local Policies Clause 22.04 Heritage Places within the Capital City Zone and Clause 22.05 Heritage Places outside the Capital City Zone.*

This Review “A Review of the Local Heritage Planning Policies in the Melbourne Planning Scheme” identifies the issues within the content, usability and operation of the local heritage planning policies and recommends options for updating these policies in the Melbourne Planning Scheme.

The Review has also assessed the existing tools for specifying heritage value (the A – D place gradings and the 1 – 3 streetscape levels) and the lack of statements of significance in some heritage precincts. These relate to Actions 2.9 and 2.10 in the Heritage Strategy 2013.

The aim of this Review is to assist Council to plan its approach to updating and improving these policies and provisions.

The Review was developed with targeted consultation with users of the policies and with representatives from peak bodies including Heritage Victoria, National Trust of Victoria and the Melbourne Heritage Action Group.

The proposed public and stakeholder consultation on the Review will run for four weeks. Following a report to the October 2014 Future Melbourne Committee, further stakeholder consultation will be undertaken in the course of implementing each of the recommendations of the Review. This will include working with the community and developing statements of significance for those precincts outside the Capital City Zone that do not have them.”

22. Section 1.0 deals with the background and notes since 2010 that the City of Melbourne had undertaken a number of specific reviews including the City North Heritage Review Amendment C198. It then observed:-

“It is timely to bring the planning scheme heritage local policies, introduced to the new format planning scheme in 1999, up-to-date with current heritage practice.

This Review has been informed by the comments of past planning panels, comments on the City of Melbourne Heritage Strategy, the Victorian Government Review of Heritage provisions in Planning Schemes (2007) and a preliminary round of consultation with key users of the heritage policies and peak heritage bodies including Heritage Victoria, National Trust of Victoria and the Melbourne Heritage Action Group.”

23. Nowhere in any of the above documentation is there any reference to a methodology established as part of the City North Heritage Review, which preceded the commencement of the work giving rise to the Discussion Paper.
24. It is apparent from the above that the Discussion Paper methodology was not ultimately adopted by Council nor subject to any rigour through independent testing other than by Ms. Brady, who specifically rejected it and whose conclusions have been supported by Council in this Panel hearing.

25. Section 3 of the Discussion Paper defining Heritage Significance commences at page 11 and in section 3.3 states:-

“The definition of Heritage Significance is:

- *State heritage value – worthy of listing on the Victorian Heritage Register;*
- *Individually significant within a municipality – worthy of application of the Heritage Overlay; and*
- *Contributory to the heritage significance of a precinct – worthy of inclusion in a Heritage Overlay area.”*

A table appended to that discussion observed:-

“Generally the principles of the translation would be as follows:

...	
<i>C possibly some D</i>	<i>Individually Significant</i>
<i>D possibly some C</i>	<i>Contributory”.</i>

26. The 2012 Heritage Review assessment was that 193 Bouverie Street was not identified as being worthy of an individual citation or being included in an individual heritage overlay. It was part of a precinct, with its sideage being “noteworthy”.

27. The witness statement prepared 22 months after the release of the July 2014 Discussion Paper makes reference to conversion at page 8 in the following terms:-

“Conversion to Standard Grading System –

The issue of continuing to use the existing grading system outlined above was raised with the Planning Department when the standard approach from recent years has been to adopt a consistent system across the State of: significant, contributory, and non-contributory.

Although the direction from Council was to employ the existing system, in light of the possible need to adopt the standard upgrading system in the future, a conversion system was kept in mind that all sites:-

- *graded A, B or C could be re-graded as “significant”;*
- *graded D could be converted to “contributory”;*
- *ungraded sites could be listed as “non-contributory”.*

Individual sites were graded C or higher and sites were only graded D within a precinct (that is no existing or proposed individual sites were re-graded “D”).”

28. This issue was touched on by the C198 Panel in section 4.5 Approach to Grading. It identified that the Review utilised the grading system outlined in clause 22.05 and detailed grade C amongst others. It noted:-

“The Amendment seeks to apply an individual grading to buildings which are found within and outside precincts and include them in the Heritage Place Inventory. For those places outside precincts, the Amendment proposes to apply a Heritage Overlay over buildings of individual heritage significance with a grading of A, B or C and remove the Heritage Overlay from individual buildings graded D. Most places were also assigned a streetscape level grading.”

29. The issues for the Panel to consider included:-

- *Given of the advice of the Planning Practice Note (as described in Chapter 3), whether the Panel should consider the individual sites in the context of significant/contributory or the City of Melbourne grading system.”*

30. In addressing evidence and submissions, the Panel recorded:-

“The Council’s experts advised that their instructions were to use the grading system as it stands, however, they noted that a “conversion system” to accommodate the need to adopt the standard grading system (included in PN01) should be kept in mind.”

In essence this equated:-

- *A, B or C with “significant”.*
- *D with “contributory”.*
- *Ungraded with “non-contributory”.*

31. At page 25 of the report, the Panel observed:-

“Mr. Beeston confirmed that although he usually undertakes heritage studies using the “significant” and “contributory” model, he was instructed to use the grading model that the Council has used for the last 30 years ...”.

32. In discussing this issues, the Panel observed (p.26 – 27):-

“Whilst discussion of the niceties of the grading system may seem somewhat abstract, the Panel found it to be a confounding matter in this Amendment, where many of Council’s Statements of Significance refer particularly to historic, social, aesthetic interest but where much of the strength of evidence led by owners was in the area of architectural, rather than historical analysis. In addition, many of the Statements of Significance referred to a building as representative while affording the building a C grading. This approach contradicts the definitions in the planning scheme.”

33. The Panel made reference to the observations of the Panel in Amendment C186 and then concluded:-

“In the context of individual places outside heritage precincts, the Panel accepts the Council’s approach to apply the Heritage Overlay to places of individual heritage significance (or buildings graded A, B or C using the Council’s model) and remove the Heritage Overlay from individual places identified as D (representative). In the case of precincts, the Panel has taken the approach that, while the merits of whether a building is a C or D grade is considered, the more pressing question is whether a Precinct is justified in the first place.

With regard to the methodology, the Panel agrees with Mr. O’Farrell that the principal consideration in this Amendment is the threshold of significance and whether a Heritage Overlay should be recommended to be applied to a place. However, given the integration of the grading system embedded in the planning scheme through clause 22.04 and 22.05 and the Heritage Places Inventory, the Panel considers it is confined to consider the grading system used by the City of Melbourne ...

...

The Panel does not accept that there was a wholesale approach to “upgrading” places however it has looked at individual places on their merits to ascertain whether the Heritage Review has satisfactorily established the threshold of significance.

The Panel is encouraged that, beyond this Amendment, Council intends to undertake a review of their grading system and the Panel encourages them to apply the significance/contributory model outlined in PN01.”

34. In Section 9 the Panel set out its summary of conclusions and recommendation, the Panel confirmed the view of the Panel in C196 for the need of a heritage policy relevant to urban growth areas and observed:-

“With regard to the grading, the Panel feels somewhat “hamstrung” by the grading system and the policy in Clause 22.05. Given the status of the grading system in the Planning Scheme, the Panel is obliged to assess the Amendment and the recommendations of the Heritage Review according to that grading system. In the case of Precincts, the Panel is of the view that what really matters is the contribution of the particular building to the group, complex or precinct and not necessarily the significance of the individual building. The approach of grading the individual building and making management decisions according to that grading has the potential to undermine the integrity of the Precinct. As with numerous Panels before it, the Panel strongly encourages Council to move towards the “individual significance/contributory to the Precinct” model consistent with PN01.”

35. Recommendation 4 provided:-

“4. For the Little Pelham Street precinct:

- (a) apply the Heritage Overlay to the Little Pelham Street precinct as exhibited.*
- (b) amend the Heritage Places Inventory as exhibited by removing reference to 183 - 189 Bouverie Street, Carlton.*
- (c) amend the post-exhibition version of the Statement of Significance to remove reference to aesthetic significance and remove reference to 183 – 189 Bouverie Street and include in the incorporated document “City North Heritage Review Statement of Significance”.*

36. The Council’s assessment of this precinct was referred to in section 5.3. Mr. Hemmingway of RBA Architects gave evidence on behalf of the Council which is summarised on page 58. The summary does not include any reference to the individual quality of 193 Bouverie Street, rather it was the “group of buildings” that reached a threshold level of local protection. The Panel concluded at page 60:-

“The Panel is satisfied that construction of the extant buildings was predominantly “interwar” and, as a group, an identifiable representation of that stage of factory/warehouse development that occurred in the area between 1920’s and the 1940’s.

...

It also accepts evidence that this precinct is a good representative example and demonstrates those Interwar changes and shift to small-scale enterprises.

Although the precinct represents a coherent and identifiable group, it is not persuaded of its aesthetic significance.

...

In the case of 183 – 189 Bouverie Street, the Panel takes the view that the alterations reduce the integrity of the building as a document of Interwar development.

(v) Conclusions and Recommendation –

The Panel concludes that the precinct is of sufficient historical significance for inclusion in Heritage Overlay HO1151. It finds that the precinct lacks sufficient aesthetic significance for inclusion on that basis.

In reaching its conclusion, the Panel takes the view that of humble, ordinary or undistinguished architectural resolution it can, nonetheless, display important historic or aesthetic (as for example landmarks or social reference points) significance. In this case, the buildings involved are not of special architectural interest but rather represent a utilitarian aspect of Melbourne's growth. The following buildings are considered of sufficient historical significance to apply the Heritage Overlay (HO1151):

- 193 – 195 Bouverie Street, Carlton – as C2.
- 168 – 172 Leicester Street, Carlton – as D2.
- 174 – 180 Leicester Street, Carlton – as C2.
- 160 (156) – 170 Pelham Street, Carlton – as D2.

The Panel considers that the integrity of 183 – 189 Bouverie Street as a representative of Interwar development is so reduced that, while its land should be included in the precinct, the building should be ungraded. The Panel also concludes that 183 – 189 Pelham Street, Carlton and that 150 – 154 Pelham Street, Carlton should be included to the extent of the land only and be ungraded in the Heritage Places Inventory.”

37. Ms. Brady's Witness Statement discusses the gradings review in section 5 (page 24 and following). In section 5.1.2, she observed that the July 2014 Discussion Paper was something with which she did not fully agree:-

(Page 26)

“The concern with the translation or conversion as identified in the discussion paper, was that a disproportionately high number of properties will automatically translate to significant – being all existing “A”, “B” and “C” properties. While existing “A” and “B” places are recognisably significant, with their historically high grading having rarely been challenged, that is not the case with the lesser graded properties. While Lovell Chen acknowledges that some “C” and “D” grade properties would likely be elevated to (significant and this was an outcome of the review), we do not share the view that all “C” grade properties were at the same level of heritage value. The discussion paper approach, in our view, also undermined the notion of significant, or individually significant, properties being at a higher level of importance than the majority of graded properties. The view that not all “C” grade properties were at the significant threshold was confirmed in the “sampling exercise” (see below).

Further, having a disproportionately high number of significant places runs the danger of diluting the perceived value of these places. In heritage precincts in Melbourne and generally across the metropolitan area, contributory properties typically substantially outnumbered significant properties. If the discussion paper approach were to be followed, with “A”, “B” and “C” places converted to significant, then some 3,800 properties in precincts in the municipality would be graded significant, whilst some 3,100 places (formerly “D”) would be contributory. (my emphasis)

...

The important distinctions between significant and contributory places are also reflected in the new definitions of significant, contributory and non-contributory included in the revised local heritage policies. The new definitions emphasises singular and individual importance of significant places, as opposed to the broader and more commonplace category of contributory places.

The gradings and definitions in the current Clause 22.05 for “A”, “B”, “C” and “D” properties, also generally make this distinction through emphasising the high level of significance or importance of “A” and “B” buildings, and the lower or lesser significance of “C” and “D” buildings.”

38. The Council accepted the methodology undertaken by Lovell Chen. It follows that the Council accepted the criticism she made of the 2014 discussion paper. It further follows that the Council has not applied a consistent, tested methodology to the assessment of Little Pelham Street precinct or to 193 Bouverie Street. It was not the subject of review but; with a sweep of a pen, has been elevated into something that it is not, i.e., a place that is individually important in its own right – as opposed to a place that is important for its contribution to a heritage precinct. It is the latter that the Panel made its judgment upon, it is the reason that it is currently in the Heritage Overlay, it is the way in which the City North Heritage Review considered it and there has been no evidence anywhere to refute the evidence led at that hearing on behalf of MBS through Mr. Lovell.
39. MBS now relies on the independent assessment by Mr. Raworth of that building's individual significance which confirms the judgment of Mr. Lovell, Mr. Hemmingway and the Panel.
40. It follows, therefore, that there is no justification whatsoever for upgrading property in the manner proposed. Equally, it is mystifying why 183 Bouverie Street received a grading of D.
41. This Panel should recommend 193 Bouverie Street be graded "Contributory" and 183 Bouverie Street removed from the Heritage Places Inventory 2017.

The Policy Setting –

Planning Practice Note 8 –

42. Planning Practice Note 8 provides guidance on the role of, the need for, and, how to write Local Planning Policy.
43. The principles to consider when drafting an LPP include:-
- *An LPP should not repeat or contradict the State Planning Policy Framework.*
 - *An LPP should not repeat or contradict the MSS.*
 - *An LPP should not contain broad strategic objectives and strategies.*
 - *Use zones and overlays to deliver the policy objective where possible.*
 - *An LPP should be derived from an objective or strategy in the MSS.*
 - *An LPP should relate to a specific permit discretion.*
 - *An LPP should assist the Council to make a decision.*
 - *An LPP should not repeat or contradict other LPP's.*
Some LPP's may compete and deciding between them is a normal function of the planning system. However, repetitive or contradictory LPP's for the same theme or area will only confuse and weaken the planning authority's intentions.
 - *An LPP should not repeat or contradict controls in the zone.*
 - *An LPP should not repeat or contradict controls of an overlay.*
 - *An LPP should be self-contained.*
 - *An LPP should not contain mandatory requirements.*
 - *An LPP should be clear.*
 - *An LPP should be written in clear, concise, plain English.*

A well written, clear and unambiguous LPP can reduce challenges at VCAT and make the whole decision process more transparent.”

44. As noted above the requirement not to repeat or contradict the SPPF, the MSS or the LPP’s, recognises that LPP’s may compete with each other and that deciding between them is a normal function of the planning system. It is important not to overlook other equally important outcomes being sought by the SPPF, the MSS or the LPP’s and that the whole of these outcomes needs to be balanced in the “*net community benefit*”.

Amendment VC148 –

45. The VC148 Amendment re-arranges the provisions of the planning scheme but still, relevantly, requires policy to be one part of the whole to achieve the purpose of integrated land use and development planning in the net community benefit.

46. Clause 71.02 Operation of Planning Policy Framework provides (with my emphasis):-

“71.02-1 Purpose of the Planning Policy Framework –

The Planning Policy Framework provides a context for spatial planning and decision-making by planning and responsible authorities. The Planning Policy Framework is dynamic and will be built upon as planning policy is developed and refined, and changed as the needs of the community change.

The Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in section 4 of the Act) are fostered through appropriate land use and development planning policies and practices that integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

71.02- 2 Operation –

... a planning policy provides guidance for decision-making and can help the community to understand how the responsible authority will consider a proposal.

...

A planning authority must take into account the Planning Policy Framework when it prepares an amendment to this planning scheme. ...

Policy Guidelines –

A planning policy may include policy guidelines. Policy guidelines indicate how objectives can be met and how strategies can be implemented.

A responsible authority must take a relevant policy guideline into account when it makes a decision under this planning scheme but is not required to give effect to it. If the responsible authority is satisfied that an alternative approach meets the objectives, the alternative may be considered. ...

71.02-3 Integrated Decision-Making –

Society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.

Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

...”

47. Apart from bushfire affected areas requiring protection of human life as a “priority” the Planning Policy Framework does not attempt to prioritise one aspect of policy over another.

48. Clause 65 of the planning scheme has not been altered and relevantly provides:-

“65. Decision Guidelines –

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

65.01 Approval an Application or Plan –

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:-

- *the matters set out in section 60 of the Act;*
- *the Municipal Planning Strategy and the Planning Policy Framework;*
- *the purpose of the zone, overlay or other provision;*
- *any matter required to be considered in a zone, overlay or other provision;*
- *the orderly planning of the area.*

...”

49. Clause 23 addresses Local Planning Policies and relevantly provides:-

“23.03 Operation of the Local Planning Policies –

Local Planning Policies are tools used to implement the objectives and strategies of the Municipal Strategic Statement.

A Local Planning Policy is a policy statement of intent or expectation. It states what the responsible authority will do in specified circumstances or the responsible authority’s expectations of what should happen. A Local Planning Policy gives the responsible authority an opportunity to state its view of a planning issue and its intention for an area. A Local Planning Policy provides guidance to decision-making on a day-to-day basis. It can help the community to understand how the

responsible authority will consider a proposal. The consistent application of policy over time should achieve a desired outcome.

When preparing amendments to the scheme and before making decisions about permit applications, planning and responsible authorities must take any relevant Local Planning Policy into account.

50. Clause 11.01-1S, Settlement provides:-

Objective –

To promote the sustainable growth and development of Victoria and deliver choice and opportunities for all Victorians through a network of settlements.

Strategies –

Develop sustainable communities through a Settlement Framework offering convenient access to jobs, services, infrastructure and community facilities.

Focus investment and growth in places of state significance in metropolitan Melbourne guide the structure, functioning and character of each settlement taking into account municipal and regional contexts and frameworks.

...

Promote and capitalise on opportunities for urban renewal and infill redevelopment.

Develop compact urban areas that are based around existing or planned activity centres to maximise accessibility to facilities and services.

...

Policy Documents –

Consider as relevant ...

- *Plan Melbourne 2017 – 2050: Metropolitan Planning Strategy ...*

Plan Melbourne –

51. The Vision for Melbourne identified in Plan Melbourne is:-

“Melbourne will continue to be a global city of opportunity and choice.”

52. The planning strategy outlined in the document has key elements which are “a long-term plan to accommodate Melbourne’s future growth in population and employment.” It includes:-

“Nine principles that underpin a long-term vision for Melbourne.

Seven outcomes to drive Melbourne as a competitive, liveable and sustainable city.

32 directions setting out how these outcomes can be achieved.

90 policies outlining how each outcome will be approached, delivered and achieved.”³

³ Plan Melbourne 2017 – 2050 Metropolitan Planning Strategy, page 3.

“While natural population increases are still significant, many of these new residents have come to Melbourne from interstate or overseas – attracted by a range of education and employment opportunities as well as housing choice.”⁴

Remaining Competitive in a changing economy –

The global economy has changed rapidly in the past two decades, becoming more digital and mobile through digital disruption, more competitive through the form of industrialisation of nations such as China, and more uncertain through the impact of climate change. In years to come, these changes are expected to accelerate, testing the capabilities of nations and states with ageing populations.

Melbourne is well placed to respond to these changes. After all, the city has a highly skilled workforce with strong international business, educational, research and cultural connections.

However, to remain competitive there is a need to boost productivity, and support growth and innovation across all industries and regions. New technologies – such as self-driving cars, the development of energy storage technologies and artificial intelligence – will change the ways people live and work between now and 2050. Plan Melbourne will need to be adapted over time to accommodate these changes.

To grow jobs and create accessible, affordable and attractive neighbourhoods, Melbourne needs to take advantage of the land it has available for renewal in the city and suburbs. Increasing the number and diversity of jobs closer to where people live – in places such as suburban employment clusters, health and education precincts and industrial precincts – will make Melbourne more productive and competitive.

In short, Melbourne has the people, places and potential to build the knowledge based industries and service industries that will drive economic growth in the 21st century.”

53. The vision for Melbourne is to be guided by nine principles that are identified on pages 10 and 11 of the Plan. Included in those principles, Principle 1 – A distinctive Melbourne, Principle 2 – A globally connected and competitive city and Principle 6 – Social and economic participation.

54. The vision is to be guided by the principles including the above which are to be supported by seven outcomes outlined on pages 12 and 13, the first of which is:-

“Melbourne is a productive city that attracts investment, supports innovation and creates jobs.”

The directions under this outcome include:-

“1.1 Create a city structure that strengthens Melbourne’s competitiveness for jobs and investment.

1.2 Improve access to jobs across Melbourne and closer to where people live.

1.3 Create development opportunities at suburban renewal precincts across Melbourne ...”.

⁴ Ibid page 6.

55. The places of state significance that are to be the focus for investment and growth are identified on page 14. Of significance are the National Employment and Innovation Clusters, the purpose of which is:-

“To improve the growth and clustering of business activity of national significance, particularly in knowledge-based industries.

These areas are to be developed as places with a concentration of linked business and institutions providing a major contribution to the Victorian economy, with excellent transport links and potential to accommodate significant future growth in jobs and in some instances housing.”

56. One such location is the Parkville NEIC. In addition to the NEIC, further places of state significance are the health and education precincts, the purpose of which is:-

“To support health and education services that are well serviced by public transport in a range of locations across Melbourne.

Their specialised economic functions will be reinforced, and they should provide opportunity for ancillary health and education services, retail, commercial and accommodation uses.”

Included in the health and education precincts is the Parkville Medical Bio-Science and Education Precinct. Map 2 identifies the location of the Parkville NEIC.

57. Outcome 1 is extrapolated on page 20 where it is noted:-

“Melbourne will need 1.5 million new jobs over the next 35 years.

What those jobs are and where those jobs go will define Melbourne’s future as a globally connected and competitive city ...

Melbourne has a number of competitive advantages that can create a diverse, flexible and resilient economy. These include world-class industries, a highly skilled workforce, and multicultural population, close proximity and links to the fast-growing Asian region, world-renown liveability and tourist destinations, good transport networks, and access to productive agricultural land and earth and energy resources.

Priority sectors have been identified that have the potential to attract and deliver significant growth and investment, and make Melbourne and Victoria global leaders.

The priority sectors are:-

- *medical technology and pharmaceuticals.*
- *new energy technologies.*
- *...*
- *international education.*
- *professional services.*

With targeted investment, these sectors could drive up to \$70B in additional economic output by 2025 – creating more than 400,000 new jobs for Victorians.

Melbourne has the opportunity to position itself as one of the world's foremost new knowledge economies, powering the next generation of productivity and economic growth in Australia. To achieve that ambition, Melbourne must develop a series of interconnected learning, working and living precincts across the city."

58. Map 3 on page 22, identifies jobs and investment areas in its legend including the Parkville NEIC.

59. Direction 1.1 is:-

"Create a city structure that strengthens Melbourne's competitiveness for jobs and investment."

It provides:-

"To remain prosperous Melbourne must remain attractive to investment.

That means ensuring well-priced commercial and industrial land is available in locations that support and strengthen key growth industries. In the longer term, Melbourne's northern and western regions will need to create job opportunities – particularly for high-value, knowledge based jobs – to support expected population growth.

That means understanding the scale of employment growth and land-use requirements across the city; ensuring business locations are investment-ready and productive, with capacity to grow; and making smart investments in infrastructure projects that accelerate local investment and job creation for suburban and outer areas and stimulate economic growth."

60. Policy 1.1.3 of facilitating the development of National Employment and Innovation Clusters includes:-

"Seven national employment and innovation clusters have been identified across metropolitan Melbourne. Each is anchored by a specialised activity (such as an university, research facility, medical facility or manufacturing enterprise) that has seeded its growth. These clusters are ... Parkville ...

The national employment and innovation clusters are focused on knowledge based business that locate close to each other for knowledge and resource sharing. The clusters are distributed throughout Melbourne and long high-capacity transport networks to provide greater access to high-productivity jobs.

The Monash and Parkville clusters are already established and have significant potential to keep growing and diversifying. Other clusters are at various stages of development but possess the fundamentals needed to become strong centres for innovation and job growth.

...

Each cluster needs to be investment-ready for knowledge, intensive firms and jobs. To support the development of clusters, effective government arrangements – including key stakeholders and landowners – are required."

61. Map 4 on page 26 identifies in more detail the Parkville NEIC located between Melbourne University, the Royal Melbourne Hospital and RMIT.

62. The Parkville NEIC is discussed at page 28 and shown on Map 6. This map includes the MBS sites. It is described in the following terms:-

“Strengths –

The cluster has education, research, health, professional and technical industries as well as significant parkland.

Jobs –

The cluster is an established, international renown research centre on the doorstep of the CBD. It is centrally located, has access to a wide catchment of workers across metropolitan Melbourne and employs 40100 people.

Key Attributes –

The cluster has a critical mass of leading institutions and organisations, including Australia’s highest ranking university (the University of Melbourne), Victoria’s second-largest university (RMIT University), Monash University’s Faculty of Pharmacy and Pharmaceutical sciences, the Walter & Eliza Hall Institute of Medical Research, global biotherapy industry CSL Limited, the Royal Melbourne Hospital, the Royal Children’s Hospital, the Royal Women’s Hospital, the Victorian Comprehensive Cancer Centre, the Australian Medical Association and the Bio 21 Institute.

Many of Parkville’s institutions and organisations are expanding, or plan to expand. Melbourne University and RMIT are also expanding their facilities to incorporate greater collaboration and joint projects with industries. This will drive innovation, research and business development.

The cluster has a high level of public transport access, with tram routes via Swanston and Elizabeth Streets. Accessibility will be improved with the establishment of a new-state-of-the-art train station as part of the Metro Tunnel. The frequency and capacity of this service will make it possible for more people to access Parkville.

Key partners for the future of this cluster include the City of Melbourne, the University of Melbourne, RMIT, the CSIRO (Commonwealth government), the Royal Melbourne Hospital, the Royal Women’s Hospital and the Royal Children’s Hospital.”

63. Policy 1.1.4 of supporting the significant employment and servicing role of health and education precincts across Melbourne, identifies:-

“Victoria has an international reputation in health and medical research. It is also a leading provider of high-quality international education and home to two of five Australian universities ranked in the world’s top 100 tertiary institutions.

...

Parkville is an anchor point for health and medical research, ...

Major health and education precincts across metropolitan Melbourne have been identified for further services and jobs growth. These precincts stimulate innovation, create employment and are of fundamental importance to the emerging knowledge economy and surrounding communities.

Planning for the growth of these precincts will need to focus on improving access – particularly via public transport – and diversifying job growth. Co-location of facilities (for example, a university with a hospital), will make better use of existing infrastructure and support the growth of associated businesses and industries.

Specialised economic functions should be reinforced, but there should also be opportunities to provide ancillary retail, commercial, accommodation and supporting services.”

64. Clause 11.01-1 R1 provides:-

“11.01-1 R1 Settlement – Metropolitan Melbourne –

Strategies –

Maintain a permanent urban growth boundary around Melbourne to create a more consolidated, sustainable city and protect the values of non-urban land.

Focus investment and growth in places of state significance including:-

- Metropolitan Melbourne Central City;
- National Employment and Innovation Clusters;
- ...”

65. 17 – Economic Development:-

17. Economic Development –

“Planning is to provide for a strong and innovative economy, where all sectors are critical to economic prosperity.

Planning is to contribute to the economic wellbeing of the state and foster economic growth by providing land, facilitating decisions and resolving land use conflicts, so that each region may build on its strengths and achieve its economic potential.”

17.01 Employment –

17.01-1S - Diversified Economy –

Objective –

To strength and diversify the economy.

Strategies –

Protect and strengthen existing and planned employment areas and plan for new employment areas.

Facilitate regional, cross-border and inter-regional relationships to harness emerging economic opportunities.

Facilitate growth in a range of employment sectors, including health, education, retail, tourism, knowledge industries and professional and technical services based on the emerging and existing strengths of each region.

Improve access to jobs closer to where people live ...

17.01-1R – Diversified Economy – Metropolitan Melbourne –

Strategies –

Support the Central City to become Australia's largest commercial and residential centre by 2050, by planning for office, retail, residential, education, health, entertainment and cultural activities spaces.

Plan for the redevelopment of Major Urban-Renewal Precincts in and around the Central City to deliver high-quality, distinct and diverse neighbourhoods offering a mix of uses.

Facilitate the development of National Employment and Innovation Clusters by ensuring they:-

- *have a high level of amenity to attract businesses and workers.*
- *supported by good public transport services and integrated walking and cycling paths.*
- *maximise investment opportunities for the location of knowledge intensive firms and jobs.*

Support the employment and servicing role of Health and Education Precincts by:-

- *focusing on improving access, particularly public transport access.*
- *encouraging co-location of facilities to better utilise existing infrastructure.*
- *supporting and facilitating growth of associated businesses and industries.*
- *reinforcing their specialised economic functions while also providing opportunities for ancillary retail, commercial, accommodation and supporting services.*

...

17.01-2S – Innovation and Research –

Objective –

To create opportunities for innovation and the knowledge economy within existing and emerging industries, research and educations.

Strategies –

...

Encourage the provision of infrastructure that helps people to be innovative and creative, learn new skills and start new businesses in locations identified to accommodate employment and economic growth.

...”

66. Clause 21.01 of the MSS identifies the 11 sections into which the MSS is divided. Each is a microcosm of the whole and includes, inter alia, at 21.04-1.2 reference to the urban renewal areas, and, in particular, City North and that the City North Structure Plan 2012 has been adopted by the City of Melbourne and implemented into the planning scheme via the Planning Scheme Amendment that was C196. In addition to the heritage clause at 21.06-2 are a number of potentially conflicting policies in clause 21.08 that are particularly referable to the MBS given its location in the knowledge precinct and its provision of education and research activities, particularly in conjunction with Melbourne University and other research institutes.

67. As part of that adoption, DDO61 was incorporated into the planning scheme for City North that has its design objective of encouraging development in the area as a central city precinct characterised by university, research and medical buildings in which it was sought to establish a mid-rise scale of buildings. Table 1 located the MBS in Area 4.1 where overall building height was 40 metres with a street wall height of 24 metres.

Amendment C196 Panel Report –

68. The adoption of DDO61 followed a report of Ms. Mitchell and Ms. Barker into Amendment C196. That report identified that the City North Structure Plan 2012 referenced heritage qualities and the policy tension between the aspirations of the regeneration and renewal of City North and the retention of heritage fabric. Its discussion of this issue appears at page 64:-

“7.2 Discussion –

The Panel acknowledges that there is a tension between DDO61 and the existing and proposed heritage controls which seek to preserve heritage fabric. The Panel agrees with Council’s assessment that the heritage qualities of City North provide important character elements to the area and it commends Council for their efforts through the Structure Plan to provide guidance as to how the goal of intensification and development can respond to heritage buildings and streets.

The Panel accepts that DDO61 for the most part provides adequate guidance for development to respond to adjoining heritage building. However, the Panel agrees with Mr. Czarny that thought should be given to the retention of the traditional heritage streets. It supports an approach which flags heritage street walls (as opposed to defining a new higher street wall) as a consideration where appropriate.

The Panel however considers that the tension between properties within Heritage Overlays in addition to DDO61 has not been adequately addressed by Council, and at clause 22.05 Heritage Places is inadequate to provide policy guidance when decision-makers are required to resolve this tension. Ideally, this tension should have been addressed as part of the City North Heritage Review by reviewing the application of Clause 22.05 Heritage Places outside the Capital City Zone and its “fit” with DDO61. However, it appears that the horse may have bolted for this to occur given the exhibition of Amendment C198.

The Panel sees there is a need to provide decision-makers with some guidance in relation to the development of heritage places in the City North area. Given that Clause 22.05 currently exists, the Panel supports this policy continuing to apply to the City North area. It does however, agree with Mr. Pitt and others that a number of the requirements for the design of new buildings are inconsistent and at odds with DDO61. The sections in Clause 22.05 which deal with the concealment of higher rear parts, as well as façade height and setbacks are problematic, and the Panel believes these requirements should be expressly excluded from applying in the City North precinct.”

69. It was these observations with which the C198 Panel agreed as discussed at pages 40 and 41 where it observed:-

“The Panel notes that Amendment C198 forms part of a suite of Amendments which Council is undertaking in relation to their strategic program. The Panel is of the view that the current Amendment must be seen in the context of the adopted Amendment C196.

The Panel agrees with Mr. Pitt that it is not satisfactory for Council as Planning Authority to acknowledge on the one hand the issues with Clause 22.05 of the context of City North and assert that these will be dealt with by way of a review of the heritage policies in the coming months. The Panel is also of the view that it is not good practice to propose changes to a Planning Scheme which perpetuate policy conflicts or tensions.

Whilst the Panel acknowledges that planning schemes are subject to change, it is also cognisant of the need to ensure a consistency between various provisions. The level of consistency ought to be tested at the Planning Scheme Amendment stage, and ideally Council should have considered its heritage policy and the strategic aims of the City North’s renewal together.

The Panel in C196 discussed this same issue extensively in their report, and provided the recommendation that Council has chosen not to accept. Council has stated that they are concerned about unintended consequences of amending Clause 22.05 as recommended by the Panel which heard C196. They also submitted that decision-makers at the permit stage are quite capable of balancing the competing demands of various provisions of the Scheme.

The Panel acknowledges that Clause 22.05 currently applies to the bulk of the City North area – in fact in areas where tall buildings exist and where Design and Development Overlay controls which facilitate tall buildings had been in place for some time. Decision-makers clearly use the provisions of Clause 22.05 in this built form context, and presumably ignore the requirements for concealment of additions when assessing heritage buildings. The Panel questions the point of having provisions in a policy if they are simply to be ignored because they do not fit the site context. Although this might be a practical approach at the permit stage, it is not good practice when implementing new strategic directions.

...

The Panel agrees with Mr. Pitt, Mr. Cicero and Mr. Chiappi that it is up to this Panel to make recommendations to resolve the policy tension ...”.

70. It was pursuant to the above tension that the Panel recommended amending the provisions of Clause 22.04 so that they applied to the C196 adopted CCZ5 land and the DDO61 A1, and to amend Clause 22.05 to exempt the above pertaining to concealment of higher parts and façade height setbacks and building heights (page 41).

71. The Panel (Ms. Moles) conjectured yesterday:-

“Where do you draw the line where exceptions apply?”

Council’s response was that DDO’s in areas outside the CCZ adequately address heritage issues and therefore such exceptions are not needed. Ms. Jordan in paragraph 67 noted:-

“Undoubtedly the juxtaposition of taller built form adjacent to, or behind, a graded building within the Capital City Zone is more accepted than for land outside of Capital City Zone,

and this leads to a different approach being necessary in the consideration of alterations and additions to identified heritage places.”

Similar comments were made by Ms. Brady on her page 12 noting some of her examples were:-

“In a context where intensive development is supported by Council.”

72. DDO61 contains provisions relating to heritage. Notwithstanding these provisions the Panel's in C196 and C198 considered the conflict between policy leading to taller buildings and DDO controls which facilitate those buildings had not been adequately addressed by the provisions of the DDO and warranted resolution of the above tension. These observations are equally valid in other areas recognised as appropriate for urban renewal where DDO's contemplate taller built form where a different approach would be necessary.
73. It is submitted that all of the above is relevant to the consideration of the proposed text now being considered by this Panel.
74. The issue of integrated planning decision-making is well highlighted by Deputy President Gibson and Member Read in the *University of Melbourne v Minister for Planning* [2011] VCAT 469. As the Tribunal observed:-
- “ 81. Yet cities must be regarded as palimpsests: they must be capable of growth and adaptation to meet new needs. Over time the buildings of one era will invariably require replacement or adaptation to meet these needs. It is important to conserve and enhance buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value. However, when a conflict arises between this objective and other objectives, and a choice must be made between them, the Tribunal must balance those conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.”*
75. The Tribunal's discussion of balancing conflicting policy objectives highlights the various considerations needed to be taken into account including:-
- “73. ... the decision must have regard to the full ambit of planning controls and planning policy applying to the site.*
- ...*
- 75. Thus, whilst the Tribunal must consider the decision guidelines under the Heritage Overlay and other matters set out in the Planning Scheme relating to heritage, there is nothing within the Act or clause 65 that limits the consideration of matters when determining an application to demolish a building in the Heritage Overlay only to matters pertaining to heritage. Rather, the requirement of clause 10.04 regarding integrated decision-making and the opening words of clause 65 direct the Tribunal to take into consideration the full gamut of policy objectives and planning considerations.*
- ...”*

Nowhere in that decision did the Tribunal suggest the circumstances were exceptional.

76. In contrast to the conclusion reached in the above case, the Tribunal comprising Deputy President Gibson and Ms. McDonald refused to grant a permit in the recent case *Icon Co (Jessamine Avenue) Land Pty. Ltd. v Stonnington City Council* [2018] VCAT 1134. Again the Tribunal gave lengthy consideration of the concept of integrated decision-making [51 – 73].
77. What both cases highlight is that the conflicts between competing policy outcomes are everyday occurrences and part of P.P.F.

The Proposed New Policies –

78. In undertaking an analysis of the drafting of the new policies, it is submitted the above context must be front and centre of the draft person’s responsibility in providing a document that provides guidance, but does not purport to control or give some form of priority over any other policy. To do so would give rise to each division within the planning department charged with the responsibility of dealing with the multiplicity of portfolios addressed in the planning scheme seeking to prioritise their portfolio. Each no doubt considers their own discreet area as being more important than the rest. If one policy were to be couched in terms that somehow purported to elevate it in importance above the others, apart from bushfire protection, it would only be a matter of time before each division would be seeking to amend their respective policy to achieve the same outcome. This is obviously not what PPN8 requires. What is sought is a balance that enables the decision-making to be undertaken as demonstrated by the above VCAT cases.
79. Unfortunately that balance has not been demonstrated in this Amendment. The exclusion of CCZ5 from the exhibited Amendment is clear demonstration of a lack of rigour that has been applied to the drafting exercise and the absence of recognition of the planning tension that can arise between competing policies. How could this possibly have happened in the light of the clear direction given by the two previous Panels concerning their interim measures pending the finalisation of this Amendment? The explanation has not been forthcoming. Ms. Brady identified in her May 2016 methodology report at page 7 that Clause 22.04 was intended to apply to places within and outside the CBD grid:-

“This issue, or apparent conflict, was also identified in recent Planning Panels Report. The Report from Amendment C196 City North Zoning and Built Form, considered if Clause 22.05 could apply to the areas in the CCZ which were outside the CBD grid and more to bigger development outside the CCZ ...

...

The latitude provided in the policy acknowledges the strategic importance of the CCZ, and the greater intensity of development which is encouraged in the CCZ. However, it is still a policy which provides guidance on conserving and enhancing the heritage places of the CCZ.”

80. Ms. Brady identifies the community and stakeholder engagement in her Section 1.1. The exhibited draft followed what appears to be workshops and consultation with, inter alia, the Department, The National Trust, The Melbourne Heritage Action Group as well as the Council officers and heritage advisors. The exhibited draft, notwithstanding the exclusion of CCZ5 from Clause 22.04, did not have mandatory requirements in it and generally complied with the requirements of PPN8 as well as PPN1. The exclusion of CCZ5 from this particular clause is all the more unusual considering that the one of the policy references include the City North Heritage Review.

81. The existing Clause 22.05 contains a particular provision dealing with demolition being:-

- “• *Whether the demolition or removal is justified for the development of land or the alteration of, addition to, a building.*”

82. That requirement was not carried over into the exhibited version of the Amendment. Following exhibition a new sentence was added:-

- “Full demolition of significant or contributory buildings would only be permitted in exceptional circumstances.”*

As to what constitutes exceptional circumstances, the definition sections are silent, hence the ordinary meaning of those words would be required to be interpreted. The Melbourne University case is not an exceptional circumstance. The examples given by Ms. Brady in her photographs represent common examples of conflict between competing policies. The competition between competing policies is not exceptional. However, the inclusion of the above text seeks to effectively eliminate the potential conflict of competing policies from being considered. In other words, it gives priority to heritage over and above other equally relevant considerations. This is clearly inconsistent with the Practice Note and integrated planning required by the Act and the Scheme *“in the net community benefit”*.

83. It is submitted that what was considered appropriate in the current policy should be reinstated to achieve the balance required in managing policy considerations and the above sentence removed. If on the other hand the version is excluded, it is submitted the new sentence is equally inappropriate for the same reasons argued in [228] of the Part B submissions, i.e., that *“exceptional circumstances”* would be interpreted and applied to allow greater weight to retention in relation to demolition than would otherwise be the case.

Conclusion –

84. The unjustified upgrading of 193 and inclusion of 183 Bouverie Street exposes the MBS to inappropriate policy burdens that the significance of the respective properties does not justify.
85. It is one thing to assert in a Panel context what something may or may mean – it is entirely different when trying to argue what the meaning is at VCAT.
86. Accordingly, it is important that these properties start on the correct footing. The Panel should recommend 193 Bouverie remain graded “*Contributory*” and that 183 Bouverie be ungraded or “*non-Contributory*”.

15 AUGUST, 2018

C. J. WREN
AICKIN CHAMBERS