

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

SUBMISSIONS ON BEHALF OF BENNETT'S LANE CUSTODIANS

Compliance with Divisions 1 & 2 of the PEA

1. Section 29 of the Act mandates that the adoption of an Amendment by a Planning Authority must follow compliance with Divisions 1 and 2 of the Act.
 2. By reference to the Planning Authority's Part A submission alone, it is evident that there have been procedural shortcomings in the preparation and consideration of Amendment C258, and a consequent denial of natural justice. These shortcomings should be remedied before the Amendment proceeds.
 3. These submissions are made on behalf of the landowners of 17, 19, 21 and 23 Bennett's Lane, and 134-148 Lonsdale Street, Melbourne. There are seven companies grouped for the purposes of these submissions under the name Bennett's Lane Custodians.
 4. Bennett's Lane Custodians is materially and directly affected by Amendment C258:
 - (a) By recent interim amendment, the Bennett's Lane Custodians' land is included in the Heritage Overlay.
 - (b) The policy considerations that would apply to development of the land are informed, inter alia, by Clause 22.04 of the Scheme.
 - (c) The proposed policy (as exhibited and moreover as altered through the process – and transformed in the evidence of Ms Jordan) would potentially profoundly affect the policy attitude and development potential of the Bennett's Lane Custodian Land. This is no doubt also the case for numerous sites within the central city.
 5. According to the Planning Authority's Part A submissions, the Panel was informed that:
 - (a) The Hoddle Grid heritage review was “currently underway” – page 12.
 - (b) Amendment C258 was “an important step in Council's overall program to protect heritage in the municipality” - Page 2.
 - (c) The Hoddle Grid heritage review was part of a program of heritage reviews.
 6. The program of amendments is a significant consideration in this matter. This is not a case where Amendment C258 is incidental to the heritage reviews that were being conducted in parallel. Amendment C258 has a profound affect on the consideration of, and policy for, land identified within those reviews.
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7. On 9 August 2018, the City of Melbourne wrote to the owners of the Bennett’s Lane Custodian land, advising it that its land had been identified for the purpose of the Heritage Review. No notice was provided that the City of Melbourne was seeking to amend the policy that would apply to it. This is despite the letter including the statement that:

“Inclusion of sites within heritage overlays does not necessarily prevent their redevelopment, but rather provides certainty and clarity for the community about their significance encouraging more sensitive outcomes.”

8. In fact it is now known that the identification of the land in the heritage overlay was part of a program that included a policy shift as to the redevelopment potential of the land, and the longstanding policy distinctions that have applied in the central city.
9. In the circumstances:
- (a) The planning authority should have formed the belief under s19(1)(b) that the properties subject to the Hoddle Grid Review were materially affected, even if that had ramifications for the timing of notice.
 - (b) The planning authority should have taken steps under Section 19(7) sooner than has occurred.
 - (c) In the circumstances a reasonable opportunity to be heard must not be informed by procedural convenience or timetabling. The interests of Bennett’s Lane Custodians are sufficiently affected that it is entitled to participate fully in the process. It is not reasonable or fair that it be given a more limited opportunity than other submitters. For the record, Bennett’s Lane Custodians seeks to hear the Planning Authority, make submissions call and test evidence concerning:
 - (i) the strategic basis of the Amendment;
 - (ii) the role of policy and its integration with other policies;
 - (iii) the Central City;
 - (iv) the exhibited amendment;
 - (v) the post exhibition changes; and
 - (vi) form and content of the Amendment.

Procedural directions

10. The Panel should first make a finding as to whether it considers that, in the circumstances, a reasonable opportunity to be heard means that Bennett’s Lane Custodians will be given the opportunity to hear the case of the Planning Authority in full, including all or any evidence relied upon by the Planning Authority.

11. The Panel is respectfully requested to provide written reasons.
12. Following the Panel's findings on this issue, it may be appropriate to consider further procedural steps.

Dated: 7 November 2018

C Townshend
Instructed by Rigby Cooke