

Submissions on behalf of National Trust of Australia (Vic)

Planning Panels Victoria

Amendment C240 to City of Melbourne Planning Scheme

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&

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Introduction

1. The National Trust of Australia (Vic) ('the Trust') is an independent not-for-profit organisation established in 1956. The mission of the Trust is to 'inspire the community to appreciate, conserve and celebrate its built, natural and cultural heritage'.
2. As the State's premier heritage and conversation organisation, the Trust has had a long-standing interest in the protection of Melbourne's heritage assets and has a strong interest in this Amendment.
3. Amendment C240 represents a further step in the recognition of the City of Melbourne's heritage fabric and protection of recognised significant places. The Trust has appeared at recent heritage amendment Panels for City of Melbourne C186, C198 and C207. The Trust generally supports the C240 Amendment and adopts a position very close to that of the proponent.
4. The strategic work for the precinct is the most comprehensive for a precinct since the late 1970s/early 1980s (Storey).
5. The Trust submits that this is a defining period in the history of planning controls for Bourke Hill Precinct and provides an opportunity to ensure that Melbourne does not "regret what we have lost" (Trethowan) into the future.
6. Collins Street is an example of Melbourne's failure to adequately recognise the importance of the physical, social, environmental and cultural history of the City. The special character of the Bourke Hill Precinct has been 150+ years in the making (McGuaran).

Background

7. The strategic justification for the amendment is contained in the VPP reference document *Plan Melbourne* introduced in May 2014 as VC106 requiring planning and responsible authorities to consider and apply *Plan Melbourne*.
8. In respect to places within the Bourke Hill Precinct the Trust
 - i) in 2010 was involved in VCAT and Supreme Court appeals against the Minister for Planning's Notice of Decision of 18 March 2010 for a permit for the Hotel Windsor Tower.
 - ii) is a party to the forthcoming March 2015 VCAT appeal by the owners for an application for demolition of the Palace Theatre at 20-30 Bourke Street.
9. In respect of the Windsor The Trust made submissions to the Executive Director Heritage Victoria in October 2009 and subsequently to the Advisory Committee appointed (on 3 December 2009) by the Minister for Planning.
10. The Advisory Committee published its report in February 2010, recommending that a permit be granted subject to typical conditions and including additional conditions (par 1 Summary). The Advisory Committee commented: "We have not been asked to comment on the impact of the proposal on the heritage values of the existing Victorian building".
11. The Trust sought to challenge the decision of the Minister for Planning (as Responsible Authority) to issue the Notice of Decision to grant the permit at VCAT ([2010] VCAT 671).
12. The Tribunal determined that the Trust was entitled to seek review only of that part of the proposal that fell within HO500, but outside HO739. A subsequent appeal to the Supreme Court of Victoria ([2010] VSC 430 – 22 September 2010) upheld the Tribunal's decision.

13. In June 2010 the Trust made an Application to the Supreme Court for Review of a VCAT's decision. The Trust stated publically at the time:

VCAT has ruled that no permit is required under the Heritage Overlay for the development of the Windsor even if the development extends 26 stories into the air – and irrespective of the effect that this may have on the area as a whole.

If VCAT is correct, the Trust has no right to object at VCAT to the merits of the proposed development. In practice, this means that no-one in the decision making process is forced to take into account the effect of the proposed development on the whole of the Bourke Hill Heritage Precinct.

“The Supreme Court Application is the ONLY opportunity to have the merits of the Windsor Hotel redevelopment tower heard by VCAT. We are a not for profit community group and the ONLY organisation that is pursuing a review of this matter.”

14. The Trust was of the opinion that the decision was a matter of general importance involving the interpretation and operation of the *Planning & Environment Act* and its relationship with the *Heritage Act* and would have general application to other sites.

15. Immediately following the Supreme Court determination *The Age* reported (23 September 2010) Trust CEO Martin Purslow saying that he believed that the ruling would help set a precedent allowing 100-metre buildings in the precinct.

16. The Trust's engagement in issues with respect to the Windsor concluded at that point.

Palace Theatre

17. The Palace Theatre application for demolition and redevelopment of 20-30 Bourke Street, first proposed in 2014 for a tower at 100m, would have been four times the 23m discretionary height limit applying at the rear of the site.

The redevelopment was modified to 75m, but was refused by the former Minister for Planning.

18. The owners did not seek a review of that decision, but modified the height again down to 50m and then modified it again in order to conform with a building envelope as described by the controls enabled by the former Minister for Planning's amendment C237 introducing interim mandatory controls in the precinct.

19. Reduction in height meant that the revised application is under 25,000m sq. and was a matter for the City of Melbourne. 60 days expired and the applicant has asked VCAT for a determination.

20. Whilst Mr Peake would say that this outcome demonstrates the current controls are working, in our submission the outcome supports the imposition of mandatory controls to create certainty and avoid repeat applications as occurred, resulting in great expense to all parties.

Heritage Council Permits Committee Review of Windsor permit and relevance to proposed DDO controls

21. The report of the Heritage Council Permits Committee is instructive in the general application of DDO2 to the Bourke Hill precinct.

22. In respect of the Windsor the Executive Director of Heritage Victoria granted a permit (subject to conditions) on 13 March 2010. Thereafter, the permit conditions imposed by the Executive Director Heritage Victoria included conditions that the height of the corner "annexe" building be reduced to the main cornice line of the Windsor Hotel, and a reduction in the height of rooftop additions. The permit applicant sought to challenge those conditions (Permit Appeal Number P15781).

23. The Heritage Council Permits Committee on 8 November 2010 determined that the appeal not be upheld, but that instead, a variation to the conditions be made which had the effect of the “corner” building being lowered (reflecting the earlier decision of the Executive Director Heritage Victoria – Mr. Jim Gard’ner).

24. Mr. Gard’ner gave evidence at the Permit Committee hearing as did other expert witnesses. With respect to the Gard’ner evidence, the Permit Committee observed at par 41:

“Mr Gard’ner pointed at out that the DD02 seeks to protect values (set out in the Statement of Significance for Parliament House as it then was), with the stated outcome of the control being, ‘The Parliamentary buildings remain dominant on the Bourke Hill Skyline’. DDO 2 imposes a discretionary maximum height limit of 23 metres. It was noted that the view to Parliament House from Bourke Street is one of only three views to landmark buildings protected by a DDO control in Victoria (the others being views to the Shrine of Remembrance and the Royal Exhibition Building dome, drum, lantern and flagpole).”

25. The Advisory Committee on the proposed Windsor Hotel redevelopment was provided with Terms of Reference (par 4.1) that included:

Comment on whether the current discretionary height controls over the area bounded by Spring Street, Little Collins Street, Exhibition Street and Little Bourke Street should be mandatory.

26. In light of the submissions of others before this Panel that regard should be had to the report of the Advisory Committee, and insofar as that Committee comments on height issues in the whole precinct, the Trust refers the Panel to paragraphs 209 and following of the Permit Committee decision.

- The Advisory Committee consideration of the proposal was limited to considerations under HO500 and HO7339 pursuant to Cl. 43.01-2.

- The Terms of Reference set out the method by which it was to approach the task of advising the Minister for planning.
- In essence, this was an 'on the papers' review of all written submissions.
- Presentations were made by the (developer), the MCC, the NTAV.
- The list of witnesses called during those presentations did not include any witnesses with expertise in the matter of heritage.

27. At par 210:

For the reasons provided earlier in this decision this Committee has formed a different opinion to that of the Minister's Advisory Committee in relation to the impact of the proposal on the Bourke Hill Precinct. The Committee has done so having had the benefit of hearing from Messrs Gard'ner, Raworth and Lovell and extensive submissions from the parties relating to the cultural heritage implications of the proposal. We consider that our finding that both the significant effects upon the cultural heritage significance of the Hotel Windsor and the Bourke Hill Heritage Precinct warrant an outcome which differs from that recommended by the Advisory Committee whose recommendations were accepted by the Minister.

28. At par 211:

While it may be desirable for approvals under different statutory regimes to be consistent, the Committee does not consider that it is essential that this be the case. In this case, the Committee considers that there are cogent reasons, namely the substantial effects upon the cultural heritage significance of the registered place which warrant a different outcome to that approved by the Minister's Notice of Decision which relied upon the conclusions of the advisory Committee.

29. This Panel has been provided with significant research and strategic justification for the proposed amendment to go forward; and has been provided with, and heard evidence from many witnesses both in support of, and against the proposal. The evidence has been tested by representatives of various parties and the Panel. This process in our submission allows a fully considered decision to be made by this Panel.

30. Reliance on and preference for the six pages (pp.20-25) of untested commentary on height controls applicable to the precinct by the Advisory Committee is not justified or reasonable.

Strategic Justification

31. The Bourke Hill precinct has been a heritage precinct since 1982, when such controls were first introduced in the CBD in the Central City Interim Development Order (essentially the first planning scheme for the CBD). A large number of buildings within the precinct were also identified as 'Notable Buildings' (translated in 1999 into individual HOs), which were protected by a virtual ban on demolition. These controls derived from the CBD studies commissioned by the then Historic Buildings Preservation Buildings Council in the late 1970s, the first comprehensive studies of the heritage of the CBD. The component buildings were given their current gradings in 1984.

32. Clause 22.04 (Heritage Places within the Capital City Zone) acknowledges:

“the identification, assessment, and citation of heritage places have been undertaken over decades, a part of an ongoing heritage conservation process and their recognition and protection have been a crucial component of planning in Melbourne since 1982”.

33. The height limits for the precinct, a mix of **mandatory** 15m, 23m and 60m were also first established as part of the 1982 IDO, in order to protect the low scale and resulting pedestrian amenity, and we submit, the heritage character of the precinct. Amendment C1 to the Melbourne Planning Scheme in 1999 altered these to discretionary, but added justifications, for instance, the 15m limit area has the desired outcome:

“The low-rise, high-density and pedestrian oriented built form of the Chinatown, Bourke Hill, and McKillop/Hardware/Guildford Lane precincts is maintained”.

34. The Trust supports this amendment because

- i) the Bourke Hill precinct has demonstrated heritage significance already articulated as part of HO500 and C240 reviews that significance and proposes HO500 to be updated, revised and expanded based on updated research and relevant strategic work. Mr Storey's opinion is that the strategic heritage work is the most comprehensive for a precinct since the late 1970s/early 1980s. (p.3)
- ii) the amendment seeks to strengthen the mechanisms to protect the significance of the Bourke Hill Precinct by introduction of revised height controls, being a blend of mandatory and discretionary limits.

Statement of Significance

35. The significance of the Bourke Hill precinct is already articulated in HO500.

The proposed amendment to the statement of significance HO500 is not disputed in any of the expert evidence although improvements are suggested by Mr Storey, Mr Trethowan and Ms Gray.

36. Ms Gray states: *As a general comment, the existing statement is in need of revision and the revised statement is generally supported.* Further, *"If there is a need to reference 'landmark buildings' in this location these should be identified as the Hotel Windsor, Parliament House and Princess Theatre. All three are notable for their scale, distinctive architectural qualities and external intactness.* (pp.24-5)

37. Mr Raworth states: *"...while the updated Trethowan Statement expands upon and clarifies elements of the earlier Statement, in my view it effectively echoes and reinforces the key aspects of the existing Statement in relation to the importance of scale and of views within the precinct."* (p.12)

38. No expert witness has disputed the Statement where it identifies that the key attributes of the Precinct include *"The low scale of the buildings to Bourke*

Street and the precinct as a whole.” This attribute underpins what the Trust regards as a significant flaw in the evidence of the witnesses for the opponents to the Amendment.

39. The evidence of all witnesses other than for the Department and the Trust has focussed on particular outcomes for specific buildings. Views and vistas were concentrated on and around those buildings from particular vantage points. The sense of space and air, and expansive views with sky espoused by Mr McGauran, and the experience of the entire precinct by the range of viewers including commuters, pedestrians, drivers, occupiers of buildings, was not considered.
40. Mr Trethowan referred to three dimensional buildings, including rear and side views in lanes – not just facades – being part of the experience. Although Bourke Street is an important part of the Precinct, there are other parts that contribute to the overall appreciation of the low scale, fine fabric of the place. Views and vistas from these other areas were not considered or discussed by the witnesses. Photographs/views tendered by the witnesses are just that. They are not the scene/experience of the human eye or human being.
41. The wording of the Statement of Significance is often crucial in decision making for planning applications, especially when to allow demolition. It is important that statements include all relevant aspects of significance, while being not too broad, neither so specific that if something is left out it can be claimed to not be relevant.
42. While it is important that statements of significance explain the historical significance of the place, they should particularly include all *physical* attributes of the precinct that have any significance, as these are the elements that would be subject to change that can be controlled by the planning scheme.
43. Two changes suggested by the Trust have been included in Mr Trethowan’s revised statement of significance tabled to the Panel in evidence, as well as

one suggested by the City. In his evidence Mr Storey suggests improvements to the proposed statement of significance.

Heritage boundaries

44. Mr Storey in written evidence supports expansion of boundaries (of the Heritage Overlay HO500) but not the creation of so-called 'buffer' sites: *Consideration should be given to reducing the boundaries where ungraded buildings form its edges.* (p.7)

45. Mr Raworth in evidence states

I believe that the proposed changes to the boundaries of the Bourke Hill Precinct as part of Amendment C240 are reasonable and well considered.
(p.16)

Gradings

46. As part of his work for the *Review* Mr Trethowan proposed heritage gradings for places to be added to HO500 and reviewed the existing heritage gradings of places within the precinct. As exhibited, these revised gradings have not been proposed by the Department for inclusion in the scheme as a reference document.

47. Whilst the Trust has advocated for, welcomed and actively supported the City of Melbourne's strategic work in the past three-four years to identify and protect places of heritage significance hitherto unprotected by the planning scheme, the Trust has queried at Panels C186, C198 and C207 the continued use of A-B-C-D gradings by the City in its ongoing heritage assessments.

48. In recent Panels the Trust has advocated strongly that the City translate its gradings to be consistent with the Planning Practice Note No.1. The City has now begun the strategic work to examine how to translate gradings to the preferred format of significant/contributory/non-contributory to a precinct and

review heritage policies 22.04 and 22.05. The strategic review is supported by resolution of the Council.

49. The City of Melbourne in its submission of March 2015 pointed out that the exclusion of the revised/new Trethowan gradings will lead to an inconsistency and/or confusion in application of their consideration. The Trust agrees.

50. Mr Storey's written evidence is

I agree with the National Trust's concern that the heritage study Bourke Hill Precinct Heritage Review 2014 is not proposed to be part of this Amendment, since it is not added to the reference documents at the end of Clause 22.04.

I also agree that the opportunity to introduce the new format standard heritage gradings of 'significant' or 'contributory' (and 'not contributory') should have been taken as part of the Amendment. While the gradings can stay as they are until a new Amendment that I understand is planned to be conducted by the City of Melbourne introduces updated ones, this still leave the Statement of Significance without any background support within the Planning Scheme.

I am not certain of the reason for not incorporating the Review as part of the Amendment, but I understand that the planned subsequent one will occur soon. That future Amendment can tidy up this aspect of this Amendment. (p.8)

Mandatory/Discretionary argument

51. Much has been said in many places about the desirability or otherwise of mandatory height controls. It is clear that mandatory controls are appropriate in certain cases.

52. Practice Note 59 was specifically designed to recognise the circumstances in which mandatory provisions may be the best tool to achieve an objective, recognising there is a balance to be struck between mandatory provisions and discretionary provisions, the latter of which may provide for greater opportunity and/or flexibility to achieve the objective.

"Whilst mandatory provisions are the exception, there will be circumstances where a mandatory provision will provide certainty and ensure a preferable efficient outcome. Although these circumstances cannot be common practice,

they may include areas of high heritage value, strong and consistent character themes, or sensitive environmental locations such as along the coast.” PN59

53. The Panel in Kingston C128 [2012] PPV 149 agreed with a proposition that there was some tide in favour of mandatory controls in planning today and that it was clear such controls have been supported where they have been found to be justified. At par 3.3, the Panel said that:

”I am of the view that it would be appropriate to impose mandatory controls in some but not all instances of the controls in DDO22.”

54. In that case, urban design outcomes for the area were soundly based on a comprehensive analysis of the area. The area in question was not an extensive one.

55. The Panel approved of the conclusions of the Bayside Planning Scheme Amendment C46 Panel that:

Mandatory controls are justified where planning has taken account of all the strategic issues and has been undertaken in sufficient detail to show a built form that best accommodated all of the objectives.

The Panel believes that, where planning has been taken to this level of detail and an attempt is being made to realise a collective vision which is to apply over multiple ownerships, mandatory controls (and in this case mandatory height limits) are justified.

56. It was principally for that reason, the Panel in Kingston believed that, for the most part, mandatory controls were appropriate at Mentone Junction.

57. Earlier Panel Reports such as Melbourne Planning Scheme Amendment C20 (December 2001) considered the reasons for applying building height requirements (par 4.3) and discussion of the issue in other Panel reports under the headings of:

Establishing preferred future character, Achieving a particular built form outcome, Achieving general built form outcomes, and at par 4.3.4, Maintaining

existing character. Under that heading the Panel observed that when using a DDO to protect existing character, the definition of that character should be something more than just “low scale”.

57. In the Bourke Hill example, the Policy Basis of Clause 22.04, including the proposed Statement of Significance, together with the objectives of the proposed DDO62 very clearly establish the unique character of Bourke Hill.

58. The Panel in C20 undertook a consideration of discretionary vs mandatory controls at par 4.4.

59. This Panel will consider the objectives of proposed DDO62, about which there is no debate except as to some words. Mr Peake in submission, and Mr Biasci in evidence, suggest “respect and maintain” rather than “protect”. They are objectives designed to entrench the historic importance of this area for future generations. The Trust prefers “protect”.

60. The Practice Note No.59 *The role of mandatory provisions in planning schemes* (September 2010) states that mandatory height controls should only be implemented in exceptional circumstances and where justified and necessary.

Mandatory provisions in the VPP are the exception. The VPP process is primarily based on the principle that there should be discretion for most developments and that applications are to be tested against objectives and performance outcomes rather than merely prescriptive mandatory requirements. Nevertheless, there will be circumstances where a mandatory provision will provide certainty and ensure a preferable and efficient outcome.

Nevertheless, there will be circumstances where a mandatory provision will provide certainty and ensure a preferable and efficient outcome. Although these circumstances cannot be common practice, they may include areas of high heritage value, strong and consistent character themes, or sensitive environmental locations such as along the coast.

61. Insofar as the questions posed by the Practice Note PN59 are concerned, the Department's submissions at par 7 and following comprehensively address those issues. The precinct is an area of very high heritage value – it has three key buildings identified in the statement of significance – Parliament, the Princess and the Windsor Hotel. It is a precinct with ten buildings on the Victorian Heritage Register: the Windsor Hotel the Parliament buildings and gardens, Princess Theatre, Salvation Army, former London Chartered Bank, Jobs Warehouse, Florentinos, former stables in Little Bourke St, Gordon House, and Comedy Theatre.

62. The amendment proposes to amend Clause 21.06 (Built Environment and Heritage) to identify Parliament House at Clause 21.06-2 Heritage (Strategy 1.7). The submission by the Parliament of Victoria provides strong support for the amendment, and details the work that is being undertaken to create a Parliament Precinct Landmark setting. It notes the adjacent World Heritage Environs Precinct for the Royal Exhibition Building (with relevant control DDO6 to regulate height).

63. For its part, the Trust submits in response to the question raised in PN59 in respect of Bourke Hill: *Is the mandatory provision strategically supported?* that the controls are entertained at the highest level of strategic planning, *Plan Melbourne and Clause 9 of the Melbourne Planning Scheme*. The detailed strategic work is clearly laid out in the *Bourke Hill Heritage, Planning and Urban Design Review* and its appendices, including appendix 4, *Bourke Hill Precinct Heritage Review*.

64. The recent Planning Panel for C113, C114 and C115 to City of Bayside Planning Scheme (seeking to introduce mandatory height controls to activity centres in the City) recommended abandoning the amendments because of insufficient strategic justification. They would conflict with *Plan Melbourne*. This is in contrast to C240. It is plainly evident that there are exceptional circumstances existing in the Bourke Hill Precinct – its high heritage significance, and low scale contrasting with both Parliament House and taller development around - that justify the application of mandatory controls.

65. Mr Biles and Mr Biacsi both agree that there is a place for mandatory height limits. Mr Biacsi at par 72: *“In these circumstances and acknowledging a general desire to retain the lower scale built form character to this end of Bourke Street, I believe that a mandatory height could be appropriate in DDO62 – B1.”* His comment is qualified, seeking consideration of the prevailing height of the existing Windsor corner building to the parapet.

66. Mr Biles at 4.1: “Mandatory height and setback controls can play a beneficial role in managing built form in places of significance”. In fact he concludes that on the south side of Bourke Street there should be a mandatory height limit imposed (25m for the benefit of his client).

Size of the Bourke Hill Precinct

67. The Bourke Hill Precinct occupies a very small area of the CBD (see Melway map). Mr Biacsi in evidence described the area as “a pocket of property of low scale compared to the rest of the grid.” Mr McGauran commented that there is only one Bourke Hill. The central Bourke Street spine is not an area of diversity as some submitters would have it. It is “unique”; one of the most intact examples of its kind in Melbourne.

68. Mr Biles (p.7) noted: *“In addition, tall buildings have encroached on the place of Parliament House in a manner that reduces the pre-eminence of the building within the precinct”*. Nevertheless, opportunities are available within the proposed DDO62 area to build to discretionary heights of 40, 60 and 100 metres. The Trust agrees that there are many opportunities outside of the DDO62 area for buildings of significant height and volume.

69. The critical area of the mandatory 15 metres control within the DDO62 is located either side of the Bourke Street spine for its length from Exhibition to Spring Streets, either side of Little Bourke Street from Exhibition to Gordon Place to the east, and an area midblock between Bourke and Little Bourke Streets.

70. The 25m mandatory area affects the Windsor Hotel, the Princess Theatre and the building on the north-east corner of Little Bourke Street and Spring Street. There

is a proposed 40m mandatory area midblock between Bourke and Little Bourke Streets.

“Preferred” height limits...

71. The suggestion in evidence that developers will not necessarily develop to a “preferred” height limit is rejected. The Trust does not support the suggestion of a preferred limit. A mandatory control with a maximum height is preferred for sake of certainty for developers and the community. Mandatory controls do not require development to the mandated height.

Linking heritage outcomes to DDOs.

72. Mr Peake submits (paras. 9.1 & 9.2) that *the use of a Design and Development Overlay to purportedly achieve heritage outcomes is inappropriate, and that the function of the DDO should be limited to controlling built form for reasons other than heritage.* There is no Planning Practice Note for the application of DDOs. Mr. Peake’s submission flies in the face of existing DDO’s that incorporate heritage objectives.

73. The evidence of Ms Gray is that:

The primary tool for the protection of heritage places and values in a planning scheme context is the Heritage Overlay. However it is not uncommon for DDO controls to include objectives which reference heritage, typically where heritage is an important aspect of the character of an area or where an area includes or abuts individual heritage places.

In particular, it is not unusual for DDO controls, where they apply in HO areas, to address the heritage qualities of those areas, along with other built form outcomes. This is appropriate in that the DDO objectives should ideally recognise and be consistent with the heritage context particularly where this is a dominant characteristic, as is the case in the Bourke Hill precinct. Heritage values and objectives should be considered in developing the DDO provisions and this has occurred through the Heritage, Planning and Urban Design Review process. (pp.30-31).

74. The Trust notes that the City of Melbourne Planning Scheme contains numerous DDO schedules to regulate height of new buildings. Some of these are mandatory; the rest are discretionary. Some explicitly contain design objectives that relate directly to heritage issues, for example DDO6 Carlton, DDO21 Wellington Parade, and DDO46 University East. (See also the design objectives of DDO7 Lilydale Activity Centre Residential Areas which include the following: *To protect identified heritage elements and encourage the retention of older significant buildings in new developments.*)

75. Ms Gray in evidence helpfully describes the background to DDO6, Carlton:

Pursuant to the Heritage Act 1995, a World Heritage Environs Area was defined around the World Heritage Listed Royal Exhibition Building and Carlton Gardens site to protect its World Heritage values. A Strategy Plan was developed to identify the means through which these values would be protected and subsequently planning scheme amendments in the Melbourne and Yarra Planning Schemes (Amendment C118 to Yarra Planning Scheme and Amendment C154 to the Melbourne Planning Scheme) were introduced to give effect to the Strategy Plan. The amendments introduced additional HO and DDO controls which require consideration of the World Heritage values of the REB and Carlton Gardens. In that case DDO6 includes maximum building heights, however these are discretionary, rather than mandatory. (p.34)

76. The design objectives in DDO6 for the Carlton area are:

To protect and conserve buildings and street scapes of significance and to reinforce the built form character of the area as being essentially of low-rise buildings.

To maintain the human scale of the area and to ensure compatibility with the scale and character of the existing built form.

To ensure that any redevelopment or new development is compatible with the scale and character of adjoining buildings and the area.

To protect and manage the values of and views to the Royal Exhibition Building.

77. Schedule 21 Wellington Parade and Clarendon Street. Design objectives, *inter alia* are to respect the scale and significance of heritage buildings on the site or on adjacent sites.

78. Schedule 46 University East. Design objectives *inter alia* are to ensure that new development respects the scale and form of heritage buildings on Faraday and Cardigan Streets.

DDO height controls

79. The Trust's submission is that the original mandatory height controls for the Bourke Hill precinct (and other precincts) were to a large extent clearly based on the scale of the actual historic building stock.

80. The Trust submits that in the case of buildings that already exceed 15m, rebuilding to existing heights should be allowed. This policy is supported by Mr Biasci.

81. The question of how far setback the 15m currently goes was a question raised by Panel (ie part way through building envelopes, or following the building property line). On the north side of Bourke Street, the difference between B1 and B3 is part way through buildings, on the south side of Bourke Street it appears to follow title lines.

82. Changes in height limits across heritage-listed buildings is not supported. As currently proposed in B3, this would apply to the Palace site at 28-30 Bourke Street, and to 27-35 Little Bourke Street. (The other building with a proposed height break, 40-50 Bourke Street, is not a contributory or individually listed building).

83. Similarly the transition from mandatory 15m to discretionary 40m across the VHR listed Gordon Building site at 24-36 Little Bourke Street is not supported. These are

not supported because the creation of a higher limit at the rear of sites such as 27-35 Little Bourke Street and Gordon House in Little Bourke Street promote and encourage facadism by having half the building at one low height limit, the other half higher.

84. The Trust submits that B3 (40m mandatory) should be deleted and that 15m is the appropriate control in place of B3. Mr McGauran's opinion is that a 40m height limit is detrimental to the view and context of the Princess Theatre, particularly from the Nicholson Street view line (he placed a lot of importance on this view). He suggests 25m discretionary, taking into account the 23.5m ridge line of the Princess. If the Trust's preferred outcome of 15m is not supported then Mr McGauran's proposed 25m would be our fall-back position.

85. The Panel has raised the question of whether it would be appropriate to adopt the guidance principles set out in Clause 22.05 (Heritage Outside CCZ). This would allow guidance regarding concealing higher rear additions etc.

86. The Trust would be concerned about adoption of the policy in 22.05 in the CCZ and reiterates its written submission to the exhibited amendment: *In recent years, the laneways of Melbourne have become celebrated as a distinctive aspect of Melbourne's cultural identity. Their gritty character, created by un-elaborate sides of buildings fronting the main streets, and the frequently plain industrial/warehouse buildings that actually face them, is widely appreciated and embraced.*

87. In evidence Mr McGauran extensively discussed the social significance of the precinct (and sense of place), and that it was an inappropriate view to just consider heritage as the immediate streetscape or street frontages. In response to a question by the Chair, Mr McGauran compared the Bourke Hill precinct to development along Collins Street whereby in Collins Street the proposition has been facadism, largely to a one room depth (typically 8-12m), yet Bourke Street is about whole/entire places of low scale, and here a substantial setback (i.e. the whole building) is necessary.

88. We agree with the evidence of Mr McGauran that

- i) provision of *Plan Melbourne* seeks to protect unique precincts.

- ii) it is inappropriate to say capital city zone should always be able to be treated the same.
- iii) Mr Biles is wrong in saying the street wall can be raised to 25m, yet at the same time preserve this special area.
- iv) it is not just about considering a heritage building or heritage view it is about a significant place, and the experience of it as a place that is important. Experience of a place is not a static thing.
- v) it is important to consider a range of strategies which talk about conservation of heritage places. But it should be more than just about keeping a facade.

89. The Trust submits that heritage recognition and protection, whether architectural historical or social, is about the whole building, not just the facade, and in the case of precincts, about the whole of all buildings, not just the frontages. The Trust agrees with Mr McGauran's evidence that there aren't just singular views but it is about the in-the-flesh "experiences" of the place.

Conclusion

90. The amendment has strong strategic justification.

91. Mr Storey's opinion is that the strategic heritage work is the most comprehensive for a precinct since the late 1970s/early 1980s.

92. None of the experts dispute that the Bourke Hill precinct relies at least in part on a consistency of low scale for its significance.

93. Mandatory height controls in B1 and B2 are supported. B3 should be varied, either to 15m consistent with B1, or to 25m discretionary as preferred by Mr McGauran.

94. The Trust submits that in the case of buildings that already exceed 15m, rebuilding to existing heights should be allowed.