



Planning Panels Victoria

Department of Environment, Land, Water and Planning

1 Spring Street
Melbourne Victoria 3000
GPO Box 2392
Melbourne, Victoria 3001
Telephone (03) 8624 5712

3 August 2022

Dear Party,

1 Spring Street and 21-25 Flinders Street Melbourne Advisory Committee

The Committee held a Directions Hearing for the above matter on 29 July 2022 by Microsoft Teams. Please find attached:

- Committee Directions
- Distribution List
- Proposed Hearing Timetable.

The following keys dates apply:

Time	Date	Action	Direction
12 noon	Monday, 15 August 2022	Parties intending to attend the accompanied portion of the site visit must nominate attendees	3
9.30 am	Thursday, 18 August 2022	Accompanied (in part) site visit	4
12 noon	Monday, 22 August 2022	Proponent must supply documents specified	9
		Proponent must provide written clarification	10
		Council must supply documents specified	11
10 am	Wednesday, 24 August 2022	Further Directions Hearing, if needed	13
12 noon	Monday, 29 August 2022	Proponent and Heritage Victoria must supply documents specified	12
12 noon	Monday, 31 October 2022	Proponent must circulate any amended plans	14
12 noon	Monday, 21 November 2022	Proponent must circulate its Part A submission	15
12 noon	Monday, 28 November 2022	Parties must circulate expert witness reports	17
12 noon	Monday, 5 December 2022	Proponent must circulate its Part B submission	18
		Proponent must circulate its 'Day 1' Incorporated Document	19
12 noon	Wednesday, 7 December 2022	Council and Heritage Victoria must circulate written submission	21
		Any supplementary submission from a party not appearing at the Hearing must be circulated	22
10 am	Monday, 12 December 2022	Video conference Hearing commences	

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Privacy Coordinator, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002

OFFICIAL



Declarations

The Committee Chair declared a previous association with Mr Daniel Besen who is associated with the Proponent, Phillip Nominees Pty Ltd. The Chair indicated:

- approximately 10 to 12 years ago when she was a junior solicitor, her then supervising Partner acted for Mr Besen and provided advice regarding a planning matter
- she assisted her then supervising partner with the matter
- she has had no other association with Mr Besen since then.

No party expressed any concern about this. The Committee made no other declarations.

The Committee declared that the office of Planning Panels Victoria is located at 1 Spring Street, Melbourne. No party expressed any concern about this.

Procedural matters

Site inspection

The Committee confirmed that it will undertake a site inspection before the Hearing starts and will visit Shell House, Milton House and the surrounding area from various key vantage points, including each photo montage location.

The Committee will inspect the interior of Milton House, and various interior areas of Shell House which are not normally accessible to the public, such as the theatre.

Site inspections are normally unaccompanied and conducted from the public realm. The Committee sought the views of parties regarding whether an accompanied site inspection was warranted.

The Proponent indicated that the Committee might benefit from an accompanied inspection of the internal areas in both Shell House and Milton House, particularly if Mr Lovell, the Proponent's heritage advisor, was able to attend to answer any questions of clarification. All parties supported this approach.

The Committee agreed and invites all parties to attend the accompanied component of the site inspection (refer to Directions 3 and 4).

The Committee indicated that the remainder of the site inspection would be unaccompanied.

Heritage Council Victoria Report and Adjournment Request

Planning Panels Victoria circulated its Notification Letter on 15 July 2022 advising of both the Directions Hearing, and the proposed dates for the Hearing being the week of 12 September 2022.

On 26 July 2022, the Proponent wrote to Planning Panels Victoria and indicated:

- the contemplated dates for the Hearing would cause material prejudice and unfairness to the Proponent's capacity to properly present its case before the Committee
- the dates contemplated are not feasible insofar as the availability of longstanding expert witnesses and counsel briefed in this matter and would leave all parties with inadequate time to prepare for the Hearing
- the Hearing should be adjourned to the week of either 13 or 20 February 2023 to ensure the availability of key personnel and provide all parties with sufficient time to adequately prepare.

During the Directions Hearing, it became apparent that the Proponent had not been provided with a copy of the Heritage Council Victoria Regulatory Committee Report which was prepared for and provided to the former Minister for Planning on 27 May 2022 (the Heritage Council Victoria Report). The Heritage Council Victoria Report is currently confidential but was included in the package of information referred to the Committee. Officers in DELWP, including Heritage Victoria, have a copy of the report.

All parties were given an opportunity address the Committee on this issue, and the Proponent's adjournment request.

The Proponent continued to seek an adjournment of the Hearing, primarily on the basis that it had not been provided with the Heritage Council Victoria Report. In summary, the Proponent submitted it needs

adequate time to receive, review and seek advice on the Heritage Council Victoria Report and to prepare for the Hearing. The Proponent indicated that this may include the preparation of amended plans which better respond to the report and its recommendations. The Proponent requested that the Hearing be adjourned until the week of either 13 or 20 February 2023.

Council did not oppose the adjournment request and had no issue with the proposed February 2023 dates. Heritage Victoria opposed the adjournment and supported the proposed September 2022 hearing dates, submitting the outcome of this review may inform other live permit applications.

The Committee determined to adjourn the Hearing until the week beginning 12 December 2022. It found that:

- the Proponent should be provided with a copy of the Heritage Council Victoria Report so that it has an opportunity to review the report, and be given a reasonable opportunity to prepare its case
- the proposed Hearing in September 2022 will unfairly prejudice the Proponent and deny it a reasonable opportunity to prepare its case given the Heritage Council Victoria Report has not yet been released
- no other party was able to point to any significant detriment that will be suffered if the adjournment is granted
- a December 2022 hearing will give the Proponent a reasonable time to prepare its case, subject to the Heritage Council Victoria Report being released in a timely manner
- while the Proponent's preferred legal Counsel might not be available in December 2022, adjourning the Hearing for four months will allow sufficient time to ascertain alternative suitable Counsel.

The Committee indicated it would write to the Minister for Planning, requesting that she release the Heritage Council Victoria Report so that it is available to all parties.

Amendment to the Terms of Reference

Council asked the Committee to consider requesting an amendment to the Terms of Reference (in accordance with Clause 21) to:

- Hear (and potentially determine) submissions and evidence relating to the heritage permit applications P33300 and P33301 first. It was submitted that heritage was a threshold issue which should be heard and determined first before matters relating to urban design and the like.
- Expand upon who might be invited to make submissions at the Hearing to hear from submitters to the heritage permit applications.

The Proponent and Heritage Victoria opposed the request to hear submissions and evidence relating to the heritage permit applications first. Both parties highlighted the former Minister for Planning's request for an integrated planning and heritage assessment.

Heritage Victoria supported, and the Proponent objected to the Council's request to seek to amend the Terms of Reference to expand the parties to the Hearing.

The Committee indicated that it would not be seeking to vary the Terms of Reference to hear the heritage case first or to hear from submitters to the heritage applications. The Committee noted:

- the Terms of Reference are clear about the integrated planning and heritage approach and sees no benefit in separating or isolating the two
- the Terms of Reference are clear on those who can be heard at the Hearing noting that it has been provided with all written submissions and cannot see any significant benefit in having those people attend the hearing.

Further Directions Hearing

The Proponent suggested the Committee and parties may benefit from a further Directions Hearing, particularly if the Heritage Council Victoria Report is not released in a timely manner.

The Committee agreed to this approach and a further Directions Hearing is scheduled to be held at **10am on Wednesday 24 August** by video conference using MS Teams.

[Click here to join the meeting](#)

If you have questions, please contact Hayley Becker, Manager Major Projects, Planning Panels Victoria on [REDACTED] or planning.panels@delwp.vic.gov.au.

Yours sincerely,



SARAH RASO
Committee Chair

Distribution List

1 Spring Street and 21-25 Flinders Street Melbourne Advisory Committee

Before the Hearing

Hearing administration

1. The Proponent must host and manage the video conference.
2. The Proponent must host and manage online document sharing where all parties can access tabled documents through the course of the Hearing.

Site visit

3. Parties intending to attend the (partly) accompanied site visit must nominate attendees by 12 noon on **Monday, 15 August**.
4. The accompanied portion of the site visit will take place at 10am on **Thursday, 18 August** (further details to follow).

Circulation and sharing of documents

5. Documents must be circulated electronically to all parties on the Distribution list.
6. Files should not exceed 20MB in size. Documents larger than 20MB should be broken down into smaller files less than 20MB.
7. File names should be as short as possible.
8. Paper documents will only be permitted in exceptional circumstances. If any party has issues supplying documents electronically, they should contact Planning Panels Victoria.
9. The Proponent must provide the following documents to parties on the distribution list by **12 noon on Monday, 22 August**:
 - a) Statement of changes which describes the changes between the plans lodged in November 2020 and the plans submitted in February 2022
 - b) The Lovell Chen Statement of Design Principles.
10. The Proponent must provide written clarification to parties on the distribution list by **12 noon on Monday, 22 August** in relation to:
 - a) Whether the amended development as shown in the plans submitted in February 2022 has been provided to Mr Greg Holman of Harry Seidler & Associates or to the OVGGA Design Review Panel for an updated review.
 - b) The total figure for the existing plaza area on the north side of Tower 1 (inclusive of the existing level 3 plaza).
 - c) Whether the Wind Assessment dated January 2022 prepared by Mel Consultants includes existing, under construction and proposed built form – or just existing.
11. The City of Melbourne must provide the following documents to parties on the distribution list by **12 noon on Monday, 22 August**:
 - a) The planning permits and endorsed plans for the Hotel Lindrum redevelopment and the redevelopment at 32 Flinders Street, Melbourne.
12. The Proponent and Heritage Victoria must jointly prepare an agreed list of documents to be provided to the Committee and all parties on the distribution list by 12 noon **on Monday, 29 August 2022**.

Further Directions Hearing

13. The Committee will convene a further Directions Hearing **at 10am on Wednesday, 24 August** by video conference using MS Teams.

Amended Plans

14. The Proponent must circulate any amended plans sought to be relied upon, including a statement of changes which describes the changes from the plans lodged in November 2020, by **12 noon on Monday, 31 October**.

Proponent Part A submission

15. The Proponent must circulate a Part A submission to parties on the distribution list by 12 noon **on Monday 21 November** that includes:
- a) background to draft Amendment C401melb and heritage permit applications P33300 and P33301 including a chronology of events
 - b) strategic context and assessment
 - c) other amendments that may be under preparation or recently approved that may be relevant
 - d) a summary of the main issues identified in submissions to draft Amendment C401melb, including a detailed summary of the issues raised by the City of Melbourne and the Department of Transport and their recommendations
 - e) a summary of the main issues identified in submissions to heritage permit applications P33300 and P33301, including a summary of the Heritage Victoria decisions and the Heritage Council Victoria recommendation
 - f) any suggested changes to either draft Amendment C401melb or heritage permit applications P33300 and P33301 in response to submissions
 - g) any other strategic material that the Proponent intends to rely upon in support of the draft Amendment C401melb or heritage permit applications P33300 and P33301 that has not yet been provided, or that might assist the Committee.

Note: The Proponent's Part A submission will be taken as read by the Committee at the Hearing. The Proponent should allow time for questions about its Part A submission on Day 1.

Witness reports

16. A witness report must:
- a) comply with the Guide to Expert Evidence (<https://www.planning.vic.gov.au/panels-and-committees/planning-panel-guides>)
 - b) not refer to any individual submitter by name – if necessary, submitters should be referred to by submission number (*Note: it can refer to community groups, organisations, corporations and government agencies*)
 - c) be provided to the Committee as an unlocked document.
17. Parties must circulate their witness reports to parties on the distribution list by **12 noon on Monday, 28 November**.

The Proponent Part B submission

18. The Proponent must circulate a Part B submission to parties on the distribution list by **10 am on Monday 5 December** that includes:
- a) its response to submissions and evidence
 - b) its final position on the Amendment.

'Without prejudice' drafting

19. The Proponent must circulate its 'Day 1' version of the Incorporated Document (in MS Word with all changes tracked) to parties on the distribution list by 12 noon **on Monday, 5 December 2022**.

20. Any party seeking to provide without prejudice tracked changes, must provide them to all parties by **12 noon on the day before** the party presenting is due to present.

Written submissions

21. City of Melbourne and Heritage Victoria must circulate their written submission to parties on the distribution list by 12 noon **on Wednesday 7 December**.
22. A party who intends to supplement their original submission (without orally presenting that submission) must circulate their written submission to parties on the distribution list by 12 noon **on Wednesday 7 December**.

At the Hearing

Submissions and information

23. Parties must present material at the Hearing electronically.
24. Electronic information must be circulated to parties on the distribution list by 12 noon on the day before the information is to be presented at the Hearing.
25. All information presented at the Hearing is a public document for the purposes of the Committee process unless the Committee directs otherwise.

Evidence and cross examination

26. Unless agreed by the Chair, evidence-in-chief must be no longer than 30 minutes – *all expert witness reports will be read before the Hearing*.
27. An expert witness may refer to a presentation which summarises their evidence, but it must:
- a) not include new evidence
 - b) be provided to parties by 12 noon the day before that witness is scheduled to appear.
28. Unless a specific direction is made about 'like' evidence, an expert witness can provide their response to other like evidence by 12 noon the day before that witness is scheduled to appear.
29. Parties, advocates and the Committee may question a witness.
30. During the Hearing, for scheduling purposes, the Committee will ask each party:
- a) how much time they anticipate they will need for each witness
 - b) to keep to their anticipated time for each witness.
31. If cross-examining a witness, a party must:
- a) be present for the whole of the giving of the evidence
 - b) ask clear and relevant questions, directed to matters of fact or professional opinion, that genuinely assist the Committee in understanding the issues
 - c) allow a witness time to explain their answer.
32. If giving evidence remotely, a witness must:
- a) be alone in the room from which they give evidence and not make or receive any communication with another person while giving evidence except with the express leave of the Committee
 - b) inform the Committee immediately should another person enter the room from which they are giving evidence
 - c) not discuss their evidence with any other person during breaks in evidence when under cross-examination
 - d) not have before them any document, other than their expert witness statement and relevant supporting documents.

33. The Committee will regulate cross-examination.

Other information

34. Any other material a party wishes to present at the Hearing must be circulated to parties on the distribution list by **12 noon on the day before** the party presenting the material is due to present.
35. After presenting to the Committee, submissions and other material (preferably in MS Word) should be emailed to planning.panels@delwp.vic.gov.au as an unlocked document.
36. All information presented at the Hearing is a public document unless the Committee directs otherwise.

Closing submissions

37. The Proponent will be provided time to present a closing submission.
38. The closing submission must not raise new matters but should respond to matters raised in other parties' submissions or evidence.

Recording Hearings and use of personal information

39. Parties must not record any part of an electronic hearing by any means without permission from the Committee.
40. If Planning Panels Victoria records an electronic hearing, any party provided with a copy of the recording on request must not publish or distribute that recording or use it for any purpose other than for the Hearing.
41. Parties must not record, keep, distribute or publish contact details of any other party obtained during an electronic hearing session, or use those contact details for any purpose other than for the Hearing.

Compliance with Committee directions

42. All directions must be complied with. It is an offence to not comply with a direction without lawful excuse. [section 169 of the *Planning and Environment Act 1987*]
43. If you anticipate being unable to comply with a direction (for example, meeting a deadline for the circulation of evidence), you must provide the Committee with advance notice, and a written statement explaining why you are unable to comply with the direction, and seek leave from the Committee to vary the direction.
44. The Committee may:
- a) refuse to hear from anyone who fails to comply with a direction. [section 159(b)]
 - b) not accept evidence if leave to vary a direction for the circulation of evidence is not sought or granted.

Electronic documents

Party	email address
Planning Panels Victoria	planning.panels@delwp.vic.gov.au
Phillip Nominees Pty Ltd (the Proponent)	[REDACTED]
Melbourne City Council	[REDACTED]
Heritage Victoria	[REDACTED]

Timetable

1 Spring Street and 21-25 Flinders Street Melbourne Advisory Committee

Timetable Version 1

Day 1: Monday 12 December 2022

Venue: To be confirmed

Time	Party	Allocated
10.00am	Preliminary matters	30 mins
10.30am	Phillip Nominees Pty Ltd (Proponent) , represented by Planning Property Partners calling the 6 to 8 expert witnesses (to be confirmed)	5 days
11.15am	Break	15 mins
11.30am	Proponent (continued)	
12.30pm	Lunch break	1 hour
1.30pm	Proponent (continued)	
3.15pm	Break	15 mins
3.30pm	Proponent (continued)	
4.30pm	Day close	

Day 2: Tuesday 13 December 2022

Venue: To be confirmed

Time	Party	Allocated
10.00am	Preliminary matters	15 mins
10.15am	Proponent (continued)	
11.15am	Break	15 mins
11.30am	Proponent (continued)	
12.30pm	Lunch break	1 hour
1.30pm	Proponent (continued)	
3.15pm	Break	15 mins
3.30pm	Proponent (continued)	
4.30pm	Day close	

Day 3: Wednesday 14 December 2022

Venue: To be confirmed

Time	Party	Allocated
10.00am	Preliminary matters	15 mins
10.15am	Proponent (continued)	

11.15am	Break	15 mins
11.30am	Proponent (continued)	
12.30pm	Lunch break	1 hour
1.30pm	Proponent (continued)	
3.15pm	Break	15 mins
3.30pm	Proponent (continued)	
4.30pm	Day close	

Day 4: Thursday 15 December 2022

Venue: To be confirmed

Time	Party	Allocated
10.00am	Preliminary matters	15 mins
10.15am	Proponent (continued)	
11.15am	Break	15 mins
11.30am	Proponent (continued)	
12.30pm	Lunch break	1 hour
1.30pm	Proponent (continued)	
3.15pm	Break	15 mins
3.30pm	Proponent (continued)	
4.30pm	Day close	

Day 5: Monday 19 December 2022

Venue: To be confirmed

Time	Party	Allocated
10.00am	Preliminary matters	15 mins
10.15am	Proponent (continued)	
11.15am	Break	15 mins
11.30am	Proponent (continued)	
12.30pm	Lunch break	1 hour
1.30pm	Proponent (continued)	
3.15pm	Break	15 mins
3.30pm	Proponent (continued)	
4.30pm	Day close	

Day 6: Tuesday 20 December 2022

Venue: To be confirmed

Time	Party	Allocated
10.00am	Preliminary matters	15 mins
10.15am	Melbourne City Council , represented by Louise Hicks, instructed by Ann-Maree Drakos of Melbourne City Council, calling expert evidence on: - Heritage from Jim Gardner of GLM Heritage	1 Day
11.15am	Break	15 mins
11.30am	Council continued	
12.30pm	Lunch break	1 hour
1.30pm	Council continued	
3.15pm	Break	15 mins
3.30pm	Council continued	
4.30pm	Day close	

Day 7: Wednesday 21 December 2022

Venue: To be confirmed

Time	Party	Allocated
10.00am	Preliminary matters	15 mins
10.15am	Heritage Victoria , represented by Nicole Stairmand and Janey Sullivan of Heritage Victoria	1 hour
11.15am	Break	15 mins
11.30am	Proponent Closing Submission	1.5 hours
1.00pm	Hearing Close	15 mins

Hearing Timetable Notes:

1. The Committee may amend the timetable without notice.
2. Please be present at least 15 minutes before your scheduled commencement time.
3. Time will be made for morning and afternoon breaks each day.
4. If you are unable to be present at your scheduled time, please contact Planning Panels Victoria as soon as possible.