

PROPOSED EASEMENT VARIATIONS AND WORKS AFFECTING PARTS OF THE
BOURKE STREET PEDESTRIAN BRIDGE OVER SOUTHERN CROSS STATION,
DOCKLANDS

2 July 2013

Presenter: Angela Meinke, Manager Planning and Building

Purpose and background

1. The purpose of this report is to provide information on the progress of three applications for planning permits for easement variations on parts of the Bourke Street Footbridge which crosses over Southern Cross Station (refer Attachment 2 – Locality Plan).
2. The Future Melbourne Committee (FMC) at its meeting on 16 April 2013 considered a report on the applications and heard presentations for and against those. FMC resolved to '*defer this item to be heard at the Committee to be held on 14 May 2013*'. The deferral was to enable further discussions between the City of Melbourne, the applicants and objectors. The item did not proceed as consultation was still continuing with applicants and objectors. Councillors were advised of this via a Briefing Paper.
3. The site is owned by the Department of Transport Planning and Local Infrastructure (DoTPLI). The bridge is encumbered by a public easement of way providing a legal right for through pedestrian movement between Docklands and central Melbourne. DoTPLI is seeking to install additional myki ticketing barriers on the bridge, whilst SCS Retail Pty. Ltd. (SCS), which manages the retail operations in the station complex, seeks to construct a retail pod on the western side of the myki barriers and two to the east. Permanent obstructions cannot be placed on the bridge within the easement unless the easement is first removed from the encumbered lands. If approved, the usable width of the bridge will be reduced by about four metres leaving a clear width of approximately 14 metres.
4. Council's approval as the responsible authority for the easement and that of the Minister for Planning for the works and use (as applicable) are both needed. Officers of Council and DoTPLI have worked jointly on the proposals.

Key issues

5. Significant consultation has since occurred between the parties and the proposals have been amended to lessen their effects on pedestrian use of the bridge. Two prime objectors being Melbourne Stadiums Ltd. and the AFL have now both withdrawn their objections to the applications. Places Victoria has given its conditional approval to the applications.
6. Following the April FMC meeting the pedestrian modelling was updated. The modelling indicates there is little likelihood of the amended proposals adversely affecting the public use of the bridge and public safety (refer Attachment 3 – Photos of the Bridge and Montages of Proposed Works). However, in the future there may be the desire to remove the works and have the easement reinstated should long term changes to the bridge's use levels warrant this.

Recommendation from management

7. That the Future Melbourne Committee resolve to:
 - 7.1. issue a Notice of Decision in relation to planning application TP-2011-853 for the easement variation related to the DoTPLI (myki) works subject to DoTPLI entering into a legal agreement with the Council and/or the Minister for Planning agreeing to:
 - 7.1.1. remove the barriers and associated works after 10 years (with a potential extension at Council's sole discretion);

- 7.1.2. requiring the reinstatement of the easement should the approval not be extended;
- 7.1.3. such other terms as reasonably required by the Council's Chief Legal Counsel;
- 7.2. issue a planning permit for planning permit application TP-2011-126 for the easement variation related to the SCS western retail pod;
- 7.3. note that planning permit application TP-2013-157 for the easement variation related to the SCS eastern retail pods has been given notice pursuant to s. 52 of the *Planning and Environment Act 1987* (the Act) and that the matter will be reported back to the Future Melbourne Committee or to Councillors via a Briefing Paper in due course; and
- 7.4. advise DoTPLI of Council's position in respect to the proposals and request the Department to assess the three works related applications in line with the Council's position.

Attachments:

- 1. Supporting Attachment
- 2. Locality Plan
- 3. Photos of the Bridge and Montages of Proposed Works
- 4. Site Plan
- 5. Officers Detailed Report
- 6. Objections to myki proposal

SUPPORTING ATTACHMENT

Legal

1. The report identifies the relevant legal issues. In each case, the Minister for Planning is the responsible authority for the development permit and the Council is the responsible authority for the request to vary the registered easement.

Finance

2. The proposals will have no direct financial impact on the Council. Costs associated with meeting any conditions for approval of the various applications including those associated with any legal agreements, will be met by the relevant applicant.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

The DoTPLI easement related application

4. This affects the DoTPLI land which is shown coloured red on the attached plan (refer Attachment 4 – Site Plan). That application (TP-2011-853) was given notice under s. 52 of the Act by advertisements in the Age and Leader Newspapers, by ordinary mail to the owners and occupiers of surrounding businesses and by posting two notices on the site for a 14 day period.
5. Four objections were received. These were from the AFL; Melbourne Stadiums Limited/Etihad Stadium; Places Victoria and from the Franchise Manager of the Theobroma Chocolate Lounge ('the Lounge') (refer Attachment 6 – Objection to myki Proposal). The Lounge operates at bridge level opposite the proposed eastern retail pods, being part of the Spencer Outlet Centre, previously known as DFO Spencer. All of the submitters had concerns as a consequence of the proposed easement removal and works, on pedestrian amenity and safety on the bridge at times of egress from major events held at Etihad Stadium. The Lounge had additional concerns on the effects of the construction works on their business.
6. The Lounge has not participated in subsequent consultation but has confirmed the objection remains.
7. The AFL and Melbourne Stadiums have unconditionally withdrawn their objections.
8. Places Victoria has consented to the application subject to the certain conditions being included in a Notice of Decision to issue a permit. The conditions, which follow, relate more to the operation of the myki barriers than to the easement application itself.
 - 8.1. Myki barriers being open during stadium events. (*Response - DoTPLI has advised opening the gates for all events is considered to cast a net too broadly. It is standard operational practice that during special event an operator monitors crowd controls. Safety is a priority in operating the network and gates are opened when necessary to address potential crowding issues*).
 - 8.2. Inclusion of adequate weather protection for pedestrians utilising the pedestrian bridge. (*Response – the extent of the proposed myki work's intrusion into the easement has significantly lessened from the initial proposal. Some shelter does then remain available to through pedestrian traffic. Urban Design and Docklands Branch has assessed a related submission provided by DoTPLI and considers it reasonable not to require additional or replacement weather protection*);

- 8.3. Further splaying of the western edge of the myki barriers to provide a less obstructive design.
(*Response - amended plans have now been received from DoTPLI that meet that requirement*).
9. DoTPLI has confirmed in-principle support to the works on a without prejudice basis but requires the easement matters to be resolved before any approval can be given to those works.
10. Manager Urban Design and Docklands and Principal Engineer Traffic Engineering and Coordinator Risk Management do not object to the application.

The SCS western easement related application

11. Planning permit application TP-2013-126 affects the land coloured orange on the site plan being the portion of the easement proposed to be occupied by a westernmost retail pod. There already is a temporary news stand on that land. It is recessed and aligns with western unencumbered lands used for offices and myki barriers accessing the station's metropolitan platforms. Places Victoria, Melbourne Stadiums Limited and the AFL have all voiced their non-objection to that application. That application has not been given notice as its approval is not considered to cause material detriment to any person.
12. Manager Urban Design and Docklands and Principal Engineer Traffic Engineering and Coordinator Risk Management do not object to the application.
13. DoTPLI has confirmed in-principle support to the works on a without prejudice basis but requires the easement matters to be resolved before any approval can be given to those works.

The SCS eastern easement related application

14. Planning permit application TP-2013-157 affects the lands coloured yellow and green on the site plan, being the portions of the easement proposed to be occupied by the two easternmost retail pods. The eastern extent of that area starts about 7.5 metres from the top of the prime steps providing public and commuter access from Spencer Street to the bridge. The pods will have some impact on the public realm and amenity. Principal Engineer Traffic Engineering and Coordinator Risk Management do not object to the application but the easement removal is not supported by Manager Urban Design and Docklands on the following grounds:
 - 14.1. there is no justification for loss of public space at the top of the Bourke Street stairs;
 - 14.2. there is ample space for additional retail in the adjacent Spencer Outlet Centre;
 - 14.3. it creates a physical and visual barrier at the top of the stairs;
 - 14.4. it will adversely affect critical air movement between the bridge and the station;
 - 14.5. it will obstruct views into the station, which would significantly compromise the current competition-winning design; and
 - 14.6. a permanent structure as required by the applicant, as compared to a temporary structure, does not allow for regular reassessment of its effects on public space issues.
15. DoTPLI has confirmed in-principle support to the works on a without prejudice basis but requires the easement matters to be resolved before any approval can be given to those works.
16. The decision guidelines of the Melbourne Planning Scheme (see Clause 52.02 (Easements, Restrictions and Reserves)) require that a responsible authority must consider the interests of affected people before deciding on an application. The easement benefits the general public so as to better appreciate those interests, the application has been given notice under s52 of the Act. Officers will not be in a position to determine the matter before the July Committee meeting.

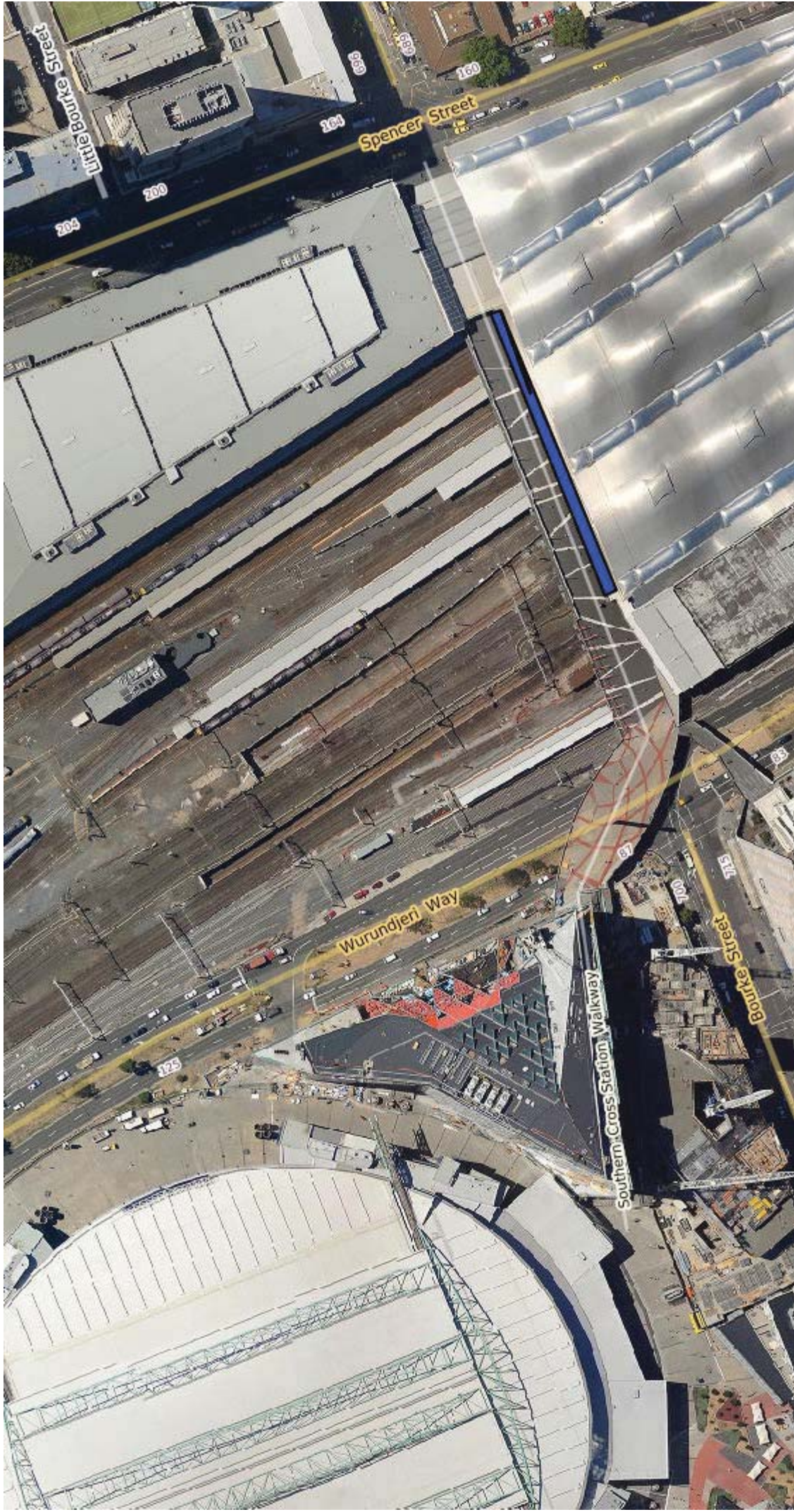
Relation to Council policy

17. Council has delegated its powers discretions and functions under the Act to various officers who must act in accordance with Council's Delegation Policy for Planning Applications. The applications raise issues of significant public interest and require a FMC decision.

Environmental sustainability

18. The applications for which the Council is the responsible authority are solely for easement variations that in themselves do not raise any environmentally sustainable issues.

LOCALITY PLAN - BOURKE STREET BRIDGE OVER SOUTHERN CROSS STATION



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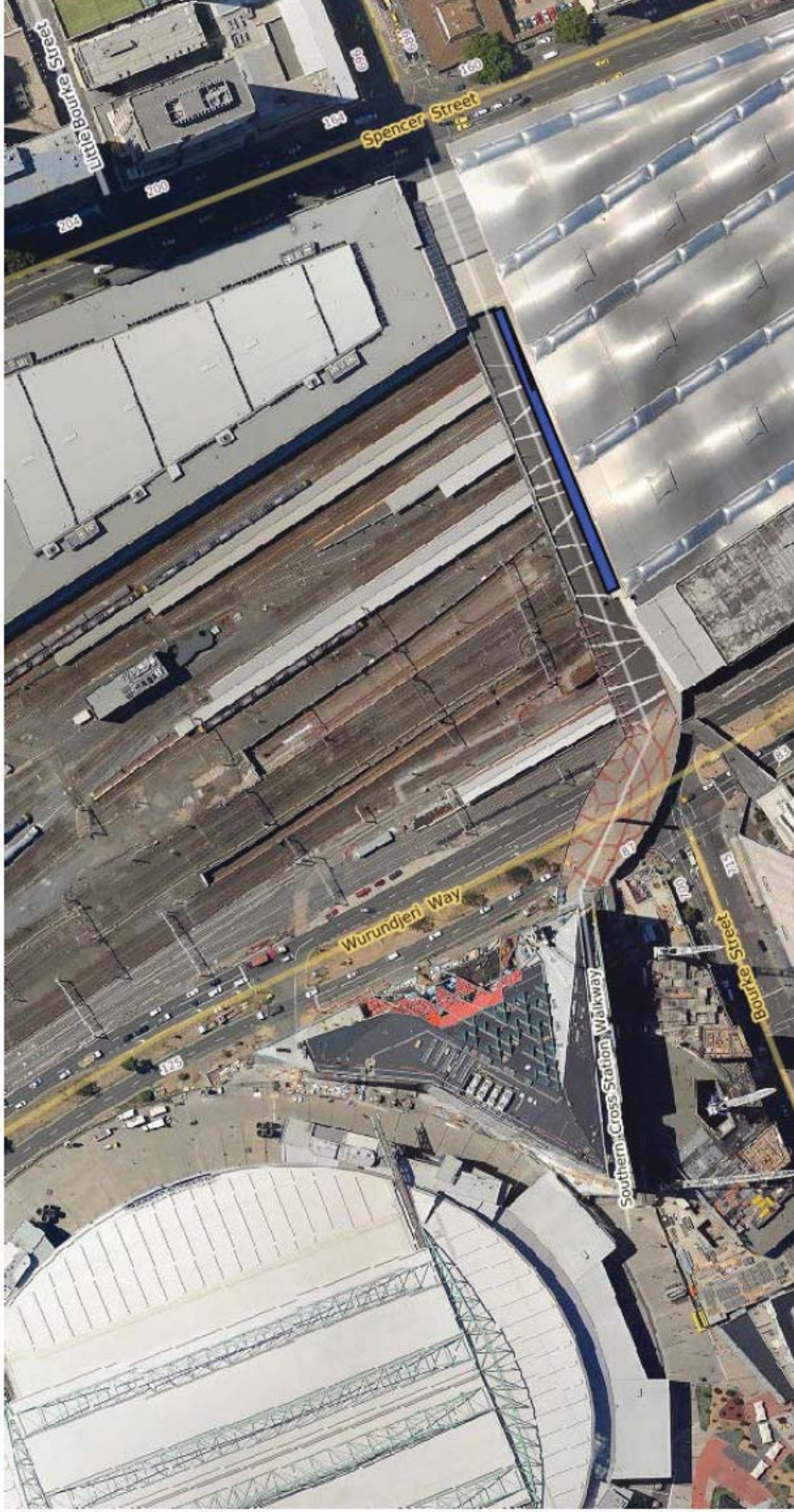
Photos and Montages
Bourke Street Bridge at Southern Cross Station

Photos taken on 6 June 2013
8.00am

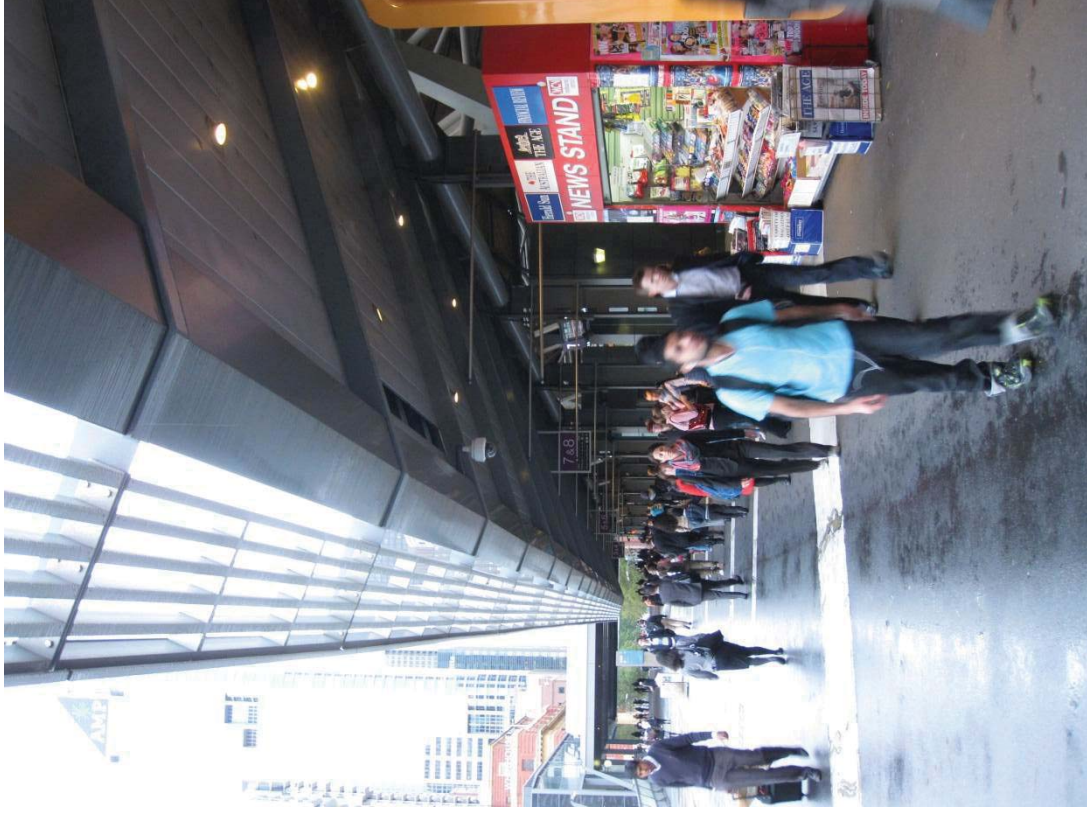
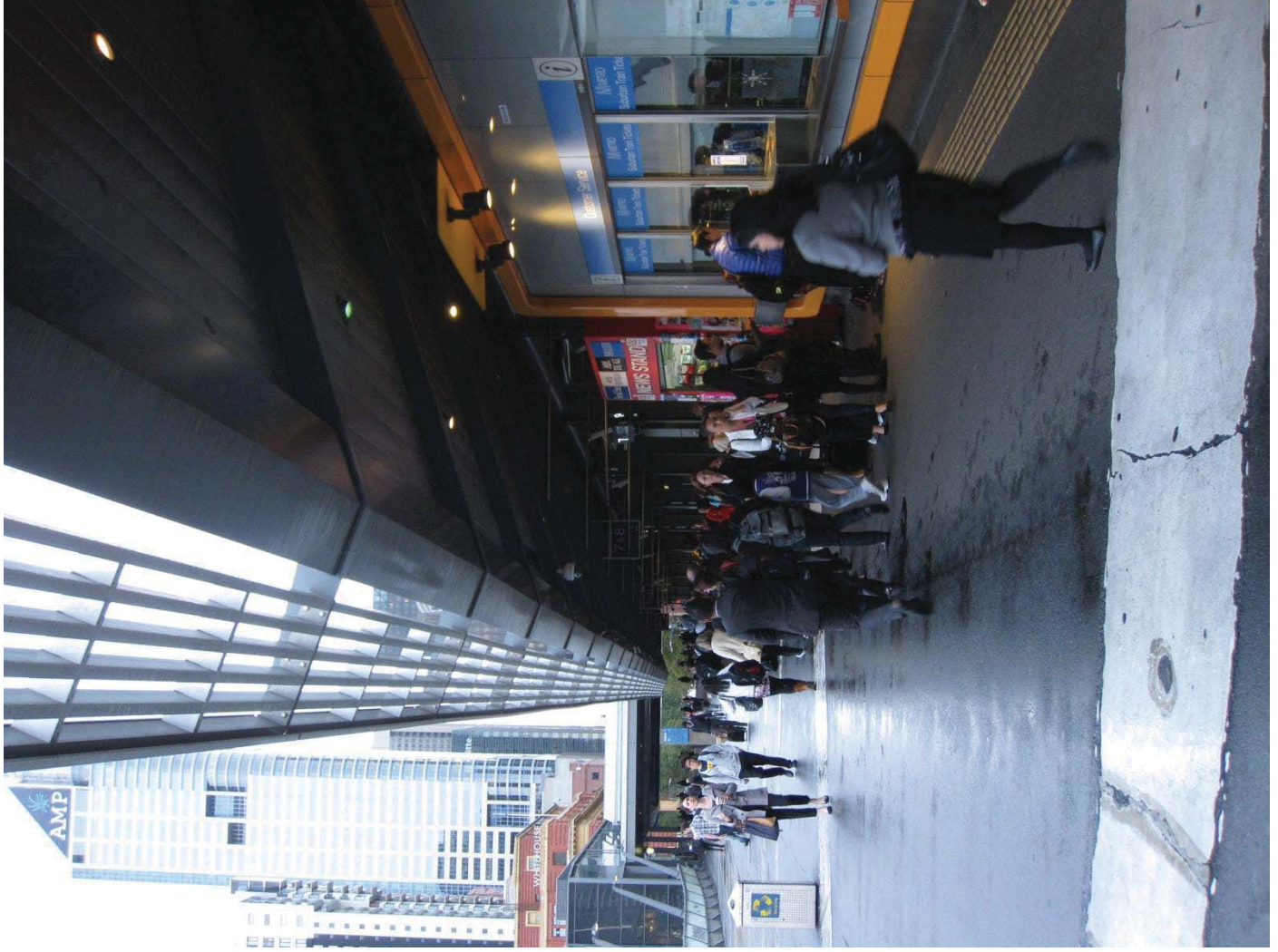
BUI/TPP/2011/00878/P1

DM#7934150

LOCALITY PLAN - BOURKE STREET BRIDGE OVER SOUTHERN CROSS STATION



Approx. Scale 1:2000



Easterly views of proposed western retail pod (Newsagency)



Easterly view showing extent of proposed MYKI area



Westerly view showing extent of proposed MYKI area





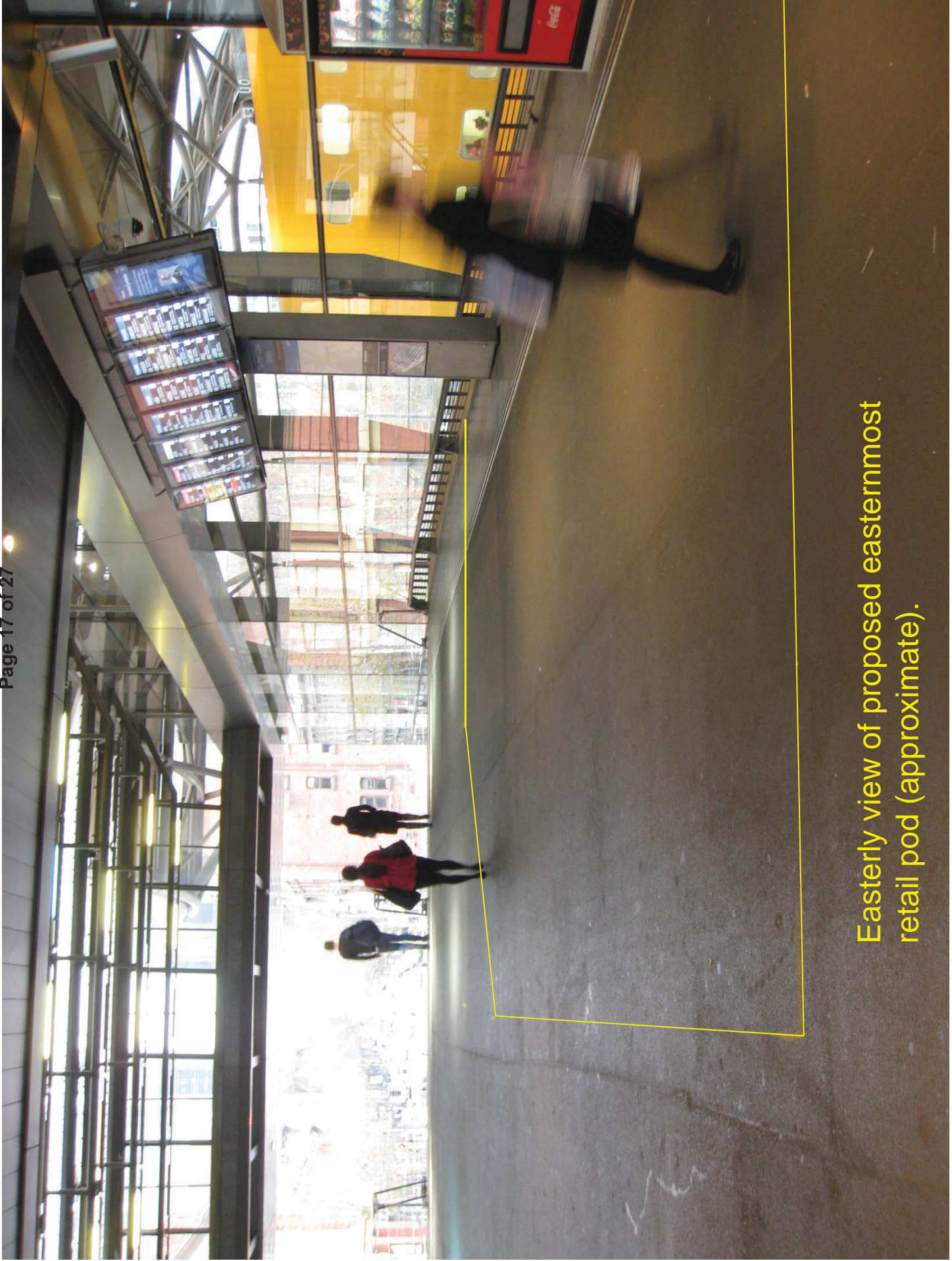
View of proposed easternmost retail pod (approximate) from the top of the Spencer Street stairs



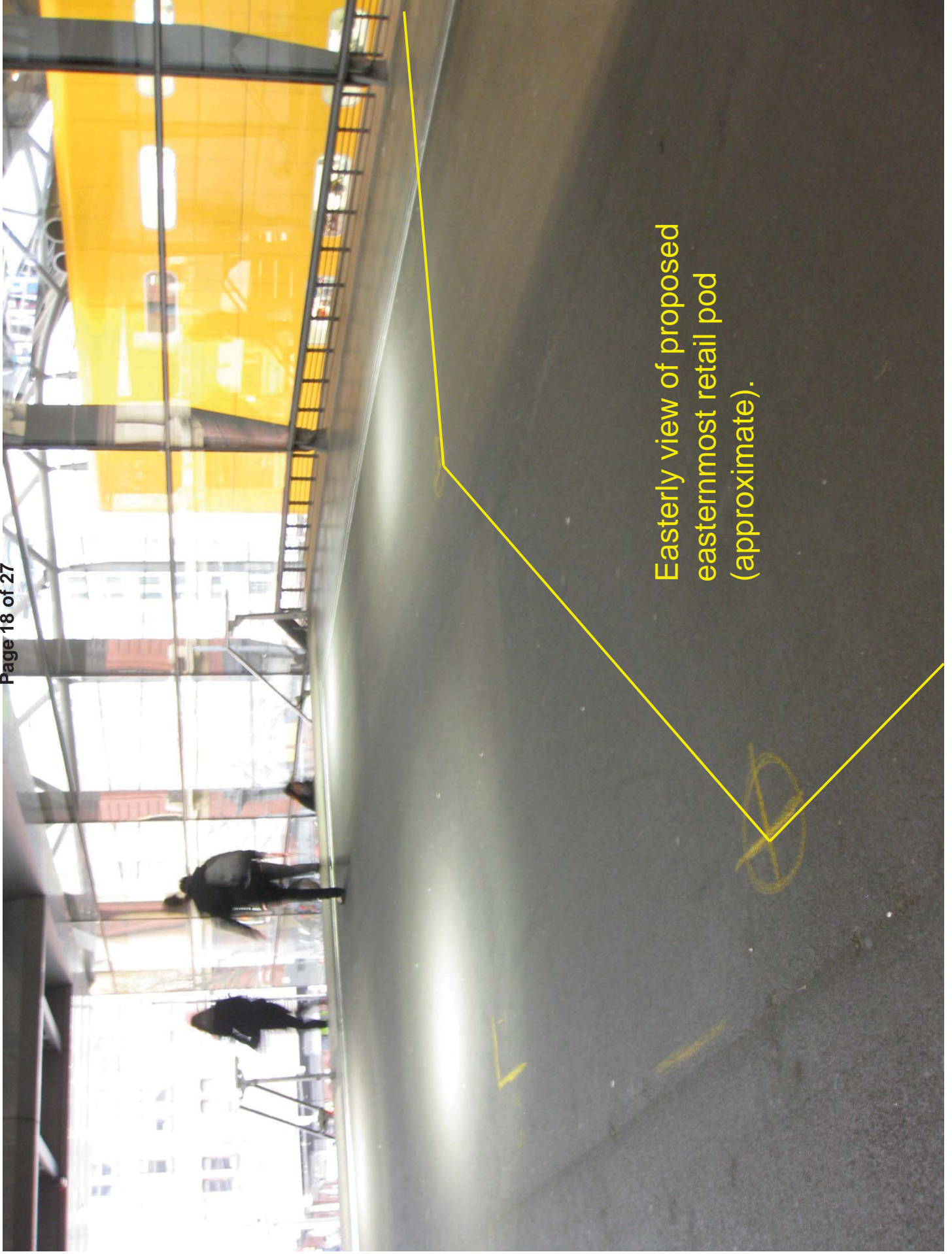
Westerly view of proposed easternmost retail pod (approximate) from the top of the Spencer Street stairs



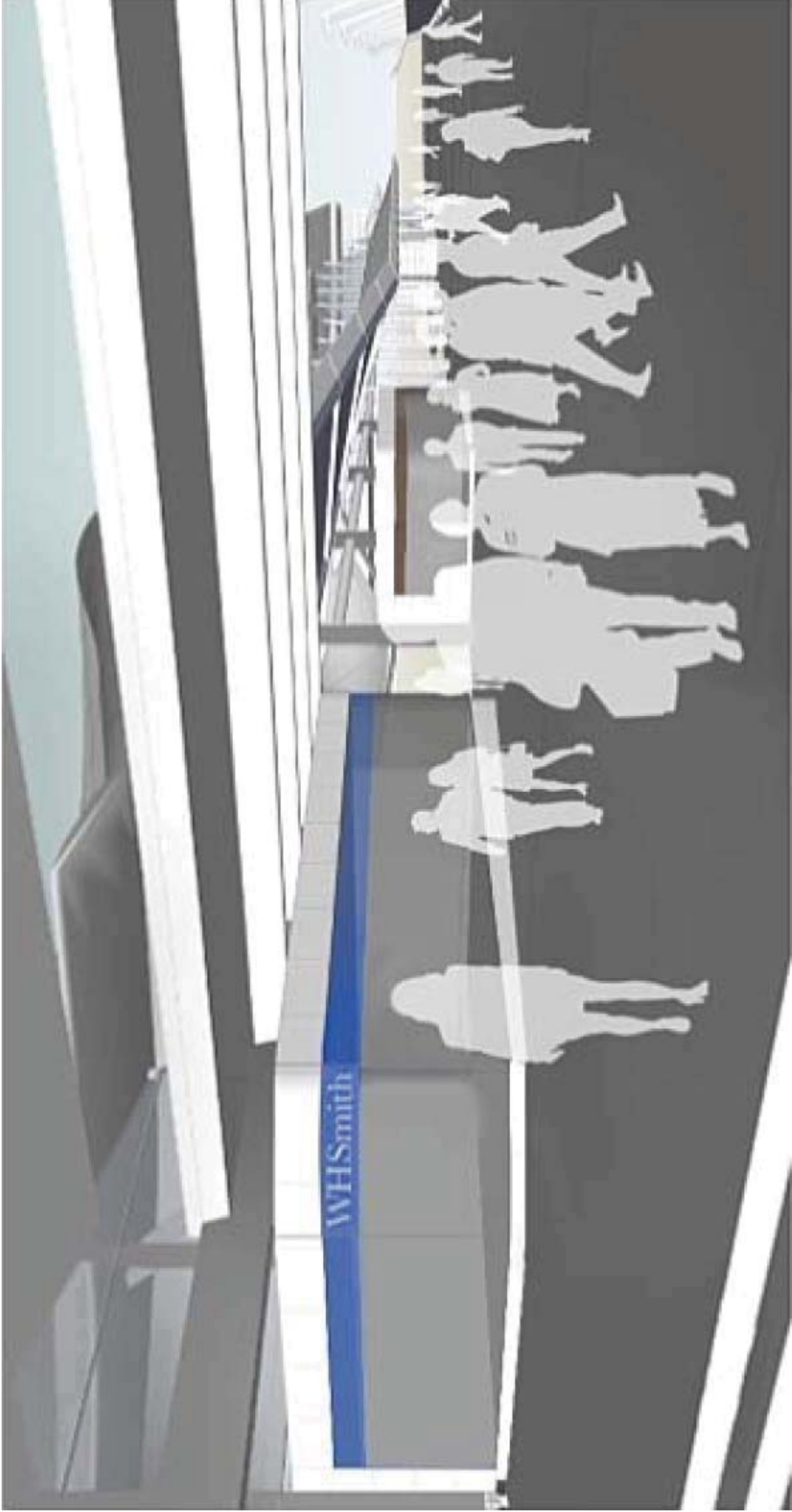
Westerly view of proposed easternmost retail pod (approximate)



Easterly view of proposed easternmost retail pod (approximate).



Easterly view of proposed easternmost retail pod (approximate).



Montage
Proposed Eastern Retail Pods



Montage
Proposed MYKI Works

OFFICERS DETAILED REPORT**PROPOSED EASEMENT VARIATIONS AND WORKS AFFECTING PARTS OF THE BOURKE STREET PEDESTRIAN BRIDGE OVER SOUTHERN CROSS STATION, DOCKLANDS**

Three applications for a planning permit for easement variations (reductions in area) on parts of the Bourke Street Footbridge over Southern Cross Station have been lodged with Council (See DM7944048 for a locality plan and DM7944010 for a more detailed site plan). Additionally the applicants have been in contact with the Department of Transport Planning and Local Infrastructure (DoTPLI) regarding obtaining the necessary planning approvals related to works on the lands affected by the easement variations.

The bridge is encumbered by a limited in height easement which legally allows public pedestrian traffic across the bridge between the Central Business District and Docklands. Permanent obstructions cannot be placed on the bridge without first removing the easement from the affected lands. (See DM7934150 for photos of the bridge).

Council is the Responsible Authority for approving variations to existing easements anywhere within the municipality, but the Minister for Planning is the responsible authority for approving any works on the bridge. Approvals or permits are needed from both before the works can be constructed on the bridge.

The applications and contacts are:

- an application recently made by the Department of Transport Planning and Local Infrastructure (DoTPLI) in regard to the Incorporated Document 'Spencer Street Station Redevelopment, August 2007' in the Melbourne Planning Scheme. The application proposes approval to the construction of standard myki ticketing barriers at the entrance to the station's regional platforms (Platforms 3-8) and affects the land generally shown coloured red ('the myki land') on the site plan;
- an application by DoTPLI to Council for a planning permit (TP-2011-853) to vary (reduce in part) the easement as far as it affects the myki land;
- an approach recently made by SCS Retail Pty. Ltd. ('SCS') to DoTPLI also in regard to the above Incorporated Document. SCS propose approval to the erection of permanent retail pods on the bridge. One retail pod is proposed on the land shown orange on the site plan ('the western retail pod'). Three are proposed on the lands shown yellow and green ('together the eastern retail pods'); and
- two applications on behalf of SCS to Council for planning permits (TP-2013-126 and TP-2013-157) to vary (reduce) two parts of the easement as it respectively affects the western retail pod and the eastern retail pods.

The City of Melbourne has previously refused a planning permit application (TP-2011-937) lodged on behalf of SCS to vary (reduce) the easement by the western and eastern retail pods and the DoTPLI land. Following the giving of notice of that application, objections were received from Places Victoria, Melbourne Stadiums Limited and the AFL. SCS chose to not appeal that decision but rather to lodge the two applications now under report.

The important issue for Council is the potential impact on public safety and public amenity caused by the associated works restricting the current usable width of the bridge.

DoTPLI owns the station complex including the bridge. As a public authority DoTPLI is responsible for co-ordinating Victoria's public transport system for the state. SCS is the 'private' leasing management company for the retail operations in the complex.

The easement applications and stakeholder consultation

The DoTPLI easement related application

Southern Cross Station is by far Victoria's busiest regional railway station. Whilst its metropolitan platforms can only be accessed via gated myki areas, its regional platforms are currently ungated. Fare evasion costs the community in excess of \$62 million per year and that significance in relation to the regional platforms will escalate over the coming months, as myki will soon be introduced as the sole ticketing product on V/Line inter-urban lines. PTV considers the installation of myki barriers for those platforms to be a critically important measure for all Victorians who should expect that a modern transport system and interchange facility includes adequate revenue protection works.

The application (TP-2011-853) affects the DoTPLI land which is shown coloured red on the attached plan (refer Attachment 4 – Site Plan). The land has a length of about 58 metres ('m') and intrudes 3.9m into the easement. This reduces the available width for public use in that part of the bridge from 17.7m to 13.8m.

That application was given notice under s. 52 of the Act by advertisements in the Age and Leader Newspapers, by ordinary mail to the owners and occupiers of surrounding businesses and by posting two notices on the site for a 14 day period.

Four objections were received. These were from the AFL; Melbourne Stadiums Limited/Etihad Stadium; Places Victoria and from the Franchise Manager of the Theobroma Chocolate Lounge ('the Lounge') (refer Attachment 6 – Objection to myki Proposal). The Lounge operates at bridge level opposite the proposed eastern retail pods, being part of the Spencer Outlet Centre, previously known as DFO Spencer. All of the submitters had concerns as a consequence of the proposed easement removal and works, on pedestrian amenity and safety on the bridge at times of egress from major events held at Etihad Stadium. The Lounge had additional concerns on the effects of the construction works on their business.

The Lounge has not participated in subsequent consultation but has confirmed the objection remains.

The AFL and Melbourne Stadiums have unconditionally withdrawn their objections.

Places Victoria has consented to the application subject to the certain conditions being included in a Notice of Decision to issue a permit. The conditions, which follow, relate more to the operation of the myki barriers than to the easement application itself.

- myki barriers being open during stadium events. *(Response - DoTPLI has advised opening the gates for all events is considered to cast a net too broadly. It is standard operational practice that during special event an operator monitors crowd controls. Safety is a priority in operating the network and gates are opened when necessary to address potential crowding issues).*
- Inclusion of adequate weather protection for pedestrians utilising the pedestrian bridge. *(Response – the extent of the proposed myki work's intrusion into the easement has significantly lessened from the initial proposal. Some shelter does then remain available to through pedestrian traffic. Urban Design and Docklands Branch has assessed a related submission provided by DoTPLI and considers it reasonable not to require additional or replacement weather protection);*
- Further splaying of the western edge of the myki barriers to provide a less obstructive design. *(Response - amended plans have now been received from DoTPLI that meet that requirement).*

DoTPLI considers pedestrian amenity and safety will be maintained despite the installation of those facilities and has also advised there is a totally unacceptable risk to commuter safety if the myki infrastructure was placed on the relevant platforms rather than as proposed.

DoTPLI has confirmed in-principle support to the works on a without prejudice basis but requires the easement matters to be resolved before any approval can be given to those works.

Manager Urban Design and Docklands and Principal Engineer Traffic Engineering and Coordinator Risk Management do not object to the application.

The SCS western easement related application

Planning permit application TP-2013-126 affects the land coloured orange on the site plan being the portion of the easement proposed to be occupied by a westernmost retail pod. There already is a temporary news stand on that land but the exact nature of the future retail use of western retail pod is unknown. The land has a length of about 9.3m and intrudes 2.2m into the easement, but is recessed and aligns with western unencumbered lands used for offices and myki barriers accessing the station's metropolitan platforms. Places Victoria, Melbourne Stadiums Limited and the AFL have all voiced their non-objection to that application. That means works in the western pod will have little if any impact on pedestrian flow across the bridge. That application has not been given notice as its approval is not considered to cause material detriment to any person.

Manager Urban Design and Docklands and Principal Engineer Traffic Engineering and Coordinator Risk Management do not object to the application.

DoTPLI has confirmed in-principle support to the works on a without prejudice basis but requires the easement matters to be resolved before any approval can be given to those works.

The SCS eastern easement related application

Planning permit application TP-2013-157 affects the lands coloured yellow and green on the site plan, being the portions of the easement proposed to be occupied by the two easternmost retail pods. Two food and drink outlets and a newsagency are currently proposed for the eastern retail pods. Those pods have different areas and different intrusions into the easement. The western part (on the land coloured yellow) has a total width of about 10m and intrudes about 3.7m into the easement. That reduces the available width for public use in that part of the bridge from 17.7m to 14m. Its eastern pod (on the land coloured green) has a length of about 12m and intrudes about 6.8m into the easement. That reduces the available width for public use in that part of the bridge from 21.5m to 14.7m. Overall the easternmost affected lands (yellow and green on the site plan) have a length of about 22m.

The eastern extent of that area starts about 7.5m from the top of the prime steps providing public and commuter access from Spencer Street to the bridge. The pods will have some impact on the public realm and amenity. Principal Engineer Traffic Engineering and Coordinator Risk Management do not object to the application but the easement removal is not supported by Manager Urban Design and Docklands on the following grounds:

- there is no justification for loss of public space at the top of the Bourke Street stairs;
- there is ample space for additional retail in the adjacent Spencer Outlet Centre;
- it creates a physical and visual barrier at the top of the stairs;
- it will adversely affect critical air movement between the bridge and the station;
- it will obstruct views into the station, which would significantly compromise the current competition-winning design; and
- a permanent structure as required by the applicant, as compared to a temporary structure, does not allow for regular reassessment of its effects on public space issues;

The decision guidelines of the Melbourne Planning Scheme (see Clause 52.02 (Easements, Restrictions and Reserves)) require that a responsible authority must consider the interests of affected people before deciding on an application. The easement benefits the general public so as to better appreciate those interests, the application has been given notice under s52 of the Act. Officers will not be in a position to determine the matter before the July Committee meeting as the advertising period will still be open.

DoTPLI has confirmed in-principle support to the works on a without prejudice basis but requires the easement matters to be resolved before any approval can be given to those works.

General

The applicants have provided detailed pedestrian modelling including factoring commuter rush times and spectator discharge from sporting and non-sporting events at Etihad Stadium. These have been prepared by two independent traffic management consultants. Those being AIRBIZ for DoTPLI and Urbantrans/Movendo for SCS.

The pedestrian modelling shows all of the works should have little impact currently and in the near future on pedestrian use of the bridge. Additionally there is little likelihood of a significant event such as a large crowd crush occurring as a result of those works, but the implications of such happening could be severe. Considerable comfort comes from PTV advice that the myki barriers can be promptly and easily opened in the unlikely event on an emergency such as a public crush and that back up contingencies also exist.

The applications raise issues of significant public interest. Consequently an officer level approval under delegated powers would be contrary to the Delegation Policy for Planning Applications and the issues need a Committee decision. A prompt Committee decision is required because of that and the urgency of installing the myki facilities.

In making a decision there is a need to consider the public interests of PTV against any negative impacts to the public that might be caused by the myki works and the retail pod related works.

A long term non-revokable commitment to the works and easement variations should not be given, so any approval to the latter should be effective only for a limited time. This is suggested at 10 years. After that Council needs powers at its sole discretion to have the works removed and a new similar easement being created over the affected lands. This is necessary to address currently unknown future changes to the levels of use of the bridge coming from new developments; changes to land use; population growth and planning strategies etc. It is however likely that significant growth would lead to additional pedestrian linkages being provided between the CBD and Docklands thus removing any future need to 'reclaim' the easement.

Chris Blackwood

Team Leader Land Survey

4 June 2013

Chris Blackwood

From:
Sent: Monday, 14 November 2011 1:23 PM
To: Survey
Subject: about TP-2011-853

To whom will concerned,

We have following doubt about the construction plan:

1. The bridge was not wide, and the design has occupied too much area of the bridge. Each year there are more than 80 footy games held in the stadium; with 30000 to 60000 people coming through the bridge at peak hour. It contains pedestrians from the entire shopping center and the station. If there is an emergency, such narrowed space can rise serious security concern.

2. The elevator to platform 1, 2A and 2B is the only path connecting the station, vline and the shopping center. if it is blocked, 30% of our customers will be affected.

Therefore,

1. we would like to maintain the width on the bridge during any construction for the area outside of center's entrance
2. elevators towards platform 1, 2A and 2B must be kept

Regards
Richard

Theobroma Chocolate Lounge

Places Victoria

TRIM13/38385

5 June 2013

Mr Chris Blackwood
Team Leader Land Survey
City of Melbourne
GPO Box 1603
MELBOURNE VIC 3001

Dear Chris

**PROPOSED EASEMENT VARIATION TP-2011-858
BOURKE STREET PEDESTRIAN BRIDGE, SOUTHERN CROSS STATION
WITHDRAWL OF PLACES VICTORIA OBJECTION**

We refer to the most recent correspondence (29 May 2013) received from Ms Brodie Woodland of Public Transport Victoria regarding the proposed easement variation TP-2011-858 to the Bourke Street Pedestrian Bridge over Southern Cross Station. Places Victoria previously objected to the proposed buildings and works by letter dated 15 April 2013.

Following review of this information, Places Victoria withdraws our objection to the application.

We do however, in the event Council wishes to approve the application, request the following conditions be included on a Notice of Decision:

1. The opening of Myki barriers during Stadium events.
2. Inclusion of adequate weather protection for pedestrians utilising the pedestrian bridge.
3. The splaying of the western edge of the Myki barriers to provide a less obstructive design (as shown in drawings SST_C2063/SST_C2063-1 attached to PTV's email of 03/06/13).

Should you have any further enquiries regarding this Planning Permit application, please contact me on 8317 3543.

RONAN MELLAN
Senior Development Manager