



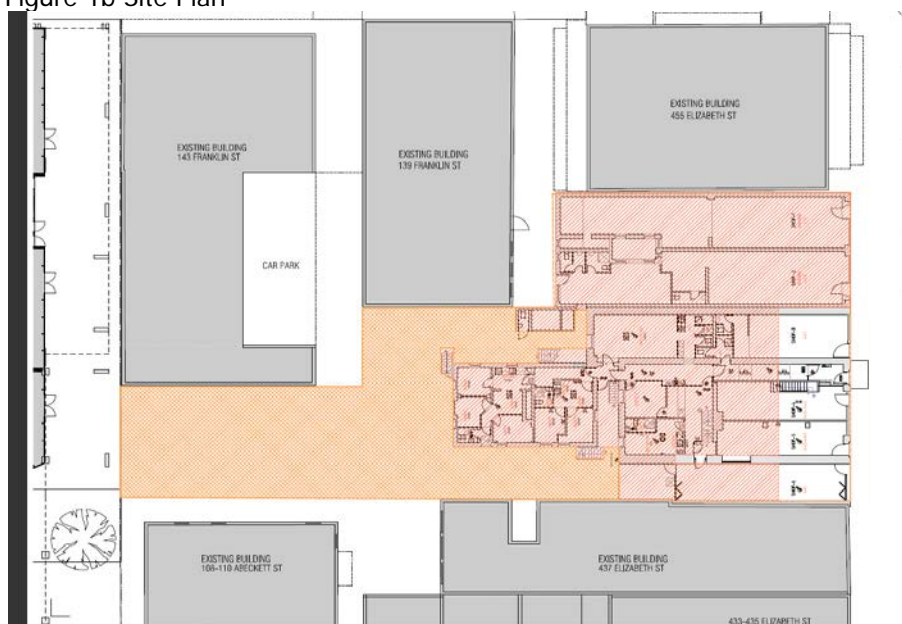
## SITE AND SURROUNDS

1. The site is located at the northern edge of the Central Activities District near the junction of Franklin and Elizabeth Streets. It is approximately 150 metres south east of the Queen Victoria Market.
2. The property proposed for development is held under two certificates of title.
  - Land at Nos. 449-451 Elizabeth Street is held under C/T 10332/169 (being Lots 1 and 2 on TP122771C, being Lots 3 and 4 on LP34235). That land has a frontage of about 9.9m to Elizabeth Street, and a depth of about 24.7m. The land has rights of carriageway, drainage, sewerage, light and air over PL5218, which in turn has a frontage of about 3.1 m to Franklin Street a length of about 25.4m and a width at its southern extremity of about 3.m.
  - Land at Nos. 441-447 Elizabeth Street is held under C/T 8206/208 (being Lots 4 and 5 on LP36484). That land has a frontage of about 17.1m to Elizabeth Street, and northern and southern depths respectively of about 40.5m and 60.6m. The land has no title rights over PL5218.
  - a part of the land in the development has access rights over PL 5218;

Figure 1a – Site Location



Figure 1b Site Plan



3. The site abuts a Right of Way (row) to its north which provides a link to Franklin Street. During the course of the application the applicant purchased the site at 139 Franklin Street and the corresponding rights to the laneway easement.
4. The site contains two 3 storey commercial buildings (used retail purposes with apartments above). Part of the site is the former Royal Saxon Hotel, which was included in a heritage overlay as part of Amendment C186 (Part 1).
5. The surrounding land contains high density development with a mix of uses. The site is located at the northern edge of the Central Activities District (CAD) retail core, therefore land uses include residential, retail, office, education, institutional facilities and public car parks. The building heights in the area range between 2 and 48 storeys. There are three buildings abutting the site to the north. To the north west of the site, is a 3-storey building known as Vosti House Apartments, which is a converted office building (143 Franklin Street). To the north is a 2-storey commercial building owned by the applicant (139 Franklin Street). To the north east on the corner of Elizabeth Street, is the Q Apartments measuring 13-storeys (455 Elizabeth Street). To the south is a row of two storey commercial buildings facing Elizabeth Street (starting with 437 Elizabeth Street) and to the south west is the Uni Lodge residential building, which is 8-storeys in height and has habitable windows facing the application site (106 A'Beckett Street). To the west is a construction site for the Fulton Lane Development (165 Franklin Street).
6. There are a number of planning permits that have been granted in the immediate area including 410 Elizabeth Street (162m residential tower, under construction) and 450 Elizabeth Street (197m residential tower approved). Immediately to the west is the Fulton Lane development at 165 Franklin Street comprising two residential towers (29 storeys and 45 storeys above an 8-storey podium) with ground floor retail premises (under construction).
7. Whilst change has occurred in the surrounding area most of the west side of Elizabeth Street is low scale traditional retailing or food and beverage offers.

## **PROPOSAL**

8. The application seeks approval to part demolish the existing building and construct a residential tower building with ground and first floor retail uses and associated car parking. The proposed gross floor area is 44,700 sqm.
9. Details of the application are as follows:
  - Part demolition of the existing buildings and part retention of Royal Saxon Heritage Building
    - 6 metres of the heritage building is retained. The new development is setback 6 metres (levels 1-4), 4-6 metres (levels 5-14) and 4 metres (levels 15-67).
  - Construction of a 67 storey residential building measuring approximately 207 metres in height.
  - 360 apartment dwellings. (The original application had 306 dwellings).
  - Retail on ground level and levels 1 and 2.
  - Car parking for 119 cars on site on levels 2-8.
  - Shared recreation space on levels 2, 9 and 46.
  - A through block arcade linking Elizabeth Street to the 'Fulton Lane' residential development to the west.

## **AMENDED PLANS**

10. Following a further information request issued by the Department, additional plans were submitted by the permit applicant on 13 August 2012. The plans provided additional information related to the site context, details relating to the setback variations and heritage and alterations to the ground floor.

11. Following additional discussions with the applicant on 20 December 2013 a revised set of plans were formally substituted on 6 February 2013. These included an additional setback of 3.5 metres to the southern boundary and an increase in height of 17 levels from 50 levels to 67 levels (174 metres to 207metres approximately). The apartment numbers were increased from 306 dwellings to 360 dwellings as a result of the revised plans.

**STATUTORY CONTROLS**

12. The following controls apply to the site, with planning permit triggers, requirements and decision guidelines are described below:

<b>Planning Control</b>	<b>Permit / Application Requirement(s)/ Decision Guidelines</b>
<i>Capital City Zone- Schedule 1 (Outside the Retail Core)</i>	<p><b>A permit is required</b> to demolish, construct a building or construct or carry out works.</p> <p>The table of uses specifies ‘accommodation’ and ‘retail premises’ (other than adult sex bookshop, department store, hotel, supermarket and tavern) are <b>permitted as of right</b> (Section 1 use) at Clause 1.0 of the Schedule;</p> <p>Schedule 1 exempts demolition and buildings and works from notice and appeal requirements;</p>
<i>Design and Development Overlay-  Schedule 1 and Schedule 14</i>	<p>Under Clause 43.02-2 a <b>permit is required</b> to construct a building or construct or carry out works unless the schedule specifies otherwise. The Schedules do not exempt ground floor buildings and works from requiring a permit and exempts buildings and works from notice and appeal requirements.</p> <p>DDO14 provides for a 30 metre height control (discretionary).</p>
<i>Heritage Overlay</i>	<p>HO1022- 441 Elizabeth Street- Individual Heritage Overlay. A <b>permit is required</b> to construct a building or to construct or carry out works.</p>
<i>Special Building Overlay</i>	<p>Under the SBO a <b>permit is required</b> to construct a building or construct or carry out works and the application must be referred to the relevant floodplain management authority.</p>
<i>Parking Overlay (PO1) and Car Parking (Clause 52.06)</i>	<p>The Parking Overlay specifies a maximum number of car parking spaces (calculated at 1 space/dwelling and a ratio for commercial uses using two equations) and the provision of 1 motorbike space per 100 car parking spaces.</p> <p>The limitation policy allows for 400 spaces. The provision of 119 car spaces on site is below the maximum allowed under the clause, therefore <b>no permit is required</b>.</p> <p>The proposal does not specify any motor bike parking.</p>
<i>Loading and Unloading of Vehicles (Clause 52.07)</i>	<p>Under Clause 52.07 no buildings or works may be constructed for the manufacture, servicing, storage or sale of goods or materials unless space is provided on the land for loading and unloading vehicles as specified within the table.</p> <p>A loading facility is provided on site however it does not meet the exact dimensions required therefore a <b>permit is required to vary the requirements</b>.</p>
<i>Bicycle Facilities (Clause 52.34)</i>	<p>Under Clause 52.34-1 a new use must not commence until the required bicycle facilities and associated signage has been provided on the land. The standard requires the provision of 101 spaces (including both resident, visitor and employee spaces). The</p>

	application provides for 180 spaces. No shower provision has been made and the spaces require to be more conveniently located therefore <b>a permit is required to vary the requirements.</b>
<i>Urban Context Report and Design Response for Residential Development of Four or More Storeys (Clause 52.35)</i>	Under Clause 52.35-1 an application for a residential development of four or more storeys must be accompanied by an urban context report and design response. The application was accompanied by an urban context report.
<i>Integrated Public Transport Planning (Clause 52.36)</i>	Under Clause 52.36-1 an application must be referred in accordance with Section 55 of the Act to the Director of Public Transport for a residential development comprising 60 or more dwellings or lots. The application was referred to the Director of Public Transport. A response was provided and conditions have been added to the permit.

**General Provisions**

13. **Responsible authority for administering and enforcing the Scheme:** The schedule to Clause 61.01 indicates that the Minister for Planning is the responsible authority for considering and determining applications in accordance with Divisions 1, 1A, 2 and 3 of Part 4 of the *Planning and Environment Act 1987* for approving matters required by the scheme in relation to developments with a gross floor area exceeding 25,000 square metres.
14. **Decision Guidelines:** Under Clause 65.01 before deciding on an application the responsible authority must consider as appropriate a number of matters, including Section 60 of the Act.
15. **Referral and Notice Provisions:** Under Clause 66.03 an application must be referred to the person or body specified as the referral authority; Clause 52.34 (Director of Public Transport) and Clause 44.05 (Relevant Floodplain Management Authority- Melbourne Water).

**PLANNING POLICY FRAMEWORK**

**State Planning Policy Framework (SPPF)**

16. The following key policies within the SPPF are relevant:
- Clause 15 (Built Environment and Heritage)
  - Clause 17 (Economic Development)
  - Clause 18 (Transport)
  - Clause 19 (Infrastructure)

**Municipal Strategic Statement and Local Planning Policy Framework (LPPF)**

17. The following key policies are relevant:

*MSS*

- Clause 21.02 Municipal Profile
- Clause 21.03 Vision
- Clause 21.04 Settlement
- Clause 21.06 Built Environment and Heritage
- Clause 21.07 Housing
- Clause 21.08 Economic Development
- Clause 21.09 Transport
- Clause 21.10 Infrastructure
- Clause 21.11 Local Areas
- Clause 21.12 Hoddle Grid

*LPPF*

- 22.01 Urban Design within the Capital City Zone
- 22.02 Sunlight to Public Spaces
- 22.04 Heritage Places in the Capital City Zone
- 22.19 Energy, Waste and Water Efficiency
- 22.20 CBD Lanes

Refer to **Appendix 1** for an outline of the key SPPF and LPPF policies relevant to the proposal.

#### *Relevant Planning Scheme Amendments*

##### *Amendment C162*

18. Amendment to the Melbourne Planning Scheme C162 (Municipal Strategic Statement) was gazetted on 12 September 2013. This report has considered the new MSS provisions.

##### *Amendment C188*

19. Amendment to the Melbourne Planning Scheme C188 (Built Form Review) is awaiting authorisation. Amongst other matters, the built form review proposes to amend the existing controls and introduce mandatory height and setbacks controls within parts of the City.

##### *Amendment C209*

20. Amendment C209 seeks to introduce the Open Space Strategy which requires an 8% contribution for the central city. The contribution can be made as a percentage of the site value, a land contribution or a combination of both. Council has not made a request for public open space contribution as part of their response to the application. The amendment has received submissions and will be considered at a planning panel on 24 September 2013.

#### **Other relevant policy/ matters**

21. Other relevant policy/ matters include:

- Design Guidelines for Higher Density Residential Development (Department of Sustainability and Environment, 2004) (referenced in the SPPF at Clause 15.01-2).
- Central City Heritage Review Incorporated Document June 2013

#### **NOTIFICATION**

22. Under Schedule 1 of the Capital City Zone an application to demolish a building and construct or carry out works, and under Schedule 1 of the Design and Development Overlay, an application to construct or carry out works is exempt from the notice requirements of Section 52 (1) (a), (b) and (d), the decision requirements of Section 64 (1), (2) and (3) and the review rights of Section 82 (1) of the Act.

23. Under the provisions of the Heritage Overlay (Clause 43.01) notice requires to be provided. Under section 52 of the Act a responsible authority may decide to refuse an application without giving notice.

24. The City of Melbourne has been provided a copy of the application and has provided informal comments.

25. The application received some media attention and six submissions were received including from [REDACTED]. The submissions relate primarily to the potential heritage impact and the inappropriateness of the height of the proposal in its context.

#### **REFERRALS**

26. The application was provided to the *Department's Urban Design Unit*, informally to the *City of Melbourne*, and pursuant to referred under Section 55 of the Act to the *Director of Public Transport and Melbourne Water*. The following comments were provided:

27. **City of Melbourne:** Council does not support the application [REDACTED]. Council does not support the proposal due to its height, lack of setbacks, overshadowing and heritage. Council considers that the proposal:

- is an overdevelopment of the site.
- does not have an appropriate scale to surrounding and adjacent streets and buildings
- casts a shadow over Elizabeth Street
- will be visible from Queen Victoria Market
- exceeds the height limit and objectives of DDO14.
- has minimal or no side setbacks
- has inadequate private open space
- has poor amenity for future occupants
- produces negative amenity impacts for adjoining developments.

28. The City of Melbourne was provided a copy of revised plans dated February 2013 and commented in an email dated 16 July 2013 as follows:

[REDACTED] *The City of Melbourne continues to strenuously oppose the proposed development as a significant overdevelopment of the site. Further, the proposal to introduce a 3.5m setback along the southern boundary with an apartment at each level facing the boundary presents further issues with respect to the amenity of these apartments and the development potential of the adjoining sites. The proposition that the land immediately to the south is 'not developable' would appear to be unfounded. Having regard to the above we would urge the Minister to refuse to grant a permit for this development.*

29. **Urban Design (DPCD):** Urban Design provided comments on the proposal on 26 June 2012 and on 17 September 2012. Urban Design advised they do not support the proposal in its current form. Concerns were raised with:

- Heritage. The proposed retention of only the front rooms loses the fuller story of the building as an historic hotel complex.
- Tower Form. No further detail of the tower facade is provided, so doubts remain as to the internal amenity provided by the "portholes" and the quality of the end result, particularly considering the visibility of the high tower proposed.
- Heights. There are precedents for tall buildings on sites in this precinct, but none on such a constrained site.
- Setbacks. The tower extends boundary-to-boundary to the north and partially on the south. Whilst the adjoining properties may be difficult to redevelop, there is no guarantee that this will not occur one day, leaving apartments with low amenity (particularly the south-west corner) and a possible "wall effect" of joined towers.
- Podium Treatment. There are issues with the blank podium façade.
- Ground level activation. There are issues with exposed sides of the heritage property and the long covered arcade.

30. **Director of Public Transport:** offered no objection to the proposal subject to conditions in their letter dated 17 July 2012.

31. **Melbourne Water:** offered no objection to the proposal subject to conditions in their letter dated 13 June 2012.

## **ASSESSMENT**

### *Land Use*

32. The proposal is consistent with many policy directions as it will increase the residential population, provide retail spaces and contribute to the on-going revitalisation of a 24-hour Central Activities District.
33. The development provides higher density housing complemented by commercial uses and responds appropriately with the broad strategic intent for housing as outlined in the State Planning Policy Framework, Local Planning Policy Framework, including the Municipal Strategic Statement (MSS) and the zoning control.
34. To this end, the land use mix and concept of redeveloping the site is not in contention. The key issues in this matter relate to design and built form, heritage, internal amenity and overall functionality of the site. These matters are discussed further below.

### ***Heritage***

35. An assessment of the proposal and the heritage statement for the [REDACTED] (identified as HO1022 in the Capital City Heritage Review Incorporated Document June 2013) has been made and the advice of the City of Melbourne Heritage Advisor and the Department's Urban Design Team carefully considered.
36. The City of Melbourne comments were provided by their consultant heritage advisor, [REDACTED]. [REDACTED] argues that the setback should be 10 metres as this depth maintains the perception that the original body of the building has been retained. In conclusion he notes that:  
*"The extent of demolition and more particularly the limited setback of the tower are contrary of accepted conservation practice, would have a substantial adverse affect upon the heritage significance of the host building and streetscape and should be refused."*
37. The Department's Urban Design Team comments as follows:  
*There is a fundamental issue with the substantial (approx 2/3) demolition of the 1858 Royal Saxon Hotel, which is B-graded by the City of Melbourne.... The facade (up to 6m deep) is maintained and restored, but the rear and internals, which potentially tell the fuller story of the hotel complex, are lost.*
38. [REDACTED] objected to the proposal and provided a full heritage report. The report indicated that the standard for retention of portions of heritage buildings was previously 'the major portion' or at least 10 metres.
39. The heritage statement of significance for the property, included in the Incorporated Document, identifies that the [REDACTED] as significant historically, socially and aesthetically to the Melbourne Central Business District. It is important that these features are maintained in any redevelopment.
40. The applicant, through heritage consultant [REDACTED], has argued that the setbacks enables the new development to have little or no visual affect on the kerb-side perception of the scale and form of the early hotel. This is due to the main heritage element being built as part of a street frontage.
41. The applicant has provided several examples of new development accommodating at the existing heritage building at ground level. The most sympathetic examples are those where the building has been setback a greater distance than 4-6 metres proposed in this application. The remaining examples (such as the Wills Street Tower and 101 Elizabeth Street) form some sort of precedence but are crude examples of their type and poorly executed.
42. On balance, it is considered that the proposal does not conserve and enhance the heritage property. A greater portion of the building fabric should be retained to maintain the historic, social and aesthetic qualities. The tower development as proposed does not provide sufficient physical relief to the heritage building. The applicant has been advised throughout the



application process to increase the front setback of the building and retain more of the heritage building and has not been able to do so.

### ***Design and Built Form***

#### *Side and Rear Setbacks*

43. The proposed tower has minimal side setbacks to the northern and southern boundaries. This will be an issue if the neighbouring sites are redeveloped. Clause 22.01 provides some flexibility regarding setbacks:
- Tower separation setbacks may be reduced where it can be demonstrated that towers are offset and habitable room windows do not directly face one another and where consideration is given to the development potential of adjoining lots.*
44. The applicant has argued that given the pattern of development in the area redevelopment of sites to the south such as 437 Elizabeth Street are unlikely. It is possible that sites to the south may be consolidated and therefore might be developed. The proposal contains an apartment on every level where the only natural light and views are from a southerly direction. These apartments are 3.5 metres from the boundary, which is not considered appropriate.
45. The [REDACTED] contains apartment block with habitable windows approximately 2 metres from the boundary. The windows on the northern facade will retain a good level of amenity however the balconies on the eastern side will only be 4 metres from the car park, which currently contains an open grill to ensure natural ventilation. This will not allow an appropriate level of amenity for this section of the apartment building
46. [REDACTED]
47. If all the neighbouring sites are developed to this level of intensity it may result in a wall of towers if viewed from Elizabeth Street.
48. [REDACTED]
49. [REDACTED]
50. The Fulton Lane development at 165 Franklin Street comprises a 29 and a 45 storey residential tower above a 8-storey podium. The proposal is setback at least 20 metres from this development and there will only be a small percentage of apartments which will face each other with the closest living room to living room at 36 metres approximately. This separation is considered appropriate.
- Design and Development Overlay (DDO14- Area 19 - Queen Victoria Market Area)*
51. The proposed tower sits on the periphery of the Central Business District. The wider precinct to the south, west and east is undergoing significant transformation with recent completed constructions, developments under construction and recent approvals within close vicinity of the precinct.
52. However the design control for this area specifies a 30 metre maximum building height requirement. This is not a mandatory control and an application to exceed the Maximum Building Height must demonstrate how the development will continue to achieve the Design Objectives and Built Form Outcomes of the schedule and any local planning policy requirements.
53. A specific built form outcome is provided for DDO14 - Area 19:

*The scale of development provides an appropriate interface from the low scale built form of the Queen Victoria Market towards the medium and high rise towers of the Central Business District.*

54. The second objective of DDO14 is also particularly relevant to the proposal, namely:  
*To ensure that development around the Market edges and within close proximity to the Market provides an appropriate scale transition from the low scale Market buildings towards the medium and high rise towers in the Central Business District.*
55. Both the built form outcome and the design objective provide guidance on preferred form of new development and expressly identify the need to ensure a transition between the market and the CBD buildings. Given the market and immediate surrounds are typically two –four storeys in height and the city in this area averages 40 storeys it cannot be considered that a proposal of 67 levels and 207 metres provides a transition. On this basis the proposal does not meet built form outcomes or design objectives outlined in Design and Development Overlay (DDO14- Queen Victoria Market Area).
56. The Fulton Lane tower development is within the same Design and Development Overlay but straddles both Area 19 and Area 20 (discretionary 60 metre control). [REDACTED] the Fulton Lane development [REDACTED] did have a form of transition by gradually stepping heights of the two buildings from 88 metres for the northern tower (closest to the market) and 142 metres for the southern tower (onto A'Beckett Street). It did also result in a redevelopment of a large vacant lot car park, which met other local policy objectives and on balance it was worthy of support.

*Elizabeth Street site context and microclimate*

57. The standard model for developing taller buildings in the City is based on a 35-40 metre high podium with the tower element setback from this podium level by at least 10 metres, as described in Local Policy 'Urban Design within the Capital City Zone' (Clause 22.01) and Schedule 1 of the Capital City Zone (Clause 37.04). The purpose of tower setbacks is to provide a number of measures related to the enjoyment of the public realm. Tower setbacks assist in providing pedestrian scale, sunlight penetration, views to the sky and the deflection of wind downdrafts. In this instance the proposal does not achieve the policy outcomes.
58. The building in its context sits awkwardly with only a 4 metre setback to the front street and will have a negative impact on the amenity of Elizabeth Street. A shadowing and built form assessment on Elizabeth Street has been completed (see Planning Report, Attachment 2). It is considered that the proposal:
- impacts negatively on the view lines down Elizabeth Street particularly from southerly positions,
  - impacts negatively on the overall sense of space on Elizabeth Street resulting in a canyon effect (in conjunction with the approved and built towers on the eastern side of Elizabeth Street).
  - impacts negatively on the sun penetration to the street particularly in the public realm at the junction of Elizabeth Street and Lonsdale Street.
59. Both Schedule 1 of the Capital City Zone and the Local Policy 'Sunlight to Public Spaces' require that overshadowing of public streets are considered. The height will add to the overshadowing of surrounding streets and semi-public spaces to a detrimental effect on the public realm. In particular the area around the junction of Elizabeth Street and Lonsdale Street and around St. Francis Church are both notably affected by the additional overshadowing. This is a pleasant pedestrian area of the city and achieves good sun penetration in the afternoon (see Attachment 3). On this basis the proposal does not meet the policy guidance within clause 22.02.
60. There is some additional overshadowing of Little LaTrobe Street, which is a category 2 street in clause 22.20. The development has not sufficiently considered this small street in the overall design.

*Laneways/ Through-block Link*

61. The proposed link from Elizabeth Street to the Fulton Lane proposal will partially recreate the 'heritage carriageway' that is an important heritage element in the statement of significance. However, it operates as a retail arcade that is only partially open to the sky, which is a potential safety issue.

*Wind*

62. The wind report illustrated the building as proposed meets the walking criterion at the ground level positions, which is considered acceptable.

*Internal Amenity*

63. Developments for new residential uses should incorporate design measures to attenuate noise associated with the operation of other businesses and activities associated with a vital 24-hour capital city. The decision guidelines of the Capital City Zone specify that *'habitable rooms of new dwellings adjacent to high levels of external noise should be designed to limit internal noise levels to a maximum of 45dB in accordance with the relevant Australian Standards for acoustic control'*. This can be dealt with via the Building Act.
64. The Department's Urban Design Unit has raised an issue with the internal amenity provided by the "portholes" and the quality of the end result, particularly considering the visibility of the high tower proposed. This is a difficult area to assess based on the information available however it could be further resolved (if required) to ensure a suitable outcome.
65. The architect has removed all bedrooms that rely on borrowed light in the revised plans received February 2013. The apartments are also spacious internally and have good sized balconies. This is an advantage of the development.

66. All apartments will have operable windows and in many of the apartments this will provide cross ventilation.

*ESD*

67. The proposed building includes residential development and therefore the ESD requirements are contained both within the 'Building Code of Australia' and Clause 22.19 of the Melbourne Planning Scheme. The proposal seeks to achieve an average rating of 4 stars Green Star Rating using the GBCA's multi unit residential rating tool. A condition will be added to ensure it reaches a 5 star rating under a current version of Green Star - Multi Unit Residential rating tool or equivalent.

***Car Parking / Loading and Unloading of Vehicles/ Waste Collection/ Bicycle Facilities***

68. The permit application is supported by a traffic and car parking impact assessment. The assessment identified that the traffic generated by the proposed development can be accommodated by the surrounding road network and intersections without any adverse impacts.
69. The car parking proposed is under the statutory maximum limitation policy however its access and internal design is compromised. Council's engineering department identified deficiencies with functionality of the car park and access arrangements in the easement to Franklin Street and loading arrangements. In particular, there is an issue of cars passing each other in the laneway and potentially delivery and removal vehicles servicing the lane at the same time.
70. Bicycle parking is also provided on site but should be relocated, as required by the City of Melbourne.
71. The Waste Management plan submitted with the application (Speedy Waste, 9 August 2012) relates to the original proposal. The development provides space for bin storage and waste collection facilities in the basement and at ground floor and provisionally have been accepted by

the City of Melbourne. The finer details could be addressed via a condition on a permit if required.

**Conclusion**

- 72. There are a number of positive elements of the proposal. It provides an addition to the accommodation stock in the capital city. The building provides a thoughtful architectural outcome considering the constraints of the site [REDACTED].
- 73. However the proposal does not respond to the site context appropriately and does not meet key requirements of state & local planning policies. The proposed tower has insufficient side (southern) boundary setbacks, which is contrary to clause 22.01. The building does not provide the transition envisaged in Design and Development Overlay 14 and is over 170 metres higher than the suggested 30 metre built form control. The building will have a negative impact on the amenity of Elizabeth Street, material affect sun penetration to the street and will result in a canyon effect down Elizabeth Street, which is contrary to both clause 22.01 and clause 22.02.
- 74. The applicant's contention that this is the 'right building' cannot prevail over the conclusion that this is the 'wrong site' and the proposal cannot be supported in it current form. Significant alterations would be required to the built form to bring it to an acceptable outcome in terms of heritage and overall impact on its surroundings.
- 75. Despite considerable effort from the Department and the City of Melbourne in working with the developer's architect the alterations provided in February 2013 have been insufficient. It is considered that any further alterations to the building to make it acceptable would be substantial and it is not for the department to attempt to negotiate this further.
- 76. In summary the proposal is recommended to be refused due to its impact on the heritage building, its impact on Elizabeth Street, its lack of adequate setbacks and its inability to meet the requirements of Design and Development Overlay (DDO14).

**RECOMMENDATION**

- 77. That you refuse planning permit application 2012/04292 at 441-451 Elizabeth Street, Melbourne for development of a 67 level residential tower and associated development.

Prepared by: [REDACTED]

Name: [REDACTED]  
Title: [REDACTED]  
Phone: [REDACTED]  
Date: 26 July 2013

Reviewed by: [REDACTED]

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Date: 29 July 2013

Approved by: [REDACTED]

Name: [REDACTED]  
Title: [REDACTED]  
Phone: [REDACTED]  
Date: 10 September 2013

## **APPENDIX 1 - PLANNING POLICY FRAMEWORK**

### **State Planning Policy Framework (SPPF)**

The State Planning Policy Framework (SPPF) seeks to develop objectives for planning in Victoria to foster land use and development planning and policy which integrates relevant environmental, social and economic factors. The sections of the SPPF, which are particularly relevant to this matter include:

- *Clause 15 (Built Environment and Heritage)* - seeks to ensure all new land uses and development appropriately responds to its landscape, valued built form and cultural context and protect places and sites with significant heritage, architectural aesthetic, scientific and cultural value.
- *Clause 16 (Housing)* – seeks to ensure the provision of housing diversity including providing affordable housing. This includes increasing the supply of housing in existing urban areas by facilitating increased housing yield in appropriate locations, including under-utilised urban land.
- *Clause 17 (Economic Development)* - seeks to provide for a strong and innovative economy, where all sectors of the economy are critical to economic prosperity. It encourages development which meets the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities. One of the key strategies of this Clause is to locate commercial facilities in or near existing and/or planned activity centres.
- *Clause 18 (Transport)* - seeks to establish and support an integrated and sustainable transport system that provides access to social and economic opportunities, facilitates economic prosperity, contributes to environmental sustainability and co-ordinates reliable movements of people and goods. In particular this clause seeks to ensure that urban developments are planned to make jobs and communities more accessible.
- *Clause 19 (Infrastructure)* - promotes development of social and physical infrastructure that are provided in a way which is efficient, equitable, accessible and timely. Planning is to also recognise social needs by providing land for a range of accessible community resources such as educational, cultural health and community support facilities.

The overarching purpose and intent of the above policies is to ensure that all new land use and development appropriately responds to planned future growth in a manner reflective of a site's valued built form and cultural context.

### **Local Planning Policy Framework (LPPF)**

#### *Municipal Strategic Statement (MSS)*

Clause 21.02 (Municipal Profile) recognises that the City of Melbourne is the premiere location for many of the State's economic, infrastructure and cultural facilities, and attracts a substantial daily population with people travelling to the city for work, leisure and shopping. Significant gains in resident population are expected in the Central City, Docklands and Southbank.

Clause 21.03 (Vision) recognises the diverse roles of the city and local areas, with a vision being 'a bold, inspirational and sustainable city. The Vision statement identifies that a diversity of housing choice should be provided and protect the existing built form character of the city.

Clause 21.04 (Settlement) sets out the growth area framework for the city to ensure growth can be accommodated while retaining valued characteristics. The focus of this MSS is on promoting areas of growth and protecting areas of stability. The Hoddle Grid and urban renewal areas of Southbank, Docklands and Fishermans Bend are areas that will encompass population expansion. A strong emphasis in the Hoddle Grid will be placed on a quality public realm and good pedestrian amenity and connectivity.

Clause 21.06 (Built Environment and Heritage) identifies the need to conserve identified heritage buildings from the impact of development. Development should add positively to Melbourne's public realm. Development should ensure a strong distinction between the built form scale of the Central City with that of development in surrounding areas. New development should conserve, protect and enhance the fabric of identified heritage places and precincts.

Clause 21.07 (Housing) supports the growth in housing in the areas of urban renewal and the Hoddle Grid. Residential growth must be managed to ensure a good quality of life and amenity for existing and future residents. High standards of on-site amenity should be provided in all residential developments including good access to sunlight and daylight and privacy.

Clause 21.08 (Economic Development) seeks to support the provision of local shops and businesses and encourage employment opportunities for local residents. The City Centre is identified as the principle centre for commerce and retail services.

Clause 21.09 (Transport) seeks to encourage a compact and walkable city built around public transport corridors. There is encouragement for development in locations which can maximise the potential use of public transport. Development should ensure sites are permeable for pedestrians with a fine grain and legible urban form.

Clause 21.10 (Infrastructure) supports the efficient use of existing infrastructure and development of integrated precinct utilities to reduce greenhouse gas emissions and increase resilience to climate change.

Clause 21.11 (Local Areas) organises the municipality into clear areas including the Hoddle Grid and the urban renewal areas of Southbank, Docklands and the Fishermans Bend Urban Renewal Area.

Clause 21.12 (Hoddle Grid). This area will support permanent and short term residential development that accommodates a diverse population. It will encourage a range of commercial retail and entertainment uses within the area.

This clause includes policy support to

- Ensure the form and use of development around the Queen Victoria Market does not detract from its amenity nor compromise its 24 hour function.
- Ensure a strong contrast in scale of development along Elizabeth Street from the lower scale areas to the north of Victoria Street and the higher scale of the Capital City Zone.
- Ensure the area bounded by Latrobe and Victoria Streets and Elizabeth/Peel Streets has a lower scale than the Hoddle Grid and provides a contrast in built form scale between the lower scale of Carlton and North Melbourne and the higher scale of the Hoddle Grid.
- Maintain the built form contrast in this area between the higher Capital City Zone and the lower Carlton/ North Melbourne area.
- Ensure tall buildings that promote a human scale at street level and provide a context for heritage buildings.

### *Local Policies*

The following local planning policies within the LPPF are relevant:

*22.01 (Urban Design within the Capital City Zone)* identifies that the future vitality and success of Melbourne will be achieved by new development responding to the underlying urban framework and characteristics of a site's context whilst establishing its own identity and character. The policy has eight sections addressing Building Design, Facades, City and Roof Profiles, Projections, Wind and Weather Protection, Public Spaces, Access and Safety in Public Spaces and Policy Implementation.

Of particular relevance to the proposal are the policy objectives relating to podium height, tower separation and setbacks. It is policy that design of buildings is assessed against the following guidelines:

- *The maximum plot ratio for any city block within the Capital City Zone should generally not exceed 12:1, unless it can be demonstrated that the development is consistent with the function, form and infrastructure capacity of the city block, including the capacity of footpaths, roads, public transport and services. The existing plot ratio for each city block is shown on Map 1.*
- *Towers should have a podium height generally between 35 to 40 metres except where a different parapet height already exists or where the need to provide a context for a heritage building or to emphasise a street corner justifies a variation from this norm.*
- *Towers above the podium should be setback at least 10 metres from street frontages.*
- *Towers should be well spaced to equitably distribute access to an outlook and sunlight between towers and ensure adequate sun penetration at street level as follows:*
  - *Development above 45 metres be set back 24 metres from any surrounding podium-tower development.*
  - *Tower separation setbacks may be reduced where it can be demonstrated that towers are offset and habitable room windows do not directly face one another and where consideration is given to the development potential of adjoining lots*
  - *Developments for new and refurbished residential and other sensitive uses should incorporate design measures to attenuate against noise associated with the operation of other businesses and activities associated with a vital 24-hour capital city.*

*Clause 22.02 (Sunlight to Public Spaces)* applies to public spaces such as parks and gardens, squares, streets and lanes, and includes privately owned spaces accessible to the public, such as building forecourts, atria and plazas within the municipality excluding the Docklands Zone. It requires that development not cast additional shadows across St Paul's Square, the Plaza and the Atrium which are part of Federation Square, any part of City Square, Queensbridge Square or the State Library forecourt between 11.00am and 2.00pm on 22 June.

*Clause 22.04 (Heritage Places in the Capital City Zone)* applies to all heritage buildings in the capital city zone. Objectives include to conserve and enhance heritage places and ensure that any alterations or extensions to them are undertaken in accordance with accepted conservation standards.

*Clause 22.19 (Energy Water and Waste)* applies to all land for retail office or accommodation within the municipality and requires amongst other matters, to minimise greenhouse gas emissions and maximise energy. It requires accommodation to achieve a 5 star rating under the plus a 5 star rating under a current version of Green Star - Multi Unit Residential rating tool or equivalent.

*Clause 22.20 (CBD Lanes)* applies to all existing and proposed laneways and all land with a boundary to a laneway in the Central Business District bounded by Flinders Street, Spring Street, Victoria Street, Peel Street, La Trobe Street and Spencer Street, excluding the RMIT University. The purpose of this policy is to identify the important characteristics of the city's lanes and to indicate the preferred character and form of development along lanes. It also classifies lanes against four core value characteristics relating to connectivity, active frontages, elevational articulation, and views.

Little La Trobe Street is a Class 2 Lane which shows signs of three out of four core value characteristics. The character and/or function of these lanes are significant and require protection.

**Appendix 2 Built Form 3D Assessment and Shadow Study**