

PROPOSAL

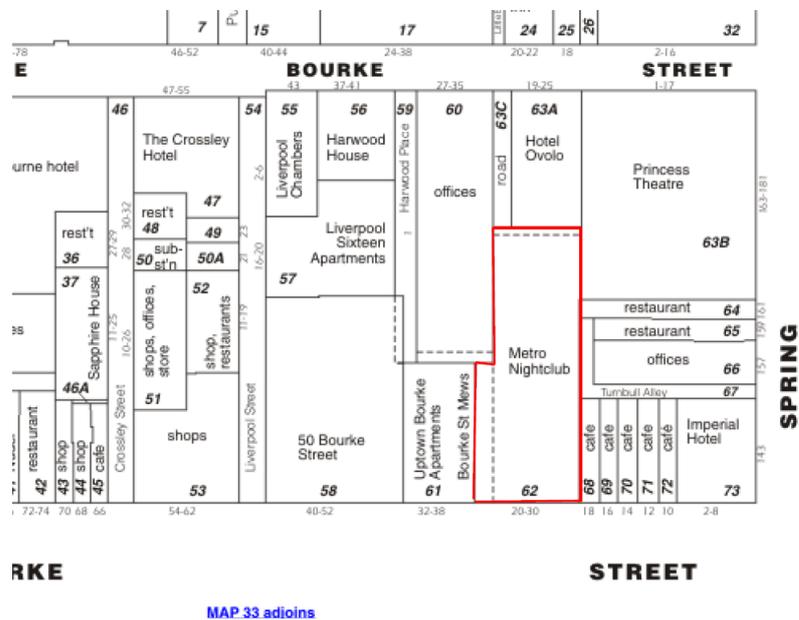
1. The proposal lodged on 27 June 2013 includes demolition of the existing building being the Place Theatre and construction of a 31 level tower (99.75 metres) comprising 205 hotel rooms and 144 apartments, a basement car park, high wall and business identification signage and dispensation from hotel visitor bicycle parking. The proposed gross floor area of the development is approximately 34,400 sq.ms.

BACKGROUND

2. Following notification of the application the Applicant requested that the application be placed on hold on 20 August 2013 pending a review of the proposal. The 'on hold' period was concluded on 24 September when the application was re-activated with the submission of revised plans for the development.
3. The revised plans (informally substituted) are for a tower of reduced height of 72.25 metres and 22 levels tower comprising 200 hotel rooms and approximately 90 apartments, a basement car park, high wall and business identification signage and dispensation from hotel visitor bicycle parking. The revised proposal also shows a reduced setback from the west boundary, from 1 metre to zero with the front portion of the building reduced in setback to 5 metres. The architectural resolution has also been modified to respond to the rhythm, fenestration and detailing of the neighbouring heritage buildings in the streetscape.
4. Details of the application, based on the **revised** plans are as follows:
 - Demolition of the Palace Theatre building at 20 -30 Bourke Street – identified as a D grade building in a level 3 streetscape.
 - Demolition of a single bay of the Italian renaissance revival building which is part of the building located at 32-38 Bourke Street which is a C graded building, this part of the building is known as 30A Bourke Street.
 - Construction of a new 22 level tower with a total height of 72.25ms.
 - Tower setback of 5ms from the four level podium.
 - 200 hotel rooms in upper portion of tower and approximately 90 residential apartments in lower portion of tower. A mix of one, two and three bedroom dwellings with an average of 13 apartments per level.
 - Four levels of basement parking including 116 car spaces including 26 tandem pairs. 114 of the spaces will be allocated to the residential component of the building and 2 car spaces will be allocated to hotel staff. The car spaces will be accessed via a car lift.
 - 181 bicycle spaces - 21 will be allocated to the hotel for staff and 160 will be allocated to the residential apartments. No car spaces are proposed to be allocated for guests of the hotel. 2 motorcycle spaces will be included in the car park.
 - A small on site loading bay will be provided to the rear of the site.
 - Vehicle access to the site will be via a vehicle connection between Bourke Street and Little Bourke Street using an existing passageway, footway and carriage way easement on the west side of the site which currently terminates at the rear boundary. This easement is proposed to be widened and paved to provide a controlled speed environment suitable for pedestrians and vehicles to share as a through block link.
 - The ground level comprises the hotel lobby and lounge and residential lobby, car lift and loading bay.
 - The first floor comprises the hotel restaurant, the second floor a function space and the third level gym/pool facilities and outdoor terrace.
5. The submission is supported by comprehensive reports including a Town Planning and Urban Context Report, Traffic Engineering Assessment Report, Waste Management Plan and Environmental Wind Speed Measurements Report.

SITE AND SURROUNDS

6. The subject site is located on the northern side of Bourke Street, approximately 40 metres from the north west corner of Bourke Street and Spring Street. It has a frontage of 24.4 metres to Bourke Street and a depth of approximately 64 metres with a total site area of 1,458 square metres.
7. The site is occupied in part by the Palace Theatre and presents as a four storey art deco style facade which is access via the ground level theatre doors. The building dates from 1911 but has been heavily modified over the years to suit various uses as a theatre, cinema and live music venue. There is a 3 metre wide passageway, footway and carriageway easement that extends from Bourke Street on the western perimeter of the site and has been used for loading for the Palace Theatre and access for the property at 35 Little Bourke Street.
8. The balance of the site is part of the building at 32 – 38 Bourke Street, an Italian renaissance revival building, this part of the building is known as 30A Bourke Street.



9. The site is zoned Capital City Zone Schedule 1. It is covered by four overlays including Design and Development Overlay Schedule 1 (DDO1-A2), Design and Development Overlay Schedule 1 (DDO1-A4), the Parking Overlay and the Heritage Overlay.
10. The site is located within the Heritage Overlay HO500 which is the Bourke Hill Precinct. This is a low to medium rise precinct which features 2-4 storey buildings with zero set back to the street, and mainly Victorian brick and rendered facades.
11. The exceptions to this generally low rise scale are Parliament House at the crest of Bourke Street and the Windsor Hotel on the south west corner of Bourke Street and Spring Street. The Windsor has a recently approved addition of a new 28 level 94 metre building on the south west corner of Spring Street and Bourke Street.
12. Other buildings relevant to the consideration of the application are:
 - East
 - 18 Bourke Street is a two storey rendered Victorian era shop which is one of 6 shops which are within the HO500.
 - The two storey Imperial Hotel is on the corner of Bourke Street and Spring Street. Graded C in a level 3 streetscape, the Imperial Hotel has been a hotel since 1863.
 - West

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- 32-38 Bourke Street, Melbourne. This building is located in HO500 has an C grading in a level 3 streetscape. The building is in the Italian Renaissance revival style and has 5 gables. The portion of the building behind the gables which abuts the Palace building is incorporated into the Palace complex and is intended to be demolished as part of the proposed hotel and residential apartment development. This building is internally subdivided into multiple titles and used as residential apartments.

North

- 19 Little Bourke Street is occupied by the City Limits apartment Hotel.
- 27-35 Little Bourke Street is occupied by 4 storey brick building occupied by a number of architectural practices.

STATUTORY CONTROLS

The following controls apply to the site, with planning permit triggers are described below:

Planning Control	Permit/ Application Requirement(s)/ Decision Guidelines
Capital City Zone – Schedule 1 Outside the Retail Core	<p>Under Clause 1 of the CCZ1 the use of the land for accommodation is “as-of-right”. The land uses “dwelling”, “residential hotel” are included under accommodation and are therefore as-of-right.</p> <p>“Function/conference” and “retail premises” inclusive of restaurant are also as-of-right in the zone.</p> <p>Under Clause 37.04-4 a permit is required to construct a building or construct or carry out works.</p> <p>Under Clause 37.04-4 a permit is required to demolish a building or remove a buildings or works.</p> <p>Under Clause 37.04-5 a permit is required to construct and display a sign.</p> <p>Under Clause 3.0 of the CCZ1 a permit is required to construct a building exceeding 40 metres within 10 metres of a road frontage.</p> <p>Decision guidelines and application requirements are at Clause 3.</p>
Design and Development Overlay	<p>Under Clause 43.02 a permit is required to construct a building or construct or carry out works unless the schedule to the overlay states that a permit is not required.</p> <p>DDO1 Active Street Frontages – Capital City Zone Area 2</p> <ul style="list-style-type: none"> - At least 5 metres of 80% street frontage whichever is the greater as an entry or display window to a shop-retail premises - Built scale that is appropriate to the street and pedestrians - Clear glazing (security grilles must be transparent). <p>Only the ground floor portion of the building requires a permit under this overlay.</p> <p>DDO2 Height Controls Capital City Zone</p> <ul style="list-style-type: none"> - To protect sunlight access to key public places and open space areas so as to provide comfortable, pedestrian-friendly urban environment. - To ensure that the height of new buildings reinforces the built form character of unique areas. - To maintain the visual dominance of prominent landmarks. <p>DDO2 Height Controls Capital City Zone</p> <p>Buildings and works should not be constructed to exceed the maximum height as set out in the table to this schedule. An application to exceed the maximum heights must be accompanied by a site analysis plan and a written urban context report documenting how the development will achieve the specific design objectives and outcomes of this schedule.</p> <p>Height Control Area 2 Maximum building height 15 metres</p> <p>Outcomes: The low-rise, high-density and pedestrian oriented built form of the Chinatown, Bourke Hill, and McKillop/ Hardware/ Guilford Lane precincts is maintained.</p> <p>Height Control Area 4 Maximum building height 23 metres</p>

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	<p>Outcomes: The Parliamentary buildings remain dominant on the Bourke Hill skyline. Under Clause 43.02-2 an application must be accompanied by a site analysis and urban context report which demonstrates how the proposed building or works achieve each of the Design Objectives and Built Form Outcomes of the schedule, and any local planning policy requirements.</p> <p>The decision guidelines for the DDO are at Clause 43.02-5.</p>
Heritage Overlay	<p>HO 500 Bourke Hill Precinct</p> <p>Under Clause 43.01-1 :</p> <p>a permit is required to construct a building or construct or carry out works and a permit is required to demolish or remove a building.</p> <p>The decision guidelines are at Clause 43.01-4.</p>
Parking Overlay (PO1)	<p>Clause 45.09 Under Clause 2 of the PO1 a permit is required to provide car parking spaces in excess of the car parking rates in Clause 3.0 of this schedule. The limitation policy allows for 61 spaces for the Hotel and 145 for the residential apartments, a total of 206 spaces. The provision of a total of 116 car spaces on site is below the maximum allowed; therefore no permit is required.</p> <p>The decision guidelines are at 52.06-9.</p>
Loading and Unloading of Vehicles (Clause 52.07)	<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>Given the use does not involve the manufacture, servicing, storage or sale of goods or materials, a loading bay is not a planning requirement. A small loading bay will be provided however to meet the needs of a 6.4m long vehicle.</p>
Bicycle Facilities (Clause 52.34)	<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 86 bicycle spaces. 44 spaces are required for the residential component (comprising 29 spaces for dwellings and 15 spaces for visitors) and 42 spaces are required for the hotel (comprising 21 employee spaces and 21 guest spaces). Overall 181 bicycle spaces are proposed to be provided which is well in excess of the requirement, however none are proposed to be allocated to guests of the hotel due to likely lack of demand and the existence of the share bicycle scheme in the City of Melbourne. This is a technical waiver and relates to allocation rather than inadequate provision.</p>
Urban Context Design Response (Clause 52.35)	<p>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. This has been provided by the applicant.</p>
Integrated Integrated Public Transport Planning (Clause 52.36)	<p>Under Clause 52.36- An application of the kind listed below must be referred in accordance with Section 55 of the Act to Public Transport Victoria for any of the following:</p> <p>A residential building comprising 60 or more lodging rooms.</p> <p>On 30 July 2012 the application was referred to the Director of Public Transport.</p>

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).

Particular Provisions

16. The following Particular Provisions are relevant to the application:
- Clause 52.05 Advertising Signs
 - Clause 52.06 Car parking
 - Clause 52.07 Loading and Unloading of Vehicles
 - Clause 52.27 Licensed Premises
 - Clause 52.34 Bicycle Facilities

Notification

17. The schedule to the Capital City Zone, the Design and Development Overlay and Clause 52.06-4 in conjunction with the Parking Overlay specifies that the application is exempt from notice requirements 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.
18. Under the Heritage Overlay an application to demolish a building and construct a building or carry out works is not 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.
19. Public notice of the application was given via a sign on site, notices in the local papers and the Age and notices to adjoining and opposite property owners and occupiers. Public notice was given in relation to the submitted application with a building height of the 31 level, 99 metre high development proposal.
20. [REDACTED] In addition to letters of objection, the application has resulted in a social media campaign and has been the subject of a street protest.
21. Following submission of the revised plans, a letter was posted to all objectors on 8th October 2013 acknowledging the objection and advising that revised plans with a reduced height building height had been submitted, inviting objectors to review the revised plans if desired. A further 60 new objections were received.
22. A summary of the grounds of the objection are:
- Objection to the demolition of the building due to its heritage significance and role in the streetscape providing a low rise setting to the Parliament building.
 - The proposed development would detrimentally impact on the heritage character of the area, in particular its low rise character.
 - The proposed development would adversely impact on the Parliament building and surrounding precinct by adversely impacting on the historic environment and streetscape.
 - The Palace building has cultural significance as a place for live music and entertainment and should be retained for this purpose.
 - The demolition of the Palace which is a live music venue will have a detrimental impact on Melbourne's status as an "arts" capital.
23. Included in the objections was a submission from the [REDACTED] which objected to the impact of the proposed development on the Parliament building. This objection and the accompanying written response from [REDACTED] is in Attachment 3 of the brief.
24. An objection has been received from the [REDACTED] on heritage grounds.
25. Two submissions in support of the application have also been received. The organisation that owns [REDACTED] has supported the proposal on the basis that it will revitalise the precinct. [REDACTED] [REDACTED] have also provided a detailed submission which argues there is a need for 5 star accommodation in the city.

POLICY FRAMEWORK

State Planning Policy Framework (SPPF)

26. The following policies within the SPPF are relevant:

- Clause 10.04 Integrated decision making
- Clause 11.0 Settlement
- Clause 11.01 Activity Centre Planning
- Clause 11.04-4 Central Melbourne
- Clause 13.04-1 Noise Abatement
- Clause 15.0 Built Environment and Heritage
- Clause 15.02 Sustainable Development
- Clause 16.01 Housing
- Clause 17.01 Economic Development
- Clause 18 Transport

Municipal Strategic Statement (MSS)

27. 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. In addition, the most significant gains in resident population are expected in the Central City (and Southbank and Docklands.)
28. Clause 21.03 (Vision) recognises the diverse roles of the city and local areas, with a vision being 'a thriving and sustainable City that simultaneously pursues economic prosperity, social equity and environmental quality'.
29. Clause 21.04 1-1 (The original city centre – the Hoddle Grid) sets out objectives and implementation strategies for the various areas of Melbourne :” *Central City functions will be located in the Hoddle Grid. This area will be managed to facilitate continued growth where appropriate and limit change or the scale of development in identified locations to preserve valued characteristics. A strong emphasis will be placed on a quality public realm and good pedestrian amenity and connectivity.*”
30. Clause 21.06 (Built Environment and Heritage) identifies Melbourne's character which is defined by its “*distinctive urban structure, historic street pattern, boulevards and parks, heritage precincts, and individually significant heritage buildings. Heritage buildings, precincts and streetscapes are a large part of Melbourne's attraction and the conservation of identified heritage places from the impact of development is crucial*”. This Clause identifies the need to protect Melbourne's distinctive physical character and in particular, to maintain the importance of the Hoddle Grid and iconic views in the city including views to the Parliament House along Bourke Street.
31. Clause 21.07 (Housing) Seeks to encourage the most significant housing and population growth occurs in the Central City and Urban Renewal areas. It acknowledges the need to ensure residential developments in the Capital City, Docklands and Commercial Zones are designed to mitigate the amenity impacts from surrounding established and future uses, including insulation from noise.
32. Clause 21.09 (Transport) seeks to integrate transport and urban growth by encouraging development in locations, which can maximise the potential use of public transport. This Clause seeks to maximise access to the city through support of the provision of adequate, safe public transport, pedestrian and bicycle facilities and car parking, in the City to suit 24 hour activity.
33. Clause 21.10 (Infrastructure) seeks to enhance the City as Victoria's pre-eminent cultural and entertainment location by supporting and encouraging the growth of a vibrant cultural environment in the Hoddle Grid, Southbank and Docklands, by supporting entertainment uses, music and the arts.
34. Clause 21.12 (The Hoddle Grid) includes policies relating to Economic Development, Built Environment and Heritage and Transport which specifically relate to the unique and valued characteristics of the Hoddle Grid. It encourages the development of a range of complementary

precincts within the Hoddle Grid that offer a diverse range of specialist retail, cultural and entertainment opportunities.

Local Planning Policy Framework (LPPF)

35. The following policies within the LPPF are relevant:
- Clause 22.01 Urban Design within the Capital City Zone
 - Clause 22.02 Sunlight to Public Spaces
 - Clause 22.04 Heritage Places within the Capital City Zone
 - Clause 22.19 Energy, Water and Waste Efficiency

Other relevant policy/ matters

36. Other relevant policy/ matters include:
- Design Guidelines for Higher Density Residential Development (Department of Sustainability and Environment, 2004) (referenced at Clause 15.01-2).
 - Metropolitan Planning Strategy (Department of Transport, Planning and Local Infrastructure 2013).

HERITAGE REGISTRATION

37. The Palace Theatre has been the subject of a nomination process to be included on the Victorian Heritage Register. The Executive Director of Heritage Victoria made the recommendation on 21 November that the Palace Theatre not be included on the Victorian Heritage Register because its architectural, social and cultural significance is only considered to be important at a local level. The 60 day advertising period has commenced and submissions will be heard by the Heritage Council. If there is a hearing process, it is likely to take approximately 3 months to complete.

REFERRALS

38. The application was referred to the Department's Urban Design Unit, the Office of the Victorian Government Architect, the City of Melbourne, and pursuant to Section 55 of the Act to the Director of Public Transport. The following comments were provided:

Urban Design (DTPLI).

39. The DTPLI Urban Design Unit does not support the proposal at 99 metres or at the reduced 72 metres and has provided comments in relation to concerns with the building height, building setbacks, ground level access and frontages, architectural resolution and public realm amenity.
40. The most important issue raised by Urban Design was that the height and setbacks of both the initial and revised proposal. It cannot give support to the proposal based on the following reasons:
- The building's height is unacceptable and has minimal side setbacks which do not support the equitable development of neighbouring sites and their amenity.
 - The building will have an adverse amenity impacts of wind and shadowing impacts on Bourke Street (especially the well-used south footpath).
 - The through block link is supported but not the near total enclosure or roofing of the link.
 - The reduced podium setback is not acceptable – a significant reason for acceptance of the Windsor proposal was the large setback (25ms) from Bourke Street.
 - The demolition of the attached Victorian building over the side laneway is significant particularly as it completes a symmetrical group of five units. The applicant's own heritage consultant concludes; "The retention and integration of this elevation within the context of a new development is strongly recommended".

City of Melbourne

41. The application was referred to the City of Melbourne on 4 July 2012 and again on 26 September 2013 when the revised plans were submitted. The City of Melbourne advised in writing of its objection to the application on 22 October 2013 and recommended refusal of the application on the following grounds:

- The proposal will adversely impact the low scale character of the Bourke Hill Precinct.
 - The proposal is an overdevelopment of the site.
 - The development fails to complement, respect or relate to the surrounding area.
 - The development fails to comply with the provisions of the Design and Development Overlay Schedule 2, the Heritage Overlay and Clause 22.04 of the Melbourne Planning Scheme.
 - The proposal fails to respond to immediate surrounds or adequately consider the possibility of potential redevelopment of adjoining sites.
 - The proposal will result in dominance over the heritage place and subsequently diminish the dominance of the Houses of Parliament.
 - The proposal will adversely affect the significance of the heritage building at 32 Bourke Street.
 - The proposal will dominate the heritage place and compete with highly regarded buildings in the immediate area.
42. The application was considered by the City of Melbourne Future Melbourne Committee meeting on 12 November 2013. At this meeting the Future Melbourne Committee resolved:
- the City of Melbourne acknowledges that the establishment of a W Hotel in Melbourne will bring economic benefit and recognise that Melbourne is a world class city.
 - the City of Melbourne encourages the Minister for Planning and his department to continue engaging with the developer to achieve a more acceptable design outcome for the site and for the Bourke Hill Precinct.
 - the City of Melbourne has key concerns in regards to the lack of setbacks and the height of the proposal as compared to the height controls for that particular section of the Bourke Hill Precinct.
 - the City of Melbourne continues to object to the application in its current proposed form for the reasons set out in the Delegate Report in Attachment 4 of the report from management.
43. The resolution of the Council is noted and assessment concurs that while there would be distinct benefits associated with a “W Hotel” or similar style of hotel development on the site, there remains significant concerns with the proposed built form and its impact on the area.
44. Other relevant issues to note from the Officer’s report which formed the basis of Council’s resolution is as follows:
- Land Survey
- The Council’s advice is that the new vehicle access way should be made a public road and that this could be addressed as a condition.
- Engineering Services
- The application assumes unimpeded access via Corporation Lane 1639 although several neighbouring businesses have permission to permanently store large bins in this lane which would cause obstruction to traffic. The applicant therefore may need to investigate the possibility of only entering and existing the site from Bourke Street.
- Heritage
- The Council’s Heritage advice notes that the application appears to include “no reasoned analysis of the valued heritage character of the precinct and the projected relationship or impact of the proposed built form”.
 - This advice asserts that the proposal is deemed to be a massive intrusion into the Bourke Hill precinct which will adversely affect the heritage significance of the precinct.
 - It notes that rather than the Windsor Hotel offering justification for the proposed development, to the contrary, the proposed building, in addition to the Windsor will “wall in” the Parliament building.
 - The focus has been on the view lines to Parliament but the advice notes that the view from the steps of Parliament should also be considered and is very important vantage point from which the precinct and the city can be appreciated.
- Office of the Victorian Government Architect:**
45. The OVGA in its comments on the proposal indicated that generally they were supportive of the type of development proposed by the site which they believe will make a positive contribution to the area.

However they expressed some concerns/questions with regards to certain aspects of the proposal relating to architectural expression, the through block link, inadequate podium setbacks, the loss of heritage fabric and whether the replacement building makes and positive contribution and.

Director of Public Transport:

46. Offered no objection to the proposal subject to two conditions be placed on any permit issued for the development.

ASSESSMENT

Compliance with State and Local Policy Context

47. The proposed development comprising a residential hotel with an associated restaurant and function uses and dwellings generally responds well to the State and Local policy context by providing an appropriately located 5 star hotel that would strengthen the Capital City function of the CBD, offer world class tourism facilities to revitalise the top end of Bourke Street and provide benefits and synergies to complement surrounding businesses and tourism. This point is supported by a submission from [REDACTED]
48. The proposal would also contribute to the Melbourne tradition of laneways by creating a new through block link to Little Bourke Street by improving the presentation and safety of this existing laneway. In this regard, the application meets the policy contained in Clauses 11 Settlement, 15.02 Sustainable Development and Clause 22.19 Energy, Water and Waste Efficiency, 16 Residential Development, Clause 17 Economic Development and Clause 18 Transport.
49. The proposal, however, responds poorly to policy relating to built form and heritage, primarily due to the height and setbacks of the proposed building. The relevant policy can be found in Clause 10.04 Integrated decision making, Clause 15 Built Environment and Heritage, Clause 21.06 Built Environment and Heritage, 22.01 Urban Design within the Capital City Zone, Clause 21.12 Local Areas – Hoddle Grid, Clause 22.04 Heritage Places within the Capital City Zone and Clause 22.02 Sunlight to Public Spaces.
50. These policies seek to reinforce the urban structure of the city which includes protection of identified places and precincts, the protection of precincts of heritage significance, to protect iconic views such as along Bourke Street to Parliament and to ensure the height scale and form of development is appropriate to the identified built form scale of the area. These policies encourage new development to protect and enhance the amenity, attractiveness and safety of the public realm spaces of the city.
51. The substantial height of the proposed building, either the submitted or revised proposal, is either 76 or 49 metres in excess of the DDO height control. The height controls seek to implement the relevant policy to protect the low rise, pedestrian oriented character and the low rise setting to Parliament which is described in Local policy. The variation to these heights controls is of great significance in this instance because the site is in a special precinct (Bourke Hill Precinct) that is identified for its urban character as well as for its heritage characteristics. Clause 22.04 Heritage Places within the Capital City Zone seeks to:
- To conserve and enhance the character and appearance of precincts identified as Heritage places by ensuring that any new development complements their character
 - To conserve and enhance all heritage places, and ensure that any alterations or extensions to them are undertaken in accordance with accepted conservation standards.
52. This policy describes the Bourke Hill precinct in the Statement of Significance and details the key attributes of the precinct as
- Low-scale Victorian buildings.
 - The visual dominance of the parliamentary buildings on the Bourke Hill skyline, and the vista along Bourke Street to Parliament House.

53. The substantial scale of the proposed tower and its lack of setback from the street lead to an assessment that the proposal is entirely at odds with both State and Local policy which seeks to protect the valued architectural, aesthetic, cultural and heritage characteristics of identified neighbourhoods. This is attributable to the height of the development and the lack of appropriate setbacks which will lead to an overly dominant presence in the precinct.
54. Furthermore, the proposal will not complement or enhance the character and key attributes of the precinct identified in policy and will diminish the character of the precinct.
55. The Parliament building is an important heritage place in close proximity to the subject site. The height controls and the policy about the vista to Parliament are intended partly to support protection of the Parliament building and the context. No aspect of the built form of the proposal indicates that deference to this important heritage place has been given. Such a significant variation to the height controls along with minimal setbacks leaves a conclusion that the proposal will harm the ability to appreciate the Parliament building.
56. Clause 10.04 requires that decision makers “integrate *the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.*” While there are clear benefits associated with revitalisation of a site that has no daytime activation with a use that would enhance the city, this cannot be at the expense of the valued character and heritage significance of an important heritage places and a precinct of the city which is central to Melbourne’s identity and should be protected for future generations.

Land use

57. The proposal involves use of land as a residential hotel (with ancillary associated function centre and restaurant) and dwellings. Under the Capital City Zone Schedule 1, these land uses do not need a planning permit in the zone. Assessment of the application therefore centres on consideration of demolition, built form, car parking and bicycle provision and signs.

Design and Development Overlay

58. Two DDO schedules apply to the site, DDO1 (A2) Active Street Frontages and DDO2 (HCA2 and HC A2 to the front of the site and HC A4 to the rear of the site.) Height Controls – Capital City Zone.

HC-2 15 metres	Objective: The low-rise, high-density and pedestrian oriented built form of the Chinatown, Bourke Hill, and McKillop/ Hardware/ Guilford Lane precincts is maintained.
HC-4 23 metres	The Parliamentary buildings remain dominant on the Bourke Hill skyline.

59. The proposal responds appropriately to DDO1 Active Street Frontages by provision of a fully glazed ground floor lobby and lounge area that would contribute activation, interest and improved safety to the streetscape.
60. At 99 or 72 metres in overall height, the proposal would be excessively tall and would have a dominating presence in the precinct and would have an adverse impact on the low rise and pedestrian character of the Bourke Hill precinct. The proposal therefore cannot meet the objectives of DDO2.

Heritage Response

61. The application involves a proposal to demolish a D graded building within the Heritage Overlay and to demolish a portion of a C graded building (involving a single bay of the Italian Renaissance revival building at 32-38 Bourke Street) within Heritage Overlay HO500. A planning permit is required pursuant to Clause 43.01-1 of the Heritage Overlay to demolish or remove a building and to construct a building and construct or carry out works.

62. The application raises three key issues under the Heritage Overlay, whether the proposed demolition is acceptable and whether the replacement built form is appropriate within the Heritage Overlay and whether the proposal will conserve and enhance places of cultural significance.

Demolition

63. The Palace Theatre building is a D graded building in a level 3 streetscape. The report accompanying the application prepared by Lovell Chen Architects and Heritage Consultants provides a credible, detailed background of the site's history and alterations to the building over the years. It notes that the building has experienced three major phases of considerable change or alteration to the building including replacement of the facade and the removal of the auditorium. The building is therefore of limited architectural and aesthetic significance and its demolition is considered acceptable.
64. The Lovell Chen report includes an assessment of the cultural significance of the building as a place for entertainment and live music against the Heritage Council of Victoria criteria for the assessment of cultural significance. This assessment indicates that while the building does hold some significance as a live music and theatre venue, the performance against many of the criteria is mediocre and is not of the same order of other venues such as the Esplanade Hotel, Festival Hall or the Myer Music Bowl which would provide strong justification for retention of the building. This assessment is supported by Heritage Victoria's recommendation not to place the building on the State register.
65. Removal of the 'fifth' bay of the adjoining facade of the building at 32-38 Bourke Street is not recommended by the Lovell Chen, not supported by the City of Melbourne and will have an adverse impact on the completeness and significance of the adjoining heritage place. However, it is recognised, as noted in the DTPLI Urban Design comments, that retention and incorporation of such a small portion of a facade into the new built form risks a superficial "facade-ist" approach to heritage conservation.
66. On a practical level, the bay was purchased to facilitate vehicle access to the site and vehicle access and loading can only be achieved with a 3.6m clearance rather than the 3.2m clearance that could be achieved if the bay is retained. It is therefore difficult to justify retention of such a small portion of a building when it will have major functional impacts on vehicle access to the site. The bay's retention would also inhibit the achievement of a high quality, coherent architectural expression for the replacement building.

Replacement built form

67. The Decision guidelines found at Clause 43.01-4 of the Heritage Overlay require consideration of: *Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.*
68. The revised plans submitted propose a building of 72.25 metres in height have been further developed to respond to the heritage context in a further submission dated 18 October 2013. The proposed podium will reference a median height between both adjoining groups of buildings and includes facade segmentation and a glass awning that responds directly to the rhythm of adjoining heritage architecture. The materials of the facade have also been modified to effect a more "solid" appearance which offers a contemporary expression which will complement the heritage streetscape.
69. The significant height of the proposed tower (either at 72 or 99 metres), its depth over the length of the site, the overall size of the building and the setback of the tower from the podium are fundamental and problematic features of the built form which are out of context with the character and appearance of adjacent buildings and the wider heritage place (HO500) and lead to an excessively dominant presence in the precinct.
70. It is noted that a significant factor which led to the favourable assessment of the Windsor development was the 25 metre setback of the tower from the Bourke Street frontage which allows protection of the Bourke Street Parliament vista, despite a taller built form. Furthermore, this setback and the site's location mean that the Windsor tower will be perceived from the street as part of the

group of higher scale towers further in the distance i.e. Collins Place. This cannot be said for the Palace site, which is central to the precinct and much closer to Parliament.

Impact on heritage places – the Parliament building

71. The objectives of Clause 22.04 Heritage Places within the Capital City Zone include “to conserve and enhance heritage places” and “consider impact of development on buildings listed in the Central Activities District Conservation Study” . The City of Melbourne’s comments and the objection from [REDACTED] [REDACTED] underscores the issue of the built form context around the Parliament which is important to enable this building to be appreciated. In particular, the City of Melbourne notes that the proposal will dominate the precinct and contribute to a “walled in” effect on Parliament which would adversely impact on its heritage significance. This assessment is considered accurate and contrary to the objectives of the Design and Development Overlay which are partly intended to support and protect the urban character and heritage values of the precinct, of which the Parliament is a prominent part of. The variation on the height controls is significant and no adequate justification for it is reasonable in light of the extent of diminution of character and heritage significance that would occur as a result of such a large built form.

Height, Built Form and Setbacks

72. The simple form and relatively neutral and sober tower facade treatment is considered an appropriate approach which would ensures the architectural style of the building is appropriate for the heritage context.
73. The height, size and mass of the tower exhibits excessive bulk and would have a very dominant presence which is not responsive to the adjoining buildings, the key attributes of the precinct and the Bourke Street/Parliament vista, all of which are clearly articulated in policy and implemented via the Design and Development Overlay.
74. The proposed building has no side setbacks, only a 5 metre setback from the front boundary and a 1.5 metre setback to provide clearance from a footway easement at the rear of the site. Clause 22.01 Urban Design within the Capital City Zone provides the guidance that:

Towers above the podium should be setback at least 10 metres from street frontages.

Development above 45 metres be set back 24 metres from any surrounding podium– tower development.

Towers should also be ‘well spaced to equitably distribute access to an outlook and sunlight’ and that tower separation can be reduced where... ‘consideration is given to the development of adjoining lots’.

75. DTPLI Urban Design has significant concerns with the front setback relative to the tower height due to its impact on the pedestrian orientated character of the area.
76. The Applicant’s rationale for providing no side and rear setbacks is based on [REDACTED] [REDACTED] there being little or no potential for redevelopment of adjoining lots based on heritage reasons and the subdivision pattern, despite the subject site also having at least one of these constraints, i.e. heritage. This assumption overlooks the significant incentive within the city to acquire and consolidate sites for redevelopment and to seek demolition of heritage fabric to maximise the development potential of city sites. The proposal seeks demolition of C and D graded heritage fabric and a built form well in excess of the applicable height controls. If this approach was to be adopted for all the adjoining buildings such as the Imperial Hotel and 32-38 Bourke Street, both could be redeveloped and would demand an equitable approach to side setbacks. There is consequently no satisfactory justification for the lack of provision of side setbacks and a meaningful rear setback.

Microclimate (Wind, Weather Protection, Light and Shade/ Overshadowing)

77. The design of the podium includes a glazed awning which will provide both weather protection and light penetration to the street that would enhance the amenity of the streetscape for pedestrians and would provide an improvement upon the existing conditions of the building.
78. Under Clause 22.02 Sunlight to Public Spaces, development should not reduce the amenity of public spaces by casting any additional shadows on public parks and gardens, public squares, major pedestrian routes including streets and lanes (including all streets within the retail core of the Capital City Zone), and privately owned plazas accessible to the public between 11.00 am and 2.00 pm on 22 September.
79. The current condition of shadows cast by the existing building mean that shadows do not reach the south side of Bourke Street and affect the pedestrian pavement between 11am and 2pm which ensures a high amenity situation for outdoor dining in this part of the street.
80. Under the lower of the two proposed tower schemes (72 metres) the shadows from the development would reach the front wall of the buildings on the south side of Bourke Street at 11am and would travel along the pavement and east by 2pm, creating a significant wide shadow over the pedestrian pavement. The proposal therefore does not meet the policy and would reduce the amenity of the top of Bourke Street.
81. The loss of sunlight to public open space during the 11am-2pm period further underlines that the proposal will adversely impact on the 'pedestrian orientated character' of the precinct articulated in policy and the Design and Development Overlay.

Wind

82. An Environmental Wind Criteria report has been submitted with the application and reports on wind tunnel testing conducted on a model commissioned by the Applicant. The report findings indicate that while the site is generally well shielded, the proposed development will result in a tangible change and increase in the wind conditions particularly for the north and north easterly wind directions which will shift the conditions from suitable for long term stationary towards short term stationary.

While proposal is assessed to overall to have acceptable wind impacts (i.e. the proposed building will not result in pedestrians being blown over) the proposal will have a tangible adverse impact on the amenity of the street for activities such as outdoor dining which are part of the character of this portion of Bourke Street.

Street level frontages and pedestrian safety

83. The proposal involves an entirely glazed street level frontage which is designed to have a seamless integration with the vehicle access laneway on the west side of the site. Entrance doors are proposed both from a central point in the facade and from a drop off point from the new access laneway setback approximately 9 metres from the front boundary. The access laneway is proposed to have an attractively designed, well lit treatment and some vision of the through connection point to invite pedestrians to use the through block link. This design responds well to DDO1 Active Street Frontages – Capital City Zone and would offer an active street frontage which with a high level of amenity, interest and safety for pedestrians.

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

84. The proposal involves a four level basement with provision of 116 car spaces access via the laneway on the west side of the site and a car lift located to the rear of the ground level. 114 of the car spaces are proposed to be allocated to the residential apartments and 2 car spaces to the hotel. 2 motorcycle spaces are proposed. The number of bicycle spaces are not compliant with the Schemes requirements. The City of Melbourne Traffic Engineering Department has reviewed the proposal and generally supports the proposal subject to conditions. It is noted that the City of Melbourne has recommended that the passage way, footway and carriageway easement be given status as a road if

the development were to be approved. This approach is supported and would guarantee access for other properties such as Jackson Architects to the rear of the site who use the easement.

Environmental Sustainable Design

85. The documentation accompanying the application asserts that the proposed development will meet or exceed all applicable statutory ESD requirements for hotel developments.

Signs

86. The application involves business identification signs, which primarily involve the “W” icon. The signs proposed are well placed and well designed to integrate with the architecture of the building and contribute positively to the streetscape.

Objections

87. A large proportion of the objections received were standard form objections and the grounds have been summarised at paragraph 22 of this report. The objections have been noted and considered. A large number of the objections voice a concern about the loss of the Palace Theatre as a music venue; however this is not a valid planning issue under the discretion afforded by the planning application. There is no “use” component of the application and it is not possible to compel an owner to continue an existing use.

SUMMARY & CONCLUSION

88. The proposed development has been assessed and does not comply with the following provisions and policy of the Melbourne Planning Scheme:

SPPF

Clause 15 Built Environment and Heritage

LPPF

Clause 21.06 Built Environment and Heritage

Clause 21.12 Hoddle Grid

Clause 22.01 Urban Design within the Capital City Zone

Clause 22.02 Sunlight to Public Spaces

Clause 22.04 Heritage Places within the Capital City Zone

Clause 22.02 Sunlight to Public Spaces

Provisions

Clause 43.01 Heritage Overlay

Clause 43.02 Design and Development Overlay Schedule 2

Clause 53.34 Bicycle Facilities

89. Consideration has been given to the referral responses, the objections and the above policy and provisions of the Scheme. While few development proposals have 100% compliance with all policy and all provisions of planning schemes, it is a fundamental requirement of the Planning Scheme that development is responsive to the site and context of development. The proposed development fails this fundamental requirement because it does not respond adequately to policy in the Melbourne Planning Scheme which identifies and values the unique characteristics of the site's context, the Bourke Hill Precinct, which is vitally important to Melbourne's urban character and heritage.
90. Assessment concludes that the development would have a significant and adverse impact on the amenity, urban character and heritage of the Bourke Hill precinct. In particular, the proposal would have a detrimental impact on the most important building within the precinct, the Parliament of Victoria. The importance and role of this building in the precinct and Melbourne is unparalleled and this has been a relevant factor in considering that the scope for discretion to vary the DDO height controls is very limited.
91. Compounding this issue are the unacceptable impacts that would result from the development including overshadowing, wind impacts and excessive visual bulk in an area which is valued for its low rise, pedestrian orientated character. The proposal is also considered to be an overdevelopment

of the site which does not adopt an equitable approach to the amenity, outlook and development opportunities of neighbouring sites in the precinct.

92. The physical heritage fabric of the Palace Theatre is assessed to be of low value and therefore demolition of the building is considered acceptable. The demolition of a portion of 32 Bourke Street is [REDACTED] on balance acceptable, given the requirements of vehicle access and the benefits of a more coherent streetscape presentation of the new building. This aside, the principal failing of the proposal in relation to the heritage provisions of the planning scheme is not in respect of demolition of the building but the location, height, appearance and bulk of the proposed replacement building within the context Heritage Overlay 500.

Option

93. The primary issues with the application relate to the height and the setbacks of the building. The primary argument put forward by the Applicant in favour of the proposal is the benefit of a new 5 star "W Hotel" branded hotel at the top of Bourke Street.
94. Therefore, if the introduction of a 5 star hotel to the city accompanied by a new activated podium, a new through block link and the overall revitalisation of the top portion of Bourke Street were considered to be of sufficient benefit, an option open to the Responsible Authority would be to significantly reduce the height of the building.
95. This could be achieved by removing the apartment component of the building (the revised 72.25 metre proposal) combined with a setback of 8 metres from the podium. This would reduce the overall height of the building to no more than 50 metres. However it is noted that a key issue with the application for DTPLI Urban Design was both the height and the setbacks, and neither the 5 metres or the 9 metres setback were supported in excess of the DDO height limit of 23 metres. The height of a variation to the DDO that should be contemplated, in DTPLI's opinion was an overall height of 40 metres.
96. This course of action would need to be considered in the context of the future application of mandatory height controls to the Bourke Hill precinct as recommended by initiative 4.2.1 of Plan Melbourne.

RECOMMENDATION

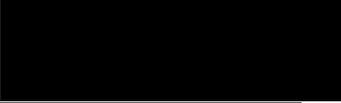
97. That a Refusal to Grant a planning permit be issued for the proposal at 20-30 and 30A Bourke Street Melbourne on the following grounds:
1. The proposal will adversely impact the low scale character of the Bourke Hill Precinct.
 2. The proposal is contrary to Initiative 4.2.3 of Plan Melbourne - Metropolitan Planning Strategy which proposes to "Implement planning provisions for mandatory height controls in and around appropriate Central City locations such as the Bourke Hill precinct."
 3. The proposal is an overdevelopment of the site in relation to the excessive height and minimal setbacks of the building.
 4. The development fails to complement, respect or relate to the surrounding area.
 5. The proposal will have an adverse impact on the amenity of Bourke Street and its environs through overshadowing, wind and visual bulk.
 6. The development does not provide adequate bicycle spaces.
 7. The development fails to comply with the provisions of the Design and Development Overlay Schedule 2, the Heritage Overlay and Clause 22.04 of the Melbourne Planning Scheme.
 8. The proposal fails to respond to immediate surrounds or adequately consider the possibility of potential redevelopment of adjoining sites.
 9. The proposal will result in dominance over the heritage place and subsequently diminish the dominance of the Houses of Parliament.
 10. The proposal will adversely affect the significance of the heritage building at 32 Bourke Street.
 11. The proposal will dominate the heritage place and compete with highly regarded buildings in the immediate area.

DTPLI Planning Report

20-30 and 30A Bourke Street, Melbourne

Prepared by: 
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Date: 3 December 2013

Reviewed by: 
Name: 
Title: 
Phone: 
Date: 3 December 2013

Approved by: 
Name: 
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Date: 3 December 2013