

APPLICATION FOR PLANNING PERMIT: 420 SPENCER STREET, WEST MELBOURNE	
Application Number:	2010/016083
Proposal:	To use the land for the purpose of retail premises (excluding hotel, tavern and/or gambling premises) and office; to partially demolish the existing building; to construct a 32-storey building comprising of dwellings; to vary the requirements of Design and Development Overlay (Schedule 33); create access to Category 1 Road (Dudley street) and to reduce the associated car parking requirements
Applicant:	420 Spencer Street Pty Ltd C/- Message Consultants
Zoning:	Mixed Use Zone (MUZ)
Overlays:	Heritage Overlay- Schedule 787 (420 Spencer St) Design and Development Overlay- Schedule 33 (CBD Fringe)
Existing Use:	Low level commercial
Number of Objections:	Four (4)
Recommendation:	Notice of Decision to Grant Permit subject to conditions

PROPOSAL

1. Permit application 2010/016083 was lodged on 7 June 2010. The application seeks approval to use the land for the purpose of retail premises (excluding hotel, tavern and/or gambling premises) and office; to partially demolish the existing building; to construct a 32-storey building comprising of dwellings; to vary the requirements of Design and Development Overlay – Schedule 33; to create access to a Category 1 Road; and to reduce the associated car parking requirements. The proposal provides a gross floor area of 30,258m².
2. Details of the application are as follows:
 - Partial demolition of the existing C graded building including removal of the third floor and roof, resizing of the window joinery to Spencer Street, partial demolition of the ground floor of the Dudley Street façade and the masonry wall quadrants on either side of the Spencer Street entry to create clear and wide openings to the new entry to the retail/commercial arcade. The proposal also includes the demolition of a single storey building to the east of the site;

- Ground floor shopfronts totalling 737m², first floor commercial space totalling 1139m² and communal recreational facilities totalling 270m²,
- Construction of a tower to a height of approximately 106m (32 storeys) when measured from the centre of the site frontage to Spencer Street. The new building will rise above the retained existing building and is set back 8.5m from Spencer Street, between 4m and 4.5m from Dudley Street, 4m from the lane to the south, and 6m from the east property boundary. The tower is to contain 368 dwellings (48 one-bedroom, 216 two-bedroom, 8 three-bedroom and 96 studio apartments);
- Three basement levels and ground floor loading facilities and bicycle parking which include 152 car parking spaces, and 115 bicycle spaces (including 21 to the Dudley Street frontage);
- Materials and finishes include concrete finish, glazing, ceramic and terracotta tiles, sandstone paint finish, aluminium and powder coated frames; and
- The submission is supported by comprehensive reports including a wind tunnel assessment, traffic report, waste management report, ESD report (incorporated into the architectural drawings), and heritage assessment.

SITE AND SURROUNDS

3. The site is located on the south east corner of Spencer and Dudley Streets, West Melbourne. The 1930s predominantly double storey building is ornate and substantially intact and used for electronic wholesale with office. The building is graded 'C' in Council's Heritage Places Inventory (2008), an Incorporated Document to the Scheme.
4. The site has a frontage of 40.15m and a depth of 54.9m, with a total area of 2,204m². There is a fall of 2.4 metres from east to west along Dudley Street and a fall of about 0.5 metres from south to north along Spencer Street.
5. Both Spencer and Dudley Streets are major transport routes providing connection to the Docklands and the CBD. The surrounding land uses are mostly commercial with some residential.
6. To the north of the site along Dudley Street is a car wash and single storey showrooms.
7. To the west of the site across Spencer Street are a number of single and double storey small businesses.
8. The adjoining property to the east of the site is a double storey hotel. Further east is Flagstaff Gardens.
9. At the southern border of the site is a vacant block which Permit TP-2009-798 issued by the City of Melbourne allows the redevelopment of the site by a 12-storey building for dwellings, home occupation and retail tenancies. The two sites are separated by a laneway that runs along the proximity of the subject site.
10. The broader precinct includes the mixed use zoned residential areas of North and West Melbourne, Docklands to the west and the CBD to the south.

BACKGROUND

Previous Permit Applications

2002/0282

- Permit application 2002/0282 was lodged with the Minister for Planning seeking approval for the demolition of the existing building and construction of a 26-storey building (to a height of

82.28 metres) to be used for the purpose of office, retail premises (including restaurant) and dwellings. The general building envelope included a 9-level podium with the predominant tower constructed to the corner of Dudley and Spencers Streets with no setbacks.

- A Notice of Decision to Grant a Permit was issued by the Minister for Planning on 20 December 2002.
- The decision of the Tribunal, Order dated 28 July 2003, set aside this decision and directed that a permit must not be issued. The decision itself references the following:
 - DDO33 does not contain a provision setting a maximum or preferred building height (paragraph 19).
 - DDO33 was approved following exhibition and independent Panel report, of Amendment C20 to the Melbourne Planning Scheme. The Panel's consideration and recommendations provide relevant background information to give understanding to the current planning policies and controls affecting the site. DDO33 was approved in a very different form to its exhibited version. The exhibited version specified a height of 28 metres (8 storeys). The Panel was critical of the amendment and concluded that there was no justification put forward to adopt the specific height and that it would be too restrictive in terms of facilitating redevelopment of the CBD fringe of a scale commensurate with the major opportunities presented by the larger sites and its interface with Docklands (paragraphs 28 to 30 inclusive).
 - The policy provisions are very general in nature and are not considered to be of much assistance in determining what constitutes an appropriate built form outcome for this site. The policy framework of the site fails to provide clear direction as to the magnitude of change which is envisaged for the CBD fringe. DDO33 provides very wide discretion to grant a permit for a building of almost any height and scale, but contains very little in the way of design objectives or decision guidelines (paragraph 48).
 - The Tribunal were generally satisfied that the proposal is capable of complying with the detailed provision of DDO33 and that areas of non compliance are not fatal to the application. In the current application, there is considered to be a gap in the planning regime for the West Melbourne CBD fringe between the broad policy provisions of the State and Local Planning Policy Frameworks and the detailed controls and guidelines, which would be expected to appear in DDO33 and has not been undertaken satisfactorily.
 - Evidence given for the proposal acknowledged that while the CBD fringe will inevitably and desirably undergo change, there ought to be a transition in building height of the CBD scale closer to the CBD. Transitional scale should also be considered with a discretionary 4 storey height control to the north of Dudley Street. A podium/ tower arrangement with a tower setback would assist in making this transition. The Tribunal agreed with this evidence and indicated that whilst a building of this height was not untenable, they were not persuaded that the scale is appropriately located on the site and in its location (paragraph 61 to 63 inclusive).

2005/0240

- Permit application 2005/0240 was lodged with the Minister for Planning seeking approval for the partial demolition of the existing building and development of a 13 level building comprising ground floor retail, 2 levels of offices, 28 serviced apartments, 72 dwellings and associated car parking.

- Planning Permit 2005/0240 was issued on 16 October 2006. The expiry date for the permit has been extended and the permit will now expire on 16 October 2011.

Structure Plans/ Amendment C20/ Amendment C96

11. Amendment C20, completed in December 2002, arose from a review of existing built form policies and controls in the municipality of Melbourne (known as the Built Form Review), generally outside the CBD. The review was undertaken as a response to recommendations made by the Planning Panel appointed to consider the new format Melbourne Planning Scheme; an expiry date on some existing built form planning scheme provisions and a need to review policies and controls that had been in place for many years.
12. Amendment C20 provides context in relation to the evolution of height controls in this location. The Panel generally considered that mandatory height controls were appropriate where it can be established that in the vast majority of cases an application not in accordance with the height requirements would be contrary to the design objectives, thereby detracting from the essential character of the area and as such buildings would not be supported by Council. The Panel doubted that such circumstances existing anywhere in the City of Melbourne.
13. In areas where the Panel did not support height controls it considered that the combination of the existing zone, overlays (including heritage) and policy provisions, together with the proposed Urban Design policy, were sufficient to provide appropriate built form outcomes and that adding a height control would not make a difference to the quality of the outcome.
14. The North West 2010 Local Plan (1999) is a Reference Document at Clause 21.11 of the Scheme. The Panel Report for Amendment C20 outlined that:

It is clear that North West 2010 represents a community/residents perspective of the desired built form future for North and West Melbourne and in this respect provides useful background. However, as a planning document, it lacks the balance and broad perspective evident in Carlton 2010. The Panel....does not consider that North West 2010 is sufficiently integrated within the Planning Scheme as a whole to be given this status.

15. The West Melbourne Structure Plan (April 2005) was adopted by City of Melbourne at the meeting of Council's Planning and Environment Committee on 3 May 2005. In summary the Structure Plan seeks to achieve a mix of residential and other uses reflecting the traditional mixed use character of the area. There is a requirement for low level podiums will provide streetscapes that reflect a human scale, even where taller buildings occur. This area is to retain its sense of being on the 'edge' of the CAD, North Melbourne and the emerging Docklands precinct with a built height and land use transition between the Melbourne CAD and the core areas of West Melbourne to the north of Dudley Street. The scale of development will step down from the CBD at La Trobe Street, and from Dudley Street to areas to the north.
16. The West Melbourne Structure Plan is a reference document within the Melbourne Planning Scheme and was discussed in the Panel report for Amendment C20 and Amendment C96. In general built form terms the C20 Panel report stated that:

The purpose of having policies and controls about built form is to identify what aspects of the existing urban fabric can be sacrificed to enable new development to occur and the city to continue to evolve, and those aspects that should be retained as an important part of the overall character or heritage of the city. To enable such judgements to be made, there must be a critical analysis that identifies why some existing character is "better" or more valued than others and therefore warrants retention or reflection. It is not sufficient to say, as the

Built Form Review has frequently done, this is the existing character, ipso facto it should be retained.

17. It also goes on to state:

The building height requirements set out in Design and Development Overlays are often referred to as height limits or height controls. The Panel intends to use the expression used in the VPPs, namely building height requirement. It does so because not all building height requirements will be height limits as they are commonly understood. A building height requirement may set a range of heights or even a minimum height. (p. 20)

18. It is clear from the above Structure Plans and corresponding panel reports that led to the current DDO33 control that each site is to be considered on its merits and there should be a performance based analysis on the development as proposed taking into consideration both local and wider State planning issues.

19. Amendment C96 (gazetted on 5 July 2007) was developed following the recommendations in the West Melbourne Structure Plan, April 2005 (the Structure Plan). The Structure Plan was prepared by Melbourne City Council utilising strategic planning material that included, at an earlier stage, the preparation of the West Melbourne Mixed Use Area Structure plan by Hansen Partnership with Charter Keck Cramer and Parsons Brinkerhoff (May 2004). The Structure Plan contains policies to provide a framework for land use and built form across the extent of the study area for a period of 20 years. The Structure Plan was developed to address the recommendations of the Panel for Amendment C20 (gazetted on 19 December 2002) that stated that further investigations should be carried out by Council to determine appropriate height controls for the area.

20. The Panel report regarding Amendment C96 indicates that: *'the difficulty we have in analysing this aspect of Amendment C96 is that there has been no rigorous analysis that explains or justifies the proposed 40m height limit for DDO33. For example, there is no analysis of the visual character of the nearer portions of the CBD in terms of emerging building height, or of how the desired development outcomes in the CBD-Fringe area would appear from the west (or anywhere else)....*

In conclusion, we do not consider that Council has demonstrated that discretion to permit buildings in excess of 40m height in proposed DDO33 would be inimical to the objectives and built form outcomes of its strategy, as set out in Clause 21.05 and 21.08-9 of the MSS and Schedule 33 to the DDO'.

STATUTORY CONTROLS

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

Planning Control	Permit/ Application Requirement(s)/ Decision Guidelines
Mixed Use Zone (MUZ)	<p>Permit is required for:</p> <ul style="list-style-type: none"> • Use (Clause 32.04-1) as a shop and office; • Buildings and works (Clause 37.04-5) to construct a residential building, and • Buildings and works (Clause 32.04-7) to construct or carry out works for a section 2 use (shop, office). <p>The application is not exempt from third party notice and review.</p> <p>Decision guidelines and application requirements are at the corresponding clause numbers specified above.</p>

Heritage Overlay (HO787)	<p>Under Clause 43.01-1 a permit is required to demolish, and to construct or carry out works.</p> <p>Under Clause 43.01-3, there are no exemptions from third party notice and review.</p> <p>Decision guidelines are listed at Clause 43.01-4.</p>
Design and Development Overlay (DDO33)	<p>Under Clause 43.02-2 a permit is required to construct a building or construct or carry out works unless the schedule specifies otherwise.</p> <p>Schedule 33 specifies:</p> <ul style="list-style-type: none"> • A permit is required for buildings and works; • Does not exempt buildings and works from third party notice and review; • Specifies a maximum building height of 40 metres, 16 metres podium height and minimum building setback of 6 metres from streets and 2 metres from laneways; • Decision guidelines are at Clause 43.02-5.
Car Parking (Clause 52.06)	<p>The Table at Clause 52.06-5 sets out the car parking requirements for the development. A total of 776 spaces are required (for dwellings: 736; for office space 40; none for retail as it is an unspecified use and there is no specific rate) and 152 are provided. A permit is required to reduce the car parking provision by 624 spaces.</p>
Land Adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay for a Category 1 Road (Clause 52.29)	<p>Under Clause 52.29-1 a permit is required to alter a crossover to a Road Zone (Dudley Street) and the application must be referred to the relevant Road Corporation (VicRoads).</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 116 spaces. The application provides for 115 spaces; therefore a permit is required to reduce this provision. It is noted that the provision of signage is to the satisfaction of the responsible authority and is not a permit requirement.</p>
Urban Context Report and Design Response for Residential Development of Four or More Storeys (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.</p> <p>Under Clause 52.35-3 the responsible authority must inform the applicant in writing before notice of an application is given that the urban context report meets the requirements of Clause 52.35-2. A letter was sent confirming the above on 20 December 2010.</p>
Integrated Public Transport Planning	<p>Under Clause 52.36-1 an application must be referred in accordance with Section 55 of the Act to the Director of Public</p>

(Clause 52.36)	Transport for a residential development comprising 60 or more dwellings or lots.
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General Provisions

22. **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.
23. **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.
24. **Referral and Notice Provisions:** Under Clause 66.03 an application must be referred to the person or body specified as the referral authority; Clause 52.29 (VicRoads) and Clause 52.34 (Director of Public Transport).

POLICY FRAMEWORK

State Planning Policy Framework (SPPF)

25. The following policies within the SPPF are relevant:

- Clause 10.04 (Integrated Decision Making)
- Clause 11.04-5 (Melbourne's Urban Growth)
- Clause 15.01-1 (Urban Design)
- Clause 15.02 (Sustainable Development)
- Clause 18.01 (Integrated Transport)
- Clause 18.02-2 (Cycling)

Municipal Strategic Statement (MSS)

26. Clause 21.03-1 Vision for Melbourne is for a thriving and sustainable City that simultaneously pursues economic prosperity, social equity and environmental quality. The Vision acknowledges:

The key to achieving Council's vision is the recognition that different parts of the municipality have to be managed differently and that development potential varies markedly. There is a mixture of activities and built form throughout the City and understanding the local context of a proposal is the key to understanding whether or not a proposal is acceptable.

27. Clause 21.04 sets out objectives for 'housing opportunities' and for the 'contribution of residential development' as follows:

*Figure 5 indicates the different areas where housing opportunities are identified. Within the municipality, parts of Carlton, North and **West Melbourne** will accommodate increased growth to varying degrees*

and

Residents are central to the vitality and liveability of the City. More people living within the City leads to an increase in, and diversity of, activity throughout the day and night, enhances safety, and ensures efficient use of services and infrastructure. Increased residential

development contributes to the overall urban consolidation objectives outlined within the State Planning Policy Framework.

28. Clause 21.08 sets out the implementation strategies that relate to particular neighbourhood areas and precincts within the municipality. North and West Melbourne is one of those areas. The Vision for North and West Melbourne reads:

North and West Melbourne is one of the City's dynamic and complex mixed use areas. It has a strong residential base of established and new dwelling stock and also has other business, commercial and industrial uses. Many elements in North and West Melbourne, including streetscapes and buildings, have been recognised for their heritage significance. Parts of North and West Melbourne are experiencing increasing pressure for residential development, especially in the city fringe areas. It is estimated that the population of North and West Melbourne will increase from 11,671 to 15,021 residents between 2001 and 2011.

29. Figure 20 indicates that the subject site is in an area which will encourage higher built forms adjacent to the Central City, support increased residential densities as well as small to medium enterprises that support the Central City and Docklands.
30. Strategies under the heading 'Housing and Community in North and West Melbourne include:
- Support residential and commercial development within the Central City fringe (identified as area [6] in Figure 20). In this area, increased residential densities should be balanced with the strategic role of this area in providing for small to medium enterprises that support the Central City and Docklands.
31. The implementation strategies for North and West Melbourne also go on to reinforce the key vision at Clause 21.03 of understanding local context and recognising differences throughout the municipality. Under 'land use' and 'built form', the following implementation strategies apply:

'Office and Commercial in North and West Melbourne':

- Support the ongoing operation and establishment of small to medium enterprises and businesses that provide professional and business support services to the Central City in the Mixed Use Zone of North and West Melbourne adjacent to the Central City (identified as [3, 6] in Figure 20).

'Heritage in North and West Melbourne':

- Protect heritage places, including buildings, structures, streetscapes, historic subdivision patterns, street layout, landscape features and indigenous sites in North and West Melbourne.
- Ensure that development is sympathetic to the heritage values of adjacent heritage areas and places.

'Height and Scale':

- Support higher building forms in West Melbourne in the area adjacent to the Central City (identified as [6] in Figure 20).

Amendment C162

32. Amendment to the Melbourne Planning Scheme C162 has been exhibited. It is understood that Council are considering submissions made and it has yet to be considered by the Minister for approval. In this amendment the subject site is identified in an area as being an area of "Ongoing Change". Under the proposed Clause 21.02 Ongoing Change Areas are *'the product of well established land use and development controls. They have a mix of built form and land uses. Development in these areas tends to occur on a site by site basis and may include changes of use as well as changes to the buildings, or new development. The*

degree of change in these areas will be varied and dependent on many factors including location, existing use and form of development. Development will be in accordance with the relevant planning controls within other section of the Planning Scheme’.

Local Planning Policy Framework (LPPF)

33. The following policies within the LPPF are relevant:

- 22.02 (Sunlight to Public Spaces)
- 22.05 (Heritage Places outside the Capital City Zone)
- Clause 22.17 (Urban Design Outside the Capital City Zone)

Other relevant policy/ matters

34. Other relevant policy/ matters include:

- Design Guidelines for Higher Density Residential Development (Department of Sustainability and Environment, 2004) (referenced at Clause 15.01-2)
- West Melbourne Structure Plan, April 2005 (referenced at Clause 22.11)
- North West 2010 Structure Plan (referenced at Clause 21.11)

NOTIFICATION

35. Under Section 52 of the *Planning and Environment Act 1987* the owners and occupiers of the abutting properties were given notice, signs were erected to the Dudley and Spencer Street frontages and a copy of the notice was published in the Melbourne Times and the Age for one issue. Notification commenced on 17 January 2011 for a 14 day period and was listed in the Melbourne Leader and the Age for one issue on 18 & 19 January 2011 respectively. The applicant confirmed this by statutory declaration on 1 February 2011.

36. As a result of this process, four objections have been received. The objections can be summarised as follows:

- The height of the development does not fit within the existing character of the local area, both in terms of its current character and the future development of this strategic area between Dudley Street and what lies to the south up to La Trobe Street. The forty metre height limit defined within DDO33 should be acceptable throughout this whole area but especially to the north end where the design objectives require a transition between the taller built form of the central city and the lower scale built form of West Melbourne;
- The site is not considered to be a gateway to the city and the proposal seeks to redefine the CBD zone within which tall towers are appropriate;
- The proposed height interrupts views to Docklands from the Flagstaff Gardens;
- The visual impact of the proposal from Flagstaff Gardens are not fully appreciated with the graphic presentations, particularly views from Flagstaff Gardens and this will, in turn, impact upon the recreational activities of the park;
- The proposal has not considered the potential impacts to the Flagstaff Gardens beyond 22 September shadows;
- Concerned about the traffic generation and increased pressure to the current road network, including during construction;
- A less intense development would result in a lesser traffic impact to the surrounding network and the report provided seems to rely on existing flows and does not consider peak user times;
- The controls that affect the site, including design and development and heritage overlays are put in place to give certainty and there is insufficient justification to allow the development to proceed on this basis;
- The proposal will set an undesirable precedent for development in the area; and

- The proposed demolition results in the existing art nouveau building as a podium with an un-proportional tower sitting above the existing fabric.

REFERRALS

37. The application was informally referred to the Department's Urban Design Unit, formally under section 52 of the Act to the City of Melbourne, and pursuant to Section 55 of the Act was referred to the Director of Public Transport and VicRoads. The following comments were provided:
38. **Urban Design (DPCD):** Generally support the application and consider that the tower height is a planning issue and does not influence urban design quality. They suggested that wind effects on the adjoining streets must be further clarified.
39. **City of Melbourne:** Further information received was referred to the City of Melbourne on 13 September 2010 (after initial referral). A formal response was received on 4 March 2011. Planning officers recommended objecting to the application on the basis of demolition of heritage fabric and the overall height of the new tower being well in excess of that specified within the applicable Design and Development Overlay. The matter was considered at the Future Melbourne Committee on 1 March 2011 where it was resolved that *'the Future Melbourne Committee recommend to the Minister for Planning that he consider a Planning Permit and a joint planning scheme amendment process based on the grounds listed in the delegate's report (refer Attachment 4 of Management report- Delegate's report)'*. The grounds for consideration included:
- The proposal results in an unreasonable loss of heritage fabric and is detrimental to the significance of the heritage place.
 - The proposal sets a precedent that is to the detriment of the emerging neighbourhood character.
 - The proposal fails to provide an appropriate transition between the taller built form of the central city and the lower scale built form of West Melbourne.
 - The proposal fails to maintain the heritage characteristics of the area by respecting the scale of, and providing a transition to, adjoining heritage buildings.
40. **Director of Public Transport:** offered no objection to the proposal subject to conditions. Letter dated 15 October 2010.
41. **VicRoads:** offered no objection to the proposal subject to conditions. Letter dated 13 October 2010.

ASSESSMENT

Land Use

42. The proposed uses for ground floor retail premises (excluding hotel, tavern and/or gambling premises), office and dwellings replaces a mostly underutilised site which makes a limited contribution to the area. The proposal is consistent with many policy directions, will provide housing choice, density and diversity in a centrally located area supported by existing infrastructure and public transport.
43. The development also responds appropriately with the broad strategic intent for residential development of this transitional area as outlined in the Local Planning Policy Framework, including the Municipal Strategic Statement (MSS) and the zoning control.

Design and Built Form

Demolition & Heritage

44. The application includes the partial demolition of the building on site. The existing building is affected by Heritage Overlay- Schedule 787 which is a site specific overlay. Under Council's Heritage Places Inventory July 2008, (an Incorporated Document of the Scheme) the building is identified as 'C' graded and within a Level 3 Streetscape.
45. Assessed against Clause 43.01 (Heritage Overlay) and Clause 22.05 (Heritage Places outside the Capital City Zone) the significance of the place is at a local level and the building is not included on the Victorian Heritage Register. The Building Identification Sheet for the site 10 January 1985 references the intact shop front as the building's notable feature.
46. Clause 22.05, Heritage Places outside the Capital City Zone, includes performance standards against which applications must be considered including demolition, form, materials, details and building height. Regard should be given to the significance of the place and whether demolition or removal of any part of the building contributes to the long term conservation of the significant fabric of that building.
47. The design response has integrated the existing heritage building into the overall composition and layout of the building by retaining its two street facades as a component of the podium. The City of Melbourne has raised concerns with the extent of demolition of the building, arguing that it threatens the building's heritage significance and structural integrity. However the Applicant's Heritage Adviser, [REDACTED] supports the extent of demolition on the grounds that Dudley and Spencer Street facades provide the building's only real fabric of heritage significance. Whilst the local policy contemplates retaining the facades and "first two rooms in depth" this is focused towards properties where the roof form is generally evident and forms an integral heritage feature. In this case, the roof sits behind the parapet and is not visible from the street and, moreover, the building's internal fabric is extensively modified and has no heritage significance. Therefore, there is little merit in retaining the building beyond its facades. It is also significant that the building's demolition could be contemplated in instances where the replacement building is of high quality and would achieve policy outcomes.
48. The current proposal both conserves the site's historic significance and provides new development that is responsible to its present and future urban contexts, implementing the new local policy objectives for the North and West Melbourne precinct. As such, this proposal overcomes the Tribunal's previous concerns with respect to the site's heritage value.

Urban Context Response/ Height & Setbacks

49. Amendment C20, completed in December 2002, arose from a review of existing built form policies and controls in the municipality of Melbourne (known as the Built Form Review), generally outside the CBD. The review was undertaken as a response to recommendations made by the Planning Panel appointed to consider the new format Melbourne Planning Scheme; an expiry date on some existing built form planning scheme provisions and a need to review policies and controls that had been in place for many years.
50. In areas where the Panel did not support height controls it considered that the combination of the existing zone, overlays (including heritage) and policy provisions, together with the proposed Urban Design policy, were sufficient to provide appropriate built form outcomes and that adding a height control would not make a difference to the quality of the outcome.
51. The West Melbourne Structure Plan is a reference document within the Melbourne Planning Scheme and was discussed in the Panel report for Amendment C20 and Amendment C96. In general built form terms the C20 Panel report stated that:

The purpose of having policies and controls about built form is to identify what aspects of the existing urban fabric can be sacrificed to enable new development to occur and the city to continue to evolve, and those aspects that should be retained as an important part of the overall character or heritage of the city. To enable such judgements to be made, there must be a critical analysis that identifies why some existing character is “better” or more valued than others and therefore warrants retention or reflection. It is not sufficient to say, as the Built Form Review has frequently done, this is the existing character, ipso facto it should be retained.

52. It also goes on to state:

The building height requirements set out in Design and Development Overlays are often referred to as height limits or height controls. The Panel intends to use the expression used in the VPPs, namely building height requirement. It does so because not all building height requirements will be height limits as they are commonly understood. A building height requirement may set a range of heights or even a minimum height. (p. 20)

53. It is clear from the above Structure Plans and corresponding panel reports that led to the current DDO33 control that each site is to be considered on its merits and there should be a performance based analysis on the development as proposed taking into consideration both local and wider State planning issues.

54. Clause 21.05 outlines built form principles to reinforce the existing structure of the city, to manage built form change and ensure built form change is consistent with the identified future character of the various precincts of the city. The clause makes a direct connection between managing built form and amenity to ensure liveable, high quality urban environments. One of the objectives of this policy is to ensure that the height, scale, massing and bulk of new development helps achieve an identified preferred future character and amenity. The site is within the West Melbourne area which is identified as an area where built form character is to be preserved. Overall the proposal responds to the matters set out in Table 4 and within the Clause.

55. This is a location that is substantially redefining its role in the context of the City. The development marks the entry point to the City grid and links from the southern parts of the City to the north. This site has a number of attributes which make it suitable for a taller building form. They include; its corner location on two main roads, no abuttal to existing residential properties, no overshadowing of important public spaces such as Flagstaff Gardens, and being sufficiently removed from the Flagstaff Gardens to avoid any significance impact on viewlines or outlook from the Gardens.

56. The application was accompanied by a site analysis and urban context report which outlined how the development meets the design objectives and built form outcomes of DDO33. DDO33 emphasises key objectives which further informs and adds detail to the general direction given by local policy. The objects relate to encouraging the development of a new built form character in this transitional area and ensuring the retention of the mixed use nature of the area.

57. Clause 21.08-9 (North and West Melbourne) of the Municipal Strategic Statement details the vision for North and West Melbourne. The site is within the area identified as [6] in Figure 20. It includes support for residential development and small scale business uses in this area while maintaining the predominantly low-scale nature of the area. It states that North and West Melbourne provides a balance of residential and commercial uses which maintain an emphasis on local community and liveability and which have a clear distinction in scale from the Central City. New development must ensure that development is sympathetic to the heritage values of adjacent heritage areas and places. There is policy support for higher buildings forms in this area, which is considered adjacent to the Central City.

58. It is considered that the proposed development meets the overall vision for the area as outlined in Clause 21.08-9 (North and West Melbourne). In particular the use of the land for residential and retail is supported. The proposal is sympathetic with providing a pedestrian scale through retention of the lower scale heritage building and reasonable tower setbacks.
59. The policy accepts the area is not exclusively low scale and the proposal respects and maintains the predominantly low-scale podium height of the area by setting back the tower from street frontages. The 32-storey building is well designed and provides a landmark/ edge /gateway from the transitional scale to the Central City to the lower scale buildings to the north. This is also consistent with policy for 'larger and prominent sites' within Clause 22.17 of the Scheme.
60. The existing built form in the surrounding area presents contrasts and diversity ranging from early European architecture to the modern presence of tall buildings. The precinct is undergoing and has undergone transformation with recent completed constructions, developments under construction and recent approvals within close vicinity of the precinct. The building heights, including towers affected by DDO33, include building heights of 14 - storeys at 33 Batman Street (approved by not yet constructed), 14-storeys (50 Jeffcott Street built), and 12-storeys (south of the site approved but not yet constructed).
61. The proposal provides a tower measuring at approximately 106 metres above the podium measuring at approximately 12 metres; with towers offset a minimum of 5 metres from Dudley Street, 8.5 metres from Spencer Street, 6 metres from its eastern boundary and 4.2 metres to the laneway to the south. This exceeds the 40 metre tower height and 6 metre setback to Dudley Street specified within DDO33.
62. The following Design Objectives and Built Form Outcomes apply:

Design Objectives

- *To provide a transition between the taller built form of the central city and the lower scale built form of West Melbourne.*
- *To maintain the heritage characteristics of the area by ensuring new development respects the scale of, and provides a transition to, adjoining heritage buildings.*
- *To ensure development limits impact on the amenity and outlook from Flagstaff Gardens.*

Built Form Outcomes

- *Built form which provides a visual transition between the taller prevailing heights of the CBD and the lower scale built form of West Melbourne.*
 - *Development provides a transition to adjoining lower scale heritage buildings by the use of podiums and upper level setbacks.*
 - *Development that does not overshadow Flagstaff Gardens between 11am and 2 pm on 22 September and 22 June.*
 - *Building setbacks that strengthen the pedestrian scale and focus of the area and maintain a sense of open outlook from the Flagstaff Gardens.*
63. There is justification for a departure from the suggested height due to the development's compliance with the design objectives, built form outcomes and local policy requirements. Detailed assessment is as follows:
- The height controls are not mandatory and are objective based to allow a degree of flexibility, particularly in an area that promotes higher density development and a new built form character.
 - There is supporting policy for intensification and urban consolidation within the State and Local Planning Policy Framework of the Scheme.

- The proposal acknowledges the transitional nature of the area. The area is undergoing change and the development will provide an as-of-right land use in the Mixed Use Zone. Taking a broad strategic perspective the proposal will provide a built form transition from the central city and Docklands areas. It will also provide transition from the neighbouring land uses due to the proposed setbacks.
- The development will clearly provide a new built form character for the site and transform an underutilised area of land close to the Central Activities District. The proposal is considered to provide a transition between the taller built form of the central city and the lower scale built form of West Melbourne. The development is well designed with high quality architecture and contemporary materials and finishes adding to the character of the area.
- The podium height and tower setbacks strengthen the pedestrian scale and focus of the area.
- Local policy considerations (Clause 22.17, Urban Design outside the Capital City Zone) have been given where the built form outcome is considered to produce an acceptable development with regard to massing (podium height, tower setbacks to streets, tower separation) and produces acceptable built form outcomes with regard to pedestrian amenity (wind amelioration, shadows).
- 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 a pedestrian scale, sunlight penetration, views to the sky and the deflection of wind downdrafts. The proposed tower setbacks comply with the requirements of DDO33 with the exception of a minor proportion of the overall frontage to Dudley Street, which is less than 6 metres. The reduced setback of a minimum of 4 metres and averaging 5 metres to 8 metres is acceptable as the proposal deflects wind downdrafts penetrating street level and the reduced tower setback does not impact upon shadows.
- The proposal maintains the heritage characteristics of the area by retaining the graded heritage building on site. There are no adjoining heritage buildings where a transition of scale is required.
- The site is offset from the Flagstaff Gardens where there is limited impact on the amenity and outlook from Flagstaff Gardens. There is no additional overshadowing from the development to Flagstaff Gardens.
- The development does not overshadow Flagstaff Gardens.

Street Level Frontages

64. Clause 22.17 (Urban Design outside the Capital City Zone) encourages ground floor occupancies to street frontage to directly engage and be visually evident with the street, and provide surveillance. The proposed development incorporates retail tenancies at ground floor level, by adapting the existing building to Spencer and Dudley Streets which is supported. The inclusion of these active frontages will also serve to increase the perception of safety in this area and provides visual interest to pedestrians. The upper level apartments provide passive surveillance of the site's immediate surrounds.

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

65. Local Policy 'Sunlight to Public Spaces' requires that development not cast additional shadows between 11.00am and 2.00pm at the equinox that would prejudice the amenity of public spaces. An analysis carried out by the permit applicant indicated that additional shadowing will occur to surrounding properties and streets (to the south and to the west). Given the overall height of the proposed building (significantly taller than that occupying the site), increased overshadowing is inevitable. It is noted, however, that the development does not increase shadowing to any notable public space, such as Flagstaff Gardens; therefore it is considered to be acceptable.

66. The proposal includes reasonable tower setbacks which deflect wind downdrafts from penetrating street level. The wind tunnel testing confirms this with the exception of an anomaly on the other side of the street away from the site itself. Further testing should be undertaken to ensure that the 'unusual' reading to the north is resolved. This can be resolved through appropriate condition.

ESD

67. The proposal is to achieve a 5 star NABERS Energy base building rating. The proposal incorporates passive design strategies and active strategies.

Internal Amenity

68. Consideration of the 'Design Guidelines for Higher Density Residential Development' (referenced at Clause 15.01-2) has been given where the building provides a good standard of amenity for future residents. There is limited reliance on borrowed light. Most bedrooms have an external wall, and thus, have access to natural light and ventilation. The dwellings will also not be constrained by any future development given the location of the site and offset from adjoining sites. All proposed dwellings have access to varying sized balconies, largely proportionate with the size of the dwelling itself. Additionally, the site is within walking distance of public open spaces particularly the Flagstaff Gardens to the east. Adequate storage should be provided and can be conditioned accordingly.

Car and Bicycle Parking / Altering Access to a Road Zone (Dudley Street)

69. The limited provision of on-site car parking is supported. Whilst not directly affected by the maximum limitation policy that applies to other surrounding residential areas within the municipality, the proposed rate of parking is consistent with the applicable rate of parking elsewhere. The development provides 152 car spaces, the Scheme requires the provision of 776; therefore the application seeks to reduce this rate by 624 spaces. The development, including limited car parking, was also supported by the Director of Public Transport.
70. Assessment of the Applicant's traffic engineering report as well as the City of Melbourne's comments concludes that the rate of parking to be provided on site, including points of access is acceptable. There is also support for the proposed loading bay and its location. Council's Engineering Services sought further clarification on a number of matters in relation to the car parking layout. These can be resolved through appropriate condition.
71. The application provides for a total of 115 bicycle spaces, where visitor spaces are provided on Dudley Street, with the remaining spaces located within the basement levels. The Scheme requires the provision of 116 spaces and the City of Melbourne does not support the location of bicycle racks on Dudley Street. A conditions can be included requiring 22 spaces be provided on site (21 relocated from the footpath and the additional 1 space required in accordance with the Scheme). Signage requirements outlined at Clause 52.36 can be dealt with via appropriate condition.

Objections

72. All objections have been considered and the main issues of height, building form, extent of demolition and traffic/ parking have been discussed elsewhere within this report.
73. In addition a number of objections express concern with potential increased strain on local infrastructure (social, community and physical), interruption of views to Docklands from the Flagstaff Gardens, and undesirable precedent that the development, if approved, would set for the area, which are not considered to be relevant planning considerations. There can be no expectation that distant views from existing spaces will be retained in perpetuity. The

Planning Scheme contemplates a level of change for this area and the City of Melbourne and other authorities will accommodate a modest increase in residents accordingly. Indeed the increase in population may provide justification for continuation of existing social infrastructure or provision of new services.

74. Construction concerns can be adequately addressed through a Construction Management Plan and Environmental Assessment to be submitted prior to commencement of development.

RECOMMENDATION

75. The application has been assessed against all relevant State and Local Policies, and the relevant application requirements and decision guidelines of the Mixed Use Zone, Heritage Overlay, Design and Development Overlay, and Particular and General Provisions of the Melbourne Planning Scheme. The proposal is considered to be appropriate and consistent with the above-mentioned considerations and it is recommended that a Notice of Decision to Grant a Permit be granted subject to the conditions contained within the notice.