



371-379 & 83-113
Batman Street, West
Melbourne

Planning Permit Application No. 2012/000444

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1 Application Details

Land /Address:	371-379 Spencer Street and 83-113 Batman Street, West Melbourne 3003
Application No:	2012/000444
Proposal:	Development of two multi-level residential towers above a five level podium and four basement levels, use of land for retail, reduction in the car parking requirements, alteration of access to a road in a Road Zone Category 1 and waiver of the loading and unloading requirements.
Applicant:	Bennelong Value Funds Pty Ltd
Zone:	Mixed Use Zone (MUZ)
Overlay(s):	Design and Development Overlay Schedule 12 Noise Attenuation Area Design and Development Overlay Schedule 33 City Fringe Heritage Overlay 771 - 355 Spencer Street West Melbourne (in part only and no change proposed to land and building included in HO771).
Restrictive Covenants and/or Agreements	Not applicable
Notification	107 Notices posted adjoining and surrounding owners and occupiers, erection of an on site public notice on Spencer Street and Batman Street frontages and publicising of notices in The Age and The Melbourne Leader newspapers. Advertising completed on 9 May 2012. Second round consultation and notification with registered objectors to the permit application in relation to amended plans lodged on 21 March 2014.
Recommendation	Notice of Decision to grant a planning permit with appropriate conditions.

1.1 [REDACTED]

[REDACTED]

NAME: [REDACTED]

SIGNATURE: [REDACTED]

DATE: 27 May 2014

Ph: [REDACTED]

2 Background

Bennelong Value Funds Pty Ltd (BVF) lodged permit application no.2012/000444 on 10 January 2012, following pre-application meetings with DTPLI and City of Melbourne in 2011. The plans lodged with the permit application provided 749 apartments in two residential towers above a podium and five levels of basement. The East tower had 29 levels above the podium and the West tower had 39 levels above the podium.

The towers are setback from the podium with rounded edges to address significant wind issues identified by MEL Consultants. A generous minimum setback (13.3m) to the East Tower from Spencer Street maintains sight lines to the Sands and McDougall building, included in HO771.

The plans lodged with the permit application follow assessment of the wind impacts of multiple design options to determine a design that maintains comfortable wind conditions at street level. Managing wind impacts is a key consideration due to the site's expose to prevailing north-west and westerly wind and because the building is not protected by surrounding buildings. Numerous design options were tested and eliminated because of wind impacts. The north-east corner of the site is required to contain a wind deflection screen to manage wind conditions at the ground level and in the public realm.

The permit applicant consulted with the Department of Justice before lodging the permit application, to address security and overlooking issues for Melbourne Assessment Prison (MAP). The plans submitted for planning approval include screening on windows and balconies to prevent views into the Melbourne Assessment Prison.

Public notice of the application commenced on 23 April 2012 and was completed on 9 May 2012. Three objections were received. One objection is from residents at [REDACTED] concerned about adverse impact on amenity. The second objection dated 8 June 2012 is from the City of Melbourne. The third objection dated 16 May 2012 was submitted by [REDACTED] regarding issues of construction management.

Following the receipt of objections and negotiations between the permit applicant, DTPLI, objectors and the City of Melbourne amended plans were lodged with DTPLI on 21 March 2014 showing a reduction in the height of the towers.

The amended plans are supported by a revised Context Analysis & Design Response Report prepared by Bruce Henderson Architects, a report by MEL consultants and a revised Transport Impact Assessment prepared by GTA Consultants.

In summary, the amended plans reduce the height of the West Tower by 22.2m and achieve a maximum building height of 101.5m (RL). The height of the East Tower is reduced by 15.2m. The "footprint" of the West Tower, as amended, is larger. The setback to the west boundary for the West Tower is also reduced to 14.26m compared to 18.9m shown on the original plans.

The architect has also modified the floor plans within the amended building envelope for each tower. The amended plans result in a loss of 45 apartments overall with a reduction from 749 to 704 apartments and provision of 510 resident car spaces.

The amended plans were referred to the City of Melbourne, [REDACTED] and the objector at [REDACTED] as part of a second round consultation process to inform the assessment of the revised proposal.

This assessment is based on the substituted plans received on 21 March 2014.

3 Site and Surrounds

The site comprises several titles between Jeffcott Street, Spencer Street and Batman Street, West Melbourne. The land included in the permit application is part of the larger holding and has an area of 4500qm. The site is irregular in shape with frontage to Spencer Street (50m), Batman Street (78m) and Franklin Place (combined 64m). The rear property boundary to McDougall Lane is 88m.

The site is located north of the Melbourne Assessment Prison (MAP) on Spencer Street and south of the Australian Red Cross Blood Service Melbourne Processing Centre at 100-154 Batman Street West Melbourne. Access to the blood service and loading zone on the north side of Batman Street is required at all times. Land to the west on Batman Street is developed as low scale offices. Land to the west addressing Franklin Place comprises low-scale former warehouse buildings converted to apartments. The Department of Justice Judy Lazarus Transition Centre is located to the south-west of the subject land, on the corner of Adderley Street and McDougall Lane, West Melbourne.

The land owned by the permit applicant includes the Sands and McDougall building at 355 Spencer Street. This building is included in the Heritage Overlay (HO771) and no change to the land or building included in HO771 is proposed as part of the development application. The proposed development has been designed with advice from [REDACTED] heritage consultant to minimise any adverse impact on the heritage significance of the Sands and McDougall building.

Part of the site on the corner of Spencer Street and Batman Street is undeveloped and used as an open lot car park. Part of the land internal to the site accessed from Franklin Place is also used as an open lot car park. The building on Batman Street is used as an office building and occupied by the Commonwealth Bank of Australia.

The subject land is located between Docklands, Dudley Street, Spencer Street and La Trobe Street and is part of the CBD Fringe precinct, to the north-west of the Hoddle Grid. The site is underutilised and can be considered a strategic development site because of its size and location on the fringe of the CBD.

Figure 1 – Site Locality Plan



4 Proposal

The key elements of the proposal are summarised as follows:

Key Elements	Comments
Use	Residential (706 apartments) with ground floor commercial tenancy (235 sqm) and associated car parking
Height	Two towers over a 5 storey podium. 28 storeys (east tower – 82.9 metres) and 34 storeys (west tower – 101.7 metres) across a sloping site.

Department of Transport, Planning and Local Infrastructure

Key Elements	Comments
Setbacks	<p><u>Podium</u></p> <p>Built to all boundaries with the exception of the west elevation which provides a partial 3.8 metre setback.</p> <p><u>Towers</u></p> <p>13.3 metres from Spencer Street.</p> <p>6 metres from Batman Street.</p> <p>14.25 metres to the west boundary.</p> <p>7.1 metres from Franklin Place with the exception of part of the west tower built to the southern side of Franklin Place.</p>
Gross Floor Area	79,203 sqm
Developer / Applicant	Bennelong Value Funds Pty Ltd C/O Meredith Withers and Associates
██████████	████
City of Melbourne	Objects to the permit application
PANS-OPS / OLS Flight Path Layers	The maximum building height of 101.7 metres is approximately 123 metres below the Obstacle Limitation Surface (OLS). The building is well below the PANS-OPS level of approximately 275 metres. It is the responsibility of the permit holder to ensure compliance with all aviation requirements and federal legislation.

- A mix of 184 x 1 bedroom apartments and 522 x 2 bedroom apartments. The floor plans for the two bedroom apartments offer one and two bathroom options.
- Two towers over a five level podium, height of East Tower is 82.9m (RL) /101.7 AHD, height of West Tower is 101.5m RL/120.30AHD,
- Five level podium with a height of about 13m on Batman Street ; the podium height relative to ground level varies because the ground level changes around the site;
- An activated podium on levels facing Batman Street;
- Part landscaped but enclosed frontage to Batman Street;
- Minimum set back between the podium and towers of 13.3m from Spencer Street, 6m to Batman Street, 14.25m to west boundary and 7.1 to Franklin Place. Part of the West tower is built to the boundary on Franklin Place;
- Minimum separation distance of 12.1m between towers with appropriate screening to provide reasonable privacy between apartments that face each other;
- Main pedestrian entry on Batman Street;
- Small number of apartments (45) with bedroom relying on borrowed light;

- Most apartments have a balcony for private open space;
- Facilities for residents within the development include meetings rooms and retail space on Batman Street, 20m lap pool, gymnasium, and roof top podium terrace garden on level 4 (podium),
- 537 car parking spaces;
- 222 bicycle parking spaces;
- Vehicle access from Franklin Place;
- Screening of windows and balconies on the south elevation of the towers to prevent overlooking into the Melbourne Assessment Prison. Fixed screening detail provided.

The proposal is supported by consultant reports addressing ESD, Waste Management, Traffic and Parking and Wind impacts.

The development comprises two curved apartment towers (East and West Tower) over a five level podium and 4 levels of basement car parking. The area to be developed is on the corner of Batman and Spencer Street and extends west along Batman Street towards Franklin Place

The towers are curved to prevent adverse wind conditions at street level. The East Tower has 24 habitable levels with an overall height of 82.90m (RL) or 101.7 AHD. The West Tower has 30 habitable levels with an overall height of 101.5m (RL) or 120.30 AHD. The height of each tower is also stepped to break up the mass of the building. The podium has a height of approximately 11m on Spencer Street. The podium is designed to match the height and proportions of the Sands and McDougall Building on Spencer Street and the use of red brick in the podium is a further reference to the heritage buildings and warehouses in the area.

The project architect advises that the minimum separation distance between the internal wall faces of the towers is 12.1m. Screening is provided between habitable rooms and balconies on the internal wall face of both towers to prevent direct views and loss of privacy between apartments.

In relation to bedrooms with borrowed light, the architect advises that only 15 of the two bedroom apartments in the podium levels rely on borrowed light for the second bedroom. In the West Tower, 30 of the one bedroom apartments rely on borrowed light to the bedroom. This is one apartment per level in the West tower. However, natural light access could be achieved if the occupant chose to reduce the size of the living room.

The development includes basement and podium car parking providing 537 car parking spaces for 704 apartments and the retail tenancy on Batman Street (234sqm). The car park levels are accessed from Franklin Place, which is widened to 6.3m. The project also provides 32 motor bike spaces, 222 bicycle spaces and storage, rainwater tanks, bin storage, main switch room and substation.

A loading zone is provided on the permit applicant's land with access from Franklin Place and all waste is stored within the basement in accordance with the Waste Management Plan prepared by Leigh Design.

The plans provide for five levels within the podium, including the ground floor on Batman Street and the ground floor on Spencer Street. The main pedestrian entry is from Batman Street with a second entry from Spencer Street. Car parking spaces are provided in all levels within the podium. The car parking spaces are "sleeved" with other uses and will not be visible from Batman Street, Spencer Street and Franklin Place. Potential views of parked cars within the podium from McDougall Lane will be prevented with a wall to a height of 1.2m above floor level in the car park.

Apartments are provided on level 4 and 5 in the podium and are built to the boundary onto Batman Street, Franklin Place and McDougall Lane. The towers commence on the level 4 plan. This level is actually level 6 in the development, including the Basement 1 plan and the Ground floor plan.

The ground floor plan provides a retail tenancy of 234sqm on Batman Street. The use of the retail space will depend on market response. Under the Mixed Use Zone, the use of land for Shop, and Food and Drink Premises with a leasable floor area of more than 150sqm requires a planning permit. The retail space will serve the development providing a walkable catchment.

Facilities for residents within the development include meeting room on the ground floor (Batman Street), lap pool and gymnasium in the podium, a roof top terrace on the podium that provides the opportunity for raised vegetable planters, landscaping, shelter and two multi-purpose meeting rooms.

Landscaping is provided along the Batman Street frontage to create a garden setting for the main entry lobby and an outlook for the retail space. In response to a request to bring the building to the street edge at ground level, the project architect proposes to enclose the garden area with glazing. Balconies at the upper levels in the podium overhang the garden strip on Batman Street.

Management of the potential for adverse wind conditions has been a critical consideration. The setbacks from frontages and the separation between towers have been carefully determined by wind tunnel testing undertaken by MEL Consultants. The plans include a wind deflection screen /cut out on ground level on the north east corner of the site (Spencer Street) to manage wind conditions. While this is not ideal from an urban design perspective, the cut out is required to avoid adverse wind conditions at the corner of Spencer Street and Batman Street. A canopy on Spencer Street wrapping around the corner into Batman Street will provide weather and wind protection for pedestrians. Details of the canopy can be addressed by permit condition.

The elevations show the finishes schedule. The building will be pre-cast concrete construction with screening and obscure glazing contributing to the articulation of the building as shown in Figure 2 below. Façade details, including fixed blade detail are provided on the façade detail plan. The podium is face brick to reference the Sands and McDougall building and other warehouses in the area.

Figure 2 –View from the Intersection of Batman and Spencer Street



5 Planning Policies and Controls

5.1 State Planning Policy Framework

The State Planning Policy Framework (SPPF) provides broad policy direction within the Victoria Planning Provisions. The planning principles set out under the SPPF are used to guide decision making on planning proposals across the state.

The following key SPPF policies are relevant:

- Clause 11.04-2 Activity Centre hierarchy
- Clause 11.04-4 Central Melbourne
- Clause 16 Housing particularly Clause 16.01-2 location of residential development and Clause 16.01-3 Strategic redevelopment sites.

The thrust of the above policies is to encourage appropriate land use and development which enhances the built environment; supports economic growth, delivers diversity in housing supply to meet existing and future needs and integrate transport and infrastructure planning.

An assessment against the above policies is provided in section 9 of this report.

5.2 Local Planning Policy Framework

The Municipal Strategic Statements (MSS) and Local Planning Policy Framework (LPPF) within Planning Schemes across Victoria outline principal characteristics of a given municipality (municipal profile) and provide specific visions, goals, objectives, strategies and implementation plans. The MSS within the Melbourne Planning Scheme identifies seven key themes for Settlement, Environment and Landscape Values, Built Environment and Heritage, Housing, Economic Development, Transport and Infrastructure.

The site is located in the North and West Melbourne local area as shown on the Local Areas Plan at Clause 21.11. The future directive for North and West Melbourne at Clause 21.16-5 is

"North and West Melbourne should provide a balance of residential and commercial uses that maintains an emphasis on local community and liveability. There should be a clear distinction in scale from the Central City with higher scales of development expected located at the central city fringe, around the North Melbourne Railway Station and along Flemington Road. In all other areas a lower scale of development should be maintained"

The subject land is located on the City fringe and is outside the "Stable Residential Area" as shown on the Growth Area Framework Plan at Clause 21.04. The subject land is located between "E-Gate" and "City North" Proposed Urban Renewal Areas and north- west of the Hoddle Grid.

Policies at Clause 21.16-5 support residential development in the Hoddle Grid fringe. 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 Hoddle Grid and Docklands and support higher building forms in West Melbourne in the area adjacent to the Hoddle Grid.

Clause 21.07 Housing is also relevant. This policy seeks to provide for new housing while preserving the valued characteristics of the existing neighbourhoods and ensuring that new residential development achieves high standards of amenity.

The following key local planning policies (Clause 22) are relevant to the proposal:

- 22.02 Sunlight to Public Spaces
- 22.17 Urban Design outside the Capital City Zone
- 22.19 Energy, Water and Waste Efficiency
- 22.23 Stormwater Management (Water Sensitive Urban Design)

The thrust of the above policies is to encourage high quality urban design outcomes and to ensure that development is environmentally sustainable and recognises its impact on the public realm.

An assessment against the above policies is provided in section 9 of this report.

5.3 Statutory Controls (Permit Triggers)

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

Planning Control	Permit / Application Requirement(s)																		
<i>Zone</i>	<p><i>Mixed Use</i></p> <p>Permit required to construct more than one dwelling on the land and to use land for Shop and Food and drink premises with a leasable floor area of more than 150 sqm.</p>																		
<i>Design and Development Overlay</i>	<p><i>Schedule 12 - Noise Attenuation Area (Etihad Stadium)</i></p> <p>Permit required to construct a building and noise attenuation requirements to be met</p> <p><i>Schedule 33 - CDB Fringe</i></p> <p>Permit required to vary the discretionary 40m maximum building height, podium height (16m) and setbacks above podium.</p>																		
<i>Parking Overlay – Schedule 1</i>	Not applicable																		
<i>Car Parking (Clause 52.06)</i>	<p>Unlike the Parking Overlay (PO) which caps car parking on land to a maximum rate for which it applies, Clause 52.06 applies minimum car parking requirements as follows:</p> <table border="1"> <thead> <tr> <th>Use</th> <th>Size (No. / m²)</th> <th>Parking Rate</th> <th>Parking Requirement</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Dwellings</td> <td rowspan="2">704 apts</td> <td>1 space to each 1 & 2 bedroom dwelling</td> <td>704 spaces</td> </tr> <tr> <td>1 visitor space for each 5 dwellings</td> <td>121 spaces</td> </tr> <tr> <td>Shop</td> <td>235m²</td> <td>4 car spaces to each 100² Leasable Floor Area (LFA)</td> <td>9 spaces</td> </tr> <tr> <td colspan="3">Total minimum rate:</td> <td>836 spaces</td> </tr> </tbody> </table> <p>The development proposes 537 car spaces and therefore a permit is required to waive the requirement.</p>	Use	Size (No. / m ²)	Parking Rate	Parking Requirement	Dwellings	704 apts	1 space to each 1 & 2 bedroom dwelling	704 spaces	1 visitor space for each 5 dwellings	121 spaces	Shop	235m ²	4 car spaces to each 100 ² Leasable Floor Area (LFA)	9 spaces	Total minimum rate:			836 spaces
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Total minimum rate:			836 spaces																
<i>Loading and</i>	Under Clause 52.07 no buildings or works may be constructed for the manufacture, servicing, storage or sale of goods or materials unless																		

<p><i>Unloading of Vehicles (Clause 52.07)</i></p>	<p>space is provided on the land for loading and unloading vehicles as specified within the table.</p> <p>A loading zone of 12sqm is provided on site however its width is 2m metres (instead of the required 3.6 metres) and its length is 6m instead of the required 7.6m), therefore a permit is required to vary this requirement.</p>
<p><i>Bicycle Facilities (Clause 52.34)</i></p>	<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 222 spaces (including both resident, visitor and employee spaces). The application provides for 222 spaces and therefore a permit is not required to reduce this requirement.</p>
<p><i>Urban Context Report and Design Response for Residential Development of Four or More Storeys (Clause 52.35)</i></p>	<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. The application was accompanied by an urban context and design report prepared by Bruce Henderson Architects.</p> <p>The permit application documentation also includes a report in response to the 'Guidelines for Higher Density Residential Development' and the 'Urban Design outside the Capital City Zone' local policy.</p>
<p><i>Integrated Public Transport Planning (Clause 52.36)</i></p>	<p>Under Clause 52.36-1 an application must be referred in accordance with Section 55 of the Act to the Director of Public Transport (Public Transport Victoria) for a residential development comprising 60 or more dwellings or lots. On 6 February 2012 the application was referred to Public Transport Victoria for comment.</p>
<p><i>General Provisions (Clause 61.01)</i></p>	<p>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.</p>
<p><i>Decision Guidelines (65.01)</i></p>	<p>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.</p>
<p><i>Referral and Notice Provisions (Clause 66.03)</i></p>	<p>Clause 66.03 works in conjunction with Clause 52.36 (amongst other requirements) and requires an application to be referred to the person or body specified as the referral authority. As previously mentioned, the Director of Public Transport is a specified referral body under Clause 52.36.</p>
<p><i>Relevant Reference Documents / Guidelines</i></p>	<p>Guidelines for High Density Residential Development</p> <p>The Guidelines provide 'better practice' design advice for higher density residential development. The Guidelines are structured around six elements of design consideration including:</p> <ul style="list-style-type: none"> ■ Urban Context, ■ Building Envelope, ■ Street Pattern and Street-edge quality, ■ Circulation and services,

	<ul style="list-style-type: none"> ■ Building layout and design, ■ Open space and landscape design
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6 Other Strategic Matters

6.1 Amendment C209 – Public Open Space

Planning Scheme Amendment C209 is part of the implementation of the City of Melbourne Open Space Strategy. The City of Melbourne Open Space Strategy 2012 provides the strategic direction for open space planning across the municipality for the next 15 years. The strategy is a comprehensive review of the existing public open space network within the City of Melbourne and provides a strategic basis for Council's future open space program.

The Open Space Strategy and associated Open Space Contributions Framework were endorsed by the Council's Future Melbourne Committee on 10 July 2012. Public consultation on Planning Scheme Amendment C209 was held from 21 February to 28 March 2013.

The amendment, if approved, will introduce a 5% or 8% minimum Public Open Space requirement being either as a percentage of site value, a land contribution or combination of both. The site is located within the 5% contribution area with Council's preference being for the provision of land.

An expert panel has been appointed by the Minister for Planning and its role is to consider C209 and all submissions. A directions hearing was held on 26 February 2014 and the hearing will commence on 23 June 2014.

In planning terms, while significant work has been undertaken to progress C209, the amendment is yet to be reviewed by the expert panel and subsequently adopted by Council. Therefore Amendment C209 is not a "seriously entertained" amendment and does not have any official status in the Planning Scheme. Therefore the rates and preference for public open space contribution do not apply to the permit application.

6.2 Plan Melbourne (May 2014)

Plan Melbourne is the Government's long term plan to accommodate Melbourne future growth in population and employment. Two key directions of relevance are:

- Key Direction 1.4 - outlines the plan for the expanded central city to become Australia's largest commercial and residential centre by 2040.
- Key Direction 2.2 - outlines the requirement to reduce the cost of living by increasing housing supply near services and public transport.

Plan Melbourne identifies that redevelopment of urban-renewal precincts and strategic redevelopment sites will be vital to creating more diversity in the housing market and additional community services. They will be a major source of higher –density, mixed use development.

6.3 City West Strategic Review

The City of Melbourne recently committed to undertake a strategic review of the City West area and has set aside funds in this budget.

It is expected that the review will include the area in a Capitol City Zone and introduce higher density overlays.

Work has not yet commenced on the review.

7 Notification

There is no exemption from notice under the Mixed Use Zone for this application. In a letter dated 10 April 2012, DTPLI issued a direction to the permit applicant to give notice of the permit application.

The notice requirements were:

- Display of two AO sized sign boards on the land for 14 days; one signboard fronting Batman Street and one fronting Spencer Street
- Send a public notice by post to 107 owners and occupiers of land who could be affected by the development
- Publish a notice in The Age and the Melbourne Leader newspaper.

The notice procedures were completed by 10 May 2012 and the permit applicant advised DTPLI in writing by letter dated 10 May 2012 that the advertising had been completed.

As a result of the notice, the following objections were received:

- City of Melbourne, dated 8 June 2012

- [REDACTED]

- [REDACTED]

- [REDACTED]

It should be noted that while the submissions from [REDACTED] and [REDACTED] were registered as objections, the content of their submissions were as such that development of the site was in fact supported subject to conditions. Matters addressed include overlooking and overshadowing of the Melbourne Assessment Prison, traffic and car parking and the need for detailed construction management plans.

In direct response to the City of Melbourne's objection, the permit applicant modified plans to reduce the height of the east and west tower, and lodged amended plans with DTPLI on 18 March 2014.

The objectors were re-notified and invited to comment on the amended plans. However, more general re-notification was not considered necessary because the height of the towers was reduced and the number of apartments reduced by 45 to 704. As a consequence of the reduction in height of the development and apartment numbers in the amended plans, it is concluded that an increase in material detriment to any person is unlikely.

8 Referrals

The application and amended plans lodged 21 March 2014 were referred to DTPLI Urban Design Unit, the City of Melbourne, the Department of Justice (noting no change to the proposed window and balcony screening) and pursuant to Section 55 of the Planning and Environment Act 1987 to the Director of Public Transport and VicRoads.

City of Melbourne: At the time of writing this report the City of Melbourne were yet to report the matter at Council's Future Melbourne Committee. Notwithstanding this it is understood that the

recommendation of officers is to maintain the objections provided to DTPLI included within its letter of 8 June 2012.

In its assessment of 8 June the City of Melbourne resolved to object to the proposal for the following reasons:

- The height and massing of the proposed building is inappropriate having regard to the built form outcomes and decision guidelines of Design and Development Overlay Schedule 33.
- The lack of activation and design of the ground floor frontages particularly at the north-east corner of the building will have an adverse impact on the public realm and is contrary to policy objectives of Clause 22.17 Urban Design Outside the Capital City Zone and the built form outcomes and decision guidelines of Design and Development Overlay Schedule 33.
- The height and massing of the proposed building will adversely affect the heritage significance of the adjoining heritage buildings (Sands and McDougall Building) and is inconsistent with the built form outcomes and decision guidelines of Design and Development Overlay Schedule 33.
- The proposed building is expected to generate additional vehicle movements which will have a detrimental impact on (the) Batman Street, Spencer Street and Franklin Place.

The City of Melbourne also provided conditions to be included in any permit which might be granted. The conditions included modifications to the plans to create an open space at the north-west corner of the lot with frontage to Batman Street. The open space area is to measure 5% of the total site area.

In addition to the unlawful nature of the proposed public open space condition, the permit applicant opposed the condition because it would require a redesign of the building and affect the project feasibility. The permit applicant also considers that public open space in the location requested has poor amenity due to adverse wind conditions and is remote from a residential catchment.

After many months of negotiation between the permit applicant and the City of Melbourne, it is understood that the City of Melbourne accepts that the permit applicant will not provide land for public open space within the development. However, as required under the planning controls, the permit applicant will pay an open space contribution in accordance with a condition in a subdivision permit for the development.

The permit applicant also consulted with City of Melbourne in relation to design changes to address concerns about height, massing and street activation. [REDACTED]

A reduction in the height of the development would also address heritage concerns and a reduction in the number of apartments would reduce traffic impacts. As a result of this further consultation, the permit applicant was encouraged to reference the maximum height of the West Tower to the approved development at 420 Spencer Street, with a height of 124m AHD.

Urban Design (DTPLI): DTPLI urban design is generally supportive of the proposal and identified that despite this proposal extending above the preferred height control, the development is justified by its strategic location and the careful crafting of building forms, which represent a rational site development well within central city norms.

Matters relating to the need for a continuous building line along street edges, ensuring the efficacy of louvered privacy screen and sustainable planting on the roof garden raised and can be dealt with via permit conditions.

Public Transport Victoria: No objection to the proposal.

VicRoads: No objection to the proposal subject to the conditions. It should be noted that Spencer Street is located within a Road Zone Category 1 and therefore consideration of traffic impact on the intersection of Batman and Spencer Street is matter for VicRoads.

The Department of Justice: No objection subject to the following conditions:

- The view/sightlines from the building are not to overlook the Melbourne Assessment Prison
- The external screens /blades are to permanently fixed to obscure and direct sight lines away from the Melbourne Assessment Prison (i.e unable to be altered by building occupiers)
- The 'construction management plan' is to include permission for site access by Department of Justice officers to conduct risk assessments(s) part way through and at the conclusion of construction, including assessing whether the design treatments to address overlooking of the Melbourne Assessment Prison have been satisfactorily achieved.

The permit applicant has agreed to these conditions.

9 Assessment

9.1 Consistency with Planning Policy

All planning policies whether they be included within the planning scheme, or not, provide guidance for development and are not intended to be interpreted as prescriptive mandatory controls. A guidance based approach encourages innovative development solutions responding to specific constraints and opportunities having regard to the requirements of the relevant zone and overlay.

The proposal is a well resolved scheme consistent with the characteristics of the area and its strategic vision identified in the Melbourne Planning Scheme.

State Planning Policy Framework

The State Planning Policy Framework (SPPF) provides broad policy direction within the Victoria Planning Provisions. The planning principles set out under the SPPF are used to guide decision making on planning proposals across the state.

The following key SPPF policies are relevant:

- Clause 11.04-2 Activity Centre hierarchy
- Clause 11.04-4 Central Melbourne
- Clause 16 Housing particularly Clause 16.01-2 location of residential development and Clause 16.01-3 Strategic redevelopment sites.

The thrust of the above policies is to encourage appropriate land use and development which enhances the built environment; supports economic growth, delivers diversity in housing supply to meet existing and future needs and integrate transport and infrastructure planning.

The proposal achieves State policy objectives by:

- Locating new housing on the edge of Central Melbourne on a strategic redevelopment site that has excellent access to the public transport, public open space (i.e Flagstaff Gardens) and the Central Business District (CBD).
- Supporting the role and function of Central Melbourne's capital city functions through high scale and high density mixed residential and commercial development opportunities.

- Providing 1 and 2 bedroom apartments that will contribute a well located and affordable housing option for Melbourne's increasing population.

Municipal Strategic Statement

The Municipal Strategic Statements (MSS) and Local Planning Policy Framework (LPPF) within Planning Schemes across Victoria outline principal characteristics of a given municipality (municipal profile) and provide specific visions, goals, objectives, strategies and implementation plans. The MSS within the Melbourne Planning Scheme identifies seven key themes for Settlement, Environment and Landscape Values, Built Environment and Heritage, Housing, Economic Development, Transport and Infrastructure.

The site is located in the North and West Melbourne local area as shown on the Local Areas Plan at Clause 21.11. The future directive for North and West Melbourne at Clause 21.16-5 is

"North and West Melbourne should provide a balance of residential and commercial uses that maintains an emphasis on local community and liveability. There should be a clear distinction in scale from the Central City with higher scales of development expected located at the central city fringe, around the North Melbourne Railway Station and along Flemington Road. In all other areas a lower scale of development should be maintained"

The subject land is located on the City fringe and is outside the "Stable Residential Area" as shown on the Growth Area Framework Plan at Clause 21.04. The subject land is located between "E-Gate" and "City North" Proposed Urban Renewal Areas and north- west of the Hoddle Grid.

The development addresses relevant MSS guidelines as follows:

- Responding to Clause 21.06 (Built Environment and Heritage) by reinforcing the City's overall urban structure by ensuring development respects the urban character of street and enhances places and precincts of identified heritage significance. The modulation and setbacks of the development seeks to preserve views to the Sands and McDougall building and the design and scale of the development appropriately balances the transition in scale from the Central City to lower forms throughout West Melbourne.
- Responding to Clause 21.07 (Housing) by providing new housing while preserving the valued characteristics of the existing neighbourhoods and ensuring that new residential development achieves high standards of amenity.
- Responding to Clause 21.16-5 (North and West Melbourne) by consolidating residential development in the Hoddle Grid fringe and making good use of land and existing infrastructure. Increased residential densities should be balanced with the strategic role of this area in providing for small to medium enterprises that support the Hoddle Grid and Docklands and support higher building forms in West Melbourne in the area adjacent to the Hoddle Grid.

Local Planning Policies

The thrust of the local planning policies is to specifically address the objectives and strategies outlined in the MSS. In summary the policy relevant to this proposal encourage high quality urban design outcomes and development which is environmentally sustainable and recognises its impact on the public realm.

The development addresses key local planning policy objectives as follows

- Responding to Clause 22.02 (Sunlight to Public Spaces) by ensuring that the development allows good sun penetration to surrounding land. The development will not overshadow any significant parks or public spaces and will not diminish the enjoyment of public spaces for pedestrians. This is achieved through a combination of height, tower design, building separation and placement.
- Responding to Clause 22.17 (Urban Design outside the Capital City Zone) by ensuring that the scale, siting, massing and bulk of development complements the surrounding built form context.

While taller than adjacent buildings the development maintains views to the Sands and McDougall heritage building and will provide a rich and positive contribution to the public realm. Specific details of how this is achieved are discussed further in this report.

- Responding to Clause 22.19 (Energy, Water and Waste Efficiency) by providing a building that will achieve high environmental performance standards at the design, construction and operation phase. Specific details of how this is achieved are discussed further in this report.
- Responding to Clause 22.23 (Stormwater Management and Water Sensitive Urban Design) by delivering a building that implements best practice in stormwater management through water sensitive urban design. Permit conditions can be used to ensure deliver of appropriate stormwater outcomes.

9.2 Land Use

The proposed residential and retail uses replace and reinvigorate an underutilised and strategic redevelopment site which currently makes limited contribution to the area. The proposal provides 704 apartments on the edge of the Hoddle Grid to support Central Melbourne and small to medium sized businesses located in the Mixed Use area on the edge of the CBD.

9.3 Design and Built Form

The subject land is included in DDO33 CBD Fringe that provides guidance about design and built form outcomes for new development. The composition of podium and tower is supported. The podium has a height of approximately 11-13 metres (accounting for change in elevation across the site) and this is consistent with the preferred podium height within in DDO33 of less than 16m where the site is adjacent to a heritage building.

The podium and setbacks from Spencer Street provide a visual buffer to ensure that the heritage buildings on Spencer Street are not physically or visually overwhelmed by the multi- storey development. This design response also maintains a pedestrian scale at the street and acceptable wind conditions.

Also consistent with the DDO objectives and local planning policy the proposal utilises clever design, tower setbacks, simplistic materials and podium form to complement surrounding buildings. The curved edges, provision of multiple towers and use of pre-cast concrete and extensive glazing will provide richness in building form and differentiate it from surrounding buildings. Where the development directly interfaces with the Sands McDougall heritage building the use of a 13.3 metre setback, low podium and face brick maintains the prominence and profile of the adjacent building and references establishes warehouses in the area.

The preferred setback of 6m for the towers is met or exceeded from Batman Street and Spencer Street. The preferred setback to Franklin Place and McDougall Place is not met. However, the reduction of the setback, including zero set back along part of the boundary, is acceptable because the adjoining land use is commercial and the width of the lane provides sufficient separation and a transition.

The design objectives in DDO33 include ensuring development limits impact on the amenity and outlook from Flagstaff Gardens. The subject land is located approximately 250m west of King Street and therefore meets this design objective. Shadow diagrams for June and September demonstrate that the proposed development does not overshadow the Flagstaff Gardens as required by the planning scheme.

The proposed will make a positive contribution to the built form quality of Spencer Street and Batman Street. While the towers exceed the 40m preferred maximum building height, the proposed heights respond to the developing built form context in the CBD fringe and the site's strategic location on the edge of the city.

All potential impacts have been addressed through the appropriate design response. The permit applicant has agreed to reduce the height of the towers in consultation with the City of Melbourne which culminated in the submission of amended plans on 21 March 2014. This design response has in part compromised the slender elegance of the towers as originally conceived, however, the City of Melbourne was not prepared to support the towers as originally designed. The permit applicant has elected to reduce the height of the towers to appease the City of Melbourne.

Matters relating to overlooking of the Melbourne Assessment Prison (MAP) have been addressed through the provision of externally mounted fixed screens which obscure direct views into the MAP without compromising internal amenity.

9.3.1 Height / Setbacks / Tower Separation / Architectural Design

The application includes a 5 level podium and two high-rise residential towers (82.90m and 101.50m) in the CBD Fringe area where a discretionary 40m height limit applies. At the request of the City of Melbourne, the permit applicant agreed to reduce the original height of the towers, drawing reference from the approved development for the site at 420 Spencer Street, West Melbourne.

The height of the West Tower has been reduced by 22.2m and the height of the East Tower reduced by 15.2m compared to the original plans. The proposed development responds appropriately to key planning policy objectives, recommendations and the requirements of the zone and overlay as follows:

- The development site is located on the fringe of the CBD and is one block north of La Trobe Street;
- The height of the towers draws reference from the developing built form context and the approved development at 420 Spencer Street that has a maximum height of 124.1 AHD;
- The development achieves the objective of a visual transition between the taller built forms of the central city south of La Trobe and the lower scale built form of West Melbourne,
- The siting and design of the East Tower, includes a setback of 13.3m from Spencer Street to maintain sightlines to the Sands and McDougall building to the south.
- The preferred podium height in DDO33 is achieved;
- The preferred setbacks above the podium are generally achieved. Where the minimum 2m setback is not achieved on part of Franklin Place and McDougall Lane, the design response is appropriate because the context is commercial and the width of the lane provides a buffer.
- [REDACTED] heritage consultant for the permit applicant considers that the development will not have an adverse impact of the Sands and McDougall Building. The podium building matches the height and proportions of the smaller Sands and McDougall building and will be finished with face brick referenced from the heritage and warehouse buildings in the area. The physical transition from street to tall building is successfully moderated by the podium.

The design rationale supporting the proposed height of the podium and East and West tower is provided in the design response prepared by the project architect. The built form context "plan" identifies the currently approved and/or under construction high-rise buildings in the environs of the site to demonstrate that developments of considerable height are located in the area.

These developments are indicative of the changing built form and land use character of the area as it moves from traditional low scale buildings to high-rise residential apartment developments that respond to the locational advantages of the CBD Fringe precinct and strong demand for residential development in this convenient location. The approved development at 420 Spencer Street is a built form reference for the site.

Based on the built form context analysis, it is considered that the proposed development provides a transition between the taller built forms of the Central City, stepping down to the preferred four storey maximum building height north of Dudley Street. While the height of the proposed towers is

more than 40m, a transition in building height is achieved, because the subject land is *centrally located* within the CBD Fringe precinct and building heights north of Batman Street step down in height to Dudley Street.

It is considered that the design, composition and tower heights are based on a proper consideration of the many relevant factors that contribute to an appropriate built form outcome including the developing built form context, amenity, heritage, streetscape, pedestrian scale, and wind effects.

In summary, the proposal has adequately responded to the opportunities and constraints of the land and will deliver an outcome that is appropriate in the context of the CBD fringe.

9.4 Street Level Activation and Pedestrian Safety

The development incorporates an active frontage to Batman Street, with the main pedestrian entry and a retail tenancy. The Spencer Street frontage is also activated with a second pedestrian entry. Apartments are oriented to provide enhanced surveillance of Batman Street, Spencer Street and Franklin Place. The apartments in the podium will also enhance casual surveillance of McDougall Lane and improve the perception of public safety, particularly along internal lanes that currently have sight lines to the Batman Street or Spencer Street.

9.5 Microclimate (Wind, Weather Protection, Overshadowing) & Internal Amenity

Wind

MEL Consultants has provided a report dated 18/11 dated July 2011 supporting the proposed development. In a letter dated 28 November 2013, MEL Consultants further advised that with the changes to the tower height and setbacks shown on the amended plans currently under consideration, the wind conditions outlined in MEL Report 18/11 would not be expected to change significantly and further wind tunnel testing would not be required.

The assessment of wind impacts is a major influence on the design, including the wind deflection screen on the corner of Spencer Street and Batman Street is essential to maintain comfortable pedestrian conditions.

MEL Consultants has confirmed that the setbacks achieve acceptable wind conditions for pedestrians. Notwithstanding the desktop assessment forming part of the amended plans, it is recommended that a full wind tunnel test be required with the revised scheme to confirm that the development achieves all relevant criteria including areas on the podium terrace. This matter can be addressed by way of permit condition.

Weather Protection

The plans include a canopy over the property boundary on the Spencer Street frontage wrapping around the corner into Batman Street at the top of the podium. The entry to the apartments from Batman Street and Spencer Street is also protected with a canopy. A permit condition requires the design details of the canopy projecting over the property boundary to be provided and requires the permit applicant to obtain the necessary approvals from the City of Melbourne and VicRoads to encroach over the property boundary.

The provision of a weather protection canopy is supported in this location and will enhance pedestrian amenity along footpaths where increased pedestrian traffic is expected.

Overshadowing

Design and Development Overlay 33 CBD Fringe and Clause 22.02 (Sunlight to Public Spaces) seeks to avoid development that overshadows key public spaces such as the Flagstaff Gardens between 11am and 2pm on 22 September and 22 June. Shadow plans for 22 June and 22 September at 10am,

11am, 12 noon, 1pm, 2pm, 3pm and 4pm show that the proposed development does not overshadow the Flagstaff Gardens. Resulting shadow impacts on surrounding streets is considered acceptable would be experienced if land were developed to the preferred 40 metre height control.

Only a small area of the Melbourne Assessment Prison is affected by shadows at 2pm on 22 September. However outside this time, the prison's outdoor areas are not affected by shadow from the proposed development.

By 12 noon on 22 September, the shadow has also moved from the balconies of the apartments at [REDACTED]. The shadow diagrams show that the objector's property at [REDACTED] is free of shadow after 11am on 22 September.

Internal and Interface Amenity

The provision of high standards of internal amenity for apartments within the development is achieved. Most apartments have a balcony for private open space and only 45 apartments within the total of 704, rely on borrowed light for the bedrooms. While not preferred, the low yield of these apartments is considered acceptable. Notwithstanding this permit conditions can be applied to seek alternative design solutions to improve the amenity of these bedrooms by providing versatility in the way they are used, such as providing door opening large enough to integrate the room into the living space.

Protection of privacy between apartments in the towers that have the potential for direct views has also been addressed with screening between windows and balconies. The architect has developed screening techniques that contribute to the design resolution and articulation of the building.

The separation distance between the towers is a minimum of 11.2m. It is acknowledged that this is close to the acceptable minimum (10m) in the context of the Central Melbourne. However, the interface between the towers has been designed to provide the required level of privacy and day light access between apartments.

The permit applicant consulted the Department of Justice to ensure the design, including the fixed blade screens, on the south elevation of the towers prevented views into the Melbourne Assessment prison. The project architect has developed four façade wall types that address screening and also contribute to the articulation of the building.

The building provides facilities for residents including meeting rooms, a lap pool, gymnasium and an outdoor roof top landscaped recreation area on the top level of the podium that includes raised vegetable beds and shelter.

The only direct residential interface for the proposed development is the former warehouse building at 23 Franklin Place located to the west of the car parking area between Franklin Place and McDougall Lane. This building has been converted to residential apartments that include two east facing balconies at the upper level. The plans provide for the proposed boundary wall for the car park levels in the podium not to exceed the existing adjoining balcony height.

At the balcony level the wall of the podium sets back to achieve a minimum 3.8m separation to existing balconies. However blade walls are proposed to intersect with the side wall of 23 Franklin Place which 'boxes in' the substation roof top below. The floor level of the east facing balconies sits at an RL 19.10.

While ResCode does not technically apply, it is common practice to use amenity standards as a guide to assist in determining appropriate outcomes for interface amenity. It is noted that the provision of a 3.8 metre setback will achieve an area clear to the sky in excess of the required ResCode minimum of 3sqm, however, due to the height and setbacks of the podium it is considered reasonable to apply Standard B17 of Clause 55.04-1 calculated from the finished floor level of the balconies. This can be achieved by way permit condition and will affect the profile of apartments in the podium.

The setback to the West Tower from the western boundary is a minimum of 14.25m.

In addition to the separation distance, the loft apartments at level 2 and level 3 in the podium of the proposed development are oriented north-south with opaque windows in the west elevation to avoid direct views onto the balconies in the residential apartments at 23 Franklin Place.

It is considered that the design response coupled with slight adjustments to increase the upper level setback protects the reasonable amenity of the residents of 23 Franklin Place.

Acoustic

The subject land is included in the Noise Attenuation Area that applies around Etihad Stadium. The permit applicant has provided a report by acoustic consultant Norman Disney Young addressing the design objectives and requirements of DDO12. The report concludes that appropriate noise attenuation can be achieved. A permit condition can require all apartments to be designed and constructed to achieve the requirements in Design and Development Overlay Schedule 12 Noise Attenuation Area in the Melbourne Planning Scheme.

It is also considered reasonable to apply a permit condition requiring assessment and treatment of the loading zone which abuts 23 Franklin Place to ensure that a reasonable level of amenity is maintained.

9.6 Environmental Sustainable Development (ESD)

The permit application is supported by a Sustainability Statement prepared by Ark Resources. The report pre-dates the introduction of Clause 22.19 Energy, Water and Waste Efficiency approved in April 2013 and Clause 22.23 Stormwater Management (Water Sensitive Urban Design) approved in March 2014. The permit application also includes a Waste Management Plan prepared by Leigh Design.

The development has been designed to achieve the objectives in the new policies directed towards energy, water efficiency, stormwater and waste management.

A permit condition requires an ESD report addressing objectives in Clause 22.19 and Clause 22.23 to be prepared and approved and initiatives identified in the report to be implemented.

9.7 Car Parking, Loading and Unloading of Vehicles, Waste Collection and Bicycle Facilities

GTA Consultants have prepared a Transport Impact Assessment. The report provides justification for the reduction in car parking numbers, (537 spaces for 704 apartments) based on several factors including in particular the availability of public transport. The development provides 222 bicycle spaces and meets the statutory requirements.

The GTA report concludes that the proposed parking layout is generally consistent with the dimensions set out in the Melbourne Planning Scheme and /or relevant standards and that there is adequate capacity in the surrounding road network to cater for the traffic generated by the proposed development.

A loading zone is provided on-site adjacent to Franklin Place. This is smaller than the requirements in the planning scheme. However, the size is considered to be acceptable because it is expected to be used infrequently.

A Waste Management Plan prepared by Leigh Design was lodged with the permit application. The City of Melbourne's Waste Management Guidelines have been updated since then. The permit includes a condition requiring a waste management plan to be prepared to the satisfaction of the City of Melbourne.

Concerns regarding the impact on street car parking demands and traffic were raised by objectors including the City of Melbourne. The GTA report of 12 March 2014 indicates that Batman Street

currently carries in the order of 1000 vehicles per day in any one location. Furthermore GTA estimates that the development is anticipated to generate up to 1074 vehicle movements per day, including 107 vehicle movements in a peak hour. This traffic will travel along Franklin Lane adjacent to the site and then west or east along Batman Street.

Therefore the post-development traffic analysis suggests that this will increase by in the order of 43 vehicle movements in a peak hour to the west of Franklin Lane and 65 vehicle movements in a peak hour to the east of Franklin Lane. The daily traffic volume on Batman Street to the east of Franklin Lane could increase to in the order of 1,650 vehicle movements per day (with lower volumes to the west of Franklin Lane).

Batman Street has one lane of through traffic in each direction, with kerbside and median parking. Whilst this layout does not directly match any of the street types in Clause 56.06-8 of the Melbourne Planning Scheme, it most closely fits the description of an Access Street Level 2, given the generous carriageway widths and on-street parking. An Access Street Level 2 has an indicative maximum capacity of 2,000-3,000 vehicles per day at any one location. Therefore, following the full development of the subject site, the volume of traffic on Batman Street will still be well within the capacity of the road.

The traffic analysis in the GTA report of 12 March 2014 also indicates that the site will generate up to 25 additional vehicle movements at any location along Spencer Street during a peak hour. Given that Spencer Street is an arterial road with two through lanes in each direction, this volume of additional traffic is negligible.

In relation to the question of the impact on parking, this matter can be addressed by requiring on-site visitor spaces in accordance with the Planning Scheme requirements to be used for that exclusive purpose by way of permit condition.

10 Recommendation

That a Notice of Decision to Grant planning permit 2012/000444 to construct a multi storey development comprising basement, podium and two high-rise apartment towers, retail premises, reduction in car parking requirements, alteration of access to a road in a Road Zone Category 1 and a waiver of the loading and unloading requirements be issued subject to conditions.

Prepared by:

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