

<b>APPLICATION FOR PLANNING PERMIT: 151-165 FRANKLIN STREET, MELBOURNE</b>	
<b>Application Number:</b>	2010/027863
<b>Proposal:</b>	Demolition and construction of two multi-storey towers a above a podium comprising residential apartments, first floor gymnasium and ground floor retail premises (other than adult sex bookshop, department store, hotel, supermarket and tavern)
<b>Applicant:</b>	Setia (Melbourne) Development Company Pty Ltd C/- Urbis Pty Ltd
<b>Zoning:</b>	Capital City Zone- Schedule 1 (Outside the Retail Core)
<b>Overlays:</b>	Design and Development Overlay- <ul style="list-style-type: none"><li>• Schedule 1 (Active Street Frontages)</li><li>• Schedule 14 (Area 19 &amp; 20) (Queen Victoria Market Area)</li></ul>
<b>Existing Use:</b>	Open lot car park with single storey building to Franklin Street
<b>Number of Objections:</b>	Not applicable
<b>Recommendation:</b>	Permit

## PROPOSAL

1. To demolish the existing building and construct a 29 and 45 storey residential towers above a 8-storey podium comprising of residential apartments, and ground floor retail premises (other than adult sex bookshop, department store, hotel, supermarket and tavern). The development comprises 810 apartments (predominantly 1 and 2 bedroom apartments), 339 car parking spaces, 4 motorcycle spaces, 293 bicycle spaces and approximately 1,488m<sup>2</sup> of retail floor space. The proposed gross floor area is 87,020m<sup>2</sup>.
2. Details of the application are as follows:
  - Provides a two level basement (including motorcycle and bicycle parking, storage and services- substations, pump rooms, loading bays, water tanks) and above ground car parking accessed from A'Beckett Street and concealed by a 'skin' of residential apartments;
  - Constructs an 8-storey podium across the site, measuring at 27.8 metres to Franklin Street and 27.75 metres to A'Beckett Streets (measured from the centre of the site frontage) providing ground level retail premises which also face the proposed north-south links (centrally to be known as Fulton Lane) and 86 visitor bicycle spaces at ground floor accessed from A'Beckett Street; includes communal space for residents to the roof of the podium including theatrette, pool and terraces. The podium has been designed to allow for future adaptation, including conversion of the car parking above ground to apartments due to the 3.1 metre floor to ceiling heights;
  - Construction of two towers above the podium measuring at 29 storeys (88.45 metres when measured from the centre of the site frontage excluding plant) to Franklin Street and 45 storeys (142.95 metres when measured from the centre of the site frontage excluding plant)

to A'Beckett Street. Both towers are setback 6 metres from the respective street frontages and are separated by 16 metres and offset to improve sight lines for future residents. Level 41 includes a 'sky deck' which is a communal facility for residents. The A'Beckett Street podium includes no setback to its common west boundary and further north into the site includes a 6.6 metre setback to its west boundary, and 2 to 6.295 metres from its common east boundary. The tower to A'Beckett Street is offset 2 metres from its common west boundary and 6.57 metres from its common east boundary. The Franklin Street podium includes a 6.6- 13.14 metre setback to its common west boundary and 0.985- 6.54 metres to its west boundary. The tower to Franklin Street is offset 10-13.14 metres from its common west boundary and 0.985 metres from its common east boundary;

- Materials and finishes include concrete finish, render finish, glazing, composite metal and timber; and
- The submission is supported by comprehensive reports including a wind tunnel assessment, traffic report, waste management report, landscape design report; and ESD reports and statements.

### **SITE AND SURROUNDS**

3. The site is located on the southern side of Franklin Street, between Queen and Elizabeth Streets, Melbourne. The site is an irregularly shaped parcel includes a frontage of approximately 46 metres to Franklin Street, a depth of 101 metres, with an overall area of 4,358m<sup>2</sup>. The site slopes from west to east by 0.9 metres along Franklin Street, 1.3 metres along A'Beckett Street and 2.6 metres diagonally from its north-west corner at Franklin Street to the south-east corner on A'Beckett Street. The site includes an easement (located to the eastern boundary of the site towards the middle of the site) and includes a drainage, sewerage and passageway reserve to its western edge. The reserve at its north-western edge is currently used as a loading and garbage collection area for the adjoining property.
4. The site is predominantly vacant; with the exception of a single-storey brick building located to the south-west corner of the site, and is otherwise used as an open lot car park. The site is devoid of any substantial vegetation.
5. To the north of the site, on the opposite side of Franklin Street, is a range of building ages and heights. The buildings vary from 1 to 11 storeys in height used for variety of purposes including accommodation, warehouses and retail. The Nova Stargate Apartments is directly opposite and stands at 11-storeys in height.
6. To the west of the site, is the 5-storey Hotel Bakpak short-term accommodation building which is adjacent to Anthony Street, which runs north-south between Franklin and A'Beckett Streets; further west of this is Melbourne Terraces, an 8-storey residential building. To the south of the Uni Lodge building, fronting Anthony Street is a 3-storey apartment building, and further south, fronting A'Beckett Street, is another 3-storey apartment building. All of these buildings include window openings facing the subject site.
7. To the east of the site, is a 3-storey building known Vosti House Apartments, which is a converted office building. Further east of Vosti House is a 2-storey building and further east, on the corner of Elizabeth Street, is the Q Apartments measuring at 13-storeys in height. To the south of this is the rear of 441-447 Queen Street a 3-storey building used for retail and apartments at the upper level. To the south of this, fronting A'Beckett Street is a Uni Lodge building which is 8-storeys in height. All of these buildings include window openings facing the subject site.
8. To the south of the site, on the opposite side of A'Beckett Street, are a variety of building heights and uses. From Elizabeth to Queen Street building heights vary from 2, 4, 21 to 34 storeys in height. The larger parcel sizes have allowed for larger office towers fronting both La Trobe (34 storeys) and Queen (KTS House 21 storeys) Streets.
9. The broader precinct includes a number of newer high rise towers and approvals. Currently under construction along A'Beckett Street, between William and Queen Streets are 25 to 27 storey residential towers, recently completed on A'Beckett Street between Elizabeth and Swanston

Street is A'Beckett Tower measuring at 33-storeys in height, and recent approvals at 410 Elizabeth Street, corner of A'Beckett Street and 500 Elizabeth Street, corner of Therry Street which measure at 54 and 66 storeys respectively.

## **BACKGROUND**

### *Amendment C20*

10. 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.
11. Although superseded by Amendment C61 in 2006 (discussed further below) in terms of the height controls that now apply to the subject site, Amendment C20 is relevant to this proposal because it 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.
12. 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.

### *Amendment C61*

13. Amendment C61 gazetted on 8 June 2006 reviewed the controls within the Queen Victoria Market Precinct outlined within Design and Development Overlay- Schedule 14. The amendment related to modifying the current height controls to reflect the existing heights of the Market buildings and including additional height requirements for new buildings and works within the Queen Victoria Market Precinct area, in particular on land generally between Franklin and A'Beckett Street (which includes the site).
14. The Panel Report provides useful context behind the form of the wording of the current height controls and their intended purpose. The report clarifies that the need for the Amendment was, in Council's view:  
  
*To address the conflicting notions of urban change in this precinct, between the capital city role of the market as an important retail and tourism attraction, and the expectations of local residents regarding the scale of development and local character and amenity.*
15. The report summarises the arguments, information and debate that occurred throughout the consideration of the Amendment. The salient discussion points that can be taken from the Panel Report are:
  - Height controls are not necessarily a failsafe way of ensuring good built form outcomes. They can have the potential to stifle innovation and good performance based outcomes;
  - City centre high rise development has already broken through the La Trobe Street boundary, for examples the Wills Tower development (and others);
  - The Panel was concerned about confusion around the concept of '*transition*' in building height from the market, and what was meant in the controls by the phrase '*maintaining and enhancing the CAD skyline views*' and required the design objectives be re-drafted to clarify these matters;
  - In the context of the discretionary height limits being debated and with respect to the Drapac site fronting Franklin, William and A'Beckett Streets, Council suggested that the sheer size of

the site would allow some flexibility in the 60m height control limit; this concession was not enough for the proponents of the development of that site who argues that the height controls impose a built form constraint that may prejudice the ability for this very large site to meet the land use aspirations of the CCZ;

- In recommending the 30m and 60m height controls, the Panel was advocating that a transitional control providing an appropriate 'interface' with higher buildings in the City's heart was appropriate, but that the crux of the issued was the 'vertical dimension' of this control. It noted that greater height is warranted on the southern edge of the precinct, and that imposing such a control must recognise that there were extant approved developments of greater height than 60m in this area (such as the 72m high Radisson Hotel development on the corner of A'Beckett and William Streets); and
- The Panel noted that it is desirable that for many major development proposals a modelled design approach which may in fact exceed the stated maximum height could prevail, and that this would require innovative and creative proposals from developers.

## **PLANNING CONTROLS**

16. Within the Capital City Zone- Schedule 1 (CCZ1), and Design and Development Overlay- Schedules 1 (Active Street Frontages) and 14 (Queen Victoria Market Area).

### **Zone**

17. The purpose of the Capital City Zone- Schedule 1 is: *'to provide for a range of financial, legal, administrative, cultural, recreational, tourist, entertainment and other uses that complement the capital city function of the locality'*.
18. Under Clause 37.04-4 a permit is required to demolish a building, construct a building or to construct or carry out works unless a schedule to the zone specifies otherwise. Schedule 1 requires a permit to construct or carry out works, and for works that would cast a shadow between 11.00am and 2.00pm on 22 March and 22 September over a public space (including streets). No permit is required for the proposed uses. The application is exempt from notice and review rights. Decision guidelines and application requirements are at Clause 37.04-4.

### **Design and Development Overlays**

19. Under Clause 43.02-2 (DDO) a permit is required to construct a building or construct or carry out works unless a schedule specifies otherwise. The schedules specify the following:
- Schedule 1: does not exempt ground floor buildings and works from requiring a permit; and specifies that buildings with ground level street frontages must contribute to the safety, visual interest, and vitality of the street;
  - Schedule 14: does not exempt buildings and works from requiring a permit. An application must be accompanied by a site analysis and urban context report which demonstrated how the proposed buildings and works achieve each of the Design Objectives and Built Form Outcomes of this schedule, and any local planning policy requirements. An application to exceed the Maximum Building Height must demonstrate how the development will continue to achieve the Design Objectives and Built Form Outcomes of this schedule and any local planning policy requirements. The site is affected by Areas 19 and 20 which specify a maximum building height of 30 and 60 metres respectively. Building height is the vertical distance between the footpath or natural surface level at the centre of the site frontage and the highest point of the building, with the exception of architectural features and building services.
20. The above schedules exempt buildings and works from notice and review rights.
21. Decision guidelines are at Clause 43.02-5.

### **Particular Provisions**

22. **Car Parking:** Under Clause 52.06-6 a parking precinct plan affects the Capital City Zone including the subject site. The Schedule to this Clause specifies a maximum number of car

parking spaces and the provision of 1 motorbike space per 100 car parking spaces. The limitation policy allows for 846 spaces. The provision of 339 car spaces on site is below the maximum allowed under the schedule; therefore no permit is required. The Schedule also specifies the provision of 1 motorbike space per 100 car spaces to be provided. The provision of 4 motorbike spaces is well in excess of that required; therefore no permit is required.

23. **Bicycle Facilities:** 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 251 spaces. The application provides for 293 spaces, therefore no permit is required under this provision.
24. **Urban Context Report and Design Response for Residential Development of four or more storeys:** 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. 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 11 March 2011.
25. **Integrated Public Transport Planning:** Under Clause 52.36-1 an application must be referred in accordance with Section 55 of the Act to the Director of Public Transport for a residential development comprising 60 or more dwellings or lots.

### **General Provisions**

26. **Responsible authority for administering and enforcing the Scheme:** The Schedule to Clause 61.01 specifies that the Minister for Planning is the responsible authority for considering and determining application in relation to developments with a gross floor area exceeding 25,000 square metres.
27. **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.

### **POLICY FRAMEWORK**

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

28. The following policies within the SPPF are relevant:

- Clause 10.04 (Integrated Decision Making) indicates that planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.
- Clause 15.01-1 (Urban Design) seeks to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity. Clause 15.01-2, Urban Design Principles, encourages development that provides architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties. Developments are considered against design principles including: context, the public realm and safety; landmarks, views and vistas; pedestrian spaces; heritage; consolidation of sites and empty site; light and shade; energy resource efficient; architectural quality; landscape architecture.
- Clause 15.02 (Sustainable Development) seeks to encourage land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions.
- Clause 18.01 (Integrated Transport) seeks to create a safe and sustainable transport system by integrating land-use and transport. Strategies include concentrating key trip generators such as higher density residential development in and around Central Activities Districts, Principal, Major and Specialised Activity Centres on the Principal Public Transport Network.

- Clause 18.02-2 (Cycling) seeks to integrate planning for cycling with land use and development planning and to encourage cycling as an alternative mode of travel.

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

29. 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.*

30. 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, Docklands, Southbank (north of City Link) and **the Central City** will over the next ten years be areas that accommodate the most significant population growth*

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.*

31. Clause 21.08 sets out the implementation strategies that relate to particular neighbourhood areas and precincts within the municipality. The Central City is one of those areas. The Vision for the Central City reads:

*The Central City continues to be the primary place of employment, business, finance, entertainment, cultural activity and retail in Victoria, and a place that facilitates the growth of innovative business activity.*

*The Central City continues to be a 24 hour precinct, attracting visitors from a wide catchment at all times of the day to a diversity of entertainment venues and facilities. However, entertainment venues and other potential noise generating premises have been carefully managed to minimise off site impacts, in recognition of the growing residential community within the Central City.*

*The Central City has grown as a high-density inner city residential environment. Excellent construction and effective management of non residential uses as well as good design of new dwellings in the City has meant that a diverse range of uses can co-exist.*

32. Strategies under the heading 'Housing and Community in the Central City', include:
- *Support permanent and short term residential development in the Central City that accommodates a diverse population.*
  - *Ensure that new dwellings are designed so that they provide occupants with a reasonable level of amenity consistent with the Land Use Amenity Principles, and do not undermine the ability of existing and new business and commercial, retail and entertainment uses to successfully function in the Central City.*
33. The implementation strategies for the Central City 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 headings, the following implementation strategies apply:

'Retail, entertainment and the arts in the Central City':

- *Encourage a mix of public and commercial uses at ground level in new development to support street life and provide pedestrian interest.*

**'Height and Scale in the Central City':**

- *Ensure new tall buildings add architectural interest to the city's sky line.*
- *Ensure that the design of tall buildings in the Central City promotes a human scale at street level especially in narrow lanes, respects the street pattern and provides a context for heritage buildings.*

**'Streetscape':**

- *Ensure development fronting streets creates a continuous building edge and integrated streetscape.*
- *Ensure that security treatments for shopfronts allow for views into the premises at night and positively contribute to the streetscape.*

**'Pedestrian amenity':**

- *Ensure that pedestrian use is given priority in the Central City.*
- *Ensure that vehicle ingress and egress points do not impede pedestrian flow, safety and amenity along key pedestrian routes and areas.*
- *Ensure that developments provide weather protection along key pedestrian routes and areas, where this does not conflict with building or streetscape integrity.*
- *Ensure that the design of buildings and public realm in the Central City enhances the safety of pedestrians, visitors and occupants of buildings.*

**'Sunlight to public spaces':**

- *Ensure sunlight penetration in the middle of the day to key public spaces, appropriate to their role and function.*

**Amendment C162**

34. 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)**

35. The following policies within the LPPF are relevant:

- 22.01 (Urban Design within the Capital City Zone) identifies that the future vitality and success of Melbourne will be achieved by new development responding to the underlying urban framework and fundamental urban characteristics, whilst establishing its own identity and character in harmony with the existing context. The policy has four sections addressing Public Spaces; Circulation; Building Design & Areas of Transition, and includes design principles and performance guidelines.
- 22.02 (Sunlight to Public Spaces) requires that development not cast additional shadows between 11.00am and 3.00pm at the equinox (22 September and 22 March) that would prejudice the amenity of public spaces.
- 22.20 (CBD Lanes) seeks to protect and enhance the City's laneways which provide a human scale built form and intimate environment that is less common in the city's main streets. The policy identifies four core value characteristics that contribute to the success of

the lane as a pedestrian environment including: Connectivity, Active Frontages, Elevational Articulation, and Views.

## **NOTIFICATION**

36. Under Clause 37.04 -4 (Capital City Zone), Schedule 1 of the CCZ an application to construct or carry out works, under Clause 43.02-2 (Design and Development Overlay), Schedules 1 & 14 an application construct or carry out works, is exempt from the notice requirements of Section 52 (1) (a), (b) and (d), the decision requirements of Section 64 (1), (2) and (3) and the review rights of Section 82 (1) of the Act.

## **REFERRALS**

37. The application was referred to the Department's Urban Design Unit, the City of Melbourne, and pursuant to Section 55 of the Act was referred to the Director of Public Transport. 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.
39. **City of Melbourne:** Generally supported the application subject to the reduction in height of the towers to 36 metres (Franklin Street) and 85 metres (A'Beckett Street) to ensure that it is commensurate with the existing and preferred character of built form for this area. The revised heights would also ensure that the lower scale of the Queen Victoria Market is protected and the amenity of the area maintained. It is noted that the nominated heights are 20% above that specified in DDO14. There was also a recommendation to incorporate a 5 metre setback to the western boundary of the southern (A'Beckett Street) tower. Other comments related to detailed matters which can be resolved through conditions.
40. **Director of Public Transport:** offered no objection to the proposal and did not include any conditions.

## **ASSESSMENT**

### ***Land Use***

41. The proposed uses for ground floor retail premises (other than Adult sex bookshop, department store, hotel, supermarket and tavern), first floor gymnasium (for resident use only) and accommodation (dwellings) replaces a mostly underutilised and inactive site which makes a limited contribution to the area and also removes a prohibited use. The proposal is consistent with many policy directions, will increase the residential population and contribute to the on-going revitalisation of a 24-hour Central Activities District.

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

#### ***Urban Context Response/ Height***

42. 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 significant transformation with recent completed constructions, developments under construction and recent approvals within close vicinity of the precinct. The building heights, including towers affected by DDO14, include building heights of 25-27 storeys (A'Beckett Street between William and Queen Streets), 33 storeys (A'Beckett Street between Elizabeth and Swanston Streets) and 54 and 66 storeys along Elizabeth Street (on the corners of A'Beckett and Therry Streets respectively).
43. The proposal provides two towers measuring at approximately 90 and 145 metres respectively above the podium measuring at approximately 30 metres, with towers offset a minimum of 6 metres from street frontages. This exceeds the 30 and 60 metres specified within DDO14.

44. The following Design Objectives and Built Form Outcomes apply:

Design Objectives

- To ensure that any development within the Queen Victoria Market is consistent with its Victorian character and low-scale.
- To ensure that development around the Market edged and within close proximity to the Market provides an appropriate scale transition from the low scale Market buildings towards the medium and high rise towers in the Central Business District.
- To ensure that any development in close proximity to the Queen Victoria Market is compatible with the scale and character of the Market, surrounding residential developments and adjacent precincts.

Built Form Outcomes

- Area 19: The scale of development provides an appropriate interface from the low scale built form of the Queen Victoria Market towards the medium and high rise towers of the Central Business District.
- Area 20: The scale of development provides an appropriate relationship in building height between the traditional low scale of the Market and immediate environs of the Central Business District.

45. 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 site is not located within a sensitive heritage streetscape where a mixed built form response exists. The development provides an appropriate scale through the podium height.
- The development is considered to provide an appropriate scale of transition from the low scale Market buildings towards the medium and high rise towers in Elizabeth and La Trobe Streets.
- The development is not considered to be in close proximity to the Queen Victoria Market (compared with other sites within the precinct) where compatibility with the scale of the Market is less critical. The surrounding residential developments are protected through appropriate tower offsets.
- The Built Form Outcomes for both areas which affect the site (Area 19 and 20) provide an appropriate interface from the low scale built form of the Queen Victoria Market towards the higher built form in the City, particularly Elizabeth and La Trobe Streets. The proposal will form a back-drop to the higher tower elements beyond.
- Local policy considerations (Clause 22.01, Urban Design within 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 both on site and off site) and produces acceptable built form outcomes with regard to pedestrian amenity (wind amelioration, shadows).

46. When consideration is given to the previous Panel Report ("the report") regarding Amendment C61 and the reconsideration of the height controls around the Market environs, it is noted that the report's primary strategic justification for the amendment was the Queen Victoria Market Built Form Review (BFR) by Hansen Partnership that was commenced in early 2002 and completed in July 2003. Specifically, with respect to the preferred 30 metre height control that applies to the Franklin Street frontage of the site, the Panel notes the following:

*In fact, no alternative height control for Area 21 was seriously put forward by the various parties to the Hearing. It has then become the Panel's view that 30m can be supported as follows. For a discretionary height control, the originally suggested measure (30m) through the BFR, supported post-exhibition by Council and encompassing or accommodating most existing and proposed built form in the subject Area, is the most appropriate*

*Thus, 30m is also the Panel's preferred control for Area 21 (linking it to Area 20).*

47. It is apparent from this statement within the report that the 30m height control as initially proposed by Council was never seriously challenged or debated at Panel. The Panel was never

presented with a contrary position to suggest that the height control in this area should be greater and as a result the Panel has simply adopted Council's position.

48. With respect to the preferred 60 metre height control that applies to the A'Beckett Street frontage of the site, the Panel noted the following:

*The Panel believes that, with the recommended discretionary controls, it is possible (and desirable) for many major development proposals a 'modelled' design approach which may, in fact, exceed the maximum height could prevail. This will require creative and innovative proposals from developers which are responded to be a professional assessment team with expertise in urban design.*

*Thus 60m (extending along the A'Beckett Street edge of the Precinct), is the Panel's preferred control for Area 1.*

49. The Panel recognised that urban design excellence may result in built form outcomes that exceed the preferred maximum building height in this area. As identified in the urban context and planning report lodged as part of the application, the proposed development has been designed to respond appropriately to its context and create a design standard that may be a catalyst for future development in the north of the Central Activities District (CAD). The CAD north of La Trobe Street has continued to expand and evolve since the Queen Victoria Market Built Form Review commenced and as a result the built form context has altered significantly since its inception in 2002.
50. The height does not result in significant public spaces receive additional shadowing and visual dominance on the street. The towers will be visible in the market precinct, but other towers already are, and the towers are not in direct proximity to any heritage building or streetscape. It is on this basis that the proposed heights are considered to be appropriate.

#### *Setbacks/ Tower Separation*

51. The proposal provides two towers measuring at approximately 90 and 145 metres respectively above the podium measuring at approximately 30 metres, with towers offset a minimum of 6 metres from street frontages.
52. The standard model for developing taller buildings in the City is based on a 35-40 metre high podium with the tower element setback from this podium level by at least 10 metres, as described in Local Policy 'Urban Design within the Capital City Zone' (Clause 22.01) and Schedule 1 of the Capital City Zone (Clause 37.04).
53. The Scheme seeks to provide tower setbacks of 10 metres from any street frontage, however allows discretion to consider lesser setbacks. 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.
54. The proposed tower setbacks at 6 and 7.5 metres from the street are considered to be appropriate. The wind tunnel testing confirms that the building envelope as proposed deflects wind downdrafts penetrating street level. It is also noted that the height of the podium produces shadowing to A'Beckett Street irrespective of the tower heights which cast shadows well beyond the site and immediate surrounds.
55. Tower separation is less than 24 metres stipulated in Clause 22.01. Policy allows a reduction in tower separation where it can be demonstrated that the towers are offset and habitable room windows do not directly face one another and where the redevelopment of adjoining sites is not compromised.
56. The orientation of the towers assists in respecting the orthogonal city grid and is designed to minimise overlooking due to the internal apartment layouts, with the closest living room to living

room distance at 16 metres. Commendably most of the apartments do not rely on borrowed light and provide natural light/ ventilation to the corridors.

57. With regard to the lack of side setbacks to adjoining properties, a minimum of 9-10 metres is sought, however the information provided by the applicant highlights the fragmented nature and ownership pattern of adjoining sites proves that it will be difficult to redevelop these sites. Most interfaces meet the minimum required offsets with the exception of 143 Franklin Street (north-east to the subject site) which provides separation of 5.2- 7.825 metres and 138 A'Beckett Street (south-east of the site) which provide separation of 2 metres (which applies to the upper levels of the tower). In the case of 143 Franklin Street the existing 5-storey apartment building is strata-titled and therefore extremely difficult to redevelop. Therefore a minimal tower setback is acceptable due to the informally substituted plans submitted on 22 February 2011 which reorientate some of the lower level apartments away from this sensitive interface and includes screening. In the case of 148 A'Beckett Street and in particular 14-16 Anthony Street which are 3 and 4 storey strata-titled apartment buildings, redevelopment is also unlikely. The proposed buildings are already setback 6.6 metres at its lower levels and reduced to 2 metres at the upper levels above Level 7. The amenity concerns regarding this interface do not occur as the required separation is provided where critical, at the lower levels. The proposed development is considered to allow "breathing space" and sky views both within the site and adjoining sites. If adjoining sites were developed in a similar nature, offsets can be provided on these sites to allow for appropriate tower separation.

#### *Street Level Frontages, Pedestrian Safety & Lanes*

58. The proposed development incorporates retail tenancies at ground floor level to Franklin, A'Beckett Streets and to the internal arcade to be known as Fulton Lane, and the two lateral links to the east and west are supported. The inclusion of these active frontages will also serve to increase the perception of safety in this area. It is also noted that the upper level apartments provide passive surveillance of the site's immediate surrounds.
59. The podium, with its use of balconies, timber and planted elements architecturally distinguishes the podium from the towers. This will provide visual interest to pedestrians. The maintenance of the 'green wall'/ 'greening of the podium' should be secured via appropriate condition. It is commendable that the podium car parking is concealed with apartments to visible frontages and that side setbacks to the neighbouring development to allow the podium to be converted to habitable space in future.
60. Concerns were initially expressed regarding the width of vehicular access to A'Beckett Street. The plans have subsequently been modified to reduce its width to a maximum of 6.9 metres.
61. Both Clause 22.01 (Urban Design within the Capital City Zone) and Clause 22.20 (CBD Lanes) seek to provide accessible pedestrian routes, encourage new retail arcades, maintain and enhance the traditional street pattern, and reinforce pedestrian amenity in lanes that provide through block links.

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

62. Policy recommends that towers, at a height greater than a 40 metre podium, are setback 10 metres from all streets to deflect wind downdrafts from penetrating to street level. The towers setback a minimum of 6 metres from the street frontages results in appropriate wind conditions at street level as confirmed within the wind tunnel testing undertaken.
63. 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 at 9am, 11am, 1pm, 2pm and 3pm has been carried out for 22 March/ September.
64. The analysis shows the additional shadowing will occur over properties to the east and south. Given the overall height of the proposed buildings (significantly taller than currently occupying the site), increased overshadowing is inevitable. It is noted however that the development does not

overshadow any public parks or gardens, public square or major pedestrian route, it is therefore considered to be acceptable.

#### *ESD*

65. The proposal is to achieve a minimum 4 star rating under the Green Star Multi-Unit Residential v1 tool. The proposal incorporates passive design strategies and active strategies.

#### *Internal Amenity*

66. Developments for new and refurbished residential uses should incorporate design measures to attenuate noise associated with the operation of other businesses and activities associated with a vital 24-hour capital city. The decision guidelines of the Capital City Zone specify that *'habitable rooms of new dwellings adjacent to high levels of external noise should be designed to limit internal noise levels to a maximum of 45dB in accordance with the relevant Australian Standards for acoustic control'*. This can be dealt with via condition.

67. The building design provides a good standard of amenity for future residents. There is limited reliance on borrowed light. All 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 redevelopment opportunities of adjoining sites.

68. 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.

#### ***Car Parking / Loading and Unloading of Vehicles/ Bicycle Facilities***

69. The limited provision of on-site car parking is supported and accords with Schedule 1 of Clause 52.06 of the Planning Scheme which does not require car parking for residential developments within the Capital City Zone. This 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.

71. The application provides for a total of 293 bicycle spaces, where visitor spaces are provided at ground level from A'Beckett Street, with the remaining spaces located within the basement levels. The only concern with the basement spaces is that these are located within the reserve (located to the western boundary of the site) and if they cannot be located here they must be located elsewhere. A condition to secure this should be included on any decision. The provision is more than the 251 required by Clause 52.36. Signage requirements outlined at Clause 52.36 can be dealt with via appropriate condition.

#### **RECOMMENDATION**

72. The application has been assessed against all relevant State and Local Policies, and the relevant application requirements and decision guidelines of the Capital City Zone, Design and Development Overlay, and Particular 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 Permit be granted subject to the following conditions:

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1. Prior to the commencement of the development, excluding demolition, bulk excavation, site preparation, soil removal, site remediation, retention works, footings, ground beams, ground slab and development, amended plans to the satisfaction of the Responsible Authority must be submitted to and be approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must generally be in accordance with the plans submitted with the application but modified to show the following:

- a) The relocation of the proposed bicycle facilities within the basement levels in the event that the reserve is not removed and the spaces cannot be provided in this location; and
- b) Provision of signage for the bicycle facilities in accordance with the requirements of Clause 52.34 of the Scheme.

### **Staging Plan**

2. Prior to the commencement of the development, including demolition, a plan showing the staging of the development, including location of hoardings, must be submitted to and approved by the Responsible Authority.

### **Layout Not Altered and Satisfactory Completion**

3. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

### **Wind Assessment**

4. Prior to the commencement of the development, excluding demolition, bulk excavation, site preparation, soil removal, site remediation, retention works, footings, ground beams and ground slab, comprehensive wind tunnel testing and environmental Wind Climate Assessment report of the development by a suitably qualified engineering consultant must be undertaken by the owner of the land and be submitted to and be to the satisfaction of the Responsible Authority. This report must be generally in accordance with that prepared by Mel Consultants dated September 2010. Any further modifications required to the development in order to ensure acceptable wind conditions to the surrounding streets and public areas must be carefully developed as an integrated high quality solution with the architectural and landscape design to the satisfaction of the Responsible Authority.

### **Construction Management Plan**

5. Prior to the commencement of the development of each stage, excluding demolition, a detailed Construction Management Plan (CMP) must be submitted to and approved by the responsible authority in consultation with the City of Melbourne. This construction management plan is to be prepared in accordance with the City of Melbourne- Construction Management Plan Guidelines and is to consider the following:
  - a) public safety, amenity and site security;
  - b) operating hours, noise and vibration controls;
  - c) air and dust management;
  - d) stormwater and sediment control;
  - e) waste and material reuse; and
  - f) traffic management.

The recommendations of the report must be implemented at no cost to the Responsible Authority or the City of Melbourne. All development must be carried out in accordance with the approved Construction Management Plan.

### **Land Tenure**

6. Prior to the occupation of the development, the Reserve on LP9570 must be removed and replaced by relevant easements, the easement at the southern end of the reserve must be varied in height and depth to match the current services and proposed development plans and the easement on certificate of title volume 9496 folio 254 must be removed, to the satisfaction of the City of Melbourne (Team Leader Land Survey) using a Section 24A Plan of Subdivision which also consolidates all the titles for the site.
7. Prior to the occupation of the development the Corporation Lane (CL) 1163 must be vested in Council as a Road on a Plan of Subdivision to the satisfaction of the City of Melbourne (Team

Leader Land Survey). Note this can be achieved on the same plan for the actions in condition above.

### **Legal Agreement**

8. Prior to the occupation of Stage 1 of the development, the relevant landowner(s) must enter into a legally binding agreement with the Responsible Authority and City of Melbourne under Section 173 of the Planning and Environment Act 1987. The Agreement should be to the satisfaction of the Responsible Authority and City of Melbourne (Engineering Services, Land Survey and Legal Services). The agreement must:
  - a) be at no cost to the Responsible Authority or the City of Melbourne;
  - b) be registered on the certificate(s) of title to the lands being developed;
  - c) provide rights of access over the proposed central pedestrian link between Franklin and A'Beckett Streets and that the link remains privately owned and controlled;
  - d) refute potential possession claims regarding the above.

### **Materials and Finishes**

9. Prior to the commencement of each stage of the development, excluding demolition, bulk excavation, site preparation, soil removal, site remediation, retention works, footings, ground beams and ground slab, a sample board including a colour rendered and notated plan /elevation that illustrates the location and details of all external materials and finishes must be submitted to and be to the satisfaction of the Responsible Authority and when approved will form part of the endorsed plans. All finishes and surfaces of all external buildings and works, including materials and colours must be in conformity with the approved schedule to the satisfaction of the Responsible Authority.
10. Except with the consent of the Responsible Authority, all external glazing must be of a type that does not reflect more than 20% of visible light when measured at an angle of incidence normal to the glass surface.

### **Noise Attenuation**

11. Prior to the occupation of the dwellings, a report from a qualified acoustic engineer, must be submitted to the satisfaction of the Responsible Authority certifying that the development will achieve a maximum noise level of 45dB(A) in habitable rooms with windows closed.

### **Building appurtenances**

12. All roof top building plant and equipment must be concealed to the satisfaction of the Responsible Authority. The construction of any additional plant machinery and equipment, including but not limited to all air-conditioning equipment, ducts, flues, all exhausts including car parking and communications equipment shall be to the satisfaction of the Responsible Authority.
13. Any satellite dishes, antennae or similar structures associated with the development must be designed and located at a single point on each building in the development to the satisfaction of the Responsible Authority, unless otherwise approved to the satisfaction of the Responsible Authority.

### **Environmentally Sustainable Design (ESD)**

14. A Design Statement outlining the Environmentally Sustainable Design techniques integrated into the building must be submitted to and be to the satisfaction of the Responsible Authority.
15. The completed building must achieve a minimum of a 4 star rating under the Green Star Multi-Unit Residential v1 tool of the Green Building Council of Australia to the satisfaction of the Responsible Authority.

### **Landscaping**

16. Prior to the commencement of the development, excluding demolition, bulk excavation, construction or carrying out of works on the land, or as may otherwise be agreed with the Responsible Authority, a qualified landscape architect is to produce a scaled and dimensioned detailed landscape plan that must be submitted to and be to the satisfaction of the Responsible Authority in consultation with the City of Melbourne. The plan must include a schedule of all soft and hard landscape materials and treatments including street trees, automatic irrigation, planting schedule, details of how the vertical garden will be constructed and operated, measures to prevent vegetation debris from falling to ground level, urban design elements including, but not limited to, paving, lighting, seating, and public art, and clear demarcation of public realm and private spaces including arrangements for pedestrian, bicycle, vehicular circulation in the development. The landscape plan must demonstrate how the project responds to water sensitive urban design principles including how storm water will be mitigated, captured, cleaned and stored for on site irrigation purposes. The City of Melbourne technical notes should form the basis for all public realm works.
17. Prior to the commencement of all landscaping works associated with the vertical garden a landscape management plan detailing the ownership, maintenance regime and management responsibilities of the vertical garden associated with the development must be prepared and submitted to the satisfaction of the Responsible Authority in consultation with the City of Melbourne.
18. Should the vertical garden fail the alternative podium treatment is to be undertaken to the satisfaction of the Responsible Authority in consultation with the City of Melbourne.
19. Landscaping works as shown on the endorsed plans must be completed within 6 months of the overall completion of the development to the satisfaction of the Responsible Authority and subsequently maintained to the satisfaction of the Responsible Authority.
20. Any trees in the adjoining street(s) which are shown on the endorsed plans to be removed, relocated or replaced must not be removed, lopped or pruned without the prior consent of the City of Melbourne (Manager Parks and Urban Design). All costs in connection with the removal/relocation or replacement of the trees, including any payment for the amenity value of the tree(s) to be removed, must be met by the developer/owner of the site.

### **Traffic Engineering**

21. Prior to the commencement of the development, excluding demolition, bulk excavation, construction or carrying out of works on the land, the applicant must submit to the Responsible Authority in consultation with the City of Melbourne (Engineering Services) a traffic management report. The traffic management report must include copies of plans drawn to scale, generally in accordance with the traffic report and plans accompanying the application and the revised traffic report and plans submitted on 9 November 2010, but amended to show:
  - a) car parking space dimensions and aisle widths should be required to meet the requirements of the Planning Scheme;
  - b) Ramp grades and change of grade must be compliant Australian and New Zealand Standards. This also applies to ramp widths;
  - c) Minimum head clearance of 2.1 metres must be provided throughout the car parking area;
  - d) Columns located immediately adjacent to an access aisle and those that would otherwise restrict opening of driver/front passenger car doors should be located to meet Australian Standards;
  - e) Appropriately dimensioned pathways should be provided between the loading areas and the residential lifts of both towers to allow for resident delivery and moving activities;
  - f) Pedestrian sightlines triangles (Australian and New Zealand Standards) need to be provided for vehicles exiting the site;
  - g) Maximum permissible width of a vehicle crossover without a pedestrian refuge is 7.6 metres. Crossings wider than 7.6 metres must include pedestrian refuges a minimum of 2 metres in length at 7.6 metre clear spacings.

These amended plans must be submitted to the satisfaction of the Responsible Authority in consultation with the City of Melbourne (Engineering Services). The recommendations of the report must be implemented at no cost to the Responsible Authority or the City of Melbourne. The traffic management report must be carried out in accordance with that approved and will form part of this permit.

### **Drainage**

22. The Owner of the subject land should construct a drainage system, incorporating water sensitive urban design, within the development and make provision to connect this system to Council's stormwater drainage system in accordance with plans and specifications first approved by the City of Melbourne (Engineering Services).

### **Car Parking, Loading Bays & Bicycle Facilities**

23. The area(s) set aside for car parking in the building must be restricted to the parking of vehicles by owners and occupiers of, or visitors to, the building.
24. All mechanical exhaust systems to the car park hereby approved must be sound attenuated to prevent noise nuisance to the occupants of the surrounding properties, to the satisfaction of the Responsible Authority.
25. The loading and unloading of vehicles and delivery of goods to and from the premises must at all times take place within the boundaries of the site.
26. Provision must be made for a minimum of 293 secure bicycle parking spaces (including alternate locations for the bicycle spaces nominated within the reserve) to be located within the site to the satisfaction of the Responsible Authority.

### **Waste Management**

27. Prior to the commencement of the development, excluding demolition, bulk excavation, construction or carrying out of works on the land, hereby approved, a Waste Management Plan (WMP) must be prepared and submitted to the City of Melbourne's Engineering Services Branch for approval. The WMP must be prepared with reference to the City of Melbourne's *Guidelines for Preparing a Waste Management Plan*. The waste storage and collection arrangements as shown on the development plans must accord with the approved WMP, and the WMP must be followed at all times unless an amendment is approved by the City of Melbourne's Engineering Services Branch. The WMP must include information regarding the size of vehicles to be used for waste collection, the transport of waste through the site to the loading area and confirmation that the collection of waste will be undertaken from the loading area. The collection and storage of refuse must at all times be to the satisfaction of the City of Melbourne's Engineering Services Branch.
28. No garbage bin or surplus materials generated by the permitted use may be deposited or stored outside the site and bins must be returned to the garbage storage areas as soon as practicable after garbage collection.

### **Street Levels and Crossovers**

29. The Owner of the subject land should construct all necessary vehicle crossings and demolish all unnecessary vehicle crossings adjacent the subject land in accordance with plans and specifications first approved by the City of Melbourne (Engineering Services).
30. The Owner of the subject land will not be permitted to alter the existing footpath/road levels in Franklin and A'Beckett Streets for the purpose of constructing new vehicle or pedestrian entrances without first obtaining the written approval of the City of Melbourne (Engineering Services).

31. Footpaths in Franklin and A'Beckett Streets must be upgraded and reconstructed in sawn bluestone together with associated works including the renewal and/or relocation of kerb and channel and the relocation of all services puts and covers as necessary at the cost of the Owner/Developer in accordance with the plans and specifications first approved by City of Melbourne (Engineering Services).

### **Lighting**

32. All public lighting must conform to AS1158, AS3771 and The Public Lighting Code September 2001 to the satisfaction of the City of Melbourne (Engineering Services). All light poles including modifications to existing public street lighting should be first approved by the City of Melbourne (Engineering Services).

### **No Advertising Displayed on Building**

33. No advertising signs shall be erected, painted or displayed on the land without the permission of the Responsible Authority unless in accordance with the provisions of the Melbourne Planning Scheme.

### **Expiry of Permit**

34. Expiry of permit:

In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:

- The development is not started within two (2) years of the date of this permit.
- The development is not completed within six (6) years of the date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.