

**MELBOURNE PLANNING SCHEME AMENDMENT C61:
QUEEN VICTORIA MARKET PRECINCT BUILT FORM REVIEW**

Committee Planning and Environment

Presenter Cr Ng

Purpose

1. To recommend that Council adopt Melbourne Planning Scheme Amendment C61, with the modifications recommended by the Independent Panel, and request the Minister for Planning approve the Amendment.

Recommendation

2. That Council:
 - 2.1. having considered all submissions and the Panel Report, adopt Melbourne Planning Scheme Amendment C61 as set out in Attachment 1 to the Management Report; and
 - 2.2. submit Amendment C61 to the Minister for Planning for approval.

Council Report Attachment:

1. Planning and Environment Committee, Agenda Item 5.8, 7 February 2006

7 February 2006

**MELBOURNE PLANNING SCHEME AMENDMENT C61:
QUEEN VICTORIA MARKET PRECINCT BUILT FORM REVIEW**

Division Sustainability & Innovation

Presenter John Noonan, Group Manager Sustainable Regulatory Services

Purpose

1. To recommend that Council adopt Melbourne Planning Scheme Amendment C61, with the modifications recommended by the Independent Panel, and request the Minister for Planning approve the Amendment.

Recommendation

2. That the Planning and Environment Committee recommend that Council:
 - 2.1. having considered all submissions and the Panel Report, adopt Melbourne Planning Scheme Amendment C61 as set out in Attachment 1; and
 - 2.2. submit Amendment C61 to the Minister for Planning for approval.

Key issues

3. The review of the height controls affecting the land bounded by Peel Street, Victoria Street, Elizabeth Street, A'Beckett Street and William Street, Melbourne (known as the Queen Victoria Market Precinct) was sought by local residents to address concerns that the current planning scheme provisions did not provide adequate guidance as to the appropriate heights for new development in the precinct.
4. Hansen Partnerships, on behalf of Council undertook a review of the height controls affecting the precinct. The consultants recommended appropriate building height controls for the land within the precinct in their report titled "Queen Victoria Market Precinct Built Form Review". This review included height controls for land surrounding the Queen Victoria Market, but did not include an assessment of the existing height controls over the Market buildings and the associated car park.
5. Subsequent to this review, Meredith Gould, on behalf of Council undertook a review of the existing height controls over the Market buildings and the car park.
6. The *Queen Victoria Market Precinct Built Form Review* undertaken by Hansen Partnerships and the *Queen Victoria Market Review of Height Controls* undertaken by Meredith Gould formed the basis for Amendment C61 which proposes changes to the existing height controls and additional new height control areas within the precinct.

7. Specifically, the Amendment (Post – Exhibition) proposes to revise the current Schedule 14 to the Design Development Overlay by:
 - 7.1. reducing the existing height controls over the Market buildings to reflect the existing building heights;
 - 7.2. reducing the existing height control over the Market car park from 12 metres to 10 metres, stepping down to a 7 metre height limit along the Queen Street and Peel Street frontages;
 - 7.3. reducing the existing height limits on the land fronting the south side of Therry Street and the east side of Queen Street from 20 metres to 12 metres for a depth of 9 metres;
 - 7.4. introducing height control on the land generally between Franklin Street and A’Beckett Streets; and
 - 7.5. introducing additional design objectives to Schedule 14.
8. Following on from the public exhibition of the Amendment, Council requested the appointment of an Independent Panel by the Minister of Planning to hear and consider the written submissions.
9. An Independent Panel was appointed by the Minister for Planning to hear submissions and to consider the merits of the Amendment. The Panel Hearing was held between 4 and 7 October 2005. Attachment 2 to this report maps the Council recommendations presented to the Panel Hearing.
10. The Panel Report has recently been received and a copy of the report is included at Attachment 3. The Panel has recommended that the proposed Amendment C61 to the Melbourne Planning Scheme be adopted generally in line with the heights recommended by Council but with the following modifications:
 - 10.1. minor wording changes be made to the Design Objectives and the Built Form Outcomes in the Schedule 14 to the Design and Development Overlay;
 - 10.2. removal of the 12 metre height limit applied to the land along Therry and Queen Streets and reinstatement of the existing 20 metre height control;
 - 10.3. removal of the 21 metre height limit along William Street and the replacement with a 30 metre and 60 metre height limits, and the reinstatement of the equinox sunlight protection provision for the Flagstaff Gardens;
 - 10.4. replacement of the 30 metre height control at the entrance of Anthony Street and A’Beckett Street with a 60 metre height control; and
 - 10.5. the application of height controls to all streets within the precinct.
11. After receiving the Panel’s Report, Council must consider the report and endorse one of the following options:
 - 11.1. adopt the Amendment as exhibited (without changes) and request the Minister for Planning approve the Amendment; or
 - 11.2. adopt the Amendment with changes from the exhibited version and request the Minister for Planning approve the Amendment; or
 - 11.3. abandon the Amendment.

12. It is considered that Council should adopt Melbourne Planning Scheme Amendment C61 in accordance with the Panel's recommendations.
13. The rewording of Schedule 14 to the Design and Development Overlay as suggested by the Panel is supported as the changes more succinctly reinforce the heritage and built form strategies for the Queen Victoria Market Precinct. The Panel's recommendations for height limits for each of the areas are satisfactory as the heights recommended by the Panel are reasonably consistent with the heights recommended by the Council and/or the intent behind the proposed controls.

Summary of Issues and Panel Recommendations

Queen Victoria Market Buildings and Car park

14. The Amendment proposes a discretionary height limit of 7 metres over the main Market sheds and 10 metres over the Market buildings on the corner of Victoria, Elizabeth and Therry Streets. The Amendment also proposes a 10 metre discretionary height control over the Market car park. Currently the entire Queen Victoria Market site is affected by a 12 metre discretionary height limit and is afforded heritage protection under the Heritage Overlay.
15. The Queen Victoria Market Management expressed concern that there was insufficient strategic justification for reducing the existing height limits particularly on the open on-site car park.
16. The Panel considered that in the light of the strong heritage controls that apply to the Market buildings, it would be preferable to take a more conservative approach and apply the discretionary height controls as proposed by the Amendment.

Flagstaff Gardens Shadow Protection

17. The Amendment proposes a discretionary height limit of 21 metres on the land on William Street between A'Beckett Street and Franklin Street. The intention of this height limit is to protect the Flagstaff Gardens from additional overshadowing at the winter solstice.
18. Currently this land is not affected by height controls.
19. The Panel concluded that the proposed move to using the winter solstice (and a related 21 metre height control) rather than the equinox as the basis for control of the overshadowing (currently exists in the Sunlight to Public Places Policy) is not appropriate and should be deleted. The Panel considered that the proposed winter solstice would have major implications for potentially affected landholders. The panel recommends 30 metre and 60 metre discretionary height controls subject to the equinox shadow control.

Height Limits on Therry Street and Queen Street

20. The Amendment proposes a discretionary height limit of 12 metres for a depth of 9 metres on land fronting Therry Street and Queen Street.
21. Under the existing requirements of the Design and Development Overlay Schedule 14, this land is currently subject to a 20 metre height limit and is also included within the Heritage Overlay. The changes to the height limits were introduced to protect the pedestrian amenity of this important entry into the market.
22. Fulcrum Town Planners on behalf of the owner, Mr Munro expressed concern that that the Amendment failed to recognise the potential development of this land and imposed an onerous and additional layer of height control.
23. The Panel concluded that the existing 20 metre height limit would create an appropriate scale for this "people place" part of the precinct and recommended the removal of the 12 metre discretionary height limit and the reinstatement of the current 20 metre discretionary height limit.

Heights Over Roads

24. Height limits over the road reserves fronting Queen Street and Therry Street currently exist. The Amendment (Post – Exhibition) proposes to remove these height controls over the road reserves in line with the directive from the Department of Sustainability and Environment and to remove the permit trigger for all works including minor works.
25. The Panel concluded that height controls should apply to all the road reserves within the study precinct as removing the height controls suggest that these areas would never be subject to development options in the future.

Time Frame

26. The report of the Independent Panel, which reviewed the Amendment has been received and now requires the Council's consideration. Copies of the Panel report have been circulated to all submitters. Amendment C61 will lapse on 17 March 2007 unless the Council adopts the amendment prior to that date.

Relation to Council Policy

Municipal Strategic Statement

27. The current *Municipal Strategic Statement* (which has recently been approved by the Minister for Planning) supports the development and promotion of the Market as a major retail and tourist facility as well as a heritage asset of State significance. It seeks to ensure that development surrounding the market does not detract from its amenity or compromise its 24 hour functioning. It also recognises the Market's recreation role and highlights the importance of links to the Market from the surrounding areas.

Consultation

28. Amendment C61 was exhibited between Thursday 17 March 2005 and Friday 22 April 2005 pursuant to Section 19(1) of the *Planning and Environment Act 1987*. As part of the exhibition process, public notices were placed in the Melbourne Times and the Government Gazette. The amendment and supporting documentation were also made available at the Council office, The Department of Sustainability and Environment and the Council's website. A public notice was sent to relevant State Government Ministers, the Department of Sustainability and Environment as well as other key stakeholders. Notices were also sent directly to owners and occupiers of properties affected by this amendment.
29. Written submissions were received from the North and West Melbourne Association, individual residents and specific property owners directly affected by the amendment, the Queen Victoria Market Management, the Department of Sustainability and Environment and interested individuals. The details of these submissions were outlined in the Planning & Environment Committee Report dated 5 July 2005.

Finance

30. Council will incur the cost of the Panel Hearing. These costs will be met from the Development Planning Branch's 2005/2006 Operating Budget. Minimal further costs will be incurred to adopt the amendment.

Legal

31. Divisions 1 and 2 of Part 3 of the *Planning and Environment Act 1987* ("the Act") set out the required process for amending a planning scheme.

Sustainability

32. The amendment will contribute to an inclusive and engaging city through the promotion of high quality development and minimising the impact on heritage, built form and character and the quality of the adjoining parks.

Background

33. The Planning, Development and Services Committee at its meeting on the 2 April 2001, resolved to undertake a review of building heights in the area bounded by A'Beckett, Elizabeth, Victoria, Peel and William Streets (known as the Queen Victoria Market Precinct). The reason for the review followed the consideration of the multi storey development at 100 Franklin Street and concern by some local stakeholders that there needed to be stricter and more detailed built form controls in the area.
34. The Queen Victoria Market Precinct study area is affected by a number of built form controls within the Melbourne Planning Scheme. Whilst these planning controls give direction and guidance in the consideration of development proposals, in some recent examples of development proposals in Franklin Street, differing points of views were expressed by Council, existing residents and the Victorian Civil and Administrative Tribunal in relation to appropriate building heights.
35. Some residents in the area considered that the character of the area could be under threat and sought a review of height controls within the Queen Victoria Market Precinct to deliver additional certainty in future development proposals.
36. Hansen Partnership completed this review of building heights and provided its recommendations for appropriate building height and a suitable planning mechanism to implement their review recommendations.
37. The review examined the need for an overall urban design vision statement for the precinct to enable a balance between the important local values of the Queen Victoria Market Precinct and the growth of the CBD. As a basis for the future urban form and scale of the study area, the following vision statement was formulated:

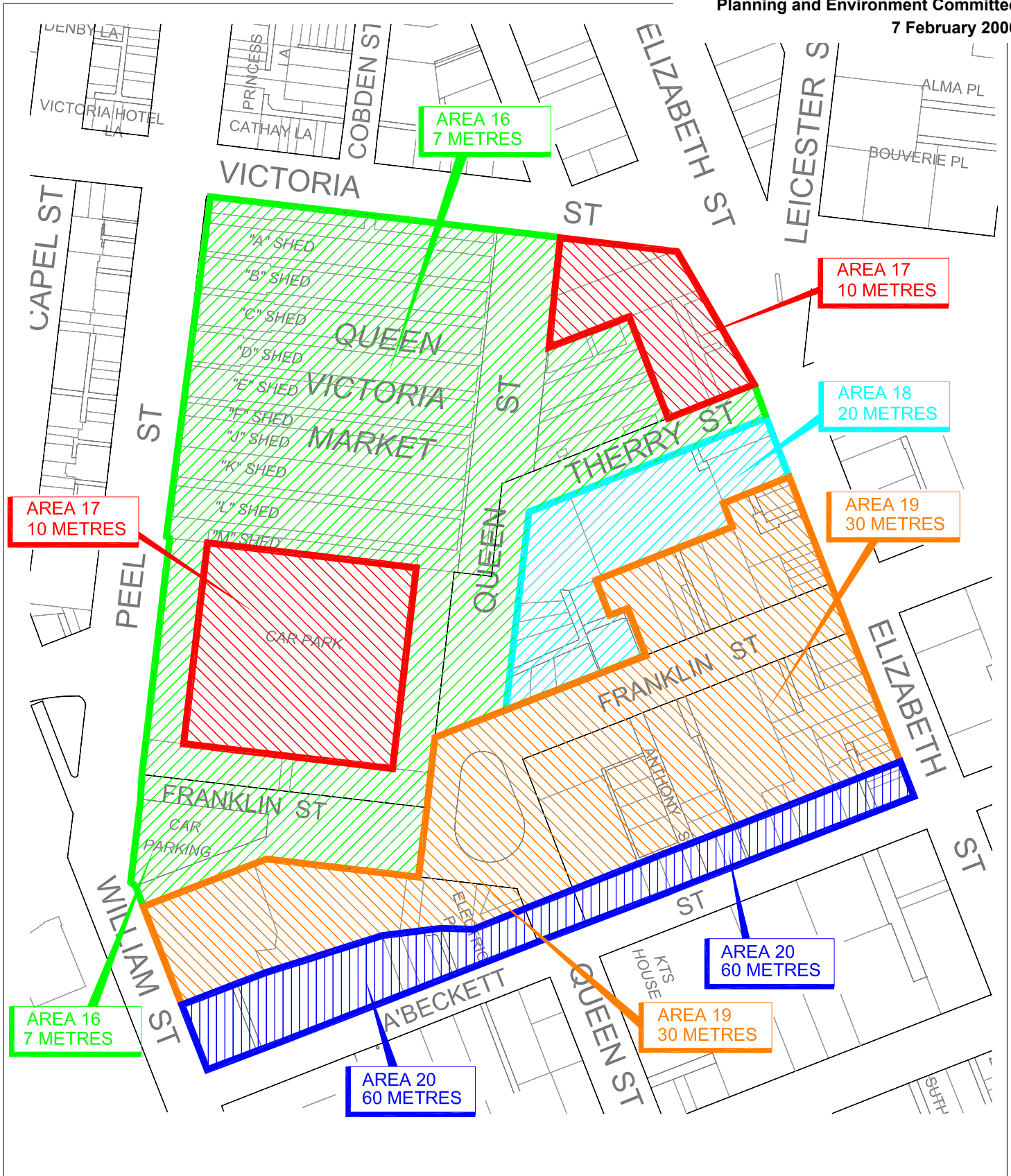
"The future desired urban character of the Queen Victoria Market Precinct will reaffirm the traditional scale and image of the historic Market. This character will also achieve an attractive, diverse and proud capital city edge condition that complements Melbourne's City skyline and the sense of openness as experienced from within the Market itself, the adjoining Flagstaff Gardens and the interfaces with North and West Melbourne and Carlton. The future urban form and scale of the southern and eastern edges of the Market Precinct, (namely Queen Street north and Franklin Street west) will achieve an appropriate transition from the broad proportion and low scale of the Market to the more substantial tower forms of Central Melbourne."

38. The review outlined three built form scenarios and evaluated each scenario against the local values of the precinct in relation to buildings, people environment and function, the strategic objectives and the stated vision.
39. The three scenarios or options, described in detail in the consultants report are as follows:
 - 39.1. scenario A: Maximum Development (tower form of development, maximum 60 metres);
 - 39.2. scenario B: Transition Development (layered built form from 12 metres to 60 metres); and
 - 39.3. scenario C: Minimum Development (low to medium scale of 12 metres to 30 metres).
40. The consultants recommended that Scenario B would best achieve the desired vision for future development of the Market Precinct.
41. Scenario B is a 'mid-range' option, which includes no change to the existing height controls of 12 metres over the Queen Victoria Market heritage buildings and 20 metres generally along Therry Street and Queen Street. The consultants study recommends new height controls of 30 metres generally along Franklin Street and 60 metres for properties on the northern side of A'Beckett Street.
42. The former Planning, Development and Services Committee at its meeting on 9 October 2003 resolved to:
 - 42.1. note the consultants report titled *Queen Victoria Market Built Form Review*;
 - 42.2. endorse pre-exhibition consultation with key stakeholders; and
 - 42.3. include the question of height controls over the Queen Victoria Market site as an issue to be addressed.
43. As resolved by the Committee, pre-exhibition consultation was undertaken with key stakeholders which included the North & West Melbourne Association, the Peel Street Traders, and interested residents' groups. The purpose of the consultation was to seek their views in regard to the study approach, the three built form scenarios outlined in the completed study and the consultants preferred built form option. Written submissions were received from the North & West Melbourne Association, Bruce Echberg (Urban Initiatives), and individual property owners Robert Munroe and Dr Frances Separovic.
44. A report was presented to the former Planning and Development Committee on 8 July 2004 summarising the outcome of the pre-exhibition consultation undertaken with the key stakeholders, and seeking a resolution to commence formal exhibition of the planning scheme amendment. After noting the issues raised by the submitters, the Committee resolved to defer consideration of the commencement of the exhibition to allow further pre-exhibition consultation to be undertaken with property owners and occupiers within the precinct.
45. Subsequent to the Committee resolution, an information sheet outlining the purpose of the Queen Victoria Market Built Form Review and the recommendations of the consultants review was sent to all owners and occupiers of properties within the precinct. They were invited to provide written comments on the content and the final recommendations within the consultants report.

46. Written submissions were received from individual property owners Paris Kyne, Robert Munro, Greg Branson, Brenda Cherednichenko and J Athanatoi, and the Department of Treasury and Finance.
 47. A report was presented to the Planning and Environment Committee on 1 February 2005 on the outcome of the pre-amendment consultation and the assessment of the appropriateness of the existing height controls over the heritage market buildings (report prepared by Meredith Gould, *Queen Victoria Market Review of Height Controls*). The Committee resolved to place Amendment C61 to the Melbourne Planning Scheme on formal exhibition.
 48. A report was presented to the Planning and Environment Committee on 5 July 2005 on the outcome of the public exhibition of the Amendment. The Committee considered the submissions and resolved to request that the Minister for Planning appoint an Independent Panel to hear and consider the written submissions.
 49. An Independent Panel was appointed by the Minister for Planning. The Panel Hearing was held between 4 and 7 October 2005.
-

Attachments:

1. Amendment C61 documents to be submitted for approval
2. Council recommendation presented to the Panel
3. Panel Report



Title

**PLANNING SCHEME AMENDMENT C61
 SCHEDULE 14 TO THE DESIGN
 AND DEVELOPMENT OVERLAY
 PANEL RECOMMENDATIONS**

Date

NOVEMBER 2005

Scale 1: 3000

Lengths in Metres

30 0 30 60 90 120 150



Prepared by: dargre

GIS & Property Data Team - Rates & Valuations

Y:\extract_data\DG_Plans\Development Planning\C61 AMENDMENT-Panel.dwg

SCHEDULE 14 TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO14**

QUEEN VICTORIA MARKET PRECINCT

1.0 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 edges and within close proximity to the Market provides an appropriate stepped approach in building height 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 use, scale and character of the Market, surrounding residential developments and adjacent precincts.

2.0 Buildings and works

An application must be accompanied by a site analysis and urban context report which demonstrates 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.

Buildings and works should not exceed the *Maximum Building Height* specified in the table to this schedule.

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.

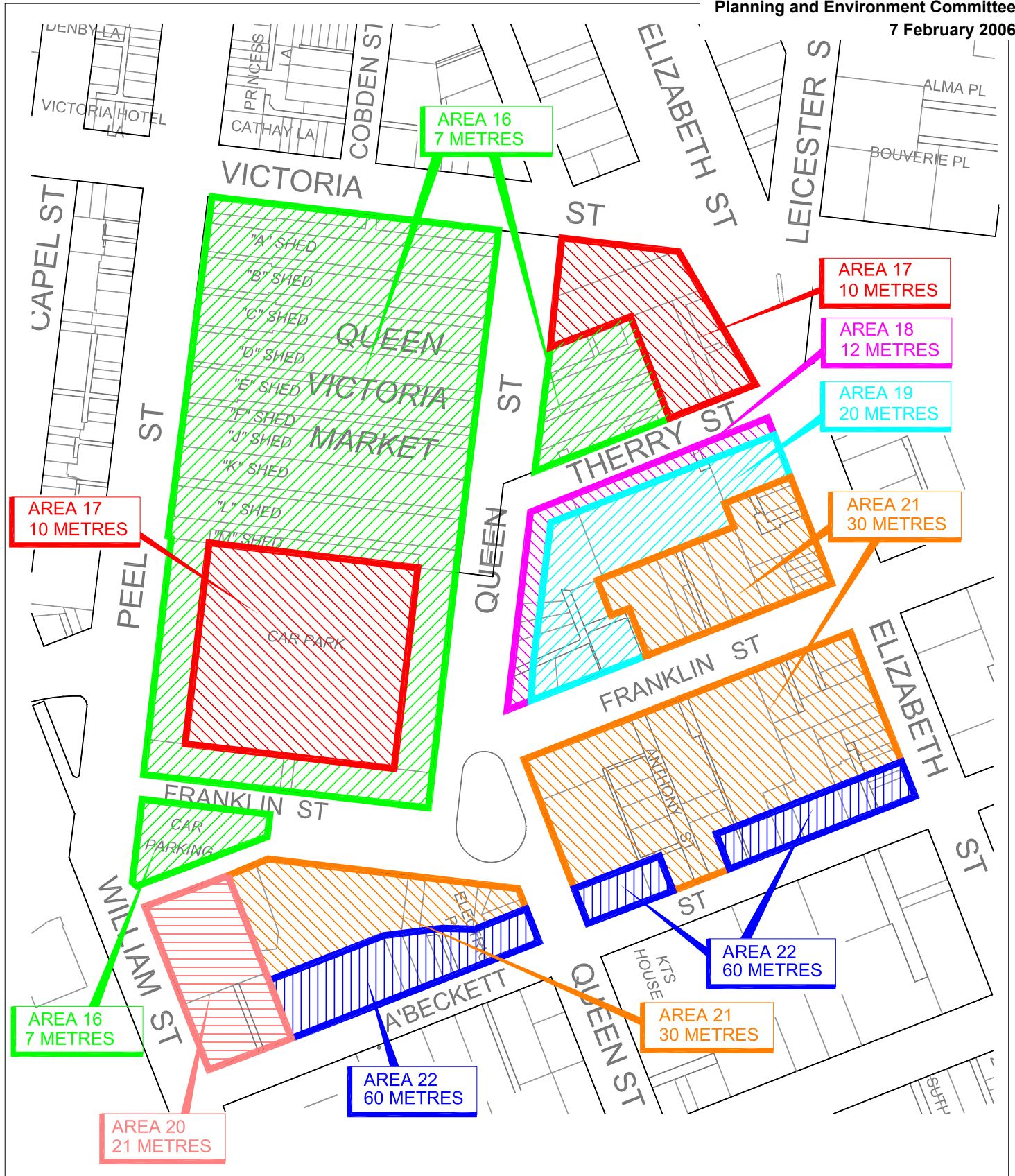
Building height is the vertical distance between the footpath or natural surface level at the centre of the site frontage and the highest point of the building, with the exception of architectural features and building services.

Table to Schedule 14

AREA	MAXIMUM BUILDING HEIGHT	BUILT FORM OUTCOMES
16	7 metres	Development maintains the consistency of scale and built form of the historic Queen Victoria Market.
17	10 metres	Development maintains the consistency of scale and built form of the historic Queen Victoria Market.
18	20 metres	The scale of surrounding development respects the low scale built form character of the Queen Victoria Market.
19	30 metres	The scale of development provides an appropriate interface from the low scale built form of the Queen Victoria Market towards the Central Business District.
20	60 metres	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.

Exemption from notice and appeal

An application to construct a building or 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 of rights of Section 82(1) of the Act.



Title
PLANNING SCHEME AMENDMENT C61
SCHEDULE 14 TO THE DESIGN
AND DEVELOPMENT OVERLAY
COUNCIL RECOMMENDATIONS
(POST EXHIBITION)

Date 08-06-2005

Scale 1:3000
 Lengths in Metres

**MELBOURNE PLANNING SCHEME
AMENDMENT C61**

PANEL REPORT

NOVEMBER 2005

**MELBOURNE PLANNING SCHEME
AMENDMENT C61**

PANEL REPORT



A handwritten signature in black ink that reads "Helen M. Weston" followed by a diagonal slash.

Helen Weston, Chair



A handwritten signature in black ink that appears to be "Eugene Kneebone".

Eugene Kneebone, Member

November 2005

TABLE OF CONTENTS

1.	SUMMARY	1
2.	WHAT IS PROPOSED?	2
2.1	<i>THE SUBJECT SITE AND SURROUNDS</i>	2
2.2	<i>CURRENT PLANNING CONTROLS</i>	3
2.2.1	Zoning	3
2.2.2	Existing Overlays	3
2.3	<i>THE AMENDMENT</i>	3
2.3.1	Background	3
2.3.2	Queen Victoria Market Built Form Review	5
2.3.3	Council's Consideration of the Built Form Review	7
2.3.4	Community Consultation on the Built Form Review	8
2.4	<i>THE AMENDMENT</i>	10
2.4.1	Scope of Amendment C61	10
2.4.2	Exhibition of Amendment C61	11
3.	ISSUES	12
3.1	<i>ISSUES RAISED IN SUBMISSIONS AND AT THE HEARING</i>	12
3.2	<i>MAXIMUM BUILDING HEIGHTS – AGREEMENT/DISAGREEMENT WITH EXHIBITED HEIGHTS</i>	14
3.3	<i>DISCRETIONARY HEIGHTS vs MANDATORY HEIGHTS (INCLUDING RISK ASPECTS)</i>	18
3.4	<i>QVM ISSUES – OPERATIONS, PARKING, HERITAGE, AND PEDESTRIAN AMENITY</i>	21
3.4.1	Operations	21
3.4.2	Parking	22
3.4.3	Heritage	23
3.4.4	Pedestrian Amenity	24
3.5	<i>FLAGSTAFF GARDENS AMENITY AND OVERSHADOWING</i>	25
3.6	<i>ALIGNMENT OF CONTROL BOUNDARIES WITH TITLE BOUNDARIES</i>	28
3.7	<i>OTHER ISSUES</i>	30
3.7.1	Compensation and International Precedent	30
3.7.2	Hoddle Grid and Historic Factors	31
3.7.3	Terminology	31
4.	STRATEGIC AND STATUTORY CONTEXT	32
4.1	<i>STRATEGIC PLANNING FRAMEWORK</i>	32
4.1.1	State Planning Policy Framework	32
4.1.2	Metropolitan Strategy	34
4.1.3	Local Planning Policy Framework	35
4.1.4	Other Policies	39
4.2	<i>STATUTORY PLANNING FRAMEWORK</i>	39
4.2.1	Zone(s)	39
4.2.2	Overlays	40
4.2.3	Particular and Other Provisions	41
4.2.4	Other Provisions	41
4.3	<i>PANEL FINDINGS</i>	41
5.	PANEL CONSIDERATION OF THE AMENDMENT	42
5.1	<i>PANEL APPROACH – APPLY ISSUES IN PARTICULAR AREAS</i>	42
5.1.1	Consultant's Recommendations Map	42
5.1.2	Exhibition Map	42
5.1.3	Council Recommendations (Post Exhibition) Map	43
5.1.4	Consideration of Approach	44
5.2	<i>COVERAGE OF AMENDMENT – AREAS TO BE EXCLUDED</i>	44
5.3	<i>DESIGN OBJECTIVES - DDO 14</i>	45

5.3.1	Building and Works.....	46
5.3.2	Built Form Review Origins.....	46
5.3.3	Questions of Process, Transition, Compatibility and Skyline Views.....	48
5.3.4	Consideration of Design Objectives.....	50
5.4	<i>BUILT HEIGHT AND BUILT FORM OUTCOMES BY IDENTIFIED AREA</i>	51
5.4.1	Area 16.....	51
5.4.2	Area 17.....	52
5.4.3	Area 18.....	54
5.4.4	Area 19.....	56
5.4.5	Area 20.....	56
5.4.6	Area 21.....	58
5.4.7	Area 22.....	60
5.5	<i>PANEL FINDINGS</i>	62
6.	RECOMMENDATIONS	63

APPENDICES

A. THE PANEL PROCESS

THE PANEL

TERMS OF REFERENCE

HEARINGS, DIRECTIONS AND INSPECTIONS

SUBMISSIONS

B. STRATEGIC ASSESSMENT GUIDELINES

C. MAPS OF PROPOSED MAXIMUM BUILDING HEIGHTS

D. EXHIBITED AMENDMENT

E. MAP OF PANEL'S RECOMMENDED MAXIMUM BUILDING HEIGHTS

1. SUMMARY

The Panel was appointed on 4 August 2005 to hear and consider submissions in relation to Amendment C61 of the Melbourne Planning Scheme. This amendment, as exhibited, proposes various changes to the Design and Development Overlay – Schedule 14 (DDO14) in the Melbourne Planning Scheme. These changes can be summarised as:

- Revise the current Schedule 14 to the Design and Development Overlay by:
 - reducing the existing building height limits in Area 16 and 17 to generally reflect the height of the existing Queen Victoria Market buildings;
 - reducing the existing height limits over the existing Queen Victoria Market carpark for 12 metres to 10 metres stepping down to a 7 metre height limit along the Queen Street and Peel Street frontages;
 - reducing the existing height limits on the land fronting the south side of Therry Street and the east side of Queen Street from 20 metres to 12 metres for a depth of 9 metres;
 - introducing new height control areas to the table to Schedule 14 on land generally between Franklin Street and A'Beckett Street; and
 - introducing additional Design Objectives to Schedule 14 to ensure that new development to the south of the Queen Victoria Market provides an appropriate transition of scale from the Market towards the CBD.
- Make change to the Planning Scheme Map 13 DDO2 to amend the boundaries of existing Height Control Areas 16 and 17, and to include new Height Control Areas 18, 19, 20, 21 and 22.

A total of 16 submissions was received on the proposed amendment and raised a variety of issues either in support of or opposing the amendment.

In relation to the strategic context, the Panel has found that the proposed amendment is acceptable from a planning perspective and is consistent with the Strategic Assessment Guidelines. There is strategic justification for the proposed amendment through the current provisions of the Municipal Strategic Statement, the planning scheme in general, and the adopted Municipal Strategic Statement.

The Panel has found that the proposed Amendment C61 to the Melbourne Planning Scheme, as exhibited, should be adopted with modifications to both the exhibited maximum building height controls and the wording of the design outcomes in the DDO. The Panel also considers that the height controls should apply to the streets within this precinct.

2. WHAT IS PROPOSED?

2.1 THE SUBJECT SITE AND SURROUNDS

Amendment C61 relates to the land within the City of Melbourne bounded by Victoria Street to the north, Elizabeth Street to the east, A'Beckett Street to the south, and Peel and William Streets to the west. This area is generally known as the Queen Victoria Market (QVM) precinct as the most extensive land use in the subject area is the QVM itself, which occupies a total of approximately 7.09 hectares. This precinct is located on the north west edge of Melbourne's Central Activity District (CAD) and is considered to form *...a unique and highly valued part of the City's image, history, function and experience* (Hansen Partnership 2003, p3).

The precinct is considered to be in a transitional area between the high density built form and high intensity land use of the CAD to the south and south-east and the lower rise, lower intensity areas to the west (Flagstaff Gardens) and north and north-east (the inner suburban areas of North Melbourne and Carlton). The key land uses in the precinct are noted in Table 1.

Table 1 Key land uses in Queen Victoria Market precinct

BLOCK BOUNDED BY	KEY LAND USES
Victoria, Elizabeth, Therry, Queen, Franklin and Peel Streets	Upper and Lower sections of the QVM and related car parking area.
Franklin, Queen, A'Beckett and William Streets	Mixed uses including car sales, office buildings, and the Radisson Hotel.
Franklin, Elizabeth, A'Beckett and Queen Streets	Mixed uses including residential apartment buildings, backpackers hotel, office buildings and ground level retail.
Therry, Elizabeth, Franklin and Queen Streets	Mixed uses including residential apartment buildings, Y Hotel, office buildings, ground level retail and cafes/coffee shops.

The QVM has evolved over the period from the closure of the first Melbourne General Cemetery in 1867 to the completion of the built form of the QVM as it currently exists in 1936 (A detailed history of the development of the QVM site to the present day is presented in Chapter 2 of the *Queen Victoria Market Elizabeth Street, Melbourne Conservation Management Plan* [Allom Lovell & Associates 2003]).

2.2 CURRENT PLANNING CONTROLS

2.2.1 ZONING

All land within the precinct is zoned Capital City Zone 1 in the Melbourne Planning Scheme. Land to the north and west outside the precinct is zoned either Mixed Use or Residential 1 respectively. The Flagstaff Gardens to the south-west of the precinct are zoned Public Park and Recreation. The current planning controls are discussed further in Section 4.

2.2.2 EXISTING OVERLAYS

Heritage Overlays

Two Heritage Overlays (HO) apply within the precinct:

- HO7 – Queen Victoria Market Precinct which covers all of the QVM site as well as land to the south-east of Queen and Therry Streets which front the QVM; and
- HO496 – Queen Victoria Market which covers the existing QVM buildings north of and excluding the open car park as well as the land to the immediate east generally known as the Lower Market.

Design and Development Overlays

Two Design and Development Overlays (DDO) apply within the precinct:

- Schedule 1 (DDO 1 – Active Street Frontages – Capital City Zone) which covers the whole precinct and applies to ground level street frontages; and
- Schedule 14 (DDO 14 – Queen Victoria Market area) which covers the QVM site and the Therry and Queen Streets frontages to the east.

Special Building Overlay

A Special Building Overlay extends for the length of Elizabeth Street and thus applies to some buildings within the precinct on the west side of Elizabeth Street.

2.3 THE AMENDMENT

2.3.1 BACKGROUND

The need for Amendment C61 was précised in the *Explanatory Report* which accompanied the exhibition of the amendment prepared by Melbourne City Council as follows:

The amendment is required to address the conflicting notions of urban change in the precinct, between the capital city role of the Market as an important retail and tourist attraction, and the expectations of local residents regarding the scale of development and local character and amenity.

However, the Panel was informed that the catalyst for the amendment occurred several years earlier in response to strong local community opposition to development proposals at:

- **114 to 122 Franklin Street** –this case (Nettlebeck & Ors v Melbourne CCC [1998] VCAT 333 [1 October 1998]) was an appeal against the grant of a planning permit by the Melbourne City Council for a proposed 27 level building on the subject L-shaped site on the north side of Franklin Street. The proposed building was intended to be used primarily for flats and serviced apartments with the lower four levels being occupied mainly by car parking, offices and a restaurant at ground level fronting Franklin Street. The grounds of appeal included that the height of the proposed building was excessive and the proposed development would be, *inter alia*, an over–development of the site and was not compatible with the scale and character of the area.

In the reasons for the determination to allow the appeal (so that no permit issued), the Victorian Civil and Administrative Tribunal (VCAT) member commented that:

I would not go so far as to suggest that future development in this precinct must reflect in an exact manner the present built form, scale and character. Indeed the Melbourne Terrace development serves as an excellent example of a structure which, while responding positively to its urban context has introduced a new, more dense built form which arguably has served to enhance the character of the precinct. The proposed development, due to its scale, form and siting does not respond in so positive a manner. Indeed it is my strong opinion that its contribution would be harmful and decidedly negative to that character (Nettlebeck & Ors v Melbourne CC [1998] VCAT 333 [1 October 1998], p10).



Photo 1 North side of Franklin Street showing the Stargate development

As no permit was issued for this proposal, an existing permit for a 12 level residential apartment building (the Stargate development) was subsequently acted upon and an 11 storey development proceeded on this site. However, Mr Echberg, in his presentation to the Hearing, noted that this development ... *is universally considered a bad outcome partly because the design is mediocre but also because it is too big for its context.*

- **96 to 102 Franklin Street** – an application for a 23 storey apartment building was refused by Melbourne City Council in 2001 and this decision was subsequently confirmed by VCAT. Another permit was issued by Council for this site in January 2003 which allowed for alterations and additions to the existing building and for an 11 storey building with a maximum height of 39 metres (containing 96 apartments) over basement car parking and commercial uses at ground level. Development in accordance with this permit has not proceeded to date on this site and, after an extension of time was granted, this permit will now expire in January 2007.

As noted in the Melbourne City Council's Planning and Environment Committee's Report (dated 5 July 2005, p8):

The Planning, Development and Services Committee at its meeting on the 2 April 2001, resolved to undertake a review of building heights in the area bounded by A'Beckett, Elizabeth, Victoria, Peel and William Streets (known as the Queen Victoria Market Precinct). The reason for the review followed the consideration of the multi storey development at 100 Franklin Street and concern by some local stakeholders that there needed to be stricter and more detailed built form controls in the area.

The Queen Victoria Market Precinct study area is affected by a number of built form controls within the Melbourne Planning Scheme. Whilst these planning controls give direction and guidance in the consideration of development proposals, in some recent examples of development proposals in Franklin Street, differing points of views were expressed by Council, existing residents and Victorian Civil and Administrative Tribunal in relation to appropriate building heights.

Some residents in the area considered that the character of the area could be under threat and sought a review of height controls within the Queen Victoria Market Precinct to deliver additional certainty in future development proposals.

2.3.2 QUEEN VICTORIA MARKET BUILT FORM REVIEW

The preparation of the *Queen Victoria Market Built Form Review* (BFR) by Hansen Partnership commenced in early 2002 and was completed in July 2003. Key stakeholders, including representatives of the QVM management, residents groups, the Department of Sustainability and Environment (DSE) and the Property Council of Australia, were consulted by way of a workshop early in the study period. The purpose of this workshop was to enable a discussion on the valued character of the precinct and the identification of threats which could undermine this character and the development of a vision for the future of the precinct.

As presented by Mr Tweedie at the Hearing on behalf of Council, the purposes of the BFR were:

- *To provide the Council with advice as to the most appropriate form of future development for the Precinct;*
- *To determine appropriate building height controls for the Precinct; and*
- *To recommend a suitable planning mechanism to implement its recommendations.*

Based on extensive analysis and investigation of the study area and consultation with key stakeholders, the desired Vision for future development of the Market Precinct was articulated in the BFR as follows:

The future desired urban character of the Queen Victoria Market Precinct will reaffirm the traditional scale and image of the historic Market. This character will also achieve an attractive, diverse and proud capital city edge condition that complements Melbourne's City skyline and the sense of openness as experienced from within the Market itself, the adjoining Flagstaff Gardens and the interfaces with North and West Melbourne and Carlton. The future urban form and scale of the southern and eastern edges of the Market Precinct (namely Queen Street north and Franklin Street west) will achieve an appropriate transition from the broad proportion and low scale of the Market to the more substantial tower forms of 'Central Melbourne'.

*The nature, form and character of development abutting the Market site demonstrates a high degree of ground and upper level articulation with active frontages opening to streetscapes and contributing to the area's active spirit. The diverse pattern of horizontal and vertical façade divisions, generous fenestration and simplified roof forms ensure that individual building forms are recognisable as individual architectural elements within streetscapes with a distinguishable building base, middle and top (Hansen Partnership 2003. *Queen Victoria Market Built Form Review*, p46).*

Design and Development Principles were also recommended in the BFR in relation to:

- Architectural & Urban Design Quality;
- Building Height & Silhouette;
- Streetscape Contribution and Image; and
- ESD [Ecologically Sustainable Development] & Service Infrastructure.

The BFR then sought to define a series of urban design and built form options that expressed likely development scenarios consistent with the vision for testing. These three scenarios were considered to reflect a relatively 'authentic' overview of future built form should various 'types' of redevelopment occur. The following three scenarios were considered in the BFR (as summarised by Mr Czarny in his statement of evidence presented at the Hearing, p 9):

Scenario A: Maximum Development: Applying a primary form of development towards and abutting the edge of the Market Precinct,

therefore defining a wall of buildings at the edge of the City grid overlooking the Market and gardens. This is envisaged as maximum development scenario.

Scenario B: Transition Development: A layered built form approach to the City edge condition, with a medium rise frontage to the Markets in front of a suite of background tower forms. The presentation of the medium rise frontage to the open Market and integrated with the more intimate heritage precinct, provides a podium effect to the more substantial rising towers on the horizon.

Scenario C: Minimum Development: Retaining the traditional built form configuration with minimal variation to the existing urban pattern through the use of medium to low and low scale development formats across the study area. Reiteration of the traditional building formats allowing for the City skyline to be experienced over the low rise Market frontage.

Using illustrative two and three-dimensional material, a qualitative assessment of the three built form scenarios was undertaken in order to determine a preferred direction for future development within the QVM Precinct. Each of the three scenarios were tested against a set of 'key local values' of the study area as well as the macro objectives presented in the draft Municipal Strategic Statement (MSS) that was then on exhibition (Amendment C60).

As noted by Mr Tweedie in his presentation to the Hearing on behalf of Council:

Ultimately, the Review recommended that Scenario B (described as "Transition Development (layered built form)") would best achieve the desired vision for future development in the Precinct.

Scenario B proposed the retention of the existing height controls of 12 metres over the Queen Victoria Market site and 20 metres generally along Therry Street and Queen Street. In addition to these existing controls, the study recommended new height controls of 30 metres generally along Franklin Street and 60 metres for properties on the northern side of A'Beckett Street.

2.3.3 COUNCIL'S CONSIDERATION OF THE BUILT FORM REVIEW

The BFR was presented to the Council's Planning, Development and Services Committee at its meeting held on 9 October 2003. The related report noted the coverage of issues related to the QVM in Amendment C60 (revised Municipal Strategic Statement [MSS]) including the incorporation of the content of the existing QVM Local Policy into the MSS. The report also stated that:

The revised Municipal Strategic Statement supports the development and promotion of the Market as a major retail and tourist facility as well as a heritage asset of State significance. It seeks to ensure that development surrounding the market does not detract from its amenity or compromise its 24 hour functioning or access. It also seeks to encourage eating and other evening uses in Elizabeth, Queen, Peel, Therry and Victoria Streets. It recognises the Market's recreation role and also highlights the importance of links to the Market from surrounding areas.

At this meeting, the Committee resolved to:

- Note the consultant's report titled *Queen Victoria Market Built Form Review*;
- Endorse pre-exhibition consultation with key stakeholders; and
- Include the question of height controls over the Queen Victoria Market as an issue to be addressed in the consultation process.

2.3.4 COMMUNITY CONSULTATION ON THE BUILT FORM REVIEW

After advertisements in local papers giving general information about the BFR and inviting public comment on it, a workshop with key stakeholders was held on 26 November 2003. Key stakeholders invited included Residents 3000, Urban Initiatives (Mr Bruce Echberg), Property Council of Australia, Market Precinct Group, QVM Management, DSE, North & West Melbourne Association Inc, and Peel Street Traders Association. In addition, a number of written submissions were received including some from presenters to this Hearing (North & West Melbourne Association Inc, Mr Bruce Echberg from Urban Initiatives, and Mr Robert Munro).

At the meeting on 8 July 2004 of the Planning and Development Committee, the issues raised in the consultation on the BFR were presented along with a draft of Amendment C61 which had been prepared to enable additional height limits and built form controls to apply to land within the study area through a revised Schedule 14 to the Design and Development Overlay (DDO). The revised Schedule 14 to the DDO was intended to give effect to the implementation of the preferred direction (Scenario B: Transition Development) for areas identified in the BFR but which also incorporated key changes in response to some of the concerns raised by the key stakeholders and further analysis by Council officers. As noted in the officer's report:

The revised schedule will provide for the following maximum building heights:

<i>Area 16 (Queen Victoria Market buildings)</i>	<i>12 metres</i>
<i>Area 17 (south side of Queen Street & Therry Street)</i>	<i>20 metres + 12 metres within a 9 metre depth</i>
<i>Area 18 (William Street)</i>	<i>21 metres</i>
<i>Area 19 (Franklin Street area and Anthony Street)</i>	<i>30 metres</i>
<i>Area 20 (north of A'Beckett Street)</i>	<i>60 metres</i>

A map (entitled *Consultants Recommendations*) showing these proposed height controls is included as Appendix C1.

After noting the issues raised by submitters, the Planning and Development Committee resolved at this 8 July 2004 meeting to defer consideration of the commencement of the exhibition of the proposed Planning Scheme Amendment to allow further pre-exhibition consultation to be undertaken with property owners and occupiers within the precinct.

The officer's report to the Planning and Environment Committee meeting held on 1 February 2005 noted that:

Subsequent to the Committee resolution [8 July 2004], an information sheet outlining the purpose of the Queen Victoria Market Built Form Review and the recommendations of the consultant's review was sent to all owners and occupiers of properties within the precinct. They were invited to provide written comments on the content and the final recommendations within the consultant's report.

A range of comments were made by submitters – some in support of the proposed heights and some opposed.

The officer's report also noted that:

In undertaking the review of the Design and Development Overlay (DDO 14) applying to the Queen Victoria Market and the land to the south of the Market, Hansen Partnership did not include an assessment of the existing 12 metre height limit within the Market (Area 16) and the 20 metre height limit to the south (Area 17) in the existing DDO 14.

Concern was raised by the North and West Melbourne Association about the effectiveness of the existing height controls over the market buildings and the lack of a review of these existing heights. Council's Heritage Consultant, Meredith Gould, was engaged to undertake this review, the basis of which was to examine whether the 12 metre and 20 metre height limits as specified in Schedule 14 on the Design and Development Overlay reflects the current height of the market buildings and whether these height limits adequately protect the heritage significance of the buildings within the Queen Victoria Market.

The conclusions of the Meredith Gould review were summarised in the officer's report as follows:

....the maximum heights of 12 metres and 20 metres height limits as specified in the current DDO 14 are not a reflection on the existing heights of the market buildings and therefore do not protect the heritage significance of the market buildings. Within the Market existing heights to the tallest point of the existing buildings, range from 4.9 metres to approximately 10 metres. Whilst the tallest buildings, being the shed between "K" and "L" and the Meat and Dairy Produce Sheds are 9.6 metres in height, the majority of structures are approximately 7 metres in height and lower. A new 12 metre building of height within the Queen Victoria Market would therefore not maintain the consistency of existing scale and built form.

Based on issues raised in submissions and the conclusions of the Meredith Gould report, a revised schedule of height controls to DDO 14 was presented to the Committee as a draft amendment as follows (and as shown in the *Exhibition Map* included as Appendix C2):

<i>Area 16 (existing sheds “A to M”)</i>	<i>7 metres</i>
<i>Area 17 (Market Carpark and Meat and Dairy Produce building)</i>	<i>10 metres</i>
<i>Area 18 (buildings fronting the south side of Therry Street east of Queen Street)</i>	<i>12 metres (for a depth of 9 metres)</i>
<i>Area 19 (south of Therry Street)</i>	<i>20 metres</i>
<i>Area 20 (William Street)</i>	<i>21 metres</i>
<i>Area 21 (Franklin Street area and Anthony Street)</i>	<i>30 metres</i>
<i>Area 20 (north of A’Beckett Street)</i>	<i>60 metres</i>

The Committee resolved at the 1 February 2005 meeting that Amendment C61 be exhibited.

2.4 THE AMENDMENT

2.4.1 SCOPE OF AMENDMENT C61

Amendment C61 was prepared by the Melbourne City Council and, as exhibited, proposes to:

- Revise the current Schedule 14 to the Design and Development Overlay by:
 - reducing the existing building height limits in Area 16 and 17 to generally reflect the height of the existing Queen Victoria Market buildings;
 - reducing the existing height limits over the existing Queen Victoria Market carpark for 12 meters to 10 metres stepping down to a 7 metre height limit along the Queen Street and Peel Street frontages;
 - reducing the existing height limits on the land fronting the south side of Therry Street and the east side of Queen Street from 20 metres to 12 metres for a depth of 9 metres;
 - introducing new height control areas to the table to Schedule 14 on land generally between Franklin Street and A’Beckett Street; and
 - introducing additional Design Objectives to Schedule 14 to ensure that new development to the south of the Queen Victoria Market provides an appropriate transition of scale from the Market towards the CBD.
- Make change to the Planning Scheme Map 13 DDO2 to amend the boundaries of existing Height Control Areas 16 and 17, and to include new Height Control Areas 18, 19, 20, 21 and 22.

2.4.2 EXHIBITION OF AMENDMENT C61

Amendment C61 was exhibited from 17 March to 22 April 2005. Notices were published in the *Melbourne Times* and the Government Gazette. A notice was sent to each owner and occupier of land affected by the amendment. Notices were also sent to relevant State Government Ministers and the DSE and relevant stakeholders. Appendix D contains a copy of the relevant parts of the exhibited Amendment C61, namely, the proposed DDO14 schedule and the map is included in Appendix C2.

A total of 16 submissions were received – the content of these submissions is discussed in Section 3. Based on consideration of issues raised in submissions, Council's Planning and Environment Committee resolved on 5 July 2005 to accept certain changes as follows:

- Correction of a 'mapping error' on the northern side of A'Beckett Street (extending over Franklin Street) by replacing the 60 metre height limit (Area 22) with a 30 metre height limit (Area 21) on the area fronting Franklin Street to the mid block property boundary; and
- Removal of the 7 metre height limit on the traffic roundabout at the intersection of Queen and Franklin Streets and from the toilet block within is located in the Queen Street road reserve (at the western end of Therry Street).

These changes are included on the map entitled *Council Recommendations (Post Exhibition)* which is included in Appendix C3.

As there were other changes requested in submissions on the exhibited amendment to which the Council did not accede, the exhibited amendment and all submissions were referred to a Panel Hearing.

3. ISSUES

3.1 ISSUES RAISED IN SUBMISSIONS AND AT THE HEARING

For the issues pertinent to Amendment C61, the Panel noted that the parties to the Hearing (and submitters generally) held contrasting views with high expressed degrees of conviction, which suggested that finding any working compromise would be somewhat difficult. The Council and some submitters clearly identified what they saw as the critical issues. Other submitters, however, expressed a range of concerns or alternative ways forward that the Panel was able to interpret, at least in part, as relevant issues.

The issue of proposed height controls for the various identified areas across the precinct was arguably the most critical issue identified through submissions. The Council apparently wished to both respond to further and better information obtained from its officers and be sensitive to the strongly expressed views by residents and others involved in consultation on the amendment. As a result, the Council's documentation reveals an evolution of proposed height controls over time across the precinct (see Section 2.3). This evolution of the physical expression of desired heights within the precinct is illustrated by the plans progressively associated with the following reports and maps:

- *Queen Victoria Market Precinct Built Form Review* (Hansen Partnership, July 2003);
- *Consultant Recommendations* (map dated 9 June 2004) (see Appendix C1);
- *Queen Victoria Market Review of Height Controls* (Meredith Gould Architects, January 2005);
- *Exhibition Map* (dated 15 January 2005) (see Appendix C2); and
- *Council Recommendations (Post Exhibition)* (map dated 8 June 2005) (see Appendix C3).

These reports and maps reflect various attempts to accommodate a range of views. These attempts by Council, however, did not produce an agreed view concerning the latest (adopted) version (July 2005) (see the map entitled *Council Recommendations [Post Exhibition]* in Appendix C3). Indeed, the Panel observed that the adopted version is somewhat more complex than previous versions with respect to both vertical 'layering' across the precinct and horizontal 'alignment' with precinct property boundaries.

The Council, as proponent of Amendment C61, in its submission identified four 'main issues' as follows:

- height transition between the QVM and the CBD;
- reduced height limits for the QVM;
- reduced height limits for Therry and Queen Streets; and
- protection of Flagstaff Gardens from additional overshadowing at specified times.

Drapac Property, which controls a major site in the south-west of the precinct not presently subject to height controls, identified key issues as follows:

- the limiting effect of height controls for a significant 'supersite';
- discretionary height limits become *de facto* mandatory limits;
- the inconsistent treatment of the QVM precinct by Council over time;
- there are sufficient existing controls on the Drapac Group site; and
- additional overshadowing protection of Flagstaff Gardens is not justified.

The Queen Victoria Market Pty Ltd submission identified the following issues of concern to it:

- the protection of heritage values of the QVM;
- the commercial objectives and needs of the QVM site;
- inconsistency with existing strategic studies;
- the need to provide appropriate (on site) parking facilities; and
- the need for a maximum height in excess of 10 metres.

The Munro ('Munro Corner') submissions saw the critical issues as follows:

- insufficient strategic justification for the amendment;
- sufficient existing decision-making framework, including the 'unfettered discretion' of VCAT, to provide decision-making guidance;
- proposed control adds an unnecessary further layer of complexity; and
- failure to recognise potential redevelopment options for Munro site - a rare 'supersite' within this precinct.

The Wealthcome International Hotel submission generally agreed with the third dot point above and added the following issues:

- height controls do necessarily lead to good design outcomes; and
- the block bounded by Franklin, Anthony, A'Beckett and Elizabeth Streets has particular physical characteristics, including spatial separation from QVM, which would justify its removal from present considerations.

The Echberg submission, also representing some associated residential interests, endorsed the thrust of the amendment but found issue with:

- the heritage qualities of the precinct had not been sufficiently safeguarded by the BFR scenarios and resulting controls proposed in either the Exhibited or Adopted versions (a Bruce Echberg version was offered as an alternative); and
- Previous high rise (overdevelopment) proposals in the precinct have only been prevented through the vigilance of concerned residents and businesses in the area (and not necessarily by Council or its officers).

The submission of the North & West Melbourne Association Inc. supported the amendment including the changes made in the Adopted version, but raised the additional following issues:

- the need to apply design sensitivity through 'stepping down' any unrelieved new built form on the QVM, sensitively responding to site topography; and

- the failure of Council to proceed with a formal Winter Solstice Policy for identified City gardens (including the Flagstaff Gardens) as previously recommended.

Other submissions heard by the Panel offered some comment which related to issues raised in more detail elsewhere:

- the proposal is ‘unAustralian and unfair’ (Ms Susan Hawes, Mr Howard Gibbons), which would compromise a major entry (Elizabeth Street) to the City; and
- the proposal would inhibit the potential land assembly and redevelopment of a key Elizabeth Street site (Mr Phill Kelly).

Other written submissions raised certain issues which also have been discussed in detail by other submitters including:

- a request to recognise the height of existing buildings within the precinct in any control (Hotel Y, YWCA);
- the ‘small’ nature of certain sites in combination with the control, makes their future development ‘inefficient and uneconomic’ (Benjamin Investments Pty Ltd);
- amendment has no logical or practical basis (Tramere Pty Ltd);
- height changes within control are ‘too abrupt’ with additional options suggested (Mr Richard Davis); and
- redevelopment options for sites within the precinct have been reduced by the proposed controls (Tramere Pty Ltd, Suttons Holdings Pty Ltd).

The Panel has considered all the above issues in seeking to formulate the following consolidated set of issues which will then be discussed in turn. It should be noted that issues identified that relate to the adequacy or otherwise of the strategic framework as a justification for the amendment are discussed in Section 4 - Strategic Context.

In addition, the Panel adopted the approach to apply any relevant identified issues that follow (when discussed in Section 5) to each of the Areas 16 to 22 (as identified in Schedule 14 to the proposed DDO).

3.2 MAXIMUM BUILDING HEIGHTS – AGREEMENT/DISAGREEMENT WITH EXHIBITED HEIGHTS

Two aspects of this issue are relevant here:

- those submissions that argue that no height controls should exist at all, with design guidance being provided through other (performance-based) measures; and
- those submissions which could accept the imposition of an appropriate height control but would prefer a height limit other than that proposed through the amendment (or as adopted).

This section will deal with the former issue, with the latter issue discussed in Section 5. The Panel observes that, in relation to the former issue, the position in most cases is that if it is found that height controls will apply in the Precinct, individual property owners had preferred applicable ‘fall back’ heights in mind.

The identification of a certain physical building envelope over each individual Area within Schedule 14 to the DDO was often viewed by its detractors as an unnecessary, impractical constraint on the best outcome design and development of future urban form. Conversely, the Council, as proponent, together with supporting submitters, considered that the 'building height' approach represents a reasonable and effective way to produce responsive design outcomes in the context of a precinct-wide ordered design regime.

Mr Milner, in providing planning and urban design evidence in support of the submitter (Drapac Property) which controls the largest (potential) assembled site within the precinct, concluded:

The imposition of height controls is not an effective manner of ensuring good built form and urban design outcomes, nor does it ensure appropriate interfaces to the Queen Victoria Market.

This view was shared by Mr Andrew Kelly (for Munro interests) who judged that the control would prejudice any proposed redevelopment, preferring a performance-based approach:

The new height control...would establish an expectation that any development will take place in a particular manner...this in effect pre-judges any proposed redevelopment of the site. This is something which should be reserved for the consideration of a planning permit application in the context of the existing (and predominantly performance-based) decision making process.

A third planning witness before the Panel (Mr Bastone for Wealthcome International Hotel) also endorsed this view:

The introduction of height controls is not necessarily an effective manner of ensuring good design outcomes.

Mr Bastone went on to cite the history of the recently developed Stargate building in Franklin Street which resulted, in his opinion, in a substandard built form outcome through 'an imposed height limit'.

Advocates and witnesses for precinct property owners generally adopted the above approach expressing opposition to the concept of height controls, particularly where such a control has not previously applied within the precinct. Views ranged from the belief that height controls are 'undemocratic' to the concern that an imposed constraint will result in a less creative and responsive built form (compared with innovative designs responding to performance-based approaches).

Whilst certain residential and property interests supported a height control regime, it was effectively left to the Council representatives to spell out the case in support of the proposed approach to height control. Mr Tweedie, in his submission to the Panel on behalf of Council, indicated that height controls in the precinct are not new. The proposed heights are basically an updated version (responding to development pressures in the precinct) of controls that were incorporated in the 'old format' planning scheme. The critical analysis in the two Council reviews (see Section 5) justify the application of the control to a more extensive precinct associated with the QVM and for significant land clearly contained within the Capital City Zone:

Some of the land in the Precinct is not subject to any individual height or built form control, and its future development is guided only by general urban design policies within the Scheme. For an area of such significance, this is considered to be undesirable and, accordingly, the Council submits that there is a real need to provide further and more detailed guidance as to desired built form outcomes. Decisions should not simply be left to the judgements of planning authorities or Tribunals based on general policies.

The additional certainty provided by the more specific controls will be of benefit to all interested parties, and help to ensure that the development of this important precinct occurs in an orderly and sustainable manner.

In addition, Mr Tweedie, through his cross examination of a heritage witness (Mr Fraser Brown) was able to effectively dispose of the proposal that the provisions of a DDO could be replaced for this precinct by a more prescribed version of a Heritage Overlay (which also applies to the Precinct). It was pointed out by Mr Tweedie that because of the state-wide application of the Heritage Overlay, this overlay could not include a schedule of specific height controls which would apply to an individual precinct.

Mr Craig Czarny, of Hansen Partnership, gave evidence for Council stating that he was a leading contributor to the *Queen Victoria Market Built Form Review* (Hansen Partnership, July 2003). He further indicated to the Panel that his primary expertise was in urban design (his co-author of the BFR was responsible for the strategic justification aspects). In his evidence (p2), Mr Czarny went to the genesis of the rationale for height controls (whilst still acknowledging the changes in the adopted version were acceptable to him):

...I accept that the proposed amendment has applied additional design and development controls over the study area...I am satisfied that these controls are appropriate and that the amendment will:

- *Reinforce the urban design and qualities of the Queen Victoria Market and surrounds,*
- *Generate an appropriate city form and skyline image as experienced from the city fringe,*
- *Protect the amenity of the Flagstaff Gardens and other public places in the Precinct, and*
- *Provide appropriate opportunities for significant central city consolidation and development.*

In pursuing desirable urban outcomes for the precinct through the BFR, Mr Czarny relied on particular recommended Design and Development principles relating to:

- Architectural and Urban Design Quality;
- Building Height and Silhouette;
- Streetscape Contribution and Image and
- ESD and Service Infrastructure.

These principles, Mr Czarny claimed, whilst of arguably equal value, need to include height control as part of a complementary suite of guidance measures.

Mr Czarny explained that a 'Vision' was developed in the BFR, against which three development scenarios were tested. This assumed, among other things, height controls which will *ensure that that individual building forms are recognisable as individual architectural elements within streetscapes with a distinguishable building base, middle and top*. The Panel discusses the merits of the individual scenarios in following sections.

Under questioning from the Panel, Mr Czarny admitted that variations to the above design approach were possible for certain sites, but the approach which responded to the Vision, forming the bedrock for the amendment, was appropriate and necessary in this case.

Council also submitted urban design evidence through its Manager of Urban Design, Mr Robert Moore. Through Mr Moore's evidence and cross-examination, it was revealed he had supported modifications of significant proposals for major new development in the Precinct which exceeded the heights now proposed to be introduced through the amendment process (see, for example, City Projects report on Proposed A'Beckett Street Development & Design Studies for Residential Tower, 206 A'Beckett Street [August 2000]). He indicated, however, that now he had *changed his mind* with regard to applicable height controls. He was able to state that *...they represent a clear and concise statement of...desirable outcomes for the precinct*.

Whilst Mr Moore believed that the BFR was a *useful starting point* for the consideration of built form and height in the precinct, he clearly preferred the modified versions of the controls as exhibited and adopted. This clearly placed Mr Moore in the same 'camp' as those property interests that can live with height controls *per se*, but prefer a modified measure. Mr Moore stated:

The form and content of the DDO...represents...an improvement over the initial recommendations...The modifications to the height limits of certain areas has been necessary to achieve the best form outcome for the precinct, taking into account various competing considerations. I offer my support for the DDO as currently presented...

The Panel, in reflecting on the competing considerations (variations of 'transition' by 'layering') referred to by Mr Moore, is not necessarily convinced that the control iterations with increasing degrees of complexity represent improvements for built form outcomes for likely future development. This issue is explored in an Area-specific manner in Section 5.

Ms Meredith Gould offered heritage evidence on behalf of Council further to the *QVM Review of Height Controls Review* (January 2005) which she prepared. Ms Gould's main contention was that height controls which already apply to the QVM site subject to the existing DDO should be brought more into line with the existing heritage buildings and structures. The applicable development direction (height limit) for the undeveloped QVM car park site, in Ms Gould's opinion, should:

...reflect and respect the existing built form, low height and low scale within the QVM [and] result in an appropriate context for the existing low scale and low height Market buildings around the Market edges; and should be compatible with its character.

With the Gould recommendations influential in forming the controls as proposed, the Panel took particular note in its site inspections of the physical presence and character of the QVM buildings as they opened or masked views to and from the site. The Panel also observed the difference on site (as judged by the height of known elements such as light poles) between existing and proposed height limits for any future development of the car park area.

Without committing to a final position at the time of the inspection, the Panel observed that the spatial experience from the site at ground level was highly pertinent to forming an informed appreciation of matters of building height. The Panel is of the opinion that personal visual evidence is critical in assessment and should supplement Hearing considerations based on the viewing of two dimensional maps and even the viewing of relevant photographs.

The Panel, in examining the somewhat contentious matter of the application of Precinct-wide height controls or otherwise, can also see the case for a comprehensive contextual design study for individual sites (especially larger consolidated sites). The Panel, however, believes that this further approach does not destroy the benefit of an additional control, especially where this 'constraint' is seen as a 'creative opportunity' by design professionals.

The Council, however, underscored the need (and precedent) for large area-based controls by reference to the tabled Schedule 33 to the Design and Development Overlay (19 December 2002). This provision sets out tower setbacks relating to stated heights over an extensive area on the CBD Fringe. This control extends into north and west Melbourne, generally extending from the subject site. The Panel noted that it also introduced an equinox overshadowing standard to the north and west of the Flagstaff gardens.

The Panel further considers that, where a height control is to apply, it should be logical (in the 'reading' of urban form sense) and comprehensive, being able to be simply understood and applied. The Panel will apply these tests when it considers options in Section 5.

3.3 DISCRETIONARY HEIGHTS VS MANDATORY HEIGHTS (INCLUDING RISK ASPECTS)

A superficial question that could be posed with regard to the amendment process is 'Why replace one set of discretionary controls with a further set of discretionary controls – albeit with different guidance with regard to desired height outcomes?' Some submitters put to the Panel that if a case could be made to the Responsible Authority or VCAT to vary the height under existing 'rules', why supplant this process with a further discretionary one which would equally allow the consideration of a proposal that responds to the Objectives in the Schedule to the DDO and other relevant State and Local Policies?

In his supplementary opinion tendered to the Panel on the question of the 'unfettered discretion' available to authorities in considering planning applications, Dr Philip Opas, on behalf of the Munro interests, concluded:

The amendment will make no difference as far as my client is concerned to the discretion established by the provisions above referred to. That discretion will remain undisturbed. The amendment is therefore unnecessary and bad planning to introduce yet another confusing guideline because there will remain three elements (Market, surrounding residential developments and adjacent precincts), to be dealt with and considered on their own merits when an application for a permit is made. The Responsible Authority should not be restricted in its judgements on those merits if changes unanticipated by the planning scheme will have occurred.

Alternative views on this matter were tendered by the other two advocates who were party to the Hearing. Mr Tweedie, in his supplementary submission on behalf of Council, cites the case of *Sweetvale Pty Ltd v Melbourne City Council* decided by VCAT (12 January 2004). He claims this matter relates to *essentially identical provisions in another DDO*. Mr Tweedie, in following the reasons provided in this case, concludes that it follows that the discretion to grant a permit is not 'unfettered'. Dr Opas in a reply to supplementary submissions was 'the last word' directing the Panel to *Whitehorse City Council v Golden Ridge Investments 2005 VSCA 198* as a judgement 'of the highest Court in Victoria' in support of his earlier contention.

The Panel, without wishing to adjudicate on the legal arguments expressed, considered the consequences of discretion (fettered or unfettered) not realising built form vision/objectives. One reaction to this apprehension could lead to the desire to impose mandatory height controls (which presently apply in certain areas of North Melbourne and Carlton) in lieu of the discretionary height regime. It is noteworthy, however, that no party to the Hearing, including the Council and its expert witnesses, advocated this course, preferring the established discretionary control approach.

Putting aside legal considerations, the Panel heard concerns raised by many parties that, in their opinion, often based on extensive experience in the building and development industries, that discretionary controls were often applied by responsible authorities as *de facto* mandatory controls. This perception is based on the known 'uncertainties' associated with development which regularly produce time and thus cost blowouts. This issue revolves around the skills of Council officers and their delegated authority to negotiate 'different' built form outcomes. Also cited in this context is the varied composition of VCAT and resulting range of 'opinions' sometimes represented there.

The Panel was informed that, among the development fraternity, there are those who would rather proceed in a confined but 'certain' planning framework where likely time schedules associated with obtaining planning permission can be predicted with some accuracy. This was described as project 'risk assessment'. It was put by Mr Milner (on behalf of Drapac Property) that an assessment of project risk was the first responsibility of planning consultants to developer clients. This 'commercial reality' of developers choosing a more known path and not risking a better built form outcome, according to Mr Milner, is part of the reason he concludes:

...the implementation of height controls will not necessarily achieve the desired outcomes of managing change around the Market buildings and enhance the CAD skyline views.

Mr Adrian Finanzio, on behalf of Drapac Property, reinforced the point of the practical effect of the control in responding to the question of 'why'.

Height controls limit development yield. It follows that before one imposes a height control one ought to be satisfied that the limitations imposed upon development are consistent with the desired land use planning outcome.

And perhaps more pertinently:

Height controls, even discretionary height controls, are extremely effective in limiting the height of a building to nominated limits...because...built form outcomes...are...wedded intrinsically to the nominated heights...the nominated height limit is imposed to achieve the built form outcome in height terms and so departure from the limit is not warranted.

Mr Bastone, on behalf of the Wealthcome International Hotel, talked of his client's commercial experience:

...with controls of this nature...some...will expect that the maximum building can be met but not exceeded. So whilst the proposed control affords the ability to exceed the specified maximum building heights, we believe that in reality exceeding the nominated building height will be extremely difficult regardless of the design merit of the building proposed.

In addition, Mr Stokans, on behalf of Queen Victoria Market Pty Ltd, was at pains to make the same point with regard to the viability of proposals for the car park area of the QVM which will be constrained in height in relation to existing heritage structures.

While the exhibited amendment proposes discretionary building heights which gives the opportunity for a building or works to exceed the maximum building height provided that the development continues to achieve the design objectives and the built form outcomes of DDO14, these design objectives are too narrow...This in effect means that in reality there is no discretion for granting a permit which is higher than the highest heritage building within the market.

Issues related to the QVM are dealt with in more detail in Section 3.4.

The Panel reflected on the difficult issue of discretionary height controls generally. The Panel believes that, within this precinct, there is no justification for a mandatory height control regime which would provide for maximum prescription and minimum design flexibility. Further, the Panel is sympathetic to the view that the discretionary control does, to a large degree, confine development to the nominated limit.

Whilst there is a capacity through the DDO to depart from specified discretionary maximum height limits, the Panel observes that the weight of design justification and argument will, of necessity, fall upon an applicant's professional team. The Panel further acknowledges then, that pursuing alternatives may be too onerous (in time and cost terms), other than in exceptional circumstances. The Panel, however, believes that height limits remain an essential element for providing guidance for built form proposals. It follows that, when applied, these controls should represent the logic of their origins and intentions, which design professionals when creating responses to site and context, can see as both helpful and fair.

3.4 QVM ISSUES – OPERATIONS, PARKING, HERITAGE, AND PEDESTRIAN AMENITY

3.4.1 OPERATIONS

The Panel was keen to understand the relationship between the Council as Responsible Authority for the planning of the QVM and its role as custodian of the land on which the QVM is located.

The Council and Queen Victoria Market Pty Ltd (the operating entity for the QVM) were separately represented at the Hearing, with the Council stressing the 'arms length' relationship between the two bodies. Whilst *prima facie* the Panel accepted this divide, it was interested to learn that the Council enjoys a range of formal and informal relationships with the QVM entity.

The Panel was informed that the Council is the single shareholder in Queen Victoria Market Pty Ltd, approves its annual budgets, endorsed the *QVM Masterplan* (September 2003) (which extensively canvasses operational matters and certain development options) and, perhaps more significantly, undertook (through consultants) planning and urban design studies associated with the abandoned Supermarket/Car Park/Retail Premises/Roadworks proposal on the existing open car park area (March 2000).

The Panel noted that the QVM is subject to its own legislation (*Queen Victoria Market Lands Act 1996*) and a land grant for the car park and, in particular, Clause (d) states:

the condition that the land be used for market purposes (Queen Victoria Market), car parking and municipal purposes associated with the operation of the adjoining Queen Victoria Market.

The Panel, nevertheless, was not convinced that the interests of Queen Victoria Market Pty Ltd and Council were as far removed as the representatives for the two bodies portrayed at the Hearing. Whilst it may be 'water under the bridge', it was apparent to the Panel that the Council and Queen Victoria Market Pty Ltd could have come to a common view concerning preferred development which balanced heritage, commercial and iconic tourism node considerations.

The Panel would not quibble with Mr Tweedie's contention that both the Council and Queen Victoria Market Pty Ltd are entitled (indeed required) to come to their own considered positions. However, because part of the rationale of the amendment is to protect the QVM's heritage values and recognise *an important retail and tourist attraction*, an accommodation between the Council and its valued 'creature' would seem to the Panel to have been possible. The Market could have made helpful input to the Council's consultative process at appropriate time prior to exhibition of Amendment C61. It is now left to a third body (the Panel), however, to consider the merits of development after taking account of the submissions by both parties.

Mr Stokans reminded the Panel of the emphasis in the Melbourne Planning Scheme to *promote the QVM as a major retail and tourist resource, and its role in central Melbourne's capital city functions*. Clause 22.08 was cited in support:

The Market's continuing success and viability is of considerable importance to the vitality of the city;

In further support of this aspect, Mr Jim Monaghan, (Managing Director, Queen Victoria Market Pty Ltd) was introduced and asked by Mr Stokans to explain certain aspects of the QVM's present operations and future needs. Mr Tweedie protested at this approach, in the belief that Mr Monaghan's submission *verged on evidence* which had not been previously documented and exchanged, thus it could not be tested in the usual way. Nevertheless, the Panel was assisted in its better understanding of the Market's operations and requirements from a management point of view through the documents tabled and Mr Monaghan's contribution. The Panel agreed, however, if QVM management had presented as a formal witness, more weight could have been placed on the verbal and documented information obtained.

The QVM is clearly a site with 'conflicting notions' as indicated by the Explanatory Report to the amendment, which cites the *expectations of local residents* as well as the *character and context of QVM*. That the 'street-life' character is a major attractor to the QVM is undisputed. It was also clear to the Panel that the numbers of local shoppers and visitors attracted to its varied retail offering on its five days a week of operation is essential for commercial viability.

3.4.2 **PARKING**

It is in regard to commercial viability that Mr Stokans believes the amendment has its major shortcoming:

Amendment C61 has missed the mark in relation to acknowledging the economic effect of what is proposed. It will have a negative economic benefit on the operation of the market itself because the viability of the market is dependent on being able to provide for car parking generated by its use.

Mr Stokans explained that this is due to the potential loss of one deck of car parking if a multi-deck car park were to be constructed over the present ground level car park. Upon questioning by the Panel, however, it was revealed that no detailed feasibility study had been completed on the subject site to demonstrate, among other things, alternative parking yield.

Mr Tweedie, in response, went to the QVM *Master Plan* (Section 6.4.4) which indicated that a number of alternative approaches to the provision of car parking were possible, including off-site solutions. He noted that the consideration of a multi-deck car park should only be considered after *...the implementation and assessment of effectiveness of lower-cost options*. (Section 8.3.4).

With the limited information available, the Panel would not be surprised if the Market Corporation's contention that the provision of car parking on market days is tight and, on occasions, grossly inadequate. Nevertheless, the Panel is inclined to agree that concern expressed over the effect of the proposed 10m height control is premature in the absence of detailed feasibility studies, both on and off site, of available car parking responses.



Photo 2 View northwards across open car parking area of Queen Victoria Market towards market buildings and higher buildings on north side of Victoria Street

3.4.3 HERITAGE

The issue, however, that seemed to drive most concern is the respect for the heritage aspects of the QVM. This has resulted in the two existing Heritage Overlays - one which relates to the Heritage Victoria's Schedule of Heritage Places (HO496) and the other that relates to a larger area included in the Heritage Precinct (HO7) (see Section 4.2.2).

Mr Stokans was confident that Queen Victoria Market Pty Ltd endorses the MSS and LPPF emphasis on the preservation and enhancement of heritage aspects. He stated that this organisation ...*fully accepts the need to protect the heritage values of the place*. He further cited the existence of the *Queen Victoria Market Conservation Management Plan* (Allom Lovell & Associates 2003) as evidence of commitment in this regard.

The *Conservation Management Plan* was argued by Mr Stokans to be a detailed study which is sensitive to the site's original role as a cemetery and the varying architectural significance of building structures, areas, landscapes and vistas. It was put to the Panel by Mr Stokans that this Plan, and, in particular, its summary *Figure 73 - Hierarchy of Significance within the QVM* (to be read in conjunction with a full listing of the areas and elements at Section 5.3 of the Plan) is an essential guide for decision-making. Figure 73 adopts three levels of significance from Primary (shown separately for Buildings, Altered Buildings & Areas) to Little or No Significance. For the Upper Market, it shows least significance for the new J Shed, Contributory Significance for the buildings that flank the car park (including the tallest K & L Shed) and Primary Significance to the area of the car park (due to the location of the former cemetery beneath it).

The issue of the Upper Market car park site is canvassed in the *Conservation Plan* (p112) stating:

Development of the carpark site should be carried out within these conservation guidelines and take into account those contained within other incorporated reports of the Queen Victoria Market Master Plan, 2002.

This section goes on to discuss the potential for a sensitive development respecting the 8,000-10,000 remaining internments, with 1 to 2 storeys on the edges and 1 to 4 stories on the centre.

The Council, in seeking to better inform itself with regard to controls over the QVM site, commissioned Meredith Gould Architects Pty Ltd, who are Conservation Architects familiar with the site. This *Review of Height Controls* (Meredith Gould Architects Pty Ltd 2005) formed a basis for controls on and adjacent to the QVM site. The primary findings relate to the merit of dual Heritage and Design and Development Overlays. This report recommended that this approach continue, with the introduction of an amended DDO14. Secondly, the report found that:

The maximum heights specified of 12m and 20m and the provisions of the existing DDO14, do not provide the means of achieving the heritage objectives in Schedule 14 to the DDO given the existing heights of the Market buildings.

Lower heights were subsequently recommended which closely related to existing buildings and structures which, in a 'rounded off' form, were included in the exhibited Amendment (see Appendix C2). The implications for the QVM are discussed above, but the effect on surrounding development fronting Queen and Therry Streets seemed to the Panel to be more confining because it relates to privately-owned property (Munro and other interests). The Panel heard the strongly expressed views of submitters that this heritage-based control which encroached on their properties. This produces an unwarranted and impractical constraint, which is not required to protect heritage values (low scale/low height).

Whilst the Panel discusses the preferred height limitations in Section 5, it is of the opinion that the lower frontage strip along Therry and Queen Streets for a depth of 9m as recommended, exhibited and adopted seems somewhat arbitrary. The Panel can relate to the comment of one submitter that the *magic line* approach is not magic or even desirable if the logic of the control is not readily apparent from the site morphology or its as-built context.

3.4.4 PEDESTRIAN AMENITY

A final matter under discussion with regard to the life and vitality of the QVM is what could be thought of as the 'pedestrian amenity' factor. Detailed evidence was not presented by submitters on this aspect, however, the Panel observed that the QVM is a major cosmopolitan attractor of 'bustling crowds' of people shopping, eating/drinking and perhaps 'just looking' as an experience. This quality was seen to be desirable by all parties.

Whilst the amendment envisages potential views from the QVM 'to the city skyline' and other view corridors explored in the BFR, the reality may be otherwise. Various submitters pointed out that people would find many available vistas were effectively screened by the QVM sheds. Further, it was suggested that crowds experiencing the 'hustle and bustle' of the QVM's ambience that draws customers would not be looking for more aesthetic experiences associated with the sometimes available external view corridors.

The Panel endorses the desirability of a lively and 'unpredictable' pedestrian experience to be valued and encouraged along with other environmental and heritage qualities. The Panel is confident that the QVM can continue to serve its various communities of interest well into the future. No doubt, however, tensions will remain between its sometimes competing interests.

3.5 FLAGSTAFF GARDENS AMENITY AND OVERSHADOWING

The issue of overshadowing could perhaps be characterised from the viewpoint of Drapac Property interests as involving 'thin mid winter sun for a few hours over a few square metres for a few people under a thick canopy of tree branches'. Council interests, alternatively, would no doubt convey the need to create a rare opportunity for the enjoyment of warming 'sun patches' for the growing number of users of limited CAD park resources.

Whilst the above characterisations may exaggerate positions somewhat, nevertheless considerable debate occurred at the Hearing over this point. Mr Tweedie, when suggesting that this was a main issue, postured *whether it is necessary and/or desirable to provide protection for Flagstaff Gardens from the adverse impact of additional winter shadow*.

The question of 'additional' overshadowing seemed germane to the Panel as evidence presented on behalf of Drapac Property indicated that *the horse had bolted* in that the shadows in question would emanate from the east side of Queen Street at the south-west corner of the precinct. This is due to the existence of the Radisson Hotel on the corner of Queen and A'Beckett Streets and the approval (but not yet acted upon) for a 72m high building immediately east of the hotel building in A'Beckett Street.

The adopted height control in this location (21m) is derived from the maximum building height which would avoid the casting a shadow over the Flagstaff Gardens on June 22 (winter solstice). The calculations and projections for this limit are not a matter of dispute between the parties. The main aspect in contention, however, is the use of the winter solstice (in lieu of the equinox) as the basis for the overshadowing control embedded in the height controls in the DDO.

Mr Tweedie took the Panel through the somewhat contorted history associated with this matter. It can be summarised as follows:

- A winter solstice standard applied to city parks prior to the advent of the new format Planning Scheme, (which, pursuant to DDO 33, introduced an equinox standard) and, although the former was recommended for retention by the Panel, it was not retained in the new format Planning Scheme for 'unknown/unclear' reasons;
- Clause 22.02 of the Scheme applies a winter solstice to three significant 'hard' urban spaces including Federation Square, but an equinox standard to 'public parks and gardens' and the like (including Flagstaff Gardens);
- The Amendment C60 Panel recommended that *Clause 22.02 should be changed in respect of Flagstaff Gardens to establish a policy standard that it not be exposed to additional overshadowing due to new development between the hours of 11am and 2pm on 22 June, except where the responsible authority considers*

that the additional overshadowing would not prejudice the amenity of the area;
and

- This recommendation, whilst having currency, was not adopted by Council due to the likely concerns of affected property owners.

Council has subsequently taken this first opportunity to 'correct' this situation, at least with respect to the relevant properties within the precinct subject to Amendment C61, in the belief that it is consistent with both the 'traditional' standard and the considered recommendations of the Amendment C60 Panel.

Not surprisingly, the Drapac Property submission and evidence came to a completely different conclusion. Mr Finanzio stated that *in relation to solar access, the proposed amendment is entirely inconsistent with its existing planning policy framework*. Mr Finanzio's argument can be summarised as follows:

- The existing policy is for an equinox standard (subject to Clause 22.02);
- Discretion is available pursuant to that policy (*except if... would not prejudice...*);
- Council now prefers a height control (rather than a performance measure), adopting the winter solstice rather the equinox and *does not provide any express basis for the tempering of the control...*;
- It is anomalous to give one edge of Flagstaff Gardens the same level of protection as, say, Federation Square;
- This approach runs counter to previous clear community commitments to the contrary;
- Any move to a new sun access benchmark should not be by an *ad hoc* measure; and
- A case-by-case assessment is a preferred approach to overshadowing rather than *be wedded to a numeric value in a height control*.

The Panel was interested to observe that both advocates, as summarised above, were drawing on commonly agreed facts and documentation in forming their differing conclusions. The Panel, in considering this matter, was further assisted by the shadow diagrams produced by the parties. The BFR included various scenario diagrams which showed projected shadows. These were put aside by the Panel as it was admitted that these shadows were only to illustrate heights and were not considered relevant to the issue of overshadowing.

Additional shade assessment diagrams were produced by Hansen Partnership for Council using a built form model developed with Rhinoceros software. These diagrams, which were tabled at the Hearing, accurately plotted:

- existing overshadowing at the winter solstice (only the Radisson Hotel transgresses),
- approved buildings (only the approved 25 storey [72m] development on A'Beckett Street adds to the winter shadow), and
- the shadowing effect of a potential 21m building 'wall' along the William and Peel Street intersection.

This final construct shows that winter solstice shadows would not impinge on the Flagstaff Gardens boundary. Mr Czarny told the Panel that, although not illustrated,

the maximum height of buildings to avoid additional overshadowing at September 22 at 11am is 44m.

The Panel took the opportunity to project the effect of a theoretical building on the William Street frontage at the same height (44m) as the existing adjacent hotel (such a building would have the additional characteristic of screening, in the Drapac Property submission *the ugly blank northern wall of the Radisson*). The outcome of this further analysis could be observed to about double the amount of the William Street (eastern) side of the Flagstaff Gardens subject to shadow, or about an additional 3% area. A 30m building, as envisaged by the BFR, would have a correspondingly smaller effect.

Mr Czarny claimed, however, that the small gain in the Garden's amenity was more worthy than competing streetscape considerations:

While I accept that a reduction in development scale to William Street from 30m to 21m reduces the 'presence' of street frontage to the park and city edge, and presents a scale that is marginally less than that fronting the Market, I do not believe that it will significantly compromise the function of the Market precinct, or its capacity to evolve within the Capital City Zone.

It was of note to the Panel, however, that these (newly) projected winter shadows would in fact fall over a heavily-treed area which would reduce any additional loss of winter sun. The Panel was made aware of the *Flagstaff Gardens Master Plan* (City of Melbourne 2000) which indicated the need to renew significant trees over time due to senescence and disease. Indeed, it was observed by the Panel that several species along the William Street boundary had been replaced over recent years, indicating to the Panel that major trees along the area in question were likely to remain with various degrees of maturity, foliage and winter canopy over time.

Clearly Drapac Property interests carried the greatest concern for this issue. To support his conclusion that *..there are sufficient controls...to...protect the Flagstaff Gardens from unreasonable levels of overshadowing*, Mr Milner in his evidence, included an extensive shadow study prepared by PeddleThorp/Architects which included the following diagrams for both the equinox and winter solstice:

- Existing Conditions;
- Exhibited Height controls;
- Proposed height controls (as amended July 2005);
- *Built Form Review* – Recommended Scenario B;
- Existing Permit; and
- Possible higher built form.

The Panel observed that no shadow fell over the Gardens for any of the above situations using the equinox standard. For the winter solstice, the diagrams endorse the BFR projections except more information is provided on the effect of the 30m limit recommended pursuant to Scenario B. Also a higher built form north of the Radisson Hotel but matching its height (44m) was shown. In addition, in all cases, the PeddleThorp projections indicated shadows cast by trees along the William Street boundary.

Mr Milner, noting the apparent defects of the BFR with regard to shadows, commented on this aspect:

The impacts of shadows on the Flagstaff Gardens appears to have been an afterthought for inclusion in the C61 Amendment.

and further, with regard to solar penetration:

My observation of the Flagstaff Gardens confirms the findings of the Review that the identified 'sunspots' in the Flagstaff Gardens receive good solar access. These areas are set well back from William Street, behind an avenue of deciduous trees that line the William Street footpath.

Mr Milner also comments on the nature of the *dense, woody branch structure* of trees and shadows cast by the Radisson Hotel. He concludes that:

...that the height controls in the C61 Amendment seem to arrive at a height limit that bears no resemblance to the shadow policy at Clause 22.02 and the capital City Zone provisions. These provisions both use the September 22 equinox to measure the impact of development on public open spaces and gardens.

The Panel, in reviewing this issue, is inclined to agree that the proposed height provisions along William Street do seem to be an afterthought (or possibly opportunistic). Further, the Panel considers that the introduction of the winter solstice standard via Amendment C61 is a less transparent means of introducing a new control measure. An amendment would be preferred that would involve the shadowing effect of development to relevant perimeter of the Gardens (and, indeed, any other place that Council wishes to treat with the winter equinox standard presently applying to Federation Square and two other premier spaces).

What the Panel considers the applicable height control is indicated in Section 5, but it is clear that the logic of the proposed winter solstice standard represents a somewhat 'shaky' basis for the introduction of new control with major implications for potentially affected adjacent landholders.

3.6 ALIGNMENT OF CONTROL BOUNDARIES WITH TITLE BOUNDARIES

The issue of alignment with title boundaries again drew differing views at the Hearing. On one hand, some believed that because of the possibility (and actuality) of amalgamated sites where title boundaries become less relevant, convenient straight lines can delineate edges of differing height controls. While this was the general view of Council, some accommodation of boundaries seems to have been made with regard to properties at A'Beckett Street west, whilst some property boundaries in the block bounded by Therry, Elizabeth, A'Beckett and Queen Streets related exactly to proposed changes in the control and some clearly do not.

It is in this latter location that most concern was expressed by submitters, chiefly in relation to the extensive Munro interests, but also from two smaller tapering properties at the south-west corner (owned by Benjamin and Tramere interests). Other submitters along the Elizabeth Street frontage were not concerned with the boundary

condition, but in the case of Mr Phill Kelly's holding, the prospect of the assembly of a larger site seemed crucial.

Mr Munro tabled a plan of his properties fronting Therry and Queen Streets. which seemed to indicate some six separate contiguous properties. These sites (together with four further properties along Queen Street) would be affected by the proposed 9m setback with an associated height limit of 12m that corresponds to the existing 'McDonalds' building at the corner of Therry and Elizabeth Streets. The Panel understands that this 'refinement' (which was not suggested by the BFR) was introduced to the exhibited amendment further to the Gould review.

Whilst Mr Andrew Kelly suggested in his evidence that the Munro 'D Graded' buildings within 'Level 2 and 3 streetscapes' are not sufficient reasons in themselves to deny their potential for redevelopment, the proposed height control of 12m would effectively achieves the same result (by default). Mr Kelly stated:

The proposed additional height control of 12m from the site's street frontages seems to me to be entirely unnecessary. I note that no reference was made to the desirability of such a further control in the ...Review.

In real terms, the proposed change involves a reduction in height control of 8 metres. Given however that the subject site makes up the majority of its context...I consider that a higher scale of development may be acceptable in this location.

Mr Andrew Kelly went on to rebut the notion that, because heritage controls apply to the site, existing buildings will, of necessity, be retained. He canvassed the possibility of a five-level modern equivalent. He suggested that the Council believes that only the existing buildings would have a *comfortable relationship with the site's surroundings*. Mr Kelly went on to discuss the implications of the proposed setback:

The proposed 9m depth...appears to confirm that the retention of the existing buildings is required, though no reasons...are specified. Ms Gould commented on this perception, indicating that the setback related to a 'two room depth' of a typical domestic dwelling.

Mr Munro, when commenting on this aspect, indicated that for himself (and his neighbours) the 9m would leave a 3m unbuildable 'void' between the existing rear building line of his properties and the 9m control line. He also commented on the dilemma which would be caused for a neighbour:

When Mr Steve Kroussos, uncle of Katrina Economou (present owner of 440 Queen Street), constructed building he laid foundations for a 12 storey building including a lift well. The 9m setback goes through middle of it.

Mr Munro urged the Panel to inspect the corner of Franklin Street near his properties claiming that this on the ground evidence will reveal that the proposed 9m *would never work*.

The Panel, in considering the implications of the control for this block, could agree that the proposed setback seems both arbitrary and impractical. The Panel believes that if a boundary setback were to apply, it should accord to long-established boundaries of a long-consolidated site in single ownership.

The Panel also considered the Drapac Property 'supersite' which crossed various property boundaries that are subject in the adopted version of Amendment C61 variously to 21m, 30m or 60m height controls. In this last mentioned control (60m), it was suggested by Council representatives that the sheer size of the site would allow some flexibility.

Drapac Property representatives, however, suggested that a 'mega' built complex would be appropriate for this site. If development proposals were forced to 'slavishly' conform to the various height control boundaries, the result could produce an building envelope with far less design merit than say an elegant set back 'elliptical' tower (This possibility was suggested at the hearing by Mr Finanzio as a possible and potentially desirable design solution for the site).

This latter approach would require a creative compromise height solution which may not, in fact, be consistent with any of the potential prevailing height standards being above some and below others. This illustrated to the Panel the dilemma of differential control lines that go beyond property boundaries especially for key sites.

Whilst not seeking a universal verdict, the Panel generally prefers conformity of control lines with property boundaries in much the same way as they would routinely apply to street frontages. To depart from this approach, the Panel believes would require specific justification based on individual site analysis and related logic.

3.7 OTHER ISSUES

3.7.1 COMPENSATION AND INTERNATIONAL PRECEDENT

Other submitters raised a range of additional issues, which while real and important to them, were accorded less weight by the Panel because of their lesser relevance to planning context, policy and practice. Mr Howard Gibbons in his written submission stated that the process (of imposing height controls) was *unAustralian* and in his verbal presentation asked *who would pay compensation* for any resulting diminished development potential. The Panel noted that similar provisions apply to other planning jurisdictions within Australia and that compensation (or indeed betterment) is not available under these circumstances for reasons of established planning policy and practice.

Mr Gibbons also cited a range of international cities with which he was familiar, claiming that they had an appropriate presence (including height associated with their CAD's). Thus Melbourne's *Postcode 3000* built form should likewise contribute towards a *happening city* and *...not just another suburb*. The Panel observed alternatively, that in Mr Echberg's submission (another international traveller who was a property owner and ratepayer from within the Precinct), the French cities of Paris, Montpellier and Lyon had been cited in support of Mr Echberg's contention that height controls should apply to the precinct (at an even lower level than that adopted by Council).

The Panel believes that these diametrically opposed views, from equally sincere presenters, illustrate the need for the consideration and decision-making associated with this sensitive precinct to have both a sound strategic and researched basis.

3.7.2 **HODDLE GRID AND HISTORIC FACTORS**

Other issues raised at the Hearing included discussion about just what was the historic 'Hoddle Grid'. Debate raged over what the Grid had effectively become (e.g. is the northern boundary now Lonsdale Street, Latrobe Street or Victoria Street?) Further the relationship of these considerations deriving from consideration of the Hoddle Grid to the applicable Capital City Zone (re-established for the Precinct after a 'flirtation' with a Mixed Use Zone during the new format Planning Scheme process) was discussed.

Whilst the Panel will deal with these matters in Section 5, it is sufficient to note here that historic city framework considerations are of interest and have some relevance to contemporary matters. They are, in the Panel's estimation, a secondary issue (and may lead to confusion) compared with those issues discussed at length above.

3.7.3 **TERMINOLOGY**

As a final matter, which verged on 'issue status' due to its extent and potential impact on considerations, was the use of planning/urban design 'terminology' – which some would say is technical 'jargon'. This included the meanings of the words 'compatibility', 'complement', 'legibility' and 'comfortable' in relation to an assessment of how one example of built form such as the historic QVM buildings can be viewed and understood or 'read' with adjacent and nearby built forms, namely, other existing or potential buildings in the precinct.

The Panel is quite familiar with these and similar terms and can use them in technical discussions such as those concerning the merits of alternative precinct scenarios or design studies for individual sites. The Panel is, nevertheless, aware that the use of such (and similar) terms can be quite foreign (and thus intimidating) for those who do not share a common training. This language, in the Panel's experience, can be at best confusing and at worst misleading in interpreting issues of urban design and development.

The Panel therefore believes that where such terms are used in Schemes and Schedules and Policies made pursuant to them, they should be clearly defined in ways that will be readily understood and endorsed by the greater majority of Planning Scheme users.

4. STRATEGIC AND STATUTORY CONTEXT

4.1 STRATEGIC PLANNING FRAMEWORK

This section identifies the existing strategic context within which issues associated with Amendment C61 must be considered, together with any proposed changes to this context. The relevant documents that provide the context for considering Amendment C61 are:

- State Planning Policy Framework;
- Metropolitan Strategy – *Melbourne 2030*; and
- Melbourne Planning Scheme – Local Planning Policy Framework.

Both the existing Municipal Strategic Statement (MSS) and the proposed MSS (as presented in Amendment C60 given the advanced status of its assessment) have been considered. The *Strategic Assessment Guidelines* are addressed in Appendix B.

The relevant policies are summarised below.

4.1.1 STATE PLANNING POLICY FRAMEWORK

The State Planning Policy Framework (SPPF) is presented in Clauses 11 to 19 of the Melbourne Planning Scheme. Clauses which are particularly relevant to Amendment C61 are presented below.

Clause 12 (Metropolitan Development) provides specific objectives and strategies for Metropolitan Melbourne which are in addition to the principles of land use and development planning and the relevant specific objectives and strategies included elsewhere in the SPPF. In relation to the direction of ‘**A more compact city**’, the Panel considers that the amendment is consistent with the objective (Clause 12.01-1):

To facilitate sustainable development that takes full advantage of existing settlement patterns, and investment in transport and communication, water and sewerage and social facilities.

and the related strategy focussing development on Activity Centres:

Concentrate new development at activity centres near current infrastructure and in areas best able to cope with change. Development is to respond to its landscape, valued built form and cultural context and achieve sustainable objectives.

More particularly in relation to the Central Activities District within which the QVM precinct is located, the SPPF (Clause 12.01-1) presents the following strategies:

- *Supporting the role of the Central Activities District as Metropolitan Melbourne’s largest centre of activity with the greatest variety of uses and functions including commercial, retail, housing, highly*

*specialised personal services, education, government and tourism;
and*

- *Reinforcing the Central Activities District as the preferred location for activities that have State or national significance, and for activities that generate a significant number of trips from the metropolitan area and beyond.*

The Panel considers that the amendment is consistent with the direction ‘**A more prosperous city**’ (Clause 12.04-1) which has the objective *To create a strong and innovative economy and the strategy for Central Melbourne to strengthen Central Melbourne’s capital city functions and its role as the primary business, retail, sport, and entertainment hub for the metropolitan area* by a range of more specific strategies. While none of these strategies specifically mention the QVM precinct, its role is implicit in the strategy *Retaining the Central Activities District as the prime office and retailing centre for the metropolitan areas as well as a major destination for visitors.*

In relation to Housing, the following strategies in the SPPF are relevant to the QVM precinct:

Housing

Locate a substantial proportion of new housing in or close to activity centres and other strategic redevelopment sites that offer good access to services and transport by:

- *Increasing the proportion of housing to be developed within the established urban area, particularly at activity centres and other strategic sites, and reduce the share of new dwellings in greenfield and dispersed development areas; and*
- *Encouraging higher density housing development on sites that are well located in relation to activity centres and public transport.*

The Panel considers that the amendment is consistent with the direction ‘A great place to be’ (Clause 12.05-1) which has the objective *To create urban environments that are of better quality, safer and more functional, provide more open space and an easily recognisable sense of place and cultural identity* and the overall strategy in relation to urban design to *promote good urban design to make the environment more liveable and attractive.*

Clause 15.11 (Heritage) seeks to *assist the conservation of places that have natural, environmental, aesthetic, historic, cultural, scientific or social significance or other special value important for scientific and research purposes, as a means of understanding our past, as well as maintaining and enhancing Victoria’s image and making a contribution to the economic and cultural growth of the State.*

Clause 19.03 (Design and Built Form) seeks to *achieve high quality urban design and architecture that:*

- *Reflects the particular characteristics, aspirations and cultural identity of the community;*

- *Enhances liveability, diversity, amenity and safety of the public realm; and*
- *Promotes attractiveness of towns and cities within broader strategic contexts.*

Development should achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties.

Residential development not covered by ResCode and of four or more storeys must include an urban context report and design response explaining how the design responds to the existing urban context and preferred future development of the area, on the basis of the following principles:

- Context;
- The public realm;
- Landmarks, views and vistas;
- Pedestrian spaces;
- Heritage;
- Consolidation of sites and empty sites;
- Light and shade;
- Energy and resource efficiency;
- Architectural quality; and
- Landscape architecture.

The Panel finds that Amendment C61 is consistent with the metropolitan development direction of the SPPF, especially the need to reinforce emphasis on design quality and heritage conservation and to encourage housing and the continued prosperity and efficient operation of the QVM.

4.1.2 METROPOLITAN STRATEGY

Melbourne 2030 proposes that Melbourne should become a more compact city by encouraging the concentration of new residential and commercial development close to existing activity centres and on strategic sites.

The Melbourne City Council in the Explanatory Statement for the amendment argued that:

The Metropolitan Strategy does not have any direct effect on the amendment. The directions and policies in the Metropolitan Strategy are consistent with the amendment, particularly with regards to built form outcomes which are consistent with strengthening the capital city role of Melbourne.

The amendment is consistent with a number of the policies in Directions 1, 4 and 5....

Relevant policies include:

Policy 1.3 which seeks to locate a substantial proportion of new housing in or close to activity centres and other strategic redevelopment sites that offer good access to services and transport.

Policy 4.2 which aims to strengthen Central Melbourne's capital city functions and its role as the primary business, retail, sport and entertainment hub for the metropolitan area.

Policy 5.1 which proposes that Melbourne continues to be a great place to live. New development should be of high quality design that responds to its urban context and local character elements.

Policy Direction 5.2 which seeks to ensure that new development responds to, respects and contributes to the existing sense of place and cultural identity. It can do this by responding to the landscape of the site and its environs, including heritage buildings, while encouraging appropriate new development that respects these values.

Policy Direction 5.4 which confirms Melbourne is one of the great 19th century cities and the built form of an earlier period can be a source of economic prosperity for current generations as well as an expression of cultural history and identity.

The Panel finds that Amendment C61 supports and responds to the relevant policy directions of *Melbourne 2030*.

4.1.3 Local Planning Policy Framework

Municipal Strategic Statement

The Melbourne Municipal Strategic Statement (MSS) comprises a document called the *City Plan* that was introduced with the new format Planning Scheme in March 1999. Council exhibited Amendment C60 in December 2002 which proposed to introduce a new restructured MSS and set of local planning policies. Melbourne City Council adopted the revised MSS in July 2004 and Amendment C60 is currently with the Minister for Planning awaiting approval.

It is important to understand the relevant strategies for the QVM precinct presented in both the existing and adopted MSS's as this sets the specific context for the consideration of Amendment C61. In his submission to the Hearing on behalf of the Council, Mr Tweedie tabled a comparison of the provisions of the existing MSS and the adopted MSS relevant to the QVM precinct. Key areas of comparison were as follows:

- **Built form**

The existing MSS contains only broad statements about scale and does not give any additional specific indication in the text about the scale of development in the vicinity of the QVM. In the Adopted MSS, Clause 21.05-2 and Figure 10 identify the Central City as an area where substantial built form change is envisaged. Clause 21.08-1 Central City provides some guidance on scale for the QVM through Strategy 1.44 which seeks to:

Ensure the area bounded by La Trobe and Victoria Streets and Elizabeth/Peel Streets has a lower scale than the Hoddle Grid and provides a contrast in scale between the lower scale then the Hoddle Grid and provides a contrast in scale between the lower scale of Carlton and North Melbourne and the higher scale of the Hoddle Grid.

Strategy 1.45 also provides guidance on the scale of development along the length of Elizabeth Street seeking a contrast in scale from lower scale north of Victoria Street to higher scale of the Central City.

- Land uses

Both the existing and adopted MSS's identify that specialised retailing, cultural and entertainment precinct occurs in the QVM precinct.

- Heritage

Both the existing and adopted MSS's acknowledge the importance of heritage buildings to the character and urban form of Melbourne. Clause 21.08-1 of the adopted MSS specifically aims to protect the scale of importance heritage precincts and ensure that development is sympathetic to the heritage value of these areas – the QVM is identified as one of these areas.

- Central City specific strategies

Both the existing and adopted MSS's include strategies for the Central City. A key difference between the existing MSS and the adopted MSS is that Clause 21.08-1 in the adopted MSS provides a detailed map of the Central City with specific sub-areas identified. These areas are linked to specific strategies in the MSS text. This clause reiterates all the issues covered in the directions for the QVM area of the Central City in the existing MSS (*City Plan 99*, p85) as well as providing more detail on some issues including, as noted in the Council's comparative document, the following:

- *Specific strategies to support the Market as a major retail and tourist facility and heritage asset;*
- *Ensuring development around the Queen Victoria Market does not detract from its amenity or compromise its 24 hour function;*
- *Encouraging pedestrian links to the Market from surrounding areas; and*
- *Protecting the scale of important heritage precincts, including the Queen Victoria Market.*

It was also noted that the Local Policy contained in Clause 22.08 – Queen Victoria Market (see below) is proposed to be deleted by Amendment C60 which would introduce the Adopted MSS. The rationale for this deletion was presented in the comparative document as follows:

- *The role of a local policy is to complement the MSS and are a tool for day to day decision making in relation to a specific discretion in a zone or overlay. It was considered that the content of Clause 22.08 did not meet this criteria; and*
- *The policy mainly dealt with land uses that do not require a planning permit in the Capital City Zone resulting in objectives and policies*

that cannot be achieved through the Policy. A number of the directions contained in the Policy is now included in Clause 21.08-1 Central City of the Adopted MSS. Other general requirements of the Policy about streetscape and safety are covered by Clause 22.01 Urban Design in the Capital City Policy.

The Panel finds that Amendment C61 supports and responds to the relevant policy directions of the current MSS and the adopted MSS. The Panel notes that the adopted MSS would remove the existing local policy applying to the QVM and replace it with arguably a more comprehensive policy located within the adopted MSS.

Local Planning Policies

There are four relevant local planning policies in the LPPF that have a direct relationship to Amendment C61.

Urban design within the Capital City Zone

Clause 22.01 (Urban design within the Capital City Zone) cites a number of objectives and policy statements. This policy applies to all areas within the Capital City Zone. The QVM precinct is not specifically mentioned among the valued elements of the City's character identified in this policy but several of the generic elements arguably directly relate to the QVM precinct, namely:

- *The on-street tram network;*
- *The pedestrian amenity of the streets, lanes and arcades;*
- *Buildings with an 'active' interface with the streets and public spaces which provide architectural detail, excitement and interest at skyline and pedestrian levels;*
- *The formal definition of streets and public spaces created by consistent building frontages at the street alignment; and*
- *Historic buildings and precincts.*

The Panel considers that the provisions of Amendment C61 are consistent with the relevant sections of this clause in relation to the QVM precinct and, in some circumstances, repetitive of the Built Form Outcome statement of the proposed schedule to the DDO. Issues such as scale, context, height, building bulk, and pedestrian amenity are commonly addressed by the proposed schedule and this policy.

Sunlight to Public Spaces

Clause 22.02 applies to key public places, including parks and gardens, squares, streets and lanes in the City of Melbourne (see Section 3.5). One of the objectives of this policy is:

- *to ensure that overshadowing from new buildings or works does not result in significant loss of sunlight and diminish the enjoyment of public spaces for pedestrians.*

The key control in this policy is control of overshadowing to most public spaces at the Equinox, as follows:

Development should not cast any additional shadows between 11.00 am and 3.00 pm on 22 September and 22 March except if the responsible authority considers further overshadowing would not prejudice the amenity of the public space on public parks and gardens public squares major pedestrian routes including streets and lanes including all streets within the retail core of the Capital City Zone and privately owned plazas open to the public.

The public spaces to which this policy applies include the Flagstaff Gardens adjacent to and beyond the area covered by Amendment C61 but potentially affected by development of buildings within the QVM precinct.

The 21m height control proposed for Area 20 in Amendment C61 has been formulated using the winter solstice rather than the equinox as the basis for the specified Built Form Outcome for this area, namely:

Development provides protection for the Flagstaff gardens from additional overshadowing at the winter solstice.

This aspect of Amendment C61 is thus inconsistent with this existing local policy. This issue is discussed further in Section 5.4.5.

Heritage places within the Capital City Zone

Clause 22.04 applies to all areas within the Capital City Zone and specifies a range of matters to be taken into account when the responsible authority is considering applications for buildings, works or demolition to heritage places identified in the Heritage Overlay.

The Design Objectives and Built Form Outcomes in Amendment C61 are complementary to and consistent with this local policy.

Queen Victoria Market

Clause 22.08 applies to the QVM environs which are not defined in this policy except by reference to a number of policy matters that *should be taken into account when considering an application for use or development of a site in the near vicinity of the Queen Victoria Market*. These matters include access, parking, streetscapes, safety and amenity.

The basis for this policy includes that:

This policy seeks to recognise and protect the primacy of the Queen Victoria Market within its environs as major retail, tourism and leisure resource or metropolitan and State significance.

The Design Objectives and Built Form Outcomes in Amendment C61 are complementary to and consistent with this local policy (Note that under Amendment C60, this Local Policy would be deleted from the Planning Scheme).

The Panel finds that Amendment C61 supports and responds to the relevant local policies except for the proposed introduction of a winter solstice overshadowing standard on the Flagstaff Gardens. The Panel notes that the adopted MSS would remove the existing local policy applying to the QVM and replace it with arguably a more comprehensive policy located within the adopted MSS.

4.1.4 OTHER POLICIES

There are no other relevant policies.

4.2 STATUTORY PLANNING FRAMEWORK

Amendment C61 is focussed on changes to the existing Design and Development Overlay – Schedule 14 of the DDO (see Appendix D). Section 2.4 summarises the proposed alterations to the schedule.

4.2.1 ZONE(S)

All land within the precinct is zoned Capital City Zone 1. Land to the north and west outside the precinct is zoned either Mixed Use or Residential 1 respectively. The Flagstaff Gardens to the south-west of the precinct are zoned Public Park and Recreation. The current planning controls are discussed further in Section 4.

The purposes of the Capital City Zone are:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies;*
- *To enhance the role of Melbourne's central city as the capital of Victoria and as an area of national and international importance;*
- *To recognise or provide for the use and development of land for specific purposes as identified in a schedule to this zone; and*
- *To create through good urban design an attractive, pleasurable, safe and stimulating environment.*

The Panel considers that the amendment responds to and is consistent with the zone purposes.

4.2.2 OVERLAYS

Heritage Overlays

Two Heritage Overlays (HO) apply within the precinct:

- HO7 – Queen Victoria Market Precinct which covers all of the QVM site as well as land to the south-east of Queen and Therry Streets which front the QVM; and
- HO496 – Queen Victoria Market which covers the existing QVM buildings (north of and excluding the open car park) comprising Sheds A to F, and J to M (generally known as the Upper Market) as well as the land to the immediate east bounded by Queen, Victoria, Elizabeth and Therry Streets (generally known as the Lower Market). The land within HO 496 is included on the Victorian Heritage Register pursuant to the *Heritage Act 1995*, Reference No HO734.

Design and Development Overlays

Several Design and Development Overlays (DDO) apply within the precinct:

- Schedule 14 (DDO 14 – Queen Victoria Market area) which covers the QVM site and the Therry and Queen Streets frontages to the east. The Design Objectives for this DDO are:
 - To ensure that any development within the Queen Victoria Market is compatible with its Victorian character and low-scale;
 - To ensure that development in close proximity to the Queen Victoria Market is compatible with its scale and character; and
 - To ensure that any development of the Queen Victoria Market site is compatible with the scale and use of the Market, surrounding residential developments and adjacent precincts.

For the purposes of Maximum Building Heights and Built Form Outcomes, the DDO 14 area is divided into Area 16 (Queen Victoria Market) and Area 17 (Therry/Queen Streets). The relevant provisions are as follows:

Area	Maximum Building Height	Built Form Outcomes
16	12 metres	Development maintains the consistency of scale and built form of the historic Queen Victoria Market.
17	20 metres	The scale of surrounding development has a comfortable relationship with the low-scale, built form character of the Queen Victoria Market.

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;

- Schedule 1 (DDO 1 – Active Street Frontages – Capital City Zone) which covers the whole precinct and applies to ground level street frontages. The Major Pedestrian Area 2, which applies to Therry, Queen and Elizabeth Streets, aims to ensure that the built form is appropriate to the street and pedestrians. The Other Area 3, which applies to the QVM and the remaining area to the south and east,

similarly aims to ensure that the scale of ground floor frontages are appropriate to the street and pedestrians; and

- Schedule 4 (DDO 4 – Weather Protection – Capital City Zone) which applies to the land fronting Elizabeth Street between Victoria and A’Beckett Streets.

Special Building Overlay

A Special Building Overlay extends for the length of Elizabeth Street and thus applies to some buildings within the precinct on the west side of Elizabeth Street.

The Panel finds that Amendment C61 is consistent with the existing statutory framework but that the amendment will provide clearer and more specific direction on built form outcomes within the QVM precinct.

4.2.3 PARTICULAR AND OTHER PROVISIONS

4.2.4 OTHER PROVISIONS

Amendment C61 is not directly affected by any other Particular or General Provisions of the Planning Scheme.

4.3 PANEL FINDINGS

The Panel finds that, while there is currently a comprehensive approach to planning controls in the area covered by Amendment C61 and that the amendment is generally consistent with the strategic and statutory framework, two key ‘anomalies’ between the suite of existing controls and the proposed amendment relate to:

- **The proposed move to using the winter solstice (and a related 21m height control for Area 20) rather than the equinox as the basis for control of overshadowing on Flagstaff Gardens cast by buildings located on the eastern side of William Street; and**
- **The introduction of a specific upper level 9m frontage setback requirement at a height of 12m for development along the south side of Therry Street and east side of Queen Street in addition to the existing policies considerations as to how development in the QVM precinct should address the street.**

While the approach to a gradation in heights across the precinct is consistent with the general planning framework, the question of the exact dimensions is discussed in the following section.

5. PANEL CONSIDERATION OF THE AMENDMENT

5.1 PANEL APPROACH – APPLY ISSUES IN PARTICULAR AREAS

The Panel, in deliberating on the most helpful manner of approaching its task of assessment of the amendment, considered both the traditional 'issue basis' and the alternative 'area (geographic) basis'. Section 3 canvasses the issues thought by the Panel to be most significant with Section 4 considering strategic and statutory issues. The Panel now applies identified issues to nominated Areas on relevant maps of the QVM combining both processes referred to above.

Just which precinct maps identifying various areas was the most relevant to the Panel's work also was a matter of some contention. The Panel was aided in its understanding of the various alternative spatial distributions within the precinct by three large-scale base maps prepared by the City of Melbourne. These maps were all intended to relate to the proposed Schedule 14 to the DDO. The maps, included in Appendix C, show that the concept of 'area' is not so easily defined.

5.1.1 CONSULTANT'S RECOMMENDATIONS MAP

The earliest map, *Consultant Recommendations* (dated 9 June 2004) (see Appendix C1) further to the BFR shows Areas 16 to 19 only with each Area corresponding to a progressively higher height limit (12m, 20m, 30m and 60m). On this map, all streets in the precinct are included in an adjacent height control area. Further, the heights recommended 'step up' in a simple 'layered' fashion from the lowest (12m) at the north to the highest (60m) at the southern boundary.

5.1.2 EXHIBITION MAP

The second map entitled *Exhibition Map* (dated 15 January 2005) (see Appendix C2), introduced a somewhat different (and more complex) set of height controls which embraced Areas 16 (7m) and 17 (10m) for the Upper and Lower Market areas (equating to Area 16 on the earlier map). Five additional areas were also identified with increasingly higher controls to Area 18 (12m), Area 19 (20m), Area 20 (21m), Area 21 (30m) and Area 22 (60m).

This map omitted the streets from the proposed height controls except for a contained car parking 'triangle' at the Franklin, William and Queen Streets intersection, a landscaped roundabout at the intersection of Franklin and Queen Streets, and a long-established toilet block in Queen Street opposite the western end of Therry Street.

The reason for the changes, as explained to the Panel, relate to a desire to protect the QVM context from a heritage point of view (Area 18). Further, the changes related to the desirability to protect and emphasise a 'view corridor' along Anthony Street to the south (Area 21) and an opportunity to protect the Flagstaff Gardens from additional shadowing at the winter solstice (Area 20).

It should be noted that this map also included a mapping 'error' with regard to the extent of the proposed 60m control (Area 22) which extends in this version from A'Beckett Street right through to Franklin Street, unlike the *Consultant's Recommendations* map, which curtailed the 60m control mid-block north of A'Beckett Street. This issue was identified by various submitters and the Council corrected it, together with certain further refinements, in the following version.

5.1.3 COUNCIL RECOMMENDATIONS (POST EXHIBITION) MAP

This map entitled *Council Recommendations (Post Exhibition)* (dated 8 June 2005) (see Appendix C3) generally corresponds to consideration of the amendment by the relevant Council committee. It corrects the 'error' referred to above, reinstating to mid-block the divide between the 30m and 60m control lines for Areas 21 and 22. This version also retained the 'exclusion of the streets' approach and went further by omitting the toilet block in Queen Street (subject to Mr Munro's concerns) and the landscaped traffic island at the intersection of Franklin and Queen Streets on the basis that Council will not (or at least *should not*) consider development over this recently established amenity area.

The situation of the northernmost section of Queen Street (between Therry and Victoria Streets) is somewhat curious, if not anomalous, in that all maps show the situation that was pointed out to the Panel, that that this portion of the former street has been closed to through traffic and incorporated into the QVM Reserve (effectively 'joining' the Upper and Lower Market areas). Only the *Consultant's Recommendations* map presently allowed the potential of any DDO control of potential development in this area.

No evidence was presented at the Hearing on this aspect with the assumption that development is unlikely (perhaps) because of proximity to heritage buildings on both adjacent Queen Street frontages. The *QVM Conservation Plan* (Allom Lovell Associates, 2003) recommends that:

Queen Street should retain its historic use as a thoroughfare and a loading area, while accommodating part time market use. (p114)

The QVM Master Plan (2003) merely notes that:

The section of Queen Street passing through the Market has been appropriated by the Market over the years... now being part of Market land (p47).

The Panel, however, wonders if it is prudent to exclude this land because, in an unknown future, circumstances may arise whereby a control, presumably of a similar dimension to that recommended for Areas 16 and 17 in the latter two maps, may be appropriate for this 'street' area.

A further inconsistency in this regard identified by the Panel is the incorporation of lanes and Anthony Street in the control area. In the latter case, Anthony Street, albeit a 'narrow street', nevertheless is sufficiently valued by Council to warrant the proposed opening up of a view corridor over its southern entry.

Therry Street, in particular, was argued by Council representatives also to be an important 'narrow' space, yet it is excluded in the adopted control map (see Appendix C3). From on-site observation and photographs, the Panel was able to confirm that Therry Street was a lively 'people place'. It contains overhead canopies, exterior eating 'enclosures' and other expressions of the 'al fresco' experience. Observations elsewhere would suggest that these features could evolve into quasi-permanent structures for which some control may be applicable and desirable. This usage supports the view that controls should extend over streets within the precinct (see Section 5.2).

5.1.4 CONSIDERATION OF APPROACH

The Panel, in reflecting on the alternative 'global approaches', cannot find itself in full agreement with any one approach which necessitates a block-by-block discussion of the merits of the variously identified Areas. Areas 16 to 22, together with their associated Built Form Outcomes as detailed in the exhibition material, of necessity, form the basis of discussion. This approach does not imply, however, that the Panel endorses this configuration as the most cogent or convincing.

Indeed, the Panel is somewhat attracted to the simple visual logic of the original *Consultant's Recommendations* map (see Appendix C1). The Panel has observed that the subsequent refinements in later versions produced complexities and inconsistencies which tend to detract from the underlying logic of the earliest response to the comprehensive Vision developed for the precinct in the BFR (see Section 2.3.2).

5.2 COVERAGE OF AMENDMENT – AREAS TO BE EXCLUDED

As indicated in the above discussion, three approaches are possible with regard to areas to be included/excluded in the application of controls in the amendment, namely:

- Include all streets in the precinct;
- Exclude all streets (and possibly certain lanes), in the precinct; and
- Exclude streets, but include certain elements within them.

In an effort to come to grips with these possibilities, the Panel considered that the initial approach illustrated by the *Consultant's Recommendations* map is preferred in the belief that there is little 'downside' risk and certain 'upside' advantages of this approach. These advantages include:

- The presentation of a unified precinct, which is coherent and comprehensive;
- Avoidance of inconsistencies of the type that exclude controls over Therry Street and include controls over Anthony Street;
- Recognition that 'Queen Street' north of Therry Street between the Upper and Lower Markets is, in fact, part of a contiguous Market 'Reserve' with the possibility that other streets (or parts of streets), for example, Queen Street between Therry and Franklin Streets, could be similarly closed in the future; and
- Avoidance of premature judgements concerning the merits of including of car parks within road reserves (which could be subject to future development or perhaps landscaping), existing buildings (for example, toilet blocks) and traffic/landscape structures which may or may not continue into the future in their present form.

The Panel finds that this inclusive approach to apply controls to street areas is desirable within this precinct. The applicable control should adopt height limits for streets areas that are applicable to adjacent city blocks (adopting the lower of the adjacent limits where they differ) rather than adopting a separate 'streets control height', which might suggest that these areas would never be subject to development options in the future.

5.3 DESIGN OBJECTIVES - DDO 14

Whilst the Panel noted that the whole Precinct is also subject to Schedule 1 of DDO1 *Active Street Frontages – Capital City Zone*, this was not a matter under dispute. The difference between the stated Design Objectives between the existing DDO14 and the proposed expanded version of it produced most debate at the hearing. The present Section 1.0 of DDO 14 states:

Design Objectives

- *To ensure that any development within the Queen Victoria Market with its Victorian character and low scale;*
- *To ensure that development in close proximity to the Queen Victoria Market is compatible with its scale and character; and*
- *To ensure that any development of the Queen Victoria Market site is compatible with the scale and use of the Market, surrounding residential development and adjacent precincts.*

In the exhibited amendment, the first Objective survived intact. The third Objective also was substantially the same with the word 'character' substituting for the word 'use' (perhaps foreshadowing a shift in emphasise from Market operations to aesthetics). Two new Objectives, however, were interposed between these, with the first introducing the concept of 'transition' as follows:

To ensure that development around the Market edges and within close proximity to the Market provides an appropriate transition in building height from the low scale Market buildings towards the medium and high rise towers in the traditional Hoddle Grid in the Central Business District.

A further Objective is included, which is somewhat reminiscent of the second original Objective listed above, but introducing the concept of CAD skyline views. It goes on to require:

To ensure that development adjacent to the Market to its east and south maintains and enhances the CAD skyline views from within the Market and immediate environs.

5.3.1 BUILDING AND WORKS

The Schedule to DDO 14 then goes on to describe under *Building and Works* a required contextual site analysis for proposals which should respond to the above Design Objectives. This section also lays down requirements of how any proposal which seeks to exceed the *Maximum Building Height* (nominated by Area in the associated Table) ... *will continue to achieve the Design Objectives and Built Form Outcomes of this schedule and any local planning policy requirements.*

Further, instructions pursuant to this section, define building height as the *vertical distance between the ... natural surface level at the centre of the site frontage and the highest point of the building...* The Panel was told that this provision is pertinent for the QVM site because of the extensive natural slope down to the Elizabeth Street natural watershed (generally from west to east), which would distort the measurement of stepped/sloping structures unless measured at their mid point.

5.3.2 BUILT FORM REVIEW ORIGINS

These Schedule provisions have their origins in the BFR and have not been modified in the exhibited or adopted documents (unlike the 'evolving' Maps and associated *Table of Maximum Building Heights and Built Form Outcomes*). The BFR states with regard to the Schedule under Recommendation 8.1:

It gives effect to the implementation of the preferred direction (scenario B: Transitional Development Control) for building height identified in the Study. Further, it reviews the design objectives in the light of the study outcomes and incorporated decision Guidelines which make reference to this Study (p68).

Although Mr Czarny in his evidence had high regard for the guidance the BFR could provide (indicating that his preferred position being the BFR should become a referral/reference document under the Scheme), his main thrust was in support of the Schedule and its Objectives:

...and give effect to the vision for a transition in urban form from the open format of the Markets to the intense tower format of the CAD core as per scenario B...The revised Schedule 14 to the DDO will facilitate the development of the land in the Market Precinct in a manner which is appropriate having regard to the site conditions, its strategic context in the Capital City Zone and its relationship with the QVM.

Mr Czarny went on to discuss, in his view, how the Objectives relate to key themes and design issues including:

- *Total City Form;*
- *Views, Vistas and City Skyline;*
- *Streetscape Scale & Pedestrians;*
- *Sunlight and Overshadowing; and*
- *Design Articulation & Presentation.*

Mr Czarny in his discussion on Total City Form (the city's structure or 'morphology') goes to the existing Melbourne MSS which shows under Map 12 - Figure 5 City Structure ..*transition between the clearly defined Hoddle Grid (terminated to the north by LaTrobe Street) and the adjoining North and West Melbourne and Carlton Grids. The review sought to determine the best urban form 'fit' given the Market Precinct's role as a threshold between the Hoddle grid to the south of LaTrobe Street [his definition] and the low lying surrounds to the north and west.*

Mr Czarny further cites MSS support ...*for the need for the urban form to address sensitive (city) edges carefully and Furthermore , the extension of city centre scale en-masse to the Market edge would clearly erode the legibility of the city grid and in my view, distort the Hoddle vision.*

Mr Czarny, however, admitted that city centre high rise has broken through the LaTrobe Street boundary (for example, through the development of the Wills Towers), as the Panel observed through its inspections, and thus prefers the Franklin Street edge to the Market Precinct - *It would present a Central Park (New York) like edge where policy and direction suggests a 'softer' transition consisting of stepped building forms with some projecting towers.* Mr Czarny sees all this as supporting his preferred Scenario B which recognises previously approved high rise developments within the precinct influencing urban form which does *not realise an overly simplified stepped pyramidal structure....*



Photo 3 View of Wills Towers on south side of A'Beckett Street looking south from intersection of Queen and Franklin Streets

Mr Tweedie submitted to the Panel that the modifications represented by the adopted version still supported the concept of transition between the QVM and the CBD while also reflecting on the need not to ...*compromise the character and amenity of the Markets, vistas from the market, and the feeling of space and openness experienced within the markets and at its edges.*

He commented, however, that the juxtaposition of lower scale and higher scale in the immediate vicinity of the QVM was a matter largely driven by heritage values and not so much by urban design concerns. Drapac Property representatives, however, considered that as its land (like certain other submitters) was visually and physically separate from QVM, it was argued that the proposed Amendment C61 provisions were inappropriately applied to their site/s.

5.3.3 QUESTIONS OF PROCESS, TRANSITION, COMPATIBILITY AND SKYLINE VIEWS

The representatives for Drapac Property in particular took a critical view of Council's approach as developed or advocated by Mr Czarny and Mr Tweedie respectively. Mr Finanzio, indeed, suggested to the Panel that the timing and circumstances of the BFR suggested that it was not so much *informed by the process* but potentially by *preconceived ideas of what the outcome should be.*

Mr Finanzio further suggested that the BFR had avoided the Ministerially-required consideration of relevant *Melbourne 2030* objectives and that Mr Czarny had agreed that although ...*a proper understanding of the strategic land use planning framework...* was included in the BFR, it was almost non-existent. The Panel discussed the relationship between *Melbourne 2030* and Amendment C61 in Section 4.2.

Mr Finanzio went on to criticise what he saw to be major omissions in the exhibited DDO Objectives including the expressed land use outcomes for the Capital City Zone which embraces the precinct and the suitability of the Drapac Property site for a major development, due to its size, separation and its location on the transport network. Further criticism of the approach undertaken for the BFR related to the unresolved tensions between conflicting policy directions (and interest groups), and that more pointedly ...*there is no basis whatsoever articulated in the ...Review for coming to the conclusion that a 'Transition' between the Drapac land and the Market was supported by the existing policy framework.*

Mr Finanzio further dismissed references in *City Plan '99* (the existing MSS) referred to by Mr Czarny suggesting that whilst the concept of transition pursuant to Clause 22.01 was applied to other sensitive areas (including Docklands, Westend and Yarra Corridor), it was silent on the morphology of the QVM precinct.

Finally, in the Panel's understanding of Drapac Property's critique, the use of the City Structure Map was not used as a basis for the original BFR but, nevertheless, it was referred to (seemingly in hindsight) by Mr Czarny in his evidence. Mr Finanzio believed, however, that this reference failed on a number of accounts including its isolation and 'late' inclusion in the MSS, its insertion post criticism of the new format Planning Scheme Panel Hearing, inappropriate treatment of North and West

Melbourne built form, and advancing a planning scheme outcome that is inconsistent with other objectives associated with the Capital City Zone. These 'flaws' make inclusion of this plan according to Drapac Property... *devoid of explanation either in City Plan '99 itself or any other document.*

To underscore apparent inconsistencies in the Council's treatment of CBD form, Mr Milner researched and tendered to the Panel a catalogue of maps that relate to the Capital City Zone in its various manifestations over time. Mr Milner, in his evidence, stressed the capital city role of Melbourne, stating how the adopted MSS requires the *Strengthening and enhancing of the Capital City role....*

For Map 12 describing *Urban Design Structure*, Mr Milner suggested that the Capital City Zone was shown to extend through and beyond the Hoddle Grid to the Market precinct. Whereas the final map which was included was derived from the proposed MSS (Amendment C60) also showed confusing alternate directions (These concerns are distinguished from what the Panel noted as Mr Milner's alternative versions of the Figure 12 *Local Area Map – Central Area*. Version A was confirmed by Council representatives at the Hearing to be the 'correct' version, with the other version being an earlier draft included on Council's website in error). Although difficult to read due to the drafting and small scale text, the Panel was able to adduce that the legend to Area 3 (which includes the Drapac Property site in the correct version) indicates *Height Controls*, with the note associated with the same area saying *Ensure the area provides a lower scale than Hoddle grid and provides a contrast in scale between the lower Carlton and North Melbourne scale and the higher scale of the Hoddle grid* (thus tending to support the Council's contentions or intentions, in spite of the relativism ['lower'] of the language used).

Mr Milner's evidence, however, also noted the additional comment on the map *Support the QVM as a major tourism and tourism facility and as a heritage asset of State significance* and includes Clause 21.04 (1.18) of Land use implementation strategies of the adopted version of the MSS. This states *Ensure the form and use of development around the QVM does not detract from its amenity nor compromise its 24 hour function* (which could support Drapac Property arguments).

Mr Milner concluded on this matter as a result of his analysis of years of 'confused' mapping and contradictory statements with regard to the Drapac site (and the QVM precinct generally), *...no coherent reasoning [is left] in a planning sense as to what the City of Melbourne expects for this area.*

The Panel, while not disputing much of Mr Milner's analysis, nevertheless noted that only the contemporary documentation is relevant to its considerations.

Mr Milner went on to comment on the notion of 'compatibility' with scale and character raised in the Objective, citing a number of existing policies and provisions that bear upon this matter. As a result he concluded:

I do not consider that the proposed design objective adds anything further to the existing ..Scheme in this respect...Furthermore, the proposed DDO and objective...provides no greater understanding as to what constitutes a 'compatible' scale and character to the Market apart from the application of the height controls. The use of height controls to achieve a "compatibility" with the QVM...is a flawed argument...

Mr Milner also tackled the aspect of transition to the Hoddle Grid mentioned in the Objective pointing out that it is not expressed in terms of height (it is a linear road network). Mr Milner further indicated that the Grid has become embedded in the Amendment C61 land through its definition in the MSS. In addition, he contends that the precinct, through the adopted MSS, also has a strong visual relationship with South Carlton and North Melbourne which will accommodate higher built forms, justifying a broader context for higher development on the north side of Victoria Street in the future. Mr Milner concluded that the *transition...fails to achieve the broader objectives of visually distinguishing the central city area from surrounding areas, and inhibits the capital city role of the Central City area of Melbourne.*

Finally Mr Milner reflected on the protection of skyline views mentioned in the third objective of the proposed DDO. Mr Milner differentiated between significant views protected elsewhere via Overlays in the Scheme (such as the Shrine of Remembrance vista along Swanston Street) and those views which are not identified in the adopted MSS. He suggested that *no further control through the DDO is warranted.* Further, Mr Milner questioned the adopted methodology used to identify skyline views suggesting that the proposed control will not *maintain and enhance* these views due to arguments summarised as follows:

- It is evident that existing development in the CBD including towers north of Latrobe Street has established a significant bulk to the city skyline which then forms a back drop to views taken from the Market Precinct;
- The imposition and image of the prominent Radisson Hotel *with opportunity for new development to the north of the Radisson to improve the blank wall image...; and*
- From within the Market buildings, views are considerably constrained by the roof and other structures.

Mr Milner finally argued that *a considerable increase in height could be accommodated on the Drapac site, without presenting a detriment on views taken from the Market Precinct.*

5.3.4 CONSIDERATION OF DESIGN OBJECTIVES

The Panel, in considering the value of the additional wording and clauses in the proposed Schedule in the light of the critique provided by Drapac Property representatives and other submitters, considered that the Design Objectives are a genuine (and commendable) attempt to improve the guidance associated with the *Exhibition Map* (see Appendix C2) and controls although some shortcomings are still apparent.

The Panel would support a redrafted version of the Objectives which could include the following:

- The retention of Objective 1 with the word '*compatible*' either substituted or further elaborated upon;
- The retention of the concept of 'transition' in building height in Objective 2 with perhaps a reference to a 'stepped' or 'layered' approach. Further the deletion of reference to, or the further definition of, the mention of the 'traditional Hoddle Grid';

- A qualification, (for example, as far as practical) in Objective 3 with regard to...*maintains and enhances the CAD skyline views* which recognises the limitations of existing taller buildings to the south, the screening effect of market buildings and related limitations raised by opposing submitters; and
- The reinstatement in Objective 4 of the word ‘use’ alongside ‘scale and character’.

The Panel finds that the Design Objectives should be carefully redrafted along the lines suggested above. This would enable users of the Planning Scheme to better understand and interpret what is required by the remainder of the Schedule.

The task now turns to review individual recommended provisions for each Area.

5.4 BUILT HEIGHT AND BUILT FORM OUTCOMES BY IDENTIFIED AREA

The Panel, in reviewing the identified Areas in the adopted version of the Schedule to the proposed DDO (see *Council Recommendations [Post Exhibition]* map in Appendix C3), reflected on the various relevant issues and strategic context canvassed above. In considering appropriate height limits in particular, the Panel was aided by its site inspections, the evidence and submissions before it (including a map provided by Council which accurately indicated existing heights in the precinct), and its own sense of what is visually and aesthetically appropriate.

These matters, however, remain questions of professional judgement for whichever standard is finally adopted will underscore the wisdom of adopting a discretionary control which can respond to further and better information if required.

5.4.1 AREA 16

This is the Area that includes the existing built form of the QVM (except for Area 17 - the car park and the north-east corner of the Lower Market). The dominant issue here is the influence of the heritage buildings as confirmed by the applicable Built Form Outcome:

Development maintains the consistency of scale and built form of the QVM.

The Maximum Building Height is generally derived from the Gould Review recommendations except for the suggestion that a separate (higher) height should apply to K Shed, which is not a heritage-listed building and is substantially larger than its context being measured at between 9.6m and 10.5m.

The BFR recommended 12m for this area (and the remainder of the QVM area). However, the Adopted version opted for a 7m control which, the Panel was informed, generally accords to existing buildings and structures (save for the Franklin Stores at 7.6m, J Shed at 8m and K Shed referred to above).

The Panel found itself in a dilemma concerning this measure. On the one hand, it is attracted to a control that is uniform and thus simply applied over the QVM area

(including Queen Street between) as in the *Consultant's Recommendations* map. On the other hand, the Panel is more convinced by legitimate heritage concerns to align controls 'as near as possible' to the existing heights of heritage buildings. This is in the face of the apparent contradiction of K Shed (along with other more minor exceptions) identified by the Gould review. K Shed's excision, however, in the Panel's view, would produce an unnecessarily fussy outcome.



Photo 4 Upper Market buildings, closed off section of Queen Street and Lower Market buildings (on non-market day).

As a result, 7m is the Panel's preferred control for Area 16.

5.4.2 AREA 17

Even more problematic for the Panel was the Adopted control for Area 17 which suggested a maximum height some 2m lower than the *Consultant's Recommendations* (10m compared to 12m). The cited Built Form Outcome is the same as that listed for Area 16 above.

The issue that seems to be in tension here is the QVM's 'use' (and thus commercial viability) and its 'character' and thus its aesthetic relating to its heritage status. QVM management was at pains to claim that the higher control was required to provide for a possible new multi-deck car park over the existing ground level car park.

The QVM management explained, and the Panel accepted, that any proposed underground car park option had been set aside on the grounds of cost and practical considerations. This is due to the extensive number of remaining 19th century internments which give this part of the QVM site its heritage significance. These graves would be disturbed (requiring major disinterment) through any general excavation. The Panel noted, however, that the footings required for a multi-deck structure would also provide a sensitive construction challenge, with excavation of a more limited area still disturbing some grave sites.



Photo 5 Open car park area of QVM looking south towards Franklin Street

Whilst being quite sympathetic to the QVM management's arguments, the Panel also:

- Agreed with Council's contentions that no supporting 'evidence' in support of commercial need was presented;
- Noted that no detailed multi-deck car park feasibility study (the study for the abandoned supermarket proposal being only of limited relevance) was available to support QVM Pty Ltd's claims; and
- Saw the *QVM Master Plan* as a relevant contemporary document, which, whilst contemplating a multi-deck parking structure as one possibility, also canvassed a range of alternative approaches to car parking, which would not require a 12m height control.

Further, the Panel considered that in the light of the strong heritage controls that apply in parallel to the QVM site, it is best to err on the side of a conservative position with regard to adjacent (and clearly nearby and visible) State Heritage registered buildings such as those shown in Figure 12 Heritage Sites & Place in the BFR (p26).

Thus, 10m is the Panel's preferred height control for Area 17.

No doubt under possible future circumstances, where Queen Victoria Market Pty Ltd. demonstrates the need for a functional multi-deck car park which extends to 12m in height, the available discretion under the control would be exercised by its 'parent' corporation – the Melbourne City Council. This outcome would assume compliance with the DDO Schedule's requirements, including a sensitive design response which is of a complementary character to the adjacent heritage buildings.

5.4.3 AREA 18

The Panel in turning to the consideration of the Adopted version's Area 18, which is in the form of an elongated 9m deep strip, some 12m high, along the Queen and Therry Street frontages, the Panel was not convinced of the rationale. This provision resulted from considerations, further to the *QVM Height Review*, and was not contemplated by the earlier BFR.

The Built Form Outcome is instructive concerning the logic behind this map 'refinement':

The scale of development has a comfortable relationship with the low scale built form character of the Queen Victoria Market and protects the pedestrian scale of this important entry to the Market.

Apart from being somewhat 'uncomfortable' with the expression 'comfortable' in relation to built form character as outlined above, the Panel discerned two distinct rationales behind the height provision, both relating to an 'appropriate' scale - (low QVM scale and pedestrian scale). The Panel notes, however, that no reference is made here to the rationale behind the depth of the frontage setback that is proposed to apply along Queen and Therry Streets.

The first justification is similar to that applicable to Area 17 except that it applies to land in long-standing private ownership which faces the QVM across streets (Queen and Therry Streets) containing buildings of lesser heritage significance.

The Panel was informed that the adopted depth and height related to the dimensions and presence of the building at the precinct's north-east corner (the McDonalds building). This judgement, however, seemed to disregard the height of other adjacent structures such as the YWCA building (Y Hotel) in Elizabeth Street (30.8m at the frontage and 19m at the rear). Further, it also disregards the existing buildings on the Queen Street frontage whose redevelopment potential would be reduced (or perhaps effectively expunged altogether) because of the sites' dimensions as explained in the Munro, Tramere and Benjamin submissions.

These judgements would be justified in the mind of the Panel if sound arguments had been made in favour of disregarding the *Consultant's Recommendations* map provision of a single standard of 20m for both property frontages and to the full depth of these properties. The reasons for the lowered frontage strip approach put forward during the Hearing by Council representatives were largely based on the Gould review in relation to nearby heritage buildings. The reasons were insufficient, however, to convince the Panel accordingly.

The Panel noted, as was cited by urban design witnesses, that many other heritage buildings in the Capital City Zone sit 'cheek by jowl' with much taller buildings than those contemplated in this area by the BFR. Generally, in these alternative examples, rather than being diminished by the evident contrast, the new buildings are positively emphasised with heritage 'gems' set among more contemporary neighbouring structures.



Photo 6 Relationship of height of buildings on south side of Therry Street to McDonalds building and Hotel Y

The Panel noted, as was cited by urban design witnesses, that many other heritage buildings in the Capital City Zone sit 'cheek by jowl' with much taller buildings than those contemplated in this area by the BFR. Generally, in these alternative examples, rather than being diminished by the evident contrast, the new buildings are positively emphasised with heritage 'gems' set among more contemporary neighbouring structures.

The 'pedestrian scale' argument also did not persuade the Panel. As was pointed out at the Hearing, the pedestrian 'eye' is largely caught up in street-life and this is experienced at street level. Street furniture, lighting devices, outdoor dining opportunities, display windows, overhead canopies and banners/bunting (apart from other people in bustling crowds) are arguably the main contributors toward pedestrian scale (and thus experience) rather than alternative heights of mid-level development at and above the street frontage boundary.

Five storeys of development which, it can be observed can facilitate lively street level food and beverage and general retailing with apartments above in a modest height arrangement, would be the likely arrangement (subject to a 20m control). This would allow residents to enjoy a 'European-like' visual experience of the street life below and a panorama across the QVM. This approach, as suggested by Mr Munro's interests (and endorsed by the Panel), is both possible and desirable on the subject street frontages. Under this provision, the 20m control would create an entirely appropriate scale for this 'people place' part of the precinct.

The above built form outcome, in the Panel's assessment, still responds to the description in the Schedule for Area 18. In addition, it also maintains the desired layered approach advocated by the BFR.

Thus, 20m is the Panel's preferred height control for Area 18.

5.4.4 AREA 19

Area 19 is the residual area 'behind' the above Area 18 strip and shares a Built Form Outcome with the omission of references to pedestrian scale (omitting the 12 words in the final sentence following ... 'Market'). No submissions were received in relation to this area, and thus it is one of the few areas where all three maps (see Appendix C) and height proposals were in agreement (at 20m).

The Panel sees no reason to disagree with the proposed 20 m height control as it would complement the considerations of Area 18 above.

Thus, 20m is also the Panel's preferred height control for Area 19.

5.4.5 AREA 20

This Area is also one that provides a challenge to resolve in the view of strongly competing claims. The Built Form Outcome simply states:

The scale of development provides protection for the Flagstaff Gardens from additional overshadowing at the winter solstice.



Photo 7 View southwards from Franklin Street towards part of the Drapac Property site towards higher buildings in Central Activities District.

The issue of overshadowing was debated at length by Drapac Property interests during the Hearing and is correspondingly discussed at length in Section 3.5 of this report. Whilst Drapac Property representatives argued for the abandonment of Amendment C61 for this site *per se*, which the Panel cannot support, their 'fall back' position which would, no doubt, be the higher of the presented height controls, namely 30m. The chief advanced arguments in favour of maintaining the *Consultant's Recommendations* map standard of 30m are as follows:

- It fully meets the equinox (September 22) shadowing standard, which presently applies. This is appropriate for a space 'below' (aesthetically) that of Federation Square and similar;

- The consolidated Drapac Property site would be subject to two, as distinct from the marginally more complex, three height limits;
- William Street as an established and significant city 'edge,' which can take a reasonable height presence;
- The established Radisson Hotel at the corner of William and A'Beckett Streets at 44m, the approved development adjacent to the Radisson in A'Beckett Street at 72m already do (or would) shade 50% of the area of the Flagstaff Gardens in question to a greater degree at the winter solstice than any future 30m built form further to the north along William Street;
- The existing residential development in Wills Street to the immediate south-east of the subject area, together with other visible CBD skyline from this part of the precinct, provide a higher urban form and context for this Area; and
- Any higher built form to the north of the Radisson Hotel would assist in the screening the 'ugly' blank northern face of this building which is clearly visible from many parts of the QVM. This outcome would have been previously anticipated by the Radisson Hotel's form and (lack of) fenestration on this wall.



Photo 8 Relationship between the Radisson Hotel and eastern edge of Flagstaff Gardens (shadows as at mid morning in mid November)

Conversely the Council's arguments in favour of the height control of 21m adopted in the exhibited and adopted versions for Area 21 can be summarised as follows:

- The Flagstaff Gardens are an increasingly important and well-used central city public open space (in the words of the North and West Melbourne Association Inc.– *it is our back yard*);
- Any sun penetration in winter at lunchtime, albeit somewhat reduced by a woody, deciduous tree canopy, would be welcomed by Gardens users;
- Winter overshadowing may retard the development of desirable landscape (replacement) features pursuant to the *Flagstaff Gardens Master Plan (2000)*;

- Whilst the equinox standard presently applies to the Flagstaff Gardens, this is due to a set of circumstances which, whilst not entirely clear, does not confirm this as the preferred outcome for the future;
- Council's present intention is crystal clear, however, to implement the Amendment C60 Panel's recommendation (with regard to a Scheme amendment adopting the winter solstice standard) for the Flagstaff Gardens when able to do so (either in part or whole); and
- This C61 Amendment process is such an opportunity, and would 'flag' Council's intentions of adopting the winter solstice standard more widely for significant city parks.

In the current case, this Panel is sympathetic to both sides of the argument but feels that it must come down on the side of 'natural justice'. The Panel notes that Council has had reasonable opportunity to commence an amendment to achieve a uniform winter solstice standard for the whole Flagstaff Gardens but for 'unstated/unknown' reasons has failed, so far, to do so. Further, the Panel understands that this provision was not adopted at the time of the Amendment C60 Panel considerations for reasons of a non-transparent process for affected properties. This Amendment C61 situation in the Panel's mind is analogous, and so, the Panel will 'on balance', support the standard suggested by the original *Consultant's Recommendations*.

Thus, 30m is the Panel's preferred standard for Area 20.

5.4.6 AREA 21

The control for Area 21 extends in part over all three (non-QVM) city blocks in the *Consultant's Recommendations* and *Council Recommendations* maps. Further, it would have done so for the *Exhibition Map*, save for the drafting error referred to previously (see Section 2.4.2).

The stated Built Form Outcomes draw on the wording for earlier reviewed Areas, adding for the first time reference to *the traditional Hoddle Grid of the Central Activities District* which envisages again a *comfortable relationship*. On this occasion, the reference relates to surrounding development (not the QVM), but comment around '*appropriate interface and transition*' to QVM's scale and form is maintained:

The scale of development provides an appropriate interface and transition from the low scale and built form of the QVM towards the tradition Hoddle Grid of the CAD, which has a comfortable relationship with the scale of surrounding development.

Submitters, who are located in this Area, essentially argued at the Hearing for the abandonment of Amendment C61, at least with respect to their properties. The exception was Mr Echberg who advocated lower height controls. Other submitters expressed mixed views, ranging from the qualified support from the North & West Melbourne Association Inc. and its supporters, through to Mr Richard Davis who argued for a compromise of a new *absolute maximum* of 40m. Suttons Holdings Pty Ltd, however, stated that *...height limitations will severely limit future re-development of our land...* (the Drapac Property site).

The 30m control proposed for this Area is only currently exceeded 'on the ground' with the buildings at the corners of Queen and Franklin Streets (32.4m) and Queen and A'Beckett Streets (36.5m). Approved development (but not presently activated) which would exceed the proposed control includes 100 Franklin Street (39m), 453 Elizabeth Street at its corner with Franklin (48m) and 167 Franklin Street (37m). It should be noted that, in addition, the approved development east of the Radisson Hotel at 72m is partially included in Areas 20, 21 and 22.



Photo 9 View across QVM car park towards Melbourne Terrace (32.4m) on the corner of Queen and Franklin Streets with higher buildings in Central Activities District behind.

The Panel noted incidentally from the above analysis and its observations that higher development has been (and is) more likely to occur at the corners of city blocks. Here the accentuation of height can assist with visual 'legibility' of streetscapes and similar design objectives. This would have implications for the exercise of discretion generally for the three precinct blocks affected (not involving the QVM area within the precinct).

In relation to suggestions of amendment abandonment, however, the Panel considers that to 'excise' any individual property from the control - apart from producing a 'patchwork' result - is not supported by the consideration of urban design undertaken for the precinct through the BFR. This precinct-wide basis, although not without some difficulties as discussed earlier (see Section 3), in the Panel's view, still forms a sound and tested basis for the proposed control.

Apart from oblique references to the *traditional Hoddle Grid* (south of Latrobe Street), it is clear to the Panel that some form of height transition from the precinct to the CAD is desirable. The Panel observed that CAD skyline impacts have seemingly 'crept north' via the development of the Wills Towers and similar height buildings north of Latrobe Street.

The issue here is not the need for a transitional control which provides an appropriate 'interface' with higher buildings in the city's heart, but its vertical dimension. No party to the Hearing advocated a control, where in Mr Moore's height terminology, a 'let it rip' approach could and should prevail in relation to built form. On the other hand, the impact of the prevailing Central City Zone would suggest at least a medium rise response.

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).

5.4.7 AREA 22

This final Area under the Panel's consideration was the one that variously forms a single (as per *Consultant's Recommendations* map) or an interrupted strip (as per *Council Recommendations[Post Exhibition]* map) generally along the southern boundary of the precinct. This is the precinct location most immediate to the CAD to the south. This relationship was picked up in the Built Form Outcomes which refers to *the immediate environs of the CAD* in addition to similar comment for Area 21:

The scale of development provides an appropriate transition and relationship in building height between the traditional low scale of the Market and immediate environs of the Central Activities District.

Differences between the BFR recommendations and the adopted controls in this area relate to a termination of the control on either side of Anthony Street and for the area now proposed in the adopted version by Area 20. The Panel notes the general agreement that, for this particular precinct, greater height is warranted to the southern edge.

It was noted by the Panel, however, that some submitters also referred to the presence of some higher buildings in Carlton and, in particular, North Melbourne on the north side of the Victoria Street edge of the precinct. The merits or otherwise of these observations do not detract from the contention that the highest control is required for Area 22 to achieve the transition to the CAD.

The main issue here is the extent of the control. The Panel considers that a higher standard would be more consistent with a layered approach and also pragmatic (recognising existing and proposed built form). This would result in extending a 60m control to William Street over the land occupied by the recently extended Radisson Hotel and its neighbouring 72m high approved development in A'Beckett Street, as originally recommended by the BFR.

Setbacks of the proposed control for the southern end of Anthony Street are in need of careful consideration. The Panel noted that the street's intimate scale and vistas along it from the north are valued by Council (although no reference to this aspect is made in the relevant Built Form Outcome statement). The Panel also noted that no other street

in the precinct is similarly treated in the proposed controls. Further, the proposed setback to Anthony Street, while seeming to conform to an existing property boundary to the west, bisects a property to the east.

The Panel, drawing on its knowledge of smaller streets and lively lanes located in the CAD, is not convinced that these setbacks are required to define either desired scale of development or the preferred 'through-vista'. The Panel therefore prefers the continuous control configuration as shown in the *Consultant's Recommendations* map.



Photo 10 Anthony Street – looking north towards Franklin Street from A'Beckett Street

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

5.5 PANEL FINDINGS

Based on the above considerations, the Panel finds that:

The *Built Form Review* provides a reasonable and researched basis for the amendment.

The *QVM Review of Height Control* provides an appropriate basis for varying recommendations that relate to the Upper and Lower Market areas of the QVM (but not adjacent areas).

An inclusive approach to apply controls to all streets is desirable within this precinct. The applicable control should adopt height limits that are applicable to all streets to adjacent city blocks (adopting the lower of the adjacent limits where they differ) rather than adopting a separate 'streets control height', which might suggest that these areas would never be subject to development options in the future.

A winter solstice standard that could apply to part of the Flagstaff Gardens should not be introduced via this amendment process.

Changes are desirable to the wording used in the DDO Schedule and in the associated Table with five as distinct from six maximum height controls categories.

Working from the *Council Recommendations (Post Exhibition)* version of the map, the preferred maximum heights by the Panel are as follows:

- Area 16 – 7 metres;
- Area 17 – 10 metres;
- Area 18 – 20 metres (and considered together with)
- Area 19 – 20 metres;
- Area 20 – 30 metres (also considered together with)
- Area 21 – 30 metres; and
- Area 22 – 60 metres (over the area generally shown as Area 19 in the *Consultant's Recommendations* map).

In support of these Findings and in an attempt to provide greater certainty, the Panel requested the Melbourne City Council to prepare a consolidated ***Panel Recommendations map*** which presents as for previous versions, but encapsulates the further changes contemplated above. It is attached as Appendix E.

6. RECOMMENDATIONS

Based on the reasons set out in this report, the Panel makes the following primary recommendation to the planning authority:

1. **The Panel recommends that Amendment C61 should be adopted with modifications as set out in the following specific recommendations.**
2. **The Panel recommends that wording changes be made to the Design Objectives in Schedule 14 to the DDO to include the following:**
 - **The retention of Objective 1 with the word ‘compatible’ either substituted or further elaborated upon;**
 - **The retention of the concept of ‘transition’ in building height Objective 2 with perhaps a reference to a ‘stepped’ or ‘layered’ approach. Further the deletion of reference to, or the further definition of, the mention of the ‘Hoddle Grid’;**
 - **A qualification, (e.g. as far as practical?) in Objective 3 with regard to...maintains and enhances the CAD skyline views which recognises the limitations of existing taller buildings to the south, the screening effect of market buildings and related limitations raised by apposing submitters; and**
 - **The reinstatement in Objective 4 of the word ‘use’ alongside ‘scale and character’.**
3. **The Panel recommends the maximum building heights be as follows and as illustrated on the map included as Appendix E:**

AREA	MAXIMUM BUILDING HEIGHT
16	7 metres
17	10 metres
18	20 metres
19	20 metres
20	30 metres
21	30 metres
22	60 metres (over the area generally shown as Area 19 in the <i>Consultant’s Recommendations</i> map)

4. **The Panel recommends that, based on the recommended maximum building heights, Areas 19 and 20 and their related Built Form Outcomes be effectively deleted from Schedule 14 to the DDO.**

-
5. **The Panel recommends that the Council consider whether a more appropriate expression than 'comfortable relationship' can be used in the wording of the Built Form Outcome for Area 21.**
 6. **The Panel recommends that maximum building height controls should apply to all streets within this precinct. The applicable control should adopt height limits that are applicable to all streets to adjacent city blocks (adopting the lower of the adjacent limits where they differ) rather than adopting a separate 'streets control height', which might suggest that these areas would never be subject to development options in the future.**

APPENDICES

A.	THE PANEL PROCESS	66
B.	STRATEGIC ASSESSMENT GUIDELINES	69
C.	MAPS OF PROPOSED MAXIMUM BUILDING HEIGHTS	72
<i>C1</i>	<i>CONSULTANT RECOMMENDATIONS (9 JUNE 2004)</i>	73
<i>C2</i>	<i>EXHIBITION MAP (15 JANUARY 2005)</i>	74
<i>C3</i>	<i>COUNCIL RECOMMENDATIONS (POST EXHIBITION) (8 JUNE 2005)</i>	75
D.	EXHIBITED AMENDMENT	76
E.	MAP OF PANEL'S RECOMMENDED MAXIMUM BUILDING HEIGHTS	79

A. THE PANEL PROCESS

THE PANEL

This Panel was appointed under delegation on 4 August 2005 pursuant to Sections 153 and 155 of the *Planning and Environment Act 1987* to hear and consider submissions in respect of Amendment C61. This amendment was prepared by the Melbourne City Council and, as exhibited, proposes to:

- Revise the current Schedule 14 to the Design and Development Overlay by:
 - reducing the existing building height limits in Area 16 and 17 to generally reflect the height of the existing Queen Victoria Market buildings;
 - reducing the existing height limits over the existing Queen Victoria Market car park for 12 metres to 10 metres stepping down to a 7 metre height limit along the Queen Street and Peel Street frontages;
 - reducing the existing height limits on the land fronting the south side of Therry Street and the east side of Queen Street from 20 metres to 12 metres for a depth of 9 metres;
 - introducing new height control areas to the table to Schedule 14 on land generally between Franklin Street and A'Beckett Street; and
 - introducing additional Design Objectives to Schedule 14 to ensure that new development to the south of the Queen Victoria Market provides an appropriate transition of scale from the Market towards the CBD.
- Make change to the Planning Scheme Map 13 DDO2 to amend the boundaries of existing Height Control Areas 16 and 17, and to include new Height Control Areas 18, 19, 20, 21 and 22.

The planning authority is City of Melbourne.

The Panel consisted of:

- Chairperson: Helen Weston
- Member: Eugene Kneebone.

TERMS OF REFERENCE

There were no terms of reference issued to the Panel.

HEARINGS, DIRECTIONS AND INSPECTIONS

A Directions Hearing was held on 25 August 2005 at Planning Panels Victoria, 80 Collins Street, Melbourne. A number of standard directions were made, which provided guidance for the conduct of the hearing. All directions were complied with and, to this extent, their function has been discharged. They are not reiterated here.

The Panel Hearing was held on 4 to 7 October 2005 at Planning Panels Victoria, 80 Collins Street, Melbourne.

The Panel inspected the area subject to the amendment and surrounding areas of Melbourne, making an accompanied visit to the following locations on 5 October 2005:

- Queen Victoria Market car park,
- William Street between Franklin and Latrobe Streets,
- A'Beckett Street between Elizabeth and William Streets,
- Franklin Street between Elizabeth and William Streets, and
- Queen and Therry Streets.

The Panel members also made several unaccompanied inspections of the area subject to the amendment and surrounding areas prior to and after the Hearing.

SUBMISSIONS

A list of all written submissions to Amendment C61 is included in Table A.1 below. The Panel has considered all written and oral submissions and all material presented to it in connection with this matter.

The Panel heard the parties listed in Table A.2 below.

Table A.1 List of written submissions

Submitter	Organisation (if any)
Mr Santino Mercuri	Drapac Property re land fronting Franklin, William and A'Beckett Streets.
Mr David M Townshend	On behalf of Wealthcome International Hotel Pty Ltd, owners of 167 Franklin Street
Mr Stuart McGurn	Fulcrum Town Planners on behalf of Mr Robert Munro, owner of 93-151 Therry Street
Ms Jennifer Hibbs	Commercial Manager, Queen Victoria Market Pty Ltd
Ms Susan M Hawes	Owner, 144-148 A'Beckett Street
Mr Howard Gibbons	Owner, 144-148 A'Beckett Street
Mr Vaughan Connors	Contour Consultants on behalf of YWCA, owner of Y Hotel, 489 Elizabeth Street
Mr Bruce Echberg	Urban Initiatives Pty Ltd
Ms Angela Williams	North and West Melbourne Association
Tramere Pty Ltd	Owner, 450 Queen Street
Benjamin Investments Pty Ltd	Owner, 440 Queen Street
Mr Richard L Davis	
Mr B Conneybeare	Suttons Holdings Pty Ltd, Owner land fronting Franklin, William and A'Beckett Streets.
Dr Francis Separovic	

Submitter	Organisation (if any)
Mr Nkechi Ogbonnaya	Planning Engineer, Land Use & Traffic Management, VicRoads
Mr John Phillips	Manager Development Approvals, Department of Sustainability and Environment

Table A.2 Presenters to the Hearing

Submitter	Represented By
Melbourne City Council	Mr Nick Tweedie of Counsel. He called the following witnesses: <ul style="list-style-type: none"> - Mr Craig Czarny, Urban Designer of Hansen Partnership - Ms Meredith Gould, Heritage Architect of Meredith Gould and Associates - Mr Rob Moore, Urban Designer, City of Melbourne.
Drapac Property	Mr Adrian Finanzio of Counsel. He called the following witnesses: <ul style="list-style-type: none"> - Mr Rob Milner, Town Planner of Coomes Consulting.
Wealthcome International Hotel Pty Ltd	Mr Morgan Bastone, Town Planner of Environmental Resources Management Australia Pty Ltd
North & West Melbourne Association Inc	Ms Angela Williams
Queen Victoria Market Pty Ltd	Mr Eglis Stokans of Russell Kennedy Solicitors. He called the following expert witness: <ul style="list-style-type: none"> - Mr Fraser Brown, Heritage Consultant of Lovell Chen. Mr Jim Monaghan, General Manager, Queen Victoria Market Pty Ltd also provided some information to the Panel.
Urban Initiatives Pty Ltd	Mr Bruce Echberg
Mr Howard Gibbons	
London & American Supply Stores Pty Ltd	Mr Phill Kelly
Mr Robert Munro	Dr Phillip Opas QC who called the following witness: <ul style="list-style-type: none"> - Mr Andrew Kelly, Town Planner, Fulcrum Town Planners.

B. STRATEGIC ASSESSMENT GUIDELINES

Pursuant to Ministerial Direction No 11, as part of its assessment of Amendment C61 to the Melbourne Planning Scheme, both the Panel and the planning authority are required to assess the amendment against the Strategic Assessment Guidelines.

Strategic Assessment Guidelines for Planning Scheme Amendments (revised in August 2004) are included as a General Practice Note in the VPPs and are to be used by Councils and Panel during the consideration of amendments. The Strategic Assessment Guidelines include a number of matters that are to be considered to ensure that planning is strategic and policy based. The broad issues to be considered in assessing an amendment are set out below and each of these matters is briefly addressed in the following sections:

1. Why is an amendment required?
2. Does the amendment comply with the requirements of the *Planning and Environment Act*?
3. Does the amendment support or implement the State Planning Policy Framework?
4. How does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?
5. Does the amendment make proper use of the Victoria Planning Provisions?
6. How does the amendment address the views of any relevant agency?

In addition, the planning authority must assess the impact of the new planning provision on the resource and administration costs of the responsible authority.

The following brief comments are drawn from the detailed strategic analysis of the proposal in Sections 3 and 5 of this report and from Council's *Explanatory Report* and respond, as appropriate, to comments made in submissions in relation to the amendment's consistency with the Guidelines.

WHY IS THE AMENDMENT REQUIRED?

In addition to the reasons put forward by the Council in its *Explanatory Report*, the Panel considers that an amendment to the Melbourne Planning Scheme is required to introduce appropriate height controls to the subject area because of issues raised in the assessment of several development proposals in the precinct and to ensure development outcomes that are consistent with the surrounding areas – both the CAD to the south and the lower rise areas of North Melbourne and Carlton to the north.

DOES THE AMENDMENT COMPLY WITH THE REQUIREMENTS OF THE PLANNING AND ENVIRONMENT ACT?

The strategic basis for the amendment is to provide appropriate height controls and related built form outcomes, based on investigations including a *Built Form Review* and stakeholder consultation for the Queen Victoria Market precinct.

As discussed in the Council's *Explanatory Report*, the proposed controls would implement relevant objectives of planning in Victoria. The Panel finds that proposed amendment is also consistent with State planning objectives and policies.

Consideration of environmental, social and economic effects

The Panel considers that the amendment is consistent with the provisions of the *Planning and Environment Act 1987*. As noted in Council's *Explanatory Report*, it would not result in any adverse environmental in nearby areas in North Melbourne or the adjacent Flagstaff Gardens and addresses the relevant social and economic effects including the promotion of high quality design and greater certainty of built form outcomes.

Ministerial Directions

Ministerial Direction No. 9 requires that planning scheme amendments must have regard to the Metropolitan Strategy (*Melbourne 2030*). This issue is discussed in Section 4.1.2 of this report. The Panel concurs with the Council's view that the amendment is consistent with *Melbourne 2030* as it will encourage built form outcomes which are consistent with strengthening the capital city role of central Melbourne. It will also encourage the concentration of new residential and commercial development close to existing activity centres and on strategic sites.

The amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act. The amendment complies with *Ministerial Direction 11 – Strategic Assessment of Amendments*.

DOES THE AMENDMENT SUPPORT OR IMPLEMENT THE STATE PLANNING POLICY FRAMEWORK?

The Panel considers that the amendment, subject to revisions based on the Panel's recommendations, would support and implement the relevant provisions of the SPPF (see Section 4.1.3). The Panel considers that the proposed maximum building height controls should be amended as recommended in Section 6 and that the draft wording for the DDO (as exhibited) should be amended to ensure that appropriate and consistent built form and amenity outcomes are achieved by proposed building and works (as discussed in Section 5 of this Report).

HOW DOES THE AMENDMENT SUPPORT OR IMPLEMENT THE LOCAL PLANNING POLICY FRAMEWORK, AND SPECIFICALLY THE MUNICIPAL STRATEGIC STATEMENT?

As there are no proposed or necessary changes to the MSS or local planning policies, there will not be any consequences for other aspects of the policy framework.

DOES THE AMENDMENT MAKE PROPER USE OF THE VICTORIA PLANNING PROVISIONS?

The Panel considers that the amendment makes proper use of the VPPs.

HOW DOES THE AMENDMENT ADDRESS THE VIEWS OF ANY RELEVANT AGENCY?

Four agencies made submissions on the amendment and were not opposed to the proposed amendment and did not appear at the Hearing. Council noted in its Explanatory Report that during the preparation of the *Built Form Review* that preceded the preparation of the amendment, the views of relevant agencies and stakeholders were sought and considered.

IMPACT ON THE RESOURCE AND ADMINISTRATION COSTS OF THE RESPONSIBLE AUTHORITY

The Council noted that the new planning provisions will have a limited impact on its resource and administrative costs and that the proposed amendment will provide greater certainty of the built form outcomes and future character of the QVM precinct is assured.

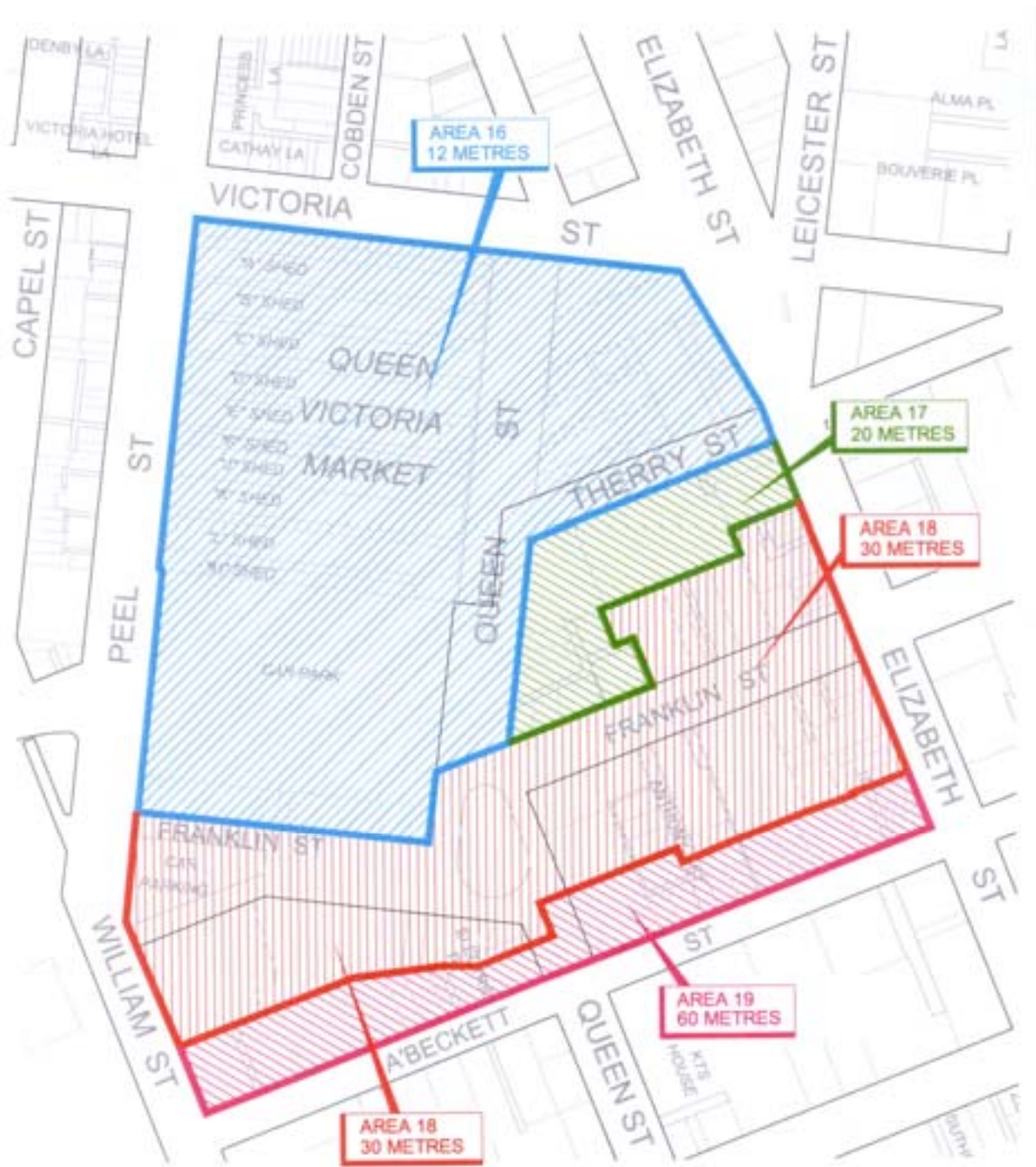
The Panel concurs with this assessment.

OUTCOME OF THE AMENDMENT

With the changes to the proposed building height controls and wording of the proposed Design and Development Overlay recommended by the Panel, the implementation of the amendment should facilitate development in the subject area with greater certainty about built form outcomes and without adverse or significant environmental or amenity impacts on the adjacent development or heritage character of the QVM precinct.

C. MAPS OF PROPOSED MAXIMUM BUILDING HEIGHTS

C1 CONSULTANT RECOMMENDATIONS (9 JUNE 2004)



Drawn by
GIS Team
Rates & Valuations



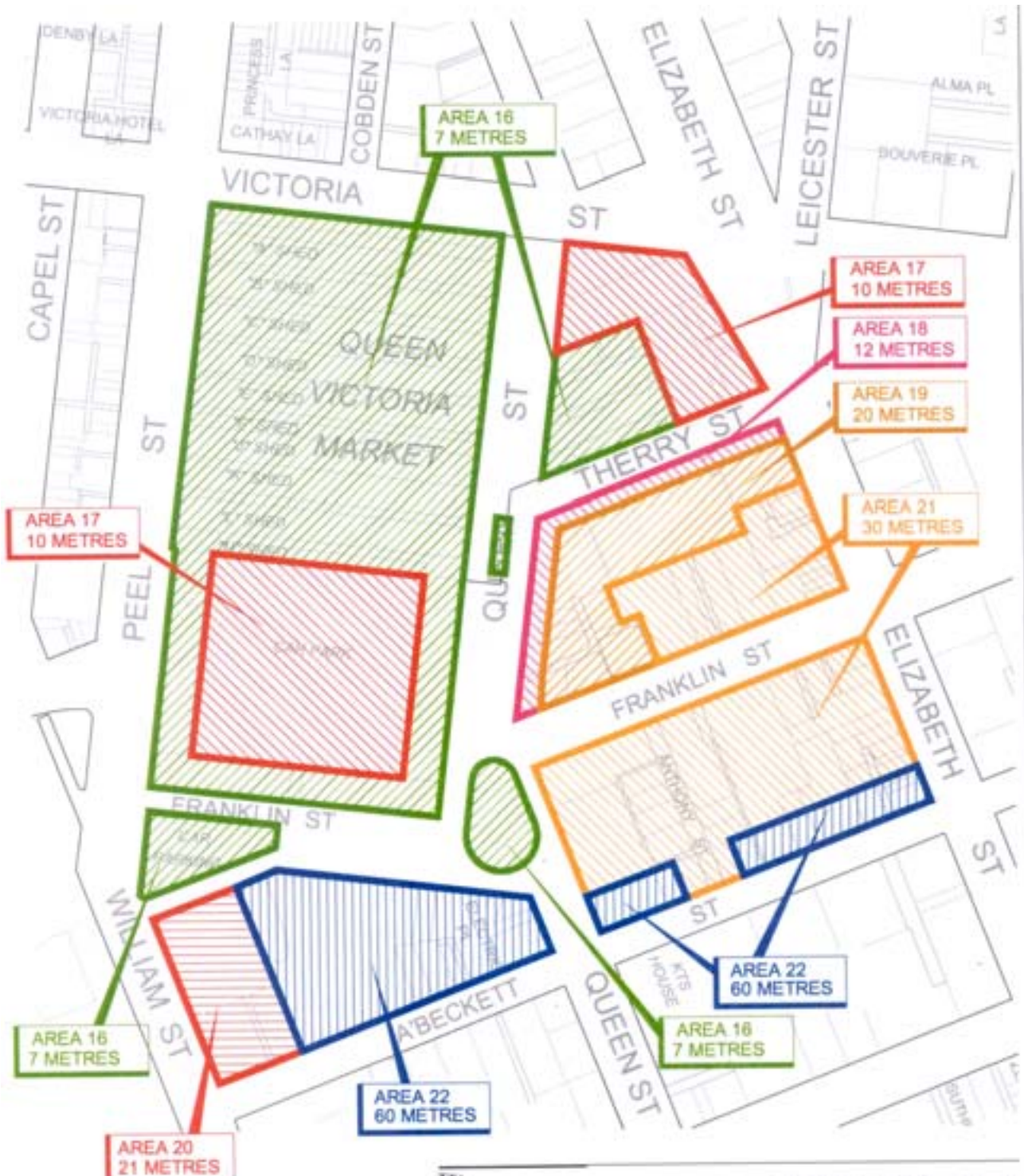
Title
**PLANNING SCHEME AMENDMENT C61
SCHEDULE 14 TO THE DESIGN
AND DEVELOPMENT OVERLAY
CONSULTANT RECOMMENDATIONS**

Date 09-06-2004

Scale 1: 3000

SHEET 1 OF 1

C2 EXHIBITION MAP (15 JANUARY 2005)



Drawn by
GIS Team
Rates & Valuations

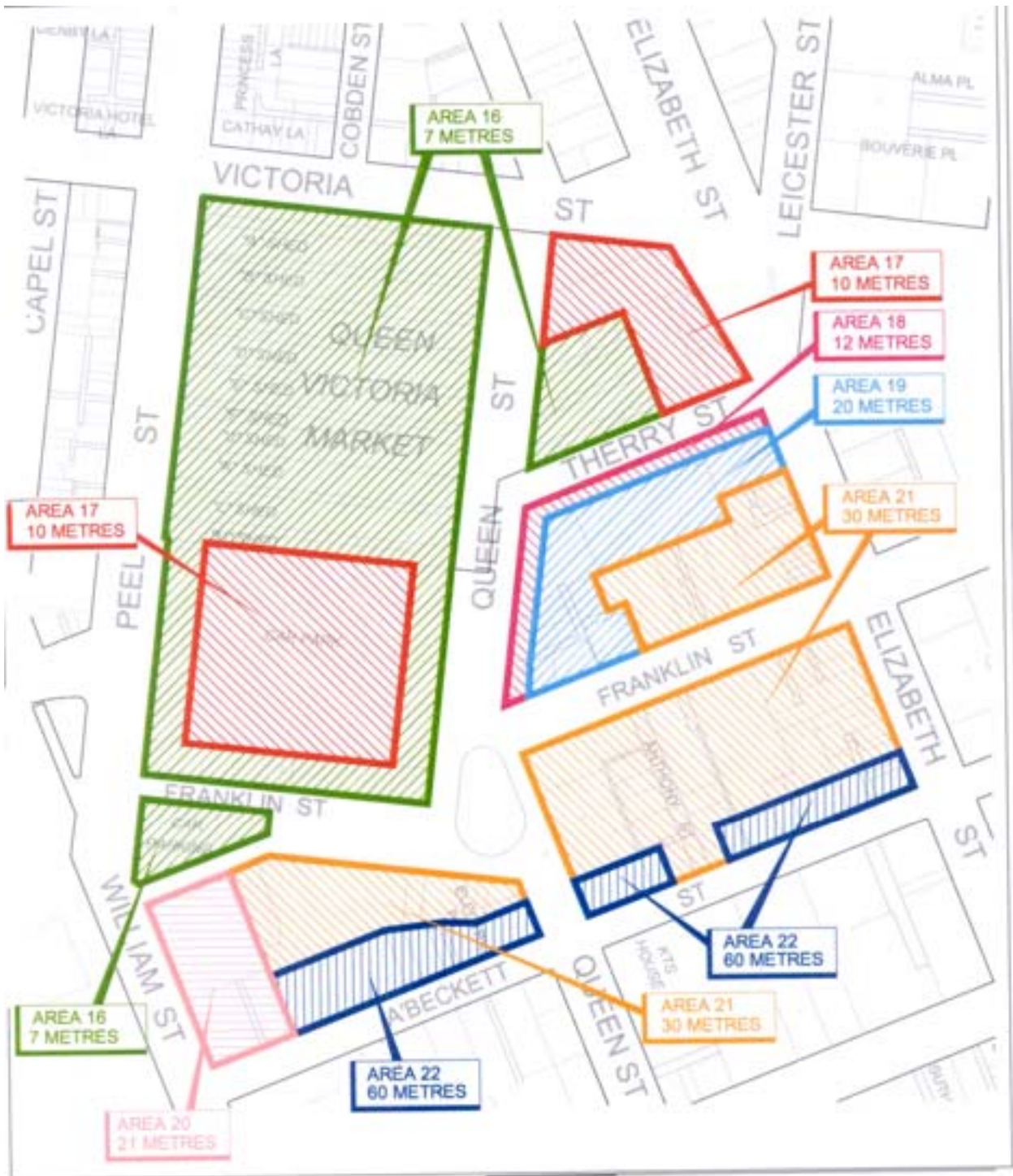
Title
**PLANNING SCHEME AMENDMENT C61
SCHEDULE 14 TO THE DESIGN
AND DEVELOPMENT OVERLAY
EXHIBITION MAP**

Date 15-01-2005

Scale 1: 3000

SHEET 1 OF 1

C3 COUNCIL RECOMMENDATIONS (POST EXHIBITION) (8 JUNE 2005).



Title
PLANNING SCHEME AMENDMENT C61
SCHEDULE 14 TO THE DESIGN
AND DEVELOPMENT OVERLAY
COUNCIL RECOMMENDATIONS
(POST EXHIBITION)

Date 08-06-2005

Scale 1: 3000
 Lengths in Metres



Prepared by: Serge
 GIS & Property Data Team - Rates & Valuations
 Y:\extract_data\OD_Plan\Development Planning\

D. EXHIBITED AMENDMENT

SCHEDULE 14 TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as DDO14

QUEEN VICTORIA MARKET PRECINCT**1.0 Design objectives**

- To ensure that any development within the Queen Victoria Market is compatible with its Victorian character and low-scale.
- To ensure that development around the Market edges and within close proximity to the Market provides an appropriate transition in building height from the low scale Market buildings towards the medium and high rise towers in the traditional Hoddle Grid of the Central Business District.
- To ensure that development adjacent to the Market to its east and south maintains and enhances the CAD skyline views from within the Market and immediate environs.
- 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.

2.0 Buildings and works

An application must be accompanied by a site analysis and urban context report which demonstrates 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.

Buildings and works should not exceed the *Maximum Building Height* specified in the table to this schedule.

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.

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.

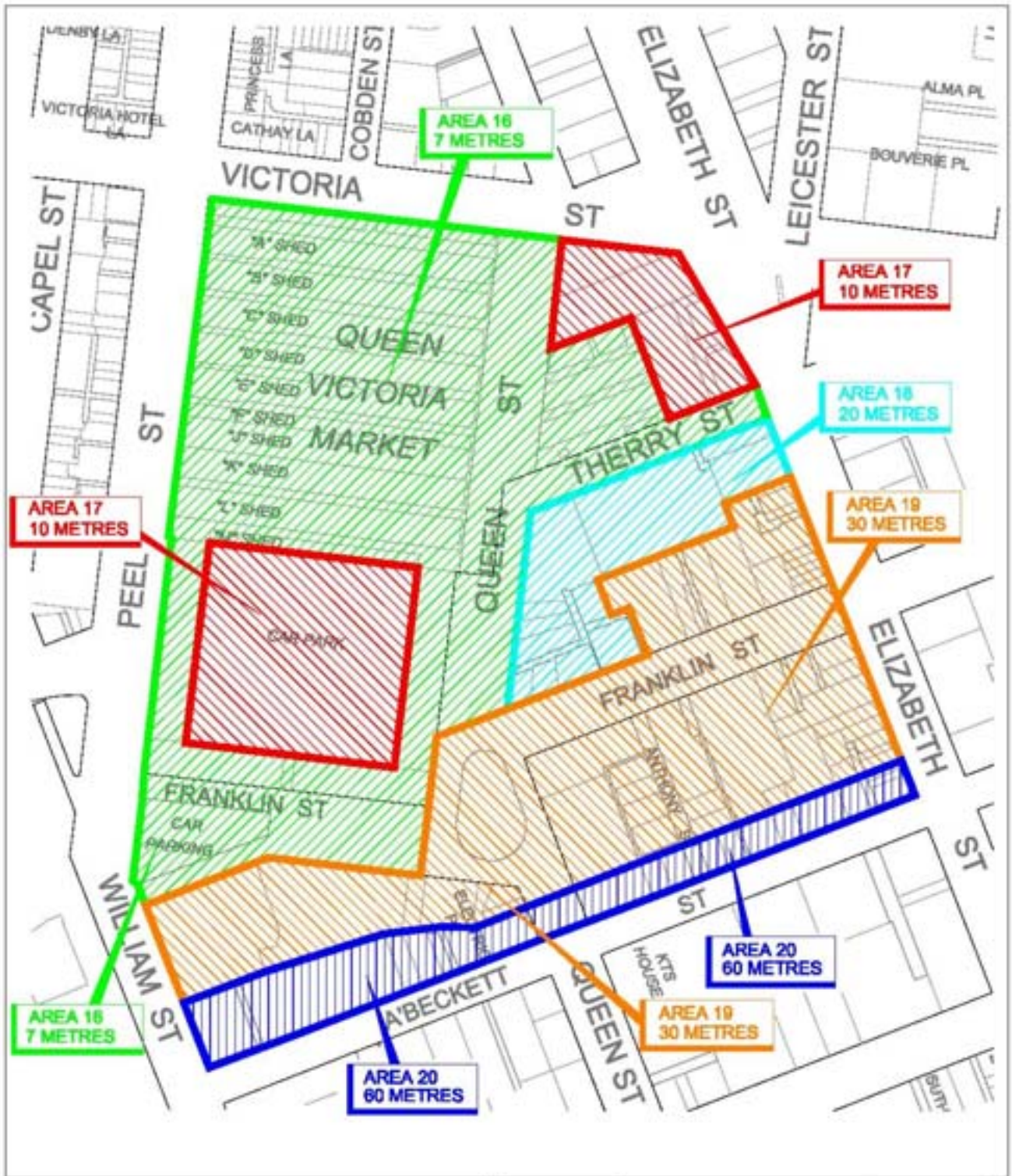
Table to Schedule 14

AREA	MAXIMUM BUILDING HEIGHT	BUILT FORM OUTCOMES
16	7 metres	Development maintains the consistency of scale and built form of the historic Queen Victoria Market.
17	10 metres	Development maintains the consistency of scale and built form of the historic Queen Victoria Market.
18	12 metres	The scale of development has a comfortable relationship with the low scale built form character of the Queen Victoria Market and protects the pedestrian scale of this important entry to the Market.
19	20 metres	The scale of surrounding development has a comfortable relationship with the low scale built form character of the Queen Victoria Market.
20	21 metres	The scale of development provides protection for the Flagstaff Gardens from additional overshadowing at the winter solstice.
21	30 metres	The scale of development provides an appropriate interface and transition from the low scale and built form of the Queen Victoria Market towards the traditional Hoddle Grid of the Central Activities District, which has a comfortable relationship with the scale of surrounding development.
22	60 metres	The scale of development provides an appropriate transition and relationship in building height between the traditional low scale of the Market and immediate environs of the Central Activities District.

Exemption form notice and appeal

An application to construct a building or 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 of rights of Section 82(1) of the Act.

E. MAP OF PANEL'S RECOMMENDED MAXIMUM BUILDING HEIGHTS



Prepared by: dargh
 GIS & Property Data Team - Rates & Valuations
 Y:\westrest_data\DG_PanelDevelopmentPlanning\CB1 AMENDMENT-Panel.dwg



The
PLANNING SCHEME AMENDMENT C61
SCHEDULE 14 TO THE DESIGN
AND DEVELOPMENT OVERLAY
PANEL RECOMMENDATIONS

Date: **NOVEMBER 2005**



FINANCE ATTACHMENT

**MELBOURNE PLANNING SCHEME AMENDMENT C61: QUEEN VICTORIA
MARKET PRECINCT BUILT FORM REVIEW**

Cost of the Panel Hearing can be met from the Development Planning Branch's 2005/2006 Operating Budget.

Joe Groher
Manager Financial Services

LEGAL ATTACHMENT

**MELBOURNE PLANNING SCHEME AMENDMENT C61: QUEEN VICTORIA
MARKET PRECINCT BUILT FORM REVIEW**

Divisions 1 and 2 of Part 3 of the *Planning and Environment Act 1987* (“the Act”) set out the required process for amending a planning scheme. This includes exhibition, giving notice of the proposed amendment, receiving public submissions and the appointment of a panel to hear submissions in relation to the proposed amendment.

Section 29(1) of the Act provides that after complying with Divisions 1 and 2 in respect of an amendment or any part of it, the planning authority may adopt the amendment or that part with or without changes.

Section 31(1) of the Act provides that the planning authority other than the Minister must submit an adopted amendment to the Minister together with the prescribed information.

The Minister may then approve the amendment or part of the amendment with or without changes subject to any conditions it wishes to impose. The Minister may also refuse the amendment. If approved, the Minister must publish notice of the approval of the amendment in the Government Gazette and Council must also provide notice of the approval in a manner satisfactory to the Minister.

The amendment will come into operation on publication of the notice in the Government Gazette or on the later or days specified in that notice.

Alison Lyon
Manager Legal & Governance