

Report to the Future Melbourne (Planning) Committee

Agenda item 6.8

Ministerial Planning Referral: ID-2014-4, 555 Collins Street, Melbourne

11 November 2014

Presenter: Karen Snyders, Planning Coordinator

Purpose and background

1. The purpose of this report is to advise the Future Melbourne Committee of a request to the Minister for Planning to amend the existing incorporated document in the Melbourne Planning Scheme entitled 'Shadow Controls, 555 Collins Street, February 2013'. The Council's comments have been sought on the proposed amendment to the Melbourne Planning Scheme by the Department of Transport, Planning and Local Infrastructure (DTPLI).
2. The incorporated document 'Shadow Controls 555 Collins Street, February 2013' was approved under Amendment C216 on 26 April 2013. The incorporated document facilitates a future application for a development to be lodged which is exempt from the Melbourne Planning Scheme prohibition to overshadow the south bank of the Yarra River on 22 June from 11am to 2pm. Comments were not sought by the DTPLI from the City of Melbourne in relation to this amendment. The approved incorporated document is subject to three conditions which are described at page 2 of the Delegate Report (Attachment 4).
3. The land owner of 555 Collins Street, Melbourne has requested the Minister for Planning to exercise his powers under Section 20(4) of the *Planning and Environment Act 1987* to exempt himself from the amendment notice requirements and to prepare an amendment to modify the existing incorporated document 'Shadow Controls 555 Collins Street, February 2013' to allow a mixed use development rather than a commercial development and has requested that all of the conditions of the incorporated document be removed.
4. A separate planning application for a mixed use development that would overshadow the south bank of the Yarra River has been lodged with DTPLI. On 8 October 2014. DTPLI requested comments on amended plans which reduced the total hotel floor area and increased the office floor area to 42,754sqm. The built form (height, setbacks and design) remained unchanged. Without the requested Ministerial amendment, this application cannot be considered under the current planning controls.

Key issues

5. The amendment seeks to allow the consideration of a planning application for the construction of a tall mixed use building that will significantly overshadow the south and north banks of the Yarra River. The amendment will not provide any public benefit, or any additional contribution to the public realm. The removal of conditions means that there will be no built form constraints imposed on the development site and there will be no expiry of the exemption provided by the incorporated document.
6. The proposed modifications to the incorporated document should not be supported as that will erode the long-held policy of protecting the amenity of the Yarra River corridor. Fundamentally the amendment is without clear or reasonable strategic justification and will create an undesired precedent and a poor planning outcome.

Recommendation from management

7. That the Future Melbourne Committee resolves that a letter be sent to Department of Transport, Planning and Local Infrastructure;
 - 7.1. Advising that the Council does not support the request to amend the Incorporated Document Shadow Controls, 555 Collins Street, Melbourne, February 2013 as the outcome that is sought cannot satisfactorily facilitate a development which justifies an exemption to the prohibition of a development to overshadow the south bank of the Yarra River from 11am to 2pm on 22 June;
 - 7.2. Recommending that the incorporated document Shadow Controls, 555 Collins Street Melbourne, February 2013 should be removed from the Melbourne Planning Scheme.

Attachments:

1. Supporting Attachment
2. Locality Plan
3. Incorporated Document Shadow Controls 555 Collins Street, February 2013 and proposed amended Incorporated Document
4. Delegate Report

Supporting Attachment

Legal

1. The Minister for Planning is the Responsible Authority for determining the application.

Finance

2. There are no direct financial issues arising from the recommendations contained in this report.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

4. The proponent and Department of Transport, Planning and Local Infrastructure officers have been made aware of the Council officer level recommendation to not support the proposed modifications to the incorporated document.

Relation to Council policy

5. Relevant Council policies are discussed in the attached delegate report (refer Attachment 4).

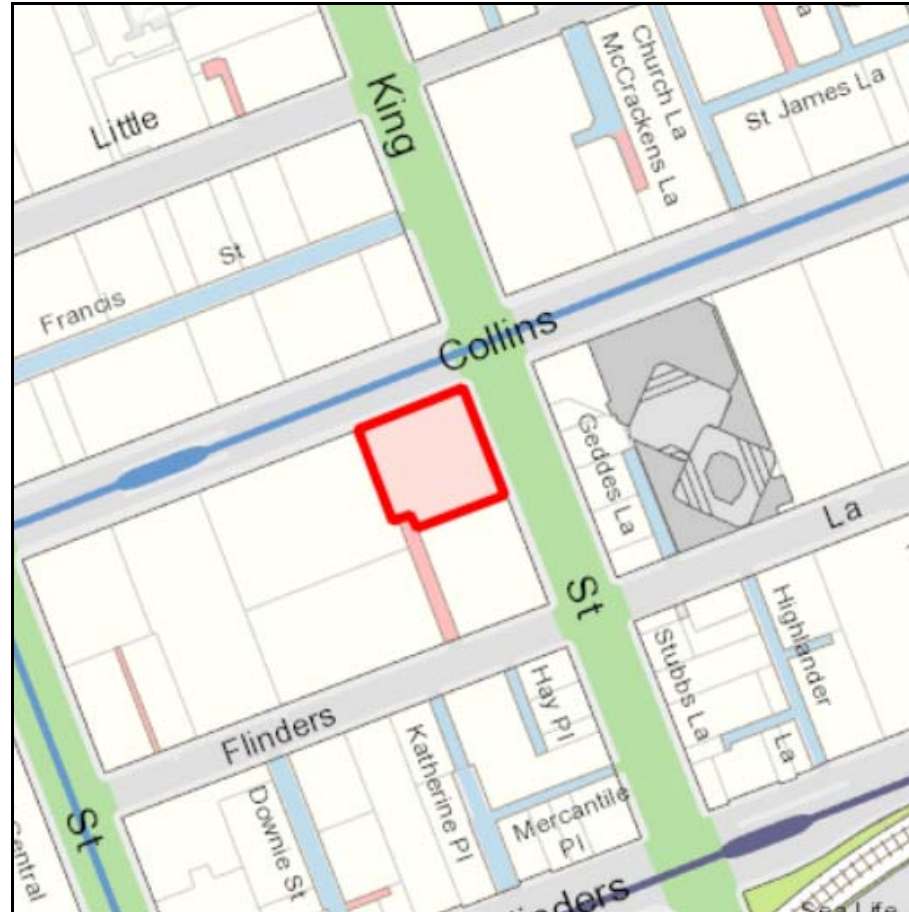
Environmental sustainability

6. It is a condition of incorporated document Shadow Controls 555 Collins Street, February 2015 that the building must deliver a high quality economic and environmentally sustainable office. The modification to the incorporated documents seeks to remove this requirement from the incorporated document.

Nevertheless, any future development of the site will be subject to a planning application process. The requirements of Clause 22.19 Energy Water and Waste and Clause 22.23 Stormwater Management (Water Sensitive Urban Design) will apply.

Locality Plan

555 Collins Street, Melbourne



Incorporated Document

Shadow Controls, 555 Collins Street, Melbourne, February 2013 – Amendment C216

This document is an incorporated document in the Melbourne Planning Scheme pursuant to Section 6(2)(j) of the Planning and Environment Act 1987.

INTRODUCTION:

This document is an Incorporated Document in the schedule to Clause 52.03 and Clause 81 of the Melbourne Planning Scheme (the Scheme).

This document excludes the land identified in the Incorporated Document from a planning control contained within the Scheme that prohibits the overshadowing of the south bank of the Yarra River.

The specific controls may exclude other controls of the Scheme.

If there is any inconsistency between the specific controls and the general provisions of the Scheme, the specific controls will prevail.

ADDRESS OF THE LAND:

This document applies to land at 555 Collins Street, Melbourne, being the land in Plan of Consolidation 104626.

THIS DOCUMENT ALLOWS:

The consideration and determination of a planning permit application for development for the purposes of office, retail, and non-residential uses only which is contrary to the provisions of the Schedule 1 of the Capital City Zone of the Melbourne Planning Scheme, being:

'The construction of buildings and works which would cast a shadow across the south bank of the Yarra River between 11.00 am and 2.00 pm on 22 June is prohibited, except for unenclosed structures associated with the construction of gangways, mooring poles and pontoons which are constructed by or on behalf of Melbourne Parks and Waterways or Parks Victoria under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958, the Parks Victoria Act 1998, or the Crown Land (Reserves) Act 1978.'

THE FOLLOWING CONDITIONS APPLY TO THIS DOCUMENT:

- 1 The building must be iconic in nature and design, demonstrate a high degree of architectural merit, provide excellent public realm outcomes, and deliver high quality economic and environmentally sustainable offices.
- 2 All other provisions of the planning scheme remain.
- 3 The controls in this incorporated document will expire if a planning permit has not been granted for development of the land and the demolition and development is not commenced within five (5) years of the date of the approval of the amendment that incorporates this document into the planning scheme.

The Minister for Planning may extend the period referred to if a request is made in writing before these controls expire, or within three months afterwards.

END OF DOCUMENT

Planning and Environment Act 1987

MELBOURNE PLANNING SCHEME

AMENDMENT CXXX

EXPLANATORY REPORT

Who is the planning authority?

This amendment has been prepared by the Minister for Planning, who is the planning authority for this amendment.

The amendment has been made at the request of 'Fragrance Vic-Mel (Collins) Pty Ltd'.

Land affected by the amendment

The amendment applies to land known as 555 Collins, Melbourne, with a site address of 555 Collins Street, across one title, being Land in Plan of Consolidation 104626.

What the amendment does

The amendment amends the Schedules at Clauses 52.03 and 81.01 of the Melbourne Planning Scheme to allow for a planning application to be considered at the abovementioned site which is contrary to the prohibitions outlined within Schedule 1 of the Capital City Zone

Specifically the amendment:

- Amends the Schedule to Clause 52.03 to include the Incorporated Document entitled "555 Collins Street, Melbourne, August 2014".
- Amends the Schedule to Clause 81.01 to include the Incorporated Document "555 Collins Street, Melbourne, August 2014".

Assessment of the amendment

• Why is the amendment required?

The amendment will allow for the consideration of a planning application on the land 555 Collins Street Melbourne, for the construction of Melbourne's tallest building – providing a true mixed use building within an iconic building that will capture both local and international interest.

The amendment is required to enable the development to provide a site specific control under Clause 52.03 and Clause 81 of the Melbourne Planning Scheme.

• How does the amendment implement the objectives of planning in Victoria?

Key objectives of planning in Victoria outlined in Section 4(1)(a) of the Planning and Environment Act 1987 are to (a) 'to provide for the fair, orderly, economic, and sustainable use and development of land' and (b) 'to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria'.

The subject site, located in the Melbourne CBD on the corner of Collins Street and King Street, enjoys excellent access to nearby residential precincts of Southbank and Docklands, excellent connectivity to the wider Melbourne metropolitan area, access to retail, other employment areas (for business synergies) and recreation opportunities.

The development of the site for '555 Collins Street, Melbourne' will facilitate orderly, economic and sustainable use and development of land, and will implement the objectives of planning in Victoria. Specifically the development will:

- Reinforce the critical role of the Melbourne CBD in providing a new true mixed use building incorporating a hotel, office and residential uses.
 - Clustering of high density uses within the Melbourne CBD to utilise land efficiently.
 - Reinforce the capital city function. The proposal will provide a strong anchor on the corner of Collins Street and King Street, to drive pedestrian footfall and activity to an area of the CBD that is continuing to evolve through increasing investment and redevelopment.
 - Provide an elegant, timeless building of the highest architectural quality. The iconic architecture will complement the existing built form within the CBD and present a positive image both locally and at an international level.
- **How does the amendment address the environmental effects and any relevant social and economic effects?**

Social and Economic

This amendment will facilitate the development of a mixed use tower which will:

- Deliver a timeless, elegant and iconic building which promotes confidence in Melbourne and reinforces its status as a truly international city.
- Provide a major investment which will generate a large number of new employment opportunities in the, construction industry and ancillary industries.

Environmental

There are not considered to be any significant environmental effects resulting from the proposed amendment.

- **Does the amendment address relevant bushfire risk?**
- Development within the Melbourne CBD is not subject to bushfire risk.
- **Does the amendment comply with the requirements of any Minister's Direction applicable to the amendment?**

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

- **How does the amendment support or implement the State Planning Policy Framework and any adopted State policy?**

The proposal is consistent with the State Planning Policy Framework, including:

• *Clause 11 – Settlement*

Clause 11 of the Melbourne Planning Scheme provides strategic directions for Metropolitan Melbourne by broadly embodying the thrust of the old Metropolitan Strategy, Melbourne 2030 and Melbourne @ 5 Million. This will no doubt be updated to reference Plan Melbourne and any relevant changes. Further discussion on the State Government's new Metropolitan Strategy is contained at Section 3.5. Relevant to this proposal, the State Planning Policies seek to:

Support and reinforce the role of the central city as Melbourne's largest centre for commercial, retail and housing by providing significant opportunities for housing redevelopment.

- *Clause 15 – Built Environment and Heritage*

Clause 15 seeks to ensure that all new land use and development that appropriately responds to its site context and setting. The Policy provides urban design principles that seek to ensure high quality urban design and architectural outcomes are produced.

This clause also references the Design Guidelines for Higher Density Residential Development which has been developed to ensure “best practice” in the design of higher density residential development.

These best practice guidelines are centred around built form and design and seek to ensure attractive and active spaces are incorporated into building designs.

- *Clause 16 – Housing*

Clause 16 provides specific direction to located new housing in Metropolitan Melbourne that offers good access to services and transport. This Clause states that planning should provide for housing diversity and be planned for long term sustainability.

- *Clause 17 – Economic Development*

The policy thrust of Clause 17 is to encourage strong economic growth through the provision of a strong and innovative economy. With respect to this proposal, this is to be done by encouraging development that meets the communities’ needs for retail and other commercial services.

- **How does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?**

- *Clause 21 – Municipal Strategic Statement*

The vision for the City of Melbourne, as identified in Clause 21.03, is to create a bold, inspirational and sustainable city through six high level goals centred around people, creativity, prosperity, knowledge, sustainability and connectivity.

The goals relate, amongst other things, to housing, urban renewal, sustainability, the built environment, and transport and emphasise the importance of ensuring high quality urban design, appropriate consideration of the public realm and creating sustainable environments.

The following local policies are applicable to the consideration of this proposal:

- *Clause 22.01 – Urban Design within the Capital City Zone*

This policy is applicable to all land within the Capital City Zone and seeks to enhance and protect the existing public realm of the central city whilst ensuring that new developments are responsive to these characteristics. The policy is divided into eight sections that address different elements of building and public space design, being:

- Building Design
- Facades
- City and Roof Profiles
- Projections
- Wind and Weather Protection
- Public Spaces
- Access and Safety in public spaces
- Policy implementation

- **Clause 22.02 – Sunlight to Public Spaces Policy**

This policy recognises that a fundamental feature of Melbourne's character, liveability, comfort and attractiveness is its ability to offer sunlight to its streets and public spaces at the times of year when the intensity of pedestrian activity is highest. This policy seeks to ensure that new buildings allow for good sun penetration to public spaces and to ensure that overshadowing from new buildings does not result in significant loss of sunlight and diminish the enjoyment of public spaces for pedestrians.

- **Clause 22.19 – Energy, Water and Waste Efficiency**

Clause 22.19 is Council's ESD policy and seeks to ensure that the design, construction and operation of buildings minimises its impact on the environment through sustainable practices. This is achieved through a number of application requirements and performance measures to ensure developments are environmentally sustainable.

- **Does the amendment make proper use of the Victoria Planning Provisions?**

The amendment makes proper use of the Victoria Planning Provisions by updating the schedules to clauses 52.03 and 81.01 to include the Incorporated Document '555 Collins Street, Melbourne, August 2014' in the Melbourne Planning Scheme.

- **How does the amendment address the views of any relevant agency?**

Extensive consultation regarding the proposed site specific exclusion has occurred with relevant agencies.

- **Does the amendment address relevant requirements of the Transport Integration Act 2010?**

Any future Department of Transport requirements will be included to any future permit for this site.

Resource and administrative costs

- **What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?**

The amendment will not impose any impact on the administrative costs of the responsible authority.

Where you may inspect this Amendment

The amendment is available for public inspection, free of charge, during office hours at the following places:

Department of Planning and Community Development

Level 14, 1 Spring Street

Melbourne Vic 3000

The amendment can also be inspected free of charge at the Department of Planning and Community Development website at www.dpcd.vic.gov.au/planning/publicinspection.

Incorporated Document

555 Collins Street, Melbourne, August 2014

This document is an incorporated document in the Melbourne Planning Scheme pursuant to Section 6(2)(j) of the Planning and Environment Act 1987.

INTRODUCTION:

This document is an incorporated document the schedule to Clause 52.03 and Clause 81 of the Melbourne Planning Scheme.

The land identified in the document may be developed and used in accordance with the site specific controls in the document. The specific controls may exclude other controls of the Scheme.

If there is any inconsistency between the specific controls and the general provisions of the Scheme, the specific controls will prevail.

ADDRESS OF THE LAND:

This document applies to land known as Land known as 555 Collins, Melbourne, with a site address of 555 Collins Street, across one title, being Land in Plan of Consolidation 104626.

THIS DOCUMENT ALLOWS:

For a 'Buildings and Works' application to be considered which is contrary to Schedule 1 of the Capital City Zone of the Melbourne Planning Scheme, specifically:

'The construction of buildings and works which would cast a shadow across the south bank of the Yarra River between 11.00 am and 2.00 pm on 22 June is prohibited, except for unenclosed structures associated with the construction of gangways, mooring poles and pontoons which are constructed by or on behalf of Melbourne Parks and Waterways or Parks Victoria under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958, the Parks Victoria Act 1998, or the Crown Land (Reserves) Act 1978.'

THE FOLLOWING CONDITIONS APPLY TO THIS DOCUMENT:

Nil

END OF DOCUMENT

PLANNING REPORT

MINISTERIAL REFERRAL

Application number:	ID-2014-4
Applicant / Owner / Architect:	Urbis / Fragrance Vic Mel (Collins)/ Bates Smart
Address:	555 Collins Street Melbourne
Proposal:	Section 20(4) Melbourne Planning Scheme Amendment request to amend Incorporated Document Shadow Controls, 555 Collins Street, February 2013 - Amendment C216
Date of application:	21 August 2014
Responsible officer:	Brendan Cousins

1 SUBJECT SITE AND SURROUNDS

The subject site is located on the south west corner of Collins Street and King Street and is currently occupied by 24 level office building also known as Enterprise House. The site is approximately 2,292sqm with a frontage to Collins Street of 48.52 metres and to King Street of 48.46 metres. A private 6 metres wide lane way located south of the site provides vehicle access to the rear.

Aerial Photo / Locality Plan



The main characteristics observed in the area include:

- South of the subject site is a 9 level commercial / government building that also houses the Victorian and Civil Administrative Tribunal.
- West of the subject site, No. 567 Collins Street is being redeveloped for a 29 storey office building with a height of 129 metres.

- North of the subject site at No. 568 Collins Street there is a building under construction. This is a mixed use building and will primarily be residential with 588 apartments constructed over 68 levels to a height of 226 metres.
- East of the subject site on the opposite corner of King Street is Rialto Towers which was constructed in 1986. Rialto tower is approximately 250 metres high.

2 PROPOSAL

The land owner Fragrance Vic Mel (Collins) has requested the Minister for Planning exercise his powers under Section 20(4) of the Planning and Environment Act 1987 to exempt himself from the amendment notice requirements of sections 17, 18 and 19 if the Minister considers that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.

The amendment request seeks to modify the existing Incorporated Document 'Shadow Controls 555 Collins Street, February 2013' allow a mixed use development rather than a commercial development.

At this stage, the Department has confirmed that they are currently providing advice on the applicants request for the Minister to exercise his powers under 20(4) and the separate permit application. The request will only become an amendment if the Minister seeks to approve the request.

Incorporated Document 'Shadow Controls 555 Collins Street, February 2013' was approved under amendment C216 26 April 2013. Comments were not sought by the Department of Transport Planning and Local Infrastructure from the City of Melbourne in relation to original assessment of the incorporated document.

The approved incorporated document is subject to three conditions.

1. The building must be iconic in nature and design, demonstrate a high degree of architectural merit, provide excellent public realm outcomes, and deliver high quality economic and environmentally sustainable offices.
2. All other provisions of the planning scheme remain.
3. The controls in this incorporated document will expire if a planning permit has not been granted for development of the land and the demolition and development is not commenced within five (5) years of the date of the approval of the amendment that incorporates this document into the planning scheme. The Minister for Planning may extend the period referred to if a request is made in writing before these controls expire, or within three months afterwards.

The amendment to the incorporated document seeks to remove all of the above conditions. No new conditions are being sought.

3 MINISTERIAL POWERS

The Minister has power to amend a planning scheme, with exemption from notice requirements, or to expedite an amendment to a planning scheme, under section 20(4) of the *Planning and Environment Act*. The state government Practice Note provides the following information on Ministerial powers of intervention:

In considering powers of intervention, the Minister will:

- where a person other than the Minister proposes the intervention, expect the proposal to be made in writing and to identify the basis on which the Minister should intervene, addressing the criteria set out in this practice note;
- where a person other than a planning authority or responsible authority proposes the intervention, expect that person to have consulted the relevant planning authority or responsible authority about the proposal;
- expect the planning authority or responsible authority and other affected parties to have attempted to resolve any dispute and clearly identify outstanding matters;
- seek to consult the relevant planning authority or responsible authority, where it would otherwise have a decision-making role in relation to the matter;
- examine each case on its merits, including consideration of the need to consult with affected parties and the need to seek independent expert advice;
- act so as not to unreasonably delay a decision on the matter.

In using powers of intervention, the Minister will:

- make publicly available written reason for each decision, including an explanation of how the circumstances of the matter responded to this Practice Note and the legislative criteria for that action;
- provide a report to Parliament at least every twelve months detailing the nature of each intervention.

When will the Minister consider using these powers?

The matter will be one of genuine State or regional significance. Such situations may include, for example, those:

- where the determination of the application may have a substantial effect on achievement or development of State or regional planning or heritage objectives;
- which raise a major issue of State or regional policy or public interest such as the implementation of Melbourne 2030 objectives;
- which could have significant effects beyond their immediate locality.
- The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.
- The matter will be the introduction of an interim provision or requirement and substantially the same provision or requirement is also subject to a separate process of review (such as the introduction of permanent controls in a planning scheme).

The matter will raise issues of fairness or public interest, where:

- the mechanisms of the planning process have created a situation that is unjust, unreasonably causes hardship or is clearly in error;
- anomalous provisions apply and the valid intent is clearly evident or simple inconsequential correction is required.
- there is a need for urgency and the public interest would be served by immediate action;

- the matter is unlikely to be reasonably resolved by the processes normally available.

The matter requires a co-ordination to facilitate decision-making by more than one agency.

As an overriding consideration, Ministerial powers will only be exercised having regard to and within the confines of, the legislative provision in question.

4 PLANNING SCHEME PROVISIONS

The following provisions of the Melbourne Planning Scheme apply:

State Planning Policies	<p>Clause 11.04-9 River corridors seek to protect and enhance the significant river corridors of Metropolitan Melbourne.</p> <p>Relevant strategies include:</p> <p>‘Ensure strategic planning and land management of the Yarra River and Maribyrnong River corridors to protect their environmental and cultural values and landscape character and guide new development.’</p> <p>‘Ensure development responds to and respects the significant environmental, conservation, cultural, aesthetic, open space, recreation and tourism assets of the Yarra River and Maribyrnong River corridors.’</p> <p>‘Ensure new development is sensitively designed and sited to maintain and enhance environmental assets, significant views and the landscape along the Yarra River and Maribyrnong River corridors.’</p> <p>Policy guidelines include Review of Policies and Controls for the Yarra River Corridor: Punt Road to Burke Road Consultant Report (Planisphere, June 2005).</p> <p>Clause 12.04-1 Environmentally sensitive areas seeks protect and conserve environmentally sensitive areas. The strategy is to protect environmentally sensitive areas with significant recreational value such as the Yarra River from development which would diminish their environmental conservation or recreation values.</p> <p>Clause 12.04-2 Landscapes seeks to protect landscapes and significant open spaces that contribute to character, identity and sustainable environments.</p> <p>Clause 15.01-1 Urban design seeks to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.</p> <p>Clause 15.01-2 Urban design principles seeks to achieve architectural urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties</p> <p>Plan Melbourne</p> <p>Initiative 4.2.4 Protect waterways from inappropriate development</p> <p>‘Port Phillip Bay, Yarra River, Maribyrnong River and other significant rivers and streams are important assets to the state and are highly valued by the community in a number of ways. There is a need to balance the tourism, recreational and cultural values of Melbourne’s foreshore and waterways with development opportunities. It is also important that we protect our waterways from inappropriate development.’</p> <p>‘The government has recently brought forward new, mandatory controls to protect the banks of the Yarra and Maribyrnong rivers, our city’s two iconic</p>
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	<p>waterways. These controls should be offered to local governments and waterway authorities to protect other iconic waterways and coasts across Melbourne, including Port Phillip Bay.’</p> <p>Initiative 4.5.3 Extend the landscape and vegetation cover of Metropolitan Melbourne</p> <p>Initiative 4.8.2 Promote urban design excellence</p> <p>Initiative 5.6.2 Protect our open space waterway corridors from inappropriate development</p> <p>‘The government has introduced significantly stronger planning protections for Melbourne’s two main river corridors, the Yarra and Maribyrnong rivers. These include mandatory height controls; controls in relation to site coverage, vegetation removal and drainage requirements; and discouraging development that intrudes on existing public and private open space adjacent to the rivers.</p> <p>This approach to protecting rivers from inappropriate development will be extended to other rivers in Melbourne.’</p> <p><u>In short-term</u></p> <p>‘In partnership with local governments and stakeholders, prepare and implement planning provisions for major metropolitan waterway corridors, consistent with the approaches adopted for the Yarra and Maribyrnong rivers.’</p>
<p>Municipal Strategic Statement</p>	<p>Clause 21.04 – 1.2 Urban renewal areas</p> <p>It is noted in this Clause that Southbank has brought the Yarra River ‘into the heart of the city’s life’ with a ‘pedestrian priority at street level’</p> <p>Clause 21.05 – 2 Significant environments and landscapes</p> <p>Objective 1 To enhance the environmental value of Melbourne’s parklands waterways and other open spaces.</p> <p>Clause 21.06-1 Urban design</p> <p>Objective 1 To reinforce the City’s overall urban structure</p> <p>Strategy 1.1 Protect Melbourne’s distinctive physical character and in particular maintain the importance of (among other things):</p> <ul style="list-style-type: none"> - The Hoddle Grid - The Yarra River Corridor, Victoria harbour and waterways <p>Strategy 1.5 Promote development that is compatible with the scale, character and amenity of public open spaces, and the environs of the Yarra River.</p> <p>Objective 5 To increase the vitality, amenity, comfort, safety and distinctive City experience of the public realm.</p> <p>Strategy 5.2 Ensure that the scale, bulk and quality of new development supports a high quality public realm.</p> <p>Strategy 5.9 Ensure that development maximises solar access in public open spaces, and creates microclimatic conditions for a high level of pedestrian comfort.</p> <p>Objective 6 To improve public realm permeability, legibility, and flexibility.</p> <p>Strategy 6.2 Ensure the design of buildings and public spaces enhances</p>

	<p>the public realm and pedestrian environment.</p> <p>Clause 21.12 Hoddle Grid seeks, among other things, to:</p> <p>‘Protect the regular grid layout, laneways, tree-lined boulevards and identified significant public open spaces.’</p> <p>‘Ensure sunlight penetration in the middle of the day to key public spaces, appropriate to their role and function.’</p> <p>‘Protect the Yarra River and its south bank from overshadowing throughout the year.’</p>
<p>Local Planning Policies</p>	<p>Clause 22.01 Urban design within the Capital City Zone seeks, among other things, to:</p> <p>‘To improve the experience of the area for pedestrians’</p> <p>Clause 22.02 Sunlight to Public Spaces</p> <p>‘This policy applies to public spaces such as parks and gardens, squares, streets and lanes, and includes privately owned spaces accessible to the public, such as building forecourts, atria and plazas within the municipality excluding the Docklands Zone.’</p> <p>‘A fundamental feature of Melbourne’s character, livability, comfort and attractiveness is its ability to offer sunlight to its streets and public spaces at the times of the year when the intensity of pedestrian activity is highest.’</p> <p>This policy seeks, among other things, to:</p> <p>‘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.’</p> <p>‘To protect and where possible increase the level of sunlight to public spaces during the times of the year when the intensity of use is at its highest.’</p> <p>It is policy that Development should not reduce the amenity of public spaces by casting any additional shadows on public parks and gardens, public squares, major pedestrian routes including streets and lanes (including all streets within the retail core of the Capital City Zone), and privately owned plazas accessible to the public between 11.00 am and 2.00 pm on 22 September.</p> <p>Yarra River Corridor</p> <p>Development in the Capital City Zone and Docklands Zone must not cast a shadow across the south bank of the Yarra River between 11.00 am and 2.00 pm on 22 June.</p> <p>Development should not cast a shadow across the north bank of the Yarra River between 11.00 am and 2.00 pm on 22 June.</p>

Statutory Controls	
<p>Capital City Zone Schedule 1</p>	<p>Pursuant to Clause 3.0 of Schedule 1 to the Capital City Zone the construction of buildings and works which would cast a shadow across the south bank of the Yarra River between 11.00 am and 2.00 pm on 22 June is prohibited, except for unenclosed structures associated with the construction of gangways, mooring poles and pontoons which are</p>

	<p>constructed by or on behalf of Melbourne Parks and Waterways or Parks Victoria under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958, the Parks Victoria Act 1998, or the Crown Land (Reserves) Act 1978.</p> <p>Incorporated Document Shadow Controls, 555 Collins Street, Melbourne, February 2013 – Amendment C216 was approved which allowed the consideration and determination for a development of office, retail and non-residential uses that is contrary to above provision of CCZ1. The incorporated document was also subject to three conditions.</p> <p>In addition, a permit is required:</p> <p>To construct a building or carry out or construct works.</p> <p>To construct a building or construct or carry out works which will cast a shadow across the north bank of the Yarra River between 11.00 am and 2.00 pm on 22 June. A permit may only be granted if the responsible authority considers the overshadowing will not prejudice the amenity of the Yarra River corridor.</p> <p>To construct a building or construct or carry out works which would cast a shadow between 11.00 am and 2.00 pm on 22 March and 22 September over public space, public parks and gardens, public squares, major pedestrian routes including streets and lanes, and privately owned plazas open to the public. A permit may only be granted if the responsible authority considers the overshadowing will not prejudice the amenity of those areas.</p> <p>As this amendment relates to whether it is appropriate to the vary the incorporated document no further consideration is required under this provision.</p>
<p>Design and Development Overlay Schedules 1-A2, 3 and 4</p>	<p>A permit is required to carry out buildings and works.</p> <p>As this amendment relates to whether it is appropriate to the vary the incorporated document no further consideration is required under this provision.</p>
<p>Parking Overlay 1</p>	<p>A permit is required to provide parking in excess of a rate of:</p> <ul style="list-style-type: none"> • One space per dwelling. For other uses the maximum number of spaces is <p style="text-align: center;"><u>5 x net floor area of buildings on that part of the site in sqm</u> 1000sqm</p> <p>As this amendment relates to whether it is appropriate to the vary the incorporated document no further consideration is required under this provision.</p>

Particular Provisions	
<p>Clause 52.03, Specific Sites and Exclusions</p>	<p>The amendment request is to amend an Incorporated Document via Clause 52.03 of the Melbourne Planning Scheme to provide a facility for a planning application to be considered for the site which is contrary to the prohibition.</p>

The above listed planning permit triggers, with the exception of the prohibition, would continue to application to any consideration of any planning application applying to the site.

General Provisions	
Clause 61.01 – Administration and enforcement of this scheme	The proposal, which was lodged with the Minister for Planning C/- Department of Transport, Planning and Local Infrastructure (DTPLI) on 8 August 2014, seeks an amendment to the Melbourne Planning Scheme via Section 20(4) of the Planning and Environment Act 1987.

5 PUBLIC NOTIFICATION

Pursuant to Section 20(4) of the Planning and Environment Act 1987 the Minister may decide to exempt himself from the giving of notice of the amendment.

6 REFERRALS

The application was referred internally to Urban Design for comment.

Specific advice was sought in relation to the how the design responses to the conditions of the current incorporated document, which are much more restrictive than what is proposed by the amendment.

The two specific conditions that were assessment against were:

- *The building must be iconic in nature and design, demonstrate a high degree of architectural merit, provide excellent public realm outcomes, and deliver a high quality economic and environmentally sustainable offices, and*
- *All other provisions of the planning scheme remain.*

The advice is summarised below:

6.1 Building iconic in nature and design

Despite the many aspirational ideas about the tower’s form contained in the planning application design report, once built, the essential symbolic capital of the tower rests with *what it is* (i.e. the material evidence of property development) and how this is *expressed* (i.e. as *the tallest building in Melbourne’s skyline*. (At some 300m in height, and rising well above the Eureka and Rialto Towers that feature prominently in Melbourne’s skyline, this proposed tower will certainly be seen from far and wide).

In this context, the proposed tower is iconic. It is a carefully designed symbol of corporate power as exercised through the exclusive commercial interests of property development.

6.2 Demonstrate a high degree of architectural merit

In this particular context, i.e. the democratic nature of public space in the city, these meanings of exclusive power exercised through extraordinary height, are not sympathetic to its context and audience, and it would therefore be difficult to argue that this proposal has a high degree of architectural merit.

6.3 Provision of public realm outcomes

At ground level, the provision of vehicle access from the service lane rather than from Collins or King Streets, favorably avoids impacts of cars on street pedestrians, and most of the building at ground/ street level has active uses. Notwithstanding, the treatment of the street level does not afford a high quality street condition

The proximity of the tower to its adjoining Collins Street tower-neighbour contributes to a “street-wall” effect that reduces amenity at street level (sky views and sunlight).

6.4 High quality economic and environmentally sustainable offices

Not applicable to our public domain impact assessment.

Further to the above comments the following general comments were provided in relation to ground level and podium and tower setbacks.

Notwithstanding that this building provides a high extent of activation at street levels, the nature of the ground floor and podium do not reinforce the character of the traditional Collins Street building/street interface, or contribute to a high quality pedestrian environment. The proposed floor plate is extensive, with little real or expressed subdivision, and is essentially a curtain wall of glass at street interface, with minimal fenestration / mullions.

The proposed tower is not 24m from the adjoining tower on Collins Street, therein increasing the effect of the “street-wall” on Collins Street, and reducing pedestrian amenity at street level (access to sunlight and sky views).

7 ASSESSMENT

The request by Fragrance Vic Mel (Collins) to the Minister for Planning for an amendment to the incorporated document Shadow Controls, 555 Collins Street, Melbourne, February 2013 – Amendment C216 seeks to delete the three approved conditions and add no additional conditions. The current incorporated document allows for a planning application to be lodged for a future office development which would be exempt from the Capital City Zone prohibition of buildings overshadowing the south bank of the Yarra River on the winter solstice. A planning application has been lodged with the DTPLI for a mixed use development that includes a residential hotel and residential uses.

The City of Melbourne was not consulted about the Melbourne Planning Scheme Amendment, C216, which introduced the original document. The explanatory report for the amendment noted:

No consultation has been undertaken for this amendment. However, the assessment of the planning application for the site will consider the views of statutory referral authorities and the City of Melbourne.

The incorporated document only allows consideration and determination of the non-residential development that is contrary to Clause 3.0 of Schedule 1 of the Capital City Zone. It does not automatically consider that the overshadowing of the south bank or even the north bank of the Yarra River is appropriate. As such any proposed development is open to a full assessment against the shadow controls outlined within Clause 22.02 as to whether or not it is reasonable to overshadow these key areas of Melbourne.

The Yarra River corridor is identified as being a natural asset of State significance. The attributes of this asset is protected from inappropriate built form by appropriate built form controls in the Planning Schemes of municipalities through which the river flows. Local policy Clause 22.02 Sunlight to Public Spaces is clear in its intent to protect public spaces from unreasonable overshadowing and seeks that:

- Development in the Capital City Zone and Docklands Zone must not cast a shadow across the south bank of the Yarra River between 11.00 am and 2.00 pm on 22 June.
- Development should not cast a shadow across the north bank of the Yarra River between 11.00 am and 2.00 pm on 22 June.

The original explanatory report provides very little justification as to why it was reasonable to allow a variation of the prohibition other than to state:

- The amendment will enable the assessment of a planning application for a significant commercial development at the site to be lodged and assessed. A significant commercial development at the site will facilitate orderly, economic and sustainable use and development of land, and will implement the objectives of planning in Victoria.

Had there been consultation with the City of Melbourne regarding Amendment C216 Shadow Controls, 555 Collins Street, Melbourne, February 2013, it is considered that no support would have been given. There is no reasonable strategic grounds to consider that overshadowing of the south bank of the Yarra River provides for a good planning outcome that balances the development potential of the site with providing a high level of amenity to public spaces. Both sides of the Yarra River corridor are significant and should be protected from inappropriate impacts from development.

This amendment seeks to further erode the prohibition and the policies relating to sunlight to public space by also removing the following conditions:

- The building must be iconic in nature and design, demonstrate a high degree of architectural merit, provide excellent public realm outcomes, and deliver high quality economic and environmentally sustainable offices.
- All other provisions of the planning scheme remain.
- The controls in this incorporated document will expire if a planning permit has not been granted for development of the land and the demolition and development is not commenced within five (5) years of the date of the approval of the amendment that incorporates this document into the planning scheme.

The Minister for Planning may extend the period referred to if a request is made in writing before these controls expire, or within three months afterwards.

In effect the amendment seeks to allow the consideration of a tall building that will significantly overshadow the south and north banks of the Yarra River and does not provide any public benefit, or any additional benefit to the public realm. The removal of conditions means that there will be no additional built form constraints imposed on the development site and there will be no end date to incorporated document. In justification of the changes, the applicant submits that the development will:

- Reinforce the critical role of the Melbourne CBD in providing a new true mixed use building incorporating a hotel, office and residential uses.
- Clustering a high density of Uses within the Melbourne CBD to utilise land efficiently.
- Reinforce the capital city function. The proposal will provide a strong anchor on the corner of Collins Street and King Street to drive pedestrian footfall and activity to an area of the CBD that is continuing to evolve through increasing investment and redevelopment.

- Provide an elegant, timeless building of the highest architectural quality. The iconic architecture will complement the existing built form with the CBD and present a positive image both locally and at an international level.

Allowing a development to vary the prohibition on the basis of the above justification (or indeed the original justification of C216) provides the foundation for a very poor precedent that allows certain built form outcomes such as building height and architectural quality to have more weight than other long-held policies, e.g. overshadowing of the south bank of the Yarra River. If governments thought that the overshadowing of the south bank of the Yarra River could be acceptable in some circumstances, even exceptional circumstances, the control would be discretionary, rather than mandatory.

A precedent of allowing “iconic” tall buildings to break long held planning policies is a poor planning outcome that has the potential to be abused with future development sites north of the Yarra River. The expectation is that buildings should generally achieve all built form outcomes being sought. In this instance there is no reason why any development on this site should be able to adequately address the relevant built form outcomes of the Melbourne Planning Scheme whilst still achieving the desired outcomes as outlined by applicant in their justification of the proposed amendment to the incorporated document.

A recent VCAT decision for a 115 metre high mixed use building for shops, office and residential at 33 -35 King Street (approximately 70 metres south of 555 Collins Street) was ultimately refused by VCAT on grounds of overshadowing the Yarra River corridor, resolution of the south faced and the natural light and ventilation to the southern bedrooms. VCAT stated that:

We consider that this development would adversely impact the banks of the river, contrary to policy. We are persuaded that the height of the building should be reduced so it does not impose additional shadow onto the Yarra River’s north corridor. We cannot be precise about the changes required to the building to achieve this outcome, but think they are limited and a somewhat lower building would still deliver the “compact city” outcomes sought by the planning scheme without intruding onto the Yarra River corridor.

It is clear that in this context the protection of the amenity of the Yarra Corridor is paramount and should not be further impacted upon by development. This site is not unique and the development of the site for a mixed building is of no more State significance than many other similar proposals within Melbourne Municipality.

It considered that the proposed amendment to the incorporated document Shadow Controls, 555 Collins Street, Melbourne, February 201 should not be supported as any consideration of a building that will erode the long-held policy of protecting the amenity of the Yarra River corridor results in a poor planning outcome.

Fundamentally the amendment is without clear or reasonable strategic justification and will create an undesired precedent and the incorporated document should be removed entirely from the planning scheme.

8 RECOMMENDATION

That a letter be sent to DTPLI advising that the Council does not support to the request to amend the Incorporated Document Shadow Controls, 555 Collins Street,

Melbourne, February 2013 as the outcome that is sought cannot satisfactorily facilitate a development which justifies an exemption to the prohibition of a development to overshadow the south bank of the Yarra River between 11.00 am and 2.00 pm on 22 June and should be revoked in its entirety.

Signature:

Date affirmed:

Brendan Cousins

Senior Planning Officer