Report to the Future Melbourne (Planning) Committee  
Ministerial Referral: TPM-2014-30 383-405 King Street, West Melbourne  
2 December 2014

Presenter: Daniel Soussan, Planning Co-ordinator

Purpose and background
1. The purpose of this report is to advise the Future Melbourne Committee of a ministerial planning application (reference 2014/002975) at 383-405 King Street, West Melbourne (refer Attachment 2 – Locality Plan). The planning permit application was referred by the Department of Transport, Planning and Local Infrastructure (DTPLI) on 15 August 2014 for comment.
2. The application is for the demolition of the existing building and the construction of a 23 level building comprising 392 dwellings, 904sqm of retail floor space, 95 car parking spaces, and 232 bicycle parking spaces. The overall height of the building is 75.57m. The gross floor area of the development is 32,910sqm (refer Attachment 3 – Plans).
3. The site is located within the Mixed Use Zone and is affected by a Design and Development Overlay – Schedule 33 (DDO33).
4. The application is not exempt from advertising or appeal rights.

Key issues
5. The key considerations associated with the proposal are the height and scale of the proposed building, internal amenity, potential external amenity impacts, and car parking.
6. The proposed building will result in a 57m long by 70m high wall when viewed from King Street and Flagstaff Gardens. A building of this height and scale is not considered appropriate in this location, resulting in a dominant and overbearing impact upon the public realm, including Flagstaff Gardens.
7. At 75.57m in height, the proposed development represents a significant departure from the preferred maximum building height of 40m as set out in DDO33.
8. There are internal amenity issues, particularly as the proposed layout has a large proportion of ‘saddlebag’ style apartments resulting in poor access to light and ventilation for future residents. In addition west facing podium level apartments include 1.7m high privacy screening applied to balcony areas to prevent overlooking to adjacent properties, further reducing the internal amenity of these apartments.
9. The proposal will result in unacceptable amenity impacts to residents of 28 Jeffcott Street (particularly those in close proximity to Corporation Lane) by way of noise associated with proposed waste collection and loading arrangements within the lane, and potential overlooking and wind impacts.
10. The reduction of 429 of the 524 car parking spaces required by Clause 52.06 of the Melbourne Planning Scheme is not justified or appropriate in this location.

Recommendation from management
11. That the Future Melbourne Committee resolves that a letter be sent to the Department of Transport, Planning and Local Infrastructure advising that the Melbourne City Council objects to the application subject to grounds of objection detailed in the attached delegate report (refer Attachment 4);

Attachments:
1. Supporting Attachment
2. Locality Plan
3. Plans
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 preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation
4. Council officers have not advertised the application or referred this to any other referral authorities. This is the responsibility of the DTPLI acting on behalf of the Minister for Planning.

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

Environmental sustainability
6. ESD matters are discussed in the attached delegate report (refer Attachment 4).
PLAN OF THE PROPOSAL (General Podium levels 1 & 2)
PLAN OF THE PROPOSAL (Level 3)
PLAN OF THE PROPOSAL (Levels 4-16)
PLAN OF THE PROPOSAL (Levels 17-21)
PLAN OF THE PROPOSAL (Level 22)
PLAN OF THE PROPOSAL (Rooftop Communal Facilities)
PLAN OF THE PROPOSAL (East Elevation)
PLAN OF THE PROPOSAL (South Elevation)
PLAN OF THE PROPOSAL (North Elevation)
PLAN OF THE PROPOSAL (West Elevation)
Perspective (Facing north-west from King St)
Perspective (Facing south-west from Flagstaff Gardens)
Perspective  (Facing west across Flagstaff Gardens)
Perspective (Facing east from Batman St)
Perspective (Facing south from King St)
PLANNING REPORT

MINISTERIAL REFERRAL

Application number: TPM-2014-30
DTPLI Application number: 2014/002975
Applicant / Owner / Architect: WCL - King (VIC) Pty Ltd / Elenberg Fraser / WCL - King (VIC) Pty Ltd
Address: 383-405 King Street, WEST MELBOURNE VIC 3003
Proposal: Building and works for the construction of a mixed use development comprising retail and residential apartments, use of land for retail (restaurant, food and drink premises and shop exceeding 150 square metres) reduction of the car parking requirements clause 52.06 and waive the loading and unloading requirements of clause 52.07
Date received by City of Melbourne: 15 August 2014
Responsible officer: Evan Counsel
Report Date: 12 November 2014
( DM# 8846728)

1. SUBJECT SITE AND SURROUNDS

1.1. The site

The site is located on the northern corner of King and Jeffcott Street adjacent Flagstaff Gardens. The site has a frontage width of 70m to King Street and 33.53m to Jeffcott Street, with a resulting area of 2,206sqm.

Locality Plan
The surrounding area includes a mix of commercial and residential uses. Buildings within this area vary in height, from lower scale two and three storey buildings to multi-storey developments around 40 metres.

The subject site is currently developed with a 10 storey vacant office building. The building consists of a three to four storey podium and a six storey tower. The tower is setback approximately nine metres from King Street and five metres from Jeffcott Street with a splay to the street corner as shown in site photo below.

Site Photo (King St facing west)

1.2. Surrounds

To the north, at 407-415 King Street is a two to three storey commercial building which is subject to an individual Heritage Overlay, HO842 (listed as 411-415 King Street). The site is a B graded building as identified in the City of Melbourne Inventory of Heritage Places.

Located immediately to the south of the site is Jeffcott Street. Further to the south is a recently constructed six storey office building.

The northern boundary of the Melbourne CBD (La Trobe Street) is located approximately 150m to the south of the site.

To the west, at 28 Jeffcott Street is a five storey apartment development, the building surrounds a central communal courtyard. At 15-31 Batman Street is a three storey office building.

A 3.6m wide laneway abuts the site’s western boundary. The lane is used as vehicle access to 407 King Street and for loading associated with subject site.

2. THE PROPOSAL

The plans referred to the City of Melbourne for comment were received on 15 August 2014. Additional information was provided on 11 November 2014 in response to a request from DTPLI for further information.

This application seeks to demolish the existing building and construct a twenty-four storey mixed use development comprising ground floor retail and residential apartments above.
The application proposes the following uses:

<table>
<thead>
<tr>
<th>Dwelling</th>
<th>Total number of dwellings: 392</th>
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<tbody>
<tr>
<td></td>
<td>One bedroom dwellings/apartments: 190</td>
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<tr>
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<td>Two bedroom dwellings/apartments: 184</td>
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<td>Three or more bedroom dwellings/apartments: 18</td>
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| Restaurant/cafe         | Two separate tenancies proposed. |
|                        | Hours of operation: Unspecified |
|                        | Patron numbers: Unspecified |

| Retail (ground level)   | Leasable Floor Area (904sqm) |
The specific details of the proposal are as follows:

<table>
<thead>
<tr>
<th>Building height</th>
<th>75.57m</th>
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<tr>
<td>Podium height</td>
<td>9.9m</td>
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</table>
| Front, side and rear setbacks | North - 5.5m to 6.5m  
South - 5.5m to 6.5m  
East - 5.5m to 6.5m  
West – 2m to 3m |
| Gross floor area (GFA) | 32,910sqm |
| Car parking spaces | 95 spaces |
| Motorbike parking spaces | 15 spaces |
| Bicycle facilities and spaces | 232 spaces |
| Loading/unloading | Within the existing laneway along the western site boundary. |
| Vehicle access | Existing crossover on Jeffcott Street. |

3. BACKGROUND

3.1. Pre-application discussions

The plans presented at the pre-application meeting showed a mixed-use building of similar context to what has been submitted.

The key issues raised at the pre-application meeting were:

- Excessive height and in response to DDO33
- Lack of activation to the western laneway as is proposed at 15-31 Batman Street (north-west of the site) which is currently being considered by The Minister.
- Lack of adequate setbacks to the western laneway. Current proposal for 15-31 Batman Street mentioned above provides 5m setbacks to the lane. This should be matched.
- Internal layout including saddlebag apartments with 'stacked' balconies

3.2. Site history

There is no directly relevant history or background for this site.

Current Ministerial Application for Planning Permit TPM-2014-21 (DTPLI ref no. 2014001849) for 15-31 Batman Street, West Melbourne is of relevance to this application. This site is located adjacent the subject site to the north-west.

The proposal at 15-31 Batman Street is for the construction of a mixed use development comprising of offices, retail shops and 243 apartments and includes a reduction of car parking requirements The proposed building can be described in three parts, the podium (16m), the mid-rise podium (48.4m) and tower (79.1m).
The Future Melbourne Committee resolved to object to the application at its meeting of 7 October 2014. The grounds of objection were:

- The proposal is contrary to the orderly and proper planning of the area.
- The proposed height of the tower is excessive having regard to the maximum building height set out in Design and Development Overlay - Schedule 33.
- The proposal fails to meet the objectives and built form outcomes of Design and Development Overlay - Schedule 33 in that it fails to provide an appropriate transition between the taller built form of the central city and the lower scale built form of West Melbourne.

The Minister is yet to make a decision on this application.

4. PLANNING SCHEME PROVISIONS

The following provisions of the Melbourne Planning Scheme apply:

<table>
<thead>
<tr>
<th>State Planning Policies</th>
<th>Clause 11 - Settlement</th>
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<tbody>
<tr>
<td></td>
<td>Clause 15 - Built Environment and heritage</td>
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<td></td>
<td>Clause 16 - Housing</td>
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<td>Clause 17 - Economic development</td>
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<td>Clause 18 - Transport</td>
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<td>Clause 19 - Infrastructure</td>
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<tr>
<th>Municipal Strategic Statement</th>
<th>Clause 21.03 - Vision</th>
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<tr>
<td></td>
<td>Clause 21.04 - Settlement</td>
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<tr>
<td></td>
<td>Clause 21.06 - Built Environment and Heritage</td>
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<td>Clause 21.07 - Housing</td>
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<td>Clause 21.08 - Economic Development</td>
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<td>Clause 21.09 - Transport</td>
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<td>Clause 21.10 - Infrastructure</td>
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<td></td>
<td>Clause 21.16-5 - North and West Melbourne</td>
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<thead>
<tr>
<th>Local Planning Policies</th>
<th>Clause 22.02 - Sunlight to Public Spaces</th>
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<tbody>
<tr>
<td></td>
<td>Clause 22.17 - Urban Design outside the Capital City Zone</td>
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<td>Clause 22.19 - Energy, Water And Waste Efficiency</td>
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<td></td>
<td>Clause 22.23 - Stormwater Management (Water Sensitive Urban Design)</td>
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<tr>
<td>Statutory Controls</td>
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<td>----------------------------------------------------------------------------------</td>
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<tr>
<td>Mixed Use Zone</td>
<td>Pursuant to Clause 32.04-1 a permit is required to use the land for a retail premises (shop or food and drink premises greater than 150sqm). A dwelling is an “as-of-right” use and does not require a permit. Pursuant to Clause 32.04-6, a permit is required to construct two or more dwellings on a lot. Clause 32.04-8 requires a permit to construct a building or construct or carry out works for a use in Section 2.</td>
</tr>
<tr>
<td>Design and Development Overlay, Schedule 33 - CBD Fringe</td>
<td>A permit is required to carry out buildings and works. The provisions of the overlay relate to height, setbacks and built form outcomes and specify a maximum building height of 40m.</td>
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<table>
<thead>
<tr>
<th>Particular Provisions</th>
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<tr>
<td>Clause 52.06, Car Parking</td>
<td>A permit is required to:</td>
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<td>Reduce (including reduce to zero) the number of car parking spaces</td>
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<td>required under Clause 52.06-5 or in a schedule to the Parking</td>
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<td>Overlay.</td>
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<td>Provide some or all of the car parking spaces required under</td>
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<td>Clause 52.06-5 or in a schedule to the Parking Overlay on another</td>
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<tr>
<td></td>
<td>site.</td>
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<td></td>
<td>Provide more than the maximum parking provision specified in a</td>
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<td>schedule to the Parking Overlay.</td>
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<td>95 spaces are proposed and 524 spaces (410 resident spaces, 78</td>
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<td>visitor spaces and 36 staff spaces) are required.</td>
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<td></td>
<td>A reduction of 429 on-site spaces is required.</td>
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<tr>
<td>Clause 52.07, Loading and Unloading of Vehicles</td>
<td>No building or works may be constructed for the manufacture,</td>
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<td>servicing, storage or sale of goods or materials unless the</td>
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<td>requirements of Clause 52.27 are met.</td>
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<td>A permit may be granted to reduce or waive these requirements if</td>
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<td>either:</td>
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<td>✷ The land area is insufficient.</td>
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<td>✷ Adequate provision is made for loading and unloading vehicles</td>
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<td>to the satisfaction of the responsible authority.</td>
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<td>Loading and unloading of vehicles is proposed to take place within</td>
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<td>the abutting lane. As such the proposal fails to provide 27.4sqm</td>
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<td>loading bay with the required dimensions and access arrangements</td>
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<td>on the site, and a waiver is required.</td>
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<tr>
<td>Clause 52.34, Bicycle Facilities</td>
<td>A permit may be granted to reduce or waive the bicycle parking</td>
</tr>
<tr>
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<td>requirement.</td>
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<td>244 spaces are proposed, including 146 at ground floor level,</td>
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<td>satisfying and exceeding the 122 spaces required (81 resident/staff and 41 visitor/shopper spaces).</td>
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<td>A reduction is not required.</td>
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<tr>
<td>Clause 52.35, Urban Context Report and Design Response for Residential Development of Four or More Storeys have been provided with the application.</td>
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</table>
Design Response for Residential Development of Four or More Storeys

Clause 52.36, Integrated Public Transport Planning

An application for an excess of 60 dwellings must be referred to PTV for comment. This is the responsibility of DTPLI.

5. PUBLIC NOTIFICATION

In accordance with Section 52(1)(b) of the Planning and Environment Act 1987, DTPLI has given notice of the application to the City of Melbourne.

6. REFERRALS

The application was referred to the following internal departments:

6.1. Urban Design

Height and Massing

The proposed height of the building is 23 levels, plus a communal rooftop area. We note that the proposal exceeds the preferred 40m building height in DDO33 by approximately 30m or 10 levels. We have assessed the proposal against the design objectives in DDO33:

— To provide a transition between the taller built form of the central city and the lower scale built form of West Melbourne.

As the proposal is taller than most of the buildings on the south side of La Trobe St (ie the section of the central city in the vicinity of the site), it does not achieve this objective.

— To maintain the heritage characteristics of the area by ensuring new development respects the scale of, and provides a transition to, adjoining heritage buildings.

We consider that the proposed 3 storey podium responds appropriately to the adjacent heritage building at 407-411 King Street.

However, the tower overwhelms its neighbour, as shown in the perspectives on page 59 and 67 of the urban context report.

— To ensure development limits impact on the amenity and outlook from Flagstaff Gardens. At the equinox, the building would start overshadowing the gardens about 3pm, and by 5pm would cast a substantial shadow over the full width of the gardens.

While there is benefit in built form providing special definition to Flagstaff Gardens, this would be better achieved with smaller form (or pair of forms); as shown in the perspective on p61 of the urban context report, the proposal would have a dominating impact on the gardens.
While the proposed setbacks to the upper levels accord with those in DDO33, consideration should be given to the overall impact of the tower, which is a compound of its height, its setbacks and the considerable length of the site (about 70m). As tower height approaches those of the central city, setbacks should correspondingly approach the design standards of the Capital City Zone, which include 10m street setbacks. We recommend that, if the proposed height were to be approved, the tower setbacks should be increased accordingly. In addition to better addressing the design objectives and built form outcomes in DDO33, this would improve natural lighting and ventilation within the building.

Pedestrian Network:
We are supportive of the continuation of the corporation lane, through to Jeffcott Street, and the removal of the built form which currently sits above this link. It would be preferable to avoid the canopy over the lane, if other measures could be found to avoid adverse wind conditions.

Building Design
We are supportive of the faceted articulation of the upper levels and consider that it will result in an appropriate backdrop when viewed from within the Flagstaff Gardens.

External Materials & Finishes
We note concern in relation to the potential reflection of direct sunlight and glare off the angled glazing.

Active Frontages
We note the integration of retail uses at ground floor to both street frontages.

Plant, services, bins
We recommend that the existing sub-station located at Ground Floor Level off Corporation Lane could be relocated into the basement and replaced with a more active use, such as townhouse/s.

6.2. Engineering

Civil Design
The proposed development includes vehicle access from private road abutting the subject land to the west and this road appears to be in the title of the subject land.

Considering the scale of the proposed development and weighing public and private benefits we recommend declaring the road as a public highway. This provides positives for the developer/occupants as the City of Melbourne becomes responsible for the care and management of the lane. This includes parking control. The owner(s) of the proposed development must meet all necessary advertising, gazetting and other costs associated with this process.

Pursuant to the Road Management Act 2004 any works within the road reserve of King Street, an Arterial Road, requires the written consent of VicRoads, the Coordinating Road Authority. Footpaths and nature strips of such roads fall under the City of Melbourne's control although the Act specifically states that the Coordinating Road Authority gives conditions for works on these roads and the "road" is the reserve from building line to building line. Subsequently our conditions for non-road works on footpaths and nature strips of Arterial Roads are listed below.

Manager Engineering Services Branch recommends that all projections over the street alignment must conform to Building Regulations 2006, Part 5, Sections 505 to 514 as appropriate. Reference may be made to the City of Melbourne’s Road Encroachment Operational Guidelines.

The maximum permissible width of a vehicle crossover without a pedestrian refuge is 7.6 metres. Crossings wider than 7.6 metres should include pedestrian refuges a minimum of 2.0 metres in length at 7.6 metre maximum clear spacing. The width of an abutting laneway entrance should be deemed to be included in the crossing width unless a 2.0 metre long pedestrian refuge is provided between the laneway entrance and the crossing.
Kerb and channel in King Street (subject to VicRoads consent) and Jeffcott Street must be upgraded and reconstructed in sawn bluestone.

Recommended Conditions:

XX.XX Declaration of private road as a public highway

Prior to the occupation of the development, the private road abutting the subject land to the west must be formally declared as a public highway. The owner of the subject land must meet all necessary advertising, gazetting and other costs associated with this process.

The new public highway (including the provision of drainage, public lighting and signage) adjoining the site to the west must be constructed prior to the occupation of the development, in accordance with plans and specifications first approved by the Responsible Authority - Engineering Services.

PR.09 Drainage of projections

All projections over the street alignment must be drained to a legal point of discharge in accordance with plans and specifications first approved by the Responsible Authority - Engineering Services

DET.02 Works abutting Council Lanes

The title boundaries for the property may not exactly agree with the road alignments of the abutting Council lane(s). The approved works must not result in structures that encroach onto any Council lane.

DET.11 Drainage connection underground

Prior to the commencement of the development, a stormwater drainage system, incorporating integrated water management design principles, must be submitted to and approved by the Responsible Authority – Engineering Services. This system must be constructed prior to the occupation of the development and provision made to connect this system to the City of Melbourne’s underground stormwater drainage system.

AC.02 Demolish and construct access

Prior to the commencement of the use/occupation of the development, all necessary vehicle crossings must be constructed and all unnecessary vehicle crossings must be demolished and the footpath, kerb and channel reconstructed, in accordance with plans and specifications first approved by the Responsible Authority - Engineering Services.

XX.XX Footpaths

The footpath(s) adjoining the site along King Street and Jeffcott Street must be reconstructed together with associated works including the renewal and reconstruction of kerb and channel and relocation of services as necessary at the cost of the developer, in accordance with plans and specifications first approved by the Responsible Authority - Engineering Services.

AC.11 Street levels not to be altered

Existing street levels in King Street and Jeffcott Street must not be altered for the purpose of constructing new vehicle crossings or pedestrian entrances without first obtaining approval from the Responsible Authority - Engineering Services

AC.12 Existing street lighting not altered without approval

Existing public street lighting must not be altered without first obtaining the written approval of the Responsible Authority - Engineering Services.

AC.14 Street furniture

All street furniture such as street litter bins recycling bins, seats and bicycle rails must be supplied and installed on King Street and Jeffcott Street footpaths outside the proposed building to plans and specifications first approved by the Responsible Authority - Engineering Services.

NOTES

Any requirement to temporarily relocate and/or remove street furniture must be first approved by the City of Melbourne - Manager Engineering Services Branch.
All street furniture temporarily relocated and/or removed must be reinstated to the satisfaction of the City of Melbourne - Manager Engineering Services Branch.

All necessary approvals and permits are to be first obtained from the City of Melbourne - Manager Engineering Services Branch and VicRoads and the works performed to the satisfaction of the City of Melbourne – Manager Engineering Services Branch and VicRoads.

6.3. Land Survey

CL1302 should be continued/extended right through to Jeffcott Street and vested in Council as a ROAD on any Plan of Subdivision submitted to Council for certification.

The proposed canopy over the existing laneway must be deleted as it does not comply with Council’s Road Encroachment Guidelines.

The proposed plans show doors opening from the proposed pump room and existing substation onto CL1302.

Any retail entrances off CL1302 will require the laneway to be named for street addressing purposes prior to occupation. This will require a condition along the following lines to be included on the permit:

- Prior to occupation, the access way on the eastern side of the development must be named in accordance with the Geographic Place Names Act 1998 to provide appropriate street addressing for the retail tenancies.
- Any proposed road name must comply with the Guidelines for Geographic Names 2010, and the Geographic Place Names Act 1998.

7. ASSESSMENT

The key issues in the consideration of this application are:

- Height, setbacks and built form
- Internal amenity
- Amenity impacts to adjoining land
- Parking, Traffic and Waste

Clause 21.16-5 details a local area plans which provides spatial and built form directions for North and West Melbourne, with sections of particular relevance detailed below:

‘North and West Melbourne has a strong residential base as well as commercial and industrial uses. Many of the area’s streetscapes and buildings have been recognised for their heritage significance… North and West Melbourne should provide a balance of residential and commercial uses that maintains an emphasis on local community and liveability. There should be a clear distinction in scale from the Central City with higher scales of development expected located at the Central City fringe, around the North Melbourne railway station and along Flemington Road. In all other areas, a lower scale of development should be maintained.’

‘Support residential development in the Hoddle Grid fringe. In this area, increased residential densities should be balanced with the strategic role of this area in providing for small to medium enterprises that support the Hoddle Grid and Docklands.’

‘Maintain the predominantly low scale of the Mixed Use Zone in West Melbourne, south of Hawke and Roden Streets.’

‘Ensure the area bounded by Latrobe Street, south west of the Flagstaff Gardens provides a contrast in scale between the lower built form of West Melbourne and the higher scale of the Hoddle Grid.’
‘Support higher building forms in West Melbourne in the area adjacent to the Hoddle Grid.’

It is important that the local area plan be read in conjunction with other Local Planning Policy and the Design and Development Overlay Schedule 33 which are intended to implement the strategies set out at Clause 21.16-5.

7.1. Height, setbacks and built form

Clause 22.17 Urban Design Outside the Capital City Zone sets a policy basis which acknowledges that Melbourne’s buildings, streets, open spaces and landscape features combine to give the municipality its unique appearance and feeling. It is important that the valued aspects of the City’s character are not lost through redevelopment. The policy basis also acknowledges the role of The Design Objectives and Built Form Outcomes in the Design and Development Overlays, in this case Design and Development Overlay Schedule 33 (DDO33) to guide the scale and form of development in the creation of a new built form character. The relevant DDO controls are discussed later in this report.

Clause 22.17 identifies a number of urban design policies which seek to achieve the above policy basis and objectives of the Clause. Relevant policies are addressed below:

Scale

Properties surrounding the site are currently occupied by two to six storey buildings. The DDO33 which affects the area specifies a maximum building height of 40m (approximately 13-14 levels). The sheer length of the sites frontage to King Street and the tower element of the proposed building will result in a 57m long by 70m high wall when viewed from King Street and Flagstaff Gardens. A building of this height and scale is not considered appropriate in this location and will have a dominant and overbearing impact upon the public realm.

A tower setback from the primary frontage of 6m is not considered adequate for a building of this scale within the central city yet alone city fringe areas such as West Melbourne.

The overall dimensions of the building are considered to be excessive and fail to respond to the scale of surrounding development and the desired rate of built form change that has been identified for the area.

Context

As identified above, the development fails to respond to the scale of surrounding development, including the two to three storey B-graded heritage building to the north, at 407-415 King Street, and the desired rate of built form change that has been identified for the area.

Whilst the proposed three storey podium responds appropriately to the adjoining heritage building located to the north, the tower overwhelms its neighbours and would have a dominant impact upon Flagstaff Gardens as seen in the perspective images below (facing east).
Building Height

Whilst the height of the proposed development exceeds that of existing built form within the immediate surroundings, the area is located within DDO33 which seeks to guide the future scale and form of development. DDO33 specifies a maximum building height of 40m in addition to various setback requirements and built form outcomes.

Policy at Clause 22.17 encourages the height of new development to respond to the height of the emerging preferred new built form character in areas where the desire for built form change has been identified.

Although a limited number of taller Ministerial approvals and current development applications exist within the West Melbourne area, this does not alter the status of the desired built form change identified for this area by DDO33 of the Melbourne Planning Scheme. Being almost double the specified maximum building height, the proposal fails to meet the objectives and built form outcomes of DDO33.
A more detailed assessment of this proposal against the provisions of DDO33 is discussed later in this report.

Building Bulk

As identified above, the proposed building will result in a 57m long by 70m high wall setback 6m from King Street. This will result in overwhelming building bulk presented to both the King Street streetscape and Flagstaff Gardens.

The design response fails to break-up the building’s overall volume into a number of sub-volumes to modify its perceived size. As identified by the City of Melbourne’s Urban Design team, due to the length of the site, a more appropriate design may be achieved with smaller form or pair of forms.

Street Level Frontages

Ground level retail tenancies fronting King and Jeffcott Streets and a residential lobby centralised to the King Street Frontage will successfully engage with and be visually evident from the street.

Fronts and Backs of Buildings

The proposal gives adequate prominence to the principal streets and provides good connection and relationship for future residents with the adjacent gardens.

Corporation Lane runs in a north-south direction along the western property boundary and is approximately 3m wide. It is proposed to retain the existing substation and locate plant and waste rooms fronting the lane. Loading and unloading of vehicles associated with the four retail tenancies and waste collection for the entire building is also proposed to take place within the lane.

As part of a recent permit application (Ministers decision pending) at 15-31 Batman Street it is proposed to construct five two-storey townhouses with a frontage and private access onto Corporation Lane. In addition, a 5m setback above the podium is also provided. These design measures are proposed in an effort to activate the lane way and should be replicated, where possible, as part of any development on the subject site.

The proposed development does not utilise the opportunity to activate the laneway at ground level. Further, the waste collection and loading and unloading activities will result in detrimental impact upon the amenity of current residents at 28 Jeffcott Street and possible future residents at 15-31 Batman Street.

Building Tops

A limited extent of plant and lift over-run is required to provide access to rooftop communal areas and are adequately included as part of overall roof design.

Visible Facades and Blank Walls

As stated above, the building is design so as to be viewed ‘in the round’. All visible frontages provide an appropriate architectural response, in terms of materials and finishes, and do not include blank walls. The City of Melbourne Urban Design team are supportive of the faceted articulation of the upper levels.

Pedestrian Connection and Vehicle Access

Corporation Lane currently extends south from Batman Street, with a section of the lane being privately owned as part of the subject site at the Jeffcott Street end. The private segment of the laneway includes built form which currently sits above this link.

The continuation of Corporation Lane, through to Jeffcott Street, and the removal of the built form above this link to form part of a dedicated public highway is supported.
Protection from Wind and Rain

The Wind Report prepared by MEL Consultants indicates a number of unsatisfactory wind conditions for various locations at ground level, communal area at Level 3 and the rooftop garden outdoor areas.

In addition report recommendations rely upon the provision of a proposed 35m long canopy extending over the Jeffcott St end of the western laneway for its entire width. The proposed canopy must be deleted as it does not comply with Council’s Road Encroachment Guidelines.

The proposed building design and accompanying wind report are not considered to adequately address the possible wind effects resulting from the proposal.

The proposal does include adequate weather protection at ground level.

By virtue of the above the development fails to meet the following objectives of Clause 22.17:

- To ensure that the scale, siting, massing and bulk of development complements the scale, siting, massing and bulk of adjoining and nearby built form.
- To ensure that the height of buildings relates to the prevailing patterns of height and scale of existing development in the surrounding area.
- To reduce unacceptable bulk in new development.
- To ensure that development promotes building forms that will minimise the adverse impacts of wind in surrounding public spaces and provide weather protection where appropriate.

The Design and Development Overlay Schedule 33 (DDO33) specifies, among other things, a discretionary maximum building height of 40 metres. In context, the following DDO controls apply to nearby areas:

- The area located approximately 170m north of the site (north of Dudley Street and west of King Street) is affected by DDO29 which specifies a discretionary four storey height control;
- The area located north of Dudley Street and east of King Street (directly north of Flagstaff gardens) is affected by DDO32 which specifies a discretionary four storey height control;
- The area located directly to the east (across Flagstaff Gardens) is affected by DDO14-Area 19 and Area 20 which specify preferred maximum heights of 30m and 60m respectively, and 7-10m at the periphery of the Queen Victoria Market.
- To the south, no DDO height controls affect the land located on the south side of La Trobe Street, some 130m from the subject site.

Relevant to the subject site, DDO33 identifies the following design objectives for the area:

- To provide a transition between the taller built form of the central city and the lower scale built form of West Melbourne
- To maintain the heritage characteristics of the area by ensuring new development respects the scale of, and provides a transition to, adjoining heritage buildings.
- To ensure development limits impact on the amenity and outlook from Flagstaff Gardens.
DDO33 also specifies a discretionary maximum building height of 40 metres; podium height of 16 metres or an appropriate lesser height where the site is adjacent to a heritage building; with setbacks above podium of six metres from all front, side and rear boundaries; and two metre setbacks from laneways. The specified heights and setbacks are provided in order to achieve built form outcomes as follows:

- Built form which provides a visual transition between the taller prevailing heights of the CBD and the lower scale built form of West Melbourne.
- Development provides a transition to adjoining lower scale heritage buildings by the use of podiums and upper level setbacks.
- Development that does not overshadow Flagstaff Gardens between 11am and 2 pm on 22 September and 22 June.
- Building setbacks that strengthen the pedestrian scale and focus of the area and maintain a sense of open outlook from the Flagstaff Gardens.

The above DDO controls and relevant planning permits and current applications within these areas are summarised and indicated on the map below:

1. 371-379 Spencer Street, West Melbourne: Ministerial approval for 104m tall building. The decision has been appealed by the City of Melbourne and is awaiting a VCAT hearing.
2. 420-434 Spencer Street, West Melbourne: Ministerial approval for 131m tall building.
3. 130-144 Dudley Street, West Melbourne: Approved development of three 8-9 storey buildings with a maximum building height of approximately 30m.
4. 95 Dudley Street, West Melbourne: Current application for 47.7m tall building. Identical development previously approved for the site however permit has expired.
5. 386-412 William Street, Melbourne: Current ministerial application for 178m tall building.
6. 354-360 William Street, Melbourne: Current application for 66m tall building.
7. 330-352 William Street, Melbourne: Ministerial approval for 114m tall building.
8. 244-276 Spencer Street, Melbourne: Current ministerial planning permit and approved master plan for four towers of between 200 and 300m tall.
9. 285-313 Spencer Street, Docklands: Ministerial approval for 64.3m tall building currently under construction.
10. 15-31 Batman Street, West Melbourne: Current Ministerial Application for 79m tall building. City of Melbourne has objected to this proposal. The Minister is yet to make a decision.
Whilst the proposed podium height (9.9m) and associated setbacks are generally compliant with the height controls and built form outcomes specified by DDO33; it is the proposed tower element at 75m tall which represents a significant departure from the specified maximum building height of 40m.

Considering the tower element in isolation, proposed setbacks are as follows:

- Front setback of 5.5-6.5m to the eastern site boundary (King Street).
- Rear setback of 2-3m to the western site boundary.
- Side setback of 5.5-6.5m to the northern site boundary.
- Setback of 5.5-6.5m to the southern site boundary (Jeffcott Street).

The proposed setbacks would be considered adequate in terms of a development of approximately 40m tall. However as development proposals go excessively beyond the current DDO33 controls and approach a building typology more commonly seen within the central city, the setback provisions detailed at DDO33 become inadequate. This issue is addressed by the City of Melbourne’s Urban Design Team who commented:

‘While the proposed setbacks to the upper levels accord with those in DDO33, consideration should be given to the overall impact of the tower, which is a compound of its height, its setbacks and the considerable length of the site (about 70m).

As tower height approaches those of the central city, setbacks should correspondingly approach the design standards of the Capital City Zone, which include 10m street setbacks. We recommend that, if the proposed height were to be approved, the tower setbacks should be increased accordingly. In addition to better addressing the design objectives and built form outcomes in DDO33, this would improve natural lighting and ventilation within the building.'
In the absence of any horizontal break in the tower form (some 50m in length) across the site, the prevailing issue in relation to the proposed built form can be confined to the overall building height, with the relevant built form outcome, being:

**Built form which provides a visual transition between the taller prevailing heights of the CBD and the lower scale built form of West Melbourne.**

Given the context of ‘taller prevailing heights’ of central city buildings has somewhat shifted since the introduction of DDO33 in July 2007, it could be considered that a significant increase in the preferred maximum building height of 40m might be appropriate and justifiable.

However, it would be remiss of the City of Melbourne to support an application almost double the preferred 40m height control in this location. Given the absence of any current policy review, planning scheme amendment, and/or a more in depth community consultation process, approval of this development proposal would ‘outstep’ community expectation in light of current planning controls imposed by the Melbourne Planning Scheme and would be contrary to the proper and orderly planning of the area. A scenario where a development proposal of this type which markedly exceeds current planning policy is supported is an unfair and unnecessary imposition on current and potential residents of the area.

From the above it can be derived that the area is currently experiencing increased pressure for significant growth and change over and above what the current planning controls for the area would allow. A permit application proposing a significant departure from current policy of the Melbourne Planning Scheme does not warrant the support of the City of Melbourne. It may be that there needs to be a review of the height and setback controls under DDO33 or the preparation of a structure plan for the area. A structure plan process would facilitate a more holistic strategic review of the area and ascertain whether the height and density of development such as that proposed may be suitable in this location. Importantly, more in-depth and meaningful community consultation would form part of this process.

### 7.2. Internal amenity

The Guidelines for Higher Density Residential Development are a relevant consideration for multi-storey residential buildings. Amongst other matters the guidelines include Objective 5.4 which seeks:

‘To ensure that a good standard of natural lighting and ventilation is provided to internal building spaces’

Design suggestion 5.4.1 seeks ‘to provide direct light and air to all rooms wherever possible’, and suggests that:

‘Encourage direct natural light and ventilation to all habitable rooms – living rooms, bedrooms, studies – in the form of operable windows. The ‘borrowing’ of light and air should be avoided, particularly in ventilating bedrooms, although this may not always be possible, when reusing existing buildings. Where light is borrowed from another room, ideally it should be taken from the principal living area rather than from corridors or other bedrooms.’

The proposed layout includes ‘saddlebag’ style apartment arrangements within the podium and tower. In a number of instances bedrooms have access to a single window for light and ventilation which is located at the end of an approximate three to four metre enclosed external corridor, usually used as balcony area or forming a void. This arrangement is undesirable and should be avoided and more innovative design solutions should be explored.
Of increased concern are proposed west facing podium level apartments. These apartments include saddlebag arrangements, with 1.7m high privacy screening applied to balcony areas to prevent overlooking to adjacent properties. The compounding effect of this arrangement further diminishes an already poor outcome.

Level 22 of the proposal is an exception to the above, proposing eight 3-bedroom apartments with good access to light and ventilation for all habitable rooms. A significant lesser standard of internal amenity should not result from increased apartment yield.

The proposed internal layout of the building is not supported and requires significant changes to achieve an acceptable level of internal amenity for all apartments.

7.3. Parking, Traffic and Waste

It is proposed to provide a total of 95 car parking spaces in a basement car park, including two disabled spaces. These spaces will be for the use of residents and retail employees only. There will also be 15 spaces for motorcycles.

It is proposed to provide a total of 244 bicycle parking spaces including 98 bicycle parking spaces for residents and retail employees in the basement, 132 bicycle parking spaces in a ground floor bicycle storage room and 14 spaces for visitors and retail customers adjacent to the site entrance on King Street.

Vehicle access will be via the existing crossover at the southwest corner of the site, to Jeffcott Street. Pedestrian access will be via a lobby from King Street.

In accordance with Clause 52.06 the development produces a statutory car parking requirement of 524 car parking spaces including 410 resident spaces, 78 visitor spaces and 36 spaces associated with the retail component. A waiver of 429 car parking spaces is required.

Of relevant to this application, the Victorian Civil and Administrative Tribunal’s decision E A H Batman Pty Ltd v Melbourne CC (includes Summary) (Red Dot) [2011] VCAT 1477 previously considered a proposal to reduce the planning scheme’s car parking requirements for a nearby development at 33-43 Batman Street, West Melbourne.

In this decision the Tribunal referred to the panel report for Amendment C133, which amended the planning scheme to introduced maximum (rather than minimum) statutory car parking rates within certain areas of the City of Melbourne. Section 5.3 of the panel report acknowledged a large area of West Melbourne was not included in Amendment C133. This area was included in the study area but was found not to be suitable because of the higher car ownership rates in the area, lack of tram network (reliance on train network only), and because residents are permitted two on-street parking permits.

The Tribunal cautioned that a reduction or waiver of car parking needs to be justified having regard to the range of criteria contained in clause 52.06 and found that neither the Council nor the Applicant had sufficiently justified the proposed reduction in that instance.

In justifying a reduction or waiver of car parking, the applicant submitted a report prepared by GTA Consultants. The report acknowledges the required waiver of 429 car parking spaces and provides the following in response to Clause 52.06:
The site is located immediately adjacent to land which is within a Parking Overlay. The aim of the Parking Overlay is to minimise vehicular traffic in and around the Melbourne CBD. The Overlay specifies a maximum car parking rate of one space per dwelling, with no minimum rate. The Overlay on the Melbourne CBD also specifies maximum rates for retail uses, with no minimum rate.

Therefore, there is clear policy direction to minimise car parking in the vicinity of site to provide as few parking spaces as possible.’

The above statement is misleading. The Parking Overlay does not apply to this site, and the land affected by the Parking Overlay located directly adjacent the site is Flagstaff Gardens. The aim of the Parking Overlay is not relevant of the assessment of this application. The provisions and requirements of Clause 52.06 continue to apply.

‘The site enjoys excellent public transport access being within easy walking distance of Flagstaff station and numerous tram routes along Spencer Street, La Trobe Street and William Street.’

The Tribunal previously considered that this site has good access to public transport but is not described as having excellent access. It was further suggested that one reason for this may the lack of tram access and the lack of train services in Flagstaff Station on weekends.

‘The 2011 Census by the Australian Bureau of Statistics (ABS) provides an indicator of typical resident car parking demands within the suburb of West Melbourne. This ABS data reports the following car ownership levels for private apartments in buildings of four or more storeys’;

- One-bedroom dwelling; 0.68 vehicles per dwelling
- Two-bedroom dwelling; 0.83 vehicles per dwelling
- Three-bedroom dwelling; 0.85 vehicles per dwelling.

It should be noted that the above car ownership data reflects historical rates and, as West Melbourne becomes more integrated with the Melbourne CBD car ownership rates are likely to reduce. Further, car ownership rates are often strongly related to the provision of on-site resident parking.’

Even assuming all 95 spaces provided on-site are allocated to residents (which is not justified or appropriate) the rate of car parking per apartment is approximately 0.23. The ABS data referenced above and the notion that West Melbourne is becoming more like the central city does not provide sufficient justification to waive car parking requirements to the extent proposed. As a reference point, the Tribunal in the decision referenced above enforced a rate of 0.82 for this location.

As demonstrated above the waiver or reduction of 429 of the required 524 car parking spaces is not justified or appropriate in this location. Due to the extent of the proposed waiver, this in itself is justification for refusal of this application.

Assessment against the requirements of Clause 52.34 indicates that the proposal has a statutory bicycle parking requirement of 122 bicycle spaces, including 81 resident/employee spaces and 41 visit or/shopper spaces. The provision of 98 bicycle parking spaces for residents and retail staff within the basement and 132 bicycle parking spaces on the ground floor exceeds the statutory requirement.
7.4. Amenity impacts to adjoining land

No unreasonable opportunity for overlooking to the north, south and east is expected to occur as a result of the proposed development as windows and balconies face King or Jeffcott Streets or are located greater than 9.0 metres from a habitable room windows or balconies.

Level 1, 2 and 3 of the proposed development includes west facing balconies and habitable room windows which are located approximately 4.25-5.7m from the property boundary of 28 Jeffcott Street. A number of balconies and habitable room windows of existing dwellings at 28 Jeffcott Street are located in close proximity to this boundary. The separation between the proposed development and the existing balconies and windows appears to be approximately 5-6.5m as seen below.

In accordance with the Guidelines for Higher Density residential Development, existing dwellings should be protected from potential overlooking in accordance with the requirements of Clause 55 of planning schemes, which is generally achieved by provided 9m separation or appropriate visual screening. It is noted that screening of the proposed balconies would result in unacceptable internal amenity for the proposed dwellings in terms of access to outlook and sunlight, particularly given the ‘saddleback’ arrangement of a number of the proposed apartments.

As identified earlier in this report, the waste collection and loading and unloading activities will result in detrimental impact upon the amenity of current residents at 28 Jeffcott Street and possible future residents at 15-31 Batmen Street.

Shadow diagrams indicate that the proposed development will increase overshadowing to 28 Jeffcott Street. The level of overshadowing resulting from the proposed development is not considered unreasonable in the context of the area as future development surrounding the Jeffcott Street site of approximately 40m high would result in a similar level of overshadowing. This is largely due to the layout and orientation of the existing 5 storey apartment building at 16-28 Jeffcott Street.

Importantly, the proposed development will not overshadow Flagstaff Gardens.
In addition, from the Wind Report provided with the application it is considered that the development may result in unacceptable wind conditions at 28 Jeffcott Street, particularly outdoor areas and balconies located directly adjacent the site. This has not been adequately addressed.

7.5. Environmentally Sustainable Design (ESD) and Stormwater Management

The City of Melbourne Planning Scheme (via Clause 22.19) identifies that for residential buildings greater than 5,000m2, a project should have the potential to achieve a 5 star rating under current version of the Green Star Multi Unit Residential rating tool and 1 point for Wat-1 credit under a current version of the Green Building Council of Australia’s Green Star – Multi Unit Residential rating tool or equivalent.

The ESD report prepared by ADP Consulting: Engineering indicates that the development has the potential to achieve the minimum requirements for a 5 Star Green Star Multi-Unit Residential v1 Design and will achieve 2 points for the WAT-1 credit, thus satisfying the requirements of Clause 22.19.

Clause 22.23 Stormwater Management requires Water Sensitive Urban Design response including a report from an industry accepted performance measurement tool such as STORM or MUSIC (or equivalent).

The ESD report prepared by ADP Consulting: Engineering includes a STORM Report which indicates that the development will achieve over 100 points, thus satisfying the requirements of Clause 22.23.

7.6. Conclusion

It is considered that the proposal fails to meet the requirements of the Melbourne Planning Scheme, particularly Clause 22.17 Urban Design Outside the Capital City Zone, Clause 43.02 Design and Development Overlay Schedule 33, Clause 52.02 Car Parking and Clause 52.07 Loading and Unloading. As such, this application does not warrant the support of the City of Melbourne.

8. OFFICER RECOMMENDATION

That a letter be sent to DTPLI advising that the City of Melbourne objects to the proposal on the following grounds:

1. The design and external appearance of the proposed building, particularly the sheer length and height of the tower element, fails to meet the objectives and policy set out at Clause 22.17 and is detrimental to the visual amenity of the streetscape and Flagstaff Gardens.

2. The proposed height of the tower is excessive having regard to the maximum building height set out in Design and Development Overlay – Schedule 33.

3. The proposal fails to meet the objectives and built form outcomes of Design and Development Overlay – Schedule 33 in that it fails to provide an appropriate transition between the taller built form of the central city and the lower scale built form of West Melbourne.

4. The proposal is contrary to the proper and orderly planning of the area.

5. The proposal provides for insufficient on-site car parking as required by Clause 52.06 and if approved would result in additional demand for the limited parking spaces available in near-by streets.
6. The proposed development on the site without adequate provision for loading and unloading onsite as required by Clause 52.07 would have a detrimental impact upon the amenity of current and future residents of nearby properties, and inhibits the opportunity for active uses fronting Corporation Lane.

7. The proposal fails to provide a reasonable level of internal amenity for apartments as sought by the Guidelines for Higher Density Residential Development referenced at Clause 15.02-1 of the Melbourne Planning Scheme.

8. The proposal will result in unacceptable amenity impacts to nearby properties by way of overlooking, wind impacts, and noise associated with proposed waste collection and loading arrangements within the lane.

9. The proposal will result in unacceptable wind impacts upon the public realm. The canopy over the laneway is not supported.