

**ORDINARY MEETING OF COUNCIL
10 AUGUST 2009**

5.	AMENDMENT C79
ADDRESS:	400-430 CITY ROAD, 115-131 WHITEMAN STREET & 10-24 CECIL STREET, SOUTHBANK
EXECUTIVE DIRECTOR:	GREG WOOD, ACTING EXECUTIVE DIRECTOR COMMUNITY DEVELOPMENT & PLANNING
PREPARED BY:	JANE BIRMINGHAM, URBAN PLANNING COORDINATOR
FILE NO.:	TRIM FILE NO. 66/02/176
ATTACHMENTS:	ATTACHMENT 1: AMENDMENT C79 EXPLANATORY REPORT

1. EXECUTIVE SUMMARY

- 1.1 A major mixed use development application is expected to be lodged for the City Road Wedge site in July 2009.
- 1.2 During an extensive pre-application process it has been brought to the applicant's attention that their preferred design does not comply with one of the mandatory requirements of Clause 43.02 at Schedule 8 to the Design and Development Overlay (DDO), which specifies a 10m setback from City Road above the streetwall.
- 1.3 The applicant has written to the Minister for Planning to request the facilitation of an amendment to the Port Phillip Planning Scheme pursuant to Section 20(4) of the Planning and Environment Act 1987. The amendment request involves a minor change to the wording of the DDO to facilitate the applicant's preferred design.
- 1.4 While there is considered to be merit in the amendment sought, officers oppose the request on the basis that the Section 20(4) process does not include public exhibition. Officers have recommended to the applicant that the preferred approach would be to pursue a combined amendment and planning permit process, under Section 96A of the Planning & Environment Act 1987.

2. RECOMMENDATION

That Council:

- 2.1 Advise the Minister for Planning that Council does not support the request for Amendment C79 to be processed pursuant to section 20(4) of the Planning

and Environment Act 1987, to amend Schedule 8 to the Design and Development Overlay, on the basis that this process would prevent public comment and an independent panel review of the proposed changes to the Port Phillip Planning Scheme.

- 2.2 Advise the Minister that Council would support the preparation and exhibition of Amendment C79 to the Port Phillip Planning Scheme pursuant to Section 96A of the Planning Environment Act 1987, to enable the combined and concurrent consideration of the proposed amendment and an associated planning permit application.
- 2.3 Advise the Minister that any change to the 'Requirements' for 'Area DDO 8-10 City Road Wedge' through Amendment C79, should specify Above a height of 16 metres, buildings must be set back 10m from City Road to replace the current requirement Above the streetwall, buildings must be set back 10m from City Road.

3. BACKGROUND AND CONTEXT

Subject Site and Proposed Development

- 3.1 A planning permit application for a major mixed use development with an estimated development cost in excess of \$400 million, will be lodged in late July by Urbis on behalf of Wadhawan Holdings Pty Ltd.
- 3.2 The subject site is former industrial land and is essentially an island site bounded by City Road, Whiteman Street and Cecil Street. The site area is approximately 1.2 ha and sits immediately south of a section of the Westgate Freeway.
- 3.3 The development would comprise a podium level containing commercial uses with three residential towers and one hotel tower above. The development would include 1 264 residential apartments and 288 hotel rooms. The following heights are proposed:

Tower	Height (m above street to roof)	Storeys (+ plant)
1	128.1m	39
2	97.1m	30
3	99.4m	31
Hotel	134.5m	39

- 3.4 The site is located in a Mixed Use Zone and is covered by a Heritage Overlay, Environmental Audit Overlay and a Design and Development Overlay (DDO8-10 City Road Wedge), which amongst other controls has a maximum preferred maximum height of 90 metres.
- 3.5 In addition to the subject site, DDO8-10 affects 378-386 City Road and 25 Cecil Street. This site also contains a significant heritage building which would be required to be incorporated into any future development of that land.
- 3.6 The first and third dot points listed in the requirements of DDO8-10 (City Road Wedge) state:

- The streetwall parapet height in the precinct must not exceed 16 metres or 4 storeys whichever is the lesser.
 - Above the streetwall, buildings must be setback 10 metres from City Road.
- 3.7 The applicant has had a number of pre-application meetings with Council officers. The plans presented to officers to date do not comply with the mandatory 10m setback above the streetwall along the City Road frontage. The proposed design has a 'streetwall' height of approximately 7.5m as a result of the retention of the frontage of the heritage building to City Road. Sections of the building are proposed to a height of 16m with a setback from City Road ranging from 3.5m to 8m. At level 5 and above the proposed development is setback a minimum of 10m in accordance with the DDO requirements. Officers brought the area of non-compliance with the DDO to the attention of the applicant as the current controls prohibit the consideration of any additional podium form, behind and above the existing heritage fabric.
- 3.8 In a letter dated 11 May 2009, the applicant sought support from Council officers for changes to Schedule 8 of the DDO to facilitate the development of the site in accordance with their preferred design. On 18 May 2009 Officers advised in writing that, although there would appear to be merit in amending the DDO to allow some encroachments at a lower level while maintaining a setback of 10m to the tower elements along City Road, the preferred approach would be for the applicant to pursue a combined permit and amendment process, rather than a Ministerial amendment.

Request for Amendment C79

- 3.9 In a letter dated 30 June 2009, Wadhawan Holdings Pty Ltd, has requested the Minister for Planning to intervene under the powers pursuant to Section 20(4) of the Planning and Environment Act 1987, to facilitate an amendment to the Port Phillip Planning Scheme. The amendment request seeks a minor change to the wording of DDO8.
- 3.10 The amendment proposes to amend the third dot point under the 'Requirements of Area DDO8-10 City Road Wedge' of the Port Phillip Planning Scheme to read as follows:

Above the streetwall, towers must be setback 10 metres from City Road. This does not apply to any other built form up to a maximum height for 16 metres or 4 storeys.

Ministerial Powers of Intervention in Planning and Heritage Matters

- 3.11 Section 20(4) of the Planning and Environment Act 1987 gives the Minister the authority to undertake a planning scheme amendment with an exemption from the standard public notification requirements of the Act.

- 3.12 The criteria for Ministerial intervention are specified in the General Practice Note on Ministerial Powers of Intervention in Planning and Heritage Matters (November 2004) as follows:
1. The matter will be one of genuine State or regional significance.
 2. The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.
 3. 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).
 4. The matter will raise issues of fairness or public interest.
 5. The matter requires 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.

Applicant's submission

- 3.13 In support of the requested amendment the applicant submits that the proposed amendment meets the criteria for Ministerial intervention and states:

The minor amendment to the DDO8 will allow the consideration of a site responsive podium design, whilst still ensuring that any tower elements are appropriately setback from City Road. The proposed podium design is the optimum design response for the hotel component of the proposed development which will represent a significant investment in Victoria (in excess of \$400 million) and will provide a diverse range of housing options whilst at the same time maximising the potential of a parcel of land that is currently being under utilised.

- 3.14 The applicant's primary reason for opposing a combined amendment and permit process is concern that the matter could take 12-18 months to resolve.

4. CONSULTATION AND STAKEHOLDERS

Urban Design and Heritage Advisor

- 4.1 The design merit of the proposed development has been discussed with Council's Urban Design and Heritage Advisor, who has made the following comments regarding the proposed encroachment into the mandatory 10m setback beyond the streetwall:
- It would appear from the Panel Report that the design intent of the 10m setback relates to the positioning of the tower as opposed to protection of heritage fabric - regardless both aims are complimentary.
 - Based on the plans submitted (2 April 2009) the extent of roofing retained to the Johns Waygood building is sufficient to ensure that its level of significance is protected. The

heritage intent is to ensure that the gable ended buildings do not present as merely facadism but rather express the previous structure, form, finishes and detailing. Retention of part of the roof form helps to inform an understanding of the previous functionality of the building, its era of development and the contextual relationship given the historic Cable Tram Engine House, opposite.

- The view lines to the roof form of the Johns Waygood building from pedestrian street level will not be impacted by the proposed encroachment.
- The hotel areas that encroach within the 10m zone are activated areas, including dining, function rooms and offices so there is a direct benefit for the public realm as opposed to the internalised car park areas adjacent.

Strategic Planning

- 4.2 Schedule 8 to the Design and Development Overlay implements the built form outcomes sought through the South Melbourne Central Urban Design Framework. These controls were introduced into the Port Phillip Planning Scheme in April 2008 by Amendment C52, following extensive public notification and an independent panel process.
- 4.3 'Area DDO8-10 City Road Wedge' establishes Design Objectives and Requirements specific to the land bounded by City Road, the Light Rail and the Westgate Freeway. A key design objective is:
 - "To ensure tower elements of new development are setback from City Road to appear to form part of the Southbank precinct".
- 4.4 This objective is supported by design requirements which seek to achieve a clear distinction between the podium / street-wall component and the tower element of any building through specifying; a maximum street-wall height of 16 metres, a minimum setback above the street-wall of 10 metres, and a preferred maximum overall building height of 90 metres.
- 4.5 The subject land is partially occupied by a significant heritage building located adjacent the City Road frontage. Retention of this heritage fabric is sought and supported by the design objective "To encourage adaptive re-use of heritage buildings as appropriate so that they form a unique and valued part of the contemporary urban fabric and that new development reflects the preferred character in this area".
- 4.6 The siting and height of this existing heritage building limits the potential for compliance with the mandatory 10 metre setback between the street-wall and tower components, suggesting that a rewording of the DDO provision is appropriate to provide for a more flexible design response which still achieves retention of the significant heritage fabric and a clear distinction between lower 'podium' level development and the higher 'tower' form.
- 4.7 It is recommended that the requirement of the DDO be modified to read:
 - Above a height of 16 metres, buildings must be set back 10m from City Road.

This requirement would complement the existing provisions which specify; that the streetwall parapet height must not exceed 16 metres or 4 storeys, and that the overall maximum building height should not exceed 90 metres or 25 storeys. This wording is considered to be clearer in intent, whilst consistent in effect, with the wording sought by the proponent.

- 4.8 In effect this change would enable new development up to the maximum podium height of 16 metres to be achieved, but not exceeded, rather than the existing heritage building defining a reduced podium level height along City Road.
- 4.9 With respect to pursuing an amendment to the scheme, it is recommended that Section 96A of the Planning and Environment Act 1987 offers the most appropriate process by providing for a combined and concurrent planning scheme amendment and planning permit application process. This would achieve a streamlined assessment / approval process whilst maintaining the opportunity for public comment and a review by an independent panel.

5. DISCUSSION

5.1 OPTIONS

5.1.1 Council has the following options available to it:

Option 1: Resolve to advise the Minister for Planning that Council does not support the request pursuant to Section 20(4) of the Planning and Environment Act 1987 for Amendment C79 to the Port Phillip Planning Scheme but that, in the event that the Minister approves Amendment C79, the third dot point under the 'Requirements of Area DDO8-10 City Road Wedge' of the Port Phillip Planning Scheme read as follows:

Above a height of 16 metres, buildings must be setback 10m from City Road.

Option 2: Resolve to advise the Minister for Planning that Council supports the request pursuant to Section 20(4) of the Planning and Environment Act 1987 for Amendment C79 to the Port Phillip Planning Scheme.

5.1.2 Option 1 is recommended.

5.1.3 The Panel report relating to Amendment C52 (South Melbourne Central) makes the following comments in relation to the mandatory setback of 10m above the streetwall:

At the same time, the importance of the role to be played by the lower street wall element in responding to the established character of City Road and providing a pedestrian scale at the frontage is a fundamental and central element in the Urban Design Framework and

in our opinion must be acknowledged and reflected in any design. By virtue of their scale, the tower elements can overwhelm the street wall element. The Panel agrees with Council that the towers should be sited toward the rear of the City Road properties where they will be provided with a more representative built form context by the existing tower development in Southbank. The panel accepts Council's submission on this issue and agrees that this needs to be reflected in the 'preferred character' statement with an additional insertion.

The panel also accepts that the DDO should include a mandatory requirement that the levels above the street wall be set back a minimum of 10 metres from the frontage to City Road.

- 5.1.4 It is therefore clear that the primary aim of the setback is to ensure a distinct separation between the tower and podium elements of any development. The design, as most recently presented to Council officers, achieves this objective with the towers set back 10m from City Road from Level 5. The podium level could have been proposed with no setback from the front boundary and would thus have complied with the allowable streetwall height of 4 storeys or 16 m. However this would result in the loss of the significant heritage building along the City Road frontage. Instead the design proposes the incorporation of this fabric and, in order to maintain the legibility of the roof form, would be setback 3.5m at levels 3 and 4.
- 5.1.5 Despite officers being supportive of the proposed changes to the DDO in principle, the preferred approach would be for the applicant to pursue a combined permit and amendment process, rather than a Ministerial amendment. The concurrent amendment permit process provides for a single, time efficient assessment process which maintains the opportunity for public input.
- 5.1.6 In the request to the Minister the applicant states that the proposed amendment to the DDO maintains the mandatory requirements in that any new tower be setback a minimum of 10 metres from City Road, whilst allowing flexibility in the design response to the area between the streetwall and any tower, particularly where a heritage facade is being retained. This response is consistent with the position reached by the Panel on the South Melbourne Structure Plan.
- 5.1.7 In the event that the Minister approves the requested amendment, officers consider that the following wording would be more appropriate:

Above a height of 16 metres, buildings must be setback 10m from City Road.

It is considered that the above wording more clearly states that any built form above the podium level (16m) must be setback 10m from City Road. The concern with the wording proposed by the applicant is the reference to 'towers' which, despite having an ordinary and understood meaning, is not defined in the DDO. Although the word

'tower' is used frequently in the 'Preferred Character' and 'Design Objectives' of DDO8-10, it is considered that the wording of the specific requirements must be unambiguous.

5.2 ALIGNMENT TO COUNCIL PLAN

5.2.1 The proposed changes to the DDO would align with strategic direction 4. Enhancing Liveability. Strategy 4.1.7 seeks to preserve our heritage, valuing the past and planning for the future. The revisions to the DDO would ensure that the significant heritage buildings along City Road are retained as an integral part of the proposed development.

5.3 POLICY IMPLICATIONS PLAN

5.3.1 The proposed changes to Schedule 8 of the DDO would be consistent with the South Melbourne Central Structure Plan adopted by Council in September 2004 and the South Melbourne Central Urban Design Framework adopted in October 2005. The aspirations of these documents are reflected in Clause 22.11 (South Melbourne Central) of the Port Phillip Planning Scheme and the relevant DDO objectives and requirements.

5.4 FINANCE / RESOURCE IMPLICATIONS

5.4.1 There are no financial or resource implications for Council.

5.5 LEGAL & RISK IMPLICATIONS

5.5.1 Even if Council resolves to advise the Minister that it does not support the request for Amendment C79 to be processed pursuant to section 20(4) of the Planning and Environment Act 1987, the Minister still has the power to approve the amendment. Bearing this in mind officers have recommended more appropriate wording of the changes proposed to DDO8.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

6.1.1 A letter will be sent to the Minister for Planning and the applicant within one week of the Council resolution advising of Council's position.

6.2 COMMUNICATION

6.2.1 If the Minister uses the section 20(4) process to approve the amendment, there would be no public consultation process.

- 6.3 Should the proposed changes to the DDO be pursued through a combined planning scheme amendment and planning permit process (Section 96A), normal exhibition processes would apply.

7. OFFICER DIRECT OR INDIRECT INTEREST

- 7.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.