

**MELBOURNE PLANNING SCHEME  
PERMIT APPLICATION 2009/1687  
HOTEL WINDSOR**

**ADVISORY COMMITTEE REPORT**

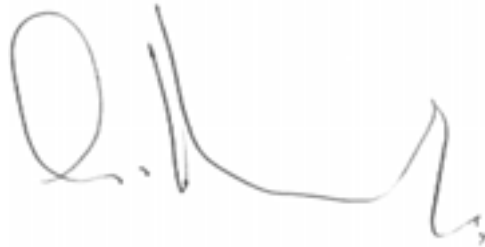
**FEBRUARY 2010**

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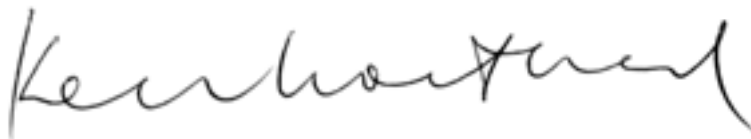
**ADVISORY COMMITTEE REPORT**



.....  
**Lester Townsend, Chair**



.....  
**Graeme Holdsworth, Member**



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**Ken Northwood, Member**

**FEBRUARY 2010**

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# 1. Summary

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The Hotel Windsor is an iconic Melbourne landmark, held in the highest esteem both locally and internationally. The hotel needs work, and redevelopment of the hotel with allow improved facilities and services to be delivered, as well as additional rooms needed for the viability of the operation. It is clear that many aspects of the current building need repair or upgrading.

Part of the heritage of the Windsor is as a grand hotel. The Windsor has the potential to reinforce the tourism allure of Melbourne and Victoria in a unique way, and make a positive economic contribution to the state.

In terms of the permissions required under the planning scheme, we see no reason why a permit should not be granted. The proposal responds to its context in an intelligent way and will make a positive architectural contribution to Melbourne – potentially a very significant positive contribution. We do not see that it will create any sort of precedent for development not in keeping with planning controls.

**We recommend that a permit be granted subject to typical conditions to be resolved between the applicant and DPCD, but including conditions that:**

- **Alterative plans be prepared that:**
  - **Reduce the height of the pool and services 'stick'.**
  - **Remove the zinc clad roof top guest room abutting the existing heritage central towers.**
- **A wind study be carried out.**
- **A Car Parking and Traffic Management Plan be prepared.**
- **Bicycle parking and facilities be provided to the satisfaction of the Responsible Authority.**
- **Further details be provided on the material palette to be used.**

We have not been asked to comment on the impact of the proposal on the heritage values of the existing Victorian building. This will be dealt with through a separate process by Heritage Victoria.

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## 2. The Advisory Committee

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The Minister for Planning appointed this Advisory Committee on the 3 December 2009 pursuant to Section 151 of the *Planning and Environment Act 1987* to advise him on all relevant matters concerning the Planning Permit Application 2009/1687 ('the Application') for the redevelopment of the Windsor Hotel.

The Advisory Committee consisted of:

- Chairperson: Lester Townsend,
- Member: Graeme Holdsworth, and
- Member: Ken Northwood.

The Terms of Reference set out the method by which the Advisory Committee was to undertake our task. Essentially, the Advisory Committee undertook an 'on the papers' review of all written submissions.

Presentations were made by the permit applicant, the City of Melbourne and the National Trust on Thursday 10 December 2009 at Metropole Conference Centre:

**Halim Group** Mr Stuart Morris QC who called the following witnesses:

Bill Corker, Architect, Denton Corker Marshall,  
Ian White, Architect, Denton Corker Marshall,  
John Henshall, Economist, Essential Economics.

**Melbourne City Council** Mr Martin Williams

**National Trust** Paul Roser

We also met with:

- Judy Maddigan, MLA during an inspection of Parliament,
- Glenn Coupar, Halim Group, during an inspection of the Hotel Windsor, and
- Bill Renehan, Manager Investments and Infrastructure Projects, Tourism Victoria on 13 January 2010 at Planning Panels Victoria

The Terms of Reference require the Advisory Committee to report on all relevant matters relating to the Permit Application.

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## **3. The proposal**

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### **3.1 The Permit Application**

The Minister for Planning is the Responsible Authority and the proponent is the Halim Group.

The Application was lodged with the Minister for Planning on 28 July 2009. The Department of Planning and Community Development (DPCD) determined that notice to affected parties was required. The applicant posted a notice on the land on the 30 September 2009 until 14 October 2009, sent notices by ordinary mail as per DPCD's instructions and placed a notice in the Age Newspaper on 30 September 2009 and in the Melbourne Times on 7 October 2009.

It is noted that the Windsor Hotel site is listed on the Victorian Heritage Register (VHR Ref H764). A heritage permit application under the *Heritage Act* 1995 was also lodged with Heritage Victoria on 28 July 2009 (Application No P14689).

### **3.2 The subject site**

#### **The site**

The Hotel Windsor fronts Spring Street filling the block between Bourke Street and Little Collins Street. It is known as 137 Spring Street and 1-7 Bourke Street, Melbourne.

The site is bound by Bourke Street to the north, Spring Street to the east, Little Collins Street to the south and Windsor Place to the west. The site is rectangular with a frontage of 37.27 metres to Bourke Street and 96.13 metres to Spring Street. It has an area of approximately 3,582 square metres.

#### **The existing buildings**

The site contains a five level hotel building with the original wing constructed between 1883 and 1888 as a grand luxury hotel located to the south of the site, and a 1960s addition located to the north. The hotel comprises 180 rooms with 92 of those rooms located in the original building. The hotel also includes a grand ballroom, dining room, pre-function area and lobby lounge, reception, and back of house facilities kitchen and storage facilities.

The existing plant, services and equipment are dilapidated and in most cases beyond their commercial life. Asbestos and other hazardous material have been found in the buildings, most notably the 1960s addition.

### **The surrounds**

The site is located on the eastern edge of the central city at the top of what is known as the Bourke Hill Precinct. The predominant building in the locality is Parliament House (and notably the Parliament steps) on the opposite side of Spring Street.

To the south, beyond Little Collins Street, is a 24 storey residential apartment building. Along Windsor Place to the west are a range of lower scale buildings that accommodate a range of uses. On the opposite corner of Bourke and Spring Streets to the north is the Imperial Hotel and smaller retail tenancies to its west.

## **3.3 The proposal**

The use of the site will remain exclusively for hotel purposes with provision of 332 guest rooms (currently 180 rooms), leisure and conference facilities.

The Application proposes to refurbish and extend the existing hotel building. There are essentially four elements to the proposal:

- retain parts of Victorian hotel building (the 'original building') facing Spring Street and Little Collins Street with internal refurbishments and external alterations,
- demolish of the rear section of the Victorian hotel building fronting Windsor Place and construct a new 26 storey 'tower' on Windsor Place,
- replace the 1960s building with a new seven storey 'corner building' on the Bourke–Spring Streets corner,
- construct a services and recreation 'stick' on the new corner building that would project over Windsor Place.

The retained parts of the original hotel, the new tower and replacement corner building are situated around a retained, refurbished and expanded central light court and atrium.

### **Refurbished Victorian hotel building**

The original Hotel Windsor will be restored more faithfully to its original exterior appearance. Some minor exterior plumbing will be removed, the solid entry canopy will be replaced by a contemporary design that reveals

the ornate sculpture above, and the colonnade along Spring Street will be reintroduced. A basement section along Little Collins Street will be recommissioned as a bar space.

There will be some alterations and refurbishment to internal spaces and within rooms in keeping with the heritage significance of these spaces. This work is subject to a permit from Heritage Victoria.

### **26 storey tower**

A new tower will be set on the western boundary of the site. The back section of the original hotel will be demolished to accommodate the tower. The tower is set back from Little Collins Street by 11 metres, being the width of the south wing of the original hotel building.

The tower is 12 metres wide, 59 metres long and 91 metres above street level. The tower is described by the applicant as follows:

*The slim tower is treated as a masonry block, inlaid with panels of glass and zinc, with its eastern facade treated as a delicate white glass undulating curtain, apparently floating behind the Hotel Windsor.*

The tower has hotel rooms on only the east side of the corridor (it is 'single loaded'). A double loaded tower would be too wide to fit on the site without demolishing significant parts of the original hotel.

### **Seven storey 'corner building'**

The new corner building is designed as a simple zinc clad 'block' held 4 metres above street level and separated from the original hotel building by a glazed re-entrant.

The roof level is at the height of the parapet level of the corner towers of the original hotel building.

### **Services and recreation 'stick'**

On the roof level of the new corner building set back from Bourke and Spring Street is a linear block containing a 25 metre pool and with plant above. The stick projects into Windsor Place. This will be clad in a fine stainless steel grid with clear glazing behind in the grid.

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## 4. Identification of issues

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### 4.1 Terms of Reference

The Advisory Committee Terms of Reference require the Advisory Committee to provide:

- A recommendation and reasons in relation to the determination of the Application for Planning Permit no. 2009/1687 for the Hotel Windsor redevelopment, including recommendations as to whether a notice of decision/permit should issue and if so, under what conditions.

In doing so we are asked to report on:

- Assessment of issues:
  - An assessment of all issues relating to the Application for Planning Permit no. 2009/1687 for the Hotel Windsor redevelopment.
  - An assessment of any submissions and referral responses made during the course of the Application for Planning Permit no. 2009/1687 or made directly to the Advisory Committee.
  - The effect of the proposal on the Parliament precinct with consideration to any relevant legislation in relation to the Parliament.
- Adequacy of the planning controls:
  - Comment on the Statement of Significance for the Bourke Hill Precinct.
  - Comment on whether the current discretionary height control that applies to the site (Design and Development Overlay, [DDO2] in the Melbourne Planning Scheme) should be mandatory.
  - Comment on whether the current discretionary height controls over the area bounded by Spring Street, Little Collins Street, Exhibition Street and Little Bourke Street should be mandatory.
- Economic and financial issues:
  - An economic assessment of the applicant's justification for exceeding the suggested height controls in DDO2. This should include comment on the applicant's requirement for the proposed number of rooms and other hotel facilities to allow the project to be economically viable and operate at a 5-star standard.

- An assessment of the potential for economic benefit to the State. This should include review of job creating potential and other economic benefits suggested by the applicant.
- It should include analysis of the ability of the proponent to complete the project in terms of skills, experience, financial resources and future planning and construction strategy.

We can also report on 'any other relevant matters raised in the course of the Advisory Committee hearing', and are required to provide 'a list of persons the Advisory Committee meets with or consults with directly'. This was provided on page 2.

## 4.2 Issues raised in submissions

We have considered all written submissions, referral agency responses and expressions of support received.

### Community submissions

In total we considered thirty 'community' submissions from local residents, business operators, and other interested parties. Each of these submissions is summarised below, providing details of the submitter and the key issues raised. We also considered a number of pro forma submissions forwarded to us by DPCD.

Submitter	Key Issues Raised
Victorian MP's Carli, Maddigan, Herbes, and Hudson  (Letter 15th October 2009)	Need to abide by current controls which restrict major redevelopments
Julia Murray  (Letter 6th November 2009)	Impact on the precinct's ambiance and 'European character'  Building height leading to overshadowing  Financial viability overriding heritage values
Mark Chester, SJB Planning, on behalf of Owners Corporation No. 2983 (99 Spring Street, Melbourne)  (Email 13th November 2009)	Proposal does not accord with the objectives of the Melbourne Planning Scheme
Damien Codognotto OAM  (Email 28th August 2009)	Disruption of trade during construction  Impact on character of the area  Potential precedent for other 'massive projects'

Submitter	Key Issues Raised
Damien Codognotto OAM (Family interest in 23 Bourke Street, Melbourne)  (Letter 6th November 2009)	Disruption of trade due to noise and dust  Building height and design out of character for the area  Potential precedent, especially for the Imperial Hotel site
Marguerite Marshall (Eltham)  (Letter 22nd October 2009)	Impact of building height on the character of the area  Potential precedent
Martin Purslow, CEO National Trust  (Letter 20th October 2009)	Impact of building height on the heritage significance of the precinct  Potential precedent a threat to Bourke Hill precinct
Ben Farrell (Collingwood)  (Letter 12th October 2009)	Demolition and redevelopment reduces historic significance of precinct  Hotel operation overriding heritage values and neighbourhood amenity
Shiff & Company, on behalf of Owners Corporation No. 413413 (19-25 Windsor Place Melbourne)  (Letter 15th October 2009)	Impact on neighbourhood character  Overdevelopment of site  Impact on residential amenity including noise; traffic; carpark access; waste management; overshadowing
Elisabeth Vodicka (Thomas's Music, 31 Bourke Street, Melbourne)  (Undated, letter received 14th October 2009)	Impact of building height on solar amenity  Impact on Windsor Place pedestrian/vehicle interface
Clive Taylor (on behalf of City Centre Budget Hotel)  (Email 13th October 2009)	Impact of noise,; work vehicles; and dust levels during construction
Michael Howard (owner 16-18 Little Collins Street, Melbourne)  (Letter 8th October 2009)	Impact of rubbish; noise (drilling during work hours); blockage of Little Collins Street. during construction
David Ackland (Lindsay Ilse & Co, Manager Owners Corporation Plan No. 2983)  (Letter 12th October 2009)	Redevelopment reduces historic significance of precinct  Building height leading to overshadowing  Impact of redevelopment on traffic movement, free to air reception, wind currents
David and Catherine Brydon (owners 232 99 Spring Street, Melbourne)  (Email 8th October 2009)	Redevelopment impacts on 'village' atmosphere and heritage values  Impact of redevelopment on privacy and overlooking; views to Carlton Gardens and Exhibition Building; sunlight
Michael Wilkinson (Alcaston House, 2 Collins Street, Melbourne)  (Email 7th October 2009)	Impact on Parliament House precinct  Impact of building height on shadowing and light for surrounding buildings

Submitter	Key Issues Raised
Irene Pollard (resident of Spring Street, Melbourne)  (Letter 7th October 2009)	Impact of design on historic significance of the area; wind; air flow; shadowing and views
Dinah Krongold (owner 202/202 99 Spring Street, Melbourne)	Impact of redevelopment on privacy; views; vehicle traffic; free-to-air TV reception; wind and dust
Jillian Bradshaw (owner of Apartment 212, 99 Spring Street)  (Letter 8th October 2009)	Impact of redevelopment on light and air flow to adjacent properties; overlooking and privacy; and diminished northerly views
Linda Cassar (resident and owner 19-25 Windsor Place)  (Email 9th October 2009)	Potential precedent for similar scale developments in Bourke Hill precinct  Demolition of heritage rear wing  Impact on natural light and overshadowing
Elizabeth Neyland (East Ringwood)  (Letter 16th September 2009)	Impact of building height on the character of the area  Impact on heritage streetscape
Michael E. Humphries (Hawthorn)  (Letter 10th September 2009)	Impact on the remaining heritage building  Building design out of character for the area
Justin Caddaye  (Email 3rd October 2009)	Justification for scale and impact of proposal on Hotel Windsor and Bourke Hill precinct  Potential precedent for similar scale developments in Bourke Hill precinct  Demolition of rear wing of 1888 building
Yvonne Singer (owner and occupier 7/19-25 Windsor Place)  (Undated, letter received 7th October 2009)	Impact of redevelopment on morning sunlight; overshadowing to rooftop balcony; invasion of privacy; noise, dust and restricted access during construction; reduction in property value  Potential precedent for similar scale developments in the precinct
Olivia Abbay (Sandringham)  (Letter 12th September 2009)	Threat to Melbourne's 'sense of place' due to violation of height limits  Impact of demolition of heritage buildings
Major General (Retired) David J McLachlan (on behalf of the RSL)  (Letter 6th August 2009)	Impact on RSL's business operations during construction
Pro forma 'Save Our City' postcard	Impact of the height of the Hotel Windsor redevelopment on the upper Bourke Hill area
Mary Madigan  (Email 11 August 2009)	Demolition of heritage building  Potential precedent for similar scale developments in the precinct
Jessica Stanley  (Email 10th October 2009)	Need to maintain at least the facade and keep buildings to a reasonable height

Submitter	Key Issues Raised
Briony Cullen (Email 8th October 2009)	Need to keep Melbourne's unique character Potential precedent for similar scale developments in the precinct
Andrew Curtis (Email 8th October 2009)	Tower too tall Potential precedent for similar scale developments in the precinct Demolition of 1960s building acceptable

None of the twenty-six submissions received from local residents, business operators, and other interested parties supported the proposed development.

Whilst the interests behind the submissions were diverse, we were able to identify a number of common key themes of issues. These common key themes were:

- the impact of the proposed development on the existing heritage and low-rise character of the Bourke Hill precinct,
- the potential for the Hotel Windsor development to establish a precedent for further high rise development within the precinct,
- concerns regarding the demolition of heritage buildings, particularly the rear of the Hotel Windsor at Windsor Place,
- concerns regarding residential amenity issues such as overshadowing, overlooking, noise, dust, deprivation of natural light, blocking of views, and traffic and pedestrian safety, and
- disruption to commercial operators during and after construction.

### **Referral agencies and relevant organisations' submissions**

In addition to community submissions, we considered responses submitted by referral agencies and comments received from other relevant organisations.

Qualified support was expressed from three of the agencies (Department of Planning and Community Development; City of Melbourne; and Department of Transport), whilst unconditional support was expressed by the Department of Premier and Cabinet; and Tourism Victoria.

The National Trust, in both written and verbal submissions, objected to the current proposal but expressed support for an alternative, less-intensive scheme.

Referral Agency/Organisation	Key Issues Raised
<p>Urban Design Unit Department of Planning and Community Development</p> <p>(Comments 20th November 2009)</p>	<p>The integrity of the 'curtain effect' (Tower's East face) under varying conditions (ie strong sunlight; overcast, dusk and night)</p> <p>Bourke Street overhang (Spring Street frontage recessed, Bourke Street frontage flush with street – reducing the 'balanced weight' between upper bulk and base)</p> <p>Retention of rear brick wall to Windsor Place</p> <p>Conditions proposed if planning permit allowed</p>
<p>City of Melbourne</p> <p>(Verbal presentation to hearing by Martin Williams – 10th December 2009)</p>	<p>The development is excessively bulky. It should be reduced in height and set back further from Bourke Street</p> <p>Proposed height of corner building not supported due to height requirements specified in the DDO</p> <p>Projection of the 'stick' over Windsor Place inappropriate over the narrow laneway</p> <p>Presentation of building to Windsor Place has little active frontage, and does not meet Heritage Overlay design guidelines</p> <p>Logistics of valet parking</p> <p>Potential wind effects</p> <p>Conditions listed if permit considered appropriate</p>
<p>Department of Premier and Cabinet</p> <p>(Letter 6th November 2009)</p>	<p>Supports the applicant's proposal and three-pronged strategy:</p> <ul style="list-style-type: none"> <li>• Restoration of the heritage hotel</li> <li>• Replacement of corner building with simple zinc-clad 'block'</li> <li>• A new 'backdrop' building</li> </ul>
<p>Department of Transport</p> <p>(Letter 23rd October 2009)</p>	<p>Does not object to the granting of a planning permit subject to permit conditions (stated)</p>
<p>National Trust</p> <p>(Verbal presentation to hearing – 10th December 2009)</p>	<p>Impact of the height of the tower</p> <p>Suggest a variation to the Tower of 'half the height and twice the width' (ie 46 metres high Tower with a 10 metre setback)</p>
<p>Tourism Victoria</p> <p>(Verbal presentation to Advisory Committee by Bill Renehan, Manager Investment and Infrastructure Projects, Tourism Victoria – 13th January 2010)</p>	<p>Supports applicant's proposal based on:</p> <ul style="list-style-type: none"> <li>• Tourism outlook</li> <li>• Demand and supply of 5-star hotel accommodation</li> <li>• Economic benefit through construction investment, employment, tourism spend</li> </ul>

## Other expressions of support

A number of expressions of support were received from other organisations which were not in the form of community submissions or referral responses. These are summarised below:

Organisation	Summary of expression of support
Australian Institute of Architects – Karl Fender, Victorian President, National President Elect  (Letter 9th December 2009)	“Proposal offers Melbourne the potential of a world class benchmark in Heritage revitalization.”  “Great respect and sensitivity has been directed to the renovation of the original Victorian building...”
Wood Marsh Architecture – Roger Wood, Director  (Letter 8th December 2009)	“The proposal tackles the complexities of urban design, restoration and reinvigoration of heritage building stock and contemporary addition of new architecture to Melbourne.”
Destination Melbourne – Chris Buckingham Chief Executive  (Letter 96h November 2009)	“If the hotel is to survive and prosper, it needs to be brought into the 21st century with due care and consideration for its amazing history.”
Richard Dalla-Riva MLC (Shadow Minister for Industry and State Development; Shadow Minister for Major Projects  (Letter 66h November 2009)	“...I am nothing short of in favour of the Hotel Windsor's major redevelopment works ...”
AAA Tourism Pty Ltd – George Campbell, National Operations Manager  (Letter 56h November 2009)	“...we have outlined 'Areas of Concern' in recent assessments of the (Hotel Windsor). As acknowledged the facilities at the property require updating in order to sustain its 5-STAR status as they are dated and not currently meeting 5-STAR standard....”
Norman Day – Article in The Age (undated)	The proposed design for the Windsor combines the best of old and new and will ensure the hotel remains an iconic Melbourne building.”
Ben Butler and Stephen McMahon – Article in The Herald-Sun (Dated 30th July 2009)	“Melbourne Lord Mayor Robert Doyle has welcomed a \$260 million plan to build a 92 metre tower at the back of the city's grandest hotel, the Windsor.”
Kate Lahey, City Reporter - Article in The Age (undated)	“The \$260 million development proposed by the owners, the Halim Group is the best chance of preserving the 1883 hotel Captain Jansen said.”

Each of these letters/articles express support for the proposed development. They did not require a specific response but were used to inform our thinking.

## 4.3 What permits are required?

This is an application under the Melbourne Planning Scheme.

### 4.3.1 Land use

The subject site is located within the Capital City Zone. Schedule 1 to the Capital City Zone (CCZ1) relates to land located outside the Retail Core.

A permit **is not** required for the use of the land for a Residential Hotel, or the associated function and food and beverage spaces.

### 4.3.2 Height and bulk

A number of controls relate to issues that affect the height and bulk of buildings permitted on the site:

- In the Capital City Zone Schedule 1 a permit is required:
  - 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;
  - to construct any part of a building within 10 metres of a road frontage which is inconsistent with the dominant road frontage parapet height;
  - to construct any part of a building exceeding a height of 40 metres within 10 metres of a road frontage.
- The land is affected by a number of Schedules to the Design and Development Overlay (Clause 43.03):
  - DDO2 – Height Control Area (Area 4),
  - DDO56 – CBD Lanes (Class 2 Lane).

Permits are exempt from notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

### 4.3.3 Heritage

The site is covered twice by the Heritage Overlay. This is shown on separate maps in the planning scheme. They are:

- Bourke Hill Heritage Precinct (HO500).
- An individual listing for the Hotel Windsor (HO739). This relates to the whole site and is included on the Victorian Heritage Register, reference number H764.

Pursuant to Clause 43.01-2:

*No permit is required under this overlay:*

- *To develop a heritage place which is included on the Victorian Heritage Register.*

It is clear that a planning permit is not required as a result of HO739 for the proposed development because the place is included on the Victorian Heritage Register. A separate permit application has been lodged with Heritage Victoria.

There is some debate as to whether a permit is required for the proposed development as a result of HO500.

It is the Applicant's submission that the words 'under this overlay' in Clause 43.01-2 relates to both HO500 and HO739 (as both are schedules to the overlay) and, as the whole of the land subject to the Permit Application is included on the Heritage Register, a permit is not required by these provisions.

The Overlay states:

*Scope*

*The requirements of this overlay apply to heritage places specified in the schedule to this overlay. A heritage place includes both the listed heritage item and its associated land. Heritage places may also be shown on the planning scheme map.*

The table in the Schedule includes:

<i>PS Map Ref</i>	<i>Heritage Place</i>
<i>HO500</i>	<i>Bourke Hill Precinct</i>
<i>HO739</i>	<i>Hotel Windsor, 103-137 Spring Street, Melbourne</i>

It is argued that the exemption under Clause 43.01-2 does not apply under HO500 because the 'heritage place' is the whole precinct, and this precinct is

not included in Victorian Heritage Register as a heritage place (though parts of it are).

Whether or not permit is required is a complex legal issue which we are not in position to definitively resolve. We will proceed on the basis that permit is required, but take care to make it clear where we are considering issues under the Heritage Overlay. If it is ultimately determined that a permit is not required then our advice may be redundant.

We note Section 73(1A) of the *Heritage Act* states:

- (1A) *In determining an application for a permit, the Executive Director may consider –*
- (a) *the extent to which the application, if approved, would affect the cultural heritage significance of any adjacent or neighbouring property that is –*
    - (i) *subject to a heritage requirement or control in the relevant planning scheme; or*
    - (ii) *included in the Heritage Register; and*
  - (b) *any other relevant matter.*

If a permit is not required under HO500 and the Executive Director chooses not to consider the extent to which the application, if approved, would affect the cultural heritage significance of the balance of HO500 then the impact of the proposal on the heritage significance of the Bourke Hill precinct would not be directly addressed.

#### **4.3.4 Design detail**

A number of controls (in addition to heritage controls) relate to issues of design detail. These are:

- DDO1 – Active Street Frontages (Area 2),
- DDO3 – Traffic Conflict Frontage, and
- DDO4 – Weather Protection.

#### **Access and parking**

Schedule 1 to Clause 52.06 specifies the maximum parking provision for development within the Capital City Zone (CCZ). The maximum number of spaces must not exceed:

- 5 space per 1000 sq m of net floor area, or
- 12 spaces per 1000 sq m of site area.

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Based on a site area of 32,900 square metres, no more than 165 spaces is to be provided on the site. The application proposes 70 on site spaces.

Provision of bicycle parking and facilities is also required.

#### **4.4 Issues dealt with in this Report**

The community submissions, the responses from referral agencies and other relevant organisations have provided valuable material to inform the Advisory Committee. The issues raised have been used as a 'checklist' in the preparation of the relevant Sections of this report. The expressions of support have also provided useful comment from a range of professional organisations.

This Report deals with the issues under the following headings:

- Planning policies and controls
  - Policy framework
  - What height limits apply?
  - How much discretion is appropriate?
  - Effect on Parliament precinct and comments on the Burke Hill Statement of significance
- Is redevelopment required?
- Assessment of issues
  - Heritage
  - Building Height
  - Detailed design issues
  - Traffic Management
  - Amenity Impacts
- Potential for economic benefit to the State
- Ability of the proponent to complete the project.

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## 5. Planning policies and controls

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### 5.1 Policy framework

#### Summary of policy direction

The Town Planning Report (July 2009) prepared by Contour Consultants provides a comprehensive outline of the relevant planning policy framework. A large number of policies apply to the site. Key elements of the policy framework are:

- To strengthen central Melbourne's Capital City roles.
- To attract tourists and retain the CBD as a major destination for tourists.
- To support entertainment, bars, eating and other venues throughout the CBD.
- To reinforce the city's overall urban structure.
- To conserve, protect and enhance heritage assets.
- To ensure new developments adds positively to the character of Melbourne as a visually exciting and vibrant city.
- To allow good sun penetration to public spaces.
- To create a high quality public environment and to support street life.
- To protect the character of laneways.
- To maintain high standards of amenity with respect to overlooking, overshadowing, sunlight, daylight and building bulk.
- To ensure towers are set back 10 metres from street behind a podium of 35 -40 metres.

The summary of policy direction is based on the following policies.

#### State Planning Policy Framework

The following clauses from the State Planning Policy Framework (SPPF) are relevant to the proposal:

- Metropolitan Development (Clause 12)
  - A more prosperous city (12.04)
  - A great place to be (12.05)
  - A greener city (12.07)

- Environment (Clause 15)
  - Heritage (15.11)
  - Energy Efficiency (15.12)
- Economic Development (Clause 17)
  - Tourism (17.04)
- Infrastructure (Clause 18)
  - Declared highways, railways and tramways (18.01)
  - Car parking and public transport access to development (18.02)
  - Bicycle transport (18.03)
- Particular Uses and Development (Clause 19)
  - Design and Built Form (19.03).

### **Municipal Strategic Statement**

The following Clauses of the Municipal Strategic Statement (MSS) are relevant to the proposal:

- Vision and Approach (Clause 21.03)
- Land Use (Clause 21.04)
- City Structure and Built Form (Clause 21.05)
- Local Areas (Clause 21.08).

### **Local planning policy**

The following local planning policies are relevant to the proposal:

- Urban Design within the Capital City Zone (Clause 22.01)
- Sunlight to Public Spaces (Clause 22.02)
- Heritage Places within the Capital City Zone (Clause 22.04)
- CBD Lanes (Clause 22.20).

## **5.2 What height limits apply?**

Schedule 2 to the Design and Development Overlay (DDO2) sets out maximum building heights for areas within the Capital City Zone. A permit is required for buildings whether or not the maximum building height is exceeded.

A planning permit cannot be granted to exceed 40 metres in the central city area between Elizabeth and Swanston Streets (Area 1 in DDO2).

In other areas the control states that buildings and works *should* not exceed the maximum height in Table 2 of the DDO, but permit can be granted to exceed the height in the table.

## What are the objectives of DDO2?

The DDO sets out objectives that apply across the whole area and some area specific outcomes. General objectives are:

*To protect sunlight access to key public places and open space areas so as to provide a comfortable, pedestrian-friendly urban environment.*

*To ensure that the height of new buildings reinforces the built form character of unique areas.*

*To maintain the visual dominance of prominent landmarks.*

The specific outcomes of different areas are:

<b>Area</b>	<b>Height</b>	<b>Outcome (summarised)</b>
A2 Chinatown Bourke Hill Top end of Bourke	15 metres	The low-rise, high-density and pedestrian oriented built form ... is maintained.
A3 Pedestrian gateways to the Chinatown and Hardware Lane precincts	20 metres	The scale of development provides a comfortable scale transition between the precinct and the broader area.
A4 Windsor and Little Collins Mid block Bourke Hill	23 metres	The Parliamentary buildings remain dominant on the Bourke Hill skyline.
A5 Bourke Street between Russel and Exhibition	40 metres	The scale of development complements and is compatible with the nearby retail core. The Parliamentary buildings remain dominant in vistas along Bourke Street.
A6 Gateway sites	30 metres	The scale of development takes advantage of the opportunities of consolidated sites. The scale of development maintains a comfortable relationship with the surrounding low-scale and pedestrian oriented precinct. The scale of development does not unreasonably overshadow streets.
A7 Southern Cross site off Bourke	80 metres	The scale of development takes advantage of the opportunities of a large consolidated site. The scale of development maintains a comfortable relationship with the surrounding low-scale precinct. The scale of development does not intrude upon the long vistas to Parliament House along Bourke Street.
A8 Scatter of sites set back from important pedestrian laneways	60 metres	The scale of development takes advantage of the opportunities of consolidated sites. The scale of development maintains a comfortable relationship with the surrounding low-scale precincts.

### 5.3 How much discretion is appropriate?

The Advisory Committee Terms of Reference require the Advisory Committee to report on the following:

- Comment on whether the current discretionary height control that applies to the site (Design and Development Overlay, [DDO2] in the Melbourne Planning Scheme) should be mandatory.
- Comment on whether the current discretionary height controls over the area bounded by Spring Street, Little Collins Street, Exhibition Street and Little Bourke Street should be mandatory.

Critical to assessing this application is a judgement about how much discretion should be given under the height controls:

- None: the controls set a mandatory height which cannot be exceeded.
- A little: the controls set a 'preferred' height which is expected to be achieved in general.
- A lot: the controls set a height above which a more detailed analysis is required, but the height is not an aim in itself.

#### 5.3.1 Mandatory heights

##### What are the principles for applying mandatory height controls?

Height limits in the Melbourne Planning Scheme were considered by the panel for Amendment C20. As the C20 Panel pointed out (p.72):

*Objective based, strategic decision-making is a fundamental tenet of the planning system in Victoria and is embodied in the VPPs. An over-reliance on mandatory building requirements in Design and Development Overlays is a departure from this system and undermines it.*

The C20 Panel set out a number of tests as to the circumstances where a mandatory control would be appropriate. In the view of the C20 Panel, a mandatory height control would be appropriate where:

- It can be established that, in the vast majority of cases, an application not in accordance with the building requirements would be contrary to the design objectives set out in the schedule.
- A strategic assessment or study has identified that in the vast majority of cases buildings not in accordance with the building height or other requirements would detract from the essential character of the area or other built form outcome the design objectives are seeking to achieve.

- In the vast majority of cases such buildings would not be supported by Council after application of its design objectives and any relevant guidelines.

These tests have been supported in a range of other panels and advisory committees including the recent Advisory Committee for the New Residential Zones where the committee stated:

*The Advisory Committee is aware of a number of previous Panel reports where the issue of mandatory and discretionary controls were raised, nearly all in connection with 'height' controls, including:*

- *Amendment C20 to the Melbourne Planning Scheme;*
- *Amendment C2 to the Bayside Planning Scheme;*
- *Amendment C7 to the Queenscliff Planning Scheme;*
- *Amendment C52 to Port Phillip Planning Scheme;*
- *Amendment C55 to the Colac Otway Planning Scheme;*
- *Amendment C99 to the Yarra Planning Scheme; and*
- *Amendment C33 to the Manningham Planning Scheme.*

*The conclusions reached by those Panels have consistently established the principle that the appropriate (or preferred) means of expressing requirements in planning schemes is as a 'discretionary' provision, with 'mandatory' requirements only being applied where the specific circumstances warrant a mandatory control.*

It is useful to consider cases where mandatory controls have been supported. The Panel considering Amendment C33 to the Manningham Planning Scheme regarding Doncaster Hill stated:

*It is recognised that the Victorian Planning Provisions were designed as a broadly performance-based planning system with a minimum of mandatory controls. However, it is also a strategically-based system in which the controls must be justified by a sound and clearly expressed planning strategy. Within this system, it is reasonable to suggest that the sounder the strategy, the greater the justification for mandatory controls.*

In the Manningham case, the controls were based not just on a comprehensive planning strategy, but also on a detailed analysis of alternative urban forms. The analysis examined both visual and amenity impacts, leading to development of building envelopes designed to maximise achievement of the strategy's objectives.

That Panel considered that the thoroughness of the strategic and analytical work in that case justified the use of mandatory controls for the key elements of building height, interface with the boulevards and the height of design elements.

Where all relevant issues have been considered (or the design objectives are paramount), and the design requirements to achieve the objectives can be clearly derived, then making the requirement mandatory is efficient. An example is the Shrine Vista controls. In this case the objective is highly prized and the physical parameters to achieve the objective are clear. There would be no point in providing discretion because a building that exceeded the limit would fail to meet an objective that must be achieved.

In cases where it is less clear what physical parameters achieve the objective, or there is an expectation that competing policy objectives might override the objectives setting the height control, then the control would need to be discretionary to avoid stopping acceptable developments. In the case of the CBD, mandatory height limits could lead a gross underutilisation of the city.

We conclude:

**The 'default' position in the Victorian planning system is for discretionary controls unless there are persuasive reasons to mandate an outcome.**

**Mandatory height provisions should only be applied where there is a detailed and defined planning outcome to be achieved and there has been a detailed analysis of alternative urban forms.**

### **Height control in Melbourne CBD**

There has been no recent analysis of height limits in the Melbourne CBD. The panel that reviewed the New Format Scheme said:

*The issue of height limits is a matter of considerable sensitivity. The current Melbourne Planning Scheme has a plethora of height controls built up over many years as a result of various studies and in response to various circumstances. By and large, they have been reproduced in the numerous Design and Development Overlays which, except for the retail core, introduce a discretion to vary any limits. Schedules to the Overlay which specify height limits now include reasons for those limits. Any application to vary the limit must be assessed both in terms of the reason for the limit and in the wider urban context.*

If mandatory heights were to be put in place, then a review of the heights would need to be undertaken.

The New Format Scheme Panel considered arguments that the controls should be mandatory in the light of the justification of the controls and stated:

*... the Panel does not support the submissions that height limits in the Design and Development overlays should be mandatory and the discretion to vary them should be removed.*

In the current matter, the applicant submitted:

*... the application of mandatory height controls would be detrimental to the model of heritage protection applied in the city to date, that is to arrive at a compromise between density and heritage by allowing tall buildings to be respectfully set back behind buildings of heritage significance. Examples of the approach include 1 Collins Street, 120 Collins Street, 333 Collins Street and the Herald and Weekly Times Building.*

We note that the inclusion of discretion cannot be read to mean that the requirement is somehow less important. What it does mean is that a development that exceeds the limit might still meet the objectives of the planning scheme.

It was further submitted that:

*The application of a mandatory, inflexible height control to the subject site would effectively commission the Windsor Hotel to a downward spiral to a 4-star hotel and lower. This would result in a gross under utilisation of what the Capital City Zone has to offer.*

We conclude:

**It would be contrary to the broader policy objectives of planning and the Melbourne Planning Scheme to make current discretionary controls mandatory:**

- **In Design and Development Overlay Schedule 2.**
- **In the area bounded by Spring Street, Little Collins Street, Exhibition Street and Little Bourke Street.**

### **5.3.2 Discretionary heights**

#### **Preferred heights**

The typical form of height control is to set a 'preferred' height limit that can be exceeded with a permit.

If the preferred height is derived from an analysis of the requirements to achieve nominated objectives, then some 'minor' excess in height might be accepted, and the discretion would allow for some flexibility. Buildings that greatly exceeded the limits would not be expected, because they would not meet objectives.

This issue was considered in Amendment C96 to the Melbourne Scheme. The C96 Panel stated that they could see no reason in principle why the introduction of discretion into the control of building heights should lead to any substantial divergence, overall, from the preferred height limit of 40m. They could not envisage a series of 60 metres towers. This was because while there might not have been an unswerving relationship between the objectives and the set height, the objectives provided a relatively clear indication of the height that could be achieved.

A similar case might exist for areas A2 under DDO2 where an outcome is that:

*The low-rise, high-density and pedestrian oriented built form ... is maintained.*

In these areas a high rise development would clearly fail to achieve the outcome.

However, it is clear that in the Melbourne CBD the specified height is often exceeded by a significant margin. How does this happen?

### **Trigger heights**

The Applicant submitted:

*As currently drafted, Schedule 2 to the DDO seeks to provide a baseline or discretionary limit on the height of buildings which, if exceeded, triggers the need for the preparation of a site analysis plan and an urban context report documenting how the development will meet the specified design outcomes.*

The argument here is that the height limits in DDO2 are a trigger for a more detailed consideration, and not a preferred height in themselves.

If the limits are construed as a trigger for a more detailed consideration then the heights can be exceeded (even by a great amount) provided the required outcomes are met.

A simple reading of the language of DDO2 is that 'buildings should not exceed the maximum height'. The use of maximum height and the fairly plainly expressed requirement would seem to leave little room for doubt that the intention was to restrict buildings to this height, perhaps with some

leeway, hence the discretionary nature of the control. This implies that the controls express a 'preferred height', and not a 'trigger height' as submitted.

However, it is clear from the drafting of DDO2 that it is contemplated that development exceeding the height limits could achieve the objectives. The Clause invites assessment of proposals that exceed the 'maximum' building height.

It is also clear that it is possible to exceed the 'maximum' height (even by a lot) and still meet the objectives of the Clause. Discretion has been included because there is no clear or unswerving relationship between the height limits set and the objectives or outcomes to be achieved in all areas.

This is further reinforced by the permits have been granted for development exceeding the 'maximum height'.

While the language of the clause – 'Buildings or works should not be constructed to exceed the maximum height set out in Table 2 to this schedule' – suggests the limits are a policy aim in themselves we are persuaded that this is not in fact the case.

In considering this issue we note:

- The Clause invites assessment of proposals that exceed the 'maximum building height'.
- It is clearly possible to exceed the limits but meet the objectives of the Clause.
- Permits have been granted for exceeding the 'maximum height' and if the heights were intended to be a policy limit then they have not been applied in that fashion in the past. The Southern Cross building is a 180m building allowed in an 80m height limit under the DDO.

We conclude that:

**It is no longer clear (if it ever were clear) how the specified heights in DDO2 related to the objectives and outcomes to be achieved.**

**The DDO2 height controls are a mix of mandatory, preferred, and 'trigger' heights for a more detailed analysis against objectives. They do not always express a height that relates to the objectives or outcomes to be achieved.**

## 5.4 Effect on Parliament and comments on the Bourke Hill Statement of Significance

### Effect on Parliament precinct

The Terms of Reference require us to report on the following:

- The effect of the proposal on the Parliament precinct with consideration to any relevant legislation in relation to the Parliament.

We are not aware of any relevant specific legislation in relation to the protection Parliament, but note that this is provided for in the Design and Development Overlay.

The applicant submitted:

*... the design of the building and the provision of generous setbacks of 25.3 metres from Spring Street and 24.5 metres from Bourke Street, ensure that the Parliament will maintain the visual dominance and prominence of the Parliament landmark. By having such setbacks the tower reads as being located on a separate allotment behind the Windsor Hotel ...*

The issue of the potential effect on Parliament is discussed further in Sections 7.1 and 7.2.

### Statement of Significance

The Terms of Reference require us to report on the following:

- Comment on the Statement of Significance for the Bourke Hill Precinct.

We take this to mean that we are to provide comment of the Statement of Significance as an adequate control, beyond an assessment of the merits of the proposal in terms of the Statement of Significance, which is covered by other elements of our Terms of Reference.

The Bourke Hill precinct Statement of Significance is set out in the Planning Scheme.

#### ***Bourke Hill Precinct Statement of Significance***

*This precinct derives much importance from its association with Parliament House, which was built progressively from 1856. This 19th century complex dominates the Bourke Street vista from as far away as William Street, and is emphasised by the sympathetic scale of the buildings on either side of the Bourke Street Hill. The precinct also includes such stylish and prominent buildings facing Spring Street as*

*the Princess Theatre (1886) and the Hotel Windsor (1883). These contribute to the high level of amenity of Spring Street and its gardens. The buildings on either side of Bourke Street reflect the variety of social activities that have taken place in this area since the mid-19th century. The scale of the City's buildings prior to the boom era of the 1880s is seen in the simple design and low scale of the two-storey Crossley's Building (1884-1853).*

*The area also comprises part of the entertainment precinct of the central city, and buildings such as the Salvation Army Temple (1890) reflect the interest of social reformers in the nearby 'back slums' epitomised by the nearby former Gordon House (1883-1884). A philanthropic venture built by a syndicate headed by the actor-manager and politician George Coppin, it was named after the martyr of Khartoum and was an ambitious venture intended to provide family accommodation for the respectable poor. However, the venture was not successful in achieving its purpose and Gordon House later became a shelter for homeless men and now a hotel. It survives as a unique social document in the narrow confines of Little Bourke Street, and is complemented by the low-scale of surrounding red brick buildings.*

*The juxtaposition of the Parliament, the former deprived areas of Little Bourke Street and the style of Bourke Street gives the precinct an unrivalled historic texture and overall the theatres, hotels, cafes and quality bookshops contribute to the relaxed and elegant character of the eastern end of the city.*

#### *Key Attributes*

- *Low-scale Victorian buildings.*
- *The visual dominance of the parliamentary buildings on the Bourke Hill skyline, and the vista along Bourke Street to Parliament House.*

It seems to us that there are four components to the Statement of Significance:

- The juxtaposition of the Parliament, the former deprived areas of Little Bourke Street and the style of Bourke Street gives the precinct an unrivalled historic texture.
- Building height and scale:
  - Parliament House dominates the Bourke Street vista from as far away as William Street.
  - The sympathetic scale of the buildings on either side of the Bourke Street Hill.

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- The scale of the City's buildings prior to the boom era of the 1880s is seen in the simple design and low scale of the two-storey Crossley's Building (1884-1853).
  - Architectural quality:
    - The stylish and prominent buildings facing Spring Street such as the Princess Theatre (1886) and the Hotel Windsor (1883).
    - The high level of amenity of Spring Street and its gardens.
  - Mix of uses:
    - The theatres, hotels, cafes and quality bookshops contribute to the relaxed and elegant character.
    - The buildings on either side of Bourke Street reflect the variety of social activities that have taken place in this area since the mid-19th century.
    - The precinct is part of the entertainment precinct of the central city.
    - Buildings such as the Salvation Army Temple (1890) reflect the interest of social reformers in the nearby 'back slums' epitomised by the nearby former Gordon House (1883-1884). These are complemented by the low-scale of surrounding red brick buildings.

In terms of the issue of building height and scale of development, the Statement of Significance identifies the particular the scale of the buildings on either side of the Bourke Street Hill and the lower scale pre 1880s boom buildings.

This scale is reflected not only in the height of the buildings, but also in the fine-grained nature of the frontages with many individual buildings on relatively narrow blocks. This pattern can be contrasted to other patterns of development found in the CBD where larger buildings have longer frontages. In the Bourke Hill precinct it is only the historic grand buildings that have larger floors plates and longer frontages.

We think that the Statement of Significance addresses the key built form and land use aspects of the area. Perhaps the only element that is not mentioned is the laneways in the area. We presume that laneways are not of particular heritage significance in the area, but note that the strong Hoddle grid and the attendant laneways are broadly recognised as important parts of Melbourne heritage.

We conclude:

**The Statement of Significance is reasonably clear, and there are no obvious gaps or contradictions. Using the Statement of Significance in a decision making process would not lead to important factors being missed.**

How the development responds to these issues is discussed in Sections 7.1 and 7.2.

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## 6. Is redevelopment required?

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The Terms of Reference require us to report on the following:

- An economic assessment of the applicant's justification for exceeding the suggested height controls in DDO2. This should include comment on the applicant's requirement for the proposed number of rooms and other hotel facilities to allow the project to be economically viable and operate at a 5-star standard.

### 6.1 Is the current operation viable?

In the Economic Analysis Report prepared by Essential Economics, the current situation of the Hotel Windsor is benchmarked against other Melbourne 5-star hotels, using ABS accommodation data from 2003 to 2009:

- the Hotel Windsor's average room rate was 22% lower in 2009 than the Melbourne 5-star average,
- the occupancy rate is around 10% less than the Melbourne CBD 5-star average (although the actual occupancy rate is considered to be artificially boosted by the lower room rate),
- the average length of stay is 1.5 nights to 1.9 nights compared with the average length of stay at Melbourne's 5-star hotels of 2.2 nights and 2.4 nights, over the period cover by the ABS data,
- 75% of the Hotel Windsor's 180 guest rooms are less than 35 sqm, this being the generally accepted minimum size for luxury guest rooms, and
- the ancillary facilities expected in a 5-star hotel (ie conference, business, leisure facilities) are lacking or of poor quality at the Hotel Windsor.

This comparative data shows that the Hotel Windsor is placed at the bottom end of the of the 5-star accommodation market.

Essential Economics conclude this section with:

*When the performance of the Windsor Hotel is compared against other 5-star CBD hotels, the hotel is clearly deficient in many key areas, including the lack of modern conference and business facilities, the lack of on-site car parking, the lack of leisure facilities and an overall lack in general guest amenity. In view of this situation, the Hotel Windsor - once regarded as Melbourne's top hotel - is now placed towards the*

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*bottom of the 5-star market and below the standards set by Melbourne's top luxury hotels.*

The lack of essential 5-star facilities is the basis of the economic feasibility debate.

The reasoning for the lack of viability is that the hotel is still 'uncompetitive' in the 5-star market. Of the 180 rooms 104 are less than 30 sq m. There are no leisure facilities, no on site parking, no additional food and beverage outlets and insufficient back of house facilities.

Mr Henshall stated that the investment in the Hotel Windsor redevelopment was essential to retain the 5-star rating; a point also made by Mr Renehan.

In support of this latter comment, George Campbell, National Operations Manager, STAR Ratings Australia, AAA Tourism Pty Ltd, in a letter to Mr David Perry CEO, The Hotel Windsor, stated:

*...we have outlined 'Areas of Concern' in recent assessments of the (Hotel Windsor)... As acknowledged the facilities at the property require updating in order to sustain its 5-STAR status as they are dated and not currently meeting 5-STAR standard....*

Mr Henshall observed that there would be a significant opportunity cost in letting the Hotel Windsor slip to 4-star rating. His conclusion in Section 4.5 makes a strong point:

*Should the redevelopment not proceed, the future of the Hotel Windsor is uncertain as it may be difficult to attract (as already well proven) an investor prepared to significantly refurbish the facility (under the existing permit) in view of the hotel's relatively low returns. This situation would inevitably lead to a further decline in the hotel's infrastructure and with strong likelihood that it would lose its 5-star rating. In turn, this would lead to a further reduction in room rates and in revenues, and would adversely affect the hotel's overall operating viability in commercial terms.*

## **6.2 Is refurbishment feasible?**

There have been several proposals over the years to redevelop the Hotel Windsor. None of these proposals have been implemented because of the significant costs associated with the site constraints of the existing structure.

The Applicant in August 2006 looked at renovating 10 rooms at a time to refurbish the hotel. The state of existing services and an asbestos issue made this impractical.

A \$45 million, 2 Stage scheme was then contemplated. Five million dollars was spent on detailed design, obtaining a Heritage Victoria Permit and detailed feasibilities. The original budget increased after the detailed design due to the servicing requirements and the approached to hazardous materials. By the time that two prototype rooms had been completed in December 2008 the confirmed budget had risen to \$78 million.

The feasibility for this proposal, which was supplied to us, clearly indicates a final return of less than 10%, which is below industry benchmarks for financing and can only be viewed as unviable.

### 6.3 Current proposal

The applicant supplied us, in confidence, with a number of feasibility analysis, and sensitivity studies for certain possible changes to the current scheme.

The most useful of these was the spreadsheet titled Hotel Analysis that compared 332 rooms (current proposal) with two other scenarios with the same function and food and beverage areas but a reduction in the tower guest rooms to 268 rooms and then to 204 rooms. This clearly showed that for 204 rooms the scheme was not viable but for 332 rooms it was. The 268 room solution could best be argued as borderline, but in reality not viable.

The applicant stated that:

*The economic feasibility that they undertook indicates that at least 330 rooms of a minimum size of 35 sqm are required in order to achieve an economically viable hotel – which will be supported by financiers – and maintain the excellent 5-star service expected.*

It was also submitted that:

*This outcome is not unexpected – all hotels require a certain number of rooms to ‘pay’ for the common spaces – but it is more pronounced in this case as a consequence of the significant heritage cost component.*

In table 1.1 of the Economic Analysis Report (previously referred to) the average room number per hotel of all the Melbourne CBD 5-star hotels (excluding the Hotel Windsor) is listed as 348 rooms.

#### Compromises to viability

We have turned our mind to whether the layout and configuration of the proposal can deliver a viable hotel operation. Clearly there are a range of design decision that have been taken in response to heritage concerns and

these have the potential to compromise the operation of the proposal, and hence undermine its viability.

We are concerned that there is poor connection between the pre-function area and the ballroom. While this might be seen as a 'detail' design issue it is the sort of detail that can be the difference between effective reuse of heritage spaces and a room that no one can use.

## 6.4 Conclusions

We conclude the Hotel Windsor is unlikely to be refurbished or redeveloped with the current permits or within the 'preferred' height limits. This is because there cannot be enough hotel rooms to support the additional facilities required and the cost and complications of the heritage building.

The consequence of doing nothing is likely to lead to further decline in the hotel's operation and the building. It is clear that any proposal to refurbish the hotel must be economically viable and be able to compete in the market place.

We also conclude that a redevelopment of the Hotel Windsor would need a hotel with in excess of 300 rooms to allow costs to be fully amortised across the entire project. The proposed scheme meets this criterion.

We conclude:

**Doing nothing will only see the hotel and the building decline.**

**The hotel is unlikely to be refurbished under the existing permit, and a development within the 'preferred' height limits will not be viable.**

**At least 300 rooms together with conference and leisure facilities are required to allow the project to be economically viable and operate at a 5-star standard.**

**The development as proposed is an economically viable scheme that could attract bank finance.**

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## 7. Assessment of issues

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### 7.1 Heritage

#### Assessment by Heritage Victoria

The primary assessment of the impact of the proposal on the heritage of the Hotel Windsor will be undertaken by Heritage Victoria.

#### Assessment in terms of the Bourke Hill Statement of Significance

As discussed in Section 4.3.3 it is disputed whether a permit is required under the Heritage Overlay in respect of the Bourke Hill precinct. Issues that overlap between heritage controls and other controls in the Planning Scheme are considered in the following sections.

The proposal redevelops part of the existing Hotel Windsor building, which is one of the 'grand' buildings of the precinct. It does not remove any of the fine grained fabric of the former deprived areas of Little Bourke Street.

It was submitted that Melbourne model is to have heritage and density next to one another. This could be contrasted to, say, the Paris model where new buildings are removed from the heritage core.

The assessment of heritage issues prepared for the application by Lovell Chen considers that the proposal is consistent with the Statement of Significance for HO500:

*The proposed works will alter the presentation of the precinct with the introduction of a slightly taller corner building in the location of the Windsor Annexe and the new tower at the back of the hotel.*

*While more visible in views looking east from Exhibition Street, as moving towards Spring Street, the annexe replacement will not alter the appreciation of the generally lower scale built form in the area or detract from views from Parliament House. For much of the year these views are obscured by mature Plane trees and even when not in leaf these trees filter the view. The greater height will be discernable but the change is not such that it will detract.*

*In considering the impact of the works on the Bourke Hill Precinct as a whole it is evident that they introduce strong new forms but not such that the values which go to the significance of the precinct are fundamentally altered. As has occurred with the tower construction at*

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*668 Bourke Street in the Bourke West precinct (HO501) and approved at 171 Collins Street in the Collins East precinct (HO504), these are heritage areas within a central city context where substantial scale change has and can be accommodated.*

The development does not directly affect pre 1880s boom buildings. While the tower will be taller element in the area it is located away from the lower scale pre 1880s boom development. Importantly it does alter the grain of subdivision pattern of the area.

We agree with Mr Morris that the pattern of development in Melbourne is to juxtapose modern and heritage development. In this respect we are comfortable that the tower will not undermine the low scale sense of the pre boom buildings when viewed from the surround streets and public spaces.

The proposal is of high architectural quality (as one would expect for a prestige hotel). We think that it will add to the architectural quality of the area.

The proposal allows the mix of uses to continue, and if any thing will make this mix more visible by increasing the active street frontages.

Further, we do not see that the development will create a precedent for the removal of low scale pre 1880s boom buildings.

We conclude:

**In terms of the impact of the proposal on the Bourke Hill Precinct as a whole, the values which form the significance of the precinct are not fundamentally altered.**

## **7.2 Building Height**

### **7.2.1 Specific issues**

Building height is controlled by:

- the zone,
- DDO2,
- DDO56.

These control overlap, and it is appropriate to consider the specific issues addressed by the controls.

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**To protect sunlight access to key public places and open space areas so as to provide a comfortable, pedestrian-friendly urban environment.**

The significant public places are Bourke Street, Spring Street and Little Collins Street and Gordon Reserve. The proposal has submitted detailed shadow diagrams and we have reviewed these in detail.

Bourke Street is to the north of the development and hence not affected by overshadowing. Spring Street is already shaded from the existing building and the situation will not change dramatically with the new buildings.

While there is the potential for some increase in shadows to Little Collins Street and Gordon Reserve from the tower, the proposal will not have a significant impact of sunlight to public places.

**To ensure that the height of new buildings reinforces the built form character of unique areas**

Close to the site it is only the street interface that is readily apparent to the viewer. The development will reinforce the character of streets at the street interface by increasing active frontages and releasing the historic building from the corner building by way of the re-entrant.

In the more distance views the corner building will not be particularly visible as it is comparable height to a number of surrounding buildings, and the tower will be viewed in the context of other towers in that end of the CBD.

In the middle distance, we believe the critical views will be:

- from Gordon Reserve.
- from Parliament steps.
- from Bourke Street near Exhibition Street.

The view from Gordon Reserve is the view most clearly impacted. We are comfortable that the setback and facade treatment of the tower means that its impact in the original hotel building will be acceptable. In respect of its impact on the character of the area, the tower will bring the characteristic Melbourne mix of taller new structures and lower scale heritage buildings closer to Bourke Street, introducing it into part of the Bourke Hill precinct.

It is important to note that the height controls provide for some mix of height in the area.

The corner building reinforces the parapet levels along Spring Street and Bourke Street. The City of Melbourne submitted that it should be one storey

lower. The proponent presented detailed costing to us showing that this would have a significant financial impact on the project.

The height of the corner building is important because of:

- its relationship to Bourke Street buildings, and views of Parliament House, and
- its relationship to the Hotel Windsor.

We do not see that lowering the height of the corner building has any real advantage as far as Bourke Street goes or views to Parliament. The height is perfectly acceptable in this context.

The assessment of heritage issues prepared for the application by Lovell Chen said:

*The ... [corner building] is visually separated from the existing building by a 7.5 metre wide and 5 metre deep glazed re-entrant which also provides a new access point. This allows the new building to take on a distinctive character without compromising the balance and harmony of the heritage building.*

*The separation ensures that the greater height of the new building does not overwhelm and allows the original Windsor Building to retain and to a degree re-emphasise its dominance and importance.*

*It is a building which carefully manages a slightly greater height to the street by releasing the north end of the old hotel such that its streetscape presence will be strongly reinforced.*

In terms of its relationship to the Windsor, we agree that because the new building will be separated from the Hotel Windsor by the re-entrant it will not undermine the contribution the Windsor makes to the character of the area, but will probably increase it.

It was submitted:

*If the corner building had been designed to directly abut the heritage building there may be an argument that the corner building should be reduced. However, the re-entrant at the corner of the heritage structure not only enhances the appreciation of the heritage building, but also enables the new corner building to stand separate, with a different set of principles with respect to height and bulk.*

*The fact the corner building will read as a separate building means that the proposed height is entirely appropriate in urban design terms. The height of the corner building is also necessary to accommodate the number of rooms to make the proposal viable.*

We have some concerns about the recreation and services stick. We accept the need for the structure, but consider that its height should be decreased. We do not see the need for it have a square cross section and think that other height-width ratios could be used that still result in an aesthetic outcome.

It was submitted:

*While it is possible to have a shorter pool, this would diminish the quality of the pool environment. More importantly it would remove an architectural feature that adds interest to the design of the corner building.*

We agree with this and we are comfortable with the stick projecting over Windsor Place.

### **To maintain the visual dominance of prominent landmarks**

A required outcome is the Parliamentary buildings 'remain dominant on the Bourke Hill skyline'.

We were shown the vista over the area from various parts of Parliament House. A particularly good view is to be had from the roof; this is not a view that is generally available.

The application included a number of photo montages from different points in the area, and we have made extensive site inspections. From the streets and public spaces around the Windsor and Parliament we can only conclude that the proposal would have no impact in terms of reducing the dominance of Parliament House.

There is, however, a new zinc clad roof top guest room abutting the two central towers that will clearly be seen from the streets and public spaces around the Windsor and Parliament. We do not believe that it does anything for the overall scheme or is required for the economic viability. It will undermine the prominence of the central towers on the Windsor.

### **Setback from laneway**

Under the zone controls towers should be set back from roads, and more detailed provisions apply under DDO56:

*Development abutting a Class 1 lane or Class 2 lane must meet a preferred maximum lane wall building height to lane width ratio of 5:1 (Lane wall building height is defined as the maximum height of the building on the lane alignment);*

Where a lane is also within a height control area under Schedule 2 to the Design and Development Overlay (DDO) the height of a wall abutting a lane should meet the lesser of:

- the maximum building height set out in Table 1 and 2 to Schedule 2 to the DDO; or
- the preferred maximum height to lane width ratio of 5:1.

### **Setbacks**

Any part of the development that exceeds the preferred 5:1 Building height along lane wall must be setback from the lane way. The minimum setback must be a distance equivalent to the width of the lane.

### **Interfaces**

On a corner site new development must meet the Building height along lane wall and Setback requirements at a point no less than 15 metres into the lane.

### **4.0 Decision guidelines**

Before deciding on an application, in addition to the decision guidelines listed at Clause 43.02-5, the responsible authority must consider:

- Whether tower forms are generally concealed from the view of a pedestrian within the lane therefore avoiding a canyon effect.

The control is written using 'must' but does not explicitly state that a permit cannot be granted. In fact it sets out decision guidelines, which would be redundant if the controls were mandatory.

The proposal does not meet the requirements of this Clause, as the tower element is not set back from the lane. There is no practical alternative to the location of the tower against the lane edge. The issue is whether the positive aspects of the development are sufficient to outweigh the negative effects of the tower on the laneway edge.

Windsor Place is not a highly trafficked lane with retail or active frontages.

Given the constraints of the site there is essentially a choice between the integrity of Winsor Place and the ongoing viability and integrity of the hotel. It is clear which is more important.

### **Shorter and fatter?**

It was suggested by the National Trust and the City of Melbourne that a shorter tower was to be preferred.

It is not possible to have a 'fatter' tower. A wider tower would severely impact on the ballroom, remove the light court, and reduce the setback to Spring Street.

Any reduction in height would need to be at the expense of hotel rooms. As discussed in Chapter 6 we accept the need to achieve the proposed number of rooms to make the hotel viable.

### 7.2.2 Conclusion on the height and massing

The proposal is a well thought out approach to achieving the additional floor space on the site while maintaining or reinforcing the significant features of the heritage building and the character of the surrounding area.

The style of development with its mix of higher and lower forms is typical of Melbourne development and is part of what makes up the character of Melbourne. The critical issue is whether the corner building and tower might undermine other valued characteristics. We do not see that they will.

We conclude:

**The height and massing of the proposal are generally appropriate in the context and in terms of the planning objectives for the area.**

We recommend:

**Alternative plans be prepared that:**

- **Reduce the height of the pool and services 'stick'.**
- **Remove the zinc clad roof top guest room abutting the existing heritage central towers.**

## 7.3 Detailed design issues

### Facade design

There was some discussion over the nature of the eastern facade of the tower and how this facade might be realised in detail, and how it might appear at night.

The facade manages to walk a fine line between enough visual complexity to fit with the visual richness of the area and the heritage buildings without so much complexity that it overwhelms the heritage building. This is a well thought out solution.

In terms of how it might appear at night we do not see this as an issue. At night the city is a mix of lights from taller buildings, and it would be

expected that some rooms will be lit, and many will not. The applicant does not claim that the curtain effect will work at night.

We do not see that there is any practical way, or any benefit in trying to maintain the back drop effect at night. It certainly would not justify the added expense and energy involved in externally lighting the facade, even if this could be achieved in a way that maintained the amenity of hotel guests.

### **Street interface**

While we understand the desire of the City Melbourne to increase the active street frontage down Windsor Place we do not see how this can readily be achieved given the need to locate services, car lift and loading in this area.

The current design provides for articulation and visual interest at the corner of Windsor Place. What it does not provide is any real active frontage along Windsor Place.

Windsor Place will never have significant lengths of active frontage, the current proposal and pattern of development preclude this. We do not see that the additional active frontage to Windsor Place is a priority.

It was also suggested that the proposal be set back from Bourke Street at ground level. We do not see that this is needed. The setback at Spring Street provides improved pedestrian circulation where the pedestrian flow is constrained by the station access. We do not see the need for a setback on Bourke Street.

### **Windsor Place wall**

It has been suggested that the red brick wall against Windsor Place should be kept at the base of the tower. The first 11 metres of this wall from Little Collins Street, complete with its heritage plumbing, will be retained.

We were advised that:

*The design team started the project with the aim of retaining the existing wall and investigated various propping strategies to hold the 23 metre wall up during the construction period.*

Retaining the wall would be time consuming and complicated, it would reduce the basement space available and would add more than \$1.25 million to the project.

*The overall heritage merit of retaining the wall is modest in the context of the overall heritage works to be undertaken; and does not justify the additional costs.*

We do not see that it is at all practical to retain this wall as part of the base of the tower. If it were retained it would mean the new tower sitting directly on the old wall. We are not sure that this would be an appropriate design outcome, and prefer the current proposal where the new buildings sit next to the retained and restored heritage building at ground level.

### **Colonnades**

The colonnades on Spring Street will be modified:

*The use of a contemporary glazed screen behind the arches will reintroduce a sense of depth at ground level while maintaining the existing internal areas largely intact.*

From a planning permit point of view this is a positive outcome in terms of street interface. Whether the detail is appropriate from a heritage point of view is a matter for Heritage Victoria.

### **Wind**

It was submitted that there were unlikely to be any significant adverse wind impacts from the development. This was based on Advice from MEL Consultants based on a qualitative assessment of surrounding development.

It was further submitted that there would be a range of techniques that could be employed to ameliorate any adverse impacts that might conceivably emerge that did not involve changes to the overall form of the building.

We accept that at this stage it appears that any wind problems that may arise can be managed as part of the detailed design.

We recommend:

**The permit includes a condition that:**

- **A wind study be carried out.**

### **Materials**

There is some concern over the precise materials to be used. We are satisfied with the broad approach to materials, but accept that there may be some detailed issues that require resolution.

We recommend:

**The permit includes a condition that:**

- **Further details be provided on the material palette to be used.**

## 7.4 Traffic and access

As vehicles arrive at the hotel the occupants will disembark at the front entrance and valet attendant will move the vehicle to the basement carpark.

The shortest route to the carpark is via a U-turn on Spring Street and right turns into Little Collins Street and Windsor Place. Drivers collecting cars from the basement will exit into Bourke Street, where they may U-turn and turn right into Spring Street. These manoeuvres will lead to numerous U-turns in both Spring and Bourke Streets that may be disruptive to trams.

There does not seem to be any ready solution to these concerns. It would be possible to eliminate some of these turns by making Windsor Place two way for a short distance. Because the traffic is valet parking there is better the potential to manage the way the cars travel to the car park.

We recommend:

**The permit includes a condition that:**

- **A Car Parking and Traffic Management Plan be prepared.**

There are some unresolved issues in relation to bicycle parking, but these are not of major concern.

We recommend:

**The permit includes a condition that:**

- **Bicycle parking and facilities be provided to the satisfaction of the Responsible Authority.**

The City of Melbourne sought a 4.5 metre clearance to the loading bay. We agree with the applicant that this is not possible not is it necessary in the circumstances.

## 7.5 Amenity impacts

A number of submissions raised concerns over the amenity impacts on nearby apartments and businesses.

Some of these concerns relate to the potential impacts during construction. These are not expected to be atypical of construction in the CBD. In terms of impacts on sun, daylight, views in apartments, and other issues raised, a number of these concerns are not dealt with by planning, and others are not relevant to the specific permissions required for the proposal. However, it is difficult to see that the proposal will have any undue adverse affect on surrounding properties.

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## **8. Potential for economic benefit to the State**

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### **8.1 Economic benefit**

One element of the case for a variation in height may be the potential for increased economic activity which the redevelopment will facilitate; thus the inclusion of a term of reference relating to the 'economic benefit' of the proposal.

In assessing the potential for economic benefit to the State, the components examined were whether there is sufficient *demand* for additional 5-star hotel rooms to warrant the Hotel Windsor redevelopment; and how the *supply* of such facilities may promote investment, employment, and tourism benefit.

#### **8.1.1 Evidence and submissions**

The Halim Group engaged Essential Economics Pty Ltd to prepare an 'Economic Analysis Report' for the redevelopment. This report provides the context to the redevelopment, and outlines the current situation, Melbourne's tourism outlook, the proposed redevelopment, and an assessment of economic benefit. This report was presented to the hearing by Mr John Henshall, Principal, Essential Economics.

In addition, Tourism Victoria prepared a Hotel Windsor 'Tourism Assessment'. This written assessment provided contextual information, a domestic and international demand outlook, Melbourne's 5-star hotel supply outlook, the concept of 'brand' Melbourne, and an economic assessment of the impact of the Hotel Windsor redevelopment. Mr Bill Renehan, Manager Investment and Infrastructure for Tourism Victoria, presented the assessment to the Advisory Committee.

A summary of the information presented in the 'Economic Analysis Report', and the 'Tourism Assessment' is provided below.

#### **Demand Contributors – Tourism Visitation Outlook**

The Economic Analysis Report discussed by Mr Henshall identified strong tourist visitation to Melbourne in the past decade (increasing from 1.03 million visitors pa in 2000, to 1.39 visitors pa in 2008). The report also identified projected strong visitor growth to Victoria (of which Melbourne attracts 94%) between 2009 and 2017. This is especially so amongst

international and domestic business visitors who are key consumers of 5-star accommodation.

The Report forecasts that between 2009 and 2017, international visitor nights are projected to increase from 30 million nights pa to 45 million nights pa, whilst domestic business visitor nights are projected to increase from 6.5 million nights pa to 7.1 million nights pa.

Figures of this order were also indicated by Mr Renehan from Tourism Victoria.

Mr Henshall identified that there are currently around 4000 5-star hotel rooms in Melbourne's CBD to cater for this demand (of which the Hotel Windsor currently contributes 180 rooms). He believes that since these 5-star rooms have experienced sustained high occupancy rates (80% or more) over the past decade, and international and domestic business visitation forecast are strong, the additional 152 5-star rooms proposed in the Hotel Windsor redevelopment are not likely to lead to an oversupply of accommodation in the luxury market.

Mr Renehan's research indicates that there are 4300 5-star hotel rooms in Melbourne's CBD, but still agrees that the additional rooms proposed in the Hotel Windsor redevelopment would not lead to overcapacity. On the contrary, he considers that new, improved 5-star stock is a key driver for increased visitation.

### **Supply Contributors – Investment, Employment, Tourism Benefit**

The Economic Analysis Report identifies economic outcomes expected to flow from the Hotel Windsor redevelopment including construction investment, employment during both construction and operational phases, and tourism attraction and visitor spending.

#### Investment

Mr Henshall, speaking to the Economic Analysis Report, identified an estimated construction cost for the redevelopment at around \$130 million. This investment would be applied to the capital and labour factors of production.

#### Employment

Assuming a 50/50 capital/labour investment, Mr Henshall stated that the redevelopment is expected to generate approximately 215 full-time equivalent (FTE) construction jobs pa over the life of the project (around 30 months).

Mr Henshall also identified, using an ABS employment multiplier, that some 345 FTE indirect jobs, associated with supplies and services to the project during construction, would be created annually over the construction period.

As well as construction jobs the Economic Analysis Report also identifies increased employment associated with the ongoing operation of the redeveloped Hotel Windsor. Mr Henshall estimates this to be a net increase of 135 FTE jobs over current employment levels. These additional jobs would be associated with room-servicing and hospitality. A redeveloped Hotel Windsor is expected to also provide a boost for non-accommodation revenue such as 'High Tea' patronage, and increases in functions, restaurant covers, and wedding receptions.

Again using an ABS employment multiplier he estimates that a further 175 FTE indirect jobs would be created on an ongoing basis.

On the basis of these figures, over 500 FTE jobs are expected to be generated during the construction period, and over 300 FTE jobs, ongoing, following construction.

### Tourism Benefit

The Economic Analysis Report states that 'Tourism is a major contributor to the Victorian economy and the accommodation sector is a major contributor to tourism revenue'. In supporting this line of argument, Mr Henshall identified that increased patronage associated with the Hotel Windsor redevelopment would create new and increased levels of visitor expenditure. Using basic assumptions, generally supported by Mr Renehan from Tourism Victoria, Mr Henshall estimated that additional ongoing visitor spending of \$13 million pa would be generated by the new rooms.

## **8.1.2 Discussion**

In discussion with Mr Renehan, we sought Tourism Victoria's opinion on the key elements presented in the Economic Assessment Report prepared by Essential Economics. Mr Renehan's view was that the economic assessment appeared accurate and realistic and that the figures presented for capital expenditure, employment creation, visitation projections and visitor spend were all reasonable and within Tourism Victoria's own expectations.

On the basis of the methodology undertaken for the Economic Assessment Report and the endorsement from Tourism Victoria, we accept the rationale relating to the need for further 5-star hotel capacity in Melbourne CBD and the potential economic benefits that this will generate in terms of:

- a construction investment of around \$130 million,

- generation of 215 FTE construction jobs and 345 FTE indirect jobs (associated with supplies and services) over the life of the project (around 30 months),
- an increase in ongoing operational employment of 135 FTE jobs (associated with room-servicing and hospitality) and a further 175 FTE indirect jobs, and
- an additional ongoing visitor spending of around \$13 million pa.

This assessment has been used to inform our recommendations.

Despite the acceptance of this information, we were still keen to pursue the issue of whether additional 5-star capacity was best provided at the Hotel Windsor or whether a new development in another Melbourne CBD location (ie Southbank or Docklands) would also be suitable (and without the heritage implications of the Hotel Windsor redevelopment).

The question '*Could additional 5-star hotel rooms be built elsewhere in the Melbourne CBD?*' was put to Mr Henshall at the hearing and to Mr Renehan at the subsequent meeting with the Advisory Committee.

In response, Mr Henshall said that the Hotel Windsor was a niche market which, after renovation, would provide a unique combination of historic elegance, iconic address, and modern facilities. This combination could not be achieved in a new development.

Mr Stuart Morris stated at the hearing that if the Hotel Windsor was redeveloped, an 'ultra-premium' price, above the normal 5-star room rate could be charged. This would provide a bonus in terms of maintaining and operating the heritage hotel.

Mr Renehan, from Tourism Victoria, in discussing whether additional 5-star hotel rooms could be built elsewhere in the Melbourne CBD, stated that the heritage aspects of the Windsor and its prime location (for theatre, sports, shopping, cafes/bars) were very significant attractors to 'high yield' visitors, who sought the prestige and proximity of the address. It is unlikely, he said, that a new development elsewhere could match these advantages.

As an observation Mr Renehan said:

*People will want to be associated with the iconic name and prestigious address of the old building, but they will want to stay in the modern facilities of the new building.*

### 8.1.3 Conclusion

On the basis of the evidence presented, we accept:

**There is sufficient latent demand in the Melbourne CBD 5-star hotel accommodation market to justify the additional capacity proposed by the redevelopment of the Hotel Windsor.**

**The Hotel Windsor will provide some benefit to the State economy through construction investment, generation of construction and associated jobs, increasing operational and associated employment, and additional ongoing visitor spending.**

Whilst this will not be massive on a State-wide scale, it will be of incremental benefit to State investment and employment growth and will support Melbourne's reputation as a great city for sports, culture, shopping, food and nightlife. The proposed development especially that on the corner site (No. 1 Bourke Street), is also likely to stimulate both the number and quality of small businesses in the precinct.

We also accept that additional 5-star capacity is most effectively offered through an upgrade of the Hotel Windsor rather than a new development within the Melbourne CBD. Such an upgrade will maintain the Hotel's 5-star rating and will offer the unique experience to a niche market with the potential to charge 'ultra-premium' tariffs to a 'high yield' clientele.

Given these conclusions, we believe:

**The Hotel Windsor redevelopment should be supported in terms of an assessment of economic benefit to Victoria and more specifically to the Melbourne CBD.**

## 8.2 Ability of the proponent to complete the project

The Hotel Windsor is an iconic Melbourne landmark, held in the highest esteem both locally and internationally. As part of the consideration of the granting of a planning permit, it is essential to ensure the Halim Group, as the proponent, has the financial capacity and the professional competence to undertake the proposed redevelopment effectively and within expectations of quality and timeliness.

The importance of this is highlighted even further since a previous planning permit to refurbish the existing building, granted in 2008, was not fully

pursued by the owners because the refurbishment was considered to be financially prohibitive.

This component of the terms of reference requires an investigation of the profile of the Halim Group, its financial resources and the Group's funding strategy for the redevelopment.

### 8.2.1 Evidence and submissions

Mr Morris presented the hearing with two documents relating to the ability of the proponent to complete the project:

- a profile of the Halim Group, and
- a statement of Halim Group Finance Resources and Funding Strategy (Confidential).

In addition, following questioning at the hearing, a statement from Adipoetra Halim, Director of the Halim Group and a letter from legal and financial consultants Nevett ford was submitted to the Advisory Committee.

#### Profile of the Halim Group

In addressing the hearing, Mr Morris stated that the Halim Group Pty Ltd (ACN 089 961 375) has operated in Australia since 1998 focussing on property development. The family company also operates in Indonesia where it is involved in varied ventures including banking and property. The Halim Group Australian headquarters are located at 125 Collins Street, Melbourne.

Mr Morris cited a number a major developments within Melbourne in which the Halim Group has been, or proposes to be, involved. These include:

- Watergate, Docklands – a 350 apartment development which was undertaken as a joint venture with Pan Urban.
- Site One, Docklands – stage 2 of the Watergate precinct involving mixed commercial, office and retail.
- 606 St Kilda Rd – Halim Group undertook the construction management role with Walton Constructions and delivered the project on time and on budget.
- Lacrosse, Docklands – A joint venture to be undertaken with Pan Urban providing 8,300 sqm of retail and office suites.

In referring to these projects, Peter Lumb of the legal and financial consultants Nevett ford, stated in a letter to the Advisory Committee:

*... the (Halim) group has been required to undergo stringent due diligence enquiries and observe the requirements of their financiers.*

Mr Lumb continued:

*The Group has throughout performed its agreed obligations in dealings with its financiers, joint venture partners and third parties. We are not aware of any event or circumstances which would result in (the) Halim Group being regarded as unsuitable to conduct the proposed redevelopment of the Hotel Windsor.*

### **Financial resources and funding strategy for the redevelopment**

According to documents tabled at the hearing the Halim Group is structured with 11 group entities which collectively have a gross asset base of over \$130,000,000 (as at 30 June 2008). In a letter tended to the Advisory Committee from Phillip Rocher, Director Tax Support Network, he stated:

*...we believe the nett worth of the (Halim) group as at 30 June 2009 was approximately \$39 million and this remains a reasonable estimate of its value at 30 June 2009.*

The increased ownership stake of the Hotel Windsor by the Halim Group (now 100%) has since added approximately \$10 million in nett assets to the Group.

In a confidential letter to the Advisory Committee from Mr Glenn Coupar, Development Manager, Halim Group (dated 9 December 2009), the funding strategy for the proposed Hotel Windsor redevelopment was outlined. Mr Coupar's letter said that the Halim Group had undertaken positive preliminary discussions with financiers which can be further progressed if planning approvals are secured. He states that the Group has strong relationships with the NAB, Bank of Western Australia, and ANZ Bank. This is corroborated by letters from NAB and the Bank of Western Australia. He also included an extract from an ANZ Bank 'terms sheet' document which indicated that the Halim Group, as part of a joint-venture, was in the process of securing funding from the ANZ Bank to undertake the Lacrosse, Docklands project.

A letter to the Directors, Windsor Hotel Holdings Pty Ltd, from Mr Lai Kim Phua, Senior Business Development Manager Bank of Western Australian Ltd, states that the Bank of Western Australian Ltd is the existing financier for the Hotel Windsor and is committed to ongoing development.

In this letter Mr Lai states that the:

*Bankwest would welcome the opportunity to consider the funding required. ... subject to us completing and being satisfied with our due diligence....*

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### **Significance of investor/developer – owner/occupier nexus**

Mr Renehan from Tourism Victoria stressed the significance of the owner/occupier and investor/developer nexus, which the Halim Group offers.

His belief is that because the Group will undertake the full suite of roles, from investor to developer, and from owner to occupier, the development is more likely to be of high quality than if it was undertaken purely as a speculative venture. His rationale is that the Halim Group will have a long term interest in the property, well beyond the construction period.

Mr Morris stated at the hearing that at the completion of the redevelopment, the Hotel Windsor will continue to be operated by the existing managers, the Halim Group. The current CEO Mr David Perry has managed 5-star hotels in Australia and overseas and the CFO Mr Agit Rou is also experienced in 5-star hotels.

Mr Morris also indicated that the Hotel Windsor intends to continue operating as an independent entity, rather than as part of a hotel chain. This, he suggests, will further support the ‘ultra-premium’, ‘high yield’ niche market segment.

### **8.2.2 Discussion**

In considering this term of reference, in the absence of a full due diligence process (which is outside the scope of the Advisory Committee) the key questions which the Advisory Committee considered are:

#### **Does the Group have a stable and transparent structure?**

The Halim Group (ACN 089 961 375) is a family concern operated by four Directors who are siblings. The Directors are Adipoetra Halim, Dharmapoetra Halim, Syahpoetra Halim, and Yulia Halim. All four are Australian Permanent Residents and were educated at Melbourne University.

Although operating in Australia, Indonesia and New Zealand, the Halim Group headquarters is based in Melbourne

#### **Does the Group have a sufficient asset base and nett worth to undertake a project of the scale proposed?**

The Halim Group is a large concern with business interest throughout Australasia.

In Indonesia, the Group's interest is centred on the operation of their privately owned bank, Bank Mestika. We are advised that this is ranked as the fifth largest private bank in Indonesia.

In Australia the Halim Group is structured as 11 group entities which have gross assets of over \$130,000,000 (as at 30 June 2008) and a nett worth of approximately \$39 million.

**Does the Halim Group have a credible strategy to raise the finance necessary for the project?**

The Halim Group has provided documents to the Advisory Committee indicating preliminary discussions as part of a funding strategy for the proposed Hotel Windsor. The progression of this strategy is contingent upon the granting of the planning permit for the redevelopment.

The Group appears to have good relations with the NAB, Bank of Western Australia, and ANZ Bank, and is in the process of securing joint-venture funding from the ANZ Banking Group to undertake the Lacrosse Docklands project.

A letter from the Bank of Western Australian Ltd states that Bankwest would welcome the opportunity to consider the funding required, subject to the Bank completing and being satisfied with a due diligence investigation.

**Is the Group in the business of property development and hotel management?**

Since 1998 the Halim Group has engaged in large property development projects in and around Melbourne CBD, either in their own right or as joint venture partners. In some projects they have undertaken the construction management role. Many of these projects are of a similar scale to that proposed.

In undertaking these projects the Halim Group has been required to undergo stringent due diligence enquiries and observe the requirements of planning, finance, and building control organisations.

The Halim Group intends to continue to operate the Hotel Windsor and has an experienced management group headed by CEO Mr David Perry and CFO Mr Agit Rou. Both have considerable experience in managing 5-star hotels in Australia and overseas.

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**Is the Group's interest in this development speculative or strategic?**

From the evidence presented, it is apparent that the Halim Group has a long term strategic intent in relation to the Hotel Windsor, rather than a speculative interest.

The Group proposes to undertake the full spectrum of roles relating to the Hotel Windsor, from investor to developer; and from owner to occupier.

The position put to the Advisory Committee is that because the Halim Group will have a long term interest in the property well beyond the construction period, the development is more likely to be of high quality than if it was undertaken purely as a speculative venture.

We accept that for niche market hotels it is an advantage **not** to be part of a hotel chain.

**Is there any undisclosed information regarding the Halim Group that the Advisory Committee should be aware of?**

At the hearing, we asked Mr Morris whether there was there any further relevant information that the Advisory Committee should know about the Halim Group or its Directors, prior to making a recommendation.

Mr Morris stated that he would further advise the Committee on any relevant matters.

In response to this question, letters were received from Mr Peter Lumb of Nevett ford (23 December 2009) and Mr Adipoetra, Director, Halim Group (23 December 2009).

Mr Lumb stated:

*We are not aware of any event or circumstances which would result in (the) Halim Group being regarded as unsuitable to conduct the proposed redevelopment of the Hotel Windsor.*

Mr Adipoetra, Director, Halim Group stated:

*I can confirm to the members of the advisory committee that the Halim Family and its directors have no additional information to provide to the panel involving their business or personal dealings that may evoke an element of consternation.*

### 8.2.3 Conclusion

On the basis of the information tended at the hearing and subsequent documents, we conclude:

**The Halim Group has:**

- **a stable and transparent structure,**
- **an asset base and nett worth sufficient for it to undertake a project of the scale of the Hotel Windsor redevelopment,**
- **a credible strategy to raise the finance necessary for the project,**
- **appropriate experience in property development and hotel management, and**
- **a long term strategic, rather than speculative intent for the Hotel Windsor.**

Further, we have been advised by the Group and their legal and financial consultants that there is no additional information to suggest the Halim Group lacks financial capacity, professional competence, or presents a governance or legal risk to the proposed redevelopment.

Given these conclusions, we believe:

**The Halim Group has the skills, experience and resources to complete the project.**

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## 9. Conclusions and Recommendations

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### Assessment of Application for Planning Permit no. 2009/1687

We have made:

- An assessment of all issues relating to the Application for Planning Permit No 2009/1687 for the Hotel Windsor redevelopment.
- An assessment of any submissions and referral responses made during the course of the Application for Planning Permit no. 2009/1687 or made directly to the Advisory Committee.
- An economic assessment of the applicant's justification for exceeding the suggested height controls in DDO2. This should include comment on the applicant's requirement for the proposed number of rooms and other hotel facilities to allow the project to be economically viable and operate at a 5-star standard.

We have concluded:

1. In terms of the impact of the proposal on the Bourke Hill Precinct as a whole, the values which form the significance of the precinct are not fundamentally altered.
2. The height and massing of the proposal are generally appropriate in the context and in terms of the planning objectives for the area.
3. Doing nothing will only see the hotel and the building decline.
4. The hotel is unlikely to be refurbished under the existing permit, and a development within the 'preferred' height limits will not be viable.
5. At least 300 rooms together with conference and leisure facilities are required to allow the project to be economically viable and operate at a 5-star standard.
6. The development as proposed is an economically viable scheme that could attract bank finance.

In respect of specific changes requested we have not found any of these to be justified.

The Applicant has no objection to the majority of conditions proposed by the City of Melbourne and in the design advice of DPCD and suggested that the

details of conditions could be resolved through consultation with DPCD prior to the issue of a permit (or NOD if the Applications submission regard the Heritage Overlay is not supported).

**We recommend that a permit be granted subject to typical conditions to be resolved between the applicant and DPCD, but including conditions that:**

- **Alternative plans be prepared that:**
  - **Reduce the height of the pool and services 'stick'.**
  - **Remove the zinc clad roof top guest room abutting the existing heritage central towers.**
- **A wind study be carried out.**
- **A Car Parking and Traffic Management Plan be prepared.**
- **Bicycle parking and facilities be provided to the satisfaction of the Responsible Authority.**
- **Further details be provided on the material palette to be used.**

#### **Comment on the Statement of Significance for the Bourke Hill Precinct**

We have concluded:

7. The Statement of Significance is reasonably clear, and there are no obvious gaps or contradictions. Using the Statement of Significance in a decision making process would not lead to important factors being missed.

#### **Making height controls mandatory**

We have concluded:

8. The 'default' position in the Victorian planning system is for discretionary controls unless there are persuasive reasons to mandate an outcome.
9. Mandatory height provisions should only be applied where there is a detailed and defined planning outcome to be achieved and there has been a detailed analysis of alternative urban forms.
10. It would be contrary to the broader policy objectives of planning and the Melbourne Planning Scheme to make current discretionary controls mandatory:
  - In Design and Development Overlay Schedule 2.
  - In the area bounded by Spring Street, Little Collins Street, Exhibition Street and Little Bourke Street.

11. It is no longer clear (if it ever were clear) how the specified heights in DDO2 related to the objectives and outcomes to be achieved.
12. The DDO2 height controls are a mix of mandatory, preferred, and 'trigger' heights for a more detailed analysis against objectives. They do not always express a height that relates to the objectives or outcomes to be achieved.

### **An assessment of the potential for economic benefit to the State**

We have concluded:

13. There is sufficient latent demand in the Melbourne CBD 5-star hotel accommodation market to justify the additional capacity proposed by the redevelopment of the Hotel Windsor.
14. The Hotel Windsor will provide some benefit to the State economy through construction investment, generation of construction and associated jobs, increasing operational and associated employment, and additional ongoing visitor spending.
15. The Hotel Windsor redevelopment should be supported in terms of an assessment of economic benefit to Victoria and more specifically to the Melbourne CBD.

### **The ability of the proponent to complete the project**

We have concluded:

16. The Halim Group has:
  - a stable and transparent structure
  - an asset base and nett worth sufficient for it to undertake a project of the scale of the Hotel Windsor redevelopment
  - a credible strategy to raise the finance necessary for the project
  - appropriate experience in property development and hotel management
  - a long term strategic, rather than speculative intent for the Hotel Windsor.
17. The Halim Group has the skills, experience and resources to complete the project.