

**Draft Melbourne Planning Scheme Amendment C401melb
1 Spring Street and 21-25 Flinders Lane, Melbourne**

Advisory Committee Report

Planning and Environment Act 1987

1 May 2023

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

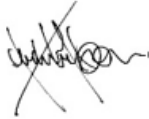
1 Spring Street and 21-25 Flinders Lane, Melbourne Advisory Committee Report

Draft Melbourne Planning Scheme Amendment C401melb

1 May 2023



Sarah Raso, Chair



Associate Professor Andrew Hutson, Member



Doctor Timothy Hubbard, Member



Professor Roz Hansen AM, Member

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Glossary and abbreviations

1 Spring Street Heritage Application	Heritage application No P33300, for works to 1 Spring Street
Amendment	draft Melbourne Planning Scheme Amendment C401melb
CCZ	Capital City Zone
CMP	Conservation Management Plan
Council	Melbourne City Council
DDO01	Design and Development Overlay Schedule 1
DDO10	Design and Development Overlay Schedule 10
DELWP	Department of Environment, Land, Water and Planning (former)
DoT	Department of Transport (former)
Executive Director's Refusals	Executive Director's resolution to refuse the Heritage Applications
Heritage Act	<i>Heritage Act 2017</i>
Heritage Council Review Report	Heritage Council Regulatory Committee report to the Minister on 27 May 2022
Heritage Permit Applications	Heritage applications P33300 and P33301
Heritage Victoria Policy on Reasonable or Economic Use	Heritage Victoria Policy on Reasonable or Economic Use, June 2021
Heritage Victoria Principles for Considering Change	The Heritage Victoria Principles for Considering Change to places in the Victorian Heritage Register document, dated December 2022
Milton House Heritage Application	Heritage application No P33301, for works to Milton House
Minister	Minister for Planning
PE Act	<i>Planning and Environment Act 1987</i>
Plan Melbourne	Plan Melbourne 2017-2050: Metropolitan Planning Strategy
Proposal	Partial demolition of existing structures on the subject land and development of a second office tower in place of the existing plaza and podium fronting Flinders Lane. Internal alterations and new openings to Milton House and modifications to the podium levels (theatrette, roof garden and conference rooms) of Shell House

Revision C plans	Architectural plans dated 16 February 2021 marked Revision C
Revision G plans	Architectural plans dated 22 February 2022 marked Revision G
Revision J plans	Architectural plans dated 13 January 2023 marked Revision J
SCO	Special Controls Overlay
Seidler	Harry Seidler & Associates
Shell House	1 Spring Street, Melbourne
Statement of Design Principles	Statement of Design Principles - 1 Spring Street, (Nov 2020)
subject land	1 Spring Street and 21-25 Flinders Lane, Melbourne

Overview

Summary	
Amendment	Draft Melbourne Planning Scheme Amendment C401melb
Heritage Victoria Permits	P33300 and P33301
Common name	1 Spring Street and 21-25 Flinders Lane, Melbourne
Brief description	<p>Proposed redevelopment of the subject land, including partial demolition of Shell House and Milton House, and the development of a multi storey commercial building, to be facilitated through:</p> <ul style="list-style-type: none"> - draft Amendment C401melb which seeks to introduce a site-specific Incorporated Document and Specific Controls Overlay pursuant to section 20(4) of the <i>Planning and Environment Act 1987</i> - Heritage Victoria Permit Applications P33300 and P33301
Subject land	1 Spring Street and 21-25 Flinders Lane, Melbourne
The Proponent	Phillip Nominees Pty Ltd
Planning Authority	Minister for Planning
Exhibition	Heritage Victoria Applications were exhibited for 14 days from 17 March to 31 March 2021
Submissions	<p>93 submissions in relation to P33300 and 91 submissions in relation to P33301</p> <p>See Appendices B and C</p>

Committee process	
The Committee	Sarah Raso (Chair), Prof Roz Hansen AM, Dr Timothy Hubbard, Associate Prof Andrew Hutson
Supported by	Hayley Becker, Manager Major Project, Planning Panels Victoria
Directions Hearings	29 July 2022, 24 August 2022 and 1 February 2023
Committee Hearings	6, 7, 8, 9, 10, 20, 21 and 22 March 2023
Site inspections	<p>Accompanied, 18 August 2022 of Shell House and Milton House</p> <p>Accompanied, 20 February 2023 of 129 Harrington Street, The Rocks; 225 George Street, Sydney; 264 George Street, Sydney; 9 Castlereagh Street, Sydney; 25 Martin Place, Sydney and 1 Bligh Street, Sydney</p> <p>Accompanied, 6 March 2023 of Shell House</p> <p>Accompanied, 7 March 2023 of Milton House</p>
Parties to the Hearing	See Appendix D
Date of this report	1 May 2023

Executive summary

Phillip Nominees Pty Ltd (the Proponent) owns the land at 1 Spring Street and 21-25 Flinders Lane, Melbourne (the subject land), being the land at the south-easternmost corner of Melbourne's 'Hoddle Grid'.

The Proponent seeks to:

- introduce a new commercial tower in the north-east portion of the subject land
- make modifications to tie in the northern aspects of the lower levels of 1 Spring Street, and to the northern plaza area, and the existing relationship to Milton House.

Specifically, it is proposed to partially demolish existing structures on the subject land and develop a second office tower in place of the existing plaza and podium fronting Flinders Lane. Internal alterations and new openings are proposed to Milton House as well as modifications to the podium levels (theatrette, roof garden and conference rooms) of Shell House (the Proposal).

The development is proposed by way of:

- draft Melbourne Planning Scheme Amendment C401melb (the Amendment) which proposes to apply the Specific Controls Overlay (Clause 45.12) to the subject land and introduce an Incorporated Document at Clause 72.04
- applications to Heritage Victoria under the *Heritage Act* 2017 for works to a registered place.

The Amendment was submitted to the Minister for Planning for approval pursuant to section 20(4) of the *Planning and Environment Act* 1987. The Department of Environment, Land, Water and Planning, Melbourne City Council and the Department of Transport were consulted.

Both 1 Spring Street (VHR HO2365) and Milton House (VHR HO582) are listed on the Victorian Heritage Register. As such a permit is required for works under the *Heritage Act* for both places.

The Proponent applied to Heritage Victoria for permits for works to both registered places. The applications were advertised, and submissions received. The Executive Director, Heritage Victoria determined to refuse both permit applications because the proposed development would substantially impact the cultural heritage significance of heritage places. The Proponent requested a review by the Heritage Council of the Executive Director's decision.

The Minister for Planning called in the heritage permit applications and the Amendment and established this Advisory Committee to:

- review and assess all relevant matters concerning the development proposal and the heritage permits, including all submissions made
- review and assess all relevant matters concerning Amendment, including statutory planning, built form and urban design considerations.

Key issues raised in relation to the heritage permit applications included:

- the extent to which the demolition and modification proposed for parts of 1 Spring Street and Milton House would affect its cultural heritage significance
- the extent to which the addition of the proposed Tower 2 in the north-east portion of the subject land, and the associated changes to the ground floor planes, would affect the cultural heritage significance of 1 Spring Street and Milton House

- the extent to which refusal of the applications would affect the reasonable or economic use of 1 Spring Street or Milton House.

Key issues raised in relation to the Amendment included:

- whether the proposal represents an appropriate outcome having regard to the considerations of the *Planning and Environment Act 1987* and the Melbourne Planning Scheme
- whether the architecture is of a sufficient quality to enhance or improve the existing design and form of the subject land with particular focus on the northern aspect
- whether the proposed variations to the requirements of Design and Development Overlay Schedule 1 and Design and Development Overlay Schedule 10 are justified, appropriate and able to be suitably accommodated by approval of the Incorporated Document.

Heritage and Planning Assessment

The subject land has been described as an idiosyncratic or extraordinary site, that presents both challenges and opportunity. The challenge is the heritage imperatives of the land, and the opportunity to adapt and reuse heritage assets to supplement these with new built form that will support the heritage values of the land.

It was not submitted by any party that Melbourne should not aspire to introduce new and excellent architecture. The question became whether the subject land is capable of integrating bold and new architecture, intelligently and respectfully, to preserve what is valued and to ensure future generations are afforded new floor space, opportunity, and superior urban design experiences.

The task for this Committee is to recommend whether the proposal is successful in respecting the cultural heritage significance of 1 Spring Street and the valued qualities of architect Harry Seidler's design of the original building, and separately Milton House. The Committee has had the benefit of observing the continued input and guidance of Harry Seidler & Associates' practice in the Proposal.

The Committee concludes the demolition and modification proposed for parts of 1 Spring Street and Milton House are acceptable and will not inappropriately affect the cultural heritage significance of either place. In relation to Milton House, the Committee considers the scope of internal works warrants further consideration and has recommended that a Conservation Management Plan should be prepared and approved prior to the submission, approval and endorsement of final demolition plans.

The Committee accepts the proposed tower will not affect the heritage significance of either place. The architectural strategy has adapted Shell House to create a new, attractive and usable northern plaza that is in keeping with the philosophy of the Seidler architectural practice and designed a tower that respects both heritage places and is physically separated from 1 Spring Street and Milton House. While the tower includes a substantial overhang to Milton House, the design is clever and respectful and represents an excellent technique for integration of form and conservation of heritage.

In relation to the reasonable and economic use of the heritage places, the Committees finds the proposal would only have a limited effect on the reasonable and economic use of the heritage

places. To overcome a refusal under section 101(2)(a), further evidence would need to have been called on this point.

In terms of the planning assessment, the Committee concludes the Amendment is strategically justified and represents a practical approach to Central City urban design and land use outcomes and contemporary architectural excellence. In relation to design and built form, the Committee accepts the impacts of the Proposal are satisfactory on the urban context, the pedestrian entry to Shell House and the relationship to the existing forms of Shell House and Milton House. The Committee concludes the proposed development represents an appropriate response to the design objectives of Design and Development Overlay Schedules 1 and 10. The proposed variations to the requirements of both overlays are justified and appropriate and can be suitably accommodated, subject to conditions in the Incorporated Document.

The Committee has considered the Proposal against the relevant legislative and policy framework and has had regard to both heritage and planning implications. The Committee considers the Proponent has successfully incorporated excellent design and change carefully and in the context of respecting heritage values. From a physical, functional and economic perspective, the proposed development will make a positive contribution to this part of the Hoddle Grid while demonstrating the ability to reconcile new and old architecture, including an appropriate separation and juxtaposition of scale.

For the reasons outlined in this report, the Committee recommends the Minister for Planning should approve the Proposal, subject to the following recommendations:

- 1. Prepare and approve Melbourne Planning Scheme Amendment C401melb by applying the Specific Controls Overlay to the subject land and introducing the Incorporated Document at Clause 72.04 subject to the conditions as shown in Appendix G, which includes a condition to:**
 - a) modify the architectural plans prepared by Ingenhoven, Architectus and Harry Seidler and Associates Pty Ltd dated 13 January 2023 and marked Revision J to show the redesign of the stairs up to the Level 3 roof garden from Level 2 in accordance with SK—221, SK-222 and SK-223 dated 20 March 2023.**
- 2. Issue Heritage Permit P33301, subject to the conditions as shown in Appendix H, which includes conditions to:**
 - a) modify the Milton House Demolition Plans prepared by Ingenhoven, Architectus and Seidler dated 7 March 2023 and marked Revision K to show:**
 - the retention of the rear staircase and subsequent relocation of the lift
 - any changes to the internal works as recommended by the Conservation Management Plan
 - b) require the preparation of a Conservation Management Plan for Milton House for approval by Heritage Victoria.**
- 3. Issue Heritage Permit P33300, subject to the conditions as shown in Appendix I.**

1 Introduction

1.1 The Committee

The Minister for Planning appointed the 1 Spring Street and 21-25 Flinders Lane, Melbourne Advisory Committee on 24 June 2022 pursuant to section 151 of the *Planning and Environment Act 1987* (PE Act) comprising:

- Ms Sarah Raso (Chair)
- Prof Roz Hansen (Member)
- Dr Timothy Hubbard (Member)
- Assoc Prof Andrew Hutson (Member).

The Committee was assisted by Ms Hayley Becker, Manager, Major Projects from the Office of Planning Panels Victoria.

1.2 The Committee's role

The Minister for Planning signed Terms of Reference (Document 1 and Appendix A) for the Committee on 24 June 2022. The Terms of Reference set out the scope of the Committee's role and how it is to undertake its task.

The purpose of the Committee as set out in Clause 2 Terms of Reference is:

...to advise the Minister for Planning on the appropriateness of draft Amendment C401melb and called-in heritage permits P33300 and P33301.

Clause 16 required the Committee to:

- a) Review and assess all relevant matters concerning the proposal, including the heritage permits, including all submissions made; and
- b) Review and assess all relevant matters concerning the draft Planning Scheme Amendment C401melb, including statutory planning, built form and urban design considerations.

Clause 17 required the Committee to inform itself in anyway it sees fit, and must consider all relevant matters, including, but not limited to:

- a) Relevant provisions of the Heritage Act.
- b) All submissions or objections received by Heritage Victoria pursuant to section 95 of the Heritage Act.
- c) The report prepared by the Heritage Council Regulatory Committee dated 27 May 2022.
- d) Relevant provisions of the PE Act and the Melbourne Planning Scheme, including any adopted plans, strategies or planning scheme amendments.
- e) The submissions and views of the applicant, Heritage Victoria, Melbourne City Council, DELWP and the Department of Transport.
- f) All relevant material prepared by or for the applicant or otherwise provided to the Advisory Committee, including any amended application material submitted.

Clause 19 required the Committee to provide the following parties with an opportunity to make a submission and be heard:

- Heritage Victoria
- Melbourne City Council (Council)
- the Proponent

- Department of Environment, Land, Water and Planning (DELWP)
- Department of Transport (DoT).

DELWP and DoT chose not to present a submission at the hearing. DoT was a statutory referral authority to the draft amendment and lodged a written submission which the Committee has had regard to.

Clause 24 requires the Committee to produce a written report for the Minister for Planning (Minister) which provides:

- a) An assessment of all relevant matters relating to draft Planning Scheme Amendment C401melb and any amended application material submitted to it.
- b) An assessment of all relevant matters relating to the heritage permit applications and any amended application material submitted to it.
- c) A recommendation on any changes required for the proposal to be considered acceptable on heritage grounds and matters relevant to determination of the review under the Heritage Act. Recommended changes should be consistent with the committee's assessment of draft Planning Scheme Amendment C401melb.
- d) An assessment of all submissions to the Advisory Committee.
- e) Any other relevant matters raised during the Advisory Committee hearing.
- f) A list of persons who made submissions considered by the Advisory Committee.
- g) A list of persons consulted or heard.

1.3 Site inspections

The Committee undertook comprehensive accompanied and unaccompanied site inspections of both 1 Spring Street and Milton House prior to and during the Hearing.

At the request of the Proponent, the Committee undertook an accompanied walking tour of Seidler buildings in Sydney. Mr Greg Holman of Harry Seidler & Associates (Seidler) led the tour, which included a visual inspection of:

- Cove Apartments, 129 Harrington Street, The Rocks (Seidler integrated residential tower, integrated with heritage context, similarities in setting and proportion to proposal)
- Grosvenor Place, 225 George Street, Sydney (Seidler commercial tower, adapted plaza and commercial spaces)
- Australia Square, 264 George Street, Sydney (Seidler commercial tower, adapted public open space)
- Capita Centre, 9 Castlereagh Street, Sydney (Seidler commercial tower, adapted plaza and commercial spaces, sloping site)
- MLC Centre, 25 Martin Place, Sydney (Seidler commercial tower, adapted commercial plaza and spaces)
- 1 Bligh Street, Sydney (tower designed by Ingenhoven & Architectus).

The site inspection attendees were:

- Seidler: Mr Holman
- All Committee members and Ms Becker
- Heritage Victoria: Ms Stairmand
- Council: Ms Drakos, Mr Gard'ner
- Proponent: Mr Townshend KC, Ms Peppler, Ms Townshend.

Mr Holman led an inspection of 1 Spring Street during Day 2 of the Hearing, and Mr Lovell led an inspection of Milton House during Day 2 of the Hearing.

The Committee thanks the Proponent for facilitating the accompanied site inspections.

1.4 Background

The Proponent provided a detailed background to the draft Amendment and Heritage Permit Applications in its Part A submission, including a chronology of events. Council added to the chronology of events and the Committee has summarised these in Table 1.

Table 1 Chronology of events

Date	Draft Amendment	Heritage Permit Applications
26 June 2020	Request by Proponent for an initial pre-application meeting with DELWP and Council.	
5 July 2020	Consolidated DELWP and Council pre-application comments circulated to Proponent.	
4 August 2020	Report issued by the Office of the Victorian Government Architect following review of the proposal by the Victorian Design Review Panel.	
11 November 2020	Proponent submitted the Amendment to the Minister pursuant to section 20(4) of the PE Act, seeking to facilitate planning approval for the proposed development under the Specific Controls Overlay and an Incorporated Document, including a set of architectural plans marked Revision B.	Proponent applied to Heritage Victoria, for two permits for works to registered places pursuant to the Heritage Act, to facilitate the proposed development, includes: <ul style="list-style-type: none"> - Application No P33300, for works to 1 Spring Street (the 1 Spring Street Heritage Application) - Application No P33301, for works to Milton House (the Milton House Heritage Application) (together, the Heritage Permit Applications).
21 December 2020		Heritage Victoria provided a request for further information letter in both Heritage Applications.
22 February 2021		Proponent provided a response to the Heritage Victoria requests for further information, including an updated set of architectural plans dated 16 February 2021, marked Revision C (Revision C plans).
17 to 31 March 2021		Advertising occurred for the Heritage Applications and public submissions pursuant to section 95 of the Heritage Act.
16 and 29 April 2021		Heritage Victoria requested further information, which was provided on 29 June 2021, principally by way of a report from Lovell Chen responding to submissions.

Date	Draft Amendment	Heritage Permit Applications
23 April 2021		Council lodged a submission pursuant to section 100 of the Heritage Act.
May 2021		The Heritage Applications were referred to the DELWP, who declined to comment.
4 June 2021		A meeting was held between officers of Heritage Victoria, representatives of the Proponent and a representative of the DELWP, to discuss potential alternative proposals for the subject land.
23 June 2021	DELWP consulted with Council and DoT.	
29 June 2021		Proponent provided a written response to the submissions received.
4 August 2021		The Executive Director of Heritage Victoria resolved to refuse the Heritage Applications (Executive Director's Refusals).
12 August 2021	Proponent submitted an initial response to Council's preliminary review (urban design referral comments and DDO01 issues).	
27 August 2021	Proponent supplied a Plaza Strategy to Council.	
7 September 2021		Proponent applied to the Heritage Council for review of the Executive Director's Refusals.
7 September 2021	Proponent wrote to the Minister seeking a call in of the Heritage Permit Applications, and that the Amendment and Heritage Permit Applications be referred to an Advisory Committee and reviewed in a single forum.	
22 September 2021	Minister wrote to the Proponent to clarify the terms of the request and to seek clarification on the intention for amended plans to be provided.	
October and November 2021	Proponent provided further architectural material to Council showing potential modifications to the plaza and lower portion of the proposed tower.	
10 November 2021	Minister: <ul style="list-style-type: none"> called in the Heritage Permit Applications and the Amendment requested the Heritage Council provide him with a report on the review pursuant to section 113(1)(b) of the Heritage Act. The Minister directed the report should consider amended plans intended to be submitted by the Proponent, the Executive Director's Refusals and the submissions received in relation to the Heritage Applications – but that further submissions and a hearing are not required. 	

Date	Draft Amendment	Heritage Permit Applications
12 November 2021		Heritage Council advised the parties that the applications had been called in and that the review hearing was cancelled.
16 November 2021	Proponent provided a revised design concept package to DELWP and Council generally comprising a reduced cantilever to Milton House.	
23 December 2021	Proponent submitted an updated suite of materials to DELWP and Council for including an updated set of architectural plans dated marked Revision E.	
24 February 2022	Proponent provided an updated suite of material and replaced the architectural plans with a set of plans dated 22 February 2022 (Revision G plans).	Proponent provided an updated suite of material and replaced the architectural plans with the Revision G plans.
4 March 2022		Heritage Council sought further information from the former Minister about its task and the February 2022 material.
27 March 2022		Minister advised the Heritage Council to seek further information from the Proponent – and to consider the expert reports which were included within the February 2022 material.
31 March 2022		Proponent queried the information the Heritage Council was seeking.
5 April 2022	Council considered the Amendment at a Future Melbourne Committee meeting and resolved to support the Amendment subject to changes.	Council resolved to confirm the objection made by Council in relation to Heritage Permit Applications.
8 April 2022		Proponent provided further information to the Heritage Council by way of explanation of differences in plans.
19 April 2022		Heritage Council sought advice from the former Minister about whether the Executive Director should provide his position on the amended proposal, effectively the Revision G Plans. On 18 May 2022 the former Minister advised this would offer no additional value to the review.
26 May 2022		A Heritage Council Regulatory Committee provides a report to the former Minister on 27 May 2022 (Heritage Council Review

Date	Draft Amendment	Heritage Permit Applications Report).
Advisory Committee process		
24 June 2022	Minister appointed the Committee, referred the Amendment and the Heritage Permit Applications to the Committee and issued Terms of Reference for the Committee.	
29 July 2022	First Directions Hearing.	
18 August 2022	Accompanied Site Inspection of 1 Spring Street and Milton House.	
24 August 2022	Second Directions Hearing.	
16 January 2023	Proponent circulated amended plans dated 13 January 2023, marked Revision J (Revision J plans). It is these plans that are sought to be pursued before the Committee.	
19 January 2023	Proponent circulated a Statement of Changes which described the amendments to the proposal between the Revision C and Revision J plans.	
23 January 2023	Council advised that given the changes proposed in the Revision J plans, that officers would report the amended plans to the Future Melbourne Committee on 21 February 2023.	
1 February 2023	Third Directions Hearing.	
16 February 2023	Proponent circulated an updated set of demolition plans for Milton House (Revision J).	
20 February 2023	Accompanied Site Inspection in Sydney.	
21 February 2023	Council Future Melbourne Committee considered the report and recommendation of officers with respect to the Revision J plans. Noting earlier support for the previous revision, it was resolved to not support the amended proposal and to advance this position at the Hearing.	
27 February 2023	Proponent circulated a corrected set of demolition plans for Milton House (Revision J corrected).	
6 March 2023	Hearing commenced.	

1.5 Expert evidence and architectural presentation

The Committee had the benefit of expert evidence from seven experts as shown in Table 2.

Table 2 Summary of heritage experts

Party	Expert	Field	Firm
Proponent	Mr Peter Lovell	Heritage	Lovell Chen
	Mr Bryce Raworth	Heritage	Bryce Raworth P/L
	Mr Peter Schmal	Architectural	Deutsches Architekturmuseum (DAM)
	Mr Stuart McGurn	Planning	Urbis
	Mr Craig Czarny	Urban Design	Hansen Partnership
	Mr Tony Dimasi	Economics	Gap Advisory
	Mr Chris Goss	Animation	Orbit

Council	Mr Jim Gard'ner	Heritage	GLM Heritage
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On behalf of the Proponent, presentations were made at the commencement of the Hearing by key representatives of the architectural group as shown in Table 3.

Table 3 Summary of architectural representatives

Representative	Firm	Role
Mr Holman	Harry Seidler & Associates	Presentation touched on the experience of the tour of Sydney buildings and focussed on the original design principles at 1 Spring Street, the approach, extent and design of modifications to 1 Spring Street, the opportunity, rationale, and guiding principles for a tower on the northern concourse area, and the relationship of the new works to the existing setting, for a tower proposal. Mr Holman commented on the Seidler response to the resultant relationship between the proposed tower, 1 Spring Street, Milton House and the Flinders Lane context.
Mr Ingenhoven	Ingenhoven Architects	Presentation which focussed on the contextual response, design response, siting, materiality, functionality and sustainability of the proposed tower.
Mr Damic	Architectus	Presented alongside Mr Ingenhoven to assist with questions of clarification about the plans.

1.6 Procedural issues

All significant procedural issues are outlined in Table 4.

Table 4 Procedural issues

Date	Event
15 July 2022	Planning Panels Victoria circulated the Committee's notification letter to Heritage Victoria, Council, the Proponent, DELWP and DoT. Heritage Victoria, Council, and the Proponent indicated they wish to be heard at the Hearing.
26 July 2022	Proponent wrote to the Committee and indicated the proposed hearing dates would cause material prejudice and unfairness in respect of its capacity to properly present its case before the Committee. It indicated the dates contemplated were not feasible due to the availability of longstanding expert witnesses and counsel briefed in this matter and would leave all parties with inadequate time to prepare for the hearing. The Proponent sought dates in the weeks beginning 13 or 20 February 2023.
29 July 2022	First Directions Hearing Hearing dates During the Directions Hearing, it became apparent the Proponent had not been provided with a copy of the Heritage Council Review Report, which at that time was confidential, but had been provided to the Committee, officers in DELWP and Heritage Victoria. Proponent submitted:

Date	Event
	<ul style="list-style-type: none"> - the hearing dates should be moved because it had not been provided with the Heritage Council Review Report - it needed adequate time to receive, review and seek advice on the report and to prepare for the Hearing, and this may include the preparation of amended plans which better responded to the report and its recommendations. <p>It requested the Hearing start in week of 13 or 20 February 2023.</p> <p>Council did not oppose moving the Hearing dates and had no issue with the proposed February 2023 dates. Heritage Victoria opposed moving the hearing dates.</p> <p>Committee determined to commence the Hearing to the week beginning 12 December 2022. It found that:</p> <ul style="list-style-type: none"> - Proponent should be provided with a copy of the Heritage Council Review Report - the proposed Hearing in September 2022 will unfairly prejudice the Proponent and deny it a reasonable opportunity to prepare its case given the Heritage Council Review Report had not yet been released - no other party was able to point to any significant detriment that will be suffered if the Hearing dates were moved - a December 2022 hearing would give the Proponent a reasonable time to prepare its case, subject to the Heritage Council Review Report being released in a timely manner - while the Proponent's preferred legal Counsel might not be available in December 2022, adjourning the Hearing for four months would allow sufficient time to ascertain alternative suitable Counsel. <p>Terms of Reference</p> <p>Council asked Committee to consider requesting an amendment to the Terms of Reference (in accordance with Clause 21) to:</p> <ul style="list-style-type: none"> - hear (and potentially determine) submissions and evidence relating to the Heritage Applications first. Council submitted heritage was a key threshold issue which should be heard and determined first before matters relating to urban design and the like. - expand upon who might be invited to make submissions at the Hearing to hear from submitters to the Heritage Applications. <p>Proponent opposed both requests. Heritage Victoria supported both.</p> <p>Committee indicated it would not seek to vary the Terms of Reference noting the Terms of Reference were clear:</p> <ul style="list-style-type: none"> - about the integrated planning and heritage approach and there was no obvious benefit in separating or isolating the two - on those who could be heard at the Hearing, noting it had been provided with a copy of all written submissions.
9 August 2022	<p>Proponent wrote to the Committee and indicated:</p> <ul style="list-style-type: none"> - its senior counsel who had a long-standing retainer in this matter remained unavailable in December 2022 - considerable enquiries to ascertain the availability of many suitably skilled and experienced senior counsel had been made and none were available

Date	Event
	<ul style="list-style-type: none"> - further enquiries had been made with Mr Lovell and Mr Raworth, persons whom the Proponent sought to call as experts in heritage, as to their availability for the December hearing dates, and neither were available - the revised December dates for the Hearing would cause material prejudice and unfairness to the Proponent's capacity to properly present its case - the Hearing should be adjourned to the week of either 27 February or 6 March 2023.
12 August 2022	Committee sought the views of all parties in relation to the adjournment request, and whether any party had any objection to the adjournment as proposed. No party objected to the further adjournment with Council and Heritage Victoria indicating various levels of availability in the weeks proposed by Proponent.
16 August 2022	<p>Proponent wrote to Committee again and indicated:</p> <ul style="list-style-type: none"> - following its correspondence of 9 August 2022, the Proponent was notified of availability difficulties in its intended team during the week of 27 February 2022 - the Proponent had discussions with Heritage Victoria and Council, both of whom indicated a hearing conducted in the week of 27 February 2022 was unlikely to be feasible - a preference to list the matter for the weeks of 6 and 13 March 2023.
17 August 2022	Committee asked Proponent to coordinate with the parties an agreed set of hearing dates for the Committee's consideration. On 22 August 2022, the Proponent advised all parties were available in the weeks of 6 and 20 March 2023.
18 August 2022	Accompanied site inspection of 1 Spring Street and Milton House.
24 August 2022	<p>Second Directions Hearing</p> <p>Committee adjourned the Hearing until the weeks beginning 6 and 20 March 2023. The Committee considered given the scale and significance of the proposal, the Proponent would be materially disadvantaged in not being able to call its key heritage experts and retain suitable Counsel to run its case.</p> <p>The Committee had regard to:</p> <ul style="list-style-type: none"> - no other party would suffer any prejudice or detriment from the adjournment - no party objected to the further adjournment.
25 August 2022	Committee requested the Minister to release a copy of the Heritage Council Review Report to the parties.
13 October 2022	Minister authorises Committee to release a copy of the Heritage Council Review Report to all parties.
19 January 2023	Proponent circulated a proposal to undertake an accompanied site inspection of various Seidler buildings in Sydney. Heritage Victoria and the Council opposed the inspection. On 30 January 2023, the Proponent provided further details in relation to the benefits of the inspection.
20 January 2023	Committee requested the views of the parties with respect of the Proponents invitation for an accompanied site inspection in Sydney.

Date	Event
20 January 2023	Heritage Victoria indicated it opposed the accompanied site inspection in Sydney.
23 January 2023	Council indicated it had a series of queries regarding accompanied site inspection in Sydney.
25 January 2023	Committee listed a further Directions Hearing to consider the accompanied site inspection in Sydney.
30 January 2023	Proponent provided a written response to the various queries put by Council in relation to the accompanied site inspection in Sydney.
1 February 2023	Third Directions Hearing Directions Hearing to consider site inspection in Sydney. The Committee determined there would be significant benefit in the inspection, it should proceed. It was resolved representatives of Heritage Victoria and Council would attend the Sydney inspection.
13 February 2023	Council wrote to Committee and Parties seeking clarification of the documentation being relied upon by the Proponent, noting the Revision J proposal was not accompanied by documentation/reports that had accompanied earlier revisions. Committee issued a direction for the Proponent to clarify its documentation being relied upon by 15 February 2023.
15 February 2023	Proponent provided a table summarising the various documentation being relied upon for the purposes of the hearing (i.e. Proponent's Document List).
16 February 2023	Proponent provided a suite of materials to accompany the site inspections in Sydney, which included a set of plans depicting demolition works and elevations for Milton House.
20 February 2023	Site inspection in Sydney.
23 February 2023	Council wrote to the Committee seeking further clarification of documentation being relied upon by the Proponent, citing various inconsistencies in the response provided on 15 February 2023. Committee issued a request for the Proponent to respond to Council's request for clarification.
27 February 2023	Proponent filed an updated version of the Proponent's List of Documents which included a set of Milton House demolition plans as a corrected set. The Proponent included the Milton House Demolition Plans in its list of documents to be relied upon, having made adjustments to these plans following the review of the expert evidence of Mr Gard'ner.
6 March 2023	At the commencement of the Hearing Council submitted the Hearing should not proceed due to the lack technical documents supporting the Revision J plans. Committee determined the Hearing should proceed, noting any issue Council had with the documentation should be made by way of a submission.

1.7 The Committee's approach

The Terms of Reference include a broad and encompassing purpose to advise the Minister on the appropriateness of the draft Amendment and the Heritage Permit Applications (Clause 2).

As allowed by the Terms of Reference, the Proponent circulated amended plans dated 13 January 2023, marked Revision J (the Revision J plans)¹ as part of this process. An amended set of demolition plans for Milton House were circulated on 16 February 2023², and again on 27 February 2023 showing some minor corrections³. It is these plans that are sought to be pursued before the Committee and form the basis of the Amendment and the Heritage Applications.

Under its Terms of Reference, the Committee has assessed all issues relating to the Heritage Applications pursuant to section 101 of the Heritage Act, and all issues relating to the draft Amendment pursuant to section 12 of the PE Act and against the Planning Scheme. The Committee has considered the proposed development against the relevant legislative and policy framework and holistically has had regard to heritage implications, planning implications and composite implications.

This Report deals with the key determinative issues under the following headings:

- the Project
- identification of issues
- the Heritage Permit Applications
- planning assessment
- final form of the Incorporated Document and Heritage Permits.

¹ Document 52.

² Document 75

³ Document 96.

2 The Project

2.1 The Amendment

The Minister is the Responsible Authority, and the Proponent is Phillip Nominees Pty Ltd.

An application was made to the former Minister seeking to facilitate planning approval for the redevelopment of 1 Spring Street and 21 – 25 Flinders Lane, Melbourne (subject land) through draft Planning Scheme Amendment C401melb, pursuant to section 20(4) of the *Planning and Environment Act 1987* (PE Act). The draft Amendment seeks to make the following changes to the Melbourne Planning Scheme:

- apply a Specific Controls Overlay to the subject land
- amend the schedule to Clause 45.12 (Specific Controls Overlay) to reference new Incorporated Document *1 Spring Street & 21 – 25 Flinders Lane, Melbourne* (Incorporated Document)
- amend the schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) to refer to the new Incorporated Document.

The draft Incorporated Document allows the use and development of the subject land in accordance with conditions.

2.2 The Heritage Permit Applications

Two separate heritage permit applications were made to Heritage Victoria for works 1 Spring Street and Milton House (21 – 25 Flinders Lane) (P3330 & P3331 respectively) (Heritage Permit Applications).

Both 1 Spring Street (VHR HO2365) and Milton House (VHR HO582) are listed on the Victorian Heritage Register. As such, a permit is required for works under the Heritage Act in addition to planning approvals required under the Melbourne Planning Scheme.

2.3 The Proposal

The proposal is depicted in the Revision J plans⁴, circulated as part of this process on 16 January 2023. The Revision J plans were accompanied by a Planning Application Report⁵ prepared by Ingenhoven and Architectus, dated January 2023, and a statement of changes⁶ describing the changes to the proposed development between the Revision J plans and the Revision C plans (the plans considered by the Executive Director, Heritage Victoria dated 16 February 2021).

The Revision J plans followed an iterative design evolution with co-operation between three architectural firms.

The proposal is for the north plaza of 1 Spring Street to be redeveloped with a multi-storey office tower. This will involve the partial demolition of the Shell House podium structure, the existing northern plaza, areas of the basement car park, some conference rooms and relocation of the theatrette. These areas will be developed with a 35 storey commercial building (plus plant)

⁴ Document 52.

⁵ Document 53.

⁶ Document 56.

identified as 'Tower 2' and will incorporate a newly constructed northern plaza. It is proposed the original Harry Seidler designed theatrette will be relocated and integrated into the reconfigured north plaza using original fabric and overall layout, and with the addition of a new window into the theatrette from the 2 plaza.⁷

The new tower will comprise mainly office use (including hospitality uses) with some retail areas. Milton House will be refurbished for retail use and will open into the plaza. It is proposed to have an entry lobby at Flinders Lane level with a glazed curvilinear façade, set in a new publicly accessible plaza, with a connection through to Shell House.

The main body of the proposed tower is proposed to be raised above the plaza and supported on columns. It is proposed to be fan-shaped in plan and with a scalloped façade profile with glazed curtain wall cladding and vertical bands of matt white ceramic tiles. The new tower is proposed to be structurally independent of Milton House, albeit with an overhang across the southeast portion of the heritage building. A high undercroft is proposed to be created above the open space where the building extends over Milton House.

Figure 1 Plaza View from Flinders Lane (Design Response, page 49)⁸



⁷ The level 2 plaza sits at the Flinders Lane ground level but is referred to as level 2 within Shell House.

⁸ Document 53.

Figure 2 North elevation (Revision J Plans)⁹



⁹ Document 52.

Figure 3 View from Wellington Parade (Design Response, page 1)¹⁰

It is proposed that Milton House will be adaptively reused as retail space, with minimal change to the external envelope apart from the creation of new openings to the east and south elevations. The 1980s fabric abutting the rear of Milton House is to be demolished with new stairs to the rear to create connectivity to the west laneway. Internal works would include the removal of c1980s partition walls, some original internal walls, and bathroom fixtures and fittings, as well as the installation of a new lift. The works would include the reinstatement of Welsh slate to the roof and replacing the non-original corrugated steel cladding.

2.4 The subject land

(i) The subject land

The subject land is located at the south-eastern most corner of Melbourne's Hoddle Grid with a total land area of approximately 5,250 square metres. It directly interfaces with three road frontages – Spring Street to the east, Flinders Street to the south, and Flinders Lane to the north, as well as two additional laneway frontages, including Throssell Lane to the east and Spark Lane to the west.

¹⁰ Document 53.

Figure 4 Aerial map of subject land

The subject land is comprised of 32 storey office building known as Shell House occupying the corner of Flinders Street and Spring Street and three storey office building Milton House (21 – 25 Flinders Lane) fronting Flinders Lane.

Between both buildings is a two-level plaza with landscaping and vegetation. Pedestrians are currently able to traverse from Flinders Street to Flinders Lane through the plaza and 1 Spring Street. The upper level of the plaza is used in association with Shell House and is currently inaccessible to the public. A narrow staircase at the north-eastern corner of the subject land provides access to the upper level, however the staircase is permanently gated and only accessible by occupants of 1 Spring Street. The lower paved plaza contains canopy trees and bench seating.

The Spring Street frontage of the subject land includes a ground level plaza and sculpture.

A narrow walkway (and stairway) runs along the western boundary of the subject land, within the title boundary. This provides a pedestrian connection between Flinders Lane and Flinders Street.

Figure 5 1 Spring Street**Figure 6** Milton House alongside the plaza

Figure 7 Western Laneway**(ii) The surrounds**

The land to the north of Flinders Lane comprises Collins Place at 17 – 65 Collins Street which contains three separate high-rise buildings, and Cannons House at 12 – 20 Flinders Lane which is occupied by a ten-storey concrete office and parking building.

Throssell Lane separates the subject site from any direct eastern abutments. Further east of Throssell Lane includes 31 Spring Street which contains a twenty-five-storey residential tower, and 13 – 23 Spring Street, which contains a 35 storey mixed use building (retail and dwelling land uses). Further east over Spring Street, are the Treasury Gardens.

The south of the subject land over Flinders Street is predominantly VicTrack and government-owned land, including the Treasury Square site at 295-357 Wellington Parade South.

West of the subject site includes:

- 27 – 29 Flinders Lane which abuts the north-west corner of the subject site and is occupied by a six-storey brick and concrete former warehouse with two basement levels, informally known as Sackville House. The building has since been converted into strata-titled residential apartments.
- 26 – 30 Flinders Street which is occupied by the Hotel Lindrum, a five-storey brick former warehouse with a basement, now used as a residential hotel. This land sits within a site-specific Heritage Overlay and directly adjoins the subject site at the southwest corner, adjacent to Shell House. A planning permit was issued at the direction of the Victorian Civil and Administrative Tribunal on 22 June 2017 that allows for partial demolition of the existing building and construction of a multi-level residential hotel and residential apartment building including two basement levels. A recent application to amend the existing permit seeks to change the primary use of the building to office space, with ground level retail.
- Further west (not directly adjoining the subject land) is 32 – 44 Flinders Street, which holds a planning approval for the construction of a multi-storey mixed-use building (predominantly residential use).

3 Identification of issues

3.1 Issues raised in submissions

The Committee has considered all written submissions, referral agency responses and expressions of support received.

(i) Submissions to the draft Amendment

The draft Amendment was the subject of two submissions (Council and DoT).

On 5 April 2022, Council considered the draft Amendment at a Future Melbourne Committee meeting and resolved to support the draft Amendment subject to detailed changes.

Issues identified in the officer's report included:

- the physical extent of the new tower proposed over the existing northern plaza
- the need for a high quality resolution of design detail for the lower level plaza arrangements, having regard to the Design and Development Overlay Schedule 1 (DDO01), September 2021.

The officer's report considered by the Future Melbourne Committee suggested changes in response to the following outcomes:

- overhang of Milton House and the northern plaza area
- lower level arrangements for the proposed new tower, in particular the lobby
- what retail provision might occur in the base of the proposed new tower and other opportunities for activation of the proposed lower level arrangements
- the canopy that was previously proposed
- linkages to the western laneway from the subject land.

The DoT was supportive of the car parking and cycling provision for the subject land. The DoT had consulted with VicTrack because the subject land is within the Melbourne Underground Rail Loop zone of influence. As a result of that consultation, DoT provided suggested changes to the Incorporated Document, which were technical in nature and related to the protection of the Melbourne Underground Rail Loop during and post construction.

(ii) Heritage Application submissions

In relation to the 1 Spring Street Heritage Application, there were 90 public submissions (including two late submissions). These included 56 pro forma submissions, and eight pro forma submissions with additional comments. There were 24 individual submissions, including from the National Trust of Australia (Victoria), Melbourne Heritage Action, and the Australian Institute of Architects.

The common themes raised included:

- the proposal's impact on the cultural heritage significance of 1 Spring Street, in particular:
 - the proposed loss of heritage elements/valuable fabric and spaces
 - impacts on the setting and cultural heritage significance of 1 Spring Street through the proposed introduction of the new tower
- the approach taken in the applications relating to reasonable and economic use
- impact of the proposal on the existing northern plaza, and how the significance of the northern plaza ought to be assessed

- loss of an opportunity to view 1 Spring Street in the round
- impact on views to 1 Spring Street.

Some submissions queried the assumptions made about the value of the existing northern plaza, and how the significance of the northern plaza ought to be assessed.

In relation to the Milton House Heritage Application, there were 89 public submissions, some of which are duplicates of the submissions in the 1 Spring Street Heritage Application.

The common themes raised were:

- the cultural heritage impacts because of changes to the setting of Milton House by reason of the new tower
- challenges that the proposal was essential to fund renovation and activation of Milton House.

In addition to submissions received pursuant to section 95 of the Heritage Act, a submission was received from the Council, as the relevant municipal council, pursuant to section 100 of the Heritage Act. Council did not support the Heritage Permit Applications on the following grounds:

- loss of heritage elements
- loss of heritage setting of Milton House
- impact on the north frontage of Shell House.

All submissions have been considered by the Committee and largely echo issues ventilated by Heritage Victoria and Council.

3.2 Executive Director's determination

On 4 August 2021, the Executive Director, Heritage Victoria determined, pursuant to section 101(1)(b) of the Act, to refuse issue of Heritage Permit Applications P33300 and P33301 in respect of the original proposal.

The Executive Director gave the following reasons for refusal of the 1 Spring Street Heritage Application:

- The demolition of the existing north plaza back to the north face of the existing tower, including the entrance passage, conference centre, theatrette and Level 3 roof garden would cause substantial harm to the cultural heritage significance of the place. It would permanently and irreversibly demolish original fabric and spaces, and would significantly diminish the legibility of Harry Seidler's original concept and design of the place.
- The construction of a 33-level tower on the north plaza would have significant physical and visual impacts on the place. Of similar footprint and taller than the existing tower, it would create an entirely new development at the place and would disrupt the visual and physical connections between 1 Spring Street and Flinders Lane. The scale and bulk of the new tower would dominate the north section of the place and almost entirely block views to the north elevation of the tower. The existing external plaza would be substantially reduced in size and the remainder of the plaza would be enclosed.
- The proposal is based on highest and best use of the place and not the cultural heritage significance of the place. It is considered to be an overdevelopment of the heritage place.

- The current commercial and public uses remain viable, and the commercial use generates income to cover the costs of conservation and maintenance.¹¹

The Executive Director gave the following reasons for the refusal of the Milton House Heritage Application:

- The proposed works are related to the construction of a tower and new plaza at 1 Spring Street (Shell House) and to allow for engagement between Milton House and the new development.
- The scale and bulk of the tower proposed for 1 Spring Street (Shell House) and its cantilevering above Milton House would have significant visual impact on the place and is detrimental to the cultural heritage significance of the place.
- The current commercial use of Milton House appears to be viable without the proposed changes.¹²

3.3 Requests for review to the Heritage Council

On 7 September 2021, the Heritage Council received separate requests from the Proponent, pursuant to section 106(1) of the Heritage Act, for the review of the Heritage Permit Application refusals.

In relation to the 1 Spring Street Heritage Application, the Proponent gave the following reasons for the review:

1. The Proposal is an acceptable heritage outcome having regard to sections 101(2) and 101(3) Heritage Act 2017 ('Act').
2. The Proposal is a high-quality design response and provides site-responsive outcomes that fit comfortably within the original concept and design of the place.
3. The Proposal will have a minimal visual impact on the place in respect of scale and visual bulk.
4. The Proposal is not detrimental to the cultural heritage significance of the place.
5. A refusal of the Proposal will inappropriately affect the reasonable or economic use of the land at 1 Spring Street, Melbourne.

In relation to the Milton House Heritage Application, the Proponent gave the following reasons for the review:

1. The Proposal is an acceptable heritage outcome having regard to sections 101(2) and 101(3) Heritage Act 2017 ('Act').
2. The Proposal is a high-quality design response and provides site-responsive outcomes in respect of scale and visual bulk.
3. The Proposal will have a minimal visual impact on the place.
4. The Proposal is not detrimental to the cultural heritage significance of the place.
5. A refusal of the Proposal will inappropriately affect the reasonable or economic use of the land at 21-25 Flinders Lane, Melbourne.
6. The design response of the Proposal in respect of its scale and visual bulk will have an insignificant effect on the cultural heritage significance of adjacent and neighbouring properties.

Pursuant to section 101(4) of the Heritage Act, a permit review hearing was required to be held by the Heritage Council in relation to both applications. However, the former Minister notified the

¹¹ Document 9e.

¹² Ibid.

Heritage Council he had determined to exercise his powers in accordance with section 109 of the Heritage Act to call in the review of both applications.

3.4 Heritage Council Review report

The former Minister requested the Heritage Council provide a report on the reviews, considering the Executive Director's determinations, submissions received by Heritage Victoria during the public advertisement of the permit applications and amended plans to be submitted by the Proponent. The former Minister directed the Heritage Council that further submissions were not required to be made, or for a hearing to be conducted by the Heritage Council in relation to the matters.

The Heritage Council determined to:

- support the Executive Director's determinations to refuse the Heritage Applications
- recommend to the former Minister that the Executive Director's decisions to refuse the Heritage Applications be affirmed.

Specifically, it found that:

- The proposed development relies on a position about the State-level cultural heritage significance of Shell House that was rejected when Shell House was included in the Victorian Heritage Register and, consequently, does not accord with, or respect, the registered values of the place.
- The extent of demolition required to facilitate the proposed development will have unacceptable, irreversible, and adverse impacts on the State-level cultural heritage significance of Shell House.
- While the issue of the cantilevering of the proposed tower over Milton House is improved in the amended proposal, the design, scale, and location of the proposed tower does not respect the cultural heritage significance of Milton House and will visually dominate, visually disrupt, and overwhelm it.
- The proposed development will result in an overcrowding of the immediate setting of the places that will greatly undermine the cultural heritage significance of the places.
- No evidence has been provided to demonstrate that the refusal of the permit applications would affect the reasonable or economic use of either place.¹³

3.5 Future Melbourne Committee

On 21 February 2023, the Future Melbourne Committee considered the report and recommendation of officers with respect to the Revision J plans. Noting earlier support for the previous revision, it resolved to not support the amended proposal and to advance this position at the Hearing.

The report and recommendation by the officers said the Revision J plans included several design regressions which unpicked key outcomes achieved through Council's engagement and consultation with the Proponent. The design regressions included:

- Reverting Tower 2's floorplate design from the 'Revision G' design to the historic tower floorplate design, reintroducing a significant cantilever of Tower 2's floorplate over Milton House and the northern plaza.

¹³ Document 10.

- Altering Tower 2's building programme and pedestrian connectivity, compromising access to the pedestrian connection on the west boundary, and relocating an important exterior public connection to Spark Lane connection within the building.
- Removal of detailed-design landscaping and human-scale design treatments from exterior 'plaza' areas, and significantly reducing the size of these exterior 'plaza' areas, which had been relied upon by the Proponent historically to justify the erosion and reduction in area of the northern publicly accessible private plaza.¹⁴

3.6 Key Issues for Committee's consideration

The following issues are the central considerations for the Committee, arising from the submissions and the determinations of the Council and the Heritage Council bodies, as well as from submissions received:

Amendment

- Whether the Proposal represents an appropriate outcome having regard to the considerations of the PE Act and the Melbourne Planning Scheme.
- Whether the architecture is of a sufficient quality to enhance or improve the existing design and form of the subject land with particular focus on the northern aspect.
- Whether the proposed variations to the requirements of Design and Development Overlay Schedule 1 and Design and Development Overlay Schedule 10 are justified, appropriate and able to be suitably accommodated by approval of the Incorporated Document.

Heritage Applications

- Whether the Proposal represents an appropriate outcome having regard to the considerations of the Heritage Act and considerations relevant to the Heritage Applications, including:
 - the extent to which the demolition and modification proposed for parts of 1 Spring Street (the northern plaza, the theatrette, the 31 conference rooms, the level 3 terrace, and associated circulation spaces) would affect the cultural heritage significance of 1 Spring Street
 - the extent to which the addition of the proposed tower in the north-east portion of the subject land, and the associated changes to the ground floor planes, would affect the cultural heritage significance of 1 Spring Street or Milton House, considering submissions around
 - the extent to which the modifications proposed to Milton House otherwise would affect the cultural heritage significance of Milton House
 - the extent to which the refusal of the Heritage Permit Applications would affect the reasonable and economic use of 1 Spring Street or Milton House
 - whether there are other relevant matters that should be considered.

¹⁴ Document 86.

4 The Heritage Permit applications

4.1 Background

(i) Legislative background

The Heritage Applications are administered under the Heritage Act. Section 101 of the Heritage Act is relevant to the Committee's task of advising the Minister on the appropriateness of the Heritage Permit Applications, namely:

- Section 101(2) provides that in determining whether to approve an application for a permit, the Executive Director must consider the following:
 - a) the extent to which the application, if approved, would affect the cultural heritage significance of the registered place ...;
 - b) the extent to which the application, if refused, would affect the reasonable or economic use of the registered place ...;
 - c) any submissions made under section 95 or 100;
- ...
- Section 101(3)(a) provides that the Executive Director may consider the extent to which an application, if approved, would affect the cultural heritage significance of any adjacent or neighbouring property included in the Heritage Register or subject to a heritage requirement or control in the relevant planning scheme.
- Section 101(3)(b) provides that the Executive Director may consider any other relevant matter.

There are two further Heritage Victoria documents of relevance:

- the Heritage Victoria Principles for Considering Change to places in the Victorian Heritage Register document (Heritage Victoria Principles for Considering Change) made and published under section 19(1)(f) of the Heritage Act, December 2022
- the Heritage Victoria Policy on Reasonable or Economic Use (Heritage Victoria Policy on Reasonable or Economic Use) made and published under section 19(1) of the Heritage Act in June 2021.

Unlike the Heritage Act, these documents do not provide requirements for assessment, and cannot narrow the scope of discretion conferred by the Heritage Act.

In relation to the cultural heritage significance of the places in this proceeding, the following are relevant:

- the Statements of Significance for the places
- the decision of the Heritage Council to include 1 Spring Street in the Victoria Heritage Register, 13 June 2017.

Table 5 provides a summary of the legislative context for the Heritage Permit Applications.

Table 5 Legislative context – Heritage Permit Applications

Relevant references	
Administration	- Heritage Act
Relevant considerations	- Section 101(2), 101(3)(a) of the Heritage Act

Heritage Victoria Documents	- Statements of Significance
	- Heritage Victoria Principles for Considering Change
	- Heritage Victoria Policy on Reasonable or Economic Use

(ii) 1 Spring Street

No. 1 Spring Street (Shell House) comprises an office tower, northern podium, main foyer with Arthur Boyd mural 'Bathers and Pulpit Rock' and external plazas to the north and south, designed by leading Australian modernist Harry Seidler. The Charles O Perry sculpture 'Shell Mace' located at the corner of Spring and Flinders Streets is included in the registration for Shell House.

The following description of Shell House is included with the registration for the Place:

Located on a sloping L-shaped site at the south-eastern corner of the Melbourne city grid, Shell House is a late twentieth century International style office tower with side podium, basement carpark and external plazas. The building is a concrete structure with granite-faced lower facades and a repetitive floor construction system of clear span beams of equal length. With an interest in geometry, simplicity of form and clear expression of structure, Harry Seidler designed the building using two counterpoint curved sections to maximise views to the south and east, to accommodate existing underground railway tunnels and to present a commanding entry point to the city. The core of the building, containing lifts and amenities, is located on the off-view north side and the office floors wrap around this core. The building integrates dramatic level changes for public access from the south, south east and north through a central control point located in the main Spring Street foyer. This foyer is accessed via stairs from Flinders Street or directly from the primary external entry plaza at the corner of Flinders and Spring Streets. The main entry plaza contains a dominant structural and sculptural building pier and a specially commissioned sculpture, 'Shell Mace' by American sculptor and architect, Charles O Perry (1989). The foyer has soaring ceilings, with a mural, 'Bathers and Pulpit Rock' by Arthur Boyd (1988) and sets of escalators which lead to the mezzanine and conference centre level. The conference centre provides access to meeting rooms arranged around a circular light well, an auditorium and a narrow secondary pedestrian plaza entry from Flinders Lane. The mezzanine level provides access to a former cafeteria space, with built in seating arranged around the base of the light well, a servery and adjoining commercial kitchen. The office tower uses a repetitive floor construction system of clear span beams of equal length, resulting in a uniform 15 metre wide column-free space from the services core to the external windows. This, along with the concealment of computer cabling and electrical wiring under a 250 mm access floor, creates an interior aesthetic which is open, light and spacious. All office floors have expansive views to the south and east of the city. The top two floors of the office tower contain an executive suite with external terrace garden, garden court and spiral granite staircase between levels. A variety of quality finishes have been used throughout the building for paving, floor and wall cladding, including Italian granite and travertine, and much of this has been retained. Some changes have been made to the office floor configurations and fittings, including the executive suite.¹⁵

Shell House was included in the Victorian Heritage Register on 29 June 2017 for cultural heritage significance to the State of Victoria.

The Statement of Cultural Heritage Significance for Shell House notes:

How is it significant?

Shell House is of architectural and aesthetic significance to the State of Victoria. It satisfies the following criterion [sic] for inclusion in the Victorian Heritage Register:

Criterion D

¹⁵ Victorian Heritage Register citation, 1 Spring Street, Melbourne, 2017.

Importance in demonstrating the principal characteristics of a class of cultural places and objects.

Criterion E

Importance in exhibiting particular aesthetic characteristics.

Why is it significant?

Shell House is significant at the State level for the following reasons:

Shell House is architecturally significant as an outstanding example of a late modernist office building in Victoria, designed by one of the style's most accomplished proponents, the renowned Australian architect, Harry Seidler. Late modernism, as expressed in Shell House is demonstrated principally through sculptural form, use of solid concrete and other massive materials, and a variety of textural finishes. Shell House is also significant for the clarity with which it expresses particular themes and motifs characteristic of Seidler's work. These include the use of opposing curvilinear forms and the generous planning of public areas, both externally and internally.

Shell House is one of an important series of high rise tower projects designed by Harry Seidler both nationally and internationally from the 1960s to the 1990s, and is the only one located in Victoria. Shell House is of architectural significance for its innovative design response to a difficult site and for its integration of dramatic level changes for public access from surrounding streets through a central lower foyer control point. Shell House won a number of awards including the Royal Australian Institute of Architects Victoria Merit Award in 1991 and the National RIAA Award in the same year. Seidler is considered to be one of the major talents in Australian architectural history who made a substantial contribution to Australian architecture. [Criterion D]

Shell House is aesthetically significant for the sculptural effect created by the interlocking curvilinear form of the building that is reflected in the interior planning. The quality of the interior spaces and their relationship to the extensive outdoor terraces at several levels of the building is of high aesthetic value, both visually and experientially. The location at the south-east corner of the Hoddle Grid is highlighted by elements such as the large tapered pier at the Spring Street/Flinders Street entrance.

The aesthetic qualities of the place are enhanced by the incorporation of large scale artworks which complement the architecture and were selected by Seidler for the building. Significant pieces include the foyer mural 'Bathers and Pulpit Rock' by Arthur Boyd (1988) and the external plaza sculpture 'Shell Mace' by Charles O Perry (1989). [Criterion E]

The ability to appreciate the relevant aesthetic characteristics is enhanced by the high degree of intactness and integrity of the Place, both internally and externally.¹⁶

Three key heritage documents, all prepared by Lovell Chen in association with the Seidler architectural practice, include:

- Statement of Design Principles - 1 Spring Street, (November 2020) (Statement of Design Principles)
- No. 1 Spring Street, Melbourne (H2365) Conservation Management Plan (November 2020)
- No. 1 Spring Street, Melbourne (H2365) Heritage Impact Statement, Revised Proposal (2022).

(iii) Milton House

Milton House was included in the Victorian Heritage Register on 29 August 1984 for its architectural significance to the State of Victoria. Its Statement of Significance takes a different form from the Statement of Significance for Shell House. Permits were issued in the late 1980s for the demolition of the rear annex and the extension on the east elevation housing a lift, and for

¹⁶ Victorian Heritage Register citation, 1 Spring Street, Melbourne, 2017.

internal works including partial demolition. The extent of registration for Milton House was amended in 2018 following the registration of Shell House which initially overlapped with that of Milton House.

The Statement of Cultural Heritage Significance for Milton House states:

What is significant?

Milton House is a three-storey brick building with an almost Georgian symmetrical facade with quoined corners and deep, bracketed eaves. The linked chimneys suggest the English Baroque of Hawksmoor. The central bay incorporates a major arch of American Romanesque character. The overall classical form is probably attributable to the architects Sydney Smith and Ogg, but much of the detail is thought to be that of their consultant Robert Haddon, the leading local exponent of the art nouveau: in particular the ornamental terracotta band, the sinuous broken label mould of the entrance arch, the wrought-iron work within the arch, and the use of brick strips to link windows of the first and second floors - all of which are more or less characteristic of Haddon's work elsewhere. The interior of the building is plain and functional, and is an early example of the use of coved skirtings for hospital purposes. The glass includes some very subtle and some very bold combinations of colour; single pieces of mixed hue; motifs resembling snails and sunflowers seen on edge like parasols; abstract renderings of scenes such as the sun shining on waves; and other compositions of exquisitely contrived tension and asymmetry. Built as a private hospital in 1901 for the eminent Melbourne surgeon, William Moore, who was the first master of surgery graduate of the University of Melbourne, Milton House was subsequently a rooming house, reverted to a medical context in its use by the Victorian Health Commission for X-ray purposes and later became government offices.

How is it significant?

Milton House is of architectural significance to the State of Victoria.

Why is it significant?

Milton House is architecturally significant as one of the rare examples of the application of art nouveau design to a building in Victoria. The building is an exquisite composition drawing substantially on the intricacy and delicacy of art nouveau but also skilfully blending elements of the more robust and powerful American Romanesque and Georgian styles to produce an integrated but unique design.

4.2 Demolition and modification

(i) The issues

The key issues to be resolved are the extent to which the demolition and modification proposed:

- for parts of Shell House (the northern plaza, the theatrette, the conference rooms, the level 3 terrace and associated circulation spaces) may affect the cultural heritage significance of the place
- to Milton House may affect the cultural heritage significance of the place.

(ii) Background

Shell House

The Proposal involves the demolition of:

- part of the northern plaza
- egress stairs to basement car parking and the stairs connecting to the pedestrian route between Flinders Street and Flinders Lane to the immediate west of 1 Spring Street and Milton House

- elements of the basement levels below the existing plaza and podium that includes (but is not limited to) the structural columns, partial floor slabs and part of the vehicle access ramp (interior only) over basement levels P5 to P1
- partial demolition of the northern podium element addressing the Flinders Lane (northern) plaza, including the roof terrace, theatrette, foyer space, conference and associated back of house facilities
- partial demolition of the eastern retaining wall to Throssell Lane.

Milton House

The Proposal involves the demolition of:

- part of the eastern elevation to create a new opening
- openings in the southern elevation for windows (on all levels) and entry (at ground floor level)
- a new opening in western elevation
- partial demolition of internal walls, which includes original masonry walls and later addition partition walls
- bathrooms and internal services
- original staircase at the rear (southern) end of the building and glazed landing extending from southern elevation.

(iii) Evidence and submissions

Shell House

The Proponent submitted the impacts, including adverse impacts, to the Shell House building and place would be limited, appropriately managed and acceptable, because:

- there will be no impact to the design philosophy, or main south and east facades or entry as the proposed works are focused wholly on internal modifications and entry arrangements at the northern entry
- the demolition and alterations are relatively minor, and will have a positive rationale for relevance and functionality of the place
- the changes are carefully designed and curated under the supervision and control of the Seidler architectural practice and in line with the design principles of the heritage place
- the level of change *“compares favourably with the lived experience of many other valued Seidler commercial buildings that have likewise been adapted to serve their ongoing purpose as prime commercial buildings with attractive public areas”*.¹⁷

The expert evidence of Mr Raworth and Mr Lovell drew a distinction between impacting intactness, as opposed to impacting integrity. They both concluded the extent of impact on the cultural heritage significance of Shell House represented an impact on intactness that would not be adverse to the integrity of the heritage place.

Mr Lovell said the Proposal has evolved in collaboration with the Seidler architectural practice and rather than demolition and replacement, the scheme is one of modification and reconfiguration. The evidence of Mr Lovell noted:

¹⁷ Document 93.

- that while the changes to Shell House are not modest, the Proposal continued to maintain the Seidler program and design aesthetic
- that although the original building was being altered and there was an impact on its completeness and intactness, the integrity of the place was retained so that the impact was not unacceptable.

Mr Raworth said the “reworking” of the lower levels of Shell House was “*much more of a surgical approach and a careful intervention*”. His evidence noted:

- the partial demolition and new works were carefully considered interventions with only modest impacts
- the theatrette would be reconstructed using the original interior fabric and would support improved public accessibility of the theatrette and roof garden
- while its intactness was diminished, the integrity of Shell House would be maintained as a key exemplar of Harry Seidler’s work
- although some original fabric would be lost in the remodelling of the north plaza and the podium, he thought this was of relatively modest significance.

Council submitted there would be obvious significant impacts to the heritage fabric of Shell House and its cultural heritage significance. It submitted the heritage place is not just the Seidler tower but includes the podiums, the plaza and the tower’s setting and context. It contended:

There is nothing in the Seidler design that indicates he contemplated or would be supportive of what has been described as an “intervention” in the northern plaza, in particular a 36 storey intervention that radically and irreversibly alters the heritage place.

...

A suggestion that the proposal does not offend the integrity and intactness of the tower is rejected by Council. Such a proposition is even more fanciful when not only the tower but its setting and context are properly considered.¹⁸

Mr Gard’ner gave evidence that demolition of the northern plaza, podium, and key internal spaces associated with the conference centre would have a substantial adverse impact on the significance of the heritage place. He said “*these design elements contribute to the heritage place as a whole – consistent with Seidler’s philosophy of gesamtkunstwerk¹⁹ – not just the office tower*”. Mr Gard’ner said the northern approach to 1 Spring Street from Flinders Lane would be “*irreparably diminished by removing the original curvilinear podium and roof terrace and replacing it with a more visually complex form in this location*”.²⁰

Heritage Victoria submitted the proposed demolition and construction of a new taller tower immediately adjacent to the Seidler tower would result in a substantial loss of integrity and intactness, both visually and physically. It contended this would “*substantially, permanently and irreversibly diminish the legibility of Harry Seidler’s concept and design of the place and as a consequence, the architectural and aesthetic significance of the place*”.²¹

Heritage Victoria supported the retention of the theatrette, but not the rationale for its relocation. It submitted the relocation was based on the need to achieve the highest and best use of the place because the new tower would not “fit” if the theatrette was retained in its original location.

¹⁸ Document 134.

¹⁹ Translated approximately as ‘total artwork’.

²⁰ Document 84.

²¹ Document 100.

Milton House

The Proponent submitted:

- the nature of the impacts to Milton House are minor and appropriate, for the purposes of the building functioning for contemporary purposes
- no demolition is proposed to the overall Milton House form
- the proposed modifications would result in a measurable improvement to the space at its south end.

There is no Conservation Management Plan (CMP) for Milton House. The Proponent submitted it is logical for a CMP to be provided under a permit condition, but prior to demolition. The Proponent noted also it would be appropriate to allow consideration of further internal works under a permit condition and presumably together with fit-out design. This approach was supported by Mr Raworth and Mr Lovell. Mr Lovell was comfortable that future scoping of a CMP could be addressed through a permit condition and said the building presented no pressing urgency for the conservation works.

Mr Lovell described the proposed works to Milton House as limited and not contentious. It would involve access compliance works, reworking of the south façade, and opening of the interiors. He said creating an east side entrance, reworking the south façade and installing a lift would not have adverse heritage impacts. Some of the work, such as the internal demolition, warranted further detailed development as a condition of a permit.

Mr Raworth said the Proposal involves a modest extent of change to the building exterior which is limited to new door openings to the east (side) and south (rear) elevations. He considered:

- the south elevation can reasonably accommodate a higher level of change given that it was not originally an external wall
- creation a new door opening on the east elevation would be a positive change because it would allow Milton House to engage with the proposed plaza and provide DDA compliant access without needing to make change to the main entry to Flinders Lane
- the changes to the building fabric would not have an unacceptable or adverse heritage impact.

He added that the east elevation is essentially an unadorned plain brick wall absent of any of the Art Nouveau detailing that contributes to the architectural significance of the place.

Mr Raworth supported the proposed internal demolition and said this was a *“reasonable outcome given the extent of change to which the interiors have already been subjected, and the limited potential of the extant fabric to demonstrate the original use as a private hospital”*.²²

Council submitted there was critically, no CMP and no conservation works proposed for Milton House and there was no observable support for the conservation or enhancement of the valued heritage building.

Mr Gard’ner did not support the removal of two intact window bays on the ground floor in the middle of the east elevation to accommodate a new opening. He said this outcome was highly undesirable when there was an opportunity to provide the new access a few metres to the south where the eastern annex was once located. He considered the changes proposed to the south

²² Document 79.

elevation – other than those associated with the removal of the staircase – were acceptable. Likewise, the proposed creation of an additional door opening in the west elevation at basement level to provide egress was acceptable and would not adversely affect the cultural heritage significance of the place.

Mr Gard'ner supported the retention of both the principal and secondary staircases located at the centre and south of the building respectively, which he considered to be highly intact and significant interior elements. He observed the proposed internal changes to Milton House would, in the absence of a credible re-use proposal, have an unacceptable impact on the cultural heritage significance of the heritage place. If the Proposal was to proceed, he supported the development and implementation of a schedule of conservation works.

Heritage Victoria did not support the proposed demolition of additional internal walls, the opening of the eastern façade, or the removal of the staircase in the southwest corner. It submitted some of the proposed works may be acceptable if considered separately from an application which includes the construction of a tower, however, the scale and bulk of the proposed tower would have a substantial visual impact on Milton House.

(iv) Discussion

Shell House

The evidence of Mr Lovell and Mr Raworth was reliant on the concepts of intactness and integrity. The Committee agrees the impact on the cultural heritage significance of Shell House represents an impact on intactness, but considers that overall, the integrity to the place will be maintained. The Committee is aided by the current and proposed input and control of Seidler's architectural practice and the design's ability to maintain the integrity of the place. The changes proposed to Shell House were curated under the practice's supervision and in line with the design principles of the heritage place.

While the Committee does not agree with Mr Raworth that the demolition proposed is modest, the proposed demolition and modifications are not substantial either and seek to enhance the functionality of the space. They are focused on internal modifications and entry arrangements at the northern entry and plaza and no demolition is proposed to the tower, the main south and east facades or entry. The works represent careful modification and reconfiguration to the northern podium of the tower and its entry. They retain the publicly accessible plaza to the north, although in a different form, and preserve the original function of Shell House to Flinders Lane by providing access from the north through well designed and appropriate modifications.

Level 3 and the northern plaza space have been reconfigured and present as an unenclosed space where the original porphyry paving is to be repeated. The original fabric which is to be lost in remodelling the podium and north plaza is of relatively modest significance and its demolition is mitigated by the creation of the new public plaza which references Seidler's design approach and principles in a respectful manner. There will be a clear sense of continuity in one's experience approaching and leaving the north side of Shell House across the plaza, although one which will include a new tower.

Above the reconfigured conference facilities, the Level 3 plaza is maintained against the tower base with the design extended into the reorganised space. The Committee considers that while the works impact the intactness of the place, the impact is localised and has no impact on the

eastern and southern presentation of the building. In this respect, the significance of the place will be maintained.

The interventions associated with level 2, the conference centre and the theatrette, all result in some degree of loss of fabric associated with spaces which are significant to the place as a whole. While the demolition proposed will impact the intactness of the place, the new works would continue to maintain the architectural program as it relates to Flinders Lane and continue to interpret the strong curvilinear shaping of the spaces. Clearly the works will diminish the intactness of the original place, but they are localised and more akin to a reworking of the space in response to new commercial needs.

The Committee supports the reconfiguration of the theatrette. This is an important change that has been made within the amended scheme that will reuse the original interior fabric to be carefully removed prior to the demolition works. Again, this part of the design was developed in collaboration with Seidler's architectural practice and will enhance the outcome in terms of retention of the integrity of the Seidler concept. While the theatrette will be reorientated and reduced in seating capacity, its reconstruction will maintain a significant feature of Seidler's design approach.

It will be a challenge to maintain the authenticity of the reconfigured theatrette but also an opportunity to update its facilities, to make it more accessible to the public (both actively and passively), and to broaden its function. There was some discussion during the hearing in relation to whether additional back of house facilities could be provided, and two plans were provided by the Proponent to demonstrate various options.²³ The Committee has considered the benefit of providing back of house facilities and has decided they are not essential to support the theatrette's ongoing use. It is likely the theatrette will be used for seminar type functions only, rather than traditional plays or performances where more elaborate back of house facilities would be required. As such, modification to the proposed theatrette is not warranted.

The reduced extent of the conference rooms is not seen as a substantial loss because the radial plan, the central lightwell and the tension created by opposing curvilinear forms survive. The nearby space currently no longer evidences its original function as a corporate cafeteria and its significance is largely as associated with the fountain and lightwell. The proposed works seek to adapt the conference rooms to meet contemporary user needs.

The Committee has no issue with the demolition works proposed to the fabric to be impacted below ground. This is not fabric of any identified significance or fabric which is intrinsic to an understanding of the Seidler design.

Milton House

The works to Milton House can largely be described as access compliance works, reworking of the south façade and opening up of the interiors. The Committee has considered these works on their own merits and has not linked them to the tower construction. No specific conservation works have been detailed, other than the reroofing with Welsh slate, and it is proposed the scoping of these works would be the subject of a permit condition.

The Committee agrees the proposed new central entrance in the east elevation of Milton House is both logical and sensible. While the new eastern opening will result in the loss of the intact

²³ Document 142.

window bays on the ground floor, it will positively allow Milton House to open up and engage with the plaza while providing DDA compliant access.

The Committee has little concern about the proposed re-fenestration of the south elevation. This elevation can reasonably accommodate a higher level of change given it is not original.

However, the Committee agrees with the position advanced by Heritage Victoria and Council and is concerned about the proposed demolition of internal walls and the consequent loss of original joinery, cornices, and skirtings in circumstances where there is no CMP. The updated demolition plans produced during the Hearing²⁴ have assisted and help to demonstrate that the extent of internal demolition is largely non-original wall fabric, and any original fabric to be demolished is limited. However, the scope of these works warrants further detailed development and it considers a CMP should first be prepared prior to the submission, approval and endorsement of final demolition plans. The plans can then be modified to reflect any recommendations made through the CMP. This is reflected through condition 1(b) and condition 2 of Committee's preferred version of the Heritage Permit 33301 as shown in Appendix H.

While the Committee doesn't necessarily endorse the approach adopted by the Proponent and considers it would have benefited from the preparation of a CMP as part of this process, it is comfortable for a CMP to be provided under a permit condition, to be prepared and approved prior to the endorsement of final plans. The Committee does not agree it would be appropriate to allow consideration of further internal works under a permit condition. This consideration can appropriately be addressed through the CMP if appropriate.

The Committee agrees with Mr Gard'ner that the rear stair should not be demolished. This rear stair is highly intact and is a significant internal element worthy of retention. It disagrees with its removal based on the Proponent's justification of locating a lift in its place. There are suitable options for its retention and other locations where the new lift could instead be placed.

Overall, the Proposal will bring much needed changes to Milton House, including a more contemporary use, a grander celebrated entry and the eventual enhancement of the place through a CMP.

(v) Conclusions and recommendations

The Committee concludes:

- The extent of demolition and modification proposed for Shell House is acceptable and would not inappropriately affect or diminish its cultural heritage significance.
- Demolition and modifications proposed to Milton House are generally acceptable and would not inappropriately affect or diminish the cultural heritage significance of Milton House.
- The scope of internal works and demolition warrants further consideration, and a Conservation Management Plan should be prepared and approved prior to the approval and endorsement of final demolition plans.
- The rear staircase should be retained because it is an important internal element.

²⁴ Document 118.

The Committee recommends:

Modify the Milton House Demolition Plans prepared by Ingenhoven, Architectus and Seidler dated 7 March 2023 and marked Revision K to show:

- a) the retention of the rear staircase and subsequent relocation of the lift
- b) any changes to the internal works as recommended by the Conservation Management Plan.

Require the preparation of a Conservation Management Plan for Milton House for approval by Heritage Victoria.

4.3 Proposed tower and northern plaza

(i) The issues

The key issue to be resolved is:

- the extent to which the addition of the proposed tower in the north-east portion of the subject land, and the associated changes to the ground floor planes, will affect the cultural heritage significance of Shell House and Milton House.

(ii) Evidence and submissions

The northern plaza

A key issue was the acceptability of change to the 'public' area and setting of the northern entry to 1 Spring Street. The parties ascribed a lesser or greater importance to the northern plaza/concourse and submitted this area could therefore accommodate a greater or lesser degree of development.

The Proponent submitted the proposed tower is worthy of support because:

- it will be sited and designed to respect the sense of space at ground level for arrival to, and the viability of, Shell House and Milton House as independent freestanding buildings
- it will be designed with elevated floorplates above a "breathed in" base which would create an attractive plaza and pedestrian environment
- the retention of the reimagined and publicly accessible plaza will be in keeping with Seidler's original intent of the relationship of Shell House to Flinders Lane providing access and a sense of address from the north
- the level of change will compare favourably with the lived experience of many other valued Seidler commercial buildings that have also been adapted to serve their ongoing purpose as key commercial buildings with attractive public areas.

Much of the debate was centred around whether the Shell House open areas are 'equal' in significance.

The Proponent:

- acknowledged the significance of the whole place but submitted the northern plaza is used as a thoroughfare rather than a destination, which is at the rear and not the front of the building
- submitted the rear concourse/plaza provides a compelling opportunity for further development and was unlikely to have been required for floor area in the original design brief.

Mr Raworth gave evidence the demolition of original fabric to the north plaza would be mitigated by the creation of a new public plaza which would reference Seidler's design in a respectful and considered manner. He said there would be a sense of continuity in the public's experience when approaching the north side of Shell House across a public plaza, although one that would be sheltered by the new tower.

Mr Lovell's evidence noted the subject land could accommodate the new tower without an unacceptable impact on the assessed significance of the registered place. He said the tower would alter the spatial setting and that while Shell House was designed with an open northern plaza, it has a clearly defined primary presentation and point of address to the southeast. Mr Lovell said the existing northern presentation contributes to the whole of the building but is secondary to the composition. He accepted the proposition that "*functional hierarchies*" do not necessarily determine levels of significance.

Council submitted the northern plaza should not be treated as an infill opportunity. It submitted that while the Statement of Significance might describe the plaza as a secondary entrance, this does not mean it is of secondary significance and a hierarchy of entry does not equate to a hierarchy of significance. Council submitted the Proposal would substantially and irreversibly alter the character and experience of the Seidler design and experience of it from the north.

In relation to the approval of the northern plaza as it exists, Council submitted:

As has been explained by a number of the Proponent's experts, the Council's policy at that time required the building to be built up to the street frontages. Yet Mr Seidler's design deliberately and categorically did not respond to the recommended built form policy applicable in the 1980s. In our submission, the open air plaza to the north is not an afterthought. Mr Seidler fought hard for it – and won.²⁵

Mr Gard'ner accepted that the northern plaza provides a 'secondary' entrance when compared to the main plaza addressing the corner of Spring and Flinders streets but said it is nevertheless "*a key element of the overall design that contributes to the State-level significance of the heritage place through its demonstration of "the generous planning of public areas" and "extensive outdoor terraces" articulated in the Statement of Significance"*.²⁶

Heritage Victoria submitted the Proponent and its expert witnesses attempted to downplay the cultural significance of the north plaza because the principal presentation and the most recognisable views of the heritage place are of the south and east elevations. It submitted that buildings are three dimensional forms with fronts, backs and sides and presentation and views can vary across a place and that privileging a principal presentation of a place above other areas is an outmoded approach to heritage conservation.

Heritage Victoria submitted the:

- north plaza was one of the key components of Seidler's original design of the place and is no less significant than any other part of Shell House
- north plaza and the Level 3 roof garden are integral to understanding Seidler's design in its entirety
- new Tower would have significant physical and visual impacts on the place and would disrupt the physical connections between 1 Spring Street and Flinders Lane.

²⁵ Document 134.

²⁶ Document 84.

Impact of the proposed tower on the northern façade

The Proponent submitted the same level of protection should not be afforded to the rear of Shell House as the protection given to the main entrance and facades of the building.

The continuity and legibility of Shell House is described in early Lovell Chen work²⁷ as *“total artwork”*. The Proponent submitted this was a *“nice expression”* which provided a framework for which change and adaption should be assessed, and *“not to elevate the significance of all fabric and an alleged requirement that the building be unaltered and viewed ‘in the round’”*. The Proponent submitted:

In this respect the term loses its value as a guiding principle for conservation, enhancement, or alteration to the building and instead becomes a “dumb” deterrent to change.²⁸

The Proponent took the Committee to the 1985 Seidler Design Report which referred to:

- the ‘major’ frontages to Spring and Flinders Street and ‘a secondary frontage’ to Flinders Lane
- with ‘views to the north and west ... comparatively restricted’
- ‘undesirable outlook’ and ‘restricted outlook’ to the north, which meant it was satisfactory to ‘position the service core on the north side of the site’
- ‘superior outlooks’ for the east and south, and the plan accentuating the ‘prominent site’ and turning the corner of the city gracefully, with a ‘dignified urban space at the Flinders and Spring Street intersection’ creating ‘a main address point appropriate to an important corporate headquarters building’.

Mr Lovell referred to the current view of the northern facade of Shell House as being constrained and lacking the generosity of distance and breadth evident in the views of Shell House from the south and east. He said although it contributes to the whole, it is secondary in terms of composition. Mr Lovell said:

- whilst Shell House to the north presents as a finished façade, its presentation was one of less sensitivity where the core dominates, and the building turns its back on its surrounds
- the placement of Tower 2 would constrain views of Shell House from the north and alter the spatial setting but this would not diminish its cultural significance
- despite the visual and spatial impact of the second tower, the ability to appreciate the original design as an architecturally and aesthetically whole object would be maintained.

Regarding the architecture of Tower 2, Mr Lovell said the design would maintain and extend the original modernist approach and draw on, in a contemporary sense, the Seidler design of Shell House.

Mr Raworth said Tower 2, while proximate to Shell House, would be complementary in design. Its curvilinear profile would speak to Shell House in an interpretative manner whilst its glazed materiality would strike an appropriate contrast to the masonry finish. He said views of Shell House from the north are less desirable than those to the south and east; are limited by pre-existing and subsequently high-rise developments; and were not a primary consideration in the design of Shell House.

²⁷ The Heritage Impact Statement and Conservation Management Plan.

²⁸ Document 93.

Mr Raworth supported the loss of northern views towards Shell House from Flinders Lane and within the place. He said the proposed tower would provide sufficient breathing space to Shell House and, to the extent that views to the north elevation of Shell House would be concealed, this would not fundamentally undermine the significance of the place.

Council submitted Shell House is a “*total artwork*” and all of it is purposefully designed to respond to its interfaces and the views it offers. It submitted the view of the northern façade was designed to be a view and any appreciation of the northern façade would be obscured by the proposed tower.

Mr Gard’ner gave evidence against the visual and spatial effect which would result from Tower 2. He said the proposed location and the necessary demolition of the northern plaza, and a substantial proportion of the northern podium would:

- substantially diminish the legibility of Shell House
- adversely affect Seidler’s design of the podium and northern entry as part of the composition of opposing curvilinear forms that respond to the northern elevation of the tower when viewed from the north.

Mr Gard’ner considered Shell House to have a ‘front’ and a ‘back’ with most of the building’s services and vertical circulation located in the northern elevation. However, he did not agree the northern façade was treated any differently from the south and eastern facades from a compositional point of view. He considered the exterior form of Shell House’s northern facade to be highly intact, at least to an equal if not greater degree, as the eastern and southern elevations.

Mr Gard’ner said Tower 2 would “*obliterate views*” of the northern elevation of Shell House and would diminish the legibility of the existing Seidler designed relationship between the tower, northern podium and entry plaza, adversely affecting its setting when viewed from the north. In his opinion the proposed tower, while evidently designed to interact with the architectural form and language of Shell House, was in the wrong location, being on part of the heritage place that was designed holistically and was never intended to accommodate substantial new built form.

Heritage Victoria submitted:

- equal significance should be ascribed to all facades
- the plaza’s location intentionally provides views of the north elevation of the tower and that this elevation was designed to be seen
- the scale and bulk of the new tower would dominate and block views to Shell House’s northern façade and substantially, permanently and irreversibly diminish the legibility of Seidler’s concept.

Heritage Victoria submitted:

Privileging the significance of the principal presentation of a place above other areas is an outmoded approach to heritage conservation. Heritage places comprise buildings, structures, landscape and land. Buildings are three dimensional forms with fronts, backs and sides. Presentation and views can vary across a place. Just because an area is not the main entrance, or is less attractive or less useful, does not mean it is less significant.²⁹

²⁹ Document 136.

Impacts to the setting of Milton House and the relationship of the new tower with Milton House

The Proponent submitted in respect to the impacts on Milton House, the relationship between Tower 2 would be constrained and appropriate because:

- no demolition is proposed to the overall Milton House form, and its southern end will be measurably improved
- the eastern walls would become a feature of the improved plaza and its east elevation would be viewed in an open and spacious setting
- the recessed ground level and only having columns adjacent to Milton House would enable its east elevation to be viewed and appreciated.

In support of the proposed overhang, the Proponent submitted:

The Proponent submits that in recent years in Melbourne the technique has become academically criticized in principle rather than being subject to careful analysis on a case by case basis. There is a sense that in some heritage circles there is no open mind on this issue. In this case the elevated form sits well above and back from the three dimensional form of Milton House.³⁰

The Proponent submitted the use of the columns to enable the creation of the recessed space around Milton House would preserve the eastern elevation while also opening up views to both Milton House and Shell House.

Mr Lovell said:

- the Flinders Lane context is one of a narrow secondary street where views are confined and the ability to perceive depth in views is more limited
- the setback of 14.5 metres to where the overhang commences above the roofline of Milton House would allow for the three-dimensional form of Milton House to remain and be seen as visually unencumbered
- when viewed from the north-east across the northern plaza, the overhang would be sufficiently setback and elevated to maintain an appropriate setting
- the combination of the separation of the soffit of the new tower and the roof and eaves level of Milton House is 16.4 metres with a reduction to 12.4 metres at the south-east corner of Milton House would provide breathing space between the two buildings.

Mr Raworth acknowledged new development often results in contrast of scale and character to the heritage place, but this should not mean the heritage structure is visually overpowered or reduced to a secondary element. Mr Raworth considered this contrast of scale and character can energise and reinforce the special qualities of the heritage place. In relation to the Proposal, he said:

- the height separation between the soffit of Tower 2 and the roof of Milton House would moderate the visual impacts of the new building
- would provide “*breathing space*” for Milton House and maintain the heritage building’s streetscape primacy
- the modest degree to which Tower 2 projects over Milton House would not adversely affect its legibility as an independent and freestanding structure.

Mr Schmal described the Proposal as being excellent in terms of architectural design, and a sensitive and considered response to the urban context and heritage considerations. He said the

³⁰ Document 93.

proposed raised under-croft section of the design over the roof form of Milton House was a sound response to the integrity of the building in comparison with more interventionist approaches as evidenced in numerous examples in the Melbourne CBD³¹. He said the proposed tower would adopt a protective stance over Milton House.

Council criticised the design approach to Milton House and submitted Milton House would not be “*untouched and enhanced*” but would have a high-rise building covering 30 per cent of its roof area with massive columns some 450mm from its eaves.

Mr Gard’ner said the cantilever would visually dominate and overwhelm Milton House’s modest scale. He said the cantilever, in combination with the adjacent column would create an uncomfortable juxtaposition of the two buildings and substantially diminish the legibility of Milton House as a freestanding building.

Heritage Victoria submitted the scale and bulk of the tower and its cantilevering above Milton House would have a significant visual impact on the place and would be detrimental to its cultural heritage significance. Heritage Victoria acknowledged the high-quality architectural design but submitted:

- its placement and cantilever in particular, would compromise Milton House
- high quality design does not compensate for inappropriate siting, bulk and scale
- the combined bulk and scale of the proposed tower and columns would dwarf Milton House and reduce its visual presence on Flinders Lane
- the emphasis would no longer be on Milton House as the eye would be drawn to the tower
- a tower of 33 levels immediately adjacent to a three-storey heritage building would overpower, overwhelm and dominate the place
- the detrimental visual impacts of the proposed tower on Milton House would be further exacerbated by the increased size of the columns.

(iii) Discussion

The Committee is satisfied the Proposal has ultimately been successful in respecting the significance of Shell House and the valued qualities of Seidler’s design, and separately Milton House. In coming to this conclusion, the task has been one of judgement but with the knowledge of the continued input and guidance of the Seidler architectural practice.

The Committee has the benefit of being able to understand and appreciate the degree to which the original design philosophy and design principles of Shell House have informed the plans and the siting of the tower, particularly given its inspection of other Seidler buildings, hearing directly from Mr Holman and through tested heritage evidence.

Northern plaza

The Committee accepts the northern open space is used primarily as a pedestrian approach or thoroughfare which is at the northern entry of the building. There were no submissions that provided any quantitative evidence of its use beyond being an external access space from Flinders Lane to the north. The Committee notes this space had been variously described in several terms throughout the hearing, including plaza, forecourt, pedestrian concourse, but does not see that

³¹ Mr Schmal was asked by the Committee to consider each photographic example presented in Document 108.

nomenclature would alter the perception as to how the space is used. No submissions were provided that the use of the space was anything other than primarily a space to accommodate those entering the building.

The Proposal would modify the plaza space. It would extend the space from north-south and compress it from the east at the ground plane. The proposed tower form would overhang a substantial section of the existing forecourt space being set between 5 and 8 storeys above the paved levels.

The Committee agrees with Council and does not accept the northern plaza should be treated as an infill opportunity; however, it has assessed the potential impact on the northern plaza based on its response to the existing heritage fabric. While the northern presentation of Shell House contributes to the whole of the place, the Committee sees it as secondary to the composition and therefore capable of accommodating the new tower without an unacceptable impact on the cultural heritage significance of the place.

Tower 2 has been sited and designed to respect the existing sense of space and arrival into Shell House. The proposed new plaza reflects Seidler's original intent of the relationship between Shell House and Flinders Lane by providing pedestrian access and a clear sense of address, as well as through referencing Seidler's design in a considered manner. Equally, the level of change to Shell House is like other Seidler buildings which have also been adapted over time to serve their ongoing purpose. The proposed configuration for the pedestrian approach to Shell House would provide opportunities for a more active and attractive urban space than the current configuration without an unacceptable impact on the assessed significance of the registered place.

While the Committee agrees with Heritage Victoria that the existing northern plaza has been carefully and respectfully designed, the Committee does not consider that it is of a siting, scale, or relevance to Shell House that by changing it as proposed, it will damage the cultural heritage significance of the place.

Northern facade

There was a clear difference of opinion in relation to the treatment of Shell House's northern façade and whether it is of equal importance to other parts of the place, or whether it is of lesser significance.

Much was said about the relative significance of the south-eastern façade and the northern façade. The Committee sees the façades as creating the external 'in-the-round' understanding of Shell House. Both are valid examples of the urban experience but, one is panoramic and offers a 'heroic' architectural aesthetic while the other is confined and offers a more 'incidental' architectural aesthetic. One experience is grand, the other intimate.

Shell House represents a clear consciousness of design thought from the front to the back and everything in between. However, this doesn't mean change cannot occur or architecture cannot be adapted. What it does mean is that any change or adaption must be done faithfully, and the Committee considers this is the case with this proposal. Importantly, the northern façade of Shell House would be unaltered and untouched, with works proposed only to the podium levels, so the ability to appreciate the original design as an architectural whole would be maintained.

The Committee agrees with the Council and Heritage Victoria that construction of the new tower would block the limited views at street level in Flinders Lane and other adjacent lanes of the northern façade of Shell House. However, the existing view of the northern facade is more

constrained and lacks the distance and space evident in the views of Shell House from the south and east. The east and southern aspects of Shell House and associated plazas feature large in the visual presentations of this corner of the CBD. The view opportunities from Flinders Lane and surrounding approaches, made more restrictive with numerous recent high-rise developments surrounding the subject land, are restricted and opportunistic. The primary appreciation of the northern façade of Shell House is at street level approaching the entry or moving laterally along Flinders Lane. These views prioritize the existing ground plane, podium form and a limited visual portion of the lower tower. While the full height of the existing tower can be seen, it requires a clear intention to do so, and it does not figure greatly in the streetscape appreciation.

While the street level views might be lost, new intimate views of the northern façade will be created. The northern façade of the Shell House would be revealed as it is approached from several directions: from the entrance off Flinders Lane; ascending the curved stair from the Level 2 plaza to the Level 3 terrace; from the Level 3 terrace; and from Throssell Lane and Spark Lane. There would also be new views from within the new tower. The 10 metre separation between Shell House and Tower 2 would sensitively respond to the northern façade of Shell House and allow for these more intimate views to be established. The raised undercroft section of Tower 2 which would range from five to eight storeys above the ground plane would also allow views into the subject land, the new pedestrian concourse, the redesigned podium and the upper terrace areas.

The podium would be altered with an impact on significant fabric. However, through the recent collaboration between Seidler and the Ingenhoven and Architectus practices, the sensitivity and quality of new external and internal works will be high and will represent a continuum of the integrity of Seidler's philosophy.

Milton House

The Proposal includes a substantial overhang to Milton House. The Committee agrees with the Proponent that such a technique, which should be based on careful case by case analysis, is clever and respectful and represents a sound technique for integration of form and conservation of heritage.

The Proponent usefully provided a booklet of photographs during the hearing which detailed examples, good and bad, of developments in Melbourne's Central Business District that included new built form overhanging or penetrating heritage buildings.³² These examples showed where new works penetrated the heritage building, this resulted in significant demolition and impact on the heritage fabric.

The Committee considers the notion adopted in this case however, of utilising airspace above a heritage building for built form, works well. The approach adopted ensures there would be no facadism and no built form penetrating or touching Milton House, which would protect the architectural integrity of the heritage building. The Committee commends the architectural technique adopted of using elevated floor plates above a recessed base for Shell House which leaves Milton House untouched.

The Committee carefully considered the effect of the overhang of the proposed tower on the setting of Milton House and the deviation from Heritage Victoria Principles for Considering Change

³² Document 108.

which discourage buildings projecting over heritage buildings. It accepts the evidence of the Proponent's expert witnesses that, in this case, the design of the undercroft with its relatively large setbacks is a considered and satisfactory outcome. Equally, the principles in the guidelines are not prescriptive and universal in their application and should be applied with discretion taking into account the particular circumstances of a site and the proposed development.

The 16.4 metre separation³³ between the soffit of Tower 2 and the roof of Milton House, in combination with 14.5 metre setback to where the overhang commences above the roofline of Milton House would:

- allow for the three-dimensional form of Milton House to remain
- ensure Milton House is seen as an individually separate building
- provide breathing space between the two buildings
- sustain the cultural significance of Milton House in an appropriate spatial context.

The Committee accepts the evidence of Mr Raworth and Mr Lovell that the tower will not have any real or appreciable impact on the cultural heritage significance of the place. There will be a change to the setting and presentation to the building, but this is not one which will undermine a fair reading of the place. In addition, any view to Tower 2 and its cantilever will be constrained as there is no real distant viewing opportunity.

The Committee considered the closeness of the proposed columns to Milton House but accepts the structural constraints of their location allow for little variation in their placement. The columns successfully allow for limited structures in the forecourt to open, rather than close, views to both Milton House and Shell House.

In coming to its conclusions, the Committee was assisted by a three-dimensional model prepared by the Proponent. Figure 8 and Figure 9 are photographs of the model and usefully show the relationship between Tower 2, including its soffit and columns, and Milton House (noting the full extent of the tower's height has not been modelled).

³³ With a reduction to 12.4 metres at the south-east corner of Milton House.

Figure 8 Photograph of model taken during the Hearing – Flinders Lane view



Figure 9 Photograph of model taken during the Hearing – Western Laneway view



(iv) Conclusion

The Committee concludes:

- The addition of the proposer tower and the associated changes to the ground floor planes would not inappropriately or unacceptably affect the cultural heritage significance of Shell House and Milton House.
- The architectural strategy for the proposed tower has successfully:

- adapted Shell House to create a new, attractive and usable northern plaza that is in keeping with the philosophy of the Seidler architectural practice
- designed a tower that respects both heritage places and is physically separated from Shell House and Milton House.

4.4 Reasonable and economic use

(i) The issues

The issue to be resolved is:

- the extent to which the refusal of the heritage permit applications would affect the reasonable or economic use of Shell House or Milton House.

(ii) Evidence and submissions

Reasonable use

Section 101(2)(b) of the Heritage Act requires consideration of the extent to which a permit application, if refused, would affect the reasonable use of the registered place. This is a broad consideration and simply put, it asks: if a permit is refused, does it impact the reasonable use of the heritage place.

The Proponent submitted the answer to the question is yes, and then said the question that remains for the Committee is what weight this consideration has among other considerations. It submitted:

The reasons why the Proposal is a reasonable use of the places are set out above and embrace a range of outcomes supported by policy, including the encouragement to develop the Central City and enhance publicly accessible spaces.

It is open and proper to the Committee to conclude that the Proposal is for a reasonable use of the site, and that refusing the permit would therefore deny a reasonable use of the site, and that therefore refusing the permit would affect the reasonable use of the registered place.

It is not the case that the Committee could 'only' count the reasonable use consideration as a supporting factor if it considered that there could be no reasonable use of the place without the permit. This is not what the Act says.

As to reasonable use, the Heritage Victoria Policy on Reasonable or Economic Use includes:

14. When taking into account the circumstances of the permit application and the registered place or object, the Executive Director may consider: (1) the historic, recent and current uses of the registered place or object, (2) other compatible uses of the registered place or object, (3) the context and setting within which the place or object is located, and (4) other relevant matters.

The Proponent referred to the inclusion of 'other relevant matters' as demonstrating there is no hard and fast limit to what or how consideration of this matter occurs. It said the Committee could broadly consider what the existing and proposed uses of the place are, whether they are reasonable, and what effect refusing the permit would have, including with reference to context and setting, on the question of the reasonable use of the place. The Proponent concluded that refusing *"the permits here would perpetuate the risk of underutilisation of the places, ultimately to their detriment"*.³⁴

³⁴ Document 93.

Mr McGurn said:

- from a planning perspective, the Heritage Victoria Policy on Reasonable or Economic Use should be considered in the context of the building and its role in the Central City
- the existing plaza and podium of Shell House are underperforming relative to the opportunity provided by the overall site
- it is reasonable to consider a development opportunity of the scale proposed
- in a CBD context, the existing use and development is an underdevelopment, that office uses were moving to the west of the CBD and consolidation of the subject land for A Grade office purpose was a reasonable use of land.

In response, Council submitted the question of reasonable or economic use was relevant and consideration of it is appropriately guided by the Heritage Victoria Policy on Reasonable or Economic Use which ought to be given great weight. It submitted these guidelines and their application by Mr Gard'ner should be preferred to Mr McGurn's opinion on what is a reasonable use of a place *"from a planner's perspective"*.

Mr Gard'ner said the refusal of the Shell House permit would not affect the ongoing 'reasonable use' of the place as a high-grade office building with associated facilities. In relation to Milton House, he said:

It is my conclusion that refusal of this permit – insofar as it relates to the proposed new tower projecting over Milton House – would not affect the ongoing 'reasonable use' of the heritage place as an office building or for retail or food and beverage uses.³⁵

Heritage Victoria submitted the current commercial and public uses of the places are reasonable and appear to be viable.

Economic use

The Heritage Act also (separately) requires consideration of the extent to which the permit application, if refused, would affect the economic use of the registered place.

The Proponent submitted:

... it is not a limited consideration which must conclude that a permit should only be granted where there is no possible economic use of the place without a permit. There can be a viable ongoing economic use of a place even without a permit, but yet still, if a permit would create a greater economic use of a place, then this is a relevant factor to be taken into account in considering the economic effect for the place, of refusing the permit. The greater the economic benefit, then usually, the more weighty the consideration.

The Proponent submits that an appropriate way to consider the economic use question in this case is to compare the current economic use of the place, with the economic use of the place which would be possible if the permit was approved. The difference represents the extent to which refusal would affect the economic use of the place – in effect, using a commonly understood shorthand: the 'opportunity cost'.

The Proponent submitted the Proposal will result in significant economic benefits:

The ongoing adaptation of the Shell building to support commercial activity and use is a legitimate and important factor in its reasonable and economic use. This is vital here, where Shell House is valued for its commercial form and function but is also relatively isolated from the City's commercial hubs.

³⁵ Document 84.

Mr Dimasi for the Proponent estimated 36 per cent of the subject site is either vacant or accommodates low-level uses which generate minimal economic activity. He said that the approval of Tower 2 would generate:

- accommodation for 2,400 office workers
- a total net rental in the order of \$22 million (accounting for premium grade office space, hospitality)
- a Gross State Product contribution of \$240 million each year.

Mr Dimasi said his economic assessment showed the Proposal would have significant positive consequences for the economic functioning of the registered places. He said if Shell House, as a purpose-built office building is to continue operating successfully as a Grade A office premises over the long term, it would benefit from a closer and stronger link with the balance of the office buildings within eastern core of the central business district.

Mr Dimasi said Shell House has increasingly become surrounded by residential apartment development and the vacant part of the site adjoining Milton House presents *“the only opportunity to strengthen the nexus between Shell House and the balance of the office uses within the eastern core”*.³⁶ He said Tower 2 would provide greater integration of Shell House with the balance of the eastern core, strengthen the focus of offices on the site and help ensure the existing Grade A office use of Shell House can continue. Refusal of the proposed tower would also, in his view, negatively impact on the viability of adaptive re-use of Milton House.

Council submitted Mr Dimasi:

- accepted the Proposal was not necessary to assist with the maintenance costs for the heritage places and that Shell House would *“more or less continue as present not dependent on the tower... viability was not of concern in the immediate future”*
- accepted his economic analysis would have been the same whether or not the places were heritage listed and his evidence was unrelated to the heritage status of the places
- did not suggest a second tower was (immediately) necessary to contribute to the economic costs of Shell House, but that the development would be important to mitigate the risk of decline of Shell House as a commercial address.

Council submitted:

The evidence the Proponent has provided seeks to advance an argument without quantification of some possible ill that might befall 1 Spring Street at some unspecified time in the future should the proposal not occur.

This in Council's submission does not address the Heritage Act requirements; rather it seeks to advance an “opportunity lost” agreement that is entirely untethered to the Heritage Act.

It submitted the Proponent must address the impact of a refusal on the economic or reasonable use of the heritage places, but no evidence on that point was produced.

Council said the south-eastern part of the Hoddle Grid was not at risk of a *“residential takeover”*. It referenced³⁷ a list of planning permit applications (current, under consideration and approved) for office and residential use in the city blocks bound by Russell, Bourke, Spring and Flinders Streets

³⁶ Document 83.

³⁷ Document 134, paragraph 63.

which indicated many new developments that have a substantial office offering which cumulatively equates to over 180,000 square metres of office floorspace.³⁸

Mr Gard'ner criticised the approach taken by the Proponent in relation to section 101(2)(b) of the Heritage Act and said it was not based on established heritage practice and did not usefully inform the decision maker. Mr Gard'ner said:

- no material had been provided to demonstrate the heritage place would fail to be used or maintained at any lesser level if the application for Shell House was refused
- in his experience, the economic use of a heritage building is used to help justify larger scale enabling development that will generate income to support its long term conservation
- no evidence has been provided to suggest there is a large deferred maintenance liability that would necessitate development of the scale proposed
- it had not been demonstrated that Shell House or Milton House would fall into a state of disrepair threatening their conservation
- Shell House can be compared to other corporate headquarters which are able to continue to fulfil their role as commercial offices without major high-rise development being necessary to sustain their maintenance and conservation.

Heritage Victoria submitted:

- from a heritage perspective, there is no imperative to construct another office to ensure the ongoing use of Shell House as Grade A office accommodation
- there are no compelling reasons why Milton House is currently vacant or why future tenants might view it as more attractive should an office tower be built
- some of the works required at Milton House to improve its accessibility could be approved by Heritage Victoria without a tower application
- the reasonable or economic use rationales advanced by the Proponent do not outweigh the substantial detrimental impacts the proposal would have on the cultural significance of the two heritage places.

The Proponent submitted the Council and Heritage Victoria positions begged the question of whether a building must fail for the reasonable and economic use consideration to work. It said the test should not be about whether the building needs serious repair or is now failing to attract tenants before it can be advocated there are reasonable economic arguments to prevent the decline of the heritage place.

(iii) Discussion and conclusion

In varying different comments, the Proponent and its expert witnesses suggested the northern plaza is “vacant land”, “underutilised” or an “underdevelopment”. The Committee disagrees. All the land within the Statement of Significance for Shell House is included in the heritage listing, and as indicated in Seidler’s 1985 Design Report, the northern plaza is referred to in various ways including:

- the Flinders Lane Concourse Entry
- an important pedestrian entry is located at the Northern end of the site
- a landscaped outdoor forecourt leads the visitor into the Concourse.

³⁸ Including the existing 1 Spring Street building.

The north plaza has a function and should not be treated as an opportunity cost. Nevertheless, this does not imply that any future development such as a new tower building should not occur on the north plaza.

Conversely, in varying and different comments, Heritage Victoria, Council, and its expert suggested there may be “*other*” or “*more appropriate ways*” to develop the land including to adapt the Seidler building to help ensure its sustainable use. The Committee equally disagrees with this approach. The Committee is required by its Terms of Reference to assess the relevant matters associated with the proposal before it. It is not relevant, or valid, to speculate about other development.

The replacement works, and the benefits of additional office floorspace and destination values for Milton House and Shell House (or the loss of this opportunity occasioned by refusal) are weighty considerations. The reasonable or economic use consideration includes the land use context of the site, the benefits of supporting office use at Shell House, and improving the functionality and public access to the Shell building.

The Committee agrees with Mr Dimasi, that over the longer-term, Shell House will remain an office building. The Committee appreciates how the proposed tower, sharing a common plaza, would strengthen the commercial nexus for Shell House and would create a key destination for the broader city. Mr Dimasi did not suggest a second tower was necessary to contribute to the economic costs of Shell House but said the development would be important to mitigate the risk of decline of Shell House as a commercial address. Equally, Mr McGurn’s evidence on the reasonable use was cognisant of the isolated corner location of Shell House and the potential associated problems.

However, the Committee is not convinced that developing the site to provide additional office use, and the adaption of Shell House and Milton House, are so significant that it would be unreasonable to refuse the extent of demolition and works such as to prevent the outcome. The Committee does not accept that questions of reasonable or economic use necessarily need be quantifiable or measurable, however, to overcome a refusal under section 101(2)(a), further evidence would need to have been called on this point.

When assessing change, the Heritage Act requires consideration of the effect of an approval on the cultural heritage significance of a place, to be balanced against the effect of refusal on the reasonable use or economic use of the place. Importantly, the Committee is not compelled to balance one factor against the other, or to be satisfied that one outweighs the other, it is simply required to have regard to both factors, and then make up its mind.

(iv) Conclusions

The Committee concludes:

- the Proposal would only have a limited effect on the reasonable and economic use of the heritage places.

The Committee notes this conclusion is unnecessary to support the scope of works proposed because it has ultimately concluded:

- the interventions to Milton House are acceptable and are important works for the benefit of the use of the building
- the extent of impact on the cultural heritage significance of Shell House is not adverse.

4.5 Reflections on heritage matters

(i) The issues

Several issues which arose throughout the Hearing relate to the weight the Committee should give to:

- Seidler's involvement in the Proposal
- the Heritage Victoria Principles for Considering Change and the Heritage Victoria Policy on Reasonable or Economic Use
- the Heritage Council Committee Report.

(ii) Evidence and submissions

Seidler

The Proponent submitted an important consideration is the association the Proposal has with the Seidler architectural practice. It submitted the association with the Seidler practice is "*special*", "*remarkable*", "*weighty*" and "*influential*", and an association that will not emerge very often.

The Proponent submitted:

- Shell House is identified in the Statement of Significance as being important because it was designed by Harry Seidler
- the Seidler practice continues to adapt and change commercial towers around Australia to meet contemporary needs, and as an active continuance of the Seidler design philosophy, its buildings must be designed to be flexible and to meet changes over time to remain activated, populated, and relevant, thereby supporting their ongoing conservation
- the Seidler practice is one of the project architects for the Proposal
- the Seidler practice's support is strongly linked to supporting the heritage values of Shell House both through its design curation and collaboration
- through its advocacy, adjacent substantial commercial floorspace must be added to support the ongoing use of Shell House for office without a single corporate occupant
- Seidler's design, and the Seidler practice's support is heavily contingent on design changes that reflect the design principles of the practice and the integrity of Shell House and retaining its legibility as an independent building and address
- Seidler's continued involvement puts perspective on the facts relied upon by others which otherwise make exaggerated assumptions about the original design intent.

Heritage Victoria noted the involvement of the Seidler practice in the Proposal is important, but said "*the views of any original Practice do not always align with the reasons a place is included in the Victorian Heritage Register*". It submitted:

Harry Seidler and Associates may be supportive of the proposal but this is not necessarily indicative of a good heritage outcome for the place. The parameters in which each organisation is making their determinations is different. What may be positive or desirable from an architecture or planning perspective is not always positive or desirable from a heritage perspective.³⁹

³⁹ Document 100.

Heritage Victoria Principles for Considering Change

The Proponent submitted the Heritage Victoria Principles for Considering Change are relevant and, in many respects, uncontentious, but said critical aspects of the guidelines leave much to be desired because they lack useful phrasing or direction preferring effective 'do not's' over performance-based advice. It contended the guidelines do not appear to derive from a rigorous or transparent approach for preparation of policy.

The Proponent said it was not trying to attack the guidelines as they are clearly important, but its submissions should help to illustrate what weight they ought to be afforded. It submitted the language used in the guidelines is unhelpful as it moves away from a guideline and more towards argument which is not useful and fails to encourage an applicant to achieve innovative ways to respond to heritage places.

Council submitted the Committee should reject the invitation to criticise the guidelines produced by Heritage Victoria pursuant to the power and responsibility to do so under the Heritage Act.

Heritage Victoria submitted the purpose of all guidance produced by it is to assist owners of heritage places when making applications and Heritage Victoria permit officers in making recommendations.

Heritage Council Committee Report

Heritage Victoria submitted the Heritage Council Committee Report ought to be given "*great if not primary weight*"⁴⁰ with respect to its key findings, issues and opinions that remain common between current and former plans.

The Proponent disagreed and submitted:

- the Heritage Council Review Report is a relevant matter, but should attract only limited weight
- its conclusions should not be followed, given they were based on earlier and different plans and more limited information and untested concepts
- the report is largely overtaken by events including this process
- it could usefully be compared to a Council Officer's report as a matter of weighting, because it is essentially an internal assessment having regard to the material available to its authors
- the key matters within the report amount to matters of opinion and findings on evidence before the authors, not as an independent set of facts or information.

The Proponent submitted:

The Heritage Council Committee Report should be afforded only limited weight, serving as another record of internal views of the body. This is not a criticism, it is a fact, resultant from the procedural limitations of the task. The result is one untestable point of view, echoing the untestable point of view of the Executive Director.

The Proponent also rejects the characterisation of the applications as described in these reports if, as it appears, the officers derive support from the 'levels of significance' as put by the Proponent's heritage consultant or the notion of total artwork as put by the Proponent's heritage consultant. Neither of the positions as characterised by the officers of the Committee were canvassed or discussed with the authors of the report. The extension from

⁴⁰ Ibid.

these views of the officers to protection of views to Shell House from Flinders Lane, or in the round, is an extreme and impractical finding.⁴¹

Heritage Victoria submitted that *“to suggest the Heritage Council’s report is analogous to, or ought be given the weight of, a planning officer’s report, fails to take account of the stature, function and expertise of the Heritage Council as provided for in the Act”*.⁴²

The Proponent took issue and contested certain aspects of the report as incorrect, including:

- it is not fair or correct to say that the Proponent is challenging an argument *“run and done”* about significance - the Proponent’s case is done in light of the registration and is not to challenge it
- the Report has misunderstood the intellectual argument advanced by Mr Lovell that the Registration Committee did not find all parts of the place were of equal significance
- the Report misunderstands the notion of ‘total artwork’ and has applied it to the notion of seeing the building in the round
- the finding that the building is currently viewed in the round, despite admitting to obvious obstructions to views
- the finding that Shell House is a *“cornerstone”* and applying this to the view to the rear of the building.

(iii) Discussion and conclusions

Seidler’s practice

The continued input of Seidler’s practice is important and it is clear the Seidler design principles have guided the proposed works to Shell House and support the ongoing relevance and function of the building. This is evidenced from the Committee’s own inspection of the Seidler buildings in Sydney where the Seidler practice has demonstrated a deliberate and careful approach to the adaptations and works undertaken. It is clear the Seidler practice goes out of its way to ensure its buildings can be adapted and can continue to remain relevant.

The Committee was fortunate to hear directly from Mr Holman on his involvement in this project, his direct involvement in the original design of Shell House and working with Harry Seidler. It is quite clear from Mr Holman’s thoughtful and respectful presentation he was intricately involved in all of Harry Seidler projects, has a deep appreciation in how Harry Seidler worked and his consistent approach to his projects, and has a strong understanding about the design principles and philosophy of every Seidler building.

The Committee considers the involvement of Seidler’s practice is a relevant matter and has attributed weight to this involvement in coming to its overall conclusions.

Heritage Victoria Principles for Considering Change

The Committee considers the Heritage Victoria Principles for Considering Change should be given weight in the decision-making process. The Committee agrees with both the Council and Heritage Victoria that the purpose of the guidelines is to assist owners of heritage places when making applications and Heritage Victoria permit officers in making recommendations, noting they are a guide only and cannot limit the considerations under the Heritage Act. However, they should not

⁴¹ Document 93.

⁴² Document 136.

be seen as prescriptive and universal in their application and should be applied with discretion taking into account the particular circumstances of a site and the proposed development.

Heritage Council Committee Report

The Committee does not agree the Heritage Council Committee Report should be given primary weight because its conclusions were based on different plans and did not have the benefit of expert evidence and tested concepts. However, the Committee acknowledges the importance, function and strong expertise of the Heritage Council. The Committee has therefore been assisted by the Committee Report with respect to key findings, issues and opinions that remain common between current and former plans and considers it should be given some weight in this respect.

5 Planning assessment

5.1 Legislative context

The Amendment is governed by the PE Act.

The Amendment is a request for a planning scheme amendment pursuant to section 20(4) of the PE Act. The Committee's task (according to the Terms of Reference) is to advise the Minister of the appropriateness of the draft Amendment.

The PE Act sets out relevant considerations for a planning scheme amendment, and for planning authorities. In particular:

- section 12(1) provides that a planning authority must:
 - d) implement the objectives of planning in Victoria;
 - e) provide sound, strategic and co-ordinated planning of the use and development of land in its area;
 - f) ...
- section 12(2) provides that in preparing a planning scheme amendment a planning authority:
 - (a) must have regard to the Minister's directions; and
 - (aa) must have regard to the Victoria Planning Provisions; and
 - (ab) in the case of an amendment, must have regard to any strategic plan, policy statement, code or guideline which forms part of the scheme; and
 - ...
 - (c) must take into account its social effects and economic effects.

5.2 Strategic justification and planning

(i) Issues

The key issues to be resolved are whether:

- the draft Amendment is strategically justified
- use of the Special Controls Overlay and the inclusion of the Incorporated Document at Clause 72.04 of the Melbourne Planning Scheme is appropriate.

(ii) Background

Table 6 provides an overview of the strategic context for the draft Amendment. Appendix F highlights key imperatives of relevant provisions and policies.

Table 6 Planning and legislative context – Amendment

	Relevant references
Administration	- PE Act
Relevant considerations	- section 12(1) and (2) of the PE Act
Victorian planning objectives	- section 4 of the PE Act
Municipal Planning Strategy	- Clause 2.01 (Context)

	<ul style="list-style-type: none"> - Cause 2.02 (Vision) - Clause 2.03-3 (Settlement) - Clause 2.03-4 (Built environment and heritage) - Clause 2.03-6 (Economic development)
Planning Policy Framework	<ul style="list-style-type: none"> - Clause 11 (Settlement) - Clause 12.03-1R (Yarra River protection) - Clause 15 (Built environment and heritage) - Clause 17 (Economic development) - Clause 18 (Transport) - Clause 19 (Infrastructure)
Particular and General Provisions	<ul style="list-style-type: none"> - Clause 52.06 (Car Parking) - Clause 52.34 (Bicycle Facilities) - Clause 53.18 (Stormwater Management in Urban Development) - Clause 65 (Decision Guidelines)
Other planning strategies and policies	<ul style="list-style-type: none"> - Plan Melbourne 2017-2050: Metropolitan Planning Strategy and the Plan Melbourne 2017-2050: Addendum 2019
Planning scheme provisions	<ul style="list-style-type: none"> - Capital City Zone, Schedule 1 (Outside the Retail Core) - Design and Development Overlay Schedule 1 (Urban Design in Central Melbourne) - Design and Development Overlay Schedule 10 (General Development Area Built Form) - Parking Overlay Schedule 1 - Heritage Overlay (Listings HO637 and HO1235)
Ministerial directions	<ul style="list-style-type: none"> - Ministerial Direction 9 (Metropolitan Planning Strategy) - Ministerial Direction 11 (Strategic Assessment of Amendments)
Planning practice notes	<ul style="list-style-type: none"> - Planning Practice Note 46: Strategic Assessment Guidelines, August 2018

It is proposed to permit the use and development of the subject land through the inclusion of an Incorporated Document under the Specific Controls Overlay (SCO). The SCO enables specific controls to be applied to override other requirements of the planning scheme. The incorporated document includes the conditions under which the use and development of the land must abide by. In this case, the Incorporated Document effectively replaces a planning permit and outlines the development conditions that would apply.

The purpose of the SCO is to “*apply specific controls designed to achieve a particular land use and development outcome in extraordinary circumstances*”.

The application of the SCO through draft Amendment C401melb is required to vary the mandatory requirements prescribed within DDO10, being the tower separation and install plant, equipment and architectural features outside the height and setback requirements.

(iii) Evidence and submissions

Strategic justification

No party disputed that the draft Amendment is strategically justified. The Proponent submitted there is a clear strategic basis for the draft Amendment which is supported by, and implements, the relevant sections of the Planning Policy Framework.

The Proponent submitted the Proposal would bring *“practical and positive alignment to separate principles of heritage conservation, sustainable economic use of heritage places, Central City urban design and land use outcomes...”*,⁴³ and would deliver on fundamental land use, development, economic and population imperatives.

The Proponent submitted the Proposal would provide a rare and exceptional opportunity to:

- conserve significant heritage fabric and values consistent with the purposes of the Heritage Act, and would protect and conserve the cultural heritage of the State
- enhance the utility and function of heritage assets
- encourage economic activity, urban consolidation and efficient use of infrastructure
- utilise, to optimum land use benefit, underdeveloped land in a vital central city location
- introduce *“architectural innovation with a sense of rigour and excitement to further celebrate the juxtaposition of heritage and contemporary urban design in a special and highly pedestrianized precinct of the City”*.⁴⁴

In referencing Plan Melbourne 2017-2050: Metropolitan Planning Strategy (Plan Melbourne) and the Plan Melbourne 2017-2050: Addendum 2019, the Proponent submitted that these important strategic documents, particularly in the case of Melbourne’s Central Business District, acknowledge that Melbourne must evolve, be defined as a global city of opportunity and choice and be a productive city to attract investment, support innovation and create jobs (outcome 1).

The Proponent submitted the Proposal would deliver on several high order policy outcomes for the Central City in urban design and land use terms, including it:

- would be consistent with the policy for the Central City to be a global city, a key hub, linking into the world economy, and for it to be *“bold, inspirational and sustainable”*
- would be a significant economic investment and attractor for the precinct delivering A grade office space in the Hoddle Grid where such use maximises ‘infill’ opportunities and clever use of existing infrastructure
- is in a location which is desirable to keep the increasingly isolated office use of 1 Spring Street linked to other commercial uses in the Hoddle Grid
- would deliver a connected, active and protected public realm space
- would achieve net community benefit.

The Proponent submitted the draft Amendment is supported by the relevant planning strategies, policies and provisions in the Planning Scheme and accordingly the Committee should conclude it *“directly responds to and implements key tenets of planning policy as applicable to the precinct and broader CBD”*.⁴⁵

⁴³ Document 93.

⁴⁴ Document 93.

⁴⁵ Document 93.

In his evidence, Mr McGurn highlighted the importance of the subject site being within Melbourne's Central City and the Hoddle Grid, being the location for key functions such as government and public buildings, offices, cafés, retail and residential uses.

In relation to the proposed land uses, Mr McGurn said the provision of high-quality office space, ground level retail, hospitality and flexible co-working styles office spaces, as well as upgrades to Milton House to increase activity within the plaza, are outcomes sought by the Capital City Zone Schedule 1 and corresponding policies in the Planning Scheme. He said the:

- contribution of A Grade commercial floorspace would support the maintenance of the Central City as the pre-eminent commercial and mixed-use centre in Victoria
- benefit of an upgraded environment would flow to the ongoing viability of Shell House as a place of business
- tower would positively contribute to employment and commercial use at this edge of the City
- the Proposal represented a reasonable balancing of planning policy that would contribute positively by making more public space available, would increase activity within Flinders Lane and provide high quality office space, resulting in a net community benefit.

While Council did not refute the strategic justification of the Proposal, it submitted the northern plaza was not an infill opportunity, was not set aside for future development or further intervention and was not an underutilised vacant site.

Use of the SCO and an Incorporated Document

In his evidence, Mr McGurn indicated:

The SCO identifies the Incorporated Document and is an appropriate use of the Victoria Planning Provisions. It is appropriate for the SCO and Incorporated Document to apply to the whole of the land to encompass the integrated nature of the development. The content of the Incorporated Document follows the typical format of developments of this scale, including conditions which in effect form a planning approval (D78).

Mr McGurn furthermore stated "the variation to DDO10 is on the whole not significant and does not in my view detract from the overall objectives of the provisions. On this basis I would consider the use of the SCO and Incorporated Document responds to a technical need rather than a wholesale variation to policy. This is an outcome which I consider can be readily justified in the context of the relevant policy for the Central City and is an appropriate outcome, particularly given the relationship with buildings of State Heritage significance (D78).

Council submitted:

A site like this ought to be eligible for special consideration and council has no fundamental opposition to drawing on available planning tools, such as the SCO on this occasion, to introduce an appropriate planning response'.⁴⁶

(iv) Discussion

The subject site is on the fringe of the eastern part of the Hoddle Grid, an area earmarked by higher scales of development, including office development. This is evident from the scale of new development in this part of the Central City, which is creating a more intense urban environment, resulting in changing the city skyline. The Committee agrees that as a Place of State Significance (for investment and growth), the Central City will need to accommodate more office space if it is to

⁴⁶ Document 134.

remain a destination for business investment. The contribution of A Grade commercial floorspace as proposed would support the maintenance of the Central City as the pre-eminent commercial and mixed-use centre in Victoria.

For the Central City to remain a desirable destination for business investment and a major destination for tourism, new space must be found for office as well as retail, education, health, entertainment, and cultural activities. The Proposal would boost employment opportunities within the Central City and contribute to the presence of office space in the eastern precinct of the Hoddle Grid.

Planning Policy aims to manage ongoing change and growth within the Hoddle Grid but acknowledges the need to balance the need for more intense development and built form against the management of heritage places. While the Committee accepts new development should not unacceptably impact the integrity of the heritage places, it considers the policy framework for the Central City acknowledges this is a key area which will experience ongoing change in built form. The Planning Scheme seeks to balance new development with conservation of heritage places and, in the case of the Hoddle Grid, where built form change will be more substantial, the outcome should be one that contributes to the built form character as well as providing a pleasant pedestrian environment.

While planning should protect places with significant heritage, architectural, aesthetic, natural, scientific, and cultural value, this does not imply that changes to these places, including within their current context, cannot occur. The Central City is an evolving, growing, and diversifying entity and is Victoria's principal centre for commerce, as well as other uses. The outcome as stated in the Planning Scheme is *"to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity"*.⁴⁷

The draft Amendment and the Proposal directly respond to and implement key tenets of planning policy as applicable to the precinct and broader Central City. The Proposal would enhance the legacy and function of the heritage places for the broader community while delivering on high order policy outcomes for the Central City in both urban design and land use terms. The Proposal achieves a net community benefit in circumstances where there is a need to balance conflicting policies to arrive at an outcome which will support Victorians having regard to the objectives at section 4 of the PE Act.

Finally, the Committee is satisfied the SCO is an appropriate statutory tool to use because it will sit side by side with an endorsed set of plans and contains conditions that the use and development must comply with. The SCO provides the ability to enforce and monitor the conditions contained within the Incorporated Document, as if it was a permit subject to conditions.

(v) Conclusions

The Committee concludes:

- The Proposal satisfies the relevant planning strategies, policies and Planning Scheme provisions as they relate to development within the Capital City Zone Schedule 1.
- There is strong support under the PE Act and the Planning Scheme to justify the strategic basis for the draft Amendment.

⁴⁷ Clause 15.01-1S of the Planning Scheme.

- The draft Amendment is an appropriate planning tool to facilitate the Proposal.

5.3 Design and Development Overlay Schedule 1

(i) The issues

The key issues to be resolved are whether:

- the Proposal is an appropriate response to the design objectives of Design and Development Overlay Schedule 1 (DDO01)
- the proposed variations to the requirements of DDO01 are justified and appropriate and can be suitably accommodated by approval of the Incorporated Document.

DDO01 is focused on the pedestrian experience, and good urban design at the ground plane.

(ii) Evidence and submissions

The Proponent submitted the Proposal would provide for a significant improvement to the public realm experience of the northern elements of the ground level of the site, submitting:

The existing conditions leave something to be desired. The existing 'plaza' area is not activated, with inactive barriers seen on the west, most of the south and the east, and a relatively hostile pedestrian environment to the north of Flinders Lane. The area is not connected to anywhere save for being the 'rear' entrance to 1 Spring Street and it is very much an 'ant track' for that building. In fact, as will be seen below, properly considered it is but a 'concourse entry'. It therefore lacks activity, and it is not seen as a desirable place to dwell or 'use' in any real sense. There is a lack of pedestrian shelter. It is significantly overshadowed, and it is affected by wind. It is now almost surrounded by tall built form. In contemporary terms, it is not living up to the standard of amenities, finish, and the general ambience of modern day plaza environments.⁴⁸

The Proponent submitted the Proposed would transform the northern area into a modern, lively, high quality and valued public realm space in Melbourne's CBD through:

- improved connectivity with new links through to the western laneway, Spark Lane, and Throssell Lane
- improved activation to Milton House through the insertion of retail uses
- improved public realm spaces by making the level 3 rooftop garden publicly accessible
- innovative treatment of valued heritage fabric through the relocation of the theatrette which will act as a draw card into the plaza
- modern and high-quality materials and finishes.

In his evidence, Mr Czarny described the existing northern space as an open paved plaza and provided a contextual diagram designating the space as a plaza⁴⁹. Mr Czarny said the plaza space was underperforming as an attractor for pedestrians and urban activation. Mr Czarny considered the north elevation and northern open space as a secondary access to Shell House.

Mr Czarny said the design proposal would provide activation to the subject site, it would include a well-designed pedestrian conduit to the entrance of the building, and public access to a reconfigured upper open courtyard and retain clear visual appreciation of the full form of Milton House.

⁴⁸ Document 93.

⁴⁹ Document 81.

Mr Czarny said the:

- proposed design and inclusion of a tower would provide a good opportunity for activation to the ground plane
- raised soffit of the tower would offer some weather protection for the pedestrian forecourt while maintaining an open air feel to the space
- configuration of the raised soffit and undercroft area of the tower with associated columns would not compromise the formal integrity of the adjoining heritage buildings.

Mr McGurn provided evidence on the urban design response, including reference to DDO01. He said DDO01 is a blanket control applying broadly across Melbourne's Central City and its purpose is to provide urban design controls relating to city form and detail of ground level interfaces and pedestrian connectivity, as well as building design.

Mr McGurn considered DDO01 was appropriately addressed, noting:

- the Proposal would improve the 'Urban Structure' through additional pedestrian connections down to the western laneway and the provision of a stair and lift
- improved activity would be created in the plaza through the new building foyer, retail and hospitality connections in the podium and the opening of Milton House to the plaza
- the foyer entrance of the new building would be clearly visible from Flinders Lane and the entrance to Shell House from this approach would be more clearly emphasised through the Proposal and introduction of activity in this area
- the requirement to retain 50 per cent of the existing plaza under DDO01 would be addressed by the reconfigured plaza area (inclusive of the level 3 terrace) delivering a high-quality public space with opportunities for stationary activity
- vehicle access would be maintained in Throssell Lane (and upgraded) to be separate from primary areas of pedestrian activity
- the proposed tower would form one of three primary forms on the subject land and each building would have its own architectural language and maintain a different typology especially in the case of Milton House
- materials have been adopted which would respond to the heritage qualities of Shell House and would be robust in this highly urban setting
- activity to Flinders Lane would be improved by the reuse of Milton House for retail purposes, the new tower's retail tenancy at the Flinders Lane frontage, hospitality uses in the tower podium (Level 4, 5 and 6) and through a clearly visible foyer for Tower 2.

Council submitted the Proposal would not appropriately respond to the plaza retention requirements or ground plane requirements of DDO01. It submitted there would be a significant reduction to the northern plaza and areas which are accessible to the public, and the Design Requirements or Design Outcomes for 'Plazas' in Clause 2.5 would not be met. Council submitted the Proponent's suggestion that a functionally separated Level 3 terrace would assist to supplement this reduction (which would receive no sunlight and with no wind analysis to support use of this terrace for stationary activity) was inadequate.

In relation to the acceptability of the re-designed ground floor plane and the ability for the public to access the Level 3 plaza from the ground floor plane, Council submitted:

The fact that Mr Czarny had to be told it would be made accessible to the public puts a serious question mark over the integrity of the level 3 plaza's connection with the public realm and the ground floor plane. Indeed, the planning assessment carried out by Council's Planning department could not decipher the plans proposing public access to Level 3. Did

the architect's genuinely see this as an actual component of the design, or was it a mere afterthought? We would submit it to be the latter.

And, notwithstanding, it is now clear to Council through the benefit of the evidence and further explanations offered on day #1 of the Advisory Committee hearing that the Proponent seeks to make the level 3 plaza publicly accessible, the design response raises serious questions around whether it will actually afford accessibility to the public so as to be enjoyed and used by the public.⁵⁰

Council submitted:

- modifications to the ground plane would contort the atrium/undercroft around Tower 2 and the retained and reconfigured parts of Shell House, and would erode the quality of the ground plane and publicly accessible areas
- what was a generous atrium/undercroft proposition previously, would be a labyrinthine passage impeded by Tower 2's supporting columns and projecting and angular walls.

(iii) Discussion

The Committee considers the proposed design outcome is an appropriate response to the design objectives of DDO01.

Under 'Urban Structure' (clause 2.4) the pedestrian connections through the subject land would be structurally retained. The western laneway from Flinders Lane to Flinders Street would be retained with improved access provisions through lift and additional stair access. The other existing pedestrian connection through the subject land is the movement from Flinders Lane through to the Spring Street corner passing through the northern plaza and access through Shell House. This is not a public thoroughfare but as a route, it would be retained in the Proposal.

The Committee accepts the proposed design would, through increased activation to the northern approach and enhanced access amenity, retain and improve on existing public and pedestrian connections and would provide opportunities for a more active and attractive urban space than the current configuration. The Committee does not accept the quality of the proposed northern access/concourse to the building entry would be eroded in design quality relative to the existing plaza space, rather the Proposal would present improved design quality and site attractiveness.

The existing northern plaza would be significantly altered under the Proposal. The Committee accepts that in considering 'Site Layout' (clause 2.5) the proposed design would meet the design outcomes. The proposed plaza would retain at least 50 per cent of the original plaza area (inclusive of the publicly accessible level 3 terrace) while enhancing pedestrian access and opportunities for stationary activities.

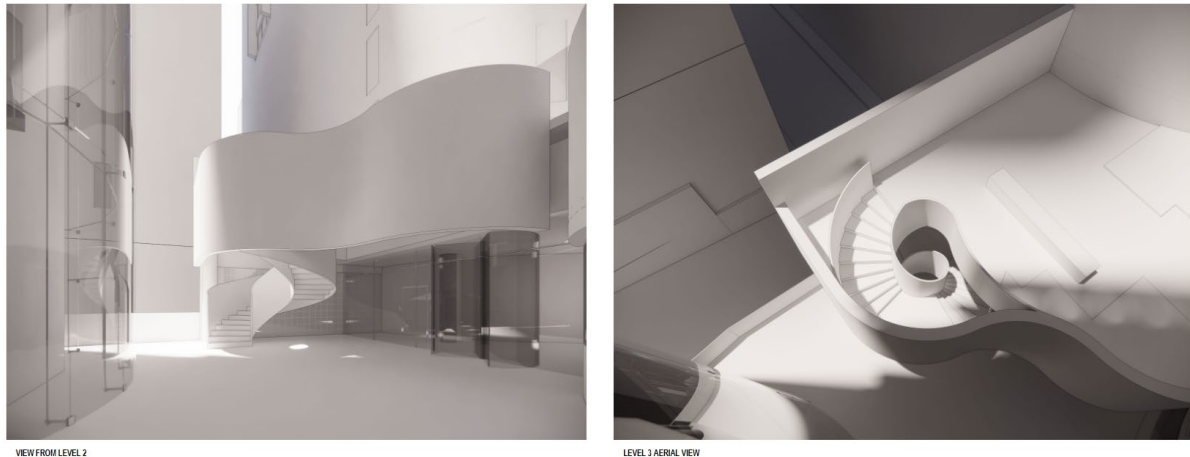
The design requirement that plazas be open to the sky would not technically be met by the Proposal as the undercroft section of Tower 2 would cover substantial parts of the redesigned plaza. The height of the soffit to the undercroft ranges between five and eight storeys above ground level and is open to the sides at the north, south and west. In this instance the area under cover would feel open and allow views of the sky and would meet the design outcomes of the clause.

The Committee does however agree with Council that the design response of the level 3 plaza from a public accessibility perspective would be substandard. It raised this issue through the

⁵⁰ Document 134.

questions it asked of Mr Czarny and Mr Holman in relation to the pedestrian staircase connecting the plaza with the level 3 space above. Mr Holman was asked to consider this and produced a plan (Document 142) which showed a modified version of the stairs up to the level 3 roof garden from level 2 (see Figure 10).

Figure 10 Re-design staircase to level 3 plaza (Source: SK-223 dated 20 March 2023)⁵¹



The Committee considers this revised design to be a superior response as it provides better connectivity, while respecting and maintaining the Seidler philosophy and design.

While the Proposal would not meet all the objectives, the variance is related to responses to the specific nature of the subject land. The design outcomes of 'Building Mass' (clause 2.6) and Building Program (clause 2.7) are generally met.

Regarding 'Building Mass' (clause 2.6), the Proposal would provide a distinction between new and existing buildings with the soffit, tower and redesigned podium all relating to specific existing site conditions. The tower silhouette would provide another interesting building top to the existing diverse skyline. The Proposal would address Milton House through its lower-level setback and the high raised undercroft of the tower which responded directly to the typology of the existing forecourt and the significance of the Milton House form. Similarly, the Proposal would draw on the existing forecourt and the visual primacy of Milton House in not offering a street wall form.

Addressing 'Building Program' (clause 2.7), the Proposal would increase activation at the publicly accessible ground plane through the addition of retail and hospitality opportunities. It would provide a raised publicly accessible plaza on level 3 which the current terrace does not, only providing restricted access through a locked gate.

The Committee does not agree with the submission of Council that the proposed design configuration and columns presented an impeded 'labyrinthine' passage to the entry to the subject land or Shell House. The access from Flinders Lane to the northern entry of Shell House is longer and more formally stretched than the existing configuration, but it would be a straightforward and clear passage. The location of the columns would not impact on this pedestrian passage.

Clause 2.8 of DDO01 that refers to Public Interfaces relates to street edges that infer the urban design approach of continuous street facades. In this case, the Committee accepts the existing

⁵¹ Document 142.

circumstances and proposed design response call for an approach without street façades or podium forms, rather it seeks a design outcome that draws pedestrians into the subject land.

The Committee accepts the design detail and quality of the proposed architecture, materials and finishes is of a high standard. This point was accepted by all parties although the location and scale of the architectural proposal raised heritage impact concerns.

(iv) Conclusions and recommendation

The Committee concludes:

- The Proposal is an appropriate response to the design objectives of DDO01
- The proposed variations to the requirements of DDO01 are justified and appropriate and can be suitably accommodated by conditions in the Incorporated Document.

The Committee supports the redesign of the stairs up to the level 3 roof garden from level 2. This change is reflected in condition 1(e) of Section 6.0 of the Committee's Preferred Version of the Incorporated Document in Appendix G.

The Committee recommends:

Modify the architectural plans prepared by Ingenhoven, Architectus and Harry Seidler and Associates Pty Ltd dated 13 January 2023 and marked Revision J to show the redesign of the stairs up to the Level 3 roof garden from Level 2 in accordance with SK—221, SK-222 and SK-223 dated 20 March 2023.⁵²

5.4 Design and Development Overlay Schedule 10

(i) The issues

The key issues to be resolved are whether:

- the proposed development is an appropriate response to the design objectives of Design and Development Overlay Schedule 10 (DDO10)
- the proposed variations to the requirements of DDO10 are justified, appropriate and able to be suitably accommodated by approval of the Incorporated Document.

The purpose of DDO10 is to provide guidance for high density development with a focus on street wall heights, massing and building setbacks. DDO10 applies broadly across the Central City except for areas of special character which are affected by other provisions and requirements.

The desirable form for buildings overall is a podium and tower. The required setbacks and floorplates for a proposal are determined according to a mix of specified setbacks and a formula which considers how tall the building is proposed to be.

(ii) Evidence and submissions

The Proponent described the design as the opposite of a podium tower approach because useable external public spaces and air space is proposed in the area where a podium would have been sited. Nevertheless, the Proponent said the design and siting of the new tower has taken into

⁵² Document 142.

consideration the metrics in DDO10 and “*distributed the proposed floorplate areas in a very site responsive and architecturally refined way*”.⁵³

In relation to DDO10 design requirements, the Proponent submitted:

- it was appropriate to exclude the architectural crown feature from the calculation of setbacks and floorplate, despite it exceeding three metres in height - if this is done, then the allowable floor plates are 1,238 square metres in area and the required side setbacks are 7.3 metres
- the Proposal has taken these metrics along with the minimum five and ten metre setbacks from various elements which are contained within DDO10, and it has used them as guides for the formulation of the tower design
- the proposed floorplate areas for the Proposal would be distributed in a site responsive and architecturally refined way using a scallop shaped building.

The Proponent submitted the areas of non-compliance with DDO10, which are the reason the Amendment is required rather than a planning permit, are:

- the street wall requirements of DDO10 which presume a typical urban design response is to build directly to the street are not met
- the fire stair which would protrude from the northern face of Shell House, has a four metre separation from the new tower rather than a 10 metre separation
- if the architectural feature is included within the calculation of ‘total building height’ then the floorplate measures within DDO10 would be slightly exceeded.

However, the Proponent said the areas of non-compliance with DDO10 are acceptable in the scheme of the overall Proposal.

Mr McGurn said the Proposal responded positively to most measures set out in DDO10. He noted the proposed ‘variations’ to the requirements of DDO10 were justified and appropriate and could be suitably accommodated by approval of the Incorporated Document.

Mr McGurn addressed the Floor Area Ratio requirement and said a Floor Area Ratio 18:1 applied to the subject land and with floor area of the 77,261 square metres proposed for Tower 2, the Floor Area Ratio is 14.73:1.

Mr McGurn considered the DDO10 mandatory provisions relating to wind effects and overshadowing. He referred to the wind statement by MEL Consultants (noting it related to the Revision G plans), and said based on that assessment:

- the wind conditions in the surrounding streets, including Flinders Lane and the new plaza, would pass the pedestrian safety criteria
- the wind conditions in the plaza itself would be expected to be at the upper limit of the sitting comfort criterion or at the lower end of standing comfort criterion.

In relation to overshadowing, Mr McGurn said the Proposal met the shadow tests of Clause 15.01-1L03 of the Planning Scheme and DDO10. In relation to Clause 15.01-1L-03 he said:

- there would be no additional shadow cast across the Yarra River Corridor between 11am and 2pm on 22 June
- there would be no unreasonable reduction in the amenity of public spaces (such as Birrarung Marr or Flinders Street) between 11am and 2pm on 22 September

⁵³ Document 93.

- where there would be additional shadow, this was mainly limited to the rail yards, Flinders Street and Exhibition Street roadways and the footpath along the Exhibition Street extension
- during the hours of 11am to 3pm from 22 April to 22 September, no shadow will affect Parliament Gardens, Treasury Gardens, Parliament Steps and Forecourt, Old Treasury Steps
- no shadow will affect Birrarung Marr between 11am and 2pm from 22 April to 22 September.

DDO10 includes the requirement that no unreasonable shadow affect privately owned public open space, namely the new plaza, between 11am and 2pm on 22 September.

McGurn agreed the addition of Tower 2, including the elevated soffit, would affect shadows in the existing plaza, but noted this area is already largely in shadow at 11am and 12pm on 22 September and again at 2pm and 3pm. At 1pm on 22 September, the level 2 plaza would experience some additional shadow and the area unshaded would be re-oriented. Mr McGurn did not consider the impact to be significant because of the limited time of the impact and the relatively limited change.

While Council supported the use of the SCO and an Incorporated Document for the subject land, it submitted it was still reasonable to assess the Proposal against provisions such as DDO10. Council submitted the Proposal does not appropriately respond to the tower floorplate or building setback requirements of DDO10. It said the layout and location of the Tower 2 'scallop' shaped floorplate design would cantilever into the airspace above Milton House and the cantilevered floorplate would mean Tower 2 visually dominates the heritage place.

(iii) Discussion

The Explanatory Report for the draft Amendment stated:

The variations to DDO10 are required to facilitate a contextually driven design outcome at the site and a world class commercial tower. Given the unique position of the proposed development, set back from Flinders Lane (providing a publicly accessible plaza) and constructed up to Throssell Lane, whilst sharing land with two (2) significant heritage buildings, the design of the building is not a typical podium-tower relationship and a variation to the strict built form requirements of DDO10 is required.

The Committee agrees with this description and considers the proposed development is an appropriate response to the design objectives of DDO10.

The proposed Floor Area Ratio of 14.73:1 would be well within the maximum allowable Floor Area Ratio for the subject land of 18:1. While the top or crown of Tower 2 would exceed the three metre architectural feature allowance, the Committee agrees this additional 28.5 metres accommodating plant and services (and not occupied floorspace) would contribute to the architectural qualities of the development, its legibility within the skyline and will sit comfortably in the surrounding high rise towers.

The primary trigger for the provisions of the DDO10 not being fully met is the emphasis in the purpose of the DDO10, being to *"encourage intensive development in the Central City to adopt the podium and tower format"*. The Proposal does not apply this format to the siting of Tower 2 and the Committee supports this approach. This is an appropriate design response because without it, a northern plaza space accessible from Flinders Lane would no longer be provided on the subject land and views of the northern elevation of Shell House would likely be lost when viewed from Flinders Lane. The Committee was advised this resistance to adopt the podium and tower format

for sites with street frontage in the Central City is consistent with Seidler's vision for Shell House in the 1980s when he opposed this format and won.

Instead, Tower 2 is proposed to be setback five metres from Flinders Lane with the ovoid footprint hugging the eastern boundary (Throssell Lane) and providing a new plaza space at the ground plane which would be activated to be visually and physically accessible from Flinders Lane. The building setbacks to the side and rear boundaries meet the DDO10 modified requirements except for the fire escape stair of Shell House which would intrude four metres into a ten metre setback distance required between the two towers. The Committee does not consider this intrusion to be contrary to the objectives of DDO10, and notes because of the scalloped shape of the façade of Tower 2, the western boundary setback in some locations would exceed the ten metre requirement.

Turning to issues of overshadowing and wind impacts, the Committee considers an updated wind impact assessment is required but is comfortable with this being addressed by way of a condition in the Incorporated Document. The Committee considers there will be no adverse overshadowing to key places outside of the subject land. Within the subject land it is evident the level 2 plaza which is publicly accessible (unlike the level 3 plaza which is not publicly accessible) is already subject to a high degree of overshadowing between 11am to 2pm on 22 September caused by nearby taller buildings. This situation will largely remain and the most amount of unshaded area would be at 1pm. The Committee agrees with Mr McGurn that the overshadowing impact is not significant given the relatively limited change to what currently exists for the level 2 plaza.

(iv) Conclusion

The Committee concludes:

- The proposed variations to the requirements of DDO10 are justified and appropriate and can be suitably accommodated, subject to conditions of the Incorporated Document.

5.5 Proper documentation

Council submitted the Revision J plans were not supported by proper documentation.

The Proponent submitted that a range of background and supporting documents from the Revision B, Revision C and Revision G suites of documents can be generally relied upon to support the Revision J Plans.

Council took issue with this approach, submitting the Revision B, Revision C and Revision G developments were different proposals. It said it *"is not appropriate to 'pick and choose' reports or submissions from a complex list of technical documents with multiple iterations, filed in service of an abandoned proposal, to support a new proposal"*.⁵⁴ Council submitted it would not be comfortable deferring the missing technical reports to the 'condition' stage of the development.

Council submitted the following documents were necessary to enable a complete and accurate assessment of the proposed development:

- development summary⁵⁵
- an updated Wind Analysis Report responding to the requirements of DDO10

⁵⁴ Document 101.

⁵⁵ Provided during the hearing - Document 109.

- an updated Transport Impact Assessment
- proposed elevations for Milton House⁵⁶
- an updated Waste Management Plan
- Landscape Report
- Plaza Strategy.

The Proponent submitted all above listed matters, together with environmentally sustainable design statements, can be the subject of conditions of the Incorporated Document.

Council submitted the Proponent has sought an amendment process drawing on the mechanism of an Incorporated Document which will form part of the Planning Scheme on approval. It said this was different to a planning permit process where a greater level of flexibility exists and where a level of change can readily occur should/when the need arises because a condition cannot be satisfied.

Mr McGurn said that for a development of this scale, it is appropriate for conditions to require submission of detailed documentation moving through to the commencement stage (or after as relevant for some matters), and observed:

- the documents under consideration provide a detailed level of information regarding site layout, elevations, land use and plaza design
- these have been informed by specialist consultant reports (such as ESD, landscaping and wind) and represent a well resolved proposition
- the proposed Incorporated Document conditions strike an appropriate balance of approval, while allowing for submission of detailed documents later in the process.

The Committee agrees with the approach adopted by the Proponent and considers it is appropriate that an updated Wind Analysis Report, Transport Impact Assessment, Waste Management Plan, Landscape Report and Plaza Strategy be required through the Incorporated Document conditions.

⁵⁶ Provided during the hearing - Document 118.

6 Final Form of the Incorporated Document and Heritage Permits

6.1 Final Form of the Incorporated Document

The Committee was provided with various versions of the Incorporated Document throughout the hearing including:

- Exhibited Incorporated Document⁵⁷
- Council Version⁵⁸
- Proponent Day 1 Version⁵⁹
- Proponent Version 2⁶⁰
- Council track changes to the Proponents Version 2⁶¹
- Proponent Version 3.⁶²

A ‘without prejudice’ session on the Incorporated Document was held on the last day of the Hearing, based on the Proponent’s Version 3 Incorporated Document.

The Committee’s preferred version is at Appendix G to this report. For ease of reference, the Committee is using the Council Version of the Incorporated Document (with all changes proposed by Council accepted) as its base document for its recommendations. The tracked changes shown include those accepted by the Committee as proposed by both the Proponent and Council throughout the hearing, and other changes.

The issues between the Proponent and Council in relation to the conditions were limited, with most changes proposed by both parties throughout the hearing process accepted.

Three key issues with the conditions remained unresolved.

The first issue related to the requirement to provide updated elevations as part of the amended plans package and whether the following words should remain or be deleted:

Integrated elements to enhance human scale to all building public realm interfaces, including:

- solid elements to ensure human scale and façade depth
- operable windows
- plinths
- an integrated landscape edge
- awnings over tenancy entries.

All materials used should be robust, natural, textured and high quality with reference to the character of Flinders Lane, and other adjacent laneways.

Design measures to minimise the visual perception of column scale from the pedestrian perspective, such as a finer grained applied treatment (bluestone tiles, etc.).

⁵⁷ Document 4d

⁵⁸ Attachment 1 to Document 6

⁵⁹ Document 99

⁶⁰ Document 126

⁶¹ Document 137

⁶² Document 148

This condition was a Council recommendation in relation to the Revision G plans. Council submitted it was still relevant and should remain. The Proponent submitted given it relates to the Revision G plans, it should no longer be included. The Committee agrees it relates to a different set of plans and is no longer relevant and should be deleted.

The second issue is whether the conditions which reference the Responsible Authority (being the Minister) as the determining authority, should include the words “*in consultation with Melbourne City Council*” in some circumstances, including key matters such as plan endorsement and approval.

Council submitted the words “*in consultation with Melbourne City Council*” should be included in circumstances which ought to be referred to the Council for consideration. The Proponent accepted the inclusion of these words in most circumstances however opposed their inclusion in condition 8 (relating to landscape works), condition 17 (relating to the publicly accessible spaces management plan), condition 18 (relating to the requirement for a Sustainability Management Plan) condition 21 (relating to the requirement for a Water Sensitive Urban Design /Stormwater Management Plan) and condition 56 (relating to the Art Strategy).

Council ultimately agreed to the deletion of the words in condition 8 but submitted they should remain in conditions 17, 18, 21 and 56. The Proponent submitted it was appropriate for Council to be consulted on matters where the Council has a direct interface or role, such as street trees and waste management but not for everything. The Proponent submitted it was not appropriate that Council need to be consulted in relation to matters such as the Sustainability Management Plan, the Water Sensitive Urban Design /Stormwater Management Plan and the art strategy.

The Committee disagrees and considers Council should be consulted in relation to conditions 17, 18 and 21 and does not agree they are matters where the Council has no direct interface or role. This is what would ordinarily occur in practice in any event and the Committee considers the better approach is to be consistent and for Council to be consulted. The Committee however does not agree the Council needs to be consulted in relation to the art strategy.

The final issue which remained unresolved was whether condition 5 (Façade Strategy, Materials and Finishes) should reference the Responsible Authority (being the Minister) or Council as the determining authority to ensure it is able to enforce ongoing compliance. Council submitted that while clause 72 of the Planning Scheme confirms the Minister is the Responsible Authority, it does not give the Minister enforcement powers, which, it contended, has created confusion between the two authorities in the past.

The Proponent disagreed and submitted that while confusion might arise as to who should enforce a condition such as this, it was not a reason to elevate the Council to the Responsible Authority. The Committee agrees and considers there are appropriate enforcement powers and provisions provided through the PE Act, in particular section 114, which can be pursued as needed.

All parties agreed the conditions relating to the protection of heritage buildings during construction could be deleted as this protection is provided for in the Heritage Permits.

Finally, during the Hearing the Committee asked the Proponent whether it supported the recommendation of Mr Goad⁶³ that a signature piece of contemporary fine art be placed in the lobby space of Tower 2, given this was a common strategy employed by Seidler to impart human

⁶³ Document 3e which formed part of the original application.

scale at ground level. The Proponent accepted this recommendation, and an art strategy condition has been included in the final form of the Incorporated Document (condition 56). Similarly, during the Hearing the Proponent indicated it proposed to widen the footpath by 55 square metres along Flinders Lane in accordance with plan DA1027 produced 7 March 2023 (Document 120). No party objected and this change is reflected in condition 1(d).

6.2 Final Form of the Heritage Permit P33301 (Milton House)

The Committee was provided with various versions of Heritage Permit P33301 throughout the hearing including:

- Heritage Victoria Version⁶⁴
- Proponent Version 1⁶⁵
- Proponent Version 2⁶⁶.

A ‘without prejudice’ session on the Heritage Permits was held on the last Hearing Day, based on the Proponent’s Version 2. For ease of reference, the Committee is using the Proponent’s Version 2 as its base document for its recommendations.

The Committee’s preferred version is at Appendix H to this report. The tracked changes shown include those accepted by the Committee as proposed by both the Proponent and Heritage Victoria throughout the hearing, and the Committee’s recommendation in relation to the retention of the rear staircase. The Committee’s preferred version references the Milton House demolition plans produced during the Hearing⁶⁷ and form the base set of the plans which capture what the Committee is recommending be approved.

The changes also reflect the recommendations of the Committee reached in Chapter 4.2, being:

- the scope of internal works and demolition warrants further consideration
- a Conservation Management Plan should be prepared and approved prior to the approval and endorsement of final demolition plans.

There was no real dispute amongst the parties in relation to the conditions and the Proponent’s suggested changes, except for the Proponent’s inclusion of the words “*A relevant portion of*” in relation the provision of a bank guarantee in condition 22. Heritage Victoria opposed the staging of the bank guarantee, submitting the condition as proposed is standard, used on all permits, and staging should not be supported as permit applicants often forgo the Bank Guarantee rather than completing the works. The Committee agrees with Heritage Victoria and does not support this change proposed by the Proponent.

6.3 Final Form of the Heritage Permit P33300 (1 Spring Street)

The Committee was provided with various versions of the Heritage Permits throughout the hearing including:

- Heritage Victoria Version⁶⁸
- Proponent Version 1⁶⁹

⁶⁴ Document 114

⁶⁵ Document 125

⁶⁶ Document 144

⁶⁷ Document 118

⁶⁸ Document 115

- Proponent Version 2⁷⁰.

A 'without prejudice' session on the Heritage Permits was held on the last Hearing Day, based on the Proponent's Version 2. For ease of reference, the Committee is using the Proponent's Version 2 as its base document for its recommendations.

The Committee's preferred version is at Appendix I to this report. The tracked changes shown include those accepted by the Committee as proposed by both the Proponent and Heritage Victoria throughout the Hearing.

⁶⁹ Document 126

⁷⁰ Document 145

7 Conclusion and recommendations

Assessment of the Heritage Applications

Under its Terms of Reference, the Committee has assessed all issues relating to the 1 Spring Street Heritage Application and the Milton House Heritage Application pursuant to section 101 of the Heritage Act.

The Committee concludes:

- The extent of demolition and modification proposed for Shell House is acceptable and would not inappropriately affect or diminish its cultural heritage significance.
- Demolition and modifications proposed to Milton House are generally acceptable and would not inappropriately affect or diminish the cultural heritage significance of Milton House. However, the scope of internal works warrants further consideration, and a Conservation Management Plan should be prepared and approved prior to the approval and endorsement of final demolition plans.
- Demolition of the rear staircase is not appropriate and is an internal element which should be retained.
- The addition Tower 2 and the associated changes to the ground floor planes would not inappropriately or unacceptably affect the cultural heritage significance of Shell House and Milton House.
- The architectural strategy for Tower 2 has successfully:
 - adapted Shell House to create a new, attractive and usable northern plaza that is in keeping with the philosophy of the Seidler architectural practice
 - designed a tower that respects both heritage places and is physically separated from Shell House and Milton House.
- The Proposal would only have a limited effect on the reasonable and economic use of the heritage places. To overcome a refusal under section 101(2)(a), further evidence would need to have been called on this point.

Assessment of the Amendment

Under its Terms of Reference, the Committee has assessed all issues relating to the draft Amendment pursuant to section 12 of the PE Act and against the Planning Scheme.

The Committee concludes:

- The Proposal satisfies the relevant planning strategies, policies and Planning Scheme provisions as they relate to development within the Capital City Zone Schedule 1.
- There is strong support under the PE Act and the Planning Scheme to justify the strategic basis for the draft Amendment.
- The draft Amendment is an appropriate planning tool to facilitate the Proposal.
- The Proposal would appropriately respond to the design objectives of DDO01 and the proposed variations to the requirements of DDO01 and DDO10 are justified and appropriate and can be suitably accommodated by conditions in the Incorporated Document.

The Committee recommends:

Prepare and approve Melbourne Planning Scheme Amendment C401melb by applying the Specific Controls Overlay to the subject land and introducing the Incorporated Document at Clause 72.04 subject to the conditions included in Appendix G of this report.

Issue Heritage Permit Applications P33001 and P33000 subject to the conditions included in Appendices H and I of this report.

Appendix A Terms of Reference

Terms of Reference

1 Spring Street and 21–25 Flinders Lane, Melbourne Advisory Committee

Version: June 2022

Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* (PE Act) to report on planning and heritage matters in relation to the proposed redevelopment of the land for the partial demolition of existing structures and development of a multi-storey commercial office building at 1 Spring Street and 21-25 Flinders Lane, Melbourne.

Name

The Advisory Committee is to be known as the '1 Spring Street and 21–25 Flinders Lane, Melbourne Advisory Committee' (the Committee).

1. The Advisory Committee is to have members with the following skills:
 - a. heritage
 - b. statutory planning
 - c. urban design

Purpose

2. The purpose of the Advisory Committee is to advise the Minister for Planning on the appropriateness of draft Amendment C401melb and called-in heritage permits P33300 and P33301.

Background

3. The proposal is for the partial demolition of existing structures on site and development of a multi-storey commercial office building at 1 Spring Street and 21-25 Flinders Lane, encompassing two places (Shell House and Milton House) listed on the Victorian Heritage Register under the *Heritage Act 2017* (Heritage Act).
4. The proposed development requires planning approval, through a site-specific planning scheme amendment (draft Planning Scheme Amendment C401melb).

Heritage permits background

5. On 11 November 2020, heritage permit applications P33300 and P33301 were submitted to Heritage Victoria. The permits sought approval for works to Shell House and Milton House to facilitate the proposed redevelopment of Shell House.
 - a. The works proposed to Shell House included demolition or partial demolition of the north plaza, theatre, conference rooms, entrance passageway and the roof garden on Level 3 to allow for the construction of a new 35-storey tower within the north plaza (above the existing basement).
 - b. The tower would cantilever over the south-east corner of Milton House, and works are proposed to the interior and exterior of Milton House to upgrade access and allow for integration with the new tower by way of a new entrance within the eastern wall. Conservation works are proposed to the exterior of the building.
6. On 4 August 2021, the Executive Director, Heritage Victoria, determined to refuse both permit applications on the grounds the proposed development would substantially impact the cultural heritage significance of Shell House and Milton House.
7. On 2 September 2021, in accordance with section 106(1) of the Heritage Act, the applicant requested a review by the Heritage Council of the Executive Director's decision to refuse the permit applications.

8. On 9 September 2021, the applicant sent a letter to the Minister for Planning requesting the Minister call in the Heritage Council review proceeding for determination by the Minister, using powers afforded to the Minister, and that the planning (via draft Amendment C401melb) and heritage matters be referred to an advisory committee and reviewed in a single forum given the interconnectivity of the matters.
9. On 26 October 2021, the Minister for Planning determined to call in the heritage permit review under section 109 of the Heritage Act. Under section 113(1)(b), the Minister required the Heritage Council to provide a report on the permit review.
10. On 27 May 2022, a report prepared by the Heritage Council Regulatory Committee, pursuant to section 113(1)(b) of the Heritage Act, was provided to the Minister. The report recommended the Executive Director's decisions to refuse permits P33300 and P33301 be affirmed.
11. In determining a review, the Minister must consider the matters set out in s 101(2) of the Heritage Act. The Minister may make a determination to (a) affirm the determination under review; or (b) vary the determination under review; or (c) set aside the determination under review and make another determination in substitution to it.

Planning Scheme Amendment background

12. Draft Planning Scheme Amendment C401melb was submitted to the Minister for Planning on 18 November 2020. The amendment seeks planning approval for the proposed development by introducing a Specific Controls Overlay and an incorporated document.
13. A planning scheme amendment is required as the proposed development does not comply with the mandatory tower separation, height or setback requirements prescribed by Schedule 10 to the Design and Development Overlay of the Melbourne Planning Scheme.
14. On 23 June 2021, the Department of Environment, Land, Water and Planning (DELWP) consulted with Melbourne City Council and the Department of Transport under section 20(5) of the PE Act about this proposal. The Department of Transport has requested a number of changes to the Incorporated Document which are technical in nature and relate to the protection of the Melbourne Underground Rail Loop (MURL) during and post construction. Melbourne City Council considered the amendment at its Future Melbourne Committee on 5 April 2022 and resolved to support Amendment C401melb, subject to changes to the conditions within the Incorporated Document.

Appointment of Advisory Committee

15. The Minister for Planning has now determined to establish an Advisory Committee to consider all relevant matters relating to this proposal. The Minister proposes to consider the report of the Advisory Committee before determining the heritage permits and planning scheme amendment request.

Method

16. The Advisory Committee must:
 - a. Review and assess all relevant matters concerning the proposal, including the heritage permits, including all submissions made; and
 - b. Review and assess all relevant matters concerning the draft Planning Scheme Amendment C401melb, including statutory planning, built form and urban design considerations.
17. The Advisory Committee may inform itself in anyway it sees fit, and must consider all relevant matters, including, but not limited to:
 - a. Relevant provisions of the Heritage Act.
 - b. All submissions or objections received by Heritage Victoria pursuant to section 95 of the Heritage Act.
 - c. The report prepared by the Heritage Council Regulatory Committee dated 27 May 2022.
 - d. Relevant provisions of the PE Act and the Melbourne Planning Scheme, including any adopted plans, strategies or planning scheme amendments.

- e. The submissions and views of the applicant, Heritage Victoria, Melbourne City Council, DELWP and the Department of Transport.
 - f. All relevant material prepared by or for the applicant or otherwise provided to the Advisory Committee, including any amended application material submitted.
18. The Advisory Committee is not expected to carry out any additional public notification or referral.
19. The Advisory Committee shall provide the following parties with an opportunity to make a submission and be heard:
- Heritage Victoria
 - Melbourne City Council
 - The applicant and its representatives
 - Department of Environment, Land, Water and Planning
 - Department of Transport
20. The Advisory Committee may limit the time of parties appearing before it and may regulate or prohibit cross examination.
21. The Advisory Committee may apply to vary these Terms of Reference in any way it sees fit before submitting its report.

Submissions are public documents

22. The Advisory Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it until a decision has been made on its report or five years has passed from the time of its appointment.
23. Any written submissions or other supporting documentation provided to the Advisory Committee is treated as public documents and must be available for public inspection until the submission of its report, unless the Advisory Committee specifically directs that the material is to remain 'in camera'.

Outcomes

24. The Advisory Committee must produce a written report for the Minister for Planning providing the following:
- a. An assessment of all relevant matters relating to draft Planning Scheme Amendment C401melb and any amended application material submitted to it.
 - b. An assessment of all relevant matters relating to the heritage permit applications and any amended application material submitted to it.
 - c. A recommendation on any changes required for the proposal to be considered acceptable on heritage grounds and matters relevant to determination of the review under the Heritage Act. Recommended changes should be consistent with the committee's assessment of draft Planning Scheme Amendment C401melb.
 - d. An assessment of all submissions to the Advisory Committee.
 - e. Any other relevant matters raised during the Advisory Committee hearing.
 - f. A list of persons who made submissions considered by the Advisory Committee.
 - g. A list of persons consulted or heard.

Timing

25. The Advisory Committee is required to set dates for a Directions Hearing and Hearing no later than 20 business days from the date Panel Panels Victoria is formally notified of the Committee's appointment.
26. The Advisory Committee is required to submit its report in writing as soon as practicable but no later than 25 business days from the completion of its hearings.

Fee

27. The fee for the Advisory Committee will be set at the current rate for a Panel appointed under Part 8 of the PE Act.
28. The costs of the Advisory Committee will be met by the applicant.



HON RICHARD WYNNE MP
Minister for Planning

Date: 24 / 06 / 2022

The following information does not form part the Terms of Reference.

Project Management

- 1 Day to day liaison for this matter will be provided by Sheridan Harley, Senior Planner, Development Approvals & Design at the Department of Environment, Land, Water and Planning, on telephone (03) 8508 1510 or email sheridan.harley@delwp.vic.gov.au.
- 2 Day to day liaison for the Advisory Committee will be through Hayley Becker, Manager Major Projects of Planning Panels Victoria on (03) 8508 2775 or hayley.becker@delwp.vic.gov.au.

Appendix B Submitters to the Heritage Application P33300

No.	Submitter	No.	Submitter
01	Eric Craig	31	Alexandra Pozzo
02	Christine Craig	32	Cindy Murphy
03	David Curtain	33	Robert Borzillo
04	Eileen O'Shea	34	Paul Bush
05	Clayton Thomas (Melbourne Pain Group)	35	Peter Evans (Colliers)
06	Robert Ketterer	36	Ralf Heine
08	Jim and Libby Cousins	37	Jo-Anne Bush
09	Josephine Tan	38	Richard Caven and Susan Pelka
10	Shaun McElwaine	39	Belinda Au
11	Carolyn Hewson	40	Lynda and Neil Saunders
12	Jeremy Rouse	41	Kee Lok Tan
13	Alice Pebay	42	Peter Watson
14	Hana Assafiri	43	Rebecca Thomas
15	Richard Cowan	44	Tracey Mander
16	Rosemary Nixon	45	Mrs Janette Lee Phin Panaccio
17	Lorraine Tucker	46	Alan and Kate Gibson
18	John Tucker	47	Gary Cuttler
19	Joy and Lynden McNamara	48	Maria Diamond
20	John Madden	49	Nanako Cuttler
21	Chris Lord	50	Karen Perkins
22	Judith and Philip Hargrave	51	Kieren Perkins
23	Michael Clarebrough (Australian Securities Limited)	52	Sandra Makris
24	Toby McElwaine	53	Kenneth Date
25	Janie Clarebrough	54	Lorraine Wharton
26	Alan and Kate Gibson	55	Dug Pomeroy
27	Yolande Leonard	56 & 79	Harry Stamoulis (Stamoulis Property Group)
28	Anju Agarwal (Specialists on Honeysuckle)	57	Elizabeth Loftus (Owners Corporation – 35 Spring Street, Melbourne)
29	Graham McStay (CECGM)	58	Sy Chiew Law (Prime Value Asset Management Ltd)
30	Sandor Herbath (European Watch Gallery)	59	Rosanna Hoad

No.	Submitter	No.	Submitter
60	Caro Llewellyn	76	Christopher and Cheryl Thomas
61	Fabrizio Ippoliti Jnr, Fabrizio Ippoliti, Lynn Burmeister and Tatiana Ippoliti	77	Marcel Mihulka
62	George Tzaferis	80	Ian MacDonald (Eewee Nominees Pty Ltd)
63	Jacqueline Mulvogue	81	Michael Sesto
64	Jarrold Sibbison	82	Felicity Watson (National Trust of Australia, Victoria)
65	Rodney Hoad	83	Michael Anghie
66	John Redman	84	Christopher Lamb (Owners Corporation, Sackville House, 27 Flinders Lane, Melbourne)
67	Barry and Gwen Ballard	85	Mark Woolley (Wooltings Pty Ltd)
68	Adrian Pozzo	86	John Sadar
69	Ann Byrnes (RBA Financial Group Pty Ltd)	87	Stuart Harrison
70	Peter and Margaret Gill	89	Anthony Amy
71	Peter Lucas (Marriott Hotels)	90	Chi Guo
72	Kim Choo	91	Geordie Cowan
73	Christopher Wyke	92	Julia Cambage (Australian Institute of Architects)
74	Rohan Storey (Melbourne Heritage Action)	93	Michael Lane
75	Adam Tomas (Tomas Technology Pty Ltd)		

Appendix C Submitters to the Heritage Application P33301

No.	Submitter	No.	Submitter
01	Eric Craig	32	Peter Evans (Colliers)
02	Christine Craig	33	Ralf Heine
03	Eileen O'Shea	34	Jo-Anne Bush
04	Robert Ketterer	35	Richard Caven and Susan Pelka
06	Jim and Libby Cousins	36	Belinda Au
07	Carolyn Hewson	37	Lynda and Neil Saunders
08	Jeremy Rouse	38	Kee Lok Tan
09	Alice Pebay	39	Peter Watson
10	Hana Assafiri	40	Rebecca Thomas
11	Geordie Cowan	41	Tracey Mander
12	Rosemary Nixon	42	Janette Lee Phin Panaccio
13	Lorraine Tucker	43	Alan and Kate Gibson
14	John Tucker	44	Gary Cuttler
15	Joy and Lynden McNamara	45	Maria Diamond
16	John Madden	46	Nanako Cuttler
17	Chris Lord	47	Karen Perkins
18	Judith and Philip Hargrave	48	Kieren Perkins
19	Michael Clarebrough (Australian Securities Limited)	49	Sandra Makris
21	Janie Clarebrough	50	Kenneth Date
22	Alan and Kate Gibson	51	Lorraine Wharton
23	Yolande Leonard	52	Dug Pomeroy
24	Anju Agarwal (Specialists on Honeysuckle)	53 & 76	Harry Stamoulis (Stamoulis Property Group)
25	Graham McStay (CECGM)	54	Elizabeth Loftus (Owners Corporation – 35 Spring Street, Melbourne)
26	Sandor Herbath (European Watch Gallery)	55	Chiew Law (Prime Value Asset Management Ltd)
27	Alexandra Pozzo	56	Rosanna Hoad
28	Cindy Murphy	57	Caro Llewellyn
29	Robert Borzillo	58	Fabrizio Ippoliti Jnr, Fabrizio Ippoliti, Lynn Burmeister and Tatiana Ippoliti
30	Paul Bush	59	George Tzaferis
31	Shaun McElwaine	60	Jacqueline Mulvogue
No.	Submitter	No.	Submitter
61	Jarrold Sibbison	77	Ian MacDonald (Eewee Nominees Pty Ltd)

62	Rodney Hoad	78	Michael Sesto (Sesto Nominee Pty)
63	John Redman	79	Felicity Watson (National Trust of Australia, Victoria)
64	Barry and Gwen Ballard	80	Michael Anghie
65	Adrian Pozzo	81	Christopher Lamb (Owners Corporation, Sackville House, 27 Flinders Lane, Melbourne)
66	Ann Byrnes (RBA Financial Group Pty Ltd)	82	Mark Woolley (Wooltings Pty Ltd)
67	Peter and Margaret Gill	83	Toby McElwaine
68	Peter Lucas	84	John Sadar
69	Kim Choo	85	Anthony Amy
70	Christopher Wyke	86	Chi Guo
71	Rohan Storey (Melbourne Heritage Action)	87	David Curtain
72	Adam Tomas (Tomas Technology Pty Ltd)	88	Clayton Thomas (Melbourne Pain Group)
73	Christopher and Cheryl Thomas	89	Josephine Tan
74	Marcel Mihulka	90	Richard Cowan
75	Anna De Paoli	91	Michael Lane

Appendix D Parties to the Committee Hearing

Submitter	Represented by
Phillip Nominees Pty Ltd	<p>Chris Townshend KC and Emma Pepler, instructed by Planning Property Partners who called expert evidence on:</p> <ul style="list-style-type: none"> - town planning from Stuart McGurn of Urbis - urban design from Craig Czarny of Hansen Partnership - heritage from Bryce Raworth of Bryce Raworth Pty Ltd - heritage from Peter Lovell of Lovell Chen - architectural heritage from Peter Cachola Schmal - economics from Tony Dimasi of Dimasi and Co - photomontage and animation from Christopher Goss of Orbit Solutions (was not called).
Melbourne City Council	<p>Louise Hicks, instructed by Ann-Maree Drakos of Melbourne City Council who called expert evidence on:</p> <ul style="list-style-type: none"> - heritage from Jim Gardner of GLM Heritage.
Heritage Victoria	Nicola Stairmand and Janet Sullivan of Heritage Victoria

Appendix E Document list

No.	Date	Description	Provided by
2022			
1	7 Jul	Letter of referral to the Committee	(former) Minister for Planning
2	"	Terms of Reference	(former) Minister for Planning
3	"	Planning Application Request, November 2020, Architectural Plans and Consultant Reports: <ul style="list-style-type: none"> a. Urban Context Report, Ingenhoven and Architectus, Nov 2020 b. Development Summary c. Architectural Plans - Tower 2, Ingenhoven and Architectus, issue B, Nov 2020 d. Architectural Plans - Milton House, Ingenhoven and Architectus, issue B, Nov 2020 e. Architectural Review, Professor Goad, Oct 2020 f. Conservation Management Plan, Lovell Chen, Nov 2020 g. Economic Benefit Presentation, Urbis, Oct 2020 h. FAR and GFA Review, WT Partnership, Oct 2020 i. Green Travel Plan, GTA Consultants, Oct 2020 j. Landscape Report, Oculus, Nov 2020 k. Planning Report, Urbis, Nov 2020 l. Re-established Boundary Plan m. Site Survey, Veris n. Supporting Statement, Greg Holman of Harry Seidler and Associates, Oct 2020 o. Sustainability Management Plan, ARUP, Oct 2020 p. Transport Impact Assessment Tower 2, GTA Consultants, Oct 2020 q. Urban Design Assessment, Jones and Whitehead Pty Ltd, Oct 2020 r. Waste Management Plan, WSP, Oct 2020 s. Wind Report, MEL Consultants, Nov 2020 t Stormwater Management Plan, ARUP, Nov 2020 	Department of Environment, Land, Water and Planning (DELWP)
4	"	Draft Amendment C401melb: <ul style="list-style-type: none"> a. Schedule to Clause 45.12 b. Schedule to Clause 72.04 c. Explanatory Report d. Incorporated Document e. Instruction Sheet 	

No.	Date	Description	Provided by
5		Amended Architectural Plans and Consultant Reports, February 2022: <ul style="list-style-type: none"> a. Cover letter b. Planning Report, Urbis, Feb 2022 c. Architectural Plans – Tower 2, Ingenhoven and Architectus, issue G, Feb 2022 d. Architectural Plans – Tower 2 (Clouded), Ingenhoven and Architectus, issue G, Feb 2022 e. Architectural Plans – Milton House, Ingenhoven and Architectus, issue G, Feb 2022 f. Architectural Plan – Milton House (Clouded), Ingenhoven and Architectus, issue G, Feb, 2022 g. Development Schedule, Feb 2022 h. Model Location Plan, Feb 2022 i. Urban Context Report, Ingenhoven and Architectus, Feb 2022 j. Column Study, Ingenhoven and Architectus, Jan 2022 k. Plaza Area Diagrams, Ingenhoven and Architectus, Feb 2022 l. Plaza Strategy, Urbis, Feb 2022 m. Landscape Report, Oculus, Feb 2022 n. Wind Report, Mel Consultants, Feb 2022 o. Sustainability Management Plan, ARUP, Feb 2021 p. Milton House Heritage Impact Statement, Lovell Chen, Feb 2022 q. 1 Spring Street Heritage Impact Statement, Lovell Chen, Feb 2022 	
6	“	Melbourne City Council Report and Resolution to draft Planning Scheme Amendment C401melb, 5 April 2022	“
7	“	Department of Transport Submission to draft Planning Scheme Amendment C401melb, including tracked change Incorporated Document, 22 July 2022	“
8	“	Heritage Permit Application P33300 <ul style="list-style-type: none"> a. Application Lodge Nov 2020 (in addition to documents also submitted with the Planning Application Request, Nov 2020): <ul style="list-style-type: none"> i. Application Form and consent letter ii. Cost of works iii. Heritage Impact Statement, 1 Spring Street, Lovell Chen, Nov 2020 iv. Memorandum of proposed construction methodology, ARUP, Oct 2020 	“

No.	Date	Description	Provided by
		<ul style="list-style-type: none"> v. Certificate of Titles vi. Statement of Design Principles - 1 Spring Street, Lovell Chen, Nov 2020 vii. Memorandum, Seismic Considerations, ARUP, Oct 2020 viii. Reasonable and Economic Use Assessment 1 Spring Street, Urbis, Nov 2020 	
		b. Referral letter to Melbourne City Council, May 2020	
		c. Response to Request for Further Information, Feb 2021	
		<ul style="list-style-type: none"> i. Ingenhoven and Architectus RFI response, Feb 2021 ii. Architectural Plans – Tower 2, Ingenhoven and Architectus, Issue C, Feb 2021 iii. Heritage Impact Statement, Lovell Chen, Feb 2021 iv. Memorandum, Seismic Considerations, ARUP, Jan 2021 v. Lovell Chen Response to RFI, Feb 2021 vi. Memorandum of proposed construction methodology, ARUP, Jan 2021 vii. Reasonable and Economic Use Assessment 1 Spring Street, Feb 2021 	
		d. Melbourne City Council Referral Response and Heritage Advice for P33300 and P33301, April 2021	
		e. Submissions	
		f. Referral letter to Development Approvals DELWP, May 2021	
		g. Response to s. 95 and s. 100 submissions for P33300 and P33301, Lovell Chen, June 2021	
		h. Heritage Victoria Determination, Aug 2021	
9	“	Heritage Permit Application P33301	“
		<ul style="list-style-type: none"> a. Application Lodge Nov 2020 (in addition to documents submitted with the Planning Application Request, Nov 2020 and Heritage Permit Application P33300): <ul style="list-style-type: none"> i. Application Form and consent letter ii. Cost of works iii. Certificate of Titles iv. Heritage Impact Statement, Milton House, Lovell Chen, Nov 2020 b. Referral letter to Melbourne City Council, November 2020 c. Response to Further Information, Feb 2021 (in addition to RFI documents submitted with Heritage Permit Application P33300) 	

No.	Date	Description	Provided by
		<ul style="list-style-type: none"> i. Lovell Chen Response to RFI, Milton House, Feb 2021 ii. Architectural Plans – Milton House, Ingenhoven and Architectus, Issue C, Feb 2021 iii. Heritage Impact Statement, Milton House, Lovell Chen, updated Feb 2021 d. Submissions e. Heritage Victoria Determination, Aug 2021 	
10	“	Report of the Heritage Council of Victoria to the Minister, 26 May 2022 (and Appendices 1, 2 and 3)	“
11	15 Jul	Directions Hearing notice letter	Planning Panels Victoria (PPV)
12	26 Jul	Letter – requesting adjournment of Hearing	Proponent
13	4 Aug	Directions, Timetable, Distribution List, Version 1	PPV
14	9 Aug	Email filing planning permits and endorsed plans	Melbourne City Council (Council)
15	“	Confirmed Future Melbourne Committee Minutes (6-Sep-16) - (Hotel Lindrum)	“
16	“	Endorsed Plans, 3 September 2018, Hotel Lindrum	“
17	“	Planning Permit Extension of Time Request, 1 October 2020, Hotel Lindrum	“
18	“	Council Delegate Report, 6 September 2016, Hotel Lindrum	“
19	“	Planning Permit TP-2015-568, 25 June 2017, Hotel Lindrum	“
20	“	VCAT Order, 13 June 2017, Hotel Lindrum	“
21	“	Endorsed Plans, 5 October 2021, Wilson Carpark	“
22	“	Planning Permit Extension of Time Request, 23 March 2022, Wilson Carpark	“
23	“	Planning Permit, 26 July 2016 (amended 13 October 2020, Wilson Carpark	“
24	“	Redacted Council Delegate Report, 26 July 2016, Wilson Carpark	“
25	“	Redacted Section 72 Amendment Delegate Report, 11 September 2020, Wilson Carpark	“
26	“	Letter - requesting further adjournment of the Hearing	Proponent
27	12 Aug	Letter – requesting response to adjournment request	PPV
28	16 Aug	Email – requesting alternative adjournment dates of the Hearing	Proponent
29	17 Aug	Email – Council response to adjournment request	Council
30	“	Email – HV response to adjournment request	Heritage Victoria

No.	Date	Description	Provided by
31	"	Email – confirming second Directions Hearing and request for parties to agree on hearing dates	PPV
32	22 Aug	Email – requested alternative hearing dates	Proponent
33	31 Aug	Direction and Timetable Version 2	PPV
34	9 Sep	Direction and Timetable Version 2 (Amended)	PPV
35	19 Sep	Email – Responding to Directions 7 and 8	Proponent
36	"	1985 Design Report prepared by Harry Seidler and Associates	"
37	"	Total figure for existing plaza on the north side of Tower 1	"
38	"	Statement of changes between Nov 2020 and Feb 2022 Plans, Architectus, September 2022	"
39	26 Sep	Email responding to Direction 9	Proponent
40	"	HC Letter to Minister – 4 March 2022	"
41	"	Minister Letter to HC – 27 March 2022	"
42	"	PPP Letter to HC – 31 March 2022	"
43	"	Schedule of Changes – 2020 to 2022 Plans	"
44	"	PPP Letter to HC – 8 April 2022	"
45	"	Plans Tower 2 (Rev E) – 17 December 2021	"
46	"	Plans (Milton House) (Rev E) – 17 December 2021	"
47	"	Plans Dimensional Differences	"
48	13 Oct	Email regarding Heritage Council Documents	PPV
49	"	Heritage Council of Victoria Report Appendix 3, Document 100	"
50	"	Heritage Council of Victoria Report Appendix 3, Document 101	"
51	22 Dec	Directions and Timetable Version 3	"
2023			
52	16 Jan 2023	Architectural Plans – Tower 2, Ingenhoven and Architectus, issue J, Jan 2023	Proponent
53	"	Planning Application Report, Ingenhoven and Architectus, issue C, Jan 2023	"
54	"	Email responding to Direction 11	"
55	19 Jan	Letter regarding proposed inspection of Seidler Buildings	"
56	20 Jan	Statement of Changes responding to Direction 11	"
57	"	Letter from Committee regarding proposed inspection of Seidler Buildings	PPV
58	"	Letter responding to the proposed inspection of Seidler Buildings	Heritage Victoria
59	23 Jan	Email responding to the proposed inspection of Seidler Buildings	Council

No.	Date	Description	Provided by
60	25 Jan	Letter from Committee regarding Directions Hearing and proposed inspection of Seidler Buildings	PPV
61	30 Jan	Letter in anticipation of Directions Hearing	Proponent
62	1 Feb	Letter from Committee regarding Seidler site inspection and updated Directions	PPV
63	"	Directions Version 4	"
64	13 Feb	Email requesting clarification of the proponent's amended plans and documentation	Council
65	"	Proponent's Part A Submission	Proponent
66	"	Letter from Committee to Proponent requesting information from the proponent	PPV
67	15 Feb	Planning Permit No. 85-9303B	Council
68	"	Endorsed plans under Planning Permit No. 85-9303B	"
69	"	Letter from Proponent to Committee in response to information request	Proponent
70	"	List of approval and supporting documents to be relied upon by Proponent	"
71	16 Feb	Email regarding site inspection and additional plans	"
72	"	Letter and itinerary of Sydney site inspection	"
73	"	Contextual material for Sydney site inspection	"
74	"	Site inspection walking maps	"
75	"	Milton House demolition plans, Ingenhoven and Architectus, Issue J	"
76	23 Feb	Letter requesting clarification of documentation to be relied upon	Council
77	"	Letter confirming expert evidence to be relied upon	Proponent
78	"	Expert Witness Report Stuart McGurn (Planning)	"
79	"	Expert Witness Report Bryce Raworth (Heritage)	"
80	"	Expert Witness Report Peter Lovell (Heritage)	"
81	"	Expert Witness Report Craig Czarny (Urban design)	"
82	"	Expert Witness Report Peter Cachola Schmal (Architectural peer review)	"
83	"	Expert Witness Report Tony Dimasi (Economics)	"
84	"	Expert Witness Report Jim Gard'ner (Heritage)	Council
85	24 Feb	Email regarding 21 February 2023 Future Melbourne Committee decision	"

No.	Date	Description	Provided by
86	"	FMC Agenda, Report and Attachments 21 February 2023	"
87	"	Expert Witness Report Christopher Goss (Visual Amenity)	Proponent
88	"	Animation Flinders Lane East	"
89	"	Animation Flinders Lane West	"
90	"	Animation Flinders Level 2 Plaza	"
91	"	Animation Flinders Level 3 Terrace	"
92	"	FMC unconfirmed minutes 21 February 2023	Council
93	27 Feb	Part B Submission	Proponent
94	"	Letter responding to council's letter of 23 February 2023	"
95	"	Updated list of approval and supporting documents to be relied upon by Proponent	"
96	"	Milton House demolition plans, Ingenhoven and Architectus, Issue J (Corrected)	"
97	"	Letter regarding Day 1 Incorporated Document	"
98	"	Proponent Day 1 Incorporated Document Track Change	"
99	"	Proponent Day 1 Incorporated Document Clean	"
100	2 Mar	Submission	Heritage Victoria
101	"	Submission	Council
102	"	Tower 2 Shadow Diagrams (Revision B Tower model with authorised development)	"
103	"	Northern Plaza Shadow Diagrams (existing conditions with authorised development)	"
104	"	Amendment C308 Central Melbourne Urban Design Panel Report (May 2019)	"
105	"	Timetable Version 4	PPV
106	3 Mar	Presentation by Mr Holman	Proponent
107	"	Presentation by Mr Ingenhoven	"
108	"	CBD Context Photography by Chris Ott Photography	"
109	6 Mar	Development Summary Revision J Plans	"
110	"	Extracts from Towers in the City, Harry Seidler & Associates	"
111	"	Extracts from Four Decades of Architecture, Kenneth Frampton & Philip Drew	"
112	"	Presentation by Mr Schmal	"
113	7 Mar	Full copy of Shell House 1985 Design Report	Heritage Victoria
114	8 Mar	Without prejudice permit conditions P33300	"

No.	Date	Description	Provided by
115	"	Without prejudice permit conditions P33301	"
116	"	Reasonable or Economic Use, DELWP, June 2021	"
117	"	Principles for considering changes to place in the Victorian Heritage Register, DELWP, December 2022	"
118	"	Annotated Milton House demolition plans	Proponent
119	"	Email providing details of the sustainability initiatives following presentation of Mr Ingenhoven	"
120	9 Mar	Tower 2 Plaza Revision J Plan with footpath widening	"
121	14 Mar	Without prejudice permit conditions P33300 Word Version	Heritage Victoria
122	"	Without prejudice permit conditions P33301 Word Version	"
123	15 Mar	Timetable Version 5	PPV
124	16 Mar	Proponent version of without prejudice permit conditions P33300	Proponent
125	"	Proponent version of without prejudice permit conditions P33301	"
126	"	Proponent version 2 Incorporated Document Track Change	"
127	"	Updated Southern Montage View 1	"
128	"	Updated Southern Montage View 2	"
129	"	Guiding principles for changes proposed to places on the Victorian Heritage Register, Heritage Victoria, 2019	"
130		Guiding principles for changes proposed to places on the Victorian Heritage Register, Heritage Victoria, 2021	"
131	"	Timeline of Heritage Victoria's Permit Applications and Guiding Principles for Change	"
132	"	Summary of Proponents Day 5 oral submission	"
133	17 Mar	Presentation by Mr Gard'ner	Council
134	"	Supplementary submission	"
135	20 Mar	Heritage Victoria presentation	Heritage Victoria
136	"	Supplementary submission	"
137	"	Council track changes version of Proponent Version 2 Incorporated Document	Council
138	"	Council clean version of Proponent Version 2 Incorporated Document	"
139	"	Urban Design Report, Rob Adams, 23 September 1985	"
140	"	Council Officer Report Permit Application DP85/0303, 16 Sept 1985	"

No.	Date	Description	Provided by
141	“	Submission 92 to the Heritage Permit P33300, Australian Institute of Architects	“
142	21 Mar	Theatrette Stair Option 1 and 2	Proponent
143	“	Level 2 revised staircase plan and perspectives	“
144	“	Proponent version 2 of without prejudice permit conditions P33300	“
145	“	Proponent version 2 of without prejudice permit conditions P33301	“
146	“	Speaking notes	Heritage Victoria
147	22 Mar	Part C Submission	Proponent
148	“	Proponent version 3 Incorporated Document Track Change	“

Appendix F Planning context

F:1 Planning policy framework

(i) Victorian planning objectives

The Proposal will broadly assist in implementing State policy objectives set out in section 4 of the PE Act, including:

- a) to provide for the fair, orderly, economic and sustainable use, and development of land;
- b) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
- c) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
- d) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;
- e) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e)
- f) to balance the present and future interests of all Victorians.

(ii) Municipal Planning Strategy

Clause 02

The Municipal Planning Strategy is provided for in clause 02. Key strategies relevant to this proposal includes:

- Clause 02.01:

Location

Melbourne is Victoria's capital city and at its heart is the City of Melbourne (the 'City').

...

Melbourne is a global city, and a key hub in Australia's eastern seaboard economic region and gateway of trade, commerce and culture, linking into the world economy.

Key features

The City contains Victoria's premier economic and cultural infrastructure; and a wide diversity of 24/7 uses including office and commercial, retail, leisure, entertainment, research, educational (university) and residential uses; and hosts the State's major events.

The City attracts visitors from the metropolitan area, Victoria, inter-state and globally.

The City's assets include its historic precincts, streetscapes and buildings, the public spaces along the Yarra River, its ring of parks and gardens, government and public buildings and well established business districts, including:

...

- The Hoddle Grid comprising an orderly grid of streets, lanes and arcades and main boulevards.
- ...
- Laneways and arcades, which are one of the most iconic elements of the City's character, social life and economy
- ...

History

...

... In the 1990s, apartment development in the Hoddle Grid and Southbank began the Central City's revival as a place to live as well as work.

- Clause 02.02: Vision
 - The vision for the City to be a bold, inspirational and sustainable city (2.02)
- Clause 02.03: Strategic directions, including:
 - 'Original city centre'

The Hoddle Grid is known for its orderly grid and hierarchy of streets, lanes and arcades and is the main retail and office area in the state. Key functions are located in the Hoddle Grid, including government and public buildings, offices, cafes, education, retail and residential. A strong emphasis is placed on a quality public realm and good pedestrian amenity and connectivity.
 - In planning for settlement:
 - Direct urban growth and development into specific areas of the City shown on the Growth area framework plan at Clause 02.04-1.
 - ...
 - Retain the Hoddle Grid area as the core of the Central City and plan for its ongoing change and growth.
 - ...
 - Maintain a clear distinction in scale from the Central City with higher scales of development expected located at the Central city fringe, around the North Melbourne railway station and along Flemington Road.
 - In Built environment and heritage, a description of Melbourne's character, including its individually significant heritage buildings, and that the City's distinctive physical character and heritage is to be protected and enhanced (2.03-4). There is a Heritage specific section in clause 2.03-4.
 - In Economic Development, the statement that the City makes an important contribution to the economic prosperity of the State through the provision of its local, corporate and global businesses (2.03-6).

(iii) Planning Policy Framework

Key themes within the Planning Policy Framework and which are relevant to this proposal include:

- Encouraging economic activity, urban consolidation and efficient use of infrastructure, in particular:
 - Facilitating sustainable growth and development of Victoria (Clause 11.01-1S)
 - Focusing investment and growth in places of State significance in Metropolitan Melbourne (Clause 11.01-1S), including Metropolitan Melbourne Central City (Clause 11.01-1R)
 - Encourage a form and density of settlements that supports healthy, active and sustainable transport (Clause 11.01-1S)
 - Limit urban sprawl and direct growth into existing settlements (Clause 11.01-1S)
 - Promote and capitalize on opportunities for urban renewal and infill redevelopment (Clause 11.01-1S)

- Develop compact urban areas that are based around existing or planned activity centres to maximise accessibility to facilities and services (Clause 11.01-1S)
- Ensure retail, office-based employment, community facilities and services are concentrated in central locations (Clause 11.01-1S)
- Planning for urban growth should consider opportunities for the consolidation, redevelopment and intensification of existing urban areas (Clause 11.02-1S)
- Encourage the concentration of major retail, ... commercial, ... entertainment ... developments into activity centres that are highly accessible to the community (Clause 11.03-1S)
- Encourage economic activity and business synergies (Clause 11.03-1S)
- Support the development and growth of Metropolitan Activity Centres by ensuring they are able to accommodate significant growth for a broad range of land uses (Clause 11.03-1R)
- Provide for a strong and innovative economy, with planning to contribute to the economic wellbeing of the State and foster economic growth by providing land, facilitating decisions and resolving land use conflicts, so that each region may build on its strengths and achieve its economic potential (Clause 17)
- Strengthen and diversify the economy, protect and strengthen existing employment areas, improve access to jobs closer to where people live (Clause 17.01-1S)
- Support the Central City to become Australia's largest commercial and residential centre by 2050, by planning for office, retail ... spaces (Clause 17.01-1R)
- Encourage development that meets the community's needs for retail, entertainment, office and other commercial services – ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure – locate commercial facilities in existing activity centres (Clause 17.02-1S)
- Facilitate efficient use of existing infrastructure (Clause 19).
- Specific policy directives for the Hoddle Grid (Clause 11.03-6L-09)
- Encouraging high quality urban design and excellence in the built environment (Clause 15, 15.01-1S, 15.01-1L-04, 15.01-2S), with specific provisions for CBD Lanes (Clause 15.01-1L-01), sunlight to public spaces (Clause 15.01-1L-03), energy and resource efficiency (Clause 15.01-2L-01), floor area uplift and delivery of public benefits (Clause 15.01-2L-02), healthy neighbourhoods (Clause 15.01-4S and 4R) and neighbourhood character (Clause 15.01- 5S)
- Ensuring appropriate heritage conservation and outcomes (Clause 15.03-1S, 15.03-1L-02).

F:2 Other relevant planning strategies and policies

i) Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven outcomes, which set out the aims of the plan. The outcomes are supported by directions and policies, which outline how the outcomes will be achieved.

Table 7 Relevant parts of Plan Melbourne

Outcome	Directions	Policies
Melbourne is a productive city that attracts investment, supports innovation and creates jobs	Create a city structure that strengthens Melbourne's competitiveness for jobs and investment	Support the central city to become Australia's largest commercial and residential centre by 2050 Plan for adequate commercial land across Melbourne
Melbourne is a distinctive and liveable city with quality design and amenity	Create more great public places across Melbourne Achieve and promote design excellence Respect Melbourne's heritage as we build for the future	Promote urban design excellence in every aspect of the built environment
Melbourne is a sustainable and resilient city	Transition to a low carbon city to enable Victoria to achieve its target of net zero greenhouse gas emissions by 2050	Improve energy, water and waste performance of buildings through environmentally sustainable development and energy efficiency upgrades

F:3 Planning scheme provisions

The subject land is located within the Capital City Zone Schedule 1 and is encumbered by the Heritage Overlay, Design and Development Overlay Schedule 1 and 10 and the Parking Overlay.

The permit triggers are listed in Table 8.

Table 8 Subject land permit requirements

Permit requirements	
Capital City Zone Schedule 1	A permit is required to: <ul style="list-style-type: none"> - construct a building or construct or carry out works - demolish or remove a building
Design and Development Overlay Schedule 1	A permit is required to construct buildings and works Mandatory requirement: a permit cannot be granted to vary the design requirements in the schedule expressed with the term must
Design and Development Overlay Schedule 10	A permit is required to construct buildings and works Mandatory requirement: a permit cannot be granted for buildings and works that do not meet the modified requirement for any relevant design element specified in Table 3 to the schedule

No planning permit is required under the Heritage Overlay as it is a place within the Victoria Heritage Register (Clause 43.01-3) or the Parking Overlay.

In relation to Clause 52.34 Bicycle Facilities, bicycle parking spaces and end of trip facilities are to meet the minimum requirements. A permit is not required as the proposal complies with the minimum bicycle parking spaces and shower and change room requirements for end of trip facilities.

i) Zones and Overlays

Capital City Zone

The purposes of the Capital City Zone (CCZ) include:

- To enhance the role of Melbourne's central city as the capital of Victoria and as an area of national and international importance.
- To recognise or provide for the use and development of land for specific purposes as identified in a schedule to this zone.
- To create through good urban design an attractive, pleasurable, safe and stimulating environment.

The CCZ is applied across different parts of the Central City, each included within a schedule to the zone. The purpose within the Capital City Zone Schedule 1 includes:

- To provide for a range of financial, legal, administrative, cultural, recreational, tourist, entertainment and other uses that complement the capital city function of the locality.

Design and Development Overlay Schedule 1

The purpose of the DDO01 includes:

- To ensure that all development achieves high quality urban design, architecture and landscape architecture
- To ensure that development integrates with, and makes a positive contribution to, its context, including the hierarchy of main streets, streets and laneways
- To ensure that development promotes a legible, walkable and attractive pedestrian environment
- To ensure that the internal layout including the layout of uses within a building has a strong relationship to the public realm
- To ensure that development provides a visually interesting, human scaled and safe edge to the public realm

Design and Development Overlay Schedule 1 includes design objectives to be met and design outcomes to be satisfied, relating to urban design with a focus on pedestrian experience.

Design and Development Overlay Schedule 10

The purpose of the DDO10 includes:

- To ensure that development respects and responds to the built form outcomes sought for the Central City
- To encourage a level of development that maintains and contributes to the valued public realm attributes of the Central City
- To ensure that new buildings provide equitable development rights for adjoining sites and allow reasonable access to privacy, sunlight, daylight and outlook for habitable rooms
- To provide a high level of internal amenity for building occupants
- To ensure the design of public spaces and buildings is of a high quality
- To encourage intensive development in the Central City to adopt a podium and tower format
- To ensure development achieves a high quality of pedestrian amenity in the public realm in relation to human scale and microclimate conditions such as acceptable levels of sunlight access and wind

Design and Development Overlay Schedule 10 includes built form requirements relating to street wall height, building setbacks above the street wall, building setbacks from side / rear boundaries, wind effects and overshadowing.

ii) Particular Provisions

Relevant particular provisions include:

- Clause 52.03 Car Parking
- Clause 52.34 Bicycle Facilities
- Clause 53.18 Stormwater Management in Urban Development.

Clause 65 Decision Guidelines are also a relevant consideration.

iii) General and operational provisions

Clause 65.01 includes Decision Guidelines for approval of an application or plan. Relevant matters to be considered include:

- the Municipal Planning Strategy and the Planning Policy Framework
- the purpose of the zone, overlay or other provisions
- any matter required to be considered in the zone, overlay or other provision
- the orderly planning of the area
- the effect on the amenity of the area.

Clause 71.02-3 relates to integrated decision making and identified that society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure and that planning aims to meet these needs and expectations. Responsible authorities should integrate the range of planning policies relevant to the issues and balance conflicting objectives in favour of net community benefit.

F:4 Ministerial Directions, Planning Practice Notes and guides

Ministerial Directions

The following Ministerial Directions are relevant:

- Direction 9 Metropolitan Planning Strategy, which requires that in preparing a planning scheme amendment a planning authority must have regard to the Metropolitan Planning Strategy, which is defined to include Plan Melbourne 2017-2050: Metropolitan Planning Strategy and Plan Melbourne 2017-2050: Addendum 2019
- Direction 11 Strategic Assessment of Amendments and the associated Strategic Assessment Guidelines.

The Ministerial Direction in relation to The Form and Content of Planning Schemes is relevant to assist in drafting matters.

Planning Practice Notes

Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the Victoria Planning Provisions in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.

Appendix G Committee preferred version of the Incorporated Document

NOTE: The Committee has provided its recommended changes to the Melbourne City Council Version of the Incorporated Document (with all changes proposed by Melbourne City Council accepted) using:

Tracked Added

~~Tracked Deleted~~

MELBOURNE PLANNING SCHEME

Incorporated Document

1 Spring Street & 21 – 25 Flinders Lane, Melbourne

April 2023 ~~2022~~

1.0 INTRODUCTION

The document is an Incorporated Document in the schedule to Clause 45.12 and Clause 72.04 of the Melbourne Planning Scheme (the Scheme).

The land identified in Clause 3.0 of this document may be used and developed in accordance with the specific controls and conditions contained in Clause 6.0 of this document.

The controls in this document prevail over any contrary or inconsistent provision in the Scheme.

2.0 PURPOSE

The purpose of this Incorporated Document is to allow the development of land described in Clause 3.0 of this document for the purposes of a multi-storey building comprising office and retail uses.

3.0 ADDRESS OF THE LAND

This document applies to the land at 1 Spring Street and 21 – 25 Flinders Lane, Melbourne ([“Land”](#)) that is affected by the Specific Controls Overlay SCOXX and as identified in Figure 1 below.

4.0 EXEMPTION FROM PLANNING SCHEME REQUIREMENTS

Despite any provision to the contrary or any inconsistent provision in the Scheme, no planning permit is required for, and no planning provision in the Scheme operates to prohibit, restrict or regulate the use and development of the land for the purposes of the development permitted by this document.

5.0 WHAT THIS DOCUMENT ALLOWS

[This Incorporated Document allows for the use and development of the Land for:](#)

- [Partial demolition of existing structures; and](#)
- [Construction of a multi storey building comprising of office and retail uses.](#)

The ~~Incorporated Document allows for the partial demolition of existing structures and development of a multi-storey building comprising office and retail uses~~ [use and development must be](#) generally in accordance with [the plans the following ‘Incorporated Plans’](#) prepared by Ingenhoven, Architectus [and Harry Seidler and Associates Pty Ltd \(Seidler\)](#) (dated [13 January 2023 and identified as Revision J\) 22 February 2022 \(Issue G\)](#) listed hereunder, and ~~but~~ modified to include [any](#) changes required under ~~Clause 6.0~~ [any condition](#) of this Incorporated Document:

[1 SPRING STREET](#)

~~DA1000~~ — ~~SHEET LIST~~

DA1001	BASEMENT P5
DA1002	BASEMENT P4
DA1004	BASEMENT P3
DA1005	BASEMENT P2
DA1006	BASEMENT P1
DA1007	LEVEL 1 (THOROSSEL LANE)
DA1008	LEVEL 2 (FLINDERS LANE)
DA1009	LEVEL 3 (INC EXTRENAL TERRACE)
DA1010	LEVEL 4

DA1011 LEVEL 5
 DA1012 LEVEL 6
 DA1013 LEVEL 7
 DA1014 LEVEL 8
 DA1015 LEVEL 9 —14 (TYPICAL LOW RISE)
 DA1016 LEVEL 10-16 (TYPICAL LOW RISE)
~~LEVEL 15 (BRIDGE TO TOWER 1)~~
~~DA1017 — LEVEL 16~~
~~DA1018~~DA1017 LEVEL 17 (LIFT HEAD ROOM)
~~DA1019~~DA1018 LEVEL 18 (LIFT CONTROLLER ROOM)
~~DA1020~~DA1019 LEVEL 19 (LIFT MOTOR ROOM)
 DA1020~~1~~ LEVEL 20 (HYDRONIC PRESSURE ROOM)
 DA1021~~2~~ LEVEL 21 – 32 (TYPICAL HIGH RISE)
 DA1022~~3~~ LEVEL 33 (PLANT)
 DA1023~~4~~ LEVEL 34 (PLANT)
 DA1025 LEVEL 35 (BMU)
 DA1026 ROOF
 DA1027 TOWER 2 PLAZA ~~1 LEVEL 4 SWITCH ROOM~~
DA1029 TOWER 1 LEVEL 4 SWITCH ROOM
 DA2000 NORTH ELEVATION
 DA2001 EAST ELEVATION
 DA2002 SOUTH ELEVATION
 DA2003 WEST ELEVATION
 DA2500 SECTION 1 – EAST / WEST
 DA2501 SECTION 2 – NORTH / SOUTH
 DA9700 ~~MILTON HOUSE~~ DEMOLITION P5~~PLAN~~
DA9701 DEMOLITION P4
DA9702 DEMOLITION P3
DA9703 DEMOLITION P2
DA9704 DEMOLITION P1
DA9705 DEMOLITION LEVEL 1
DA9706 DEMOLITION LEVEL 2
DA9707 DEMOLITION LEVEL 3
DA9708 DEMOLITION LEVEL 4

21-25 FLINDERS LANE

DA0501 PLANS/DEMOLITION (MILTON HOUSE)
DA0502 ELEVATIONS/DEMOLITION (MILTON HOUSE)
DA0503 ELEVATIONS/DEMOLITION (MILTON HOUSE)

[DA1001 PLANS/PROPOSED \(MILTON HOUSE\)](#)

[DA2001 ELEVATIONS/PROPOSED 1 \(MILTON HOUSE\)](#)

[DA2002 ELEVATIONS/PROPOSED 2 \(MILTON HOUSE\)](#)

[DA2501 SECTIONS/PROPOSED \(MILTON HOUSE\)](#)

[DA6002 TOWER 2 OVERLAY OVER MILTON HOUSE HVR](#)

~~And including any amendment of the plans that may be approved from time to time under the conditions of this document.~~

6.0 THE FOLLOWING CONDITIONS APPLY TO THIS DOCUMENT

Incorporated [Modifications to pPlans](#)

1. Prior to the commencement of the development, including demolition, bulk excavation and site preparation works, an electronic copy of plans, drawn to scale must be submitted to the ~~Planning Responsible Authority~~ [\(in consultation with Melbourne City Council\)](#). ~~for Amendment C401. The plans must be~~ generally in accordance with [plans identified in Section 5.0 of this Incorporated Document but modified](#) ~~the Incorporated Plans prepared by Ingenhoven + Architectus (dated 22 February 2022 (Issue G)) but amended~~ to show:
 - a) [any amendment required for consistency with:](#)
 - i. [the Façade strategy required by Condition 5;](#)
 - ii. [the amended Landscape Plan required by Condition 8;](#)
 - iii. [the amended Sustainable Management Plan required by Condition 18;](#)
 - iv. [the amended Water Sensitive Urban Design Statement required by Condition 21;](#)
 - v. [the Loading Management Plan required by Condition 44;](#)
 - vi. [the Detailed Design Plans for Throssell Lane Carriageway and Flinders Lane Footpath Widening required by Condition 45;](#)
 - vii. [the Waste Management Plan required by Condition 47;](#)
 - viii. [the conditions of any PRSA or Environment Audit conducted under Conditions 49 and 50;](#)
 - ix. [the amended Wind Impact Assessment required by Condition 53;](#)
 - x. [the Art Strategy required by Condition 56.](#)
 - b) [For Milton House, plans generally in accordance with DA-000, DA-0501, DA-0502, DA-0503, DA-1001, DA-2001, DA-2002, DA-2501, DA-6001 and DA-6002 prepared by Ingenhoven, Architectus and Seidler, Issue K dated 7 March 2023, subject to any revisions for consistency with plans endorsed under the heritage permits P33300 and P33301.](#)
 - c) [An updated Development Summary.](#)
 - d) [Footpath Widening of 55 sqm along Flinders Lane in accordance with DA1027 produced 7 March 2023.⁷¹](#)
 - e) [Modifications to the staircase up to the Level 3 roof garden from Level 2 in accordance with SK—221, SK-222 and SK-223 dated 20 March 2023 and any consequential changes.⁷²](#)
 - f) ~~Tower 2's floorplate and soffit altered to reduce the extent of overhang over the proposed northern plaza, so that at least 50% of the existing uncovered area of the~~

⁷¹ Document 120.

⁷² Document 142.

~~northern plaza is retained in its current location on Flinders Lane and is 'open to the sky' (this could be achieved by reconfiguring Tower 2's floorplate to increase the uncovered area by 50sq.m (from 200sq.m)).~~

f) 1:20 elevations of all public interfaces (external laneway interfaces, external plaza interfaces, covered plaza interfaces), detailing:

~~i. Integrated elements to enhance human scale to all building public realm interfaces, including:~~

- ~~• solid elements to ensure human scale and façade depth~~
- ~~• operable windows~~
- ~~• plinths~~
- ~~• an integrated landscape edge~~
- ~~• awnings over tenancy entries.~~

~~All materials used should be robust, natural, textured and high quality with reference to the character of Flinders Lane, and other adjacent laneways.~~

~~ii. Design measures to minimise the visual perception of column scale from the pedestrian perspective, such as a finer grained applied treatment (bluestone tiles, etc.).~~

iii. ~~Detail of h~~How the development will interface with adjacent laneways, including Throssell Lane and the western laneway, including detail of design, materiality, and permeability achieved through entries and openings. All openings and entries requiring substantial stairs are to have sufficient passive surveillance, and be enclosable ~~though a gate~~ after plaza operating hours to avoid the creation of potential entrapment spaces.

iv. All secure gates clearly delineated on plans, and designed to be high quality, while maintaining some permeability to further denote the public identity of the covered plaza area. An operational plan must accompany this information for proposed secure gates located at key covered plaza entries from street / laneway frontages, to ensure that the hours of operation of the 'covered plaza' are maximised.

~~g) A number of substantial and clearly defined retail and food and beverage tenancies, directly accessible from the covered plaza to provide sufficient sense of purpose, activation and passive surveillance to facilitate public use and pedestrian movement through. Kiosk cafes / tenancies can be included to supplement a broader activation offering.~~

g) An updated schedule of materials, including specification detail, finish, colour and imagery accurately depicting appearance, and confirmation that the reflectivity of all glazing is not greater than ~~45~~20%. Any additional materials added as a result of responding to permit conditions are to be included.

h) Any doorways opening out onto the Throssell Lane carriageway redesigned so that they do not encroach upon the footpath.

i) Architectural features less than 6.3 metres in height redesigned so that they do not project over the pedestrian refuge / footpath provided to the Throssell Lane carriageway.

~~h) Any changes arising from the recommendations in the endorsed Road Safety Audit.~~

~~i) Any changes arising from the recommendations in the endorsed Loading Management Plan.~~

~~j) Any changes arising from the recommendations in the Consistency with the endorsed~~

~~Waste Management Plan.~~

~~k) Consistency with, and facilitation of, the endorsed detailed design plans for the widened Throssell Lane carriageway required by Condition.~~

~~l) Any changes arising from the recommendations in the revised Wind Impact Assessment.~~

When ~~provided to the satisfaction of the Planning Authority for Amendment C401 in consultation with Melbourne City Council~~ approved the amended plans will be endorsed by the Responsible Planning Authority for Amendment C401 to form part of this Incorporated Document.

2. The use and development as shown on the endorsed ~~incorporated~~ plans must not be altered or modified without the prior written consent of the Responsible Planning Authority for Amendment C401.
3. Once the development has started it must be continued and completed to the satisfaction of the Responsible Planning Authority for Amendment C401.

Demolition and Construction Management Plan

4. Prior to the commencement of the development, including demolition, bulk excavation and site preparation works, a detailed traffic, demolition and construction management plan must be submitted to and be approved by the Melbourne City Council – Construction Management Group. This traffic, demolition and construction management plan must be prepared in accordance with the Melbourne City Council – Construction Management Plan Guidelines and is to consider the following:
 - a) Staging of construction.
 - b) Management of public access and linkages around the site during construction.
 - c) Site access and traffic management (including any disruptions to adjoining vehicular and pedestrian accessways).
 - d) Any works within the adjoining street network road reserves.
 - e) Sediment control and site drainage.
 - f) Hours of construction.
 - g) Control of noise, dust, vibration and soiling of roadways.
 - h) Discharge of polluted waters.
 - i) Collection and disposal of building and construction waste.
 - j) Reasonable measures to ensure that disruption to adjacent public transport services are kept to a minimum.
 - k) Public safety, amenity and site security.
 - l) Program and completion date.

Façade Strategy, Materials and Finishes

5. ~~Prior to the commencement of the development, excluding demolition, bulk excavation and site preparation works~~ Concurrent with the submission of plans in accordance with Condition 1 of this Incorporated Document, a Façade Strategy must be submitted to and approved by the Planning Responsible Authority for Amendment C401 (in consultation with Melbourne City Council). ~~When approved this will form part of the endorsed plans. All materials, finishes and colours must be in conformity with the approved Façade Strategy to the satisfaction of the Planning Responsible Authority for Amendment C401.~~ The Façade Strategy for the development must be generally in accordance with plans identified in Section 5.0 of this

Incorporated Document prepared by Ingenhoven + Architectus dated XX (Rev X) 22 February 2022 (Issue G) and detail:

- a) Necessary modifications to reflect the development as approved under Condition 1 of Section 6.0 of this Incorporated Document.
- b) A concise description by the architect of the building design concept and how the facade works to achieve this.
- c) A schedule of colours, materials and finishes, including the colour, type and quality of materials showing their application and appearance. This can be demonstrated in coloured elevations or renders from key viewpoints, to show the materials and finishes linking them to a physical sample board with clear coding.
- d) Elevation details generally at a scale of 1:50, or other suitable scale agreed to by the Responsible Planning Authority for Amendment C401, illustrating typical podium details, entries and doors, typical privacy screening and utilities, typical tower detail, and any special features which are important to the building's presentation.
- e) Cross sections or other method of demonstrating the façade systems, including fixing details indicating junctions between materials and significant changes in form and / or material.
- f) Information about how the façade will be accessed, maintained and cleaned.
- g) Example prototypes and / or precedents that demonstrate the intended design outcome indicated on plans and perspective images to produce a high quality built form outcome in accordance with the design concept.

When approved the Façade Strategy will be endorsed to form part of this Incorporated Document.

All materials, finishes and colours must be in conformity with the approved Façade Strategy to the satisfaction of the Responsible Authority

6. Light reflectivity from external materials and finishes must not reflect more than 20% of specular visible light, to the satisfaction of the Responsible Planning Authority for Amendment C401.

Retention of Architectural Firm

7. Except with the written consent, and to the satisfaction of the Responsible Planning Authority ~~for Amendment C401~~, Ingenhoven + Architectus in conjunction with Seidler must be retained as appropriate to the works to complete and provide architectural oversight during construction of the detailed design as shown in the endorsed plans, façade strategy and the endorsed schedule of materials and finishes. The final finishes and design for the plaza area must be supervised under the direction of Seidler.

Landscape Plan

8. Concurrent with the submission of plans in accordance with Condition 1 of this Incorporated Document ~~Prior to the commencement of the development, excluding demolition, bulk excavation and site preparation works, an updated~~ Landscape Plan must be submitted to and approved by the Responsible Authority (in consultation with Melbourne City Council). The Landscape Plan must show: ~~generally in accordance with the Landscape Plan prepared by Oculus (dated 21 February 2022 (Revision 03)) must be provided to the Planning Authority for Amendment C401. The Landscape Plan must be updated to include:~~
 - a) Any landscape outcomes in the plans identified at Section 5.0 of this Incorporated Document.
 - b) Necessary modifications to reflect the development as approved under Condition 1 of Section 6.0 of this Incorporated Document.

- c) Details of all public street trees to be retained and / or removed as part of the future development.
- d) Details of all surface finishes including pathways, driveways, terrace or decked areas.
- e) The landscape design of all publicly accessible areas at ground level.
- f) Urban design elements including, but not limited to, lighting, seating and public art.
- g) Clear demarcation of public realm and private areas including arrangements for pedestrian, bicycle and vehicular circulation.
- h) A comprehensive plant species list developed by a qualified horticulturalist including plant species, planting size, height at maturity, amounts and proposed locations. ~~The comprehensive plant species list is to include consideration of alternative native species to *Gleditsia tricanthos*, subject to further investigation of the suitability of this species and available light levels within the interior foyer area.~~
- i) All Green Infrastructure (GI) (i.e. tree planters; size including depth, geo textiles, drainage and irrigation) (including any additional GI identified in the updated Sustainability Management Plan (SMP).
- j) Detail on potting substrate to be used in GI.
- k) Identification of all deep soil planting areas.
- l) An irrigation and maintenance plan for all landscaped areas within the development.
- m) How the development responds to water sensitive urban design principles, including how storm water will be mitigated, captured, cleaned and stored for onsite use and the location and type of irrigation systems to be used, including the location of any rainwater tanks to be used for irrigation.

When ~~approved~~ ~~provided to the satisfaction of the Planning Authority for Amendment C401 in consultation with Melbourne City Council~~, the Landscape Plan will be endorsed to form part of this Incorporated Document. The endorsed Landscape Plan must not be modified or altered without the prior consent of the ~~Planning Responsible~~ Authority ~~for Amendment C401~~.

- 9. Prior to the commencement of all landscaping works, as detailed in the condition above, a landscape management plan detailing the maintenance regime and management responsibilities must be prepared and submitted to the satisfaction of the ~~Responsible Planning~~ Authority ~~for Amendment C401 consultation with Melbourne City Council~~.
- 10. Landscape works as shown on the endorsed plans must be completed within 3 months from the completion of the development to the satisfaction of the ~~Responsible Planning~~ Authority ~~for Amendment C401~~ and subsequently maintained to the satisfaction of Melbourne City Council.

Street Trees

- 11. Prior to the commencement of the development, including demolition, bulk excavation and site preparation works, a Tree Protection Plan (TPP) for any public trees that may be affected by the development, must be provided to the satisfaction of Melbourne City Council – Urban Forestry & Ecology. The TPP must be in accordance with AS 4970-2009 – Protection of Trees on Development Sites and include:
 - a) City of Melbourne asset numbers for the subject trees (found at <http://melbourneurbanforestvisual.com.au>).
 - b) Reference to the finalised Demolition and Construction Management Plan, including any public protection gantries.

- c) Site specific details of the temporary tree protection fencing to be used to isolate publicly owned trees from the demolition and construction activities or details of any other tree protection measures considered necessary and appropriate to the site.
 - d) Specific details of any special construction methodologies to be used within the Tree Protection Zone of any publicly owned tree. These must be provided for any utility connections or civil engineering works.
 - e) Full specifications of any pruning required to publicly owned trees.
 - f) Any special arrangements required to allow ongoing maintenance of publicly owned trees for the duration of construction.
 - g) Name and contact details of the project arborist who will monitor the implementation of the TPP for the duration of construction (including demolition).
 - h) Details of the frequency of the Project Arborist monitoring visits, interim reporting periods and final completion report (necessary for bond release). Interim reports of monitoring must be provided to Council's email via trees@melbourne.vic.gov.au.
12. Following the approval of a TPP a bank guarantee equivalent to the combined environmental and amenity values of public trees that may be affected by the development will be held against the TPP for the duration of demolition and construction activities. The bond amount will be calculated by Melbourne City Council and provided to the applicant / developer / owner of the site. Should any tree be adversely impacted on, Melbourne City Council will be compensated for any loss of amenity, ecological services or amelioration works incurred.
13. In the event that a Traffic, Demolition and Construction Management Plan changes any of the tree protection methodologies or impacts on public trees in ways not identified in the endorsed TPP, a revised TPP must be provided to the satisfaction of Melbourne City Council – Urban Forestry & Ecology. When approved, the revised TPP will be endorsed to form part of the permit and will supersede any previously endorsed TPP.
14. All works, including demolition and bulk excavation, within the Tree Protection Zones of public trees must be undertaken in accordance with the endorsed Tree Protection Plan and supervised by a suitably qualified Arborist where identified in the report, except with the further written consent of Melbourne City Council – Urban Forestry & Ecology.

Public Tree Removal

15. Approval for any tree removal is subject to the Melbourne City Council's Tree Retention and Removal Policy, Council's Delegations Policy and requirements for public notification, and a briefing paper to Councillors. Certain tree removals including but not limited to significant or controversial tree removals, may be subject to decision by Melbourne City Council or a Committee of Council.
16. All costs in connection with the removal and replacement of public trees, including any payment for the amenity and ecological services value of a tree to be removed, must be met by the applicant / developer / owner of the site. The costs of these works will be provided and must be agreed to before Melbourne City Council remove the subject trees.

Publicly Accessible Spaces Management Plan

17. Prior to the commencement of the use a Publicly Accessible Spaces Management Plan must be submitted to and approved by the Responsible Authority (in consultation with Melbourne City Council). The Plan must set out the details of management and responsibilities in relation to the publicly accessible spaces on the Land, including the plaza/terrace operating hours. When approved, the Publicly Accessible Spaces Management Plan will be endorsed to form part of this Incorporated Document.

Environmentally Sustainable Design

18. Concurrent with the submission of plans in accordance with Condition 1 of Section 6.0 of this Incorporated Document ~~Prior to the commencement of the development (excluding demolition, bulk excavation and site preparation works), an updated amended~~ Sustainability Management Plan (SMP), ~~generally in accordance with the SMP prepared by ARUP dated 18 February 2022 (Revision 03)~~ must be submitted to and approved provided to by the Planning Responsible Authority for Amendment C401 (in consultation with Melbourne City Council). The amended SMP must be generally in accordance with the SMP prepared by ARUP dated 13 October 2020 but modified ~~updated~~ to include:

- a) Any modifications required to accord with the development as approved by Condition 1 of Section 6.0 of this Incorporated Document.
- b) Benchmarking of the buildings' green infrastructure quality through use of City of Melbourne's Green Factor Tool.
- c) Exploration of the following additional green infrastructure opportunities:
 - i. Vertical greening of the Level 3 internal plaza western feature wall.
 - ii. Inclusion of native and indigenous plant species.

When approved the SMP will be endorsed to form part of this Incorporated Document. ~~When provided to the satisfaction of the Planning Authority for Amendment C401 in consultation with Melbourne City Council, the WSUD will be endorsed to form part of this Incorporated Document.~~

19. The performance outcomes specified in the endorsed Sustainability Management Plan (SMP) must be implemented prior to occupancy ~~at no cost to the Responsible Planning Authority for Amendment C401~~ or the Melbourne City Council and be to the satisfaction of the Responsible Planning Authority for Amendment C401.
20. Any change during detailed design of the development and which affects the approach of the endorsed SMP, must be assessed by an accredited professional. The revised statement must be endorsed by the Responsible Planning Authority for Amendment C401 prior to the commencement of construction.

Water Sensitive Urban Design (WSUD)

21. Concurrent with the submission of plans in accordance with Condition 1 of Section 6.0 of this Incorporated Document, an amended Water Sensitive Urban Design Statement (WSUD)/Stormwater Management Plan, must be submitted to and approved by the Responsible Authority (in consultation with Melbourne City Council). The amended WSUD/Stormwater Management Plan must be generally in accordance with the WSUD Statement prepared by ARUP dated November 2020 but modified to include:

- a) Any landscape outcomes in the plans identified at Section 5.0 of this Incorporated Document.
- b) Any modifications required to accord with the development as approved by Condition 1 of Section 6.0 of this Incorporated Document.
- c) Investigation of the incorporation of rain gardens into the landscape response to reduce reliance on the proprietary device (Ocean Protect, Jellyfish Device), to assist with the management of run-off from trafficable areas
- d) A maintenance program for rainwater tanks and on-site detention tanks, raingardens and other proprietary devices relied upon to manage run-off.

~~Prior to the commencement of the development (excluding demolition, bulk excavation and site preparation works), an updated Water Sensitive Urban Design Statement (WSUD), generally in accordance with the WSUD Statement prepared by ARUP dated 15 December 2021 (Issue 3), must be provided to the Planning Authority for Amendment C401. The WSUD Statement must be updated to include:~~

~~When provided to the satisfaction of the Planning Authority for Amendment C401 in consultation with Melbourne City Council, the WSUD will be endorsed to form part of this Incorporated Document. When approved by the Responsible Authority the WSUD/Stormwater Management Plan will be endorsed to form part of this Incorporated Document.~~

22. Water sensitive urban design measures must be in accordance with the endorsed Water Sensitive Urban Design (WSUD) Statement [/Stormwater Management Plan](#). The ~~endorsed submitted~~ WSUD Statement [/Stormwater Management Plan](#) must not be modified or altered without the prior consent of the Responsible ~~Planning~~ Authority ~~for Amendment C401~~.
23. Any change during detailed design, which affects the approach of the endorsed WSUD Statement, must be assessed by an accredited professional. The revised statement must be endorsed by the Responsible ~~Planning~~ Authority ~~for Amendment C401~~ prior to the commencement of construction.

Building Appurtenances

24. All building plant and equipment on the roofs, balcony areas, common areas, and public thoroughfares must be concealed to the satisfaction of the Responsible ~~Planning~~ Authority ~~for Amendment C401~~. The construction of any additional plant machinery and equipment, including but not limited to all air-conditioning equipment, ducts, flues, all exhausts including car parking and communications equipment shall be to the satisfaction of the Responsible ~~Planning~~ Authority ~~for Amendment C401~~.
25. Any satellite dishes, antennas or similar structures associated with the development must be designed and located to the satisfaction of the Responsible ~~Planning~~ Authority ~~for Amendment C401~~.

No Advertising Displayed on Building

26. ~~Any advertising or other sign must not be erected, painted or displayed on the land without the prior written permission of the Responsible Authority, unless otherwise in accordance with the provisions of the Melbourne Planning Scheme. No signs shall be erected, painted or displayed on the land without the prior written permission of the Planning Authority for Amendment C401 unless in accordance with the provisions of the Melbourne Planning Scheme or with the written consent of the Planning Authority for Amendment C401.~~

3D Digital Model

27. Prior to the occupation of the development, a 3D digital model of the approved development must be submitted to, and must be to the satisfaction of, Melbourne City Council. The model should be prepared having regard to Advisory Note – 3D Digital Modelling Melbourne City Council. Digital models provided to the Council may be shared with other government organisations for planning purposes. The Council may also derive a representation of the model which is suitable for viewing and use within its own 3D modelling environment. In the event that substantial modifications are made to the building envelope a revised 3D digital model must be submitted to, and be to the satisfaction of, the Council.
28. Before the development starts, excluding demolition, bulk excavation and site preparation works, or as otherwise agreed with the ~~Planning-Responsible~~ Authority for ~~Amendment C401~~, a 3D digital model of the development and its immediate surrounds, as appropriate, must be submitted to, and be to the satisfaction of, the ~~Planning-Responsible~~ Authority ~~for Amendment C401~~ in conformity with the Department of Environment, Land, Water and Planning Advisory Note 3D Digital Modelling.

Vesting of Roads

29. Prior to the occupation of the development, the proposed widening of Throssell Lane must be vested in Melbourne City Council as a road under the provision of the Subdivision Act 1988. The new portion of the road is to have no upper or lower limit and must exclude any structure above and below to the satisfaction of the Melbourne City Council.

Works abutting Laneways

30. The title boundaries for the property may not exactly agree with road alignments of the abutting Melbourne City Council's laneway(s). The approved works must not result in structures that encroach onto the Melbourne City Council's laneways.

Drainage connection underground

31. Prior to the commencement of the development, a stormwater drainage system, incorporating integrated water management design principles, must be submitted to and approved by the Melbourne City Council – Infrastructure and Assets. This system must be constructed prior to the occupation of the development and provision made to connect this system to the Melbourne City Council's underground stormwater drainage system.
32. All projections over the street alignment must be drained to a legal point of discharge in accordance with plans and specifications first approved by the Melbourne City Council.

Groundwater management

33. All groundwater and water that seeps from the ground adjoining the building basement (seepage water) and any overflow from a reuse system which collects groundwater or seepage water must not be discharged to the Melbourne City Council's drainage network. All contaminated water must be treated via a suitable treatment system and fully reused on site or discharged into a sewerage network under a relevant trade waste agreement with the responsible service authority.

Demolish and construct access

34. Prior to the commencement of the use / occupation of the development, all necessary vehicle crossings must be constructed and all unnecessary vehicle crossings must be demolished and the footpath, kerb and channel reconstructed, in accordance with plans and specifications first approved by the Melbourne City Council – Infrastructure and Assets.

Street works required

35. All new or altered portions of road (including the provision of footpaths, drainage, public lighting, pavement marking and signage) in Throssell Lane must be constructed prior to the occupation of the development, in accordance with plans and specifications first approved by the Melbourne City Council – Infrastructure and Assets.

Roads

36. All portions of roads and laneways affected by the building related activities of the subject land must be reconstructed together with associated works including the reconstruction or relocation of services as necessary at the cost of the developer, in accordance with plans and specifications first approved by the Melbourne City Council – Infrastructure and Assets.
37. The road adjoining the site along Throssell Lane must be reconstructed together with associated works including the modification of services as necessary at the cost of the developer, in accordance with plans and specifications first approved by the Melbourne City Council – Infrastructure and Assets.

Reconstruction of Footpaths

38. The footpath adjoining the site along Flinders Lane must be reconstructed together with associated works including the renewal / reconstruction of kerb and channel, provision of street furniture and modification of services as necessary at the cost of the developer, in accordance with plans and specifications first approved by the Melbourne City Council – Infrastructure and Assets.

Street levels not to be altered

39. Existing street levels in roads adjoining the site must not be altered for the purpose of constructing new vehicle crossings or pedestrian entrances without first obtaining approval from the Melbourne City Council – Infrastructure and Assets.

Existing street lightning not altered without approval

40. All street lighting assets temporarily removed or altered to facilitate construction works shall be reinstated once the need for removal or alteration has been ceased. Existing public street lighting must not be altered without first obtaining the written approval of the Melbourne City Council – Infrastructure and Assets.

Existing street furniture

41. Existing street furniture must not be removed or relocated without first obtaining the written approval of the Melbourne City Council – Infrastructure and Assets.

Public lighting

42. Prior to the commencement of the development, excluding demolition, bulk excavation and preliminary site works, or as may otherwise be agreed with the Melbourne City Council, a lighting plan must be prepared to the satisfaction of Council. The lighting plan should be generally consistent with Council's Lighting Strategy, and include the provision of public lighting in the adjacent streets of the subject land. The lighting works must be undertaken prior to the commencement of the use / occupation of the development, in accordance with plans and specifications first approved by the Melbourne City Council – Infrastructure and Assets.

Road Safety Audit

43. Concurrent with the submission of plans in accordance with Condition 1 of Section 6.0 of this Incorporated Document, a formal Road Safety Audit prepared by a suitably qualified professional must be provided submitted to and approved by the satisfaction of the Planning Responsible Authority for Amendment C401 (in consultation with Melbourne City Council). ~~—Infrastructure and Assets.~~ The Road Safety Audit must address any changes to existing conditions as a result of the development, relating to the following matters:

- a) Vehicular / bicycle / pedestrian access arrangements.
- b) Loading and waste arrangements.
- c) Internal circulation / layout.
- d) ~~The need to ensure~~ Safety impact of vehicles entering the site ~~do not~~ and queueing in Throssell Lane or obstructing pedestrians / bicycles / traffic.

When ~~provided to the satisfaction of the Planning Authority for Amendment C401 and Melbourne City Council —Infrastructure and Assets,~~ the Road Safety Audit will be endorsed to form part of this permit-Incorporated Document.

Loading Management Plan

44. Concurrent with the submission of plans in accordance with Condition 1 of Section 6.0 of this Incorporated Document, a Loading Management Plan (LMP) must be submitted to and approved by Responsible Authority (in consultation with Melbourne City Council). ~~The LMP must specify be prepared to the satisfaction of Melbourne City Council —Infrastructure and Assets,~~ specifying how the access / egress of loading vehicles is to be managed ensuring that:

~~a. —A ramp grade of <1:10 is provided for the first 5 metres from the site boundary at the access.~~

- a) Loading bays, including all space dimensions, grades and height clearances, are designed in accordance with relevant Australian and New Zealand Standards or other relevant standards as determined by a suitably qualified traffic engineer.
- b) All vehicle types expected to service the site are capable of being accommodated within the loading area / bays. Compliance with this requirement is to be demonstrated by the submission of appropriate swept path diagrams accompanying the LMP.
- c) The delivery needs of the various components of the uses and development can be accommodated.
- d) Vehicles do not queue on-street.

~~a. —Vehicles are able to both access / egress the site in a forward direction.~~

Any potential conflicts between various vehicles (and other road users) are satisfactorily addressed.

- e) Vehicles do not stop, park, load or unload at a clearway.

When approved the LMP is to be submitted to and approved by Melbourne City Council – Infrastructure and Assets will be endorsed to form part of this Incorporated Document.

Detailed Design Plans for Throssell Lane Carriageway and Flinders Lane Footpath Widening

45. Concurrent with the submission of plans in accordance with Condition 1 of Section 6.0 of this Incorporated Document, detailed design plans for the Throssell Lane carriageway must be submitted to and approved by ~~provided to the satisfaction of~~ Melbourne City Council – Infrastructure and Assets. The detailed design plans for the Throssell Lane carriageway must include:
 - a) A design plan with details of the existing and proposed arrangement for Throssell Lane, including cross-sections.
 - b) Investigation of the provision of a 1.5 metre wide (minimum) footpath on the ~~east~~ west side of Throssell Lane.
46. Concurrent with the submission of plans in accordance with Condition 1 of Section 6.0 of this Incorporated Document, detailed design plans for the Flinders Lane Footpath Widening must be submitted to and approved by Melbourne City Council – Infrastructure and Assets.

Waste Management Plan

47. Concurrent with the submission of plans in accordance with Condition 1 of Section 6.0 of this Incorporated Document, an amended ~~revised~~ Waste Management Plan (WMP) ~~shall~~ must be submitted to and approved by the ~~Planning Responsible~~ Authority for Amendment C401 in consultation with Melbourne City Council ~~– Waste and Recycling~~. The ~~revised~~ amended WMP shall be generally in accordance with the WMP prepared by WSP, dated ~~16 December 2021~~ October 2020 but amended to include:
 - a) Any modifications required to accord with the development as approved by Condition 1 of Section 6.0 of this Incorporated Document.
 - b) Compliance ~~and comply~~ with Melbourne City Council's Guidelines for Preparing a Waste Management Plan.
 - c) ~~but with~~ f Further resolution of the stopping location and size of vehicles servicing the development in accordance with the endorsed Loading Management Plan (LMP).

When approved the amended WMP will be endorsed to form part of this Incorporated Document

48. Waste storage and collection arrangements must be in accordance with the approved WMP, which must not be modified or altered without the prior consent of Melbourne City Council.

Preliminary Risk Screen Assessment and Remediation

49. Concurrent with the submission of plans in accordance with Condition 1 of Section 6.0 of this Incorporated Document ~~Prior to the commencement of the development (excluding any works necessary to undertake the assessment)~~, a Preliminary Risk Screen Assessment (PRSA) of the site must be conducted by a suitably qualified environmental auditor. The PRSA statement and report must be submitted to the Responsible Authority in accordance with section 205 of the Environment Protection Act 2017 and respond to the matters contained in Part 8.3, Division 2 of the Environment Protection Act 2017 to the satisfaction of the Responsible Authority.
50. If the PRSA requires an Environmental Audit be undertaken, then prior to the commencement of the development (excluding any works necessary to undertake the audit), an Environmental Audit of the site must be carried out by a suitably qualified environmental auditor. On completion of the Environmental Audit, an Environmental Audit Statement (EAS) and report must be submitted to the Responsible Authority in accordance with section 210 of the Environment Protection Act 2017 responding to the matters contained in Part 8.3, Division 3 of the Environment Protection Act 2017 to the satisfaction of the Responsible Authority. The EAS must either:
 - state the site is suitable for the use and development allowed by this permit.

- state the site is suitable for the use and development allowed by this permit if the recommendations contained within the EAS are complied with.
51. All the recommendations of the Environmental Audit Statement (EAS) must be complied with to the satisfaction of the Responsible Authority for the full duration of any buildings and works on the land in accordance with the development hereby approved, and must be fully satisfied prior to the occupation of the development. Written confirmation of compliance must be provided by a suitably qualified environmental auditor in accordance with any requirements in the EAS.
 52. If any of the conditions of the EAS require ongoing maintenance or monitoring, prior to the commencement of the use and prior to the issue of a statement of compliance under the Subdivision Act 1988 the owner of the land must enter into an agreement with the Responsible Authority under section 173 of the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority to the effect that all conditions of the EAS issued in respect of the land will be complied with.

Protection of heritage buildings during construction

~~52. The buildings and works associated with the approved development must be planned and constructed in a manner which prevents damage to the heritage buildings and fabric to be retained in accordance with the Conservation Management Plan prepared by Lovell Chen dated November 2020. Where hidden and original or inaccessible details of the buildings are uncovered, works are to cease until the appropriate further record has been made.~~

~~53. Prior to the commencement of the development, including demolition, bulk excavation and site preparation works, a bank guarantee or bond to the value of \$500,000.00 must be deposited with the Melbourne City Council to ensure that retained parts of the heritage buildings and fabric are not demolished, except to complete the development in accordance with the endorsed plans. The bank guarantee or bond will be returned when the development is completed to the satisfaction of the Council.~~

~~54. Prior to the commencement of the development, including demolition, bulk excavation and site preparation works, the permit holder must provide evidence to the Planning Responsible Authority for Amendment C401 that progress has been made toward obtaining the necessary building permits for the development of the land generally in accordance with the development hereby approved, and that the permit holder is actively procuring the construction services for the development, or as otherwise agreed with the Planning Responsible Authority for Amendment C401.~~

Revised wind impact assessment and link to condition 1

53. [Concurrent with the submission of plans in accordance with Condition 1 of Section 6.0 of this Incorporated Document](#) ~~Prior to the commencement of the development, including demolition, bulk excavation and site preparation works, an amended revised~~ Wind Impact Assessment, including wind tunnel modelling prepared by a suitably qualified person must be submitted to and approved by the [Planning Responsible Authority for Amendment C401](#) (in consultation with Melbourne City Council). ~~The revised amended~~ Wind Impact Assessment must:
 - a) Respond to the wind effects provisions and definitions in Schedule 10 to the Design and Development Overlay.
 - b) Explain the effect of the development on the wind conditions in publicly accessible areas impacted by the development as well as any balconies and / or rooftop areas within the development.
 - c) At a minimum, model the wind effects of the development and its surrounding buildings (existing and proposed) using wind tunnel testing.
 - d) Identify the principal role of each part of the publicly accessible areas for sitting, standing or walking purposes.
 - e) Not rely on any trees or other elements within publicly accessible areas for wind mitigation.

- f) Make recommendations for modifications to the design of the building, if required, to achieve comfortable wind conditions consistent with the identified principle role for publicly accessible areas as well as any balconies and / or rooftop areas within the development-

When approved the amended Wind Impact Assessment will be endorsed to form part of this Incorporated Document.

54. Any modifications to the development to ensure comfortable wind conditions to the surrounding streets, building entries, publicly accessible areas and any balconies and / or rooftop areas within the development must be carefully developed as a high quality integrated architectural solution to the satisfaction of the Planning Responsible Authority for Amendment C401 (in consultation with Melbourne City Council) and implemented at no cost to the Minister for Planning or Melbourne City Council.

Temporary works

55. Prior to the commencement of the development, including demolition, bulk excavation and site preparation works, the owner of the land must enter into an agreement with the Melbourne City Council pursuant to Section 173 of the *Planning and Environment Act 1987*. The agreement must provide for the following:

- a) if the land remains vacant for 6 months after completion of the demolition;
- b) if the demolition or construction activity ceases for a period of 6 months; or
- c) if the construction activity ceases for an aggregate of 6 months after commencement of the construction, the owner must construct temporary works on the land to the satisfaction of the Responsible Authority.

Before the commencement of construction of the temporary works, details of the works must be submitted to and be to the satisfaction of the Melbourne City Council. Temporary works may include:

- a) The construction of temporary buildings for short-term retail or commercial use. Such structures shall include the provision of an active street frontage; or
- b) Landscaping of the site for the purpose of public recreation and open space.

The owner of the land must pay all of Council's reasonable legal costs and expenses of this agreement, including preparation, execution and registration on title.

Art Strategy

56. Concurrent with the submission of plans in accordance with Condition 1 of this Incorporated Document, an Art Strategy must be submitted to and approved by the Responsible. The Art Strategy must include:

- a) details of contemporary artwork for the lobby of the new tower;
- b) a written rationale explain how the artwork is commensurate with the importance of the setting of the lobby adjacent to Shell House and Milton House; and
- c) details of consultation with and input of Ingenhoven, Architectus and Harry Seidler and Associates Pty Ltd to the design of the artwork.

When approved the Art Strategy will be endorsed to form part of this Incorporated Document.

7.0 DEVELOPMENT TIME LIMIT

The development permitted by this Incorporated Document will expire if the development is not started within ~~three~~ four (34) years of the date of the gazettal of Amendment C401~~XXX~~melb to the Melbourne Planning Scheme, and not completed within four (4) years of the commencement of the development.

The ~~Responsible Planning~~ Authority ~~for Amendment C401~~ may extend the periods referred to if a request is made in writing before these controls expire or within 6 months afterwards.

End of Document

Appendix H Committee preferred version of the Heritage Permit P33301

NOTE: The Committee has provided its recommended changes using:

[Tracked Added](#)

~~Tracked Deleted~~

WITHOUT PREJUDICE DRAFT PERMIT CONDITIONS IN RELATION TO THE REFUSAL OF HERITAGE PERMIT P33301, MILTON HOUSE, 21-25 FLINDERS LANE MELBOURNE

Prepared by:	The Executive Director, Heritage Victoria
Prepared for:	1 Spring Street & 21-25 Flinders Lane Advisory Committee
Proposal:	Projection of a tower into the airspace at the rear, introduction of a new opening to the east elevation, works to the south elevation, removal of internal partition walls, introduction of an internal lift, removal of rear stair , structural works for seismic compliance and external conservation works including reinstatement of original roof cladding (Welsh slate).

GENERAL CONDITIONS

1. [Prior to the commencement of the works permitted under this permit, plans must be submitted for the approval of Heritage Victoria.](#)

[In relation to the works proposed within the airspace of Milton House the plans must be generally in accordance with the plans prepared by Ingenhoven, Architectus and Harry Seidler and Associates Pty Ltd dated 13 January 2023 and marked Revision J but modified to show all changes required under the conditions of the Incorporated Document for the site pursuant to the Melbourne Planning Scheme.](#)

[In relation to the works to the Milton House building itself, the plans must be generally in accordance with the plans prepared by Ingenhoven, Architectus and Harry Seidler and Associates Pty Ltd dated 7 March 2023 and marked Revision K, constituted by DA-000, DA-0501, DA-0502, DA-0503, DA-1001, DA-2001, DA-2002, DA-2501, DA-6001 and DA-6002 but modified to show:](#)

- a. [retention of the rear staircase and subsequent relocation of the lift](#)
 - b. [any further amendment to the internal layout as recommended and/or supported by the Conservation Management Plan required by Condition 2.](#) ~~Any further internal demolition of internal walls that is required to support an adaptive reuse, to be supported by appropriate internal fit-out documentation;~~
2. [Prior to the submission of plans as required by Condition 1 \(in relation to the works to the Milton House building itself\), a Conservation Management Plan must be prepared and submitted for the approval of Heritage Victoria.](#)
 3. The permission granted for this permit will expire if one of the following circumstances applies: the permitted works have not commenced within ~~four~~ ~~two~~ (24) years of the original date of issue of this permit, or are not completed within four (4) years of the ~~original~~ date of ~~issue of this permit~~ [commencement of the permitted works](#), unless otherwise agreed in writing by the Executive Director, Heritage Victoria.
 4. The Executive Director, Heritage Victoria is to be given five working days' notice of the intention to commence the approved works.
 5. Should further minor changes in accordance with the intent and approach of the endorsed documentation become necessary, correspondence and supporting documentation must be prepared and lodged in accordance with the permit condition for endorsement by the Executive Director

Heritage Victoria. If the Executive Director considers that the changes are not minor, an amendment to the permit or a new application will be required.

6. Approved works or activities are to be planned and carried out in a manner which prevents damage to the registered place/object. However, if other previously hidden original or inaccessible details of the object or place are uncovered, any works that may affect such items must immediately cease. The Executive Director Heritage Victoria must be notified of the details immediately to enable Heritage Victoria representatives to inspect and record the items, and for discussion to take place on the possible retention of the items, or the issue of a modified approval.
7. All works must cease, and Heritage Victoria must be contacted if historical archaeological artefacts or deposits are discovered during any excavation or subsurface works.
8. The Executive Director Heritage Victoria must be informed when the approved works have been completed.
9. The works approved by this permit must be carried out in their entirety unless otherwise agreed in writing by the Executive Director Heritage Victoria.
10. Prior to the commencement of any of the works approved by this permit, the permit holder must satisfy the Executive Director Heritage Victoria that substantial progress has been made towards obtaining the necessary building permits for the relevant works and that the permit holder has entered into a bona fide formal contract for the construction of the works.

STAGING

11. Prior to the commencement of any of the works approved by this permit, and if there is to be staging of works, a **Staging Plan** which provides an overview of the order in which approved works will be commenced must be submitted to the Executive Director Heritage Victoria for approval. Once approved, the Staging Plan will be endorsed and will then form part of the permit. A Heritage Protection Plan for multiple stages can be provided.
12. Prior to the commencement ~~of each stage~~ of works ~~identified in the Staging Plan referred to in Condition 9~~, a **Heritage Protection Plan** must be submitted to the Executive Director Heritage Victoria for approval. Once approved, the Heritage Protection Plan will be endorsed and will then form part of the permit. The Heritage Protection Plan must include a sequencing program for the approved works, details of any temporary infrastructure and services required, protection methods for the heritage place during the undertaking of the works, a work site layout plan and if necessary a tree/vegetation management and protection plan prepared in accordance with AS4970 *Protection of trees on development sites*. For the relevant stage of works, the Heritage Protection Plan must also include a **dilapidation report** (including images) for the heritage building to record its condition prior to the commencement of works approved by this permit
13. Prior to the commencement ~~of each stage~~ of works ~~identified in the Staging Plan referred to in Condition 9~~, final **construction ready (marked as such) and final engineering drawings documentation, including architectural, structural and services engineering drawings, and final engineering drawings** for the ~~subject stage of~~ works must be submitted to the Executive Director Heritage Victoria for approval. Once approved, they will be endorsed and will then form part of the permit. Drawings for multiple stages can be provided. The submitted drawings shall be generally in accordance with the endorsed documents ~~shown in the permit preamble~~ with the following required:
 - a. Conservation works to retained and reinstated heritage fabric (internal and external) as required under condition ~~17~~9.
 - b. Methodology for the reconstruction of the Welsh slate roof.
 - c. Documentation outlining the methodology for the dismantling, protection and temporary offsite storage of relevant elements to be retained including notification in writing to the Executive Director at each stage.
 - d. Details of proposed demolition and new connections between the existing building and the new development.

- e. Exterior and interior materials and finishes schedules.
 - f. Landscape works including an inventory of ground treatment materials and colours, all proposed permanent elements including paving and proposed plantings as related to permit P33300.
14. Prior to the commencement of any of the works approved by this permit, **a report prepared by a suitably qualified Structural Engineer**, must be submitted to the Executive Director Heritage Victoria for approval. Once approved, the report will be endorsed and will then form part of the permit. The report must document appropriate measures to ensure the protection and structural stability of the 1 Spring Street (Shell House) and Milton House prior to and during the undertaking of the works. It must also include an assessment of the feasibility of the construction of the columns adjacent to Milton House and any potential impacts on Milton House.
 15. Prior to commencement of any of the works approved by this permit an **archival quality photographic survey** is to be prepared to record the heritage place. The survey must record the existing condition of the Place including views from key exterior vantage points and all interior spaces and details. The survey is to be prepared in accordance with the Heritage Council/Heritage Victoria Technical Note entitled "Specification for the submission of archival photographic records" (available on the Heritage Council website or from Heritage Victoria on request). Two copies of the completed photographic survey are to be produced with one copy submitted to the Executive Director Heritage Victoria for approval in writing prior to commencement of any of the works approved by this permit. On approval of the first copy the second copy is to be lodged with the La Trobe Picture Collection, 328 Swanston Street Melbourne 3000, State Library of Victoria or delivered by courier to Despatch: 174 Little Lonsdale Street Melbourne 3000. Deliveries accepted from 7.30 to 4.30 (A receipt will be sent the day the material is received.)
 16. A **Heritage Interpretation Plan** for installation of interpretive devices within the registered land must be prepared by a suitably qualified and experienced practitioner. The Heritage Interpretation Plan must include proposals for the appropriate interpretation of the history of the site. The Heritage Interpretation Plan is to be submitted to the Executive Director Heritage Victoria for endorsement within 12 months of the activation of this permit unless otherwise agreed in writing by the Executive Director Heritage Victoria. After its approval the Interpretation Plan is to be implemented on site prior to the expiration of the permit.
 17. Prior to the installation of new signage, a signage plan showing the proposed content, materials, location and installation method must be submitted for the endorsement of the Executive Director and when endorsed becomes part of the permit.

BANK GUARANTEE

18. Prior to the commencement of any of the works approved by this permit, a **suitably experienced heritage conservation consultant**, approved in writing by the Executive Director Heritage Victoria, must be engaged to advise and assist as necessary with the preparation of the documentation where any intervention to built fabric of heritage significance is involved and to provide relevant conservation advice to the permit holder during the carrying out of those works. In particular the heritage conservation consultant must fulfil conditions ~~17~~⁹ and ~~19~~²¹ of this permit.
19. Prior to the commencement of any of the works approved by this permit, the heritage conservation consultant approved under condition ~~16~~¹⁸ must prepare a ~~costed schedule and drawings of conservation works identified as required for the heritage place~~ with an estimate of cost prepared by a cost consultant/quantity surveyor, ~~costed schedule and drawings of conservation works identified as required for the heritage place~~ for the approval and endorsement by the Executive Director Heritage Victoria and once endorsed these works become part of the permit and must be completed within the period of validity of the permit.
20. Prior to the commencement of any of the works approved by this permit and as provided for under s.103 of the *Heritage Act 2017*, a financial security in the form of an unconditional **Bank Guarantee** in favour of the Heritage Council of Victoria (ABN 87 967 501 331), is to be lodged with the Executive Director Heritage Victoria. The period of validity of the Bank Guarantee is to be unspecified.

The Bank Guarantee is to ensure the satisfactory completion of all of the works required by condition ~~17~~¹⁹ approved by the permit. The amount guaranteed must be equivalent to the cost shown in the approved conservation schedule under condition 17 plus a 20% contingency sum (inclusive of GST). The bank guarantee must set out under the “contract/agreement” that the bank “asks the Principal to accept this bank guarantee (“undertaking”) in connection with permit P33301.

21. Following completion of the conservation works required under condition ~~17~~¹⁹, the approved heritage conservation consultant must submit to the Executive Director Heritage Victoria, for their approval, a brief written report confirming that the conservation works have been completed ~~and the extent to which the completed conservation works conformed to good practice in their professional judgement.~~ in accordance with the approved and endorsed documentation.
22. The Bank Guarantee referred to in condition ~~18~~²⁰ will be released to its provider following receipt by the Executive Director Heritage Victoria of a written request by the permit holder, subject to the completion of all of the works referred to in condition ~~17~~¹⁹ to the satisfaction of the Executive Director Heritage Victoria and satisfaction of condition ~~19~~²¹. The Bank Guarantee will be forfeited to the Heritage Council of Victoria in the event that all of these works are not completed to a satisfactory standard prior to the expiry date of this permit.

MANAGEMENT OF ARCHAEOLOGY

23. Prior to the commencement of any sub-surface works, an **historical archaeological assessment report** which identifies whether the works may impact on archaeological remains associated with either the Place or previous uses, particularly in relation to the alignment with Milton House at 21-25 Flinders Lane, Melbourne must be submitted to the written satisfaction of the Executive Director, Heritage Victoria.
24. If works are proposed that may affect historical archaeological remains at the place, a Heritage Act 2017 Consent will be required.
25. The Executive Director, Heritage Victoria may require a program of archaeological investigations and/or monitoring to be conducted prior to or during site works.
26. If any significant historical archaeological features, deposits and or artefacts are uncovered during any site works, a program of recording and reporting must be undertaken in accordance with Heritage Victoria’s Guidelines for Investigating Historical Archaeological Artefacts and Sites (2015), and to the satisfaction of the Executive Director, Heritage Victoria. Any required project report must be submitted within 12 months of the completion of the archaeological investigations.
27. All historical archaeological artefacts recovered during investigations and site works must be retained, except where in accordance with an Artefact Retention and Discard Policy, endorsed by the Executive Director, Heritage Victoria. The Applicant is liable for all expenses arising from the conservation of any significant historical archaeological artefacts that are recovered and retained, to the satisfaction of the Executive Director, Heritage Victoria. A collection storage fee of \$100 per artefact box (standard size accepted by Heritage Victoria) will be required for the permanent storage and curation of any retained artefacts.
28. Prior to the commencement of any sub-surface works, an unexpected finds protocol must be submitted to the written satisfaction of the Executive Director Heritage Victoria, and implemented to the written satisfaction of the Executive Director Heritage Victoria.

NOTE THAT PERMISSION HAS BEEN GIVEN FOR INSPECTIONS OF THE PLACE OR OBJECT TO BE UNDERTAKEN DURING THE CARRYING OUT OF WORKS, AND WITHIN SIX (6) MONTHS OF NOTIFICATION OF THEIR COMPLETION.

TAKE NOTICE THAT ANY NATURAL PERSON WHO CARRIES OUT WORKS OR ACTIVITIES NOT IN ACCORDANCE WITH THE PERMIT OR CONDITIONS IS GUILTY OF AN OFFENCE AND LIABLE TO A PENALTY OF 120 PENALTY UNITS (\$22,190.40 FROM 1 JULY 2022) OR IN THE CASE OF A BODY CORPORATE 600 PENALTY UNITS (\$110,952 FROM 1 JULY 2022) UNDER s104 THE HERITAGE ACT 2017.

WORKS UNDERTAKEN WITHOUT A PERMIT OR PERMIT EXEMPTION CAN INCUR A FINE OF UP TO 4800 PENALTY UNITS (\$887,616 FROM 1 JULY 2022) FOR A NATURAL PERSON OR 5 YEARS IMPRISONMENT OR

BOTH AND UP TO 9600 PENALTY UNITS (\$1,775,232 FROM 1 JULY 2022) IN THE CASE OF A BODY CORPORATE UNDER SECTION 87 OF THE HERITAGE ACT 2017.

THE ATTENTION OF THE OWNER AND/OR APPLICANT IS DRAWN TO THE NEED TO OBTAIN ALL OTHER RELEVANT PERMITS PRIOR TO THE COMMENCEMENT OF WORKS.

Appendix I Committee preferred version of the Heritage Permit P33300

NOTE: The Committee has provided its recommended changes using:

[Tracked Added](#)

~~Tracked Deleted~~

WITHOUT PREJUDICE DRAFT PERMIT CONDITIONS IN RELATION TO THE REFUSAL OF HERITAGE PERMIT P33300, 1 SPRING STREET (SHELL HOUSE), MELBOURNE

Prepared by:	The Executive Director, Heritage Victoria
Prepared for:	1 Spring Street & 21-25 Flinders Lane Advisory Committee
Proposal:	Partial demolition of the north plaza and basement below, partial demolition of Levels 1 and 2 including demolition of circulation spaces, the theatrette and conference rooms, demolition of the roof garden on Level 3, and construction of a tower with 31 levels plus 3 plant levels.

GENERAL CONDITIONS

- [Prior to the commencement of the works permitted under this permit, plans must be submitted for the approval of Heritage Victoria. The plans must be generally in accordance with the plans prepared by Ingenhoven, Architectus and Harry Seidler and Associates Pty Ltd dated 13 January 2023 and marked Revision J but modified to show all changes required under the conditions of the Incorporated Document for the site pursuant to the Melbourne Planning Scheme.](#)
- The permission granted for this permit will expire if one of the following circumstances applies: the permitted works have not commenced within ~~four~~ [two \(42\)](#) years of the original date of issue of this permit, or are not completed within four (4) years of the ~~original~~ [date of issue of this permit commencement of the permitted works](#), unless otherwise agreed in writing by the Executive Director, Heritage Victoria.
- The Executive Director, Heritage Victoria is to be given five working days' notice of the intention to commence the approved works.
- Should further minor changes in accordance with the intent and approach of the endorsed documentation become necessary, correspondence and supporting documentation must be prepared and lodged in accordance with the permit condition for endorsement by the Executive Director Heritage Victoria. If the Executive Director considers that the changes are not minor, an amendment to the permit or a new application will be required.
- Approved works or activities are to be planned and carried out in a manner which prevents damage to the registered place/object. However, if other previously hidden original or inaccessible details of the object or place are uncovered, any works that may affect such items must immediately cease. The Executive Director Heritage Victoria must be notified of the details immediately to enable Heritage Victoria representatives to inspect and record the items, and for discussion to take place on the possible retention of the items, or the issue of a modified approval.
- All works must cease, and Heritage Victoria must be contacted if historical archaeological artefacts or deposits are discovered during any excavation or subsurface works.
- The Executive Director Heritage Victoria must be informed when the approved works have been completed.
- The works approved by this permit must be carried out in their entirety unless otherwise agreed in writing by the Executive Director Heritage Victoria.

9. Prior to the commencement of any of the works approved by this permit, the permit holder must satisfy the Executive Director Heritage Victoria that substantial progress has been made towards obtaining the necessary building permits for the [relevant](#) works and that the permit holder has entered into a bona fide formal contract for the construction of the [development works](#).

STAGING

10. Prior to the commencement of any of the works approved by this permit, a **Staging Plan** which provides an overview of the order in which approved works will be commenced must be submitted to the Executive Director Heritage Victoria for approval. Once approved, the Staging Plan will be endorsed and will then form part of the permit. A Heritage Protection Plan for multiple stages can be provided.
11. Prior to the commencement of each stage of works identified in the Staging Plan referred to in Condition [109](#), a **Heritage Protection Plan** must be submitted to the Executive Director Heritage Victoria for approval. Once approved, the Heritage Protection Plan will be endorsed and will then form part of the permit. The Heritage Protection Plan must include a sequencing program for the approved works, details of any temporary infrastructure and services required, protection methods for the heritage place during the undertaking of the works, a work site layout plan and if necessary a tree/vegetation management and protection plan prepared in accordance with AS4970 *Protection of trees on development sites*. For the relevant stage of works, the Heritage Protection Plan must also include a **dilapidation report** (including images) for the heritage building to record its condition prior to the commencement of works approved by this permit
12. Prior to the commencement of each stage of works identified in the Staging Plan referred to in Condition [109](#) final **construction ready (marked as such) and final engineering drawings documentation, including architectural, structural and services engineering drawings**, for the subject stage of works must be submitted to the Executive Director Heritage Victoria for approval. Once approved, they will be endorsed and will then form part of the permit. Drawings for multiple stages can be provided. The submitted drawings shall be generally in accordance with the [endorsed](#) documents ~~shown in in the permit preamble~~ with the following required:
 - a. Conservation works to retained and reinstated heritage fabric (internal and external) as required under condition ~~17~~[18](#).
 - b. Documentation outlining the methodology for the dismantling, protection and temporary offsite storage of relevant elements to be retained including notification in writing to the Executive Director at each stage.
 - c. Details of proposed demolition and new connections between the existing buildings and the new development.
 - d. Exterior and interior materials and finishes schedules.
 - e. Landscape works including an inventory of ground treatment materials and colours, all proposed permanent elements including paving and proposed plantings.
13. Prior to the commencement of any of the works approved by this permit, a **report prepared by a suitably qualified Structural Engineer**, must be submitted to the Executive Director Heritage Victoria for approval. Once approved, the report will be endorsed and will then form part of the permit. The report must document appropriate measures to ensure the protection and structural stability of 1 Spring Street (Shell House) and Milton House at 21-25 Flinders Lane prior to and during the undertaking of the works. It must also include an assessment of the feasibility of the construction of the columns adjacent to Milton House and any potential impacts on Milton House.
14. Prior to commencement of any of the works approved by this permit an **archival quality photographic survey** is to be prepared to record the heritage place. The survey must record the existing condition of the Place including views from key exterior vantage points and all interior spaces and details. The survey is to be prepared in accordance with the Heritage Council/Heritage Victoria Technical Note entitled "Specification for the submission of archival photographic records" (available on the Heritage Council website or from Heritage Victoria on request). Two copies of the completed photographic survey are to be produced with one copy submitted to the Executive Director Heritage Victoria for

approval in writing prior to commencement of any of the works approved by this permit. On approval of the first copy the second copy is to be lodged with the La Trobe Picture Collection, 328 Swanston Street Melbourne 3000, State Library of Victoria or delivered by courier to Despatch: 174 Little Lonsdale Street Melbourne 3000. Deliveries accepted from 7.30 to 4.30 (A receipt will be sent the day the material is received.)

15. A **Heritage Interpretation Plan** for installation of interpretive devices within the registered land must be prepared by a suitably qualified and experienced practitioner. The Heritage Interpretation Plan must include proposals for the appropriate interpretation of the history of the site. The Heritage Interpretation Plan is to be submitted to the Executive Director Heritage Victoria for endorsement within 12 months of the activation of this permit unless otherwise agreed in writing by the Executive Director Heritage Victoria. After its approval the Interpretation Plan is to be implemented on site prior to the expiration of the permit.
16. Prior to the installation of new signage, a signage plan showing the proposed content, materials, location and installation method must be submitted for the endorsement of the Executive Director and when endorsed becomes part of the permit.

BANK GUARANTEE

17. Prior to the commencement of any of the works approved by this permit, a **suitably experienced heritage conservation consultant**, approved in writing by the Executive Director Heritage Victoria, must be engaged to advise and assist as necessary with the preparation of the documentation where any intervention to built fabric of heritage significance is involved and to provide relevant conservation advice to the permit holder during the carrying out of those works. In particular the heritage conservation consultant must fulfil conditions ~~18~~¹⁷ and ~~19~~²⁰ of this permit.
18. Prior to the commencement of any of the works approved by this permit, the heritage conservation consultant approved under condition ~~16~~¹⁷ must prepare a ~~costed~~ **schedule and drawings of conservation works** identified as required for the heritage place **with an estimate of cost prepared by a cost consultant/quantity surveyor**, for the approval and endorsement by the Executive Director Heritage Victoria and once endorsed these works become part of the permit and must be completed within the period of validity of the permit.
19. Prior to the commencement of any of the works approved by this permit and as provided for under s.103 of the *Heritage Act 2017*, a financial security in the form of an unconditional **Bank Guarantee** in favour of the Heritage Council of Victoria (ABN 87 967 501 331), is to be lodged with the Executive Director Heritage Victoria. The period of validity of the Bank Guarantee is to be unspecified.

The Bank Guarantee is to ensure the satisfactory completion of all of the **conservation** works required by condition 18 approved by the permit. The amount guaranteed must be equivalent to the cost shown in the approved conservation schedule under condition ~~17~~¹⁸ plus a 20% contingency sum (inclusive of GST). The bank guarantee must set out under the “contract/agreement” that the bank “asks the Principal to accept this bank guarantee (“undertaking”) in connection with permit P33300.

20. Following completion of the conservation works required under condition ~~17~~¹⁸, the approved heritage conservation consultant must submit to the Executive Director Heritage Victoria, for their approval, a brief written report confirming that the conservation works have been completed ~~and the extent to which the completed conservation works conformed to good practice in their professional judgement~~ **in accordance with the approved and endorsed documentation**.
21. The Bank Guarantee referred to in condition ~~18~~¹⁹ will be released to its provider following receipt by the Executive Director Heritage Victoria of a written request by the permit holder, subject to the completion of all of the works referred to in condition ~~17~~¹⁸ to the satisfaction of the Executive Director Heritage Victoria and satisfaction of condition ~~19~~²⁰. The Bank Guarantee will be forfeited to the Heritage Council of Victoria in the event that all of these works are not completed to a satisfactory standard prior to the expiry date of this permit.

MANAGEMENT OF ARCHAEOLOGY

22. Prior to the commencement of any sub-surface works, an **historical archaeological assessment report** which identifies whether the works may impact on archaeological remains associated with either the

Place or previous uses, particularly in relation to the alignment with Milton House at 21-25 Flinders Lane, Melbourne must be submitted to the written satisfaction of the Executive Director, Heritage Victoria.

23. If works are proposed that may affect historical archaeological remains at the place, a Heritage Act 2017 Consent will be required.
24. The Executive Director, Heritage Victoria may require a program of archaeological investigations and/or monitoring to be conducted prior to or during site works.
25. If any significant historical archaeological features, deposits and or artefacts are uncovered during any site works, a program of recording and reporting must be undertaken in accordance with Heritage Victoria's Guidelines for Investigating Historical Archaeological Artefacts and Sites (2015), and to the satisfaction of the Executive Director, Heritage Victoria. Any required project report must be submitted within 12 months of the completion of the archaeological investigations.
26. All historical archaeological artefacts recovered during investigations and site works must be retained, except where in accordance with an Artefact Retention and Discard Policy, endorsed by the Executive Director, Heritage Victoria. The Applicant is liable for all expenses arising from the conservation of any significant historical archaeological artefacts that are recovered and retained, to the satisfaction of the Executive Director, Heritage Victoria. A collection storage fee of \$100 per artefact box (standard size accepted by Heritage Victoria) will be required for the permanent storage and curation of any retained artefacts.
27. Prior to the commencement of any sub-surface works, an unexpected finds protocol must be submitted to the written satisfaction of the Executive Director Heritage Victoria, and implemented to the written satisfaction of the Executive Director Heritage Victoria.

NOTE THAT PERMISSION HAS BEEN GIVEN FOR INSPECTIONS OF THE PLACE OR OBJECT TO BE UNDERTAKEN DURING THE CARRYING OUT OF WORKS, AND WITHIN SIX (6) MONTHS OF NOTIFICATION OF THEIR COMPLETION.

TAKE NOTICE THAT ANY NATURAL PERSON WHO CARRIES OUT WORKS OR ACTIVITIES NOT IN ACCORDANCE WITH THE PERMIT OR CONDITIONS IS GUILTY OF AN OFFENCE AND LIABLE TO A PENALTY OF 120 PENALTY UNITS (\$22,190.40 FROM 1 JULY 2022) OR IN THE CASE OF A BODY CORPORATE 600 PENALTY UNITS (\$110,952 FROM 1 JULY 2022) UNDER s104 THE HERITAGE ACT 2017.

WORKS UNDERTAKEN WITHOUT A PERMIT OR PERMIT EXEMPTION CAN INCUR A FINE OF UP TO 4800 PENALTY UNITS (\$887,616 FROM 1 JULY 2022) FOR A NATURAL PERSON OR 5 YEARS IMPRISONMENT OR BOTH AND UP TO 9600 PENALTY UNITS (\$1,775,232 FROM 1 JULY 2022) IN THE CASE OF A BODY CORPORATE UNDER SECTION 87 OF THE HERITAGE ACT 2017.

THE ATTENTION OF THE OWNER AND/OR APPLICANT IS DRAWN TO THE NEED TO OBTAIN ALL OTHER RELEVANT PERMITS PRIOR TO THE COMMENCEMENT OF WORKS.