

Report to the Future Melbourne (Planning) Committee

Agenda item 6.1

**Melbourne Planning Scheme Amendment C247 (ID-2014-3)
433-455 Collins Street, Melbourne**

12 August 2014

Presenter: Angela Meinke, Manager Planning and Building

Purpose and background

1. The purpose of this report is to advise the Future Melbourne Committee of a request which has been made to the Minister for Planning by the property owners of 433-455 Collins Street, Melbourne to exercise powers under Section 20(4) of the *Planning and Environment Act* (the Act). That request seeks an amendment to the Melbourne Planning Scheme, to introduce an Incorporated Document into the Melbourne Planning Scheme and for the Minister to exempt himself from the notice requirements of the Act.
2. The land affected by the amendment has been known as the 'Suncorp' site and is located at 433-455 Collins Street, Melbourne. The site occupies the block bounded by Collins Street, William Street, Market Street and Flinders Lane (refer Attachment 2 for a Locality Plan).
3. The proposal seeks to introduce an Incorporated Document under Clause 52.03 of the Melbourne Planning Scheme. The proposed document would exempt the future development of the site from the prohibition under the Schedule 2 to Clause 37.04, for the Capital City Zone which prohibits new development from overshadowing the south bank of the Yarra River between 11am and 2pm, on 22 June (refer Attachment 3 for proposed Incorporated Documents and selected plans).
4. The amendment proponent has been working with the Council's Urban Design Team to develop a future design proposal for the site. The preliminary proposal incorporates a tower located on the western portion of the site broken into three distinct block elements, containing a residential hotel, commercial, and residential land uses with lower level retail including a 'retail market' fronting Flinders Lane with a raised ground plane above. A detailed design for this future development has not been fully resolved and is not under consideration as part of this amendment.
5. The proposed conditions of the Incorporated Document seek to include principals for the future design of any development including the provision of an open space area with an approximate area of 2000 sqm and that any future building design is 'iconic'. The proponent has agreed to additional conditions that the building envelope and shadow impacts of any future development are generally as presented. The conditions would not 'lock in' the building envelope presented and would not limit future development to the building design that has been the basis of discussions with the administration.

Key issues

6. The importance of the Yarra River as a key natural feature of Melbourne is acknowledged in State planning policy, the Melbourne Planning Scheme and the Planning Schemes of other relevant municipalities. The only basis upon which an exemption to the prohibition could possibly be contemplated is if there was a demonstrated public benefit which would outweigh such an impact on a natural asset of state significance.
7. The creation of a public open space area of a significant size on the site, with good access to sunlight, which is designed and constructed to City of Melbourne standards, incorporating landscaping with deep soil planting and public street connections, has the potential to deliver a new public open space asset to the city.
8. However, it is considered that it is premature to consider an exemption from the mandatory shadow prohibition requirement without further resolution of a detailed design for future development of the site.

Recommendation from management

9. That the Future Melbourne Committee:
 - 9.1. Resolves that a letter be sent to the Department of Transport, Planning, and Local Infrastructure advising that the Council objects to the proposed Planning Scheme Amendment C247 as the amendment and proposed conditions cannot satisfactorily facilitate a development which justifies an exemption to the prohibition of a development to overshadow the south bank of the Yarra River between 11am and 2pm on 22 June.
 - 9.2. Note that Council officers will continue to work with the proponent to develop a detailed design of a future development of the site which may deliver a significant new area of public open space and which might form part of a future proposed amendment to the Melbourne Planning Scheme which could introduce an Incorporated Document to facilitate an agreed development outcome.

Attachments:

1. Supporting Attachment
2. Locality Plan
3. Plans and application documents
4. Delegate Report

Supporting Attachment

Legal

1. The Department of Transport, Planning and Local Infrastructure is the responsible authority for determining the application.

Finance

2. There are no direct financial issues arising from the recommendations contained in this report. However, if the application were to be approved then the financial costs are to be covered by the proponent.

Conflict of interest

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

Stakeholder consultation

4. There has been ongoing consultation between the proponent and Planning and Urban Design.

Relation to Council policy

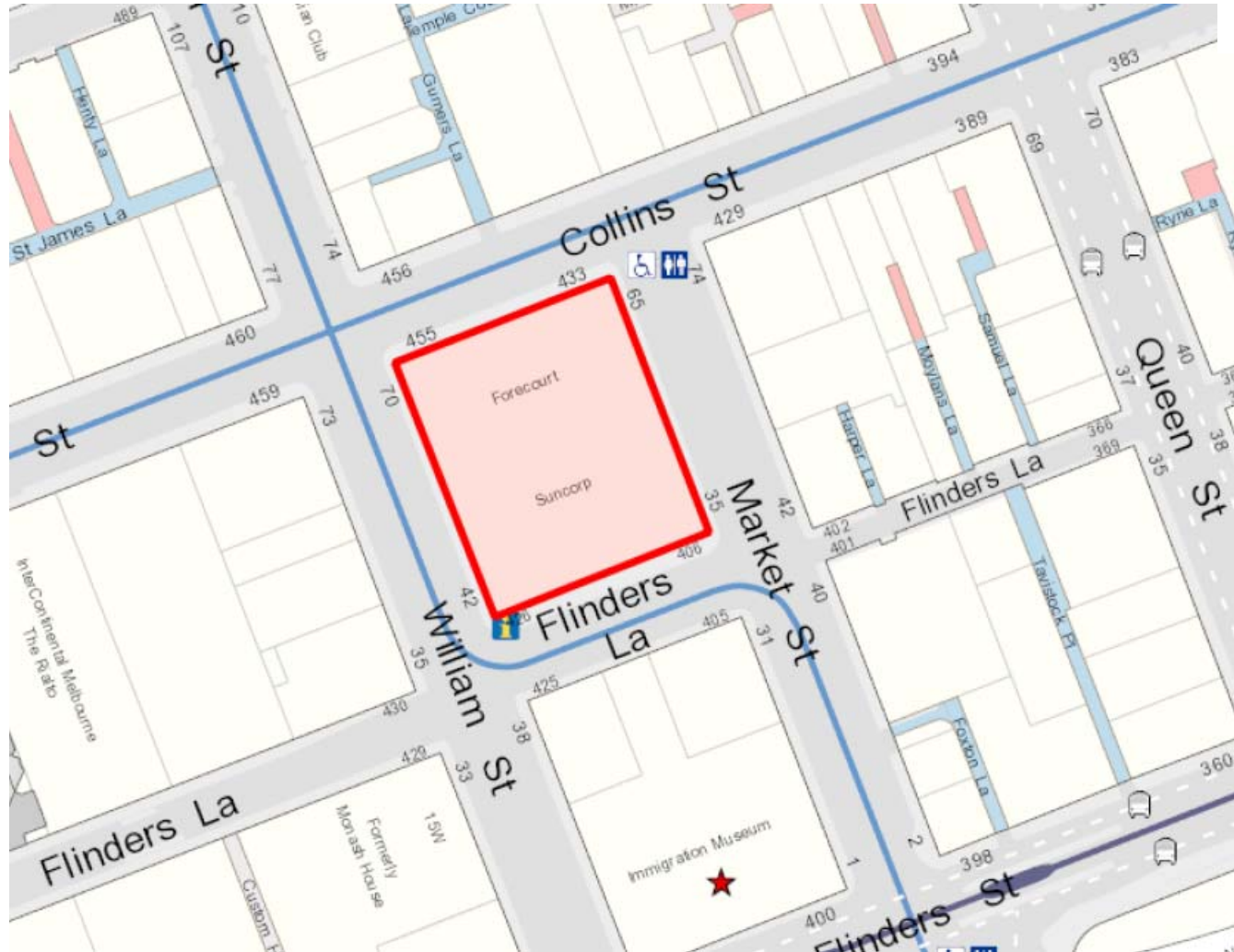
5. Relevant Council policies are discussed in attached delegate report (refer Attachment 4).

Environmental sustainability

6. The application is a matter of whether it is a good planning outcome to support the exemption to the prohibition and therefore no ESD report has been provided as development is not under consideration.

Locality Plan

Suncorp site, 433-455 Collins Street, Melbourne



INCORPORATED DOCUMENT – CLAUSE 52.03 AND CLAUSE 81 SCHEDULES

433 - 455 COLLINS STREET MELBOURNE

INTRODUCTION:

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

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

The specific controls may exclude other controls of the Scheme.

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

ADDRESS OF THE LAND:

This document applies to land at 433 - 455 Collins Street, Melbourne.

THIS DOCUMENT ALLOWS:

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

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

THE FOLLOWING CONDITIONS APPLY TO THIS DOCUMENT:

- 1 The buildings and works must be iconic in nature and design, demonstrate a high degree of architectural merit, provide excellent public realm outcomes, and deliver high quality economic and environmentally sustainable development.
- 2 No part of the buildings and works can exceed a maximum height of 300m AHD.
- 3 Any proposal which overshadows the south bank of the Yarra must include a component of high quality, north facing public open space on the site, of an area of approximately 2,000sqm. The open space must provide a significant contribution to the open space amenity of the western end of the CBD, be publicly accessible for use by workers, residents and visitors to the CBD, and be designed to achieve comfortable wind conditions and good solar access.
- 4 All other provisions of the planning scheme remain.
- 5 The controls in this incorporated document will expire if a planning permit has not been granted for development of the land and the demolition and development is not commenced within five years of the date of the approval of the amendment that incorporates this document into the planning scheme.

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

END OF DOCUMENT

MELBOURNE PLANNING SCHEME
AMENDMENT CXXX
EXPLANATORY REPORT

Who is the planning authority?

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

The amendment has been made at the request of Cbus Property.

Land affected by the amendment

The amendment applies to land known as 447 Collins, Melbourne, with a site address of 433-455 Collins Street, across one title, known as Crown Allotment 15 Section 3 City of Melbourne Parish of Melbourne North.

What the amendment does

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

Specifically the amendment:

- Amends the Schedule to Clause 52.03 to include the Incorporated Document entitled "433-455 Collins Street, Melbourne, February 2014".
- Amends the Schedule to Clause 81.01 to include the Incorporated Document "433 - 455 Collins Street, Melbourne, February 2014".

Assessment of the amendment

• Why is the amendment required?

The amendment will allow for the consideration of a planning application on the land 447 Collins Street Melbourne, for the construction of an exemplary mixed use building – and high quality public realm outcomes.

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

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

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

The subject site, located in the Melbourne CBD on an island site bound by Collins Street, Market Street, William Street and Flinders Lane, enjoys excellent access to nearby residential precincts of Southbank and Docklands, excellent connectivity to the wider Melbourne metropolitan area, access to retail, other employment areas (for business synergies) and recreation opportunities.

The development of the site for '433 - 455 Collins Street, Melbourne' will facilitate orderly, economic and sustainable use and development of land, and will implement the objectives of planning in Victoria. Specifically the development will:

- Reinforce the role of the Melbourne CBD in providing new office, residential space, hotel and retail land uses.
 - Incorporate a remarkable and exciting expanse of public open space designed for all Melburnians and visitors to enjoy.
 - Clustering of high density office uses within the Melbourne CBD to enhance business synergies and to utilise land efficiently.
 - Provide an exceptional architectural outcome which will incorporate best practice ESD and urban design outcomes.
 - Assist in providing an enhanced connection to the Yarra River from Collins Street.
- **How does the amendment address the environmental effects and any relevant social and economic effects?**

Social and Economic

This amendment will facilitate a mixed use tower development in the order of 300 metres in height, which will:

- Provide an investment of in excess of \$1 Billion and generate employment in the construction industry and ancillary industries anticipated to be in excess of 10,000 ongoing permanent and construction jobs.
- Be the catalyst for further regeneration in this part of Melbourne's CBD, encouraging further investment and development.
- Will provide an exceptional area of public open space which will be available to all to utilise.

Environmental

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

- **Does the amendment address relevant bushfire risk?**

Development within the Melbourne CBD is not subject to bushfire risk.

- **Does the amendment comply with the requirements of any Minister's Direction applicable to the amendment?**

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

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

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

Clause 11 – Settlement, including *to strengthen Central Melbourne's capital city functions and its role as a primary business, retail, sport and entertainment hub for the State.*

Clause 15 – Built Form, including the following:

- *To achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties;*
- *New development should contribute to the complexity and diversity of the built environment; and*
- *New development should achieve high standards in architecture and urban design.*

Clause 17 – Economic Development, which seeks to ‘encourage development which meets the communities’ needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.’

Clause 18 – Transport, by locating high density development in a city-centre location with the highest level of access to public transport.

Clause 19 – Infrastructure, which promotes the efficient use of existing infrastructure provisions, promoting that where possible, new development capitalises existing community, social, cultural and development infrastructure facilities.

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

Consistent with the policy objectives and planning controls for the Melbourne CBD, the proposal which achieve the following outcomes:

- Locate a significant level of new office, residential, hotel and retail space and support the Central City’s role as a principal centre for commerce, professional, business and financial services (in accordance with Clause 21.03-3).
- The nature of the proposal and the intensity of the floor space provision will be appropriate for the location (in accordance with Clause 21.03-3).
- The proposal will introduce an exemplary urban design outcome and will provide architectural excellence (in accordance with Clause 21.05-3).
- The proposal will create a precinct within the Hoddle Grid that offer a diverse range of specialist retail, cultural and entertainment opportunities (in accordance with Clause 21.12).
- The proposal will create a new tall building that will add architectural interest to the city’s sky line (Clause 21.12).

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

The amendment makes proper use of the Victoria Planning Provisions by updating the schedules to clauses 52.03 and 81.01 to include the Incorporated Document ‘433 - 455 Collins Street, Melbourne, February 2014’ in the Melbourne Planning Scheme.

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

Extensive consultation regarding the proposed site specific exclusion has occurred with relevant agencies. These include Melbourne City Council and the Department of Planning and Community Development.

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

Any requirements of the Department of Transport, Planning and Local Infrastructure will be included on any future permit for this site.

Resource and administrative costs

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

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

Where you may inspect this Amendment

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

Department of Transport, Planning and Local Infrastructure

Level 14, 1 Spring Street

Melbourne Vic 3000

The amendment can also be inspected free of charge at the Department of Department of Transport, Planning and Local Infrastructure www.dtpli.vic.gov.au/planning/publicinspection.

Amendment **CXXX**

List of changes to the **Melbourne** Planning Scheme

Clause / Map Numbers	Change	Comment
PLANNING SCHEME MAP CHANGES		
Clause 52.03 Schedule	Amends the Schedule to include "Land known as 447 Collins Street, Melbourne", with a site address of 433 - 455 Collins Street, across one title, being land known as Crown Allotment 15 Section 3 City of Melbourne Parish of Melbourne North.	Updates the schedule to include a new Incorporated Document
INCORPORATED DOCUMENTS		
AMENDING THE INCORPORATED DOCUMENT SCHEDULE		
81.01 Schedule	A NEW INCORPORATED DOCUMENT Amends the Schedule to include the "433 - 455 Collins Street, Melbourne, February 2014." Incorporated Document.	Updates the list of incorporated documents in the Melbourne Planning Scheme.
LIST OF AMENDMENTS		
List of Amendments	Insert: Amendment number " CXX ", In operation from "[DATE TO BE INSERTED BY DPCD]", Brief description: "Includes a new Incorporated Document at the Schedules to Clauses 52.03 and 81.01 to allow an assessment of proposed development of 433 - 455 Collins Street, Melbourne".	Updates the list of amendments in the Melbourne Planning Scheme.

Planning and Environment Act 1987

MELBOURNE PLANNING SCHEME

AMENDMENT CXXX

INSTRUCTION SHEET

The planning authority for this amendment is the Minister for Planning.

The Melbourne Planning Scheme is amended as follows:

Planning Scheme Ordinance

The Planning Scheme Ordinance is amended as follows:

1. In Particular Provisions – Clause 52.03, replace the Schedule with a new Schedule in the form of the attached document.
2. In Incorporated Documents – Clause 81.01, replace the Schedule with a new Schedule in the form of the attached document.

End of document

-/-/2013
CXX

SCHEDULE TO CLAUSE 52.03

Address of land	Title of incorporated document
Land known as 447 Collins Street, Melbourne, with a site address of 433-455 Collins Street, across one title, with the land description being Crown Allotment 15 Section 3 City of Melbourne Parish of Melbourne North.	433 - 455 Collins Street, Melbourne, February 2014.

-J-2013
CXX

SCHEDULE TO CLAUSE 81.01

Name of document	Introduced by:
433 - 455 Collins Street, Melbourne, June 2014.	CXX

Planning and Environment Act 1987

MELBOURNE PLANNING SCHEME

Notice of Preparation of Amendment

Amendment CXXX

The Minister for Planning has approved Amendment CXX to the **Melbourne** Planning Scheme.

The amendment comes into operation on the date this notice is published in the Government Gazette.

The land affected by the amendment is to known as 447 Collins Street Melbourne (with a site address of 433 - 455 Collins Street, across a single title, being land known as Crown Allotment 15 Section 3 City of Melbourne of Melbourne North.

The amendment proposes to include a new Incorporated Document at the Schedule to Clauses 52.03 and 81.01 to allow for a permit application to be considered which is contrary to the prohibitions outlined within Schedule 1 to the Capital City Zone.

A copy of the amendment can be inspected, free of charge, at the Department of Planning and Community Development web site at www.dpcd.vic.gov.au/planning/publicinspection and free of charge, during office hours, at the offices of the Melbourne City Council, Level 3, 240 Little Collins Street, Melbourne 3000.

[Insert planning authority signature block]



PLAZA (BRIDGE SCHEME)

AS-OF-RIGHT PUBLIC SPACE

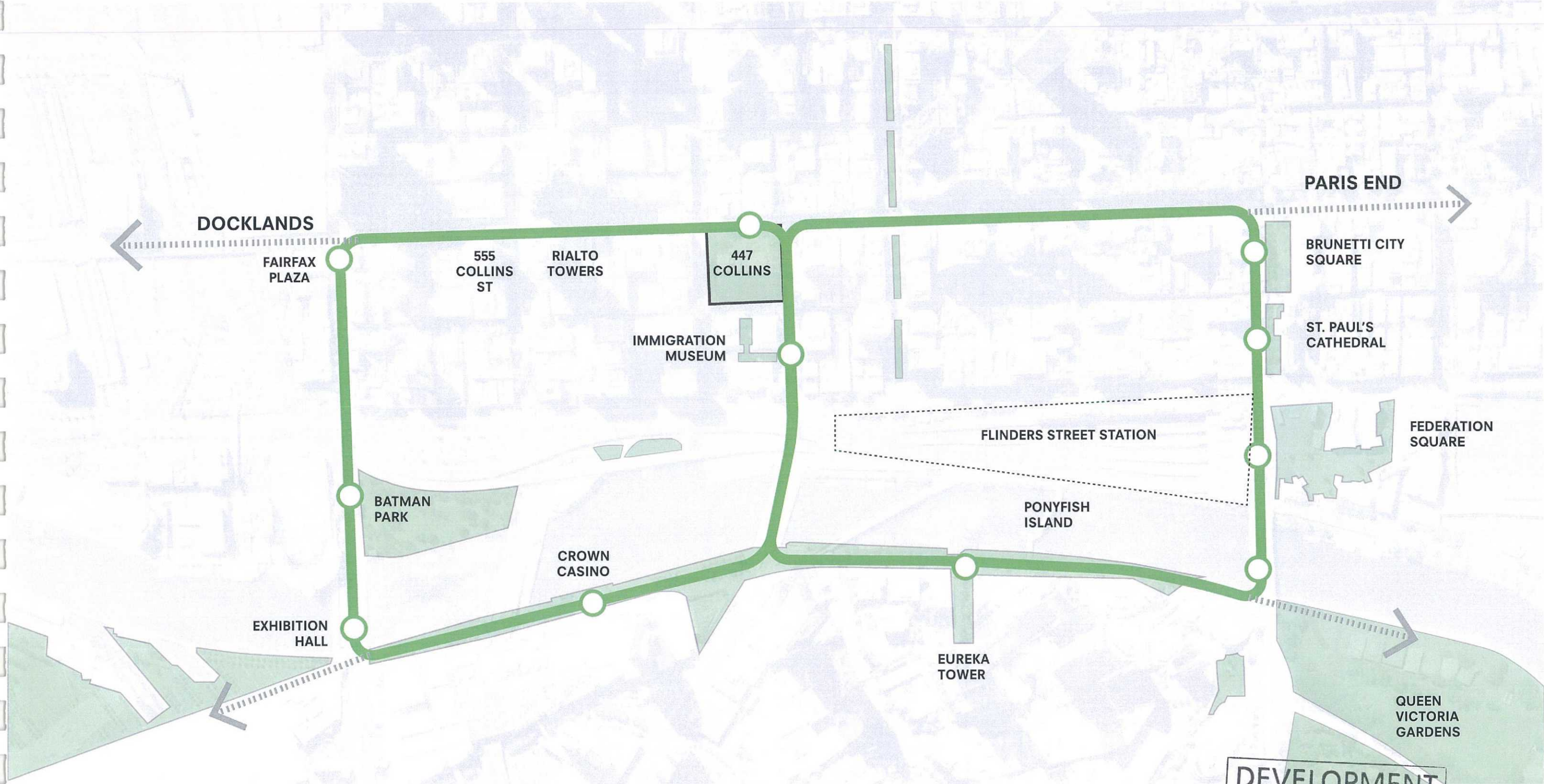


CITY PARK (SPIRE SCHEME)

REQUIRES SHADOW VARIANCE

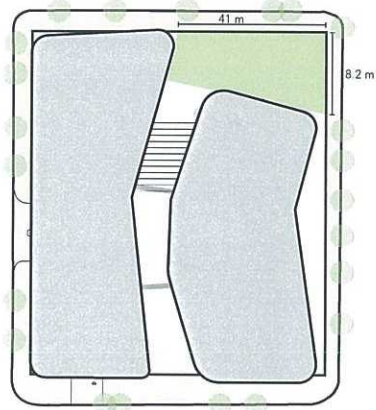
DEVELOPMENT
01 AUG 2014
PLANNING

CONTEXT // A NEW GATEWAY FOR THE CROSS-RIVER CULTURAL LOOP



DEVELOPMENT
01 AUG 2014
PLANNING

CONTEXT // A SIGNIFICANT PUBLIC SPACE CONTRIBUTION



**BRIDGE SCHEME
AS-OF-RIGHT
PUBLIC SPACE**

480M²



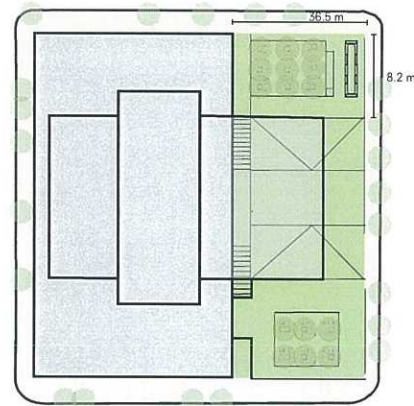
**ST. PAUL'S
CATHEDRAL**

1,390 M²



CITY SQUARE

3,000 M²



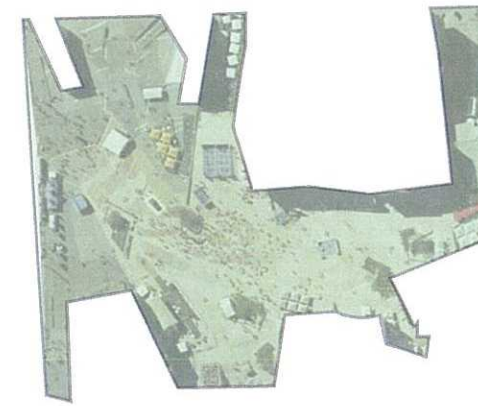
**SPIRE SCHEME
PROPOSED PUBLIC
SPACE**

~2,000 M²
(~3,000 m² with Market Extension)



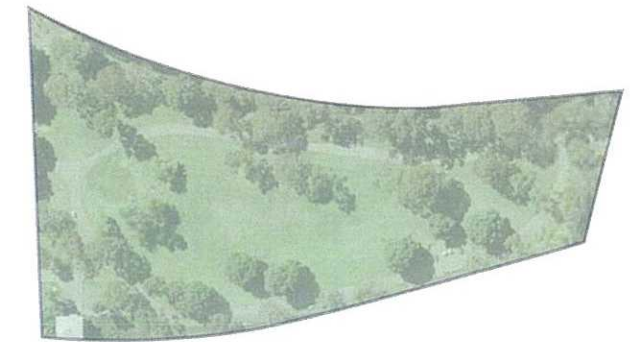
**STATE
LIBRARY OF
VICTORIA**

3,000 M²



**FEDERATION
SQUARE**

9,800 M²

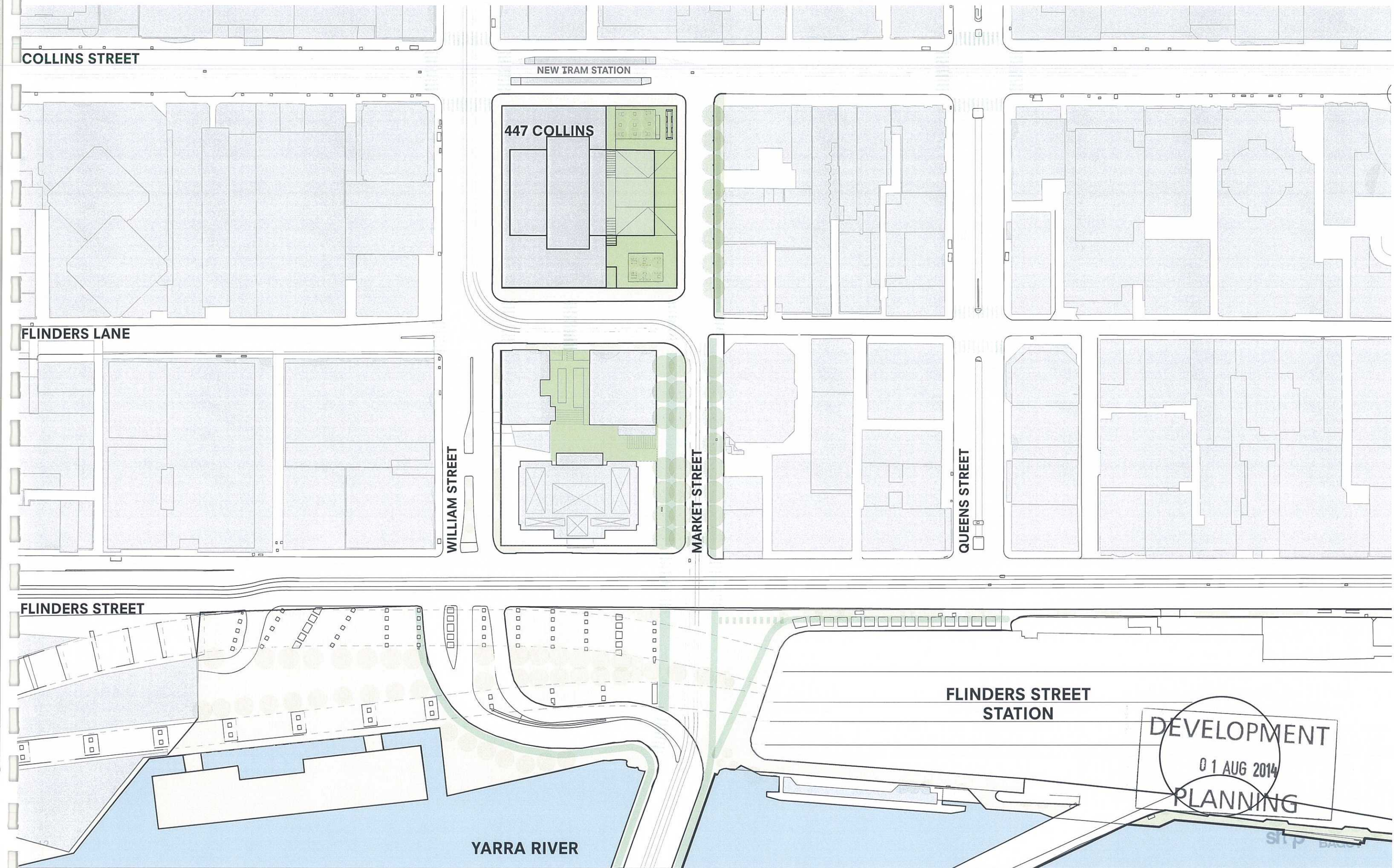


**BATMAN
PARK**

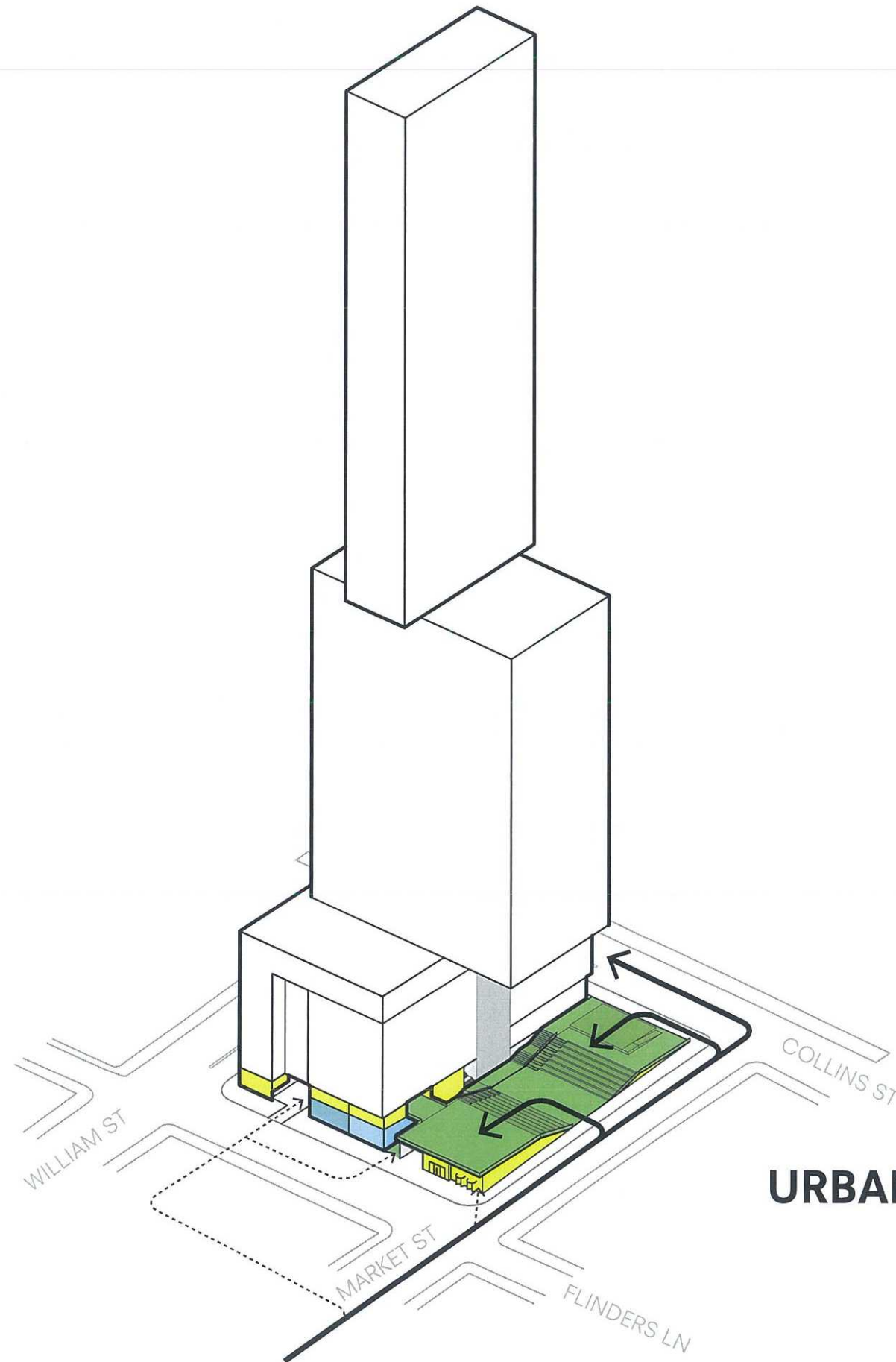
13,500 M²

DEVELOPMENT
01 AUG 2014
PLANNING

PUBLIC SPACE NETWORK // DISTRICT IMPROVEMENTS PLAN



UNIQUE PLACE MAKING // A PUBLIC SPACE GATEWAY



URBAN ROOM, CITY PARK

DEVELOPMENT
01 AUG 2014
PLANNING 

WOODS
BAGOT

PUBLIC SPACE OPPORTUNITY // AREA COMPARISONS



NO EXTENSION INTO MARKET ST
1909 m²
OF PUBLIC SPACE



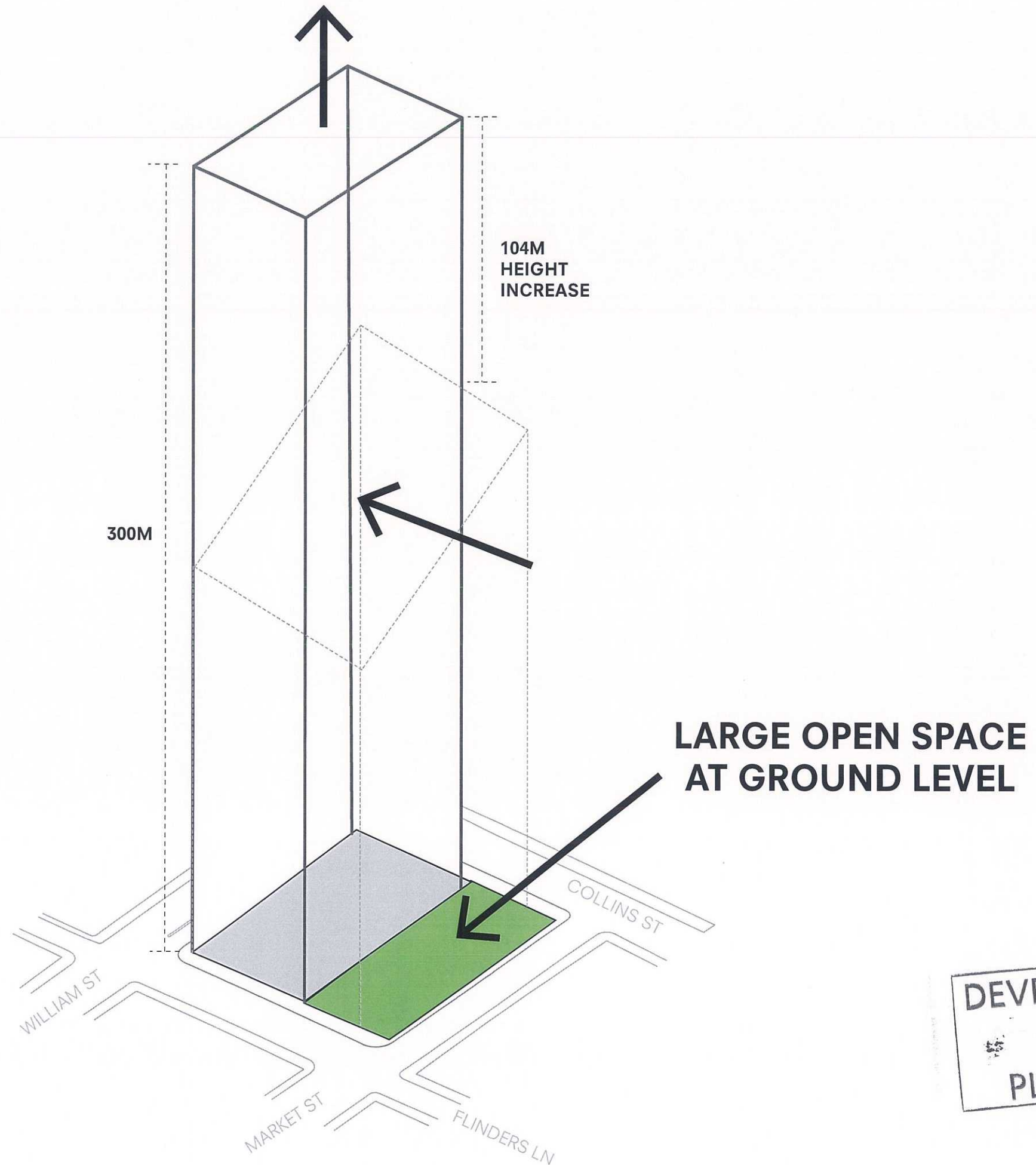
EXTENSION INTO MARKET ST
+830 m²
OF PUBLIC SPACE



EXTENSION INTO MARKET ST
= 2739 m²
OF PUBLIC SPACE

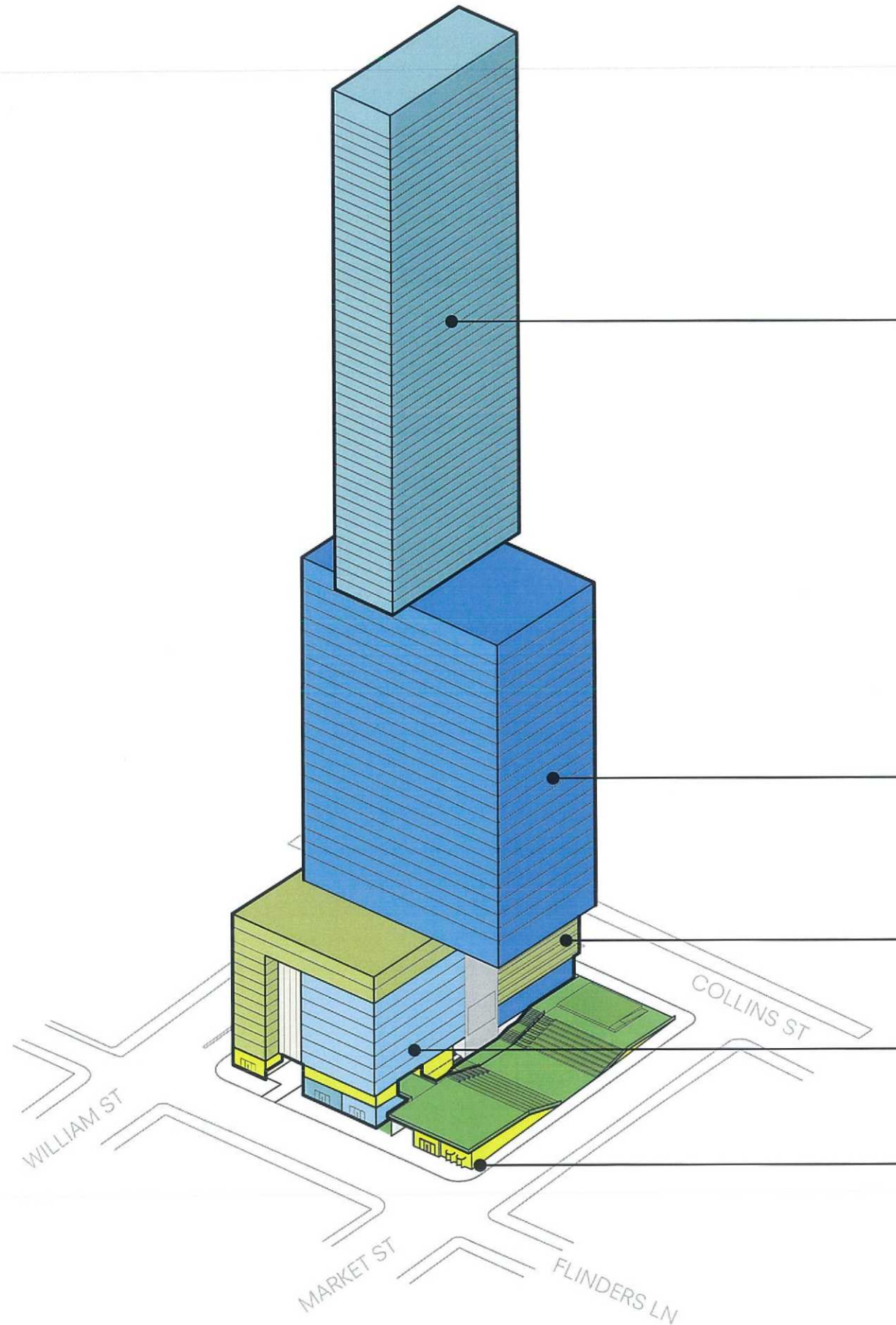
DEVELOPMENT
 01 AUG 2014
 PLANNING

SPIRE // PUBLIC BENEFIT IN EXCHANGE FOR HEIGHT



DEVELOPMENT
01 AUG 2014
PLANNING

SPIRE // PROGRAM AND AREA DISTRIBUTION



RESIDENTIAL
32,500 NLA
400 UNITS

OFFICE
45,000 NLA

HOTEL
250-300 KEYS

BOUTIQUE OFFICE
5000 NLA

MARKET / RETAIL DEVELOPMENT
(6500 SQM)

01 AUG 2014
PLANNING

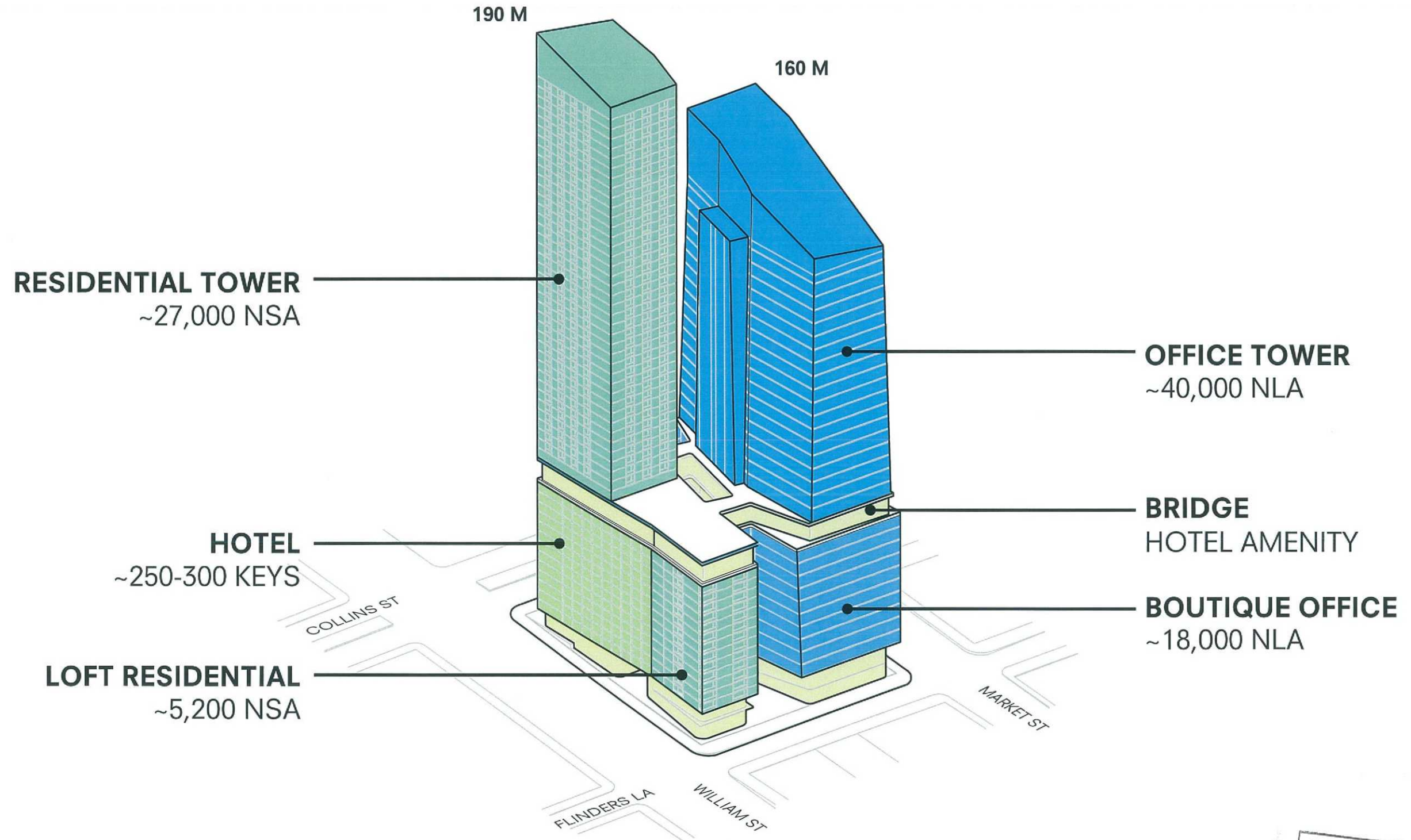




BRIDGE: AS-OF-RIGHT MASSING

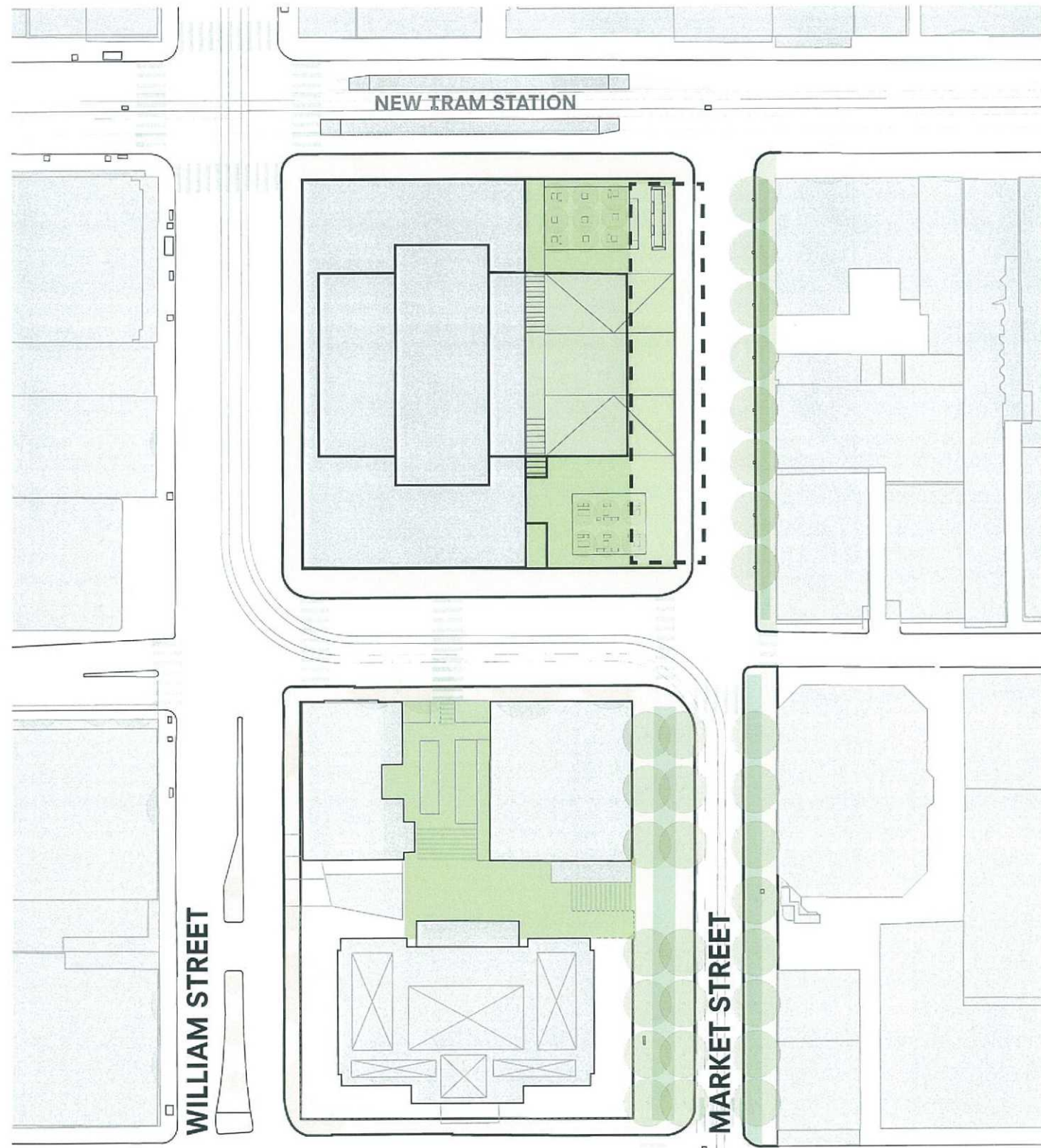
DEVELOPMENT
01 AUG 2014
PLANNING

BRIDGE // PROGRAM DISTRIBUTION AND AREAS

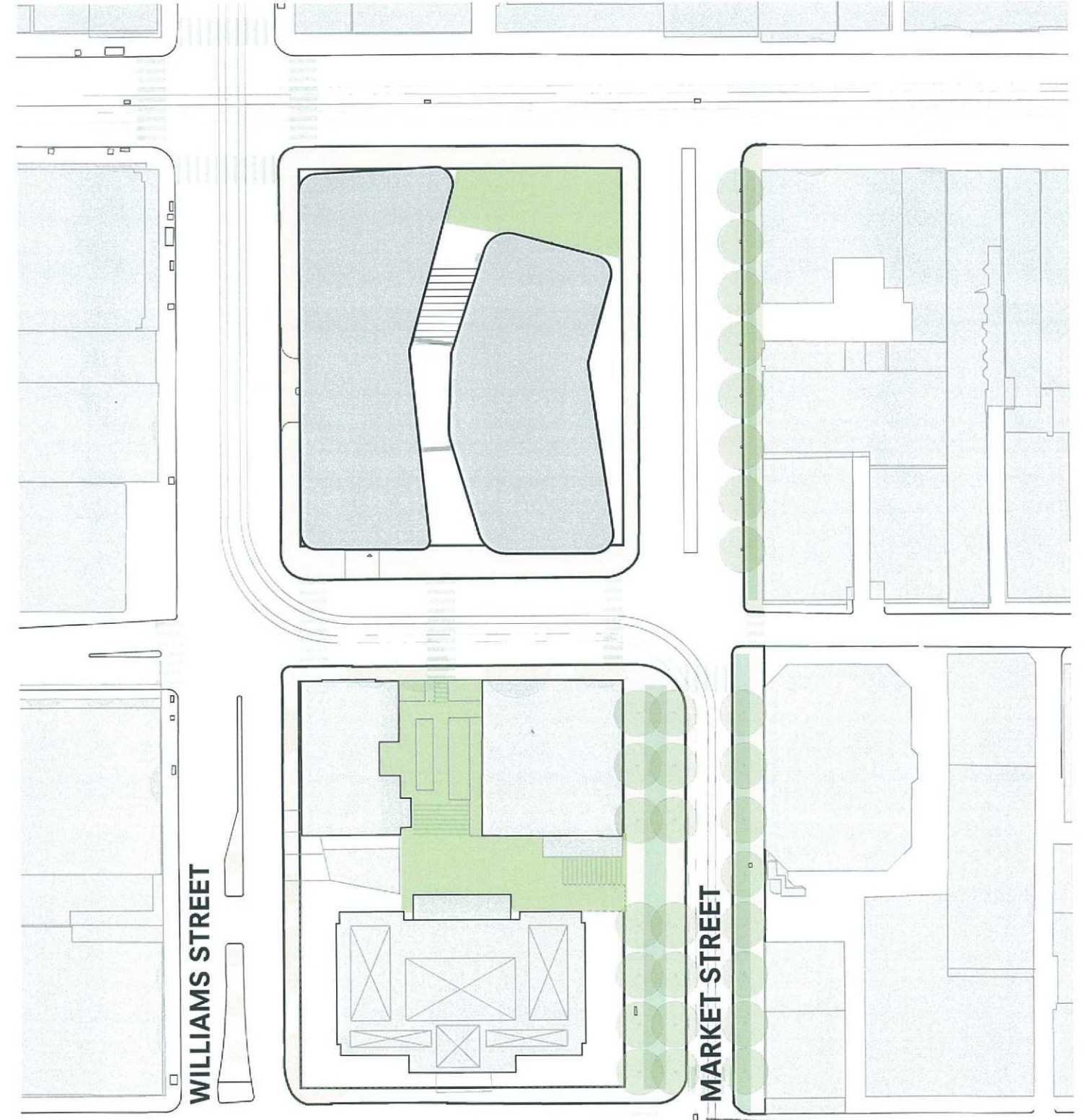


DEVELOPMENT
01 AUG 2014
PLANNING

PUBLIC BENEFIT // PUBLIC OPEN SPACE COMPARISON



SPIRE & CITY PARK
 (REQUIRES SHADOW VARIANCE)
PUBLIC OPEN SPACE: 1909 M² (2990 M² W/ MARKET EXTENSION)



BRIDGE & PLAZA
 (8% OPEN SPACE)
PUBLIC OPEN SPACE: 480 M²

DEVELOPMENT
 01 AUG 2014
 PLANNING

PLANNING REPORT

MINISTERIAL REFERRAL

Application number:	ID-2014-3 (Amendment C247)
DTPLI Application number:	
Applicant / Owner / Architect:	Urbis / Cbus Property / Woods Bagot & SHoP Architects
Address:	Suncorp, 433-455 Collins Street, MELBOURNE VIC 3000
Proposal:	Proposed Planning Scheme Amendment: 433-455 Collins Street Melbourne
Date received by City of Melbourne:	11 July 2014
Responsible officer:	Julian Larkins
Report Date:	17 July 2014
(DM# 8641625)	

1. SUBJECT SITE AND SURROUNDS

1.1. The site

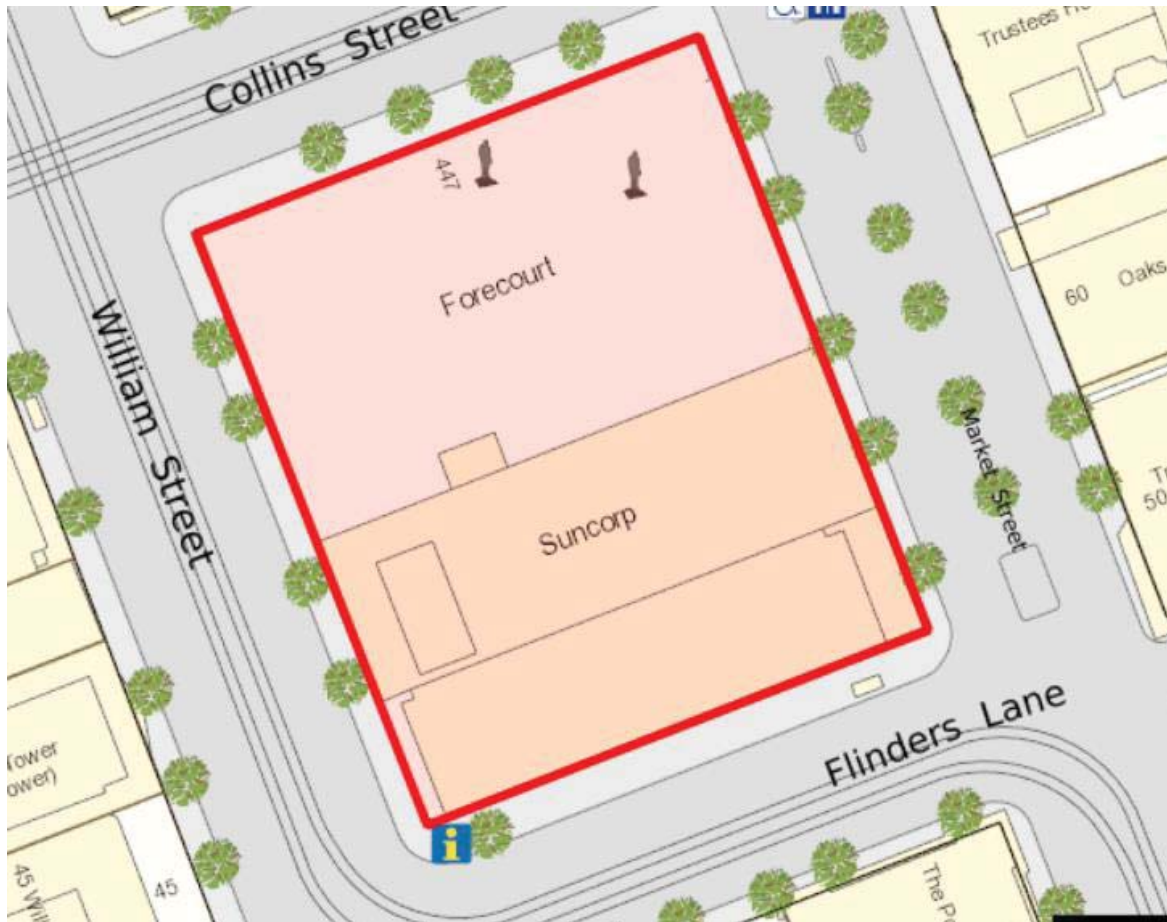
The subject site known as the 'Suncorp Centre', formerly known as the AXA Centre, is an office tower built on site of the National Mutual's first office (from 1869 to 1893) which later became the Western Markets. The existing building was opened in 1965 and extended from 22 to 27 storeys in 1982-83. The site has a plaza to Collins Street, and a two-level shopping arcade facing the plaza. The building includes a 300-space basement car park entered from Flinders Lane.

The site has a total area of approximately 5900m² and the existing building on-site was a multi-level tower. The building above plaza level is being demolished as allowed by planning permit TP-2013-227.

The block, bounded by Collins Street, William Street, Flinders Lane and Market Street was the site of the Western Market. The land was Crown Land which was granted to the Council in trust for municipal purposes, initially in 1846. It was used for the National Mutual's offices between 1869 and 1893, after which the buildings were again used for market purposes and entrusted to MCC under a new Crown grant until 1934. The trusts were extended to include other purposes in 1955. In 1960 the Council leased the site to the National Mutual Life Association for 99 years. In 1992 National Mutual bought the site freehold from Council. It is understood that all rights the public or the Council might have had over the plaza area as open space were expunged in 1992.

The site, until recently was occupied by Suncorp which has since relocated its offices.

Aerial Photo / Locality Plan



1.2. Surrounds

The main characteristics observed in the area include:

- To the south over Flinders Lane are the A graded Former Port Authority Building and Immigration Museum which are both on the Victorian Heritage Register.
- To the north over Collins Street are multi storey office buildings including two B graded post-war buildings.
- To the east over Market Street are three multi-level buildings including the A graded Trustees House which within the Victorian Heritage Register.
- To the west over William Street are multi-level office buildings.

2. THE PROPOSAL

The City of Melbourne's comments on the amendment have been sought by DTPLI by letter dated 9 July 2014.

On 18 June 2014, the amendment proponent requested that the Minister for Planning exercise his powers under Section 20(4) of the Planning and Environment Act to exempt himself from the requirements of sections 17, 18 and 19 and the regulations in respect of an amendment which the Minister prepares, if the Minister

considers that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.

The amendment request is to facilitate a future planning application to be made for a large scale development comprising hotel, residential, office, retail and a significant public open space area. The amendment proponent has been working with the City of Melbourne Urban Design Team to develop a future design proposal for the site. The preliminary proposal incorporates a tower located on the western portion of the site broken into three distinct block elements and containing a residential hotel, commercial, and residential land uses with lower level retail including a 'retail market' fronting Flinders Lane with a raised ground plane above. A detailed design for this future development has not been fully resolved and is not under consideration as part of this amendment.

The proposed conditions of the Incorporated Document seek to include principles for the future design of any development including the provision of an open space area with an approximate area of 2000 sqm and that any future building design is iconic.

The proponent has agreed to additional conditions that would require the building envelope and the shadow impacts of any future development to be as generally presented. The conditions proposed would however not 'lock in' the building envelope presented and would not limit future development to the building design that has been the basis of discussions with the City of Melbourne.

At present, a planning application for the development as presented would cast a shadow across the south bank of the Yarra River between 11.00am and 2.00pm on 22 June and would therefore be prohibited under Schedule 2 to Clause 37.04 of the Melbourne Planning Scheme.

The amendment seeks to introduce an Incorporated Document via Clause 52.03 of the Melbourne Planning Scheme to enable a planning application to be considered for the site which is contrary to the prohibition. The planning controls proposed to be included in the Incorporated Document would establish a direct link between permission to overshadow the south bank of the Yarra and provision of an area of public open space of approximately 1800sqm on site, comparable in size to the City square. This 1800sqm area would include the 480sqm area at the site already required to be provided as an area of public open space (and transferred to Council) as part of any future development. The following conditions to be included in the Incorporated Document have been put forward by the applicant:

General

1. The proposal must be undertaken with the care and management of Cbus 447 Collins Street Pty Ltd, or a subsidiary or parent company of Cbus 447 Collins Street Pty Ltd.
2. The proposal must include an area of public open space of at least 2000sqm on the site, which must be vested in the City of Melbourne upon completion of the development of the proposal (to a depth of xm). The owner may use and develop land beneath and abutting the open space.
3. Cbus 447 Collins Street Pty Ltd is responsible for the design and construction of works within the proposed public open space.
4. The Council is not entitled to any further development contribution pursuant to the provisions of the Scheme.
5. All other provisions of the planning scheme remain.

Design

6. The buildings and works must be iconic in nature and design, demonstrate a high degree of architectural merit, provide excellent public realm outcomes, and deliver environmentally sustainable development.
7. No part of the building and works can exceed a maximum height of 300m AHD.
8. The proposed layout and built form massing should be generally consistent with the Concept Plans (Dwg Nos xx – yy) prepared by Shope Architects dated X July 2014. The design concept may be further refined through planning permit process in consultation with the City of Melbourne and DTPLI, where enhanced outcomes can be demonstrated.
8. (alternative no.8 condition) Above a height of [###]m AHD, the developer must endeavour to minimise the width of the proposed buildings and works, so as to minimise the extent of the shadowing on the Yarra River.
9. The area of open space provided must:
 - a) Be an area of approximately 2000sqm;
 - b) Be of high quality and be north facing;
 - c) Provide a significant contribution to the open space amenity of the western end of the CBD;
 - d) Be publicly accessible for use by workers, residents and visitors to the CBD;
 - e) Be designed to achieve comfortable wind conditions and good solar access.
10. The controls in the incorporated document will expire if a planning permit has not been granted for development of the land and development is not commenced within five years of the date of the approval of the amendment that incorporates this document into the planning scheme.

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

In addition to this, the proponent has indicated that with a Road Closure Overlay over 10m in width of Market Street (Crown Land) the area of public open space could be increased to approximately 3000sqm.

DTPLI, allowed a 14 day timeframe for comments to be provided.

3. BACKGROUND

3.1. Pre-application discussions

There were no pre-application discussions held with Planning Officers.

There has been ongoing discussion between the Urban Design Branch and the proponent. On 15 July 2014 the proponent indicated that verbal advice had been provided by Urban Design in late June / early July that could establish certainty in the planning control for Council:

- Cbus Property transfer interest in the combined 3,000sqm POS stratum to City of Melbourne;
- Cbus Property may utilise the land beneath the POS;
- Cbus Property to design and construct the works at their own costs
- Council not entitled to any development contribution;
- Cbus Property entitled to revenue abutting and beneath POS.

These discussions and advice did not acknowledge that Market Street was Crown Land. The assumption that Market Street was Council land means that this advice was based on the understanding that Council would be the deciding authority for the status of the road and would have the ability to allow for part of the road to be incorporated into the development site.

3.2. Site history

A previous planning application, TPM-2000-24, was made to the Minister for Planning for a 30-storey building on 7-storey stilts on this plaza area. The Council objected to the loss of open space and increased shadow, but the Minister granted approval on 29 November 2000. This permit allowed for a total gross building floor area of 103,967 sqm and 232 car parking spaces.

Another planning application, TPM-2006-24, was made to the Minister for Planning for the refurbishment of the existing building and construction of an 11 storey office building and 2 storey icon building for use as office and retail premises. On this occasion the Council supported the application subject to numerous conditions. The Minister granted approval on 2 December 2006 with endorsed plans issued on 19 June 2007.

The building on the site was one of those included in the Melbourne Planning Scheme Amendment C186 Central City (Hoddle Grid) Heritage Review but has not yet been adopted by the Minister for this site.

A permit for demolition TP-2013-227 was issued on 10 June 2014 following the VCAT Order dated 26 May 2014 for the part demolition of existing buildings and associated structures. The permit allows demolition of the building above the Collins Street ground level. Conditions of this permit also require the provision of a temporary area of public open space in the time before redevelopment of the site occurs.

An Agreement under Section 173 of the Planning and Environment Act has been entered into as per Condition 3 of the previous permit for the subject site TP-2013-227 allowing demolition of existing buildings. Condition 3 stipulates, among other things, that:

‘Prior to the commencement of the demolition or removal of existing buildings or works (excluding demolition or removal of temporary structures) on the land, the owner of the land must enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987. The agreement must provide the following:

- a. The public has ongoing access to an open area with interconnection to the public realm on Collins Street. The open area must have reasonable solar access, read as public space and achieve comfortable wind conditions to the satisfaction of the City of Melbourne and be generally in accordance with the area shown green on the diagram titled (Indicative Open Space’, as attached.’

The Section 173 Agreement dated 2014 states under section 3.1 that the Owner agrees that:

- (1) 'within 2 months of the completion of the demolition pursuant to the Demolition Permit, and until the Redevelopment of the Land commences, the Owner will provide to the satisfaction of the Responsible Authority the public with temporary access to an area of open space on the corner of Collins Street and Market Street that comprises 8% of the area of the Land;
- (2) the Owner will use its reasonable endeavours to provide the public with temporary access to a further area/s of open space until the Redevelopment of the Land commences (in addition to the 8% area provided in clause 3.1(1)), subject to any operational, security and occupational health and safety requirements;
- (3) within two months of the completion of the demolition pursuant to the Demolition Permit, and until the Redevelopment of the Land commences, the Owner will provide temporary works and/or landscaping for the area of temporary open space provided pursuant to clauses 3.1(1) and 3.1(2) (if any) that is publicly accessible for passive recreation, to a maximum value of \$50,000 if the Redevelopment of the Land is to commence within six months from the completion of demolition and \$100,000 if the Redevelopment of the Land is to commence after the expiration of six months from the completion of demolition, to the satisfaction of the Responsible Authority; and
- (4) the Land will otherwise be kept in an orderly and tidy state at all times and its appearance must not prejudicially affect the amenity of the area, to the satisfaction of the Responsible Authority.'

Section 4.1 of the Section 173 Agreement goes on to state that:

'The Owner agrees that an application for a planning permit for the Redevelopment of the Land must incorporate a Public Open Space Contribution comprising an area of public open space on the corner of Collins Street and Market Street that comprises 8% of the surface area of the Land, to a depth of 700mm excluding the external face of the structure and waterproof membrane and with length and breadth dimensions consistent with the plans for the Redevelopment of the Land to the satisfaction of the Responsible Authority.'

The Section 173 Agreement also indicates that:

- the owner agrees to provide an easement of support under the area of Public Open Space
- The area is to be designed and constructed at no cost to the City of Melbourne with sufficient root areas for trees.
- The owner will use all reasonable endeavours to facilitate the prompt vesting of the area of public open space to the City of Melbourne
- The Responsible Authority agrees the area constitutes full satisfaction of the requirement to make a Public Open Space Contribution for the Land

4. PLANNING SCHEME PROVISIONS

The following provisions of the Melbourne Planning Scheme apply:

<p>State Planning Policies</p>	<p>Clause 11.03 Open space seeks to assist creation of a diverse and integrated network of public open space commensurate with the needs of the community.</p> <p>A relevant strategy is to ‘ensure that urban open space provides for nature conservation, recreation and play, formal and informal sport, social interaction and peace and solitude. Community sports facilities should be accommodated in a way that is not detrimental to other park activities.’</p> <p>Clause 11.03-2 Open space management seeks to provide for the long term management of public open space.</p> <p>Relevant strategies include to:</p> <p>‘Encourage management plans or explicit statements of management objectives for urban parks to be developed.’</p> <p>‘Ensure the provision of buildings and infrastructure is consistent with the management objectives of the park.’</p> <p>Clause 11.04-4 Liveable communities and neighbourhoods seeks to create healthy and active neighbourhoods and maintain Melbourne’s identity as one of the world’s most liveable cities.</p> <p>Relevant strategies include to:</p> <p>‘Make the city greener.’</p> <p>‘Create more great public places throughout Melbourne.’</p> <p>‘Achieve and promote design excellence.’</p> <p>Clause 11.04-8 Open space network in Metropolitan Melbourne seeks to create a network of metropolitan open space by creating new parks.</p> <p>Relevant strategies include:</p> <p>‘Ensuring development does not compromise the Yarra River and Maribyrnong River corridors and other waterways as significant open space, recreation, aesthetic, conservation and tourism assets.’</p> <p>Policy guidelines include Linking People and Spaces: A Strategy for Melbourne’s Open Space Network (Parks Victoria, 2002).</p> <p>Clause 11.04-9 River corridors seek to protect and enhance the significant river corridors of Metropolitan Melbourne.</p> <p>Relevant strategies include:</p> <p>‘Ensure strategic planning and land management of the Yarra River and Maribyrnong River corridors to protect their environmental and cultural values and landscape character and guide new development.’</p> <p>‘Ensure development responds to and respects the significant environmental, conservation, cultural, aesthetic, open space, recreation and tourism assets of the Yarra River and Maribyrnong River corridors.’</p> <p>‘Ensure new development is sensitively designed and sited to maintain and enhance environmental assets, significant views and the landscape along the Yarra River and Maribyrnong River corridors.’</p> <p>Policy guidelines include Review of Policies and Controls for the Yarra River Corridor: Punt Road to Burke Road Consultant Report (Planisphere, June 2005).</p> <p>Clause 12.04-1 Environmentally sensitive areas seeks protect and conserve environmentally sensitive areas. The strategy is to protect environmentally sensitive areas with significant recreational value such as the Yarra River from development which would diminish their environmental conservation or recreation values.</p>
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	<p>Clause 12.04-2 Landscapes seeks to protect landscapes and significant open spaces that contribute to character, identity and sustainable environments.</p> <p>Clause 15.01-1 Urban design seeks to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.</p> <p>Clause 15.01-2 Urban design principles seeks to achieve architectural urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties</p> <p>Plan Melbourne</p> <p>Initiative 4.2.4 Protect waterways from inappropriate development ‘Port Phillip Bay, Yarra River, Maribyrnong River and other significant rivers and streams are important assets to the state and are highly valued by the community in a number of ways. There is a need to balance the tourism, recreational and cultural values of Melbourne’s foreshore and waterways with development opportunities. It is also important that we protect our waterways from inappropriate development.’</p> <p>‘The government has recently brought forward new, mandatory controls to protect the banks of the Yarra and Maribyrnong rivers, our city’s two iconic waterways. These controls should be offered to local governments and waterway authorities to protect other iconic waterways and coasts across Melbourne, including Port Phillip Bay.’</p> <p>Initiative 4.5.3 Extend the landscape and vegetation cover of Metropolitan Melbourne</p> <p>Initiative 4.8.2 Promote urban design excellence</p> <p>Initiative 5.6.2 Protect our open space waterway corridors from inappropriate development ‘The government has introduced significantly stronger planning protections for Melbourne’s two main river corridors, the Yarra and Maribyrnong rivers. These include mandatory height controls; controls in relation to site coverage, vegetation removal and drainage requirements; and discouraging development that intrudes on existing public and private open space adjacent to the rivers.</p> <p>This approach to protecting rivers from inappropriate development will be extended to other rivers in Melbourne.’</p> <p><u>In short-term</u></p> <p>‘In partnership with local governments and stakeholders, prepare and implement planning provisions for major metropolitan waterway corridors, consistent with the approaches adopted for the Yarra and Maribyrnong rivers.’</p>
<p>Municipal Strategic Statement</p>	<p>Clause 21.04 – 1.2 Urban renewal areas</p> <p>It is noted in this Clause that Southbank has brought the Yarra River ‘into the heart of the city’s life’ with a ‘pedestrian priority at street level’</p> <p>Clause 21.05 – 2 Significant environments and landscapes</p> <p>Objective 1 To enhance the environmental value of Melbourne’s parklands waterways and other open spaces.</p> <p>Clause 21.06-1 Urban design</p> <p>Objective 1 To reinforce the City’s overall urban structure</p> <p>Strategy 1.1 Protect Melbourne’s distinctive physical character and in particular maintain the importance of (among other things):</p>

	<ul style="list-style-type: none"> - The Hoddle Grid - The Yarra River Corridor, Victoria harbour and waterways <p>Strategy 1.5 Promote development that is compatible with the scale, character and amenity of public open spaces, and the environs of the Yarra River.</p> <p>Objective 5 To increase the vitality, amenity, comfort, safety and distinctive City experience of the public realm.</p> <p>Strategy 5.2 Ensure that the scale, bulk and quality of new development supports a high quality public realm.</p> <p>Strategy 5.9 Ensure that development maximises solar access in public open spaces, and creates microclimatic conditions for a high level of pedestrian comfort.</p> <p>Objective 6 To improve public realm permeability, legibility, and flexibility.</p> <p>Strategy 6.2 Ensure the design of buildings and public spaces enhances the public realm and pedestrian environment.</p> <p>Clause 21.12 Hoddle Grid seeks, among other things, to:</p> <p>‘Protect the regular grid layout, laneways, tree-lined boulevards and identified significant public open spaces.’</p> <p>‘Ensure sunlight penetration in the middle of the day to key public spaces, appropriate to their role and function.’</p> <p>‘Protect the Yarra River and its south bank from overshadowing throughout the year.’</p>
<p>Local Planning Policies</p>	<p>Clause 22.01 Urban design within the Capital City Zone seeks, among other things, to:</p> <p>‘To improve the experience of the area for pedestrians’</p> <p>‘To create and enhance public spaces within the Capital City Zone to provide sanctuary, visual pleasure and a range of recreation and leisure opportunities.’</p> <p>‘To ensure that the design of public spaces, buildings and circulation spaces meets high quality design standards.’</p> <p>Public Spaces</p> <p>‘The provision of high quality, readily accessible internal and external spaces form an integral part of the public domain. Public spaces include public and privately owned land for public use and may be covered or open to the sky.’</p> <p>It is policy to:</p> <ul style="list-style-type: none"> ▪ Encourage the provision of high quality new public spaces. ▪ Encourage new public spaces to cater for the needs of the City’s diverse communities. ▪ Discourage public space at street intersections to reinforce the form of the city grid. ▪ Discourage small narrow spaces fronting streets. ▪ Encourage atria where they link different elements of building complexes, link new additions to historic buildings or improve the energy efficiency of the building. <p>It is policy that the design of public spaces is assessed against design standards within this policy, including that:</p>

- Public open space should have a northerly aspect.
- Development of new or upgrading of existing open space should comply with the City of Melbourne's design standards.
- Provision should be made for facilities such as seating, litter bins, tables, drinking fountains and public telephones where appropriate.

Clause 22.02 Sunlight to Public Spaces

'This policy applies to public spaces such as parks and gardens, squares, streets and lanes, and includes privately owned spaces accessible to the public, such as building forecourts, atria and plazas within the municipality excluding the Docklands Zone.'

'A fundamental feature of Melbourne's character, livability, comfort and attractiveness is its ability to offer sunlight to its streets and public spaces at the times of the year when the intensity of pedestrian activity is highest.'

This policy seeks, among other things, to:

'Ensure that overshadowing from new buildings or works does not result in significant loss of sunlight and diminish the enjoyment of public spaces for pedestrians.'

'To protect and where possible increase the level of sunlight to public spaces during the times of the year when the intensity of use is at its highest.'

It is policy that Development should not reduce the amenity of public spaces by casting any additional shadows on public parks and gardens, public squares, major pedestrian routes including streets and lanes (including all streets within the retail core of the Capital City Zone), and privately owned plazas accessible to the public between 11.00 am and 2.00 pm on 22 September.

Yarra River Corridor

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

Development should not cast a shadow across the north bank of the Yarra River between 11.00 am and 2.00 pm on 22 June.

Federation Square, City Square, Queensbridge Square, State Library Forecourt

Development should not cast any additional shadows across St Paul's Square, the Plaza and the Atrium which are part of Federation Square, any part of City Square, Queensbridge Square or the State Library forecourt, between 11.00 am and 2.00 pm on 22 June.

Definitions for the Purpose of this Policy

The south bank is the north edge of the existing physical boundary bordering the south side of the river.

The north bank is the south edge of the existing physical boundary bordering the north side of the river.

Statutory Controls	
Capital City Zone Schedule 1	<p>Pursuant to Clause 3.0 of Schedule 1 to the Capital City Zone the construction of buildings and works which would cast a shadow across the south bank of the Yarra River between 11.00 am and 2.00 pm on 22 June is prohibited, except for unenclosed structures associated with the construction of gangways, mooring poles and pontoons which are constructed by or on behalf of Melbourne Parks and Waterways or Parks Victoria under the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958, the Parks Victoria Act 1998, or the Crown Land (Reserves) Act 1978.</p> <p>For this reason an amendment to the Melbourne Planning Scheme via Section 20(4) of the Planning and Environment Act 1987 is being sought.</p> <p>In addition, a permit is required:</p> <p>'To construct a building or construct or carry out works which will cast a shadow across the north bank of the Yarra River between 11.00 am and 2.00 pm on 22 June. A permit may only be granted if the responsible authority considers the overshadowing will not prejudice the amenity of the Yarra River corridor.'</p> <p>'To construct a building or construct or carry out works which would cast a shadow across any part of Federation Square, City Square, Queensbridge Square and the State Library Forecourt between 11.00 am and 2.00 pm on 22 June. A permit may only be granted if the responsible authority considers the overshadowing will not prejudice the amenity of the squares.'</p> <p>'To construct a building or construct or carry out works which would cast a shadow between 11.00 am and 2.00 pm on 22 March and 22 September over public space, public parks and gardens, public squares, major pedestrian routes including streets and lanes, and privately owned plazas open to the public. A permit may only be granted if the responsible authority considers the overshadowing will not prejudice the amenity of those areas.'</p>
Design and Development Overlay Schedules 1-A2 and 4	<p>A permit is required to carry out buildings and works.</p> <p>The provisions of these schedules relate to ground floor frontages and is not a relevant consideration in this application.</p>
Parking Overlay 1	<p>A permit is required to provide parking in excess of a rate of:</p> <ul style="list-style-type: none"> • One space per dwelling. For other uses the maximum number of spaces is <u>5 x net floor area of buildings on that part of the site in sqm</u> 1000sqm <p>As this proposal is only for the question of whether the prohibition on overshadowing can be exempted, no permit is required under this provision.</p>

Particular Provisions	
Clause 52.03, Specific Sites and Exclusions	The amendment request is to introduce an Incorporated Document via Clause 52.03 of the Melbourne Planning Scheme to provide a facility for a planning application to be considered for the site which is contrary to the prohibition.
Clause 52.01 Public Open Space Contribution and subdivision	Any person who proposes to subdivide land must make a contribution to the council for public open space in an amount specified in the schedule to this clause. The subject site currently has a requirement to provide 8% or 480sqm of its land as public open space as per this provision.

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

General Provisions	
Clause 61.01 – Administration and enforcement of this scheme	The proposal, which was lodged with the Minister for Planning C/- Department of Transport, Planning and Local Infrastructure (DTPLI) on 18 June 2014, seeks an amendment to the Melbourne Planning Scheme via Section 20(4) of the Planning and Environment Act 1987.

5. PUBLIC NOTIFICATION

Pursuant to S20(4) of the Planning and Environment Act 1987 the Minister may decide to exempt himself from the giving of notice of the amendment.

6. REFERRALS

The application was referred to the following internal departments which comments summarised:

Urban Design

- ‘It should be noted that the design for the proposed building on the subject site is still only at a preliminary stage but the concept is considered to be fixed in terms of the following:
 - overall height, built form and setbacks
 - overall mix of uses and distribution of those uses on the site
 - overall proportion and distribution of built form and open space’
- ‘The applicant has commissioned the services of a joint venture architectural team consisting of two well-respected firms of architects. It is strongly recommended that should a planning scheme amendment (or permit) result from this proposal, that the concept design and the architectural team should be tied to the approval. In the event that an alternative design concept or different architectural team is put forward for this site, this should trigger a new planning amendment process.’
- ‘We do not support proposals that overshadow the south bank of the Yarra River. The only argument put forward in this particular case, for this particular site, turns on the issue of the proposal to provide a large new area of public open space on the subject site.’

- ‘The subject site currently provides a substantial area of north facing public open space that is enjoyed by city workers, residents and visitors. This land is on title and as such, the applicant has developed a range of options to develop the overall site that includes some built form on the current open space together with some provision of open space. Option A included in material submitted with this application indicates a built form outcome for this site that would result in a building with no overshadow of south bank, a north/south link through the site and a north and north/east facing public space on the subject site of 480 sqm in area.’
- ‘An alternative design has been proposed that provides a public space of 2000 sqm along the entire eastern side of the site fronting Market Street with exposure at each end to Collins Street and Flinders Lane.’
- ‘An option for further consideration includes the narrowing of the road space in Market Street and the consequential extension of the public space resulting in an additional 1000 sqm of public space on CoM controlled land added to the 2000 sqm on the subject site, thus creating an overall public space of 3000 sqm.’

NB. These comments do not recognise that Market Street is Crown Land and therefore cannot be CoM controlled.

- ‘The built form proposal on the subject site includes a large cantilever with the office component of the development overhanging around one third of the public space but at a considerable height of approx. 40 metres (11 storeys) above the public space.’
- ‘We note that at 3000 sqm, this public space would be similar in size to City Square. This area of the city has very little in the form of public space. Realistically, CoM will be very unlikely to ever be in a position to purchase privately owned land in this area to set aside for public space. This particular proposal offers an opportunity that we suggest could, on balance, be of benefit to the city and to workers, residents and visitors in the city.’
- ‘As clearly demonstrated by the applicant, the negative aspect of this proposal turns on the issue of overshadowing of the south bank of the Yarra River and consequential shadows on the highly valued Southbank Promenade. The applicant has provided useful data highlighting the current and projected future population catchments for the public spaces on Southbank and compared these to the proposed public space on the subject site. This provides an argument that the public space proposed for the subject site benefits similar numbers on residents (1800) within 300m radius of 447 Collins Street and Queensbridge Square. The applicant has also highlighted that the slender residential tower component of the proposed development on the subject site will cast a slender shadow on Southbank that will be ‘fast moving’. By way of example, it has been calculated that the shadow affect Queensbridge Square for 16 minutes during 11am-2pm period at Equinox.’
- ‘It should be noted that applicants seeking approval for tall towers that shadow important public spaces often use the argument of ‘fast moving shadows’ to argue a case for reduced level of significance of overshadowing.’
- ‘In this case the issue of extent of shadow and duration of shadow needs to be weighed up against the benefits that are being offered in terms of new public space at the subject site.’
- ‘On balance, we are of the opinion that the proposal for the subject site has merit but note that if Council and Minister agree to an amendment that allows this matter to proceed some clear conditions will need to apply as follows:

- This approval is site specific and does not set a precedent for any further shadowing of the south bank of the Yarra River.
- This approval is granted only on the basis of the benefits offered in terms of a significant new public open space on the subject site.
- This approval is based on the current concept design and must be tied to this concept.
- This approval is based on the on-going involvement of the architectural team being retained by the applicant for the delivery of the project.
- The applicant may not sell on this site with this approval to another developer.
- The design of the open space is to be to CoM standards and must include deep soil planting zones for trees.
- The cost of delivery of the open space is to be by the developer.
- An area representing 8% of the site is to be transferred to Council as free-hold for public open space use.
- Should any of the above matters eventuate, this must trigger a new planning amendment process.'

Further Urban Design comments

'I would like to add the conditions that the proposed open space is designed to the City's specification including areas to be identified for deep soil plantings. That the costs of delivery of the open space is covered by the Developer and that the open space is transferred to Council as freehold ownership.'

Civil Engineering

- 'Engineering Services offers no objection to the proposed use of Market Street for the development as proposed.'
- 'Comment must be obtained from Land Survey in relation to the proposal.'
- 'The proposed development includes construction over a portion of road abutting the subject land to the east and known by the City of Melbourne as Market Street. This portion of road must be should be formally discontinued and purchased by the developer.'
- 'The discontinued portion of road should be consolidated with the subject land. A section 173 Agreement must be used for the discontinued portion of land so that this area of public realm is available for use by the public 24/ 7 in perpetuity. We offer no objection to the significant projection proposed at 447 Collins Street on the provision this projection is over privately owned land.'
- 'Engineering Services object to any the proposed area being under the care and management of Council. We do not support the public ownership of this area, the care and management of this area must remain the responsibility of the developer.'
- 'As a consequence of the discontinuation all existing public and private assets within the road reserve including all public lighting and drainage assets located within the road reserve must be repositioned at the developers expense with plans and specifications first approved by the Responsible Authority – Engineering Services'
- 'It is noted that a public toilet is presently positioned within Market Street. The proposed development must include the relocation of this public toilet at the developer's expense with plans and specifications first approved by the Responsible Authority – Engineering Services.'

Roads

- 'The roads adjoining the site along Market Street 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 Responsible Authority – Engineering Services.'

Footpaths

- 'The footpath's adjoining the site along Market Street, Flinders Lane, William Street must be constructed in sawn bluestone together with associated works including the reconstruction or relocation of kerb and channel and/or services as necessary at the cost of the developer, in accordance with plans and specifications first approved by the Responsible Authority – Engineering Services.'

Disabled Access

- 'Provision must be made for disabled access into the building in accordance with the Disability (Access to Premises-Buildings) Standards 2010, to the satisfaction of the Responsible Authority.'

Street levels not to be altered

- 'Existing street levels in Market Street, Flinders Lane, William Street and Collins Street must not be altered for the purpose of constructing new vehicle crossings or pedestrian entrances without first obtaining approval from the Responsible Authority – Engineering Services'

Existing street lighting

- 'Existing public street lighting must be relocated in accordance in accordance with plans and specifications first approved by the Responsible Authority – Engineering Services.'

Additional follow-up Civil Engineering comments

'Further to your request for clarification as to why Engineering Services does not support Council care, management and ownership of the public land associated with the closure of Market Street, following reasons were provided:

- Market Street being developed as proposed will require the discontinuation of the road, this will result in the sale of the land and the land being in private ownership,
- Engineering Services objects to Council being responsible for the care and management of assets on private land,
- The public space along Flinders Lane includes a significant private retail development and private market under the public realm,
- The area referred to as "The Promontory" acts at the forecourt to the Boutique Office development,
- The area is above a proposed privately owned car park, land ownership extending to the "new" edge of the footpath along Market Street,

- The office space development is proposed as a giant encroachment over the private land, Engineering Services would not support such an encroachment over public land.
- The proposed infrastructure including lifts, elevators, stairs and internal pedestrian links significantly benefit the private development,
- The proposal places significant financial obligation on Council to manage these assets.
- Engineering Services has made similar comments on public realm developments, such as the development at Riverside Quay, the Batman Hill development , and the Central Park development in Docklands,'

Traffic Engineering comments

'Previous basic traffic comments on a proposal to close Market Street between Collins Street and Flinders Lane were earlier discussed with City Design.

These comments included the importance of retaining:

- traffic access to abutting properties (including a hotel and an off street car park) along Market Street between Collins Street and Flinders Lane, whether it's only a one way treatment as currently exists in temporary form or two way would need further discussion.
- two way bicycle lanes along the length of Market Street, given the inability to provide full time bike lanes in William Street between Flinders Street and Collins Street,
- on street parking adjacent to all properties on the east side of Market Street between Collins Street and Flinders Lane in order to allow the servicing of abutting businesses, and
- existing bus stops on the east side of this section Market Street.

I was unaware of any proposal to close the west section of Market Street between Flinders Lane and Flinders Street. This has just come to light when Geoff Barden received the proposed concept plans today.

In this case I would think there is a need to retain on-street on both the east side and the west side of the street to service the abutting businesses on the east side and Immigration Museum which is serviced by an on-street tourist bus parking space and a number of disabled parking spaces on the west side of the street.

There is also a need to retain the existing bike lanes and traffic lanes on each side of the street to ensure accessibility to existing buildings and maintain a safe and accessible bicycle link to Collins Street and William Street.

Finally the existing bus stop on the east side of this section of Market Street also needs to be retained.

The other more detailed issues relating to

- swept paths for buses,
- lateral shift/offsets of traffic lanes at intersections,
- safe intersection conditions for pedestrians, cyclists, and
- retaining capacity at intersections for bus and tram services and local traffic,'
- would need to be the basis of a detailed traffic impact assessment.'

Follow-up Traffic comments

'For the section between Flinders lane and Collins Street this leaves 20 metres for the road to accommodate 2 bike lanes existing footpath on east side and possible new footpath on west side, parking lane on east side and one or two traffic bike lanes which would be add up to about 20 metres.'

Council's Heritage Consultant

'Whilst the affected land is not formally a heritage place I would make the following observations regarding the pattern and layout of the City. The grid is without doubt a very important component of Melbourne and of its heritage significance. As a result of the history of the development of the road layout and Melbourne's buildings stock there remain a relatively limited no. of typologies found in the city and an important aspect of these types is how they relate to the grid and the city blocks. The buildings of developments that occupy whole block or the frontages of a whole block are few and with the exception of the T&G Building, State Library and the incomplete GPO, the buildings of full block scale are public buildings and face into the Hoddle grid. The Parliament, Treasury, Flinders Street Station, the Former Railways Admin building and now Southern Cross Station. Churches are also a special and particular class of building an historically there where the markets. The subject proposal was the site of the market and with the development of the Colonial Mutual Building provision was made for public space in recognition of the history of the market use of the site. Whilst the construction of a kind of 'non building' with a form that defies expected and accepted hierarchies does not appear to be discussed in relation to the meaning and anticipated perception and experience that will be generated by the novel form referencing stacked toy blocks testing gravity and balance, the proposal raises no heritage concern in my assessment. The prospect of the provision of open space in the city, if well executed would help to redress the historical deficiency in the Hoddle grid of open space.'

Land Survey

- 'My recommendation is that we should be **objecting** to the road closure, as it is public space that can be used for public realm without private facilities underneath. If we are putting trees in the area then Parks prefer there is no basement underneath.
- My understanding is that we have an agreement in place for open space on the corner and now they are asking for more land back under the road, for the purpose of extra height.
- A mandatory control of not overshadowing the river must not be altered for any reason, this will set a precedent even although they are saying it will not.'

Additional Land Survey advice on 29 July 2014

Status of Market Street

- Market Street is a Government Road which is Crown Land.
- City of Melbourne is responsible for maintenance and management.
- City of Melbourne can carry out works to the road.
- As proposed, the Road would need to be discontinued and the land would need to be purchased and consolidated into the title for the subject land.

Discontinuance process

- Discontinuance process would change. The discontinuance removes the road status, but does not affect ownership of the land.
- Discontinuance process can be carried out by the City of Melbourne under the Local Government Act. The DEPI would be consulted as part of this process.

Department of Environment and Primary Industries (DEPI)

- DEPI represents the Crown in relation to Crown Land or Road Closure Overlay
- The introduction of a Road Closure Overlay would normally go through a public process as it directly impacts and there is potential for compensation.

- DEPI would need to be formally advised of the proposed overlay.
- Even if the road is closed the land would still be Crown Land (unreserved).
- At the end of the road closure / discontinuation process the proponent would go to DEPI and purchase the lane. They would need to pay market value for the land.

Parks Planning

'Further to your request of the 16th July I offer the following comments:

1. In addition to the legal agreement for 480m² of public open space (or equivalent to 8% land area) to be provided on this site the revised proposal that would provide 2000m² on the site coupled with 1000m² provided through closure of Market St.
2. The Open Space Strategy has identified the need to secure additional small local open space in this area within Councils ownership and control to support current and forecast use by both resident and worker populations. Provision of such as space would have intergenerational community benefit.
3. Securing a public open space of similar size to the State Library Forecourt in this location is unlikely to be achieved by Council through land acquisition and the opportunity to secure open space as proposed through redevelopment of the site should be a high priority.
4. I am aware there are potentially negative outcomes of the revised development proposal in terms of overshadowing of the Yarra and the precedent that this could set, however suggest that the community benefit afforded by a new public open space provision should allow this proposal to be considered in a site specific (or one off) manner.
5. The public space proposal requires greater design resolution with CoM input and guidance.
6. There needs to be greater provision of deep soil planting conditions to allow more extensive tree establishment and growth for shade, shelter and biodiversity.
7. The design response is very hard plaza style space and consideration should be given to the provision of successful greening elements that work in similar spaces (such as areas of turf grass raised or at grade).
8. The design response for the open space supports worker and visitor use however the functional requirements of these spaces for new residents needs to be considered as well. They are quite often different needs and demands (i.e. play, dogs exercise).
9. The public spaces uses should be designed to support safe 24 hour use with maximum flexibility. The proposed amphitheatre style space would be very useful for events but may be difficult to manage and not provide flexibility for other uses.
10. The public space that is beyond the 8% contribution to Council needs to be secured for public use regardless of ownership via an appropriate planning or legal mechanism needs to be wholly within Council ownership and management to ensure public benefit in perpetuity.
11. The management of all or part of the public space including the closure of market street requires further internal discussion. My understanding is that the Engineering Services for valid reasons are not supportive of Council managing the combined spaces, however for the space to be successful we should consider manage this site as (and want the community to perceive it) a part of the City open space/public realm network.'

7. ASSESSMENT

The application is to allow for a site specific exemption to the prohibition for any buildings and works that overshadow the south bank of the Yarra River. As such this assessment is focusing on the principle of whether an exemption to allow overshadow of the south bank of the Yarra can be justified. To determine whether it is acceptable the key issues in the consideration of this application are:

- The shadow impact to the south bank / Queensbridge Square and other public spaces.
- Whether there is a net community benefit which would be achieved
- The potential for precedent

Any assessment of the merits of the prohibition must also take into account the likely future development of the land that any support for an exemption would facilitate. The proponent has submitted that it is likely that the land is to be developed with a 300m high building and has committed to any future building to be designed in a manner which is narrow at its highest point to limit overshadow to the south bank of the Yarra and Queensbridge Square, that the building is designed to the highest possible design standard and be an iconic feature of the city. So in addition to the above key issues the following issues are also considered relevant:

- The impact of a future development any exemption facilitates
- Design of the open space
- Comparison to other similar urban open spaces
- Vistas and amenity of the Yarra River

The shadow impact and the Yarra River

The prohibition on any overshadowing to the south bank of the Yarra is a long-standing policy introduced to protect and enhance the overall amenity of the Yarra River corridor and surrounding open spaces. The importance of the Yarra River is reinforced in numerous State and Local policies and documents as well as Melbourne's Municipal Strategic Statement (MSS) and *Plan Melbourne*.

According to the applicant the shadow impact to Queensbridge Square will be for 16 minutes between 11am-2pm on 22 June assuming the future development application is for a building with a maximum height of up to 300 metres AHD. There will also significant shadow to the south bank of the Yarra and the Southbank Promenade.

In addition to the prohibition of any shadow to the south bank of the Yarra, according to the Capital City Zone 1 any buildings and works that cast a shadow over Queensbridge Square between 11am and 2pm on 22 June may only be granted if the responsible authority considers the overshadowing will not prejudice the amenity of the square. This is essentially the test that any application must meet.

Moreover, the following is a list of the policy direction within the planning scheme and *Plan Melbourne* considered particularly relevant to shadow impact:

- Clause 11.04-9 seeks to protect and enhance the significant river corridors of Metropolitan Melbourne. The policy seeks to protect the environmental and cultural values and landscape character of the Yarra River and guide new development.
- Clause 21.06-1 seeks to protect Melbourne's distinctive physical character and in particular maintain the importance of the Yarra River and Hoddle Grid.

- Clause 22.02 states that development in the Capital City Zone and Docklands Zone must not cast a shadow across the south bank of the Yarra River between 11am and 2pm on 22 June. Furthermore, development should not cast any additional shadows across any part of Queensbridge Square between 11am and 2pm on 22 June.
- *Plan Melbourne* specifies under initiative 4.2.4 that significant rivers including the Yarra River are to be protected from inappropriate development and balance tourism, recreational and cultural values of Melbourne's waterways with development opportunities.

Initiative 5.6.2 goes on to reinforce that mandatory height controls and other planning controls will be extended to other rivers in Melbourne to protect against inappropriate development.

In determining whether the additional shadow will prejudice the amenity of the square we have the above provisions to also consider.

None of these policies suggest that any exemption from these requirements can be contemplated. Nor do any of the policies provide any direction in regard to the amount of shadow which is to be discouraged. Only that any shadowing is not supported to the south bank of the Yarra River, or to Queensbridge Square, the north bank of the Yarra or to any open space or major road during particular times.

It is apparent that in all of the above policies the consistent direction is that inappropriate development is to be avoided. By inference, inappropriate development can be defined as any development which casts a shadow over the south bank of the Yarra River or which detrimentally affects the physical significance or amenity of this part of Melbourne.

On balance there is nothing in any of the policy which supports the proposal.

The question is therefore not whether the proposal is consistent with the planning scheme or *Plan Melbourne* but rather whether the proposal will be a good planning outcome. In essence, is the proposal of enough benefit to allow the above policies and provisions to be ignored? How much weight do we give to the above policies?

The potential for precedent

The application suggests that the subject site would not serve as a precedent as it is the only such site with these sorts of attributes and advantages to present such an opportunity.

The City of Melbourne's Urban Design team reinforce this suggestion by recommending that the approval should be conditioned to not set a precedent for any further shadowing of the south bank of the Yarra River.

But previous recent exemptions have been approved including for 555 Collins, the Batmans Hill Development Plan and the much earlier constructed Rialto Building.

In each of these cases the justification is that an 'iconic' building is to be constructed to offset any detriment caused by the shadowing of the south side of the Yarra River. The subject application is proposing that not only would the built form be 'iconic' but that a substantial amount of additional open space would be provided in the event that an exemption to the prohibition was given.

It is difficult to see how such a proposal could not provide a mechanism for similar proposals in the future. Perhaps these proposals would not be on such large sites, but still the mechanism for such a proposal is there.

As such, the suggestion that precedent is not possible as a result of support of this decision is refuted. Precedent has already been established in the examples stated.

In the example of the Batmans Hill Development Plan the prohibition has not resulted in the overshadowing of the south side of the Yarra. In relation to 555 Collins there has been no approved development at this time which allows a development that would overshadow the Yarra.

This demonstrates that the issue is not so much whether precedent is established, but whether the exemption provides an overall benefit that outweighs the purposes of the prohibition and the policy direction of the planning scheme. And whether this long held policy to protect the amenity of the Yarra River should be further eroded by yet another exemption to the prohibition.

The overall benefit

To establish whether or not the proposal is supportable the overall net benefit needs to be analysed. At present, the subject site is required to provide 8% of the site or 480sqm for publicly assessable open space. Subject to an approval the subject site could provide up to 3000sqm of public open space in total. That is a gain of up to 2520sqm of additional open space if Market Street were to be partially closed. The total 3000sqm of open space would provide 2000sqm on site and 1000sqm through the closure of Market St.

The open space is to adjoin the future development of the site. The area of open space has been shown to the eastern side of the site in concept drawings. The area is shown as being predominantly hard surfaced with some trees and a level plain to Collins St and retail shops fronting Flinders Lane in reference to the history of the site as a market. The area appears to have a large TV screen and an amphitheatre style seating along with a number of links between the open space and the internal retail, hotel lobby etc.

The applicant has indicated that the mechanism to allow such an arrangement would likely involve a Road Closure Overlay via an amendment to the Planning Scheme but as yet not made any such application. The Road Closure Overlay would cover roughly 10m in width of the west side of Market Street to accommodate the additional public space. It is unknown whether there would be a notification period. In any case, the road is Crown Land and therefore any such allowance is not determined by the City of Melbourne, something which was not recognised during pre-application meetings between Urban Design and the applicant. As per the Land Survey comments DEPI represents the Crown and would be the body that ultimately decides whether or not the land can be sold to the applicant.

The concept design of the development also shows a basement underneath the public open space. Issues have been raised by Parks Planning, Engineering and Land Survey that such an arrangement is not conducive to the planting of trees which require deep soil planting conditions to allow more extensive tree establishment, shelter and biodiversity.

The Parks Planning comments also suggest that greater design resolution with the City of Melbourne is recommended, yet the applicant has indicated that they would be responsible for the design and construction works within the proposed open space.

Again it should be noted that the concept design of the open space shows a raised ground plain to Flinders Lane which does not currently exist. The concept design shows numerous links to within the subject site but fails to clearly demonstrate exactly why the larger space would be such a success.

When compared against other notable examples within Melbourne such as City Square, the State Library Forecourt and Federation Square the space appears to face significant challenges. All of these examples are in areas close to public transport and a diverse range of uses on flat ground plains resulting in highly

assessable, usable spaces that attract people. Conversely, the proposal would result in a larger area of open space that is not a flat ground plain and is arguably not within a highly assessable area of the city. The space does not benefit from the drawcard of a public building like a gallery or library. Moreover, the diversity of the people to use the space may be restricted given the subject site is predominantly surrounded by commercial uses as opposed to a university, public building or Flinders St train station and tram lines.

It is acknowledged that if the space were to be a success then the benefits to the city would be great. But there is no guarantee the space would be a success especially if the driving force behind the project is a private company. It creates a risk that the design will be done in a way that is to primarily maximise the benefit to private interests, which may be at the expense of public good, whereas a City of Melbourne project would always be aimed at maximum benefit to the public. As an example, the underground car park may result in a reduced number of trees being planted on site.

Furthermore, there is an existing requirement for 480sqm of the site to be devoted to public open space.

Open space

In addition to the in principle support from the Park Planning and Urban Design teams the following policies provide direction in regard to the open space.

- Clause 11.04-4 seeks to make the city greener and achieve and promote design excellence
- Clause 11.04-8 seeks to create a network of metropolitan open space by creating new parks and ensuring that development does not compromise the Yarra River corridor as significant open space, recreation, aesthetic, conservation and tourism asset.
- Clause 22.01 encourages high quality new public open spaces that cater for diverse communities.
- Initiative 6.2 of *Plan Melbourne* seeks to ensure the design of buildings and public spaces enhances the public realm and pedestrian environment.

It is acknowledged that there is clear policy direction to encourage open spaces, in particular under Clauses 11.04-4 and 22.01 of the scheme. But this is not in of itself strong enough reason to override the numerous policies in the scheme and *Plan Melbourne* which aim to protect the south bank of the Yarra River, Queensbridge Square, the north bank of the Yarra etc. The opportunity for additional open space should not be to the detriment of existing open space, in this instance Queensbridge Square and the Yarra River corridor.

A key point to note is that the introduction of an open space that is roughly the size of City Square at the subject site would not benefit from the same controls that protect City Square, Federation Square and the State Library Forecourt. These spaces are all specifically highlighted in the Capital City Zone as areas where amenity cannot be prejudiced. Future development north of the site could detrimentally affect the amenity that is envisaged.

The applicant's submission does not address the sections of the Capital City Zone which clearly recognise a hierarchy of open spaces where 'a permit may only be granted if the responsible authority considers overshadowing will not prejudice the amenity' of these areas. At the top of the hierarchy is the south bank of the Yarra River where overshadowing is prohibited, but in addition to this are subsequent spaces specifically highlighted in the Capital City Zone and other provisions of the scheme including Queensbridge Square, the north bank of the Yarra and any public space, public park or major pedestrian routes on March 22 and September 22. The

applicant's submission does not acknowledge that these tests must also be satisfied as part of the proposed 300m high building. Areas such as the Turning Basin, the Banana Alley and the Sandridge Rail Bridge could be affected by the future development of the site but the proponent has not demonstrated how the amenity of these areas will not be prejudiced.

So not only must the proponent satisfy us that the prohibition is acceptable, any development application must also demonstrate to the City of Melbourne that the amenity of those areas mentioned above are not prejudiced. On face value, any such application would face significant challenges to demonstrate this given how much potential shadow there is at these times.

The hierarchy of open spaces established in the Capital City Zone and numerous other provisions clearly recognises Queensbridge Square as a very important open space within Melbourne. Conversely, the proposed area is not specifically recognised by the scheme and as such is not as well protected or highly regarded by policy. This means that we are essentially 'trading off' the amenity of one area of open space which is at the higher end of the hierarchy to facilitate the emergence of a new area of open space that is not recognised or protected. Reducing the amenity of one of our most important open spaces to benefit a less important open space is an undesirable and inappropriate method of trying to improve the City of Melbourne's open spaces.

The impact of the development any exemption facilitates

As stated any discussion of this proposal must take into account the future development of the site as a result of the site being exempted from the prohibition. As acknowledged by Urban Design their support of this application is on the understanding that the overall height of 300m, built form and setbacks, mix of uses, distribution of those uses and the overall proportion of built form and open space remains the same as shown on the concept drawings. In addition, Urban Design state that their support also hinges on the two well-respected architecture firms being retained ongoing.

What is not clearly analysed is the overall impact of the built form. On the one hand it could be an innovative and iconic design, but on the other hand it will potentially overbear one of the most important parts of our city.

The amenity experienced in this area of the city is noticeably high for pedestrians. This area of the city is one of Melbourne's most cherished by tourists and locals alike. It is no doubt that the prohibition on any overshadowing to the south bank of the Yarra has made a major contribution to the ongoing amenity enjoyed by pedestrians.

The vista of the city when looking west from Princess Bridge is arguably Melbourne's most famous and appealing viewpoint for pedestrians with so many landmarks surrounded by the richness of the cityscape. This vista is noticeably open due to the lack of high-rise development on the northern bank of the Yarra River. The potential to allow another building of this magnitude, iconic or otherwise, to the greatest part of our city is not considered to be of enough benefit. The risk is not certain and the reward is not guaranteed. As a comparison the Rialto is farther away from this part of the Yarra. We would gain a bigger area of open space to an area that could become great while detrimentally affecting an area of our city that is great. This application is not simply about overshadow of Queensbridge Square, it is about the potential impact such a building would hold over the heart of Melbourne. It is no accident that this area of Melbourne is so noticeably beautiful and enjoyable to the pedestrian and the further erosion of an important prohibition will only serve to benefit future aspirants with similar ideas. We cannot condition from setting a

precedent as suggested by the applicant and Urban Design, but we can detrimentally affect one our greatest assets.

7.1. Conclusion

Overall it is considered that the proposal is not supportable due to the potential to further erode a long-held policy and due to the loss of amenity to Queensbridge Square and the Yarra River corridor. The numerous policies which seek to protect the Yarra River and which highlight Queensbridge Square as an important open space are not given enough weight in the applicant's submission. Although it is acknowledged that the proposal presents potential gain to an area of open space this should not be at the expense of existing amenity and character to one of our most important assets. The only basis upon which an exemption to the prohibition could possibly be contemplated is if there was a demonstrated public benefit which would outweigh such an impact on a natural asset of State significance, something which is not yet established. Any new open space would not benefit from the same planning protections as the open space which is to be affected so it presents the risk that development north of the subject site would cause significant impact to the envisaged amenity. The area may become a success, but it may not. And perhaps even more significant is that the trade-off for the additional open space will provide future aspirants with a pathway to further impact on the Yarra River.

8. OFFICER RECOMMENDATION

That a letter be sent to DTPLI advising that the City of Melbourne objects to the proposed Planning Scheme Amendment C 247 as the amendment and proposed conditions cannot satisfactorily facilitate a development which justifies an exemption to the prohibition of a development to overshadow the south bank of the Yarra River between 11.00 am and 2.00 pm on 22 June.

The City of Melbourne officers will continue to work with the proponent to develop a detailed design of a future development of the site which may deliver a significant new area of public open space and which might form part of a future proposed amendment to the Melbourne Planning Scheme which could introduce an Incorporated Document to facilitate an agreed development outcome.

