



WHITEHORSE
CITY COUNCIL

Whitehorse City Council

AGENDA

Council Meeting

on

Monday 27 February 2023 at 7.00pm

To be held in the
Council Chamber
Nunawading Civic Centre

Members: Cr Mark Lane
Cr Prue Cutts
Cr Blair Barker
Cr Raylene Carr
Cr Andrew Davenport
Cr Tina Liu
Cr Denise Massoud
Cr Amanda McNeill
Cr Andrew Munroe
Cr Trudy Skilbeck
Cr Ben Stennett

Mayor
Deputy Mayor

Simon McMillan

Chief Executive Officer

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AGENDA

1 WELCOME

Prayer for Council

We give thanks, O God, for the Men and Women of the past whose generous devotion to the common good has been the making of our City.

Grant that our own generation may build worthily on the foundations they have laid.

Direct our minds that all we plan and determine, is for the wellbeing of our City.

Amen.

Aboriginal Reconciliation Statement

“Whitehorse City Council acknowledges the Wurundjeri Woi-wurrung people of the Kulin Nation as the traditional owners of the land we are meeting on and we pay our respects to their Elders past, present and emerging and Aboriginal and Torres Strait Islanders from communities who may be present today.”

2 APOLOGIES

3 DISCLOSURE OF CONFLICTS OF INTEREST

4 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Minutes of the Council Meeting 13 February 2023

RECOMMENDATION

That the minutes of the Council Meeting 13 February 2023 having been circulated now be confirmed.

5 URGENT BUSINESS

6 PUBLIC PRESENTATIONS

7 PUBLIC QUESTION TIME

8 PETITIONS AND JOINT LETTERS

9 NOTICES OF MOTION

10 COUNCIL REPORTS

**10.1 Amendment C241whse - Municipal Wide Whitehorse
Development Contributions Plan and Planning Scheme**

City Planning and Development
Director City Development
FILE NUMBER: SF22/1115
ATTACHMENT

SUMMARY

The purpose of this report is to present the outcome of the public exhibition of Amendment C241whse (the amendment) and the *Draft Whitehorse Development Contributions Plan, 2022* (DCP) and to provide officer recommendation to Council on how to proceed to the next stage of the amendment.

The amendment proposes to implement the Whitehorse DCP by introducing Schedule 1 to the Development Contributions Plan Overlay (DCPO1) at Clause 45.06, and insert the DCP as in Incorporated Document in Schedule to Clause 72.04 of the Whitehorse Planning Scheme.

At its meeting on 22 August 2022, Council resolved to seek authorisation from the Minister for Planning (the Minister) to prepare and exhibit Amendment C241whse to the Whitehorse Planning Scheme. On 14 October 2022, the former Department of Environment Land Water and Planning (DELWP, now the Department of Transport and Planning – DTP) issued authorisation with ten conditions. Most of the conditions sought minor changes to the amendment documents and corresponding changes to the Draft DCP. One of the conditions requested that the Suburban Rail Loop Authority (SRLA) must be notified of the amendment.

Council officers worked with DELWP officers and made the required changes to the amendment documents and the Draft DCP. The revised amendment and the DCP were placed on public exhibition for a period of one month from 10 November to 12 December 2022. During public exhibition, 14 submissions were received.

Key issues raised in submissions include, DCP would encourage bribery, questioned how DCP projects were selected, not all the projects identified in Council's adopted strategies are included in the DCP and gaps in projects, seek clarity with regards to Community Infrastructure Levy calculation, why State projects are not included in the DCP, questioned the DCP cost apportionment and how the suburb boundaries were determined, DCP cost will impact on housing affordability and attractiveness of development sites and seek DCP exemption for affordable housing.

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The exhibited Draft DCP has been amended to respond to the relevant concerns raised in submissions, no changes were required to the exhibited DCPO1. However, where concerns raised are considered either irrelevant or inconsistent with the purpose of the amendment, no changes were made to the documents. These issues remain unresolved and therefore require a Planning Panel process for Council to proceed to the next stage of the amendment.

This report recommends that, Council note the submissions received and the changes made to the exhibited Draft DCP, and request the Minister to appoint an independent Planning Panel to consider the amendment and hear the submitters.

Subject to Council's decision, if a Panel is appointed, the Panel will hold a public hearing to hear all parties, and will provide a report to Council with its recommendations for any changes required to the exhibited amendment.

Upon receiving the Panel report, a report will be submitted to Council outlining Panel's recommendations, and officers' recommendations on options available for Council to proceed with the amendment.

RECOMMENDATION

That Council:

1. Note the submissions received for Planning Scheme Amendment C241whse and the Draft Whitehorse Development Contributions Plan, 2022 (DCP) in Attachment 1, and officers' response to the submissions in Attachment 2
2. Note the changes made to the exhibited Draft DCP in Attachment 3 in response to the relevant concerns raised in submissions
3. Having considered all the submissions under Section 22 of the Planning and Environment Act, 1987 (the Act) in relation to Amendment C241whse, request the Minister for Planning to appoint an Independent Planning Panel to consider the amendment and all of the submissions received in accordance with Section 23 of the Act.
4. Advise all the submitters of Council's request for an Independent Planning Panel.

Key Matters

- The Amendment C241whse and the Draft DCP were placed on public exhibition for a period of one month from 10 November, 2022.
- During public exhibition a total of 14 submissions were received.

10.1
(cont)

- DCP related issues raised in the submissions can be summarised as below:
 - The proposal will encourage bribery.
 - DCP needs to clearly state where and how the funds collected will be spent.
 - How DCP projects are selected, there are project gaps. Not all the projects that are identified in Council approved strategies are included in the DCP Projects list
 - DCP does not include any provision for State delivered projects
 - Pro-rata change calculation of retail, commercial and industrial floor space is not correct. Underestimation of the infrastructure needs will result in under funding
 - Lack of clarity in Appendix 5 of the DCP Report that contains a reference to income estimate by project before cap for projects not subject to the Community Infrastructure Levy (CIL) cap.
 - There is a mismatch between the charge areas based on suburb boundaries
 - Can works in kind be considered in lieu of a cash payment
 - DCP exemptions should include affordable housing
 - DCP cost will be passed on to new owners and cost impacts on affordable housing
 - The DCP will increase development costs, which will impact the attractiveness of development sites
 - The amendment does not consider existing planning approvals especially those that provide necessary infrastructure
 - The DCP should be regularly reviewed. The mechanism to adjust the list of projects over time is unclear in the DCP Report.
- No changes were required to the exhibited DCPO1 to address the concerns raised in submissions. A minor edit was made to the income estimate column heading of Table 19 and Appendix 5 of the exhibited Draft DCP. This is to provide clarity on contribution requirements in response to a lack of clarity concern raised in a submission.
- No changes were made to the exhibited documents where the concerns raised are inconsistent with the purpose of the amendment or the DCP. These concerns remain unresolved.
- In order to proceed to the next stage of the amendment, the submitters must be heard by an independent Planning Panel.
- This report recommends that Council request the Minister to appoint a Planning Panel to consider the amendment and hear the submitters.

10.1
(cont)

In addition to the above, there were two submissions that are not directly related to the exhibited amendment nor the DCP. One of these submissions seeks for more safety barriers along the strip centres to prevent vehicle accidents; the other, requires more netball court facilities in Whitehorse. These infrastructure needs are identified by infrastructure strategies. The amendment does not identify infrastructure needs, it aims to implement the Whitehorse DCP, and facilitate the collection of contributions from new developments to fund the provision of already identified infrastructure.

A complete summary of all the issues raised in submissions and officers' response are provided in Attachment 2.

STRATEGIC ALIGNMENT

The project will support many of the priorities of the *Whitehorse 2040: Community Vision*, under Theme 2 (*Movement and Public Spaces*), by collecting funds for important capital works projects that improve public spaces and mobility within the municipality.

In particular, the DCP responds to two key areas of the *Council Plan 2021-2025 (2021)* as outlined below:

- Strategic Direction 4: Our Built Environment: Movement, and Public Places:
The project supports many of the objectives and strategies under Strategic Direction 4 by generating funds that will support Council's capital works program over the next 20 years. The DCP will help support the delivery of new and renewed facilities that meet the needs of the local communities.
- Strategic Direction 8: Governance and Leadership:
A municipal wide DCP with a 20-year timeframe provides Council with an additional income stream that will support its long term financial sustainability, particularly in a rate capping environment, thereby supporting strategy 8.2.2 of the Council Plan.

Policy

Plan Melbourne 2017-2050 (2017), identifies areas expected to accommodate significant growth and change. In particular, the Box Hill Metropolitan Activity Centre and a further four Major Activity Centres within the municipality are expected to accommodate a large portion of growth in the municipality.

Similarly, the Suburban Rail Loop – East underground train tunnel project (SRL- East) between Cheltenham and Box Hill aims to connect major employment, health, education and retail destinations in Melbourne's east and south east. Although the detail of the development implications of this project is yet to be released by the State, it is expected that the project would contribute to the increase in residential, retail and commercial development within Box Hill and Burwood areas.

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The above anticipated growth and change in Whitehorse is expected to increase the demand for local infrastructure. The DCP will contribute to fund the needed infrastructure for the growing communities and businesses.

The following State Policies in the *Planning Policy Framework* (PPF) of the Planning Scheme are of relevance to the proposed municipal wide DCP:

- Clause 19.03-1S (Development and infrastructure contributions plans) contains the following objective, “To facilitate the timely provision of planned infrastructure to communities through the preparation and implementation of development contributions plans and infrastructure contributions plans”.
- Clause 19.03-1S also states the following strategies of relevance to this project:
 - Prepare development contributions plans and infrastructure contributions plans under the Planning and Environment Act, 1987, to manage contributions towards infrastructure.
 - Collect development contributions on the basis of approved development and infrastructure contributions plans.
 - Require annual reporting by collecting and developing agencies to monitor the collection and expenditure of levies and the delivery of infrastructure.

The *Local Planning Policy Framework* (LPPF) of the Whitehorse Planning Scheme, includes the following strategies under Clause 21.08 (Infrastructure):

- Obtaining developer contributions toward cumulative infrastructure needs to which development will add further demand.
- To support this, the ‘further strategic work’ in Clause at 21.08-6 of the Whitehorse Planning Scheme recommends: “Investigate appropriate tools and locations for requiring Development Contributions across the municipality”.

The Whitehorse DCP and Amendment C241whse are direct responses to implementing the above strategies.

BACKGROUND

Currently, other than the Open Space Contributions required under the *Subdivision Act, 1988* and voluntary contributions made under section 173 of the *Planning and Environment Act, 1987*, there are no other mechanisms available within the Whitehorse Planning Scheme for Council to collect contributions from developments towards providing the necessary infrastructure required for the growing community. The population, housing, retail, commercial and industrial developments across the municipality are projected to continue to grow. In a rate capping environment, delivery of Council’s capital works program is under strain. However, Council needs to continue to fund and provide the necessary infrastructure to meet the growing demand.

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Council has prepared the Whitehorse DCP and Amendment C241whse to implement the DCP into the Whitehorse Planning Scheme. The DCP includes 133 infrastructure projects with a total cost of \$211,555,000 that can be partially funded by the DCP. The DCP is expected to generate approximately \$31,264,586 (15% of the total cost of the projects) over a 20 year lifespan of the DCP. The proposed DCPO – Schedule 1 will allow for Council to collect DCP levies from development proponents to help fund the essential infrastructure that Council delivers to meet the demand of the growing population and businesses.

The amendment and the draft DCP were placed on public exhibition for a period of one month from 10 November 2022. During exhibition, 14 submissions were received.

Given that there are unresolved issues raised in submissions, a Planning Panel process is required for Council to proceed to the next stage of the amendment. This report recommends that Council request the Minister to appoint an independent Planning Panel to consider the amendment, hear the submitters and provide its recommendation to Council on the outstanding issues raised in submissions.

Discussion and Options

This section provides a summary of the DCP related issues raised in submissions and officers' response and options available for Council. Detailed issues raised and officers' response are provided in Attachment 2.

10.1
(cont)

Table 1: Summary of DCP related concerns raised and officers' response

Summary of DCP related issues raised	Officers' response
The proposal will encourage bribery	<p>DCP is a formal planning tool available within the <i>Victoria Planning Provisions (VPP)</i>, and enabled through the <i>Planning and Environment Act, 1987</i>, for Councils to collect contributions from developments towards funding the provision of development and community infrastructure.</p> <p>DCP does not facilitate nor approve development.</p>
<p>DCP needs to clearly state where and how the funds collected will be spent.</p> <p>How DCP projects are selected, there are project gaps. Not all the projects that are identified in Council approved strategies are included in the DCP Projects list.</p>	<p>The DCP Incorporated Document includes a detailed list of projects which specifies the nature of projects, locations, costs and contribution to be made by the DCP levies (refer Table 4, and Table 19 in Appendix 5).</p> <p>The infrastructure needed has been identified in various Council strategies and policies and appropriate projects are included in the DCP. These projects are not all the works that will be undertaken by the Council as part of its Capital Works Program. In addition, the DCP contains provision for a periodic review. Should the need arise this review provides the Council with an opportunity to validate the development projections and adjust the project list and the DCP, if required.</p>
DCP does not include any provision for State delivered projects	State infrastructure is not funded by a DCP and is not included in the DCP. This is a Council DCP.
<p>Pro-rata change calculation of retail, commercial and industrial floor space is not correct.</p> <p>Underestimation of the infrastructure needs will result in under funding</p>	A provision for non-residential development has been made in the DCP based on anticipated population and economic growth at a municipal level and then distributed across centres and employment areas based on existing conditions and trends in development. This provides a reasonable basis for estimating future development.

10.1
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Summary of DCP related issues raised	Officers' response
<p>Lack of clarity in Appendix 5 of the DCP Report that contains a reference to income estimate by project before cap for projects not subject to the Community Infrastructure Levy (CIL) cap.</p>	<p>Table 19 provides details on each of the projects included in the DCP. The last two columns of the table estimate the dollar value and percentage income for each project.</p> <p>Community Infrastructure Levies (CIL) may be subject to a cap when CIL projects are summed for each area. Hence the column title says "<i>before cap</i>" which means 'before cap, if applicable'. However, to avoid confusion, the words 'before cap' can be removed.</p> <p>The exhibited Draft DCP Report is amended to reflect this change.</p>
<p>There is a mismatch between the charge areas based on suburban boundaries and logical planning and redevelopment boundaries or activity centre boundaries.</p>	<p>The DCP charge areas are based on Council's forecast <i>.id Population</i> data and form generally accepted administrative boundaries within the City of Whitehorse. These areas are small enough to represent a community of interest and avoid the prospect of serious cross-subsidisation within the context of cost apportionment undertaken in the construct of this DCP.</p>
<p>Can works in kind be considered in lieu of a cash payment</p>	<p>Both the DCPO1 and the Incorporated Document contain the following provision or similar which allows Council to consider works in kind: <i>"Payment of development contributions are to be made in cash except as otherwise provided for in the Whitehorse Development Contributions Plan."</i></p>
<p>DCP exemptions should include affordable housing</p>	<p>Ministerial Directions provide for a DCP exemption of social housing, not broader definition of affordable housing. Affordable housing, under the provisions of the <i>Planning and Environment Act, 1987</i> is identified by income and occupancy as very low, low and moderate. Under the above Act the provision of affordable Housing is subject to a Section 173 Agreement, which means it is a negotiated agreement between Council and the developer which is part of the planning permit application process and not part of the DCP which provides for a contribution by new users to the infrastructure they will use.</p>

10.1
(cont)

Summary of DCP related issues raised	Officers' response
DCP cost will be passed on to new owners and cost impacts on affordable housing	DCP is a formal planning tool enabled by the <i>Planning and Environment Act, 1987</i> and is a statutory mechanism to obtain contributions towards providing the necessary infrastructure. There is no evidence to support the claim that levies and charges applied to development to cover physical and social infrastructure affect new housing affordability.
The DCP will increase development costs, which will impact the attractiveness of development sites	There is no evidence to support the claim that levies and charges applied to development to cover physical and social infrastructure affect the attractiveness of development sites.
The amendment does not consider existing planning approvals especially those that provide necessary infrastructure	Existing planning approvals, where the permit does not contain a condition requiring payment of the DCP, will not be required to pay the Development Infrastructure Levy component of the DCP. Depending on whether a Building Permit has been issued, it may be required to pay the Community Infrastructure Levy (CIL) component of a DCP. The DCP is still payable where works are required as part of a permit approval, to mitigate the impacts of a development.
The DCP Should be regularly reviewed. The mechanism to adjust the list of projects over time is unclear in the DCP Report	Section 7.7 of the exhibited Whitehorse Development Contributions Plan, which will be incorporated into the Planning Scheme, recommends a review of the DCP every four years. As part of the review, among other things the project list can be amended as necessary.

The Draft DCP is revised to reflect the suggested changes above. No changes were made in response to concerns raised that are either irrelevant or inconsistent with the purpose of the DCP and the proposed amendment. These issues remain unresolved and a Planning Panel process is required to proceed to the next stage of the amendment.

This report recommends that Council resolve to request the Minister to appoint an independent Planning Panel to consider the amendment and to hear all the submissions.

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Subject to Council's decision, if a Panel is appointed, following a public hearing, the Panel will provide its recommendations in a report for Council's consideration. Council will then be able to decide whether or not to adopt the amendment with or without changes recommended by the Panel, or abandon it. If Council decided to adopt the amendment, the amendment will then be submitted to the Minister for Planning for approval.

If Council adopt the amendment without accepting any or all of the recommendations of the Panel, it must provide planning justification for not accepting Panel's recommendation/s. The Minister will then consider the amendment on its planning merits and will make her decision on the amendment.

Options

Option 1:

Council could resolve to request the Minister to appoint a Planning Panel to hear the submitters and provide its recommendation to Council for consideration for changes required to the exhibited amendment.

The Panel process will allow for the submitters and Council to be heard by an independent Planning Panel. The Panel after hearing all parties and considering the proposed amendment, would provide its recommendations to Council for any changes required to the exhibited amendment to address the concerns raised in submissions.

This will allow for Council to make an informed decision on how to proceed with the amendment.

Option 2:

Council could decide to abandon the amendment for reasons outlined in its decision.

Abandoning the amendment will leave the Council with limited options to collect contributions from developments towards funding the necessary infrastructure to meet the needs of the growing communities and businesses.

Further, given the projected growth in Whitehorse, Council will have to continue to provide the necessary infrastructure. The DCP will provide the ability for Council to collect contributions from new developments towards funding the required infrastructure.

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Of the two Options outlined above, Officers recommend Option 1. A municipal-wide DCP is required in Whitehorse to support the provision of the necessary infrastructure to meet the growing demand. Further, not having a comprehensive DCP within the Whitehorse Planning Scheme is a policy gap. This was identified in the Victorian Auditor-General's Office (VAGO) report in 2020 on *Managing Development Contributions* that, Council is missing out on potential contributions from increased development activities in the municipality. The proposed DCPO1 will address this issue and will provide the statutory powers for Council to collect contributions from future developments.

SUPPORTING REPORT DETAILS

Legislative and Risk Implications

There are no legal risks arising from the recommendation contained in this report. If Council resolves to proceed with requesting the Minister to appoint an independent Planning Panel to hear the submitters, Council will be required to adhere to the amendment process specified in *Ministerial Direction No.15 - The Planning Scheme Amendment Process*.

Council must also adhere to the relevant sections of the *Planning and Environment Act, 1987* with respect to rest of the planning scheme amendment process.

Equity, Inclusion, and Human Rights Considerations

In developing this report to Council, the subject matter has been considered in accordance with the requirements of the *Charter of Human Rights and Responsibilities Act, 2006*. It is considered that implementing the DCP does not raise any material human rights issues.

Council constantly upgrades the existing infrastructure and provides new infrastructure to meet the needs of changing and growing communities. Collecting contributions from new developments that generate the demand for additional infrastructure is appropriate and fair.

Community Engagement

The following notification process was employed during public exhibition:

- Notice of the amendment was published in the Age Newspaper and the Victorian Government Gazette on 10 November 2022 (at the beginning of the public exhibition). The Notice was re-published in the Age Newspaper on 1 December, 2022 (11 days before the closing date for submissions on 12 December 2022) as a reminder for submissions.
- Hard copies of the amendment documents and the Draft DCP were placed for public view at Council's Service Centres at Nunawading, Box Hill Town Hall and Forest Hill Chase Shopping Centre, and Council libraries in Nunawading, Vermont South, Blackburn and Box Hill.

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- Direct notices were sent to the Prescribed Ministers, Suburban Rail Loop Authority and other relevant State agencies and adjoining municipalities.
- A dedicated Amendment C241whse webpage was developed providing detailed information on the amendment with amendment documents and the Draft DCP, Q&A about the DCP and the amendment, location details of where hardcopies of the amendment can be viewed, information on how to make submissions and the process thereafter.
- The Whitehorse DCP project webpage was updated and provided with a link to the amendment C241whse webpage.
- The amendment was notified through the Whitehorse Your Say page and Council's Facebook with a link to the amendment C241whse webpage, inviting feedback on the amendment and the Whitehorse DCP.
- The amendment was notified through the November and December, 2022 editions of the Whitehorse News with the link to the amendment webpage inviting submissions.
- During the public exhibition period, Council's Customer Service phone system included an 'on-hold' message about the public exhibition of the amendment and guiding the callers to the amendment webpage for more details and to make submissions.
- A similar message was displayed on Council's Digital Display Screen located at the foyer of Council's Nunawading Service Centre, and included in outgoing emails of City Development Department staff.
- The Department of Environment Land Water and Planning published the amendment documents on its 'Amendments Online' public website.

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Financial and Resource Implications

Table 2 - Project Budget – Cost and Expenditure

	Budget (Excl. GST)	Expenditure (Excl. GST)
2020/21 Financial Year	\$200,000	
2021/22 Financial Year \$200,000 unspent amount carried forward to 2022/23 year	\$200,000	
Consultancy		
2020/21 Financial Year		\$59,400
2021/22 Financial Year (as on 30 June 2022)		\$97,929
Remanning cost of finalising the project		\$2,825
Legal review of the Draft DCP documents (approx.)		\$15,000
Public Exhibition cost		
Notice on the Government Gazette and The Age		\$5,071
Future costs*		
Council representation at Panel Hearing (including expert witnesses, legal representation and technical advice)		\$30,000
Panel Hearing costs (Four days Hearing)		\$40,000
Fee to the Minister for Planning for considering the request to approve the amendment and giving notice on the Government Gazette of the approval		\$488
Notice on the Government Gazette and The Age Newspaper of the gazettal		\$4,400
Program and system costs to calculate and administer the DCP		\$25,000
Future staffing cost – Year 1 DCP operation		\$110,000
Total	\$400,000	\$390,113.00

* At this stage future expenditure costs are indicative only. More accurate cost will be available after the Panel Hearing.

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It is noted that, additional resources will be required to support the ongoing operation of the DCP. HillPDA has advised that in an established area context, such as Whitehorse, it is anticipated a full time to 0.8 EFT staff resource at least at a Band 6 level would be required during the initial set up of the DCP and the first two years of its operation. It may then be possible to reduce the position to 0.5 EFT for the remainder of the life of the DCP. In summary, implementing and operating the DCP could cost Council up to \$100,000 each year for the first two years and half of that for the remaining years of the DCP. In addition, the regular review of the DCP (every 4-6 years) and the subsequent amendment to the planning scheme will require resource commitment.

The DCP will fund approximately 15% of the total cost of the identified projects. Council will need to source the balance of approximately 85% of the cost of the identified projects to deliver them over a 20 year lifespan of the DCP.

Innovation and Continuous Improvement

The project offers opportunity for innovation and continuous improvement. As part of implementing and administrating the Whitehorse DCP, Council will require a program that can calculate the DCP charges that will apply to individual proposals by entering the gross floor area information for the different types of proposed uses. This will be accurate and efficient and will eliminate any human errors in calculating DCP charges. The program would be accessible to the public so that applicants would also be able to calculate applicable DCP charges for their proposals.

Regular review of the DCP will offer opportunities for process improvements in administrating and implementing the DCP.

Collaboration

This project has required considerable input from various internal departments of Council. Internal consultation and input have informed the DCP projects and costs. Continued collaboration between internal teams will be required during the Panel hearing (if a Panel is called), future regular reviews and the implementation and operation of the DCP over a 20-year period.

Council officers worked closely with DTP's Regional Planning Team, throughout the project. Officers will continue to work with DTP and Planning Panels Victoria during the Panel process (as required) and the rest of the amendment process.

Conflict of Interest

Council officers involved in the preparation of this report have no conflict of interest in this matter.

10.1
(cont)

Conclusion

Whitehorse population has been steadily growing and is expected to continue to grow. Similarly, the City has been experiencing significant development intensification in and around key activity centres, and incremental growth in other parts of the municipality. This trend is predicted to continue in the foreseeable future. Despite the significant growth, Council does not have the formal planning mechanism in place to collect contributions from developments towards delivering the necessary infrastructure required to meet the needs of the growing population and businesses. The municipal wide *Whitehorse Development Contributions Plan, 2022* (revised after exhibition in February, 2023) and the proposed DCPO- Schedule 1 via Amendment C241whse would allow for Council to collect contributions from developments towards funding the necessary infrastructure needed to meet the growing demand.

The exhibited DCP and the amendment attracted 14 submissions. Where appropriate, the exhibited DCP Report has been amended to address the concerns raised in submissions. Where concerns raised are not directly relevant to, or inconsistent with the purpose of the exhibited amendment or the DCP, no changes were made. These issues remain unresolved.

Should Council wish to proceed with the amendment, a Planning Panel process would be required. This report recommends that Council resolve to request the Minister to appoint a Planning Panel to hear the submitters.

Subject to Council's decision, if a Panel is appointed, the Panel will hold a public hearing to hear all parties. Following a public hearing, the Panel will provide its recommendations in a report to Council for consideration. Upon receiving the Panel report, a report will be submitted to Council, outlining Panel's recommendations and options available for Council with regards to the amendment.

ATTACHMENTS

- 1 Submissions Received for Amendment C241whse (Whitehorse Development Contributions Plan) - Redacted 
- 2 Whitehorse DCP - Response to Submissions 6 February 2023 
- 3 Whitehorse Development Contributions Plan (Whitehorse City Council, February, 2023) - Revised after Exhibition February 2023 

10.2 Amendment C220whse - Whitehorse Residential Corridors Built Form Study

City Planning and Development
Director City Development
FILE NUMBER: SF22/1396
ATTACHMENT

SUMMARY

The purpose of this report is to present the public exhibition outcome of Amendment C220whse to the Whitehorse Planning Scheme and provide officer recommendation to Council on how to proceed to the next stage of the amendment.

Council at its meeting on 8 August 2022 considered the revised Design and Development Overlay – Schedule 11 (DDO11) and resolved to seek authorisation from the Minister for Planning (the Minister) to prepare and exhibit Amendment C220whse to the Whitehorse Planning Scheme. The revised DDO11 along with other amendment documents were submitted to the former Department Environment Land Water and Planning (DELWP – now the Department of Transport and Planning - DTP). DELWP was satisfied with the revised DDO11, and advised that Council could undertake public exhibition under the previously issued authorisation.

The Amendment implements the *Whitehorse Residential Corridors Built Form Study* (the Study) that was adopted by Council in January, 2019. In particular, the amendment to the Whitehorse Planning Scheme proposes to:

- Introduce Schedule 11 to Clause 43.02 (Design and Development Overlay)
- Make minor policy changes to Clauses 21.06 (Housing) and 22.03 (Residential Development) to reference the Study
- Include the Study as a Background Document at Clauses 21.06 and 22.03 and in Schedule to Clause 72.08 (Background Document), and
- Amend all the planning scheme maps by applying DDO11 to land affected by the amendment.

The Amendment was placed on public exhibition for a period of one month from 29 September to 31 October 2022. A total of 16 submissions were received (submissions received are provided in Attachment 1).

10.2
(cont)

Key concerns raised in submissions include overlooking and privacy, overshadowing and loss of sunlight and associated amenity impacts, increased height and density, impacts on character and green spaces of suburbs, proposed height on hilly landscape and visual amenity, potential increase of traffic, impacts on-street car parking, impacts on utility and service provision, side and rear setbacks should also be mandatory requirements, and the DDO11 applies standard requirements without considering site specific opportunities. Two of the submissions raised concerns about standard setbacks being applied to all land without considering site specific opportunities and options for alternative design options, and the setbacks undermines the development potential of land.

An independent planning and urban design consultancy *Plan2Place* was engaged to review the submissions in conjunction with the recommendations of the Study, purpose of respective zones and the intent of the amendment. The consultant's response to submissions is provided in Attachment 2. Changes have been made to the exhibited DDO11 to address the relevant concerns raised in submissions. The revised DDO11 is provided in Attachment 3. No changes were made to the amendment documents in response to concerns that are either inconsistent with the purpose of the amendment and or the Residential Growth Zone (RGZ). These concerns remain unresolved.

Given that there are unresolved issues raised in submissions, in order for Council to proceed with the amendment, a Planning Panel process is required to give an opportunity for the submitters to be heard by an independent Planning Panel. Officers recommend that, Council note the submissions received and the recommended changes to the exhibited DDO11 as provided in Attachment 3, and request the Minister to appoint an independent Planning Panel to consider the amendment and hear the submitters.

Subject to Council's decision, if a Panel is called, the Panel will hold a public hearing to hear all parties. The revised DDO11 will be submitted to Panel for consideration as Council's response to the concerns raised in submissions.

Following the public hearing, Panel will provide its report with recommendations to Council. Upon receiving the Panel report, a report will be submitted to Council outlining Panel's recommendations and options for Council to proceed with the amendment.

10.2
(cont)

RECOMMENDATION

That Council:

1. Note the submissions received for Planning Scheme Amendment C220whse in Attachment 1, and response to the submissions in Attachment 2
 2. Note the revised Schedule 11 to the Design and Development Overlay (DDO11- post exhibition changes) in Attachment 3 in response to the relevant concerns raised in submissions
 3. Having considered all submissions under Section 22 of the Planning and Environment Act, 1987 (the Act) in relation to Amendment C220whse, request the Minister for Planning to appoint an Independent Planning Panel to consider the amendment and all the submissions received in accordance with Section 23 of the Act.
 4. Advise all the submitters of Council's request for an Independent Planning Panel.
-

Key Matters

The key matters relevant to this report are:

- Amendment C220whse was placed on public exhibition for a period of one month from 29 September, 2022
- During public exhibition 16 submissions were received. Matters raised in the submissions can be summarised as below:
 - Proposed discretionary side and rear setbacks should also be mandatory
 - Overlooking, overshadowing and amenity impacts
 - Green character and neighbourhood character of suburbs will be lost by increased density
 - Increased height and visual amenity especially if built on hilly site
 - Impacts on community infrastructure by increased density and population increase
 - Constant change of the area
 - Potential increase of pollution, noise and safety
 - Potential increase of traffic in the area and impacts on on-street car parking
 - Potential impacts on utility and service provision in the area
 - The proposed setbacks undermine the development potential of land

10.2

(cont)

- Standard side and rear setback requirements are proposed to all land affected by the amendment without considering site specific challenges (e.g. narrower sites) and opportunities for alternative design options, or sites that are located on a corner where side setback requirements can be lesser, and
- Potential flooding of basements in new developments.
- Where appropriate, the exhibited DDO11 is amended to address the relevant concerns raised in submissions
- No changes were made to the amendment documents in response to concerns that are inconsistent with the purpose of the RGZ and or the purpose of the amendment. Those issues remain unresolved.
- In order for Council to proceed to the next stage of the amendment, the submitters must be heard by an independent Planning Panel.
- If Council wishes to proceed with the amendment, it must make a request to the Minister to appoint an Independent Planning Panel to hear the submitters and make recommendations for Council's consideration.

Response to the concerns raised in submissions are discussed under sub-heading '*Discussion and Options*' below. Summary of submissions and detailed response are provided in Attachment 2 - *Submission Response*.

STRATEGIC ALIGNMENT

The proposed DDO11 supports Strategic Direction 2 within the Council Plan 2017-2021 (2017), which seeks to "*Maintain and enhance the built environment to ensure a liveable and sustainable city*".

In particular, the amendment supports Direction 2.1.1 "*Development which respects our natural and built environments and neighbourhood character while achieving a balanced approach to growth in accordance with relevant legislation*".

The amendment seeks to achieve Council's and the community's aspirations for Whitehorse especially along Burwood Highway and Whitehorse Road growth corridors and interfacing residential areas. Through the proposed built form controls, the amendment seeks to ensure high quality development that respects the character and amenity of adjacent low-rise residential development.

Policy

The amendment will respond to the local planning provisions within the Whitehorse Planning Scheme especially in Clauses 21.06 (Housing) and 22.03 (Residential Development) which identify areas for substantial change including housing growth along key transport corridors.

10.2
(cont)

BACKGROUND

In October 2014 new residential zones came into effect with gazettal of Amendment C160. Council had initially included a 3 storey (11 metres) mandatory maximum building height for Residential Growth Zone 1 (RGZ1) and a 4 storey (13.5 metres) mandatory maximum building height for Residential Growth Zone 2 (RGZ2). The mandatory heights were removed by the Minister when approving Amendment C160. The current controls within the Whitehorse Planning Scheme do not reflect the Council's intentions.

Since the introduction of the new zones, concern has been raised about the planning outcomes in these areas, particularly where the RGZ1 and RGZ2 have been applied along main road corridors and interface with more traditional residential development in the Neighbourhood Residential Zone (NRZ), and to a lesser extent the General Residential Zone (GRZ) that allows for moderate change. Where a 3 or 4 storey outcome was intended, the Victorian Civil and Administrative Tribunal (VCAT) has been approving developments greater than these heights (up to 6 storeys), and in some cases, with unsympathetic built form and limited landscaping outcomes.

In order to address these issues, Council undertook the *Whitehorse Residential Corridors Built Form Study, 2019*. The Study informed built form guidelines for the key east-west growth road corridors of the municipality (Burwood Highway and Whitehorse Road).

Amendment C220whse to the Whitehorse Planning Scheme seeks to implement the outcomes of the Study through the proposed Schedule 11 to the DDO. The amendment will provide the necessary statutory effects to the built form guidelines in the Study, and will result in more appropriate development outcomes along these key road corridors and their interface with land in the NRZ and GRZ.

Council at its meeting on 8 August, 2022 resolved to seek authorisation from the Minister to prepare and exhibit Amendment C220whse to the Whitehorse Planning Scheme. Following Council's decision, the revised DDO11 and associated amendment documents were submitted to DELWP for authorisation. DELWP was satisfied with the revised DDO11 and advised to proceed to public exhibition under the previously granted authorisation for the amendment.

The amendment documents were placed on public exhibition for a period of one month from 29 September to 31 October 2022. A total of 16 submissions were received during public exhibition.

10.2

(cont)

Where appropriate, the exhibited DDO11 has been amended to address the concerns raised in submissions. However, there are outstanding concerns that are unable to be addressed as they are either, inconsistent with the purpose of the amendment and or the RGZ. Given that there are outstanding submissions, officers recommend that Council request the Minister to appoint an independent Planning Panel to consider the amendment and to hear the submissions.

Discussion and Options

This section provides officers' response to the concerns raised in submissions along with options available for Council with regards to the amendment.

Key issues raised in submissions and officers' response are summarised below:

Side and rear setbacks should be mandatory

The initial version of the DDO11 sent to DELWP for authorisation, among other things, contained mandatory front, rear and side setback requirements. As part of authorisation, DELWP supported the mandatory front setback, but requested that Council amend the mandatory side and rear setback requirements to discretionary. DELWP referred to the *Planning Practice Note 59 - The role of mandatory provisions in planning schemes*, which indicates that the Victorian planning system is predominantly performance based, and that mandatory provisions are an exception. The Practice Note allows the use of mandatory requirements only in situations where it can be clearly demonstrated that discretionary provisions are insufficient to achieve the desired outcomes. Under the performance based approach, planning proposals should be assessed against the intended outcomes of the objectives, as opposed to prescriptive mandatory requirements.

The Department believed that the mandatory side and rear setback requirements in DDO11 will limit the narrower sites to be developed to their capacity and to use site responsive designs. For example, sites abutting laneways could have reduced setbacks or could even build on a boundary. However, mandatory setback requirements prevent these alternative design options. Where mandatory requirements limit site responsive options, there could be unintended outcomes, such as, the development potential of sites are restricted or developers consider lower heights (under developments) to avoid permit triggers under DDO11.

In order to comply with DELWP's condition at authorisation, before public exhibition, the proposed mandatory side and rear seatbacks were changed to discretionary requirements, which was endorsed by Council at its meeting on 8 August 2022.

10.2
(cont)

Nine of the 16 submissions received raised concern with regards to increased height, overlooking, overshadowing and associated privacy and amenity concerns. Mandatory side and rear setbacks address these concerns, would provide the necessary space for landscaping and deep soil planting as required by DDO11, and would give certainty for adjoining low-rise residents. Officers suggest that Council should advocate for mandatory side and rear setback requirements at the Panel Hearing.

The exhibited DDO11 is revised (as shown in Attachment 3), to include mandatory side and rear setback requirements. Subject to Council's decision, the revised DDO11 will be submitted to Panel for consideration.

Overlooking, overshadowing and amenity impacts

The proposed rear setback of 9 metres and side setbacks of 4.5 metres up to four stories and a further 4.5 metres above four stories provide a reasonable distance to prevent direct overlooking into adjoining residential land.

There will be some overshadowing caused to land adjoining a development proposed in areas where the DDO11 will be applied. The proposed building setbacks help to mitigate the impact of shadows from buildings to adjoining land. The overshadowing issues and appropriate design and development considerations can be addressed at individual permit application assessment stage of specific sites through a number of provisions in the Whitehorse Planning Scheme listed below. These provisions, among other things, include requirements to mitigate overlooking, overshadowing and amenity impacts on adjoining properties.

Development scenario	Planning controls apply
3 storeys and under	<ul style="list-style-type: none"> • ResCode (Clause 55 of the Planning Scheme) • DDO11 does not apply
4 storeys	<ul style="list-style-type: none"> • ResCode (Clause 55 of the Planning Scheme) • Landscaping, overshadowing and pedestrian interface elements of DDO11 apply
5 – 6 storeys	<ul style="list-style-type: none"> • Clause 58 - Apartment Guidelines (of the Planning Scheme). Among other things include setback and amenity requirements to limit views into the private open space and habitable room windows of dwellings within a development. • All of the requirements under DDO11 apply

10.2

(cont)

Further, the Decision Guidelines in the exhibited DDO11 includes the following requirements to ensure amenity of new developments and adjoining properties are protected:

- Future developments provide adequate sunlight, daylight and privacy, and outlook from habitable rooms, for both existing and proposed developments.
- Future developments maintain a mid-rise scale that enhances the sense of openness, maintains access to expansive sky views along the corridor and allow maximum solar access to low-rise residential development in the adjoining and adjacent areas.
- Ensure appropriate transition to an adjoining residential zone or public open space, maintaining a sense of openness to the expansive sky views along the corridors.
- Future developments allow for maximum solar access to low-rise residential development on the adjoining areas, appropriate built form interface with the public realm, non-dominant streetscape and front, side and rear setbacks to allow for deep soil planting.

Concerns raised about the impact of increased pollution, noise and safety of residents must be addressed as part of future permit applications under the above provisions of the Whitehorse Planning Scheme.

No changes required to the exhibited DDO11.

Green character and neighbourhood character of suburbs will be lost by increased density

- Green character:

The amendment aims to enable vegetation including canopy trees in new developments. The exhibited DDO11 includes, maximum building height for the road growth corridors, mandatory front setback, discretionary rear and side setbacks (this report suggests these also be changed to mandatory requirements in response to submissions), landscaping requirements including deep soil plantings in the front, side and rear setbacks with medium and large trees and visual prominence of landscaping in new developments. This will enhance the green character and visual appearance of future developments as well the streetscape and amenity.

- Neighbourhood character:

The exhibited DDO11 applies to land within Residential Growth Zone. The RGZ encourages increased density and growth. In these areas, neighbourhood character is not a relevant planning consideration. RGZ areas are different from areas of incremental or minimal change such as General Residential Zone (GRZ) and Neighbourhood Residential Zone (NRZ) where neighbourhood character is a relevant consideration.

10.2

(cont)

No changes required to the exhibited DDO11.

Impacts on commercial and community infrastructure by increased density and population

State and Federal policies predominantly determine areas suitable for growth and change, to accommodate the predicted population growth and associated demand for housing and other services and facilities. Activity centres that are well connected and serviced and road corridors that are serviced by bus, train and trams are identified by Plan Melbourne as suitable areas to accommodate increased density and growth within metropolitan Melbourne. Accordingly, the zoning of these areas was amended to facilitate the State's direction.

At a local level, demand and supply of commercial services and community infrastructure needs are regularly monitored and addressed in relevant strategic works undertaken by Council and the State Government. Council undertakes structure plans for Activity Centres, community infrastructure planning, economic land use studies and retail and commercial floor space analyses. These works inform planning policies and necessary rezoning to facilitate changing land use and infrastructure needs. Where there is increased demand, with the appropriate planning policies and the availability of appropriately zoned land, the market forces facilitate the expansion of existing and new services and business.

Population increase at local and regional levels supports commercial and retail services and improves their commercial viability.

No changes required to the exhibited DDO11.

Increased density and constant change to the area

Under the *Planning and Environment Act, 1987*, Council as a *Planning Authority* has the responsibility to identify and make available appropriately zoned land to meet the changing and growing needs of the current and future Whitehorse community. Council has to manage and balance finite resources such as land to meet these competing needs of its community. Council undertake comprehensive strategic works to inform its decisions on land use.

The *Whitehorse Housing Strategy, 2014* identified areas that are connected to services and facilities and public transport as suitable to accommodate additional growth and increased density (this is consistent with the above noted State directions through Plan Melbourne). Properties along the Whitehorse Road and Burwood Highway corridors and in key activity centres were rezoned to Residential Growth Zone (RGZ) in 2014 in line with the recommendations of the Housing Strategy. Residential developments in these identified areas for increased housing density are expected to change from the traditional single dwellings on single lots, to denser residential developments like units, townhouses and apartments, and the character and density of the area changes accordingly.

10.2
(cont)

Council undertook the *Residential Corridors Built Form Study*, in 2019 to inform the proposed DDO11. The DDO11 is to guide new development within the RGZ along these road corridors and to protect the amenity of the adjoining low-rise residential developments.

Impacts of population increase on utility services are considered as part of assessing individual planning applications. Relevant utility authorities are referred during the assessment of permit applications and their conditions are included on any permit issued to ensure appropriate utility service provision for proposed development.

Social and community infrastructure needs are considered as part of Council's community and service planning. Strategic planning studies such as structure plans also identify community infrastructure needs for respective areas, which then inform service planning.

No changes required to the exhibited DDO11.

Potential increase of traffic and on-street car parking issues

Traffic and parking issues will be considered as part of assessing future planning permit applications. Future proposals will be required to have traffic impact assessments and appropriate mechanisms to mitigate and manage impacts. Similarly, car parking requirements of future developments will be assessed under Clause 52.06 of the Whitehorse Planning Scheme.

No changes required to the exhibited DDO11.

Standard side and rear setbacks applied to all lots which reduces the development capacity of land

As noted above, the side and rear setbacks are required for a number of reasons, including to address the overlooking and overshadowing and associated amenity impacts of new developments in RGZ. The setbacks also provide space for the required landscaping including deep soil plantings in new developments. However, the proposed maximum building height allows new development to develop up to 19 meters height (or six storeys). This increases the development capacity of the land within the DDO11 / RGZ area. Narrower sites that are unable to meet the setback requirements are encouraged to consolidate land to maximise the development potential.

Further, as discussed above, a majority of the submissions received during public exhibition, request the side and rear setback requirements to be mandatory to provide certainty on amenity issues for adjoining low-rise properties. In response, as provided in Attachment 3, the exhibited DDO11 is amended to change the side and rear setback requirements from discretionary to mandatory.

10.2

(cont)

Potential flooding of basements in new developments

Flooding concerns are related to the local drainage system, which is reflected in the application of the Special Building Overlay (SBO) Controls to residential land in the area in the Planning Scheme. This concern can be addressed through future development proposals on a case by case basis, and if basement car parking is appropriate to particular sites. Further, drainage infrastructure could be improved as a result of new developments potentially paying infrastructure contributions.

No changes required to the exhibited DDO11.

Options

Option 1:

Council could resolve to request the Minister to appoint a Planning Panel to hear the submitters and provide its recommendation to Council for consideration for changes required to the exhibited amendment.

The Panel process will allow the submitters and Council to be heard. After hearing all parties and considering the proposed amendment, the Panel will provide its recommendations to Council on any changes required to the exhibited amendment in response to the concerns raised in submissions.

After receiving the Panel report, a report will be submitted outlining Panel's recommendations for Council's consideration, with officer recommendation on how to proceed with the amendment.

Option 2:

Council could decide to abandon the amendment for reasons outlined in its decision.

However, abandoning the amendment will leave the Council with limited ability to control unsympathetic developments occurring along the RGZ road growth corridors of Whitehorse Road and Burwood Highway, and the amenity impacts on the adjoining low-rise developments within the NRZ and GRZ.

Of the two Options outlined above, Officers recommend Option 1. Introducing the proposed planning controls, especially the DDO11, will ensure quality built form development outcomes in new developments along these road corridors, and better amenity for adjoining low-rise developments in other residential zones.

Next steps

If Council is to support the recommendations of this report, then the next step will be to refer the submissions to an independent Planning Panel for review and to notify submitters of Council's intentions.

It is anticipated that the Panel will hold a public hearing in April - May 2023 to hear the submitters. Following the hearing, the Panel will submit its report with recommendations for Council's consideration.

Panel's report will be submitted to Council with officers' recommendation at a later date.

10.2

(cont)

SUPPORTING REPORT DETAILS

Legislative and Risk Implications

If Council resolves to seek the Minister to appoint a Planning Panel to hear the submissions, Council will be required to adhere to the set timeframes and steps specified in *Ministerial Direction No.15 - The Planning Scheme Amendment Process* and the relevant sections of the *Planning and Environment Act, 1987* with respect to the remaining planning scheme amendment process.

Equity, Inclusion, and Human Rights Considerations

In developing this report to Council, the subject matter has been considered in accordance with the requirements of the *Charter of Human Rights and Responsibilities Act 2006*.

It is considered that the subject matter does not raise any human rights issues. The proposed DDO11 will provide better amenity for the sensitive low-rise residential areas from development in the high-density growth road corridors.

Community Engagement

Amendment C220whse was placed on public exhibition for a period of four weeks from 29 September to 31 October, 2022. During public exhibition the following consultations were undertaken:

- Notice of Amendment was published in the Victorian Government Gazette on 29 September 2022.
- Notice of Amendment was published in the Age Newspaper on 29 September 2022.
- Landowners and occupiers directly affected, and owners and occupiers of adjoining properties were directly notified via letters with the Notice of Amendment.
- Relevant State agencies, Prescribed Ministers and all five adjoining municipalities were also directly notified.
- Amendment documents were published in a dedicated Amendment C220whse website providing detailed information of the amendment and the amendment documents were uploaded in this site.
- The Residential Corridor Built Form Study website was updated with the web link to the amendment website inviting submissions.
- Council's Your Say page included details of the amendment inviting submissions online.
- Hard copies of the amendment documents were placed at Council Services Centres in Nunawading, Box Hill Town Hall and Forest Hill Chase Shopping Centre, and Whitehorse libraries at Nunawading, Vermont South, Blackburn and Box Hill, and
- The Department of Environment Land Water and Planning published the amendment documents on its 'Amendments Online' public website.

Further, during the development of the *Whitehorse Residential Corridors Built Form Study, 2019* the community was widely consulted at different stages.

10.2
(cont)

Financial and Resource Implications

The Study was included as a new budget initiative in the 2017/2018 budget. Costs associated with the planning scheme amendment process, such as exhibition costs and statutory fees are typically covered by the ongoing operational budget of the Strategic Planning Unit.

Charges for the independent Planning Panel vary depending on the duration of the Panel Hearing and the number of Panel members appointed. An independent planning consultancy was engaged to prepare technical response to the submissions received. Cost of engaging the consultancy was \$16,520 (excl. GST). Other expected costs associated with the Panel Hearing include Council's legal representation and advice and expert witnesses (as required). Exact cost details of these services will be provided in a Council report after the completion of the Panel Hearing. Refer the table below for breakdown of the project cost.

Table 1 - Project expenditure

Item	Expenditure (excl. GST)
Exhibition costs	
• Direct notification	\$6912
• Publicity material and social media	\$2200
• Notice on the Government Gazette and <i>The Age</i>	\$3048
Submission Response	
• Preparation of technical response to submission	\$16,520
Statutory fees	
• Approval of the amendment by the Minister	\$488
Planning Panel cost*	
• Charges from Planning Panels Victoria (including panel member fees, travel, accommodation and project support)	\$40,000
Planning Panel other costs*	
Legal representation and advice and expert witness	\$40,000
TOTAL	\$109,168

*Estimated cost only, final costs to be confirmed after the Panel Hearing.

Innovation and Continuous Improvement

The implementation of the proposed DDO11 will provide opportunities for innovative designs in new developments while maximising development yield. Design innovation will be involved in a number of aspects including amenity, appearance, landscaping, built form interface with adjoining low-rise developments, adequate sunlight, daylight and privacy, and outlook from habitable rooms, for both existing and proposed developments.

10.2
(cont)

Collaboration

The development of the *Whitehorse Residential Corridors Built Form Study, 2019* required input from the community and various internal departments of Council. Officers worked closely with DELWP's Regional Planning Team, during the authorisation and exhibition process. Officers will continue to work with the now DTP throughout the amendment process and with Planning Panels Victoria during the Panel process (subject to Council's decision on the submissions).

Conflict of Interest

Council officers involved in the preparation of this report have no conflict of interest in this matter.

Conclusion

The exhibited amendment attracted 16 submissions. The DDO11 is amended as appropriate to address the concerns raised in submissions. No changes were made to the exhibited DDO11 where the concerns raised in submissions are inconsistent with the purpose of the RGZ and or the intent of the amendment.

Implementing the revised DDO11 into the Whitehorse Planning Scheme will provide the statutory effect to the recommendations *Whitehorse Residential Corridors Built Form Study, 2019*. DDO11 will facilitate to achieve quality built form outcomes for RGZ1 and RGZ2 zones along the growth corridors of Burwood Highway and Whitehorse Road, and better amenity for abutting low-rise residential developments in GRZ and NRZ.

The unresolved issues raised in submissions would require a Planning Panel process to allow for Council to proceed with the amendment. This report recommends that Council resolve to request the Minister to appoint a Planning Panel to consider the amendment and hear the submitters.

Subject to Council's decision, if a Panel is appointed, the Panel will hold a public hearing to hear all parties. Following a public hearing, the Panel will provide its recommendations in a report to Council for consideration. Upon receiving the Panel report, a report will be submitted to Council, outlining Panel's recommendations and options available for Council with regard to the amendment.

ATTACHMENTS

- 1 Submission Received – Redacted 
- 2 Summary of Submissions and Response 
- 3 Revised Schedule 11 to the Design and Development Overlay – Post exhibition changes 

10.3 Amendment C245whse – Ministerial Amendment Box Hill Central North Redevelopment - Vicinity Centres

City Planning and Development
Director City Development
FILE NUMBER: SF22/1784
ATTACHMENT

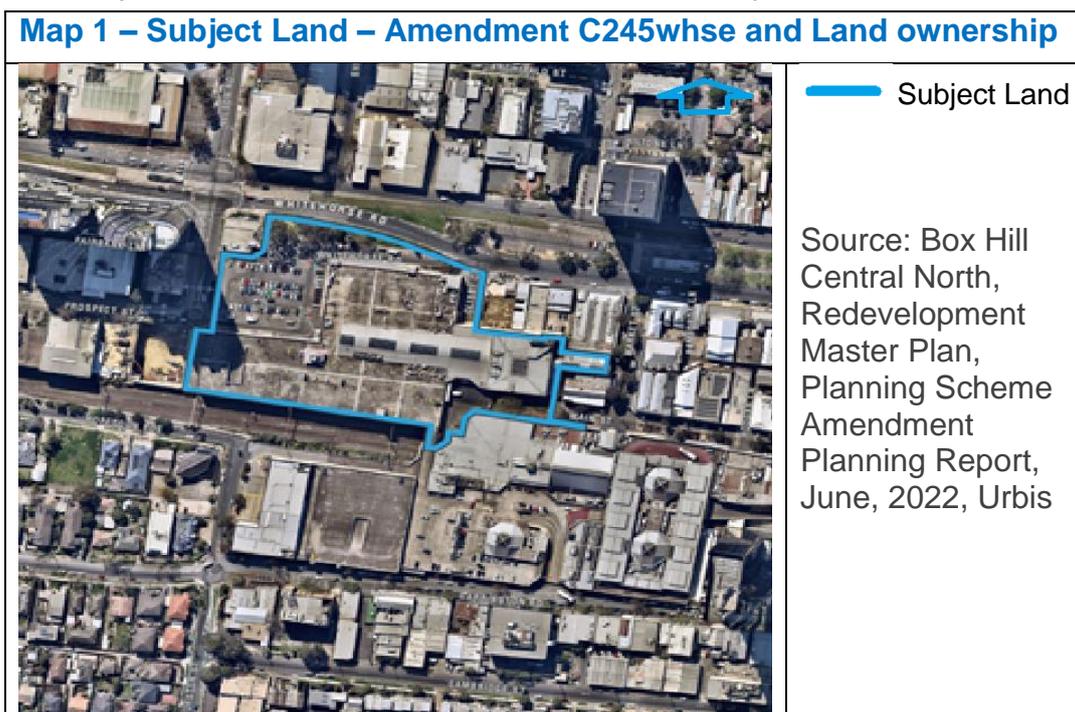
SUMMARY

The purpose of this report is to provide an update on the Draft Amendment C245whse (the amendment) to the Whitehorse Planning Scheme (Planning Scheme) which is being considered by the Minister for Planning (the Minister), and seek endorsement on Council's submission for the amendment to be sent to the Minister.

Vicinity Centres (Vicinity) owns a large portion of land within Box Hill Central North (BHCN) precinct of the Box Hill Metropolitan Activity Centre (Box Hill MAC). Vicinity applied to the Minister requesting the Minister to be the *Planning Authority* (generally this is Council) to undertake Amendment C245whse to the Planning Scheme. The application was successful.

On behalf of the Minister, the Priority Projects Team of the Department of Transport and Planning (DTP, previously, Department of Environment Land Water and Planning - DELWP) has commenced limited public exhibition on the draft amendment from 20 February to 20 March, 2023. Council received a formal notification of the amendment on 20 February, 2023. The amendment and supporting documents can be viewed via <https://www.planning.vic.gov.au/policy-and-strategy/draft-amendment-c245whse>

The Subject Land of the amendment is shown on Map 1.



10.3
(cont)

As part of the amendment, a Masterplan is proposed (Attachment 1) to guide the redevelopment of the BHCN. The Masterplan, proposes high-density, mixed-use developments (seven multi-level buildings ranging between 19 and 49 levels), a new civic plaza, enhanced public open space, pedestrian priority new street network and bicycle movement, upgrades to Council and VicTrack owned land in the surrounding and landscaping.

The amendment proposes to implement the Masterplan through the *Specific Controls Overlay* (SCO) and an Incorporated Document in the Planning Scheme. The Incorporated Document would then form part of the Planning Scheme. These controls will override all other requirements of the Planning Scheme that apply to the Subject Land.

On 28 December 2022, the Director, City Development sent a letter to the Minister requesting that public exhibition on the amendment should not be commenced until mid-January 2023 at the earliest due to the festive holiday period, it should be for a minimum period of six weeks and a wider area surrounding the Subject Land should be directly notified.

The public exhibition started on 20 February, 2023 and is open for submissions for four weeks to close at 8am on 20 March, 2023. However, direct notices were sent only to a smaller area covering the immediate surrounding of the Subject Land. Given the scale of the proposed use and development and potential material impacts for many properties, Council has undertaken informal notification of the amendment sending letters to landowners and occupiers of a wider area. Notice of the amendment is published on Council website, *Whitehorse Your Say* page and *Whitehorse News* (March, 2023 edition) directing people to State Government's Your Say page for details of the amendment and to make submissions to the State Government should they wish to do so.

The amendment and the supporting documents were reviewed by relevant internal teams and consultants. The reviews raised a number of concerns and informed Council's draft submission in Attachment 2. The submission outlines the concerns, emphasises the need for a Standing Advisory Committee (SAC) to be appointed by the Minister to hear the submitters, including Council.

Further, given the number and the magnitude of issues with the proposed amendment and associated documents, officers recommend that, in addition to sending Council's submission, a separate letter could be sent to the Minister emphasising the need for a SAC and requesting DTP to work with Council to resolve the outstanding issues, prior to the Minister making her decision on the amendment.

Officers recommend that Council note the update on Amendment C245whse, endorse Council's submission to be sent to the Minister and authorise the Mayor to write to the Minister separately on matters outlined in Recommendation 4 of this report.

Should the Minister appoint a SAC, Council will be represented by relevant experts at the SAC hearing. Council will be updated as the amendment progresses.

10.3
(cont)

RECOMMENDATION

That Council:

1. Note the update on Draft Planning Scheme Amendment C245whse to the Whitehorse Planning Scheme which is being considered by the Minister for Planning (the Minister) for Vicinity Centres' Box Hill Central, North Precinct.
 2. Endorse Council's draft submission for Planning Scheme Amendment C245whse in Attachment 2
 3. Authorise the Director, City Development to make changes to the draft submission as needed prior to sending to it the Minister.
 4. Write to the Minister:
 - Seeking the Minister's explanation for Ministerial Intervention in this instance where Council has the ability to effectively undertake this amendment, and the statutory powers and responsibility as the '*Planning Authority*' under the *Planning and Environment Act, 1987*
 - Highlighting Council's concerns with the amendment, the proposed Masterplan and the submitted technical documents, primarily relating to: affordable housing and housing diversity, provision and quality of open space and public realm, relationship to the proposed SRL, siting and height of proposed building envelopes, traffic, car parking and transport implications, development contributions, and environmentally sustainable development.
 - Emphasising the importance of appointing a Standing Advisory Committee to hear the submitters for Planning Scheme Amendment C245whse
 - Seeking an explanation as to how the concerns raised in submissions will be addressed if a Standing Advisory Committee is not appointed for Amendment C245whse
 - Requesting that no decision on Amendment C245whse should be made until the relevant outstanding issues raised in submissions are resolved to the satisfaction of the Whitehorse City Council
 - Requesting a meeting between the Minister, the Mayor and the CEO to discuss Council's concerns with the amendment, and an appropriate approach towards resolving the issues prior to the Minister making a decision on the amendment, and
 - Offering Whitehorse City Council's support to work with the Department of Transport and Planning in resolving the relevant outstanding issues raised in submissions for Planning Scheme Amendment C245whse, prior to the Minister making a decision on the amendment.
-

10.3
(cont)

Key Matters

The key matters relevant to this report are:

- Council has been notified of Amendment C245whse to the Whitehorse Planning Scheme, which is being undertaken by the Minister for Planning
- The amendment affects land within the BHCN precinct of the Box Hill MAC
- The amendment, among other things, proposes a Masterplan to guide the redevelopment of BHCN.
- The amendment proposes to introduce a new Schedule to SCO in Clause 45.12 and a new Incorporated Document in Clause 72.08 of the Planning Scheme to implement the Masterplan.
- The Incorporated Document would override all other requirements of the planning scheme affecting the Subject Land.
- Relevant internal officers and consultants reviewed the amendment documents, the proposed Masterplan and the supporting documents, and raised a number of concerns as outlined in Council's submission in Attachment 2.
- Summary of the key concerns raised include:
 - The shortcomings of the Incorporated Document and the proposed masterplan, with concerns including, but not limited to:
 - Poor quality public realm and open space, with significant wind and overshadowing impacts
 - Fragmented open space network, with poor integration with the changes proposed to the public realm associated with the SRL
 - Inappropriate siting and height of buildings
 - Inadequate detail regarding active transport, traffic, SRL-related transport impacts and car parking
 - Failure to consider appropriate development contributions, noting amendment C241whse to implement the Whitehorse Development Contributions Plan is well progressed
 - Lack of detail around diversity of housing proposed to be accommodated in the BHCN site, including affordable housing
 - Lack of detail in relation to environmentally sustainable development measures.
 - Inadequate future permit conditions
 - Lack of details, gaps and inconsistency in supporting documents
 - Impacts on the Suburban Rail Loop – East Connect project (SRL project) and Council's intention for Box Hill MAC as a whole area

10.3
(cont)

- Inadequate strategic and coordinated planning of the proposed amendment to the overall use and development of the Box Hill Metropolitan Activity Centre and alignment with the SRL project
- Lack of alignment with Council's adopted and current Strategies and Policies and associated material implications if not appropriately considered and incorporated. Relevant key strategies and policies include but not limited to:
 - *Box Hill Metropolitan Activity Centre Structure Plan, 2007*
 - *Box Hill Metropolitan Activity Centre to 2036 Structure Plan and the Box Hill Metropolitan Activity Centre to 2036 Urban Design Framework (Drafts)*
 - *Whitehorse Development Contributions Plan, 2022 (current)*
 - *Whitehorse Open Space Strategy (current), and*
 - *Whitehorse Affordable Housing Policy (current).*
- No reason was provided by the Minister for decision to act as the Planning Authority in this instance which is generally Council's role under the Act
- Inadequate consultation with the community and other relevant stakeholders as the amendment is being undertaken by the Minister under s20(4) of the Act
- Uncertainty on as to how the issues raised in submissions will be considered and addressed if a SAC is not appointed to hear the submitters.
- Duration of the public exhibition.
- The need for a separate letter to be sent to the Minister highlighting Council's concerns with the amendment, emphasising the importance of a SAC to hear the submitters and Council, that no decision on the amendment should be made until the issues raised in submissions are resolved to Council's satisfaction and to offer Council's support to work with DTP on the outstanding issues before the Minister makes the decision on the amendment.

STRATEGIC ALIGNMENT

The amendment is being undertaken by the Minister for Planning. The *Box Hill Central North, Redevelopment Master Plan, Planning Scheme Amendment Planning Report, June, 2022, Urbis (Planning Report)* submitted with the amendment claims that the amendment meets directions from *Plan Melbourne* and Planning Policy Framework and Local Planning provisions of the Whitehorse Planning Scheme.

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Policy

The amendment is undertaken by the Minister. The submitted Planning Report prepared by Urbis, claims that the amendment meets the requirements of the following Local Policies of the Whitehorse Planning Scheme:

- Clause 21.07 Economic Development recognises the BHMAC provides significant opportunities to act as a major focus for retail, commercial, health, transport, education and entertainment facilities in Melbourne's east.
- Clause 22.07 Box Hill Metropolitan Activity Centre seeks to facilitate land use and development in the Box Hill MAC line with the objectives of the Box Hill Transit City Activity Centre Structure Plan (2007), and
- Clause 22.15 Open Space Contribution identifies the need for new development to contribute to the provision of public open space in accordance with the Whitehorse Open Space Strategy. The clause aims to ensure that where appropriate, land suitable for public open space is set aside as part of the design of the development so that it can be transferred to or vested in Council. The subject site is located a sub-precinct where a land contribution is preferred.

BACKGROUND

History to the amendment C245whse

In December 2020, Vicinity Centres made a formal request to the Minister for Planning to exercise the powers under section 20(4) of the Act to introduce site specific controls to facilitate the BHCN masterplan. The request acknowledged three planning applications that had been lodged with Council in May and June 2020 (WH/2020/467, WH/2020/466 and WH/2020/597) and which were determined by Council on 23 May 2022.

The former DELWP's Development Facilitation Program sought comment from Council officers on the documents supporting the intervention request and asked the Office of the Victorian Government Architect (OVGA) to review the proposed master plan and provide independent advice to assist with its recommendation on the request. The OVGA reviewed the proposal in March 2021. In September 2021 Council was advised that the Development Facilitation Program Standing Advisory Committee (DFPSAC) had recommended that the Box Hill Central North Masterplan proposal be accepted for priority assessment by DELWP subject to conditions. Vicinity lodged a revised version of its Masterplan to DELWP in mid-2022. In late 2022, DELWP's Priority Projects Team engaged with Council officers to progress Amendment C245whse.

10.3
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Discussion and Options

Section 20(4) of the Act, allows the Minister to be the *Planning Authority* to amend a planning scheme. The Minister exercises her powers under this section of the Act to undertake Amendment C245whse to the Whitehorse Planning Scheme.

According to the information provided to Council by DTP, the amendment applies to land currently developed with the Box Hill Central North Shopping Centre and includes the following land:

- 17-21 Market Street and 1 Main Street, and the associated at-grade car park at 8 Prospect Street
- the Council owned land at 2 Prospect Street and car park at 8A Prospect Street
- sections of Main Street, Prospect Street and Nelson Road
- Clisby Court, and
- Fairbank Lane and the adjoining landscape reserve fronting Whitehorse Road.

The majority of the land is owned by Vicinity Centres.

As part of the amendment, a Masterplan is proposed to guide the redevelopment of the BHCN precinct. The Masterplan primarily proposes high-density, mixed-use developments (seven multi-level buildings ranging between 19 and 49 levels), a new civic plaza, enhanced public open space, pedestrian priority new street network and bicycle movement paths, upgrades to Council and VicTrack owned land in the surrounding and associated landscaping. Refer Attachment 1 for the details of the proposed Masterplan.

The amendment proposes to implement the BHCN Masterplan, through a new *Specific Controls Overlay* and an Incorporated Document. The SCO allows future use and development of the land affected by the amendment to be assessed exclusively under the requirements outlined in the Incorporated Document.

In December 2022, DELWP's Priority Projects Team officers undertaking the amendment, informally notified Council officers that they were preparing for a limited public exhibition for the amendment (date was not confirmed at that stage). On 28 December 2022, the Director, City Development sent a letter to the Minister requesting that public exhibition on the amendment should not be commenced until mid-January 2023 the festive holiday period, and it should be for a minimum period of six weeks to allow for people to obtain necessary advice and prepare their submissions. The letter also suggested that, given the scale of the development to be facilitated through the amendment, direct notification should be given to a wider area surrounding BHCN precinct.

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Council has no statutory powers over Ministerial [section 20(4)] amendment process. Given the scale of development and potential material impacts for many properties, Council sent informal notification of the amendment to the owners and occupiers of a wider area on 22 February, 2023, published amendment information on Council website from 22 February 2023 (will be available for the duration of the public exhibition until 20 March, 2023), *Whitehorse Your Say* and *Whitehorse News* (March, 2023 edition) directing people to State Government's Your Say page to view the amendment documents and to make submissions should they wish to do so.

The amendment and the supporting documents were reviewed by relevant internal teams and consultants. Comments received informed Council's submission in Attachment 2. The reviews raised a number of concerns as outlined under *Key Matters* (above) in this report.

In addition, it is noted that Council's Amendment C228whse, which aimed to implement the *Draft Box Hill Metropolitan Activity Centre to 2036 Structure Plan, 2021* and the *Draft Box Hill Metropolitan Activity Centre to 2036 Urban Design Framework, 2021*, was refused by the Minister in September 2022. DELWP provided the following in its reasons for the refusal:

- The structure plan and built form controls are premature given the potential inconsistency that could arise with state planning policy at Clause 11.01-1R 'Settlement – Metropolitan Melbourne', which seeks to develop the SRL and facilitate major growth and change in metropolitan activity centres, and health and education precincts, and Clause 18.01-02S 'Transport System' which seeks to facilitate the delivery of declared major transport projects.
- The amendment is likely to have a significant effect on the transport system as defined by section 3 of the Transport Integration Act 2010, and land use decisions should have regard for the current and future development and operation of the transport system.

Given the above in its reasons for the refusal of Council's amendment in September 2022, it is confusing and unclear as to why the Minister has decided to undertake Amendment C245whse in December 2022, which affects a significant portion of the same land of the above refused Council amendment, within the heart of the Box Hill MAC. Moreover, part of the C245whse land overlaps with the land protected for the SRL East – Connect project, being SCO, Schedule 14 which relates to the *Suburban Rail Loop East Infrastructure Protection Incorporated Document, August 2022* in the planning scheme. The redevelopment to be facilitated by Amendment C245whse potentially has the same, if not more (due to the scale of the proposed development), concerns and material implications with the SRL-East-Connect project, and inconsistency with the State Planning Policy at Clause 11.01-1R – *Settlement – Metropolitan Melbourne*, as raised in DELWP's refusal for Council's Amendment C228whse noted above.

The submitted supporting documents for C245whse do not demonstrate sound, strategic and coordinated planning approach with the SRL- East

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Connect project as required by DELWP for C228whse above, nor with Council's adopted and current strategic works for Box Hill MAC. The supporting documents acknowledge the SRL-East Connect project and note that there were consultations with the Suburban Rail Loop Authority during the development of the Masterplan. However, the documents neither demonstrate as to how the proposed redevelopment will strategically connect with the SRL-East – Connect developments, nor explain how the implications including impacts on the transport system were considered and incorporated in the Masterplan and the overall redevelopment of the BHCN.

These concerns have also been included in Council's submission.

The Minister has not yet provided her reasons and justification for acting as the *Planning Authority* in this instance which is generally Council's role under the Act. Council has demonstrated ability, skills and resources to efficiently process this amendment.

With Box Hill MAC being the largest and significant local, regional and metropolitan centre, the local and the wider catchment should be given a reasonable opportunity to contribute to development of the vision and have their say in a *city shaping* project like this by Vicinity Centres. However, this community and property owner/occupier participation has been removed by this Ministerial amendment process with little explanation to Council, Whitehorse and the wider community.

Council's submission highlights the concerns discussed above and requests that the Minister appoint a SAC to hear the submitters. However, this not a mandatory requirement for Ministerial amendments and the Minister may choose not to appoint a SAC.

If a SAC is appointed, a public hearing will be held to hear the submitters. Council will be able to further expand its comments at the SAC hearing. Following the hearing, the SAC will provide its report with recommendations to the Minister for consideration. If a SAC is not called, it would be prudent for the Minister to at least consider as appropriate, the concerns raised in submissions before making her decision on the amendment.

Given the number and magnitude of issues with the proposed amendment that are outlined in Council's draft submission (Attachment 2), officers recommend that, in addition to sending Council's submission, Council could write to the Minister separately emphasising the need to appoint a SAC to hear the submitters, no decision on the amendment to be made until the appropriate concerns raised in submissions are resolved to the satisfaction of Council, and to offer Council's support to work with DTP officers resolving outstanding issues prior to the Minister making decision on the amendment.

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Options

Option 1

Council note the update and endorse Council's submission for Amendment C245whse and resolve to send the submission to the Minister. In addition, Council authorise the Mayor to write to the Minister as per the Recommendation 4 of this report.

Option 2

Council could resolve to write to the Minister requesting to abandon the amendment, and direct the proponent to submit the amendment request to Council to process. If the amendment is undertaken by Council, a full public exhibition process will be undertaken to provide the opportunity for all affected parties to review the amendment and submit their concerns for consideration.

If Council chooses this option, it is recommended that, Council still resolve to endorse and send Council's submission to the Minister. This is to secure Council's rights to appear at the SAC hearing, should the Minister decide to proceed with the amendment under s20 (4) of the Act.

Of the above two options, officers recommend that Council consider Option 1 for the following reasons:

- It will allow for Council to further elaborate its concerns at the SAC hearing and be able to influence orderly and sustainable development outcomes for BHCN and a wider catchment
- It will allow for Council officers to work with DTP officers resolving outstanding issues (as appropriate) raised in submissions by Box Hill community
- It will also allow for Council to contribute to facilitate the redevelopment of BHCN precinct achieving better and lasting benefits for the Whitehorse community.

It is unlikely that the Minister would not proceed with the section 20(4) process in light of the background leading to the amendment and having decided to commence notification and calling for submissions.

Next steps

If Council supports officer recommendations in this report, Council's Submission for Amendment C245whse will be sent to the Minister, and a separate letter will be sent as per Recommendation 4 of this report.

If a SAC is appointed, Council will be represented by technical and legal experts at the hearing. Subject to Minister's decision, Council officers would work with DTP officers and Vicinity (via DTP) in resolving outstanding issues with the amendment and supporting documents (including the Masterplan and the Incorporated Document) prior to the Minister making her decision on the amendment.

Council will be updated as the amendment progresses.

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SUPPORTING REPORT DETAILS

Legislative and Risk Implications

The amendment is undertaken by the Minister for Planning. There are no legal or risk implications for Council from the recommendations in this report.

Equity, Inclusion, and Human Rights Considerations

It is considered that the subject matter does not raise any human rights issues for Council.

Community Engagement

The public exhibition for the amendment is undertaken by DTP. As noted above, Council advised the Minister that:

- Public exhibition should not be commenced before mid-January 2023 during the festive, public and school holiday period
- Public exhibition should be for a minimum period of six weeks, and
- A wider catchment should be directly notified of the amendment.

Council's advice had not been fully considered. Although the public exhibition did not commence until 20 February, 2023, it was opened only for four weeks and only a small area surrounding the subject land has been directly notified of the amendment. Considering the scale of the use and development that is to be facilitated by the amendment, and the potential material impact to many properties, Council has undertaken informal notification of the amendment as follows:

- A total of 5291 direct informal notification letters were sent to a wider area surrounding the BHCN precinct directing people to the *Have Your Say Victoria* amendment webpage for more details and to make their submission if they wish to do so. This supplements the DTP notification area.
- Amendment information was published in Council's website, *Whitehorse Your Say* page and *Whitehorse News* (March, 2023 edition) with the link to the State Government's Your Say page amendment webpage where the amendment documents can be accessed and submissions can be made.

If a SAC is appointed, those who have made submissions will be invited to be heard.

Financial and Resource Implications

The review of the amendment documents by external urban design and legal consultants and the preparation of Council's submission by Maddocks costed approximately \$40,000 (excluding GST). The exact cost will be confirmed in the next report to Council on this amendment.

If a SAC is appointed by the Minister, the cost of engaging technical and legal experts to represent Council at the SAC hearing is expected to be

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approximately \$40,000 - \$60,000 (excluding GST). The exact cost will be confirmed after the SAC hearing.

Innovation and Continuous Improvement

If Council officers are invited to work with DTP officers resolving outstanding issues raised in submissions, there will be opportunity to find innovative solutions with regards to the issues with the proposed Masterplan, Incorporated Document and the approach to implementing the proposed Masterplan.

Collaboration

Internal teams worked collaboratively to review and provide comments on the amendment that informed Council's submission. Officers will continue to work in collaboration preparing for the SAC hearing (should one be called).

Officers informally notified the local community of the amendment, will answer queries where possible and directed people to State Government's Your Say page to view the amendment documents and to make submissions if they wish to do so. Officers will continue to work with the community and relevant internal teams, as needed, throughout the amendment process.

Council officers worked closely with DTP officers prior to, and during public exhibition. Officers will continue to work with DTP and SAC as needed (if appointed).

Conflict of Interest

Council officers involved in the preparation of this report have no conflict of interest in this matter.

Conclusion

The proposed Amendment C245whse to the Whitehorse Planning Scheme undertaken by the Minister raises a number of technical and non-technical (process related) concerns as outlined in Council's submission. Council's submission also highlights the importance of, and requests the Minister to appoint a SAC to hear the external submitters and Council. Should Council endorse the submission, it will be sent to the Minister. In addition to sending Council's submission, officers recommend that Council authorise the Mayor to write to the Minister of matters specified in Recommendation 4 of this report.

If a SAC is appointed, a public hearing will be held to hear the submitters. Council will be represented by relevant technical and legal experts at the hearing. Following the hearing, the SAC will provide a report to the Minister for consideration. Council will be updated as the amendment progresses.

ATTACHMENTS

- 1 Box Hill Central North Masterplan, 23 June, 2022, Bates Smart 
- 2 Council's Draft Submission 

10.4 Quarterly Performance Report, October to December 2022/2023

Corporate Reporting Officer
Director Community Services
ATTACHMENT

SUMMARY

The purpose of this report is to brief Council on the performance against the Council Plan 2021-2025 and the Annual Budget 2022/23 for the quarter ended 31 December 2022.

Pursuant to section 97 of the *Local Government Act 2020*, the Quarterly Performance Report provides a quarterly budget report including details and commentary on Council's year to date performance compared to the budget.

The Quarterly Performance Report also includes a high level summary of Council's performance against major initiatives, initiatives, and services identified in the Council Plan 2021-2025. These are significant projects that will directly contribute to the achievement of the Council Plan 2021-2025 and budget. They may include actions that are once-off in nature and/or lead to improvements in services.

RECOMMENDATION

That Council notes the Quarterly Performance Report for the quarter ended 31 December 2022, included as Attachment 1.

Key Matters

Section 97(2) of the *Local Government Act 2020* (the Act) requires Council to prepare a Quarterly Budget Report containing:

- (a) A comparison of the actual and budgeted result to date; and
- (b) An explanation of any material variations; and
- (c) Any other matters prescribed by the regulations.

In addition to complying with section 97(2) of the Act, the report also contains a progress update for the quarter for the initiatives identified in the Council Plan 2021-2025.

Performance against Annual Budget

The year-to-date financial result at 31 December 2022 was a surplus of \$72.65m, \$0.92k favourable to adopted budget. Income was \$2.67m lower than budget mainly reflecting lower than budgeted statutory fees and fines (\$2.06m) and user fees (\$1.26m), higher losses on assets disposal (\$1.06m), partially offset by increased capital grants (\$1.04m) and interest income (\$0.67m). Expenditure was \$3.59m below adopted budget primarily relating to lower employee costs (\$2.49m), materials and services expenditure (\$1.74m), partly offset by higher depreciation (\$0.92m).

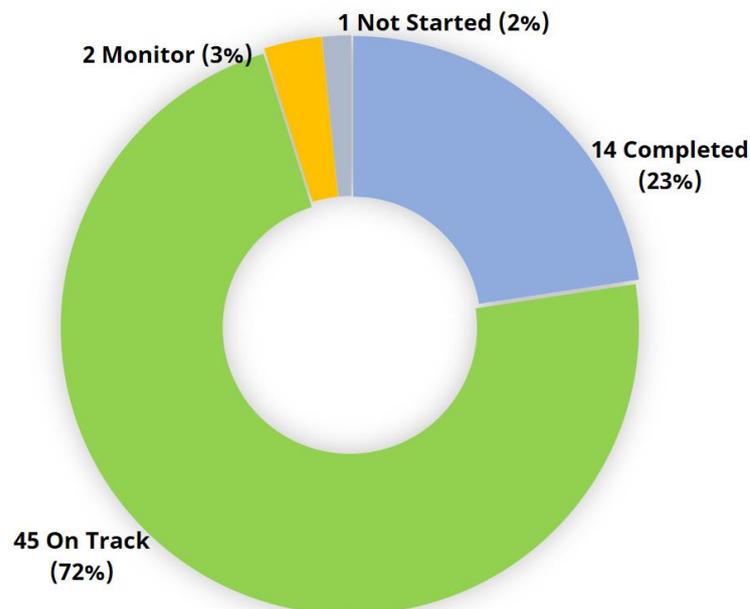
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Council revised the 2022/23 annual forecast in August to include the reduction of ERP project progress payments due to project timing (\$1.20m recognised in 2021/22) and the carry forward of unspent funds from 2021/22 into 2022/23 (net impact \$839k). The full year forecast was presenting a surplus of \$7.10m, \$359k increase compared to the \$6.74m adopted budget.

The full year forecast for 2022/23 is currently undergoing a major review as part of the 2023/24 budget development process. The January forecast review will be presented as part of the January Financial Report. Some forecast changes have been noted throughout this report and will be included in the January forecast.

Performance against Council Plan

Using a combination of the Council Plan 2021-2025, and the Adopted Budget 2022/23, 62 significant initiatives have been identified that contribute to the achievement of the strategic directions and goals of Council. Of the 62 initiatives being reported on this quarter, fourteen (14) are complete, 45 are on track, two (2) requires monitoring and one (1) has not yet commenced.



STRATEGIC ALIGNMENT

Council Plan 2021-2025 and Community Vision 2040.

The report supports Strategic Direction 8: Governance and Leadership. In particular, it supports the following objectives:

Objective 8.2: Provide responsible financial management and business planning.

Objective 8.3: Good Governance and Integrity.

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Policy

Not Applicable

BACKGROUND

At the conclusion of each quarter of the financial year, Council prepares a Quarterly Performance Report summarising the financial and non-financial performance for the quarter. It is a summary of achievements and statutory information for the quarter. The report provides progress details on performance against the Council Plan 2021-2025 and the Budget 2022/23.

Discussion and Options

The Quarterly Performance Report provides the opportunity for Whitehorse City Council to communicate to the community its achievements and challenges from quarter two of the financial year.

SUPPORTING REPORT DETAILS

Legislative and Risk Implications

Pursuant to 97(1) of the *Local Government Act 2020*, The Chief Executive Officer must, as soon as practicable after the end of each quarter, ensure that a quarterly budget report is presented to Council at a Council meeting that is open to the public.

Furthermore, Section 97(3) of the Act requires the Chief Executive Officer to include a statement describing whether a revised budget may be required. The Chief Executive Officer is of the view that a revised budget is not required for the financial reporting period 31 December 2022. No variations have been made to the declared rates and/or charges and no loan borrowings are proposed for 2022/23. The financial position of Council is sound with a working capital ratio of \$4.42 as at 31 December 2022.

Equity, Inclusion, and Human Rights Considerations

It is considered that the subject matter does not raise any human rights issues.

Community Engagement

No community engagement was required for this report.

Financial and Resource Implications

There are no financial or resource implications arising from the recommendation contained in this report.

Innovation and Continuous Improvement

There are no Innovation and Continuous Improvement matters arising from the recommendation contained in this report.

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(cont)

Collaboration

No collaboration was required for this report.

Conflict of Interest

Council officers involved in the preparation of this report have no conflict of interest in this matter.

Conclusion

The Quarterly Performance Report fairly represents Council's operations, financial position and Council's performance to date in respect to quarter two of the 2022/23 financial year. The information presented satisfies all legislative requirements.

Upon the report being considered at the Council meeting, it will be made available to the community for viewing on Council's website

ATTACHMENT

- 1 Quarterly Performance Report October to December 2022/23 

10.5 Contract Variation - Energy Performance Contract (Contract 30196)

City Services
Director infrastructure

SUMMARY

The purpose of this report is to seek approval to amend the total contract value and extend the contract period for Contract 30196 – Energy Performance Contract.

On 15 April 2019, Council approved the total contract value of \$2,200,000 including GST to deliver the Energy Performance Contract (EPC) over two financial years, 2019/2020 and 2020/21 at eight Council and community facilities.

Approval is sought to increase total contract value by an additional \$57,976.56 to \$2,257,976.56 including GST and to extend the works completion date to 30 June 2023, and therefore the monitoring and verification (M&V) process to 30 June 2024. There are no additional funds required as the additional cost can be funded from savings in other programs.

The amended contract value is due to the scope variation required to deliver the EPC and its agreed energy efficiency measures. In addition, due to the ongoing impacts of COVID-19 related supply chain delays, an extension to the contract period is required for the completion of works at two of the eight remaining sites, followed by M&V.

All expenditure is in accordance with the agreed Detailed Feasibility Study and outlined energy efficiency measures endorsed by Council at the Council Meeting held on 15 April 2019.

RECOMMENDATION

That Council approves the amended total contract value for Contract 30196 - Energy Performance Contract by \$57,976.56 to \$2,257,976.56 including GST, and extends the contract completion date for works to 30 June 2023 and monitoring and verification to 30 June 2024.

Key Matters

Council approval is required to amend the total contract value and contract completion dates for works and the measurement and verification (M&V) period for Contract Number 30196, Energy Performance Contract (EPC).

Approval is sought to amend the initial total contract value by an additional \$57,976.56 to \$2,257,976.56 including GST, and to extend the works completion date to 30 June 2023, and therefore the M&V to 30 June 2024. The revised total contract value and contract period needs to be updated in Council's contract management system.

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The amended contract value results from the scope variation required to deliver the EPC and its agreed energy efficiency measures. These variations included:

- Change in energy efficiency lighting at the Whitehorse Recycling and Waste Centre, Eley Park Community Centre, Box Hill Community Arts Centre, Aqualink Box Hill, Sportlink, Box Hill Town Hall and Operations Centre to the value of \$49,966.36 including GST.
- Relocation of solar photovoltaic inverter at Eley Park Community Centre to the value of \$5,254.70 including GST.
- Installation of safety switch at Box Hill Community Arts Centre to the value of \$2,073.50 including GST.
- Repair of rusted roof sheeting at the Box Hill Community Arts Centre identified when installing the new air conditioning unit to the value of \$682.00 including GST.

In addition, due to the ongoing impacts of COVID-19 related supply chain delays, an extension to the contract period is required for the completion of works at two of the eight sites, followed by the M&V process.

All expenditure is in accordance with the agreed scope of work in the Detailed Feasibility Study and outlined energy efficiency measures endorsed at the Council Meeting held on 15 April 2019.

A further report will be provided to Council on the initial results of the measurement and verification phase after the contracted works are completed.

STRATEGIC ALIGNMENT

The delivery of the EPC relates to the following from the Council Plan 2021-2025:

Strategic Direction 5: Sustainable Climate and Environmental Care

Objective 5.1: Take a leadership role in tackling climate change.

BACKGROUND

Contract 30196 is for the delivery of Council's EPC by 3E Group, previously known as Ecosave. It encompasses a package of energy efficiency measures to be delivered, where greenhouse gas emission savings are guaranteed to be achieved via a measurement and verification (M&V) process.

On 15 April 2019, Council approved the total contract value of \$2,200,000 including GST to deliver the EPC over two financial years, 2019/2020 and 2020/21, where it included:

- Delivery of energy efficiency measures and works at eight Council and community facilities.

10.5

(cont)

- Delivery of 24 months of M&V services post-installation of the above measures to the value of \$58,482.70 including GST.
- All energy efficiency works to be contractually completed by 30 June 2021.
- M&V services to be contractually completed by 30 June 2023.

A summary of energy efficiency measures under the Contract are:

- Installation of solar photovoltaic (PV) systems.
- Replacement of lighting with high efficiency lighting, and upgrading or installing lighting controls.
- Replacement of inefficient heating and cooling plant, and upgrade of controls.
- Installation, upgrade and integration of building management systems.
- Optimisation of pool plant equipment.
- Replacement of chiller and boiler with more efficient design and model.
- Replacement of air-conditioning units with more efficient design and model.

These measures have been implemented at eight Council and community facilities: Aqualink Box Hill, Sportlink, Whitehorse Civic Centre, Recycling and Waste Centre, Eley Park Community Centre, Box Hill Town Hall, Box Hill Community Arts Centre, and Operations Centre.

Discussion and Options

The contract variations are committed and the extension of time is unavoidable, so there are no other options and the additional expenditure can be accommodated.

The results of the measurement and verification phase will be presented to Council in further reports on environmental sustainability outcomes.

SUPPORTING REPORT DETAILS

Legislative and Risk Implications

There are no legal or risk implications arising from the recommendation contained in this report.

Equity, Inclusion, and Human Rights Considerations

It is considered that the subject matter does not raise any human rights issues.

Community Engagement

No community engagement was required for this report.

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Financial and Resource Implications

Due to the contract variations, the total contract value is to be increased by \$57,976.56 to \$2,257,976.56 including GST. There are no additional funds required as the additional cost can be funded from savings in other programs.

Innovation and Continuous Improvement

There are no Innovation and Continuous Improvement matters arising from the recommendation contained in this report.

Collaboration

No collaboration was required for this report.

Conflict of Interest

Council officers involved in the preparation of this report have no conflict of interest in this matter.

Conclusion

It is recommended that Council endorse this report to ensure the revised total contract value and contract period is reflected in Council's contract management system.

The results of the measurement and verification phase will be presented to Council in further reports on environmental sustainability outcomes.

10.6 Morack Public Golf Course - Naming

Leisure and Recreation Services
Director Community Services

SUMMARY

Council's golf venue in Vermont South is currently undergoing a major redevelopment with works including a multipurpose golf pavilion, indoor/outdoor café, 25-bay driving range and 18-hole mini-golf facility.

The site is currently referred by various names including Morack Public Golf Course, Morack Golf and Morack Public Golf Course and Driving Range. Prior to the lease commencing in late 2023, Council should formalise a single name for the facility.

As part of the project consultation, the community was asked for their feedback on formalising the site name to ensure consistency and ease of recognition when the site is referred to.

RECOMMENDATION

That Council:

1. Formalise the name of Council's golf venue in Vermont South as 'Morack Public Golf'
 2. Register this name with the relevant Victorian Register of place names.
-

KEY MATTERS

As part of the redevelopment for Morack Public Golf Course & Driving Range an extensive community engagement process was undertaken. One section of the community consultation survey focused on the name of the site.

It was noted that the site is currently referred to by various names including Morack Public Golf Course, Morack Golf and Morack Public Golf Course and Driving Range.

Respondents strongly supported retaining the name 'Morack', and preference for variations were split fairly evenly. The recommendation to formally name the site 'Morack Public Golf' reflects this engagement. The retention of 'public' as part of the name is critical to ensuring the publicly-owned, inclusive and accessible nature of the facility remains prominent.

STRATEGIC ALIGNMENT

Officially naming the site will assist in enhancing the identity of the facility which aligns with Council Plan Strategic Direction 4: Our Built Environment; Movement, and Public Places, Objective 4.1: Assets, facilities and urban design of a quality that provides the highest levels of utility and enhances the connection between the built, natural, heritage and social environments.

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The community engagement process undertaken to form this recommendation aligns with key priority 6.1 of Council's Community Vision 2040: Engage with the community collaboratively to hear their views on what needs to be done.

Policy

There is no specific Council Policy in place for naming of Council sites.

Council's 'Criteria & Procedures for naming Council facilities after individuals' policy has been used as a resource to determine a process to follow, despite the proposed name not being named after an individual.

BACKGROUND

Council's golf course (located on Morack & East Roads, Vermont South) has been variously known as Morack Golf, Morack Public Golf Course, Morack Public Golf Course and Driving Range and other variations of these.

It is important for the lease of the facility that Council confirms a single name and registers the name, to remove future doubt or confusion of the site name. The lease with Swing Factory emphasises that Council has naming rights of the facility and that Swing Factory is obliged to use the formal name in its promotions.

Discussion and Options

The name selected should reflect the new, broad offerings of the facility. It should be brief, recognisable and lend itself to effective (print and digital) marketing. It should retain existing recognition and familiarity by staying close to names already in use.

'Morack Public Golf' is recommended as it meets these requirements. In social and digital media, longer versions of the name would be cumbersome and unwieldy.

There is no compelling reason to choose an entirely new name. 'Morack Public Golf' is broad enough to suggest an array of services, beyond just a golf course. It provides flexibility for leaseholder 'Swing Factory' to market the array of services at the facility.

'Public' golf facility

It is important that golfers and potential golfers understand that this is a public golf course and accessible to all. Social media discourse on the Morack project has revealed there's a segment of our community who think golf is exclusive and/or very expensive. It will be important for Council's corporate communications to reinforce that this is a community facility and accessible to all. It will also be to Swing Factory's advantage to emphasise this in its marketing.

10.6
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Including 'Public' in the name will strengthen the understanding that this is an accessible, Council-owned golf facility that does not require players to have a membership. This will be important, as Swing Factory's branding will also be prominent or present in all marketing materials.

"Morack Golf" has a more contemporary ring and might lend itself better to digital marketing. Nonetheless, "Morack Public Golf" is recommended. Retaining the word 'public' in the name reflects Council's significant investment in the redevelopment of the community facility and mitigates the risk of perception that the facility has been fully 'privatised'.

SUPPORTING REPORT DETAILS

Legislative and Risk Implications

The Geographic Place Names Act 1998 makes provision for naming of places and the registration of place names.

Geographic Names Victoria (GNV) oversees the naming and registration of roads, features, and localities in Victoria.

Registering the chosen names through GNV will ensure obligations under the Act are met.

Equity, Inclusion, and Human Rights Considerations

In developing this report to Council, the subject matter has been considered in accordance with the requirements of the *Charter of Human Rights and Responsibilities Act 2006*.

It is considered that the subject matter does not raise any human rights issues.

Community Engagement

Community engagement on the redevelopment was undertaken in late 2021.

Part of the consultation process was to inform the community of Council's intention to review the facility name.

The community survey noted the three main variants of Morack Golf in use, and asked for comment. 72% of survey respondents indicated a preference for choosing a name from the variations or existing names in use. Only 28% of survey respondents indicated a preference for considering a new name all together.

Of those who indicated a preference for choosing a name from the existing names in use:

- 37% preferred Morack Golf
- 37% preferred Morack Public Golf Course and Driving Range
- 26% preferred Morack Public Golf Course

This community engagement shows strong support for keeping to one of the variants in current use, and that preferences among those names are fairly evenly split.

10.6
(cont)

“Morack Public Golf” is consistent with the various ‘Morack’ options the community was asked about. The strongest community preference was for retaining ‘Morack’, and then preferences for the variations were split reasonably evenly. This recommendation is consistent with what our community told us.

Financial and Resource Implications

There will be minor financial and resource implications once a formal name is confirmed, which include:

- Name registration
- Signage and physical branding updates (will be required regardless as part of the new management lease agreement)
- Digital branding updates

Innovation and Continuous Improvement

There are no Innovation and Continuous Improvement matters arising from the recommendation contained in this report.

Collaboration

The following teams/groups have been included in the process to reach the recommendation:

- Leisure and Recreation services team
- Strategic Marketing and Communications team
- Community (redevelopment project consultation)

Conflict of Interest

Council officers involved in the preparation of this report have no conflict of interest in this matter.

Conclusion

Based on community feedback and an accepted need for a standard site name for Council’s golf venue in Vermont South, it is recommended that the site be formally named ‘Morack Public Golf’.

If adopted by Council, officers will register the name through Geographic Names Victoria (as required under the Geographic Place Names Act 1998) and undertake a process for updating digital and physical branding.

10.7 Creation of Temporary Car Parking at Former Box Hill Bowls Club Site

Project Delivery and Assets
Director Infrastructure
ATTACHMENT

SUMMARY

The opportunity for a temporary off-street car park at the former Box Hill Bowls Club site located at 835 Whitehorse Road, Box Hill has been investigated.

A concept plan has been developed (Attachment 1) which indicates up to 98 car parking spaces could be provided on the existing site, subject to final design, including vehicle access to the site.

This report recommends a proposed approach to implementation of this concept plan through a Design and Construction methodology and provides estimated costs for consideration in the 2023/24 budget process.

RECOMMENDATION

That Council:

1. Allocates funding of \$600,000 in the 2023/24 budget to provide a temporary car park at 835 Whitehorse Road, Box Hill via a Design and Construction Contract; and
 2. Notes that further investigation and development of the Design and Construction Contract for a temporary car park at 835 Whitehorse Road, Box Hill will be completed in 2022/23.
-

Key Matters

Officers have advocated for the Suburban Rail Loop Authority (SRLA) to convert the former Box Hill Bowls Club land at 835 Whitehorse Road to car parking. The SRLA declined to provide funding for the works or to undertake these works on Council's behalf.

A concept plan for a temporary car park has been developed for tendering as a Design and Construction Contract. Tendering will be completed in 2022/23 to allow works in 2023/24.

The proposed specification is for temporary car parking at the site. The scope of works includes minor demolition of bowls club fixtures (plinth, matting, some light poles etc.), construction of new vehicle access ramp and crossover, provision of additional pavement materials, sealed surface, line marking, minor kerb works, solar lights, and parking ticket machines.

Estimated cost for the project is \$600,000 which includes a 20% contingency to allow for unexpected costs associated with the removal of the bowling greens.

It is proposed that parking fee income of between \$43,000 and \$216,000 could be generated from parking fees, depending on car park utilisation rates.

10.7
(cont)

STRATEGIC ALIGNMENT

This report aligns with the following strategic priorities of Council:

Whitehorse Vision – Theme 5 “Transport and getting around”

Increase car parking in specific locations and improve on-street parking arrangements.

Council Plan – Strategic Direction 2

Strategy 2.1.2: Local Law and parking service provision that is designed to support and assist business; and

Strategic Direction 4

Strategy 4.1.1: Plan, build, renew and maintain community assets and facilities to meet current and future service needs in an environmentally, financially and socially sustainable way.

Policy

The proposal is broadly in line with the objectives of the following adopted Council Plans.

- Box Hill Integrated Transport Strategy 2020
- Box Hill MAC Integrated Transport Strategy 2020
- Box Hill Central Activities Car Parking Strategy 2014

BACKGROUND

The Box Hill Bowls Club ceased operation at 835 Whitehorse Road, Box Hill in 2016. The site has remained vacant since that time with Council undertaking minimum levels of maintenance to ensure the area’s overall amenity. The bowls club house has been disconnected from services and is vacant.

The longer term future of this site has yet to be determined by Council and an opportunity exists to create a temporary car park to provide additional off-street parking options.

Grading of the temporary car park surface will need to be completed to reshape the land from the bowling green surface and the access off Poplar Street will need to be considered as part of the final design to ensure vehicles can safely access the site and storm water runoff can be managed.

There is limited information currently available for the site and further investigation and testing will be completed in 2022/23 from existing budget funding to inform the design and construct contract specification, particularly regarding the temporary car park pavement requirements and bowling green decommissioning.

10.7
(cont)

Discussion and Options

Options available are:

1. Leave the site in its current configuration and not construct a temporary car park.
2. Provide a temporary car park via a design and construction contract and allocate funding of \$600,000 in the 2023/24 budget.

SUPPORTING REPORT DETAILS

Legislative and Risk Implications

Due to the temporary nature of the car park, the proposed scope will not look at overall site drainage. As the site may be prone to flooding, this risk will need to be mitigated through managed access to site during flood impact events.

Equity, Inclusion, and Human Rights Considerations

In developing this report to Council, the subject matter has been considered in accordance with the requirements of the *Charter of Human Rights and Responsibilities Act 2006*.

The proposed concept design does not include accessible car parking spaces and is not designed in compliance with DDA requirements for access and mobility.

Community Engagement

No community engagement has been undertaken preparing this report.

There will need to be future notification of Council's intent to charge a fee for parking on the site.

Financial and Resource Implications

Construction costs have been based on a concept plan and assuming a design and construction methodology. The estimated cost includes contingency and provisional amounts.

Parking Income *

It is proposed that parking fee income will help offset the project construction costs. Parking Income would be derived from the installation of two parking ticket machines which could be installed and serviced within existing budget allocations. Annual income likely to be generated from parking fees is between \$43,000 and \$216,000 depending on car park utilisation rates.

Occupancy rate	20%	40%	60%	80%	100%
Daily Income	\$166.60	\$333.20	\$499.80	\$666.40	\$833.00

* Parking income from introduction of ticket machines based on % occupancy across 98 car spaces @ proposed 23/24 fees and charges all day rate - \$8.50.

10.7
(cont)

Innovation and Continuous Improvement

There are no Innovation and Continuous Improvement matters arising from the recommendation contained in this report.

Collaboration

No collaboration was required for this report.

Conflict of Interest

The *Local Government Act 2020* requires members of Council staff, and persons engaged under contract to provide advice to Council, to disclose any direct or indirect interest in a matter to which the advice relates.

Council officers involved in the preparation of this report have no conflict of interest in this matter.

Conclusion

The recommendation to provide a temporary car park at 835 Whitehorse Road will increase the number of off-street car park spaces available in Box Hill and make use of a currently vacant site.

The use as a temporary car park will not pre-empt or constrain any future use or decision that Council may make in relation to the site.

Given the temporary nature of the proposed car park, a design and construction methodology is considered appropriate for this project.

Funding of \$600,000 is recommended for the 2023/24 budget to progress the proposal.

ATTACHMENT

- 1 Final Concept Design - Box Hill Bowls Club - Proposed Temporary Carpark Layout 

10.8 CEO Employment and Remuneration Policy - Review

Governance and Integrity
Director Corporate Services
ATTACHMENT

SUMMARY

Section 45 of the *Local Government Act 2020* (Act) outlines the requirement for councils to develop and adopt a Chief Executive Officer (CEO) Employment and Remuneration Policy (Policy). Council adopted its Policy on 13 December 2021.

The policy sets out a process and framework for evaluating Chief Executive Officer performance, determining the remuneration, outlines the reappointment process and the need for Council to obtain independent professional advice in relation to the matters dealt with in the Policy.

Council also has a CEO Employment Matters committee which is advisory in nature and assisted by an Independent Adviser.

A small amendment is required to the notice clause relating to the reappointment of the Chief Executive Officer. This will ensure that there can be no confusion about the window within which the reappointment decision needs to be made.

RECOMMENDATION

That Council adopt the revised Chief Executive Officer (CEO) Employment and Remuneration Policy.

Key Matters

Currently Clause 8 of the Policy relates to the reappointment of the CEO. Subsection 8.1 states that:

“6 months prior to the expiry of the current CEO’s Contract of Employment, the Committee will provide a recommendation to Council on:

- Whether the CEO should be reappointed under a new Contract of Employment; and
- If the recommendation is to reappoint the CEO, the proposed provisions of the further Contract of Employment.”

The wording ‘6 months prior’ technically restricts Council to only being able to decide on the matter on an exact date and not within a range of 6 months.

Council’s lawyers have suggested amending the policy with the following wording (highlighted in orange text) to be:

“**No more than 6 months and no less than 3 months** prior to the expiry of the current CEO’s Contract of Employment the committee will provide a recommendation to Council on:

- Whether the CEO should be reappointed under a new Contract of Employment; and

10.8

(cont)

- If the recommendation is to reappoint the CEO, the proposed provisions of the further Contract of Employment.”

STRATEGIC ALIGNMENT

The policy aligns with the Council Plan objective 8.3, Good Governance and Integrity - Compliance with Council policies, legislative requirements and regulations.

Policy

- This Policy provides for the following matters which Council is responsible for under the Act or as a requirement of this Policy:
 - The recruitment and appointment of the Chief Executive Officer ensuring that
 - Approving the Contract of Employment entered into between Council and the Chief Executive Officer;
 - The appointment of an Acting Chief Executive Officer for periods in excess of 28 days;
 - The provision of independent professional advice in relation to the matters dealt with in the Policy;
 - The monitoring of the Chief Executive Officer’s performance;
 - An annual review of the Chief Executive Officer’s performance; and
 - Determining the Chief Executive Officer’s remuneration.

Discussion and Options

- Advice received from Council’s lawyers have advised that the current clause 8.1 requires Council to make a decision on the reappointment strictly on one day of the year.
- A strict reading of this clause also requires CEO Employment Matters Committee (EMAC) to first determine and make to Council a recommendation on whether to reappoint the CEO. Council must then meet to receive EMAC’s recommendation on reappointment being 1 March in the year of expiry of the contract.

SUPPORTING REPORT DETAILS

Legislative and Risk Implications

The suggested change to the policy will address the legal and risk implications and provide Council with greater certainty and flexibility in making a reappointment of the CEO.

Equity, Inclusion, and Human Rights Considerations

In developing this report to Council, the subject matter has been considered in accordance with the requirements of the *Charter of Human Rights and Responsibilities Act 2006*.

10.8

(cont)

It is considered that the subject matter does not raise any human rights issues.

Community Engagement

No community engagement was required for this report.

Financial and Resource Implications

There are no financial or resource implications arising from the recommendation contained in this report.

Innovation and Continuous Improvement

There are no Innovation and Continuous Improvement matters arising from the recommendation contained in this report.

Collaboration

No collaboration was required for this report.

Conflict of Interest

The *Local Government Act 2020* requires members of Council staff, and persons engaged under contract to provide advice to Council, to disclose any direct or indirect interest in a matter to which the advice relates. Council officers involved in the preparation of this report have no conflict of interest in this matter.

Conclusion

Changes to the wording is required to the CEO Employment and Remuneration Policy to provide clarity on the timing of the reappointment process for the CEO.

ATTACHMENT

- 1 CEO Employment and Remuneration Policy -Feb 2023 draft 

10.9 Records of Informal Meetings of Councillors

RECOMMENDATION

That the record of Informal Meetings of Councillors be received and noted.

Councillor Informal Briefing 13 February 2023 – 6.30pm-6.41pm		
Matter/s Discussed:	Councillors Present	Officers Present
<ul style="list-style-type: none"> Public Presentations Tender Evaluation (Contract 30414) Delivery of Concrete Paving, Minor Asphalt Works and Pavement Marking Council Agenda Items 13 February 2023 	Cr Lane (Mayor & Chair) Cr Cutts (Deputy Mayor) Cr Barker Cr Davenport Cr Liu Cr Massoud Cr McNeill Cr Munroe Cr Skilbeck Cr Stennett	S McMillan J Green L Letic S Cann S Sullivan S White V Ferlaino K Woods S Lozsan
Disclosures of Conflict of Interest	None Disclosed	

Councillor Briefing 20 February 2023 – 6.30pm-9.45pm		
Matter/s Discussed:	Councillors Present	Officers Present
<ul style="list-style-type: none"> CEO Employment Matters Committee Surplus Budget Update Statutory Planning Review Quarterly Performance Report, October to December 2022/23 Draft Council Plan for Implementation in Years 3 & 4 Investment & Economic Development Strategy 2023-2027 Draft Council Agenda Items 27 February 2023 	Cr Lane (Mayor & Chair) Cr Cutts (Deputy Mayor) Cr Barker Cr Carr Cr Davenport Cr Liu Cr Massoud Cr McNeill Cr Munroe Cr Skilbeck Cr Stennett	S McMillan J Green L Letic S Cann S Sullivan S White C Altan V Ferlaino K Woods C Bolitho C Clarke Z Quinn Z Tropiano
Disclosures of Conflict of Interest	None Disclosed	

11 COUNCILLOR DELEGATE AND CONFERENCE / SEMINAR REPORTS

11.1 Reports by Delegates

(NB: Reports only from Councillors appointed by Council as delegates to community organisations/committees/groups)

RECOMMENDATION

That the reports from delegates be received and noted.

11.2 Reports on Conferences/Seminars Attendance

RECOMMENDATION

That the record of reports on conferences/seminars attendance be received and noted.

CLOSURE OF THE MEETING TO THE PUBLIC

That in accordance with Section 66(2)(a) of the Local Government Act 2020, Council close the Meeting to members of the public and adjourn for five minutes to allow the public to leave the Chamber prior to considering the following confidential matters:

12 CONFIDENTIAL REPORTS

12.1 Aquatics Service Review

RECOMMENDATION

That in accordance with Section 61 (1) and 66 (2)(a) of the Local Government Act 2020 the Council should resolve to go into camera and close the meeting for the consideration of this item, as the matter to be discussed is confidential information for the purposes of section 3 (1) of the Local Government Act 2020.

This ground applies because the matter concerns information that could expose Council's commercial undertakings and result in a detrimental financial impact.

13 CLOSE MEETING