



Whitehorse City Council

AGENDA

Council Meeting

on

Monday 31 January 2022

at 7:00pm

Members: (Mayor) Cr Liu, Cr Barker, Cr Carr, Cr Cutts,
Cr Davenport, Cr Lane, Cr McNeill,
(Deputy Mayor) Cr Massoud, Cr Munroe, Cr Skilbeck,
Cr Stennett

Mr Simon McMillan
Chief Executive Officer

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AGENDA

1 PRAYER

1a 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.

1b 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 WELCOME

3 APOLOGIES

4 DISCLOSURE OF CONFLICT OF INTERESTS

5 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

Minutes of the Council and Confidential Council Meeting 13 December 2021.

RECOMMENDATION

That the minutes of the Council and Confidential Council Meeting 13 December 2021 having been circulated now be confirmed.

6 PUBLIC PRESENTATIONS

7 PETITIONS

7.1 Preventative Measures stopping cars mounting kerb at Kerrimuir Shops

A petition signed by 78 signatories has been received requesting that Council implement measures to stop cars mounting the kerb at Kerrimuir Shops.

RECOMMENDATION

That the petition be received and referred to the Director City Development for appropriate action and response.

7.2 Permit Process for issuing Demolition at 13-25 Strabane Avenue Mont Albert North

A petition signed by fifteen signatories has been received requesting Council advise the process for issuing a permit for demolition of 13-25 Strabane Avenue Mont Albert North.

RECOMMENDATION

That the petition be received and referred to the Director City Development for appropriate action and response.

8 PUBLIC QUESTION TIME

9 NOTICES OF MOTION

10 URGENT BUSINESS

11 COUNCIL REPORTS

11.1 22-24 Prospect Street, BOX HILL (CP 161206 5) Buildings and works for construction of a mixed use tower building, basement and a reduction to the car parking requirements.

City Planning and Development
File Number: WH/2020/1008
ATTACHMENT

SUMMARY

This application was advertised, and a total of 6 objections were received. The objections raised issues with overall building height, Agreement non-compliance, public realm, inconsistency with policy, notification period, and other amenity impacts. An online Consultation Forum was held on 16 November 2021, chaired by Councillor Liu, at which the issues were explored, however no resolution was reached between the parties. This report assesses the application against the relevant provisions of the Whitehorse Planning Scheme, as well as the objector concerns. It is recommended that the application be supported, subject to conditions.

RECOMMENDATION

That Council:

- A. Being the Responsible Authority, having caused Application WH/2020/1008 for 22-24 Prospect Street, BOX HILL (CP 161206 5) to be advertised and having received and noted the objections is of the opinion that the granting of a Planning Permit for the Buildings and works for construction of a mixed use tower building, basement, and a reduction to the car parking requirements, is acceptable and should not unreasonably impact the amenity of adjacent properties.
- B. Issue a Notice of Decision to Grant a Permit under the Whitehorse Planning Scheme to the land described as 22-24 Prospect Street, BOX HILL (CP 161206 5) for the Buildings and works for construction of a mixed use tower building, basement, and a reduction to the car parking requirements, subject to the following conditions:
 1. Before the development starts, but excluding the works detailed in the Early Works Plan, amended plans must be submitted to and approved by the Responsible Authority in a digital format. Once approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale, with dimensions, and be generally in accordance with the plans prepared by DKO architect, dated 6/10/2021, Version C, modified, but modified limited, to show:
 - a) The ground level Food and Drink premises with bi-fold windows or similar to the undercroft forecourt and/or to the Prospect Street front facade;
 - b) The street setback of the southern airlock pedestrian entry increased by 1 metre.

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- c) The street setback of the Food and Drink premises section of floor area that is currently 0 metres, increased such that it mirrors the modified setback of the airlock area as required by Condition 1b).
- d) The top 600mm of the 2.6 metre high balustrade that runs the perimeter of all level 4 podium walls, constructed of glass or similar to enable daylight to filter into adjoining properties.
- e) A Services Plan demonstrating that the use of the Prospect Street frontage is minimised for services, to the satisfaction of the Responsible Authority.
- f) Should the Services Plan required by Condition 1f) not require the relocation of the south-western booster box from the southern frontage, the following is required:
 - i. The materiality for booster doors to the south-western portion of the front podium façade, modified and diversified to the satisfaction of the Responsible Authority, to ensure that it is not a dominant street feature and more effectively blends in with the architectural expression of the front podium façade.
- g) Section Plans across the site to demonstrate how all level changes are addressed on-site, to the satisfaction of the Responsible Authority.
- h) All doors must not open into any road reserve or laneway, unless with the prior written consent of the Responsible Authority.
- i) The location of intercoms for both Fairbank Lane vehicular access points must be shown on plans.
- j) The locations of Tree Protection Zone described in Condition 5, with the nominated street trees clearly notated on both site and landscape plans, and a summary of the requirements of Conditions 5 and 6 to be annotated on the development and landscape plans.
- k) The location of Council's stormwater pits in the laneway that do not conflict with the proposed vehicle crossing / access.
- l) Dimensions and notes to detail all disabled parking spaces accurately designed and detailed in accordance with AS 2890.6;
- m) All columns that abut car parking spaces must be located and dimensioned so that they are not within the area shown in 'Diagram 1' of Clause 52.06-9 to improve access to a parked vehicle.
- n) A longitudinal section of the circulation roadway showing the headroom clearance provided at the entry point and along the travel path of:
 - i. The proposed 6.4 metre long waste collection vehicle (3.5 metre clearance height), and otherwise;

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- ii. A minimum height clearance of 2.2 metres to be provided throughout all car parking levels for private vehicles.
- o) Any changes required to meet Condition 13 – Wind Report.
- p) Plans updated to include all relevant requirements of the following:
 - i. The Landscape Plan as required by Condition 3;
 - ii. The Façade Strategy as required by Condition 9;
 - iii. The Car Parking Management Plan as required by Condition 10;
 - iv. The Sustainability Management Plan as required by Condition 12;
 - v. The Wind Report as required by Condition 13;
 - vi. The Waste Management Plan as required by Condition 15;
 - vii. The Lighting Strategy as required by Condition 16;
 - viii. The Green Travel Plan as required by Condition 17;
 - ix. The Acoustic Report and addendum as required by Condition 34; (Condition 34);
- q) The following reports to be amended as required, and will form part of the endorsed documentation:
 - i. The Landscape Plan as required by Condition 3;
 - ii. The Landscape Maintenance Plan as required by Condition 4;
 - iii. The Façade Strategy as required by Condition 9;
 - iv. The Car Parking Management Plan as required by Condition 10;
 - v. The Sustainability Management Plan as required by Condition 12;
 - vi. The Wind Report as required by Condition 13;
 - vii. The Waste Management Plan as required by Condition 15;
 - viii. The Lighting Strategy as required by Condition 16;
 - ix. The Green Travel Plan as required by Condition 17;
 - x. The Acoustic Report and addendum as required by Condition 34; (Condition 34);

All of the above must be to the satisfaction of the Responsible Authority. Once approved these plans become the endorsed plans of this permit.

2. The layout and operation of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plans and documents, and must not be altered or modified without the further written consent of the Responsible Authority.

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Landscaping / Tree Protection

3. Prior to endorsement of plans, an amended detailed landscape plan prepared by a suitably qualified and experienced person or firm has been submitted to and endorsed by the Responsible Authority. Once endorsed this plan shall form part of this permit. This plan must be generally in accordance with the landscape plan prepared by John Patrick Landscape Architects Pty Ltd, but modified to show:
 - a) Planting throughout the development including front façade treatment, balconies, terraces and various gardens, where applicable, detailing:
 - i. Updated to be consistent with the Condition 1 requirements.
 - ii. All wind mitigation measures specified in Condition 13 clearly highlighted and notated.
 - iii. A complete garden scheme;
 - a. Capacity for the planting to achieve visual softening of building bulk;
 - b. The proposed garden beds and the green walls / facade (footprint and depth);
 - c. A planting schedule of all proposed vegetation (trees, shrubs and ground covers) which includes, botanical names, common names, pot size, mature size and total quantities of each plant, and is 'fit for purpose' for the respective plants proposed location;
 - d. Soil depths for all planted species;
 - e. Details of all suitable containerised planting infrastructure and tree anchoring systems;
 - f. Details of all containerised planting infrastructure, including demonstrating that the garden areas on level 4 are capable of holding the deep root zone of the tree sizes shown, with details for the protection of trees during windy weather conditions.
 - iv. All proposed services nominated.

Landscaping in accordance with this approved plan and schedules must be completed before the development is occupied. Once approved these plans become the endorsed plans of this permit.

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4. Prior to endorsement of the plans, a Landscaping Maintenance Plan must be prepared by a suitably qualified consultant must be submitted for approval to the satisfaction of the Responsible Authority. The landscaping maintenance plan must be generally in accordance with the landscape maintenance plan prepared by John Patrick Landscape Architects, dated February 2020, be amended to include, but is not limited to:
 - a) Consistency with the Condition 1 requirements.
 - b) Details of the ongoing maintenance procedures to ensure that the garden areas and all plants remain healthy and well maintained to the satisfaction of the Responsible Authority. This must include:
 - i. Irrigation frequency and delivery method.
 - ii. Drainage.
 - iii. Pruning and mulching.
 - iv. Specific procedural measures confirming how all vertical/hanging/cascading plants will be maintained;
 - v. Any dead or dying plant species detailed in the landscape plan detailed in Condition 3 of this permit to be replaced with similar plant species as necessary to the satisfaction of the Responsible Authority.

Once approved this plan will become part of the endorsed plans of this permit.

5. Prior to commencement of any building or works (includes demolition and early works) on the land, a Tree Protection Zone (TPZ) must be established on the naturestrip and maintained during, and until completion of, all buildings and works including landscaping, around the following trees in accordance with the distances and measures specified below, to the satisfaction of the Responsible Authority:
 - a) Tree Protection Zone distances for the two street trees directly adjacent the site's Prospect Street frontage – 4 metres from centre base of tree.
 - b) Tree Protection Zone measures are to be established in accordance with Australian Standard 4970-2009 and are to include the following:
 - i. Erection of solid chain mesh or similar type fencing at a minimum height of 1.8 metres in height held in place with concrete feet.
 - ii. Signage placed around the outer edge of perimeter the fencing identifying the area as a TPZ. The signage should be visible from within the development, with the lettering complying with AS 1319.

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- iii. No excavation, constructions works or activities, grade changes, surface treatments or storage of materials of any kind are permitted within the TPZ unless otherwise approved within this permit or further approved in writing by the Responsible Authority.
 - iv. All supports and bracing should be outside the TPZ and any excavation for supports or bracing should avoid damaging roots where possible.
 - v. No trenching is allowed within the TPZ for the installation of utility services unless tree sensitive installation methods such as boring have been approved by the Responsible Authority.
 - vi. Where construction is approved within the TPZ, fencing and mulching should be placed at the outer point of the construction area.
 - vii. Where there are approved works within the TPZ, it may only be reduced to the required amount by an authorized person only during approved construction within the TPZ, and must be restored in accordance with the above requirements at all other times.
6. During construction of any buildings, or during other works, the following tree protection requirements are to be adhered to, to the satisfaction of the Responsible Authority:
- a) All buildings and works for the demolition of the site and construction of the development (as shown on the endorsed plans) must not alter the existing ground level or the topography of the land within 2.5 metres of any street tree.
 - b) No roots are to be cut or damaged during any part of the construction process.
 - c) Any underground services within the tree protection zone must be bored.
 - d) Any excavation within the tree protection zone of the street tree must be undertaken by hand, hydro excavation or air spading to ensure adequate protection of the trees root network.
7. The garden and recreational areas at Level 4, must be available for use by all staff and visitors.
8. The garden areas shown on the endorsed plan must only be used as gardens and must be maintained in a proper, tidy and healthy condition to the satisfaction of the Responsible Authority.

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Façade Strategy

9. Prior to the endorsement of plans, a Façade Strategy must be submitted to and approved by the Responsible Authority. When approved this will form part of the endorsed plans. All materials, finishes and colours must be in conformity with the approved Façade Strategy to the satisfaction of the Responsible Authority. The Façade Strategy must detail:
 - a) Consistency with the Condition 1 requirements.
 - b) A concise description by the architect of the building design concept and how the façade works to achieve this.
 - c) A detailed schedule of colours, materials and finishes, including the colour, type and quality of materials showing their application and appearance, and in particular the fine grain details of façade treatments. This can be demonstrated in coloured elevations or renders from key viewpoints, to show the materials and finishes linking them to a physical sample board with clear coding.
 - d) A reflectivity report prepared by a suitably qualified person, which includes specifications of glazing materials to be used on all external walls, including details demonstrating that they will not reflect unreasonable glare when viewed from any nearby road network, to the satisfaction of the Responsible Authority.
 - e) External building materials and finishes not resulting in hazardous or uncomfortable glare to pedestrians, public transport operators and commuters, motorists, aircraft, or occupants of surrounding buildings and public spaces;
 - f) Elevation details generally at a scale of 1:50 illustrating typical podium details, entries and doors, typical privacy screening and utilities, typical tower detail, and any special features which are important to the building's presentation.
 - g) Cross sections or other method of demonstrating the façade systems, including fixing details indicating junctions between materials and significant changes in form and/or material.
 - h) Roof canopies with screens to prevent rain water from dripping onto pedestrians, patrons and visitors alike;
 - i) Information about how the façade will be accessed and maintained and cleaned, including planting where proposed.
 - j) Example prototypes and/or precedents that demonstrate the intended design outcome indicated through plans and perspective images to produce a high quality built form outcome in accordance with the design concept.

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Car Parking Management Plan (CPMP)

10. Prior to the endorsement of plans, a CPMP to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the CPMP will be endorsed and will form part of this permit. The CPMP must address, but not be limited to, the following:
 - a) Consistency with the Condition 1 requirements;
 - b) The management of any applicable visitor car parking spaces and security arrangements (intercom etc) for occupants of the development, including details on how residential visitors are to access car parking;
 - c) Possible car share arrangements;
 - d) Management of loading bays for all retail land uses, including all vehicular and pedestrian related activity, and any potential traffic conflict caused by queuing instances from the mentioned purposes;
 - e) Details of way-finding, cleaning and security of the end of trip bicycle facilities;
 - f) Detail any access controls to the parking area, such as boom gates which must take into account the required queue length required as per section 3.4 of AS 2890.1;
 - g) For all applicable food and drink premises, the location of and connection point for the grease removal truck, from a parking space that will not block vehicular access to or from the site, must be detailed.
 - h) A schedule of all proposed signage including:
 - i. Directional arrows and signage, informative signs indicating location of disabled bays and bicycle parking;
 - ii. Exits;
 - iii. Restrictions;
 - iv. Pay parking system; and
 - v. Any other relevant signs;
 - vi. The collection of waste and garbage including the separate collection of organic waste and recyclables, which must be in accordance with the Waste Management Plan required by Condition 15 and
 - vii. Details regarding the management of loading and unloading of goods and materials.
- 11) The provisions, recommendations and requirements of the endorsed Car Park Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

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Sustainability Management Plan (SMP)

- 12) Prior to the endorsement of plans, an amended SMP to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the amended SMP will be endorsed and will form part of this permit. The amended SMP must be generally in accordance with the SMP prepared by Ark Resources Pty Ltd, dated 24 February 2021, but modified to include, show or address:
- a) Consistency with the requirements of Condition 1.
 - b) A Green Star Design and As Built v 1.3 Scorecard that meets or exceeds an acceptable overall score of 60 points. Supporting assessments and calculations that pertain to credits claimed associated with 'Energy', 'Water', 'Daylight' and 'Stormwater' criteria must be provided to the satisfaction of the Responsible Authority.
 - c) An Integrated Water Management Assessment addressing stormwater quality performance in addition to ensuring that the Responsible Authority's collective integrated water management expectations and requirements pursuant to Clauses 34 and 44 of the State Environment Protection Policy (Waters) are satisfied.
 - d) Appropriate access indicated to maintain and service integrated water management systems demonstrated on Development Plans.
 - e) An annotation on Development Plans indicating the capacity of the rainwater tanks and that the capacities stated are allocated exclusively for reuse/retention purposes and excludes any volume allocated for detention.
 - f) The amount of toilet services and irrigation areas that the rainwater tanks will facilitate annotated on Development Plans.
 - g) Other stormwater treatment and filtration systems to manage stormwater quality from trafficable areas.
 - h) Water efficient fixtures and fittings include minimum 5 star WELS taps, 4 star WELS toilet, 3 star WELS showerheads (≤ 7.5 L/min) and 5 star WELS urinals.
 - i) Daylight modelling assessments to the satisfaction of the Responsible Authority.
 - j) Natural ventilation with all operable windows, doors, terrace openings and vents provided in elevation drawings.

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- k) That prior to the commencement of development and works either a NABERS Energy Commitment Agreement indicating that a 5.5 star NABERS Office rating will be achieved, or a BCA Section J or JV3 Energy Efficiency Assessment with documentation status detailed as Issued for Tender. The BCA Section J or JV3 Assessment must indicate the energy efficiency performance with respect to the development's reference/base case. The assessment is required to exceed the National Construction Code 2019 Building Code of Australia requirements and include commitments towards thermal performance (i.e. R-values), artificial lighting and glazing (i.e. U- and SHGC- values). Any changes to the Issued for Tender BCA Section J or JV3 Energy Efficiency Assessment documentation must be approved, to the satisfaction of the Responsible Authority.
- l) Regulating thermal comfort for the development by ensuring that a Predicted Mean Vote (PMV) level between -1 and +1 is achieved.
- m) LED light fittings used to provide artificial lighting and designed to exceed National Construction Code 2019 Building Code of Australia requirements.
- n) Energy efficient heating, cooling and hot water systems indicating the associated COP and EER values, energy efficiency star ratings or equivalent.
- o) Exterior building services equipment including any heating, cooling, ventilation and hot water systems on Development Plans.
- p) A minimum 30 kilowatt solar photovoltaic system.
- q) Double glazing for external windows.
- r) Car park ventilation fitted with CO sensors.
- s) All common, external, service and lift area lighting fitted with sensors or timers.
- t) Common, service and lift area ventilation fitted with sensors or timers.
- u) The location of alternative transport facilities including employee and visitor secure bicycle spaces, showers, and changing facilities demonstrated on Development Plans.
- v) A minimum of 10 car spaces provided with electric vehicle charging infrastructure.
- w) A commitment to divert at least 80% of construction and demolition waste from landfill.
- x) Use of low Volatile Organic Compound (VOC) and formaldehyde products.

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- y) Timber species intended for use as decking or outdoor timber are not unsustainably harvested imported timbers (such as Merbau, Oregon, Western Red Cedar, Meranti, Luan, Teak etc.) and meet either Forest Stewardship Council or Australian Forestry Standard criteria with a commitment provided as an annotation on Development Plans.
- z) Where measures cannot be visually shown, include a notes table or 'ESD Schedule' on Development Plans providing details of the requirements (i.e. average energy rating for the development's dwellings, % energy efficiency improvement, energy and water efficiency ratings for heating/cooling, hot water and plumbing fittings and fixtures etc.).

Once submitted and approved to the satisfaction of the Responsible Authority, the SMP will form part of the endorsed plans under this permit.

The requirements of the SMP must be demonstrated on the plans and elevations submitted for endorsement, and the requirements of this plan must be implemented by the building manager, owners and occupiers of the site when constructing and fitting out the building, and for the duration of the building's operation in accordance with this permit, to the satisfaction of the Responsible Authority.

Wind Report

- 13) Prior to endorsement of plans, the Wind Report prepared by Windtech, dated February 23 2021, must be amended to include, but not limited to:
 - a) Changes required to comply with the dot point recommendations under the 'Executive Summary' of the Wind Report prepared by Windtech Consultants, dated February 23, 2021, pages iii-iv, including, but not limited to:
 - i. The use of at least 30% porous screening and/or gating to the security gates, the substation entrance and the loading zone entrance along Fairbank Lane.
 - ii. The use of at least 30% porous screening and/or gating to a minimum height of 2 metres along the northern aspect of the level 4 terrace area;
 - iii. The inclusions of either a cluster of 2-3 evergreen trees capable of growing 3-4m high and wide, OR a single evergreen tree capable of growing 3-4m high and wide with undergrowth and with protection for the early stages of the tree's growth. These trees should be in the planting zone halfway along the western aspect of the level 4 terrace area.
 - iv. The inclusion of the proposed vegetation located in the planter boxes along the southern aspect of the level 4 terrace area. This vegetation should be densely foliating and capable of growing to a height of 1.2 metres.

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- b) Any changes required due to amended plans in Condition 1
- 14) The recommendations of the wind report must be implemented such that:
 - a) There is no cost to the Responsible Authority,
 - b) There is no reliance on the provision of street trees for wind mitigation.
 - c) There is no reliance on the provision of vertical baffles on public land, except where all appropriate approvals have been obtained from all relevant authorities including the Responsible Authority, and land managers.
 - d) Consent and the appropriate approvals are obtained from Whitehorse City Council for all wind amelioration features that protrude into or over the north and south property boundaries.

Waste Management Plan

- 15) Prior to endorsement of plans, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Waste Management Plan will be endorsed and will form part of this permit. The amended Waste Management Plan must be generally in accordance with the Waste Management Plan prepared by Ratio Consultants, dated 1 October 2020, but modified to include, but not limited to:
 - a) Consistent with the Condition 1 requirements.
 - b) By designed to include required transportable waste compactors.
 - c) Sufficient space for space for bulk/hard waste items.
 - d) Private collection of all waste generated on the site;
 - e) The requirements and outcomes of the amended Waste Management Plan must be demonstrated on the plans and elevations submitted for endorsement.

Once submitted to and approved by the Responsible Authority, the Waste Management Plan must form part of the documents endorsed as part of this planning permit.

The requirements of the Waste Management Plan must be implemented by the building manager, owners and occupiers of the site for the duration of the building's operation in accordance

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Lighting Strategy

- 16) Prior to the endorsement of plans, an amended Lighting Strategy must be prepared to the satisfaction of the Responsible Authority.

The Lighting Strategy must provide details of proposed lighting of Prospect Street, and must be prepared in accordance with the Safer Design Guidelines for Victoria, Department of Sustainability and Environment, June 2005, to the satisfaction of the Responsible Authority. The lighting strategy must also be generally in accordance with the lighting strategy prepared by WSP, dated February 2021, Revision B', but modified to included, but not limited to:

- a) Be consistent with the Condition 1 requirements;
- b) External lighting capable of illuminating access to each the basement ramp and pedestrian areas at ground floor.

Any required lighting that is located, directed and shielded and of limited intensity that no direct light or glare is emitted outside the site, to the satisfaction of the Responsible Authority. This lighting must also be maintained and operated for the life of the building to the satisfaction of the Responsible Authority.

Green Travel Plan

- 17) Prior to endorsement of plans, an amended Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Green Travel Plan will be endorsed and will form part of this permit. The Green Travel Plan must be generally in accordance with the Green Travel Plan prepared by Ration Consultants, dated 2 October 2020, but modified to include, but not be limited to:

- a) Consistency with the Condition 1 requirements of this permit;
- b) Possible car share arrangements;
- c) Information for residents and visitors about public transport options in the area;
- d) Measures to encourage uptake of public transport to and from the approved development.

Early Works and Construction Management Plans

- 18) Except with the written consent of the Responsible Authority, prior to the commencement of any buildings or works, an Early Works Plan must be prepared to the satisfaction of the Responsible Authority. The Early Works Plan must include (but not necessarily be limited to) initial demolition, bulk and detailed excavation. All appropriate approvals must be obtained and the relevant permits in place, prior to endorsement of the Early Works Plan.

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- 19) Prior to the commencement of any site works, including demolition or bulk excavation if applicable, a detailed Construction Management Plan(s) (CMP), to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the CMP will be endorsed and will form part of this permit and must be implemented to the satisfaction of the Responsible Authority. This CMP must be prepared by a suitably qualified person, and be in accordance with the City of Whitehorse Construction Management Plan Guidelines.

When approved, the CMP will be endorsed and will form part of this permit and must be complied with, to the satisfaction of the Responsible Authority, to the extent that this is in the control of the owner of the land. The owner of the land is to be responsible for all costs associated with the works to be undertaken in accordance with the requirements of the approved CMP.

- 20) The provisions, recommendations and requirements of both the approved Early Works Plan and CMP and must both be implemented and complied with to the satisfaction of the Responsible Authority.

Alterations/Reinstatement of Assets

- 21) Prior to commencement, but excluding the works detailed in the Early Works Plan, a Streetscape Plan consistent with the Box Hill Urban Realm Treatment (BHURT) Guidelines, must be submitted to the satisfaction of the Responsible Authority. The Streetscape Plan must detail the design and materials of any required street frontage features and footpath areas from the building facade to the kerb of Prospect Street, as well as Fairbank Lane. .
- 22) Prior to the commencement, but excluding the works detailed in the Early Works Plan, detailed engineering drawings must be prepared to the satisfaction of the Responsible Authority detailing works within Prospect Street and Fairbank Lane. The plans must show existing and proposed works including surface and underground drainage, pavement and footpath details, concrete kerbs and channels and street lighting.
- 23) If any works are to be undertaken in the road reserve related to the project, the applicant is required to obtain the Consent to Undertake Works in the Road Reserve (Road Opening Permit) for any new, altered or deleted vehicle crossing, water or drain tapping or other opening within a road reserve. Please note that this is a separate process to the Asset Protection Permit.

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- 24) The developer/contractor will be required to submit a Report regarding any pre-existing damage to Council assets (Dilapidation Report), prior to the Asset Protection Permit being issued and the Protection Work Notice is signed off (if required). Please note that this Report will have to show all of the Council assets adjoining to the property boundary, and will be based on the approved access routes, pending on the approved Traffic Management Plan.
- 25) The permit holder must be responsible to meet all costs associated with reinstatement or alterations to Council or other Public Authority assets deemed necessary by such Authorities as a result of the development. The permit holder shall be responsible to obtain an "Asset Protection Permit" from Council at least 7 days prior to the commencement of any works on the land and obtain prior specific written approval for any works involving the alteration of Council or other Public Authority assets.
- 26) Prior to the occupation of the development, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.

Asset Protection and Drainage Conditions

- 27) Prior to the commencement of any works, the owner of the land must enter into an agreement with and to the satisfaction of the Council's Asset Engineering Team, in which the owner covenants and agrees that:
 - a) Council will be indemnified against any loss or damage it may incur as a result of any proposed buildings and works constructed on or over Council owned land.
 - b) The owner must pay the reasonable costs of preparation, review, execution and registration of the Agreement.
- 28) Detailed plans and computations for stormwater, on-site detention and connection to the legal point of discharge must be prepared by a registered consulting engineer (who is listed on the Engineers Australia National Professional Engineer Register) and submitted for approval by the Responsible Authority prior to the commencement of any works.
- 29) The completion of stormwater connection to the nominated point of discharge and stormwater on-site detention must be approved to the satisfaction of the Responsible Authority prior to the occupation of the building.
- 30) Stormwater that could adversely affect any adjacent land must not be discharged from the subject site onto the surface of the adjacent land.

11.1
(cont)

- 31) The qualified civil engineer when undertaking civil design must ensure that the landscape plan/s and drainage plan/s are compatible. The stormwater drainage and on site detention system must be located outside the tree protection zone (TPZ) of any trees to be retained.
- 32) No part of any building (includes fixtures and excludes street level roof canopy awnings) are to encroach over any property boundaries.

Building Services

- 33) All building plant and equipment on the roofs, balcony areas, common areas, and public thoroughfares is to be concealed to the satisfaction of the Responsible Authority. Noise emitting plant equipment such as air conditioners, must be shielded with acoustic screening to prevent the transmission of noise having detrimental amenity impacts. The construction of any additional plant, machinery or other equipment, including but not limited to all service structures, down pipes, aerials, satellite dishes, air-conditioners, equipment, ducts, flues, all exhausts including car parking and communication equipment must include appropriate screening measures to the satisfaction of the Responsible Authority.

Acoustic Treatment

- 34) Prior to endorsement of plans, an amended Acoustic Report must be prepared to the satisfaction of the Responsible Authority. The amended Acoustic Report must be generally in accordance with the Acoustic and Vibration Assessment prepared by Marshal Day Acoustics, dated 17 September 2020, and advice memo dated 6 October 2021, but modified to be consistent with the Condition 1 requirements. The amended acoustic report will be endorsed and will form part of this permit.
- 35) Prior to the occupation of the development, a letter of confirmation from a suitably qualified Acoustic Consultant must be submitted for approval by the Responsible Authority to certify that the development has been constructed in accordance with the updated Acoustics and Vibration Assessment.
- 36) Noise emissions from the site must be limited to ensure compliance with the requirements of the State Environmental Protection Policy (Control of Noise from Commerce, Industry and Trade) No. N-1.

11.1

(cont)

37) The amenity of the area must not be detrimentally affected by the use of development, including through:

- a) The transport of materials, goods or commodities to or from land;
- b) The appearance of any buildings, works or materials;
- c) The emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; or
- d) The presence of vermin;

To the satisfaction of the responsible Authority.

General Conditions

38) Existing street trees must not be removed or damaged except with the written consent of the Responsible Authority.

39) All pipes, fixtures, fittings and vents servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.

40) The loading and unloading of goods from vehicles must only be carried out within the boundaries of the site or a dedicated loading bay and must not affect the function of Prospect Street.

Time Expiry Condition

41) This permit will expire if one of the following circumstances applies:

- a) The development is not commenced within three (3) years from the date of issue of this permit;
- b) The development is not completed within five (5) years from the date of this permit;
- c) The approved use is not commenced within five (5) years from the date of this permit.

The Responsible Authority may extend these periods if a request is made in writing before the permit expires or within six months afterwards for commencement or within twelve months afterwards for completion.

Notes

General

- a) The granting of this permit does not obviate the necessity for compliance with the requirements of any other authority under any act, regulation or local law.

11.1

(cont)

- b) Please be aware that Section 173 Agreement N964749C burdens the adjoining land owner of 18-20 Prospect Street to carry out modification works in the form of “bricking in or covering up” the windows on the its western boundary (the common boundary with the site). Please ensure that this adjoining land owner has adequate time to complete these works prior to the commencement of the development hereby approved.

Asset Engineering

- c) The design and construction of the storm water drainage system up to the point of discharge from an allotment is to be approved by the appointed Building Surveyor. That includes the design and construction of any required storm water on-site detention system. The Applicant/Owner is to submit certification of the design of any required on-site detention system from a registered consulting engineer (who is listed on the Engineers Australia National Professional Engineer Register or approved equivalent) to Council as part of the civil plans approval process.
- d) The requirement for on- site detention will be noted on your storm water point of discharge report, or it might be required as part of the civil plans approval.
- e) All proposed changes to the vehicle crossing are to be constructed in accordance with the submitted details, Whitehorse Council’s – Vehicle Crossing General Specifications and standard drawings
- f) The Applicant/Owner is to accurately survey and identify on the design plans all assets in public land that may be impacted by the proposed development. The assets may include all public authority services (i.e. gas, water, sewer, electricity, telephone, traffic signals etc.) and the location of street trees or vegetation. If any changes are proposed to these assets then the evidence of the approval is to be submitted to Council and all works are to be funded by the Applicant/Owner. This includes any modifications to the road reserve, including footpath, nature strip and kerb and channel.
- g) The Applicant/Owner must obtain a certificate of hydraulic compliance from a suitably qualified civil engineer to confirm that the on-site detention works have been constructed in accordance with the approved plans, prior to Statement of Compliance is issued.
- h) There is to be no change to the levels of the public land, including the road reserve or other Council property as a result of the development, without the prior approval of Council. All requirements for access for all-abilities (Disability Discrimination Access) are to be resolved within the site and not in public land.

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(cont)

- i) No fire hydrants that are servicing the property are to be placed in the road reserve, outside the property boundary, without the approval of the Relevant Authority. If approval obtained, the property owner is required to enter into a S173 Agreement with Council that requires the property owner to maintain the fire hydrant”.
- j) This planning permit does not include ‘Creation of Easement’ as required under Clause 52.02 of the Whitehorse Planning Scheme.
- k) The property owner/ builder is to obtain the relevant permits and consents from Council in relation to asset protection, drainage works in easements and works in the road reserve prior to the commencement of any works. Any modifications to the road reserve, including footpath, nature strip and kerb and channel must be in accordance with the Box Hill Urban Realm Treatment Guidelines (BHURT).
- l) As-constructed drawings prepared by a Licensed Land Surveyor are to be provided to Council after the completion of civil works prior to Statement of Compliance or occupation.
- m) The developer/contractor is required to submit a Report regarding any pre-existing damage to Council assets (Dilapidation Report), prior to the Asset Protection Permit being issued and the Protection Work Notice is signed off (if required). Please note that this Report will have to show all of the Council assets adjoining to the property boundary, and will be based on the approved access routes, pending on the approved Traffic Management Plan.

Transport Engineering

- n) The architect and/or designer must ensure that vehicle access is to conform to the Australian Standards for Off-Street Parking (AS/NZS 2890.1:2004)
- o) Redundant vehicle crossing(s) must be removed at the same time as the construction of any vehicle crossings(s), prior to the completion of development works and where access to a property has been altered by changes to the property.

Parks and Natural Environment Conditions

- p) If any damage to Council trees occurs during the building works, full amenity value of the trees will be charged to the applicant. If any trees have to be removed as a part of this project, amenity value of the trees has to be paid in full to the Council Parks and Natural Environment Department prior to the commencement of works.
- q) If any works are to be undertaken in the road reserve related to the project, the applicant is required to obtain the Consent to Undertake Works in the Road Reserve (Road Opening Permit) for any new, altered or deleted vehicle crossing, water or drain tapping, roof canopy/verandah or other opening within a road reserve. Please note that this is a separate process to the Asset Protection Permit.

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- r) Prior to the commencement of any works, excluding site excavation, piling and basement slab, the owner of the land must enter into an agreement with the City of Whitehorse which will indemnify Council against any loss or damage it may incur as a result of any proposed buildings and works constructed on or over Council owned land.
- C. Has made this decision having particular regard to the requirements of Sections 58, 59, 60 and 61 of the Planning and Environment Act 1987.

MELWAYS REFERENCE 75A D3

Applicant:	Bng Tower Pty Ltd
Zoning:	Commercial 1 Zone
Overlays:	Parking Overlay Schedule 1
Relevant Clauses:	
Clause 11	Settlement
Clause 12	Environmental and Landscape Values
Clause 15	Built Environment and Heritage
Clause 17	Economic Development
Clause 18	Transport
Clause 19	Infrastructure
Clause 21.05	Environment
Clause 22.03	Residential Development
Clause 22.04	Tree Conservation
Clause 22.06	Activity Centres
Clause 22.07	Box Hill Metropolitan Activity Centre
Clause 22.10	Environmentally Sustainable Development
Clause 34.01	Commercial 1 Zone (C1Z)
Clause 45.09	Parking Overlay, Schedule 1 (PO1)
Clause 52.06	Car Parking
Clause 52.34	Bicycle Facilities
Clause 65	Decision Guidelines
Ward:	Sparks

11.1
(cont)



Figure 1: Location of Site



11.1
(cont)

BACKGROUND

The application was originally lodged with Council on 7 October 2020, with the proposal revised as part of further information and supporting documentation on 3 March 2021, to address officer concerns. The further information package was advertised on 16 March 2021.

Subsequent to the notification period and additional issues received from Planning Officers (includes urban design advice and other referral responses) and objector's concerns, the applicant submitted an amended proposal under Section 57A of the Act on 12 October 2021.

The key changes under the 57A plans comprise a reduction in scale and building height from 30 storeys (112 metres high) down to 26 storeys (96 metres high). There has been a reduction in overshadow to remove overshadow impacts from the peripheral residential precinct of Hopetoun Parade south of the railway corridor. Changes also include a reduction in podium car parking and the lift/stair core size to maximise podium office floor area; a relocation of the above podium mechanical plant room now into the podium (from level 5 to level 3); and End of Trip facilities ('EOT facilities') being reconfigured with showers and change rooms relocated from the lower ground level to the upper ground floor level.

The Section 57A plans and supporting documentation is the current version of the proposal, and forms part of the assessment below. As discussed later in this report, the Section 57A proposal has addressed the key issues raised by Council's urban design advisor.

The Site and Surrounds

The Site

The subject site is formally identified as Plan of Consolidation CP 161206G. The site slopes west to east by 1.6 metres, and south to north by up to 2.8 metres. The site is located on the northern side of Prospect Street, approximately 127 metres east of Young Street and approximately 100 metres west of Nelson Road.

Despite the site containing no easements, the submitted plans have detailed and notated a 'potential' 1.5 metre wide carriageway easement along the northern (rear) boundary interfacing Fairbank Lane. Importantly, an easement created under Clause 52.02 has not been formally applied for as part of this application. The 'proposed easement' detail sets clear intent to create a carriageway easement in a future subdivision application should this application be approved, which may also be considered by other relevant authorities where further permissions under different regulations apply. Discussion of this issue is expanded under the sub-heading, 'Other issues and Objection grounds not yet discussed', later in this report.

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Notwithstanding, the site is rectangular in shape, has a southern frontage width of 30.48 metres (facing Prospect Street), a depth of 39.62 metres, and a total area of 1,207m². Regardless of the easement creation discussion above, the site will continue to have legal vehicular access direct from the northern rear laneway (Fairbank Lane). The site is currently occupied by a two storey office building and contains a secondary pedestrian linkage running along the eastern boundary, connecting Prospect Street with Fairbank Lane. The site is located within the Box Hill Activity Centre and is zoned Commercial Zone 1.

The Surrounds

Immediate Surrounds

The subject site is adjoined by Commercial 1 Zone land to both side aspects, comprising two- to-four storey office buildings with vehicular access provided via Prospect Street. The three storey office building of No. 18-20 Prospect Street adjoins the site to the east, while the four storey office building of No. 26-28 Prospect Street adjoins the site to the west. The length of Prospect Street contains a continuous row of established London Plane canopy trees on each side of the street, presenting as a key landscape theme and significant feature of this streetscape.

The site is located within a commercially zoned area, approximately 19km east of the Melbourne CBD and is within the Major Development Precinct designated by the Box Hill Transit City Activity Centre Structure Plan 2007. The Box Hill Metropolitan Activity Centre (Box Hill MAC) provides retail, education, office, civic, medical, community facilities, entertainment, dining and recreational opportunities for the regional population, as well as a major hub for local community activities.

The subject site is located approximately within 370 metres walking distance from the Box Hill Train Station, which is serviced by Belgrave and Lilydale train services, with the rail corridor located approximately 55 metres south of the site. A major bus interchange is also located at the Box Hill Train Station, which is serviced by approximately twenty (20) bus routes.

The 109 Tram Service to the Melbourne CBD runs along Whitehorse Road, within 170 metres walking distance north of the site.

Major bus routes along Elgar Road, within 245 metres walking distance west of the site, which links into the Box Hill bus interchange and the suburban area west of the site.

The Whitehorse Road reserve, and the Box Hill Gardens public reserve are located within walking distance from the north-east of the site, approximately 430 metres and 450 metres away respectively.

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The Box Hill MAC is experiencing significant redevelopment, with the following sites in the vicinity of the subject land either approved, under construction, or have been completed:

- 9-11 Prospect Street (WH/2015/108/A) – 25 storey residential development.
- 34-36 Prospect Street (WH/2016/1156/A) – 30 storey mixed use development.
- 26-28 Prospect Street (WH/2020/9) – 30 storey mixed use development.
- 811 Whitehorse Road (WH/2019/690) – 13 storey mixed use development.
- 813-823 Whitehorse Road (WH/2016/1109) – 16 storey office / residential development.
- 820-824 Whitehorse Road (WH/2016/68/A) – 29 storey residential development.
- 826-834 Whitehorse Road (WH/2016/1149/B) – 31 storey residential development.
- 836-850 Whitehorse Road (WH/2014/763/F) – part 36, part 29 storey development.
- 7 Poplar Street & 5-9 Wellington Road (WH/2015/116) – part 14, part 16 storey mixed use development.
- 3-5 Poplar Street & 837 Whitehorse Road (WH/2017/313) – part 15, part 31 and 20 storey mixed use development.
- 843 Whitehorse Road (WH/2017/313) – part 36, part 37 storey mixed use development.
- 845-851 Whitehorse Road (WH/2014/1223/D) – part 37, part 30 and 18 storey residential development.
- 874 Whitehorse Road (WH/2016/1105) – 28 storey mixed use development.
- 545 Station Street (WH/2011/986/D) – 34 storey mixed use development.
- 12-14 Nelson Road (WH/2015/715/H) – part 19, part 20 storey development.

The following applications are under consideration in proximity to the site:

- 13-17 Prospect Street (WH/2020/83) – 22 storey mixed use development.
- 17-21 Market Street (WH/2020/466) – 28 storey office development.
- 17-21 Market Street (WH/2020/597) – 50 storey office development.

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Section 173 Agreement –18-20 Prospect Street

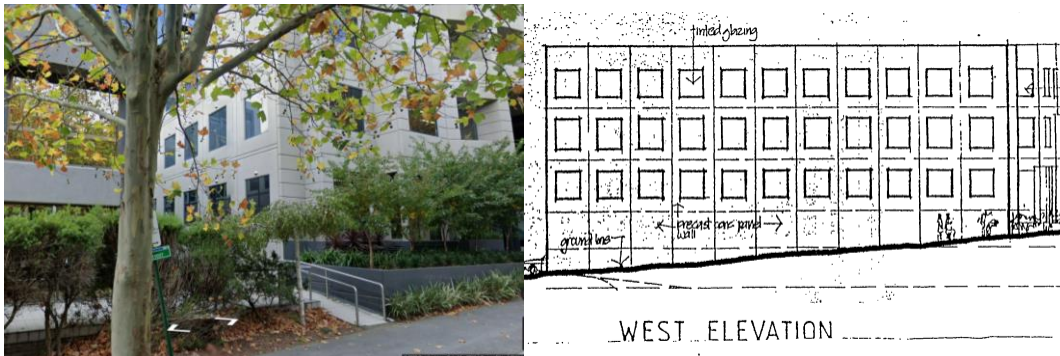


Figure 1: West adjoining property, 18-20 Prospect Street, and plan
'Attachment B in agreement'

The owner and objector of the east adjoining property, 18-20 Prospect Street, made Council officers aware in their objection that Deed of Agreement ['The Deed'] N964749C applied to their property. The Deed includes the following relevant wording:

Whereas

- A. Riadis is the proprietor of the land situated at and known as 18-20 Prospect Street, Box Hill ("Riadis' Land")...
- B. *The Council is the responsible authority with the meaning of the Town and Country Planning Act 1961 ("the T&CP Act") and the Planning and Environment Act 1987 ("the P&E Act") in relation to Riadis Land.*
- C. Riadis desires to construct a building on Riadis' Land ("Riadis' Building"). ...A diagram of the west elevation of Riadis' Building, ...is attached...marked with the letter "B".
- D: Riadis proposes that the west wall of Riadis' Building will be constructed on the common boundary between Riadis' Land and the Adjoining Land and that the said west wall will have windows constructed in it.
- E. The construction of the Riadis' Building as aforesaid may restrict the use of the Adjoining Land in the future. Accordingly, it may be necessary, in order for the owner of the Adjoining Land to be entitled to use the Adjoining Land as if Riadis' Building had not been built as aforesaid, for the windows in the said west wall of Riadis' Building to be bricked in or otherwise covered up. The bricking in or covering up of the said windows in the said Riadis building is hereinafter referred to as the "Modification".
- F. *Riadis has requested to Council to issue a permit pursuant to the T&COP Act for the construction of the Radas Building as aforesaid.*

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G: In order to facilitate the issuing of the permit pursuant (concerning the building at 18-20 Prospect Street) pursuant to the T&CP Act by the Council Riadis enters into this Deed of Agreement with the Council pursuant to Section 52A of the T& CP Act.

How this Deed Witnesses:

- 1. Riadis agrees and covenants with, the Council that if the owner of the Adjoining Land desires to carry out development on the Adjoining Land within 3 metres of the common boundary between the Adjoining Land and Riadis' Land, and if in order for the owner of the Adjoining Land to be permitted by the Council to carry out the said development the Modification [works] must be carried out, Riadis will carry out the Modification [works].*
- 2. Riadis will take all steps necessary, and bear the costs of all steps which are necessary, in order to ensure that a Memorandum of this Agreement is registered on the Certificate of Title in respect of Riadis's land by the Registrar of Titles.*
- 3. In this Deed of Agreement any reference to Riadis is to be construed as a reference to any successor in title or assignee of Riadis.*
- 4. In this Deed of Agreement any reference to the owner of the Adjoining Land is to be construed as a reference to the present owner of the Adjoining Land or to any successor in title or assignee of the present owner of the Adjoining Land.*

The objector indicated that the agreement was drawn up in the spirit of the planning regulations of that time (The Box Hill Planning Scheme 1988-1996), which limited all buildings to a maximum height of 14.5 metres. However, the following observations are also made when reviewing the wording of the Deed of Agreement above. The owner of 18-20 Prospect Street (Paragraph 'A') proposed their building on the western boundary (paragraph 'C') being well aware that including windows on this common boundary facing the site (paragraph 'D') may restrict the equitable development potential of the subject site (paragraph 'E') due to the windows being located on the common boundary.

Despite this, the applicant still proceeded with their planning application for approval (paragraph 'F'), understanding that they will be required at their own cost to carry out 'modification works' to brick in all western side facing windows to protect the equitable development potential of the subject site, should Council ultimately approve a future development on the subject site (paragraphs 1-4 under 'How this Deed Witnesses').

11.1

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Now in the present time, the proposed development includes a 4 level podium to be located onto the common boundary with 18-20 Prospect Street. Modification works will likely be required to brick in the windows and protect the equitable development potential of the subject site. Further, the owner of 18-20 Prospect Street understands that they must carry out the 'modification' works at their own cost, without any burden to the land owner of the subject site.

As no agreement is registered to the subject site, there is no legally binding effect on (a) the subject land and (b) that prevents a decision from being made on this application.

From a Building Regulations perspective, a referral response from Council's Municipal Building Surveying officer confirmed that the agreement was not binding from a building regulations perspective. Also confirmed was that the owner of 18-20 Prospect Street must receive a Building Permit for the modification works, from a fire rating, weather tightness and waterproofing perspective. Council's Municipal Building Surveying officer indicated that the owners of 18-20 Prospect St needed sufficient time and opportunity to ensure the 'modification' works are executed in accordance with the Section 173 Agreement prior to commencement of the subject proposal should a permit issue.

As the modification works is not a planning matter, the key issue is the balance of timing between bricking up and filling in the side-facing windows, and when commencement of the proposal occurs, should a planning permit issue. To address this issue, is recommended that the following occur:

- i. A note be added to any permit issued for the proposal to make the land owner aware of Section 173 Agreement N964749C prior to construction of the proposal, if ultimately approved.
- ii. Correspondence be sent to the owner at 18-20 Prospect Street making them aware of above-mentioned Recommendation (ii) made by Council's Municipal Building Surveying officer.

In context with the objection grounds for this matter, issues of excessive vibration and noise, and restricted access to ventilation and light access, will not be given favour over the fact that the neighbour proceeded with their adjoining development with the prior-awareness of the likely equitable development potential implications concerning the subject site, as a direct result of the neighbours' adjoining 3 storey office building now constructed.

Planning Controls

Clause 34.01-4 -- Commercial 1 Zone (C1Z)

In accordance with Clause 34.01-4 Commercial 1 Zone of the Whitehorse Planning Scheme, a Planning Permit is required to construct and/or carry out buildings and works.

It is noted that commercial uses (food and drink premises and offices) do not require a permit as they are 'as of right' in the zone.

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Pursuant to Cause 34.01-7,

‘an application to subdivide land or construct a building or construct or carry out works is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act. This exemption does not apply to land within 30 metres of land (not a road) which is in a residential zone, land used for a hospital or an education centre or land in a Public Acquisition Overlay to be acquired for a hospital or an education centre.’

The site is located directly opposite to, and within 30 metres of, the education centre, ‘First Education VCAT Learning Centre’ at 19-23 Prospect Street, and is not therefore exempt from the notification requirements.

Clauses 45.09-3 (Parking Overlay) and 52.06-3 (Car Parking)

With a required car parking requirement of 233 car spaces, and a proposed parking provision of 218 car spaces, a parking shortfall of 15 car spaces for the Food & Drink premises and Office land uses, is proposed.

A reduction to the car parking requirements under the Parking Overlay (Clause 45.09-3) for the ‘office’ land use, and under 52.06-3 (State Parking Policy) for the Food & Drink Premises, will trigger a planning permit.

PROPOSAL

The proposal comprises buildings and works for construction of a mixed use building, basement, and a reduction to the car parking requirements. The proposed building would have a 25 storey, 96 metre high tower height upon a 6 level basement. The building would have a 4 storey podium (16.2 metres to Prospect Street and 21.34 metres to the rear laneway, Fairbank Lane) and a 21 storey tower element (Level 5 to level 25) and roof plan.

218 car spaces are provided, split between the podium (28 car spaces on levels 1 and 2) and the 6 basement floor levels (190 car spaces). An independent, single car lift will service the podium car parking floor plates, while conventional accessway ramping will service the basement levels.

A total of 73 bicycle spaces (38 employee / 11 visitor spaces) are provided, internally split between 69 secured basement spaces and 4 visitor spaces provided in the street setback.

The service areas (meters, boosters, grease traps, substation, pump rooms, switchrooms, exhausts, plant rooms, generators, air handling units etc) are found in the basement floor levels, the ground floor level, and floor levels 3, 15 and 25. The end of trip facilities are split between the lower ground and ground floor levels. Loading and waste storage & collection occur are provided at the lower ground floor level, accessed via the rear laneway of Fairbank Lane.

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The use configuration of the building comprises a ground floor food and drink premise (121m²), and 24 levels of office area totalling 11,469m², which are serviced with central bathroom facilities, and a small south-facing balcony for levels 8-14. A wellness centre (451m²) as well as communal gym and terrace areas (429m²) are provided on level 4.



Figure 2: 3D artist impression of Prospect Street front façade. (Left: tower, Right: Podium Detail)

The basement and podium will be set onto all property boundaries with the southern main entry to Prospect Street recessed approximately 4.5 metres from the site frontage ['under-croft forecourt']. Level 4 will be recessed in from the podium street wall by a minimum of 4.87 metres (south), 4.4 metres (north) and 4.5 metres (both side boundaries). Between levels 5 and 15, the tower recess from both the podium and boundaries are: varied between 2.45 metres and 4.43 metres on the south boundary, 3.47 metres on the north boundary), and 4.5 metres on both side boundaries from level 4.

11.1

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The southern Prospect Street office entry is provided with a foyer area, which then connects via a central lobby to both the south-western 'front' lift / stair core for podium office floor plates, and a central lift/stair core for tower office floor plates. There is also a rear meeting area on the ground floor level

The proposed development will have a modern contemporary design, comprising a diverse range of building materials including numerous glazing solutions, face-brick, a variety of concrete finishes, black perforated louvres and white perforated metal screens.

The building façade is given a 'crinkled cut' staggered wall appearance, varying the podium setbacks by 400mm.

CONSULTATION

Public Notice

The application was advertised on 9th March 2021 by mail to the adjacent and nearby property owners and occupiers and by erecting three notices across the multiple parcel frontage. 6 objections were received at the completion of this advertising period.

The issues identified can be summarised as:

1. Overall Building Height
 - a) Outlook (Skyline)
2. Neighbouring Property Agreement
 - a) Setbacks
 - b) Protection of windows on boundary
 - c) Vibration
 - d) Daylighting
 - e) Visual Impact (site services)
 - f) Maintenance
 - g) Noise
3. Traffic / Car Parking / Access
 - a) Pedestrian and Vehicular Safety
 - b) Insufficient Parking provision
 - c) Inadequate End of trip facilities
 - d) Inadequate Bike Facilities
4. Public Realm
 - a) Height (Podium)
 - b) Landscaping
 - c) Wind Impacts
 - d) Overshadow
 - e) Inadequate road width (bike/pedestrian paths)
 - f) Reflectivity
 - g) Damage to street furniture / infrastructure
 - h) DDA compliance

11.1

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5. Inconsistent with Policy
 - a) Current and Draft Box Hill Structure Plan
6. Other Amenity Impacts
 - a) Environmental Impacts
 - b) Construction Management

The amended Section 57A proposal received on 12th October 2021, was advertised to all objectors on 3rd November 2021. No new issues were raised at the completion of this second advertising period.

Consultation Forum

An online Consultation Forum was held on Tuesday 16th November 2021 via Zoom. Five of the 6 objectors attended the meeting, in addition to Councillor Liu, planning officers and the applicant.

The Consultation Forum was chaired by Councillor Liu, and concerns/objections with the proposal were grouped under broad categories with all parties afforded the opportunity to provide commentary on each concern. The permit applicant was also given an opportunity to respond to objector concerns.

One new issue was raised by objectors regarding the notification period.

The objector made officers aware of this issue in the week leading up to the Consultation Forum. It was confirmed that the application was correctly advertised in accordance with the Section 52 notice requirements in terms of signs being erected on site, notices posted in the mail to all adjoining and nearby properties for the statutory period.

Unfortunately, the Section 57A plans may not have been displayed on Council's website for the entire statutory period. As such, the plans and supporting documentation were displayed for a further 2 weeks to provide adequate time for objectors to consider that proposed amendments. Officers confirmed this action on the night of the Forum.

Overall, no agreements were reached at the conclusion of the forum.

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External Referrals

Department of Transport	The proposal was referred to the Department of Transport who supported the application and did not impose any conditions.
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Internal Referrals

Urban Design	<p>The originally advertised plans and supporting documentation were referred to, and assessed by, Council's urban design advisor, who provided the following comments:</p> <p><u>Supports:</u></p> <ul style="list-style-type: none">• At grade bike storage and end of trip facilities.• Street activation at Prospect Street.• The proposed land use mix. <p><u>Outstanding concerns:</u></p> <p><i>Tower</i></p> <ul style="list-style-type: none">• Excessive building height and overshadow to the peripheral residential precinct of Hopetoun Parade (south of the railway).• Increased and staggered podium setbacks from the northern and southern podium walls, and significant erosion of upper tower levels above level 20 (80 metres high), to address daylighting, amenity and sky views to address external amenity impacts. <p><i>Podium</i></p> <ul style="list-style-type: none">• Above ground, sleeved podium car parking is not supported.• No regard for the configuration of windows in the western façade to the adjoining development at 18 Prospect Street.• The eastern pedestrian link between Fairbank Lane and Prospect Street should be retained.• Projected plant areas to the eastern podium level adjacent to neighbouring side-facing windows is unacceptable.• Shared vehicular access (private, commercial and waste vehicles) is problematic and should be reviewed.
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11.1
(cont)

	<ul style="list-style-type: none"> • 2.54 metre high upstand northern and southern podium perimeter walls are excessive, will diminish daylighting and amenity and should be reviewed. • Above ground car parking should be replaced with commercial floor space. • Maintain a pedestrian connection through the site linking Prospect Street with Fairbank Lane. • Improve capacity and functionality of the under-croft forecourt for provision of public space between public and private realms at the proposal's main entry. • Greater use of landscaping, while western lift core is encouraged to be glazed for maximum street activation. <p><i>Wind Report</i></p> <ul style="list-style-type: none"> • 30% of external lower ground wall to Fairbank Lane should be porous. • The retention of staggered 30% porous surfaces for the level 5 terrace area through use of screening and/or porous gating. • Increased landscaping to the level 5 terrace area including additional 3-4 metre high evergreen trees. • Improve pedestrian wind comfort for upper level terrace areas.
Strategic Planning	<p>The application was referred to, and assessed by, Council's Strategic Planning officer who has provided the following summarised comment:</p> <ul style="list-style-type: none"> • Greater activation required at street level to Prospect Street. • The extent of fenestration provided to podium façade is consistent with other buildings approved in the area. • How will porous lower level walls to Fairbank Lane be managed? • Building reflectivity report is required. • Doors opening into a road reserve is not supported. • Service meter rooms to Prospect Street need improved design detail expression to provide sufficient visual interest to the public realm.

11.1
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	<ul style="list-style-type: none">• Bronze canopy awning to Prospect Street needs to be more transparent and not so visually dominant to the public realm.• Landscaping is generally supported.
Asset Engineering (Drainage)	<p>The proposed plans have been reviewed by Council's Asset Engineer, who raised a number of process related issues concerning required referrals, and consents outside the planning process. However, the following issues were raised:</p> <ul style="list-style-type: none">• Levels to be unchanged in the road reserve and rear laneway, and that any DDA related issues must be resolved on site, not in the road reserve.• No encroachment of buildings or works within the road reserve and rear laneway.• No parts of the building (except basements) can be built below street level to ensure that flooding will not occur into the building.• No planter boxes, bike racks or seats permitted within the Road Reserve.• All services, utility pits, electricity pole stays, including underground drainage must be shown on the plans.• The right of carriageway easement must be created.• The stormwater pipe in the Laneway must be shown on the plan with a dimension from the outside wall of the stormwater pipe to the structure.• an agreement is required for the roof canopy awning that projects into the road reserve.• Vehicle crossing must be at least 1.0 metre from stormwater pits.• Access to the building must be facilitated without modification of the stormwater pits in Fairbank Lane.

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Transport Engineer	<p>The proposal was referred to Council's Transport Engineers who provided consent on the parking provision shortfall, expected traffic generation levels, on-site bicycle space provision, and access (sight lines, dimensions, height clearances (including WMP and loading facilities), access (ramp grades), and bicycle provision.</p> <p>Conditional consent was provided concerning dimensions for DDA spaces and structural columns.</p>
Waste Officer	<p>The proposal was referred to Council's Waste officer who has consented to the proposal, subject to the endorsement of the submitted WMP and access approval from Council's Transport Engineering engineer.</p>
ESD officer	<p>The proposal was referred to Council's ESD officer who has provided conditional consent.</p>
Parks & Natural Environment Arborist (street trees)	<p>The proposal was referred to Council's Parks and Natural Environment arborist who has confirmed that all street trees will be sufficiently protected.</p>
Building Officer	<p>On the issue of the Section 173 Agreement (18-20 Prospect Street), this issue was referred to Council's Municipal Building Surveying officer who indicated:</p> <ul style="list-style-type: none">• The agreement is not binding from a building regulations perspective.• Planning officers have a fiduciary duty to notify 18-20 Prospect St to ensure:<ul style="list-style-type: none">• The 'modification' works are executed as per the existing 173 Agreement and• Council officers have a duty to notify 18-20 Prospect Street to provide sufficient opportunity and time to make good the wall.• To ensure the correct fire rating and weather tightness and waterproofing is maintained in accordance with the Building Code of Australia and the Building Regulations 2018 that a Building Permit is required for 18-20 Prospect Street before bricking up or covering the windows occurs on the boundary.

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DISCUSSION

Consistency with State and Local Planning Policies

Plan Melbourne – The Metropolitan Planning Strategy identifies Box Hill as a Major Activity Centre (MAC) and amongst Melbourne's largest centres of activity with a wide variety of uses and functions including commercial, retail, housing, highly specialized personal services, education, government and tourism. State policies encourage the intensification of Box Hill as a commercial and employment hub, supported by one of Melbourne's biggest transport interchanges.

Clause 17 (Economic development) further encourages development which meets community needs for office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities within existing or planned activity centres.

Clause 18 (Transport) has objectives to encourage higher land use densities and mixed use developments near railway stations, major bus terminals, transport interchanges and tramways. Clause 18.02-1 promotes the use of sustainable personal transport, including walking and cycling whilst Clause 18.02-5 requires that an adequate supply of car parking is provided, that is appropriately designed and located to protect amenity of residential precincts.

Clause 19.01 (Renewable energy) promotes renewable energy use in development and Clause 19-03-05 seeks to minimise waste and encourage recycling within new development.

In terms of State planning policy, the subject site represents a significant strategic redevelopment opportunity to provide for a high density office development. Consideration is given to the site's central location within the Box Hill MAC, its interface with the Vicinity Centres Box Hill Shopping Centre and proximity to a broad range of urban infrastructure including multiple major public transport services, employment opportunities and commercial facilities.

With almost 12,000m² of office space, the proposed development will deliver a noticeable net increase in office floor space, while also providing a food and drink premises shop front tenancies to activate the Prospect Street frontage. The diverse commercial aspects of the proposal in the form of office and retail, will provide a strong economic boost as part of the Box Hill MAC, providing a net increase in employment opportunities on a local, regional and metropolitan scale.

11.1
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Local Planning Policy Framework

Clause 21.07 (Economic Development), identifies Box Hill as a Central Activities Area (CAA), which provides significant opportunities for investment in terms of retail, public transport, entertainment and higher density residential development. The proposal provides a significant area of commercial floor space, comprising 11,469m² (office), as well as 121m² of retail.

Clause 22.06 (Activity Centres Policy) includes objectives to ensure that new development maintains and enhances the role of the activity centre as a community focus and to improve the appearance and amenity of the activity centre.

Clause 22.07 (Box Hill Central Activities Area Policy), expands upon Clause 22.06 in providing policy direction relating to open spaces, pedestrian mobility and bicycle spaces, road traffic management, car parking, land use mix and built form. The policy further seeks to implement the Box Hill Structure Plan. The vision for the Centre is that *'Box Hill will be sustainable, safe and accessible to all. It will be a distinctive, vibrant, diverse, inclusive, participatory, caring and healthy community where you live, work and enjoy – day and night'*. The subject site is located within Activity Precinct B (Prospect Street Precinct) and Built Form Precinct F (Major Development Precinct).

Precinct B (Prospect Street Precinct) is identified for:

- *Consolidation as the primary office precinct in the activity centre.*

Precinct F (Major Development Precinct) seeks to achieve the following:

- *Major Development Precinct: Taller buildings permitted, enabling increased density. Heights must not cause overshadowing of Key Open Spaces, Residential Precincts A or B or residential areas beyond the study area. Transitional heights to be provided at edges of the precinct to respect the scale of neighbouring precincts.*

In relation to land uses for the Prospect Street precinct, the structure plan promotes the continuance of the area as a primary office precinct, with the encouragement of ground floor retail for street activation to provide strong mix of land uses to create a '24 hour precinct'.

The proposal promotes diversity of land use in this precinct by providing opportunities for localised employment through extensive office provision and ground floor retail (food and drink premise) for street activation. Although the proposal does not include residential land uses, the site is located nearby other approved developments where significant residential land use elements are included. Holistically, this will create a strong land use mix in support of the 24 hour precinct concept anticipated by Clause 22.07 and the Box Hill MAC Structure Plan.

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The site and its immediate environs are also earmarked for major development with taller buildings and increased densities. Precinct F is the only precinct within the Box Hill MAC where no specific preferred or maximum height limit applies. This area therefore represents a significant opportunity to deliver the proposed mixed-use development without impacting on the amenity of any residential neighbourhood or identified key public open space.

Built Height and Form

Height

Council's urban design advisor had recommended that the building height not exceed RL 184.225 or approximately 24-25 storeys. Under the Section 57A amended plans, the proposed building was reduced to 96 metres (RL 185.175), or 25 storeys, making the proposed building height generally consistent with the expectations of Council's urban design advisor, and appropriate within Built Form Precinct F under the Structure Plan. The proposal will also provide a suitable transitional building height as part of the tower buildings approved, constructed and / or currently being considered between (a) Young Street and Nelson Road and (b), Whitehorse Road and the peripheral residential area of Hopetoun Parade.

Built Form Precinct F states in summary that *heights must not cause overshadowing of Key Open Spaces, Residential Precincts A or B or residential areas beyond the study area. Transitional heights to be provided at edges of the precinct to respect the scale of neighbouring precincts.*

The site is situated well away from any key open spaces but is located 80 metres north of peripheral *Residential Precinct A* south of the railway. The Structure Plan requires that there should be no overshadowing of this peripheral residential precinct during the Winter Solstice (22 June) between 11am and 2pm. However, this margin has been shifted by a number of approved and/or constructed tower buildings east and north of the subject site.

All these nearby tower buildings do however protect the southern footpath of Hopetoun Parade and all dwellings fronting Hopetoun Parade, from overshadow during the Spring Equinox (September 22nd). While the proposed building will also overshadow a number of properties on Hopetoun Parade during the Winter Solstice, shadow diagrams indicate that shadow extends no further than the rail corridor, well away from all properties and the southern footpath of Hopetoun Parade, during the Spring equinox between the hours of 11am and 2pm. This consistency with tower buildings in the surrounding area demonstrates that the transitional building height is appropriate within the surrounding urban context of the Box Hill MAC, as well as from an external amenity perspective.

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Built Form, Massing and Equitable Development

The tower form is broken into two distinguishable tower elements to create visual interest within the skyline while minimising perceived building bulk. This is created by (a) a central vertical rebate that runs the full height of the tower, (b) two contrasting glazing tones for windows on each side of the central vertical rebate and (c), podium wall setbacks being staggered for each perceived tower element.

Similar design principles have been applied to the architectural expression of the southern and northern podium facades, to maximise visual interest to the public realm at a pedestrian scale, while reducing perceived building bulk. This is achieved firstly via the use of two vertical rebate areas that together split the front and rear podium facades into 2 and 3 vertical elements respectively.

The podium at ground floor (street level) would be visually demarcated from upper podium floor levels by the use of two different types of architectural expression. The ground floor is more heavily glazed while the upper floor has an increased face-brick profile amongst the more vertically orientated window panels. A.

Demarcation between tower and podium forms is achieved (a) by variation in building setbacks, (b) landscaping and (c), varied architectural expression. With exception to the under-croft forecourt area to Prospect Street, and space created for vehicular access, the podium is otherwise set onto all property boundaries. A recessed, rectangular floor plate is then provided at level 4 to round off the podium street wall, with minimum setbacks of 2.45 metres (southern wall), 3.9 metres (northern wall) and 4.5 metres (both side walls).

To further emphasize the demarcation between tower and podium, the tower facades take an articulated, crinkle type form, while the podium façade is a more typical 'flatter' street wall form, for added contrast. Finally, an extensive landscape design is provided also at level 4.

Holistically, the building is brought together by a variety of vertical elements of architectural expression that extend the full height of the building through both tower and podium forms. These elements are expressed in the vertical rebate areas as previously mentioned, the vertical window panels, the vertical brick columns, which then extend down to street level plinths, intended to visually anchor the building to the ground.

Council's urban design advisor indicated that the façade treatments are generally acceptable, but however indicated that that the building's scale and massing, as well as equitable development impacts to adjoining properties, needed further refinement.

Additionally, Council's urban design advisor indicates that generous tower setbacks from the tower wall aspects must also deliver the equivalent sharing of amenity or better as that delivered by neighbouring similarly or lower scaled form.

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The proposed tower element is setback from the podium wall between 2.8 metres to 4.8 metres (south elevation), 2.8 metres to 3.8 metres (north elevation), and between 3.5 metres and 4.9 metres (both side aspects). These tower podium setbacks continue for the full height of the building up to level 25 without any further recession. From the perspective of Council's urban design advisor, there is a lack of erosion to the upper tower floor levels from above a height of 80 metres (above level 21) from all aspects. Additionally, lower tower setbacks (up to 80 metres or level 21) from the northern and southern podium walls require further refinement.

The following revised setbacks from podium walls are recommended to address the built form and equitable development related issues:

Building Height	Tower Form Setback from podium wall
Below 80 metres (up to level 21)	5 metres (north and south podium wall)
Above 80 metres (above level 21)	7.5 metres (north and south podium wall)
	6 metres (east and west podium wall)

From a Planning officer perspective, it is important to draw from the surrounding urban context of approved and constructed tower buildings to guide appropriate tower development form and massing. Approved buildings at 34-36 Prospect Street (WH/2016/1156/A) and 26-28 Prospect Street (WH/2020/9) for mid-block tower development on the north side of Prospect Street. (see *Figure 3 below*).

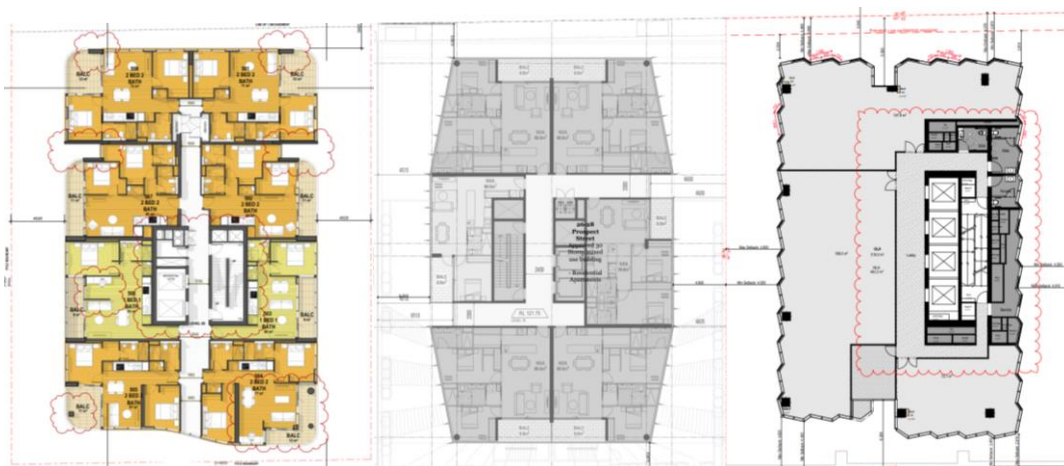


Figure 3: Tower forms from left to right (34-36 Prospect Street, 26-28 Prospect Street, and 22-24 Prospect Street)

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All towers are of similar height varying between 92 metres and 96 metres respectively. East and west podium wall setbacks for all towers are generally 4.5 metres. Southern front podium wall setbacks are between 2.57 metres and 3.07 metres for 26-28 Prospect Street, and 1.32 metres and 3 metres for 34-36 Prospect Street. Northern rear podium wall setbacks are between 1.6 metres and 1.9 metres for 26-28 Prospect Street, and 1.55 metres and 1.9 metres for 34-36 Prospect Street. From this perspective, while the shape of the tower forms vary, the proposed development's tower setbacks from the podium wall at 22-24 Prospect Street are more generous than the other 2 approved building examples.

A 9.1 metre deep communal terrace on level 25 (R 160.210) results in noticeable erosion of the upper tower form for 34-36 Prospect Street, while south, east and west tower walls above level 25 (RL 179.70) are splayed at sharper angles to create upper tower form recession of up to 2.5 metres for the tower at 26-28 Prospect Street. From this perspective, the proposed development lacks the erosion of upper tower form as reflected by Council's urban design advisor.

While balancing lower tower form recession from the podium, and erosion of the upper tower form, Council officers also consider that the 'twin tower' appearance created by the architectural expression is of the proposed development to be of a high grade of urban design. It has been implemented successfully and will provide enough visual interest in the skyline to counter the scale and massing issued raised by Council's urban design advisor. The issues on building scale and massing will not therefore be fatal to the outcome proposal. Nor will the increased lower and upper tower setbacks recommended by Council's urban design advisor be warranted in this instance.

From an equitable development perspective, Council's urban design advisor acknowledges that the side-facing windows of 18-20 Prospect Street have no long-term rights (see '*Section 173 Agreement – 18-20 Prospect Street*' earlier in this report). Despite this, recommendations were provided to increase side boundary setbacks at the upper tower form to deliver the equivalent sharing of amenity or better as that delivered.

It is however considered that once the modification works (common boundary with site bricked up, removing all side-facing windows) by the land owner of 18-20 Prospect Street as discussed earlier in this report, reliance on the subject site for daylight access, ventilation and maintenance will no longer be applicable at podium height.

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At tower level above 4 stories, side boundary setbacks will vary between 4.5 metres and 4.91 metres to provide appropriate separation between the proposed building and a future adjoining tower buildings as is expected by the Box Hill Structure Plan. This will produce an expected combined minimum distance of 9 metres when towers are ultimately approved and constructed for both side adjoining properties. It will help direct boundary setbacks for future adjoining tower buildings, and as an industry-accepted separation distance, will ensure that issues of overlooking and providing appropriate adequate daylighting potential, are both addressed.

Overall, the proposed building form and massing will be consistent in height and scale to other buildings approved and constructed in the immediate area, with particular emphasis on the mid-block developments approved at 34-36 Prospect Street (WH/2016/1156/A) and 26-28 Prospect Street (WH/2020/9). The proposed building would also adequately blend within the surrounding Box Hill MAC skyline as envisaged in the long term vision for the Box Hill MAC. All equitable development related issues have also been adequately addressed by the proposal.

Public Realm

Council's urban design advisor is supportive of the façade depth and use of tactile materiality such as brick in connecting the building to the Box Hill MAC preferred character. Discussion on 'landscaping' is expanded later in this report.

Support is also given to the scale and height of the 4 storey podium to both Prospect Street (16.2 metres high) and Fairbank Lane (21.34 metres high).

The Section 57A version of the proposal responds to urban design advice in providing a noticeable reduction of car parking in the podium in order to expand office floor area, which will generate greater useable floor space, and in turn maximise integration between public and private realms.

Greater transparency of the south-western lift core to Prospect Street as encouraged by Council's urban design adviser, was not integrated into the current version of the proposal as another possible measure to increase street integration. While this might be a missed opportunity from a street integration perspective, the extent of brick wall forming part of the south-western lift core is well integrated into the architectural expression of the building. This feature will not be an overly dominant street feature and will complement, not detract from, the street presentation of the southern podium façade.

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(cont)

Council's urban design advisor recommends an expansion of the public realm achieved by:

- a) A minimum street setback of 3 metres, particularly for the south-eastern corner of the podium (currently positioned on the front boundary).
- b) The street setback predominantly free of vertical columns and meter areas.
- c) Any airlock interconnecting entries not occupying more than 20% of the street setback area.
- d) The expansion of hard and soft landscaping in street setback area with space for potential outdoor seating associated with the ground floor Food and Drink Premises.

It is firstly considered that the under-croft central forecourt area is of greater area, depth and pedestrian carrying capacity than the approved buildings at 34-36 Prospect Street and 26-28 Prospect Street. Podium walls situated on the front boundary is not an uncommon feature with other approved and constructed tower developments in Prospect Street, including the adjoining development at 26-28 Prospect Street. Having said this, there is still opportunity to expand the forecourt area, while some vertical brick columns do constrain the functionality of the forecourt.

To expand the area and capacity of the under-croft forecourt it is recommended that the street setback of (a) the airlock area be increased by 1 metre and (b), the section of Food and Drink Premise floor area the extends to the street, increased such that it mirrors the modified setback of the airlock area. No further landscaping within the forecourt area is recommended as it would likely undermine pedestrian functionality. These recommended changes can form as conditions on any permit issued for the proposal.

Subject to the above recommended conditional changes, it is considered that the scale, height, depth and setbacks of the podium façade will provide a pleasant pedestrian scale to the public realm.

Notwithstanding, one objection ground indicated that the podium height was too excessive and did not provide a human scale public realm, and would create unsafe wind pedestrian comfort levels. As indicated above, Council officers support the podium height and scale. However, wind mitigation measures from the Windtech Wind Report continue to apply to the northern façade to Fairbank lane, which can be addressed as conditions on any permit approved for the proposal, as discussed under the subheading, 'Wind Impacts', later in this report.

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(cont)

Further supportive considerations are that interaction between both public and private realms will be improved to Fairbank lane under the current proposal with a greater use of habitable room glazing for upper rear podium floor levels. Also acknowledged is that the key purpose of Fairbank lane is to serve the BOH functions of the towers that rear onto this laneway. The pedestrian environment of the laneway is not particularly friendly and the added height to the northern podium wall is not expected to have a detrimental impact on the public realm of Fairbank Lane.

Landscaping

The proposal seeks to retain both street trees in Prospect Street directly adjacent the site, which has received the support of Council's Parks and Natural Environment arborist.

Landscape treatment is otherwise limited, in the form of two planter boxes within the ground level under-croft forecourt area, and level 4 communal terrace area. Council's urban design advisor encouraged a more ambitious soft and hard landscaping strategy that better integrates the development and site into its context. While the applicant was not amenable to this recommendation, it is considered that the right balance between provision a suitable ground level landscape design, with adequate pedestrian functionality of the under-croft forecourt area.

For the level 4 communal terrace, shrubs and small trees will be provided to address internal amenity and wind mitigation related issues. Council's Landscape Architect placed particular emphasis on ensuring that plant species, pot depth, and containerised infrastructure will be 'fit for purpose'. This will ensure that plants can thrive and feature so that the landscape theme successfully integrates with the design intent of the building.

An updated detailed landscape design and maintenance plan will be required to be submitted as a condition of any permit issued to reflect the revised plans, the recommendations of Council's landscape architect, and will also address the outstanding wind mitigation measures of the Wind Report mentioned further below in this assessment.

Notwithstanding, any offsite works (paving) in the road reserve must be addressed as a 'streetscape plan', as commonly required by Council's 'Design and Construct' and Asset Engineering officers. The streetscape plan must be in accordance with Council's Box Hill Urban Realm Treatment Guidelines and will ensure that the integrated frontage treatment will successfully blend the interface between the public and private realms. All measures can be addressed as conditions of approval.

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Wind Impacts

Although there is no residential aspect included as part of the proposal, as the building is above 5 stories, consideration can be given to Standard D32 (Clause 58.04-4) that provides guidance on wind impacts from a pedestrian comfort perspective where development provides publicly accessible areas on private land, and common open space relevant to the proposal.

This Standard discourages trees and landscaping being used to mitigate wind impacts, unless used to supplement fixed wind mitigation elements where 'sitting' wind comfort is achieved. Additionally, wind mitigation elements such as awnings and screens should be located within the site boundary, unless consistent with the existing urban context or preferred future development of the area.

There are three relevant criteria comprising sitting comfort, standing comfort, and walking comfort. Standard D32 defines pedestrian wind comfort as follows:

Hourly mean wind speed or gust equivalent mean speed (3 second gust wind speed divided by 1.85), from all wind directions combined with probability of exceedance less than 20% of the time, equal to or less than:

- 3 metres per second for sitting areas;
- 4 metres per second for standing areas; and
- 5 metres per second for walking areas.

A Wind Report, informed by wind tunnel modelling, prepared by Windtech Consultants, dated 23 February 2021 was submitted as part of the further information version of the proposal that was original advertised. The assessment covers wind effects for the ground level entries, adjacent pathways and adjoining properties, and upper level communal terraces. The Windtech report indicates that adjacent footpaths, adjoining properties and laneways should achieve 'walking' pedestrian wind comfort, while main entries and terraces should achieve 'standing' pedestrian wind comfort.

The Windtech report's results indicate that the proposal would meet all required pedestrian wind comfort levels for the footpaths and entries at ground level but will not comply for the rear laneway and upper floor terraces. The Wind report includes the following recommendations to address the non-compliant wind impacts:

- a) The external wall on the lower ground level along Fairbank Lane should be at least 30% porous through the use of screening and/or porous gating. This screening and/or porous gating applies to the two security gates, the substation entrance and the loading zone entrance along Fairbank Lane.

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- b) The retention of the staggered 30% porous screening and/or gating of at least 2m in height along the northern aspect of the level 5 terrace area. The maintenance gate on the south-western corner should also be at least 30% porous.
- c) The inclusions of either a cluster of 2-3 evergreen trees capable of growing 3-4m high and wide, OR a single evergreen tree capable of growing 3-4m high and wide with undergrowth and with protection for the early stages of the tree's growth. These trees should be in the planting zone halfway along the western aspect of the level 5 terrace area.
- d) The inclusion of the proposed vegetation located in the planter boxes along the southern aspect of the level 5 terrace area. This vegetation should be densely foliating and capable of growing to a height of 1.2m.
- e) The level 26 terrace area should remain non-trafficable/maintenance only.

Firstly, it is noted that the wind report relates to the advertised plans (not the Section 57A Plans) and must be updated to reflect the current proposal, required via condition on any permit for the proposal. Additionally, recommendations a), b), c) and d) all remain relevant to the current proposal and would be required via conditions on any permit issued for the proposal, ensuring that these measures are clearly highlighted and notated on the plans.

Notwithstanding, the plans show 2.6 metre high, balustrade podium walls to all aspects to address this wind mitigation recommendation. An objection ground indicated that these upstand walls are excessive in height and will diminish daylighting and amenity to their adjoining property, and should be reviewed accordingly.

This is a recommended wind mitigation measure and thus, the height of the balustrade cannot be changed. However, the level 4 terrace for the approved building at 26-28 Prospect (RL 105.05) is of similar height to the level 4 terrace of the proposed building (RL 105.00). This indicates that the top 600mm of the balustrade could be constructed of a more transparent material such as glass panels to enable daylight to filter into adjoining properties, while continuing to protect overlooking potential between the site and both adjoining properties. This measure is considered warranted and can be addressed as a condition on any permit issued for the proposal.

Overall, subject to conditions, the proposal will provide appropriate pedestrian wind comfort to the public and communal private realms of the site and adjacent road reserves.

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Council's Urban Designer Recommendations (not already discussed):

- *The eastern pedestrian link between Fairbank Lane and Prospect Street should be retained.*

Despite encouraging the applicant to meet this recommendation early in the process of this application, the pedestrian link has not been maintained. While the retention of the walkway would be desirable, there are no specific expectations of the Structure Plan to provide a pedestrian link between Prospect Street and Fairbank Lane. While this pedestrian connection is desired, in isolation, the absence of this provision is not fatal to the application.

- *Projected plant areas to the eastern podium level adjacent to neighbouring side-facing windows is unacceptable.*

Under the Section 57A proposal, the plant room has been relocated from level 5 (above the podium) now to level 3 (within the basement) within the eastern portion of the floor plate adjacent the eastern property boundary. As stated earlier, under the neighbouring lots Section 173 Agreement, a building permit will be required to ensure that the common boundary between the site and 18-20 Prospect Street becomes a fire rated wall under the Building Regulations. .

The applicant's acoustic report prepared by Marshall Day Acoustics (6/1/2021), confirmed that the Section 57A version of the proposal would not have '*altered the findings and recommendations detailed in our Town Planning Noise Assessment report...it is expected the services and core vibrations will be adequately controlled with conventional and readily available treatments that would be commonly included in a building of this type*'.

On this basis, subject to the endorsement of the acoustic report mentioned above, the modified location of the plant area to level 3 is considered acceptable.

- *Shared vehicular access (private, commercial and waste vehicles) is problematic and should be reviewed.*

Council's Transport Engineer has not raised concerns in the BOH access layout for private vehicles and waste vehicles. Having said this, headroom clearance have not yet been adequately demonstrated. This issue can be readily addressed through a condition..

- *Greater use of landscaping, while western lift core is encouraged to be glazed for maximum street activation.*

Although encouraged to integrate into the proposed design of the development, the applicant has not taken on this advice. However, as discussed earlier in this assessment, this will not be fatal to the outcome of the application.

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Meter location preferred BOH, if to Prospect Street, better integrated into the Podium Façade's architectural expression.

Council's urban design advisor provided the following comment:

The proposed SW lift should be expressed with a glazed south façade integrated with the podium south façade system glazed element rather than solid south façade as currently proposed. Meters wherever possible should be located to the Fairbank Lane Interface. Any meters to this frontage should be minimised in height and footprint and finished as integrated elements of the street furniture and streetscape response with activation above and to its sides to the satisfaction of Council.

It appears that there is limited ability to relocate the meter rooms to Fairbank Lane given the extent of the site's frontage to the laneway being dedicated to access and the substation. However, a 'Services Plan' demonstrating that the use of the Prospect Street frontage is minimised for services will be required on any permit issued for the proposal to provide certainty to this issue.

Should it be confirmed that the booster box in the south-western corner of the front façade in particular, cannot be relocated away from the southern street frontage, it is considered that it will be excessive in area and dominant within the public realm. The recommendation to reduce the size of booster box is warranted as part as street presentation is concerned, and can be addressed as a condition.

Clause 22.10 – Environmentally Sustainable Development (ESD)

The orientation of the building on the lot has generally maximised available solar access. The use of shared roofing, floors and walls also promotes energy and resource efficiency. A Sustainability Management Plan prepared by Sustainable Design Consultants, was submitted with the application. Subject to conditional modifications to energy efficiency ratings, air conditioning details, ventilation, water tank sizes, recycled water for landscaping and cladding finishes, numerous outstanding omissions identified by Council's ESD advisor can be addressed via conditions.

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Parking, Traffic and Access

Car Parking

The site is located within the Box Hill Central Activities Area and is therefore subject to the Box Hill Activity Centre Parking Overlay (Clause 45.09). Accordingly, the proposal requires the following parking provision:

Land Use	Area	Statutory Parking Rate	Car Spaces Required	Car Spaces Provided
Office:	11,469m ²	2 spaces per 100m ² of LFA (Parking Overlay)	229	217
Food & drink premises	121m ²	3.5 spaces per 100m ² of LFA	4	1
Total			233	218

For a statutory requirement for 233 car spaces, 218 car spaces are provided (allocated as 217 spaces to Office and 1 staff space to the Food & drink premises), resulting in a parking shortfall of 15 car spaces.

With consideration to the site's proximity to multiple modes of public transportation (bus, train and tram), and support from Council's Transport Engineer, it is expected that the proposal would not have a detrimental impact on the parking capacity within the surrounding area.

Council's Transport Engineer has suggested that a Car Parking Management be required as a condition to ensure the car parking provision is appropriately managed on an ongoing basis, to reduce potential impacts the parking and traffic conditions as part of the external road network. This requirement is considered warranted.

Traffic Generation

The Traffic Engineering Assessment has anticipated that the proposed development would generate a total of 109 trips (98 arriving trips and 11 departing trips) for AM peak hour periods and 109 trips (11 arriving trips and 98 departing trips) for the PM peak hour periods, with a minor increase of vehicular queues external to the site. Council's Transport Engineer did not raise the anticipated traffic generation from the proposed development as a matter for concern..

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(cont)

Parking Location

Council's Transport Engineer has indicated that the proposed disabled parking bays are non-compliant as there is no bollard in the shared parking space and are required to be designed in accordance with relevant standards and guidelines as per the Disability and Discrimination Act 2004. There also appears to be some structural columns that are not dimensioned and may potentially be located within the clear area around car spaces as required by Diagram 1 of Clause 52.06-9.

Both parking location issues raised above can however be addressed via conditions.

Access

The provision of access is largely compliant against Clause 52.06 and Council's Transport Engineer generally supports the proposed access arrangement concerning car parking facilities, ramp grades and sight distance splays at property boundaries,.

As discussed earlier in this assessment, additional detail is required within the cross section plans to demonstrate compliant headroom clearance for private and water vehicles.

Bicycle Facilities

The proposal has a statutory requirement for 49 bicycle spaces as required by Clause 52.34 (Bicycle Facilities), broken down as 38 staff and 11 visitor/shopper spaces. The provision of 73 bicycle spaces (69 secured spaces in the basement, and 4 at ground visitor spaces) meets this requirement and is supported by Council's Transport Engineer.

The end of trip facility ('*EOT facility*') is also located on the ground floor with direct access to Prospect Street and the lower ground level bicycle storage facility via the lift core, which is considered acceptable. The EOT facility contains 14 showers [4 showers required], along with 2 change room facilities and 134 lockers, which meets the requirements for Clause 52.34.

Waste Collection

Waste collection can be undertaken by private waste contractor within the dedicated loading bay adjacent to the waste refuse area on lower ground level, accessed via Fairbank Lane to the northern rear of the site. Council's waste engineer has approved the WMP.

Council's Transport Engineer has supported the provision of access to enable the waste vehicle to enter the site, carry out collection on site and the leave the site accordingly. This is subject to headroom clearance (to accommodate the waste vehicle and compactor lifting equipment) being appropriately demonstrated as discussed earlier in this assessment.

11.1
(cont)

The applicant intends to use a 2 metre high, 6.4 metre long mini-rear loader private waste vehicle to collect the waste. The floor to floor cross-section plans indicate a clearance height of 4.4 metre between the ground and basement level 1 floor levels, which will likely be sufficient to address this issue. However, this still needs to be demonstrated to Council's satisfaction.

Draft Box Hill Vision

At the Council Meeting on 22 November 2021, Council resolved to seek authorisation from the Minister for Planning under the Planning and Environment Act 1987 to prepare and exhibit Amendment C228 to the Whitehorse Planning Scheme to implement the recommendations of the project. The Minister has not yet authorised exhibition of the amendment.

As such, the amendment is not yet considered 'seriously entertained' and therefore Officers have not undertaken a formal assessment against the proposed controls as they hold no weight in planning law.

Other issues and Objection grounds not yet discussed

Proposed Easement

Council's Asset Engineer indicated that a right of carriageway easement must be created along the rear boundary interfacing with Fairbank Lane, likely to align the regulations and expectations of the Road Management Act 2004 with Planning and Property Law.

Under the Road Management Act 2004, the rear portion of the site for a width of 1.5 metres is likely to be defined as a 'road' under current circumstances. This is due to this portion of land, like the balance of Fairbank Lane, being constructed and maintained by Council, for public access primarily for vehicles and pedestrians, for numerous years.

Council's Asset Engineer has required a carriageway easement to bring transparency to the land owner that the rear 1.5 metres of the site will continue to function as a 'road' under the Road Management Act 2004 into the future. This is not a critical requirement in context to the proposal. Whether a Carriageway Easement creation is formally applied for or not, the site still has legal access to Fairbank Lane under Planning and Property Law, and the rear 1.5 metres of the site is still considered 'road' under the Road Management Act 2004. This circumstance has also applied to numerous adjoining and nearby properties that have a rear boundary interface with Fairbank Lane (all properties adjoining Fairbank Lane to the north, and 10-12 and 38-40 Prospect Street).

Notwithstanding other permits and/or consents maybe required should a Creation of Easement formally be applied for to the rear of the land. This issue can be addressed as a notes on any permit issued for the proposal requiring making the applicant aware that (a) a 'Creation of Easement does not form part of this permit and (b) that the granting of this permit does not obviate the necessity for compliance with the requirements of any other authority under any act, regulation or local law.

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(cont)

Levels Address within Site's Boundaries

Council's Asset Engineer has recommended that *'levels to be unchanged in the road reserve and rear laneway, and that any DDA related issues must be resolved on site, not in the road reserve.'*

It is acknowledged that there moderate slope across the entire site that may provide challenges for the applicant is addressing this recommendation. To address this issue, it is recommended that Section Plans are submitted as a condition on any permit issued for the proposal, to demonstrate that all level changes are addressed on site, and how this will be achieved.

Outlook / Skyline Impact

This issue has been discussed in under the sub-headings of 'Height' and 'Building Height and Form' earlier in this report. In addition to the earlier discussion made, it is acknowledged that the skyline of the Box Hill MAC is changing rapidly at the direction of the MAC strategic policy, in particular concerning the Structure Plan in supporting tower development. While all tower buildings must respond and appropriately fit within their relative site context, at the same time it is expected that the skyline will be tower-dominated.

Given that the site: is commercially zoned; has no building height limit; and is not located within the heart of a residential area; it is considered that the height is acceptable. The proposed building will also be obscured when viewed from the north by higher existing towers, and when viewed from the south will sit within the visual envelope of these existing towers.

Non-compliance with Deed of Agreement (protection of windows, setbacks, maintenance, vibration, noise)

These issues have been discussed in detail earlier in this report primarily under subheadings referencing the Dead of Agreement applicable to 18-20 Prospect Street, as well as under 'Environmentally Sustainable Development (ESD)'.

The deed of agreement applying to 18-20 Prospect Street confirms that, at the time of constructing that east adjoining building, the land owner understood the likely equitable development potential implications it would cause in the future.

Under the Section 173 Agreement for No.18-20 Prospect Street, the adjoining land owner also agreed to carry out the modification works to brick up on-boundary side-facing windows to the subject, at their own cost, should a development be approved on site within 3 metres of the common boundary [western boundary). Once the modification works are carried out, issues of Maintenance, Vibration, daylight access and visual impact from the proposed building to the adjoining property, will be resolved to a satisfactory level.

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*Traffic / Car Parking / Bicycle and End of Trip Facilities / Access / Safety /
Absence of Shared Footpaths or Bicycle lanes*

Bicycle and car parking provision, end of trip facilities, and pedestrian safety have all been discussed in detail earlier in this assessment.

Concerning objection grounds encouraging more shared footpaths and bicycle lanes, the Prospect Street footpath is at least 2 metres in width and allows for the shared use of pedestrians and cyclists. It is also acknowledged that the 4.5 metre deep under-croft forecourt at the front of the building will have the capacity to ensure that the gathering, meeting and seating of patrons/residents/visitor will largely occur on site and away from Prospect Street pathway. This will help relieve congestion in the public realm to enable shared pedestrian and bicycle activity to occur in the public realm.

Advertising Process

There were timing issues of when the plans and supporting documentation were displayed on Council's website. Consequently, the advertising period and duration of display on Council's Website for revised documentation concerning the Section 57A proposal, was extended for 2 additional weeks to provide for sufficient viewing opportunities for nearby residents and business owners etc.

Podium Height

This issue has been discussed in detail earlier in this report confirming that the podium height will support a suitable pedestrian scale public realm.

Landscaping / Tree Removal

This has been discussed in detail earlier in this assessment and found to achieve an acceptable landscaping outcome.

Council's Parks and Natural Environment arborist also has supported the proposal, confirming that all street trees will not be structurally compromised under the proposal.

Wind Impacts

This issue has been discussed earlier, confirming that the pedestrian wind comfort levels concerning the proposal will be 'walking' for adjacent footpaths and adjoining properties, 'standing' for the section of footpath directly adjacent the undercroft-forecourt as well as communal for terraces, and 'sitting' for the undercroft-forecourt area. This provides certainty that there will be an appropriate level of usability, functionality and safety for patrons & residents around and within the building so that these spaces are used as intended.

Overshadowing/loss of sunlight:

As stated earlier, an acceptable level of compliance has been achieved with relevant policy on this issue.

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Inadequate footpaths / impact on street furniture

Street pavement construction will be required via a condition of any approval for the proposal to be consistent with the BHURT guidelines in the form of streetscape and engineering plans.

The footpath connection has been discussed in detail as part of the urban design recommendations earlier in this assessment.

There will otherwise be no impact to any street furniture, which also received the consent of Council's asset engineers.

Reflective External Surfaces

This is a key issue that has become evident with some of the recent buildings constructed within Box Hill. As discussed earlier in the report, this is an important element that can be managed through appropriate conditions of any permit issued.

Impact on street Infrastructure

The site is currently serviced by reticulated sewer, electricity, gas, and water, and is not located within a localised flooded area as identified by Councils Asset Engineers. Subject to conditions, it is expected that the current utility infrastructure can adequately service the tower building proposed.

DDA Compliance

This requirement is determined under the building regulations should a permit ultimately issue for the proposed development. Having said this, Council's Asset Engineer and Design & Construct officers will ensure that the building will align at street level and provide DDA compliant access to and from the site. Engineering and streetscape plans will demonstrate DDA compliance from this perspective, via conditions on any permit issued for the proposal.

Not Aligned with Box Hill Vision

The draft Box Hill Vision amendment is not yet a 'seriously entertained' planning consideration as it has not been exhibited. The proposal will, nonetheless, achieve a good overall level of compliance with the draft vision, including a large net gain of office floor space and strong street frontage activation with a variety of shopfronts provided. The proposal will not prevent the intent of the Box Hill vision from being achieved in the Prospect Street Precinct.

Environmental Impacts

The proposed development would not result in the removal of any remnant vegetation or significantly alter the natural formation of the land from a drainage perspective. No street trees are proposed for removal and confirmed by Council's Parks and Natural Environment Arborist.

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(cont)

The redevelopment of this site is supported by State and Local Policies, and Council's strategic direction provides for the retention of trees and habitat improvements elsewhere in the municipality to balance the intensive development of Major Activity Centres.

From an environmentally sustainable design perspective, subject to conditions, the proposal will address Clause 22.10 as discussed under 'Environmental Sustainability Development' earlier in the report.

Impact of Construction Period

The requirement for preparation of a Construction Management Plan (CMP) is commonly required for large build developments including towers, imposed through a permit condition if approved. The CMP helps to reduce disruption to neighbouring residents and the environment during the demolition, excavation and construction of a building site. Specific issues addressed include matters of public safety, site security, operating hours, noise control, air and dust management, stormwater and sediment control, waste and traffic management and staged development. Should this application be approved, a CMP will be required via a permit condition accordingly.

CONCLUSION

The proposal for buildings and works for construction of a mixed use tower building, basement, and a reduction to the car parking requirements, is an acceptable response that will satisfy the relevant provisions contained within the Whitehorse Planning Scheme, including the State and Local Planning Policies and the Commercial 1 Zone.

The proposed design of the building has architectural and urban design merit, and has reasonably responded to all external overshadowing impacts from a building height transition, and external public realm amenity perspective, respectively. The proposal does not require an excessive reduction in car parking and thus, poor traffic congestion and traffic safety will not directly result from the proposed development. All issues of environmental sustainable design and waste management can be addressed as conditions of approval.

All outstanding objection grounds can be addressed as conditions on any permit issued for the proposal.

ATTACHMENT

- 1 Plans

11.2 South East Metropolitan Advanced Waste Processing Project

Infrastructure Attachment

SUMMARY

At its meeting on 28 June 2021, Council resolved to participate as a shareholder in the Special Purpose Vehicle (SPV) to be established as part of the South East Metropolitan Advanced Waste Processing Project (Project). The SPV has now been formed and Council is a shareholder of South East Metropolitan Advanced Waste Processing Pty Ltd (ACN 654 660 438) (Company). The Project involves fourteen Councils.

The purpose of this report is to seek Council's commitment to participate in an arrangement with a contractor to construct and operate an advanced waste processing facility to treat waste collected by Council as part of the Project. All other Councils participating in the Project will be considering similar reports.

It is recommended that Whitehorse City Council, as a shareholder of the Company, commits to enter into a Contract with a successful tenderer if the tender conforms to all of the predetermined conditions as outlined in this report.

RECOMMENDATION

That Council:

1. As a shareholder, commits to enter into a Contract with a successful tenderer if the tender conforms to all of the predetermined conditions as specified by South East Metropolitan Advanced Waste Processing Pty Ltd (ACN 654 660 438) including the:
 - Project being located at the agreed Site;
 - Waste supply deed issued for tender; and
 - Gate fee being within an agreed limit for the South East Metropolitan Advanced Waste Processing Project;
2. Authorises the Chief Executive Officer to send the letter shown in Attachment 1;
3. Endorses a minimum tonnage guarantee arrangement for the South East Metropolitan Advanced Waste Processing Project;
4. Endorses the provision of a financial guarantee, under which the Councils guarantee that South East Metropolitan Advanced Waste Processing Pty Ltd will remain solvent and will not be wound up during the term of the Contract;
5. Endorses partial bid reimbursement costs to unsuccessful tenderers who submit a compliant tender and if Councils choose to cancel the tender for the South East Metropolitan Advanced Waste Processing Project; and

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6. Authorises the Chief Executive Officer to take any further actions necessary to facilitate Council's participation in the South East Metropolitan Advanced Waste Processing Project.
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Key Matters At its meeting on 28 June 2021, Council resolved to participate as a shareholder in the SPV to be established as part of the Project. The SPV has now been formed and Council is a shareholder of South East Metropolitan Advanced Waste Processing Pty Ltd (ACN 654 660 438) (Company). The Project involves fourteen Councils. The Councils are Bayside, Knox, Manningham, Cardinia, Casey, Monash, Frankston, Mornington Peninsula, Glen Eira, Stonnington, Greater Dandenong, Whitehorse, Kingston and Yarra Ranges. It is proposed that the Company will award a Contract to a successful tenderer to receive wastes from the shareholders.

The procurement process is being facilitated by the Metropolitan Waste and Resource Recovery Group (MWRRG). The State government is funding the costs associated with the procurement activities.

The multi-stage tendering process for a Contract for waste acceptance and treatment based on the use of advanced waste processing technology has commenced and is being overseen by a working group of representatives from the Councils, supported by the MWRRG and specialist advisors.

As part of the first stage of the tender process, the tenderers have advised that they are unwilling to continue to prepare and submit a tender unless a number of matters are resolved:

1. Councils make a commitment to participate in the ultimate Contract awarded by the Company if certain conditions are met;
2. Minimum tonnage to be delivered under the Contract is guaranteed;
3. The Company is guaranteed by Councils; and
4. Reimbursement of Contractor bid costs is provided if certain conditions are met.

STRATEGIC ALIGNMENT

The Local Government Act (LGA) 2020 and the Climate Change Act 2017 require Council to consider climate change. Part 2, Section 9 of the LGA 2020 requires that the following are the overarching governance principles –

- a) Council decisions are to be made and actions taken in accordance with the relevant law;
- b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;

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(cont)

The landfilling of waste is a contributor to greenhouse gas emissions and this Project is aimed at providing a facility as an alternative to landfill. The Project seeks to convert waste to a resource.

The Circular Economy (Waste Reduction and Recycling) Act 2021 (CE Act) provides for stronger regulation of the state's waste and recycling sector for more and better recycling, less waste and landfill. The CE Act provides the foundation for Victoria's transition to a circular economy, including enabling laws for the new container deposit scheme and new state-wide four-stream household waste and recycling system. Both systems will significantly increase recycling of discarded, but valuable, materials that would otherwise end up in landfill.

The CE Act will see the establishment on 1 July 2022 of Recycling Victoria, a dedicated government business unit to oversee and provide strategic leadership for the waste and recycling sector, including Local Government. The CE Act and Recycling Victoria are key commitments of the Victorian Government's circular economy plan, Recycling Victoria: a new economy, to reduce waste and landfill, and provide for more and better recycling and a sustainable and thriving circular economy.

Policy

The transition to using Advanced Waste Processing (AWP) technology to replace landfill disposal has previously been considered and endorsed by Council in the adoption of the 'Rubbish to Resource' Waste Management Strategy 2018-2028 in December 2018 and will help Council reach its target of 80% waste diversion from landfill by 2028.

BACKGROUND

Council's adopted 'Rubbish to Resource' Waste Management Strategy 2018-2028 includes a priority action for Council to consider using new technology and innovation to improve the processing of waste and reduce the reliance on sending waste to landfill. Key drivers for this action include the rising cost of landfill, the pending closure of the only remaining landfill in the south east metropolitan area (SUEZ at Hallam), in around 2025, and the need to recover more resources from municipal residual waste for recycling. Council currently disposes of its kerbside garbage and the non-recyclable waste from the Whitehorse Recycling and Waste Centre in landfill through the MWRRG collaborative contract.

As part of the Victorian Government's circular economy policy, a waste to energy framework has been established. Many AWP technologies include waste to energy which involves turning waste material into heat or electricity. The Project specification is not specific on the technology and may include waste to energy technology.

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(cont)

SUPPORTING REPORT DETAILS

Legislative & Risk Implications As outlined in 'Key Issues' above, there four issues that pose a risk to the Project whereby tenderers are unwilling to continue to prepare and submit a tender without resolution:

1. Councils make a commitment to participate in the ultimate Contract awarded by the Company if certain conditions are met;
2. Minimum tonnage to be delivered under the Contract is guaranteed;
3. The Company is guaranteed by Councils; and
4. Reimbursement of Contractor bid costs is provided if certain conditions are met.

1. Council Commitment

Currently the Project has the potential for Councils to exit at any point prior to Contract award. This creates a number of issues for the viability of the tender process, including the:

- a) Potential need for tenderers to redesign proposed facilities following tender submissions because of one or more Councils deciding to no longer participate in the Project (which would result in material delays to the Project, increased costs to respondents and potentially increase the gate fee payable by remaining Councils).
- b) Ability of the Company to determine the minimum tonnage guarantee for the purposes of the tender process given these volumes are dependent upon Councils participating in the Project.
- c) Ability for tenderers to engage with the broader market in the absence of a firm commitment from participating Councils; and
- d) Ability of MWRRG to engage with the Department of Environment, Land, Water and Planning (DELWP) regarding allocation under the pending waste to energy cap, given this engagement requires a clear understanding of the waste that needs to be accommodated by the Project.

The Company has recommended that participating Councils consider signing a commitment letter which would provide that each Council would not exercise its right to exit from the Project should the tender response from the respondents fall within certain fundamental parameters.

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(cont)

Councils have the option to not sign the commitment letter and remain a shareholder to the Company. However, those Councils which do not sign the commitment letter would:

- a) Not be ensured that their waste would be accommodated by the AWP facility (either at the commencement or over the term of the Project) and therefore may not end up being a participant in the Project; and
- b) Even if their waste was accommodated by the AWP facility, this may be at a less favourable gate fee compared to those Councils that do sign the commitment letter.

The Company is governed by the terms of its Constitution. The Constitution is subject to the terms of the Shareholders' Agreement entered into by each participating Council as a shareholder in the Company.

The Constitution and the Shareholders' Agreement do not place any limits on a shareholder determining to no longer be involved in the Project and exercising its rights for a share buy back in accordance with the terms of the Shareholders' Agreement. This approach has been deliberately adopted to ensure participating Councils had flexibility regarding the tender process and ultimate award of any Contract in respect of the Project.

Notwithstanding this, this position has created a number of issues for the Company, tenderers, and the broader tender process.

All tenderers have raised concerns regarding the potential for Councils to exit the Project prior to Contract award. The uncertain nature of Council participation means that sizing the facility (which is a fundamental aspect of the tender process from a design a cost perspective), will be subject to change should one or more Councils subsequently decide to not participate in the final contract.

Consequently, any facility sized and designed by the tenderers as part of the tender process is potentially at risk of needing to be redesigned should one or more Councils decide to no longer participate in the Project prior to Contract award. Any redesign of the facility would have significant cost and time implications for the respondents as well as the remaining participating Councils. This could include delaying contract award (and the operational commencement date) by a minimum of 12 months as well as materially increasing gate fees for the remaining participating Councils.

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The substantial cost and timing impacts of such redesign raises material issues of the viability of the tender process with a significant risk of the Project not proceeding should this risk materialise. Tenderers have noted that this risk has created difficulties in meaningfully engaging with the market (including key subcontractors and financiers).

A further issue is that, without firm commitments from participating Councils, it is not possible to set the level of the minimum tonnage commitment by the Company (discussed further at below).

Finally, it is necessary for MWRRG to have further engagement with DELWP during the first half of 2022 to ensure an appropriate allocation is provided to the Project in relation to the pending waste to energy cap (which is scheduled to be in force by 1 July 2022). The engagement with DELWP will require a clear understanding of the waste that needs to be accommodated by the Project, which is not possible without understanding the level of commitment from participating Councils.

The only viable option which adequately addresses the issues created is for the participating Councils to consider signing a commitment letter, under which each Council would undertake to not exercise its right to exit from the Project should the tender response be within certain fundamental parameters. It is proposed that these parameters are the:

- Project being located at the agreed Site;
- Agreed waste supply deed issued for tender; and
- Gate fee being within an agreed limit of the cost affordability ceiling for the Project.

Those Councils which commit to the Project would be classified as 'Lead Councils'.

It is open to a Council not to commit but to remain a shareholder to the Company. These Councils would be classified as 'Optional Councils'.

The tenderers would be requested to size and design a facility as part of their tender response on the basis that the:

- Lead Councils will be a party to the Project provided the tender proposal is compliant with the agreed parameters; and
- Optional Councils are uncertain regarding their participation in the and therefore it would be at the discretion of tenderers as to whether they are accommodated in any sizing and design of the facility.

This approach will mean that Lead Councils will definitively be accommodated by respondents in any tender response. Further, the Company would set any minimum tonnage guarantee, at the aggregate minimum commitment of the Lead Councils.

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(cont)

By contrast, in the case of Optional Councils:

- There is a real possibility that Optional Councils will not be accommodated in the sizing of the facility (as tenderers are likely to only include the Optional Councils to the extent it has an immaterial impact on redesign time and cost should these Councils subsequently decide not to participate).
- Even if the sizing of the facility can accommodate the waste of Optional Councils at the commencement of the Project, this accommodation is unlikely to extend to the 25-year terms as Lead Council's waste will be given priority over Optional Councils; and
- Where Optional Councils are accommodated by the facility, there is a real possibility that this would be at a different (and less favourable) gate fee to the Lead Councils.

If a majority of Councils choose to not commit to the Project the Project is unlikely to proceed. The tenderers have all provided advice that they are not prepared to proceed based on no Council commitment. The tenderers have advised that unless a known number of Councils have committed to the Contract, finance to fund the facility will not be available.

It is recommended that Council commit to the Contract if the following parameters are met the:

- Project being located at the agreed Site;
- Agreed waste supply deed issued for tender; and
- Gate fee being within an agreed limit of for the Project: the gate fee payable by Councils in 2026 is equal to or less than \$235/tonne (indexed at CPI thereafter).

2. Minimum Tonnage Guarantee

Minimum tonnage guarantees are standard operating practice when managing traditional waste to landfill contracts. These allow facility operators to appropriately plan and resource for those anticipated tonnes and ensure the facility has adequate capacity. Without these the facility operators cannot ensure they can accommodate tonnages as needed and ensure their business remains viable. The amount of waste Council collects and sends to landfill fluctuates each year, similarly at other Councils depending on population growth and waste generation trends. As part of the current MWRRG landfill contract, Council is required to forecast and advise MWRRG so it can provide a collective guarantee of the minimum tonnages the facility is to expect for the year ahead. A conservative tonnage amount is provided in order to ensure Council can comfortably meet the minimum guarantee.

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For the Project, the Company has endorsed the principle to provide a guarantee regarding the minimum tonnage to be supplied under a Waste Supply Deed.

The Company has recommended that, following finalisation of each participating Council's contribution to the minimum tonnage guarantee, the Councils will endorse the proposed pass-through arrangements for any liability incurred by the Company to the relevant Councils under the minimum tonnage guarantee regime.

This decision was based on numerous factors, including:

- The anticipated impact the minimum tonnage guarantee would have on minimising gate fees payable under the Waste Supply Deed;
- The increased assistance the minimum tonnage guarantee would have on obtaining financing for the Project for tenderers; and
- That the successful Contractor will be required to prioritise waste from the Company over any other sources of waste.

The MWRRG has engaged with each participating Council to understand the levels of waste that each individual Council believes it would be comfortable with setting as that Council's contribution to a collective minimum tonnage guarantee. It is proposed that the minimum tonnage guarantee provided by the Company to the tenderers would be set at the aggregate of each Council's proposed contribution to the minimum tonnage guarantee. This minimum tonnage guarantee would be assessed annually under the Waste Supply Deed between the Company and the Contractor, similarly to the current practice under the existing regional landfill contract.

It is proposed that, where the Company does incur liability under the minimum tonnage guarantee, then this liability would be passed onto a Council proportionately to the extent that Council failed to achieve its own contribution. A failure by a Council to achieve its own contribution to the minimum tonnage guarantee would not automatically trigger liability for that Council, as this shortfall may be covered by waste produced by other participating Councils or alternative waste streams secured by the Contractor. Rather, an obligation to contribute proportionately to a liability of the Company under the minimum tonnage guarantee would only be triggered where the aggregate waste provided by the Company did not achieve the requisite minimum tonnage guarantee.

Whitehorse's future waste tonnages have been assessed in recognition of future waste reduction strategies including the upcoming food waste service, glass service and other ongoing waste reduction strategies. The minimum tonnage has been assessed such that while waste generation will be minimised, it is unlikely that the minimum would not be achieved.

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If a minimum tonnage guarantee is not provided, the Project is unlikely to proceed. The tenderers have all provided advice that they are not prepared to proceed on the basis of no minimum tonnage commitment. The tenderers have advised that unless a minimum processing tonnage is provided under the Contract then finance to fund the facility will not be available.

It is recommended that Council endorses a minimum tonnage guarantee.

3. Council Security

The proposed contracting structure between the successful respondent and the Company creates certain theoretical risks, including the ability of participating Councils to not fund the Company or to wind up the Company, so as to avoid liability under the Waste Supply Deed. The report on 28 June 2021 informed Council about the establishment of a multi-council Company for this project as a preferred mechanism to minimise risks to participating Councils, and avoid larger possible risks falling to individual participating Councils.

The Company has recommended that participating Councils endorse the provision of a financial guarantee, under which the Councils guarantee that the Company will remain solvent and will not be wound up during the term of the Contract.

As currently structured, the participating Councils would not have any direct contractual agreement with the Contractor, rather the Contractor's contractual counterparty would be the Company. This approach creates challenges for the tenderers and their financiers. In particular, the Company will have certain obligations and liabilities to the Contractor (i.e., gate fee payments). The Company is not an entity of substance (that is, it does not have a financial standing in its own right). Theoretically, the Councils could decide to not fund the Company (i.e., let the Company become insolvent) or decide to wind up the Company, so as avoid liability or even to avoid ongoing contractual obligations under the Waste Supply Deed.

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To overcome this theoretical risk the tenderers have sought some form of security from the participating Councils. This security could take various forms, including a:

- Bank guarantee in favour of the Contractor from the Company (which would need to be funded by the Councils);
- Guarantee in favour of the Contractor, under which each Council guaranteed the performance of its obligations under the Waste Supply Deed; or
- Financial guarantee, under which the Councils guarantee to the Contractor that the Company will remain solvent and not be wound up during the term of the Contract (which would be very similar in effect to a general guarantee referred to above but is limited in its operation to ensuring that the Company remains capable of paying its debts as and when they become due and payable).

It is recommended that Council endorse the provision of a financial guarantee, under which the Councils guarantee that the Company will remain solvent and will not be wound up during the term of the Contract.

4. Bid Reimbursement Costs

The Councils Chief Executive Officers have considered, and the Company has determined that partial bid reimbursement costs would be payable for unsuccessful tenderers who submit a compliant bid. The Company has recommended that Councils endorse covering bid reimbursement costs in circumstances where the Councils cancel the tender for the Project.

It is recommended that partial bid reimbursement costs would be payable to unsuccessful tenderers who submit a compliant tender, in recognising the level of engagement by tenderers to date, the time and cost required to develop tenders, the more meaningful engagement that will be received from the market for some form of cost compensation (for example, from key subcontractors) and that this is universal market/industry practice for projects of this scope and scale.

It is proposed that this partial bid reimbursement will be:

- Payable to each unsuccessful respondent up to 50% of the external costs incurred in preparing the tender response (capped at a limit set by the Company per unsuccessful Respondent); and
- Subject to reimbursable costs being verifiable and reasonable and a respondent submitting a conforming bid which is ultimately unsuccessful (requirements for a conforming bid may include satisfying all or some of the agreed parameters set out in the Council commitment outlined above).

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This partial bid cost reimbursement will be payable by the successful Contractor and embedded in the gate fees payable under the Waste Supply Deed (i.e., these amounts will be payable over the life of the Waste Supply Deed and not paid by Councils prior to contract close).

Tenderers have raised concerns that market participants have remained less willing to engage on the Project given bid reimbursement not being offered and given the existing Project risks that could materialise which are outside of their control.

Bid reimbursement for unsuccessful tenderers who submit compliant tender responses as well as reimbursement for cancelled tenders is common practice for infrastructure projects of this nature conducted by the Victorian State government.

Having the partial bid reimbursement arrangement to cover circumstances where the Project tender is cancelled by the Councils would mean that these costs would be a cost covered by Councils. This cost could be up to \$430,000 based on 14 participating Councils.

Notwithstanding this, it is expected that the risk of cancellation of the Project tender is significantly reduced given the lack of an alternative solution for Councils and provided the Councils commit to the Project as outlined above.

It is recommended that Council endorses partial bid reimbursement costs to unsuccessful tenderers who submit a compliant tender and if Councils choose to cancel the Project.

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 as this Project provides an option for the continuation of disposal of waste, which is a service that Council currently provides.

11.2
(cont)

Community Engagement

Council's teams have been involved with assisting to inform the community on this significant strategic project along with other Councils and the MWRRG. As the Project is a first for Councils in Victoria it has been important to engage with and communicate to the community early and throughout the Project.

Throughout the Project the MWRRG has coordinated communications and stakeholder engagement. This has included developing communication resources, hosting key stakeholder meetings, briefings and events and announcements.

The Project has been informed by:

- MWRRG 2018 social research on public attitudes to waste to energy facilities;
- MWRRG 2021 social research on public attitudes to waste to energy facilities;
- Pre - Expression of Interest (EOI) launch media sentiment analysis; and
- Post - EOI launch media sentiment analysis.

Information is available at: <https://www.mwrrg.vic.gov.au/smartersolution>. A range of FAQs, infographics and news is provided on the Project.

Financial and Resource Implications The main financial driver for this project is to offset the rising cost of sending waste to landfill. In recent years and in the lead-up to 2022/23 financial year, the cost of landfilling municipal waste will rise by an estimated \$64 per tonne since 2019/20. This has mainly been driven by a 96% increase in the landfill levy over the past three years as well as landfill operating costs rising by around 5% per annum to meet EPA standards.

Even allowing for a (relatively) modest 5-6% annual waste industry cost increase in landfill disposal costs from 2022/23 to 2026/27, the date that the AWP facility is expected to commence operations, the gate fee payable by Council would rise to around \$235 per tonne. This level of increase equates to landfill operators increasing gate fees by 2% annually (assumed CPI), which is likely conservative given reducing landfill capacity, combined with a \$10 per tonne annual increase in the landfill levy (approximately half of the increase imposed by State government over recent years). If landfill levy price spikes occur in the coming years, or landfill operational costs rise considerably due to closure of landfills in the metropolitan region, then the gate fee would be much higher.

11.2
(cont)

Hence a tender price ceiling of less than \$235 per tonne in 2026 as one of the financial criteria for participating Councils will ensure that the Contract will most likely deliver a more favourable financial outcome than continuing to rely on disposing of waste to landfill.

The proposed reimbursement arrangement for up to 50% of the cost of unsuccessful tenderers as an addition to the gate fee over the life of the contract will not add more than approximately one dollar per tonne to the AWP gate fee.

Council is currently in the process of considering a separate Waste Charge. If a Waste Charge is adopted, costs associated with this Project would fall within the Waste Charge.

Innovation and Continuous Improvement

This Project is based around the premise that we cannot simply continue to deal with our waste by dumping it in the ground. It has been developed to break with the status quo of landfilling waste and transitioning to turning waste into a resource utilising advanced waste processing solutions.

Collaboration

The aggregating of waste through multi-Council contracts and reducing reliance on landfill disposal aligns with various Council and Victorian Government policies and strategies. These include the State Waste and Resource Recovery Infrastructure Plan, the Metropolitan Waste and Resource Recovery Implementation Plan, and the recent Recycling Victoria Policy – circular economy plan that includes a target to divert 80% of household waste away from landfill by 2030.

Discussion and Options The recommended options are outlined in the 'Legislative and Risk Implications' section of the report. If any of the recommendations are not supported, the only available option is for Council to resolve to discontinue its participation in the Project by advising the Company and seeking the Company to buy back Council's shareholding. This would then require Council to continue to landfill waste or to seek some other solution under a tendering arrangement. Any alternative tendering arrangement would be without the collaboration with other Councils.

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.

11.2
(cont)

Steven White, Director Infrastructure, is an interim member of the Board of the Company, along with senior members of staff from five other participating Councils and the Chief Executive Officer of the MWRRG. He has no conflict of interest in the matter as the objectives of the Company are aligned with the objectives of Council and the Company has been established to fulfil the objectives of Council. The interim Board will be replaced by an independent skills based Board at the time the Company awards a Contract.

Conclusion

It is recommended that Council continue its participation in the Project if the tender conforms to all of the predetermined conditions as outlined in this report and that the letter shown in Attachment 1 be sent to the Company to confirm this.

ATTACHMENT

- 1 Draft Commitment Letter

11.3 Records of Informal Meetings of Councillors

RECOMMENDATION

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

Councillor Infomal Briefing 13.12.21 6:30-7:00pm		
Matter/s Discussed <ul style="list-style-type: none">9.4.1 110 Blackburn Road, Blackburn9.4.2 Morton Park Sun Shelter Modifications	Councillors Present	Officers Present
	Cr Liu (Mayor & Chair)	S McMillan
	Cr Barker	J Green
	Cr Carr	L Letic
	Cr Cutts	S Cann
	Cr Davenport	S White
	Cr Lane	S Sullivan
	Cr McNeill	V Ferlaino
	Cr Massoud (Deputy Mayor)	J Russell
	Cr Munroe	A McCarthy
Cr Skilbeck	C Altan	
Cr Stennett		
Disclosures of Conflict of Interest	Nil	
Councillor/Officer attendance following disclosure	Nil	
16.12.21 5:00-6:00pm		
Matter/s Discussed <ul style="list-style-type: none">Summary of Aged Care Reform in AustraliaSummary of Service Review processSummary of context concerning change to the funding of the Commonwealth Home Support Program (CHSP)	Councillors Present	Officers Present
	Cr Liu (Mayor & Chair)	S McMillan
	Cr Barker	L Letic
	Cr Cutts	S Sullivan
	Cr Davenport	Z Quinn
	Cr Lane	M Hassan
	Cr McNeill	A Makedonskaya
	Cr Munroe	J Reid
		D Seddon
		S Berton
	External Craig Kenny	
Disclosures of Conflict of Interest	None disclosed	
Councillor /Officer attendance following disclosure	None disclosed	

11.3
(cont)

Virtual Councillor Briefing 24.01.22 6:30-9:06pm		
Matter/s Discussed	Councillors Present	Officers Present
<ul style="list-style-type: none"> Financial Report as at 30 November 2021 Budget Briefing South East Metropolitan Advanced Waste Processing Project Whitehorse Performing Arts Centre Governance Update Draft Council Agenda 31 January 2022 	Cr Liu (Mayor & Chair) Cr Barker Cr Carr Cr Cutts Cr Davenport Cr Lane Cr McNeill Cr Massoud (Deputy Mayor) Cr Munroe Cr Skilbeck Cr Stennett	S McMillan (ADCD) T Peak L Letic S Cann S White S Sullivan V Ferlaine J Russell C Clarke S Price S Kinsey P Sutton
Disclosures of Conflict of Interest	None disclosed	
Councillor /Officer attendance following disclosure	None disclosed	

12 COUNCILLOR DELEGATE AND CONFERENCE /SEMINAR REPORTS

12.1 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.

12.2 Reports on Conferences/Seminars Attendance

RECOMMENDATION

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

13 CONFIDENTIAL REPORTS

94 CLOSE MEETING