



# Whitehorse City Council

## MINUTES

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### Council Meeting

on

**Tuesday 14 June 2022**

at 7:00pm

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

Mr Simon McMillan, Chief Executive Officer

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## TABLE OF CONTENTS

<b>1</b>	<b>PRAYER .....</b>	<b>4</b>
<b>2</b>	<b>WELCOME AND APOLOGIES.....</b>	<b>4</b>
<b>3</b>	<b>APOLOGIES .....</b>	<b>4</b>
<b>4</b>	<b>DISCLOSURE OF CONFLICTS OF INTEREST .....</b>	<b>4</b>
<b>5</b>	<b>CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS .....</b>	<b>5</b>
<b>6</b>	<b>PUBLIC PRESENTATIONS.....</b>	<b>5</b>
<b>7</b>	<b>PETITIONS AND JOINT LETTERS.....</b>	<b>5</b>
<b>8</b>	<b>PUBLIC QUESTION TIME.....</b>	<b>6</b>
<b>9</b>	<b>NOTICES OF MOTION .....</b>	<b>7</b>
9.1	NOM 165 FROM CR BARKER - HAGENAUER RESERVE BOX HILL – FUNDING COMMITMENT BY VICTORIAN STATE GOVERNMENT .....	7
9.2	NOM 166 FROM CR CUTTS - MERITS OF ERECTING A HERITAGE INTERPRETIVE SIGN IN HEATHERDALE RESERVE, MITCHAM .....	7
<b>10</b>	<b>URGENT BUSINESS.....</b>	<b>8</b>
10.1	LXRP MONT ALBERT .....	8
<b>11</b>	<b>COUNCIL REPORTS.....</b>	<b>9</b>
11.1	AMENDMENT BURWOOD BRICKWORKS DEVELOPMENT PLAN, 78 MIDDLEBOROUGH ROAD, BURWOOD EAST - STORMWATER QUALITY .	9
11.2	631 HIGHBURY ROAD, BURWOOD EAST (LOT 110 LP 209031R) – CONSTRUCTION OF THREE DOUBLE STOREY DWELLINGS AND ASSOCIATED TREE REMOVAL .....	52
11.3	10 BOULTON ROAD, BLACKBURN (LOT 2 LP 214382) – TREE REMOVAL AND BUILDINGS AND WORKS ASSOCIATED WITH A NEW DWELLING WITHIN 4 METRES OF VEGETATION PROTECTED UNDER SIGNIFICANT LANDSCAPE OVERLAY, SCHEDULE 2 (SLO2). ....	84
11.4	MONT ALBERT RETAIL SUSTAINABILITY ASSESSMENT.....	110
11.5	WHITEHORSE ASSET PLAN 2022-2032.....	115
11.6	RECORDS OF INFORMAL MEETINGS OF COUNCILLORS .....	121
<b>12</b>	<b>COUNCILLOR DELEGATE AND CONFERENCE / SEMINAR REPORTS .....</b>	<b>123</b>
12.1	REPORTS BY DELEGATES.....	123
12.2	REPORTS ON CONFERENCES/SEMINARS ATTENDANCE .....	124
<b>13</b>	<b>CONFIDENTIAL REPORTS .....</b>	<b>124</b>
<b>14</b>	<b>CLOSE MEETING.....</b>	<b>124</b>

Meeting opened at 7:00pm

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

**Officers:** S McMillan, J Green, L Letic, S Cann, S White, S Sullivan, V Ferlano, P Moore, K Podolak, N Jones

**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 and Apologies**

The Mayor welcomed all

**3 Apologies**

Nil

**4 Disclosure of Conflicts of Interest**

None disclosed

**11.1**  
(cont)

**5 Confirmation of Minutes of Previous Meetings**

Minutes of the Council Meeting 23 May 2022, and the Special Council Meeting 06 June 2022

**COUNCIL RESOLUTION**

Moved by Cr Cutts, Seconded by Cr Carr

That the minutes of the Council Meeting held 23 May 2022, and the Special Council Meeting held 06 June 2022 having been circulated now be confirmed.

**CARRIED UNANIMOUSLY**

**6 Public Presentations**

- 6.1 Ms M Middleton, Heatherdale Preschool, spoke in support of funding for preschool.
- 6.2 Mr M Al Fasha, President Heatherdale Preschool, spoke in support of additional funding for service to be retained in future.
- 6.3 Mr I Carkeek, Burwood East, spoke in opposition to Planning Application WH/2020/1194, 631 Highbury Road, Burwood East.
- 6.4 Mr J Ko, Burwood East, registered to speak in opposition to Planning Application WH/2020/1194, 631 Highbury Road, Burwood East but did not attend.
- 6.5 Mr G Ross, KooyongKoot Alliance spoke in opposition to the Amended Burwood Brickworks Development Plan, 78 Middleborough Road, Burwood East – Stormwater quality.

**7 Petitions And Joint Letters**

Nil

**8 Public Question Time**

- 8.1 Mr P Carter, Box Hill North – Question in relation to transport – Bicycle routes.

**Question**

Encouraging more cyclists to ride requires a NETWORK of continuous, low-stress routes (reference Victorian Cycling Strategy)

My own experience in developing the St Kilda Rd bike route (Melbourne's first) demonstrated exactly that. I advised BicycleNetwork staff that cycle numbers would increase substantially when there was a comprehensive CBD bike network. That is now very evident today.

CoW has now progressed to have implemented much of the initial 6 of 17 ERR.

Will CoW now prepare/initiate designs for the remaining 11 routes to ensure no holdup with delivery of the complete Easy Ride Network?

Mr Jeff Green Director City Development read out question one submission on behalf of Council and advised that Council officers will continue to encourage cycling throughout the municipality and progressively design and implement priority Easy Ride Routes as appropriate, subject to funding and resource allocation.

**9 NOTICES OF MOTION**

**9.1 NOM 165 From Cr Barker - Hagenauer Reserve Box Hill –  
Funding Commitment by Victorian State Government**

**COUNCIL RESOLUTION**

Moved by Cr Barker, Seconded by Cr Davenport

That Council:

1. Acknowledges the State Government's commitment of \$400,000 to improving the Hagenauer Reserve athletics facility;
2. Notes that the athletics facility improvements offered by the State Government provide the potential to transform the area over and above the improvement works that are already planned by Council; and
3. Establish a working group including the Athletics Club, relevant Council officers and the Ward Councillor in order to fast track the improvements and maximise synchronisation while undertaking the necessary community consultation (especially around lighting impacts and approach).

**CARRIED UNANIMOUSLY**

**9.2 NOM 166 From Cr Cutts - Merits of Erecting a Heritage  
Interpretive Sign in Heatherdale Reserve, Mitcham**

**COUNCIL RESOLUTION**

Moved by Cr Cutts, Seconded by Cr Stennett

That Council officers prepare a report for Council consideration on the merits of erecting a Heritage Interpretive Sign in Heatherdale Reserve, Mitcham.

**CARRIED**

**10 Urgent Business**

**COUNCIL RESOLUTION**

Moved by Cr McNeill, Seconded by Cr Barker

That Council consider an item of Urgent Business on 14 June 2022.

**CARRIED**

**10.1 LXP Mont Albert**

**COUNCIL RESOLUTION**

Moved by Cr McNeill, Seconded by Cr Barker

That Council:

1. Writes to the:

- Premier of Victoria The Hon Daniel Andrews MP,
- Minister for Transport Infrastructure The Hon Jacinta Allan MP,
- Minister for Local Government The Hon Shaun Leane MLC,
- The Minister for Planning The Hon. Richard Wynne MP and,
- Member for Box Hill Mr Paul Hamer MP

Advising that it supports the local community requests for the LXP to release its west elevation of the proposed new station building in Mont Albert.

2. Request that the Minister for Transport Infrastructure instruct the LXP to release its architectural west elevation of the proposed new station building urgently, for public information.

**CARRIED**



## **11 Council Reports**

### **11.1 Amendment Burwood Brickworks Development Plan, 78 Middleborough Road, Burwood East - Stormwater Quality**

City Planning and Development  
Director, City Development  
FILE NUMBER: SF21/1381  
ATTACHMENT

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#### **SUMMARY**

Development of the Burwood Brickworks site in the Burwood Heights Major Activity Centre is well advanced.

The current Development Plan endorsed under the planning scheme controls; specifically the Development Plan Overlay (Schedule 6) that applies to the site, proposes a wetland within the Melbourne Water Retarding Basin (MWRB) which is located on Eley Road, next to the development site. Each stage of development of the site is reliant on the proposed wetland to meet the developers' [Frasers Property Australia Pty Ltd (Frasers)] and Ryman Healthcare (Australia) Pty Ltd (Ryman) stormwater quality management obligations.

Melbourne Water has withdrawn its support for the proposed wetland in the MWRB due to unacceptable safety concerns, maintenance risks, potential damage to existing underground infrastructure, and infrastructure renewal costs to Melbourne Water. Without the wetland proposed in the MWRB, the Burwood Brickworks development, as a whole, does not meet the stormwater quality obligations on and/or near the site.

As this is a substantial change to the current Development Plan, community comment was sought on updates to the Development Plan to enable Frasers to contribute to Melbourne Water's Stormwater Quality Offsets Program in lieu of providing the intended wetland proposal.

This report discusses the community response from 81 submissions, which overwhelmingly supported implementation of the wetland as per the current, approved, Development Plan. Submissions raised concerns in relation to:

- Water quality
- Environment
- Communal benefit
- Compliance with existing planning permits for the development
- Payment of stormwater quality offsets to meet the developer's obligations instead of onsite outcomes, and the negative precedent this may set for other development
- Public relations and reputation for Frasers, Melbourne Water and Council.

**11.1**  
(cont)

Additionally, this report explores ways to address Frasers' stormwater quality obligations. They include:

1. Melbourne Water reinstating the wetland proposal within the MWRB.
2. Frasers implementing other on-site stormwater quality treatment measures.
3. Frasers contributing to the Melbourne Water Stormwater Quality Offsets Program and the use of the offset funds to support stormwater quality projects that benefit Gardiners Creek (KooyongKoot) as a priority, or projects within the City of Whitehorse.
4. Frasers contributing to the Melbourne Water Stormwater Quality Offsets Program and the use of the offset funds to support projects that benefit the wider Port Phillip and Westernport catchment area (as per the proposed change to the Development Plan).

Ultimately Option 4 is the only option available at this point in time given Melbourne Water has rejected environmental improvements to the MWRB, and all stages of the Burwood Brickworks development now have planning permits, including significant development and works having progressed on the site and, in some cases, completed.

The report therefore recommends that Melbourne Water stormwater quality offsets be utilised by Frasers and funds paid to Melbourne Water as an approach to enable Frasers to satisfy its stormwater quality requirements for the development. It also recommends that Council advocate for expenditure of the offset funds in the Gardiners Creek catchment in Whitehorse

The report also highlights the use of Melbourne Water stormwater quality offsets as the exception and not the preferred approach for development in the municipality to address stormwater quality management onsite.

Additionally, the report flags the recent General Environmental Duty (GED) principle under the *Environment Protection Act 2017* (Vic) and the view that the development's shortfall with addressing its stormwater quality requirements rests with Melbourne Water; particularly given that funds are provided to Melbourne Water by Frasers who take the benefit of utilising the Melbourne Water Stormwater Quality Offsets Program.

If Council resolves to approve the amendment to the Burwood Brickworks Development Plan, the consistency between the updated Development Plan and existing planning permit requirements will need to be addressed with Frasers.

**11.1**  
(cont)

**MOTION**

Moved by Cr Skilbeck, Seconded by Cr Lane

That Council:

1. Note the rationale provided by Melbourne Water in withdrawing its support for a wetland to be provided within the Melbourne Water Retarding Basin (MWRB) located in Eley Road, as shown in the current approved Development Plan for the Burwood Brickworks development.
2. Note the limitations on Frasers Property Australia Pty Ltd (Frasers) at this point to install other stormwater quality treatment assets and/or proprietary systems and products on the Burwood Brickworks development site that would improve stormwater quality performance
3. Acknowledge Frasers' use of Melbourne Water stormwater quality offsets to support Melbourne Water's stormwater quality treatment programs within the Port Phillip and Westernport catchment region.
4. Authorise the Director City Development to sign the Melbourne Water Stormwater Quality Offset Contribution form.
5. Write to Melbourne Water to:
  - a) Advocate for expenditure of Stormwater Quality Offset Program funds in the Gardiners Creek catchment within the City of Whitehorse.
  - b) Express Council's position that in Melbourne Water receiving the offset contribution from Frasers, that Melbourne Water takes full responsibility to adhere to the General Environmental Duty (GED) principle under the Environment Protection Act 2017 (Vic) with respect to stormwater quality discharge emanating from the Burwood Brickworks site that may affect the performance of Gardiners Creek (KooyongKoot)
6. Note the lessons learned from this development so that the development community is informed on Council's position in relation to addressing stormwater quality requirements within a development site in the City of Whitehorse.
7. Work with Frasers and other relevant parties to address any associated requirements in the existing planning permits for the development, to the satisfaction of the Responsible Authority.
8. Upon achieving a satisfactory outcome in Recommendation 7, approve the amended Development Plan that removes the proposed wetland from the MWRB.

**11.1**  
(cont)

**AMENDMENT**

Moved by Cr Stennett, Seconded by Cr Davenport

That Council:

1. Note the rationale provided by Melbourne Water in withdrawing its support for a wetland to be provided within the Melbourne Water Retarding Basin (MWRB) located in Eley Road, as shown in the current approved Development Plan for the Burwood Brickworks development.
2. Note the limitations on Frasers Property Australia Pty Ltd (Frasers) at this point to install other stormwater quality treatment assets and/or proprietary systems and products on the Burwood Brickworks development site that would improve stormwater quality performance and explore the opportunity with Fraser for other additional onsite stormwater water quality measures.
3. Acknowledge Frasers' use of Melbourne Water stormwater quality offsets to support Melbourne Water's stormwater quality treatment programs within the Port Phillip and Westernport catchment region.
4. Authorise the Director City Development to sign the Melbourne Water Stormwater Quality Offset Contribution form.
5. Write to Melbourne Water to:
  - a) Advocate for expenditure of Stormwater Quality Offset Program funds in the Gardiners Creek catchment within the City of Whitehorse.
  - b) Express Council's position that in Melbourne Water receiving the offset contribution from Frasers, that Melbourne Water takes full responsibility to adhere to the General Environmental Duty (GED) principle under the Environment Protection Act 2017 (Vic) with respect to stormwater quality discharge emanating from the Burwood Brickworks site that may affect the performance of Gardiners Creek (KooyongKoot)
6. Note the lessons learned from this development so that the development community is informed on Council's position in relation to addressing stormwater quality requirements within a development site in the City of Whitehorse.
7. Work with Frasers and other relevant parties to address any associated requirements in the existing planning permits for the development, to the satisfaction of the Responsible Authority.
8. Upon achieving a satisfactory outcome in Recommendation 7, approve the amended Development Plan that removes the proposed wetland from the MWRB.

**The Amendment was then put and was LOST**

**The Motion was then put and CARRIED**

**11.1**  
(cont)

CARRIED

**A Division was called.**

**Division**

<b>For</b>	<b>Against</b>
Cr Barker	Cr Cutts
Cr Carr	Cr Davenport
Cr Lane	Cr Stennett
Cr Liu	
Cr Massoud	
Cr McNeill	
Cr Munroe	
Cr Skilbeck	

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**On the results of the Division the Motion was declared CARRIED**

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**KEY MATTERS**

- The endorsed Development Plan has guided development of the Burwood Brickworks site and planning permits have been assessed against the Development Plan, with a dependency on the proposed wetland in the MWRB.
- In 2015/2016, all parties negotiated constructively and in good faith for the proposed wetland to be included in the Development Plan for the benefit of the development, the wider catchment and the community. Functional engineering assessment and subsequent withdrawal of Melbourne Water's support, well after endorsement of the Development Plan has left the development, the Gardiners Creek catchment and the community in a difficult situation in terms ensuring that stormwater quality outcomes from this major redevelopment site are achieved locally. This also acknowledges that the development has been recognised for its design and sustainability achievements.
- In the context of onsite stormwater management practices, without the wetland proposed in the MWRB, the Burwood Brickworks development as a whole, does not demonstrate best practice stormwater quality treatment.
- The community has expressed a strong desire for the wetland proposal to be retained in the Development Plan as approved by Council in 2016.
- The layout and infrastructure requirements for the Burwood Brickworks is well established, removing the ability to retrofit other stormwater quality treatment measures on site.
- There is concern that this predicament with the Burwood Brickworks site may set a negative precedent for future development in the municipality particularly with the use of Melbourne Water stormwater quality offsets.

## 11.1

(cont)

- The potential environmental risk for parties needs to be addressed, particularly in relation to the General Environmental Duty (GED) principle under the *Environment Protection Act 2017* (Vic).
- There is a disconnect between the location of development sites from which funds are contributed to Melbourne Water's Stormwater Quality Offsets program and the locations where they are ultimately spent in terms of benefit to local / municipal communities.

### **STRATEGIC ALIGNMENT**

This report takes into consideration the requirements of the Whitehorse Planning Scheme and various actions and outcomes outlined within Council's:

- Whitehorse 2040 Community Vision.
- Sustainability Strategy 2016-2022.
- Draft Whitehorse Integrated Water Management Strategy 2021-2040.

### **BACKGROUND**

The Burwood Brickworks development located at 78 Middleborough Road, Burwood East has been predominately progressed by Frasers Property Australia Pty Ltd (Frasers) as the primary developer involved in the project. Land fronting Burwood Highway is an aged-care facility being developed by Ryman Healthcare (Australia) Pty Ltd (Ryman).

The original Development Plan for the Burwood Brickworks development was endorsed in 2016 and included a concept plan for a wetland within the Eley Road Retarding Basin drainage reserve.

The Eley Road Retarding Basin is an area of land that adjoins the Burwood Brickworks development site and is owned and managed by Melbourne Water. As per the approved Development Plan, the proposed wetland within the Melbourne Water Retarding Basin (MWRB) would serve as a significant asset for the Burwood Brickworks development and surrounding area.

The wetland intended to treat stormwater for the overall development site to meet best practice stormwater quality (pollution) management requirements. This includes the Burwood Brickworks Shopping Centre retail precinct, Ryman's aged care facility, apartments and medium density housing.

In 2019, detailed design proposals for the wetland within the MWRB were reviewed by Melbourne Water. The review resulted in Melbourne Water withdrawing its support for the wetland in August 2019 and instead supporting payment of a contribution to Melbourne Water's Stormwater Quality Offsets Program to implement (typically larger) stormwater quality treatment projects in the wider Port Phillip and Westernport catchments.

The removal of the proposed wetland within the MWRB was considered a substantial change to the original Development Plan and has therefore resulted in an amendment to the Development Plan that needs to be displayed for public comment. The amendment documentation includes

**11.1**  
(cont)

updates to the Development Plan Report, Stormwater Management and ESD Strategy documentation. The community engagement process occurred from 20 December 2021 until 18 January 2022.

Figure 1 annotates the overall Development Plan for the Burwood Brickworks site. Table 1 explains key terms used in the report.

11.1  
(cont)

*Figure 1: Extract from Development Plan*





**11.1**  
(cont)

*Table 1: Key terms used throughout this report.*

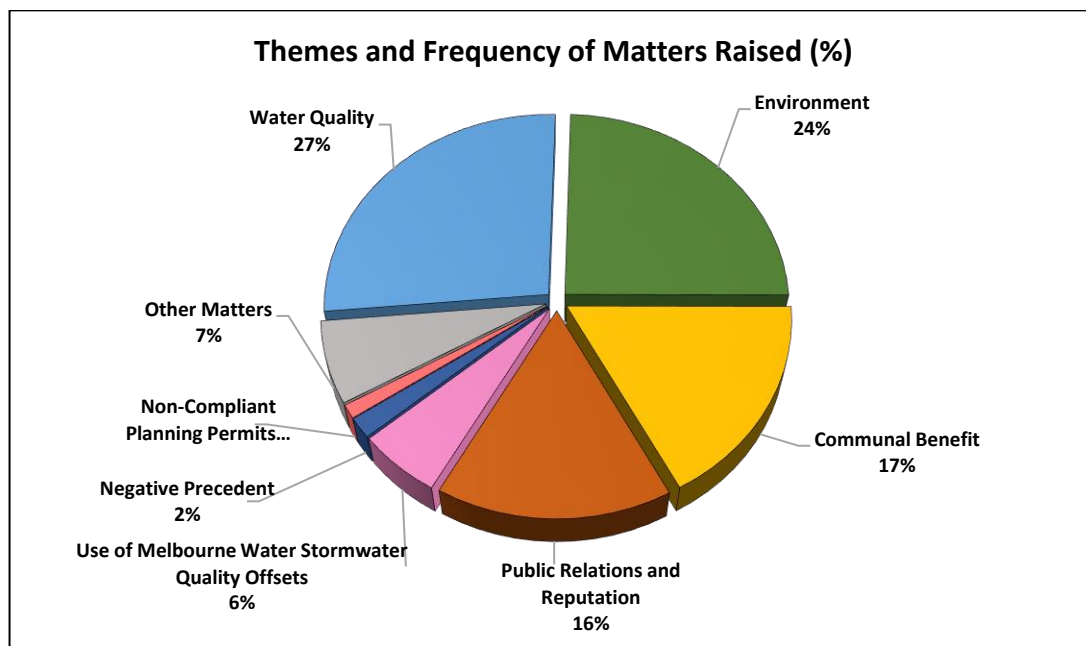
Key Term	Reference
The 'development'	Refers to the overall development on the former Burwood brickworks site that has been predominately progressed by Frasers. The MWRB adjoins the development and is managed by Melbourne Water.
The 'proposed wetland within the MWRB'; or The 'wetland'	Refers to the proposed wetland within the Melbourne Water Retarding Basin that is otherwise known as the Eley Road Retarding Basin drainage reserve.  Stormwater from this point is discharged via stormwater drains into Gardiners Creek.
Ornamental Pond or Sediment Basin	Refers to the body of water located within the Village Green or Central Open Space in the development.  Stormwater from this point is discharged to the MWRB.
Village Green / Central Open Space	Refers to the new public open space being delivered toward the centre of the development. It is the primary parkland being provided by the developer.

## **DISCUSSION AND OPTIONS**

A total of 81 submissions were received, primarily via Your Say. The majority of submissions (73%) opposed removal of the wetland from the Development Plan. Following review of the submissions, issues raised were grouped into the following themes:

1. Water quality
2. Environment
3. Communal benefit
4. Wetland's removal results in non-compliant planning permits with respect to the staged development planning permits
5. Use of Melbourne Water stormwater quality offsets not serving as an appropriate measure to meet obligations
6. Establishing a negative precedent within the planning and development industry, where future development may also seek offsets and jeopardise preferred onsite outcomes
7. Public relations and reputation
8. Other matters

**11.1**  
(cont)



*Figure 2: Themes and frequency of matters raised (%) based on the submissions received when considered considering the total amount of all matters raised (n = 175)*

As per Figure 2, the majority of the community concerns raised were in relation to the impact on water quality (27%) and the general environment (24%), followed by communal benefit (17%), and public relations and reputation (16%) implications.

The themes outlined by the submissions have assisted with further discussion between Melbourne Water and Frasers on relevant matters and are discussed in detail below, including relevant officer comments.

### **1. Water Quality**

With regard to water quality, the majority of submissions referenced concerns with best practice stormwater quality measures not being met and issues experienced by the downstream/ receiving waterway of Gardiners Creek.

To provide context and detail on this matter, the following has been prepared with reference to the Reeds Consulting Updated MUSIC Model Summary Report dated May 2021 ('MUSIC Model Summary Report') and the respective stormwater quality modelling outputs (MUSIC model) where applicable. Reeds were appointed by Frasers to serve as the consulting engineers on the Burwood Brickworks development.

#### *1.1. Performance shortfall against the Urban Stormwater Best Practice Environmental Management Guidelines (BPEMG) targets*

Development within the City of Whitehorse is required to meet all the stormwater quality targets detailed within the Urban Stormwater Best Practice Environmental Management Guidelines (BPEMG) (CSIRO, 1999).

**11.1**  
(cont)

The targets are also detailed within the more recent publication Urban Stormwater Management Guidance (Publication 1739.1, Environment Protection Authority (EPA) Victoria, 2021).

The targets serve as industry standards and benchmarks for a development to address best practice stormwater measures and practices. The Urban Stormwater BPEMG publication is also referenced throughout the Whitehorse Planning Scheme at relevant clauses as listed in Attachment 1 (section 1.1).

Given the proposed wetland's removal from the Development Plan, additional stormwater pollutants will be emitted from the development resulting in a performance shortfall against the stormwater quality targets. As a result, the best practice stormwater quality targets for the development as a whole will not all be met.

This principally entails increased total nitrogen (TN) and total suspended solids (TSS) pollutants being discharged from the development into the local waterway of Gardiners Creek. TN is the most significant and important pollutant to address given the pollutant's effect on water quality and river system health; including its difficulty treating and removing from the natural environment.

Table 2 provides the distinction between the wetland's incorporation within the site as per the current Development Plan and the wetland's removal as per the proposed amendment to the Development Plan.

With the wetland incorporated within the MWRB, all stormwater quality targets are met.

**11.1**  
(cont)

*Table 2: The Burwood Brickwork's development performance with regard to the Urban Stormwater BPEMG stormwater quality targets*

Pollutant Indicator	Urban Stormwater: Best Practice Environmental Management Guideline Stormwater Quality Target	Wetland Incorporated Current Approved Development Plan (% Pollution Reduction)	Target Met	Wetland Removed Proposed Change to Development Plan (% Pollution Reduction)	Target Met	Performance Shortfall against Stormwater Quality Target
Total Suspended Solids (TSS)	80%	87.4%	✓	66.6%	✗	-13.4 %points [16.8% of TSS Target Not Achieved]
Total Nitrogen (TN)	45%	46.0%	✓	31.4%	✗	-13.6 %points [30.2% of TN Target Not Achieved <b>Stormwater Quality Score = 69.8% of 100% min. requirement]</b>
Total Phosphorus (TP)	45%	70.9%	✓	52.3%	✓	Exceeds Target by 7.3 %points
Gross Pollutants (GP)	70%	95.2%	✓	84.5%	✓	Exceeds Target by 14.5 %points

*1.2. The importance of onsite stormwater management systems*

The submissions received raised the importance for onsite stormwater management systems and measures to address the stormwater quality targets, as well as, the commitments within the original Development Plan.

The development currently includes several onsite stormwater management systems and treatment measures. These are significant assets provided by Frasers and Ryman in the development and include:

- Rainwater tanks and a significant water reticulation system provided within the Burwood Brickworks Shopping Centre;
- Raingardens/ bioswales provided to parts of the car park areas of the Burwood Brickworks Shopping Centre;
- Rainwater tanks provided to the apartment developments for a combination of either toilet flushing and irrigation purposes;

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## 11.1

(cont)

- Rainwater tanks provided to the aged care development;
- Rainwater tanks provided to a minor amount of dwellings within the medium density housing development;
- Onsite gross pollutant traps (to be managed by Council in future years); and
- An ornamental pond/ sediment basin provided within the Village Green of the development site (to be managed by Council in future years).

As expressed by the majority of the submissions received, the inclusion of the wetland within the MWRB; as an onsite treatment system, would have enabled the development to meet the necessary stormwater quality performance targets. Council officers note that in addition, the wetland would have served the catchment of the surrounding, established, residential area.

### *1.3. The Burwood Brickworks Shopping Centre and the stormwater quality targets*

The Burwood Brickworks Shopping Centre, within its own right, as a standalone asset, and distinct from the development site in its entirety, has achieved extensive accolades as a 'World Leading' sustainable development, demonstrating 'World Leadership' credentials. This includes relevant recognition under the Living Building Challenge's Petal Certification framework and Green Building Council of Australia's Green Star framework. The Burwood Brickworks Shopping Centre is therefore a development to be celebrated within the City of Whitehorse as an exemplar project.

Primary stormwater management and treatment assets incorporated as a part of the Burwood Brickworks Shopping Centre include rainwater tanks for reuse purposes and raingardens treating parts of the car park areas. A water reticulation and 'blackwater' treatment system is also incorporated through a recycled piping network that improves and promotes consistent water reuse and further water efficiencies.

In terms of stormwater quality and the best practice targets, Council officers undertook a review of the technical stormwater quality (MUSIC) model provided for the development which excluded the wetland within the MWRB. When isolating the Burwood Brickworks Shopping Centre from the model to determine its individual performance (its relevant 'node'), theoretically, as modelled, all stormwater quality targets were met. Further analysis is provided in Attachment 1 (section 1.2).

On paper, the Burwood Brickworks Shopping Centre does achieve the best practice stormwater quality targets. Frasers has indicated that the Burwood Brickworks Shopping Centre stormwater systems and measure are being suitably managed to ensure that the best possible operational performance and the expectations as modelled are achieved, as per the design.

### *1.4. Whether the Sediment Basin/ Ornamental Pond is effective to treat stormwater*

**11.1**  
(cont)

The sediment basin/ ornamental pond is located within the Village Green/ Central Open space within the development site. Details of the sediment basin and its effectiveness is provided within the MUSIC Model Summary Report. Excerpts taken from the report, demonstrating the sediment basin / ornamental pond's effectiveness, are detailed as follows:

- The ornamental pond includes sediment capture capability and has been designed with a concrete hard base and provision for excavator maintenance access to Council satisfaction to facilitate periodic cleanouts.
- A Gross Pollutant Trap is placed upstream of the ornamental pond to minimise pollutant ingress and minimise future maintenance requirements.
- The ornamental pond has been designed in accordance with Melbourne Water's Shallow Lake Guidelines requirements.
- A risk assessment of algal blooms was undertaken in accordance with Melbourne Water guidelines and sections 10.3 and 10.6 of the WSUD Stormwater Engineering Procedures to assess the estimated holding time of material in the sediment basin / ornamental pond. This assessment confirmed a 'very low risk' of algal blooms, which is the lowest risk rating in Melbourne Water's Shallow Lake Guidelines.

*1.5. Health of Gardiners Creek*

Submissions also raised concern about the current health of Gardiners Creek given the additional pollutant load added by the development due to the proposed wetland's removal from the MWRB.

A particular submission made reference to Melbourne Water's Healthy Waterways Strategy 2018-2028 and the report card associated with Gardiners Creek. The report card for Gardiners Creek indicates a 2018 base line waterway condition of 'very low' for both the stormwater and water quality indicators. The targets for each indicator are to improve the creek's waterway condition and performance, from a status of 'very low' to 'low' by 2068.

Additionally, Table 3 demonstrates the indicators associated with Gardiners Creek where levels currently exceed the Water Quality Objectives as determined by the Environment Protection Authority (EPA) Victoria's Environment Reference Standard (ERS). The exceedance of such objectives indicate an already compromised and stressed waterway.

**11.1**  
(cont)

Regarding the development, by removing the proposed wetland from the MWRB, an additional pollutant load of total nitrogen will be received by Gardiners Creek, further exceeding the levels beyond the Water Quality Objective (highlighted yellow), impacting the health of the creek and receiving waterways.

*Table 3: Indicators for Gardiners Creek where levels currently exceed the Water Quality Objectives in the EPA's Environment Reference Standard (ERS)*

Indicator	Unit	Assessment Statistic	Water Quality Objective	Gardiners Creek Current Performance	Outcome
Total Nitrogen (TN)	µg/L	75 <sup>th</sup> percentile	≤1,300	1,528	✗
Dissolved Oxygen Saturation	%	Maximum	130	224	✗
Electrical Conductivity	µS/cm	75 <sup>th</sup> percentile	≤500	545	✗
pH	pH units	75 <sup>th</sup> percentile	≤7.9	8.9	✗
Chromium	µg/L	90 <sup>th</sup> percentile	≤6	10	✗
Copper	µg/L	90 <sup>th</sup> percentile	≤1.8	25	✗
Lead	µg/L	90 <sup>th</sup> percentile	≤5.6	54	✗
Zinc	µg/L	90 <sup>th</sup> percentile	≤15	190	✗
<i>E. coli</i>	orgs/100mL	95 <sup>th</sup> percentile	≤130	4,100	✗

The matter therefore raised by several submissions combined with Council officer knowledge of the current health of Gardiners Creek is that, given the development's magnitude and significance, and in alignment with best practice outcomes, the development should improve, as opposed to further degrade, the local waterway of Gardiners Creek.

Melbourne Water has also provided Council officers with its understanding that a significant percentage of the catchment has been developed; the majority of developments without stormwater quality treatment. The reason for this is that the developed areas were constructed at a time where stormwater quality treatment was not required. The consequence is that Gardiners Creek is exposed to significant stormwater pollutants.

**11.1**  
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Melbourne Water holds the view that even if the Burwood Brickworks development meets its stormwater quality treatment obligations onsite, Gardiners Creek would not be exposed to noticeably improved stormwater quality. Therefore the Gardiners Creek catchment, with its current development characteristics, is one where stormwater offsets may be appropriate, as the environmental impact of this development on the health of Gardiners Creek is very small versus the overall catchment impact. However, if the catchment was significantly undeveloped or had significant values needed protecting (of which Gardiners Creek is not) offsets would not be an appropriate option and all options to treat onsite should be implemented.

Mindful of Melbourne Water's view, in general terms, Gardiners Creek is impacted by the wetland's proposed removal from the MWRB which places a level of risk to the health of Gardiners Creek. The point in contention however is recognising and establishing the precise level of impact and consequence that the wetland's removal may cause from a quantitative and more informed sense. Lay opinions have been exchanged noting minimal and unnoticeable impact to Gardiners Creek however detailed and expert evidence has not been obtained on this matter.

*1.6. Broad downstream effects*

Downstream authority submissions were received from Stonnington City Council and Boroondara City Council.

Both councils expressed that the wetland's removal from the MWRB will result in additional pollutants emitted to Gardiners Creek which has broader implications for the downstream environment, waterway health, and community impacts. This also extends beyond the jurisdictional boundaries of such councils, consequentially impacting the Yarra River and Port Phillip Bay.

*1.7. Conflicting with and undermining the outcomes and objectives detailed within several Strategies, Actions and Master Plans*

The submissions from Stonnington City Council and Boroondara City Council also indicated that the implications of the change to the Development Plan conflicts with and undermines numerous Local, State and joint programs between councils.

Council is currently preparing its own Integrated Water Management (IWM) Strategy. An early version of the IWM Strategy promotes the importance of onsite stormwater quality treatment on development sites in order for Council to meet proposed objectives and targets that have been developed.



**11.1**  
(cont)

The City of Boroondara is committed to Integrated Water (IWM) Management and has been progressing towards goals and outcomes since the adoption of its own IWM Strategy in 2014. The goals and outcomes were recently updated in the Boroondara Climate Action Plan in 2021 which contains actions and objectives related to climate change and IWM.

Additionally, Boroondara City Council is in the process of preparing a Master Plan for Gardiners Creek to ensure that they continue to manage the corridor and respond appropriately to current and developing pressures, including identifying opportunities to enhance the environmental conditions of the creek.

Stonnington City Council, with support from Melbourne Water, have also prepared the Gardiners Creek (KooyongKoot) Masterplan in 2020 and are working closely with other councils, including Whitehorse City Council, to ensure its implementation and success.

One of the actions from the Gardiners Creek (KooyongKoot) Masterplan has been to assemble a regional collaborative project which currently includes a network of councils, statutory authorities, traditional owners, community representatives and others to improve and revitalise the Gardiners Creek catchment.

Furthermore, the proposed approach to utilise offsets has been outlined as contrary to the direction of catchment goals and objectives detailed within the Yarra IWM Forum's Yarra Strategic Directions Statement 2018 and accompanying Greater Metropolitan Melbourne Catchment Scale Integrated Water Management Plan that is in development. Such initiative is currently being progressed by the Department of Environment, Land, Water and Planning (DELWP) and partner organisations.

An offset approach is also contrary to the local -sub catchment planning work lead by Yarra Valley Water, specifically for the Gardiners Creek sub-catchment.

*1.8. Determining the cost to maintain the wetland and similar assets*

All stormwater management treatments systems and measures require ongoing maintenance and upkeep to ensure adequate performance.

With respect to the proposed wetland within the MWRB, it was not intended that Council manage and maintain the wetland given that the asset is owned and managed by Melbourne Water. Estimated costs to manage and maintain the proposed wetland were not provided by Melbourne Water. However, given the volume of submissions and queries raised, at high level, Council officers have investigated the key items involved to evaluate the costs required to maintain and manage a wetland similar to that proposed in within the MWRB for the Burwood Brickworks development.

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To an extent the sediment basin within the Village Green/ Central Open Space assists with stormwater quality treatment. The sediment basin will have a surface area of 562 m<sup>2</sup>. Based on council officer findings, when scaling associated costs, this could be in excess of \$300,000 for an approximate 10 year period.

Further considerations in relation to maintenance costs are provided within Attachment 1 (section 1.3).

**2. Environment**

*2.1. Biodiversity and eco-systems*

As distinct from water quality and the health of Gardiners Creek, several submissions raised other broader concerns with the environmental impact.

Some submissions detailed that the inclusion of a proper and functioning wetland in the MWRB would benefit local wildlife and enhance biodiversity in the area; also acting as a mitigating measure to address the urban heat island effect. Such opportunity and overall benefits are compromised with the proposed removal of the wetland.

On this basis the proposed wetland in the MWRB would have served as a system to treat stormwater before entering Gardiners Creek and therefore assist with improving the local waterway from a broad based, environmental perspective. This includes the wildlife, biodiversity and eco-systems present within Gardiners Creek, as well as, associated waterways. The removal of the wetland elements was highlighted by some submitters as poor ecological practice and exacerbating existing issues experienced by Gardiners Creek.

A particular submission made reference to the Healthy Waterways Strategy 2018-2028 and the report card associated with Gardiners Creek.

The report card for Gardiners Creek indicates a 2018 base line waterway key value ranging from 'very low' to 'moderate' for a variety of fauna indicators including birds, fish, frogs, macroinvertebrates (small aquatic insects) and the platypus. The vegetation indicator is also marked as 'low' in terms of the creek's current condition. Whilst the target for each indicator is to improve the creek's key value condition and performance, the only indicator marked for improvement is for aquatic life and fish by ascertaining a status of 'moderate' by 2068 (improved from 'low'). When additional pollutant loads are added to the Gardiners Creek there is greater difficulty in achieving such targets.

In a general sense, an increase in nitrates and phosphates to aquatic ecosystems may result in algal blooms, stripping the oxygen levels within waterways. This consequentially has a detrimental effect on the biodiversity and the local ecosystem, severely affecting aquatic life and relevant food chains.

Discussions with Melbourne Water, post the community engagement period, determined that it is unclear whether the additional pollutant load from the

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development, particularly total nitrogen, will directly and detrimentally effect biodiversity and local eco-systems.

Melbourne Water's view is that when taking into consideration other infill development and activities locally and up stream, there may be cumulative and contributory impacts. As indicated above, recognising and establishing the precise level of impact and consequence that the wetland's removal may cause from a quantitative and more informed sense remains unclear and expert evidence has not been obtained on this matter.

*2.2. Flooding and flood management*

Concerns were expressed with flooding to the development site and the surrounding area, in relation to the MWRB. Reasons given were increased rainfall events, perceived changes to the handling of stormwater on the development site, including additional drainage infrastructure that may be required, and the perception that the MWRB itself was going to be removed or altered.

These submissions about flooding relate to stormwater volume/ quantity; the subject wetland relates to stormwater quality. The MWRB will remain and continue to perform its existing flood mitigation role. In addition, the development site also includes a new retarding basin within the Village Green / central open space to manage stormwater flow generated by the development plus overland flows from the existing residential catchment to the south of Burwood Highway.

The proposed removal of the wetland from the MWRB does not affect the flooding characteristics of the development and the receiving waterway of Gardiners Creek.

**3. Communal Benefit**

*3.1. Loss of open space and recreational opportunity*

Submissions raised concern that the inclusion of the wetland within the MWRB, based upon the original Development Plan, would provide a much needed response to improve and enhance the landscape elements of the existing Burwood Brickworks and the surrounding area with the inclusion of green features and spaces. One submitter held that such asset would serve as 'a sanctuary away from all the new buildings'. Council officers share this concern.

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Some submissions believed that with the removal of the proposed wetland intended in the MWRB, there would be less access to such an asset and therefore a loss of recreational opportunity for the community. To clarify, the existing MWRB; as shown within the current, approved Development Plan, will still remain a fenced off asset with limited access as intended and was not proposed to be physically accessible to the community as open space. This is due to a range of factors, including the flood characteristics and safety considerations of the MWRB.

*3.2. Loss of amenity, views and aesthetic improvements*

There were concerns raised with the loss of current visual appeal of the wetland. Residents within and near the development were looking forward to a transformation of the MWRB asset into an attractive and well-functioning wetland.

Submissions raised that the current asset is visually unappealing and was regarded by some as an 'eyesore' – impacting the view from their home. The inclusion of the proposed wetland in the MWRB was considered to improve and enhance the character, appearance and attractiveness of the neighbourhood. Certain submitters also associated the landscape improvements with an increased property value.

*3.3. Impact to health, wellbeing and surveillance benefits*

A few submissions made reference to the perceived positive impact of the proposed wetland to improve human health and wellbeing given its direct and indirect benefits to the community and overall living conditions.

Additionally, a separate submission raised that improvements to the existing MWRB may assist to reduce graffiti practices occurring at the MWRB site which detracts from the natural appeal of the area.

These submissions in relation to Community Benefit are noted.

**4. Compliance with the Staged Development Planning Permits**

The Environmentally Sustainable Development (ESD) features provided within the overall site were largely supported by the endorsed Development Plan's Ecologically Sustainable Development Strategy 2015. The original Ecologically Sustainable Development Strategy referred to the inclusion of a wetland for the Burwood Brickworks site to address its stormwater quality obligations. As such, considerable reliance was placed on the delivery of the wetland asset for each development stage. The position was that the inclusion of the wetland had been endorsed by Council and therefore each development stage was entitled to seek equitable benefit of the proposed wetland to demonstrate stormwater quality compliance.

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Submissions gave rise to whether the removal of the wetland within the MWRB would result in non-compliant planning permits given that some conditions either directly or indirectly reference stormwater and stormwater quality requirements.

For each development stage, a planning permit for development and use was granted. Where required by Council, information regarding how the development stage would respond to such stormwater quality obligations was provided in an accompanying ESD report and/or statement and subsequently endorsed by Council to satisfy the permit conditions and stormwater quality requirements.

Whilst some planning permits did not refer to stormwater quality obligations and requirements for a particular stage, supporting documentation (i.e. a Sustainability Management Plan (SMP) Report) that was endorsed by Council referred to the stormwater management reports and/or the Ecologically Sustainable Development Strategy forming part of the Development Plan, therefore placing reliance on the inclusion of the proposed wetland in the MWRB to deliver stormwater quality outcomes.

While some supporting documentation remained silent on a stages' response to stormwater quality, it was reasonable to assume at the time of assessing the permit application that the wetland in the MWRB would be delivered; thus addressing the stages' response to stormwater quality obligations.

**5. The use of Melbourne Water stormwater quality offsets**

Melbourne Water operates a Stormwater Quality Offsets Program to support developers to achieve best-practice stormwater management. It provides an avenue for developers to make financial contributions in lieu of meeting stormwater quality treatment onsite where achieving best practice objectives is impractical. Melbourne Water determines the offset price which is based on the cost to remove nitrogen (currently \$/kg).

Offset applications are only considered as an exception when they meet Melbourne Water's offset criteria for development types and Council is satisfied that the applicant has demonstrated that onsite treatment is not feasible.

In this particular circumstance, in order for the overall Burwood Brickworks development to address the best practice stormwater quality pollution management requirements, a monetary offset contribution of approximately \$223,000 is proposed to be provided to Melbourne Water, by the applicant (Fraser's), in lieu of meeting the best practice performance outcomes at the development site.

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Melbourne Water utilises such funds through its Stormwater Quality Offsets Program on relevant stormwater treatment projects throughout the Port Phillip and Western Port catchment region. The intention is for the offset funds to contribute to stormwater management works in other locations with the overall aim of achieving an equivalent environmental outcome. This also enables Melbourne Water to achieve outcomes within its strategic direction.

The Melbourne Water Stormwater Quality Offsets Program is important in allowing flexibility for applicants to meet their stormwater management obligations whilst contributing to catchment scale environmental projects. This is in cases where treatment options are limited.

Melbourne Water has emphasised and supported Council that the Stormwater Quality Offsets Program is a voluntary option and last resort for an applicant to demonstrate compliance against the Urban Stormwater BPEM objectives and targets.

Offsetting stormwater management from the Burwood Brickworks development is likely to benefit the broader Port Phillip Bay and Westernport catchment however the solution will not necessarily address stormwater quality management at Gardiners Creek, as well as, downstream water quality – serving as a missed opportunity that offset funds could be utilised to support locally identified programs and therefore ensure local benefits.

Melbourne Water however utilises the stormwater quality offsets to fund a program of works that are identified and prioritised, and can provide an environmentally equivalent outcome proposing more efficient use of expenditure. The offset program's eligibility criteria and selection priorities that would enable Melbourne Water to fund and prioritise certain projects is provided in Attachment 1 (section 1.4).

In numerous conversations between Melbourne Water and Council, there was difficulty identifying key projects within the City of Whitehorse that fulfil each eligibility criteria and the selection priorities to accelerate works. Eligible programs could be identified and scoped as a part of Council's development of its Integrated Water Management Strategy (in progress) or in a future strategy for the wider Gardiners Creek catchment.

Melbourne Water did however advise that since the program's commencement in 2005, five projects totalling \$632, 839 of stormwater quality offset investments have been delivered within the Gardiners Creek catchment which covers a number of municipalities, achieving 561 kg of modelled total nitrogen reduction per annum. In 2008, Melbourne Water contributed approximately \$42,000 from the Stormwater Quality Offset Program plus \$65,465 from its Living Rivers Stormwater Program toward the raingarden in nearby Wurundjeri Walk.

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**6. Negative Precedent**

There was concern raised that if Council were to support the proposed wetland's removal from the MWRB and the use of Melbourne Water stormwater quality offsets, this would establish a negative precedent for future development more generally.

Mindful of reputational impacts that are discussed separately, in the context of establishing a negative precedent, the matter requires consideration given the Burwood Brickworks development's magnitude and significance as relevant factors.

Regarding 'magnitude', the development involves a large scale urban renewal and mixed use development (i.e. commercial/retail, apartments, medium density housing and aged care facilities and accompanying infrastructure). This is in contrast to, for example 3-10 dwellings on a lot applications, whereby the same stormwater quality performance targets and obligations are required to be met by applicants seeking a planning permit.

Regarding 'significance', the development's 'World Leading' credentials and accompanying awards and recognition must be taken into account as an example setting and benchmark raising development.

When considering both factors, there are potentially substantial repercussions if removal of the wetland from the MWRB is supported and offsets utilised in order to demonstrate compliance. For example:

- Removal of the proposed wetland poses the issue as to why other developments should be required to comply with the stormwater quality targets.
- Supporting the wetland's removal potentially undermines the level of trust, accountability and responsibilities that formed the basis of principle agreements between parties to pursue this stormwater management solution.
- Council officers do not currently entertain Melbourne Water stormwater quality offsets as a suitable mechanism to support development applications that experience performance shortfalls. It is therefore uncommon for Council officers to approve Melbourne Water stormwater quality offset applications and the development community within the City of Whitehorse is generally aware of this position. This is evidenced by the very low contribution of offsets from development in the municipality, being less than \$100,000 since the program's commencement in 2005.

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Council officers are mindful that the primary reason for displaying the revised Development Plan for public comment, was that removal of the proposed wetland from the MWRB is considered a substantial amendment to the approved Development Plan. An additional concern with accepting offsets is that Council would need to accept and sign the Melbourne Water stormwater quality offset application given the significant stormwater quality performance shortfall resulting from the wetland's removal.

Council's statutory ESD Policy (Clause 22.10 of the Whitehorse Planning Scheme) and its approach to Integrated Water Management, does not support the principle of stormwater quality offsets as an adequate nor appropriate 'best practice' measure to address Council's planning scheme requirements. Additionally, entertaining offsets has broader implications that undermines Council's internal environmental strategies, policies and outcomes. Further, potential developer and Council liabilities are raised with regard to the General Environmental Duty (GED) principle, pursuant to the *Environment Protection Act 2017* (Vic) [further explanation of the GED principle is discussed under the Legislative and Risk Implication section of this report].

## **7. Public Relations and Reputation**

It is acknowledged that the Burwood Brickworks development, and as developer, Frasers, have received numerous awards and praise for the commitments proposed and delivered towards achieving sustainability and environmental outcomes. This includes both the Burwood Brickworks Shopping Centre and the Burwood Brickworks development in its entirety which are to be treated as mutually exclusive from one another.

Awards and accolades attributed towards the Burwood Brickworks Shopping Centre and overall Burwood Brickworks development site include:

- The International Living Future Institute's Living Building Challenge Petal Certification status in 2021
- The Green Building Council of Australia's (GBCA's):
  - Green Star Design & As Built version 1.1 framework 6 star Green Star rating 'World Leadership' status in 2022
  - Green Star Communities version 1 framework 6 star Green Star rating 'World Leadership' status in 2016 with recertification in 2022
- Property Council of Australia Innovation and Excellence Awards 2021:
  - Rider Levett Bucknall Award for Australian Development of the Year
  - Hames Sharley Award for Best Shopping Centre Development
  - Landcom Award for Best Sustainable Development – New Buildings
  - Stockland's People's Choice Award
- The Urban Developer Awards 2021:



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- Excellence in Sustainability
- Development of the Year – Retail
- Sustainable Building Awards 2020:
  - Best of the Best Award
  - Commercial Architecture (Large) Award
- Victorian Premier's Sustainability Award for the Built Environment 2020
- Good Design Australia Awards 2020 Architectural Design Urban Design and Public Spaces

Marketing and promotional material from Frasers over the years has promoted the Burwood Brickworks Shopping Centre and overall development's environmental performance aspirations, outcomes and accolades to the community.

Submissions on the removal of the proposed wetland from the MWRB have raised the following issues in relation to reputation of parties:

### *7.1. Misleading claims*

Submissions have referred to the claims made and awards received by Frasers in relation to sustainability and the environment. Submissions queried whether such awards and claims can still be supported given the removal of the wetland and the level and potential impact of untreated stormwater that may discharge into Gardiners Creek.

This particularly includes the Living Building Challenge award and Green Star credentials that the Burwood Brickworks Shopping Centre and overall development has achieved. Also, the marketing collateral and the inclusion of the wetland as an asset a part of the development at the time when property was being sold to the community. As simply put in one submission, purchasers 'are not getting what was proposed at [the] time of home purchase'.

Several submissions referenced misleading conduct and false advertising in that people bought into the development with the understanding that the proposed wetland would be provided, plus that the development achieves 'world class' sustainable development status.

Further concerns on this point include that the 'proposed changes are completely misaligned to [the] spirit [of the development proposal]' given that environmental and community benefit is not recognised from the changes, and that it 'undermines the whole World Green Development status and branding that was highly regarded and respected'.

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Some submissions have also presented that Frasers have promised the delivery of environmental features and should ensure that such environmental features and outcomes are delivered. Additionally, to the view that Frasers are compelled to 'legally stand by the original decision' for the inclusion of the wetland within the MWRB.

Submissions of particular reference that highlight purchasers' disappointment and frustration include one individual that claimed 'the wetland is one of the reasons [they] decided to purchase [their] property' and another purchased their apartment within the Brickworks development 'on the understanding that waste water was to be recycled, environmentally friendly and best practice'.

Another individual also seeks relief or compensation, requesting that the 'developer set aside funds to compensate everyone (and have discussions started with people about how much compensation would be required)'. On this point, any commercial grievances are not a consideration for this report and are a matter for the developer to address, not Council.

*7.2. 'World Leading' status of the development*

Members from the community sought clarity on the 'World Leading' ratings that have been achieved by the development. This includes the International Living Future Institute's Living Building Challenge Petal Certification program and the GBCA's Green Star Design & As Built and Communities frameworks.

The Burwood Brickworks Shopping Centre achieved the highly acclaimed and globally renowned International Living Future Institute's Petal Certification status when evaluated against the strict Living Building Challenge criterion.

However, performance against 'Water' related 'petal' criterion under the Living Building Challenge program requires independent audit and evaluation following 12 months of operational data to achieve full certification. This may include review of water efficiency practices including stormwater management and rainwater harvesting in relation to the Burwood Brickworks Shopping Centre as a standalone asset, only.

Under the Green Building Council of Australia's (GBCA's) respective Green Star suite of sustainability appraisal products, both the Shopping Centre and overall development has been assessed.

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Utilising the Green Star Design and As Built version 1.1 framework, the Shopping Centre is understood to have achieved a certified 'World Leadership' 6 star Green Star rating with certification granted by the GBCA at or around March 2022. Based upon Council officer's review of the MUSIC model for the overall development, the Burwood Brickworks Shopping Centre appears to meet the Urban Stormwater BPEM stormwater quality requirements and thus the removal of the wetland does not compromise its performance in such regard.

In contrast, under the Green Star Communities version 1 framework, the overall Burwood Brickworks development is understood to have achieved a certified 'World Leadership' 6 star Green Star rating with certification granted by the GBCA in 2016. Officers were informed by Frasers that the overall development has recently been re-appraised, with its certified rating renewed to ensure that the development continues to maintain its 6 star Green Star Communities rating status.

The issue raised during display of the Development Plan changes, was with respect to the 6 star Green Star Communities rating that was achieved for the overall development. The issue has been resolved as Frasers have recertified the development to ensure that the 6 star Green Star Communities rating demonstrating 'World Leadership' is retained. Further discussion is provided under Attachment 1 (section 1.5).

*7.3. Perception of the developer avoiding its duties*

Given the proposed removal of the wetland within the MWRB, combined with the use of stormwater quality offsets to resolve Fraser's obligations, submitters have shared the view that Frasers is avoiding its duties to ensure that stormwater is effectively managed and treated onsite. Comments included:

- That Frasers has profited from the development and therefore 'have the financial means to deal with the problem'.
- That Frasers 'should do whatever is necessary to ensure the [wetland within the MWRB] goes ahead as originally approved in the [Development Plan]'.
- Frasers should implement other stormwater treatments measures on site, as well as, proprietary products and systems to adequately treat stormwater from the development. Submitters accepted that Council may be responsible for their ongoing upkeep and maintenance.
- That Frasers could rectify the matter by reducing the amount of housing stock that is provided within the development which would free-up available space to ensure appropriate treatment measures could be installed facilitated. For example, further expanding the Village Green area to cater for a more suitably constructed wetland as opposed to a sediment basin which is currently proposed.

As acknowledged through discussions with Frasers and officers, majority of the housing and apartment stock has been developed (including the

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foundational infrastructure) and lot sales have proceeded accordingly. Therefore, it is impractical for Frasers to facilitate changes to the layout of the development, particularly post purchase.

It is reiterated, that Melbourne Water withdrew its support for the proposed wetland in its retarding basin; this was not a decision of Frasers.

## 8. Other Matters

Other matters raised in the submissions received by Council include:

Matter	Council Officer Comments
Mosquito population reduced given no wetland	Depending on a wetland's design, this could be a potential benefit of removing the proposed wetland.
The issue should not be passed on for the community to deal with	Council has facilitated this engagement on the change to the Development Plan to ensure that the community's concerns and issues are raised and considered by Council. At a broader level, offsets are intended to provide equivalent water treatment in the wider catchment.
Need for further discussions and negotiations between relevant parties	Council has undertaken further discussions with both Melbourne Water and Frasers and raised the community's concerns, including options moving forward.
The wetland proposal needs to be restructured to meet Melbourne Water requirements	Council has engaged with Melbourne Water to obtain further information on the relevant constraints with providing the wetland within the MWRB.
Advise Frasers on the use of other land assets for water treatment outside the development site	Council has sought options with both Melbourne Water and Frasers for stormwater quality treatment projects within the City of Whitehorse or that may positively impact the Gardiners Creek catchment.
Ensure the wetland can be maintained from rates generated within the development	If the wetland within the MWRB were to be provided, the obligation was for Melbourne Water to maintain and manage such asset given that it was to be located on Melbourne Water property.
Little or limited opportunity now available to improve appearance of the retarding basin and achieve a better outcome	Noted, any future improvement to the appearance of the MWRB would be for Melbourne Water to address.
Whether the Environment Protection Authority (EPA) Victoria and/or the Department of	The EPA have not been engaged on the wetland matter as it is not a direct jurisdictional or referral issue requiring the EPA to consider or intervene in relation to Planning matters.

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Matter	Council Officer Comments
Environment, Land, Water and Planning (DELWP) were involved	However, the General Environmental Duty (GED) principle under the new <i>Environment Protection Act 2017</i> (Vic) (which the EPA Victoria is generally responsible for) has been considered. Similarly, DELWP has not been involved directly on this matter other than from the perspective of Melbourne Water that acts as a statutory entity, affiliated with DELWP.
Contaminated land and site management	Council acknowledges the historic matter and notes the environmental audits that have been completed for the development site. The proposed removal of the wetland does not affect or raise issues of concern in relation to contaminated land.
Traffic matters resulting from the development	Noted, however the proposed removal of the wetland does not relate to traffic matters.
Whether residents will be charged a cooperative fee for the plan	The revised changes to the Development Plan due to the proposed removal of the wetland will not result in additional fees or services placed upon residents within the Burwood Brickworks development or within the City of Whitehorse.
Opportunities for Federal funding to resolve matters	Council did not explore opportunities for Federal funding as this was not necessarily relevant as there are appropriate mechanisms within the development approvals process to identify workable solutions.
Clarification/ understanding/ distinction between the wetland and ornamental pond	The terms have been explained as a part of the introduction to this report to ensure consistency and understanding of terminology for the community's benefit.
Perceived loss of open space arising from removal of the proposed wetland	The MWRB is not currently and is not proposed to be publicly accessible space. The new Village Green/ Central Open Space to be provided in the Burwood Brickworks development will be public open space and is to be delivered by the development as intended in the approved Development Plan (i.e.: no change).

## Options

When considering the Burwood Brickworks development as a whole, the development does achieve considerably high levels of sustainability,

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environmental, and ESD outcomes. This is particularly in relation to energy efficiency, use of sustainable materials, and waste management practices.

However, in relation to integrated water management and stormwater quality, the planning framework requirements and expectations that Council held as at 2015 (when the original Development Plan was prepared) have remained consistent over the years. That is, the State Urban Stormwater BPEM criteria that also appears in the EPA's Urban Stormwater Management Guidance, in relation to total nitrogen and total suspended solids removal continue to remain identical and valid as the method to demonstrate and ensure best practice outcomes.

As such, it is considered that the proposed removal of the wetland from the MWRB results in the Burwood Brickworks development, as a whole, not meeting minimum onsite ESD requirements under the planning framework in relation to integrated water management; particularly stormwater quality. The development also does not achieve best practice stormwater quality requirements

Three (3) submissions indicated that where a resolution could not be found to implement the wetland, that either:

- Other onsite stormwater improvement initiatives are incorporated on the Burwood Brickworks development site (i.e. additional permeable surfaces and trees); or
- The offset funds provided to Melbourne Water be used within the local area of the City of Whitehorse; or
- Council to contribute and provide assistance where applicable.

Council officers have met with Melbourne Water and Frasers to understand the various issues regarding the inclusion of the wetland within the MWRB, and to explore other ways to address the development's stormwater quality obligations. These options include:

*Option 1: Melbourne Water to reinstate the wetland within the MWRB*

Option 1 supports the broader community's best interests and the interests of those residing within the Burwood Brickworks development given that the original proposal detailed the inclusion of the wetland within the MWRB. Furthermore, Option 1 minimises the risk to Council from potential liability arising from an alleged contravention of the statutory GED principle pursuant to the *Environment Protection Act 2017* (Vic).

## 11.1 (cont)

Melbourne Water and Frasers have each provided background regarding the wetland's removal from the MWRB. Frasers indicated that prior to 2015, during initial master planning, Frasers and its engineers (Reeds) engaged in extensive consultation with Council and Melbourne Water to explore various onsite and offsite stormwater treatment options. The existing MWRB was identified as an offsite opportunity (yet a part of the Development Plan) to incorporate as a part of the integrated storm water management strategy for the development.

In 2016 Frasers' landscape architects (Group GSA Pty Ltd) proposed a conceptual upgrade to the MWRB (Figure 3). This included outcomes that meet the development's stormwater quality obligations outside of the development site, as jointly requested by Frasers and Council, and to increase community engagement with and amenity from the MWRB land while maximising the utilisation of the new open space (i.e. the Village Green/ Central Open Space) proposed within the Burwood Brickworks development.

*Figure 3: Frasers / Group GSA conceptual upgrade to the MWRB that includes a wetland*



Melbourne Water provided in-principle support for the potential use of the MWRB for a new wetland and for improved community access (e.g. via viewing platform), as per Frasers' landscape architect's sketch concepts, subject to receipt and approval of detailed plans. The concept designs and in-principle agreement led to the endorsed stormwater management strategy and Development Plan that reflected the proposed wetland within the MWRB.

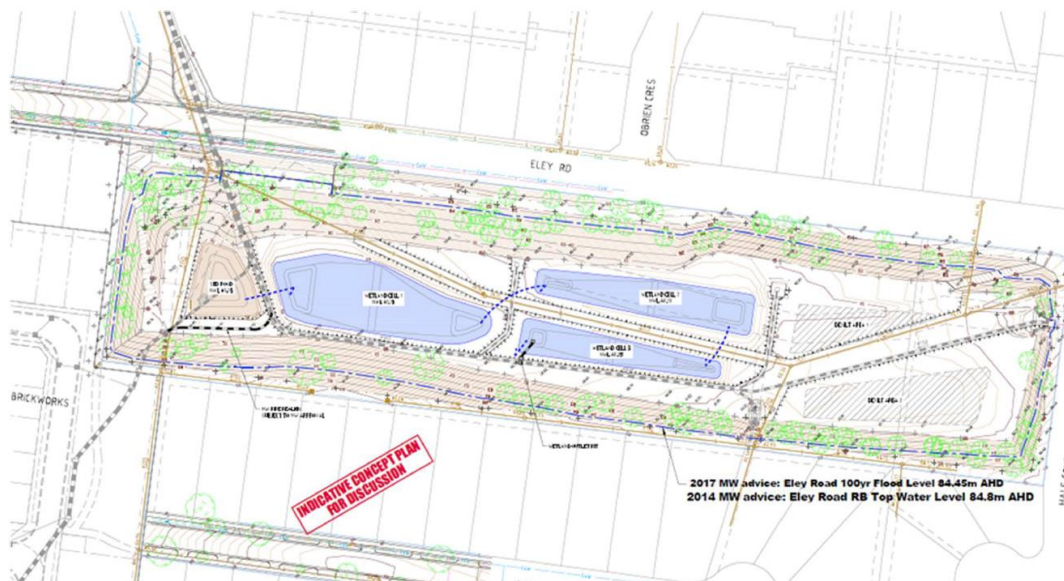
**11.1**  
(cont)

Melbourne Water believes that the intent of providing the in-principle support was to provide Frasers with clarity that they could continue to explore the proposed option. Melbourne Water asserts that all the risk and responsibility of getting the proposal formally accepted rested with Frasers which would require the developer to demonstrate the functionality and performance of the proposal with future detailed submissions. The 'backup' proposal put forward by Frasers in the original Development Plan noted the availability of stormwater quality offsets, which in a broad sense, are generally available to the development community.

Melbourne Water's technical reasons for supporting the removal of the proposed wetland from the MWRB included reference to the MWRB's original construction in the 1970s and since then, standards and approaches having changed. Melbourne Water noted that whilst the MWRB continues to serve its current function as designed and is an important part of the flood mitigation system in the catchment, the MWRB presents significant existing constraints as further explained in this report.

In 2019 Melbourne Water received detailed design proposals from Frasers' engineers (Reeds) (Figure 4).

Figure 4: Detailed design proposal from Frasers' engineers; Reeds





**11.1**  
(cont)

Melbourne Water assessed the detailed design proposal, and advised Frasers and Council that Melbourne Water could not support the wetland within the MWRB, as originally proposed due to unacceptable safety concerns, maintenance risks, potential damage to existing underground infrastructure and infrastructure renewal costs to Melbourne Water and the broader community. Critical issues with the wetland proposal included:

- The sediment pond and wetland could not be safely and efficiently maintained and renewed due to the need to avoid existing underground assets. The proposal was deemed unsustainable due to water having to cross either over or under existing sewer or drainage lines, requiring high risk and complex protection of live assets or non-standard, potentially non-maintainable wetland elements to avoid the assets.
- Inability to safely access and manage all the assets on the site (e.g. no ability to safely turn maintenance vehicles for sediment clean out maintenance).
- Increased structural risk on existing critical Melbourne Water and Yarra Valley water assets.
- The MWRB would remain as a fully fenced off asset to restrict public access to proposed wetlands noting the retarding basin has unsafe steep batters at its edges.

Given the constraints, Melbourne Water was resolute in withdrawing its support for the wetland and instead favoured that Frasers utilise Melbourne Water stormwater quality offsets. The offsets would enable Melbourne Water to undertake stormwater treatment in a more strategic manner that would potentially deliver greater benefit to the Port Phillip and Westernport catchment.

Cognisant of the technical reasons provided by Melbourne Water leading to conclusion to remove the proposed wetland within the MWRB, Council could pursue further, independent, technical advice on the feasibility of the wetland within the MWRB. Legal advice on the legitimacy of the in-principle agreement could also be considered; particularly if there is also a reasonable, technical, basis for the wetland to be provided based upon an independent review.

However, this path is likely to result in significant time and cost to Council, including a high level of uncertainty, and is not recommended

*Option 2: Frasers to implement additional on-site stormwater quality treatment measures such as raingardens and/or bioswales to areas of the public realm and/or rainwater tanks for reuse/ retention purposes to medium density housing development.*

Option 2 supports the broader community's best interests in that it would assist to improve stormwater quality emanating from the development site.

**11.1**  
(cont)

Option 2 minimises the risk to Council from potential liability arising from an alleged contravention of the statutory GED principle pursuant to the *Environment Protection Act 2017* (Vic).

Where such systems and measures are included on public land that is managed by Council, Council would inherit risks, including maintenance and management obligations.

Prior to Melbourne Water altering its position to withdraw from providing the wetland within the MWRB, Frasers indicated that by late 2019, Council had approved the Burwood Brickworks civil works and construction was well advanced. The advancement of such civil works has precluded opportunities for Frasers to retrofit stormwater treatment assets into the development drainage system. As noted earlier, there are a number of stormwater treatment measures already incorporated into the development.

*Option 3: If Melbourne Water stormwater quality offsets are to be entertained by Council that the funds be provided by Melbourne Water to Council or to be held by Melbourne Water for the benefit of Council for use in supporting:*

- 3.1 The maintenance of the ornamental pond/ sediment basin within the Burwood Brickworks development site, particularly when Council will be responsible for its ongoing maintenance; and/or*
- 3.2 Stormwater quality projects associated with Gardiners Creek in Whitehorse given that such waterway is severely affected by the development; and/or*
- 3.3 Future stormwater quality projects within the City of Whitehorse generally; and/or*
- 3.4 Other Council related stormwater quality and integrated water management project for the benefit of the City of Whitehorse (e.g. an Integrated Water Management / Water Sensitive Urban Design Education and Compliance officer).*

Option 3 involves Frasers utilising Melbourne Water stormwater quality offsets to demonstrate compliance with the development's stormwater quality obligations by providing a \$223,000 contribution to Melbourne Water.

Option 3 is likely to be controversial with the community and industry. This is because Council would still be supporting a significant shortfall with respect to necessitated best practice stormwater quality outcomes and that stormwater quality offsets can be used within the City of Whitehorse as a suitable and demonstrable approach to meet performance shortfalls; particularly for a 'world leading sustainable development'. This outcome creates a negative precedent within the development community, both locally within the City of Whitehorse and for other councils.

**11.1**  
(cont)

Option 3 is divided into 4 sub-options where the funds would be allocated to Council or held by Melbourne Water to support various initiatives and projects that could benefit the City of Whitehorse and its community – as opposed to being spent elsewhere, without benefiting Gardiners Creek or the City of Whitehorse more broadly.

The sub-options were presented to Melbourne Water when initial negotiations took place regarding the proposed removal of the wetland from the MWRB. However, Melbourne Water is currently unable to allocate funds that it receives from its Melbourne Water Stormwater Quality Offsets Program to support the initiatives and projects that have been detailed as a part of the sub-options put forward by Council.

Reasons include that the initiatives and projects would not fulfil the Melbourne Water Stormwater Quality Offsets Program eligibility criteria and selection priorities (for sub-option 3.1 and specific projects relevant to sub-option 3.2) and future stormwater projects are yet to be identified that either benefit Gardiners Creek and/or the City of Whitehorse for Melbourne Water to support with the use of offset funds (relevant to sub-options 3.2 and 3.3). That said, Melbourne Water has indicated that it will work with Council to identify projects in Whitehorse which may arise, for example, from Council's Integrated Water Management Strategy (in progress). Again with the qualifier that projects would need meet the offset program eligibility criteria and priorities. Further opportunities may arise in Whitehorse from future strategic planning of the broader Gardiners Creek catchment.

To this end, Council acknowledges the strong working relationship it has with Melbourne Water, most recently in relation to the 'pipe reserve' project in the eastern part of the municipality. This relationship places Council in a good position to advocate for expenditure of Stormwater Quality Offset Program and other funds in the municipality.

Melbourne Water has noted that it's Stormwater Quality Offsets Program is fully committed up until 2025 with \$6 million allocated towards specific projects.

Melbourne Water has also indicated that sub-option 3.4 can only be supported via a collaborative means through Melbourne Water's Liveable Waterways Liveable Communities incentives program. The Liveable Waterways Liveable Communities incentives program has been established to provide technical guidance, resourcing and funding support, as well as, avenues to assist with the development of a municipal stormwater offset scheme that provides Council with the basis to manage and flexibly fund its own stormwater initiatives and projects (i.e. without reliance on Melbourne Water's Stormwater Quality Offsets Program). Funding provided by Melbourne Water towards a project under such program is generally required to be matched by Council on a like-for-like basis. This would involve an expense to Council in order to realise a co-funded and co-resourced benefit.

**11.1**  
(cont)

Therefore, Council's pursuit to support Option 3 and the various sub-options does not assist, particularly in the short to medium term.

*Option 4: Allow for Melbourne Water stormwater quality offsets in lieu of the wetland and for the offset funds to be used by Melbourne Water as per Melbourne Water's offsets program*

Given the solutions explored above, Option 4 remains as the only feasible option based on the current circumstances.

Option 4 is for Council to support the use of stormwater quality offsets by Frasers (as proposed in the amendment to the Development Plan) for stormwater quality improvement projects by Melbourne Water in the wider Port Phillip and Westernport catchment area. This process requires Council to sign off the proposed Melbourne Water stormwater quality offset contribution form to acknowledge the use of offsets and that alternatives have been explored.

Officers believe that Melbourne Water had effectively accepted responsibility for stormwater quality management of the Burwood Brickworks site having previously agreed, in-principle, to the proposed wetland within the MWRB as part of the current Development Plan. In recommending Option 4, it is noted that Melbourne Water takes on the Frasers' obligation to provide for stormwater quality treatment.

Cognisant of both the precautionary and GED principles, Council should undertake best endeavours to absolve and indemnify itself from any current or future liability resulting from the performance shortfall in relation to the quality of stormwater being discharged from the Burwood Brickworks development site; including any issues that the discharge may cause to Gardiners Creek, for example.

Therefore it is recommended that a cover letter is prepared, accompanying the offset form, outlining Council's position on the GED principle to curtail risk and financial exposure resulting from any foreseeable consequences.

*Lessons learned and expectations regarding stormwater quality best practice obligations on development sites*

Following further consultation with Melbourne Water, Frasers and Council, the parties have endeavoured to use this experience to share with the community the lessons learned when planning and delivering projects of such magnitude and to avoid such issues in the future.

As experienced with this development, the endorsement a Development Plan does not guarantee a given outcome. The planning framework is designed to allow for flexibility to respond to changing circumstances as demonstrated by Frasers seeking to amend the Development Plan.

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**11.1**  
(cont)

The use of in-principle agreements generally aims to achieve good development outcomes by providing a degree of certainty where further detailed design (for example) may be required and to limit the need to amend (in this case) a Development Plan.

Melbourne Water broadly stated that its 'in-principle' support approach; as demonstrated by the Burwood Brickworks development, is consistent with decisions on other similar projects where Melbourne Water or a developer has proposed to retrofit existing Melbourne Water retarding basin land with a wetland or similar stormwater quality treatment asset. Reasons provided by Melbourne Water included that such an approach grants developers with 'in-principle' support of concepts (or alternatively, 'objection'), with the intention to provide direction to developers so that they do not spend money on consultants and experts if there is no chance of approval.

However, the in-principle agreement becomes superfluous, unless it is given legal effect in a contractual document that could also detail that the developer prepare and demonstrate contingency plans (i.e.: a 'Plan B' option). This could specify that a development include other onsite treatment measures such as rainwater tanks and/or proprietary products and systems if the preferred stormwater treatment measure does not proceed.

Melbourne Water has since indicated that it would have been appropriate for Frasers to have a 'backup' proposal prepared in order to meet the relevant stormwater quality obligations on site if the in-principle proposal could not be further justified or supported.

Moreover, in order to assist with ensuring that the best practice stormwater quality treatment obligations can be met, the following approach should also be considered, in the order that is detailed:

1. Meet the obligations onsite or in conjunction with the development through:
  - a. Conventional stormwater treatment means such as the installation of rainwater tanks, raingardens, bioswales, sediment ponds, retarding basins, and wetlands
  - b. Proprietary systems and products.  
Note: The above will require consent from the relevant authority if such assets are located on public owned and managed land.
  - c. Consider additional onsite treatment solutions if those selected above are not possible or available.
2. Meet the obligations locally via agreement with the responsible authority(s).

This generally includes through Council's own, independent, stormwater quality offsets program whereby funds will be utilised for the benefit of Council stormwater quality initiatives and projects in the municipality.

Note: This is contingent upon Council setting up such program in the future.

**11.1**  
(cont)

3. Meet the obligations by contributing towards Melbourne Water's Stormwater Quality Offsets Program.

The broad use of offsets must only be used as a last resort and final option, and only when it can be demonstrated by all parties that best endeavours have been pursued to provide onsite systems and an approach to stormwater management onsite is not practical.

The use of offsets should not be supported where development impacts on significant or high environmental values.

When considering the above, a development proposal is required to demonstrate that best endeavours have been pursued to facilitate a design response that ensures that the stormwater quality treatment obligations are, or otherwise cannot be, met.

This hierarchy approach should also be addressed within any contractual agreement prepared between the parties.

## **SUPPORTING REPORT DETAILS**

### **Legislative and Risk Implications**

#### Compliance with planning permits

As referred to above, given the proposed removal of the wetland, there may be issues with certain development stages complying with the stormwater quality conditions in several planning permits applying to individual stages of development. Submissions raise whether Council and the developer/s have met relevant the obligations under the *Planning and Environment Act 1987* (Vic) with regard to planning permit compliance.

Officers will work with Frasers to review and address any compliance concerns with existing planning permits.

#### Status of the in-principle agreement regarding the wetland

Concerns about whether Melbourne Water's in-principle agreement to the wetland is a legally binding agreement have not been fully explored. However, Melbourne Water is of the view that in principle agreement to a schematic concept plan does not guarantee that the wetland concept would necessarily proceed, but that it would be subject to detailed engineering review which was not available at the time of the in-principle agreement. Council officers understood that the concept had been exposed to a number of areas of Melbourne Water at the time such that sufficient confidence was conveyed by Melbourne water about the proposed wetland in the MWRB.

It is apparent that this detailed engineering assessment should have been completed by Frasers and/or Melbourne Water before the existing overall Development Plan was approved.

#### Stormwater Quality Offsets and the General Environmental Duty principle

**11.1**  
(cont)

It is considered that Council should not be placed in the position of accepting liability by agreeing to stormwater quality offsets for the development given the level of pollution that will be dissipating into Gardiners Creek. The dispersion of pollution consequently affects the waterways of other neighbouring councils and the Yarra River.

Council should retain the position that as per the Development Plan, Melbourne Water is the authority to approve the site's stormwater quality performance. Furthermore such a shortfall in stormwater quality performance and the level of pollution generated from the site is contrary to Council and the community's expectations, particularly for the Burwood Brickworks development, given its size and significance.

Council officers sought the opinion of Melbourne Water in relation to the use of stormwater quality offsets and whether use of offsets will indemnify parties from claims regarding the relatively new, statutory, General Environmental Duty (GED) principle under the *Environment Protection Act 2017* (Vic).

The relevance of the GED principle is the likely effects that the release of stormwater pollutants from the development may have on the Gardiners Creek waterway and the risk of harm to human health or the environment. Under the GED, such risks are required to be minimised so far as reasonably practicable.

Melbourne Water was not able to comment on the applicability of the GED principle to its offset program but is working with the EPA Victoria and other stakeholders more broadly to determine the risks and obligations.

As of 1 July 2022, claims can be brought by the EPA Victoria or an eligible party for a breach of the GED principle.

*Managing risks associated with the installation and maintenance of proprietary products to effectively treat stormwater*

Proprietary stormwater treatment devices are manufactured products aimed at improving stormwater quality. Most of these devices fit into the following categories:

- Gross pollutant/litter traps
- Sedimentation devices
- Oil separators
- Man-made floating wetlands
- Media filtration devices.

**11.1**  
(cont)

The Burwood Brickworks development already includes a gross pollutant / litter trap to capture larger pollutants and debris noting however that such device does not treat or remove nitrates and phosphates from stormwater. Given the proposed removal of the wetland, an option includes the development incorporating other proprietary systems, where possible, to ensure that stormwater is treated, removing necessary nitrates and phosphates, prior to entering Gardiners Creek.

Melbourne Water has shared its views with officers on the use of propriety systems. Further details are provided in Attachment 1 (section 1.6).

Whilst Melbourne Water is generally supportive of the Burwood Brickworks development to include proprietary systems that remove nitrates and phosphates from stormwater, the issue would remain as a part of Council's legal and financial risk profile. This particularly includes scoping, managing and maintaining such systems and assets; including possible installation. Furthermore, Council would also be responsible to ensure the ongoing efficacy of the systems as well as a level of liability.

**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 material human rights issues.

With respect to community engagement and public comment, several communication channels and avenues were provided for various individuals from the community to provide feedback and comment in order to have their concerns heard and documented. This included the right to freedom of expression and in taking part in public life.

The human right to property rights was considered with respect to the matter, however the removal of the wetland does not materially deprive an individual from their own, individual, property and has been considered as a commercial matter, of possible interest, in this context.

**Community Engagement**

Pursuant to Clause 43.04, Schedule 6, Section 5.0 of the Whitehorse Planning Scheme, a substantial amendment to an approved Development Plan must be displayed for public comment for a period of 14 (calendar) days and Council must consider any comments received in response to the display of the Development Plan.



**11.1**  
(cont)

Community engagement commenced on 16 December 2021 with letters sent to local residents within the vicinity of the Burwood Brickworks development. Council's 'Your Say' web forum/survey was made available for submissions to be provided from 20 December 2021. Given the holiday period, the time for comment was extended until 18 January 2022. This was a total of approximately 34 calendar days (19 business days) for the community to provide feedback.

A total of 81 submissions were received, primarily via Your Say.

**Financial and Resource Implications**

Staff resources have been used to facilitate the display and assessment process for the amendment to the Burwood Brickworks Development Plan. This includes preparing the documentation for community engagement, collating submissions and analysing responses, liaising with Melbourne Water and Frasers and report preparation. Frasers has paid the statutory fee for the amendment to the Plan to be considered (\$330.70) and has reimbursed Council for the notification costs (\$1,831.50).

The following items have been identified as additional costs if Council pursues the various options identified in this report:

- Future advice on council's obligation and risk with respect to the GED principle, including technical review of the impact to the environment, water quality and health given the proposed removal of the wetland from the MWRB.
- Future management and maintenance costs that are associated with any stormwater treatment systems and/or proprietary products installed to treat stormwater on the development site; particularly if located in public areas that Council will be responsible to manage and maintain.
- Future costs associated with funding projects that benefit and/or improve the environmental performance of Gardiners Creek and associated waterways given the proposed removal of the wetland.
- Council joining Melbourne Water's Liveable Waterways Liveable Communities incentives program that would include technical guidance, resourcing and co funding provided to Council to support the development of Council's own stormwater quality offsets program. This approach would provide Council with the basis to manage and flexibly fund stormwater initiatives within its jurisdiction.

**Innovation and Continuous Improvement**

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

**11.1**  
(cont)

**Collaboration**

Discussion and collaboration on a range of matters between Council officers, Melbourne Water and Frasers has taken place on numerous occasions throughout the duration of the Burwood Brickworks project.

With respect to the removal of the wetland from the MWRB, Council officers have been negotiating with representatives from Melbourne Water and Frasers to reach a beneficial outcome. Numerous discussions on the issue have taken place pre and post the community engagement period regarding the wetland's removal.

These conversations between the parties (Council officers, Melbourne Water and Frasers) have explored a series of options put forward by Council officers. These options are discussed later in the report.

**Conflict of Interest**

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

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

Council's Environmentally Sustainable Development (ESD) Officer has assisted with the preparation of this report. At earlier stages of the development application process, Council's ESD Officer reviewed some of the planning permit applications for each development stage, from an ESD perspective. ESD includes the review of a development's stormwater quality performance.

**Conclusion**

Melbourne Water's withdrawal of its support for the proposed wetland within its Eley Road retarding basin is a loss to the overall Burwood Brickworks development outcome. This includes a loss for asset owners, residents and occupants. However the wetland's removal, and limitations to provision of other stormwater treatment systems; including proprietary systems and products to treat stormwater onsite, is also a significant loss and missed opportunity for Gardiners Creek, as well as, the local and broader environment and community that extends beyond the City of Whitehorse.

Given that the Melbourne Water stormwater quality offsets are the most likely outcome as a compliance mechanism in this instance, there is concern that the removal of the proposed wetland and the use of such offsets establishes a negative precedent within the development industry in satisfying Council's stormwater quality obligations and requirements. This is particularly given by the development's magnitude and reputation; serving as exemplar and modelled practice within industry.


**11.1**  
(cont)

As such, the recommendations presented in this Council report serve to inform and educate the development community about Council's position and how future development should approach Council's integrated water management and stormwater quality requirements via the planning framework.

This includes facilitating the appropriate inclusion of stormwater management assets that improve stormwater quality from the initial concept design stage, through to implementation and ongoing maintenance, as well as, having a robust and demonstrable contingency plan, if any asset cannot be delivered. Therefore other suitable approaches can be pursued and adopted, rather than reliance placed on the least preferred stormwater quality offsets.

Additionally, establishing a legally enforcement agreement, as opposed to an in-principle and non-binding agreement, may also be an appropriate mechanism to protect Council's and the community's interests with respect to such large scale developments into the future.

**ATTACHMENT**

- 1 Further Details on Report Discussion - Amendment to Burwood Brickworks Development Plan 

**11.2 631 Highbury Road, BURWOOD EAST (LOT 110 LP 209031R) –  
Construction of three double storey dwellings and associated  
tree removal**

City Planning and Development  
Director, City Development  
FILE NUMBER: WH/2020/1194  
ATTACHMENT

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**SUMMARY**

This planning permit application proposes the construction of three double storey dwellings and tree removal on the subject site, located at the north-east corner of Highbury Road and Carrington Court. The lot has an area of 674m<sup>2</sup>, and a planning permit is required pursuant to the General Residential Zone Schedule 1 and the Significant Landscape Overlay Schedule 9.

This application was advertised, and a total of 34 objections were received. The objections raised concerns relating to traffic and car parking, neighbourhood character, amenity impacts and tree removal. A Consultation Forum was held online via Zoom on 1 February 2022, chaired by Councillor Carr, at which the issues were explored, however no resolution was reached between the parties.

The application has been referred to internal departments for comments.

Council's planning arborist has no objection to the proposed tree removal and construction, subject to tree protection conditions to minimise construction impacts on the retained trees on the subject site and surrounding land. Council's Asset Engineer, Transport Engineer, Environmental Sustainable Development officer, and Waste Management Team have also reviewed the proposed development and have no objections, subject to conditions.

This report assesses the application against the relevant provisions of the Whitehorse Planning Scheme, including the provisions of the

General Residential Zone Schedule 1, the Significant Landscape Overlay Schedule 9, Residential Development Policy, Tree Conservation Policy, Environmental Sustainable Development Policy, and Clause 55 (ResCode), as well as the objector concerns. The proposal is found to achieve a high level of compliance with the applicable planning controls. It is recommended that the application be supported, subject to conditions.

**RECOMMENDATION**

That Council:

- A Being the Responsible Authority, having caused Application WH/2020/1194 for 631 Highbury Road, BURWOOD EAST (LOT 110 LP 209031R) to be advertised and having received and noted the objections is of the opinion that the granting of a Planning Permit for the Construction of three double storey dwellings and associated tree removal is acceptable and should not unreasonably impact the amenity of adjacent properties.

## 11.2

(cont)

- B Issue a Notice of Decision to Grant a Permit under the Whitehorse Planning Scheme to the land described as 631 Highbury Road, BURWOOD EAST (LOT 110 LP 209031R) for the construction of three double storey dwellings and associated tree removal, subject to the following conditions:
1. Before the development starts, or vegetation is removed, amended plans in a digital format must be submitted to and approved by the Responsible Authority. When 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 submitted with the application but modified to show:
    - a) The locations of Tree Protection Zones described in condition 5, with all nominated trees clearly identified and numbered on both site and landscape plans, and the requirements of conditions 5 and 6 to be annotated on the development and landscape plans.
    - b) The schedule of cladding materials, colours and finishes, updated to specify:
      - a. All habitable room windows must be double glazed (remove the word “should” from this annotation on the elevations).
      - b. All external cladding to be either brick, brick veneer or stone.
    - c) The north boundary fence to be reconstructed.
    - d) The lattice extension to the east boundary fence to be durable and freestanding, and extended to a minimum height of 1.7 metres above the finished floor levels of facing habitable rooms. The screen must have a maximum of 25% openings. Alternatively, this fence may be reconstructed to the required height.
    - e) Notation on site plans indicating that all obscured glazing be manufactured obscured glass. Obscure film being applied to clear glazing will not be accepted.
    - f) Development plans to reflect all sustainability features indicated in the Sustainable Design Assessment required by condition 16, and the plans updated to show:
      - i. A minimum 3,000 litre rainwater tank, for retention purposes, per dwelling in lieu of raingardens.
      - ii. An annotation detailing the rainwater tank sizes and that the rainwater tanks are allocated for reuse/retention purposes and exclude any volume allocated for detention.
      - iii. An annotation that the rainwater tanks are connected to all toilet flushing, laundry systems and irrigation areas.

**11.2**  
(cont)

- iv. Permeable paving identified and annotated to parts of the driveway areas.
  - v. All operable windows, doors and vents on elevation drawings.
  - vi. Where measures cannot be visually shown, include a notes table or 'ESD Schedule' providing details of the ESD features and requirements. This is required to include dwelling star ratings, energy and water efficiency ratings for heating/cooling systems and plumbing fittings and fixtures, as well as, any waste recovery and use of sustainable materials commitments.
- g) The Schedule of Materials and Finishes to clearly state that all ground and upper level walls must be either face brick or rendered brick as required by the restrictive covenant N812253E registered on title.
- h) The retaining walls in the Dwelling 2 and 3 front setbacks to be removed, and graded paths and landscape areas to be provided, where possible.
- i) A landscape plan in accordance with condition 3, including the following:
- i. The *Eucalyptus mannifera* (Little Snow Man) species of the six canopy trees to be planted is to be amended to one or more species from the preferred tree species list in the Permit Notes.
  - ii. Canopy trees to be located within designated garden beds.
  - iii. All trees are to have a minimum height of 1.5 metres at the time of planting, and should be planted clear of easements, a minimum 3.5 metres away from dwellings and a minimum 1.5 metres from property boundaries.
  - iv. Increased shrub and understorey plantings within the front setbacks of Dwellings 2 and 3.
  - v. Avoid small lawns that will be onerous to maintain, and utilise pinebark mulch planted with ground covers if required. Artificial lawn will not be accepted.

All of the above requirements must be to the satisfaction of the Responsible Authority.

Once approved these plans and documents become the endorsed plans of this permit.

**11.2**  
(cont)

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

**Landscaping**

3. No building or works are to be commenced (and no trees or vegetation is to be removed) until a landscape plan prepared by a suitably qualified and experienced person or firm has been submitted to and endorsed by the Responsible Authority. This plan when endorsed must form part of this permit. This plan must show -
  - a) A survey of all existing vegetation, abutting street trees, natural features and vegetation.
  - b) Buildings, outbuildings and trees in neighbouring lots that would affect the landscape design.
  - c) Planting within and around the perimeter of the site comprising trees and shrubs capable of:
    - i. providing a complete garden scheme,
    - ii. softening the building bulk,
    - iii. providing some upper canopy for landscape perspective,
    - iv. minimising the potential of any overlooking between habitable rooms of adjacent dwellings.
  - d) A schedule of the botanical name of all trees and shrubs proposed to be retained and those to be removed incorporating any relevant requirements of condition 1.
  - e) The proposed design features such as paths, paving, lawn and mulch.
  - f) 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.

Landscaping in accordance with this approved plan and schedule must be completed before the dwellings are occupied.

Once approved these plans become the endorsed plans of this permit.

4. The garden areas shown on the endorsed plan and schedule must only be used as gardens and must be maintained in a proper, tidy and healthy condition to the satisfaction of the Responsible Authority. If any planted trees or shrubs die or are removed, they must be replaced within two months and maintained to the satisfaction of the Responsible Authority.

**11.2**  
(cont)

**Tree Protection**

5. Prior to the commencement of any building and or demolition works on the land, a Tree Protection Zone (TPZ) must be established and maintained on the subject land (and nature strip if required) 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:
    - i. Tree 1 (*Gleditsia triacanthos*) – 2.0 metre radius from the centre of the tree base.
    - ii. Tree 5 (*Eucalyptus nicholaii*) – 8.4 metre radius from the centre of the tree base.
    - iii. Tree 6 (*Eucalyptus nicholaii*) – 7.2 metre radius from the centre of the tree base.
  - b) Tree Protection Zone measures are to be established in accordance to Australian Standard 4970-2009 and including 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.
    - iii. Mulch across the surface of the TPZ to a depth of 100mm and undertake supplementary watering in summer months as required.
    - iv. 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.
    - v. All supports and bracing should be outside the TPZ and any excavation for supports or bracing should avoid damaging roots where possible.



**11.2**  
(cont)

- vi. All sub surface utilities and utility connection points, inspection pits and associated infrastructure trenching and installation are to be designed so that they are located outside the TPZs of retained trees, to the satisfaction of the Responsible Authority. Utility conduits can be located beneath TPZs but must be installed using trenchless excavation (eg: boring) and installed to a minimum depth of 0.6 metres below natural grade.
  - vii. Where construction is approved within the TPZ, fencing and mulching should be placed at the outer point of the construction area.
  - viii. Where there are approved works within the TPZ, it may only be reduced to the required amount by an authorised person only during approved construction within the TPZ, and must be restored in accordance with the above requirements at all other times.
6. During the construction of any buildings or works, the following tree protection requirements must be carried out to the satisfaction of the Responsible Authority:
- a) A project arborist must be appointed by the applicant or builder. Project arborist qualifications must read 'Arboriculture' for example 'Diploma in Horticulture (Arboriculture)'. The project arborist must have a minimum Diploma qualification in arboriculture to be appointed as the project arborist.
  - b) The Project Arborist must supervise all approved works within the TPZs of Trees 1, 5 and 6. The project Arborist must ensure that all buildings and works (including site demolition) within the TPZs of these trees do not adversely impact the health and / or stability of the trees now or into the future.
  - c) The decking of Dwelling 1 where within the TPZs of Trees 5 and 6, must be constructed on tree sensitive footings, such as post footings or screw piles, with no grade change within greater than 10% of the TPZ. The postholes must be hand dug and no roots greater than 40mm in diameter are to be cut or damaged. A Geotechnical Engineer must assess the soil type and provide the results to a Structural Engineer so that appropriate footings and foundations can be designed so that they are not affected by soil movement.

**11.2**  
(cont)

- d) The front path and porch of Dwelling 1 where within the TPZs of Trees 5 and 6, must be constructed above the existing soil grade using porous materials that allows water to penetrate through the surface and into the soil profile. There must be no grade change within greater than 10% of the TPZ, and no roots greater than 40mm in diameter are to be cut or damaged during any part of the construction process.
  - e) No trenching is allowed within the TPZs of Trees 1, 5 and 6 for the installation of utility services. All utility services must be bored to a depth of 600mm below natural ground level where within the TPZs of these trees and the entering points for the boring works must be outside the TPZs.
  - f) The builder / site manager must ensure that any buildings and works within or adjacent to the TPZs of Trees 1, 5 and 6 do not adversely impact their health and / or stability now or into the future.
  - g) The builder / site manager must ensure the TPZ Fencing Conditions and the Tree Protection Conditions for Trees 1, 5 and 6 are being adhered to throughout the entire building process, including site demolition, levelling, and landscape works.
  - h) The canopy of Tree 6, where it overhangs road reserve, to be uplifted so that it is clear of driver sight lines.
  - i) Any tree pruning is to conform to AS4373-2007 Pruning of Amenity Trees and the work is to be performed by a suitably qualified arborist (AQF Level 3, minimum).
7. The existing street trees must not be removed or damaged.

**Asset Engineering**

- 8. The Applicant/Owner will be responsible to meet all costs associated with reinstatement and/or alterations to Council or other Public Authority assets deemed necessary by such Authorities as a result of the development. The Applicant/Owner
- 9. All stormwater drains and on-site detention systems are to be connected to the legal point of discharge to the satisfaction of the Responsible Authority prior to the occupation of the building/s. The requirement for on- site detention will be noted on your stormwater point of discharge report, or it might be required as part of the civil plans approval.

**11.2**  
(cont)

10. Detailed stormwater drainage and/or civil design for the proposed development are to be prepared by a suitably qualified civil engineer and submitted to the Responsible Authority for approval prior to occupation of the development. Plans and calculations are to be submitted with the application with all levels to Australian Height Datum (AHD). All documentation is to be signed by the qualified civil engineer.
11. Stormwater that could adversely affect any adjacent land must not be discharged from the subject site onto the surface of the adjacent land.
12. Prior to works commencing the Applicant/Owner is to submit design plans for all proposed engineering works external to the site. The plans are to be submitted as separate engineering drawings for assessment by the Responsible Authority.
13. The Applicant/Owner is responsible to pay for all costs associated with reinstatement and/or alterations to Council or other Public Authority assets as a result of the development. The Applicant/Owner is responsible to obtain all relevant permits and consents from Council at least 7 days prior to the commencement of any works on the land and is to obtain prior specific written approval for any works involving the alteration of Council or other Public Authority assets. Adequate protection is to be provided to Council's infrastructure prior to works commencing and during the construction process.
14. 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.

**Environmentally Sustainable Development**

15. Prior to the commencement of any buildings or works, an updated Sustainable Design Assessment (SDA) must be submitted to and approved by the Responsible Authority. This SDA must be generally in accordance with the SDA submitted with the application, but amended to include the following changes:
  - a) An 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 which includes rainwater tanks of a minimum 3,000 litre capacity for retention purposes for each dwelling in lieu of raingardens.

**11.2**  
(cont)

- b) Rainwater tanks connected to all toilet flushing, laundry systems and irrigation areas.
- c) A complete, published BESS Report, with an acceptable overall score of at least 50% and also which meets the 'pass' marks in the categories of Water, Energy Stormwater and Indoor Environment Quality (IEQ) or that is otherwise to the satisfaction of the Responsible Authority.
- d) A commitment that the development achieves an average minimum NatHERS 6.5 star energy efficiency rating reflecting best practice energy efficiency and thermal comfort. Upon finalising an energy efficiency assessment for each dwelling, a shortfall with the development's thermal performance requirements and minimum obligations must not be met through the utilisation of renewable energy systems, treated as an offset measure, to proclaim compliance.

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

The requirements of the endorsed SDA must be demonstrated on the plans and elevations submitted for endorsement. Prior to the occupation of the development, the development must be constructed in accordance with the endorsed Sustainable Design Assessment to the satisfaction of the Responsible Authority, and the approved dwellings must operate in accordance with this document, to the satisfaction of the Responsible Authority. No alterations to the Sustainable Design Assessment may occur without the written consent of the Responsible Authority.

**Waste Management**

- 16. The requirements of the endorsed Waste Management Plan (WMP) must be implemented by the owners and occupiers of the site for the duration of the development's operation in accordance with this permit, to the satisfaction of the Responsible Authority. Any revision of the WMP or changes to the approved waste system of the development require Council approval.
- 17. Any Mobile Garbage Bin (MGB) placements proposed on Carrington Court or Highbury Road for on-street bin collection service must not cause any obstruction to any infrastructure or cause any danger to traffic/pedestrians. Bins are not to be placed within 1 metre of any infrastructure and are to have a height clearance of 4 metres for collection.

**11.2**  
(cont)

**Restrictive Covenant**

18. Both ground and upper level walls must be either face brick or rendered brick as required by the restrictive covenant N812253E registered on title.

**General Requirements**

19. Prior to the occupation of the development, all walls on site boundaries facing adjoining properties must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.
20. All treatments to prevent overlooking must not include 'Translucent film' on windows and must be in accordance with Standard B22 of Clause 55.
21. This permit will expire if one of the following circumstances applies:
- a) the development is not commenced within two years from the date of issue of this permit,
  - b) the development is not completed within four years from the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing pursuant to the provision of Section 69 of the *Planning and Environment Act 1987*.

**Permit Notes:**

- **General Notes**
  - A. The construction or reinstatement of crossovers is to be to Council standards and at the full cost of the permit holder.
  - B. The design and construction of letterboxes is to accord with Australian Standard AS-NZ 4253-1994.
  - C. The lot/unit numbers on the "Endorsed Plan" are not to be used as the official street address of the property. All street addressing enquiries can be made by contacting our Property Team on 9262 6470.
- **Asset Engineering**
  - D. The design and construction of the stormwater 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 stormwater 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.

## 11.2

(cont)

- E. The requirement for on-site detention will be noted on your stormwater point of discharge report, or it might be required as part of the civil plans approval.
- F. Report and consent – Any proposed building over the easement is to be approved by the Responsible Authority prior to approval of the building permit. If Report and Consent contradicts with the Planning Permit, amendment of the Planning Permit might be required.
- G. 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, naturestrip and kerb and channel.
- H. 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.
- I. 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.
- J. 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”
- K. Redundant vehicle crossing(s) must be removed at the same time as the construction of any new vehicle crossing(s), prior to the completion of development works and where access to a property has been altered by changes to the property.
- L. No excavation and/or fill is permitted within the easement.
- M. No trees are permitted within the easement. Any planting must not affect the stormwater pipe within the easement and have shallow roots that do not impact upon the functionality of the stormwater pipe.

## 11.2 (cont)

### ▪ Preferred Tree Species

- N. The replacement trees are to be selected from the lists below, or any other species to the satisfaction of the Responsible Authority:

*Large canopy trees, greater than 12m in height at maturity:*

Botanical Name	Common Name	Origin
<i>Angophora costata</i>	Smooth-barked Apple	AN
<i>Angophora floribunda</i>	Rough-barked Apple	AN
<i>Cedrus deodara</i>	Himalayan Cedar	Ex.
<i>Eucalyptus baxteri</i>	Brown Stringybark	VN
<i>Eucalyptus cephalocarpa</i>	Mealy Stringybark	VN
<i>Eucalyptus globoidea</i>	White Stringybark	VN
<i>Eucalyptus goniacalyx</i>	Long-leaved Box	VN
<i>Eucalyptus leucoxylon</i>	Yellow Gum	VN
<i>Eucalyptus melliodora</i>	Yellow Box	VN
<i>Eucalyptus polyanthemos</i>	Red Box	VN
<i>Liriodendron tulipifera</i>	Tulip tree	Ex.
<i>Quercus palustris</i>	Pin Oak	Ex.

*Medium sized trees, 8 - 12m in height at maturity.*

Botanical Name	Common Name	Origin
<i>Acacia dealbata</i>	Silver Wattle	VN
<i>Acacia mearnsii</i>	Black Wattle	VN
<i>Allocasuarina torulosa</i>	Forest She-oak	AN
<i>Betula pendula</i>	Silver Birch	Ex.
<i>Corymbia eximia</i>	Yellow Bloodwood	AN
<i>Eucalyptus scoparia</i>	Wallangara white gum	AN
<i>Eucalyptus yarraensis</i>	Yarra Gum	VN
<i>Eucalyptus leucoxylon</i> subsp. <i>connata</i>	Melbourne Yellow Gum	VN
<i>Fraxinus excelsior</i> 'Aurea'	Golden Ash	Ex.
<i>Fraxinus ornus</i>	Manna Ash	Ex.
<i>Nyssa sylvatica</i>	Tupelo	Ex.
<i>Tilia cordata</i>	Small-leaved Lime	Ex.
<i>Ulmus parvifolia</i>	Chinese Elm	Ex.
<i>Waterhousea floribunda</i>	Weeping Lilly Pilly	AN
<i>Zelkova serrata</i>	Japanese Zelkova	Ex.

**11.2**  
(cont)

**VN** – Victorian Native; **AN** – Australian Native; **Ex.** – Exotic

- 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

**COUNCIL RESOLUTION**

Moved by Cr Carr, Seconded by Cr Lane

That Council:

- A Being the Responsible Authority, having caused Application WH/2020/1194 for 631 Highbury Road, BURWOOD EAST (LOT 110 LP 209031R) to be advertised and having received and noted the objections is of the opinion that the granting of a Planning Permit for the construction of three double storey dwellings and associated tree removal is not acceptable and will unreasonably impact the amenity of adjacent properties.
- B Issue a Notice of Refusal to Grant a Permit under the Whitehorse Planning Scheme to the land described as 631 Highbury Road, BURWOOD EAST (LOT 110 LP 209031R) for the construction of three double storey dwellings and associated tree removal, on the following grounds:
1. The proposal is contrary to the Local Planning Policy Framework contained in the Whitehorse Planning Scheme, particularly in relation to the following Clauses:
    - a) Clause 21.05 (Environment);
    - b) Clause 21.06 (Housing);
    - c) Clause 22.03 (Residential Development);
    - d) Clause 22.04 (Tree Conservation)
  2. The proposed development will not adequately respect the neighbourhood character and amenity of the area, failing to meet the purpose and decision guidelines of the **general Residential Zone**.
  3. The proposal fails to meet the landscape character objectives and the decision guidelines of the Significant Landscape Overlay Schedule 9.
  4. The proposed site layout and building forms are inconsistent with the preferred rhythm of dwelling spacing, siting patterns and garden settings for the Garden Suburban Precinct 5 set out in the Residential Development Policy at Clause 22.03
  5. The development fails to meet the following Objectives and Standards of Clause 55 (including Standards as varied by Schedule 5 to the Neighbourhood Residential Zone):



## 11.2

(cont)

- a) Neighbourhood character
  - b) Energy Efficiency
  - c) Landscaping
  - d) Access
  - e) Parking Location
  - f) Side and Rear Setbacks
  - g) Overlooking
- 6. The proposed dwellings will result in excessive building bulk and visual bulk impacts to the surrounding residential lots and streetscape.
  - 7. The proposed site layout does not provide sufficient tree planting opportunities between and around the proposed dwellings.
  - 8. The proposed vehicle accessway locations will conflict with the operation of the intersection of Highbury Road and Carrington Court, resulting traffic safety impacts.

**CARRIED**

**A Division was called.**

### **Division**

#### **For**

Cr Carr  
Cr Cutts  
Cr Davenport  
Cr Lane  
Cr Liu  
Cr Massoud  
Cr McNeill  
Cr Munroe  
Cr Stennett

#### **Against**

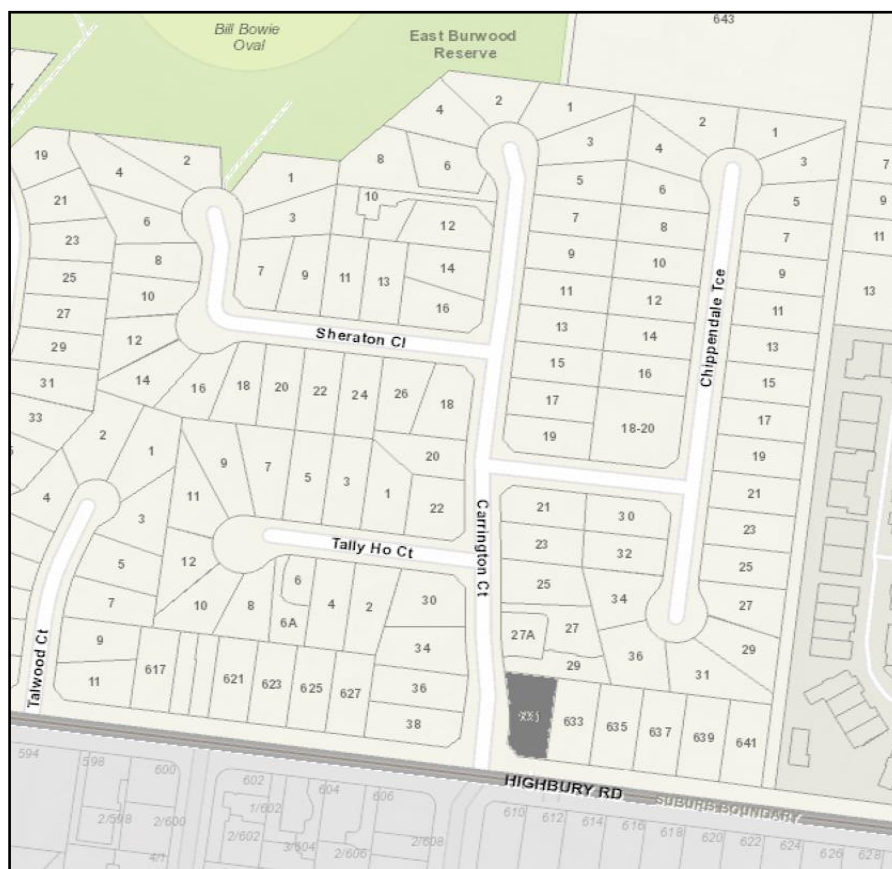
Cr Barker  
Cr Skilbeck

**On the results of the Division the motion was declared CARRIED**

**11.2**  
(cont)

**MELWAYS REFERENCE 62 C9**

Applicant:	Bello Designs Pty Ltd
Zoning:	General Residential Zone Schedule 1
Overlays:	Significant Landscape Overlay Schedule 9
Relevant Clauses:	
Clause 11	Settlement
Clause 12	Environment and Landscape Values
Clause 15	Built Environment and Heritage
Clause 19	Infrastructure
Clause 21.05	Environment
Clause 21.06	Housing
Clause 22.03	Residential Development
Clause 22.04	Tree Conservation
Clause 32.08	General Residential Zone Schedule 1
Clause 42.03	Significant Landscape Overlay Schedule 9
Clause 52.06	Car Parking
Clause 53.18	Stormwater Management in Urban Development
Clause 55	Two or More Dwellings on a Lot or Residential Buildings
Clause 65	Decision Guidelines
Ward:	Terrara



## **11.2**

(cont)

### **BACKGROUND**

#### **History**

The subject site was part of the former Tally Ho Boys Village, a farm for homeless and delinquent boys founded by the Central Methodist Mission in 1903.

Planning Permit NUN/3408 (WH/1987/803408) was issued on 23 March 1987, allowing subdivision of the land into 116 lots, creating the subject site

Planning Permit NUN/3608 (WH/1987/803608) was issued on 15 December 1987, allowing the development of ten lots for display homes and associated car parking. Under this permit, the subject site was utilised as a car park for 23 cars.

The existing house on the site was constructed in 1991.

#### **The Site and Surrounds**

The subject site is located on the north-east corner of the intersection of Highbury Road and Carrington Court in Burwood East. The site has an irregular rectangle shape, with a frontage to Highbury Road of 12 metres, a corner splay of 7 metres and a curved frontage to Carrington Court of approximately 32 metres, producing a site area of 674m<sup>2</sup>.

Highbury Road forms part of the principal road network, and is included in the Transport Zone Schedule 2 (formerly known as Road Zone Schedule 1). Carrington Court is the sole access road serving Sheraton Close, Tally Ho Court and Chippendale Terrace, all of which are cul-de-sacs. An elevated concrete splitter island divides Carrington Court for a length of 15 metres, at the intersection with Highbury Road.

The site currently contains a single storey brick dwelling with a vehicle crossover and driveway located on the west boundary, accessing Carrington Court, just north of the splitter island. This dwelling faces Carrington Court, and has its secluded private open space located in the Highbury Road setback, screened by a 1.7 metre high timber front fence.

The site slopes down from the west (Carrington Court) to the east, falling approximately 1 metre across the width of the lot. A 2 metre square sewerage easement is located at the north-east corner of the lot.

Restrictive Covenant N812253E is registered on the Title of the subject site and requires that any dwelling constructed on the site is to have external walls of brick, brick veneer or stone.

## **11.2**

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The arborist report submitted with the application, prepared by Dr Peter Yau, provides an assessment of eight trees, of which Trees 3-6 and 8 are located within the subject site. Trees 1 and 2 are street trees, and Tree 7 has since been removed from the adjoining lot to the east. Trees 1-3, 5 and 6 are protected under the Significant Landscape Overlay Schedule 9. The protected trees and application triggers associated with the proposal are summarised in the table in the Planning Controls section below.

The adjoining lot to the east, at 633 Highbury Road, accommodates a double storey rendered dwelling setback 4.7 metres from Highbury Road and including a garage built to the common boundary with the subject site, and the balance of the dwelling setback generally 2 metres from the common boundary.

The adjoining lots to the north comprise a former Church subdivided into three dwellings, with the accessway and carport serving 29 Carrington Court located beside the common boundary, and the dwellings of 27A and 29 beyond that, facing the subject site.

The surrounding dwellings on the former Tally Ho site were predominantly constructed in late 1980s-1990s, and are set within established gardens with occasional tall trees. In the vicinity of the subject site, the area comprises a mix of single and double storey detached dwellings, with only three examples of medium density development located in Tally Ho estate. To the south, across Highbury Road, there are also a mix of single and double storey dwellings, with several examples of medium density development in the area.

### **Planning Controls**

The proposal triggers the need for a Planning Permit under the following Clauses of the Whitehorse Planning Scheme:

#### General Residential Zone Schedule 1

Pursuant to Clause 32.08-6 a permit is required for the construction of two or more dwellings on a lot.

Under Clause 32.08-4 a development must meet a minimum garden area requirement of 35% (given the site area). The development plans indicate an area of 272m<sup>2</sup> or 40.4%.

#### Significant Landscape Overlay Schedule 9

Under Clause 42.03-2 a permit is required for the removal of protected trees and buildings and/or works within 4 metres of protected trees as summarised in the table below:

## 11.2

(cont)

Tree No.	Species & Common Name	Height and DBH	Condition	Location	Permit Trigger
1	<i>Gleditsia triacanthos</i> Honey Locust	5m high 0.14m DBH	Good	Street tree in Carrington Court	Driveway works within 4 metres
2	<i>Callistemon saligna</i> Bottlebrush	5m high 0.14m DBH	Fair-Good	Street tree in Highbury Road	N/A
3	<i>Quercus Robur</i> English Oak	16m high 1.1m DBH	Poor- half of the canopy has been badly lopped	Subject site	Remove protected tree
5	<i>Eucalyptus nicholaii</i> Peppermint Gum	15m high 0.7m DBH	Fair-Good	Subject site	Dwelling 1 construction within 4 metres
6	<i>Eucalyptus nicholaii</i> Peppermint Gum	15m high 0.6m DBH	Fair-Good	Subject site	Dwelling 1 construction within 4 metres

Note that the proposed removal of Tree 9 (8 metre high *Pittosporum undulatum* Sweet Pittosporum) is exempt from planning permission, as it is an environmental weed, and the removal of Tree 4 (4 metre high *Melaleuca amarillaris* Bracelet Honey Myrtle) is also exempt as it has a height of less than 5 metres and a single trunk circumference of less than 1.0 metre at a height of 1.0 metre above ground level.

## PROPOSAL

The application proposes to construct three double storey dwellings with associated tree removal. The key features of the proposal include:

- All three dwellings:
  - Are attached at the ground level.
  - Face Carrington Court, having their front doors and vehicle accessways connecting to this road.
  - Are provided with single garages (6 x 3.5 metres) setback at least 5.4 metres from the curved Carrington Court frontage, with tandem open car spaces (4.9 x 2.6 metres) located 0.5 metre forward of each garage.
  - At the ground level, comprise open plan kitchen, dining and living areas, bedroom, ensuite and laundry.

## 11.2

(cont)

- At the first floor, provide three further bedrooms.
- In addition, at the first floor, Dwelling 1 provides a retreat, family bathroom and ensuite, Dwelling 2 provides a family bathroom and ensuite, and Dwelling 3 provides ensuites to each bedroom.
- The 119m<sup>2</sup> secluded private open space area serving Dwelling 1 is located within the Highbury Road frontage, screened by a new 1.8 metre high timber paling fence. A small service yard is also provided to the north-east of this dwelling behind the garage.
- Dwelling 2 is provided with 43m<sup>2</sup> secluded private open space, to the north-east of this dwelling, including 38m<sup>2</sup> with a minimum dimension of 5.6 metres.
- Dwelling 3 has the benefit of 49m<sup>2</sup> of secluded private open space, including 35m<sup>2</sup> with a minimum dimension of 5 metres, located to the north-east of the site.
- Ground level setbacks include a 5.3 metre setback to Highbury Road for Dwelling 1, and varied setbacks to the three dwellings to the curved Carrington Court frontage at minimum 3 metres. Dwellings 1 and 2 are setback a minimum of 1 metre from the east boundary, and Dwelling 3 has a minimum 2 metre setback from the east boundary and 1.9 metres from the north boundary, except for the garage built to the north boundary.
- First floor minimum setbacks include 5.2 metres to Highbury Road (south) for Dwelling 1, minimum 3 metres to Carrington Court for all three dwellings, 2 metre north boundary setback for Dwelling 3 and varied east boundary setbacks including a minimum 2.1 metres for Dwelling 1, 2.2 metres for Dwelling 2 and 5.1 metres for Dwelling 3.
- Upper levels of the three dwelling are separated, with at least 3.3 metres between Dwellings 1 and 2, and a minimum 2.4 metres between Dwellings 2 and 3 (for a distance of 0.5 metre), opening up to 2.7 – 4 metres.
- No fence is proposed to the Carrington Court frontage north of the front porch of Dwelling 1, although low retaining walls are proposed within the front setbacks of Dwellings 2 and 3, to manage the slight elevation of the dwellings above the footpath level.
- At the Highbury Road frontage, the existing 1,7 metre high timber board fence is proposed to be replaced with 1.8 metre high palings, and at the corner splay, the existing 1.5 metre high vertical boards are proposed to be retained with a further 0.4 metre of lattice added above them.
- The existing 1.8 metre high east boundary fence is to be retained, and topped by 0.4 metre high lattice.

## **11.2**

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- The existing 1.8-1.9 metre north boundary fence is proposed to be retained, except for the length of the Dwelling 3 garage will be built to this boundary.
- External materials for the new dwellings include dark grey face brickwork to the ground level and much of the upper levels, with beige rendered brick sections provided to parts of the upper levels. A pitched dark grey tiled roof is proposed to the upper floors, with parapet walls and metal deck roofing provided to the lower levels.
- A maximum building height of 8.2 metres to the ridge of Dwelling 1 at the east elevation.
- A site (building) coverage of 49.5%.
- A permeable area of 42.8%.

## **CONSULTATION**

### **Public Notice**

The application was advertised by mail to the adjacent and nearby property owners and occupiers and by erecting notices on both the Highbury Road and Carrington Court frontages. Following the advertising period 34 objections were received. The issues raised in the objections are summarised as follows:

- Amenity impacts:
  - Overlooking
  - Overshadowing
  - North boundary fence needs replacing
  - Noise from air conditioning units
- Neighbourhood Character:
  - The site is a gateway to the local estate, but the built forms and site layout are not characteristic of the estate, which has almost no multi-unit sites.
- Car parking and traffic:
  - Increased traffic and congestion on Carrington Court, which is the only access point to approximately 90 dwellings in Tally Ho Court, Sheraton Court and Chippendale Terrace (former Tally Ho Boys School Estate).
  - The intersection of Highbury Road and Carrington Court is dangerous, with restricted sight lines and multiple accidents and near misses cited.
  - Increased queuing times at the intersection

## 11.2

(cont)

- Increased on-street parking, which is already a problem in surrounding residential streets
  - Access to the site is restricted by the splitter island
  - Tandem parking requires reversing onto the street
  - Traffic and pedestrian safety impacts on the street
  - Waste collection trucks will block traffic for a longer period.
- Landscaping:
  - Tree removal- In particular Tree 3
- Non-planning matters:
  - Negative impact on surrounding property values
  - Loss of views
  - Damage to the brick paved local roads, including Carrington Court
  - Set an undesirable precedent
  - Reference was made to the brick cladding covenant

### Consultation Forum

An online Consultation Forum was held on 1 February 2022 via Zoom. Approximately 19 objectors, the applicant's planning consultant and two planning officers attended the meeting which was chaired by Ward Councillor Carr.

The Forum followed an issues-based discussion expanding on the concerns raised in the objections received. Further points in addition to the written submissions (summarised above) included:

- Vehicles parked on street or manoeuvring in Carrington Court close to the intersection with Highbury Road could block the progress of vehicles turning into Carrington Court from Highbury Road.
- The bin storage locations for Dwellings 2 and 3 are not feasible.
- The applicant advised Transport for Victoria (formerly VicRoads) has recorded only two accidents at the intersection of in the vicinity within the past five years (in 2018 and 2019).
- Objectors prefer the vehicle accessways to connect to Highbury Road, instead of Carrington Court.
- The submitted Design Response focussed on the neighbourhood character along Highbury Road, as opposed to Carrington Court which all three dwellings face.

Subsequent to the Forum, the applicant advised that a basement car park was not viable, and that they would accept conditions requiring the reconstruction of the north boundary fence.



## 11.2

(cont)

### Referrals

#### External

##### Transport for Victoria

No objection

#### Internal

##### Engineering and Environmental Services Department

- Transport Engineer

No objection. It is noted that it is proposed to narrow the existing crossover in proximity to the splitter island, effectively maintaining the existing setbacks from this road feature.

- Waste Engineer

Submitted Waste Management Plan supported, subject to standard conditions.

- Assets Engineer

Supported subject to standard conditions, and a note referencing the management authorities approval is required for the new vehicle crossovers in proximity to Telstra and electricity pits in the road reserve.

##### Planning Arborist

Tree 3 – proposed to be removed. This tree is a large *Quercus robur* - English Oak and is poor in structure. It has previously been lopped and the canopy is in poor condition, and experiencing some die back and there are several wounds within structural branches. . Overall, based on its poor structure and declining health, its removal is supported.

Trees 5 and 6 – proposed to be retained. A permit will be required to undertake the proposed buildings and works, as the works are within 4m of these protected trees. The areas of encroachment into the TPZs of these trees are:

- Tree 5 – 15%
- Tree 6 – 13.9%

With conditions the proposal can be supported in relation to these trees.

##### ESD Advisor

Application supported subject to conditions requiring a more comprehensive Sustainable Design Assessment.

**11.2**  
(cont)

**DISCUSSION**

**Consistency with State and Local Planning Policies**

The construction of three dwellings on this site is consistent with State and Local Planning Policy directions which encourage higher density development within established residential areas that have good access to shops, recreation facilities and public transport. The subject site is located within 1.5km of the Burwood Highway tramline and Burwood One Shopping Centre, several schools and parks. The proposal accords with State Planning Policies which seek to ensure housing stock matches changing demand by widening housing choice; encourage the development of well-designed medium density housing that makes better use of existing infrastructure; and that is respectful of the existing and preferred neighbourhood character and appropriately responds to its landscape, valued built form and context.

Clause 21.06 (Housing) of the Local Planning Policy Framework is informed by Council's Housing Strategy 2014, and identifies the site within a Natural Change Area. Within Natural Change Areas 'infill development' is expected to be common, therefore a degree of change to achieve this outcome is anticipated.

Whitehorse's Residential Development Policy at Clause 22.03, applies to all applications for development within the residential zones and requires development to contribute to the preferred neighbourhood character, minimise the loss of trees and vegetation., and provide adequate landscaping consistent with the preferred neighbourhood character.

The Neighbourhood Character Study 2014 further defines the preferred future character of precincts within the City. The preferred character statements for each character precinct are defined under Clause 22.03-5. The subject site is located within the Garden Suburban Precinct 5, where the following outcomes are preferred:

*The modest, pitched roof dwellings will sit within well-established garden settings and will not dominate the streetscape due to consistent siting patterns and substantial planting of canopy trees. The rhythm of dwelling separation will appear regular from the street, even with buildings occasionally built to one side boundary. The streets will have a spacious and leafy feel, which is complemented by tall trees in the public and private realm, visible front lawn areas due to the frequent lack of or low front fencing and grass nature strips.*

## 11.2

(cont)

In particular, the Garden Suburban Precinct 5 Guidelines include Design Response Objectives to provide garden settings for dwellings, minimise the dominance of parking structures and reinforce the rhythm, spacing and alignment of buildings within the streetscape. New dwellings in Natural Change Areas should not exceed two storeys in height and roof forms incorporating eaves are encouraged. Facades are required to include articulation and details that reflect the character of the area, and low front fences are encouraged, except on main roads.

The existing dwelling of the subject site provides an anomalous setback to Highbury Road, and extends northwards over most of the balance of the lot, providing limited boundary setbacks to Carrington Court and the north and east boundaries. This is a typical side street presentation for a corner lot, which contrasts to the two dwellings facing the subject site to the west, which present their frontages to Carrington Court.

The three attached dwellings proposed will maintain the existing unbroken built form presentation to Carrington Court, but include improved setbacks and articulation to this sideage. The garages of each dwelling are recessed behind the front façade, lessening the visual impact of these structures to the streetscape. The setbacks of the dwellings from both Highbury Road and Carrington Court maintain the setback patterns appropriate to these frontages, by matching the front setback of the adjacent dwelling facing Highbury Road, and providing generous varied setbacks along the Carrington Court sideage which transition well to the adjoining dwelling to the north.

The proposed development provides landscaped front setbacks to both Highbury Road and Carrington Court, and secluded private open spaces with tree planting opportunities interface with part of both the north and east boundaries with adjoining residential lots.

The three proposed dwellings are all two storeys in height, and their upper level roofs include eaves. Overall the presentation of the proposed dwellings includes face brick and render cladding materials and pitched roof forms which provide a contemporary and restrained reflection of the range of architectural styles utilised for dwellings in the vicinity. Overall, this achieves an appropriate response to the Garden Suburban Precinct 5.

The proposal balances the urban consolidation outcomes of the Planning Policy Framework with the preferred landscape outcomes in the objectives and decision guidelines of the General Residential Zone Schedule 1, the Significant Landscape Overlay Schedule 9, Clause 22.03 (Residential Development) and Clause 22.04 (Tree Conservation), as outlined in the discussion below.

## 11.2 (cont)

### **Design and Built Form**

The subject site is positioned at the interface of the Tally Ho estate and Highbury Road, in an area which is characterised by large single and double storey detached dwellings, with scattered examples of medium density development in the vicinity, including adjacent to the site to the north and across Highbury Road to the south-west. As outlined above, the State Planning Policy direction encourages medium density housing that is responsive to the preferred and prevailing neighbourhood character.

Schedule 1 of the General Residential Zone requires dwellings to be setback from at least one side boundary, and the proposed development provides a minimum 1 metre setback to the east boundary. In addition, the presentation of the dwellings to Carrington Court is broken up by the setbacks of the garages of Dwellings 1 and 2 and the 2.7 – 3.3 metre separations provided between the upper levels of these dwellings. These horizontal articulation elements provide a rhythm to the Carrington Court presentation which enables the development to be perceived as three separate dwellings, and the 3 – 5.8 metre setbacks to Carrington Court will provide for appropriate landscaping to be established along this interface to maintain and enhance the Garden Suburban character of the area.

The upper levels provide some sheer wall elements, in particular to Carrington Court, with articulation of these elements provided through changes in cladding materials. Sheer two storey wall elements, often differentiated by cladding treatment and colours, are common features in the Carrington Court streetscape, notably at 23, 25, 30 and 34 Carrington Court. At the more sensitive residential interface to the east, the upper levels are recessed from the ground floor below and setback a minimum 2.1 metres from the boundary, and to the assessway interface to the north, Dwelling 3 presents a partly sheer two storey wall, with the upper level setback 2 metres from this boundary.

The proposed dwellings comply with the Standard B17 Side and Rear Setbacks Standard of Clause 55, which seeks to ensure that the height and setback of a building respects the existing character and limits the impact on the amenity of existing dwellings. In addition, the provision of horizontal articulation, varying cladding treatment and colours and hipped roof forms to the upper level, all assist with reducing the perception of visual bulk and maintaining the neighbourhood character.

The site layout provides for the secluded private open space of Dwelling 1 to be located within the Highbury Road frontage, behind a high front fence. This maintains the existing site conditions, and takes advantage of the allowance, under Standard B32, for front fences to be up to 2 metres high beside a main road (Transport Zone 2). The retention of this site layout allows the retention of Trees 5 and 6 at the prominent south-west corner of the lot beside the intersection, which will maintain a strong tree canopy and landscape character at this interface.

## 11.2

(cont)

The secluded private open space areas for Dwellings 2 and 3 are provided beside the east boundary with compliant access to northern light in accordance with Standard B29. All of the secluded private open space areas achieve a minimum 5 metre dimension and 35m<sup>2</sup> area, in accordance with Standard B28 as varied by Schedule 1 of the General Residential Zone.

As the secondary street frontage, Dwelling 1 is required to have a minimum 2 metre front setback, and Dwellings 2 and 3 to have minimum 3 metre setbacks, which are generally exceeded as a result of the angled street alignment, to the benefit of landscaping opportunities at this interface.

Low retaining walls have been provided within the Dwelling 2 and 3 front setbacks. Given the limited slopes of these frontages, the provision of retaining walls and steps in the pedestrian paths appears unnecessary, and will reduce the accessibility of the dwellings and will break up the landscape area within the frontages. A condition will require the retaining walls proposed in the Dwelling 2 and 3 setbacks to be removed, and graded paths and landscape areas to be provided, where possible

The provision of a single vehicle crossover for each dwelling fronting Carrington Road is compliant with Standard B14 Access, and 29% of the 31 metre (excluding splay) Carrington Road frontage is dedicated to crossovers. The provision of single garages with tandem car spaces limits the visual impact of car accommodation when viewed from the streetscape, and the recession of garages 1 and 2 behind the facades of the dwellings further reduces their prominence.

The development proposes a site coverage of 49.5% and a permeable area of 42.8%, in compliance with Standards B8 and B9, as varied by the Schedule to the Zone. This demonstrates the ability to meet a preferred character and respond to the features of the site.

The 8.2 metre maximum height of the proposed double storey development is well below the mandatory 11 metre and three storey height limits identified within the General Residential Zone Schedule 1, and will ensure that the building heights are consistent with the neighbourhood.

Overall, the boundary setbacks and interfaces are respectful of the neighbouring lots and the proposal is able to achieve a high level of compliance with Clause 55 and a strong landscape character to support the Garden Suburban characteristics of the area.

## **11.2**

(cont)

### **Amenity**

Clause 55.04 sets out a number of objectives and standards that seeks to ensure the amenity of adjoining residential lots is not unreasonably impacted. The proposed development maintains daylight to adjoining windows in compliance with Standard B19. The development only results in shadows cast over adjoining lot to the east in the 2-3pm period, but notably these shadows are clear of the rear secluded private open space area of the adjacent dwelling, thereby meeting the Overshadowing Open Space Objective (Standard B21). Overall, the proposal complies with the required Standards to ensure no unreasonable overlooking or overshadowing.

Subject to conditions, the proposed development will not cause any unreasonable overlooking to surrounding lots in accordance with Standard B22 of Clause 55, with the upper level north and east elevation habitable room windows are typically obscure glazed to 1.7 metres above finished floor level.

At the ground level, the existing 1.8 metre high east boundary fence is to be retained, and topped with an additional 0.4 metre high lattice. The proposed lattice addition will be insufficient to screen views from ground level windows to 1.7 metres above finished floor levels, and a condition will require a further 0.2 metre height to be added to the lattice extension to comply with Standard B22 of Clause 55.

To the north, there is a 9.5 metre separation between the ground level windows of Dwelling 3 and the facing habitable room windows of the adjacent dwelling, so screening of these windows is not required.

Given the potential for traffic noise from Highbury Road to impact in the internal acoustic amenity of the proposed dwellings, an annotation on the elevations states that all habitable room windows “should” be double glazed, but a condition will require the replacement of the word “should” with “must”, to provide some acoustic screening.

### **Landscaping and Tree Impacts**

The Decision Guidelines of the Significant Landscape Overlay Schedule 9 at Clause 42.03, require consideration to be given to ‘the need to retain trees that are significant due to their species, health and/or growth characteristics’, while further outlining, ‘If retention cannot be achieved, or a tree is considered appropriate for removal, consider whether the site provides adequate space for offset planting of trees that can grow to a mature height similar to the mature height of the tree to be removed’.

## 11.2

(cont)

The proposal requires the removal of one protected tree - Tree 3, a 16 metre high *Quercus robur* - English Oak located at the south-east corner of the lot. Council's Arborist has advised that this tree has been severely and unevenly lopped in the past and has wounds to several structural branches, with the result that this tree has poor structure and declining health. The removal of this tree is therefore supported.

The new Dwelling 3 crossover will be located outside of the 2 metre TPZ of the 5 metre high *Gleditsia triacanthos* street tree (Tree 1). The proposal will also result in buildings and works within 4 metres of the retained Trees 5 and 6 (both 6 metre high *Eucalyptus nicholaii*) at the south-west corner of the lot, and tree protection conditions will be imposed to ensure that the health of these trees is not compromised by the proposal.

Standard B13, as modified by the General Residential Zone Schedule 1, requires the planting of two 8 metre high trees per dwelling. The proposed landscape plan shows the retention of Trees 5 and 6 and the planting of six new trees, comprising one each within the front setbacks of Dwellings 2 and 3, one each within the secluded private open space areas of Dwellings 2 and 3, and two further trees within the Highbury Road setback of Dwelling 1. The number of proposed trees is acceptable, however the proposed species (*Eucalyptus mannifera* Little Snow Man) has a mature height of 4-7 metres, which is insufficient to comply with the varied standard, and a condition will recommend preferred replacement tree species which will achieve the required mature height.

The front setbacks of Dwellings 2 and 3 include only low understorey plantings, and a condition will require the provision of more shrubs within these frontages to soften the Carrington Court streetscape presentation.

It is noted that Dwellings 2 and 3 both include small lawns that may be onerous to maintain, and a condition will suggest that small lawns are avoided and that pinebark mulch planted with ground covers should be considered, and noting that artificial lawn will not be accepted.

### **Car Parking and Traffic**

All three dwellings provide the required two car spaces, including one covered car space, on site, as required by Clause 52.06 Car Parking. There is no requirement for visitor parking to be provided on site for a development of only three dwellings. The application has been reviewed by Council's Engineering Transport Team, who have in general supported the proposal on traffic and car parking grounds.

## 11.2

(cont)

It is noted that increased vehicle movements at the intersection of Highbury Road and Carrington Court and increased on-street parking were significant concerns raised by objectors. The intersection of Highbury Road and Carrington Court beside the subject site is the only access point to the Tally Ho estate, which includes Tally Ho Court, Sheraton Court and Chippendale Terrace. Although the proposal will increase vehicle movements close to this intersection, and will marginally increase the numbers of vehicles utilising this intersection, Council's Transport Engineer is comfortable that the increased traffic and on-street parking demand resulting from two additional dwellings on the site can be absorbed by the local street network.

It is noted that the applicant and objectors have expressed differing views on the operation of the intersection of Carrington Court and Highbury Road beside the subject site. However the operation of this intersection is outside the scope of this Planning Permit application and is the responsibility of Transport for Victoria.

Although the application does not propose to alter the site's interface to Highbury Road, this application was referred to Transport for Victoria, who have advised that there is no objection to the proposed three vehicle crossovers to Carrington Court. These crossovers do not intrude closer to the existing splitter island in Carrington Court near the Highbury Road intersection, and as such, these crossovers are acceptable. It is noted that the splitter island effectively prohibits on-street parking and vehicle manoeuvres for effectively three car lengths (approximately 15 metres) from the Highbury Road alignment, and that this 15 metre distance allows multiple turning vehicles the ability to effectively enter and queue within Carrington Court, even if Carrington Court is temporarily blocked beyond the splitter island by vehicles manoeuvring into or out of the subject site.

The subject site has a splay at the intersection of Highbury Road, which provides for driver sight lines, and the fence location at this corner is not proposed to change. It is noted that the canopy of Tree 6 overhangs the boundary fence, and a condition will require the uplift of the canopy of this tree so that it is clear of driver sight lines.

### **Restrictive Covenant**

Restrictive Covenant N812253E registered on the Title requires that any dwelling constructed on the site is to have external walls of brick, brick veneer or stone. The applicant has submitted that the current plans, showing both ground and upper level walls to be either face brick or rendered brick are compliant with the restrictive covenant, and this is acceptable, and will be reinforced by a permit condition that the all external walls must be either brick, brick veneer or stone.



## 11.2

(cont)

### **Objectors Concerns not Previously Addressed**

- North boundary fence needs replacing

The applicant has indicated they are prepared to accept a condition requiring the reconstruction of the north boundary fence, and this will be included should a permit issue.

- Noise from air conditioning units
- The consideration of this planning application is confined only to the construction of the dwellings, the residential use of the dwellings does not require a planning permit and is not a planning matter. Residential noise associated with a dwelling is considered normal and reasonable in an urban setting. Residents will be required to meet relevant EPA regulations regarding noise emissions from air conditioners.

- Proposed bathrooms and overall dwellings are cramped.

The size and layout of bathrooms is not prescribed by the Whitehorse Planning Scheme, however the proposed bathroom layouts are considered to provide an acceptable level of amenity for future residents.

- Increased on-street parking, which is already a problem in surrounding residential streets and on Highbury Road where vehicles regularly park in no-standing zones, obstructing driver sight lines.

Illegal driver behaviour cannot be addressed through the Planning permit process.

- There is no on-street parking opposite the subject site due to the splitter island, so cars will park in front of other properties.

Parking on-street is allowed for any vehicle, not just those who reside in front of that section of road. This is not a ground to refuse this application.

- Tandem parking requires reversing onto the street into a congested and dangerous intersection

Given the presence of the splitter island, all three crossovers are sufficiently setback from Highbury Road to satisfy the road authorities that vehicle movements will not interfere with the intersection operation.

- Waste collection trucks will block traffic for a longer period.

The collection of two more bins from the Carrington Road frontage will have a minimal impact on waiting times for vehicles exiting Carrington Court.

## 11.2

(cont)

- Cars parked in tandem spaces will overhang the footpath

It is noted that there is no footpath along the Carrington Court frontage of the subject site, which includes a grass verge beside the roadway. The proposed tandem car spaces are shown on the plans as 2.6 metres wide and 4.9 metres long, as required by Design Standard 2 of Clause 52.06 (Car Parking). An additional 0.5 metre is provided on the accessways beyond the required 4.9 metre length, allowing for standard vehicles to legally park clear of the road reserve.

- Negative impact on surrounding property values

The Victorian Civil and Administrative Tribunal and its predecessors have generally found subjective claims that a proposal will reduce property values are difficult, if not impossible to gauge and of no assistance to the determination of a planning permit application. It is considered the impacts of a proposal are best assessed through an assessment of the amenity implications rather than any impacts upon property values. This report provides a detailed assessment of the amenity impact of this proposal which were found to be acceptable.

- Loss of views

The proposed development height and boundary setbacks are compliant with the relevant Standards and Objectives of ResCode (Clause 55), resulting in a built form which is not unreasonably bulky. Furthermore views are not protected by the Planning Scheme.

- Damage to the brick paved local roads, including Carrington Court

Engineering conditions include a requirement for an Asset Protection Permit to be sought from Council. This mechanism will require Council assets (such as the road pavement) to be either protected or reinstated to Council's satisfaction.

- Set an undesirable precedent

Each planning permit application is decided on its own merits and against the relevant planning policies and provisions and cannot be considered against precedent.

- The proposed bin storage locations for Dwellings 2 and 3 to the rear of garages are not feasible, as bins cannot be manoeuvred past parked cars in garages, resulting in bins being stored in site frontages.

The Waste Management Plan has been approved by Council's Waste Engineer, and bin storage locations the operation of dwellings after they are constructed, are not typically managed through the Planning process.

- Vehicle accessways should connect to Highbury Road, instead of Carrington Court.

## **11.2**

(cont)

It is Transport for Victoria policy that there be no new crossovers created to main roads where there is an opportunity for access to a side street.

- Original purchasers in 1989 were advised that no medium density housing was allowed in the former Tally Ho subdivision.

There is a covenant on title, however no restriction on how many dwellings, and the Planning controls do not prohibit medium density development.

### **CONCLUSION**

The proposal for construction of construction of three double storey dwellings and associated tree removal is an acceptable response that satisfies the relevant provisions contained within the Whitehorse Planning Scheme, including the State and Local Planning Policies, the General Residential Zone Schedule 1, the objectives and decision guidelines of the Significant Landscape Overlay Schedule 9 and Clause 55 (ResCode).

A total of 34 objections were received as a result of public notice and all of the issues raised have been discussed as required.

It is considered that the application should be approved.

### **ATTACHMENT**

- 1 WH/2020/1194 - Council Report A3 Plans 

**11.3 10 Boulton Road, BLACKBURN (LOT 2 LP 214382) – Tree removal and buildings and works associated with a new dwelling within 4 metres of vegetation protected under Significant Landscape Overlay, Schedule 2 (SLO2).**

City Planning and Development  
Director, City Development  
FILE NUMBER: WH/2021/361  
ATTACHMENT

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**SUMMARY**

This item was deferred by Council at its meeting on 23 May 2022 to seek clarification of the site coverage figures. The advertised plans have been reviewed by Planning Officers and the working notes checked by the permit applicant.

The following figures have been updated from the original report:

- Total site coverage with buildings which includes the dwelling, garage, alfresco, porch and workshop is 42.35% (permit triggered).
- Total hard surfacing which includes the driveway and stepping stone path to the south of the dwelling is 7.48% (no permit triggered).
- Total site coverage of buildings and hard surfacing is 49.83% (no permit triggered).

This updated information has been provided to the objectors and Ward Councillor.

This application proposes tree removal and buildings and works associated with the construction of a single-storey dwelling within a Significant Landscape Overlay, Schedule 2 (SLO2). The application has triggered a permit for removal of protected vegetation and buildings and works for a new dwelling, pursuant to the provisions of the Significant Landscape Overlay, Schedule 2 (SLO2).

This application was advertised, and a total of fifteen (15) objections were received. The objections raised issues with vegetation removal, lack of landscaping opportunity, site coverage and consistency with neighbourhood character. A Consultation Forum was held online via Zoom on 9 February 2022 chaired by Councillor Massoud, at which time 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.

Amended sketch plans have been submitted by the applicant showing reduced impacts on trees, and overall only two (2) trees to be removed. These plans were not readvertised, however have been used to form the basis for conditional approval of the application.

**11.3**  
(cont)

The proposal for buildings and works associated with a single dwelling on a lot within 4 metres of protected trees and removal of vegetation in the Significant Landscape Overlay, Schedule 2 (SLO2), is an acceptable response, subject to conditions which seek landscaping improvements to ensure built form is the subservient element to the established vegetation and canopy cover of the streetscape.

The provision of one new single storey dwelling, will provide an appropriate built form character outcome. The new dwelling will provide for an appropriate development that ensures its front setback can be well vegetated, and in doing so, will be consistent with others in the street. The development also provides space around the new building, allowing for tree retention, as well as allowance for new tree planting and landscaping to ensure the vegetated character of the area is retained and enhanced.

It is recommended that the application be supported, subject to conditions.

**RECOMMENDATION**

That Council:

- A. Being the Responsible Authority, having caused application WH/2021/361 for 10 Boulton Road, BLACKBURN (LOT 2 LP 214382) to be advertised and having received and noted the objections is of the opinion that the granting of a Planning Permit for 'tree removal and buildings and works associated with a new dwelling within 4 metres of vegetation protected under Significant Landscape Overlay, Schedule 2 (SLO2) 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 10 Boulton Road, BLACKBURN (LOT 2 LP 214382) for 'tree removal and buildings and works associated with a new dwelling within 4 metres of vegetation protected under Significant Landscape Overlay, Schedule 2 (SLO2)', subject to the following conditions:
  1. Before the development starts, or vegetation removed, amended plans must be submitted to and approved by the Responsible Authority in a digital format. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale, and be generally in accordance with the plans submitted with the application but modified to show:
    - a) Tree 16:
      - i. The south wall of the dwelling setback a minimum 1.74 metres from the south boundary and relocation of all earthworks to be outside the Tree Protection Zone (TPZ).
      - ii. Delete stepping stone pathway where within TPZ.

**11.3**  
(cont)

- iii. Dwelling construction if within TPZ must be constructed at grade and on tree sensitive footings.
- iv. The dwelling's south setback where within Tree 16's TPZ is to be converted to garden bed and mulched.
- v. Encroachments into the TPZ of this tree are to be consistent with the revised plans submitted into Council on 20 December 2021, prepared by Reagan Ashmore and dated 24 April 2021.
- b) Granitic sand / gravel pathway along north side of dwelling must be converted to lawn / garden beds to allow for increased permeability and protection TPZs for Trees 7, 9 and 10.
- c) Relocate vehicle crossing 1 metre to the south away from Tree 1 to provide clearance from the structural root zone. Provide a copy of permission from the power company to relocate or undertake works within 1 metre of the power pole.
- d) Undertake a Non-Destructive Root Investigation (NDRI) for the crossover where works are to occur within the TPZ of Tree 1, and incorporate recommendations of the Arborist undertaking the NDRI.
- e) The internal setback between the west-facing wall of the retreat room and eastern wall of workshop/shed reduced to 2 metres.
- f) Setbacks of workshop/shed increased from north-west and west boundaries to a minimum 6.568 metres and 7.94 metres, respectively.
- g) Reduce dwelling setback from the north boundary to a minimum 3.376 metres
- h) South-west corner of garage offset 436mm from southern boundary where within the Tree Protection Zone (TPZ) of Tree 17.
- i) Setback between garage's western door and workshop/shed's eastern door reduced to 19.99 metres.
- j) Finished Floor Levels (FFLs) to Australian Height Datum (AHD) to be nominated clearly on the plans. The FFL of the dwelling is to be set no lower than 95.85 metres to AHD, which is 300mm above the applicable flood level of 95.55 metres to AHD.
- k) Roofing material for the dwelling to be non-reflective so as to not cause excessive sun glare.
- l) The locations of the Structural Root Zone and Tree Protection Zones described in Condition 5, with all nominated trees clearly identified and numbered on both the site and landscape plans and the requirements of Conditions 5 and 6 to be annotated on the development plan and landscape plan.

**11.3**  
(cont)

- m) Development plans to include an annotation which clearly states Trees 7, 8, 9 and 10 are to be retained, to be consistent with what is shown on the landscape plan prepared by Zenith Concepts Pty Ltd, dated 5/8/2021.
- n) The landscape plan to be amended to show:
  - i. The provision of at least four (4) new indigenous or native trees to be planted across the site, capable of reaching a minimum mature height of 15 metres.
  - ii. Replacement tree species to be selected from the following list:
    - Eucalyptus cephalocarpa – Mealy Stringybark
    - Eucalyptus leucoxydon – Yellow Gum
    - Eucalyptus melliodora – Yellow Box
    - Eucalyptus polyanthemus – Red Box
    - Alternative species to the satisfaction of the Responsible Authority

All of the above must be to the satisfaction of the Responsible Authority. Once approved these plans must always accord with the endorsed plan and must not be altered or modified without the further written consent of the Responsible Authority.

- 2. The layout of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plan and must not be altered or modified without the further written consent of the Responsible Authority.
- 3. No building or works must be commenced (and no trees or vegetation are to be removed) until a landscape plan prepared by a suitably qualified and experienced person or firm has been submitted to and endorsed by the Responsible Authority. This plan when endorsed shall form part of this permit. This plan shall show:
  - a) A survey of all existing vegetation, abutting street trees, natural features and vegetation.
  - b) Buildings, outbuildings and trees in neighbouring lots that would affect the landscape design.
  - c) Planting within and around the perimeter of the site comprising trees and shrubs capable of:
    - i. Providing a complete garden scheme,
    - ii. Softening the building bulk,
    - iii. Providing some upper canopy for landscape perspective,
    - iv. Minimising the potential of any overlooking between habitable rooms of adjacent dwellings.

**11.3**  
(cont)

- d) A schedule of the botanical name of all trees and shrubs proposed to be retained and those to be removed incorporating any relevant requirements of Condition 1.
- e) The proposed design features such as paths, paving, lawn and mulch.
- f) 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.

Landscaping in accordance with this approved plan and schedule must be completed before the development is occupied.

Once approved these plans become the endorsed plans of this permit.

- 4. 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. Should any tree or shrub be removed or destroyed it must be replaced by a tree or shrub of a similar size and variety.
- 5. Prior to commencement of any building or demolition works on the land, Tree Protection Zones (TPZs) must be established on the subject site and nature strip 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:
    - I. Tree 1 – 5.4 metre radius from the centre of the tree base
    - i. Tree 2 – 2 metre radius from the centre of the tree base
    - ii. Tree 3 – 4.6 metre radius from the centre of the tree base
    - iii. Tree 5 – 2 metre radius from the centre of the tree base
    - iv. Tree 7 – 4.3 metre radius from the centre of the tree base
    - v. Tree 8 - 2 metre radius from the centre of the tree base
    - vi. Tree 9 – 3.5 metre radius from the centre of the tree base
    - vii. Tree 10 – 8.9 metre radius from the centre of the tree base
    - viii. Tree 16 – 4.8 metre radius from the centre of the tree base
    - ix. Tree 17 – 2.0 metre radius from the centre of the tree base
  - (b) Tree protection zone measures are to be established in accordance with Australian Standard 4970-2009 and including the following:
    - i) Erection of solid chain mesh or similar type fencing at a minimum height of 1.8 metres held in place with concrete feet.



**11.3**  
(cont)

- ii) Signage placed around the outer edge of perimeter fencing identifying the area as a TPZ. The signage should be visible from within the development, with the lettering complying with AS 1319.
  - iii) Mulch across the surface of the TPZ to a depth of 100mm and undertake supplementary watering in summer months as required.
  - iv) No excavation, heavy machinery, 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.
  - v) All supports, and bracing should be outside the TPZ and any excavation for supports or bracing should avoid damaging roots where possible.
  - vi) 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.
  - vii) Where construction is approved within the TPZ, fencing and mulching should be placed at the outer point of the construction area.
  - viii) Where there are approved works within the TPZ, it may only be reduced to the required amount by an authorised person only during approved construction within the TPZ and must be restored in accordance with the above requirements at all other times.
6. During the construction of any buildings or works, the following tree protection requirements must be carried out to the satisfaction of the Responsible Authority:
- a) The dwelling where within the TPZ of Tree 16, must be constructed on tree sensitive footings, such as post footings or screw piles, with no grade change within greater than 10% of the TPZ. The postholes must be hand dug and no roots greater than 40mm in diameter are to be cut or damaged. A Geotechnical Engineer must assess the soil type and provide the results to a Structural Engineer so that appropriate footings and foundations can be designed so that they are not affected by soil movement.
  - b) The paving where within the TPZ of Tree 16, must be constructed above the existing soil grade. There must be no grade change within greater than 10% of the TPZ, and no roots greater than 40mm in diameter are to be cut or damaged during any part of the construction process.

**11.3**  
(cont)

- c) For Trees 7, 8, 9, 10 and 17 no roots greater than 40mm in diameter are to be cut or damaged during any part of the construction process.
  - d) 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 topography of the land (which includes trenching and site scrapes) within greater than 10% of the TPZs of Trees 7, 8, 9, 10 and 17.
  - e) No trenching is allowed within the TPZs of Trees 7, 8, 9, 10, 16 and 17 for the installation of utility services. All utility services must be bored to a depth of 600mm below natural ground level where within the TPZs of these trees and the entering points for the boring works must be outside the TPZs.
  - f) No buildings and works, which includes changes to the existing ground levels or topography of the land, are to be undertaken within 4m of the base of Tree 15 without a permit from the Responsible Authority (RA).
  - g) Tree 15 must not be removed, destroyed, or lopped without a permit from the Responsible Authority (RA).
  - h) The builder / site manager must ensure that any buildings and works within or adjacent to the TPZs of Trees 7, 8, 9, 10, 16 and 17 do not adversely impact their health and / or stability now or into the future.
  - i) The builder / site manager must ensure the TPZ Fencing Conditions and the Tree Protection Conditions for Trees 7, 8, 9, 10, 16 and 17 are being adhered to throughout the entire building process, including site demolition, levelling, and landscape works.
- 7. The applicant is required to contact Council's Planning Enforcement Officer in writing within three (3) months of planting to undertake a site inspection of the replacement canopy trees.
  - 8. All stormwater drains and on-site detention systems are to be connected to the legal point of discharge to the satisfaction of the Responsible Authority prior to the occupation of the building/s.
  - 9. Stormwater that could adversely affect any adjacent land must not be discharged from the subject site onto the surface of the adjacent land.

**11.3**  
(cont)

10. The Applicant/ Owner is responsible to pay for all costs associated with reinstatement and/or alterations to Council or other Public Authority assets as a result of the development. The Applicant/ Owner is responsible to obtain all relevant permits and consents from Council at least seven (7) days prior to the commencement of any works on the land and is to obtain prior specific written approval for any works involving the alteration of Council or other Public Authority assets. Adequate protection is to be provided to Council's infrastructure prior to works commencing and during the construction process.
11. The existing street trees must not be removed or damaged except with the prior written consent of the Responsible Authority.
12. This permit will expire if one of the following circumstances applies:
  - a) The development is not commenced within two (2) years from the date of issue of this permit;
  - b) The development is not completed within four (4) years from the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing pursuant to the provisions of Section 69 of the Planning and Environment Act 1987.

Has made this decision having particular regard to the requirements of Sections 58, 59, 60 and 61 of the Planning and Environment Act 1987.

**Permit Notes:**

- Application not assessed against ResCode (Clause 54)

**COUNCIL RESOLUTION**

Moved by Cr Massoud, Seconded by Cr McNeill

That Council:

- A Being the Responsible Authority, having caused Application WH/2021/361 for 10 Boulton Road, BLACKBURN (LOT 2 LP 214382) to be advertised and having received and noted the objections is of the opinion that the granting of a Planning Permit for the development of a single storey dwelling within 4 metres of protected trees and associated tree removal is not acceptable and will unreasonably impact the amenity of adjacent properties.
- B Issue a Notice of Refusal to Grant a Permit under the Whitehorse Planning Scheme to the land described as 10 Boulton Road, BLACKBURN (LOT 2 LP 214382) for the development of a single storey dwelling within 4 metres of protected trees and associated tree removal, on the following grounds:

**11.3**  
(cont)

1. The proposal is contrary to the Local Planning Policy Framework contained in the Whitehorse Planning Scheme, particularly in relation to the following Clauses:
  - a) Clause 21.05 (Environment);
  - b) Clause 22.04 (Tree Conservation)
2. The proposed development represents a built form excessive in site coverage and deficient in landscaping, thereby failing to adequately respect the bush environment neighbourhood character and amenity of the area, pursuant to local policy prescribed at Clause 22.03-5 of the Whitehorse Planning Scheme.
3. The proposal fails to meet the landscape character objectives and the decision guidelines of the Significant Landscape Overlay Schedule 2.
4. The proposed site layout does not allow for sufficient tree planting opportunities around the proposed dwelling and workshop / shed.

**CARRIED**

**A Division was called.**

**Division**

**For**

Cr Carr  
Cr Cutts  
Cr Lane  
Cr Massoud  
Cr McNeill  
Cr Skilbeck  
Cr Stennett

**Against**

Cr Barker  
Cr Davenport  
Cr Liu  
Cr Munroe

**On the results of the Division the motion was declared CARRIED**

**11.3**  
(cont)

**MELWAYS REFERENCE MAP 62 C1**

Applicant:	R Ashmore
Zoning:	Neighbourhood Residential Zone, Schedule 1
Overlays:	Significant Landscape Overlay, Schedule 2
Relevant Clauses:	
Clause 11	Settlement
Clause 12	Environment and Landscape Values
Clause 15	Built Environment and Heritage
Clause 21.05	Environment
Clause 21.06	Housing
Clause 22.03	Residential Development
Clause 22.04	Tree Conservation
Clause 32.09	Neighbourhood Residential Zone, Schedule 1
Clause 42.03	Significant Landscape Overlay, Schedule 2
Clause 65	Decision Guidelines
Ward:	Lake

**WH/2021/361 – 10 Boulton Road, Blackburn**

**SITE LOCATION PLAN**



**Figure 1:** Aerial image of subject site and surrounds

**11.3**  
(cont)

**BACKGROUND**

This item was deferred by Council at its meeting on 23 May 2022 to seek clarification of the site coverage figures. The advertised plans have been reviewed by Planning Officers and the working notes checked by the permit applicant.

Council Officers facilitated an onsite meeting with the permit applicant and land owner on 30 November 2021. The purpose of this meeting was to work collaboratively on finding potential solutions to tree issues which were first raised by Council's Consulting Arborist in referral comments dated 26 August 2021. Following this onsite meeting, sketch plans were received by Council on 20 December 2021. These amended plans saw improvements made to the proposed design of the dwelling to lessen impacts on trees. These changes included an increased setback of built form from the south boundary as well as a reduction in the setback from the north boundary. The permit applicant has since relied upon these sketch plans and is willing to undertake more replacement planting of upper canopy trees in light of the number of objections received, and to better respond to the bush environment precinct.

In making a recommendation to Council, this report will be assessing the decision plans, prepared by 'Reagan Ashmore Design and Drafting Services', dated 24 April 2021 and advertised by Council on 25 August 2021. The changes to the design to respond to the tree issues as discussed above will form part of the officer recommendation by way of permit condition.

**History**

A review of Council's records reveals the subject site does not have any available planning permit history. Aerial images courtesy of GIS Weave confirm the subject land has remained vacant, dating back to December 1945. At this time the land was used as an orchard.

**The Site and Surrounds**

The subject site is located at the north-west end of Boulton Road, approximately 110 metres north of Canterbury Road and directly adjacent the Masons Road Flood Retarding Basin in Blackburn. The site is irregular in shape with a frontage of 18.19 metres to Boulton Road, a north side boundary of 57.43 metres, a south side boundary of 50.27 metres and a rear boundary of 7.6 metres, yielding an overall area of 859 square metres.

The lot is currently vacant and a combination of exotic and native canopy trees are scattered across the site. No vehicle crossover services the subject land and there are a number of street trees located within the nature strip outside the front of the site. The site has a gradual fall in excess of 1 metre from south to north. A 1.52 metre wide easement is located towards the front boundary and a 2 metre wide easement extends the length of the north side boundary.

**11.3**  
(cont)

The subject site is located within a Bush Environment precinct in which the landscape is the dominant feature, and built form acts as subservient to the prevalence of middle to upper storey canopy trees and understorey vegetation.

Within the immediate context, the following is noted:

North

The subject land adjoins the Masons Road Retarding Basin to its immediate north. This open space is frequented by local residents for recreational purposes

South

The adjoining lot to the south, at No.8 Boulton Road, contains a single storey dwelling with a mostly flat roof, although skillion elements are evident. The block is an irregular shaped lot which wraps around the rear (i.e. western side) of the subject lot. The dwelling at No.8 Boulton Road is well setback from the street, at approximately 31.2 metres from the street frontage. A north-facing pergola and alfresco area is oriented to face the subject site, and is setback approximately 3.2 metres from the common boundary

Other dwellings to the south along Boulton Road are modest in scale, typically single-storey and of brick or weatherboard construction. Canopy trees are common within frontages and areas of secluded private open space (SPOS), contributing to a leafy bushland feel to the neighbourhood.

East

Directly opposite the site at No.7 Boulton Road is a single storey dwelling, well recessed from the street frontage, and dominated by established understorey vegetation as well as high quality native and indigenous canopy trees. A carport abuts the site's southern boundary. Visibility of the dwelling is partially hidden by the predominance of canopy cover and understorey planting in keeping with the 'bush environment' landscape character of the environs.

West

The SPOS of the neighbouring property to the south at No.8 Boulton Road is located to the sites immediate west. Further west is a walking trail for the Masons Road Flood Retarding Basin which connects to Masons Road.

**PROPOSAL**

The application proposes tree removal and buildings and works associated with a new single-storey dwelling within 4 metres of protected trees. The key features of the proposal include:

- Construction of a single storey dwelling comprising an entrance via a porch, an open plan kitchen, dining and living room, four bedrooms, two bathrooms inclusive of a private ensuite for bedroom 1, a laundry, retreat room, and storage area.

**11.3**  
(cont)

- The dwelling's front setback is proposed at 9 metres, with the garage setback 10.45 metres to Boulton Road (i.e. the front boundary).
- The dwelling has an overall height of 5.38 metres above ground level.
- Construction of a workshop (6 metres by 6 metres) to the rear of the dwelling.
- Construction of a vehicle crossing
- Removal of vegetation. The arborist report shows the removal of ten (10) trees, seven (7) of which require a permit.
- Revised plans which are discussed later in this report show the retention of trees 7, 8, 9, 10 and 11. Therefore a total of six (6) trees are to be removed, two (2) of which require a permit under the provisions of the SLO2, namely trees 6 and 12.

Trees requiring a planning permit

Tree No.	Name	Species	Trunk Circumference (m) and tree height (m)	Structure	Recommendation / Permit Required?
<b>6</b>	<b>English Oak</b>	<b><i>Quercus robur</i></b>	<b>0.81 / 11</b>	<b>Fair</b>	<b>Removal. Permit required.</b>
7	Desert Ash	<i>Fraxinus angustifolia</i>	0.54 / 11	Fair	Removal. Permit required.
9	Desert Ash	<i>Fraxinus angustifolia</i>	0.75 / 6	Fair/ Poor	Removal. Permit required.
10	River Peppermint	<i>Eucalyptus elata</i>	2.36 / 17	Poor	Removal. Permit required.
11	River Peppermint	<i>Eucalyptus elata</i>	1.51 / 13	Poor	Removal. Permit required.
<b>12</b>	<b>English Oak</b>	<b><i>Quercus robur</i></b>	<b>0.85 / 6</b>	<b>Fair/ Poor</b>	<b>Removal. Permit required.</b>

**Bold** = Trees proposed for removal as per revised plans



**11.3**  
(cont)

Trees to be removed which do not require a planning permit

Tree No.	Name	Species	Trunk Circumference (m) and tree height (m)	Structure	Recommendation / Permit Required?
5	European Spindle	<i>Euonymus europaeus</i>	0.25 / 3	Fair	Removal. No permit required.
8	Gossamer Wattle	<i>Acacia floribunda</i>	0.22 / 4.5	Fair	Removal. No permit required.
13	Desert Ash	<i>Fraxinus angustifolia</i>	0.39 / 6.3	Fair	Removal. No permit required.
14	Desert Ash	<i>Fraxinus angustifolia</i>	1.01 / 6	Poor	Dying. No permit required.

- Tree 14 has been assessed and verified by Council's Consulting Arborist as dying, and therefore is exempt from needing a permit for its removal.
- Vehicle access is sought via a proposed vehicle crossover in the south-east corner of the lot. This vehicle crossover is to connect to the front driveway and double width garage on-boundary. The driveway material has been nominated as exposed aggregate.
- A north and west-facing deck area is accessible via the living room and provides for a north-facing alfresco experience.
- A site cut (a maximum of approximately 600 millimetres) and associated earthworks to create a level area.

External materials include acrylic rendered finish to blockwork and foam, blockwork, timber cladding elements, aluminium battens and colorbond roofing painted in muted grey tones to blend in with the surrounding natural environment.

Buildings and works associated with the new dwelling are proposed to be located within 4 metres of the following protected trees:

- Trees 7, 9, 10, 16 and 17

**Planning Controls**

Neighbourhood Residential Zone, Schedule 1 (NRZ1)

Under Schedule 1 of the Neighbourhood Residential Zone, a permit is not required to construct a single dwelling as the lot size is greater than 500 square metres (at 859sqm). Given this, ResCode standards as varied by Schedule 1 to the Neighbourhood Residential Zone cannot be considered by Council's Planning Officers as a permit is not triggered for the proposal under the zone.

### 11.3

(cont)

An application to construct a dwelling must provide a minimum garden area of 35 per cent (based on the lot size of over 650 square metres). An assessment of the plans indicates an approximate area of 405.9 square metres, equivalent to approximately 47 per cent of the lot. This complies with the minimum garden area requirement.

#### Significant Landscape Overlay, Schedule 2

Under Schedule 2 to the Significant Landscape Overlay (SLO2) a permit is required for the removal of a tree having a single trunk circumference of 0.5 metres or more at a height of one metre above ground level.

A permit is required to remove Trees 6 and 12. Tree 13 (Desert Ash) has been assessed by Council's Planning Arborist as having a single trunk circumference of less than 0.5 metres (as measured from a height of 1 metre above ground level). Therefore a permit is not required under the provisions of SLO2 for Tree 13's removal. A summary of the protected trees to be removed follows:

**Table 1**

Tree No.	Species	Height	DBH	Significance	Comments (Taylors)
6	<i>Quercus robur</i> – English Oak	11m	0.57	Moderate	Co-dominant stems at 0.4m above ground level. Low hanging branches to ground level.
12	<i>Quercus robur</i> – English Oak	6m	0.85	Low	2 trees growing from 1 root plate. Tree dimensions have been averaged. Possum defoliation. Unbalanced canopy masses. Low hanging branches to ground level.

#### **Source – Taylor's Trees**

Pursuant to Clause 42.03-2 of the Whitehorse Planning Scheme (the Scheme), a permit is required to undertake buildings and works within four (4) metres of protected trees. As stated under the proposal section to this report, buildings and works are proposed within 4 metres of five (5) protected trees, namely Trees 7, 9, 10, 16 and 17.

Trees 13 and 14 do not trigger a permit for removal due to either being under 0.5 metres in trunk circumference as measured from a height of 1 metre above ground level (Tree 13) or dead or dying to the satisfaction of Council (Tree 14).

### 11.3

(cont)

Schedule 2 to the Overlay sets out a number of 'permit triggers' for buildings and works. The following permit requirements are not mandatory, rather are 'permit triggers'.

Permit requirement	Measure
A permit is not required to construct a building or construct or carry out works provided all of the following is met:	
The building is no higher than two storeys or 9 metres.	The dwelling is proposed to feature a maximum build height of 5.38 metres above ground level, and therefore is no higher than two storeys or 9 metres. <b>No permit triggered</b>
The building is set back at least 9 metres from the front boundary for a single storey building or 11 metres for a two-storey building	The single storey dwelling is setback a minimum of 9 metres from the front boundary. <b>No permit triggered</b>
The building is set back at least 3 metres from a boundary to a road at least 4 metres wide (other than the front boundary) for a building wall height of no more than 3.6 metres or 3 metres plus half the building wall height if the building wall height is more than 3.6 metres.	N/A
The building is set back at least 1.2 metres from any other boundary for a building wall height of no more than 3.6 metres or 1.5 metres plus half the building wall height if the building wall height is more than 3.6 metres	The setback to the south boundary (with the exception of the two walls on boundary) is a minimum 1.4 metres which complies with the standard (1.2 metres). The setback of the building from the north boundary is a minimum 3.7 metres. The overall wall height for the northern side of the dwelling is 4.78 metres above natural ground level. This requires a setback of 3.89 metres from the north boundary (190 millimetre variation sought). The amended plans received by Council on 20 December 2021 propose a minimum setback of 3.376 metres from this northern boundary, and as such will further increase the variation sought to 520 millimetres.

**11.3**  
(cont)

Permit requirement	Measure
	<p><b>Permit triggered</b></p> <p>Two (2) walls are proposed adjacent the south boundary, one for the double-width garage (approximately 6.5 metres in length at a maximum height of 3.15 metres above natural ground level) and the other wall on boundary is for the workshop in the site's rear SPOS. The length of this on-boundary wall for the workshop is shown at 6.2 metres with an overall height of approximately 2.8 metres above ground level.</p> <p><b>Permit not triggered</b></p>
The building is less than 33 per cent of the site area at ground level and 25 per cent of the site area at first floor level, excluding hard surfaces and impervious areas.	<p>Dwelling 328.813sqm <b>(38.05%)</b> Workshop 36.86sqm <b>(4.3%)</b> Total: 328.813sqm + 36.86sqm = 365.67sqm (38.05% + 4.3% = <b>42.35 %</b>)</p> <p><b>Permit triggered</b></p>
Comprising hard surfaced and impervious areas (including tennis courts and swimming pools, but excluding buildings) are less than 17 per cent of the site area.	<p>Hard surfacing (driveway) 44.06sqm <b>(5.09%)</b> The plans indicate stepping stone pathway 20.65sqm <b>(2.39%)</b> Total: 44.06sqm + 20.65sqm = 64.71sqm (5.09% + 2.39% = <b>7.48%</b>)</p> <p><b>No permit triggered</b></p>
The total area of all buildings and hard surfaces and impervious areas (including tennis courts and swimming pools are less than 50 per cent of the site area.	<p>42.35% + 7.48% = <b>49.83%</b></p> <p><b>No permit triggered</b></p>

## CONSULTATION

### Public Notice

The application was advertised by mail to the adjacent and nearby property owners and occupiers and by erecting a notice (sign) to the Boulton Road frontage. Following the formal notification period, 15 objections were received.

### **11.3** (cont)

The main objector issues raised included the following:

- Tree removal and impact of vegetation loss on landscape character
- Consistency with neighbourhood character
- Impact of proposed dwelling and works in close proximity to protected trees
- Deficient landscape response for a 'bush environment' setting
- Potential for certain materials (e.g. roofing) to be reflective and cause excessive glare

A response to these objector concerns will be detailed throughout the assessment section, as well as later within this report.

Following advertising, amended plans were received in response to arboricultural issues. These plans were not formally amended under Section 57 A of the Act and therefore have not been formally advertised. These plans are attached for information purposes and the form the basis of the permit conditions.

Melbourne Water was also notified (as an adjoining land owner) under Section 52 of the Act. A submission from Melbourne Water was received. Melbourne Water supported the proposal subject to finished floor levels (FFLs) for the dwelling being set no lower than 95.85 metres to Australian Height Datum (AHD). FFLs to AHD have not been included on the plans. This can be resolved by way of permit conditions.

### **Consultation Forum**

An online consultation forum was held via Zoom on 9 February 2022, chaired by Councillor Massoud. Approximately 12 objectors, the applicant, land owners and Council's planning officers attended the meeting during which the issues were explored. The amended plans were displayed and discussed at the forum.

Key points during the forum meeting surrounded the level of tree removal and available room on-site for landscaping.

The general consensus of the objectors on the night was that the development proposal was incompatible with the established and preferred bush environment character. The main point of contention was the lack of replacement planting, with only one *Tristanopsis laurina* (Water Gum) nominated on the plans as a replacement tree in the frontage. The objectors' spoke of the importance of maintaining the landscape character of Boulton Road through additional planting opportunities and ensuring the valued treed canopy was preserved. The objectors also alerted Council that Tree 11 has since been removed from the site due to storm damage.

In response the permit applicant was willing to undertake further landscaping and planting of upper canopy trees to ensure the design of the new dwelling

**11.3**  
(cont)

is sensitive to the valued bush environment landscape which surrounds the site.

**Referrals**

External

The application was not required to be referred under Section 55 of the *Planning and Environment Act 1987* (the Act) to any relevant external departments in accordance with Clause 66 of the Whitehorse Planning Scheme.

Internal

The application was referred internally to the following departments:

Planning Arborist

Council's planning arborist has assessed the application and was initially non-supportive of the proposal due to the tree impacts. Council's arborist was primarily concerned with the major encroachments into the Tree Protection Zones (TPZs) for Trees 7, 9, 10, 16 and 17 at 33.4%, 36.6%, 18.9%, 39.4% and 19.6%, respectively. All of these encroachments exceeded the maximum of 10% as prescribed at Australian Standard AS 4970:2009 – Protection of Trees on Development Sites.

In response to these concerns from Council's arborist, the applicant has shown a willingness to amend plans to better protect trees, evidenced by the sketch plans submitted into Council on 20 December 2021.

Council's arborist has reviewed the changes to the design based on what was discussed on site on 30 November 2021, and believes the proposal can be supported, provided specific tree protection measures are implemented throughout the construction phase, if Council were of the view that a permit should be issued for the subject land. The amended plans and tree protection requirements have been addressed by way of conditions.

Parks and Natural Environment

The application was referred to Council's Parks and Natural Environment Department given the proximity of the proposed vehicle crossover to a street tree in the nature strip (i.e. Tree 1 *Lophostemon confertus* (Brush Box)). The following referral response was received on 18 February 2022.

*This tree has been described as exhibiting "good health with fair structure and a long ULE (Useful Life Expectancy).*

*The plans provided indicate that the proposed crossover will be located approximately 1.7 m from Tree 1:*

- 1. This is within the trees TPZ and likely an encroachment of greater than the 10% mandated within AS 4970 2009. The incursion area of the proposed works is 14%, this is considered a "major encroachment".*

**11.3**  
(cont)

2. *Parks and Natural Environment does not support installation of proposed works due to the “major encroachment”.*
3. *Root damage can cause a tree to decline and eventually die. It may also predispose a tree to failure, representing a serious safety hazard.*

*Recommendation for Tree 1:*

- *Request permission from the power company to relocate the power pole on the south side at the owner’s expense, therefore providing clearance outside the structural root zone from Tree 1. An NDRI will still need to be undertaken before the crossover can go ahead.*

These modifications to the plans can be addressed as conditions on any permit issued for the land.

## **ASSESSMENT**

### **Consistency with State and Local Planning Policies**

The central issue surrounding this application focuses on whether the proposal appropriately meets the preferred neighbourhood character under the Significant Landscape Overlay, Schedule 2 (SLO2). As described earlier in this report, the site is situated within a ‘bush environment’ precinct which seeks minimal change in a landscape setting. Such policy does not envisage no development at all, rather, the policy aims to ensure development is sympathetic to the existing and preferred neighbourhood character.

The following provides an outline of the relevant local planning provisions.

Clause 21.06 of the Scheme (Housing) is informed by Council’s Housing Strategy 2014. It outlines how the municipality will contribute to the State’s housing objectives for Metropolitan Melbourne. It identifies three categories of change. The subject site is included within a ‘limited change’ area. These areas enable specific characteristics of the neighbourhood, environment or landscape to be protected through greater controls over new housing development. These areas represent the lowest degree of intended residential growth in Whitehorse.

Clause 22.03 of the Scheme (Residential Development) seeks to ensure new development reflects the ‘limited change’ classification of housing policy and contributes to the preferred character for this neighbourhood. Under this clause the site is included within a bush environment precinct.

**11.3**  
(cont)

Clause 22.04 of the Scheme (Tree Conservation) encourages new development to minimise the loss of significant trees and promotes regeneration of tall trees by ensuring sufficient space exists on new development for re-planting of tall trees. The policy sets 'performance standards' for the retention and regeneration of trees. This aims to assist in the management of the City's tree canopy by ensuring that new development minimises the loss of significant trees. These local policies enable specific characteristics of the neighbourhood, environment and landscape to be protected through greater control over new development. Moreover, architectural, urban design and landscape outcomes must positively contribute to the local urban character whilst minimising impacts on neighbouring properties.

These policies, amongst other local level planning policies, justify the zoning of the site and surrounds in the Neighbourhood Residential Zone, Schedule 1 (NRZ1). The purpose of this zone places emphasis on neighbourhood character and its associated policies.

The proposed development represents a modest single-storey dwelling with generous setbacks offered from north, east and west boundaries. The scale of the development proposal is consistent with State and Local Policy guidance for facilitating appropriate residential development in areas designated for limited change. The siting of the dwelling has been purposefully designed to accommodate vegetation retention where possible, as well as allow for replacement planting of new canopy trees. The proposed dwelling, subject to landscaping conditions is seen to respond positively to the preferred bush environment neighbourhood character. The proposal is in accord with the objectives and intent of Council's local policies as stipulated at Clause 22.03 and Clause 22.04 of the Scheme.

**Zoning and Overlays**

Given the lot size exceeds the 500sqm threshold (at 859sqm), there is no trigger for a permit under the zone and therefore Council has no ability to assess the proposed development's compliance against the varied standards prescribed under Schedule 1 to the Neighbourhood Residential Zone (NRZ1). A note will be included on any permit issued for the site, explicitly stating that the application has not been assessed against Clause 54 (ResCode) of the Whitehorse Planning Scheme. Council's ambit of discretion for this proposal is confined to how the built form responds to the bush environment landscape character of Boulton Road and surrounds, with particular emphasis on accommodating retention of trees where possible, and allowing for sufficient replanting opportunities expected of SLO2 areas.

The decision guidelines within the SLO2 are designed to guide and shape new development. To ensure the environmental and landscape elements valued by the community, continue to be protected. Any new development should respect and respond to these performance objectives.



### 11.3 (cont)

The proposed dwelling has sought to respond to these measures through a site responsive design which allows for built form to be subservient to vegetation through the provision of a modest single storey built form. The dwelling is consistent with the existing housing stock and character of the surrounding area. By creating setbacks that respond appropriately to the surrounding built form, articulated façade features, provision of a skillion roof form, allowing for the retention of existing vegetation where appropriate, and appropriate spacing for landscaping and replanting, the decision guidelines at Clause 22.04, and Clause 42.03 are considered to be met.

#### Built Form

The subject site is identified as being located within a Bush Environment Character Precinct. The *City of Whitehorse Neighbourhood Character Study, 2014* summarises the existing architectural style in the area as ‘mixed’ and includes ‘pre-WWII (including heritage significant bungalow dwellings), post-war, 1940s, 1950s and contemporary infill styles’. In terms of the landscape setting ‘gardens are bushy and informal with predominantly native/indigenous species and large canopy trees. The appearance of vegetated garden areas around buildings is an important feature of this precinct’.

Achieving a preferred landscape character for the area is guided by the ‘Preferred Character Statement’ outlined within Clause 22.03-5 of the Scheme. The preferred character setting for the bush environment setting is detailed below:

*‘The streetscapes will be dominated by vegetation with subservient buildings frequently hidden from view behind vegetation and tall trees. The buildings will nestle into the topography of the landscape and be surrounded by bush-like native and indigenous gardens, including large indigenous trees in the private and public domains.*

*Buildings and hard surfaces will occupy a very low proportion of the site. They will be sited to reflect the prevailing front, rear and side setbacks. The larger rear setbacks will accommodate substantial vegetation including large canopy trees. The bushy environs are complemented by street trees and a lack of front fencing. Properties abutting and close to creeks and lake environs will contain more indigenous trees and shrubs that act in part as wildlife corridors.*

*This precinct is identified for the lowest scale of intended residential growth in Whitehorse (Limited Change area) and the preservation of its significant landscape character and environmental integrity is the highest priority’.*

The SLO2 area is recognised as having special significance attributed to the quality of the environment, which includes vegetation notable for its height, density, maturity and high proportion of Australian native trees. This in turn contributes to the significance of the area as a valuable bird and wildlife habitat.

**11.3**  
(cont)

The Overlay provides a number of landscape objectives to be achieved, which can be summarised as retaining the dominance of vegetation cover. This is in keeping with the established bush environment character. Encouraging development that is compatible with the character of the area ensures that a reasonable portion of the lot is free of buildings, which in turn allows for the retention of valued trees and replanting of tall trees. The SLO2 also includes a number of 'decision guidelines' which test a development's responsiveness to a preferred neighbourhood and landscape character.

The immediate locality predominantly provides detached single storey dwellings on a lot. The proposed development provides for an appropriate building footprint with setbacks from side and rear boundaries, and elevations which demonstrate a mixture of materials and articulated forms. This leads to an outcome that presents as an inconspicuous profile, particularly in a setting surrounded by medium and large canopy trees. A number of the existing trees to be retained on site are not 15 metres high, but are still of amenity value due to their maturity, instant screening effect and location along the northern boundary to Masons Basin Reserve. This interface to Masons Basin Reserve is further softened through the retention of the existing 1.75 metre high cyclone wire fence along the north boundary.

Site Coverage, Permeability and Hard Surfacing

The dwelling site coverage is 42.35 per cent, 9.35 per cent more than the 33 per cent exemption under the SLO2. Additional hard surfacing is 7.48 per cent, which is below the 17 per cent permit trigger under the overlay. The total of building and hard surfacing is 49.83 per cent is below the permit trigger of 50%. This is considered to be a minor variation to the overall hard surfacing trigger and achieves the objective of the controls. This is further enhanced by the site's ability to accommodate the retention of established vegetation such as Tree 7 and Tree 10 and room for additional planting.

The development proposes a site permeability of 50.17 per cent which is seen to meet the objectives of the SLO2 in allowing sufficient 'garden areas' on site for tree planting and general landscaping. The development plans indicate the proposal achieves compliance with the mandatory 'garden area' requirement pursuant to Clause 32.09-4 of the Scheme. Under Clause 32.09-4 of the Scheme, "an application to construct or extend a dwelling or residential building on a lot must provide a minimum garden area as set out in the following table:

<b>Lot size</b>	<b>Minimum percentage of a lot set aside as garden area</b>
400 - 500 sqm	25%
Above 500 - 650 sqm	30%
Above 650 sqm	35%

### **11.3** (cont)

As the lot size exceeds 650sqm (at approximately 859sqm), a minimum 35 per cent of the lot must be set aside as 'garden area'. The proposal comfortably demonstrates compliance with this standard, having a garden area at 47 per cent of the lot.

It is noted that site coverage could have been reduced through the provision of a two storey dwelling; however this would have brought forward its own specific issues, including being less appropriate in the Bush Environment character area. It is considered the provision of a single-storey dwelling is in keeping with the character of the area, which is predominantly single storey dwellings in bushy landscaped areas. By increasing landscaping through conditions on the permit, an acceptable outcome which is respectful of the prevailing features of the landscape and neighbourhood can be best achieved.

#### **Setbacks**

The dwelling proposes a minimum setback of 3.7 metres to the northern boundary, for an overall wall height above ground level of 4.78 metres. This setback triggers a permit, with all other setbacks to side and rear boundaries being within the prescribed exemptions, under the SLO2. The SLO2 prescribes a minimum setback of 3.89 metres from the north boundary, therefore a 190 millimetre variation is sought. The sketch plans show this northern setback reduced to 3.376 metres, therefore a 520 mm variation is required. A 520 mm variation from the standard will be imperceptible to the naked eye, especially given the interface to the north is the Masons Road Flood Retarding Basin and not residential land. Therefore the amenity impacts will be negligible. On balance, this outcome is appropriate, noting there is ample opportunity for landscape in the frontage, as well as northern and western setbacks.

#### **Tree Assessment and Landscaping**

This site falls under SLO2. The Statement of Nature and key elements of landscape for this area is:

- 'The significance of the area is attributed to the quality of the environment, which includes vegetation notable for its height, density, maturity and high proportion of Australian native trees This in turn contributes to the significance of the area as a valuable bird and wildlife habitat'.

Of note, Trees 1, 2, 4, 8, 10, 16, 17 and 18 are classified as 'native'. The extent of tree removal, particularly the removal of protected Trees 6 and 12 has been assessed by Council's Arborist, and found to be acceptable provided sufficient replanting of new canopy trees is undertaken to compensate for the vegetation loss. Objectors however, have raised concerns regarding the proposed landscaping being inadequate in terms of the number of replacement trees indicated on the plans, as well as not including enough native tree species.

**11.3**  
(cont)

Local residents of Blackburn at the Community Consultation Forum have since informed Council Tree 11 was damaged in the recent storms, and has therefore been removed due to the tree being dangerous. Council and the permit applicant have acknowledged the existing landscape plan is deficient for a SLO2 'Bush Environment' context as under the tree density ratio requirements of the SLO2, a minimum of six (6) upper canopy trees (i.e. trees 15 metres or higher at maturity) are encouraged to be planted as per the decision guidelines of the SLO. Currently a shortfall of five (5) upper canopy trees from this recommended decision guideline exists.

Despite this, two (2) medium to upper sized canopy trees, namely Tree 7 and Tree 10 are to be retained. Tree 7 is a Desert Ash of 11 metres height, and Tree 10 is a Eucalyptus of 17 metres height. Both trees have a healthy 8 to 9 metre canopy spread which assists in softening the appearance of built form. The retention of both of these trees will offer some immediate canopy cover relief while the new trees are establishing.

The retention of existing medium canopy trees, as well as the condition to replant a further four (4) more native upper canopy trees is seen to meet the landscaping objectives of the SLO2 and 'bush environment' precinct. Replacement species suggested by Council's Consulting Arborist have been included by way of conditions in the recommendation.

The above assessment identifies how the proposal can appropriately meet the neighbourhood character objectives of the planning scheme and specifically the SLO2. On balance, the new dwelling is able to meet the decision guidelines under the overlay and therefore integrate with the preferred neighbourhood character of the bush environment precinct.

**Objectors Concerns not Previously Addressed**

The following concerns have been raised by objector parties, many of which are addressed in more detail in the above assessment section of the report:

Consistency with neighbourhood character objectives.

As previously discussed, the proposed development is for a single storey dwelling with a skillion roof, which is respectful of the roof forms present along Boulton Road. The front setback meets the exemptions for setbacks for single-storey dwellings in SLO2 areas and is compatible with setbacks in the street. Similarly, the side and rear setbacks are adequate to allow for abundant planting opportunities.

Impact to trees within adjoining lots.

As previously discussed, the impacts to trees have been assessed by Council's Arborist and Parks and Natural Environment department, and found to be appropriate, subject to increased setbacks from the southern boundary, and provided specific tree protection measures are implemented during construction phase. These tree protection measures will form a critical part of any Council approval for the site.

**11.3**  
(cont)

Lack of replacement tree planting and overall landscaping opportunity

As previously discussed, the proposed development is able to accommodate a minimum of five (5) upper canopy trees onsite, through a combination of (one) retained and (four) replacement canopy trees, and retention of one medium height canopy tree. In addition, landscaping is provided throughout the site, particularly toward the street frontage.

Over development of the lot

A single storey detached dwelling is not considered an over development of the site. The provision of replacement planting and landscaping, combined with retention of existing trees will soften the appearance of the built form.

Potential sun glare from roofing material

This matter was discussed at the forum and the applicant was amenable to conditions on the permit requiring a non-reflective roofing material.

**CONCLUSION**

The proposal for the construction of a single dwelling on a lot and removal of vegetation within the Significant Landscape Overlay, Schedule 2 (SLO2), is an acceptable response that satisfies the relevant provisions contained within the Whitehorse Planning Scheme.

The provision of one new single storey dwelling, will provide an appropriate character outcome. The new dwelling will provide for appropriate development that ensures its front setback can be well vegetated, and in doing so, will be consistent with others in the street. The development also provides space around the new building, allowing for tree retention, as well as allowance for new tree planting and landscaping to ensure the vegetated character of the area is retained and enhanced.

A total of fifteen (15) objections were received as a result of public notice and all of the issues raised have been discussed as required.

It is considered that the application should be approved.

**ATTACHMENT**

- 1 Attachment 1 - Plans 
- 2 Sketch Plans Received after Notice 

The meeting was adjourned at 9.14pm for a five minute break. The meeting resumed at 9:21pm.

## **11.4 Mont Albert Retail Sustainability Assessment**

Property and Leasing  
Director, City Development  
FILE NUMBER: SF09/789  
ATTACHMENT

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### **SUMMARY**

In response to a written proposal from the Woolworths Group to potentially develop a full-line supermarket in the Mont Albert Shopping Centre, Council engaged independent consultants, Ethos Urban, to complete a Retail Sustainability Assessment (RSA) of the full-line supermarket proposal.

Upon completion of the Retail Sustainability Assessment, Ethos Urban provided detailed information to Council outlining a summary of the Retail Sustainability Assessment findings and methodology that underpinned the Retail Sustainability Assessment.

Whilst Woolworths withdrew their offer during the RSA process, it was considered prudent to complete the RSA.

The final version of Retail Sustainability Assessment is attached and will be made available on Council's corporate website.

### **COUNCIL RESOLUTION**

Moved by Cr McNeill, Seconded by Cr Barker

That Council:

1. Note the final version of the Mont Albert Retail Sustainability Assessment prepared by Ethos Urban as attached.
2. Write to the two community members that met with Ethos Urban thanking them for their participation in the Retail Sustainability Assessment process.

**CARRIED UNANIMOUSLY**

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### **KEY MATTERS**

Whitehorse City Council (Council), received a proposal from Woolworths Group (Woolworths) that involved the potential sale of an existing Council owned at-grade carpark known as 1G Hamilton Street, Mont Albert; which is located in the Mont Albert Shopping Centre to facilitate a possible supermarket development with speciality retail and two levels of basement car parking.

In response to the Woolworths proposal Council engaged independent consultants, Ethos Urban, to complete a Retail Sustainability Assessment (RSA) of the full-line supermarket proposal.

The purpose of the RSA was the following:

**11.4**  
(cont)

- To assess the economic impact of the proposed rezoning of the Council owned land known as 1G Hamilton Street, Mont Albert.
- The proposed rezoning is expected to facilitate the development of a Woolworths' supermarket with a floor space in the order of 3,000m<sup>2</sup> to 4,000m<sup>2</sup>.
- Clause 22.06 of the Whitehorse Planning Scheme requires a RSA for an amendment to the Whitehorse Planning Scheme that facilitates an expansion in shop floor-space of 3,000m<sup>2</sup> or more in an activity centre.

It is important to note, that Woolworths has withdrawn its proposal and 1G Hamilton Street, Mont Albert will be partially occupied by the Level Crossing Removal Project (the LXRP) until March 2024.

Whilst Woolworths have withdrawn their offer during the RSA process, it was considered prudent to complete the RSA because a similar proposal could be received by Council at the completion of the level crossing removal project.

**STRATEGIC ALIGNMENT**

The RSA aligns with "Strategic Direction 2": A Thriving Local Economy; Business, Employment, Education and Skill Development in the Whitehorse City Council "Council Plan 2021-2025".

The objectives of "Strategic Direction 2" are job creation and providing facilities to support local business and attract new business investment and innovation.

**Policy**

As stated above the RSA was undertaken to comply with Clause 22.06 of the Whitehorse Planning Scheme.

There are no policy implications associated with the RSA.

**BACKGROUND**

The Woolworths' proposal mentioned above was "high-level", containing no specific development scheme relating to their proposal.

However, in order to undertake the analysis Ethos Urban assumed the following:

- Full-line supermarket in the order of 3,600m<sup>2</sup> including the "BWS" liquor store;
- A limited specialty retail component in the order of 400m<sup>2</sup> of floor space;
- Basement car park replacing the current publicly available car parks located at 1G Hamilton Street, Mont Albert plus an allowance for the required supermarket customer parking; and
- 2024/25 will be the first full-year of trading.

**11.4**  
(cont)

The RSA methodology undertaken by Ethos Urban involved:

- Identifying the competitive context;
- Understanding the role of Mont Albert;
- Trade area analysis including population, demographics and retail spending estimates;
- Estimated current retail sales at Mont Albert Village;
- Estimated sales of proposed development;
- Supermarket capacity assessment; and
- Assess the impact of the proposal on the Mont Albert Village Centre and the broader activity centre hierarchy.

Additionally, as part of the RSA, Ethos Urban undertook an overview of the Mont Albert retail precinct, a supermarket capacity assessment and a Mont Albert retail precinct impact assessment.

It is important to note, that the overview of the Mont Albert retail precinct included a planning and locational context that considered the level crossing removal, the new combined railway station and the Suburban Rail Loop.

**Discussion and Options**

At a high-level, the RSA found that the Woolworths proposed development of a full-line supermarket in the Mont Albert retail precinct is supported by the Whitehorse Planning Scheme as it would improve the level of local convenience retailing without undermining the wider activity centre hierarchy.

The proposal or a similar proposal would:

- Have the potential to support 180 jobs including full-time, part-time and casual positions;
- Achieve retail sales in the order of an estimated \$41M per annum in 2025, also achieving a Main Trade Area market share of 11% in 2025;
- Increase the level of accessibility to supermarket shopping facilities for the local community leading to a reduction in retail spending escaping the Main Trade Area;
- Not undermine the activity centre hierarchy;
- Constitute a significant change in the size and operation of the Village, with the proposed development forecast to almost triple the level of sales;
- Support and enhance the Mont Albert retail precinct's role as a Large Neighbourhood Centre;
- Need to be cognisant of the character of the Mont Albert Village; and
- Ensure connectivity within the Mont Albert Village.



**11.4**  
(cont)

**SUPPORTING REPORT DETAILS**

**Legislative and Risk Implications**

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

**Equity, Inclusion, and Human Rights Considerations**

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

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

**Community Engagement**

No community engagement was required for this report.

However, two members of the Mont Albert retail precinct were invited to meet with Ethos Urban and their views were included in the RSA findings.

**Financial and Resource Implications**

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

**Innovation and Continuous Improvement**

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

**Collaboration**

Key stakeholder consultation was undertaken by Ethos Urban and this included meetings with Councillors, and Council officers and two members of the Mont Albert retail precinct.

**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.

The Manager Property & Leasing declared that they have indirect financial interest as a shareholder of Woolworths Group. Given that Woolworths is a very large company with a total share capital exceeding \$5B, the Manager Property & Leasing does not have a material conflict of interest and would not would not gain an indirect pecuniary benefit because of the Council decision.

**11.4**  
(cont)

**Conclusion**

Given the quality of the RSA prepared by Ethos Urban and the sound methodology underpinning the RSA, it is recommended that Council resolve to accept the RSA and publish the RSA on Council's corporate website.

Additionally, it is recommended that Council write to the two community representatives who provided input into the RSA, thanking them for their participation.

**ATTACHMENT**

- 1 Mont Albert Retail Assessment (25 August 2021) 

## **11.5 Whitehorse Asset Plan 2022-2032**

FILE NUMBER:  
ATTACHMENT

---

### **SUMMARY**

The purpose of this report is to seek Council's adoption of the Whitehorse Asset Plan 2022-2032 in accordance with the requirements of the Local Government Act 2020.

The Asset Plan, with a focus over ten years, provides an outlook of how Council plans to manage the community assets it owns or controls.

The purpose of the Asset Plan is to:

- Ensure that assets support the themes and objectives in the Community Vision and Council Plan.
- Better inform the community on the assets under Council's custodianship, service levels and standards and financial capacity.
- Improve the effectiveness of asset management planning through a more engaged community.
- Embed asset management planning outcomes into Council's Integrated Strategic Planning and Reporting Framework.
- Demonstrate Council will responsibly manage assets to meet the service delivery needs of the community into the future in a sustainable and cost-effective way.

The Asset Plan is a key corporate document that informs the local community about how Council intends to manage its \$1.6 Billion infrastructure asset portfolio. The provisions of well managed infrastructure supports the liveability, amenity, and movability of the City making Whitehorse a great place to live.

### **COUNCIL RESOLUTION**

Moved by Cr Stennett, Seconded by Cr Cutts

That Council adopt the Whitehorse Asset Plan 2022-2032.

**CARRIED UNANIMOUSLY**

---

### **KEY MATTERS**

Over the next ten years and beyond, Whitehorse City Council is facing four distinct challenges in managing its asset infrastructure. Namely, population growth, ageing infrastructure, rate capping, and climate change.

**11.5**  
(cont)

Population Growth

Over the next 10-20 years, population growth and dwelling expansion is predicted to increase by 25%. An increase in population will place additional pressure on Council's infrastructure, and there will likely be a need for assets to be upgraded and expanded to cater for the new growth and changing needs.

Ageing Infrastructure

Approximately 80% of Council's existing assets were originally constructed between 1940 to 1990 as rapid expansion occurred from inner Melbourne eastwards. The growth of the road pavement, drainage and building asset portfolio's in particular are reflective of this expansion. This ageing infrastructure base will place additional pressure on Council's financial position as reflected in the Asset Plan and the Finance Plan.

Rate Capping

In 2015, the Victorian Government established the Fair Go Rates system to limit the amount by which Victorian councils can increase rates in a year without seeking additional approval. This has meant that Councils are unable to raise rates beyond the percentage that is set by the Minister for Local Government. A rate income that is capped to the rate of CPI places a substantial challenge on Council's ability to sustainably fund its growing infrastructure commitments.

Climate Change

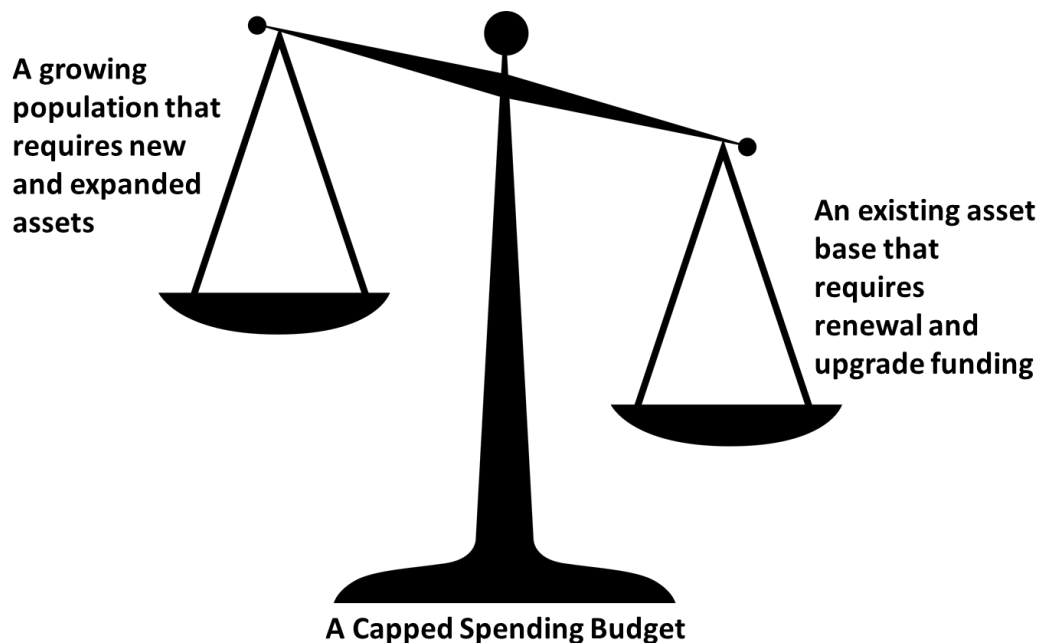
The impacts of climate change and the need to reduce greenhouse gas emissions is well documented and communicated by the Intergovernmental Panel on Climate Change. The local impacts of climate change are not in isolation to this. Council must consider these climate hazards when maintaining and renewing its asset portfolio.

The Overall Challenge

The overall challenge for the management of Council's assets can be summarised in the statement below.

*"On one hand we have a growing population that requires new and expanded assets and on the other we have an existing asset base that requires renewal and upgrade funding; and only a limited budget to spend with in an ever changing environment."*

**11.5**  
(cont)



**Illustration from Shaping Whitehorse Community Panel Presentation,  
June 2021**

Council, in the foreseeable future, is faced with a delicate balancing act of addressing the demands on its assets from challenges such as population growth and climate change, while at the same time ensuring that the existing asset base is renewed to an appropriate level.

**STRATEGIC ALIGNMENT**

The delivery of services to the community is guided by the Community Vision, Council Plan, Finance Plan, strategies, and policies. These also drive Council's approach to asset management and this Asset Plan is an important part of Council's integrated planning and reporting framework.

The Council Plan makes a commitment to outcomes and priority initiatives across several strategic objectives. Effective asset management supports the outcomes of the Council Plan and the delivery of sustainable services.

The Asset Plan is intrinsically linked with the forecasts and projections outlined in Council's Finance Plan. Ongoing affordability and financial sustainability are Council's key objectives. The Finance Plan in combination with the Asset Plan supports Council in achieving this aim.

**Policy**

The Asset Plan is supported by the Asset Management Policy. The Policy promotes the responsible management of assets to enable a healthy, vibrant, prosperous and sustainable community.

**11.5**  
(cont)

**BACKGROUND**

The Asset Plan is a culmination of five years' work, with the revision of the Asset Management Policy in 2017, and the development of six asset management plans over the last four years (one for each asset class). The key outcomes of each Asset Management Plan have been summarised in this Asset Plan to provide an overall view of the state of Council's infrastructure.

**Discussion and Options**

The Asset Plan has been reviewed and endorsed by the Audit and Risk Committee, Asset Management Steering Committee, and the Executive Leadership Team.

The Plan has factored in all recommendations from these committees prior to its submission to Council.

The timing of the Plan's completion and adoption has coincided with the scheduled Council Meeting date of 14 June 2022.

Adoption of this Plan will ensure that Council fulfils its legislative obligations to have an Asset Plan developed and adopted by 30 June 2022.

**SUPPORTING REPORT DETAILS**

**Legislative and Risk Implications**

The Asset Plan is a new legislative requirement from the Local Government Act 2020, with the first Asset Plan due for adoption by 30 June 2022.

**Equity, Inclusion, and Human Rights Considerations**

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

**Community Engagement**

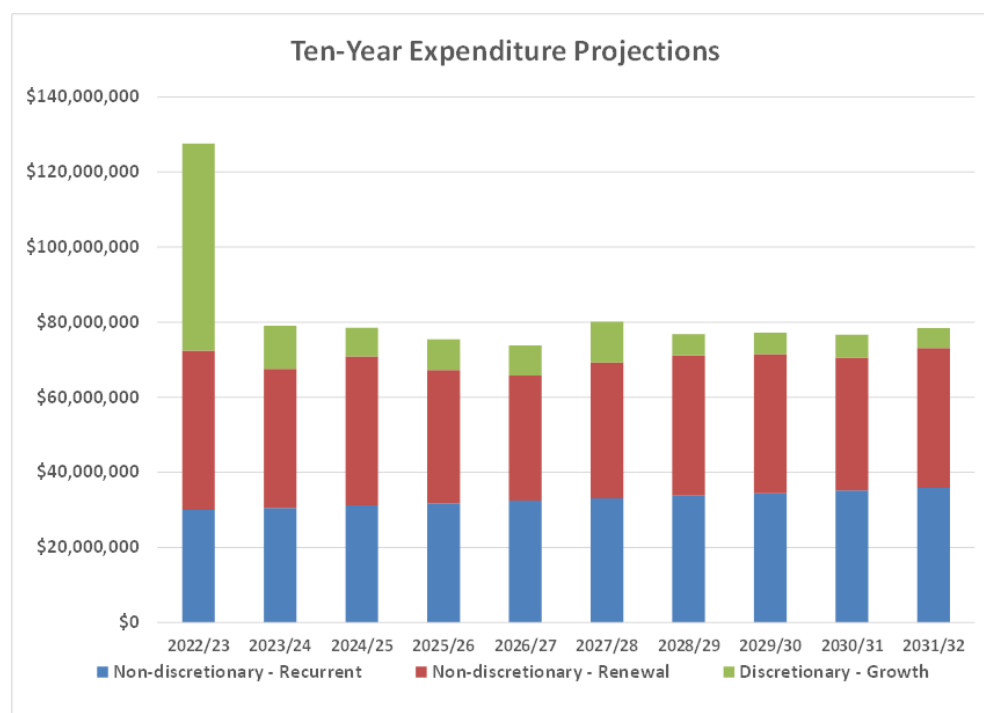
This Asset Plan has been developed in accordance with the deliberative community engagement requirements of the Local Government Act 2020 and with Council's Community Engagement Policy, which was adopted in February 2021. The Plan was developed in collaboration with the Whitehorse community through the Shaping Whitehorse community engagement process. This consultation was conducted via an online survey, pop up events, focus groups and a deliberative community panel. Council staff worked directly with the community panel to ensure their views and aspirations were considered in developing a set of guiding principles for the future financial and asset management decisions faced by Council.

## 11.5 (cont)

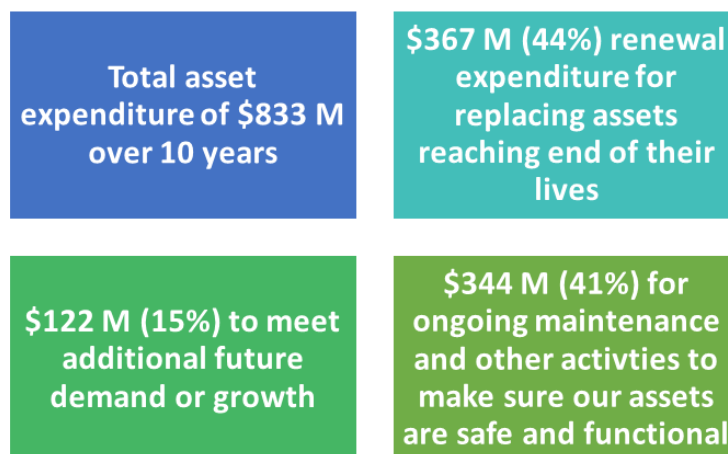
### Financial and Resource Implications

In the Asset Plan, the projected expenditure requirements for Council's assets have been determined based on the affordability assessments made in the Finance Plan and the projected costs from the six Asset Management Plans. These projections represent the investment that is required to maintain our existing levels of service. The costs represented include both capital and operational expenditure.

The following graph shows the planned expenditure across the assets as per the Capital Works Program over the next 10 years. Year 2022/23 includes the Whitehorse Performing Arts Centre project (\$47.9M).



In summary Council has planned for:



All funding is allocated in Council's Capital and Operational Budgets.

**11.5**  
(cont)

**Innovation and Continuous Improvement**

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

**Collaboration**

The Asset Plan was developed in collaboration with the Whitehorse community through the Shaping Whitehorse community engagement process. This consultation was conducted via an online survey, pop up events, focus groups and a deliberative community panel.

**Conflict of Interest**

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

**Conclusion**

The Whitehorse Asset Plan 2022-2032 provides a comprehensive overview regarding the management of its asset infrastructure.

The Plan has been developed with input from the Whitehorse community.

The Plan has been reviewed and endorsed internally by the Audit and Risk Committee and the Executive Leadership Team.

Adoption of this Plan will ensure that Council fulfils its legislative obligations to have an Asset Plan developed and adopted by 30 June 2022.

**ATTACHMENT**

- 1 Whitehorse Asset Plan 2022-2032 



## 11.6 Records of Informal Meetings of Councillors

### COUNCIL RESOLUTION

Moved by Cr Munroe, Seconded by Cr Lane

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

**CARRIED UNANIMOUSLY**

<b>Councillor Briefing 30.05.22 6.30pm-8.05pm</b>		
Matter/s Discussed:	Councillors Present	Officers Present
<ul style="list-style-type: none"> <li>3.1 Level Crossing Removal Project (LXRP) - Mont Albert and Union Road Removal Project</li> <li>3.2 Asset Plan 2022 – 2031</li> <li>3.3 Whitehorse Manningham Libraries Strategic Planning Update</li> <li>3.4 Council at Grade Car Parks Due Diligence</li> <li>4.1 Draft Council Agenda 6 June 2022</li> </ul>	Cr Liu (Mayor & Chair) Cr Massoud (Deputy Mayor) Cr Barker Cr Carr Cr Cutts Cr Lane Cr McNeill Cr Skilbeck <u><b>Apologies</b></u> Cr Stennett Cr Davenport	S McMillan J Green L Letic S Cann S White S Sullivan V Ferlaine S Kalafatis, C Clarke N Brown T Peak J White I Kostopoulos A Decampo M Hofsteter <u><b>External</b></u> T Edmonds S Brown M Horkings
<b>Disclosures of Conflict of Interest</b>	None Disclosed	
<b>Councillor /Officer attendance following disclosure</b>	None Disclosed	

**11.6**  
(cont)

<b>Councillor Briefing 06.06.22 7.10pm-8.38pm</b>		
Matter/s Discussed:	<b>Councillors Present</b>	<b>Officers Present</b>
	<ul style="list-style-type: none"> <li>• Discussion of Budget Submissions</li> <li>• Draft Council Agenda 14 June 2022</li> </ul>	<ul style="list-style-type: none"> <li>S McMillan</li> <li>J Green</li> <li>L Letic</li> <li>S Cann</li> <li>S White</li> <li>S Sullivan</li> <li>V Ferlaino</li> <li>P Moore</li> <li>C Altan</li> <li>C Clarke</li> <li>C Bolitho</li> <li>A Egan</li> <li>J Samy</li> </ul>
	Cr Liu (Mayor & Chair) Cr Barker Cr Carr Cr Cutts Cr Lane Cr McNeill Cr Skilbeck Cr Stennett Cr Davenport <u><b>Apologies</b></u> Cr Massoud (Deputy Mayor)	
<b>Disclosures of Conflict of Interest</b>	None Disclosed	
<b>Councillor /Officer attendance following disclosure</b>	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)

- 12.1.1 Cr Munroe reported on his attendance as a delegate at the:
- Metropolitan Transport Forum meeting, held on 1 June 2022
  - Local Government Metropolitan Waste and Resource Recovery Group meeting held on 2 June 2022
  - Whitehorse Business Group Board meeting held on 7 June 2022
- 12.1.2 Cr Skilbeck reported on her attendance as a delegate at the:
- Tree Assistance Fund meeting held on the 24 May 2022
  - Whitehorse Manningham Library Corporation meeting held on 25 May 2022
  - Eastern Alliance for Green House action (EAGA) held on 26 May 2022
- 12.1.3 Cr Massoud reported on her attendance as a delegate at the:
- Eastern Affordable Housing Alliance meeting held on 26 May 2022
  - Victorian Local Governance Association meeting held on 27 May 2022
  - Whitehorse Disability Advisory Committee meeting held on 1 June 2022
- 12.1.4 Cr Lane reported on his attendance as a delegate at the:
- Whitehorse Business Group Board meeting held on 7 June 2022
  - Whitehorse Manningham Library Corporation meeting held on 25 May 2022
- 12.1.5 Cr McNeill reported on her attendance as a delegate at the Tree Assistance Fund meeting held on the 24 May 2022

### **COUNCIL RESOLUTION**

Moved by Cr Munroe, Seconded by Cr Carr

That the reports from delegates be received and noted.

**CARRIED UNANIMOUSLY**

**12.2 Reports on Conferences/Seminars Attendance**

- 12.1 Cr Munroe reported on his attendance at the Community Energy Roadshow held on 8 June 2022.
- 12.2 Cr Skilbeck reported on her attendance at the Victorian Local Government Association (VLGA) Land Use Planning Seminar for Councillors held on 3<sup>rd</sup> June 2022.
- 12.3 Cr Cutts reported on her attendance at the Municipal Association of Victoria (MAV) Media Training session held on 9 June 2022.
- 12.4 Cr Massoud reported on her attendance at the following seminars:
- Global Executive Live Panel Forum with LGIU Australia and Victorian Local Government Association (VLGA) held on the 26 May 2022
  - Australian Local Government Women's Association (ALGWA) 2022 Victorian Conference held on 5 and 6 June 2022

**COUNCIL RESOLUTION**

Moved by Cr Stennett, Seconded by Cr Cutts

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

**CARRIED UNANIMOUSLY**

**13 CONFIDENTIAL REPORTS**

Nil

**14 Close Meeting**

Meeting closed at 9.48pm

**Confirmed this 27<sup>th</sup> day of June 2022**

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**CHAIRPERSON**