



WHITEHORSE  
CITY COUNCIL

# Whitehorse City Council

## AGENDA

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### **Council Meeting**

on

**Monday 25 March 2024 at 7.00pm**

**To be held in the  
Council Chamber  
Nunawading Civic Centre**

**Members:**

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

Mayor  
Deputy Mayor

Simon McMillan

Chief Executive Officer

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## AGENDA

### 1 Welcome

#### Prayer for Council

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

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

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

**Amen.**

#### Acknowledgement of Country

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

### 2 Apologies

### 3 Disclosure of Conflicts of Interest

### 4 Confirmation of Minutes of Previous Meeting

Minutes of the Council Meeting 26 February 2024

#### **RECOMMENDATION**

That the minutes of the Council Meeting 26 February 2024 be confirmed.

### 5 Urgent Business

### 6 Public Presentations

### 7 Public Question Time

### 8 Petitions and Joint Letters

**9 Notices of Motion****9.1 Notice of Motion - Cr Davenport - Miscellaneous Parking Permit Scheme**

That Council:

1. Notes that Miscellaneous Parking Permit Scheme is scheduled to be reviewed in the 2024/25 financial year as part of a new Parking Strategy.
2. Seeks a report from officers in relation to the introduction of a two-hour Visitor Permit System for areas which have half-hour restrictions which could be obtained by residents not eligible to receive a permit under the residential parking permit scheme.

**9.2 Notice of Motion - Cr Davenport - Open Space Reserve**

That Council:

1. Notes that the 2023/2024 Council Budget allows for:
  - The use of Open Space Reserve for Active Recreation Infrastructure.
  - Major Recreational Projects with examples given for Aquatics Centre and Indoor Sports Courts.
  - Up to 25% of a Major Project (Recreation) to be funded from the Open Space Reserve.
2. Refers for consideration as part of the proposed 2024/2025 Council Budget an amendment to the Open Space Reserve to be used for Open Space Acquisition, Open Space Improvements, Open Space Planning and Recreation Infrastructure Projects.

**10 Council Reports**

**10.1 42-48 Glenburnie Road, MITCHAM (LOT 1 LP 37448) –  
Amendment to Planning Permit WH/2018/45**

**Department** City Planning and Development: Statutory Planning  
Director City Development

WH/2018/45/B  
Attachment

**SUMMARY**

This proposal seeks to amend Planning Permit WH/2018/45 (42-48 Glenburnie Road, Mitcham), which approved the Construction of more than two dwellings on a lot in the Neighbourhood Residential Zone (Schedule 1), demolition of outbuildings in the Heritage Overlay (Schedule 296), construction of dwellings and associated works in the Heritage Overlay (Schedule 296), and removal of vegetation in the Significant Landscape Overlay (Schedule 7) and under Clause 52.17 of the Whitehorse Planning Scheme'.

The application seeks permission to amend plans and permit conditions to address tree loss, replacement planting, and modifications to heritage dwelling (footpath, internal fencing, deck addition and POS).

This application was advertised, and a total of twenty-five objections were received. The objections raised issues relating to the site history, neighbourhood character, vegetation removal, landscaping, heritage dwelling works, and handling of the planning application amendment process.

An in-person Consultation Forum was held on 29 November 2023 chaired by Councillor Cutts, and attended by Planning Officers, the applicant and 25 objector parties. The issues were explored, however no resolution was reached between the parties.

This report assesses the application against the relevant provisions of the Whitehorse Planning Scheme, as well as the objector concerns. It is recommended that the application be supported, subject to conditions.

**RECOMMENDATION**

That Council:

- A Being the Responsible Authority, having caused Application WH/2018/45/B for 42-48 Glenburnie Road, MITCHAM (LOT 1 LP 37448) to be advertised and having received and noted the objections, is of the opinion that the granting of the Amendment to Planning Permit WH/2018/45 for 'Construction of more than two dwellings on a lot in the Neighbourhood Residential Zone (Schedule 1), demolition of outbuildings in the Heritage Overlay (Schedule 296), construction of dwellings and

## 10.1 (cont)

associated works in the Heritage Overlay (Schedule 296), and removal of vegetation in the Significant Landscape Overlay (Schedule 7) and under Clause 52.17 of the Whitehorse Planning Scheme', is acceptable and should not unreasonably impact the amenity of adjacent properties.

B Issues a Notice of Decision to Grant an Amended Planning Permit under the Whitehorse Planning Scheme to the land described as 42-48 Glenburnie Road, MITCHAM (LOT 1 LP 37448), which allows 'Construction of more than two dwellings on a lot in the Neighbourhood Residential Zone (Schedule 1), demolition of outbuildings in the Heritage Overlay (Schedule 296), construction of dwellings and associated works in the Heritage Overlay (Schedule 296), and removal of vegetation in the Significant Landscape Overlay (Schedule 7) and under Clause 52.17 of the Whitehorse Planning Scheme', subject to the following modified permit conditions:

- Condition 1 preamble – (Amended)
  1. Before the development starts, amended plans in digital form must be submitted to and approved by the Responsible Authority. The plans must be drawn to 1:100 scale, and be generally in accordance with the plans by Jesse Ant Architects, drawing nos. TP04 to TP11, all marked Amendment L and dated 8.9.2023 and 27.10.2023, project 17029, but modified to show:
- Condition 1(e)iii. – (Amended)
  - (e) The existing heritage dwelling modified to show:
    - iii. the landscape plan as required by Condition **56**, updated to accommodate the changes approved by this amendment, as well as the requirements of Conditions **10a** and **10b**.
- Condition 1(i) – (Amended)
  - (i) The plans updated to only show the removal of Tree Nos. 1, 11, 12, 13, **14**, 17-20, 22-24, 26-30, **33**, **34**, 35, **36**, 37, 38, 39, 40, 41, 46, **47**, 50, **51**, 54, 55, 60, 63-67, 69-71 and 73-76.
- Condition 1(j) – (Amended)
  - (j) The plans accurately updated to reflect:
    - i Condition **56** (landscape plan).
    - ii Condition **810** (tree protection measures).
- Condition 1(m) – (Amended)
  - (m) Any changes required by the Waste Management Plan required by Condition ~~40~~**12**.
- Condition 1(n) – (Amended)
  - (n) The Offset Management Plan updated in accordance with Condition ~~41~~**13**.



## 10.1 (cont)

- Condition 1(o) – (New)
  - (o) **The heritage dwelling POS internal fencing must be at least 40% transparent across its eastern and southern elevations. This will be achieved by equally increasing the spacing between palings.**
- Condition 6 preamble (Amended)
  - 6 Prior to **endorsement of plans**, ~~the commencement of any buildings or demolition works~~, a revised Landscape Plan in accordance with Council's Landscape guidelines prepared by a suitably qualified consultant, must be submitted to the Responsible Authority. The landscape plan must include, but is not limited to:
    - Condition 6(d) – (Deleted)
    - Condition 6(e) – (Deleted)
    - Condition 6(f) – (Deleted)
    - Condition 6(g) – (Deleted)
    - Condition 6(h) – (Deleted)
    - Conditions 6(d) to 6(l) – (New)
      - (d) **The trees, shrubs, groundcovers and climbers must be accurately displayed in the landscape plan, with their numbers or densities accurately detailed in the planting schedule.**
      - (e) **All hatched areas within garden beds must not contain any blank areas.**
      - (f) **The 3 'Em' (Eucalyptus melliodora) in the POS of dwellings 2 and 3, all replaced with Magnolia Exmouth (MgE': Magnolia grandiflora 'Exmouth').**
      - (g) **The MgE (Magnolia grandiflora 'Exmouth)', and Ba (Illawarra Flame Tree) currently in the front setback garden bed, replaced with 2x 'Em' Eucalyptus melliodora).**
      - (h) **2x additional 'Em'(Eucalyptus melliodora) provided in the front setback area.**
      - (i) **4 to 5 Acacia pycnantha, and 3 to 4 Cassinia aculeata replanted in the front setback area garden bed. These plants are quick growing species that will quickly restore the site's bush environment landscape setting to the streetscape.**
      - (j) **4 to 5 Bursaria spinosa planted in the front boundary garden bed. These plant species can be planted close to**

## 10.1 (cont)

replacement and retained gum trees in supporting the bush environment character of the area.

- (k) The replacement tree, 'El (Yellow Gum), at the removed Tree 47 location, and the replacement tree, *Magnolia grandiflora* 'Exmouth' (MgE) beside Tree 45, to be relocated in each other's location. This will improve the Yellow Gums ability to establish and reach mature height.
  - (l) All trees to be retained and replanted must be planted at least 3.1 metres away from any dwelling, where possible.
- Condition 7 – (New)
    - 7. Prior to endorsement of plans, a Landscaping Maintenance Plan, prepared by a suitably qualified consultant, must be submitted to, and be to the satisfaction of, the Responsible Authority. The landscaping maintenance plan must include, but is not limited to:
      - (a) Consistency with the Condition 1 requirements.
      - (b) Consistency with the landscape plan endorsed as part of this Permit.
      - (c) 6 month maintenance plan for all plants (excluding 'trees') as detailed in the 'planting schedule' of the landscape plan required by this permit.
      - (d) a Tree Protection Management Plan (TPMP) written in accordance with Australian Standard AS4970-2009 by a qualified arborist with a minimum Diploma in Horticulture (Arboriculture). The TPMP must detail all existing trees being retained on site. The report must be submitted every year during the month of October for five (5) years commencing April 2024. The report must detail how the specified retained trees on the subject site are being protected during the construction period, and will continue being protected post the construction period over a 5 year period.
      - (e) Irrigation system/program for all landscaping plantings, including details of frequency and water delivery method. The irrigation must occur ongoingly over the life of the specified maintenance plan.
      - (f) The garden areas shown on the endorsed plan and schedule must only be used as gardens and must be maintained in a proper, healthy and orderly condition at all times to the satisfaction of the Responsible Authority.
      - (g) Should any tree appear to be dead or dying, the following procedural steps apply in sequential order:
        - i. The Responsible Authority must be notified within 7 days to organise a joint site inspection of the tree(s) in question;

## 10.1 (cont)

- ii. **Within 7 days of the applicable site inspection specified in Condition 7(g)i. a TPMP must be undertaken in accordance with the requirements of Condition 7(d).**
- iii. **If the tree(s) in question are confirmed by Council officers as a dead or dying tree(s), they must be replaced with plant species as detailed in the endorsed landscape plan (Condition 6), to the satisfaction of the Responsible Authority.**
- iv. **Each applicable replacement tree must be planted on the land in a similar location as approved on the landscape plan endorsed as part of this permit, within 6 months of the removed lost tree, to the satisfaction of the Responsible Authority.**
- v. **At all times for the first two years after the Replacement Trees are planted, they must be staked and tied to the satisfaction of the Responsible Authority.**

**Once submitted to and approved by the Responsible Authority, the Landscaping Maintenance Plan will form part of the documents endorsed as part of this planning permit.**

**The requirements of the Landscaping Maintenance Plan must be implemented by the owners and occupiers of the site for the life of the buildings, to the satisfaction of the Responsible Authority.**

- Existing Conditions 7 to 20 renumbered accordingly.
- Condition 10(a) x (deleted)
- Condition 10(a) xvii (deleted)
- Condition 10(a) xviii (deleted)
- Condition 10(a) xix (deleted)
- Condition 10(a) xxvii (deleted)

**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.

**D** Acknowledges that unauthorised works and permit breaches that are subject to ongoing planning enforcement investigations do not form part of the merits of this planning permit amendment application. Furthermore, any applicable restorative steps can be achieved through a Section 173 Agreement registered on the land.

Note that - should a Section 173 Agreement be a viable option in resolving restoration works as part of the planning enforcement

## 10.1 (cont)

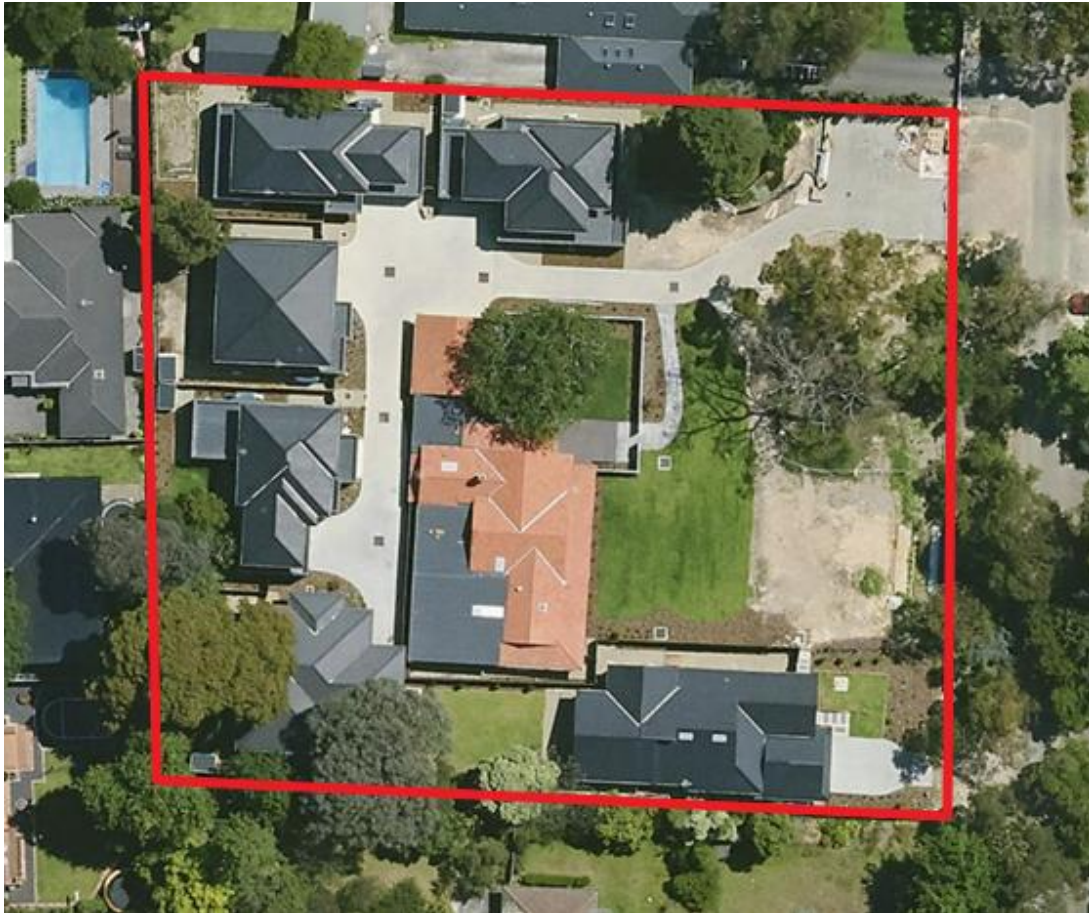
proceedings, the following mechanisms should be considered, and could include:

- (a) A Revegetation Plan for the entire site that provides for tree establishment and references to a landscape maintenance plan to revegetate site in a timely matter such that the bush environment landscaped setting is returned to the site and the site context sooner;
- (b) Replanting requirements to offset each tree lost, on a 1:1 or 1:2 ratio (number of trees lost : number of replacement trees). The tree species should have a mature height equal to, or greater than, the tree it replaces, and is native in origin.
- (c) A landscape maintenance plan that sets frequent timelines on (i) how the existing trees will continue to be protected and (ii) the age and height of replacement trees at the time of planting. Replacement trees should also be staked and tied to the satisfaction of Council officers. Regular pruning should be included where required, and post establishment that appropriate timeframes should be in place when replacement trees should no longer be staked and tied and they continue to grow.
- (d) A specific clause on what actions that land owner carry out to protect existing trees on an ongoing basis, including defining what works cannot take place.
- (e) Regular reporting to Council, including an arborist report, to confirm whether all required actions are being carried out, while also providing an update on the relevant trees' structural health and condition.

## MELWAYS REFERENCE 49 A12

Applicant:	Jesse Ant Architects
Zoning:	Clause 32.09 – Neighbourhood Residential Zone (NRZ1)
Overlays:	Clause 42.03 – Significant Landscape Overlay (SLO7) Clause 43.01 – Heritage Overlay (HO296)
Relevant Clauses:	
Clause 11	Settlement
Clause 12	Environment and Landscape Values
Clause 15	Built Environment and Heritage
Clause 16	Housing
Clause 21.05	Environment
Clause 21.06	Housing
Clause 22.03	Residential Development
Clause 22.04	Tree Conservation
Clause 52.06	Car Parking
Clause 52.17	Native Vegetation
Clause 55	Two or More Dwellings on a Lot or Residential Buildings
Clause 65	Decision Guidelines
Ward:	Simpson

## 10.1 (cont)



**Figure 1: Subject Site**

## **BACKGROUND**

### **History**

Planning Permit WH/2018/45 was issued on 26/9/2019 at the direction of VCAT for Construction of more than two dwellings on a lot in the Neighbourhood Residential Zone (Schedule 1), demolition of outbuildings in the Heritage Overlay (Schedule 296), construction of dwellings and associated works in the Heritage Overlay (Schedule 296), removal of vegetation in the Significant Landscape Overlay (Schedule 7) and under Clause 52.17 of the Whitehorse Planning Scheme.

A Secondary Consent application was received on 21/7/2020 to later be withdrawn on 26<sup>th</sup> October 2020.

A new Secondary consent application was received and subsequently approved on 23/7/2021 for the following changes to the endorsed plans:

- Garage levels for dwellings 1 and 6 modified by up to 250mm.
- The edges of the driveway adjacent the garage of dwelling 1 subsequently modified.
- Earthworks modified including the retaining wall between dwellings 1 & 2 (from 0.4 metres to 0.5 metres high)

Condition 1 plans were endorsed as part of this secondary consent approval.



## 10.1 (cont)

An Amendment to Permit application under Section 72 of the Planning and Environment Act 1987 was approved on 4/10/2021 to carry out the following changes:

Amendment to Conditions

- New conditions 1 (e) and 5.

Amendments to the endorsed plans:

- 25.3m<sup>2</sup> extension and 5m<sup>2</sup> deck addition to the heritage dwelling, extending west towards the common driveway, and north to the garage.
- The internal layout reconfigured.
- Windows modified for south, west and north elevations.
- Metal clad roofing for western rear and north side extensions.
- Garage windows modified.
- Routine maintenance to numerous windows, timber weatherboard walls, verandah, slats, and external paint finish.
- Landscaping modified to accommodate the proposed amendments.
- Site coverage modified from 28.3% (1,344.7m<sup>2</sup>) to 28.96% (1,375.7m<sup>2</sup>).
- Site permeability modified from 64.2% (3,051.7m<sup>2</sup>) to 63.59% (3,021m<sup>2</sup>).
- Private open space modified from 155m<sup>2</sup> to 128.11m<sup>2</sup>

Plans were endorsed as part of this Amended Permit on 22/12/2021, which superseded the previously endorsed secondary consent plans dated 24/7/2021.

An extension of time request to the permit expiry was approved on 9/5/2023, extending the completion expiry date to 26/11/2024.

**Planning Enforcement history**

There has been ongoing planning enforcement activity on the site since 2021, including investigation of unauthorised works and permit condition breaches. These unauthorised works have resulted in the following trees shown on the approved plans as being retained, now being identified by Council's arborist and Planning Enforcement Officers as 'dangerous trees' and as such are exempt from needing planning permission. These are detailed below.

- Tree 34 was confirmed on 15/10/20 as a dangerous tree, having declined in health due to natural causes.
- Tree 14 was confirmed on 19/10/2021 as a dangerous tree having declined in health due to unauthorised works having been carried out on site.

### 10.1 (cont)

- Tree 47 was confirmed on 3/11/2023 as a dangerous tree, having declined in health and structure due to high wind conditions.
- Tree 36 was confirmed on 14/11/2021 as a dangerous tree, having declined in health due to unauthorised works carried out on site.
- Tree 51 was confirmed on 6/6/2023 as having been removed without a planning permit. This tree was shown as being retained on the endorsed plans.
- Tree 33 was confirmed on 24/1/2024 to be a dangerous tree, having declined in health predominantly due to natural causes.

'Dangerous trees' (including 'dead or dying' trees, and trees that present an immediate risk) are exempt from the requirements of the planning scheme, notably the Significant Landscape Overlay (SLO7) and the Native Vegetation Framework (Clause 52.17).

The unauthorised works and permit breaches are subject to ongoing planning enforcement investigations and do not form part of the merits of this amendment application.

### **The Site and Surrounds**

The subject site is located on the west side of Glenburnie Road in Mitcham, approximately 43 metres south of the junction with Langford Road, and 330 metres north of the junction with Canterbury Road. The Vermont local shops at the Canterbury and Boronia Road junction is situated approximately 430 metres to the south-west of the site.

The site has a total site area of 4750.10m<sup>2</sup> with an eastern frontage to Glenburnie Road of frontage of 65.34 metres and a maximum depth of 75.02 metres. It contains a slope of over four (4) metres from the eastern frontage to the western rear boundary at an average gradient ratio of 6.76%. The site is not encumbered by any easements.

The site is currently a construction site with the development approved under active Permit WH/2018/45 being more than 85% complete.

The surrounding properties are residential containing a mix of single and double storey brick and timber dwellings set on lot sizes varying 550m<sup>2</sup> to 2400m<sup>2</sup> in area within Glenburnie Road with the site being the anomaly (4750m<sup>2</sup>). Lot sizes for properties west of the site are noticeably smaller on average (320m<sup>2</sup> to 1200m<sup>2</sup>).

The site is located within a bush environment preferred character setting dominated by the species of Messmate Stringybark, Yellow Box, Spotted Gum, Pittosporum species, Box Elder, Paperbark, Pin Oak, and varied species of conifers. These species are particularly well represented within the road reserve.

Glenburnie Road has been claimed by a number of objectors to be a National Trust-registered street, however this has not been confirmed by the

## 10.1 (cont)

National Trust. National Trust streets are classified by their single lane width, absence of kerb and channel and pathways and heavy vegetation within the road reserve, which gives the street a genuine bush appearance within the wider suburban area. These streets are designed to slow traffic and force residents to use the road to walk, encouraging the community to interact. Vegetation within the road reserve is often 'informally' handed over to the resident to maintain as their own.

## Planning Controls

### Permit Triggers

The planning scheme permit triggers that applied to the originally approved proposal, continue to apply to the proposed amendments, as follows:

#### Neighbourhood Residential Zone, Schedule 1 (NRZ1)

Pursuant to Clause 32.09-6 of the Whitehorse Planning Scheme; a permit is required to construct two or more dwellings on a lot.

#### Significant Landscape Overlay, Schedule 7 (SLO7)

Pursuant to Clause 42.03-2 of the Whitehorse Planning Scheme, a permit is required to remove, destroy or lop a tree and to construct a building or construct or carry out works, unless otherwise exempt.

#### Heritage Overlay, Schedule 296 (HO296)

Pursuant to Clause 43.01 of the Whitehorse Planning Scheme, a permit is required to construct and/or carry out buildings and works.

#### Clause 52.17 (Native Vegetation Framework)

Pursuant to Clause 52.17 of the Whitehorse Planning Scheme, a permit is required to remove, destroy or lop native vegetation, including dead native vegetation, unless exempt in the table to this Clause.

## Planning Scheme

Informing the below assessment and determination, the relevant provisions of the Whitehorse Planning Scheme listed in the summary table of this report have been considered. Additionally, as an application for Amendment was received under Section 72 of the Planning and Environment Act 1987 ("the Act"), the following provisions apply:

*"A person who is entitled to use or develop land in accordance with a permit may apply to the Responsible Authority for an amendment to the permit."*

Section 73 of the Act states that sections 47 to 62 of the Act apply to any application to the Responsible Authority to amend a permit.

In accordance with Section 60(1) of the Act the Responsible Authority must consider, when deciding on an application, the following matters:



## 10.1 (cont)

- The planning scheme.
- The objectives of planning in Victoria.
- All objections and other submissions which it has received and which have not been withdrawn.
- Any decision and comments of a referral authority, which it has received.
- Any significant effects, which the Responsible Authority considers the use or development may have on the environment or which the Responsible Authority considers may have on the use or development.

The Responsible Authority may also consider if the circumstances appear to require so, any of the matters listed in Section 60.

**PROPOSAL** (See Figures 2 to 5)

The amendments being considered are a mix of buildings and works that are proposed as part of modifications to the approved plans, and buildings and works and tree removal that has occurred in a manner not compliant with the approved plans. The extent of changes sought is outlined below:

Removal of Tree 33 as detailed below.

<b>Tree No.</b>	<b>Botanical Name</b>	<b>Common Name</b>	<b>Height (m)</b>	<b>Age (year)</b>	<b>Health/ Structure</b>
33	<i>Eucalyptus cephalocarpa</i>	Mealy Stringybark	20m	Mature	Dead

The existing heritage dwelling modified as follows:

- Private Open Space (POS) area increased from 128.11m<sup>2</sup> to 170.77m<sup>2</sup>, extended further east.
- POS internal fencing widened by 2.8 metres further east.
- Spacing introduced in between timber palings of the internal POS fencing.
- Footpath treatment and surrounding landscaping both modified.
- Deck addition, extended from eastern front verandah to the northern sunroom and entertainment room.
- Site coverage modified from 28.96% (1,375.7m<sup>2</sup>) to 29.64% (1,408m<sup>2</sup>).
- Site permeability modified from 63.59% (3,021m<sup>2</sup>) to 62.91% (2,988.3m<sup>2</sup>).

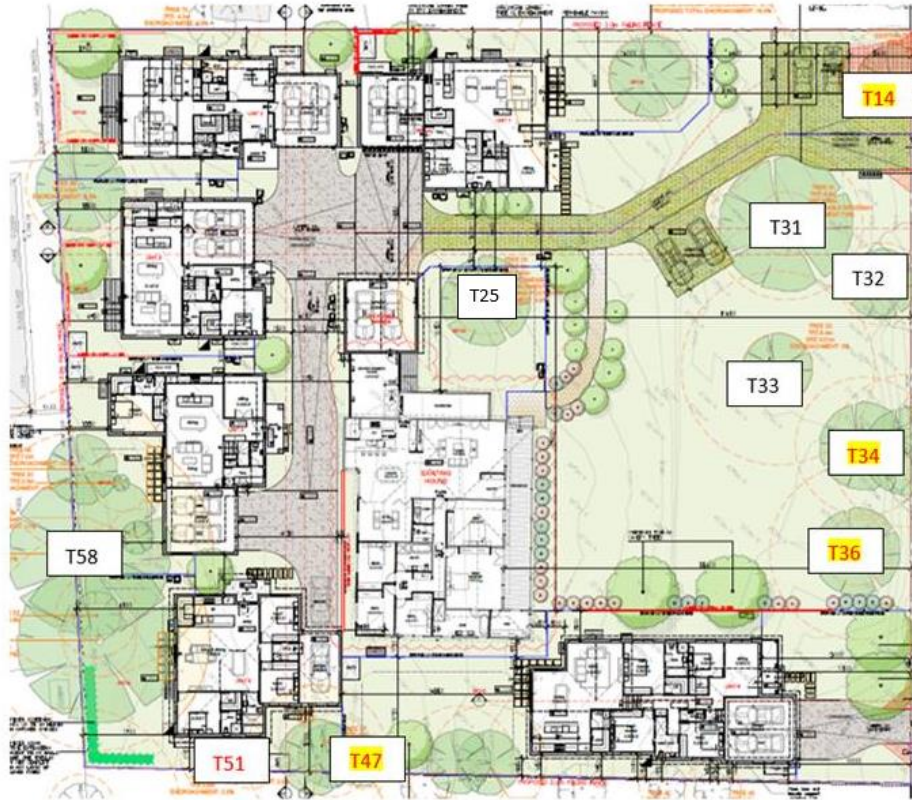
The plans and permit conditions are also required to be updated to reflect the following status of trees works on site:

- Trees 14, 33, 34, 36, 47, and 51 shown as 'removed'.
- Trees 45, 52 and 58 shown as 'retained'.

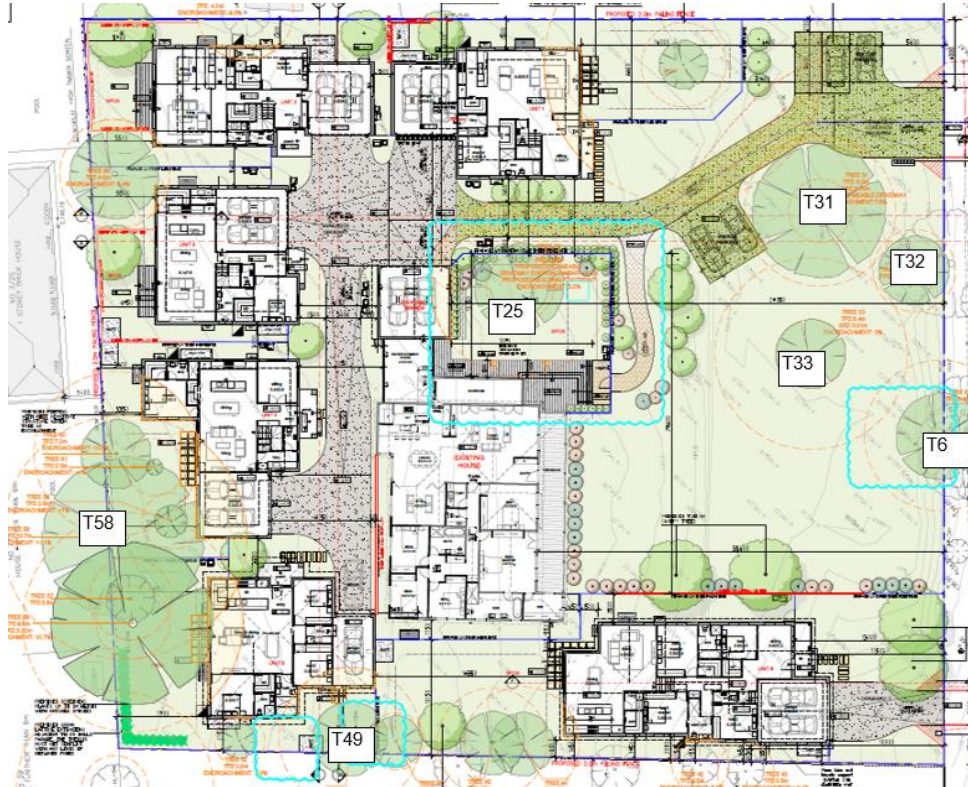
The landscape plan is required to be updated as part of the proposed amendments.

The above proposed amendments will be further detailed in the assessment section. However, the plans below show the evolution of the plans from those endorsed, to what is now being sought for approval.

10.1 (cont)



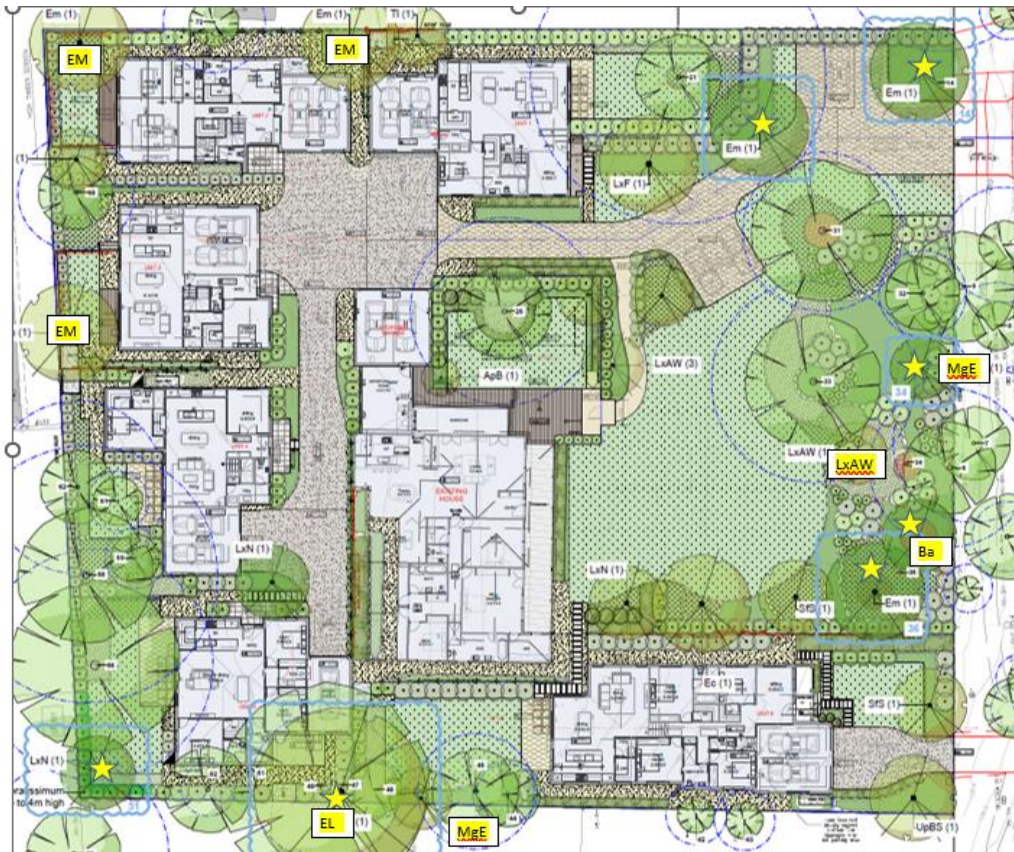
**Figure 2. (above): Current Endorsed Development Plans** (Labelled trees are relevant to assessment. Trees in red font have now been removed)



**Figure 3 (above): Section 57 Amended Development Plans** (retained trees relevant to subject assessment are labelled)



10.1 (cont)



**Figure 4 (above): Section 57 Amended Landscape Plans**  
(Additional replacement trees labelled with yellow star)

**CONSULTATION**

**Public Notice**

This amendment application was advertised in the prescribed form pursuant to the requirements of Section 52(1)(a) of the *Planning & Environment Act 1987*. Notices were posted in the mail to all adjoining and nearby residential properties, and 2x signs erected on site (frontage to Glenburnie Road). At the completion of the advertising period, 25 objections were received. Key objection grounds comprise:

<b>History</b>	<ul style="list-style-type: none"> <li>• Ongoing breaches and disregard for permit conditions.</li> <li>• TPZ measures not met.</li> <li>• unauthorised tree removal and earthworks.</li> <li>• CMP requirements not met (parking, drainage, earthworks site security fencing).</li> <li>• Council action towards prosecution.</li> </ul>
<b>Neighbourhood Character</b>	<ul style="list-style-type: none"> <li>• Excessive Site Coverage.</li> <li>• Non-compliant with policy (SL07 &amp; Bush Environment Preferred Character Guidelines).</li> <li>• Arbor not supported.</li> </ul>



## 10.1 (cont)

<b>Vegetation Removal</b>	<ul style="list-style-type: none"> <li>• Neighbourhood Character Impacts</li> <li>• Non-compliant with policy (SL07, and Urban Forest Strategy).</li> <li>• Tree removal without planning approval is unacceptable.</li> <li>• Proposed tree removal is unwarranted.</li> <li>• Non-compliance with permit conditions on Tree Protection and Construction Management.</li> </ul>
<b>Landscaping and Heritage dwelling works</b>	<ul style="list-style-type: none"> <li>• Extent of deck addition changes original dwelling form, layout and appearance.</li> <li>• Unreasonable modifications to site coverage and site permeability.</li> <li>• Space for replanting reduced.</li> <li>• Impact on Tree Protection Zones of nearby trees.</li> <li>• Impact on water retention.</li> </ul>
<b>Handling of the Process</b>	<ul style="list-style-type: none"> <li>• Application Lodgement <ul style="list-style-type: none"> <li>○ Minimum application requirements not met.</li> <li>○ Proposal is not clear or transparent.</li> </ul> </li> <li>• Notification <ul style="list-style-type: none"> <li>○ Duration of notice.</li> <li>○ Inadequate opportunity for residents to review and respond to proposal.</li> <li>○ Knowledge of how late an objection could be made.</li> </ul> </li> </ul>

Section 57 Amendment

Following the notification period, and after consideration of the objections, the applicant formally amended the proposal under Section 57 of the Act on 3/11/2023. The amended proposal includes the following key changes to the plans (which is reflected in the 'proposal' section of this assessment):

- Landscape plan updated to reflect tree loss, and to include additional tree replanting to provide a bush environment landscape setting. (see Figure 4).
- Earthworks within the heritage dwelling POS area and footpath connection to the driveway, deleted from the application.
- The notation on the plans for the encroachment of the decking into the Tree Protection Zone of Tree 25, increased from 4.9% to 5.2%.
- The arbor, included in the advertising plans, deleted from the application.

On 6/11/2023, the Section 57 amended proposal was circulated to all objectors. Opportunity was given to the residents to provide additional comment on the amended documentation prior to the charring of a Forum.

## 10.1 (cont)

**Forum Meeting**

A Forum Meeting was held on 29 November 2023, chaired by Councillor Cutts. Planning officers, the applicant, and 25 objectors attended the meeting. At the forum, the issues raised in the objections were discussed, and included the following additional issues and resident preferences:

- Larger replacement trees to be located away from fencing, and more than 3 metres away from dwellings, to ensure their future protection under the SLO7.
- Avoid Weeping Lilly Pilly replacement trees located in POS areas to ensure functionality of the POS areas.
- The heritage dwelling internal fencing must be of Hampton Style feature fencing design.
- The greatest certainty via permit conditions for trees being retained in future.
- A Council arborist to revisit Tree 33, to confirm whether the tree has since become a dead or dying tree.

The above issues are included in the subsequent assessment. Overall, no consensus was reached on the issues discussed on the night.

Subsequent to the Consultation Forum, Council's arborist and Planning Enforcement Officer revisited the site on 8/12/2023 to re-assess the structural health of Tree 33. Council's arborist confirmed at this time that Tree 33 had a current structural health condition of 'poor' and was in active decline with a useful life expectancy of 1-5 years.

In December 2023, when comparing the structural health status in 2018, Council's arborist indicated that Tree 33 was in an active state of decline and would have likely declined to its current state of structural health. This is regardless of the development of the site. Council's arborist indicated that tree 33 should be removed. If retained, the tree would require close and regular monitoring of the tree's condition due to its increasing rate of decline.

Council's planning arborist also carried out a site inspection on 24 January 2024 and confirmed that Tree 33 had since died.

**Referrals**External Referrals

The Whitehorse Planning Scheme does not require the proposal to be referred externally under Section 55 of the Act.

## 10.1 (cont)

Internal Referrals

<p><b>Heritage Advisor</b></p>	<p>The application, as advertised, was referred to Council's heritage advisor who required the deletion of (a) the arbor (b), modifications to the internal fencing and (c), all excess fill to be deleted within the TPZ of Tree 25.</p> <p>In the subsequent Section 57 plans post the advertising period, the arbor was deleted, the fill removed, and the required changes to the internal POS fencing for the heritage dwelling were made.</p> <p>Council's heritage advisor has now provided consent, subject to the spacings between the fence's palings being equally increased such that a minimum of 40% transparency across the fence's east and south elevations, is achieved.</p> <p>This recommended modification responds to the added projection of the internal fence into the front setback area, reducing the street profile of the heritage dwelling.</p>
<p><b>Arborist</b></p>	<p>The application was referred to Council's arborist who confirmed that Trees 25, 31, and 32 can be retained subject to permit conditions, following works occurring on site without a permit.</p> <p>Council's consulting arborist confirmed that Tree 33 could be retained in October 2023 (poor structural health, 1-5 year life expectancy), then in November 2023 and again in December 2023 (poor structural health, almost dead but still retainable). However, on 24 January 2024 Council's Planning Arborist confirmed Tree 33 had since died.</p>
<p><b>Tree Education Officer (Now Urban Greening Officer)</b></p>	<p>The landscape plan was referred to Council's Tree Education officer who made the following summarised observations:</p> <ul style="list-style-type: none"> <li>• The numbers and densities of retained trees and replacement plant species should be accurately reflected in the landscape plan and planting schedule.</li> <li>• The location of the 3 x <i>Eucalyptus melliodora</i> in the POS of dwellings 2 and 3 are too large for the respective POS area and too close to buildings. These trees should be replaced with smaller trees such as <i>Waterhousea</i> 'Sweeper' or the <i>Magnolia</i> 'Exmouth'.</li> </ul>

## 10.1 (cont)

	<ul style="list-style-type: none"> <li>• The replacement EL (Yellow Gum) located close to the previously location of tree 47 in the rear yard of dwelling 5, is too close to the fence line and dwelling 5. This tree should be swapped with the proposed replacement <i>Magnolia</i> species to the east.  The yellow gum would then be in a larger, less encumbered POS area that gives this tree the best chance to establish and reach its mature height.</li> <li>• In the front setback, the <i>Waterhousea</i>, <i>Lagerstromia</i> and <i>Magnolia</i> should be replaced with 3x <i>Eucalyptus melliodora</i> (Yellow Box). The total provision of onsite Yellow Box trees would remain at 6 trees.</li> <li>• In the front setback area, the following additional plants are encouraged: <ul style="list-style-type: none"> <li>○ 4-5 <i>Acacia pycnantha</i> and 3-4 <i>Cassinia aculeata</i> as quick growing species that will restore the bushy nature of streetscape quickly.</li> <li>○ 4-5 <i>Bursaria spinosa</i> which could be planted quite close to the existing gum trees for the purpose of supporting neighbourhood character in the long term.</li> </ul> </li> </ul>
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**DISCUSSION**

As reflected in the below assessment, subject to conditions on any permit issued for the amended proposal, it is considered that the proposed amendments sought are consistent with relevant provision of the Whitehorse Planning Scheme.

**History**

It must be firstly recognised that considerable effort was made by all stakeholders involved to reach agreement in achieving a balanced and appropriately determined outcome that would satisfy the provisions of the planning scheme (see Figure 2). At the VCAT compulsory conference for the original application, held on 20 September 2019, the following key outcomes were reached:

- 11 originally proposed double storey dwellings reduced to 4x double storey and 2x single storey proposed dwellings on site.
- The existing heritage dwelling, originally proposed for removal, now to be retained.
- An extensive front setback area secured for the heritage dwelling, free of dwellings to facilitate a generous street setback area and site frontage.
- The heritage dwelling front setback area also provides a high capacity for supporting an extensive and dominant, multi-layered bush environment landscape garden setting consistent with the preferred character of the area.



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### 10.1 (cont)

- Genuine boundary setbacks, internal building separation, and deep soil planting areas across the site.

Since the VCAT directed permit was issued, two minor amendments have been approved. They included modified garage levels for dwellings 1 and 6 and subsequently modifications to earthworks in in July 2021 under secondary consent. A further amendment to the permit was approved under Section 72 of the Act in October 2021, for heritage dwelling alterations which included a sun room and entertainment room additions.

### Landscaping and Tree Removal

As confirmed earlier in this assessment, Trees 14, 34, 36, 47 and 51 have since been confirmed as dead or dying trees exempt from the planning scheme, and subject to Planning Enforcement investigations.

During the course of the application, the proposal was modified on a number of occasions concerning, in particular on whether to retain or remove Tree 33. Tree 33 is a mature *Eucalyptus cephalocarpa* (Mealy Stringybark) of 20 metres high, which was originally proposed to be removed. Following an inspection of Tree 33 in October 2023 and considering the grounds of objections, the applicant decided to retain Tree 33, which was presented and discussed at the consultation forum.

As requested by residents at the Consultation Forum, Council's arborist subsequently inspected Tree 33 in November and December 2023 confirming that the tree was in an advanced state of decline and almost dead, but could still be retained. A further inspection in January 2024 by Council's arborist confirmed that Tree 33 had since died and was no longer salvageable. This tree is now proposed for removal.

While Tree 33 has been confirmed as a dead tree, it does not currently pose a danger to life and property. This tree requires a permit for its removal under Clause 52.17 (Native Vegetation Framework). The Native Vegetation Impact Assessment prepared by Practical Ecology, dated February 2020, formed part of original determination of the proposal under Permit WH/2018/45. The Practical Ecology report confirmed that Tree 33 was considered lost for offset purposes at the time, as the TPZ encroachment was greater than 10%, despite being retained.

As the offsets for Tree 33 have been addressed in the past under Condition 12 (Native Vegetation offset condition), no additional offset credit is required under the native vegetation framework. This is despite Tree 33 now being proposed for removal. Consequently, as part of this application, a referral to DELWP is not required, and the proposal remains compliant with Clause 52.17 (Native Vegetation Framework).

Notwithstanding, following the loss of trees on site, the proposal is now different to the endorsed plans and permit conditions, and must be made accurate. Two relevant permit conditions relating to approved tree works, must be updated. These permit conditions include Condition 1(i) (*confirms*



## 10.1 (cont)

*what trees are removed*), and Condition 10(a) (*confirms what trees must be protected and are subject to required tree protection measures*). These conditional changes are reflected in the draft conditions at the start of this assessment.

When there are changes in the endorsed landscape plan including trees proposed required to be retained, the normal process is to update the landscape plan for endorsement. In this instance, the change in existing trees in the endorsed landscape plan will result in noticeable long term impacts on the proposed development's ability to deliver a bush environment landscape setting on the site that will respond to the site context. There will be greater gaps in the tree canopy across the site, while the street presentation will be more open with dwellings being less inconspicuous in profile, and less subservient to the natural landscape.

To address this issue, the applicant submitted an updated landscape plan to address the tree loss and ensure that a bush environment setting can be maintained. The yellow stars labelled in Figure 4 confirm the proposed inclusion of 7x additional proposed canopy trees. In the street setback area garden bed will include 3x Yellow Box trees ('EM': 15-30 metre mature height), 1x Exmouth Magnolia ('MgE': 10 metre mature height), and 1x Illawarra Flame Tree ('Ba': 12 metre mature height).

The POS area of dwelling 5 will also include 2 replacement trees including 1x Yellow Gum ('EL': 15 metre mature height) and 1x additional Natchez Crepe Myrtle ('LxAW': 10 metre mature height).

The proposed changes, including the strengthening of the landscaping to the street, are welcome inclusions. However, they do not go far enough to provide an acceptable bush environment landscape character setting as per the SLO7 and Clause 22.03.

Advice received from Council's Tree Education officer indicates that the largest native canopy trees should be focused within the street setback area where they will provide the greatest contribution to the wider bush environment landscape character. The front setback area is extensive and the least encumbered by buildings and works, offering the greatest consolidated deep soil planting areas for plant establishment and growth.

Species of Exmouth Magnolia, Illawarra Flame Tree and Crepe Myrtle are medium sized trees (up to 12 metres tall) with medium-sized tree canopies, and will not make significant-enough contribution to the surrounding bush-environment setting. These trees should be replaced with larger Eucalyptus tree species, and instead be relocated into the POS areas of the approved dwellings, being more compatible with encumbrances (dwellings etc) within their vicinity.

Council's Tree Education officer has observed 3 x proposed Yellow Box trees 'Em' (*Eucalyptus melliodora*) in the private open space of dwellings 2 and 3, and 1x Yellow Gum, 'El' (*Eucalyptus leucoxylon*) tree proposed within the POS area of dwelling 5. These trees are all located too close to buildings

### 10.1 (cont)

and are within small POS areas. These trees are likely to outgrow their space and potentially causes damage to property, and perceptions of risks, in future. These trees are also within 3 metres of the respective dwelling and could be removed without the need of a permit in future.

The 3 x Yellow Box trees should replace the smaller Exmouth Magnolia, Illawarra Flame Tree and Crepe Myrtle trees in the street setback to dominate the street frontage and wider bush environment landscape. The 1 x Yellow Gum should be replaced with the Magnolia in the POS of dwelling 5 further away from proposed dwelling 5.

The 3x Yellow Box trees in the street setback should be complemented with 2x additional Yellow Box trees (6 tree in total) within the street setback area to reinstate both the tree canopy loss coverage across the site and the wider bush environment landscape.

As part of site's presentation to the street at the pedestrian scale, Council's Tree Education officer also required additional smaller canopy trees and tall shrubs in the front setback area, to return the site effectively to a bush environment landscape setting.

From the species recommended, the Golden wattle (*Acacia pycnantha*, 8 metres high) and Dogwood or Dolly Bush (*Cassinia aculeata*) species are recommended for their fast growing ability to assist in returning the site to a bush environment landscape setting sooner. The Christmas Bush (*Bursaria spinosa*, up to 8 metres high) is recommended as it can be planted close to replacement and retained gum trees. All 3 proposed tree species will strengthen the mid layer of the landscaping that presents to the street.

The recommended changes to the submitted landscape plan will ensure that all dwellings will again have a more inconspicuous street profile, being subservient to a stronger, multi-layered, and dominant landscape setting. This landscape setting will again appropriately integrate with the surrounding natural bush environment, and reinstate both important biolinks with a more continuous tree canopy coverage in time.

This will achieve compliance with the limited change, bush environment preferred character principles and objectives of the NRZ, and Clauses 21.05 (Environment), 22.03 (Residential Environment) and the preferred bush environment character statement, the SLO7 and Clause 52.17 (Native Vegetation Framework).

## **Amendments to Heritage Dwelling**

### ***Deck addition***

Firstly, it is acknowledged that the deck addition has been constructed without a planning permit. The subject amendment application seeks approval to legitimise this deck addition against the Whitehorse Planning Scheme. The *Planning & Environment Act 1987* allows for retrospective approval in the planning process.

### 10.1 (cont)

It is considered that the functional need for convenient pedestrian access around the dwelling is reasonable. The currently approved development site coverage of 28.96% (1,375.7m<sup>2</sup>) will be modified to 29.64% (1,408m<sup>2</sup>). This increase will remain compliant with the preferred maximum site coverage of 40% under the NRZ1, and 35% under the SLO7.

The currently approved site permeability, which includes the approved sunroom and entertainment room additions, would decrease from 63.59% (3,021m<sup>2</sup>) to 62.91% (2,988.3m<sup>2</sup>). This resulting site coverage will remain comfortably above the preferred minimum site permeability of the NRZ1 of 40%. The total hard surfaces excluding all buildings would increase from 12.67% (601.8sqm) to 12.71% (603.88sqm), which meets the 15% maximum hard surfaces and paved surfaces requirement of the SLO7.

The deck addition would result in increasing the extent of buildings and works that encroach into the TPZ of Tree 25 from 4.9% to 5.2%, while the approved encroachment of the driveway would remain at 12.18%. This would represent a total TPZ encroachment of 17.4%. Council's arborist indicates that while this remains a major encroachment, the works are not located within the structural root zone (SRZ) of Tree 25. Council's Arborist has taken into consideration:

- a) the driveway being of permeable construction;
- b) the deck being constructed on stumps with gaps between its slats.
- c) that much of the approved driveway, garage and deck has been constructed within the pre-construction gravel driveway.

When considering the nature of the above works close to Tree 25, Council's arborist has confirmed that this tree will remain viable.

Finally, the deck addition will also trigger a permit under the Heritage Overlay. Council's heritage advisor consented to the deck addition confirming that it will not undermine the significance of the heritage place. The deck will therefore be acceptable within the scope of the decision guidelines of the Heritage Overlay (HO296).

The proposed deck addition: will enhance the functionality of the heritage dwelling; will continue to deliver compliant site coverage and site permeability; and will not have a detrimental bearing on the structural integrity of the nearest tree (Tree 25). This proposed amendment is acceptable and will comply with the relevant provisions of the planning scheme, including the NRZ1, the SLO7, HO296, Clauses 22.03 (Bush Environment preferred character) and 22.04 (Tree Conservation).

### ***Internal Fencing***

The modification of the internal fencing to the heritage dwelling is a consequence of the expanding POS area. Officers confirmed on a site inspection carried out on 20 November 2023 that the internal fencing was more than 50% constructed. The most recent aerial of the site (Figure 1) shows that the fence has since been completed.

## 10.1 (cont)

With the private open space (POS) area of the heritage dwelling increasing from 128.11m<sup>2</sup> to 170.77m<sup>2</sup>, the internal fencing has been extended 2.8 metres further east. This change facilitates a more functional POS area, while reducing the extent that the internal fencing encroaches within the 25 TPZ.



**Figure 5. Heritage Dwelling internal POS fencing**

The relocation of the internal fence, while increasing the POS area for future residents will also partially reduce the street profile of the heritage dwelling. This is due to its projection forward of this building, its limited transparency, and its height.

To ensure that sufficient street profile to the heritage dwelling is provided, Council's heritage advisor has recommended that spacings in between the fence's palings be increased equally to provide a minimum 40% transparency. This increased transparency is required for the eastern front elevation, and southern elevation that projects forward of the heritage dwelling. This modification can be addressed as a condition on any permit issued for the amended proposal. Subject to this change, the heritage dwelling internal POS fencing is acceptable.

Notwithstanding, residents raised concerns that the retrospective internal fence constructed is not a 'Hampton Style' feature fence design to complement the heritage dwelling as required by the permit. Council's heritage advisor indicates that 'Hampton Style' isn't an actual architectural term. It does however infer feature timber fencing with a level of transparency. In this regard, the fence is timber, and subject to the conditions will be at least 40% transparent.

### ***Footpath Treatment***

The footpath has also been modified to accommodate the proposed changes around the expanded POS of the heritage dwelling. This change has a negligible impact on the merits of the proposal, and is a necessary change to integrate with the proposed amendments of the heritage dwelling POS area. This change is considered to be acceptable.

## 10.1 (cont)

**Landscaping specific to the heritage dwelling**

**Figure 6. above: Heritage dwelling POS Landscaping** (Left: Proposed, Right: Approved)

The proposal amendments to landscaping are a consequence of the modifications made to the expanded POS area, the deck addition, the internal fencing and the modified footpath treatment. The proposed changes are acceptable and will continue meeting the expectations of the bush environment preferred character and significant landscape character principles of both Clause 22.03 (Residential Development) and the SLO7.

### **Clause 55 – Res Code**

In context of what is currently approved, the proposed amendments have been assessed against the specific requirements of Clause 55 (Res Code). Subject to conditions, the proposed amendments are considered to be a satisfactory planning response. Most relevant Res Code standards, B13 (landscaping) and B28 (Private Open Space) warrant further discussion as follows:

#### Standard B13 (Landscaping)

The objectives of Standard B13 include seeking to *‘encourage development that respects the landscape character of the neighbourhood; to encourage development that maintains and enhances habitat for plants and animals in locations of habitat importance; to provide appropriate landscaping; and to encourage the retention of mature vegetation on the site’*.

Additionally, the following provisions of Standard B13 expects that *‘development should provide for the retention or planting of trees, where these are part of the character of the neighbourhood; that development should provide for the replacement of any significant trees that have been removed in the 12 months prior to the application being made; that the landscape design should specify landscape themes, vegetation (location and species), paving and lighting; and that development should meet any additional landscape requirements specified in a schedule to the zone’*.

### 10.1 (cont)

As discussed earlier it is considered that the 7 proposed replacement canopy trees, along with 12-15 additional smaller canopy trees, will provide an acceptable landscape response to the bush-environment character of the locality and landscape policy expectations of the planning scheme. This landscape outcome will be consistent with the outcome provided by the originally endorsed landscape plan agreed at VCAT. Subject to conditions, the proposal will address Clauses 21.05 (Environment), 22.03 (Bush Environment preferred character), 22.04 (Tree Conservation), and the SLO7.

#### Standard B28 (Private Open Space)

The varied Res Code Standard B28 of the Neighbourhood Residential Zone (NRZ1) requires a minimum secluded private open space area of 40m<sup>2</sup>, with 35m<sup>2</sup> of this area: to be at least 5 metres wide; to be conveniently accessed from a living room, and must not include a balcony or roof top terrace.

The conditions concerning the private open space (POS) areas of all dwellings remain unchanged from what was originally approved, except the POS area of the heritage dwelling. The currently approved POS area of the heritage dwelling is compliant at 128.11m<sup>2</sup> in area. This POS area is proposed to be increased to 170.77m<sup>2</sup>, which will remain compliant with Standard B28.

#### **Objectors Concerns**

The following relates to matters raised by residents that have not yet already been discussed.

#### History, Tree Works and Landscaping

The unauthorised works and permit breaches that are subject to ongoing planning enforcement investigations, and that do not form part of the merits of this amendment application, have already been discussed.

Any restorative steps can be achieved through a Section 173 Agreement to deliver an outcome that reflects the extent of additional non-compliant tree removal. This may relate to a revegetation plan, ongoing maintenance and monitoring procedures, and potentially regular communication with Council officers. However, this would be through separate enforcement proceedings that are not a part of this amendment request.

Notwithstanding, unauthorised tree loss and proposed tree removal now results change required to the endorsed landscape plan. Normally when trees are removed from the site, the applicant is required to update their landscape plan to ensure that: there is no net loss of landscaping on site, that the preferred character policy relating to the area can still be addressed, and most to ensure accuracy in the plans and the permit. Replacement planting and amending the landscape plan has already been discussed in this assessment, and can be addressed as conditions on any permit issued for the proposal.

The merits of Tree 33 for removal has already been discussed earlier in this assessment.



### 10.1 (cont)

Council's endorsed Urban Forest Strategy sets out the actions that Council will take to increase tree canopy cover in Whitehorse, including increasing the tree canopy cover to 30% in Whitehorse by 2050. Subject to conditions on any permit issued for the proposal, the amendments to the endorsed landscape plan will adequately address the Urban Forest Strategy, noting however that this is not a decision guideline for this application.

#### Heritage dwelling (deck addition and internal POS fence)

The merits of the proposed deck extension have been discussed at length throughout this assessment. In summary, subject to conditions on any permit issued for the amended proposal, the deck extension can sufficiently comply with all relevant provisions of the planning scheme. This is from a heritage, site coverage, site permeability, and tree protection perspective.

Regarding the heritage dwelling internal fence, of 'Hampton Style' design this issue has been discussed earlier in this assessment. In summary, the fencing, design, appearance, height and location is acceptable, subject to the fence being at least 40% transparent to allow views to permeate to the heritage dwelling from the street.

#### Construction Period (rubbish and unauthorised works)

An endorsed construction management plan (CMP) forms part of the permit as required by Condition 18 of the permit. Any amenity related issues associated with the construction period is, and will continue to be, subject to planning enforcement investigations.

#### Insufficient information

Under Section 14 of the Planning and Environment Regulations 2015, an application for an amendment to a permit under Section 72 of the Act must be made in writing to the Responsible Authority and must state accurately the details of the applicant and land owner, the land and title particulars, reference to the permit being amended, details of what is being amended, the existing use of the land etc.

The application included a Section 72 amendment to permit application form, a cover letter, development and landscape plans, and arborist reports. The extent of information provided met the tests of the Act and Planning and Environment Regulations 2015, which meant that the application must be accepted, and must be considered. Council must accept an application that provides the minimum information required for lodgement.

Despite this, the absence of a planning report as part of the amendment application, could have provided the much needed clarity the residents were asking for. As stated earlier, ongoing planning enforcement proceedings have resulted in the extent of proposed tree removal changing over the course of the application. It is acknowledged that the changing facts of the proposal could create confusion to residents as a result .

### 10.1 (cont)

Residents have however been updated where possible throughout the application process, including the Forum where all parties had the opportunity to discuss the merits of the proposal in full.

#### Handling of the Process

Importantly, the proposal was advertised in the prescribed form in accordance with Section 52 of the Act in September 2023. The Section 57 amendment package (current iteration of the proposal), received on 6 November 2023 from the applicant, was circulated that same day to all resident objectors for their awareness and feedback. Council officers also advised residents at least 2 weeks in advance of the Forum Meeting that took place on 29 November 2023.

From a process perspective, Council offices have been highly transparent with residents, and have processed the application in accordance with the Act.

#### **CONCLUSION**

The proposal is for amending permit conditions and endorsed plans; address tree loss, replacement planting, and modifications to the heritage dwelling (footpath, internal fencing, deck addition and POS).




The proposal adequately responds to and satisfies the relevant provisions contained within the Whitehorse Planning Scheme, including the State and Local Planning Policies, the Neighbourhood Residential Zone (NRZ1). Subject to conditions, the proposed form, siting and overall design of the development will remain consistent with the existing and preferred neighbourhood character of the surrounding area, and protect the integrity of the heritage dwelling can be protected and restored from a heritage perspective.

This will be consistent with Clauses 12.04-2 (Landscapes), 16 (Housing), 21.05 (Environment), 22.01 (Heritage Buildings and Precincts), 22.04 (Tree Conservation), the Significant Landscape Overlay (SLO7), the Heritage Overlay (HO296), Clause 52.17 (Native Vegetation), and the bush environment preferred character policy contained with Clause 22.03 (Residential Development).

A total of 25 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, subject to the amended conditions recommended.

#### **ATTACHMENT**

- 1 History (Current Permit and Endorsed Plans) 
- 2 Proposed Amended Development Plans 
- 3 Proposed Amended Landscape Plans 



## 10.2 Engagement of Lead Design Consultant for Box Hill City Oval Redevelopment - Contract 30513

**Department** Major Projects  
Director Infrastructure

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Attachment

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### SUMMARY

This report recommends that a tender be accepted for Contract 30513 for Box Hill City Oval Redevelopment Lead Design Consultancy Services.

Box Hill City Oval is located at the corner of Middleborough Road and Whitehorse Road in Box Hill. This venue hosts the highest standard of Australian Rules Football (VFL and VFLW) and Cricket (Premier) in the municipality.

Box Hill City Oval is the home of the Box Hill Hawks Football Club and the Box Hill Cricket Club. Box Hill City Oval is also used for Eastern Ranges matches and educational programs through SEDA College, along with other casual bookings by various users. The southern pavilion can be booked for a range of community uses.

The northern pavilion building (on the western wing) was built in 1937 and has reached the end of its useful life, and the newer southern pavilion building has areas that do not meet current day player and gender requirements. It is proposed that the northern pavilion building be replaced with a new pavilion. The southern building is to be refurbished.

It is proposed that new north pavilion will provide accessible and inclusive change spaces and amenities, gym space, umpire amenities, community space and rooms, game day operation spaces and external spectator viewing area improvements. The refurbishment of the southern pavilion building will upgrade the player amenity standards and create a more gender equitable facility.

To facilitate this project, a Lead Design Consultant Services Contract is required. It is recommended that the tender from HB Arch Pty Ltd be accepted.

## 10.2 (cont)

**RECOMMENDATION**

That Council:

1. Accepts the tender and signs the formal Contract document for Contract 30513 for the Box Hill City Oval Redevelopment Lead Design Consultancy Services for the tender received from HB Arch Pty Ltd (ABN30 619 593 681), of 134 Surrey Road Blackburn VIC 3130, trading as HB Architects, for the tendered amount of \$1,106,305.20, including GST; as part of the total expected project expenditure of \$27,610,000, including GST.
2. Authorises expenditure against contingencies in accordance with amounts and authorisations detailed in Confidential Attachment 2.

**KEY MATTERS**

Council has decided to renew the northern pavilion and refurbish the southern pavilion at Box Hill City Oval. Substantial external funding from both the Commonwealth and State Governments has been received to support this project.

To progress the project, the services of a lead design team are required. The lead design team encompasses all design elements of the project. The project delivery model has been designed as a novated design and construct model whereby the lead design team will be novated to a building contractor during the design phase as a mechanism to manage project costs and risks. A similar model was used for The Round project.

To ensure Council receives value for money from this Contract, the project team considered the tender submissions prices against the project budget estimate of cost, provided by an independent Quantity Surveyor.

**STRATEGIC ALIGNMENT**

The Box Hill City Oval redevelopment project contributes towards the strategic direction of the Council Plan in the following areas.

- Diverse and Inclusive community – 3.1 Increase social inclusion, community participation and access to community services.
- Our Built Environment, movement and public places - 4.1 Assets, facilities and urban design of a quality that provides the highest levels of utility and enhances the connection between the built, natural, heritage and social environments.
- Our Built Environment, movement and public places - 4.3 Provide active public spaces which are accessible by all, where people feel safe and connected with others in the community.
- Sustainable Climate Change and Environmental Care - 5.1 Take a leadership role in tackling climate change.

## 10.2 (cont)

- An Empowered Collaborative Community – 6.1 Engage with the community collaboratively and in partnership to hear their views on what needs to be done.
- Health and Wellbeing - 7.1 Address the inequalities in health outcomes through advocacy and offering affordable options in programs and services, services tailored to the individual and easily accessible information about services available in our neighbourhoods.

### **Policy**

The tender evaluation for this Contract has been conducted in line with Council's Procurement Policy and a tender evaluation report has been completed.

### **Background**

On 12 December 2023 tenders for Lead Design Consultants were requested from eight leading architectural consultancies listed in the State Government Construction Supplier Register (CSR) with similar project experiences.

The Request for Tender closed on 23 January 2024. Three tenders were received.

The tenders were evaluated against the following criteria:

- Cost to Council – 35%
- Capability – 30%
- Credibility – 25%
- Local Content – 5%
- Social and Environmental Sustainability – 5%
- Occupational Health & Safety and Equal Opportunity - Pass/Fail

The Tender Evaluation Panel (TEP) conducted a three staged evaluation process that included an initial evaluation of the tenders including lump sum price provided, tender departures and a Best and Final Offer to arrive at a pre-interview score. The TEP interviewed HB Arch Pty Ltd. The TEP met in the presence of the project's Probity Advisor, from Council's Procurement Department.

At the conclusion of the three-stage tender evaluation and interview process, the TEP recommends that the tender from HB Arch Pty Ltd be accepted as it is assessed to provide the best value for money for this Contract (see Confidential Attachment 1: Tender Evaluation Report).

### **SUPPORTING REPORT DETAILS**

#### **Legislative and Risk Implications**

HB Arch Pty Ltd took part in a Standard Financial Assessment by Corporate Scorecard from Equifax. The scope of a Detailed Financial Assessment (Procurement) included the analysis of historical Financial Statements covering the last three (3) reporting periods, as well as the latest Management Accounts.

## 10.2 (cont)

Based on information obtained, HB Arch Pty Ltd was assigned a 'marginal' financial capacity rating. Risk mitigation advice was provided by the Coordinator Procurement who was acting in the capacity of Probity Advisor.

Although the proposed contract represents minimal operational risk, and there is limited requirement for protection against HB Arch Pty Ltd the project team did seek legal advice from Maddocks Lawyers to confirm. This view was confirmed by Maddocks Lawyers, however additional safeguards were proposed to be added to the contract between HB Arch Pty Ltd and Whitehorse City Council.

Any programming risks arising from engaging the Lead Design Team will also be mitigated through appropriate conditions included in the Contract.

### **Consultation**

In early 2021 Council consulted with the community on design proposals for a renewed northern pavilion and changes to the southern pavilion at Box Hill City Oval. A range of other elements in Bolton Park and the broader Box Hill City Oval environs were considered at the time. Council endorsed a preferred approach at its meeting in March 2021 and this outcome was feedback to the community.

Since the decision in March 2021 there have been a range of meetings and discussions with the key tenant users of Box Hill City Oval. This resulted in the development of a design brief aimed at meeting the needs of Council and the tenant users, while providing opportunities for increased utilisation and community use of the upgraded facilities. There has been an exploration of potential new users of the facility to inform the design needs.

The Lead Design Consultancy brief, establishing project timelines and assessing project risks have been a collaborative effort across Council. The tenant clubs and Council have worked to secure external funding.

A communications plan is being prepared to inform engagement activities as the project moves into its next phase.

Council's Procurement team has been consulted extensively to ensure that the procurement is compliant with the Procurement Policy.

### **Collaboration**

The project team has collaborated with the Commonwealth and State Government funding officers regarding the finalisation of funding agreements for the project.

### **Financial and Resource Implications**

The total project budget for Box Hill City Oval Redevelopment is \$25.1 million to deliver all elements associated with the northern and southern pavilions. The Commonwealth and State governments have pledged \$13.6 million and \$6 million respectively in funding. Council has allocated \$5.5 million to the project. This is a Lump Sum contract.

## 10.2 (cont)

	Budget	Expenditure
Capital Works Funding Account No. C120007	\$5,500,000	
State Government Funding	\$6,000,000	
Commonwealth Government Funding	\$13,600,000	
Total Budget	\$25,100,000	
Preferred tenderer's lump sum offer (incl GST)		\$1,106,305.20
Less GST		-\$100,573.20
Net cost to Council		\$1,005,732
Plus other Costs related to this project**		\$24,094,268
Total Expenditure		\$25,100,000

\*\* Other costs related to the project include items like, demolition, project construction costs, project contingencies, other development costs (potential contamination), project escalation, consultant fees and project management fees. Confidential Attachment 2: outlines budget and contingency items.

Quotations for the appointment of a Quantity Surveyor, Building Surveyor and Probity Auditor have been received and are currently being evaluated. These services will be available and ready to engage with the Lead Design Consultancy Team upon its appointment.

### Discussion and Options

Commonwealth and State governments are providing contributions towards this project in accordance with relevant funding agreements. Discussions have taken place with Commonwealth Government funding officers regarding the project milestones and funding milestones.

### Conflict of Interest

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

### Conclusion

The recommended Lead Design Team has demonstrated its ability to deliver a number of similar scale projects in the sports and recreation sector and provides best value to Council.

Once the Lead Design Consultancy contract is awarded, the design process will commence. It is expected that the project timelines will see construction commence early August 2025 for completion in late 2026/early 2027.

### ATTACHMENT

- 1 C07 Tender Report - Confidential Attachment All Tenders over \$500k  
Whitehorse City Council designates this attachment and the information contained in it as **CONFIDENTIAL INFORMATION** pursuant to Section 3(1)(g)(ii) of the *Local Government Act 2020*.
- 2 Contingency Confidential Report  
Whitehorse City Council designates this attachment and the information contained in it as **CONFIDENTIAL INFORMATION** pursuant to Section 3(1)(g)(ii) of the *Local Government Act 2020*.

### 10.3 Impacts on Council's Insurance Program

**Department** Governance and Integrity  
Director Corporate Services

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#### SUMMARY

In pursuit of Council's commitment to robust financial management and risk mitigation, Council has an insurance portfolio to protect its assets and services designed for events of loss or harm that happen by chance and are beyond the control of the Council.

As a vital component of the Council's overall risk management strategy, the insurance portfolio plays a crucial role in protecting financial impacts to Council and the community.

The Insurance Broking Services Contract 30222 was awarded to Aon Risk Services at the Council meeting of 24 February 2020 as follows:

1. Acceptance of the tender received from Aon, for the annual service fee amount of \$32,450 including GST for a period of three years commencing on 1 July 2020
2. Authorise the General Manager Corporate Services to execute all insurance policies that result from the brokerage services contract up to the value of \$7M expenditure over the life of the contract.

For context, the \$7M stated amount within the original council report of 24 February 2020, did not indicate if the amount included or excluded GST, therefore for transparency and disclosure the \$7M stated amount will be considered not to include GST.

Due to several factors outlined in this report, the original projected and authorised expenditure of \$7M by Council in 2020 for the placement of Council's insurances is inadequate for the final year of the contract. The shortfall is approximately \$600K.

There is no impact to the Contract or Council's budget, the report is seeking the ability for the Director Corporate Services to place the Insurances for 24/25 for up to \$1.9M.

## 10.3 (cont)

**RECOMMENDATION**

That Council:

1. Notes the impacts of the insurance market on Council renewal of insurances and since the acceptance of the tender Council has made budget provisions for increases in line with market trends each financial year.
2. Authorises the Director Corporate Services to execute the final placement of insurance policies through the AON brokerage services contract up to \$1.9M (including GST) in total for the 2024/25 insurance year.

**KEY MATTERS**

There have been unforeseen challenges and impacts of a progressively hardening insurance market locally and internationally, that have impacted on the anticipated expenditure of this contract since the initial report to council on 24 February 2020. The impacts are a result of these key themes:

- Significant increase in natural disasters locally and worldwide impacting the market.
- Floods/fires such as floods in QLD/NSW that continue to financially impact insurers with estimated \$6.3 billion insurable loss.
- Long term pandemic lockdowns created labour and material shortages resulting in premiums increases to in claims costs.
- Insurers have increased premiums by an average of 20% each year, over the last 3 years. It is anticipated this will continue to increase in the next financial year.
- An Inflationary environment locally and internationally.
- Insurers choosing to either withdrawing from the market altogether or seeking to share with risk with other insurers, increasing the overall costs and fees.
- Increase in ransomware attacks in government sector (increased by 300% since the end of 2018).
- Increases in costs of investigations, legal fees in Councillors & Officers, Crime and Statutory Liability claims.
- Council building assets post major projects/refurbishments have increased in replacement value have contributed to an increase building insurance.

It is anticipated that these factors will continue to impact council insurance costs for the 24/25 insurance year.

10.3 (cont)

### **STRATEGIC ALIGNMENT**

This report aligns with the Strategic Direction 1 of the Council Plan. Council who is a well trusted organisation embraces innovation who also delivers long-term financial sustainability through the ongoing analysis of insurance renewal program to obtain best price and coverage for council.

### **BACKGROUND**

Council at its meeting on 24 February 2020, resolved to accept the tender for contract 30222, Insurance Broking Services from Aon Risk Services.

Following the initial three-year term commencing from 27 March 2020, Council exercised the option to extend the contract for two years. The contract is due to expire on 27 March 2025.

Council authorised the Director (previous title of General Manager) Corporate Services to execute all insurance policies that result from the brokerage services for the following classes:

- Industrial Special Risk (building assets)
- Corporate Practices Statutory Liability
- Personal Group Accident (Volunteers)
- Councillors and Officers Liability
- Corporate Travel
- Crime
- Fleet
- Fine Arts
- Community Liability
- Cyber

The insurance broking services contract with Aon is now in the final year and the original estimated total value of \$7M over the life the contract will be exceeded.

### **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.



## 10.3 (cont)

**Financial and Resource Implications**

Council's adopted budget continues to reflect and incorporate current trends and estimates from Council's broker to inform budget. The fluctuations in the insurance market over the last few years have made estimation of the total spend on this contract challenging.

This is not a request for further funding or contract variation, it is to give further authorisation to the Director Corporate Services to execute Council's insurance policies beyond the originally authorised total value of \$7M (including GST) to the estimated additional amount of \$600K to place the final insurance renewal for 24/25 year through the Aon insurance broking contract.

At the date of this report, the total amount paid through the Aon contract is \$5,652,453 (including GST).

The total insurance spends estimated for the 24/25 insurance renewal is predicted to be a total spend of \$1.9M (including GST). Therefore, an estimated shortfall of \$600K.

**Innovation and Continuous Improvement**

A continuous improvement project was undertaken in 2022-2023 to strategically review council's deductibles, limit of liability, and appropriate coverage of council's 10 policy lines. Council has made cost avoidance through adjusting excess levels. The focus for the 24-25 renewal is the significant review of building contents values across all council owned buildings.

**Conflict of Interest**

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

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

**Conclusion**

Council engages a broker to place insurance for the 10 policy lines each financial year. Placement of this insurance is necessary to ensure appropriate financial risk transfer coverage for council in the event of an incident. Due to unforeseen events, such as Covid, tightening insurance market, natural weather disasters, Council authority is required to extend the ability of the Director of Corporate Services to execute the insurance policies for the final year under this contract.

## 10.4 Draft Governance Rules and Election Period Policy

**Department** Governance and Integrity  
Director Corporate Services

Attachment

### SUMMARY

Pursuant to the *Local Government Act 2020* (the Act) Council is required to have a set of rules that governs the meeting procedures for Council Meetings and Delegated Committee Meetings known as the Governance Rules.

Council is required by section 69 of the Act to include an Election Period Policy in its Governance Rules. With a Local Government General election being held in October 2024 a review the Election Period Policy has been undertaken.

The Election Period Policy (Chapter 6 of the Governance Rules) has been reviewed with significant updates proposed to ensure that an appropriate level of transparent, fair and equitable guidance is provided to Councillors, candidates and Council staff in the conduct of Council business during the Election Period.

As the Governance Rules must be amended in order to update the Election Period Policy, this opportunity has been taken to also review the Governance Rules in their entirety.

Aside from the changes to the Election Period Policy at Chapter 6, minor changes have been proposed for Chapter 2 – Procedure for Council Meetings. Grammatical and formatting changes that do not alter the substance of the document have also been made throughout.

The draft Governance Rules at Attachment 1 are presented for Council endorsement prior to community consultation. Following consideration of community feedback, the final Governance Rules will be presented for consideration and adoption at a Council meeting in June 2024.

### RECOMMENDATION

That Council:

1. Endorses the revised draft Governance Rules (inclusive of the Election Period Policy) for the purposes of community consultation.
2. Notes that community consultation on the revised Governance rules will commence in April for a period of 21 days.
3. Notes that a report will be presented in June 2024 to consider and adopt the final Whitehorse City Council Governance rules in accordance with section 60 of the *Local Government Act 2020*.

## 10.4 (cont)

**KEY MATTERS**

- Council must include an Election Period Policy in its Governance Rules under section 69 of the Act
- In the interests of good governance, the Election Period Policy should be updated prior to a general election.
- In conducting the review resources from the Local Government Inspectorate, including examples of best-practice policies, were consulted.
- Benchmarking with neighbouring Councils was also undertaken.
- The Governance Rules must be updated when the Election Period Policy is updated, therefore the Governance Rules are presented for endorsement for community consultation

**SUMMARY OF PROPOSED CHANGES****Election Period Policy (Chapter 6)**

The Election Period Policy has undergone significant review, following are the main modifications:

- Inclusion of definitions and key terms table
- Council decisions
  - Prohibited decisions section added
  - More prescriptive rules added for Council meetings held during the Election Period
- Council resources
  - Additional section added clarifying access to resources for normal Councillor duties
- Public consultation
  - Additional paragraph clarifying consultation required under Planning and Environment Act 1987 and section 223 of the Local Government Act 1989.
- Council publications and media
  - Permitted publications have been specified
  - New sections added outlining appropriate use of Council media services
- Events
  - Additional guidance to clarify operation and publicity of Council and external events
  - Clarification for Mayor and/or Councillor/s in relation to attendance at events

## 10.4 (cont)

- Campaign publicity
  - Rules for election signage have been added
  - Inclusion of prohibited campaigning on municipal land or roads
  - Inclusion of appropriate use of 'Councillor' title
- Assistance to candidates
  - Outline of access to information
  - Section added for public transparency of information requested and provided
- Policy Administration
  - New section added

**Procedure for Council Meetings (Chapter 2)**

Changes to Chapter 2 are marked up in Attachment 2 and summarised below:

- Rule 10            **Election of Mayor**  
Changes made where there is no absolute majority the process to eliminate will include a further vote prior to final determination by lot. (Noting that a lot may still be required in certain circumstances)
- Rule 16            **Notice of meeting**  
Reference to publishing notice of Council meeting in a newspaper has been removed from sub-rule 16.3(b) as this is no longer practice.
- Rule 22            **Agenda and Order of Business**  
Removal of Order of Business at sub-rule 22.2 to allow flexibility of meeting structure without requiring an update of the Governance Rules.
- Rule 26            **Notice of Motion**  
Removal of sub-rule 26.5, which stipulated that Notices of Motion must be considered in the order received.
- Rule 30            **Right of Reply**  
Removal of the words '*including an amendment*' from sub-rule 30.1, as it conflicts with sub-rule 31.4(e) where the current practice provides that the mover of an amendment does not have a right of reply.

## 10.4 (cont)

- Rule 37            **Separation of motions**  
Wording added to outline that 'voting in parts is not applicable for Rescission Motions'.
  
- Division 8        **Presentation**  
Renamed to 'Public submissions' to clarify all forms of public participation.
  
- Rule 57            **Public presentations**  
Renamed to 'Request to speak' this provides better clarity to members of the public when addressing Council.  
Inclusion of guidelines for 'Request to speak' at 57.7.
  
- Rule 59            **Petitions**  
References to 'joint letters' has been removed as the rules for petitions and joint letters are the same.  
Wording at sub-rule 59.3(b) clarified to ensure that petitions contain a specific request for action  
Sub-rule 59.3(d) added to ensure petition request is within duties, functions and powers of Council.
  
- Rule 64            **Voting procedure**  
New specifications at sub-rule 64.2 regarding voting procedure, including the recording of names of Councillors voting in the affirmative and negative

**STRATEGIC ALIGNMENT**

The recommendation of this report aligns with Objective 8.3 of the Council Plan 2021-2025, Good Governance and Integrity, which states:

*Compliance with Council policies, legislative requirements and regulations needs to be maintained and upheld.*

**BACKGROUND**

Council is required to have a set of Governance Rules that determine procedures for Council Meetings and Delegated Committee Meetings. The Governance Rules were last updated in December 2022 to allow Councillors and members of Delegated Committees to attend meetings via electronic means.

Council is required by section 69 of the Act to include an Election Period Policy in its Governance Rules prohibiting Council decisions or the use of Council resources which may influence voting during the Election Period. In the interests of good governance, the Election Period Policy should be updated within 12 months prior to a Local Government General Election.

## 10.4 (cont)

The next Local Government General Election will be held on 26 October 2024 and the Election Period Policy has been revised accordingly. As the Election Period Policy comprises Chapter 6 of the Governance Rules, any update of the Election Period Policy requires that the Governance Rules also be updated. The revised Governance Rules are presented for consideration at Attachment 1.

### **SUPPORTING REPORT DETAILS**

#### **Legislative and Risk Implications**

- Section 60(1) of the Act requires Council to maintain a set of Governance Rules to determine procedures for Council and Delegated Committee meetings.
- Section 69 of the Act prescribes that the Governance Rules must include an Election Period Policy.
- Section 60(4) of the Act specifies that a process of community engagement must be followed in developing or amending the Governance Rules.
- Amending the Governance Rules in accordance with the recommendation contributes to the integrity of the election process.

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

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

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

#### **Community Engagement**

In accordance with Council's Community Engagement Policy, should Council endorse the Draft Governance Rules as per the recommendation of this report, community consultation will be undertaken for a period of 21 days.

#### **Financial and Resource Implications**

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

#### **Innovation and Continuous Improvement**

The proposed changes to the Governance Rules will improve processes for public participation in Council Meetings, and improve the level of guidance provided to Councillors, candidates and Council staff in the conduct of Council business in a transparent and equitable manner during the Election Period.

#### **Collaboration**

Benchmarking with adjoining Councils was undertaken and reference was made to the Local Government Inspectorate sample council policies.

## 10.4 (cont)

**Conflict of Interest**

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


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

**Conclusion**

It is recommended that the Draft Governance Rules at Attachment 1 are endorsed for community consultation.

Following consideration of community feedback, a further report will be presented at a Council meeting in June 2024 to consider and adopt the final Whitehorse City Council Governance Rules in accordance with section 60 of the Act.

**ATTACHMENT**

- 1 Whitehorse City Council Draft Governance Rules - no markup 
- 2 Whitehorse City Council Draft Governance Rules - marked up copy 

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**10.5 S5 Instrument of Delegation to the Chief Executive Officer and S6 Instrument of Delegation from Council to Members of Council Staff**

**Department** Governance and Integrity  
Director Corporate Services

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Attachment

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**SUMMARY**

There are numerous statutes conferring a responsibility on councils to take action or determine matters, and it is not practical for the Council or the Chief Executive Officer (CEO) alone to exercise the many statutory powers bestowed on Council.

Instruments of Delegation represent the formal delegation of powers by Council under Section 11 of the *Local Government Act 2020* and enable the business of Council to be carried out efficiently and in line with Council approved policies.

Council subscribes to Maddocks (Lawyers) Delegations and Authorisations InDepth Service which provides a range of schedules for Council to utilise and modify according to organisational needs in line with relevant legislation. In February 2024 Maddocks released updates to the delegation schedules.

One of the instruments that Maddocks prepare in their service is the Instrument of Delegation from Council to Members of Council Staff, also known as Schedule 6 or S6, the S6 was last adopted by Council on 26 June 2023.

The revised S6 Instrument of Delegation from Council to Members of Council Staff (Attachment 2) is presented to Council for consideration and provides a schedule of the legislation that only Council can delegate directly to Members of Council staff, and that the Chief Executive Officer is unable to sub delegate under the *Local Government Act 2020*.

The S5 Instrument of Delegation to the Chief Executive Officer (Attachment 1) is also included for review. Although there are no material updates to this instrument, it is advised by Maddocks that the Instrument of Delegation to the CEO should be remade whether there are any changes or not, noting that there have been some minor clerical amendments.



## 10.5 (cont)

**RECOMMENDATION**

That Council:

1. In the exercise of the power conferred by s 11(1)(b) of the *Local Government Act 2020 (the Act)*, resolves that:
  - a) There be delegated to the Chief Executive Officer the powers, duties and functions set out in the S5 Instrument of Delegation to the Chief Executive Officer, subject to the conditions and limitations specified in that Instrument.
  - b) There be delegated to the members of Council staff holding, acting in or performing the duties of the offices or positions referred to in the S6 Instrument of Delegation from Council to Members of Council staff, the powers, duties and functions set out in that instrument, subject to the conditions and limitations specified in that Instrument.
2. Resolves that the S5 Instrument of Delegation(S5) and the S6 Instrument of Delegation (S6) comes into force immediately upon this resolution being made. The S5 is to be signed by the Mayor and the Chief Executive Officer and the S6 is to be signed by the Chief Executive Officer.
3. Notes that upon the instrument coming into force, all previous delegations to the Chief Executive Officer and members of Council staff are revoked.
4. Notes the duties and functions set out in the instruments must be performed, and the powers set out in the instruments must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt.

**KEY MATTERS**

Instruments of Delegation represent the formal delegation of powers by Council and enables the business of Council to be carried out efficiently, effectively and in line with Council approved policies.

Delegations are assigned to positions within Council rather than to natural people. When executing power under delegation, all staff are also limited and bound by Council policies and procedures.

The S6 Instrument of Delegation from Council to Members of Council Staff is used by a Council to delegate to members of its staff those powers that are contained in legislation which have their own power of delegation (but no express power of sub-delegation).

The legislation captured in the S6 Instrument of Delegation from Council to Members of Council Staff includes the following:

- Domestic Animals Act 1994
- Food Act 1984, Heritage Act 2017
- Local Government Act 1989
- Planning and Environment Act 1987

### 10.5 (cont)

- Residential Tenancies Act 1997
- Road Management Act 2004
- Planning and Environment Regulations 2015
- Planning and Environment (fees) Regulations 2016
- Road Management (General) Regulations 2016, and the Road Management (Works and Infrastructure) Regulations 2015.

Where the powers under legislation are not required to be delegated, the column 'delegate' is populated with 'not delegated'.

As per advice received from the Maddocks Delegation and Authorisation In Depth Service, the regular review of delegations, irrespective of changes, is important for the good governance of Council and ensures that Council regularly reviews their delegated powers and that legislative reform and organisation restructures are captured.

Regular review also promotes transparency and accountability to the community on the powers, duties and functions of Council to all staff, including the Chief Executive officer.

The S5 Instrument of Delegation from Council to the Chief Executive Officer is at Attachment 1 of this report, and the S6 Instrument of Delegation from Council to Members of Council Staff is at Attachment 2.

## **STRATEGIC ALIGNMENT**

This report aligns with Strategic Direction 8 of the Council Plan 'Governance and Leadership' specifically Objective 8.3 Good Governance and Integrity, which is focused on compliance with Council policies, legislative requirements and regulations.

## **BACKGROUND**

Council last reviewed and adopted the S6 on 26 June 2023. In February 2024 Maddocks, via their InDepth Service, released amendments to the S6 and other instruments in accordance with legislative change and reform.

## **SUPPORTING REPORT DETAILS**

### **Legislative and Risk Implications**

Council is not a natural person and therefore, on a practical level, must undertake its responsibilities through others, usually through Council officers. Delegation of a Council power enables a member of Council staff to act on behalf of Council and allows for the effective day-to-day functioning of Council.

Reviewing Council's delegations ensures Council continues to comply with its obligations under various Acts and Regulations and enables the business of Council to be carried out efficiently.

Updating and managing instruments of delegation ensures compliance with Section 11 of the *Local Government Act 2020*.

Councils are required to maintain a register of all instruments of delegation that are in force in accordance with s11 of the *Local Government Act 2020*.

10.5 (cont)

### **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.

### **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**

Relevant departments across the organisation have been involved in the consultation process to inform the relevant positions within Council to be delegated the duties, powers and functions under each respective piece of legislation.

### **Conflict of Interest**

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



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

### **Conclusion**

Delegations are necessary to facilitate the effective functioning of Council by enabling the Chief Executive Officer and officers to make day-to-day decisions about routine administrative and operational matters.

It is recommended that Council resolves to authorise the Mayor to execute the S5 Instrument of Delegation to the Chief Executive Officer, and the Chief Executive Officer to execute the S6 Instrument of Delegation from Council to Members of Council Staff.

### **ATTACHMENT**

- 1 S5 Instrument of Delegation to Chief Executive Officer 
- 2 S6 Instrument of Delegation from Council to Members of Council Staff 

## 10.6 Records of Informal Meetings of Councillors

**Department** Governance and Integrity  
Director Corporate Services

### RECOMMENDATION

That Council receives and notes the Records of Informal Meetings of Councillors.

Pre-Council Meeting Briefing 26 February 2024 – 6.30pm – 6.45pm		
Matter/s Discussed:	Councillors Present	Officers Present
<ul style="list-style-type: none"> <li>• Public Presentations</li> <li>• Petitions</li> <li>• Council Agenda Items – 26 February 2024</li> </ul>	Cr Massoud (Mayor & Chair)	S McMillan
	Cr Barker	S Cann
	Cr Carr	J Green
	Cr Cutts	L Letic
	Cr Lane	S Sullivan
	Cr Liu	S White
	Cr McNeill	V Ferlaino
	Cr Munroe	K Woods
	Cr Skilbeck	
	Cr Stennett	
	<b>Leave of Absence</b>	
	Cr Davenport (Deputy Mayor)	
	<b>Others Present:</b> N/A	
<b>Disclosures of Conflict of Interest:</b> Nil		

## 10.6 (cont)

<b>Special Councillor Briefing Meeting Monday 4 March 2024 – 6.30pm-9.19pm</b>		
<b>Matter/s Discussed:</b>	<b>Councillors Present</b>	<b>Officers Present</b>
<ul style="list-style-type: none"> <li>• 2024/2025 Budget</li> <li>• Waste and Recycling Fees and Charges 2024/2025</li> <li>• Whitehorse Open Space Strategy</li> </ul>	Cr Massoud (Mayor & Chair)	S McMillan
	Cr Davenport (Deputy Mayor)	S Cann
	Cr Barker	J Green
	Cr Carr	L Letic
	Cr Cutts	S Sullivan
	Cr Lane	S White
	Cr Liu	C Clarke
	Cr McNeill	S Kinsey
	Cr Munroe	T Jenvey
	Cr Stennett	C Bolitho
	<b>Apology</b>	I Wang
	Cr Skilbeck	W Wang
		N Lu
<b>Others Present for Item 3:</b>		
J Thompson. Director, Thompson Berrill Landscape Design Pty Ltd		
E Kaye, Director, Environment & Land Management Pty Ltd		
<b>Disclosures of Conflict of Interest: Nil</b>		

<b>Special Councillor Briefing Sunday 17 March 2024 – 9.00am-3.32pm</b>		
<b>Matter/s Discussed:</b>	<b>Councillors Present</b>	<b>Officers Present</b>
<ul style="list-style-type: none"> <li>• Update on 4-Year Budget and Economic Update</li> <li>• Close out 24/25 Budget - WSC</li> <li>• Update on 10-Year capital works</li> <li>• Financial Sustainability:</li> <li>• Open Space Reserve</li> <li>• Aqualink Update</li> <li>• Strategic Organisational Update</li> <li>• Tech Transformation</li> <li>• ERP Benefits &amp; Evaluation</li> <li>• Directorate Presentations on FY2024/2025</li> <li>• Draft 25 March Council Meeting Agenda</li> </ul>	Cr Massoud (Mayor)	S McMillan
	Cr Davenport (Deputy Mayor)	S Cann
	Cr Barker (left 3.17pm)	J Green
	Cr Carr	L Letic
	Cr Cutts	S Sullivan
	Cr Lane	S White
	Cr Liu	N Brown
	Cr McNeill	C Bolitho
	Cr Munroe	S Kinsey
	Cr Skilbeck	V Ferlaino
	Cr Stennett	
	<b>Others Present: Nil</b>	
<b>Disclosures of Conflict of Interest: Nil</b>		

**11 Councillor Delegate and Conference / Seminar Reports**

**11.1 Reports by Delegates and Reports on Conferences / Seminars Attendance**

**Department** Governance and Integrity  
Director Corporate Services

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Verbal reports from Councillors appointed as delegates to community organisations/committees/groups and attendance at conferences and seminars related to Council Business.

**RECOMMENDATION**

That Council receives and notes:

1. Reports from delegates, and;
2. Reports on conferences/seminars attendance.

**12 Confidential Reports**

**13 Close Meeting**