

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11507/2021
PERMIT APPLICATION NO. WH/2019/200

CATCHWORDS

Fifteen storey mixed use building; Weight to be given to future Suburban Rail Loop; Shadow impact to Whitehorse Road central median open space; Built form; Screening to rear hotel; Wind effects; Environmentally Sustainable Design.

APPLICANT	Australia Poly (Whitehorse Box Hill) Pty Ltd
RESPONSIBLE AUTHORITY	Whitehorse City Council
RESPONDENT	Nedlow Nominees Pty Ltd
SUBJECT LAND	941-951 Whitehorse Road, BOX HILL VIC 3128
HEARING TYPE	Hearing
DATES OF HEARING	28, 29, 30, 31 March and 4 April 2022
DATE OF ORDER	5 April 2022
CITATION	Australia Poly (Whitehorse Box Hill) Pty Ltd v Whitehorse CC [2022] VCAT 369

ORDER

Amend VCAT application

- 1 Pursuant to section 127 of the *Victorian Civil & Administrative Tribunal Act 1998*, the address of the land related to the application is amended from 941-945 Whitehorse Road, Box Hill to:
941-951 Whitehorse Road, Box Hill.

Amend permit application

- 2 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

Prepared by: Elenberg Fraser Architects

Drawing numbers: A0000 Rev D, A0001 Rev C, A0093 Rev D, A0096 Rev D, A0097 Rev D, A0098 Rev D, A0099 Rev D, A0100 Rev D, A0101 Rev C, A0102 Rev C, A0103 Rev C, A0104, Rev C, A0105 Rev C, A0110 Rev A, A0111 Rev A, A0112 Rev A, A0113 Rev A, A0114 Rev C, A0115 Rev C, A0120 Rev B, A0900 Rev D, A0901 Rev D, A0902 Rev D, A0903 Rev D, A0910 Rev C, A0950 Rev C, A0951 Rev C &

A0952 Rev D
Dated: 31/01/22
Drawing numbers: A0911 Rev A & A0912 Rev A
Dated: 07/07/21
Drawing number: A0120 Rev B
Dated: 08/02/22

Permit granted

- 3 In application P11507/2021, the decision of the responsible authority is set aside.
- 4 In planning permit application WH/2019/200 a permit is granted and directed to be issued for the land at 941-951 Whitehorse Road, Box Hill in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of a building and construction and carrying out of works in the Commercial 1 Zone.
 - Reduction of the office car parking requirement specified in the Parking Overlay, Schedule 1, and reduction of the retail car parking requirement specified in clause 52.06 of the Whitehorse Planning Scheme.

Rachel Naylor
Senior Member

Judith Perlstein
Member

APPEARANCES

For Australia Poly (Whitehorse
Box Hill) Pty Ltd (**the applicant**)

Mr S Morris, QC and Ms C Robertson of
counsel instructed by Gadens

They called the following expert witnesses:

- Mr B Raworth, conservation consultant & architectural historian;
- Mr T Biles, town planner and urban designer of Ratio; and
- Mr T McBride-Burgess, town planner of Contour Consultants Aust.

They also tendered the following expert evidence statements as neither the parties nor the Tribunal wished to cross-examine these witnesses:

- Mr J Walsh, traffic engineer of Traffix Group; and
- Mr B Watson of Pointilism Pty Ltd in regard to the preparation of the photomontages.

For Whitehorse City Council (**the Council**)

Mr D Wong, solicitor of Planology

For Nedlow Nominees Pty Ltd

Mr S Capannolo

INFORMATION

Land description	<p>The site comprises of four lots known as Nos. 941-945, 947, 949 and 951 Whitehorse Road. In combination, these lots have a 31.09m Whitehorse Road frontage and depth of about 45.72m and a total area of 1,421sqm.</p> <p>The front of each lot contains a commercial premises and the rear of each lot generally contains at grade car parking, except for No. 951. This lot has had additions undertaken creating a first floor at the front of the site and a two storey rear addition built to both side boundaries that extends to the rear interface with Hiltons Lane.</p> <p>The rear of the site slopes down to Hiltons Lane in the order of about one metre.</p>
Description of proposal	<p>Construction of a 15 storey building with loading, services and five levels of basement car parking accessed via Hiltons Lane. The building contains two ground floor retail (food and drink) premises, a further three levels of retail floor space and offices on the remaining levels.</p> <p>The amended plans before the Tribunal have lowered the building and introduced a stepping to the upper levels of the building in response to the potential shadow impact on the open space in the Whitehorse Road central median.</p>
Nature of proceeding	<p>Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time.¹</p> <p>The Council subsequently decided that it would have refused to grant a permit.</p>
Planning scheme	Whitehorse Planning Scheme

¹ Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.

Zone and overlays	<p>Commercial 1 Zone (C1Z)</p> <p>Parking Overlay Schedule 1 – Box Hill Activity Centre (PO1)</p> <p>The adjoining property to the east at No. 953 Whitehorse Road is contained within a site specific Heritage Overlay HO116</p> <p>Whitehorse Road is located within a Transport Zone with the purpose being Principal road network (TRZ2)</p>
Permit requirements	<p>Clause 34.01-4 To construct a building and to construct or carry out works in C1Z</p> <p>Clause 52.06-3 To reduce the office car parking requirement specified in PO1 and to reduce the retail car parking requirement specified in clause 52.06.²</p>
Tribunal inspection	<p>An unaccompanied inspection of the site and surrounds was undertaken at the start of day 2 of the hearing. The Tribunal’s observations of that inspection were shared with the parties at the resumption of the hearing on day 2.</p>

² The Council’s submission explains PO1 requires 120 car spaces for 6,001sqm of net office floor area and clause 52.06 requires 118 car spaces for the 3,399 square metres of leasable shop and food and drink premises floor area. A total of 238 car spaces are required for the whole development and 139 spaces are provided.

REASONS³

Overview

- 1 The applicant seeks a review of the failure by the Council to grant a permit within the prescribed time for a 15 storey building containing retail and office floor space as well as food and drink premises on the ground floor at Nos. 941-951 Whitehorse Road, Box Hill.
- 2 Nedlow Nominees owns a significant, individually listed heritage building next door (to the east) at No. 953 Whitehorse Road and is concerned about the impact that the new building may have on the heritage significance of this property.
- 3 The Council has refused to support the proposal because of specific concerns relating to:
 - The massing and visual bulk of the building not respecting the heritage significance of the adjoining property at No. 953 Whitehorse Road;
 - The interface of the building with public areas failing to achieve streetscape activation;
 - The building height creating overshadowing that results in unreasonable amenity impacts to the public realm;
 - The proposal failing to achieve comfortable wind levels at main entries, footpaths and on balconies/terraces; and
 - The proposal not complying with the Environmentally Sustainable Development (**ESD**) local planning policy.
- 4 The Council added a ground of refusal following circulation of the request to substitute amended plans. This refusal ground relates to the Suburban Rail Loop (**SRL**):

The proposal does not respond appropriately to the strategic context of the site because it fails to integrate with the future public realm to be located to the west of the subject land as part of the Suburban Rail Loop Project.
- 5 The Council also foreshadowed a question of law to be raised at the hearing about whether the proposed SRL East Project is relevant to the consideration of this proposal and, if so, how? At the start of the hearing, the Council and the applicant agreed that the SRL is a relevant consideration and so there was no longer a question of law for the Tribunal

³ The submissions and evidence of the parties, the supporting exhibits given at the hearing, and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

to consider. Hence, the consideration in this decision is how much weight should be given to the SRL.

- 6 During the Council's submission, it acknowledged that its concerns relating to wind effects and ESD can be dealt with via permit conditions, hence the key issues in this case are:
 - The weight to be given to the SRL project as it relates to a future station at Box Hill;
 - The shadow impact on the open space in the central median of Whitehorse Road and the resultant impact this is having on the proposed building form; and
 - The interface of this site with the adjoining individually significant heritage place at No. 953 Whitehorse Road.
- 7 In considering the third issue, we find that, subject to a minor change on the east side of the proposal adjacent to No. 953 Whitehorse Road, the proposal will not adversely affect the significance of this heritage place.
- 8 The most challenging aspect of the acceptability of this proposal is the design response to the Equinox shadow impact upon the Whitehorse Road central median open space area. The amended plans contain a stepping back of the upper levels creating a wedding cake effect, which is done to minimise the shadow impact. During the hearing, alternative design responses were tabled on days 4 and 5 that had differing shadow impacts upon the open space area.
- 9 The final design tabled on day 5 is a simplified design with a more traditional podium and tower relationship. Rather than several steps across the upper levels of the tower, there is now proposed to be a single step in the building form. This creates a 'top' to the building that is necessary to reduce the shadow impacts to the open space. The height of the building has also been reduced in day 5 design by the removal of a storey at the upper levels. The result is a building form that provides both an acceptable design and an acceptable shadow impact on the central median open space. We have ordered that a permit be granted for a design consistent with this day 5 design. Our reasons follow.

Overview of physical and planning contexts

- 10 This site is centrally located in the Box Hill metropolitan activity centre. Box Hill is one of about 9 existing activity centres across metropolitan Melbourne that are designated as a 'metropolitan activity centre'. This is the highest designation outside of the central business district. These metropolitan activity centres are 'higher order centres intended to provide a

diverse range of jobs, activities and housing for regional catchments that are well served by public transport'⁴.

- 11 The Box Hill Metropolitan Activity Centre local planning policy at clause 22.07 seeks to ensure that the activity centre continues to expand including maximising employment growth. This proposal will contribute to this outcome as it proposes four levels of retail floor space in the podium and commercial floor levels in the tower above. The site is within the Box Hill Transport and Retail Precinct (A) that includes both sides of Whitehorse Road and extends south to both sides of Carrington Road. The site is also in the Major Development Precinct (F), which is a large precinct where 'taller buildings are permitted'. Precinct F is identified in the built form precinct plan in clause 22.07, included below.

⁴ <https://www.planning.vic.gov.au/policy-and-strategy/activity-centres/activity-centres-overview#:~:text=appropriately%20located%20centres-.Metropolitan%20Activity%20Centres,well%20served%20by%20public%20transport.>

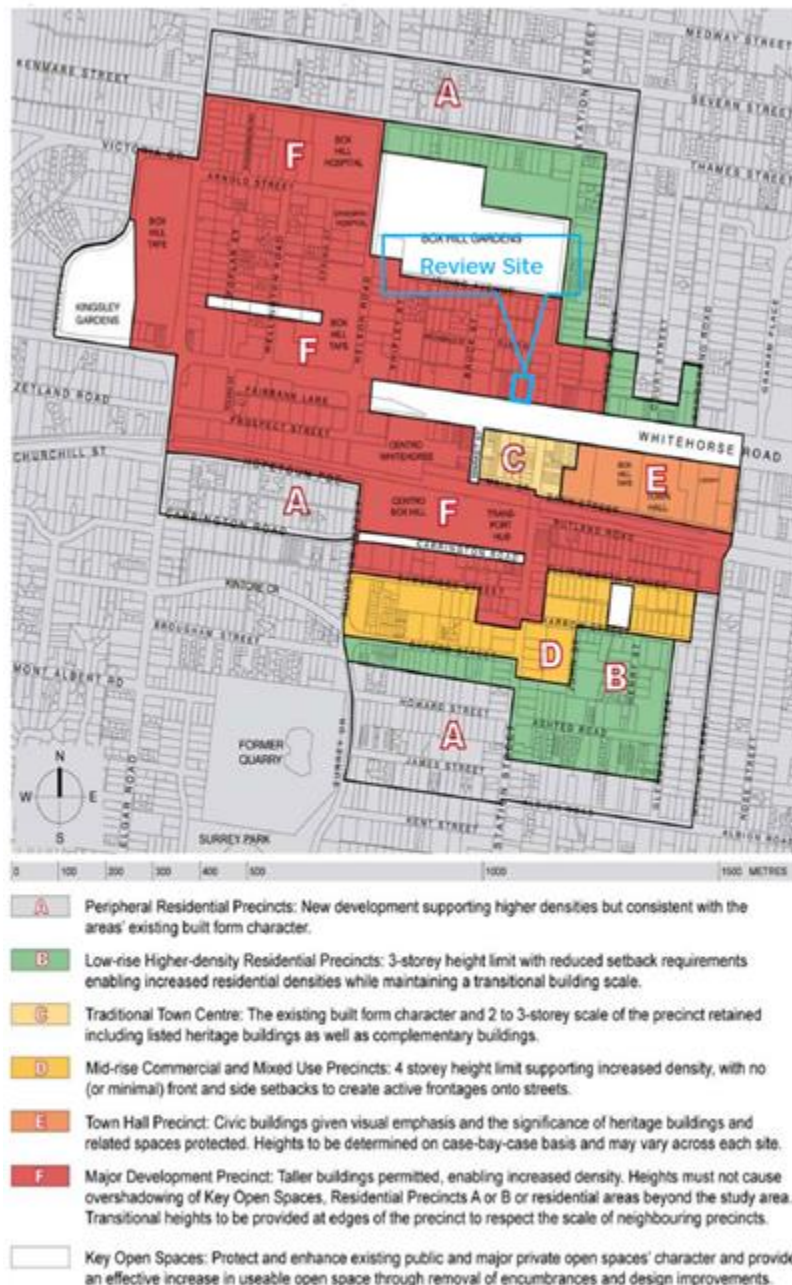


Figure 3 Box Hill Activity Centre Transit Structure Plan Built Form Precincts (site outlined blue)

Extract from Mr Biles' evidence statement

- 12 Relevant to the key issues in this case, this policy promotes design excellence in new development, encourages integration with heritage buildings, and encourages the protection of key open spaces from overshadowing.
- 13 The north side of Whitehorse Road between Bruce Street and Station Street has experienced little development thus far. The only existing tall building is the ATO building at No. 913 Whitehorse Road on the corner of Bruce Street. Mr Biles' evidence statement contains images of the permit application proposals for this site and No. 925 Whitehorse Road (not the

amended plans presented to the Tribunal in either case) amongst the existing and approved surrounding development:



Figure 6: Aerial Modelling Analysis Prepared by Elenberg Fraser (proposed development shown in Light Blue)

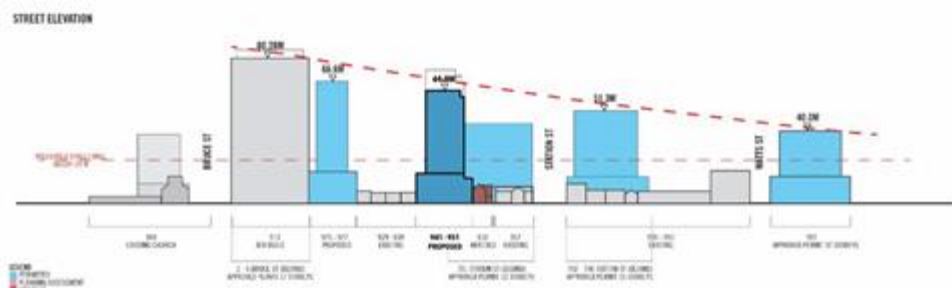


Figure 7: Transitional Height Analysis Prepared by Elenberg Fraser, (proposed building in dark blue)

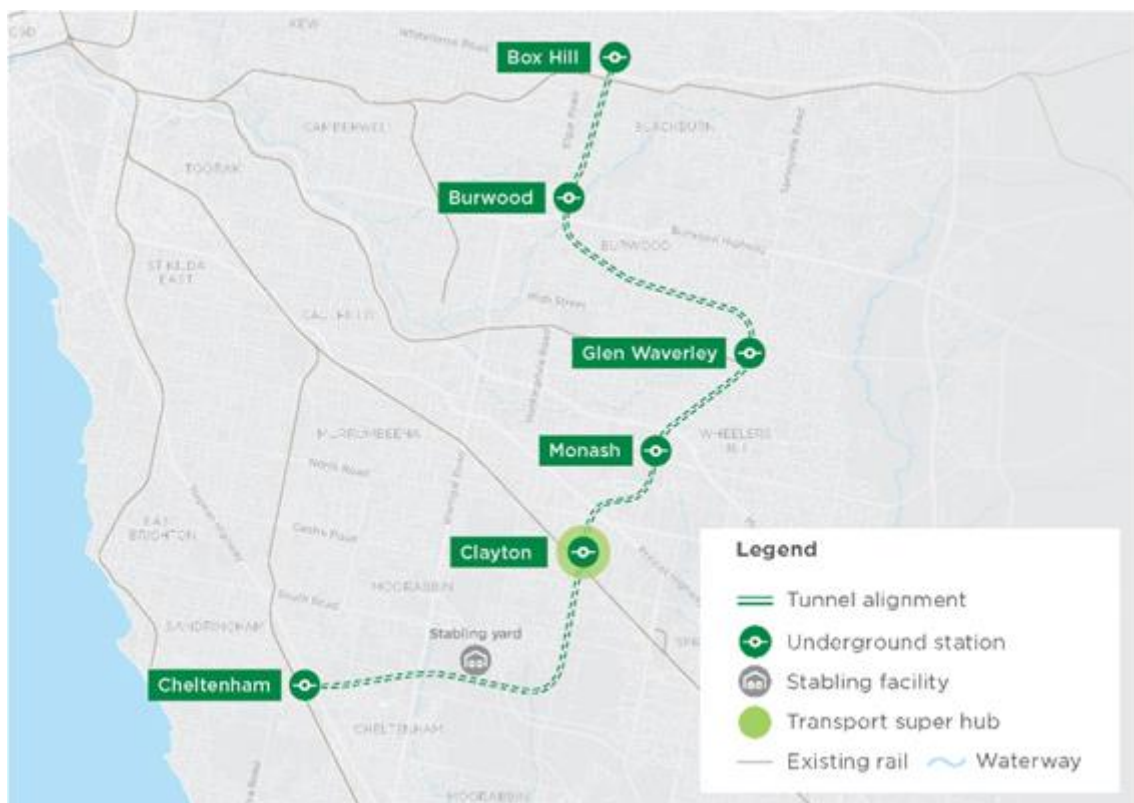
- 14 In the last month, the Tribunal has approved a new building to the east of the ATO building at Nos. 925-927 Whitehorse Road.⁵ We were advised that the applicant in that case and in this proceeding are effectively the same developer. The 925 Whitehorse Road building was presented to the Tribunal as a 19 storey mixed use development containing retail premises and a residential hotel.⁶
- 15 In approving this building, the Tribunal imposed a condition that the building be modified to achieve no new overshadowing at the September equinox to the Whitehorse Road central median open space comprising of the pedestrian pathway and the area south of the pathway, commencing from the western edge of the grassed area. The applicant and its expert witnesses are not aware of how the design of the building will be modified to address this condition, hence the final height and form of the building is unknown at this time.

⁵ *Australian Poly Box Hill Investments Pty Ltd v Whitehorse CC* [2022] VCAT 250 (referred to during this hearing as ‘the Poly decision’)

⁶ In the *Poly* decision, figure 2 on page 7 shows the location of this property and figure 3 on page 8 shows a photomontage of the proposed building with the ATO building in the background.

Suburban Rail Loop

- 16 Public transport policy at clause 18.02-3S contains a number of strategies including to:
- Protect and develop the Principal Public Transport Network (**PPTN**) to facilitate ‘a new high quality orbital rail (the SRL) through Melbourne’s middle suburbs; and
 - Locate higher density and increased development on or close to the PPTN in a way that does not comprise the efficiency of the PPTN.
- 17 The ‘SRL East’ project ‘would create a brand-new modern 26 kilometre underground rail line in the middle ring of Melbourne suburbs that would be capable of moving passengers from the SRL station at Cheltenham to the SRL station at Box Hill in around 22 minutes’.⁷

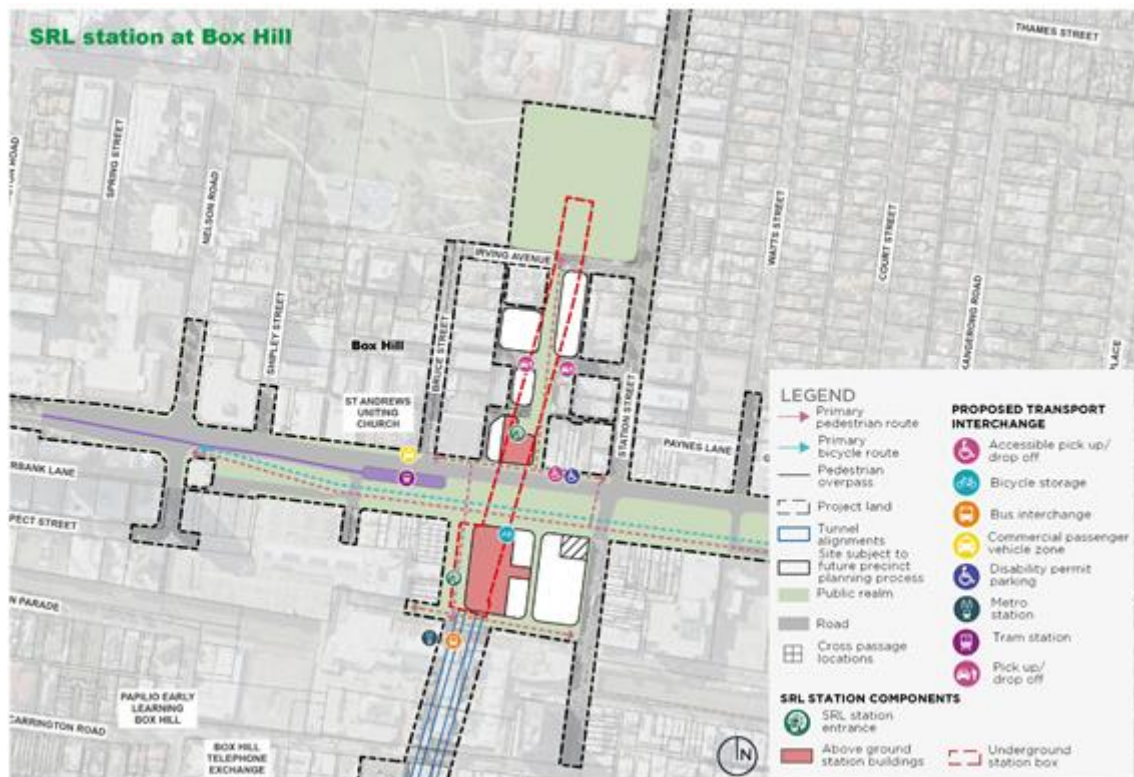


Extract from page 5 of Suburban Rail Loop East Environment Effects Statement Summary Report (**EES Summary Report**)

- 18 The concept for the SRL station at Box Hill shown in the EES Summary Report illustrates an above ground station building containing an entrance to the new station to be located on the north side of Whitehorse Road immediately to the west of this site (refer to extract below).
- 19 The Council submits the role and use of the area surrounding the SRL will change significantly upon its completion. There will be new public realm between the station building and this site as part of a pedestrian promenade

⁷ Suburban Rail Loop East Environment Effects Statement Summary Report at [4]

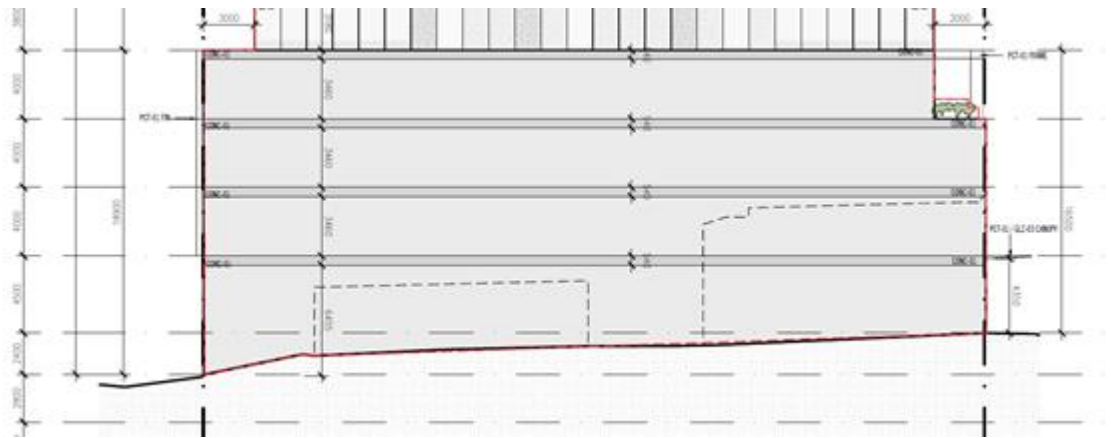
link between Whitehorse Road and Box Hill Gardens. The concept drawing also suggests making the traffic lanes on the south side of the Whitehorse Road median part of the public realm, i.e. changing these lanes to open space.



Extract from page 27 of the SRL East EES Summary Report

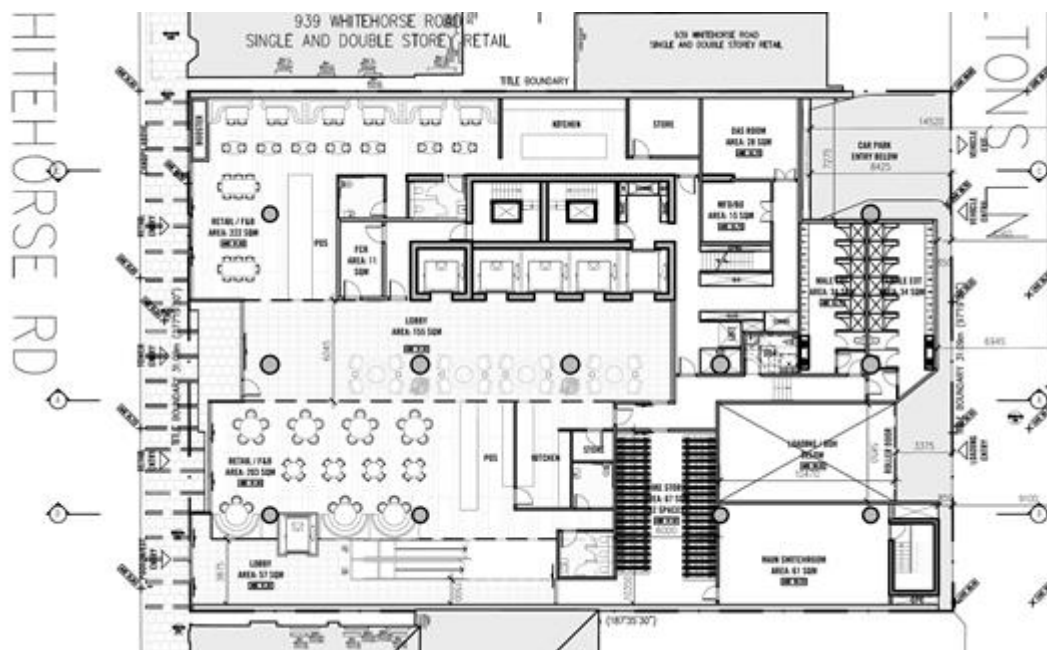
- 20 The Council submits that this proposal has failed to adequately address the SRL concept for a pedestrian promenade and station entry to its west as the design has limited opportunities for a direct interface. The Council is also concerned about the potential ground/floor level differences between this proposal and the future station building and public promenade.
- 21 Mr Biles and Mr McBride-Burgess both gave evidence about how the SRL East project is in its early stages. The Inquiry and Advisory Committee public hearing about SRL East is taking place at the same time as this hearing, having commenced in late February and running for several weeks. There is no further detail available to the Tribunal in this proceeding of the project's intended works. It is reasonable to anticipate that the detail of the project will evolve and potentially change as it progresses. The Council is concerned that this proposal will not enable integration with any future public realm created. We do not share this concern.
- 22 The level difference pointed out in the proposal is concentrated to the rear part of the proposed building, and it is unreasonable to expect that the whole of the common boundary should be capable of integration. As evident in the western elevation, the southern end of the west side of the

ground floor has some potential for openings and a direct connection with any future public realm. This is acceptable.



Extract of the podium section of the west elevation illustrating the gradual fall of the land from south to north (from the right to the left in the above image), with the greatest fall occurring at the rear of the site (left hand side of the above image).

- 23 The Council concern that the DAS room, store and kitchen (shown below) limit the opportunity for integration to the west is correct. They are service areas, but the design does include a southwest corner food and drink retail premises (top left corner of the below extract of the ground floor plan).



- 24 Mr Biles and Mr McBride-Burgess consider the ground floor layout is capable of modification to increase the opportunities for new openings and increased activation if appropriate in the future. We accept their evidence that the layout as proposed enables integration through the food and drink retail premises proposed at the southwest corner along Whitehorse Road.

This, combined with the opportunity to modify the layout in the future if appropriate, satisfies us that this is an acceptable design outcome.

- 25 It is also the case that the site currently adjoins a commercial building to the west, so the proposal must respond to its existing site context. While there is opportunity to modify the layout in future if required, we find that the proposal provides an appropriate interface to its current neighbouring building now by having a blank façade constructed to the west side boundary.

Shadow impact on Whitehorse Road Central Median Open Space

- 26 The site is on the north side of Whitehorse Road so it is an inherent design outcome that any new tall building upon it will cast a shadow over parts of Whitehorse Road, and that the shadow impact will be worse in winter than in summer.
- 27 The Council submits the shadow impact upon the central median open space in Whitehorse Road is excessive and unacceptable at the winter solstice. The Council considers the cumulative shadow impact of the ATO building, the approved building at No. 925 Whitehorse Road, other possible future buildings and this proposal mean this open space area will gain extremely little sunlight between 11am and 2pm at the winter solstice. Furthermore, to adopt the Equinox as the appropriate measure of an acceptable impact will place almost all of this open space within shadow at the winter solstice and for a material period either side of the winter shadow.

Figure 7.4
Aerial Photograph of Whitehorse Road Reserve

Source – Nearmap
Photograph dated 22 November 2021



Figure 3.16
View looking west along the central pathway with the open space in the centre of Whitehorse Road



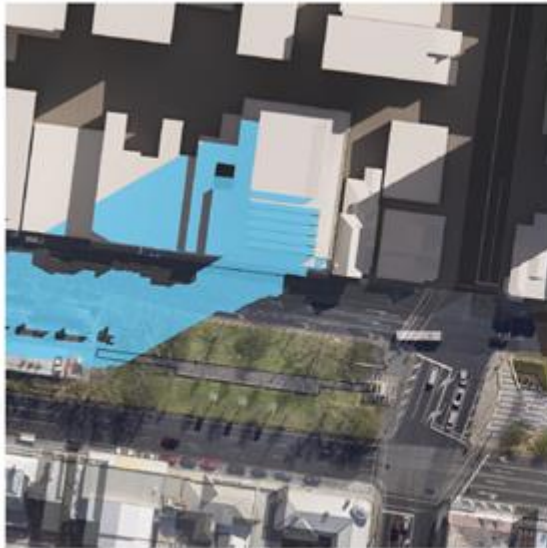
Figure 3.17
View to the northern side of the open space



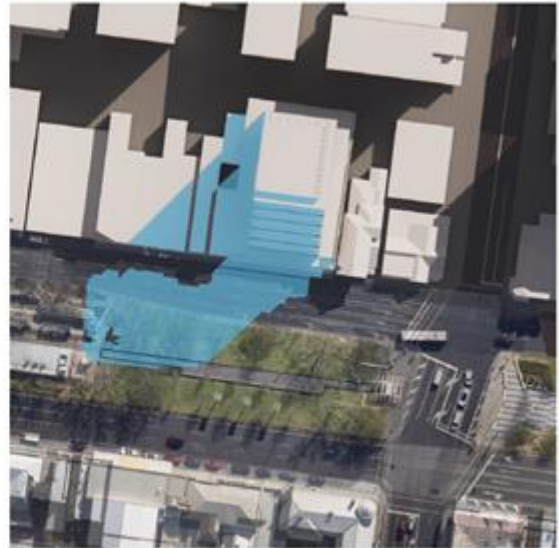
Extracted figures from Mr McBride-Burgess' evidence statement of the central median open space

- 28 The applicant, Mr Biles and Mr McBride-Burgess all hold the view that the appropriate measure of an acceptable shadow impact is to consider the shadow cast at the Equinox. Furthermore, that consideration of this shadow impact should focus upon the time of day when the usage of the open space is anticipated to be the highest, which:
- the applicant submits should be between 11am and 2pm;
 - Mr Biles considers it is somewhere between 10-10.30am and 3-3.30pm; and
 - Mr McBride-Burgess considers that the 9-10am period is of lesser significance than the middle of the day.
- 29 The substituted amended plans contain a stepped building form that has evolved to address the Equinox shadow impact, as illustrated in this extract of photomontage V3 from the southeast.

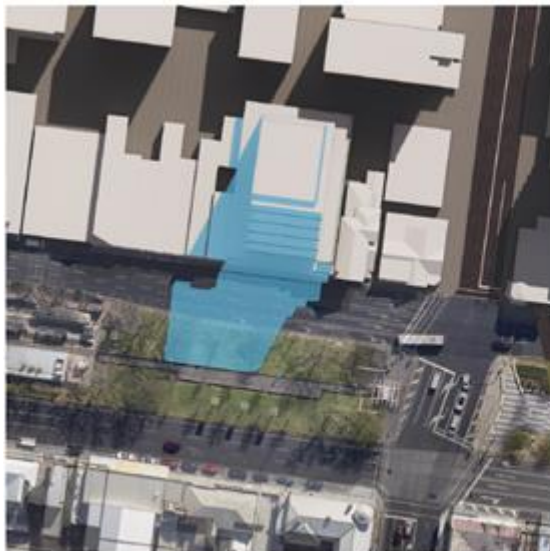




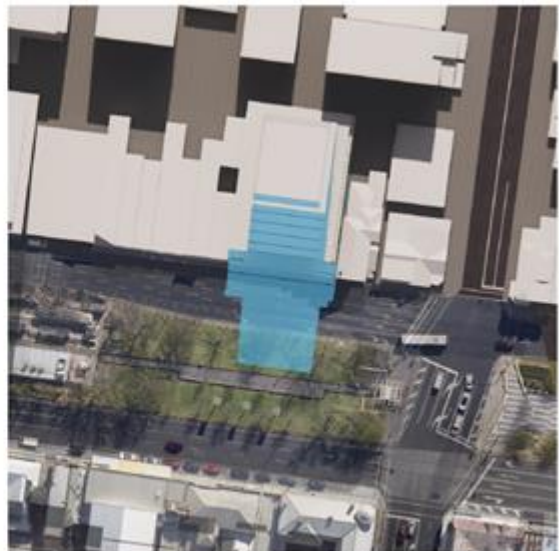
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02 10AM 22 SEPTEMBER



03 11AM 22 SEPTEMBER



04 12PM 22 SEPTEMBER

Extracts of the morning shadows cast by the substituted amended proposal

- 30 Following the completion of the expert evidence on day 3, it appeared that there could be alternative design solutions to the shadow impact. At the start of day 4, the applicant provided a further design and shadow diagrams to illustrate the extent of shadow if the stepping in the proposed building was replaced with a singular tower element building form. It would cast greater shadow than that shown in the above extracts. At the end of day 4 of the hearing, we expressed a concern to the parties that the shadow impact has potentially over-influenced the design response (i.e. the necessity for a stepped built form), and that the building design needs to be acceptable in its own right and not just as influenced by a shadow impact. We invited the applicant to reconsider its built form response on the basis of our finding

that the consideration of the shadow impact should be based upon considering the Equinox shadow between the hours of 11am and 2pm. The reasons why we have chosen this time of year and time of day as being the acceptable measure are explained below.

- 31 Council relies on the combination of the local policy at clause 22.07, the Structure Plan reference document to that policy, and the Urban Design Guidelines for Victoria to support its submission that the winter shadow is the appropriate measure. We are not persuaded of this.
- 32 Clause 22.07 is the Box Hill Metropolitan Activity Centre local planning policy. Mr McBride-Burgess points out this policy was originally placed in the planning scheme on an interim basis by the Minister for Planning and then two years later was included in the planning scheme permanently again by the Minister for Planning. The Council points out this is a legitimate method for amending the planning scheme and we agree with this.
- 33 During the hearing, we identified inconsistencies or uncertainties within the policy relating to the identified open space areas and the identified key open spaces. For example, public open spaces, pedestrianised streets and civic spaces are identified on one map, but the key open spaces on the built form precinct map do not align and include other locations such as Carrington Road. These inconsistencies can perhaps be explained by the lack of a public process identified by Mr McBride-Burgess in regard to the implementation of the policy into the planning scheme. This lack of public process means there may have been limited to no scrutiny or reconciliation of its content. Nevertheless, we agree with the Council that the policy is what it is and must be considered as a guideline in the exercising of our discretion as to whether to grant a permit.
- 34 We agree with the applicant's submission that the legends associated with the maps in the policy are primarily just that – legends, and it is necessary to read the entirety of the policy to ascertain what outcomes are sought. Whilst the legend for Precinct F⁸ includes the statement 'heights must not cause overshadowing of key open spaces', the language in the policy text itself is to encourage development to protect key open spaces from overshadowing, which is suggestive of a consideration rather than a mandatory obligation. Also, the policy text itself makes no mention of the time of year or time of day to be considered.
- 35 The policy contains a general policy statement that new use and development should have regard to 'the vision and principles' of the Box Hill Transit City Activity Centre Structure Plan June 2007, which is a reference document to this local policy. This Structure Plan contains built form guidelines for Precinct F that include the following:
 - No specific height limit.

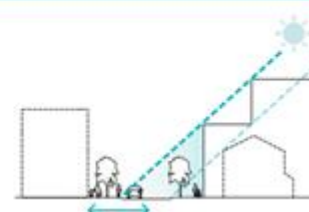
⁸ Refer to the figure on page 8 of these reasons.

- Avoid overshadowing of Key Public Spaces, Peripheral Residential Precincts or residential areas outside of the Activity Centre between 11am and 2pm on 22 June beyond what would result from an 11m building over the full extent of the site.
 - Along Whitehorse Road any height above 6 storeys (24m) should be setback above a podium.
- 36 The guidelines for Key Public Spaces themselves include to ‘minimise overshadowing of open spaces’, but with no reference to the time of year or time of day.
- 37 As a reference document, this Structure Plan effectively forms background material that may explain what has been included in the local policy at clause 22.07. Whilst winter shadow is mentioned in the built form guidelines so too is no height limit and a 6 storey podium with additional height set back above it along Whitehorse Road. There is obviously an inconsistency in the guidelines.
- 38 Interestingly, in the Tribunal decision of *25 Ellingworth Parade Pty Ltd v Whitehorse CC (the Ellingworth decision)*, which also focussed on potential shadow of key open space in precinct F, the Council acknowledged the limitations of the structure plan reference to winter shadow:⁹
- Council acknowledged that slavish application of the structure plan “test” would restrict development on the review site to a much lower building and fairly submitted that within this major development precinct, this needed to be balanced against the desire for change.
- 39 We agree with the applicant’s submission that the Urban Design Guidelines for Victoria are a useful guide to be considered as appropriate.¹⁰ The Council has referred to the following:

Objective 5.1.3 To ensure buildings in activity centres provide equitable access to daylight and sunlight

5.1.3a Locate and arrange the building to allow daylight and winter sun access to key public spaces and key pedestrian street spaces.

→ **TIP** A strategic planning process can identify and establish key public spaces.



Extract from page 4 of Section 5 of the Urban Design Guidelines for Victoria

- 40 Interestingly, the applicant points out the sun angle shown in 5.1.3a above is not the winter solstice but, rather, is equivalent to the equinox. We are

⁹ [2020] VCAT 1138 at [24].

¹⁰ The language used in clause 15.01-2S is ‘Consider as relevant’.

not persuaded we should give any weight to the reference to winter sun in 5.1.3a in this case. The introduction of the Urban Design Guidelines explains that ‘decision-makers need to determine the relevance of the specific guideline in the context of the proposed development’ and that ‘there may be ways to achieve the objectives other than through the responses described in these guidelines’. We agree with the applicant that the context of this site is that it is located in the middle of a metropolitan activity centre, alongside a major road, close to a tram terminus, and in a policy context, is in an area where tall buildings are encouraged.

- 41 The central median of Whitehorse Road is identified as a key open space, but it is also a narrow open space area primarily designed for walking and sitting whilst being located in the centre of a major roadway and adjacent to the intersection of Whitehorse Road and Station Street. The quality of this central median open space can be contrasted with the Box Hill Gardens, which is a large area of open space available for recreation, leisure and sporting activities and is also located within walking distance of this site. The Structure Plan makes specific mention in its text about Box Hill Gardens and Kingsley Gardens but there is no specific mention of the Whitehorse Road central median open space.
- 42 In balancing the policy and site context with the potential to overshadow the central median of Whitehorse Road, we are not persuaded a winter shadow measure is acceptable. We note that our finding to consider the Equinox shadow measure is consistent with the findings made in the *Poly* decision¹¹ and in the *Ellingworth* decision¹².
- 43 The parties point out that the *Poly* decision only considered the time that that development would add shadow to the central median open space, being between 12.30 and 2.15pm. The *Poly* decision imposes a condition 1(a) that requires the building to be modified to achieve no new overshadowing at the September equinox. The condition does not specify any time of day, just the time of year, i.e. the September equinox. The condition also specifies that the requirement for no new overshadowing applies to that part of the central median that comprises the pedestrian pathway and the grassed area on the south side of the pathway ‘commencing from the western edge of the grassed area’. The parties agree this quoted wording appears to relate to the commencement being at the end of the tram terminal.
- 44 We are not persuaded there can be no Equinox shadow impact at the western end of this open space area. Mr Biles’ photograph on the next page illustrates the southern side of the western end of the pathway is a garden bed located below well-established canopy trees.

¹¹ At [74]-[75].

¹² At [26].



- 45 The more significant area of the central median open space is the wider path area that contains the seating on its southern side. It is preferable to maintain sunlight into this seating area throughout the middle of the day, e.g. 11am to 2pm when the usage is likely to be highest.



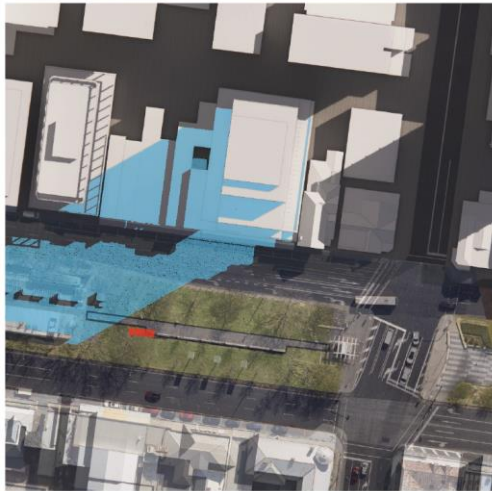
Mr Biles' photograph looking west along pathway in central median open space with pathway, seating and then elevated solar panels evident when looking to left of the photo.

Extract of day 5 east elevation

- 48 This day 5 design response means the shadow cast is primarily from the main tower form. The shadow diagrams of the Equinox have been updated to include this new tower form and to include some additional seating at the

western end that was not included in the earlier shadow analysis. These seats are those shown in Mr Biles' photograph on page 19 of these reasons.

- 49 As per our earlier findings, the shadow cast at 9am and 10am is acceptable. It is cast over the tram terminus and over the narrower section of the pathway. The 10am shadow does affect the western-most seats but, at this early time of the day and with other seating available in the sunlight, this impact is acceptable.

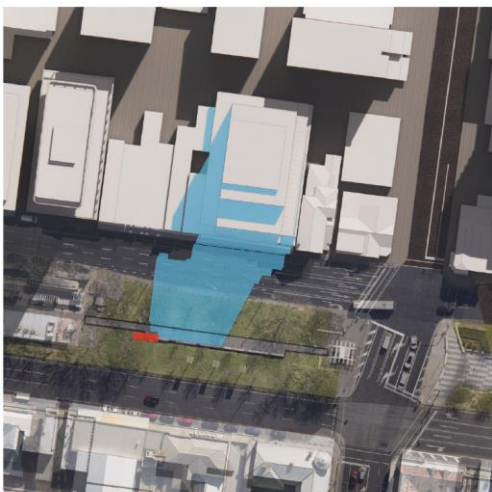


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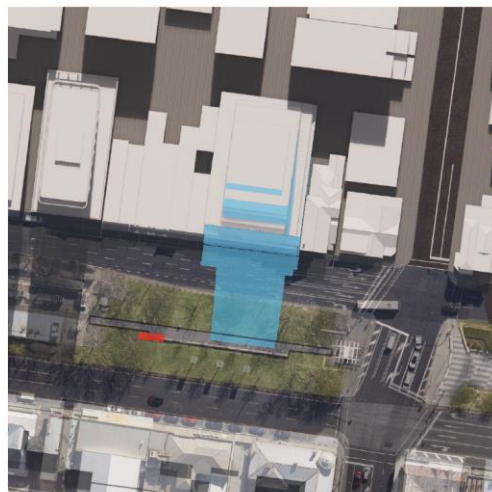


02 10AM 22 SEPTEMBER

- 50 The shadow cast at 11am impacts upon possibly as much as half of the wider section of the pathway and extends as far as the base of the seating. What this means is a person walking along the path will have their upper body in sun and a person sitting on the seating will be in sunlight. By 12noon the shadow is beginning to slip away to the north and only a portion of the wider pathway is impacted. Again, this means a person walking along this section of the path will have their upper body in sun.

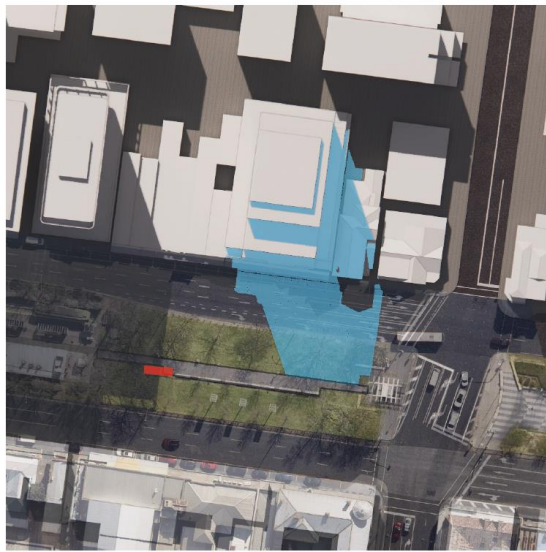


03 11AM 22 SEPTEMBER

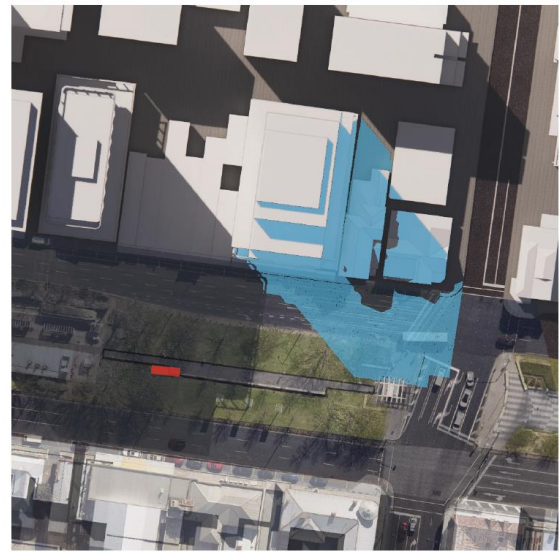


04 12PM 22 SEPTEMBER

- 51 By 1pm, the shadow cast has moved to the northern side of the pathway and by 2pm the shadow is affecting Whitehorse Road traffic lane to a greater extent than the open space.



05 1PM 22 SEPTEMBER



06 2PM 22 SEPTEMBER

- 52 We note that the shadow cast by the ATO building and the 925 Whitehorse Road building presented to the Tribunal is beginning to affect the wider section of the pathway and the seating at 1pm and 2pm. Some of this shadow impact will change as a result of the *Poly* decision. Nevertheless, having regard to these shadow diagrams that illustrate the cumulative impact of this proposal together with these other two developments and noting some reduction in shadow will occur, we are satisfied that this proposal will contribute to achieving an acceptable level of sunlight between 11am and 2pm to this central median open space area, particularly to the wider pathway section containing the seating. Sunlight will be maintained to much of the seating area and the southern portion of the open space.
- 53 In addition, this day 5 design response provides a more elegant and simplified building form that is consistent with other tower and podium forms present and emerging in the activity centre. The result is a proposal that combines both an acceptable design and an acceptable impact on a key open space area within the activity centre at the times, and in the location, that access to sunlight is most valued. We have imposed a permit condition to amend the plans to be generally in accordance with the day 5 plans.

Impact on adjoining heritage place

Heritage significance and existing context

54 No. 953 Whitehorse Road is an individually significant heritage place.

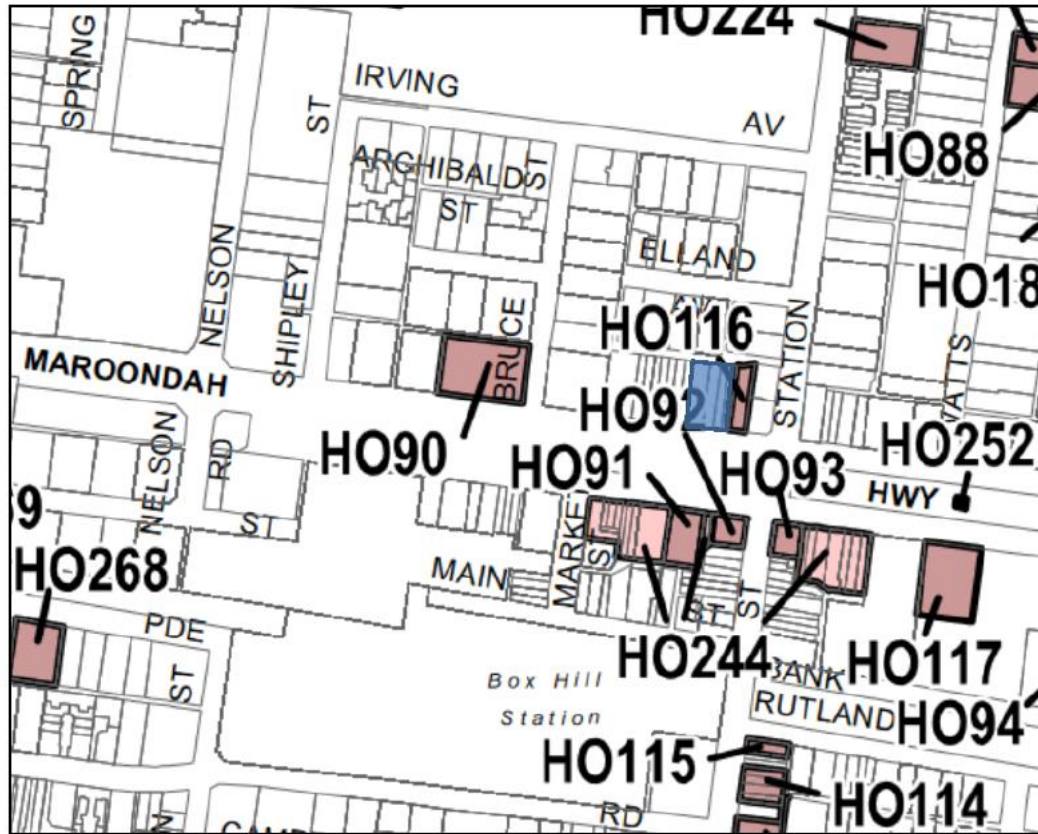


Figure 8 Extract of the Heritage Overlay Map, showing the subject site (shaded blue).
Source: Whitehorse Planning Scheme.

Extract from Mr Raworth's evidence statement

- 55 The Heritage local planning policy at clause 22.01 applies in circumstances where a planning permit is required for development on properties adjacent to a Heritage Overlay.
- 56 Both the Council and Nedlow Nominees are concerned about the scale of the development adjacent to this heritage place and that the proposed development does not achieve appropriate protection and conservation of this adjoining heritage place.
- 57 No. 953 Whitehorse Road contains a two storey Arts and Crafts style building that was formerly a bank branch constructed in 1912. The Statement of Significance in the 1999 City of Whitehorse Heritage Review is:

The State Savings Bank building is of aesthetic and historical importance. The building is an unusually picturesque bank building, and a good example of a commercial building in a bold Arts and

Crafts style, a departure from the more common Classical Revival banks of the period. Historically, the bank dates from a major period of expansion of Box Hill as a commercial centre.

- 58 The building citation in the 1999 City of Whitehorse Heritage Review contains a photograph of No. 953 showing a single storey interface with this site:



- 59 The description of the building in the citation includes the following:
- The former State Savings Bank is a predominantly double-storey brick bank building in a bold Arts and Crafts 'blood and bandages' style. The walls are of red brick, with rendered banded rusticated shallow piers on the facade, and a roughcast gable-end with bracketed eaves. The entrance is through a single-storey section adjoining the east elevation. Windows are double-hung sashes at the upper level, and fixed at street level. The gabled roof is clad in glazed terracotta tiles and penetrated by a tapered red brick chimney.
- 60 The above photograph illustrates that there is an existing setback on the west side of No. 953 Whitehorse Road. This setback provides access to services as well as a source of light and ventilation into windows along this part of the building.
- 61 The above quoted citation description identifies the tapered chimney in the building. Mr Capannolo is concerned about the potential loss of the view of this chimney from the west, looking east. Since the building was recognised in the 1999 Heritage Review, its relationship with this site has altered. Now, the interface of No. 953 includes a first floor on No. 951 as is shown in the following photograph.



Applicant photograph of existing interface between Nos. 951 and 953 Whitehorse Road

- 62 This means the side wall including the view of the chimney below No. 953's roof is now screened from view as is evident in the photomontage V1 existing conditions below with a black arrow added pointing to the chimney:



Streetscape views of No. 953 Whitehorse Road

- 63 The photomontage V1 easterly view of No. 953 from the pedestrian crossing on Whitehorse Road at the tram terminal will be largely lost as a result of this proposal as the street wall will screen much of No. 953. In this commercial and activity centre context, this loss of view of the side of this heritage place is an acceptable impact as it does not detrimentally affect the significance of the heritage place.
- 64 The street wall height is three storeys and steps down to two storeys adjacent to No. 953.



Extracts of photomontage V2 existing conditions (left) and proposal (right) with No. 953 chimney visible at right side of extracts

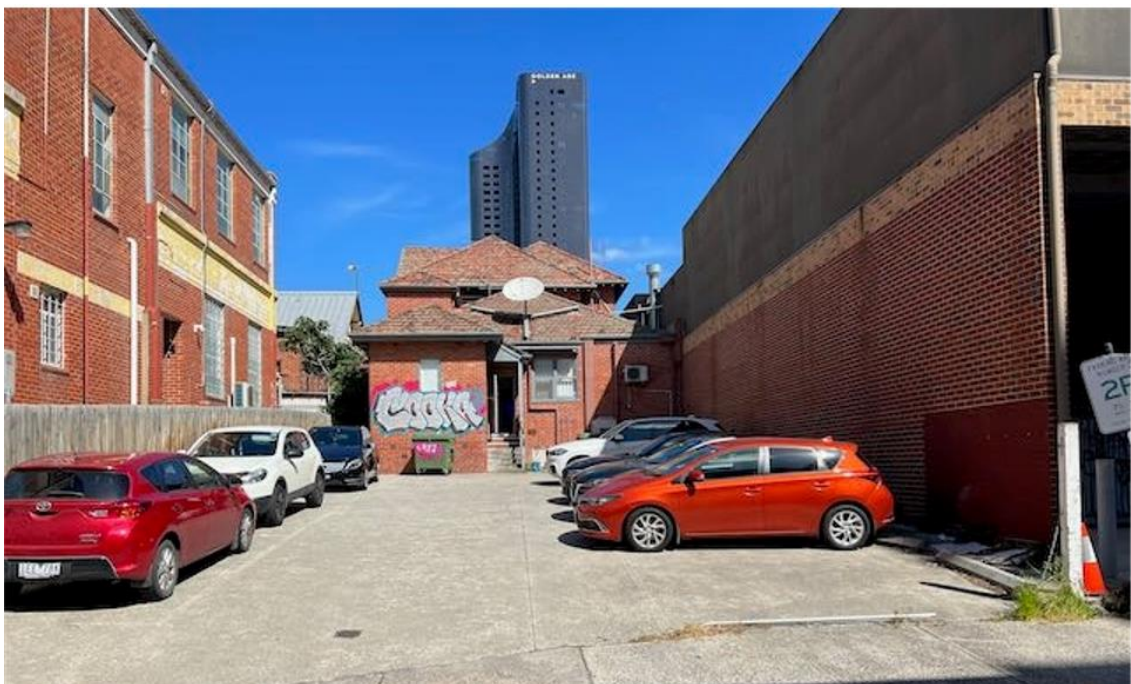
- 65 Above the two storey element next to No. 953 is a third level that is set back about 3 metres. This setback area is proposed to be a terrace/balcony. Mr Raworth was uncertain what the balustrade (shown white in the above right image) would be constructed of and suggested it should be lightweight. He had no particular view on the suggestion that there could also be landscaping in front of the balustrade. The two storey height is an acceptable interface, but we are not persuaded the terrace/balcony should remain. Removing it, and the vegetation proposed to be included in a planter box on the terrace, so that it is merely a roofed area should reduce the boundary wall height marginally and open up a limited view across the (now) roofed area to part of the chimney. Whilst the remaining view from the east will be significantly restricted, the interface of a building form that steps up in height and is also set back in height from No. 953 will not adversely affect the significance of this heritage place.
- 66 The Council's heritage advisor has recommended that the eastern two storey section of the podium also have a solid frame to its first floor level. Mr Raworth does not consider this necessary but was also not opposed to its design detail changing. The fact that the two storey section has a different architectural treatment assists to distinguish it from the balance of the three storey podium, which in turn assists the visual expression of the building stepping down and becoming more lightweight and recessive in building materials adjacent to No. 953. This is an acceptable design response to the heritage significance of No. 953, so we are not persuaded that the architectural expression should be changed.

Podium/tower relationship to No. 953 Whitehorse Road

- 67 The Council's heritage advisor suggests that the top fourth storey (level 3) of the podium be set back from Whitehorse Road 2 metres further than the tower's façade that has a 3 metre setback (i.e. a total setback of 5 metres). The heritage advisor considers this will provide a visual and physical separation between the podium and the tower.
- 68 This suggestion is not supported by either Mr Raworth from a heritage perspective or Mr Biles from an urban design perspective. We are persuaded by their evidence that this aspect of the proposal is acceptable. They both consider this top floor is already distinguished from the balance of the podium as it is not included in the solid framing of the levels below. Both this top level of the podium and the tower are set back from the east side boundary by 5 metres. Mr Raworth considers the 5 metre separation of the top storey of the podium sufficiently separates it from the heritage building and there is no appreciable benefit in setting back this top storey further from Whitehorse Road.

Rear interface with No. 953 Whitehorse Road

- 69 Mr Capannolo is concerned about the construction of a new higher eastern boundary wall to replace the existing wall as shown on the right hand side of the photograph below.



Applicant's photograph of rear of No. 953

- 70 It is not uncommon for the rear of a heritage place to have new and greater development adjacent to it. The primary heritage significance is associated with the Whitehorse Road frontage and not the rear of No. 953. The fact that there is and will continue to be a boundary wall (albeit a higher

boundary wall) along the eastern side boundary of No. 953 creates a potential future development opportunity for No. 953. The rear of No. 953 is not recognised in the citation or the statement of significance as having any particular heritage significance, hence there would appear to be some potential for future development. This area is not sensitive as it is an at-grade car park. Hence, the proposed development adjacent to the rear of No. 953 will not adversely affect either its heritage significance or its future development potential.

Other matters

- 71 There are a few other matters raised in submissions or during the hearing about which we wish to make findings.

Screening of rear interface

- 72 The rear retail podium is set back 6.1 metres from the balconies of a residential hotel located on the opposite side of Hilton Lane.

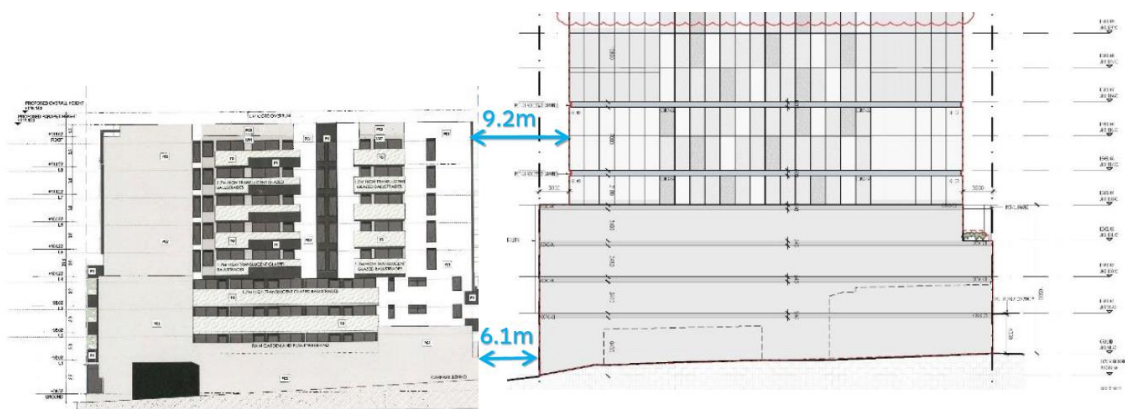


Figure 13: Building separation comparison of proposal and constructed building at No. 1 Elland Avenue (indicative)

Extract from Mr Biles' evidence statement of the rear podium interface with the residential hotel on the opposite side of Hilton Lane.

- 73 Mr Biles considers screening is not necessary, but Mr McBride-Burgess considers screening is preferable because the retail floor levels could have lots of people in them and the hotel balconies abut the laneway boundary. The site is zoned Commercial 1 (C1Z) and the residential hotel is zoned Residential Growth. The decision guidelines in C1Z include:

Consideration of the overlooking and overshadowing as a result of building or works affecting adjoining land in a ... Residential Growth Zone

- 74 We do not consider this residential hotel is in a location where the amenity impact of overlooking needs to be addressed by screening of the retail podium levels. The residential hotel is transient in nature. Existing conditions indicate the residential hotel windows all have curtains and the

majority of the balconies are of a Juliette style meaning their principal purpose is for light and ventilation rather than as usable open space. Commercial land uses in the podium of this proposed development have the capacity to fit out their floor space to create privacy for themselves. Similarly, the residential hotel occupants already have the benefit of curtains to create a level of privacy. Given these circumstances, we are not persuaded screening of the rear (north) elevation of the podium is necessary in this case.

Wind effects

- 75 The Council is critical of the fact that updated wind modelling was not prepared for the amended proposal before the Tribunal and queried ‘exceedances’ that were identified in the original modelling. The applicant has provided a letter from MEL Consultants that provides desktop wind advice about the amended plans. It suggests the following wind criteria:

Pedestrian transit areas	Walking criterion
Building/Tenancy entrances	Standing criterion
Terraces	Walking criterion

- 76 The advice also says activation of the public realm external to the site will depend on the existing wind conditions in the streetscapes that are often beyond the control of the proposed development. If existing conditions are on or above walking criterion, the proposal should not have any adverse wind effects in these areas.
- 77 The advice also says that on private outdoor terraces a walking criterion is recommended as these spaces are considered to be elective. The extent of terraces has been reduced as a result of the day 5 plans, and they are not essential to the commercial land uses or the development. As such, the walking criterion is an acceptable design outcome.

What conditions are appropriate?

- 78 In determining the conditions of permit, we have had regard to the draft conditions discussed at the hearing and the submissions of the parties as well as the matters arising from our reasons above.
- 79 The proposal includes landscaping predominantly in the form of planter boxes on several terraces of the building. The landscaping proposed is conceptual and appears tokenistic with respect to the design of this building. We are not persuaded this building requires landscaping to such an extent that it should form part of the planning approval. We have therefore not included the requirement for a landscaping plan within the permit conditions.
- 80 The Council agreed at the commencement of the hearing that, while it would prefer those details be determined in advance of a permit, matters concerning environmentally sustainable design could be resolved via permit

conditions. We have included relevant permit conditions, as discussed during the hearing, and find that the sustainability objectives included in the planning scheme can be satisfied in this way.

Conclusion

- 81 For these reasons, the decision of the Responsible Authority is set aside. A permit is granted subject to conditions.

Rachel Naylor
Senior Member

Judith Perlstein
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	WH/2019/200
LAND:	941-951 Whitehorse Road, BOX HILL VIC 3128

WHAT THE PERMIT ALLOWS

Buildings and works for the construction of a mixed use 14 storey building with basement levels, and a reduction to the car parking requirements for the office, shop and food and drink premises land uses in accordance with the endorsed plans.

CONDITIONS:

Amended plans

- 1 Before the development starts (but excluding early works detailed in the Early Works Plan approved under condition 15), amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority in a digital format. Once approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale, with dimensions, and be generally in accordance with the VCAT substituted amended plans prepared by Elenberg Fraser, but modified to show:
 - (a) The changes to the building form, particularly the tower element, as shown in the VCAT day 5 plans prepared by Elenberg Fraser (Drawing Nos. A0000 Rev E, A0001 Rev D, A0093 Rev E, A0096 Rev E, A0097 Rev E, A0098 Rev E, A0099 Rev E, A0100 Rev E, A0101 Rev D, A0102 Rev D, A0103 Rev D, A0104 Rev D, A0105 Rev D, A0112 Rev B, A0115 Rev D, A0120 Rev D, A0900 Rev E, A0901 Rev E, A0902 Rev E, A0903 Rev E, A0910 Rev D, A0911 Rev C, A0912 Rev C, A0950 Rev D, A0951 Rev D, A0950 Rev E and A0953 Rev B. All dated 01.04.22).
 - (b) Removal of the 18sqm terrace and balustrade in the southeast corner of level 02 and replacement with roof.
 - (c) Removal of landscaping planter boxes from the terraces.
 - (d) Two DDA parking spaces adjacent to the retail lift on basement levels 2 and 3.
 - (e) 1:20 / 1:50 design detail drawings of all street interfacing infrastructure including height, design and materiality.
 - (f) All car parking spaces and ramp grades to comply with the relevant planning scheme and AS2890.1:2004, and must show/include:

- i The dimensions for the width of all ramps.
 - ii Location of convex mirrors to improve visibility on these curved ramp sections should also be considered.
 - iii A notation on plans to include the provision of wheel stops to prevent vehicles damaging each other when parking in adjacent car spaces with different orientation.
- (g) All necessary exhaust fans detailed in locations that appropriately mitigate against external amenity impacts on noise generation.
 - (h) Any modification to the plans required by the Façade Strategy at Condition 3.
 - (i) Any modification to the plans required by the Sustainable Management Plan (SMP) at Condition 5.
 - (j) Any modification to the plans required by the Reflectivity Report at Condition 7.
 - (k) Any modification to the plans required by the Car Park Management Plan at Condition 9.
 - (l) Any modification to the plans required by the Green Travel Plan at Condition 10.
 - (m) Any modification to the plans required by the Wind Report at Condition 12.
 - (n) Any modification to the plans required by the Waste Management Plan at Condition 14.

All to the satisfaction of the Responsible Authority.

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

Façade Strategy

- 3 Concurrent with the endorsement of the Condition 1 plans, a Façade Strategy to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, this will form part of the endorsed plans. All materials, finishes and colours must be in conformity with the approved Façade Strategy to the satisfaction of the Responsible Authority. The Façade Strategy for the development must be generally in accordance with plans prepared by Elenberg Fraser Architects and detail:
 - (a) A schedule of colours, materials and finishes, including the colour, type and quality of materials showing their application and appearance. This can be demonstrated in coloured elevations or renders from key viewpoints, to show the materials and finishes linking them to a physical sample board with clear coding.

- (b) Elevation details of the southern podium levels generally at a scale of 1:50 illustrating typical podium details, entries and doors, typical privacy screening and utilities, typical tower detail, glazing, window detail and any special features which are important to the building's presentation.
 - (c) Cross sections or other method of demonstrating the façade systems, including fixing details indicating junctions between materials and significant changes in form and/or material.
 - (d) Information about how the façade will be accessed and maintained and cleaned, including planting where proposed.
 - (e) Example prototypes and/or precedents that demonstrate the intended design outcome indicated on plans and perspective images to produce a high quality built outcome in accordance with the design concept.
 - (f) Details of the east-facing, on-boundary wall, which is to be treated with finishes, textures or other design elements to provide a high quality finish which does not diminish the ability of the eastern adjoining lot to be simultaneously constructed to this wall.
- 4 The provisions, recommendations and requirements of the endorsed Façade Strategy must be implemented and thereafter complied with to the satisfaction of the Responsible Authority.

Sustainability Management Plan

- 5 Concurrent with the endorsement of the Condition 1 plans, an amended Sustainability Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the amended Sustainable Design Assessment will be endorsed and will form part of this permit. The amended Sustainability Management Plan must be generally in accordance with the Sustainable Design Assessment prepared by ADP Consulting and dated 4/6/2020, but modified to address any changes required to meet requirements under Condition 1 of this permit.
- 6 The provisions, recommendations and requirements of the endorsed Sustainability Management Plan must be implemented when constructing and fitting out the building, and for the duration of the building's operation in accordance with this permit, to the satisfaction of the Responsible Authority.

Reflectivity Report

- 7 Concurrent with the endorsement of the Condition 1 plans, a Reflectivity Report must be submitted to and be to the satisfaction of the Responsible Authority. When approved this will form part of the endorsed plans. The Reflectivity Report must detail that external building materials and finishes do not result in glint or glare to pedestrians, public transport operators and

commuters, motorists, aircraft, or occupants of surrounding buildings and public spaces.

- 8 The provisions, recommendations and requirements of the endorsed Reflectivity Report must be implemented and complied with to the satisfaction of the Responsible Authority.

Car Park Management Plan (CPMP)

- 9 Concurrent with the endorsement of the Condition 1 plans, a Car Park Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Car Park Management Plan will be endorsed and will form part of this permit. The Car Park Management Plan must address, but not be limited to, the following:
 - (a) Any changes required to meet requirements under Condition 1 of this permit.
 - (b) The allocation of parking spaces for staff and patrons of the office and retail land uses.
 - (c) Details of way-finding, cleaning and security of the end of trip bicycle facilities.
 - (d) Any signage associated with short-stay parking, allocated parking and directional wayfinding signage.
 - (e) Management of loading/unloading of vehicles associated with the use being undertaken wholly on site with no vehicles being parked in Hiltons Lane or other streets.
 - (f) Coordination of deliveries to retail and office uses to avoid vehicle conflict within the laneway.

Green Travel Plan (GTP)

- 10 Concurrent with the endorsement of the Condition 1 plans, a Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Green Travel Plan will be endorsed and will form part of this permit. The Green Travel Plan must include, but not be limited to the following:
 - (a) Consistency with the Condition 1 requirements of this permit;
 - (b) Information for employees and customers/clients about public transport options in the area;
 - (c) Measures to encourage uptake of public transport to and from the approved development.
- 11 The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and thereafter complied with to the satisfaction of the Responsible Authority.

Wind Report

- 12 Concurrent with the endorsement of the Condition 1 plans, an amended Wind Assessment Report informed by wind tunnel modelling, to the satisfaction of the Responsible Authority, must be submitted to and approved by the Responsible Authority. Once approved, the amended Wind Assessment Report will be endorsed and will form part of this permit. The amended Wind Assessment Report must be generally in accordance with plans endorsed under Condition 1, as well as the Wind Report prepared by MEL Consultants and the desktop advice dated 11 March 2022. The Wind Assessment report must include testing for existing configurations, the proposed building within existing configurations and the proposed building within proposed configurations which includes all approved buildings and those under consideration. The Wind Assessment report must clearly indicate the comfort level being achieved in full, and where not able to be achieved recommendations for mitigation measures.
- 13 The provisions, recommendations and requirements of the endorsed Wind Assessment Report must be implemented and thereafter complied with to the satisfaction of the Responsible Authority.

Waste Management Plan (WMP)

- 14 Concurrent with the endorsement of Condition 1 plans, an amended Waste Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the Waste Management Plan will be endorsed and will then form part of the permit. The amended Waste Management Plan must be generally in accordance with the plan prepared by SALT, dated 26 November 2020 but amended to show:
 - (a) Any changes required to meet requirements under Condition 1 of this permit.
 - (b) Waste collections for this development are to be completed internally by Private waste collection contractor.
 - (c) Council issued bins will not be required for this development.
 - (d) Waste collection vehicles are to enter and leave the developed site in a forward direction.
 - (e) Mobile garbage bin usage is to be shared by the occupiers of the development.
 - (f) Proposed waste vehicle access to and from the development as well as the vehicle movements within the development to the satisfaction of the Responsible Authority.
- 15 The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and thereafter complied with to the satisfaction of the Responsible Authority

Construction Management Plan

- 16 Before the development commences, including before demolition and site preparation works, a Construction Management Plan to the satisfaction of the Responsible Authority, detailing how the environmental and construction issues associated with the development will be managed, must be submitted to and approved by Council. The Construction Management Plan must be prepared and managed by a suitably qualified person who is experienced in preparing Construction Management Plans in accordance with the City of Whitehorse Construction Management Plan Guidelines. When approved the Construction Management Plan will form part of this permit and must be complied with, to the satisfaction of the Responsible Authority.
- 17 The provisions, recommendations and requirements of the endorsed Construction Management Plans must be implemented and complied with to the satisfaction of the Responsible Authority.

Early Works Plan

- 18 Prior to the commencement of any buildings and works, an Early Works Plan may be prepared to the satisfaction of the Responsible Authority. The Early Works Plan must provide details of all works which comprise the 'early works', including but not limited to:
 - (a) Piling works (Bored Piers), including Capping Beams.
 - (b) Retention system including structural columns, shotcrete walls and rock anchors.
 - (c) Bulk excavation.
 - (d) Detailed excavation.
 - (e) Excavation and pouring of pad footings, pile caps and basement slabs.
 - (f) Civil drainage retention system.
 - (g) Crane pad footing system.
- 19 Before the Early Works commence, a Construction Management Plan for the Early Works to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the plan will be endorsed and will form part of this permit. The plan must include:
 - (a) A pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure.
 - (b) Containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land.
 - (c) Site security.

- (d) Management of any environmental hazards including, but not limited to:
 - (e) Contaminated soil.
 - (f) Materials and waste.
 - (g) Dust
 - (h) Stormwater contamination from run-off and wash-waters.
 - (i) Sediment from the land on roads.
 - (j) Washing of concrete trucks and other vehicles and machinery; and spillage from refuelling cranes and other vehicles and machinery.
 - (k) An emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced.
- 20 Before the Early Works commence, a Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with any relevant Noise protocol as issued by the Environment Protection Authority must be prepared to the satisfaction of the Responsible Authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:
- (a) Using lower noise work practice and equipment.
 - (b) The suitability of the land for the use of an electric crane.
 - (c) Silencing all mechanical plant by the best practical means using current technology.
 - (d) Fitting pneumatic tools with an effective silencer.
 - (e) Any other relevant considerations.

Public Realm

- 21 Prior to the completion of the development hereby approved, the road reserve between the subject site and the back of kerb along the Whitehorse Road and Hiltons Lane frontages must be constructed and laid out in accordance with the endorsed plans to the satisfaction of the Responsible Authority. The design and materials must be consistent with the Box Hill Urban Realm Treatment Guidelines (BHURT guidelines) to the satisfaction of the Responsible Authority.
- 22 Prior to the commencement of the development hereby approved, a Lighting Strategy must be prepared to the satisfaction of the Responsible Authority. The Lighting Strategy must provide details of proposed lighting within the street setbacks and building facades, and must be prepared in accordance with the Urban Design Guidelines Victoria, Department of Environment, Land Water and Planning 2017. All lighting must include specifications with details of luminance, baffling, height, design and

materiality. This lighting must be maintained to the satisfaction of the Responsible Authority.

- 23 The provisions, recommendations and requirements of the endorsed Lighting Strategy must be implemented and thereafter complied with to the satisfaction of the Responsible Authority. The lighting must be installed in accordance with the Lighting Strategy and maintained and operated for the life of the building.

General conditions

- 24 All stormwater drains and on-site detention systems are to be connected to the legal point of discharge to the satisfaction of the Responsible Authority prior to the occupation of the building/s. The requirement for on-site detention will be noted on your stormwater point of discharge report, or it might be required as part of the civil plans approval.
- 25 Before the development starts, stormwater drainage and design plans and specifications of the civil works within the site associated with the development to the satisfaction of the Responsible Authority and prepared by a suitably qualified engineer must be submitted to and approved by the Responsible Authority. Certification by the consulting engineer that the civil works have been completed in accordance with the design plans and specifications must be provided to the Responsible Authority. Buildings or works must not be constructed over any easement without the written consent of the relevant Authorities.
- 26 Stormwater that could adversely affect any adjacent land must not be discharged from the subject site onto the surface of the adjacent land.
- 27 Prior to the commencement of works, excluding demolition, bulk excavation, site preparation, soil removal, site remediation and retention works, detailed engineering drawings must be prepared to the satisfaction of the Responsible Authority detailing works and treatments that are to take place within the Whitehorse Road and Hiltons Lane road reserves addressing the following:
 - (a) Finished levels that maintain appropriate interface levels to surrounding land for safe and functional pedestrian movements.
 - (b) Existing assets in the road reserve.
 - (c) Impact upon existing on street parking spaces.
- 28 Any reinstatement and/or alterations to Council or other Public Authority assets as a result of the development must be at no cost to the Responsible Authority. All relevant permits and consents from Council must be obtained at least 7 days before any works starts. Adequate protection must be provided to Council's infrastructure before works start and during the construction process to the satisfaction of the Responsible Authority.

- 29 All costs associated with reinstatement and/or alterations to Council or other Public Authority assets deemed necessary by such Authorities as a result of the development must not be borne by the Responsible Authority. An “Asset Protection Permit” must be obtained from Council at least 7 days before any works on the land start and before specific written approval for any works involving the alteration of Council or other Public Authority assets.
- 30 Before the development is complete, all mechanical exhaust systems for the car park hereby approved must be located and sound attenuated to prevent noise and unreasonable amenity to the occupants of the surrounding properties, to the satisfaction of the Responsible Authority and thereafter must be maintained to the satisfaction of the Responsible Authority.
- 31 Before the development is complete, the car parking areas and accessways as shown on the endorsed plans must be formed to such levels so that they may be used in accordance with the plan, and must be properly constructed, surfaced, drained, line-marked (where applicable) and maintained to the satisfaction of the Responsible Authority.
- 32 Except with the prior written consent of the Responsible Authority, council assets must not be altered in any way.
- 33 All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
- 34 Before the development starts, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.

Transport for Victoria conditions

- 35 The demolition and construction of the development must not disrupt bus operations on Whitehorse Road without the prior written consent of the Head, Transport for Victoria.
- 36 Any request for written consent to disrupt bus operations on Whitehorse Road during the demolition and construction of the development must be submitted to the Head, Transport for Victoria not later than 8 weeks prior to the planned disruption and must detail measures that will occur to mitigate the impact of the planned disruption

Expiry

- 37 This permit will expire if one of the following circumstances applies:
 - (a) The development is not commenced within four (4) years from the date of issue of this permit;
 - (b) The development is not completed within eight (8) years from the date of this permit;

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

- End of conditions -