

**Draft Whitehorse Planning Scheme Amendment C245whse
Referral 34: Box Hill Central North Master Plan**

Priority Projects Standing Advisory Committee Report

Planning and Environment Act 1987

27 November 2023

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

Priority Projects Standing Advisory Committee Report pursuant to section 25 of the PE Act

Draft Whitehorse Planning Scheme Amendment C245whse

Referral 34: Box Hill Central North Master Plan

27 November 2023



Kathy Mitchell AM, Lead Chair



Sarah Raso, Deputy Chair



Andrew Hutson, Member



Kate Partenio, Member

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Glossary and abbreviations

AHD	Australian Height Datum
Box Hill MAC	Box Hill Metropolitan Activity Centre
Centre	Box Hill Central North Shopping Centre
Commercial Permit	Planning Permit WH/2020/466 (Lot 4)
Committee	Priority Projects Standing Advisory Committee
Council	Whitehorse City Council
D	Document
DCP	Development Contributions Plan
DCPO	Development Contributions Plan Overlay
DCP Amendment	Amendment C241whse
DDO10	Design and Development Overlay, Schedule 10
DIL	Development Infrastructure Levy
DTP	Department of Transport and Planning
IBAC	Independent Broad-based Anti-corruption Committee
Incorporated Document	Incorporated Document titled Box Hill Central North Master Plan
MAC	Metropolitan Activity Centre
Master Plan	proposed Box Hill Central North Master Plan, 23 June 2022
OVGA	Office of Victorian Government Architect
PE Act	Planning and Environment Act 1987

Planning Scheme	Whitehorse Planning Scheme
PO1	Parking Overlay Schedule 1
PPF	Planning Policy Framework
Public Realm Permit	Planning Permit WH/2020/467 (Civic Steps)
Residential Permit	Planning Permit WH/2020/597 (Lot 5)
SCC	Strategic Cycling Corridor
SCO	Specific Controls Overlay
SRL	Suburban Rail Loop
SRLA	Suburban Rail Loop Authority
VEI	Vision Eye Institute
VEI land	852 Whitehorse Road, Box Hill
VPP	Victoria Planning Provisions
Whitehorse DCP	Whitehorse Development Contributions Plan 2022

Overview

Draft Amendment summary

Amendment	Draft Whitehorse Planning Scheme Amendment C245whse
Common name	Referral 34: Box Hill Central North Master Plan
Brief description	<p>Proposed Master Plan for the site to allow for:</p> <ul style="list-style-type: none"> • seven mixed use buildings ranging in height between 19 and 49 levels • car parking within basement and podium levels accessed off Clisby Court • new internal roads and pedestrian links • new civic plaza and pedestrian public plaza • closure of Fairbank Lane • landscaped public open space • redevelopment of 8 Nelson Road (a Council-owned car park) into a public park <p>The draft Amendment C245 seeks to:</p> <ul style="list-style-type: none"> • introduce Clause 45.05 Road Closure Overlay into the Whitehorse Planning Scheme and apply the Road Closure Overlay to Fairbank Lane to facilitate the partial closure of Fairbank Lane (east of Nelson Road) • apply the Specific Controls Overlay to the entire Master Plan area • amend the schedule to Clause 45.12 Specific Controls Overlay to introduce Incorporated Document 'Box Hill Central North Master Plan'
Subject land	17-21 Market Street, part of the land at 1 Main Street, 2, 8 and 8A Prospect Street, Clisby Court, Nelson Road and Fairbank Lane, Box Hill
The Proponent	Vicinity Centres Pty Ltd
Planning Authority	Minister for Planning
Submissions	Number of Submissions: 67

Committee process

The Committee	Kathy Mitchell AM (Chair), Sarah Raso (Deputy Chair), Andrew Hutson and Kate Partenio
Supported by	Anne-Marie Edgley and Gabrielle Trowse of Planning Panels Victoria
Directions Hearing	In person at Planning Panels Victoria and online on 24 August 2023
Panel Hearing	In person at Planning Panels Victoria and online on 18, 19, 20, 21, 25, 26, 27 and 28 September and 27 October 2023
Site inspections	Accompanied, on 14 September 2023
Parties to the Hearing	Vicinity Centres Pty Ltd (Proponent) Whitehorse City Council Department of Transport and Planning Vision Eye Institute Blackburn Village Residents Group and Combined Residents of Whitehorse Action Group Surrey Hills and Mont Albert Progress Association Kevin Earl
Citation	Whitehorse PSA C245whse [2023] PPV
Date of this report	27 November 2023

Executive summary

Overview

The Box Hill Metropolitan Activity Centre is a vibrant and dynamic centre that has seen significant change over recent years. It has a combination of various uses, including:

- significant new residential development in the form of higher tower forms
- revamped major retail hub as well specialty shops, cafes and restaurants that cater for its strong multi-cultural community and visitors
- major commercial land uses, including the Australia Tax Office, as well as other multiple offices offering a wide range of business services
- health care, with the Box Hill Hospital and many specialty services, including the Victorian Eye Institute
- Box Hill Institute/TAFE
- extensive public open space, including the vast area of the Box Hill Gardens, north of Whitehorse Road
- public transport hub with a train and bus interchange, a tram network along Whitehorse Road and from the mid-2030s, a new Suburban Rail Loop Station.

Box Hill will continue to grow and develop, and its urban morphology will continue to evolve. This Centre epitomises the role and function of a Metropolitan Activity Centre, now and into the future.

While Council has been active in preparing Structure Plans for the Centre, for various reasons, these have not been successfully included in the Whitehorse Planning Scheme.

The Proponent, Vicinity Centres Pty Ltd, is a major landowner in Box Hill and it seeks to implement draft Amendment C245whse that provides for a new Master Plan for the Box Hill Central North area and allows for the closure of Fairbank Lane. The Master Plan area includes both the Vicinity owned Box Hill Central North Shopping Centre and adjacent Council land located within the block bounded by Whitehorse Road, Nelson Road, the metropolitan rail line and Clisby Court. The Master Plan area does not include the Victorian Eye Institute property on the southeast corner of Whitehorse Road and Nelson Road.

The draft Amendment will allow for the continued development of predominantly residential and commercial uses to complement the existing Box Hill Central South retail hub and approved sites for residential and commercial uses within the Master Plan area.

The draft Amendment was made available for review by Council, other agencies and the community, from which 67 submissions were made. The Minister for Planning referred the draft Amendment and all submissions to the Priority Projects Standing Advisory Committee for its review, in accordance with a letter of referral and its Terms of Reference, as amended. The key issues raised in submissions included concerns about the increase in traffic, the height and density of the building envelopes and the subsequent increase in population.

Following a Directions Hearing and nine days of public Hearings in September 2023 and an additional day in October 2023, the Committee finds the draft Amendment has merit and should be progressed, subject to changes to the Master Plan and the Incorporated Document.

Reasons for findings

Overall, the Master Plan will guide the development of Box Hill Central North in a positive way, but the Committee was disappointed that for such a significant site that will have an enduring legacy, the Proponent and Council were at odds with each other about how this area should progress in the future.

Council was concerned about the form of and layout of development, the choice of planning control, the way in which the Proponent offered development contributions and public open space levies and how parking should be managed. While some of Councils' ideas were not accepted by the Committee, some other ideas and suggestions have merit. The Proponent was firm in its views and did not concede in any material way for suggestions put by Council or the Committee.

Notwithstanding, the Committee considers the Box Hill North Central Master Plan will deliver an integrated centre that will provide for a range of residential and commercial opportunities to the benefit of existing and emerging communities. The Committee supports implementation of the Box Hill North Central Master Plan, subject to its recommendations.

Recommendations

Based on the reasons set out in this Report, the Standing Advisory Committee recommends that Draft Whitehorse Planning Scheme Amendment C245whse be approved as exhibited, subject to the following changes:

1. **Amend the Incorporated Document to include the following addition to Clause 2.1:**
 - a) **Include the Victoria Eye Institute land at 852 Whitehorse Road, Box Hill.**
2. **Amend the Incorporated Document to include the following to Clause 2.1:**
 - a) **Redesign the podium to Lot 1 to ensure that vehicle and pedestrian access from Nelson Road to the car park and entry of 852 Whitehorse Road, Box Hill is open to the sky.**
 - b) **Redesign the interface between Lot 1 and 852 Whitehorse Road, Box Hill to ensure a safe environment for pedestrian accessibility.**
 - c) **Set back the tower form of Lot 1 by a minimum of 4.5 metres from the property boundary of 852 Whitehorse Road, Box Hill to ensure equitable development opportunities.**
 - d) **Redesign the built form of Lots 1, 2 and 3 to ensure there is no additional overshadowing to the Civic Steps between 11.00am and 1.00pm at the equinox.**
 - e) **Redesign the built form of Lots 1, 2 and 3 to minimise additional overshadowing to the Civic Steps between 1.00pm and 2.00pm at the equinox.**
3. **Amend Clause 8(h)(iv) of the Incorporated Document to change the minimum 5 Star Green Star to be 6 Star; and add a note to read *"As sustainability issues evolve, any development must meet best practice and adapt to changing ratings and rating systems"*.**
4. **Add a note to Clause 8.1(i) of the Incorporated Document to read: *"Ensure landscaped open space areas within the Master Plan are designed with features to ensure wind impact does not exceed standards required for sitting as appropriate for public uses."***

5. **Remove Parking Overlay Schedule 1 from the land at 17-21 Market Street, part of the land at 1 Main Street, 2 Prospect Street, 8 Prospect Street, 8A Prospect Street, part of Main Street, Prospect Street, Nelson Road, Fairbank Lane, 852 Whitehorse Road, and the landscape reserve fronting Whitehorse Road, Box Hill.**
6. **Prepare a new schedule to the Parking Overlay for the land at 17-21 Market Street, part of the land at 1 Main Street, 2 Prospect Street, 8 Prospect Street, 8A Prospect Street, part of Main Street, Prospect Street, Nelson Road, Fairbank Lane, 852 Whitehorse Road and the landscape reserve fronting Whitehorse Road, Box Hill that includes:**
 - a) **Parking objectives generally consistent with the existing Parking Overlay 1.**
 - b) **The number of car parking spaces required as set out in Table 10 of this report.**
 - c) **Application requirements and decision guidelines for permit applications: Before deciding on an application to increase the maximum number of car parking spaces required for a specified use, the Responsible Authority must consider: the decoupling of car spaces from individual dwelling titles and individual commercial floorspace titles.**
7. **Amend the Incorporated Document to include the following at Clause 2.1:**
 - a) **Add a notation that further design and consultation be undertaken to provide greater certainty around the space required to enable the connection of the Strategic Cycling Corridor across the rail line prior to approving the building envelope for Lots 6 and 7.**
8. **Amend the Incorporated Document at Clause 8.1j to include the following additional requirements in the Transport Impact Assessment:**
 - **the preparation of the Transport Impact Assessment for each stage of the Masterplan must be to the satisfaction of the Head, Transport for Victoria.**
 - **a road safety audit of Prospect Street and Nelson Road for all modes of transport.**
 - **an assessment of any impacts of the Suburban Rail Loop Project and any altered access conditions for all transport modes**
 - **parking rates set out in the new Parking Overlay for the subject land.**
9. **Amend the Incorporated Document to include a sub-condition to Clause 9 requiring permit conditions which require the management of any redundant airspace infrastructure on railway land, which relate to the rail interface during construction and ongoing maintenance responsibilities.**
10. **Amend the Master Plan to:**
 - a) **Add a notation at Plan 3.8 that the final design of the rail interface must comply with the VicTrack Rail Development Interface Guidelines (VicTrack, 2019) and Clause 18.02-3S Public Transport of the Whitehorse Planning Scheme.**
 - b) **Update the Movement Plan to:**
 - **include pedestrian and cycle paths, including a pedestrian path generally along the south side of the existing Fairbank Lane alignment**
 - **identify clearly the interface between the Land and the Suburban Rail Loop Project along Whitehorse Road, including the location of the new tram stop and associated road layout changes.**

- **identify clearly the Strategic Walking and Cycling Corridors through the precinct and how these link to the broader existing network.**
- 11. Amend Conditions of Permits at 9.1(d)(ii) 1 and 2 (Affordable Housing) of the Incorporated Document to read:**
- a) (1) Sale of not less than ten per cent of the total number of approved dwellings at a discount to market value of not less than 30 per cent:**
 - b) (2) Lease of not less than six per cent of the total number of approved dwellings at a discount to market value of not less than 30 per cent, for not less than 30 years from the occupation of the dwellings.**
- 12. Amend Clause 10.1 of the Incorporated Document (Open Space Contributions) to read:**
- Any planning permit allowing for the subdivision of the Land or any part of the Land must comply with the requirements in Clause 53.01 (Public open space contributions) of the Planning Scheme, subject to the following:**
- a) A person who proposes to subdivide land must make a contribution to Council for public open space in the amount of six per cent being a percentage of the land intended to be used for residential or commercial purposes or a percentage of the site value of such land, or a contribution of both.**
 - b) The land to be transferred to Council (identified as Lane 3 in the Master Plan) (if transferred and realised) must be calculated as a form of credit towards the fulfillment of the six per cent public open space contribution liability.**
- 13. Amend Clause 11 of the Incorporated Document (Development Contributions) to read:**
- a) Any development of the Land must comply with the requirement to pay any development contribution under the Whitehorse Development Contributions Plan (once Amendment C241whse is gazetted).**
 - b) A planning permit that is granted with respect to the Land must:**
 - (i) be consistent with the provisions of the Whitehorse Development Contributions Plan; or**
 - (ii) include any conditions required to give effect to any contributions or levies imposed, conditions or requirements that are contained within any schedule to Clause 45.06 of the Planning Scheme that concerns the Whitehorse Development Contributions Plan.**

1 Introduction

1.1 Terms of Reference and letter of referral

The Priority Projects Standing Advisory Committee (the Committee) was originally appointed by the Minister for Planning on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference dated 9 September 2023:

... provide timely advice to the Minister for Planning on projects referred by the Development Facilitation Program, or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.¹

The revised Terms of Reference for the Committee were approved by the Minister for Planning prior to the Hearing commencing. The Committee advised all parties of the updated Terms of Reference on Day 1 of the Hearing on 18 September 2023. The revised Terms of Reference do not affect the task of the Committee for this referral.

This is Referral No. 34. The Minister for Planning's letter of referral was dated 30 July 2023 and it asked the Committee to consider a proposal by Vicinity Centres Pty Ltd (the Proponent) to review the draft Box Hill Central Master Plan in the City of Whitehorse. The Master Plan seeks to provide the planning framework thought the use of the Specific Controls Overlay and an Incorporated Document for the redevelopment of the area loosely defined as being north of the railway line, west of Main Street, south of Whitehorse Road and east of Nelson Street.

Specifically, the Minister for Planning asked the Committee to:

- provide advice and recommendations on whether draft Amendment C245whse (the Amendment) should be approved².

The members of the Committee that considered Referral No. 34 are:

- Ms Kathy Mitchell AM, Chair
- Ms Sarah Raso, Deputy Chair
- Associate Professor Andrew Hutson, Member
- Ms Kate Partenio, Member.

The Committee was assisted by Ms Anne-Marie Edgley, Senior Project Manager, and Ms Gabrielle Trowse, Project Officer from the Office of Planning Panels Victoria.

1.2 Background to the proposal

Briefly, the background to the draft Amendment is set out in the tables below.

Table 1 Strategic Planning Site History

Date	Title and Description	Status
June 2007	Amendment C100 Box Hill Transit City Activity Centre Structure Plan to guide development in the Box Hill Metropolitan Activity Centre (Box	Adopted in 2009 and gazetted in 2011

¹ D1

² D2 and Appendix B

	Hill MAC)	
2017	Amendment C175 draft Box Hill Metropolitan Activity Centre Built Form Guidelines	Exhibited in February 2017. Panel Hearing held in August 2017. Panel report released on 6 October 2017 recommending the amendment be abandoned. Council resolved to abandon the amendment in June 2018
November 2021	Amendment C228 Structure Plan and new Urban Design Framework	Request for Authorisation was submitted in November 2021. Under delegation from the Minister, the Department of Land, Environment, Water and Planning (DELWP) advised it would not authorise the amendment in September 2022.

In May 2020, Urbis acting on behalf of the Proponent, lodged three planning permit applications with the Council, as detailed in Table 2. Together, the three permits comprised Stage 1 of the development works proposed as part of the proposed Box Hill Central Master Plan (Master Plan).

Table 2 Planning Permit Approvals

Date	Title and Description	Status
4 July 2022	Planning Permit WH/2020/466 issued for buildings and works for a 27 to 28 storey building associated with office and retail and a reduction in the car parking requirements (Commercial Permit)	Site address: Lot 4 at 17-21 Market Street, Box Hill Permit issued by Whitehorse City Council
4 July 2022	Planning Permit WH/2020/467 issued for buildings and works and alteration of access to a road in a transport zone 2 (Public Realm Permit)	Site address: civil works (including the Civic Steps) at 17-21 Market Street, Box Hill Permit issued by Whitehorse City Council
21 November 2022	Planning Permit WH/2020/597 issued for the use of the land for accommodation, buildings and works for a 50 to 51 storey building associated with accommodation, office and retail and a reduction in the car parking requirements (Residential Permit)	Site address: Lot 5 17-21 Market Street, Box Hill Permit issued by Whitehorse City Council at the direction of Victorian Civil and Administrative Tribunal

1.3 Process

(i) Directions Hearing

The Committee received the letter of referral from the Minister for Planning on 30 July 2023. The Committee subsequently wrote to all parties on 3 August 2023 advising of the referral and inviting them to attend a Directions Hearing at Planning Panels Victoria on 24 August 2023³.

In its letter to parties, the Committee directed that all parties provide a Statement of Grounds outlining the key issues to be relied upon at the Hearing prior to the Directions Hearing. All submitters seeking to be heard complied with that Direction. After reviewing the Statement of Grounds provided by parties the Committee raised the following key issues at the Directions Hearing:

- inconsistency with strategic planning for the area
- urban design, built form, including height
- integration with the Suburban Rail Loop (SRL) project
- Civic Steps/precinct, open space
- amenity, including overshadowing, overlooking, sunlight, loss of views, noise, wind
- provision of social and affordable housing
- traffic, access and parking, connectivity, active transport opportunities, congestion and mobility accessibility and inclusion.

At the Directions Hearing, the Committee directed the economics and traffic, car parking and access experts meet as a conclave and provide a statement of agreed facts and matters of disagreement. That Direction was complied with.

(ii) Site inspections

At the Directions Hearing, the Committee advised parties it would conduct an accompanied site inspection of the site and surrounds before the Hearing on 14 September 2023. The Proponent was directed to organise and manage all logistical details for the site inspection⁴.

The inspection was attended by the Committee, the Senior Project Manager and Project Officer of Planning Panels Victoria, representatives of the Proponent, Council, the Vision Eye Institute, the Blackburn Village Residents' Group and Mr Earl.

The inspection commenced with a briefing from the Committee Chair and then an explanation by Mr Tweedie, Senior Counsel for the Proponent, of what the Proponent is seeking to do across the subject land. Mr Tweedie escorted the Committee and others to all relevant parts of the subject land.

The Committee inspected the surrounds of the Box Hill Central area and inspected the Vision Eye Institute (VEI) building at 852 Whitehorse Road (VEI land).

(iii) Hearing

The Hearing was conducted in person at Planning Panels Victoria and on-line through video conferencing over nine days on 18, 19, 20, 21, 22, 25, 26, 27 and 28 September 2023. A further

³ D4

⁴ D16

Hearing day was scheduled on 27 October 2023 to receive further information from the Proponent (see Chapter 1.4ii).

The Committee thanks all parties and submitters for their contribution to this process.

1.4 Procedural issues

While there were no procedural matters raised at the Hearing that required a written ruling, three key procedural issues emerged.

(i) Impact of the proposed development on the SRL project

Council and many community submitters urged that this project not be progressed at this time due to the impact it might have on the proposed SRL development and its potential to prejudice the long term planning for the broader SRL Precinct. Council's submissions covered this issue extensively, noting in its Statement of Grounds, the draft Amendment is:

... contrary to the objectives for 'orderly planning' and 'sound, strategic planning and coordinated action at State, regional and municipal levels' under s 4 of the Planning and Environment Act 1987, because the Draft Amendment does not consider the potential range of changes that will occur to the Box Hill Metropolitan Activity Centre as a result of SRL ⁵.

During the Hearing, the Committee wrote directly to the Suburban Rail Loop Authority (SRLA) on 21 September 2023, seeking comments on this matter:

To help inform its deliberations and recommendations, the Committee invites the Suburban Rail Loop Authority to advise if it has any matters it wishes to raise with the Committee about the draft Box Hill Central North Master Plan ⁶.

The Committee received a response from the CEO of the SRLA on 27 September 2023, who advised:

SRLA has reviewed the Master Plan and relevant submissions (including the Department of Transport and Planning's submissions at exhibition and as part of the Committee hearing process). SRLA agrees with the Department of Transport and Planning's submissions as they relate to the Suburban Rail Loop Project.

SRLA has consulted and will continue to consult with relevant decision makers and stakeholders in relation to the delivery of the Suburban Rail Loop Project at the Box Hill precinct. The Box Hill precinct will be subject to future structure planning and further planning scheme amendment to realise the Suburban Rail Loop Project. As those processes will be undertaken in the future, and since the scope of those processes and outcomes are unclear at this stage, it is not possible to comment on how the Amendment and the current proposed controls will interact with specific future precinct control requirements ⁷.

In its closing submission, the Proponent rebutted Council's position about delaying consideration of the Master Plan, noting the SRLA did not share that view. The Proponent submitted:

It has never been the case that planning decisions are delayed simply because some strategic planning process is being proposed. Planning permit applications are not delayed by, or tested against, future possible strategic plans, proposed policies. If that were to occur, the planning system would grind to a halt which would result in significant community disbenefit ⁸.

⁵ D9

⁶ D56

⁷ D82

⁸ D86, para 5

The Committee share that view, and it is further comforted by the response from the SRLA that it will continue to consult with the relevant decision makers about ongoing development of the Box Hill MAC. Given both implementation of the Master Plan and the SRL proposal is likely to take 20 to 30 years until completion, the Committee proceeds on the basis that the Master Plan should be progressed through this process.

(ii) Additional information

At the conclusion of the Hearing on 28 September 2023, the Committee made several observations about matters it considered could be further addressed by the Proponent. The Committee wrote to all parties on 2 October 2023 formalising its observations and a process to allow for further consideration of the issues raised, and for constructive discussions to be had between the Proponent and Council⁹.

The key issues for further resolution included:

- further consideration of the public open space contribution if the Civic Steps are not treated as being part of the public open space allocation
- whether Lot 3 can be relocated to reduce overshadowing impacts on the Civic Steps
- inclusion of the Vision Eye Institute and the Nelson Park land in the Master Plan area.

The Committee made it clear that it was seeking further information from the Proponent only and that it was not an opportunity for other parties to provide further submissions.

The Proponent subsequently provided an additional submission with attachments on 26 October 2023 which essentially rebutted most matters raised by the Committee¹⁰. The Hearing was reconvened on Friday 27 October 2023 to discuss the additional submission.

The submission made numerous points, however, it was clear to the Committee the Proponent did not seek to resile from its submissions made at the Hearing in considering alternative options and opportunities. In summary, it contended:

- the Civic Steps should be considered as public open space
- if the Committee did not accept that position, the Master Plan will still deliver the required level of public open space in excess of what is required by the Whitehorse Planning Scheme (Planning Scheme)
- the layout of the Lot 3 building (and the key elements of the Master Plan) cannot be changed and a land swap is not possible
- Council will not sell the land relating to Nelson Park to the Proponent
- the VEI land should not be included in the Master Plan area.

The key issues raised in the additional submission will be dealt with in the substantive chapters of this report.

The Committee was disappointed with the way in which the Proponent responded to some of its inquiries. It adopted a somewhat aggressive and combative approach to a range of matters in the Hearing. This was unhelpful and unnecessary. The Committee was seeking to work with the Proponent and Council to work through an acceptable outcome for the subject land for the benefit of the existing and emerging community of Box Hill and its surrounds.

⁹ D90

¹⁰ D95

(iii) Report from the Office of the Victorian Government Architect

After the Committee had closed the proceedings and after it had provided its request for further information from the Proponent in writing, it received a letter from Council that raised several issues in relation to a report from the Office of the Victorian Government Architect (OVGA) ¹¹.

That letter noted the OVGA had been involved in the project for some time and had prepared a report providing its observations about the built form of the proposal. The letter noted various participants were involved in that process, including officers from Council and the (former) Department of Land, Water and Planning and various consultants acting for the Proponent, including Ms Wong who gave built form evidence for Proponent about the proposal. None of this was disclosed at the Hearing.

The Committee sought a copy of the report of the OVGA and this was provided and tabled ¹². Upon receiving this report, the Committee observes that many of the issues raised by the OVGA were similar to the issues raised by the Committee in seeking further review at the end of the Hearing.

Given the built form issues occupied a significant amount of submission, evidence and cross examination at the Hearing, it is disappointing to the Committee that it was not provided with notice of and access to this report earlier.

The Committee considers:

- Ms Wong, who gave expert urban design evidence for the Proponent, (and verbally advised the Committee she was involved in the OVGA review at an early stage) should have included that in her declaration to the Committee as part of her evidence statement.
- The (now) Department of Transport and Planning (DTP) should have provided the report of the OVGA to the Committee at the beginning of the proceedings (or at least made the Committee aware that the report existed) so that it could have been better informed about the urban design issues raised.
- Any other person with knowledge of this report who was involved in the Hearing should have at least advised the Committee the report existed.

At the additional Hearing day, Council expressed its frustration that it could not consider and address issues about the report of the OVGA. The Committee shares that view, but it made a direction that as the Committee received the report after all relevant evidence had been filed and considered, including cross examination, it would have had to reopen the Hearing to take evidence and submission on this issue.

The Committee does not consider it was well served by those parties or individuals who had knowledge of this report but did not bring it to the attention of the Committee. The Committee could then have at least made its own inquiries to determine whether the OVGA report might have added value to the whole process and assist in providing advice to the Minister for Planning. The Committee's reading of the report indicates that it would have assisted the Committee and added considerable value to its understanding of the proposal, but for procedural fairness and transparency issues, the Committee is not able to use the report in considering this matter.

¹¹ D91

¹² D92

(iv) Independent Broad-based Anti-corruption Committee Operation Sandon report

The Committee was perplexed about submissions made by Council that related to the Independent Broad-based Anti-corruption Committee (IBAC) 'Operation Sandon' report.

Council noted the IBAC report several times in its main submissions, including:

Concerningly, the process provided for in the current drafting is opaque and in the context of the recent Independent Broad-based Anti-Corruption Commission (IBAC) Report into Operation Sandon, particularly Recommendations 3, 4, 5 and 6, it is a process that does not lend itself to transparency as recommended by IBAC¹³.

Council added:

In this regard the proposal is contrary to key learnings and lessons derived from:

- the VAGO report into Managing Development Contributions; and
- the IBAC report into Project Sandon¹⁴.

The Committee asked Council why it had raised these issues and its response was that it was very concerned about this process. Council noted:

For completeness, we also note that the recent IBAC inquiry into Project Sandon has made a number of recommendations in relation to the planning system in Victoria. So far as the Independent Broad Based Anti-Corruption Commission Report into Project Sandon dated 27 July 2023 (IBAC Report) 25 is concerned, Part 4.3 and Recommendation 2 is relevant. It should be a concern to the Minister that the amendment (purposely or not) avoids the WGT. We are unsure if the Minister is aware of this¹⁵.

The Proponent verbally noted those submissions to be 'serious allegations'.

The Committee is aware the IBAC report predominantly came about due to perceived corruption by Councillors and developer interests with regard to rezoning of land in the City of Casey.

The Committee raises its concern about the reference to the IBAC report and the verbal comments and innuendo made about this. The Priority Projects SAC process is an open and inclusive process. The Priority Projects SAC is a Ministerial Advisory Committee that has been operating since 2020. This is Referral 34. All submissions and evidence, and all other documents are provided through the public Hearing process in the public domain.

The Committee had no direction from the Minister for Planning nor the Department of Transport and Planning apart from what is contained in its letter of referral and the Terms of Reference signed by the Minister for Planning. The Hearing was undertaken in public at all times and there were no requests for in camera sessions. This Committee is not required to consider the Windfall Gains Tax. All witnesses were fairly cross examined and all submissions were made.

As the Committee was concerned about some of the Proponent's submissions, it sought further information and convened an extra afternoon for the Proponent to speak to these. The 'rules of engagement' were that the Committee asked the Proponent for a specific response to specific issues, and it was not an opportunity for other parties to make further submissions.

With regard to drafting concerns, it is common for there to be significant input into drafting, and that Council and all parties were able to interact with this as much as they wished. Council took

¹³ D70, para 96

¹⁴ D70, para 172

¹⁵ D70, para 179

that opportunity and it provided significant detail and recommendations in this regard. The inference about corruption of this process was disturbing to the Committee.

1.5 The Committee's approach

The Committee has complied with and reported on all relevant matters in accordance with its Terms of Reference, in particular Clauses 11, 15, 18, 20 and 21.

The letter of referral includes a broad and encompassing purpose to advise the Minister on the whether the draft Amendment should be approved.

The key issues to be resolved in relation to the draft Amendment were:

- status of the Activity Centre, including consistency with its role as a MAC and the ongoing strategic planning for the area
- built form and urban design (including height)
- quality and provision of open space
- extent of contribution to public/community facilities
- traffic, access, and parking, including connectivity, active transport opportunities, congestion and mobility accessibility and inclusion
- amenity, including overshadowing, overlooking, sunlight, loss of views, noise, wind
- provision of social and affordable housing
- opportunity to provide development contributions
- integration with the SRL project.

The Committee considered all written submissions made in response to the exhibition of the draft Amendment, observations from its site visit and submissions, evidence and other material presented to it during the Hearing.

Clause 20 of the Terms of Reference of the Committee require it to provide a 'concise written report' to the Minister for Planning. This report is concise in that it focuses on the key determinative issues only and does not seek to deal with every matter raised through the original submissions, the submissions of parties at the Hearing and the evidence provided in support. All submissions and materials have been considered by the Committee in reaching its conclusions, regardless of whether they are mentioned in the report.

After providing an introduction and a summary of the Proposal, this report deals with the key determinative issues under the following headings:

- strategic planning context
- built form and urban design
- public realm and landscape
- traffic, access and parking
- social and affordable housing
- public open space
- development contributions
- resolution of the draft Amendment.

The key recommendations of the Committee are included in its recommended version of the Incorporated Document in Appendix G as well as its recommended changes to the Master Plan, amongst other matters.

2 The Project

2.1 The draft Amendment

The draft Amendment proposes to give effect to the Master Plan vision, by:

- applying the Specific Controls Overlay (SCO) to facilitate the site-specific Box Hill Central North Master Plan (Master Plan)
- amending the schedules to Clause 45.12 (Specific Controls Overlay) and Clause 72.04 (Documents Incorporated in this Scheme) to incorporate the site-specific control Box Hill Central North Master Plan
- introducing the Road Closure Overlay for the partial closure of Fairbank Lane (east of Nelson Road).

The Incorporated Document and the Master Plan comprise the key elements of the draft Amendment. The following documents underpin, explain, or support the Amendment:

- Box Hill Central North Redevelopment Master Plan Planning Scheme Amendment Planning Report, Urbis, 23 June 2022 (Planning Report)
- Landscape Design Report, Public Realm Master Plan, Lat 27, 17 June 2022
- Wind Tunnel Test Report, MEL Consultants, May 2022
- Box Hill Central North Sustainability Framework, Cundall, 7 June 2022
- Box Hill Centre North Master Plan Transport Impact Assessment, Stantec, 21 June 2022
- Box Hill Central North Incorporated Document Employment Growth and Economic Benefit Analysis, Urbis, June 2022
- Box Hill Activity Centre – Housing Diversity and Affordability, Urbis, June 2022.

2.2 The Incorporated Document

The Incorporated Document is intended to guide the subdivision and future staged redevelopment of the subject land, in a manner that is generally in accordance with the Master Plan.

Important aspects of the Incorporated Document (as proposed) include:

- it provides for the redevelopment and use of the subject land in five stages
- no planning permit is required for, and nothing in the Planning Scheme operates to prohibit or restrict, the use of the subject land generally in accordance with the Master Plan
- a planning permit is required for the subdivision and development of the subject land
- specifies the Minister for Planning as the Responsible Authority for administering Clause 45.12 with respect to the Incorporated Document
- provides for planning permit applications to be exempt from third party notice and review where the application is generally in accordance with Master Plan.

2.3 The Master Plan

The Planning Report describes the Master Plan as follows:

The Master Plan proposes the redevelopment of the Box Hill Central North Shopping Centre site and the surrounding land into a high-density, mixed-use precinct, featuring a new civic plaza and other enhanced public open space, a new street network that prioritises pedestrian and bicycle movement, within a landscaped setting. In addition to developing

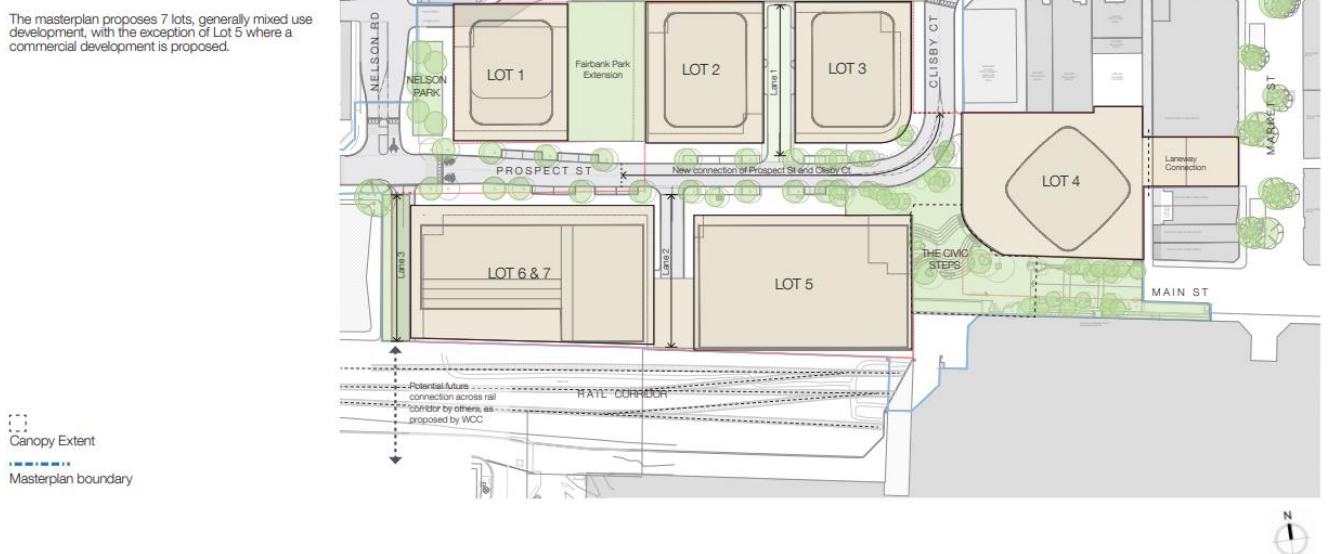
Vicinity Centre's land, the proposed masterplan aims to deliver significant upgrades to Council and VicTrack owned land ¹⁶.

The Master Plan divides the subject land into seven lots (plus the public realm), six for mixed use developments, together with Lot 5 which is the permitted commercial development, as shown in Figure 1.

Figure 1 Master Plan development plan

MASTERPLAN PROPOSAL 3.5 DEVELOPMENT PLAN

The masterplan proposes 7 lots, generally mixed use development, with the exception of Lot 5 where a commercial development is proposed.



The Master Plan includes connections, public realm works and landscaping that provides:

- development of seven multi-level buildings, ranging in height between 19 and 49 levels
- an east–west central spine (Prospect Street) for pedestrians and cyclists through the subject land
- the extension of Prospect Street through to Clisby Court and connection up to the western end of Main Street to create a new road and pedestrian link through the subject land linking Nelson Road to Station Street
- Civic Steps to manage the substantial level change between the north and south of the subject land and to connect Prospect Street and Main Street to create a public space with a wind canopy (much like an amphitheatre), open to the public at all times (see Figure 2)
- the closure of Fairbank Lane (while maintaining existing access to 852 Whitehorse Road)
- extension of Fairbank Park between Lots 1 and 2 to create a series of public and green spaces interspersed around the subject land, with the principal green space being Fairbank Park and the extension of Fairbank Park
- upgrading and enhancement of existing community and pedestrian infrastructure

¹⁶ D3a

- a new network of streets and arcades that provide connection to the adjoining interfaces, with upgrades to existing street interfaces including Main Street, Prospect Street, Whitehorse Road and Nelson Road
- alteration of the western end of Main Street from a loading dock/area to pedestrianised public mall
- redevelopment of 8 Nelson Road (a Council-owned car park) into a public park
- provision for a potential future pedestrian and bicycle connection (by others) over the rail corridor to connect Nelson Road and Thurston Street
- car parking within basement and podium levels with access from new service lanes and Clisby Court.

Figure 2 Civic Steps



The Master Plan includes design criteria, massing and built form principles and parameters to guide the design and decision making for the lots not yet approved by permits (Lots 1, 2, 3 and 6 and 7).

2.4 Subject land and surrounds

The subject land is within the Box Hill MAC, one of nine designated Metropolitan Activity Centres (MACs) in Melbourne.

The Box Hill MAC is a major provider of health, education, recreation, and retail services in Melbourne's eastern region. It includes significant higher-density residential development in buildings of significant scale (in the order of 25-36 storeys at the core of the activity centre). The subject land and its surrounds have excellent access to public transport, including the Box Hill Railway Station, Box Hill Bus Interchange and the tram route 109 Terminus.

The Box Hill MAC is one of six railway stations proposed for Stage 1 of the SRL project. Early works have commenced and Box Hill is the most northern station of Stage 1 that will connect to Cheltenham.

The subject land (Figure 3) includes land currently developed within the Centre, including a two-storey shopping centre accommodating a supermarket, retail stores, food and drink premises, and

medical facilities. The subject land extends to the surrounding road network, including Main Street, Prospect Street, Nelson Road and Fairbank Lane.

The Proponent described the current state of the Centre as “... becoming outdated and is struggling to meet the current needs of the community, and therefore represents a major urban renewal opportunity owing to its substantial size and strategic location at the core of the BHMALC”.

Figure 3 Subject site (blue) in context of surrounding area ¹⁷



¹⁷ Source: D19

The Centre has an area of approximately 26,360 square metres, of which the Proponent owns 18,500 square metres. Council and VicTrack own the remainder, as noted in Table 3.

Table 3 Subject land ownership details

Property	Parcel	Ownership
17-21 Market Street	CP102909	Proponent
1 Main Street	Lot 1 TP803942	Victorian Rail Track
2 Prospect Street	Lot 1 TP761487	Council
8 Prospect Street	Lots 1, 2, 3, 4, and 5 TP665882	Proponent
8A Prospect Street	Lot 1 TP333223	Council
Clisby Court	Lot 1 and 2 TP957558	Victorian Rail Track
Nelson Road extension	Lot 1TP234540	Council
Fairbank Lane	R1 LP82924 and Lot 2 LP45799	Council

3 Strategic planning context

3.1 Background

This chapter identifies the planning context relevant to the proposal. Appendix F highlights key imperatives of relevant provisions and policies.

The Committee had regard to the planning evidence noted in Table 4, as well as relevant submissions.

Table 4 Planning evidence

Party	Expert	Firm
Proponent	Amanda Ring	UPco
Council	David Barnes	Hansen
Vision Eye Institute	John Glossop	Glossop

Table 5 Planning context

	Relevant references
Victorian planning objectives	- section 4 of the PE Act
Planning Policy Framework	- Clause 11.01-1R (Settlement – Metropolitan Melbourne) - Clause 11.03-1R (Activity Centres – Metropolitan Melbourne) - Clause 16.01-R (Housing supply – Metropolitan Melbourne) - Clause 16.01-2S (Housing affordability) - Clause 17.01-1R (Diversified Economy – Metropolitan Melbourne) - Clause 17.02-1S (Business) - Clause 18 (Transport) - Clause 19 (Infrastructure) - Clause 21.07 (Economic Development) - Clause 22.07 (Box Hill Metropolitan Activity Centre)
Other planning strategies and policies	- Plan Melbourne - Box Hill Transit City Activity Centre Structure Plan 2007
Planning scheme provisions	- Special Controls Overlay
Planning scheme amendments	- Whitehorse Planning Scheme Amendment C241whse which is proposed to implement the Whitehorse Development Contributions Plan 2022
Ministerial directions	- Ministerial Direction 11 (Strategic Assessment of Amendments)
Planning practice notes	- Planning Practice Note 46: Strategic Assessment Guidelines, September 2022

The key issues to be resolved are whether the:

- draft Amendment is strategically justified
- draft Amendment is premature and unnecessary because it should first be informed by SRL's precinct planning

- SCO with the Incorporated Document is an appropriate planning tool to facilitate the delivery of the Master Plan
- VEI land and Nelson Park should be included in the Master Plan area.

3.2 Evidence and submissions

(i) The Proponent

The Proponent submitted the Box Hill MAC and is a location of State significance. It described the subject land as a location that is appropriate for high-density, mixed-use development and for transformative change, and the subject land as:

... a substantial part of the central core of the Box Hill MAC. It represents a location which should be expected to support the highest densities of development, and the tallest buildings.

Through her evidence, Ms Ring confirmed Box Hill is:

- one of nine centres identified in Plan Melbourne 2017-2050 as places of State significance that will be the focus for investment and growth
- one of only two such centres identified in Melbourne's eastern suburbs.

Ms Ring said:

- in addition to being a MAC, the northwest part of the Centre includes a significant health and education precinct anchored by Epworth Box Hill and the Box Hill TAFE
- Policy 1.2.1 of Plan Melbourne identifies health and international education among the priority sectors in Melbourne and that supporting the development of a network of activity centres linked by transport is important
- Box Hill is a significant transport hub with train, tram and bus services and associated infrastructure.

Ms Ring stepped the Committee through the relevant planning controls and explained:

... the Masterplan initiative was borne out of Vicinity's desire to confidently plan for continuing investment in the Box Hill Major Activity Centre, and apparent frustration with the pace and intent of the Council's strategic planning exercises, and commensurate delays and uncertainties. This included Council's efforts in respect of proposed Amendments C175 and C228 – both of which failed to advance ...¹⁸.

Ms Ring said it was important to recognise:

As a 'big picture' proposition matters of detail are, understandably, not fully resolved.

Rather, the Masterplan's intention is to map out, in a high-level way, a plan that I consider to be generally sound and which draws on the desirability of consolidating development of this MAC and providing a range of land uses; placing the most intensive development within the BHMAL core and enhancing pedestrian, cycling and vehicle connections within the centre¹⁹.

When questioned by Council about the exclusion of the VEI land from the Master Plan area, Ms Ring said she was not surprised by this exclusion, as the VEI land and the subject land have a diagonal relationship, as opposed to a side-by-side relationship. She considered the VEI land could easily be developed on its own.

¹⁸ D22, para 74

¹⁹ Ibid para 80

When further questioned by Council about the difference between the Commercial Zone 1 (being the existing zoning of the subject land) and the use of a Master Plan to determine uses, Ms Ring noted those provisions were primarily used for piecemeal development, compared to a Master Plan which seeks to give community certainty on the development of the area.

In relation to the Master Plans' relationship with the SRL land, Ms Ring said:

- from a master planning perspective, core aspects of the SRL project are known
- no area of the subject land has been acquired for the SRL project
- all parts of the subject land that will host significant development is clear of the SCO introduced to facilitate SRL project.

In relation to the proposed controls, Ms Ring said:

The draft amendment makes appropriate use of the Victoria Planning Provisions. It appropriately uses the Road Closure Overlay to identify the intended closure of Fairbank Lane. It uses the Specific Controls Overlay to facilitate development generally in accordance with the Masterplan, in the core of a very high order activity centre recognised in *Plan Melbourne* as being of state significance²⁰.

The Proponent submitted the draft Amendment:

- had been 'four years in the making', incorporated extensive consultation with DTP, the SRLA and Council²¹
- was exhibited for public feedback and represented a coherent, considered and balanced approach that will deliver a very significant community benefit
- once approved, it will be given immediate effect through implementation of the Master Plan and the SCO.

The Proponent was critical of what it perceived to be a negative 'do nothing' attitude from Council, especially about Council seeking to wait for the SRLA Precinct Plan and the alternative position put by Prof McGauran²². It contended Council had undertaken very little strategic planning for the MAC and what it had done in recent years had failed. The Proponent said in contrast, what it was putting forward was a clear plan that demonstrates how the Central North area can develop over the next 20 to 30 years. It urged the Committee to support its proposal.

In response to the request raised by the Committee about whether the VEI land should be included as part of the Master Plan, the Proponent suggested five '*Interface Principles*' be added to the Master Plan design criteria:

1. Provide for the equitable development of 852 Whitehorse Road.
2. Consider appropriate treatment of any exposed area of the Lot 1 podium northern elevation.
3. Provide a 4.5m setback of the Lot 1 tower from the property boundary with 852 Whitehorse Road so that a 9m separation between the Lot 1 tower and any tower at 852 Whitehorse Road can be provided.
4. Design the undercroft vehicle access to respond appropriately to its interfaces, including Fairbank Park.
5. Ensure lighting and treatment of undercroft area is of high quality to provide a safe environment for pedestrians²³.

²⁰ D22, para 226

²¹ But no mention of the report of the OVGA

²² See chapter 4

²³ D101

(ii) Council

Council highlighted the status of Box Hill as a MAC is designated in all levels of policy, and recent approval of the SRL project cemented that designation firmly in place. Council acknowledged:

- the impact of various changes to zoning preferences by previous Ministers for Planning
- lack of support from the State Government to implement recommendations from its previously developed Structure Plans
- an absence of contemporary controls needed to manage growth and change in Box Hill
- development has occurred with no real plan or vision in place, except for the Box Hill Transit Activity Centre 2007, which is now significantly out of date.

Council likened Box Hill to the CBD in terms of development scale, however pointed out the absence of the type of strategic planning that occurs in the Melbourne CBD.

In its opening submissions, Council raised issues about whether:

- this Master Plan should be 'set in stone' prior to the SRL planning for the Box Hill precinct
- it was orderly to 'effectively turn the Planning Scheme off'
- the drafting was competent or of a satisfactory standard
- the draft Amendment provides for acceptable public realm outcomes.

Council noted its position for each of these matters and contended the draft Amendment ... *"is poorly conceived and drafted, and if it were to proceed in its current form would result in poor public realm outcomes"* ²⁴.

Council acknowledged the 'checkered planning' history of the Box Hill MAC, noting it was important to get planning for the heart of Box Hill right. However, it submitted the draft Amendment was premature and unnecessary due to:

- the dearth of strategic policy direction
- the need to strategically plan for the whole of the Box Hill MAC
- additional overlays (including a Parking Overlay and a precinct wide Development Contributions Plan)
- a lack of clarity due to the work associated with the SRL.

Council considered the current plan to be prejudicial to the SRL precinct planning because:

... a master plan for the precinct is required and any planning control should be directed to that purpose. But Council also thinks that that master plan should be informed by the SRL's precinct planning, which is described by many as having the potential to be literally city shaping ²⁵.

Council submitted:

... unless the precinct planning program is allowed to proceed first, the ad hoc approval of such a large master plan is disorderly and back to front. For the same reasons that the DTP (at that time Department of Environment Land Water and Planning) did not authorise Amendment C228, which sought to put in place a suite of new planning provisions to give effect to a structure plan, it seems counter-intuitive to approve a new master plan for such an important precinct in the area closest to the proposed SRL station, without any understanding of what the SRL precinct planning will do ²⁶.

²⁴ D42, para 6

²⁵ D70

²⁶ D70

Further, Council noted:

We suspect that at the time Vicinity engaged with the SRL the SRL was not ready to communicate any useful information about precinct planning because precinct planning has only very recently commenced²⁷.

Council submitted:

- the Nelson Park land should not automatically be assumed to be developed as public open space and included in the Master Plan area
- this was valuable land which had been acquired by Council with its own funds, not with public open space funds.

Mr Barnes noted there was a lack of strategic policy direction to guide the future planning and development of Box Hill and said:

It is poor planning to consider such a significant development within Box Hill, prior to the preparation of a structure plan, focussed on substantial change and potential transform of the existing centre that is likely to be required as a consequence of the SRL.

A Specific Control Overlay is not particularly well suited to implement the Box Hill Central North Master Plan (the Master Plan, dated 23 June 2022) for the proposed development. Whilst there are other planning tools available, it is however possible to draft an incorporated plan in such a way that would appropriately facilitate and manage the approvals required for the project²⁸.

Council noted the loss of approximately 4,000 square metres of retail floor space as part of the redevelopment. While not a lot turned on this, the Committee observed through its site inspections that Box Hill Central appeared to be a modern thriving area and the existing retail space to be removed appeared tired and disjointed. The Proponent advised it has and will continue to negotiate with tenants proposed to be displaced to find alternate space elsewhere.

(iii) Vision Eye Institute

VEI submitted:

The VEI Land should be included in any revised Master Plan to ensure both VEI's current operations and future equitable development rights are appropriately managed. Refinements to include missing built form guidance are also required.

The SCO as proposed effectively excludes the Proponent's Land from the application of the Scheme. This is an extraordinary outcome, and extraordinary circumstances have not been demonstrated to warrant this approach²⁹.

Mr Glossop confirmed the VEI land is part of the Box Hill MAC. Specific to the VEI site, he made the following conclusions:

The VEI site ought to have been included in the Master Plan, or at the very least, the Master Plan should anticipate and respond to its likely future development in an equitable way.

The design of Lot 1 does not anticipate the future, equitable development of the VEI site.

Ongoing access to the VEI ambulance bay must be retained through the Amendment process³⁰.

Both the VEI and Mr Glossop contended there were more suitable tools within the Planning Scheme to facilitate this development, including the Development Plan Overlay. However, it is the

²⁷ D70, para 150

²⁸ D 36

²⁹ D76

³⁰ D30

role of this Committee to assess what is before them rather than what other planning tools could be used.

(iv) Other submitters

Most community submissions related to traffic and access, however those that raised planning issues considered the:

- use of the SCO was inappropriate
- built form proposed was not strategically justified
- intensity of development was more suited to a CBD setting.

Mr Earl considered the draft Amendment was premature pending the SLR project, and given the number of existing permits which have not yet been acted upon.

3.3 Discussion

(i) Strategic justification

The Committee considers the draft Amendment is strategically justified. Box Hill is a designated MAC which is supported by State policy to facilitate significant growth within its boundaries. It is a location where planning policy in the Planning Scheme directly encourages significant further intensification of development, including high density residential and commercial, a range of transport options, increased economic stimulus and major infrastructure improvements. The Box Hill MAC is a prime location for investment and growth.

Box Hill is the right location for high density housing and an increased concentration of uses, including significant height. A key attribute of Box Hill includes its excellent access to the existing road network and public transport, its location as a Strategic Cycling Corridor and that it will be a designated SRL station and precinct.

(ii) Prematurity due to SRL precinct planning

The future precinct planning by the SRLA was subject to much discussion and conjecture at the Hearing. Many questions were raised by all parties on what the position the SRLA had on the draft Amendment. To that end, the Committee wrote to SRLA inviting them to advise if there are any matters it wished to raise with the Committee about the draft Amendment and Master Plan³¹.

The Committee accepts the position of the SRLA that Box Hill will be subject to future structure planning and further planning scheme amendments to implement the SRL.

The Committee agrees with Ms Ring that core aspects of the SRL project are known and from a master planning perspective, the two sites can be considered independently of one another. However, there should be ongoing discussion to ensure appropriate integration. The Committee does not agree with Council that the Master Plan should be contingent on the results of any future planning of the SRL. The Committee notes the two sites sit side by side, with Market Street forming the main shared boundary.

The Committee finds that there is no reason to delay the master planning of the Box Hill North Central area purely on the idea that there may be future strategic planning and amendments to

³¹ D56

the planning scheme to facilitate the SRL project. SRLA confirmed in writing it was consulted and it will continue to consult with relevant decision makers and stakeholders in relation to the delivery of the SRL Project at the Box Hill precinct. The Committee is satisfied that at the time of developing the SRL precinct controls, this consultation will occur and this is not a reason to delay the planning of the Box Hill Central North area.

(iii) Use of the SCO

The SCO was introduced into the VPP through Amendment VC148 on 31 July 2018 to be used in place of Clause 52.03 (now Clause 51.01 - Specific Sites and Exclusions) to apply specific controls (contained in an incorporated document). The new overlay has the same function as Clause 52.03 and makes planning schemes more transparent by enabling specific controls to be easily identified on planning scheme maps.

The Practitioners Guide to Victoria's Planning Schemes Version 1.5, April 2022 applies to the preparation and application of a planning scheme provision in Victoria. It is primarily intended for use by practitioners considering or preparing a new or revised provision for a planning scheme. The guide sets out and explains the principles that should underpin the creation, selection, and application of a planning scheme provision. Chapter 5.6 'Considering a Site-Specific Provision' of the Practitioners Guide explains there are three methods of dealing with site specific proposals or requirements in a planning scheme:

- apply a special use zone
- use the combined amendment/permit process to rezone the land to a suitable zone and issue a permit at the same time
- include the proposal in a SCO.

The guidance provided in this chapter states the SCO can be used when the following circumstances apply:

- under extraordinary circumstances and if none of the other methods are appropriate, a proposal can be included in the SCO
- only for exceptional cases or to achieve a particular land use and development outcome that is consistent with a major issue of policy and is necessary to achieve or develop the planning objectives of Victoria.

'*Using Victoria's Planning System*' describes the structure and components of all Victorian planning schemes. Similar to the Practitioners Guide, it explains the SCO is to be used to achieve a particular land use and development outcome in extraordinary circumstances that are deemed to be a major issue of policy, where no other planning control or combination of controls is suitable. The SCO may:

- allow the land to be used or developed in a manner that would otherwise be prohibited or restricted
- prohibit or restrict the use or development of the land beyond the controls that may otherwise apply
- exclude any other control in the scheme.

Since its introduction, the SCO has been widely used.

The Committee agrees with the Proponent that current planning policy is no longer fit for purpose given the intention of the area as a significant development site. The Committee agrees with Ms Ring that the use of a SCO is an appropriate planning tool to use in areas of major change from the

existing status quo. The Committee agrees with Ms Ring that zoning of land is useful for determining the appropriateness of individual planning permit applications however benefit of using a Master Plan and SCO is the certainty it provides on how the area would be developed over the 15-year period. The Committee disagrees with Mr Barnes that a SCO is not well suited to be implemented on the subject land.

The Box Hill MAC is designated the highest level of policy and development outside the Melbourne CBD. A SCO is commonly used for significant sites and the development of large proposals. The Committee concludes the use of the SCO to facilitate the delivery of the Master Plan across the subject land appropriately delivers a vision and guidance for the redevelopment of an important component of the Box Hill MAC.

(iv) Whether the Master Plan should include the VEI land and Nelson Park

The Committee does not agree with Ms Ring’s reasoning for the VEI land to be excluded from the Master Plan area because of a diagonal relationship, as opposed to a side-by-side relationship of the two sites. The area reads as one island site bound by Whitehorse Road, Nelson Road, Clisby Court, Main Street and the rail corridor. The development of a Master Plan for this area is critically important for the future of Box Hill, especially in the absence of a contemporary Structure Plan.

The Committee agrees with the VEI and Mr Glossop that the VEI land should be included in the Master Plan area to allow for equitable growth and development potential across both the subject land and the VEI land. The Committee disagrees with Council that Nelson Park should not be included in the Master Plan. The Committee considers the Master Plan would benefit from the inclusion of both the VEI land and the Nelson Park land to ensure the Master Plan remains relevant over the next 15 plus years.

At the conclusion of the Hearing, the Committee provided the Proponent with the opportunity to further consider whether the inclusion of these sites could be facilitated. At the reconvened hearing on 27 October 2023, the Proponent confirmed that no meaningful changes were discussed with Council and the VEI. Regardless of this inaction, the Committee concludes both the VEI land and Nelson Park should be included in the Master Plan.

3.4 Findings and recommendation

The Committee finds:

- Box Hill is a designated Metropolitan Activity Centre supported by State policy to facilitate significant growth within its boundaries.
- The draft Amendment is strategically justified.
- Planning for the Master Plan area should sit comfortably with, and complement, the Suburban Rail Loop Project structure planning process.
- The use of the Specific Controls Overlay which allows for an Incorporated Document for the subject land is an appropriate planning tool to facilitate the development.
- The Master Plan should retain Nelson Park and should be amended to include the Vision Eye Institute land.

The Committee recommends:

1. **Amend the Incorporated Document to include the following addition to Clause 2.1:**
 - a) **Include the Victoria Eye Institute land at 852 Whitehorse Road, Box Hill.**

4 Built form and urban design

4.1 Background

The Committee had regard to the built form and urban design evidence noted in Table 6, as well as relevant submissions.

Table 6 Built form and urban design evidence

Party	Expert	Firm
Proponent	Karen Wong	Bates Smart
	Michael Eaddy	MLL Consulting
Council	Rob McGauran	MGS Architects
Vision Eye Institute	Gerhana Waty	Hansen

The key issues to be resolved are whether the proposal achieves an acceptable built form outcome having regard to the:

- massing and scale of podium and tower elements
- impact of built form on the amenity of the surrounding context
- impact of built form on the amenity of the Civic Steps
- impact on the potential development of the VEI land and Nelson Park
- wind impacts within the subject land and on surrounding areas.

As noted in Chapter 1.2, three active planning permits have been issued for a portion of the subject land. The Permit's include the:

- Residential Permit: podium and tower form in the south-east corner of the subject land of 50 levels which is designated as Lot 4 in the Master Plan
- Commercial Permit: tower of 27 levels on the southern portion of the subject land which is designated as Lot 5
- Public Realm Permit: a civic place referred to as the Civic Steps that would act as a central hub and level transition to join the approach from the east along Main Street through steps down to the northern section of the subject land.

The Civic Steps were described as a significant contribution to the proposed Master Plan and would create a civic heart and further public amenity to the broader context. The Civic Steps were described in the design report for the Public Realm Permit as being the heart of Box Hill and a venue for gatherings and events. A translucent canopy over a portion of the Civic Steps was envisaged as a key weather protection solution³².

To the east of Lot 5 are Lots 6 and 7 which propose 32 and 19 levels respectively on an 18 metre podium. To the north of the subject land three podium tower forms are proposed that descend in height from east to west. Lot 3 is proposed at 50 levels, Lot 2 at 46 levels and Lot 1 at 39 levels. All three forms have podia of 18 to 19 metres.

³² D47, section 5

4.2 Evidence and submissions

(i) Proponent

The Proponent instructed Ms Wong to prepare an expert witness statement³³. Ms Wong is a studio director of Bates Smart, the architects who prepared the Master Plan proposal. Ms Wong advised she acted as the project leader for the Master Plan throughout 2019 - 2023. During the process of leading the design of the Master Plan, she verbally claimed to have had collaborative engagement with Council, the OVGAs and DTP.

Ms Wong explained the Master Plan's key design principles included neighbourhood integration, pedestrian permeability, the importance of the new civic heart, and appropriate built form and scale within the context of the recent planning permit approvals and surrounding precincts.

A key consideration of the built form was a transition of height of the tower forms down from the highest scale of 271AHD for Lot 4 down to 228AHD for the western most tower of Lot 1. This stepping down from the highest form was presented as a response to the context of existing recent tower developments along Whitehorse Road. Ms Wong noted the separation of the proposed towers of between 20 and 34 metres along Whitehorse Road would allow visual penetration through the subject land and opportunities for some sunlight penetration to the centre of the subject land and the Prospect Street extension. The visual bulk impact of the proposed towers would be minimised due to the slenderness of the forms.

The three podia to the north of the subject land are proposed to be separated by the proposed Fairbank Park extension and a new laneway. The podia were set at four storeys high to create a consistent street wall along the extended Prospect Street.

Ms Wong justified the dimensions of the shape of the north towers as being slender enough to enable good daylight amenity for potential apartments within the forms.

Shadow diagrams were presented illustrating the impact of built form on the surrounding areas to the west, south and east of the Master Plan area. Near the subject land, there would be residential properties and public amenities to the south-east of the subject land. Shadow diagrams indicated that between 11.00am and 2.00pm on the equinox, there would be limited additional shadow cast on the south side of Hopetoun Parade, the intersection with Thurston Street, and a section of Thurston Street. Shadow cast to the south-west would fall on non-residential areas. Ms Wong noted the public pedestrian access of Main Street would be impacted by shadow from the Commercial, Residential and Public Realm Permits. The additional shadow cast by the proposed Master Plan buildings, in particular Lot 3, would have an impact on the proposed Civic Steps area.

Ms Wong had regard to Clause 43.02 (Design and Development Overlay, Schedule 10) (DDO10) of the Planning Scheme. She provided no direct analysis with DDO10 in her evidence, but when taken to the overlay by Council, Ms Wong said:

- it provided a 'qualitative guideline'
- DDO10 was not directly appropriate or applicable to the Master Plan proposal.

³³ D26

Ms Wong's evidence did not address the impact of the proposal on the VEI land. During questions from VEI, Ms Wong said:

- the proposal would respect equitable development of the VEI land
- she was unable to comment on whether development of the VEI land would be restricted by shadow cast onto Nelson Park
- there are no shadow controls proposed addressing the impact of a future development on the VEI land on the subject land.

Ms Wong provided a written response to the evidence of Prof McGauran:

- saying equitable development rights were respected by the Master Plan through setbacks to side and rear boundaries that abut the VEI land.
- criticising his alternative built form massing on the basis that it would create problems with shadowing, wind impacts and visual bulk.

In terms of wind impacts, Dr Eaddy assessed the wind conditions based on three comfort criteria: sitting, standing, and walking. He concluded:

- the proposed configuration would pass the walking criteria, and if the comfort levels were to be improved to meet the other criteria, wind mitigation strategies would need to be implemented which could include trees, vegetation and other detailed designed elements
- if podia heights could be increased, wind impacts to the surrounding spaces could be minimised.

Dr Eaddy was asked to comment on Prof McGauran's alternative proposal for a Master Plan. He said the higher podia and broader tower forms in Prof McGauran's alternative would create worse wind impacts. He noted he had not undertaken analytical studies on the alternative model nor had he considered any beneficial impacts of amended design detailing or mitigating features.

The Proponent:

- submitted Prof McGauran's alternative proposal had not been properly considered or composed, had no input from any specialised discipline beyond urban design and proposed built form over Council land
- relied on the evidence of Ms Wong regarding any shortfalls the alternative model displayed, including shadowing of southern sections of the subject land and tower visual massing
- relied on the evidence of Dr Eaddy that the alternative form would result in adverse wind conditions
- dismissed Prof McGauran's description of his alternative proposal as benefiting from protecting sunlight access to the Civic Steps submitting there is no strategic basis to assess the Master Plan based on Prof McGauran's overshadowing standards³⁴.

In relation to the Civic Steps, the Proponent maintained the emphasis of the importance of the Steps as a community resource:

The Civic Steps will be a space that is available to the public. It will be a place that will be available to be used by the public for recreation or "public resort". It will be a place that the public are likely to use in large numbers for a variety of purposes, including access through the activity centre, or for recreation. It will be a place to meet friends, read a book, sit for a

³⁴ D61

while, eat a meal, or attend a public function or celebration. It will be a public space in the true sense of the phrase³⁵.

In response to the invitation from the Committee to consider the impact of Lot 3 on additional overshadowing of the Civic Steps, the Proponent tabled and spoke to documents that illustrated two issues. These included:

- the importance of the Civic Steps as a community resource
- the additional overshadowing comparison between the current proposal and an alternative massing proposal that shifted Lots 1, 2 and 3 west through the relocation of the Nelson Park and Fairbank Park extension open space to create open space to the west of Clisby Court³⁶.

The Proponent submitted the alternative arrangement would only result in a limited reduction in additional overshadowing compared to the proposal before the Committee. The Proponent tabled images of examples of open spaces that demonstrate high amenity while being subject to a range of overshadowing conditions³⁷.

The Proponent advised that a land swap with Council - swapping the Council owned land where Nelson Park is proposed with the north-south land and easement between Lots 1 and 2 could not be agreed with Council and therefore the shifting of Lots 1, 2 and 3 to the west could not occur.

The Proponent submitted:

- the VEI land should not be included in the Master Plan and that any interface issues could be handled through a set of interface principles to be included in the Master Plan
- these principles could include a setback to the tower for Lot 1, interface treatments and quality of treatment and lighting to the undercroft area between Lot 1 and the VEI land³⁸
- to include VEI in the Master Plan would entail additional analytical material to be prepared by VEI including urban/landscape design concept, including ground plan activation and further wind analyses.

The Proponent did not support exclusion of Nelson Park from the Master Plan.

(ii) Council

Council generally relied on the evidence of Prof McGauran concerning issues of urban design. Prof McGauran accepted there should be a Master Plan for the subject land. As part of his evidence, Prof McGauran provided an alternative built form concept plan which showed in broad terms a reconfiguration of the built form, massing and location of Lots 1, 2 and 3.

With respect to built form and mass, Prof McGauran said:

- the height of the Lot 1 tower was too high and should be commensurate with that of the Chen Hotel to the west of Nelson Road which would result in a reduction of 29 metres
- the heights of Lots 2 and 3 were excessive and said:
 - both towers should be combined with a reduced height commensurate with Lot 5 (208 AHD)
 - the podium heights should be increased to 28 metres

³⁵ D95, para 10

³⁶ D95, D96, D97 and D99

³⁷ D97

³⁸ D101

- the height of Lot 6 should be reduced to provide a height transition between Lots 5 and 7, the lower character of Prospect Street and the residential character to the south-west³⁹.
- the reduction in height of Lot 6 would alleviate the shadow cast by the tower at 11.00am to the west side of Thurston Street.

Prof Mc Guaran referred to his alternative proposal as a redesigned Master Plan, although under questioning, referred to the diagrams as an illustrative summary that presented a footprint of the built form and open spaces, as distinct from a complete Master Plan. Much of the redesign responded to Prof McGauran's concerns regarding amenity and public spaces. The three-dimensional formal representation showed what appeared to be preferred heights with potential height extensions suggested as maximum heights.

Regarding the VEI land, Prof McGauran:

- recommended further setbacks of six metres between Lot 1 and VEI land to enable better car and pedestrian access to the existing VEI land's eastern entry and entry to Fairbank Park, and increased this to nine metres during his evidence in chief
- when questioned by VEI accepted the development of the VEI land may be impacted by shadow cast onto Nelson Park
- considered Nelson Park to be more of a 'movement platform' than a park
- saw no reason why the VEI land should not be included in the Master Plan.

Despite it being exhibited as such, Council submitted it did not want Nelson Park, land which it owned, to be included in the Master Plan.

Council submitted the massing of Lots 1, 2 and 3 would create a deterioration in wind conditions although comfort levels would not change.⁴⁰ It considered an alternative arrangement for Lots 1, 2 and 3 could be achieved to reduce shadowing impacts on Civic Steps without a land swap that included the relocation of Nelson Park.

Council tabled a letter and email to the Proponent confirming that Nelson Park would not be sold to the Proponent at this stage. Council noted it would, however, consider a land swap with the Proponent of the Council owned north-south strip of land and easement between Lots 1 and 2 (subject to the statutory processes under the Local Government Act)⁴¹.

(iii) Vision Eye Institute

As noted in Chapter 3, VEI sought the inclusion of the VEI land in the Master Plan to ensure current operations and future equitable development rights are appropriately managed.

Ms Waty broadly supported the principles of the Master Plan. Ms Waty said that if the VEI land was not included in the Master Plan, then issues of setbacks from Lot 1, pedestrian and vehicle access to the VEI land, and potential overshadowing to Nelson Park would need to be addressed to avoid adverse impacts on the VEI land in its current state and on any future development opportunities⁴².

³⁹ It was not clear whether this reduction would go down to 179AHD or 185AHD.

⁴⁰ D70

⁴¹ D101 and D102

⁴² D29

In relation to shadow impacts, Ms Waty said:

- a reasonable development envelope allowing for a 90-metre tower on a podium for the VEI land would be significantly constrained due to overshadowing to Nelson Road and Nelson Park
- while the shade to the Nelson Road western footpath could be managed with adjustment to a tower profile, limiting shade to Nelson Park would require a considerably reduced form to the VEI land
- the designation of Nelson Park to the south of VEI land within the Master Plan would unreasonably restrict future development options.

Ms Waty said the proximity of the Lot 1 podium with a cantilevered section over the access road to the entry and parking for the VEI land was an unacceptable and overbearing formal relationship. In this respect VEI referenced Mr Ring's planning evidence where she called for the setting back of the podium of Lot 1 from the access.

Ms Waty expressed concern regarding imposing a 15-metre spacing between towers as implied in the Master Plan. She observed this would reduce any potential tower footprint for VEI. In responding to questions, Ms Waty said a nine-metre separation between a future VEI tower and the Lot 1 tower was acceptable. She said it would be acceptable if Nelson Park was not designated as a park and described it closer to Prof McGauran's description as a movement platform without the imperative to be protected from overshadowing.

(iv) Other submitters

Individual submitters were not generally centred around form and scale other than concerns raised about potential overshadowing to surrounding areas, as well as wind impacts. Mr Earl raised concerns about built form and resultant wind impacts.

4.3 Discussion

The Committee considers the impact on the surrounding areas from the configuration of built forms in the Master Plan is broadly acceptable.

The configuration of towers to the north of the subject land rising in height as they reach closer proximity to the approved height of Lot 4 is a reasonable approach given the context of recent developments along Whitehorse Road and the general expectations of higher density development in the MAC. The Committee does not agree with Prof McGauran that the scale of Lot 1 should be reduced to that of the scale of the Chen Hotel to the west, as the proposed stepping down nature of the towers from the approved height of Lot 4 would place the Chen Hotel as the next change in scale. The treatment of the built forms to the north of the subject land as individual towers would enable greater visual and light penetration to the southern part of the site as compared to east-west longitudinal forms.

The Committee accepts the evidence of Dr Eaddy that the podium heights and breakdown of forms as proposed to the north would provide a workable outcome in ameliorating wind impacts in conjunction with appropriate mitigating treatments.

The Committee does not accept the proposed built form and massing of the alternative concept plan by Prof McGauran would offer the same benefits concerning wind and sun penetration to the southern part of the subject land as the proposed Master Plan. The Committee acknowledges the alternative proposal is less developed and has not been subject to the same wind tunnel tests as

the proposed Master Plan, but notes it could be improved through amendments and refinements. The Committee considers Prof McGauran's alternative proposal has not been analysed regarding public benefit and yield but could offer other benefits in relation to impact on open space amenity within the subject land by reducing overshadowing of the Civic Steps and the consolidation of open space to the west of Clisby Court. The Committee does however accept that the McGauran alternative proposal could not be achieved without a land swap between Council and Proponent.

The overshadowing cast by the proposal will be mostly manifested to the areas south and south-west of the subject land. Shadow cast onto the public realm of Thurston Street would briefly encroach onto part of the west footpath at 11.00am at the equinox. Shadow will be cast onto Hopetoun Street to the south, but it does not appear to encroach onto the footpath from 11.00am at the equinox. These impacts are acceptable.

The podium and tower form of Lot 1 in the Master Plan will impact the current use of the VEI land. The proposal to have a cantilevered podium over the vehicle and pedestrian access to the entry of the VEI land from Nelson Road will create an overbearing form to what would be the main entry to the VEI facility for clients and patients. The Committee agrees with the evidence of Ms Waty, Prof McGauran and Ms Ring that the podium should be set back from the vehicle and pedestrian access way to provide clear sky above.

The tower element of Lot 1 should require an equitable response to future development on the VEI land. It would not be reasonable to expect a 15-metre separation between towers as for the reasons discussed by Ms Waty, but rather it is reasonable to expect a nine metre separation between the Lot 1 tower and a future VEI tower configuration. To this end, the tower form of Lot 1 should be setback a minimum of 4.5 metres from the VEI boundary. The tower location of Lot 1 could be subject to appropriate podium setbacks from the Nelson Road accessway. An equitable setback of tower forms will not unreasonably restrict the development potential of the VEI land.

The issue of future development being restricted due to shadowing considerations onto Nelson Park depends on the status of the Nelson Park area, as either passive open space or a transitioning platform for pedestrians and cyclists. To prevent undue impact on potential development of the VEI land, the Committee agrees with VEI that the Master Plan should not restrict overshadowing to Nelson Park from any future redevelopment of the VEI land.

The proposed built form of the podium and tower of Lot 3 will result in additional overshadowing to the Civic Steps and the translucent canopy which will impact on its use and amenity, especially during the middle of the day. In relation to the diagrams the Proponent tabled that show an alternative layout of forms⁴³. The Committee notes the difference in overshadowing between this option and the proposed Master Plan is not overly significant. The Proponent however treated the alternative as an academic exercise insofar as it believed it could not be achieved without agreed land swaps with the Council.

The Committee does not agree the proposed Master Plan, Prof McGauran's alternative proposal or the Proponent's 'Land Swap Option' are the only built form options, and considers the forms and locations of the towers and podiums could be designed to achieve an outcome that does not impart additional overshadowing to the Civic Steps at the key times between 11 and 1pm at the

⁴³ D99. The diagram titled the 'Land Swap Option' indicates that both the proposed Master Plan and alternative option will create additional overshadowing of the Civic Steps.

equinox. The Committee recommends the built form endeavour to minimise additional shadow from 1.00pm - 2.00pm at the equinox, as expanded on in Chapter 5.

The scope of different designs to achieve this overshadowing requirement may be enhanced with land swap agreements with Council and establishment of open space to the west of Clisby Court, but this should not be a condition for the design of appropriate built form to achieve these ends.

While not raised as a significant issue, the Committee notes ambitions for the energy rating of new developments are evolving and are likely to continue to adapt in the future to accommodate community expectations for a sustainable future. What may have been considered appropriate as a star rating in the past would not be high enough in the present day and in the future.

The com observes 5-star green star rating has generally been surpassed with 5.5 and 6-star ratings for recent developments in Melbourne. The Committee finds the Incorporated Document should be amended to include that the minimum rating for energy for built form be 6-star Green Star Building, with the acknowledgement that future development meets any higher energy rating requirements at the time of development.

4.4 Findings and recommendations

The Committee finds:

- The impact of built form and massing in the Master Plan is acceptable with respect to impacts on the surrounding areas, except for the interface with the VEI land.
- Changes are required to Lot 1 to ensure an appropriate interface to the VEI building.
- The massing, height and location of Lot 3 unacceptably impacts the amenity of the Civic Steps.
- The built form of Lots 1, 2 and 3 should be redesigned to ensure there is no additional overshadowing to the Civic Steps between 11.00am and 1.00pm at the equinox.
- The built form of Lots 1, 2 and 3 should be redesigned to minimise additional overshadowing to the Civic Steps between 1.00pm and 2.00pm at the equinox.
- Wind impacts within the subject land and on surrounding areas are acceptable with associated wind mitigating features as appropriate.

The Committee recommends:

- 2. Amend the Incorporated Document to include the following to Clause 2.1:**
 - a) Redesign the podium to Lot 1 to ensure that vehicle and pedestrian access from Nelson Road to the car park and entry of 852 Whitehorse Road, Box Hill is open to the sky.**
 - b) Redesign the interface between Lot 1 and 852 Whitehorse Road, Box Hill to ensure a safe environment for pedestrian accessibility.**
 - c) Set back the tower form of Lot 1 by a minimum of 4.5 metres from the property boundary of 852 Whitehorse Road, Box Hill to ensure equitable development opportunities.**
 - d) Redesign the built form of Lots 1, 2 and 3 to ensure there is no additional overshadowing to the Civic Steps between 11.00am and 1.00pm at the equinox.**
 - e) Redesign the built form of Lots 1, 2 and 3 to minimise additional overshadowing to the Civic Steps between 1.00pm and 2.00pm at the equinox.**

3. **Amend Clause 8(h)(iv) of the Incorporated Document to change the minimum 5 Star Green Star to be 6 Star; and add a note to read *“As sustainability issues evolve, any development must meet best practice and adapt to changing ratings and rating systems”*.**

5 Public realm and landscape

5.1 Background

The Committee had regard to the open space and landscape evidence noted in Table 7, as well as relevant submissions.

Table 7 Open space and landscape evidence

Party	Expert	Firm
Proponent	Damien Thompson	Latitude

The key issues to be resolved are:

- quality and amenity of the proposed public realm areas
- impact of the proposed built form on the quality and amenity of the Civic Steps
- the location and proposed use of Nelson Park.

The main open spaces described in the Master Plan include:

- the extension of Prospect Street and associated landscaping to connect with Clisby Court
- Nelson Park between Lot 1 and Nelson Road
- Fairbank Park
- the Fairbank Park extension
- the Civic Steps
- several laneways.

5.2 Evidence and submissions

(i) Proponent

Ms Wong described the Master Plan as having an open space network that allows pedestrian connections to and through the site⁴⁴.

The Prospect Street extension is a traffic and pedestrian street flanked by 19-metre high street walls, street tree landscaping and generous pavements with the potential for outdoor seating serving retail outlets. The individual tower and podium elements to the north would allow some sunlight penetration to the street to support outdoor usage.

The Civic Steps have been approved pursuant to the Public Realm Permit. Ms Wong described the steps as having a vital function in providing a connection of Main Street to the east with the subject land through a series of steps that accommodate the level change. Ms Wong said the steps would be available for a wide range of community uses with the translucent canopy providing wind and some rain protection to encourage events on the steps.

Images included in Ms Wong's evidence statement indicated pedestrian usage of the space would be serviced by good solar penetration and amenity. Ms Wong conceded the images depicting the Civic Steps presented conditions during the equinox. She said the Civic Steps should be considered as part of a network of a variety of open spaces in the Master Plan.

⁴⁴ D26

The Proponent and Ms Wong accepted the Civic Steps would have additional overshadowing between the hours of 12noon and 2.00pm during the equinox but agreed this would not impact the role of the steps as a key connector and public space within the Master Plan. Ms Wong:

- did not see the Civic Steps as being more important within the site as other open spaces, but rather, the steps added to the diversity of spaces and potential outdoor uses
- did not consider it necessary to include any overshadowing controls within the Master Plan
- accepted the existing permits for Lot 4, Lot 5 and the Civic Steps did not consider potential impacts from proposed Lots 1, 2, and 3.

Fairbank Park is proposed to be extended south by removing Fairbank Lane. The Fairbank Park extension between Lots 1 and 2 was presented as being north facing and having good access to daylight. It would provide a north–south connection between Prospect Street and Fairbank Park. It was described as providing an attractive and welcoming environment. Ms Wong accepted Fairbank Park would need wind mitigation measures to meet the sitting and standing criteria outlined in Dr Eaddy’s wind impact statement.

Ms Wong gave evidence in relation to whether the location of Nelson Park was appropriate. Ms Wong commented that in preparing the Master Plan through a collaborative review process, the Nelson Park open space could have been provided between Lot 3 and Clisby Court instead. Ms Wong said:

- this would have required a land swap with the Council land designated as Nelson Park
- there was no agreement between Council and Proponent for a land swap and as a consequence, Nelson Park remained in its proposed location
- the location of Nelson Park was acceptable, but the placement of Nelson Park under a land swap could have been improved within the Master Plan.

Mr Thompson from LatStudio was the project director preparing the Development Landscape Design Report for the Master Plan. His evidence, which was not contested, referred to appropriate landscape treatments to the open and external spaces within the Master Plan⁴⁵. He said:

I am of the opinion that, within the urban design setting established for the Site, the public realm masterplan establishes an acceptable level of landscape and streetscape quality, amenity and flexibility for the purposes of supporting the requirements of a MAC for Box Hill⁴⁶.

The Proponent submitted the:

- Master Plan had a range of open spaces with differing characteristics and public uses
- Civic Steps would create a new civic heart and be a significant part of the public realm but that it would have a different role to the enlarged Fairbank Park to the north of the subject land
- Fairbank Park would receive good solar access and it was not important that the Civic Steps would have additional overshadowing given its proposed civic activities and the variety of open spaces in the Master Plan⁴⁷.

⁴⁵ D21

⁴⁶ D21, para 21

⁴⁷ D61

(ii) Council

Prof McGauran recommended the relocation of the Fairbank Park extension to an eastern location abutting Clisby Court⁴⁸. He said this would improve the amenity of the Civic Steps and better integrate them to Fairbank Park and Whitehorse Road. Prof McGauran suggested part of this area (a 3.45 metre strip owned by the Council) could be swapped for the easement between Lots 2 and 3 to the eastern side of Nelson Park to facilitate his recommendation.

Prof McGauran said:

- the Master Plan would provide a fragmented open space network with Nelson Park separated from Fairbank Park
- the Fairbank Park extension was illogically located in the centre of the site and overshadowed by the towers at key times of the day
- key urban design principles dictated that open spaces are better located on the periphery of development
- open space to the west of Clisby Court in his alternative plan would be partly overshadowed from the podium form of the consolidated Lots 2 and 3 after 1.00pm at the equinox, but said this would be acceptable.

Prof McGauran recommended (through his alternative proposal) moving the form of Lot 3 further to the east and cut the north face of the tower back at an angle to improve solar access to the Civic Steps.

In relation to Nelson Park, Prof McGauran:

- was comfortable with the location of Nelson Park and said it would be used as a landscaped 'traversing space'
- accepted that if it were to be part of a land swap, the logistics of such a swap may be challenging
- accepted Nelson Park may be subjected to overshadowing resulting from the future redevelopment of the VEI land but was comfortable with this given he considered it to be more of a 'movement platform'.

Council generally relied on the evidence of Prof McGauran regarding the design and amenity of the proposed open spaces. Council agreed with Prof McGauran regarding the poor solar amenity of the Fairbank Park extension and expressed concerns regarding wind impact to this space.

Council submitted the Civic Steps and associated translucent canopy would be substantially overshadowed during the key hours on the equinox by Lot 3. This would be detrimental to the ambition of the steps to be the heart of Box Hill and a focus for community activity. In his evidence in chief, Prof McGauran said the Civic Steps required a higher order of protection from further overshadowing.

In closing, Council advised it did not commit to developing its land at Nelson Road as a park as indicated in the Master Plan. The land is currently in the Commercial 1 Zone. Council advised it will wait for SRL's precinct planning before making any decisions on the future of the land.

⁴⁸ D35

(iii) Vision Eye Institute

VEI submitted its concerns with open space largely centred on Nelson Park and the expectation that as a public landscaped open space, future development of the VEI land could be restricted due to overshadowing issues⁴⁹.

5.3 Discussion

The Committee considers the amenity of the Civic Steps is a significant issue. It was described and accepted by all parties as a key connector through the site and an important area for public use on both a casual and community event basis. Given the significance of the Steps, minimising the impact on sunlight during the equinox is an important factor in delivering acceptable public amenity.

The Committee notes the Civic Steps area is the key visual expression on a range of plans and other material celebrating the proposed development.

The existing planning permits for Lots 4, Lot 5 and the Civic Steps do not appear to factor in potential overshadowing from development to the north. While development would have been anticipated, its impact on the amenity of the Civic Steps would have been an unknown aspect at the time of granting the permits.

Protection of the sunlight exposure of the Civic Steps would be in keeping with the important community role the Civic Steps are expected to play. It is accepted that the approved developments on Lots 4 and 5 (and the Chen Hotel) will cause some overshadowing to the Civic Steps at the equinox, but as set out in Chapter 4.3, the Committee found:

- any further overshadowing between 11.00am and 1.00pm must be avoided
- additional overshadowing between 1.00pm and 2.00pm at the equinox should be minimised.

The Committee recommends various amendments to the Master Plan to achieve this, principally amending the built form envelope and/or location of Lot 3 and the subsequent open space to the west side of Clisby Court.

If landscaped open space were to be provided west of Clisby Court, it would provide a physical and visual connection to Fairbank Park and Whitehorse Road beyond.

If the Fairbank Park extension were to remain in the proposed location, the Committee considers it could be designed and managed to provide an acceptable open space outcome within the Master Plan. While it may be an improvement to consolidate this space to the east, it would still provide open space amenity and connection through from Prospect Street and Fairbank Park. It was Dr Eaddy's evidence that wind mitigation measures would be required to assist the space in being a comfortable sitting area. This will be facilitated by the updated Wind Assessment

The area designated as Nelson Park is owned by Council, who have not made a decision on its future use. The Committee accepts that if the land were to continue to be Nelson Park, it would be better considered as a landscaped transverse area linking pedestrian and cyclist movement north-south to Fairbank Park.

⁴⁹ D29

Any future development of the VEI land may have an impact on the amenity of Nelson Park. Given the potential transient nature of the usage of Nelson Park and the option of the Council to consider built development on the land, development of the VEI land should not be required to limit overshadowing to Nelson Park.

Removal of the road to the south of Fairbank Park would be a positive outcome in extending the park and enabling public connections to the proposed developments. Locating the tower podia adjacent to the park would enable commercial and retail interfaces and activation of edges.

5.4 Findings and recommendations

The Committee finds:

- The quality and amenity of the proposed public realm areas are generally acceptable, however a redesign of Lots 1, 2 and 3 is required to:
 - Ensure there is no additional overshadowing to the Civic Steps between the hours of 11.00am and 1.00pm at the equinox
 - minimise additional overshadowing to the Civic Steps between 1.00pm and 2.00pm at the equinox.
- Any potential overshadowing to Nelson Park from a redevelopment of 852 Whitehorse Road, Box Hill should not be curtailed by the need to limit overshadowing to Nelson Park. Nelson Park is better described as a pedestrian movement area, rather than a traditional park.

The Committee recommends:

4. **Add a note to Clause 8.1(i) of the Incorporated Document to read: “*Ensure landscaped open space areas within the Master Plan are designed with features to ensure wind impact does not exceed standards required for sitting as appropriate for public uses.*”**

6 Traffic, access and parking

6.1 Background

The Committee had regard to the traffic, access and parking evidence noted in Table 8, as well as relevant submissions.

Table 8 Traffic, access and parking evidence

Party	Expert	Firm
Proponent	Tim DeYoung	Stantec
	Charmaine Dunstan	Traffix
	Andrew Sanderson	Architecture and Access
Council	Hillary Marshall	Ratio Consultants

The key issues to be resolved are:

- acceptability of changes to the road network
- car parking rates
- mechanism to apply car parking rates
- provision for cyclists and pedestrians.

Parking Overlay

The Box Hill Activity Centre Parking Overlay (PO1 to Clause 45.09) covers the Master Plan area and sets out minimum parking rates for residential and office uses as set out in Table 9.

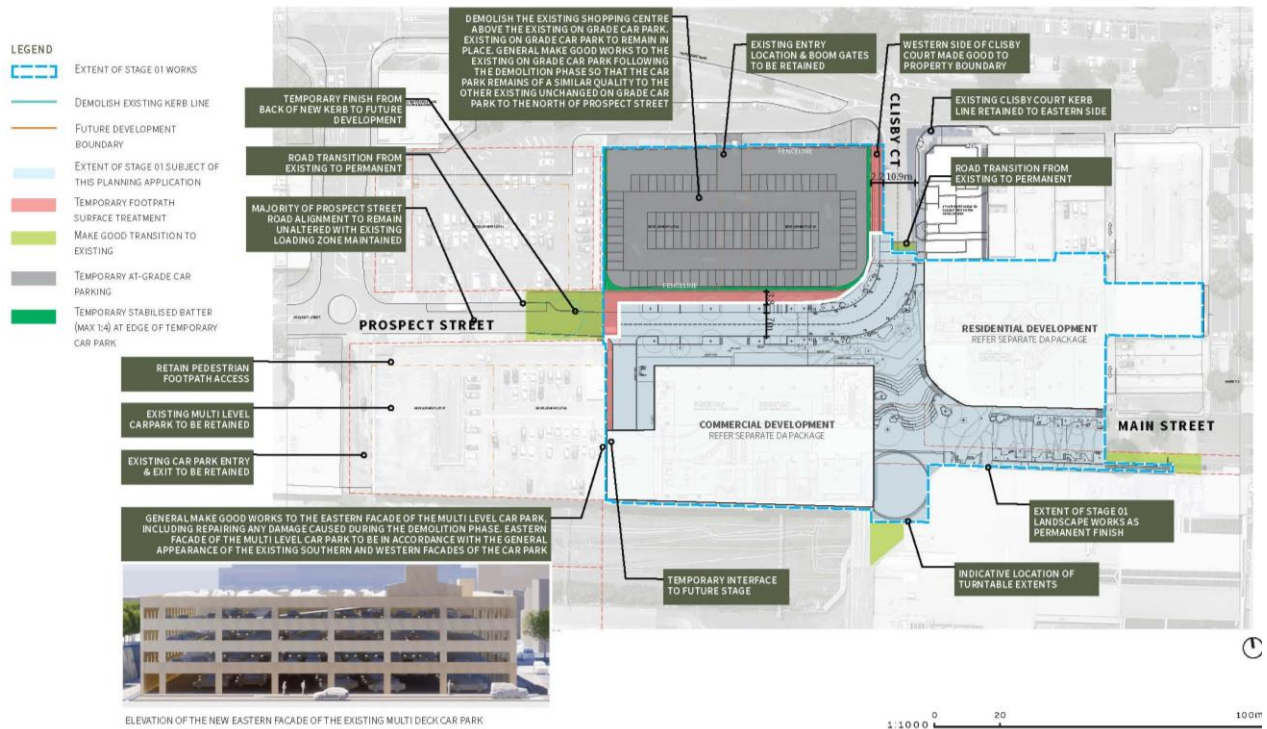
Stage One Permits

The Public Realm Permit allows for:

- connection of Clisby Court into Prospect Street, with the new road to be vested to Council (condition 41a)
- provision of a public realm connection between Prospect Street and Market Street (the Hill Plaza and Civic Steps)
- removal of loading areas at the western end of Market Street, with the loading docks servicing Box Hill Central fenced off from Market Street and provided with a truck turntable to maintain access and egress from Thurston Street.

The Public Realm Works are shown in Figure 4.

Figure 4 Public Realm Works - Stage One Plan



The Residential and Commercial Permits allow:

- parking rates of approximately:
 - 0.61 spaces per residential apartment
 - 0.47 car spaces per 100 square metres net floor area for office ⁵⁰.

6.2 Traffic conclave

At the direction of the Committee, a traffic conclave was held prior to commencement of the Hearing. The conclave was attended by all traffic experts and officers from DTP, from which a report was tabled as D51.

The following items were agreed by all parties at the conclave:

Travel demand management Approach

- a travel demand management approach is appropriate for the Amendment.

Car Parking Rates

- maximum car parking rates should be used as the surrounding streets are adequately time protected and overspill is not likely to occur
- maximum car parking rate of 1.0 space per 100 square metres net floor area for office is appropriate
- maximum car parking rate of 1.0 space per 100 square metres of leasable floor area for retail is appropriate
- two-bedroom apartments should have a maximum rate of 1.0 space per apartment
- residential visitor car parking requirement should be removed

⁵⁰D28, p10.

- no other use should have a maximum car parking rate set.

Traffic Impact Assessment

- the Master Plan will result in a 'traffic deintensification'
- subject to agreement of maximum office and retail rate of 1 space per 100 square metres, traffic impacts of the Master Plan are acceptable
- requirement to review safety and operation of the intersection of Elgar Road and Prospect Road should be included in the Incorporated Document.

Network Integration

- the 10-metre width (7 plus 3 metre existing laneway) proposed for Lane 3 is suitable to allow for a future design solution for a Thurston-Nelson cycling link/bridge
- Master Plan was suitably designed to integrate/interface with the SRLA works proposed along Whitehorse Road
- should the SRLA ban left turn movement from Whitehorse Road into Clisby Court, this would not be a 'fatal flaw', with the proposed connection between Clisby Court and Prospect Street being a public road providing access into Clisby Court from the west⁵¹
- vertical transportation proposed for the Civic Steps was acceptable.

Master Plan Layout/Road Network Design

- pedestrian, cycling and vehicle access arrangements was acceptable, subject to removal of the designation of Lane 1 as a pedestrian desire line
- addition of sharrow line marking within the laneways was not necessary
- speed limit of the shared zone should be reduced to 20 kilometres per hour and the length should be specified within the Master Plan
- adequate access provision for 852 Whitehorse Road with closure of Fairbank Lane.

Other Matters for inclusion in the Incorporated Document

- the Incorporated Document should include bicycle parking rate, motor cycle parking rate, car share requirements, mobility hubs, provision for Electric Vehicle (EV) charging, consideration of 'decoupling' parking from land use and management of parking through a car parking management plan to minimise underutilisation of car parking, provision of a Green Travel Plan.

The primary area of disagreement was the car parking rates for residential uses other than two-bedroom apartments.

A summary of the parking rate recommendations from the Proponent and Council are set out in Table 9, alongside the minimum parking rates applicable under the Box Hill Activity Centre Parking Overlay (Schedule 1 to Clause 45.09).

⁵¹ Clisby Court currently is currently limited to left in and left out movements at Whitehorse Road

Table 9 Applicant and Council recommended car parking spaces

Use	Existing Parking Overlay 1 - minimum rates	Applicant - proposed maximum rates	Council - proposed maximum rates	Measure
Office	2 spaces	1 space	1 space	per 100sqm of net floor area
Retail	Not specified	1 space	1 space	per 100sqm of leasable floor area
Residential – resident parking				
Studio	Not specified	1 space	0 spaces	per dwelling
per 1 bedroom dwelling	0.5 spaces	1 space	0.5 spaces	per dwelling
per 2 dwelling	0.75 spaces	1 space	1 space	per dwelling
3+ bedroom dwellings	1 space	2 spaces	1 space	per dwelling
Residential – visitor parking	0.2 for first 5 dwellings plus 0.1 for subsequent dwellings	0 spaces Column B rate in Clause 52.06 Table 1 [Exhibited rate: 0.1 space/dwelling]	0 spaces Column B rate in Clause 52.06 Table 1	per dwelling
Other Uses	Column B rate in Clause 52.06 Table 1	Column B rate in Clause 52.06 Table 1	Column B rate in Clause 52.06 Table 1	As relevant

6.3 Evidence and submissions

(i) Proponent

Ms Dunstan gave evidence that in her opinion, the mode share targets determined by Mr De Young were visionary. Mr De Young and Ms Dunstan both agreed the inclusion of maximum parking rates was appropriate and would help prevent oversupply of parking and achieve the mode share vision. Both acknowledged the residential parking rates approved pursuant to the Residential Permit were well below one space per apartment. However, they did not consider it necessary to limit parking for larger apartments to below two spaces per apartment, contending the second space in a residential use would generate little traffic in the peak periods and would not significantly impact public transport use. Nor did they consider there was a need to limit the supply of parking for studio and one bedroom parking to less than one space per dwelling. Both advised the market was showing signs it will provide parking at lesser rates in any event.

For uses other than retail, residential and office, Mr De Young and Ms Dunstan considered the Column B rates in the Table to Clause 52.06 should be taken as maximum rates to limit traffic generation and encourage more sustainable travel options. Mr De Young noted parking may be

required for some uses that could potentially be included such as child care, which would require specific consideration of their parking needs.

Neither expert supported the provision of visitor parking for residential uses, noting the Column B rate in the Table to Clause 52.06 is zero. In response to a question from the Committee regarding the potential need for parking for visitors such as those providing residential care services in home, Ms Dunstan considered this could be considered as loading and maintenance type vehicles that would be accommodated in a loading dock. In her written evidence, she noted the significance of Box Hill Central and the availability of substantial short-term publicly available car parking which would be suitable for residential visitor use.

Both experts considered it appropriate to decouple parking from individual dwellings to allow parking spaces to be more easily transferred to another user if not required.

Mr De Young and Ms Dunstan advised the proposed level of development would generate less traffic than the existing uses on the site. They supported the closure of Fairbank Lane and considered adequate vehicular access would be maintained to 852 Whitehorse Road from Nelson Road for ambulances and drop-off, with four parking bays to be provided for its use. They acknowledged in response to a question from the Committee, the design of the accessway would need to consider pedestrian access to 852 Whitehorse Road and Fairbank Park from Nelson Road.

Both opined Clisby Court could be restricted to left out movements only, if required by the SRLA, noting the proposed connection with Prospect Street would provide an alternative entry to Clisby Court. The impact of preventing access from Whitehorse Road into Clisby Court would be loss of access to the proposed six kerbside spaces on the south side of Prospect Street. Mr De Young opined these spaces could be used for mobility hubs and restriction on access from Whitehorse Road would prevent rat-running along this section of Prospect Street.

The experts agreed in response to matters raised by DTP, that traffic impacts at intersections further beyond the site could be assessed at the planning permit stages of development.

Mr De Young and Ms Dunstan contended Lane 3 would provide sufficient space for a Strategic Cycling (SCC) corridor bridge over the rail line, based on a concept design prepared for Council by Arup⁵². The experts had some disagreement about the need for 'sharrow' cyclist line marking on Prospect Street.

Ms Dunstan advised there was not enough data at present in relation to cycling trip generation and distribution of cycling trips to determine the site's demand and attraction for cyclists. Some flexibility would be needed to avoid oversupply of cyclist visitor parking spaces in the public realm.

The Proponent submitted providing parking rates in the Incorporated Document was acceptable for specifying alternative rates to Clause 52.06 or a Parking Overlay. It noted Practice Note "*PPN22 Using the car parking provisions*" does not limit variations to a Parking Overlay, nor was a Parking Overlay part of the exhibited draft amendment.

⁵² D28, 'Nelson-Thurston Shared Path Connection – Feasibility Study (V3, 07/02/22)' p25-26, Fig 5.6

(ii) Council

Council submitted the proposed car parking rates proposed did not sufficiently encourage mode split as an objective, nor was it overt in the drafting of the documents. It submitted:

- Planning Practice Note 22 requires a Parking Overlay to specify local parking rates
- the Incorporated Document allows for a permit to provide parking above the maximum rates, but does not provide decision guidelines in relation to assessing this
- a Parking Overlay could include decision guidelines and would simplify some aspects of the Incorporated Document
- a Parking Overlay was included for Preston Market (Darebin Planning Scheme), which included an objective for modal shift that could be used for this proposal.

Council submitted the Incorporated Document relied on the market to provide parking below the maximum rates and allowed parking at levels above those conducive to the 90 per cent mode split target. This, it said, went against public policy of endeavouring to encourage mode shift. It proposed a vision statement of mode share be included in the Incorporated Document, along with lower parking rates as recommended by Ms Marshall.

Council tabled a draft Parking Overlay during its submission⁵³. This was not exhibited or assessed by any expert.

Ms Marshall gave evidence there was sufficient evidence to justify lower parking rates for both one bed and three plus bedroom dwellings and this would assist in achieving the mode share vision. She advised the existing ABS data showed the current parking requirement for a one bed dwelling was 0.65 spaces per bed, so adopting a rate of 0.5 spaces was only a slight suppression.

Ms Marshall observed the adoption of maximum parking rates as recommended by Mr De Young as opposed to applying Clause 52.06 was not likely to make a significant change as the recent permits for Lots 4 and 5 show both the marketplace and Council are already accepting rates of 0.6 spaces per apartment, well below what was proposed. She contended as this location has excellent public transport opportunities; lower parking rates should be aimed for.

Ms Marshall considered residential uses make up a significant component of the proposed uses. She said if the travel demand of a major component of the proposal was not well managed, the proposal would not minimise traffic generation or achieve the mode share vision. She advised decision guidelines would be required to assess parking provisions above the maximum rates and was satisfied providing such discretion was reasonable.

Ms Marshall supported decoupling the car space titles from apartment titles, to allow some owners to have additional parking spaces but divest of them if not needed.

(iii) Transport agencies

DTP (transport) submitted:

- the Master Plan would result in a net reduction of traffic generated by the site, given removal of high generating retail uses, including the existing supermarket
- through design work being undertaken by the SRLA, there are significant constraints in width and reduced level differentials that may prevent construction of a left turn lane on Whitehorse Road and Clisby Court

⁵³ D72

- it supported the connection of Prospect Street and Clisby Court and noted it provided for alternatives should Clisby Court have a left in ban from Whitehorse Road.
- removal of Fairbank Lane would improve road safety by simplifying vehicular operation of Whitehorse Road and Clisby Court by reducing vehicular conflict points
- change of use to include residential and office uses was likely to increase pedestrian activity in the area that may impact on traffic signals, potentially requiring remodelling
- change of use may impact the intersection of Prospect Street and Elgar Road
- the SCC network supports commuter and other transport trips, and should be future proofed where it traverses the Master Plan site
- unable to confirm whether the width of Lane 3 would be sufficient to accommodate the SCC link across the rail corridor and further work and consultation with stakeholders including VicTrack be undertaken before plans for Lots 5 and 6 are locked down
- the risk with the current Arup preferred design relied on VicTrack land for the ramp along the rail corridor on the northern side
- Lane 3 should be vested in Council to ensure this land was available for the future construction of a bicycle facility
- the development would intensify pedestrian and cyclist movements and further traffic studies and road safety audits would be required at the planning permit stage⁵⁴.

DTP made the following recommendations:

- The Master Plan must:
 - identify the SRL Project and associated interface along Whitehorse Road for the life of the Amendment site
 - at Plan 3.8, note that final design of the rail interface must comply with the *VicTrack Rail Development Interface Guidelines* (VicTrack, 2019) Clause 18.02-3S Public Transport Whitehorse Planning Scheme
 - clearly identify the Strategic Walking and Cycling Corridors through the precinct and how these link to the broader existing network
 - identify the interface at Lots 6 and 7 with Lane 3 and ensure the proposed access arrangements do not preclude future construction of the rail crossing by others.
- The Master Plan/Transport Impact Assessment should:
 - consider any flow on impacts at Elgar Road intersection as a result of the Prospect Street extension to Whitehorse Road.
- The Incorporated Document must:
 - require each stage of the site to consider the SRL Project and any altered access conditions for all modes and include conditions relating to the rail interface during construction and ongoing maintenance
 - require the design of Lots 6 and 7 to respond to any approved design for the rail crossing
 - require a Road Safety Audit for Prospect Street and Nelson Road for all modes of transport and require detailed design accordingly
 - include a Car Parking Management Plan with appropriate car parking rates and other car parking management measures
 - include conditions to manage any redundant airspace infrastructure on railway land

⁵⁴ D58, p69

- require a Transport Impact Assessment for each stage of the Master Plan to the satisfaction of the Head, Transport for Victoria.

SRLA and VicTrack supported the submissions of DTP in relation to the rail network.

To address some of its concerns, VicTrack considered approval of development through the planning permit process would be a more appropriate framework to undertake this work.

(iv) Vision Eye Institute

The VEI outlined:

- its land includes a hospital that provides day surgery and consulting services
- most patients are not only elderly, but often frail and required to attend the site to access consulting and surgical services with a carer
- patients tend not to access the site by public transport or other sustainable transport options due to impaired vision and other eye health concerns
- ready access to proximate, convenient and affordable public car parking on the site is important to the business and to the level of patient care provided
- the basement car park can only be accessed by staff and is not accessible for patient use, nor can it be adapted for patient use
- the front door is located on the eastern side of the building facing onto Fairbank Lane.

VEI expressed concern the Master Plan would result in a loss of the 'sense of address'. Vehicular access to its front door would be changed from a shared driveway off Nelson Road that provides access to the basement car park and loading for Lot 1, and to parking for the VEI land on the eastern side of the building. The building envelope for Lot 1 would extend over the driveway and could impede the legibility of the access and sense of address for the VEI.

VEI indicated the closure of Fairbank Lane would be acceptable if:

- a transparent and comprehensive plan for the provision of ongoing high quality, certain (public roadway) access to the VEI Land mandated through the Incorporated Document and consistently described in the Master Plan;
- unencumbered by built form 'above' so as to provide a good sense of address to the VEI Land both before and after redevelopment of the VEI Land takes place; as well as
- a clear understanding of how and when public car parking would be made available within the Amendment Land to service not only the retail and commercial floor space proposed but the VEI Land⁵⁵.

(v) Other submitters

Blackburn Village Residents Group and Combined Residents of Whitehorse Action Group submitted the Master Plan failed to provide adequate facilities for cyclists, noting:

- impacts of modal shift from private to more active modes was not adequately assessed
- the movement and access plan should include bicycle movements
- Nelson Road will be a major entry point to the site for cyclists and motorists
- Nelson Road forms part of a north-south SCC and will connect with the future SRL shared path along Whitehorse Road

⁵⁵ D76, para 67.3

- cyclists, particularly delivery riders, use the Thurston Street loading dock ramp to access Market Street and its closure as part of the public realm works would result in loss of this route, increasing the need for the proposed Thurston Street to Nelson Road overpass
- for the number of anticipated bicycles movements, protected cycle lanes are required
- the extension of Nelson Street for the future Thurston Street overpass will present as a 'narrow canyon' with the development turning its back on it, requiring an active street frontage with landscaping to make this gateway welcoming
- bicycle parking should cater for different bicycle types, including trailer use and wide and long bicycles.

The Surrey Hills and Mont Albert Progress Association emphasised the need to provide a cycling bridge over the rail line for the SCC. It submitted consideration should be given to identifying the space required to improve the Box Hill bus interchange and its access prior to approving the Master Plan.

Other written submissions raised issues including:

- the need for Government to commit to, and commence development of the north-south and east-west SCC before it accepts and approves the Master Plan, including a rail overpass for pedestrians and cyclists to connect into the precinct to the south east
- lack of accessibility in the Civic Steps design
- traffic congestion
- lack of parking, including for residential visitors
- inadequate detail regarding active transport volumes, with the traffic report using active transport to justify a reduction in parking, but doing little to support active travel
- potential prejudice over the future location of the Box Hill bus interchange and bus circulation.

Mr Earl submitted the transport assessment did not:

- assess the safety of people using active transport, including the impact of wind
- consider active transport infrastructure beyond the site
- provide detail of the number of bicycle spaces proposed within the public realm and the space required to accommodate these
- resolve issues about the corner of Young Street (Fairbank Lane) and Whitehorse Road
- consider recent and future developments in the area, nor contain recent data.

Mr Earl observed the bus interchange had limited accessibility outside trading hours and public transport does not operate 24/7, while cars do.

A late submission was received from Mr Carter that raised concerns regarding pedestrian and cyclist access. The submission noted the loading dock ramp connection between Thurston Street and Market Street was designated as a cyclist route in the Whitehorse Easy Ride Network plan developed by GTA Consultants in 2017. He was concerned the closure of this route would see the disconnection of cyclist access for 16 or more years until Lane 3 was released for construction of the rail overpass as a part of the final stage of development (Lots 6 and 7). He recommended this stage be brought forward to allow delivery of the SCC overpass prior to closure of the loading bay route to avoid cyclists being redirected to nearby arterial roads⁵⁶.

⁵⁶ D93

6.4 Discussion

(i) Whether changes to the road network and traffic generation are acceptable

The existing retail and car parking on the site currently generate a significant volume of traffic. It is clear from the expert reports the extent of redevelopment proposed, along with a parking limitation strategy, will result in a reduction in traffic below existing levels. This is supported and encouraged by policies seeking to increase sustainable personal transport use.

The proposed extension of Prospect Street into Clisby Court, along with the closure of the eastern end of Fairbank Lane will support the SRL project changes to Whitehorse Road. Further, it will allow for closure of access from Whitehorse Road into Clisby Court if it is required as a part of the realignment of Whitehorse Road for the SRL.

Reasonable vehicular access is being maintained to the front door of 852 Whitehorse Road with the closure of Fairbank Lane to the east. Detailed design will need to ensure pedestrians and cyclists movements along the access areas are appropriately catered for. The movement plans in the Master Plan should include pedestrian and cycle paths, including generally along the alignment of Fairbank Lane between Clisby Court and Nelson Road.

(ii) The parking rates that should be applied to the site

This site is extremely well located within the centre of a MAC with existing rail, tram and bus services and early works underway for the proposed SRL. It is at the junction of two proposed SCCs.

Excellent access to local retail and businesses, public transport and cycling infrastructure allows for an aggressive mode shift change. These are the 'carrots' attracting people to shift mode away from private car transport. Minimising parking supply can be seen as the 'stick'. It physically makes it more difficult to use private cars if they cannot be locally parked.

It has long been held that parking in activity centres should be precinct based, to allow full sharing, and to be located at the periphery, rather than the heart, of the centre. Providing maximum parking rates within this site support this and the mode shift vision.

The existing PO1 sets a benchmark for parking rates in the Box Hill MAC for office and residential uses and signals to the market that Box Hill is moving away from a being a car-based centre.

The Proponent and Council are seeking to shift from minimum to maximum parking rates, consistent with Action 17.1 in the Box Hill Integrated Transport Strategy. The use of maximum parking rates is a significant shift from the current minimum rates and will allow development without any parking if the Proponent desires.

The Proponent seeks to have both maximum parking rates with the ability to increase these with a permit. In addition, the maximum rates for some residential dwelling types is proposed to be above what is currently being sought, both by occupants and developers, as evidenced by the Lot 4 Commercial permit.

Council seeks the maximum rate for one bedroom and three plus bedroom dwellings to be equivalent to the minimum rates in PO1. The Committee notes the evidence can be supported that these parking levels are achievable now or at least in the near future, and the mode shift suggested by Mr De Young is aggressive, but positive.

In response to Mr De Young's evidence that providing a second space for a large dwelling would not result in significant additional traffic generation at peak hour, as it would more likely be used out of peak periods, the Committee considers that this argument ignores two critical points:

- any use of private car travel impacts the environment greater than other options
- the developer could allocate two spaces to large dwellings and less parking for smaller dwellings if required, removing their ability to travel in peak periods.

The Committee notes the exhibited Transport Impact Report stated:

Rather, it is recommended that car parking rates generally aligned with the existing Parking Overlay are adopted as maximum rates (rather than minimum rates) for the Box Hill Central North precinct only^{57, 58}.

The report noted advice from the Proponent that parking would be provided in the order of 1,398 spaces, based on architectural plans by Bates Smart. This supply is broadly consistent with the existing minimum rates in PO1 for residential parking with minimal, if any, office and retail parking. The approved permit for Lot 4 requires residential parking below the PO1 rates.

The Committee has significant concerns about mandating zero spaces for visitors. This could remove the ability for the car parking management plan to allocate parking for visitors. In addition, there is limited public parking for drop-off proposed to be provided on Prospect Street. Further, public parking is being removed from Fairbank Lane and Council land on Nelson Street, as well as along Whitehorse Road by SRLA.

Residential uses attract some visitors that will require parking. This includes home care service providers who need to carry equipment, as well as elderly and less mobile visitors. The Traffic Impact Report suggested visitor parking should be limited to 0.1 space/apartment, which is a rate generally equivalent to the minimum rate in PO1, which was included in the exhibited Incorporated Document.

While the traffic experts consider visitor parking could be considered as a part of loading arrangements, it is unclear how and whether this could be met. Residential visitor parking generates minimal traffic at peak traffic periods. Should insufficient visitor parking be provided, this will put additional pressure on the parking being provided to service the VEI site.

Setting a maximum parking rate for residential visitors does not guarantee any visitor parking will be provided. However, it will provide the opportunity for it to be considered based on need, without requiring a planning permit for its provision. Importantly, it will allow for unused parking for residential or commercial uses to be converted to visitor parking if desired.

An alternative to specifying a rate for residential visitor parking is to combine it with resident parking as an overall residential rate. Adopting a rate of one space per two-bedroom dwelling, as agreed by the traffic conclave would more than accommodate visitor parking. However, in this instance, due to the very limited supply of on-street parking in the vicinity of the site and the mode shift vision, the Committee considers specification of visitor parking and minimisation of resident parking rates provides a better signal to the preferred allocation of parking.

⁵⁷ D3b, p39.

⁵⁸ D3b Table 7.2 sets out recommended rates for residential greater than the PO1 rates listed in Table 7.1 of the report, and includes a parking rate for residential visitors of 0.1 per dwelling

The Committee is satisfied the agreed rate of one parking space per 100 square metres for office and retail uses is an appropriate maximum target that will, along with a maximum rate for other uses, assist in meeting the mode shift change identified.

(iii) The mechanism to be used to apply the parking rates

The Committee notes PPN22 states:

All local car parking variations **must** be provided using the Parking Overlay. A local policy cannot be used to apply variations. [Committee emphasis]

It includes:

Sometimes another provision in the planning scheme, such as a Comprehensive Development Zone or an Incorporated Plan Overlay, will specify alternative car parking rates.

There is an existing Parking Overlay covering the site which will need to be removed to avoid confusion. While the Committee accepts that PPN22 allows for parking rates to be in other parts of the Planning Scheme, the use of the word 'must' in reference to using a Parking Overlay clearly advises that new car parking provisions are to be provided within a Parking Overlay. The Committee surmises acknowledgement of car parking provisions being provided in other clauses is to recognise existing practices. The Committee further notes Clause 52.06 is clearly written with an expectation that variations will be provided in a Parking Overlay.

In relation to applications to provide more than a maximum parking provision specified in a Parking Overlay, Clause 52.06-3 sets out the Permit requirement. Clause 52.06-7 provides relevant application requirements and decision guidelines for exceeding maximum rates in a Parking Overlay.

The Committee notes Council tabled a draft Parking Overlay that contained parking objectives and decision guidelines, but it was not exhibited nor subject to expert evidence. A Parking Overlay will need to include appropriate objectives. The Committee considers the existing PO1 objectives are appropriate. The decision guidelines in PO1 relate to reducing parking rates and these are not relevant. Clause 52.06-7 already contains relevant guidelines for exceeding a maximum parking supply, but should be supplemented with a requirement to consider decoupling car spaces.

(iv) Whether adequate provision is made for cyclists and pedestrians

In adopting maximum parking rates, it is important that there is sufficient high quality cycling and pedestrian provision to attract people to these modes of travel. As Melbourne transitions from car based to active transport based development, a greater focus and study is required to ensure adequate provision is available, not just for end of trip facilities and parking, but on the routes to the site to accommodate the pedestrian and cyclist demand.

While the Committee welcomes the significant provision of bicycle parking on sites such as this, this will come with the need to ensure that sufficient capacity and priority is provided on the roads and at intersections to accommodate these modes safely and efficiently. Being able to quantify pedestrian and cyclist travel demand and patterns will help to ensure that key facilities such as the SCC and bus interchange can be prioritised for funding in the future.

The provision of the SCC over the rail line and along Nelson Road is critical infrastructure to help achieve the mode shift vision.

The Committee agrees with DTP there has not been sufficient design and consultation around the proposed rail crossing required as part of the SCC. It considers it is premature to approve a building envelope for Lots 6 and 7 until this is further resolved and the need for this further investigation should be noted in the Master Plan. It would be advisable to seek an early delivery of the SCC to help support the vision of transitioning away from a car dominated centre and, ideally, as Mr Carter suggested, prior to closure of the existing route to Market Street via the Thurston Street dock ramp.

The Committee supports the inclusion of permit conditions and notations relating to protecting adjacent and emerging rail infrastructure and a safety review of the Nelson Road and Prospect Road intersection.

In relation to the Box Hill bus interchange, while several submitters raised concerns about it (and it was a matter of discussion at the SRL East EES), it was not a matter raised by DTP, Council or any of the experts as relevant to this matter. It remains an item in the Box Hill Integrated Transport Strategy for DTP to progress, therefore the Committee makes no findings in this regard.

6.5 Findings and recommendations

The Committee finds:

- Further design and consultation must be undertaken to provide greater certainty around the space required to enable connection of the Strategic Cycling Corridor across the rail line prior to approving the building envelope for Lots 6 and 7, and the timing for delivery.
- Traffic generation is estimated to be less than the current generation of the land and will lessen the car trips to and from the site.
- The proposal is likely to increase pedestrian and cyclist movements to and from the site and this impact can be assessed at the planning permit stage.
- The road closure of Fairbank Lane between the proposed parking area for 852 Whitehorse Road and Clisby Court is supported.
- The Incorporated Document should include conditions relating to rail infrastructure requested by the Department of Transport and Planning and the Master Plan amended to include related notes.
- The Movement Plan should be modified to include pedestrian and cycle paths, including a pedestrian path generally along the existing Fairbank Lane alignment.
- Setting maximum parking rates will help to achieve a vision of a 90 per cent mode split away from private car travel, as supported by the Box Hill Integrated Transport Strategy.
- The existing Parking Overlay Schedule 1 should be removed from the subject land.
- A new site-specific Parking Overlay be prepared with maximum parking rates as set out in Table 10.

Table 10 Committee recommended car parking spaces

Use	Maximum rate	Measure
Office	1 space	per 100sqm of net floor area
Retail	1 space	per 100sqm of leasable floor area
Residential – Resident parking		
per Studio	0.5 spaces	per dwelling

Use	Maximum rate	Measure
per 1 bedroom dwelling	0.5 spaces	per dwelling
per 2 dwelling	0.75 spaces	per dwelling
3+ bedroom dwellings	1 space	per dwelling
Residential - Visitor parking	0.1 spaces	per dwelling
Other Uses	Column B rate in CI 52.06 Table 1	As relevant

The Committee recommends:

5. **Remove Parking Overlay Schedule 1 from the land at 17-21 Market Street, part of the land at 1 Main Street, 2 Prospect Street, 8 Prospect Street, 8A Prospect Street, part of Main Street, Prospect Street, Nelson Road, Fairbank Lane, 852 Whitehorse Road, and the landscape reserve fronting Whitehorse Road, Box Hill.**
6. **Prepare a new schedule to the Parking Overlay for the land at 17-21 Market Street, part of the land at 1 Main Street, 2 Prospect Street, 8 Prospect Street, 8A Prospect Street, part of Main Street, Prospect Street, Nelson Road, Fairbank Lane, 852 Whitehorse Road and the landscape reserve fronting Whitehorse Road, Box Hill that includes:**
 - a) **Parking objectives generally consistent with the existing Parking Overlay 1.**
 - b) **The number of car parking spaces required as set out in Table 10 of this report.**
 - c) **Application requirements and decision guidelines for permit applications: Before deciding on an application to increase the maximum number of car parking spaces required for a specified use, the Responsible Authority must consider: the decoupling of car spaces from individual dwelling titles and individual commercial floorspace titles.**
7. **Amend the Incorporated Document to include the following at Clause 2.1:**
 - a) **Add a notation that further design and consultation be undertaken to provide greater certainty around the space required to enable the connection of the Strategic Cycling Corridor across the rail line prior to approving the building envelope for Lots 6 and 7.**
8. **Amend the Incorporated Document at Clause 8.1j to include the following additional requirements in the Transport Impact Assessment:**
 - **the preparation of the Transport Impact Assessment for each stage of the Masterplan must be to the satisfaction of the Head, Transport for Victoria.**
 - **a road safety audit of Prospect Street and Nelson Road for all modes of transport.**
 - **an assessment of any impacts of the Suburban Rail Loop Project and any altered access conditions for all transport modes**
 - **parking rates set out in the new Parking Overlay for the subject land.**
9. **Amend the Incorporated Document to include a sub-condition to Clause 9 requiring permit conditions which require the management of any redundant airspace infrastructure on railway land, which relate to the rail interface during construction and ongoing maintenance responsibilities.**

10. Amend the Master Plan to:

- a) Add a notation at Plan 3.8 that the final design of the rail interface must comply with the VicTrack Rail Development Interface Guidelines (VicTrack, 2019) and Clause 18.02-3S Public Transport of the Whitehorse Planning Scheme.**
- b) Update the Movement Plan to:**
 - **include pedestrian and cycle paths, including a pedestrian path generally along the south side of the existing Fairbank Lane alignment**
 - **identify clearly the interface between the Land and the Suburban Rail Loop Project along Whitehorse Road, including the location of the new tram stop and associated road layout changes.**
 - **identify clearly the Strategic Walking and Cycling Corridors through the precinct and how these link to the broader existing network.**

7 Social and affordable housing

7.1 Background

The Committee had regard to the social and affordable housing evidence noted in Table 11, as well as relevant submissions.

Table 11 Social and affordable housing evidence

Party	Expert	Firm
Council	Alex Hrelja	Hill PDA

The key issue to be resolved is:

- The extent to which the proposed development should contribute to providing social and/or affordable housing.

7.2 Evidence and submissions

(i) Proponent

As part of the background material, Urbis prepared a Housing Diversity and Affordability report that highlighted:

... the Master Plan will deliver opportunities to enhance housing diversity in Whitehorse by offering a wider choice of dwelling types, price points, product types and tenure options. This includes supply of more affordable price points relative to the municipality's median for all dwelling types, for owner occupiers and renters.

The Proponent proposes to provide six per cent affordable housing within the residential development similar to the commitment to affordable housing already been approved by Council for Lots 4 and 5. In its opening submission, the Proponent observed:

A commitment to deliver affordable housing of this nature ought not underestimated. It represents a significant community benefit, and one which is not required by any provision of the planning scheme⁵⁹.

The Proponent proposes the provision of affordable housing as a percentage of the overall net yield of dwellings, noting a reduction in yield will result in a corresponding reduction in the amount of affordable housing, as well as overall community housing. It said:

These are real consequences that ought be weighed in the balance against other considerations that might be relied upon to justify significant changes to the Master Plan that adversely affect the ability of the land to deliver housing in this highly desirable location⁶⁰.

Requirement 9.1d of the final version of the Incorporated Document requires a condition must be included in any permit granted to require an agreement to under s173 of the Planning and Environment Act 1987 with respect to affordable housing:

The Agreement must specify that the Affordable Housing Contribution will be delivered by one, or a combination of, the following methods:

- (1) Sale of not less than six per cent of the total number of approved dwellings at a discount to market value of not less than 30 per cent:

⁵⁹ D43, para 76

⁶⁰ D43, para 78

- (A) To a Registered Housing Agency; or
 - (B) To Eligible Households in accordance with an Affordable Housing Management Plan approved pursuant to condition 3 below; or
- (2) Lease of not less than six per cent of the total number of approved dwellings at a discount to market value of not less than 30 per cent, for not less than 13 years from the occupation of the dwellings
- (A) To a Registered Housing Agency; or
 - (B) To Eligible Households in accordance with an Affordable Housing Management Plan approved pursuant to condition 3 below; or
- (3) Any alternative delivery method providing that it demonstrates the total monetary amount of the Affordable Housing Contribution is equivalent to or above two per cent of the total market value of the total number of approved dwellings, to the satisfaction of the Minister⁶¹.

The Committee notes the permit issued for Lot 4 a had a lease period of 30 years, not 13 years as proposed by this current matter. Additionally, the permit proposed six per cent of the total number of approved dwellings at a discount to market value of not less than 30 per cent, the same as is proposed here.

The Proponent contended the Committee should determine whether the affordable housing proposal is acceptable and whether it provides a community benefit.

The Proponent did not call expert evidence to support this aspect of its case.

(ii) Council

While supporting the provision of affordable housing, Council contended further information should be provided around the extent of that housing contribution, particularly with regard to how it is dealt with in the Incorporated Document. Council urged the provision be mandatory rather than discretionary. It noted the critical issue related not so much to the percentage provision of affordable housing, but rather the minimum value of the contribution. It expressed concern about the way in which affordable housing was to be delivered and noted:

The State Government has just announced that affordable housing is to be provided at a new benchmark rate of 10% for large residential developments that seek to be processed under the new fast track mechanism. The Day 1 Incorporated Document will require 6% for all future residential towers. If SRL's precinct planning is ambitious and seeks affordable housing at a rate greater than 6%, this development will not be able to be required to contribute more than the 6% standard⁶².

Council called evidence from Mr Hrelja on this issue, who acknowledged the contribution proposed by the Proponent as reasonable and a net benefit to the community. He supported the six per cent contribution at the 30 per cent discount, as well as the lease option, but for 30 years, not 13. His evidence provided a summary of the potential minimum contribution:

- Method 1 (sale): 107 units deemed affordable at a proponent contribution of at least \$16.5 million.
- Method 2 (13 year lease): 107 units deemed affordable for 13 years at a proponent contribution of \$9.4 million in nominal terms. This equates to a present value sum of \$6.8 million (based on a discount of \$720,808 per annum over 13 years at a 5% discount rate).

⁶¹ D88, p9

⁶² D70, para 38

- Method 2a (30 year lease): 107 units deemed affordable for 30 years at a proponent contribution of \$21.6 million nominal terms. This equates to a present value sum of \$11.1 million (based on a discount of \$720,808 per annum over 30 years at a 5% discount rate).
- Method 3 (cash): a proponent contribution of \$18.3 million for affordable housing⁶³.

Mr Hrelja provided the affordable housing income range from the Governor in Council Order of 1 July 2023 for metropolitan Melbourne. This noted variations depending upon category of income (very low, low and moderate) and household type. It ranged from up to \$29,770 for a very low income range for a single adult to moderate income range of up to \$100,031 to \$150,030 for a family with dependent children.

He then calculated various scenarios about:

- affordable housing income ranges
- 30 per cent weekly income for selected household groups
- Box Hill apartment prices and weekly cost estimates
- Box Hill apartment sales
- medium weekly rent in Box Hill
- affordable rentals in selected areas.

(iii) Other submitters

The Committee notes two other submissions raised issues about the affordable housing contribution, with questioning about the equity of the contribution for those on lower incomes.

7.3 Discussion

The Committee acknowledges the proposed contribution of six per cent of the dwellings yield for affordable housing is a community benefit. The Committee further notes the recent changes introduced through Clause 53.23 of the Planning Scheme provides that for significant housing development:

At least 10% of the total number of dwellings in the development must be affordable housing, or alternatively this condition may be met via an alternative mechanism for the provision of affordable housing specified in the agreement under section 173 of the Act ...

The Committee acknowledges Clause 53.23 was introduced after this proposal was conceived and considered, however, this is a significant residential development that will take many years to be fully developed. It is not a one-off tower, but rather a series of towers and a significant residential development opportunity. For this reason, the Committee supports a 10 per cent contribution going forward.

Likewise, the Committee considers the lease period should be longer if that option was preferred for all or part of any offer. It is consistent with the approved permit for lots 4 and 5 and it will ensure equity across the whole of the Master Plan area.

The s173 agreement provides options for securing this benefit to the satisfaction of the Minister for Planning. The Committee recognises this agreement will allow the opportunity for the Proponent to determine how it will provide the affordable housing benefit. It may be that one

⁶³ D33, para 36

option is selected for one residential building, and another for a different building. The Committee questions whether such a mix might be confusing and might result in some inequities.

The other issue is that the provision of any option for affordable housing must be realised within each residential (or mainly residential) building. It should not be left to the end of the complete build. The Committee recognises development of the site could take up to 20 or 30 years, so any affordable housing opportunity must prevail with each residential build. One site may be better for affordable rental, another for affordable sale, another for affordable gifting to a housing agency. The Committee recognises that level of detail needs to be worked through, but each building must make provision to meet the affordable housing agreement.

7.4 Findings and recommendations

The Committee finds:

- The provision of affordable housing is a significant net community benefit.
- The net percentage rate should be amended to be 10 per cent.
- The lease option should be amended to be 30 years.
- How the allocation of affordable housing is realised is a matter for the Proponent, but each residential building on each Lot must make its own provision to meet the affordable housing commitment and conditions.

The Committee recommends:

- 11. Amend Conditions of Permits at 9.1(d)(ii) 1 and 2 (Affordable Housing) of the Incorporated Document to read:**
 - a) (1) Sale of not less than ten per cent of the total number of approved dwellings at a discount to market value of not less than 30 per cent:**
 - b) (2) Lease of not less than six per cent of the total number of approved dwellings at a discount to market value of not less than 30 per cent, for not less than 30 years from the occupation of the dwellings.**

8 Public Open Space

8.1 Background

The Committee had regard to the public open space evidence noted in Table 12, as well as relevant submissions.

Table 12 Public open space evidence

Party	Expert	Firm
Proponent	Paul Shipp	Urban Enterprise
Council	Alex Hrelja	Hill PDA

One way Council seeks to collect levies for infrastructure is in relation to public open space. Council completed a public open space strategy and through Amendment C99 to the Whitehorse Planning Scheme put in place a mandatory open space contribution which requires the following contribution for public open space to fund the open space network:

Figure 5 Public Open Space Contribution ⁶⁴

Type or location of subdivision	Amount of contribution for public open space
The subdivision of land on a strategic site (as defined by the Whitehorse Open Space Strategy or Council or State Government).	Minimum 4%. Contribution rate greater than 4% subject to negotiation of a development plan.
All other land	4%

The key issues to be resolved are:

- whether the subject land should be exempt from the provision of a public open space contribution as required under Clause 53.01 of the Planning Scheme
- if the subject land is not exempt from Clause 53.01 of the Planning Scheme and the public open space levy:
 - whether any public realm works should be considered as a form of credit towards the fulfillment of the public open space contribution liability
 - what should the public open space rate be.

8.2 Evidence and submissions

(i) Proponent

The exhibited Incorporated Document proposed a public open space rate of six per cent:

⁶⁴ Schedule 1 to Clause 53.01 of the Whitehorse Planning Scheme

Figure 6 Exhibited Incorporated Document – Clause 4.5 and 4.6⁶⁵

<p>4.5. A planning permit is required to subdivide the land and any such application is exempt from the requirements in Clause 53.01 (Public Open Space Contributions) of the Planning Scheme.</p> <p>4.6. Notwithstanding Clauses 4.4 and 4.5, any planning permit allowing subdivision of the Land must include a condition requiring provision in kind or payment to City of Whitehorse, before a statement of compliance is issued, of a public open space contribution equal to 6% of the site area or site value of the Land and informed by an open space strategy.</p>
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The Proponent's position changed as reflected in the Day 1 version of the Incorporated Document which sought a full exemption from Clause 53.01 on the basis that generous public open space was being provided through the proposed Master Plan⁶⁶. This included setting aside land currently owned by the Proponent for open space and public realm areas, conversion of existing public roads and public car parks to create new open space land and constructing improvements to those areas.

Mr Shipp prepared a summary of the proposed type and quantum of open space that would result from the Amendment (Figure 7). He categorised the spaces as either new privately owned public open space (to be provided by the Proponent), Council land converted to open space (to be facilitated by the draft Amendment and delivered by the Proponent), existing open space outside the Master Plan area, or other public realm areas not performing a public open space function.

Figure 7 Proposed Open Space Provision – Shipp Expert Evidence**T5. PROPOSED OPEN SPACE PROVISION**

Map Ref.	Description	Area (sqm)	Adjusted area (sqm)*	Net additional open space (sqm)
New Privately Owned Public Open Space				
B1	Lot 4 Public Space (Podium)	351*	176	
B3	B3.A (Plaza/The Civic Steps)	553*	277	
B4	Lot 1 Public Space – Fairbank Park Extension	886	886	
	Sub-total	2,046	1,339	1,339
Council Land converted to Open Space				
A1 (part)	Fairbank Park Extension – road closure	1,294	1,294	
A2	Nelson Park	388	388	
A3	Connection between Prospect St and Fairbank Park	142	142	
	Sub-total	1,824	1,824	1,824
Existing Open Space Adjacent to Masterplan Area				
A1 (part)	Existing Fairbank Park	1,480	1,480	0
	Sub-total	1,480	1,480	0
	Total open space in Masterplan and adjacent	5,350	4,643	3,163

Source: author, based on Masterplan. * these spaces will perform a combination of open space and movement functions. Adjusted area calculations reduce the area by 50% to account for the joint function. B2 will primarily perform a movement function (escalators) and is therefore excluded.

In summary, Mr Shipp calculated:

- the subject land and its immediate surrounds will have approximately 4,643 square metres of open space available

⁶⁵ D3i

⁶⁶ D44

- 3,163 square metres of that land will be net additional open space compared with existing conditions
- approximately 1,339 square metres of new open space is proposed within private land which equates to 7.3 per cent of the land area and a further \$13.39m in improvement.

Mr Shipp contended that if the total area of new open space created by the development in terms of both land and improvements is accounted for (3,163 square metres), the overall open space contribution would equate to 16 per cent⁶⁷.

Mr Shipp said *“the proposed open space contribution is substantial and compares favourably with the requirements of the Whitehorse Planning Scheme and other contribution rates applicable in activity centres and high growth areas of established area municipalities of Melbourne”*⁶⁸. He said the provision of open space proposed by the Amendment was sufficient and appropriate and no further public open space contributions would be appropriate in this context.

The Proponent submitted:

- the offer of public spaces, land for the bicycle path connection, works and ongoing maintenance was generous and would result in significant community benefit
- this offer cannot be said to be development works required primarily to provide necessary amenity and infrastructure to enable the buildings to function
- there is no basis in the planning scheme *“for such an excessive demand”*, that is, a ten per cent contribution (as sought by Council) on top of what is already being delivered to the community
- it should not contribute anything further for public open space beyond that proposed in the Master Plan.

In relation to Council pursuing Prof McGauran’s version of the Master Plan, the Proponent submitted:

Further, Council has now made it clear that, if it had the power to do so, it would demand that part of that contribution be made by the provision by Vicinity of the land identified in its *“alternative master plan”* as Clisby Park. It has expressly told the Advisory Committee that, if it had the power to do this, it would do it regardless of what the Master Plan showed.

The Council is determined for an outcome that will result in an arrangement on the land that is not only patently unfair, but also unworkable in terms of development.

This is part of the reason why it is essential to the proper delivery of the Master Plan that Council is not given the power to demand any form of open space contribution. It is for this reason (as well as to achieve an equitable outcome) that the Incorporated Document must *“turn off”* clause 53.01, so that the Council cannot destroy the Master Plan in its pursuit of the flawed *“alternative master plan”* proposal it has put forward⁶⁹.

(ii) Council

Council originally supported the proposed contribution amount of six per cent as provided for in the exhibited Incorporated Document but submitted the contribution should be provided wholly in land and not money. At the Hearing, Council submitted the figure should be ten per cent, not six per cent.

⁶⁷ D24, para 106

⁶⁸ D24

⁶⁹ D86

Council opposed the exemption sought and submitted that having regard to the very high densities proposed:

- the land included in the Master Plan as open space should form part of the public realm, that is delivered as part of the development proposal, and provided in addition to the minimum ten per cent public open space provision
- the public realm works should not be considered as a credit towards the fulfillment of the Proponent's public open space contribution, particularly when some of the land proposed for open space is owned by Council⁷⁰.

Council submitted that depending on the actual value of the subject land, this amounted to an 'indulgence' of between \$8 to \$10 million that would otherwise be payable to Council.

In arriving at the ten per cent rate, Council submitted:

- the Schedule to Clause 53.01 invites a higher rate to be negotiated for a strategic site, noting Mr Shipp agreed the subject land is a strategic site
- a rate of 10 per cent is relatively consistent with the rates applicable in other activity centres or strategic redevelopment sites, including:
 - Preston Market: ten per cent (lesser dwellings and lesser commercial floor space on larger land)
 - Geelong Saleyards: ten per cent (development up to 10 stories over about 5 hectares)
 - Monash: ten per cent contribution for an urban redevelopment site with mixed use
 - Doncaster Hill: eight per cent
 - Fishermans Bend: eight per cent (with an expectation of more under an uplift scheme)
 - Frankston: eight per cent for all land within the Frankston Metropolitan Activity Centre
 - Kingston: eight per cent for the Mordialloc and Highett Major Activity Centres and all land within Moorabbin, Cheltenham and Mentone Activity Centres as defined by the Activity Centre Zone
 - Stonnington eight per cent contribution for any subdivision in the suburb of Armadale, Prahran, Windsor and South Yarra
 - City of Melbourne's redevelopment areas (including Arden): 7.06 per cent
- based on an assessment by Mr Shipp, several planning schemes have rates at or above eight per cent including Frankston, Kingston, Knox, Manningham, Melbourne, Port Phillip, Stonnington and Glen Eira
- with the exception of Fishermans Bend and Arden, none of these areas are expected to be redeveloped to the intensity of Box Hill.

In terms of satisfying the rate, Council submitted:

- the Proponent should not be able to satisfy its public open space contribution obligation, or have it reduced to zero (by exemption) because it is providing public realm works on the subject land
- no Planning Panel or Advisory Committee has, as far as Council was aware, ever accepted the submission that the Proponent and Mr Shipp made in relation to this matter
- Council is best placed to determine how an open space contribution should be met

⁷⁰ For example, Nelson Park as proposed is zoned Commercial 1 Zone, owned by Council and is proposed to become public open space rather than be developed, and the Council (north south) Lane is proposed to become part of Vicinity's forecourt for Building 2.

- referring to *Trethowan v Mornington Peninsula Shire Council and Ors* [2002] VCAT 1377, the proper interpretation of Clause 53.01, then being Clause 52.01, did not allow the permit applicant to elect whether a contribution is to be made by way of land or money or by a combination of land and money
- the Proponent said the contribution should be satisfied by its public realm works on its own private land in circumstances where not a single square metre of new public open space was being provided.

Council submitted:

The notion that part of a podium of a building can be provided instead of a public open space contribution is simply nothing short of novel. The Fairbank Park extension is the forecourt to Buildings 1 and 2. Its future design is fixed by the owner of the buildings. The Civic Steps is an area that accommodates the necessary change of levels between the northern and southern parts of the precinct and providing for connectivity between Prospect and Market Streets. It also accommodates the through link to Market Street because there is no link to Market Street through the alignment of building 4⁷¹.

Council referred to Melbourne Planning Scheme Amendment C209, which sought to put in place new public open space contributions throughout the City of Melbourne. That Panel considered submissions made by many large-scale proponents, both institutional and private on policy, law and practice and ultimately concluded:

The Panel considers that there is a clear understanding in the planning system that 'public open space', that is in public ownership has a different status and characterisation to private open space, even if it is publicly accessible. The OSS is based on the provision of such public open space and the Panel supports this approach⁷².

Finally, Council submitted the provision of a public open space area at Clisby Court (as sought in the McGauran concept plan and previous iterations of the Master Plan) could be delivered by the public open space contribution without the need for land swap or land exchange arrangements.

8.3 Discussion

The Proponent seeks a full exemption from the requirements of Clause 53.01 on the basis that generous public open space is being provided through the Master Plan. The Committee acknowledges the Proponent's offer of public spaces, including land for the bicycle path connection, the Civic Steps, parks, works and ongoing maintenance, will result in a significant community benefit. It notes the public realm areas proposed will serve a clear public purpose, are well designed (particularly if direct sunlight can be achieved to the Civic Steps) and are essential to the overall development.

However, the Committee does not accept the Proponent should be exempt from any further contribution for public open space beyond that proposed in the Master Plan. This would take away Council's ability to accumulate funds to buy or improve land which is then managed for public open space purposes. Large development projects change. They change at the permit application stage, and they change over time, leaving a risk that the public open space as proposed, could be significantly reduced over time⁷³. As Council pointed out for example, the

⁷¹ D70

⁷² D73

⁷³ Noting however that the layout of the Civic Steps is unlikely to change.

public forecourt of Nauru House is now a building. Similarly, the public forecourt to the north of 1 Spring Street is proposed to accommodate a new building if approved.

The Proponent is proposing most of its open space be on land owned and to be retained by the Proponent, or on Council owned land. The only land to be transferred to Council is the land required for the future rail overpass.

The Committee prepared a summary of the proposed type and quantum of open space that would result from the draft Amendment at Table 13. The percentage has been calculated based on a total site area of 18,260 square metres (being the Vicinity owned land).

Further, Table 13 identifies:

- open space proposed on privately held land
- open space proposed on Council owned land
- open space on land proposed to be transferred to Council.

Table 13 Proposed Public Open Space Provision

Public open space type	Land area (sqm)	Committee position on Public Open Space
Public Open Space (Vicinity owned land)		
Lot 4 Podium	176 ⁷⁴	Not public open space
Civic Steps	277 ⁷⁵	Not public open space
Fairbank Park Extension	886	Not public open space
Sub-total	1,339	-
Percentage	7.3%	-
Public Open Space (Vicinity owned land transferred to Council)		
Lane 3 (Future pedestrian rail overpass)	259	Yes public open space
Sub-total	259	-
Percentage	1.4%	1.4%
Council Land converted to Open Space (works and associated costs to be completed by Vicinity)		
Fairbank Park (Road Closure)	1294	Not public open space
Nelson Park	388	Not public open space
Connection between Prospect St and Fairbank Park	142	Not public open space

⁷⁴ As per Mr Shipp's calculations, these spaces will perform a combination of open space and movement functions. The total area has been adjusted by 50% to account for the joint function. B2 will primarily perform a movement function (escalators) and is therefore excluded.

⁷⁵ Ibid

	Sub-total	1,824	
	Percentage	10%	-
Existing Public Open Space			
Balance of existing Fairbank Park		1,480	Not public open space
	Sub-total	1,480	-
	Percentage	8.1%	-

Of the three categories, the Committee is only satisfied that open space on land proposed to be transferred to Council should be considered as a form of credit towards the fulfillment of the public open space contribution liability. In this respect, the Committee agrees with the Proponent that:

- providing land for the bicycle connection is not necessarily required for the development
- it is unlikely this could be required in the context of an individual permit application.

However, the Committee is not satisfied the remainder of open space areas should be considered as fulfilling the public open space contribution requirement.

The Committee agrees with past Panels, including the Panel which considered Melbourne Planning Scheme Amendment C209, that 'public open space' that is in public ownership has a different status and characterisation to private open space, even if it is publicly accessible. While public ownership of open space should be the primary aim, other mechanisms such as permit conditions, section 173 agreements or other contractual arrangements might be used to ensure a suitable level of public access to private open space. However, this is not the situation before this Committee.

The Committee:

- agrees with Council that the land designated as open space in the Master Plan (except for the land required for the rail link) should be provided in addition the Proponent's public open space liability
- does not agree with the Proponent that it should be able to satisfy its public open space contribution through the provision of public realm works on the subject Master Plan land.

The Lot 4 podium would presumably be closed to the public and be open space for the private benefit of apartment residents, and the Fairbank Park extension will realistically act as a forecourt to Buildings 1 and 2. While the proposed building forecourts, internal roads and accessways will be used by the public, they are necessary and fundamental to the proposed development.

The Committee acknowledges the Proponent's submissions that the steps will be:

- available to be used by the public for recreation or public resort⁷⁶
- a place the public are likely to use in large numbers for a variety of purposes, including access through the activity centre, or for recreation
- a place to meet friends, read a book, sit, eat a meal, or attend a public function or celebration
- be a public space in the true sense of the phrase.

⁷⁶ D95

The Committee accepts this and acknowledges the Civic Steps will be an outstanding community space. However, the Committee notes the area is necessary to accommodate change of levels between the northern and southern parts of the precinct and provide for connectivity between Prospect and Market Streets. The steps are intrinsically linked to Buildings 4 and 5 and are required to provide necessary amenity and infrastructure to enable the proposed buildings to function.

In terms of the rate, Clause 53.01 of the Planning Scheme requires a rate of four per cent, or a minimum of four per cent for strategic sites (as defined by the Whitehorse Open Space Strategy or Council or the State Government). Council is seeking a higher rate of ten per cent on the basis the schedule to Clause 53.01 invites a higher rate to be negotiated for a strategic site.

While the Committee does not necessarily disagree with this approach and agrees the subject land is accurately described as a strategic site, it takes issue with recommending a rate higher than the rate exhibited in the Incorporated Document, that being six per cent.

The Committee agrees with Council however, that the rate should be higher than the 4.5 per cent provided for in the Planning Scheme and considers the exhibited six per cent to be acceptable. The subject land is clearly a strategic site and a six per cent contribution is consistent (albeit on the lower end) with the rates applicable in other activity centres or strategic redevelopment sites as identified by Council.

8.4 Findings and recommendations

The Committee finds:

- The subject land should not be exempt from the provision of a public open space contribution as required under Clause 53.01 of the Planning Scheme.
- The land designated as open space in the Master Plan should be provided in addition to the public open space contribution required by Clause 53.01 of the Planning Scheme.
- The land to be transferred to Council for the proposed rail link should be considered as a form of credit towards the fulfillment of the public open space contribution liability.
- A contribution rate of six per cent for public open space is appropriate for the subject land as it is a significant strategic site and six per cent is generally consistent with the rates applicable in other activity centres or strategic redevelopment sites.

The Committee recommends:

- 12. Amend Clause 10.1 of the Incorporated Document (Open Space Contributions) to read:**
Any planning permit allowing for the subdivision of the Land or any part of the Land must comply with the requirements in Clause 53.01 (Public open space contributions) of the Planning Scheme, subject to the following:
 - a) A person who proposes to subdivide land must make a contribution to Council for public open space in the amount of six per cent being a percentage of the land intended to be used for residential or commercial purposes or a percentage of the site value of such land, or a contribution of both.**
 - b) The land to be transferred to Council (identified as Lane 3 in the Master Plan) (if transferred and realised) must be calculated as a form of credit towards the fulfillment of the six per cent public open space contribution liability.**

9 Development contributions

9.1 Background

The Committee had regard to the development contributions evidence noted in Table 14, as well as relevant submissions.

Table 14 Development contributions evidence

Party	Expert	Firm
Proponent	Paul Shipp	Urban Enterprise
Council	Alex Hrelja	Hill PDA

The key issue to be resolved is whether:

- The subject land should be granted an exemption from development contributions as required by the Planning Scheme.

The draft Amendment proposes to:

- vary the requirements of Clause 45.06 (Development Contributions Plan Overlay)
- exempt the development of the subject land from the requirements of the future Development Contributions Plan Overlay (DCPO) which is proposed to implement the Whitehorse Development Contributions Plan 2022 (Whitehorse DCP) through Amendment C241whse (DCP Amendment)
- exempt any other Development Contributions Plan (DCP), including anything proposed by the SRLA.

Council recently exhibited Whitehorse Planning Scheme Amendment C241whse that provided for a DCP for the whole of its municipality. It resulted in a Panel Hearing to consider submissions made ⁷⁷. Council received the report of the Panel and adopted the Amendment, which is now with the Minister for Planning for approval. All parties accept the Amendment is ‘seriously entertained’. The levies proposed by the Whitehorse DCP are:

- \$2100 per dwelling for residential development
- \$7.03 per square metre for retail floor space
- \$5.73 per square metre for commercial floor space ⁷⁸.

9.2 Evidence and submissions

Mr Shipp and Mr Hrelja participated in an expert conclave which resulted in the following key agreed statements:

1. The Master Plan site will generate demand on infrastructure beyond the site’s boundaries.
2. The infrastructure required as part of the Proposed Master Plan will provide benefit to the activity centre as a whole as well as to the immediate development.
3. It is appropriate for the Master Plan site to deliver Master Plan works and pay levies under the Proposed DCP if it is approved (noting that PS proposes a partial DCP exemption).

⁷⁷ While submissions were made to the Amendment, no submitters sought to be heard, so the Panel wrote its report ‘on the papers’

⁷⁸ Whitehorse Development Contributions Plan, D47, p29 to 30

4. A section 173 agreement could be used to formalise the infrastructure delivery requirements on and to the site. This agreement could also formalise how Proposed DCP levies would apply to the site, as well as other related contributions, such as open space contributions and affordable housing contributions.
5. In general, changes to development quantum and land use mix should necessitate a recalculation of development contributions and affordable housing contributions, unless otherwise agreed.

The key differences of opinion between Mr Shipp and Mr Hrelja related to:

1. The extent to which the Master Plan works would provide broader public benefit and whether and how that should be recognised.
2. Whether the Proposed DCP items overlap with the works required by the Proposed Master Plan.
3. Whether the Master Plan site should be exempt from paying proposed DCP levies in the Paths and Roads categories.

(i) Proponent

The Proponent submitted orderly planning requires the recognition of what the Master Plan is proposing. That is, making voluntary contributions capable of being required as part of a development contribution. This included:

- Fairbank Park improvements
- Nelson Park improvements
- Fairbank Park extension
- Civic Steps
- works to Prospect Street
- land required for the east-west bike path connection.

The Proponent submitted these public benefit aspects of the Master Plan, particularly:

- significant improvement in east-west and north-south permeability
- connectivity to the major transport interchange
- enhanced public open space provision ...

would involve significant contributions by the Proponent in the form of works to be undertaken which would benefit the broader community. The Proponent submitted it would be unfair to apply the Whitehorse DCP to the Master Plan development without considering this contribution.

The Proponent took issue with the Whitehorse DCP submitting:

- Council did not directly discuss the proposed DCP Amendment with Vicinity
- Council did not notify Vicinity of the exhibition of the DCP Amendment when that occurred in November/December 2022
- the team within Vicinity responsible for the Master Plan were not aware of the DCP Amendment until after it had been sent to the Minister for approval
- the Proponent had no opportunity to make any submission to the DCP Amendment, or be heard by the Panel
- the Committee should not take the Proponent's failure to participate in the process for the DCP Amendment as implied agreement to it.

Mr Shipp considered it appropriate for the development contribution levies to be payable to the extent that the projects to be funded did not overlap with or duplicate the works that will be provided by the Master Plan (to avoid double-dipping and align with the principle of equity). He said the Amendment would facilitate the "*strategic, co-ordinated and consolidated delivery*" of:

- local infrastructure that is directly needed to support the development, including local roads, paths and open spaces
- other civic and public realm spaces and movement infrastructure which will provide benefit to visitors to the train station and the broader activity centre.

Mr Shipp said the Amendment and its associated infrastructure requirements “*represent both direct impact mitigation works and a form of development contribution in terms of public realm, public open space and transport projects*”.

Mr Shipp considered:

- the proposed public realm areas and associated works, particularly those supporting active transport connections through the activity centre and to the station, overlap with some of the contributions that will be required through the Whitehorse DCP
- the subject land should be required to pay the levies associated with community infrastructure (including both the community facility projects under the development infrastructure levy (CFDI) and the community facility projects under the community infrastructure levy (CFCI)
- the subject land should be exempt from the obligation to pay part of the development infrastructure levy (DIL) associated with path streetscape projects and road projects.

Mr Shipp contended:

Given that the preparation of the DCP took into account the proposed development as part of development projections, infrastructure planning and levy calculations, it would be reasonable and equitable in my view for the development to pay the levies shown in the DCP for community facility projects (i.e. those within the categories of CFCI and CFDI).

This would require a bespoke approach to development contributions for the Amendment and Masterplan which would logically be set out in a Section 173 agreement, requiring:

- Delivery of the public realm works as proposed in the Masterplan;
- Payment of a development contributions levy linked to the community facilities categories; and
- Exemption from any further development contributions requirements.

The Proponent did not accept the evidence of Mr Shipp in so far as his evidence suggested projects designated CFCI and CFDI should not be exempt. However, the Committee asked the Proponent to provide an alternative development contribution clause for the Incorporated Document based on Mr Shipp’s recommendation (should the Committee agree with his position)⁷⁹.

During Day 9 of the Hearing, the Proponent updated its position to exempt the subject land from the requirement to pay “*any development contribution under the Whitehorse DCP*”⁸⁰, as opposed to “*the requirements of Clause 45.06 (Development Contributions Plan Overlay)*”⁸¹. The Proponent indicated this change was intended that the subject land would be subject to the requirements of a future SRL DCP.

(ii) Council

Council submitted the Incorporated Document should be clear in its drafting to ensure the Whitehorse DCP applied to the project.

⁷⁹ D89

⁸⁰ D84

⁸¹ D44

Referring to the Whitehorse DCP, Council noted the subject land is located within the Box Hill MAC Charge Area, being Charge Area 7. Council submitted Charge Area 7 is:

- expected to have a substantial increase in development over the period 2022 to 2042 and that increase in population throughout the Charge Area (a small part of which comprises the subject land) requires infrastructure
- anticipated to accommodate 6,350 additional dwellings over the forecast period, 17,000 square metres of additional retail floor space and almost 58,000 square metres of additional commercial floor space.

Council submitted this extent of population growth would require new infrastructure over and above the type of infrastructure that is required as a direct result of the development itself.

Table 7 (see Figure 8 below) of the Whitehorse DCP explains the proposed collections.

Figure 8 Table 7 Whitehorse Development Contributions Plan ⁸²

Facility Type and Code	Total Cost	Time of Provision	Actual Cost Contribution Attributed to New Development	Proportion of Cost Attributed to New Development
Community Facility CFCI	\$170,164,000	2022-2042	\$21,734,867	13%
Community Facility CFDI	\$29,717,000	2022-2042	\$6,319,069	21%
Path PADI	\$8,988,000	2022-2042	\$2,520,254	28%
Road RDDI	\$2,686,000	2022-2042	\$690,395	26%
Total	\$211,555,000		\$31,264,586	15%

Council submitted:

Of the total cost of these projects which is estimated at \$211.5 million, the Whitehorse DCP funds only 15% or around \$31.2m. Accordingly, the exclusion of the Vicinity Project from the Whitehorse DCP as sought by the Day 1 version of the Incorporated Document would cost the DCP approximately \$4.2m putting a dent equal to about 15% of the total anticipated collections. If that were to occur, the entire DCP would likely fail before it even commenced to operate as those lost funds would need to be sourced from an alternative location or the project would need to be reconsidered. For that reason it is heartening at least that the projects designated CFCI and CFDI are not disputed by Mr Shipp although they are disputed by Vicinity as evidenced by their Day 1 document clause 10.

Nevertheless, we submit that none of the DCP should be in dispute ⁸³.

Part 7.5 of the Whitehorse DCP deals with exemptions. The exemptions are limited and are relatively standard and like many other municipal DCPs. Council submitted the project would not be exempt unless it was:

... subject to an agreement under section 173 of the Act that makes provision for the payment of infrastructure contributions either in cash or the provision of works services or facilities and which expressly excludes the levying of any further development contributions under an approved development contributions plan ⁸⁴.

Council submitted the issue of development contributions should be left to the parties to negotiate through an agreement and if no agreement could be reached, the exemption should not

⁸² Whitehorse DCP, D47 p995

⁸³ D70, para 240-241

⁸⁴ Whitehorse Development Contributions Plan, D47 p997-998

apply. Council took the Committee to numerous Panel Reports⁸⁵ “*where every panel that has considered municipal development contribution plans and has dealt with identical arguments that are put here by Vicinity has consistently recommended that no general exemptions be granted to existing (or proposed) developments*”⁸⁶.

In relation to Mr Shipp’s position that the subject land should be exempt from part of the DIL associated with path streetscape projects and road projects, Council submitted:

- many of the path and road projects will benefit the subject land and the subject land should therefore contribute
- where there is a category like what the Proponent is delivering (such as wayfinding signage infrastructure) these could reasonably be considered for works in kind credit or an exemption through an agreement.

Mr Hrelja agreed that no DCP exemption should apply for the Master Plan or any stage of it unless an explicit agreement was made. He said it was normal for large developments to deliver its own infrastructure and facilities which relate to the development’s specific needs and contribute to broader community-wide infrastructure through a DCP. He said:

The subject Master Plan will require the construction of a range of road, path, drainage, public space and related works that address specific needs and impacts of the proposed development. Such infrastructure should be 100% delivered by the development proponent via a condition of approval, which can be ratified via a legal agreement.

In addition to site-specific works - which can be both on the development site and connected to the development site - the development will also be required to contribute to community-wide infrastructure if the Whitehorse Municipal DCP (Amendment c241whse) is approved⁸⁷.

Mr Hrelja said some developers might agree with Council to deliver some of the works required by the Whitehorse DCP, and this could be facilitated by an agreement where the developer is provided with a credit against its DCP liability. He said this mechanism is included in the Whitehorse DCP.

9.3 Discussion

The Committee agrees the proposed public realm areas and infrastructure works will provide a clear community benefit. The Committee does not, however, accept the Proponent’s proposition that a general development contribution exemption should be provided to the subject land. It is normal for development sites to deliver or be required to deliver their own infrastructure and facilities and contribute to broader community-wide infrastructure through a DCP. The Master Plan will clearly generate infrastructure needs in relation to both transport and community and recreation infrastructure.

While the Proponent has submitted it will be providing public realm improvements to compensate for any development contribution charges, those public realm improvements are those that any large development would be required to provide as part of a large development. They are development works to specifically provide necessary amenity and infrastructure to enable the proposed development to function. For example, while the proposed building forecourts, internal

⁸⁵ Whitehorse Planning Scheme Amendment C241whse, Panel Report, D47 p928; Darebin Planning Scheme Amendment C170dare Panel Report, D73, chapter 11

⁸⁶ D70, para 245

⁸⁷ D32, para 34

roads and accessways will be used by the public, they are necessary and fundamental to this proposed development. The Civic Steps more specifically for example, are specifically needed to manage to the subject land's topography and level change. Equally, the Master Plan will require the construction of roads, paths, drainage and related works that address the proposal's specific needs.

The development of the subject land will significantly increase residential and commercial floor space within the Box Hill MAC. With this development will come demand on municipal infrastructure. The Committee agrees with Council that the extent of population growth that will result from the proposed development will require new infrastructure above and beyond the type of infrastructure that is required as a direct result of the development itself. That is, above and beyond the roadworks, drainage improvements, localised public realm works and the like which this and other large projects normally provide. The Committee therefore considers it reasonable for development on the subject land to contribute to the provision and improvement of municipal infrastructure through the Whitehorse DCP (once Amendment C241whse is gazetted).

Should the Proponent seek to provide infrastructure that it considers is 'above and beyond' what is required by the Whitehorse DCP or overlaps or duplicates the works that will be directly provided as part of the Master Plan, this can be facilitated by an agreement where the Proponent is provided with a credit against its development contributions liability. This mechanism is included in the Whitehorse DCP. Both the proposed DCP and the proposed DCPO Schedule 1 allow for contributions to be made as works in lieu of cash payments.

The Committee agrees with Council there is no need to make any further provision or to adjust the relevant provisions of the DCP. It was properly prepared, considered by a Panel and is awaiting approval.

9.4 Findings and recommendations

The Committee finds:

- There is no case for a general exemption to development contributions for the subject land.
- It is appropriate for the subject land to deliver the Master Plan works and pay levies under the Whitehorse DCP, subject to its approval.
- The exemption provided through a section 173 agreement under the Whitehorse DCP provides scope for an outcome to be negotiated with Council where infrastructure is agreed to be delivered that is 'above and beyond' what is required for the subject land.

The Committee recommends:

- 13. Amend Clause 11 of the Incorporated Document (Development Contributions) to read:**
 - a) Any development of the Land must comply with the requirement to pay any development contribution under the Whitehorse Development Contributions Plan (once Amendment C241whse is gazetted).**
 - b) A planning permit that is granted with respect to the Land must:**
 - (i) be consistent with the provisions of the Whitehorse Development Contributions Plan; or**

- (ii) include any conditions required to give effect to any contributions or levies imposed, conditions or requirements that are contained within any schedule to Clause 45.06 of the Planning Scheme that concerns the Whitehorse Development Contributions Plan.**

10 Resolution of the draft Amendment

The proposal seeks to introduce the Specific Controls Overlay into the Whitehorse Planning Scheme to implement the Box Hill Central North Master Plan through an Incorporated Document. This overlay has been used widely for various proposals since its introduction into the VPP.

Council was opposed to the Specific Controls Overlay and considered it was the incorrect planning tool to use.

The Committee supports the use of the Specific Controls Overlay, although it does consider the Comprehensive Development Zone supported by a Comprehensive Development Plan might have been a better alternative for the site area. Given the extent of the area included in the Master Plan, the level of detail in a Comprehensive Development Plan would have provided more information and greater transparency to Council, key stakeholders and the local community. A Comprehensive Development Plan would be an easier planning document to review and understand than the Incorporated Document associated with this proposal.

While the Committee is aware the Specific Controls Overlay has been used before, it has tended to be used for site specific projects with clear and defined outcomes such as single buildings, supermarkets and the like. Further, it has been used for major environmental projects such as the SRL and Crib Point.

Notwithstanding, as the Specific Controls Overlay was exhibited with the draft Amendment and that the Committee supports implementation of the Master Plan for Box Hill, the Committee supports the Specific Controls Overlay and Incorporated Document, subject to modifications. There was significant discussion at the Hearing about the form of the controls and the Committee appreciates the work of Council in particular, in providing significant and helpful input about the provisions of the Incorporated Document.

The Committee has included the final version provided by the Proponent as the base version for its final recommendations⁸⁸.

The key changes the Committee has recommended to the Incorporated Document include:

- Clause 2.1 – word changes and inclusion of the VEI land in the Master Plan area
- Clause 2.1 – inclusion of several requirements to improve vehicle and pedestrian access; equitable development rights; stronger overshadowing provisions for the equinox at Civic Steps
- Clause 5.1 – remove unnecessary text
- Clause 8.1b – word tidy up
- Clause 8.1f – include provision for a detailed way finding strategy
- Clause 8.1h(iii) – change Green Star from 5 to 6, with a note to ensure rating is updated as required
- Clause 8.1j – introducing a new site specific Parking Overlay, adopting rates as per Table 10
- Clause 8 – including various DTP requirements and conditions, including to the Transport Impact Assessment

⁸⁸ D88

- Clause 9d – gifting of land to satisfaction of Council and DTP
- Clause 9d – increase percentage of affordable housing to 10 per cent, and lease option to 30 years
- Clause 10 – delete the exemptions to comply with Clause 53.01
- Clause 11 – delete the exemptions to comply with the Whitehorse Development Contributions Plan
- Clause 12 – retain the 5 and 15 year timeframes as it is a complex project on a complex site that will likely be staged over several years.

The Committee did not agree with Council that its land known as Nelson Park should be removed from the Master Plan area, so the address of land to which the Specific Controls Overlay applies remains as exhibited. It did agree with Council that a new site specific Parking Overlay be introduced, this is referenced in the Incorporated Document.

Appendix G provides the Committee’s recommended changes to the Incorporated Document.

Appendix A Terms of Reference



Version 2: Amended June 2023

Standing Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to advise the Minister for Planning on referred priority planning proposals.

Name

1. The Standing Advisory Committee is to be known as the 'Priority Projects Standing Advisory Committee' (the Committee).
2. The Committee is to have members with the following skills:
 - a. statutory and strategic land use planning
 - b. land development and property economics
 - c. urban design and architecture
 - d. heritage
 - e. civil engineering and transport planning
 - f. social impacts
 - g. environmental planning
 - h. planning law.
3. The Committee will include a lead Chair, Chairs, Deputy Chairs and not less than ten other appropriately qualified members.

Purpose

4. The purpose of the Committee is to provide timely advice to the Minister for Planning on projects referred by the Development Facilitation Program (DFP), or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

Background

5. The Victorian Government is committed to streamlining the assessment and determination of projects that inject investment into the Victorian economy, keep people in jobs and create homes for people. The planning system is an important part of supporting investment and economic growth in Victoria.
6. The DFP focusses on new development projects in priority sectors and/or projects that are in the planning system that face undue delays. These can include (but are not limited to) housing, mixed use, retail, employment, tourism, industrial and other opportunities.

Method

7. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
8. The referral letter must specify:
 - a. the specific issues the Minister for Planning seeks advice about
 - b. the mechanism of intervention being considered (for example, but not limited to, draft planning scheme amendment, call-in from the Victorian Civil and Administrative Tribunal, planning permit application)
 - c. whether submissions are to be considered by the Committee, and if so, how many are being referred, and
 - d. how the costs of the Committee will be met.
9. The letter of referral will be a public document.
10. In making a referral, the Minister for Planning or delegate must, either:
 - a. be satisfied that any proposed planning controls for the land make proper use of the Victoria

Terms of Reference | Priority Projects Standing Advisory Committee

- Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes, or
- b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
11. The Committee may inform itself in anyway it sees fit, but must consider:
 - a. The referral letter from the Minister for Planning
 - b. referred submissions
 - c. the comments of any referral authority
 - d. the views of the project proponent
 - e. the views of the relevant Council and
 - f. the relevant planning scheme.
 12. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority, or government agency.
 13. The Department of Transport and Planning (DTP) will be responsible for any further notification required. New submissions, if required, will be collected by DTP.
 14. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
 15. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
 16. The Committee may:
 - a. assess any matter 'on the papers'
 - b. conduct discussions, forums, or video conferences when there is a quorum of:
 - i. a Chair or Deputy Chair, and
 - ii. at least one other member.
 17. The Committee may apply to vary these Terms of Reference in any way it sees fit.

Submissions are public documents

18. The Committee must retain a library of any written submissions or other supporting documentation provided to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
19. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain confidential. A document may be made available for public inspection electronically.

Outcomes

20. The Committee must produce a concise written report to the Minister for Planning providing the following:
 - a. a short description of the project
 - b. a short summary and assessment of issues raised in submissions
 - c. a draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral
 - d. any other relevant matters raised during the Committee process
 - e. its recommendations and reasons for its recommendations
 - f. a list of persons or authorities/agencies who made submissions considered by the Committee and
 - g. a list of persons consulted or heard, including via video conference.

Timing

21. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
 - a. the date of receipt of referral, if no further submissions or information are to be sought, or
 - b. receipt of the final submission of material or final day of any public process in respect of a referral.

Terms of Reference | Priority Projects Standing Advisory Committee

Fee

22. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.
23. The costs of the Committee will be met by each relevant proponent.



Sonya Kilkenny MP
Minister for Planning

Date: 9/9/2023

Terms of Reference | Priority Projects Standing Advisory Committee

The following information does not form part the Terms of Reference.

Project Management

1. Administrative and operational support to the Committee will be provided by Priority Projects, Department of Transport and Planning (priority.projects@delwp.vic.gov.au).
2. Day to day liaison for the Committee will be managed by Planning Panels Victoria ((03) 8624 5714 and planning.panels@delwp.vic.gov.au).

Appendix B Letter of referral



The Hon Sonya Kilkenny MP

Minister for Planning
Minister for Outdoor Recreation

8 Nicholson Street
East Melbourne, Victoria 3002 Australia

Ref: BMIN-1-23-1237

Ms Kathy Mitchell AM
Panel Chair, Priority Projects Standing Advisory Committee
Planning Panels Victoria
planning.panels@delwp.vic.gov.au

Dear Ms Mitchell

DEVELOPMENT FACILITATION PROGRAM – BOX HILL CENTRAL NORTH MASTER PLAN

I refer to draft Planning Scheme Amendment C245 to the Whitehorse Planning Scheme affecting land at 17-21 Market Street, part of the land at 1 Main Street, 2 Prospect Street, 8 Prospect Street, 8A Prospect Street, part of Main Street, Prospect Street, Nelson Road, Fairbank Lane, and the landscape reserve fronting Whitehorse Road, Box Hill. The proposal has been considered by the Development Facilitation Program (DFP), which has deemed that it meets relevant criteria and should be prioritised for accelerated assessment and determination.

I am considering whether to prepare, adopt and approve draft Amendment C245 to the Whitehorse Planning Scheme and exempt myself under section 20(4) of the *Planning and Environment Act 1987* (PE Act) from the requirements of section 17, 18 and 19 of the PE Act and the Regulations.

Draft Amendment C245 proposes to:

- Introduce Clause 45.05 Road Closure Overlay into the Whitehorse Planning Scheme and apply the Road Closure Overlay to Fairbank Lane to facilitate the partial closure of Fairbank Lane (east of Nelson Road).
- Apply the Specific Controls Overlay to the entirety of the master plan area.
- Amend the schedule to Clause 45.12 Specific Controls Overlay to introduce incorporated document 'Box Hill Central North Master Plan'.
- Amend the schedule to Clause 72.04 'Documents Incorporated in the Scheme' to introduce incorporated document 'Box Hill Central North Master Plan'.
- Amend Planning Scheme Map 01SCO Specific Controls Overlay.
- Insert new Planning Scheme Map 01RXO Road Closure Overlay.



To inform my decision about whether to prepare, adopt and approve draft Amendment C245, I undertook consultation under section 20(5) of the PE Act. A total of 70 submissions have been received, with the majority being objections. The main objector concerns relate to building height and siting, urban design and public realm treatments, open space contribution, the mechanism and adequacy of developer contributions, affordable housing provision, overshadowing, noise, wind and air pollution, traffic and car parking, integration with the transport network.

I have determined to refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether I should approve draft Amendment C245.

The draft amendment documentation, including the application and supporting documents, and submissions will be provided to the committee.

The cost of the committee process will be met by the proponent, Vicinity Centres Pty Ltd.

If you have any questions about this matter, please contact Bart Gane, Manager, Priority Projects, Development Approvals and Design, Department of Transport and Planning, on 0448 048 704 or email bart.gane@delwp.vic.gov.au.

Yours sincerely



The Hon Sonya Kilkenny MP
Minister for Planning

30/11/23

Appendix C Submitters to the draft Amendment

No	Submitter
1	Anthony Koedkyk
2	Whitehorse City Council
3	Housing Choices Australia Limited
4	Susan Shi
5	Filipe Chiang
6	Hui Chi
7	Tim Danes
8	Beverley Tran
9	Lixin Cheng
10	Dilum Abeywickrama
11	Libby Witts
12	Emma Gee
13	Ang Lee
14	Louise Dixon
15	Neroli Padfield
16	Mark Brown
17	Christopher Tang
18	Owen Crombie
19	Arthur Dent
20	Dorothy Jean Edwards
21	Katrina Trost
22	Sally Dugan
23	Surrey Hills-Mont Albert Progress Association
24	Di Winkler
25	Andy Ying Zhe Ma
26	Ric Pawsey
27	Alson Tan
28	Lucas
29	Maggie Xu
30	Richard Xiang
31	Jenny Du
32	Ting Ni and Yong Biao Sun
33	Lin Vicky
34	Maggie Zhang
35	Luna Ahu

No	Submitter
36	Minjia Zhang
37	Graeme Stone
38	Meryl V Voigt
39	Ling Wang
40	Jenna
41	Environment Protection Authority Victoria
42	Combined Residents of Whitehorse Action Group (CROWAG)
43	Kevin Earl
44	Bowen Chen
45	Marilyn Gurry
46	Whitehorse Ratepayers and Residents Association Inc.
47	Lai Sun and Cui Tang
48	Shawn Yang
49	Blackburn Village Residents Group
50	Ian Hundley
51	David Hall
52	The Trust Company (Australia) Limited
53	Kathy Zhang
54	Department of Transport and Planning
55	Jeremy Maxwell
56	Cui Tang
57	Ann Macdermid
58	William Orange
59	Sarah O'Neill
60	Eve Pakarinen
61	Peter Carter
62	Anwei Li
63	VicTrack
64	Yarra Valley Water (withdrawn)
65	Vision Eye Institute
66	Melbourne Water
67	Andrew Achterbosch

Appendix D Parties to the Hearing

Submitter	Represented by
Vicinity Centres Pty Ltd (Proponent)	<p>Nick Tweedie SC and Jennifer Trehwella of Counsel, instructed by Linda Choi of Norton Rose Fulbright, who called expert evidence on:</p> <ul style="list-style-type: none"> - urban design from Karen Wong of Bates Smart - public realm from Damien Thompson of LatStudios - planning from Amanda Ring of UPco - public and pedestrian access from Andrew Sanderson of Architecture and Access - wind engineering from Michael Eaddy of MEL Consultants - traffic and parking from Tim de Young of Stantec - traffic and parking from Charmaine Dunstan of Traffix Group - economics from Paul Shipp of Urban Enterprise <p>With an opening submission and presentation of the proposed concept by Julian Anderson of Bates Smart.</p>
Whitehorse City Council	<p>Terry Montebello of Maddocks Lawyers: who called expert evidence on:</p> <ul style="list-style-type: none"> - urban design from Rob McGauran of MGS Architects - planning from David Barnes of Hansen - development contributions and affordable housing from Alex Hrelja of Hill PDA - traffic and transport from Hillary Marshall of Ratio Consultants
Department of Transport and Planning (Head, Transport for Victoria)	Steven Yang and Simon Basic
Vision Eye Institute	<p>Adeline Lane of Jackson Legal, who called the following expert evidence:</p> <ul style="list-style-type: none"> - planning from John Glossop of Glossop Town Planning - urban design from Gerhana Waty of Hansen <p>With a presentation by Margaret Kelly, General Manager VIC and SA Operations, Vision Eye Institute.</p>
Blackburn Village Residents Group and Combined Residents of Whitehorse Action Group	David Morrison
Surrey Hills and Mont Albert Progress Association	Greg Buchanan
Kevin Earl	

Appendix E Document list

No	Date	Description	Presented by
1	14 Jun 2020	Terms of Reference	Minister for Planning
2	30 Jul 2023	Letter of Referral	Minister for Planning
3	30 Jul 2023	Referred material including: <ul style="list-style-type: none"> a) Town Planning Report, Urbis, June 2022 b) Transport Impact Assessment, Stantec, June 2022 c) Sustainability Framework, June 2022 d) Master Plan Report, Bate Smart, June 2022 e) Employment Growth & Economic Benefit Assessment, Urbis, June 2022 f) Landscape Design Report, Lat27, June 2022 g) BHCN Wind Tunnel Test Report MEL, May 2022 h) Housing Diversity & Affordability Report, Urbis 2022 i) s20 (part 5) Draft Amendment C245whse Incorporated Document, Dec 2022 j) s20 (part 5) Draft Amendment C245whse Explanatory Report k) s20 (part 5) Draft Amendment C245whse Instruction Sheet l) s20 (part 5) Draft Amendment C245whse Specific Control Overlay 16 Map m) s20 (part 5) Draft Amendment C245whse Road Closure Overlay Map n) s20 (part 5) Draft Amendment C245whse Clause 45.04 Road Closure Overlay o) s20 (part 5) Draft Amendment C245whse Schedule to control 45.12 Specific Controls Overlay p) s20 (part 5) Draft Amendment C245whse Schedule to Clause 45.12 Specific Controls Overlay q) s20 (part 5) Draft Amendment C245whse Schedule to Clause 72.03 What does this planning scheme consist of r) s20 (part 5) Draft Amendment C245whse Schedule to Clause 72.03 What does this planning scheme consist of s) s20 (part 5) Draft Amendment C245whse Schedule to Clause 72.04 Documents Incorporated in this Planning Scheme t) s20 (part 5) Draft Amendment C245whse Schedule to Clause 72.04 Documents Incorporated in this Planning Scheme – compare 	Department of Transport and Planning (DTP)

No	Date	Description	Presented by
4	3 Aug 2023	Directions Hearing notice letter	Planning Panels Victoria (PPV)
5	17 Aug 2023	Statement of grounds	Surrey Hills and Mont Albert Progress Association (SHMAPA)
6	18 Aug 2023	Letter to Committee	Environment Protection Authority Victoria (EPA)
7	18 Aug 2023	Statement of grounds	Kevin Earl
8	18 Aug 2023	Letter to Committee	Whitehorse City Council (Council)
9	18 Aug 2023	Statement of grounds	Council
10	18 Aug 2023	Statement of grounds	DTP (Head, Transport for Victoria)
11	18 Aug 2023	Statement of grounds	Vision Eye Institute
12	18 Aug 2023	Letter to Committee regarding procedural matters	Proponent
13	18 Aug 2023	Email withdrawing submission	Yarra Valley Water
14	20 Aug 2023	Statement of grounds	Blackburn Village Residents Group and Combined Residents of Whitehorse Action Group (BVRG and CROWAG)
15	25 Aug 2023	Directions and Timetable	PPV
16	28 Aug 2023	Email regarding site inspection	PPV
17	30 Aug 2023	Letter regarding timetable	Proponent
18	4 Sep 2023	Summary of the Amendment and Stage 1 Permit	Proponent
19	4 Sep 2023	Background and Context	Proponent
20	8 Sep 2023	Letter enclosing expert witness statements	Proponent
21	8 Sep 2023	Expert witness statement of Damian Thompson (public realm)	Proponent
22	8 Sep 2023	Expert witness statement of Amanda Ring (planning)	Proponent
23	8 Sep 2023	Expert witness statement of Charmaine Dunstan (traffic and parking)	Proponent
24	8 Sep 2023	Expert witness statement of Paul Shipp (economics)	Proponent
25	8 Sep 2023	Expert witness statement of Andrew Sanderson (public and pedestrian access)	Proponent

No	Date	Description	Presented by
26	8 Sep 2023	Expert witness statement of Karen Wong (urban design)	Proponent
27	8 Sep 2023	Expert witness statement of Michael Eaddy (wind engineering)	Proponent
28	8 Sep 2023	Expert witness statement of Tim de Young (traffic and parking)	Proponent
29	12 Sep 2023	Expert witness statement of Gerhana Waty (urban design)	Vision Eye Institute
30	12 Sep 2023	Expert witness statement of John Glossop (planning)	Vision Eye Institute
31	12 Sep 2023	Statement of Margaret Kelly	Vision Eye Institute
32	12 Sep 2023	Expert witness statement of Alex Hrelja (development contributions)	Council
33	12 Sep 2023	Expert witness statement of Alex Hrelja (affordable housing)	Council
34	12 Sep 2023	Expert witness statement of Hilary Marshall (traffic and transport)	Council
35	12 Sep 2023	Expert witness statement of Rob McGauran (urban design)	Council
36	12 Sep 2023	Expert witness statement of David Barnes (planning)	Council
37	13 Sep 2023	Updated Terms of Reference (9 September 2023)	PPV
38	13 Sep 2023	Site inspection plan and map	Proponent
39	13 Sep 2023	Version 2 Timetable and Distribution List	PPV
40	14 Sep 2023	Email to Proponent requesting further information	PPV
41	15 Sep 2023	Box Hill Metropolitan Activity Centre to 2036 - Draft Structure Plan (October 2021)	PPV
42	15 Sep 2023	Opening submission	Council
43	15 Sep 2023	Opening submission	Proponent
44	15 Sep 2023	Day 1 version of Incorporated Document	Proponent
45	15 Sep 2023	Comparison of Day 1 and exhibited Incorporated Documents	Proponent
46	15 Sep 2023	Presentation by Julian Anderson	Proponent
47	15 Sep 2023	Additional documents to be relied on during the hearing	Proponent
48	17 Sep 2023	Presentation of Gerhana Waty	Vision Eye Institute
49	18 Sep 2023	Karen Wong response to expert witness statements of Gerhana Waty and Rob McGauran	Proponent
50	18 Sep 2023	Letter of instructions to Rob McGauran	Council
51	19 Sep 2023	Minutes of transport conclave	Proponent
52	19 Sep 2023	Map with Special Control Overlays	Proponent
53	19 Sep 2023	Land swap plan	Proponent
54	20 Sep 2023	Diagram with dimensions	Proponent

No	Date	Description	Presented by
55	20 Sep 2023	Minutes of development contributions conclave	Proponent
56	21 Sep 2023	Letter to SRLA inviting comments	PPV
57	21 Sep 2023	Request for clarification of issues	PPV
58	21 Sep 2023	Submission	DTP (Head, Transport for Victoria)
59	21 Sep 2023	Diagram referred to by Michael Eaddy (1 of 2)	Proponent
60	21 Sep 2023	Diagram referred to by Michael Eaddy (2 of 2)	Proponent
61	22 Sep 2023	Submission, enclosing attachments: a) 278 Little Lonsdale Pty Ltd v Melbourne CC [2017] VCAT 577 b) Shangyi Vision Pty Ltd v Whitehorse CC [2022] VCAT 1033	Proponent
62	25 Sep 2023	Greater Geelong PSA C434ggee Panel Report	Proponent
63	25 Sep 2023	Letter from Council to Urbis re WH 2020466, 467 & 597 – 25 March 2021	Proponent
64	25 Sep 2023	Letter from Urbis to Council re WH 2020466, 467 & 597	Proponent
65	25 Sep 2023	Urban Design Advice – Vicinity Box Hill North by MGS	Proponent
66	25 Sep 2023	Whitehorse Affordable Housing Policy 2023	Proponent
67	25 Sep 2023	Whitehorse Planning Scheme – Clause 21.06 Housing	Proponent
68	25 Sep 2023	Town Planning Report prepared by Bates Smart – 4 February 2021	Proponent
69	25 Sep 2023	Clarification on proposed closure of Fairbank Lane and land required for future Strategic Cycling Corridor	DTP (Head, Transport for Victoria)
70	25 Sep 2023	Submission	Council
71	25 Sep 2023	Day 1 Incorporated Document (Council markup)	Council
72	25 Sep 2023	Draft Parking Overlay	Council
73	25 Sep 2023	Supporting documents	Council
74	25 Sep 2023	Submission	SHMAPA
75	25 Sep 2023	Email in response to invitation from Committee for comments (Document 57)	Suburban Rail Loop Authority (SRLA)
76	26 Sep 2023	Submission	Vision Eye Institute
77	27 Sep 2023	852 Whitehorse Road floor plan	Vision Eye Institute
78	27 Sep 2023	Version 3 Timetable and Distribution List	PPV
79	27 Sep 2023	Submission	Kevin Earl

No	Date	Description	Presented by
80	27 Sep 2023	Submission	BVRG and CROWAG
81	27 Sep 2023	Images	BVRG and CROWAG
82	27 Sep 2023	Response to invitation for comments	SRLA
83	27 Sep 2023	Summary of David Barnes' recommendations	Council
84	28 Sep 2023	Incorporated Document, 28 September 2023 (Word, tracked changes)	Proponent
85	28 Sep 2023	Incorporated Document, 28 September 2023 (clean)	Proponent
86	28 Sep 2023	Closing submission, enclosing attachments: <ul style="list-style-type: none"> a) Appendix 1 - Explanation of options re DELWP Design Workshop 18 May 2021 b) Appendix 2 - Certificate of Title - Council Land - Lot 1 TP761487[28] c) Appendix 3 - Recommendations of Paul Shipp d) Appendix 4 - Staging Plans e) Golden Ridge v Whitehorse CC (Mitcham Towers) [2004] VCAT 1706 f) Stonnington Planning Scheme - Schedule to Clause 53.01 - Public Open Space Contribution and Subdivision 	Proponent
87	28 Sep 2023	Incorporated Document, 28 September 2023 (Word, tracked changes) (amended)	Proponent
88	28 Sep 2023	Incorporated Document, 28 September 2023 (clean) (amended)	Proponent
89	28 Sep 2023	Alternative development contributions clause	Proponent
90	2 Oct 2023	Letter regarding issues for resolution	PPV
91	6 Oct 2023	Letter regarding Office of the Victorian Government Architect report	Council
92	10 Oct 2023	Office of the Victorian Government Architect report (22 March 2021)	PPV
93	16 Oct 2023	Submission	Peter Carter
94	19 Oct 2023	Email to Peter Carter accepting late submission	PPV
95	26 Oct 2023	Further submissions	Proponent
96	26 Oct 2023	Open Space Strategy for Metro Melbourne 2021	Proponent
97	26 Oct 2023	Shaded public open space examples	Proponent
98	26 Oct 2023	Public open space plan and table	Proponent
99	26 Oct 2023	Civic steps shadow study	Proponent

No	Date	Description	Presented by
100	26 Oct 2023	Letter to Maddocks regarding land exchange	Proponent
101	26 Oct 2023	Interface principles for BHCN Master Plan	Proponent
102	27 Oct 2023	Email from Council to Proponent, 26 October 2023	Council
103	27 Oct 2023	Letter from Council to Proponent, 26 October 2023	Council

Appendix F Planning Framework

Relevant clauses

11 Settlement

11.01 Victoria

11.01-1R Settlement – Metropolitan Melbourne

Focus investment and growth in places of State significance, including Health and Education Precincts.

11.02-1S Supply of urban land

Ensure sufficient supply of land for residential, retail, industrial, recreational, institutional and other community uses.

11.03-1S Activity Centres

Encourage the concentration of major commercial and administrative developments into activity centres that are highly accessible to the community.

15 Built Environment and Heritage

15.01 Built Environment

15.01-1S Urban design

Create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.

Strategies

Require development to respond to its context in terms of character, cultural identity, natural features, surrounding landscape and climate.

Ensure the interface between the private and public realm protects and enhances personal safety.

Promote good design along and abutting transport corridors.

15.01-1R Urban design – Metropolitan Melbourne

Create a distinctive and liveable city with quality design and amenity

Strategies

Support the creation of well-designed places that are memorable distinctive and liveable.

15.01-2S Building design

Achieve building design outcomes that contribute positively to the local context and enhance the public realm.

Strategies

Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm

Ensure development is designed to protect and enhance valued landmarks

15.01-4R Healthy Neighbourhoods-Metropolitan Melbourne

Create 20-minute neighbourhoods where people have the ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home.

15.02 Sustainable Development

Relevant clauses

15.02-1S Energy and resource efficiency

Encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions.

17.01 Economic Development

17.01-1R Diversified Economy – Metropolitan Melbourne

Support the employment and servicing role of Health and Education precincts through accessibility, co-location, growth and reinforcing specialised functions.

17.01-2S Innovation and research

Create opportunities for innovation and the knowledge economy within existing and emerging industries, research and education.

Strategies

Encourage the provision of infrastructure that helps people to be innovative and creative, learn new skills ... in locations identified to accommodate employment and economic growth.

18 Transport

18.01 Integrated transport

18.01-1S Land use and transport planning

Create a safe and sustainable transport system by integrating land use and transport.

18.02 Movement Networks

18.02-1S Sustainable personal transport Promote the use of sustainable personal transport.

18.02-2S Public Transport

Facilitate greater use of public transport and promote increased development close to high-quality public transport routes.

18.02–2R Principal Public Transport Network

Maximise the use of existing infrastructure and increase the diversity and density of development along the Principle Public Transport Network, particularly at ... activity centres and where principle public transport routes intersect.

18.02-3S Road system

Manage the road system to achieve integration, choice and balance by developing an efficient and safe network and making the most of existing infrastructure.

18.02-4S Car parking

Ensure an adequate supply of car parking that is appropriately designed and located.

19 Infrastructure

19.02 Infrastructure

19.02-1S Health facilities

Assist the integration of health facilities with local and regional communities.

Locate hospitals and other large health facilities in designated health precincts and areas highly accessible to public and private transport.

Relevant clauses

19.02-1R Health facilities – Metropolitan Melbourne

Facilitate health and community wellbeing precincts through the co-location of hospitals, allied health services... at the regional level.

19.02-2S – Education Facilities

Assist the integration of education and early childhood facilities with local and regional communities. Locate tertiary education facilities in designated education precincts and areas that are highly accessible to public transport.

Table 15 Planning Policy Framework: Local policies

Relevant clauses

21 Municipal Strategic Statement

Clause 21.05 – Environment

Encouraging development in those areas with adequate infrastructure and excellent public transport links. The Box Hill Metropolitan Activity Centre (BHMAC) is one of these areas.

Ensuring development is of a high quality design that is compatible with the character and appearance of the area. The character of the Box Hill MAC is one marked by intensive urban development being a combination of low rise development from eras past and tall, contemporary buildings constructed, over the last decade.

Implementing best practice in environmentally sustainable development. This is now a common strategy expressed in Melbourne’s planning schemes.

Clause 21.06-2 Vision

Relies on activity centres as the focus of increased housing (and diversity) and employment – noting that each has a different level of capacity and is equipped in different ways to support increased housing density.

Clause 21.07 – Economic Development

Clause 21.07 *Economic Development* identifies the Box Hill Activity Centre as a Metropolitan Activity Centre in the eastern metropolitan region. The vision for the Centre is that “Box Hill will be sustainable, safe and accessible to all. It will be a distinctive, vibrant, diverse, inclusive, participatory, caring and healthy community where you live, work and enjoy – day and night.” Box Hill provides retail, education, office, civic, medical, community service, entertainment, dining and recreational opportunities for the regional population, as well as a hub for local community activities. It is strategically located along the Melbourne to Lilydale and Belgrave rail line, Whitehorse Road and the 109 tram route, which jointly form the spine of an area of intensive economic activity that extends through Melbourne’s eastern suburbs. Box Hill has the scope to accommodate substantial growth, as well as the potential for improved amenity to support this growth.

Clause 21.08 – Infrastructure

Council looks to future roads only being constructed where they provide a net benefit to the community and that they be designed and developed in a manner which is environmentally sensitive, whilst minimising impacts on abutting land uses.

22 Local Planning Policies

Relevant clauses

Clause 22.07 – Box Hill Metropolitan Activity Centre

Recognises the strategic priority attributed to the BHM MAC, the policy effectively provides for the implementation of the *Box Hill Transit City Activity Centre Structure Plan 2007*. It is about accommodating the ambition established for the centre at that time.

The objectives set out at Clause 22.07-2 are:

- To ensure that the Box Hill Metropolitan Activity Centre can continue to expand in line with market demand.
- To ensure that future development within the Box Hill Metropolitan Activity Centre seeks to maximise employment growth for Whitehorse.
- To ensure that Box Hill provides accessible, lively and comfortable public spaces that offer diverse opportunities for recreation and social engagement.
- To support walking as the primary means of access in and around Box Hill and encourage most trips of 1km or less to be taken on foot.
- To encourage cycling as a sustainable and healthy means of travel within Box Hill and for trips of up to 5km between the Activity Centre and surrounding areas.
- To encourage significantly increased use of public transport and reduced rates in the use of private vehicular transport for travel to and from the Box Hill Activity Centre.
- To carefully manage vehicular traffic in Box Hill to support choice of travel mode and create transit supportive roads (as defined by the Box Hill Transit City Activity Centre Structure Plan 2007).
- To ensure that car parking in Box Hill balances access, sustainable transport and land use needs, consistent with the Box Hill Central Activities Area Car Parking Strategy 2013.
- To ensure that Box Hill accommodates a more intensive and diverse range of activities that increase choices and opportunities, support synergies between different uses, encourages use of sustainable transport and complement surrounding areas.

To ensure that development and use in the Box Hill Transport and Retail Precinct are appropriate to its role and function as a regional transport interchange for rail, bus, tram and taxi services.

Appendix G Committee preferred version of the Incorporated Document

Tracked Added ⁸⁹

~~Tracked Deleted~~

WHITEHORSE PLANNING SCHEME BOX HILL CENTRAL NORTH MASTER PLAN INCORPORATED DOCUMENT

Specific controls for 17-21 Market Street, part of the land at 1 Main Street, 2 Prospect Street, 8 Prospect Street, 8A Prospect Street, Box Hill, and part of Main Street, Prospect Street, Nelson Road, Clisby Court, and Fairbank Lane, and the landscape reserve fronting Whitehorse Road, Box Hill

[insert month] 2023

Incorporated document pursuant to Section 6(2)(j) of the Planning and Environment Act 1987

Incorporated document in the Schedules to Clauses 45.12 and 72.04 of the Whitehorse Planning Scheme

1. INTRODUCTION

- 1.1 This document is an Incorporated Document in the schedules to Clause 45.12 – Specific Controls Overlay and 72.04 – Incorporated Documents of the Whitehorse Planning Scheme (the Planning Scheme) pursuant to section 6(2)(j) of the Planning and Environment Act, 1987.
- 1.2 The land identified in Clause 6 of this Incorporated Document (Land) may be used, developed, and subdivided in accordance with the specific provisions of this Incorporated Document.

2. APPROVAL OF MASTER PLAN

- 2.1 ~~The Minister for Planning (Minister) must approve a~~ Before the grant of any planning permit, a Master Plan for the Land (Approved Master Plan) must be approved by the Minister for Planning (Minister). The Approved Master Plan must be generally in accordance with the Box Hill Central North Master Plan (June 2022), but modified to ~~show~~:
 - (i) Include the Victorian Eye Institute land at 852 Whitehorse Road, Box Hill.
 - (ii) Redesign the podium to Lot 1 to ensure that vehicle and pedestrian access from Nelson Road to the car park and entry of 852 Whitehorse Road, Box Hill is open to the sky.
 - (iii) Redesign the interface between Lot 1 and 852 Whitehorse Road, Box Hill to ensure a safe environment for pedestrian accessibility.

⁸⁹ NOTE: this version of the Incorporated Document is based on the final version provided by the Proponent: D88.

- (iv) [Set back the tower form of Lot 1 by a minimum of 4.5 metres from the property boundary of 852 Whitehorse Road, Box Hill to ensure equitable development opportunities.](#)
- (v) [Redesign the built form of Lots 1, 2 and 3 to ensure there is no additional overshadowing to the Civic Steps between 11.00am and 1.00pm at the equinox.](#)
- (vi) [Redesign the built form of Lots 1, 2 and 3 to minimise additional overshadowing to the Civic Steps between 1.00pm and 2.00pm at the equinox.](#)
- (vii) [Add a notation noting that further design and consultation must be undertaken to provide greater certainty on the space required for the area identified as Lane 3 to enable the connection of the Strategic Cycling Corridor across the rail line prior to approving the building envelope for Lots 6 and 7.](#)
- (viii) [At Plan 3.8, add a notation that the final design of the rail interface must comply with the VicTrack Rail Development Interface Guidelines \(VicTrack, 2019\) and Clause 18.02-3S Public Transport of the Planning Scheme.](#)
- (ix) [Update the Movement Plan to:](#)
 - [include pedestrian and cycle paths, including a pedestrian path generally along the south side of the existing Fairbank Lane alignment](#)
 - [clearly identify the Strategic Walking and Cycling Corridors through the Land and how these link to the broader existing network.](#)
- (x) [Include the interface between the Land and the Suburban Rail Loop Project along Whitehorse Road, including the location of the new tram stop and associated road layout changes.](#)

- 2.3 The Minister may from time to time approve amendments to the Approved Master Plan.
- 2.4 The use, development and subdivision of the Land must be generally in accordance with the Approved Master Plan, as amended from time to time.
- 2.5 Any planning permit granted with respect to the Land must be generally in accordance Approved Master Plan, as amended from time to time.
- 2.5 Unless with the written consent of the Minister, no permit can be granted for the use, development or subdivision of the Land until the Minister has approved a master plan for the Land.

3. APPLICATION OF PLANNING SCHEME PROVISIONS

- 3.1 Despite any provision to the contrary, or any inconsistent provision in the Planning Scheme, the Land may be used, developed and subdivided in accordance with this Incorporated Document.
- 3.2 In the event of any inconsistency between the provisions contained in this Incorporated Document and the provisions of the Planning Scheme, the provisions contained in this Incorporated Document will prevail.

4. RESPONSIBLE AUTHORITY

- 4.1 The Minister is the Responsible Authority for administering Clause 45.12 of the Planning Scheme in respect of this Incorporated Document except that:
- a. The Whitehorse City Council is the Responsible Authority for matters that are expressly required by the Incorporated Document to be endorsed by, approved, or done to the satisfaction of the Whitehorse City Council;
 - b. The Whitehorse City Council is the Responsible Authority for any applications for permits for subdivision;
 - c. The Whitehorse City Council is the Responsible Authority for the enforcement of the Incorporated Document; and
 - d. The Whitehorse City Council is the Responsible Authority for matters under Division 2 of Part 9 of the Planning and Environment Act 1987.

5. PURPOSE

- 5.1 The purpose of this Incorporated Document is to:
- ~~a. identify an area which requires the form and conditions of future use and development to be shown on a master plan before a permit can be granted to use or develop the Land;~~
 - ~~b. provide for the approval by the Minister of a master plan for the Land, and to allow for the Minister to amend the Approved Master Plan from time to time;~~
 - a. [implement the Approved Master Plan to](#) facilitate the use, development, and subdivision of the Land in a manner that is generally in accordance with the Approved Master Plan;
 - b. ensure that any use, development, or subdivision of the Land is generally in accordance with the Approved Master Plan; and
 - c. permit the use of the Land for certain purposes without the need for a planning permit for that use.

6. LAND DESCRIPTION

- 6.1 This Incorporated Document applies to the land at 17-21 Market Street, part of the land at 1 Main Street, 2 Prospect Street, 8 Prospect Street, 8A Prospect Street, part of Main Street, Prospect Street, Nelson Road, Fairbank Lane, [852 Whitehorse Road](#) and the landscape reserve fronting Whitehorse Road, Box Hill (Land).

The Land is identified in Figure 1 below, and includes all the land that is formally described as:

- Lot 1 on Title Plan 803942
- Lot 1 on Title Plan 234540;
- Lot 1 and 2 on Title Plan 957558;
- Land in Plan of Consolidation 102909;
- Lot 1, 2, 3, 4 and 5 on Title Plan 665882;

- Lot 1 on Title Plan 333223;
- Lot 1 on Title Plan 761487;
- Lot 2 on Lodged Plan 45799;
- R1 on Lodged Plan 82924 and
- [Land in Plan of Consolidation 159797R \(Volume 11368, Folio 456\)](#).



Figure 1: The land subject to this Incorporated Document highlighted in red



Figure 2: Development Plan, Box Hill Central North Master Plan (June 2022)

Note: [Figure 1 and Figure 2 should be updated to include the Vision Eye Institute land within the red boundary.](#)

6.2 For the avoidance of doubt, the Land includes all the land contained within the boundaries identified in Figures 1 and 2 above, including public land, and land that is not privately owned.

7. WHAT THIS INCORPORATED DOCUMENT ALLOWS

7.1 This Incorporated Document allows for the use, development, and subdivision of the Land in a manner that is generally in accordance with the Approved Master Plan.

- 7.2 Unless this Incorporated Document provides otherwise, no provision in the Planning Scheme operates to prohibit, control or restrict, the use or development or subdivision of the Land [which is](#) generally in accordance with this Incorporated Document and the Master Plan.
- 7.3 Notwithstanding the above, a planning permit is required under any relevant provision of the Planning Scheme:
- a. to subdivide the Land, except where such subdivision creates a road and no additional lot is created;
 - b. for alteration of access to a road in a Transport Zone 2;
 - c. to develop the Land, where the Planning Scheme requires planning permission for such development;
 - d. to use the Land for any use nominated as a Section 2 use in the Commercial 1 Zone or where the Section 1 condition is not met, with the exception of the following uses which do not require a permit:
 - Accommodation (other than Community care accommodation, Corrective institution and Rooming house).
- 7.4 The use of Land for a purpose that is identified elsewhere in the [Planning](#) Scheme as a prohibited use is prohibited.
- 7.5 An application under any provision of the [Planning](#) Scheme, including any application for a planning permit, is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Act.
- 7.6 The Incorporated Document and the Approved Master Plan provide a framework to guide planning decisions made with respect to the matters set out below, and any other matters which are to be the subject of applications for planning permits as required by the Planning Scheme:
- a. Alteration of access to a road in a Transport Zone 2.
 - b. Staged subdivision of the Land to create super lots, easements and/or reserves generally in accordance with the Approved Master Plan.
 - c. Provision of new open spaces and pedestrian and vehicle links.
 - d. Construction of buildings and works.
 - e. Staged development generally in accordance with the Approved Master Plan as follows:
 - (i) Stage 1 (Lot 4 and Lot 5) – subdivision of land into two (2) super lots, alteration of access to a road in a Transport Zone 2, public realm works and use and development of the land for the purpose of a multi-storey commercial building and a multi-storey mixed use building and associated car parking.

- (ii) Stage 2 (Lot 3) – subdivision of land into one (1) super lot, public realm upgrades and works (Clisby Court), creation of access lane and use and development of the land for a multi-storey mixed use building and associated car parking.
- (iii) Stage 3 (Lot 2) – subdivision of land into one (1) super lot, public realm works and use and development of the land for a multi-storey mixed use building and associated car parking.
- (iv) Stage 4 (Lot 1) – subdivision of land into one (1) super lot, public realm works, closure of Fairbank Lane, and use and development of the land for a multi-storey mixed use building and associated car parking.
- (v) Stage 5 (Lot 6 and Lot 7) – subdivision of land into two (2) super lots, public realms works, creation of a lane and use and development of the land for the purpose of two multi-storey mixed use buildings and associated car parking.

7.7 Planning permit applications are to be assessed against the Incorporated Document, the Approved Master Plan and any other relevant provisions of the Planning Scheme.

8. APPLICATION REQUIREMENTS FOR PLANNING PERMITS

8.1 An application for planning permission to use or develop the Land must be accompanied by the following information as appropriate.

- a. An **Indicative Staging Plan** which should include:
 - (i) The proposed sequencing of development, the indicative timing of the provision of public realm works, infrastructure and services and overall integration with other development stages; and
 - (ii) Vehicular access points, road infrastructure works and traffic management for each stage of the development.
- b. **Architectural Plans** for each stage which must include, ~~as appropriate~~:
 - (i) Existing conditions, including earlier approved stages of development if relevant.
 - (ii) Detailed site layout plans.
 - (iii) Site interface plans, which must include details of any public realm areas that are proposed to form part of the planning permit application area.
 - (iv) Plans and elevations including pedestrian access, vehicle and bicycle access, loading and other services, and wind canopy structures.
 - (v) The extent of ground level activation.
 - (vi) The location of through building links such as arcades, atria or similar.
 - (vii) The location of publicly accessible spaces such as parks, plazas or similar.
 - (viii) Details of shadowing of open space areas, roads, streets/footpaths, lanes, plazas and the like in relation to both the site and its surrounds.

- (ix) A development schedule, including floor areas (gross floor area) by land use.
 - (x) The design and layout of all dwellings and how that design and layout responds to clause 58 (Apartment Developments) of the Planning Scheme.
 - (xi) Details of how undeveloped land will be treated in the interim before the development of future stages.
 - (xii) Details of materials and finishes.
 - (xiii) Details of car park layout, car park allocation (including car share location as appropriate) and EV charging [and the appropriate infrastructure](#).
 - (xiv) Loading, delivery, [emergency vehicles](#), service vehicle and waste collection arrangements.
 - (xv) Identification of any part of the land or any building that is to be made available for public access or is to be vested in, or otherwise transferred to, the Council or any other authority.
- c. An **Architectural Design Statement** which responds to the Vision, Principles and Design Criteria in the Approved Master Plan.
- d. A **Landscape Plan** for each stage which must be generally in accordance with the Approved Master Plan and the Public Realm Master Plan prepared by Lat27 (issue 06 and dated 17 June 2022) and which must show:
- (i) Details of all proposed landscaping associated with the buildings including communal terraces, and podium and rooftop spaces (as relevant).
 - (ii) A planting schedule of all proposed vegetation (trees, shrubs and ground covers) which includes, botanical names, common names, pot size, mature size and total quantities of each plant.
 - (iii) Deep soil zones of at least 1.5m or planter pits for canopy trees as appropriate.
 - (iv) Details of any proposed green walls including plant species, irrigation and drainage, and maintenance arrangements and responsibilities.
 - (v) How the landscaping responds to water sensitive urban design principles, including how rainwater will be captured, cleaned and stored.
 - (vi) Details of all hard-landscaping materials finishes and treatments and urban design elements including paving, lighting, seating and balustrading. Details of surface materials and finishes and construction of retaining walls, pathways, kerbs and access ways.
 - (vii) Tree species capable of growth to maturity within confined planting conditions, including but not limited to those trees located within containerised planters.
 - (viii) Any landscaping works to be generally in accordance with City of Whitehorse Landscape Guidelines 2012 (or any subsequent equivalent document), materials, plant species and finishes.

- e. A **Landscaping Maintenance Plan** that includes details of the ongoing maintenance and management standards to ensure that the garden areas, containerised planting and green walls remain healthy and well maintained.
- f. A **Public Realm Strategy** that includes details as to:
 - (i) Any works to the public realm (including areas of existing or future public spaces) that are proposed.
 - (ii) When and by who those works are to be undertaken, and at whose cost.
 - (iii) Public and privately owned open spaces that will be publicly accessible.
 - (iv) The hours of public access for each space.
 - (v) The primary role and function of each space.
 - (vi) Responsibility, maintenance and management regimes for each public space.
 - (vii) Accessibility through the space and a safety audit assessment of each space.
 - (viii) The means by which public access to the spaces will be maintained.
 - [\(ix\) A detailed way finding strategy.](#)
- g. A **Ground Plane Activation Strategy** that includes:
 - (i) Details of any level changes required between street level and internal ground floor (where possible) to be integrated into the building design and public realm works to maintain good physical and visual connection between street and building interior;
 - (ii) Details of finished floor levels;
 - (iii) Details of design elements and materials that are durable;
 - (iv) Landscaping and public realm treatments;
 - (v) Treatment of level changes (e.g. batters, retaining walls); and
 - (vi) DDA compliant pedestrian access.
 - (vii) Achievement of the following clear glazing requirements to buildings at the ground level, or as otherwise as agreed by the Responsible Authority:
 - (1) Where retail uses are proposed at least 75 per cent clear glazing along the primary ground level frontage to a height of 2.5 metres, excluding any solid plinth or base.
 - (2) Where residential and office uses are proposed, at least 65 per cent clear glazing along the primary ground level frontage to a height of 2.5 metres, excluding any solid plinth or base.

- h. A **Sustainability Management Plan (SMP)** for each stage that includes:
- (i) A detailed response to Clause 22.10 of the Whitehorse Planning Scheme;
 - (ii) An Integrated Water Management Assessment addressing stormwater quality performance in addition to ensuring that the Responsible Authority's collective integrated water management expectations and requirements pursuant to Clauses 34 and 44 of the State Environment Protection Policy (Waters) are satisfied;
 - (iii) A STORM report with a score of 100% or greater (or MUSIC modelling for large scale developments); and
 - (iv) Evidence to the satisfaction of the Responsible Authority that demonstrates the development is registered to obtain a minimum **5 6** Star Green Star Design and As-Built v1.2 rating with the Green Building Council of Australia.

NOTE: As sustainability issues evolve, any development must meet best practice and adapt to changing ratings and rating systems.

- i. A **Wind Impact Assessment** for each stage, which must be generally in accordance with the Box Hill Central North Masterplan Environmental Wind Assessment report prepared by Mel Consulting, dated May 2022, but modified as necessary to respond to the staging of development.

NOTE: Ensure landscaped open space areas within the Master Plan are designed with features to ensure wind impact does not exceed standards required for sitting as appropriate for public uses.

- j. A **Transport Impact Assessment** for each stage which must be generally in accordance with the Box Hill Central North Masterplan Transport Impact Assessment prepared by Stantec, dated 21 June 2022, and prepared to the satisfaction of the Head, Transport for Victoria, but modified to include **as appropriate**:

- (i) Functional layout plans and other supporting information;
- (ii) Pedestrian, bicycle and vehicle access points;
- (iii) Parking rates set out in the Parking Overlay for the Land.

~~Car parking at a rate that encourages alternative modes of transport to the private motor vehicle, and which must not exceed the following unless otherwise agreed by the Responsible Authority. For a use not listed below, the Rate in Column B of Table 1 in clause 52.06-5 applies as a maximum rate.~~

~~(1) — 1 space per studio, one and two bedroom apartment;~~

~~(2) — 2 spaces per three or more bedroom apartment;~~

~~(3) — 1 space per 100m² of Gross Leasable Floor Area for retail uses (rounded down to the nearest whole number); and~~

~~(4) — 1 space per 100m² of Net Floor Area for office and all other non-residential uses (rounded down to the nearest whole number).~~

- (iv) Motorcycle parking at a minimum rate of 1 space per 100 car spaces.
 - (v) Bicycle parking should be provided to encourage and support increased bicycle use. The following minimum rates apply. Reduced visitor bicycle parking provision is permitted where the sharing of that bicycle parking with other uses can be demonstrated.
 - (1) Residential: 1 space per dwelling;
 - (2) Residential visitor: 1 space per 10 dwellings;
 - (3) Office employee: 1 space per 200sqm GFA;
 - (4) Office visitor: 1 space per 1,000sqm over 1,000sqm GFA;
 - (5) Retail employee: 1 space per 300sqm GFA;
 - (6) Retail visitor: 1 space per 500sqm over 1,000sqm GFA.
 - (vi) Loading, [emergency vehicles](#), delivery and waste collection arrangements, ~~and~~
 - (vii) Swept path diagrams demonstrating appropriate access arrangements to the site including all internal parking areas and loading and servicing requirements.
 - (viii) ~~Consideration of~~ Car share strategies.
 - (ix) ~~Consideration of~~ EV charging requirements.
 - (xi) A review of the safety and operation (existing and post development) of the Elgar Road/Prospect Street intersection.
 - (xii) [A road safety audit of Prospect Street and Nelson Road for all modes of Transport.](#)
 - (xxi) ~~Consideration of~~ Mobility hubs.
 - (xiv) ~~Consideration of~~ Decoupling of car parking with the aim to efficiently manage or reallocate any underutilised car parking.
 - (xv) [An assessment of any impacts of the Suburban Rail Loop Project and any altered access conditions for all transport modes.](#)
- k. **A Car Parking Management Plan** that includes:
- (i) Allocation of car parking spaces to each of the land uses.
 - (ii) Numbering of car parking spaces.
 - (iii) Details regarding the management of loading and unloading of goods and material.

- (iv) Strategies to minimise the potential for conflict between pedestrians and vehicles.
 - (v) Details of way-finding, cleaning and security of the end of trip bicycle facilities.
 - (vi) Any signage associated with allocated parking, public parking and directional wayfinding signage.
 - (vii) Management of loading/unloading of vehicles associated with the development and how these areas will be secured.
 - (viii) The number of car share spaces provided, including whether they will be accessible by the public.
 - (ix) Identify mechanisms to manage underutilised car parking spaces.
- I. A **Green Travel Plan** for each stage that includes:
- (i) objectives linked to measurable targets, actions and performance indicators [to achieve the desired mode shift](#);
 - (ii) description of the existing active private and public transport context;
 - (iii) alternatives to owning a car;
 - (iv) monitoring and reporting; and
 - (v) an action plan.

9. CONDITIONS OF PERMITS

9.1 In addition to any other appropriate or necessary conditions, the following conditions must, where appropriate, also be included in any permit granted for the subdivision, use and/or development of the Land.

- a. [Conditions which require the management of any redundant airspace infrastructure on railway land, which relate to the rail interface during construction and ongoing maintenance responsibilities.](#)
- b. A condition that requires a Reflectivity Strategy to the satisfaction of the Responsible Authority that provides, amongst other things, that except with the consent of the Responsible Authority, all external façade materials and finishes must be of a type that does not reflect more than 20% of visible light when measured at an angle of incidence normal to the surface.
- c. A condition that requires a Façade Strategy to the satisfaction of the responsible authority that includes a concise description of the building design and the mechanics of the façade construction and a schedule of colours, materials and finishes, including the colour, type and quality of materials showing their application and appearance.
- d. Conditions which require agreements to be entered into under s.173 of the Planning and Environment Act 1987 with respect to:

- i. [The vesting or gifting of the Land identified as Lane 3 in the Master Plan to Council must be determined to the satisfaction of the Proponent, Council and the Department of Transport and Planning.](#)
- ii. The provision of Affordable Housing to the satisfaction of the Minister (Affordable Housing Contribution). The agreement must include terms that provide for the manner in which the Affordable Housing Contribution is to be delivered, including when and how the contribution is to be delivered.

The Agreement must specify that the Affordable Housing Contribution will be delivered by one, or a combination of, the following methods:

- (1) Sale of not less than ~~six~~ [10](#) per cent of the total number of approved dwellings at a discount to market value of not less than 30 per cent:
 - (A) To a Registered Housing Agency; or
 - (B) To Eligible Households in accordance with an Affordable Housing Management Plan approved pursuant to condition 3 below; or
- (2) Lease of not less than six per cent of the total number of approved dwellings at a discount to market value of not less than 30 per cent, for not less than ~~13~~ [30](#) years from the occupation of the dwellings:
 - (A) To a Registered Housing Agency; or
 - (B) To Eligible Households in accordance with an Affordable Housing Management Plan approved pursuant to condition 3 below; or
- (3) Any alternative delivery method providing that it demonstrates the total monetary amount of the Affordable Housing Contribution is equivalent to or above two per cent of the total market value of the total number of approved dwellings, to the satisfaction of the Minister.

For the purpose of this clause and the Agreement:

- 'Eligible Household' means a purchaser or tenant that meets the threshold for a very low income household, low-income household or moderate income household at the time of entering the contract of sale, consistent with Section 3AB of the Planning and Environment Act 1987.
- 'Affordable Housing' has the same meaning as any definition of that phrase contained within the Planning and Environment Act 1987.
- 'Market Value' means the value of a dwelling as determined by an independent, qualified Valuer.

10. OPEN SPACE CONTRIBUTIONS

- 10.1 Any planning permit allowing for the subdivision of the Land or any part of the Land ~~is exempt from~~ [must comply with](#) the requirements in Clause 53.01 (Public Open Space Contributions) of the Planning Scheme, [subject to the following](#):

- a. A person who proposes to subdivide land must make a contribution to Council for public open space in the amount of six per cent, being a percentage of the land intended to be used for residential or commercial purposes or a percentage of the site value of such land, or a contribution of both.
- b. The land to be transferred to Council (identified as Lane 3 in the Master Plan) (if transferred and realised) must be calculated as a form of credit towards the fulfillment of the six per cent public open space contribution liability.

~~10.2—A person who proposes to subdivide and/or develop the Land must provide contributions for public open space, (which may include the development of parts of the Land for use as public open space) in a manner that is generally in accordance with the Master Plan and to the satisfaction of the Minister for Planning.~~

~~10.3—For the avoidance of doubt, the making of contributions for public open space that are generally in accordance with the Master Plan to the satisfaction of the Responsible Authority is intended to, and deemed to, satisfy any requirement that a person who proposes to subdivide or develop the Land would otherwise be required to make under Clause 53.01 (Public Open Space Contributions) of the Planning Scheme (or any other clause of the Planning Scheme) such that no other contribution is required to be made.~~

11. DEVELOPMENT CONTRIBUTIONS

11.1 Any development of the Land ~~is exempt from the requirement to~~ must comply with the requirements to pay any development contribution under the Whitehorse Development Contributions Plan (Whitehorse City Council, 2022) (Whitehorse DCP 2022).

11.2 A planning permit that is granted with respect to the Land ~~is not required to~~ must be:

- a. be consistent with the provisions of the Whitehorse DCP 2022; or
- b. include any conditions required to give effect to any contributions or levies imposed, conditions or requirements that are contained within any schedule to clause 45.06 of the Planning Scheme that concerns the Whitehorse DCP 2022.

~~11.3—For the avoidance of doubt, the provision of works, services or facilities that are to the benefit of the public and which are generally in accordance with the Approved Master Plan to the satisfaction of the Minister for Planning is intended to satisfy the requirement for the payment levies identified in the Whitehorse DCP 2022.~~

12. EXPIRY OF THE INCORPORATED DOCUMENT

12.1 The controls in this Incorporated Document expire if one of the following circumstances applies:

- a. The development of the Land in the manner contemplated by this control is not commenced within five (5) years of the approval date of Amendment C245whse to this Planning Scheme.
- b. The development of the Land in the manner contemplated by this control is not completed within fifteen (15) years of the approval date of Amendment C245whse to this Planning Scheme.

- c. No plan of subdivision of the Land in the manner contemplated by this control is certified within five (5) years of the approval date of Amendment C245whse to this Planning Scheme; or
- d. A statement of compliance with respect to such a subdivision is not issued within seven (7) years of the date of certification of a particular stage of subdivision.

The Minister for Planning may extend these periods if a request is made in writing before these controls expire or within three months afterwards.