

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P273/2022
PERMIT APPLICATION NO. WH/2021/636

CATCHWORDS

APPLICANT	Shangyi Vision Pty Ltd
RESPONSIBLE AUTHORITY	Whitehorse City Council
RESPONDENTS	Jing Ye Kevin Earl Micheline Daubignard Sangdi Liu Zen Box Hill Pty Ltd
REFERRAL AUTHORITY	Head, Transport for Victoria
SUBJECT LAND	5-9 Wellington Road BOX HILL VIC 3128
HEARING TYPE	Hearing
DATE OF HEARING	29, 30 31 August 2022 and 5 September 2022
DATE OF ORDER	8 September 2022
CITATION	Shangyi Vision Pty Ltd v Whitehorse CC [2022] VCAT 1033

ORDER

- 1 The objection by Zen Box Hill Pty Ltd is withdrawn.
- 2 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: Rothe Lowman
 - Drawing numbers: TP00.03 B, TP01.01 B, TP01.02 B, TP01.03 B, TP.01.05 B, TP01.06 B, TP01.07 B, TP01.08 B, TP01.09 B, TP01.10 B, , TP01.11 B, TP01.20 B, TP01.27 B, TP01.28 B, TP02.01 B, TP02.02 B, TP02.03 B, TP02.04 B, TP02.10 A, TP02.11 A, TP02.12 A, TP03.01 B, TP03.02 B.



Shadow diagrams, BADs plans and development summary updated to include changes listed above

- Dated: 14/07/22

- 3 In application P273/2022 the decision of the responsible authority is set aside.
- 4 In planning permit application WH/2021/636 a permit is granted and directed to be issued for the land at 5-9 Wellington Street, Box Hill, in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of a 24-storey apartment building under clause 32.07-5 of the Residential Growth Zone; and
 - Remove or vary an easement under clause 52.02.

Laurie Hewet
Senior Member

Stephen Axford
Member

APPEARANCES

For applicant

Mr N Tweedie QC and Ms Nicola Collingwood of counsel, instructed by Planning and Property Partners.

They called expert evidence from:

- Ms S Jordan, town planner.
- Mr J Walsh, traffic engineer.
- Mr T Vernon, landscape architect.
- Ms C McAlister, urban designer
- Mr J Kostas, engineer
(environmental wind)

For responsible authority

Ms M Markus, lawyer of Markus Lane Group.

Ms Markus called expert evidence from:

- Mr A Campbell, urban designer.

For referral authority

No appearance

For respondent

Mr K Earl
Ms M Daubignard



INFORMATION

Description of proposal	Construction of a 24 Storey residential building comprising 201 dwellings. Four basement levels of car parking are proposed.
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. ¹
Planning scheme	Whitehorse Planning Scheme
Zone and overlays	Clause 32.07: Residential Growth Zone (RGZ3) Clause 42.03: Significant Landscape Overlay (SLO9) Clause 45.09: Parking Overlay (PO1)
Permit requirements	Clause 32.07-5: A permit is required to construct two or more dwellings on a lot. Clause 52.02: remove or vary an easement under s 23 of the <i>Subdivision Act 1988</i> .

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



Land description

The site is located in the Box Hill Metropolitan Activity Centre (MAC). It is located on the western side of the road and extends through to Poplar Road to the east. The site has a frontage dimension to Wellington Road of about 34.3m and to Poplar Road of 15.3m. It has a site area of 2,397 m².

A private at grade car park and two single storey dwellings currently occupy the site.

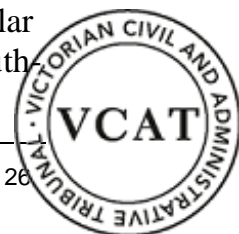
The surrounding area is undergoing dramatic and rapid growth, having been subject to significant high-rise residential development over recent years. Multiple approvals for further high rise developments are also in place.

To the north of the review site there are low scale dwellings and a five storey residential building. Further north there is the Box Hill Hospital and Epworth Eastern Hospital. Opposite the site on the eastern side of Wellington Road (12-22 Wellington Road) a 21 storey commercial and retail building is under construction. Abutting that site to the north (26-28 Wellington Road) a permit issued in 2020 allows the construction of a 17 storey residential building. An application for a 19 storey building on that site is under consideration by the Council.

At 6-8 Wellington Road, opposite the review site there is a nine storey residential building. Abutting that site to the south (845-851 Whitehorse Road), three residential towers (37 Storeys, 30 storeys and 17 storeys) are under construction.

To the west the review site has a frontage to Poplar Street. The Box Hill TAFE is located on the western side of Poplar Street extending through to Elgar Road. There is also a small park and a bowling green (835 Whitehorse Road). Poplar Street also contains a mix of low scale and medium rise residential buildings.

Abutting the site to the south (3 Wellington Road) there is a single storey medium density housing development. The sites at 3-5 Poplar Street and 843 Whitehorse Road (to the south



east) are vacant. The land at 3-5 Poplar Street and 837 Whitehorse Road benefits from a planning permit issued in 2019 allowing the construction of a 33-storey residential building comprising 241 apartments, 49 hotel rooms and 6 levels of basement car parking.

The land at 843 Whitehorse Road benefits from planning permit issued in 2019 allowing the construction of a 38-storey building comprising 276 apartments and 8 levels of basement car parking.

Tribunal inspection

We inspected the review site and the surrounding area after the hearing.

REASONS²

- 1 This is an application to review the failure of the Responsible Authority to grant a permit within the prescribed time in respect of a permit application for the construction of a 24 storey residential building at 5-9 Wellington Road, Box Hill. The Responsible Authority ultimately decided that had it not been for the application for review it would have refused permission on ten grounds.
- 2 At the start of the hearing the applicant applied to amend the permit application by the substitution of amending plans as foreshadowed by notice given in accordance with the Tribunal's practice requirements. No person opposed the amendment of the permit application in this way, and the Tribunal ordered the amendment of the permit application accordingly.
- 3 The Council's consideration of the amended plans has led it to amend its grounds of refusal and it now relies on the following grounds:
 - The proposal fails to meet the objectives of Clause 15.01-1S and Clause 15.01-2S by not achieving an acceptable urban and building design response.
 - The proposal fails to meet the policy outcomes of Clause 22.07 by not achieving an acceptable built form and public realm response.
 - The proposal is inconsistent with the built form outcomes of Major Development Precinct F by not achieving an acceptable built form and public realm response.
 - The proposal fails to respond to the surrounding context and results in unacceptable overshadowing to the public realm as a result of the building height.
 - The proposal results in unacceptable visual bulk and massing impacts to the surrounding interfaces of adjoining land and the public realm.
 - The proposal fails to provide an acceptable architectural expression, resulting in unacceptable visual bulk and massing impacts.
 - The proposed area of public open space is not afforded with acceptable wind comfort and fails to provide appropriate pedestrian amenity conducive to its intent and usage.
- 4 Reasons for this decision were given orally at the conclusion of the hearing.
- 5 We have been requested to provide written reasons. Accordingly, the following is a written transcript of the oral reasons given that have been subsequently edited.
- 6 As we indicated when we adjourned last week, Mr Axford and I intended to inspect the site and the surrounding area. We have done that. There are no

² The submissions and evidence of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.



matters that we need to raise with the parties coming out of that inspection. The inspection largely confirmed what we had been told about the site context during the running of the hearing.

- 7 We are therefore able to give you our decision this morning, which we will do, with oral reasons. Mr Earl has already requested written reasons and we will provide written reasons as well.
- 8 This is an application brought by the permit applicant to review Council's failure to grant a permit for the development at 5-9 Wellington Road, Box Hill.
- 9 Council subsequently resolved that it would have refused the application on 10 grounds. Amended plans have been prepared, filed and served by the applicant for review. Those plans were substituted for the application plans at the start of the hearing. Having assessed the amended plans the Council has amended its grounds accordingly.
- 10 There are objectors to the application who broadly support the Council's grounds of refusal, but also raise additional matters. which we will address subsequently.
- 11 One of the objectors. Zen Box Hill Pty Ltd, unconditionally withdrew its objection prior to the hearing. We will formally record the withdrawal in our order.
- 12 The parties have provided us with detailed summaries of the relevant planning scheme provisions, policy frameworks, the proposal, the site and it's local and broader context. There is no significant dispute with respect to any of these matters, and it is not necessary for us to repeat that material here, other than to record that:
 - The site is zoned Residential Growth Zone Schedule 3.
 - The site forms part of the Box Hill Major Activity Centre, an area undergoing dramatic and rapid change in form and function, broadly in accordance with the strategic settings for the Activity Centre.
 - The Box Hill MAC Structure Plan includes the site in the Hospital and Western TAFE Precinct and the Major Development Precinct.
 - The site is also affected by a Significant Landscape Overlay schedule 9 and a Parking Overlay schedule 1.
 - The permit trigger in this case is the requirement to construct two or more dwellings on a lot in the Residential Growth Zone and there is also a permit requirement to remove or vary easements.
- 13 The proposal reflected in the amended plans has been described in detail for us. In general terms the proposal is for a 24 Storey residential building comprising 201 dwellings above four levels of basement carparking. A total of 206 car parking spaces are proposed, which is significantly more than that required by the Parking Overlay which applies to the site.



- 14 Importantly an east-west public pedestrian route is proposed along the northern boundary in Wellington Road, connecting to Poplar Street to the west. The space provided is intended to be a publicly available open space providing both pedestrian connectivity and passive open space. The provision of this space in this location is encouraged by local policy.
- 15 We note that a previous permit has been granted for a part 6, 14 and 16 storey building on the site. The permit was issued in 2017. There was a section 80 conditions review to the Tribunal in relation to that permit. The conditions review was resolved at a compulsory conference.
- 16 The Council in this case, accepts and takes no issues with the strategic acceptability of this proposal. It raises no concerns about the internal amenity to be provided by the proposal. The Council also takes no issues with the proposal's carparking provisions and traffic impacts.
- 17 We agree with the Council's assessments in respect of these matters. The Council, however, identifies three specific aspects of the proposal it considers are unacceptable.
- 18 These are in summary form:
- The overshadowing impact of the proposal to Wellington Road and in particular, the pocket public park located in Wellington Road.
 - The architectural expression of the proposal, which it submits, does not achieve the high standards called for by the planning scheme for this locality. The Council submits the proposed building is repetitive, monolithic, and visually bulky in its architectural expression.
 - Thirdly, the wind effects of the proposal in the pedestrian link to the north of the site are in its view unacceptable. It submits the proposal does not provide sufficient space within it that meet the appropriate standards for siting areas to an acceptable degree.
- 19 Our findings with respect to each of these matters are as follows. We note that in recording our findings, it is important to emphasise our assessment of each of the issues is not carried out in isolation from each other or the broader strategic context. The requirement for integrated decision making is embedded in the planning scheme at clause 71.02-3
- 20 In relation to the overshadowing of the pocket park in Wellington Rd, we are satisfied that these impacts are acceptable and are consistent with the intended function of that space. We note that the park is not identified as a key open space under the local policy.
- 21 Wellington Road is identified as a priority pedestrian corridor and the pocket park in that space will form part of that corridor. We think it will be more than a transitory space, and it is likely to provide an opportunity to people to linger, potentially congregate and otherwise enjoy the space. It is not, however, a key open space and the proposed impact on it cannot be assessed as if it is.



- 22 We note that the pocket park is of a limited area and no opportunity seems to have been taken to enlarge it by either realigning the court bowls or setting back the adjacent development.
- 23 The design of the improvements to the park area as shown on the endorsed plans provides some or limited opportunity for outdoor seating associated with the abutting retail premises. Even if we accept that the design on the proposed plan is indicative and is likely to evolve to maximise gathering space, the effectiveness of this will be limited by the limited size of the park and the need to maintain a link for bicycles and pedestrian who will traverse through it.
- 24 We agree that the location of the loading bay and the car park entry to the immediate south will reduce the effectiveness or attractiveness of the space for longer term seating, such as outdoor dining, at least to some extent.
- 25 Finally, we note that the design of the retail spaces as shown on the endorsed plans does not appear to maximise the opportunity of the park as a gathering space, primarily because the retail outlets are set at least a metre lower than the footpath level.
- 26 We agree with the applicant that the benefits provided by the proposed development need to be assessed in balancing its impacts on the park.
- 27 We have concluded that the potential cost to achieve a further 30 to 45 minutes of direct sun to the park though the middle of the day is not justified. We accept that to achieve a significant increase in direct sun at the equinox a reduction in the order of 4 storeys or 45 or so apartments would be required.
- 28 Having regard to the strong strategic support in the planning scheme to increase residential opportunity in this area it would not be acceptable to reduce the yield of the development by such a significant amount to achieve a benefit that we have found to be limited in any event.
- 29 In addition, the pedestrian link on the northern boundary of the review site will be generous in area with high quality landscape and a variety of seating opportunities.
- 30 The contribution of this space directly responds to the policy outcomes sought for the area. This is a significant factor and will offset any reduced amenity to the public park in Wellington Road caused by overshadowing beyond 1pm at the equinox.
- 31 In relation to architectural quality, the Council submits that the design is not sufficiently responsive to the emerging context, and aspects of its design will cause it to have excessive visual bulk, that will be detrimental to Wellington Road and its role as a key pedestrian link.
- 32 Council is particularly concerned that there appears to be insufficient definition between the base, middle and top of the building.



- 33 The Council relied on the evidence of Mr Campbell, who concluded that the repetitive and monolithic form, as he described it would result in a visually bulky built form outcome that would be inappropriate in response to the context and would dominate Wellington Road to an unacceptable degree.
- 34 Mr Campbell contrasted the proposed building to the recent towers along Whitehorse Road which in his view present to be more elegant and sophisticated with the use of largely glazed facades and curved elements. We agree that the proposed building should be required to contribute positively to the developing urban character of Box Hill. We are satisfied that it in fact does that. We've been persuaded by the evidence of Ms Jordan and McAllister.
- 35 Although the architectural approach of this proposal may differ from the towers along Whitehorse Rd it is nevertheless a legitimate response to its context.
- 36 The proposal has a sophisticated arrangement of materials and level of articulation that will present as a high-quality architecture and contribute positively towards a sense of place.
- 37 We come to this conclusion for the following reasons:
- The facade contains distinct recesses beyond the vertical shaft. These are formed by generous proportions that were not evident on the 2D elevations but are noticeable in the 3D renders.
 - The overall form is not a simple box form but is instead modelled with setbacks at the 4th and 16th level, and with an additional set back at the northeast corner when compared to the application plans.
 - The floor plates are carried across the recesses and the recessed balconies so as to read as a lightweight 'super grid' within solid panels and glazing.
 - There are corner and edge gaps between panels and the expressed frame that will add further to a sense of detail and care in the composition.
 - The horizontal lines formed by the plates are expressed against the vertical elements to create shadow lines.
 - The introduction of the two storey elements on the east façade made up of both panels and glazing will create interest and assist to break up the apparent scale of the building.
 - The concrete panels are textured with at least two different treatments. These will be most evident in close viewing however, based on the representations provided, we think they will be evident also at a mid-distance, at least to the extent that these surfaces will change in character with different light conditions.



- We agree with Ms McAllister that the change to a warmer tone contributes to a more pedestrian friendly presentation.
- The introduction of the landscape element at the 16th level will also assist to emphasise the setback at this level
- The setbacks of the taller form from Wellington Road together with the clear expression of the entrance and the landscaped pedestrian link will provide a human scale interface for pedestrians approaching the building.
- The setback from Poplar Street combined with the extensively landscaped pedestrian link will ensure an acceptable presentation towards the west.

38 We acknowledge that while the presentation of this building is different from the glazed towers along Whitehorse Road, this does not mean that it is an inferior approach.

39 We note that there is already a distinction emerging between the Whitehorse Road character and north of Whitehorse Road, with a greater use of solids and expressed frames already evident in the recent apartment buildings in Wellington Road and Poplar Street, and now also for the proposed medical building under construction opposite the review site.

40 We noted on our site visit that the buildings of Box Hill hospital, Box Hill TAFE and an existing residential tower on Nelson Road, (the Avani building of approximately 20 storeys), are quite evident from within the precinct and showed a different architectural approach to the glazed towers of Whitehorse Road.

41 As a result, we conclude that this proposed tower is an appropriate response to a context that is varied in character to that seen on Whitehorse Road.

42 In relation to the pedestrian link that is proposed to the north of the site, we have already commented that we regard this as a well-designed feature of this proposal. We accept the evidence of Mr Kostas with respect to the proposal's wind impacts in that space. This is a well-designed space that will make a positive contribution to the functioning and amenity of the locality and of course in accordance with local policy expectations.

43 We have considered Mr Earl's submission about how the level changes in the pedestrian link should be managed. However, we are not persuaded that a change to the design to incorporate a ramp in lieu of a lift is warranted in this case.

44 We accept Mr Vernon's evidence that ramps would have to be extensive, and we think that would compromise the seating arrangement and the functionality, generally, of the space.

45 We were informed that the lift proposed would be adequate for its purpose, accommodating up to potentially three persons. We then understand it would be sufficient to accommodate a person with a pram.



- 46 In relation to other matters raised by the objectors, we acknowledge their lived experience associated with the extent of development and rapidity of change occurring in this locality.
- 47 We are in no doubt that the development of this area is and can be disruptive. The Council's management of those disruptions is important, and we have therefore sought to bolster permit conditions that relate to the construction management process. These were discussed at the end of the hearing. We note the Council's approach to the construction management in this area, which involves dedicated staff implementing those construction management plans. That provides us with some comfort it is an issue taken seriously by the Council.
- 48 We also record our findings that the provision of carparking is in excess of the planning scheme requirements. We accept Mr Walsh's evidence that increased traffic volumes and movements associated with this proposal can be accommodated within the street network. The management of the traffic and parking impacts is of course an issue that will also necessitate monitoring and management by the Council over time.
- 49 For these reasons we have concluded that this proposal is an acceptable response to the planning scheme requirements for this locality and we will direct that a permit issue subject to conditions.
- 50 Mr Axford and I will settle on the conditions based on the Council's without prejudice conditions and having regard to the submissions and evidence of the parties and the discussion that we had at the end of the hearing.
- 51 We direct that the decision of the Responsible Authority is set aside and a permit issue.

Laurie Hewet
Senior Member

Stephen Axford
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	WH/2021/636
LAND:	5-9 Wellington Road BOX HILL VIC 3128

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of a 24-storey apartment building under clause 32.07-5 of the Residential Growth Zone; and
- Remove or vary an easement under clause 52.02.

CONDITIONS:

- 1 Before the development starts, but excluding early works detailed in the Early Works Plan, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority in a digital format. Once approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale, with dimensions, and be generally in accordance with the plans prepared by Rothe Lowman Architects, Revision B, dated 14/07/2022, but further modified to show:
 - (a) Pram crossing (east and west side of road reserve) and associated zebra crossing relocated to the northern side of the Poplar Street frontage.
 - (b) A notation to state that any street works must be undertaken at the cost of the land owner.
 - (c) A notation to state that the windows to the co-working space are to be operable.
 - (d) A notation to allocate a further 7 visitor bike spaces at the lower or upper ground levels.
 - (e) A site triangle measuring 2.0 x 2.5m on the departure side of the Wellington Road access.
 - (f) Changes required to achieve compliance with clause 58 Standards D17, D18, D19.
 - (g) An annotation clarifying storage to be provided in accordance with cl 58.05-4.
 - (h) A plan depicting the removal and variation of drainage easements.



- (i) Any modification to the plans under Condition 3 (Landscaping and Public realm Plan)
 - (j) Any modification to the plans under Condition 7 (façade strategy).
 - (k) Any modification to the plans under Condition 8 (sustainability management plan).
 - (l) Any modification to the plans under Condition 9 (car parking management plan).
 - (m) Any modification to the plans under Condition 10 (wind impact assessment).
- 2 The layout of the site and the size, design and location of the buildings and works permitted must accord with the endorsed plans and must not be altered or modified without the further written consent of the Responsible Authority.

Confirmation of architect team

- 3 Before the development starts, the Responsible Authority must be provided with evidence to its satisfaction that Rothe Lowman Architects, or an alternative architectural firm to the satisfaction of the Responsible Authority, has been engaged as part of the ongoing consultant team to oversee the design and construction to ensure that the design quality and appearance of the approved development is realised.

Landscaping and Public Realm Plan

- 4 Before the development starts, but excluding early works detailed in the Early Works Plan, a Landscape and Public Realm Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority in a digital format. Once approved, the Landscape and Public Realm Plan will be endorsed and will then form part of the permit. The Landscape and Public Realm Plan must be drawn to scale, with dimensions, and be generally in accordance with the decision plans but modified to show:

Landscaping

- (a) Any changes required to meet requirements under Condition 1 of this permit.
- (b) Details of all proposed landscaping within the ground floor open spaces, communal area, upper levels, road reserves and pedestrian link.
- (c) A planting schedule of all proposed vegetation (trees, shrubs and ground covers) which includes, botanical names, common names, pot size, mature size and total quantities of each plant.
- (d) For above ground containerised planting, include the following details:



- i Plans and cross-sections of planting containers, and calculated soil volume per container.
- ii Structural engineering report and weight loading allowing for mature plant growth and potential flooding of containers.
- iii Irrigation frequency and delivery method.
- iv Drainage of planting containers.
- v Suitability for species selection in relation to nutrients and irrigation requirements.
- vi Mulch type, depth and weight.
- vii Anchoring of all containers and containerised plants above ground level to resist high winds.
- viii Assessment / specification of the microclimate and effect on plant health.
- ix Maintenance procedures, including access for staff and equipment, and safety/anchoring measures required to access landscaping above ground level.
- x Tree protection measures for existing street trees to be retained (Wellington Road street trees and trees on adjoining properties).

Public Realm

- (e) Details of any street frontage features and footpath areas from the building facade to the kerb of Wellington Road and Poplar Street. The design and materials of all public realm treatments must be consistent with the Box Hill Urban Landscape Design Guidelines Urban Core Treatment, with sectional diagrams prepared to demonstrate the construction methodology and showing no alteration to the existing public footpath levels, all to the satisfaction of the responsible authority.
- (f) Any proposed public realm and pedestrian through-link features such as paths, street furniture, sheeting materiality, seating, wind amelioration mechanisms, paving, lawn, mulch, garden beds and lighting including specifications, materiality and design detailing.
- (g) Details and location of the proposed lighting of Wellington Road, Poplar Street and the pedestrian through-link must be prepared in accordance with the Urban Design Guidelines Victoria, Department of Environment, Land Water and Planning 2017. All lighting must include with specifications with details of luminance, baffling, height, design and materiality.
- (h) Location of any wayfinding signage, information or other wayfinding measures to ensure safe and efficient access Wellington Road to Poplar Street. View lines through the site and publically accessible



areas must not be impeded by windscreens, containerized planting or any other public realm treatment.

- (i) Modification of the northern edge of the pedestrian link to widen the link by staggering the edge of the link in accordance with Figure 31 of the evidence of Mr Tim Vernon of CDA Design Group Pty Ltd (page 13).

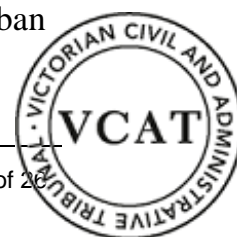
The provisions, recommendations and requirements of the endorsed Landscape and Public Realm Plan must be implemented and thereafter complied with to the satisfaction of the Responsible Authority. The lighting must be installed in accordance with the Landscaping and Public Realm Plan and maintained and operated for the life of the building. Lighting must be located, directed and shielded and of limited intensity that no unreasonable loss of amenity results beyond the site.

- 5 Before the development starts, but excluding early works detailed in the Early Works Plan, a Landscaping Maintenance Plan to the satisfaction of the Responsible Authority and prepared by a suitably qualified consultant must be submitted to the Responsible Authority. Once approved, the Landscaping Maintenance Plan will be endorsed and will then form part of the permit. The Landscaping Maintenance Plan must include, but is not limited to:

- (a) Details of the ongoing maintenance procedures to ensure that the garden areas, containerised planting remain healthy and well maintained to the satisfaction of the Responsible Authority. This must include:
 - i Irrigation frequency and delivery method.
 - ii Drainage.
 - iii Pruning and mulching.

The provisions, recommendations and requirements of the endorsed Landscape Maintenance Plan must be implemented and thereafter complied with to the satisfaction of the Responsible Authority.

- 6 The garden and recreation areas shown on the endorsed plan and schedule must only be used as gardens and recreational areas and must be maintained in a proper, healthy and orderly condition at all times to the satisfaction of the Responsible Authority. Should any tree or plant be removed or destroyed it must be replaced by a similar tree or plant of similar size and variety.
- 7 Before the approved building is occupied, the road reserve between the subject site and the kerb along Wellington Road and Poplar Street must be constructed and laid out in accordance with the endorsed plans to the satisfaction of the Responsible Authority. The design and materials must be consistent with the Box Hill Urban Landscape Design Guidelines Urban Core Treatment, to the satisfaction of the Responsible Authority.



Façade Strategy

- 8 Before the Condition 1 plans are endorsed under this permit, a Façade Strategy to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, this will form part of the endorsed plans. All materials, finishes and colours must be in conformity with the approved Façade Strategy to the satisfaction of the Responsible Authority. The Façade Strategy for the development must be generally in accordance with plans prepared by Rothe Lowman Architects and detail:
- (a) A concise description by the architect of the building design concept and how the façade works to achieve this.
 - (b) A schedule of colours, materials and finishes, including the colour, type and quality of materials showing their application and appearance. This can be demonstrated in coloured elevations or renders from key viewpoints, to show the materials and finishes linking them to a physical sample board with clear coding.
 - (c) Elevation details generally at a scale of 1:50 illustrating typical podium details, entries and doors, typical privacy screening and utilities, typical tower detail, glazing, soffits, window detail and any special features which are important to the building's presentation.
 - (d) Cross sections or other method of demonstrating the façade systems, including fixing details indicating junctions between materials and significant changes in form and/or material.
 - (e) Cross sections or other method of demonstrating a high quality design response for all street interfacing service cupboards, ensuring integration with the buildings design concept and quality of materials used.
 - (f) Information about how the façade will be accessed and maintained and cleaned, including planting where proposed.
 - (g) Example prototypes and/or precedents that demonstrate the intended design outcome indicated on plans and perspective images to produce a high quality built outcome in accordance with the design concept.

Details of the north and south facing on-boundary walls, which are to be treated with finishes, textures or other design elements to provide a high quality finish which does not diminish the ability of the north or south adjoining lot to be simultaneously constructed to this wall.

The provisions, recommendations and requirements of the endorsed Façade Strategy must be implemented and thereafter complied with to the satisfaction of the Responsible Authority.

Sustainability Management Plan

- 9 Before Condition 1 plans are endorsed under this permit, an amended Sustainability Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the amended Sustainable Design Assessment will be endorsed and will form part of this permit. The amended Sustainability Management Plan must be generally in accordance with the Sustainable Management Plan prepared by Ark Resources and dated 03/06/21, but modified to include, show or address:
- (a) A Green Star Design and As Built v 1.3 Scorecard confirms the development will achieve a 4 star rating including supporting analysis and calculations that pertain to credits claimed associated with 'Energy', 'Water', 'Daylight' and 'Stormwater' criteria must be provided to the satisfaction of the Responsible Authority.
 - (b) An assessment addressing stormwater quality performance demonstrating the Urban Stormwater - Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999) are satisfied.
 - (c) 19.03-3S – the Guidelines are referenced in the Scheme.
 - (d) Appropriate access indicated to maintain and service integrated water management systems demonstrated on Development Plans.
 - (e) An annotation on Development Plans indicating the capacity of the rainwater tanks and that the capacities stated are allocated exclusively for reuse/retention purposes and excludes any volume allocated for detention.
 - (f) The amount of toilet services and irrigation areas that the rainwater tanks will facilitate annotated on Development Plans.
 - (g) Water efficient fixtures and fittings include minimum 5 star WELS taps, 4 star WELS toilet, and 3 star WELS showerheads (≤ 7.5 L/min).
 - (h) Daylight modelling assessment to the satisfaction of the Responsible Authority.
 - (i) Natural ventilation with all operable windows, doors, terrace openings and vents provided in elevation drawings.
 - (j) Preliminary NatHERS Energy Efficiency Assessments for 15% of the total amount of dwellings within the development. The assessment, as a whole, must ensure that thermally unique dwellings have been modelled, representative of an equitable, average, performance of the development. Each dwelling must demonstrate that the development will achieve cooling loads ≤ 21 MJ/m²/annum. Assessments must demonstrate an average NatHERS energy efficiency star rating of 6.5 achieved throughout the development with no dwelling performing below 5.5 stars. Indicative commitments towards thermal



performance (i.e. R-values), artificial lighting and glazing (i.e. U- and SHGC- values) must be provided.

- (k) LED light fittings used to provide artificial lighting and designed to exceed National Construction Code 2019 Building Code of Australia requirements.
- (l) Energy efficient and electric heating, cooling and hot water systems indicating the associated COP and EER values, energy efficiency star ratings or equivalent.
- (m) Exterior building services equipment including any heating, cooling, ventilation, hot water and renewable energy systems on Development Plans.
- (n) A minimum 40 kilowatt solar photovoltaic system demonstrated on Development Plans.
- (o) Double glazing for all external windows.
- (p) Car park ventilation fitted with CO sensors.
- (q) Car park lighting, where reasonably safe to do so, fitted with motion sensors or timers.
- (r) All common, external, service and lift area lighting fitted with sensors or timers.
- (s) Common, service and lift area ventilation fitted with sensors or timers.
- (t) The location of alternative transport facilities including residential and visitor secure bicycle spaces demonstrated on Development Plans.
- (u) Electric vehicle charging infrastructure for 10% of parks equipped with demand-managed EV chargers and 50% EV charger ready demonstrated on Development Plans.
- (v) A commitment to divert at least 80% of construction and demolition waste from landfill.
- (w) Use of low Volatile Organic Compound (VOC) and formaldehyde products.
- (x) Timber species intended for use as decking or outdoor timber are not unsustainably harvested imported timbers (such as Merbau, Oregon, Western Red Cedar, Meranti, Luan, Teak etc.) and meet either Forest Stewardship Council or Australian Forestry Standard criteria with a commitment provided as an annotation on Development Plans.
- (y) Where measures cannot be visually shown, include a notes table or 'ESD Schedule' on Development Plans providing details of the requirements (i.e. average energy rating for the development's dwellings, energy and water efficiency ratings for heating/cooling, hot water and plumbing fittings and fixtures etc.)



The provisions, recommendations and requirements of the endorsed Sustainability Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

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

Car Parking Management Plan

- 10 Before the development starts, but excluding early works detailed in the Early Works Plan, a Car Parking Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Car Parking Management Plan will be endorsed and will form part of this permit. The Car Parking Management Plan must address, but not be limited to, the following:
- (a) The allocation of residential parking spaces to demonstrate no reduction in car parking for dwelling uses.
 - (b) Details to manage pedestrian and vehicle conflict within the basement and at vehicle entry points that intersection with the pedestrian footpath.
 - (c) Details of way-finding, cleaning and security of the bicycle storage facilities.
 - (d) Any signage associated with allocated parking and directional wayfinding signage.
 - (e) Details of any intercom, traffic management and boom gate system at each building entry.
 - (f) Management of loading/unloading of vehicles associated with the use being undertaken wholly on site with no vehicles being parked in any nearby laneway or street.

The provisions, recommendations and requirements of the endorsed Car Park Management Plan must be implemented and thereafter complied with to the satisfaction of the Responsible Authority.

Wind Impact Assessment

- 11 Before Condition 1 plans are endorsed under this permit, a Wind Assessment Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the Wind Assessment Report will be endorsed and will form part of this permit. The Wind Assessment Report must confirm that the development of the land generally in accordance plans endorsed under condition 1, will meet the criteria identified for comfortable wind conditions in the expert



environmental wind conditions evidence of Dr Kostas, dated 11 August 2022, and will not result in unsafe wind conditions at any location.

The provisions, recommendations and requirements of the endorsed Wind Assessment Report must be implemented and thereafter complied with to the satisfaction of the Responsible Authority.

Waste Management Plan

- 12 When approved the Waste Management Plan will form part of this permit and must be complied with, to the satisfaction of the Responsible Authority. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Construction Management

- 13 Before the development starts, but excluding early works detailed in the Early Works Plan, a Construction Management Plan to the satisfaction of the Responsible Authority, detailing how the owner the environmental and construction issues associated with the development will be managed, must be submitted to and approved by Council.

The Construction Management Plan must be prepared and managed by a suitably qualified person who is experienced in preparing Construction Management Plans in accordance with the City of Whitehorse Construction Management Plan Guidelines. The Management Plan must generally address how off-site amenity impacts including dust, noise, vibration, traffic and parking disruptions etc are to be managed to minimise disruption to existing residences in the vicinity.

When approved the Construction Management Plan will form part of this permit and must be complied with, to the satisfaction of the Responsible Authority

The provisions, recommendations and requirements of the endorsed Construction Management Plans must be implemented and complied with to the satisfaction of the Responsible Authority.

General conditions

- 14 Before the development starts, the owner/s of the land must enter into an Agreement with the Responsible Authority under section 173 of the Planning and Environment Act 1987. The agreement must provide:
- (a) Unrestricted, ungated and unfenced public pedestrian and bicycle access for the east-west 'Public Park & Thoroughfare' (including the passenger lift) adjacent to the northern boundary shown on the endorsed plan must be maintained by the land owners as an unrestricted pedestrian access, 24 hours a day, 365 days a year, in order to ensure the continued pedestrian and cyclist connection from Wellington Road to Poplar Street.



Before the development starts, the section 173 agreement must be registered on the title to the land. All expenses involved in the drafting, negotiating, reviewing, lodging, registering and execution of the Agreement, including those incurred by the Responsible Authority, must be met by the owner/s of the land.

- 15 Buildings or works must not be constructed over any easement without the written consent of the relevant Authorities.
- 16 Before the development is complete, all building plant and equipment on the roofs, terraces areas, common areas and public thoroughfares are to be concealed to the satisfaction of the Responsible Authority and thereafter remain concealed. The construction of any additional plant, machinery or other equipment, including but not limited to all service structures down pipes, aerials, satellite dishes, air-conditioners, equipment, ducts, flues, all exhausts including car parking and communication equipment must include appropriate screening measures to the satisfaction of the Responsible Authority.
- 17 Before the development is complete, all mechanical exhaust systems for the car park hereby approved must be located and sound attenuated to prevent noise and unreasonable amenity to the occupants of the surrounding properties, to the satisfaction of the Responsible Authority and thereafter must be maintained to the satisfaction of the Responsible Authority.
- 18 Before the development is complete, all pipes, fixtures, fittings and building services servicing any building on the land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority and thereafter must be maintained to the satisfaction of the Responsible Authority.
- 19 Before the development is complete, the car parking areas and accessways as shown on the endorsed plans must be formed to such levels so that they may be used in accordance with the plan, and must be properly constructed, surfaced, drained and line-marked (where applicable) to the satisfaction of the Responsible Authority.
- 20 The car parking areas and driveways must be maintained to the satisfaction of the Responsible Authority.
- 21 Before the development is complete, the nature strip must be reinstated where any existing vehicle crossover is redundant, at no cost and to the satisfaction of the Responsible Authority.
- 22 Except with the prior written consent of the Responsible Authority, Council assets must not be altered in any way.
- 23 All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.
- 24 Existing street trees must not be removed or damaged except with the written consent of the Responsible Authority.

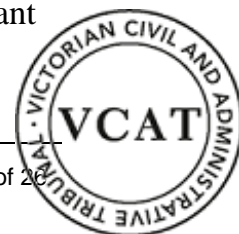


- 25 All stormwater drains and on-site detention systems are to be connected to the legal point of discharge to the satisfaction of the Responsible Authority prior to the occupation of the building/s. The requirement for on-site detention will be noted on your stormwater point of discharge report, or it might be required as part of the civil plans approval.
- 26 Detailed stormwater drainage and/or civil design for the proposed development are to be prepared by a suitably qualified civil engineer and submitted to the Responsible Authority for approval prior to occupation of the development. Plans and calculations are to be submitted with the application with all levels to Australian Height Datum (AHD). All documentation is to be signed by the qualified civil engineer.
- 27 Stormwater that could adversely affect any adjacent land shall not be discharged from the subject site onto the surface of the adjacent land.
- 28 Prior to works commencing design plans must be submitted to and approved for all proposed engineering works external to the site. The plans are to be submitted as separate engineering drawings for assessment by the Responsible Authority.
- 29 The Applicant/Owner is responsible to pay for all costs associated with reinstatement and/or alterations to Council or other Public Authority assets as a result of the development. The Applicant/Owner is responsible to obtain all relevant permits and consents from Council at least 7 days prior to the commencement of any works on the land and is to obtain prior specific written approval for any works involving the alteration of Council or other Public Authority assets. Adequate protection is to be provided to Council's infrastructure prior to works commencing and during the construction process.
- 30 The qualified civil engineer when undertaking civil design must ensure that the landscape plan/s and drainage plan/s are compatible. The stormwater drainage and on-site detention system must be located outside the tree protection zone (TPZ) of any trees to be retained.
- 31 A minimum 2.0m wide drainage easement along North Boundary of No. 7 Poplar in favour of Whitehorse City Council must be created at the subdivision stage prior to issuing of Statement of compliance. New easement drain must be constructed prior to works Design (to cater for 10% AEP Storm) of drain must be submitted to Council for approval.
- 32 No trees are permitted within the new easement. Any planting must not affect the stormwater pipe within the easement and have shallow roots that do not impact upon the functionality of the stormwater pipe. Please reflect this on the landscaping plans. Council's arborist must approve the landscaping plans.
- 33 Before the development starts, all boundary walls must be constructed, cleaned and finished to the satisfaction of the Responsible Authority.



Early Works

- 34 Except with the prior written consent of the Responsible Authority, prior to the commencement of any buildings and works, an Early Works Plan must be prepared to the satisfaction of the Responsible Authority. The Early Works Plan must provide details of all works which comprise the 'early works', including but not limited to:
- (a) Piling works (Bored Piers), including Capping Beams.
 - (b) Retention system including structural columns, shotcrete walls and rock anchors.
 - (c) Bulk excavation.
 - (d) Detailed excavation.
 - (e) Excavation and pouring of pad footings, pile caps and basement slabs.
 - (f) Civil drainage retention system.
 - (g) Crane pad footing system.
- 35 Before the Early Works commence, a Construction Management Plan for the Early Works to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved, the plan will be endorsed and will form part of this permit. The plan must include:
- (a) A pre-conditions survey (dilapidation report) of the land and all adjacent Council roads frontages and nearby road infrastructure.
 - (b) Containment of dust, dirt and mud within the land and method and frequency of clean up procedures to prevent the accumulation of dust, dirt and mud outside the land.
 - (c) Site security.
 - (d) Management of any environmental hazards including, but not limited to:
 - i Contaminated soil.
 - ii Materials and waste.
 - iii Dust
 - iv Stormwater contamination from run-off and wash-waters.
 - v Sediment from the land on roads.
 - vi Washing of concrete trucks and other vehicles and machinery; and spillage from refuelling cranes and other vehicles and machinery.
 - vii An emergency contact that is available for 24 hours per day for residents and the Responsible Authority in the event of relevant queries or problems experienced.



- (e) A Noise and Vibration Management Plan showing methods to minimise noise and vibration impacts on nearby properties and to demonstrate compliance with Noise Control Guideline 12 for Construction (Publication 1254) as issued by the Environment Protection Authority in October 2008. The Noise and Vibration Management Plan must be prepared to the satisfaction of the Responsible Authority. In preparing the Noise and Vibration Management Plan, consideration must be given to:
 - i Using lower noise work practice and equipment.
 - ii The suitability of the land for the use of an electric crane.
 - iii Silencing all mechanical plant by the best practical means using current technology.
 - iv Fitting pneumatic tools with an effective silencer.
 - v Any other considerations

Expiry

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

The Responsible Authority may extend the periods referred to in Condition 47 if a request is made in writing before the permit expires or within six months afterwards for commencement or within twelve months afterwards for completion.

- End of conditions -

