

3 Presentation of officer reports

3.1 10 Markham Avenue ASHBURTON (also known as 2-18 Markham Avenue)

Application no.:	Planning Scheme Amendment C321boro
Responsible director:	Shiran Wickramasinghe City Planning
Authorised by:	Simon Mitchell, Manager Statutory Planning
Report officer:	Seuna Byrne Principal Planner - Statutory Planning

Abstract

Proposal

The Department of Health and Human Services (DHHS) have made a request to the Minister for Planning for Amendment C321boro to the Boroondara Planning Scheme. The amendment facilitates the redevelopment of the Markham Estate at 10 Markham Avenue, Ashburton (also known as 2-18 Markham Avenue) for a mix of public (62%) and private apartments (38%) consisting of a total of 178 dwellings in five buildings ranging in height between 2-4 storeys. The amendment also seeks to make the Minister for Planning the responsible authority for the land, instead of Council.

If approved in the format proposed by DHHS, there would be no public notice (exhibition) of the amendment, no independent panel hearings and no third-party review rights. Following approval of the amendment, no planning permits will be required for the development or subsequent subdivision. Any plans for endorsement arising from the conditions in the proposed Incorporated Document are required to be prepared to the satisfaction of the Minister for Planning, not to Council's satisfaction.

Issues

The following are key issues in respect of this application:

- The Incorporated Document has a number of critical omissions, including failing to define "public housing" or "mixed tenure";
- The development proposes to segregate public and private apartments into separate buildings, rather than 'salt and pepper' distribution;
- The conditions, including building heights and setbacks, described in the Incorporated Document are discretionary rather than mandatory;
- The Incorporated Document does not embed many of the commitments espoused by DHHS in support of their Amendment, including details of the minimum rate for the supply and allocation of car parking, details of which trees are proposed to be removed/retained and equitable access to amenities/facilities between the different residential tenures;

- The development will result in unreasonable traffic congestion within Markham Avenue, requiring a traffic management solutions which is not proposed by DHHS (widening of the road);
- The building envelope of Building A will cause unreasonable overshadowing of No. 93A Ashburn Grove;
- The building envelope of Buildings D and E will cause unreasonable overshadowing of the Markham Reserve children's playground and Ashburton Community Garden;
- The provision of car parking at a rate of 0.6 spaces per dwelling for public housing apartments is inadequate, will entrench disadvantage, will cause unreasonable off-site amenity impacts and is inconsistent with a 'tenure blind' approach to the delivery of mixed-tenure housing projects;
- The development will cause a significant increase in demand for access to services and local facilities, but does not propose any development contribution;
- There is no reasonable basis for the removal of Council in its ordinary role as responsible authority;
- The proposed use of section 20(4) of the Act to by-pass the usual public notice (exhibition) and independent scrutiny (panel hearing) is inappropriate and a denial of natural justice.

Officer's response

Officers have prepared a tracked-changes amended version of the Incorporated Document (at Appendix D) which addresses many of the fundamental flaws and omissions in the proposed document. The key modifications include:

- a) Changing controls within the Incorporated Document from discretionary to mandatory, including maximum building heights and minimum building setbacks expressed in the Building Envelope Plan and compliance with the objectives and standards of Clause 55;
- b) Requiring the localised widening of Markham Avenue to facilitate simultaneous two-way vehicle movement, to relieve congestion. This includes the consequential relocation of the Gardiners Creek Trail Shared Path partially into the subject site;
- c) The vehicle accessway designed in accordance with the recommendations of Council's Traffic Engineers, to ensure the crossing over the Gardiners Creek Trail Shared Path is safe and prioritises pedestrians and cyclists;
- d) Requiring a Tree Protection Plan and the retention of all 'moderate' and 'high' value trees;
- e) Defining 'public housing' and 'mixed tenure';
- f) Requiring the development to be a 'salt and pepper' mix of public and private apartments, rather than segregated in separate buildings;
- g) Requiring the provision of a communal multi-purpose room for use by all residents and the local community;
- h) A requirement for a Communal Open Space Strategy to ensure equitable access to communal facilities and to define maintenance, management and financial responsibilities;
- i) The supply and allocation of resident car spaces in full compliance with Clause 52.06;
- j) The envelopes of Buildings D and E modified to ensure there will be no net increase in the extent or duration of overshadowing of the Markham Reserve

- children's playground or the Ashburton Community Garden between the hours of 9am-3pm at the September Equinox and the Winter Solstice;
- k) The envelope of Building A modified to ensure there will be no net increase in the extent or duration of overshadowing of the secluded private open space of No. 93A Ashburn Grove between the hours of 9am-3pm at the September Equinox;
 - l) Privacy screening of any west-facing habitable room window or balcony/terrace in Building A;
 - m) All building facades to be articulated;
 - n) All buildings to incorporate rainwater harvesting for re-use in toilet flushing and garden irrigation, and for irrigation of the Ashburton Community Garden;
 - o) Increased detail in the documentation to be submitted to the responsible authority for approval;
 - p) A requirement for copies of the plans and documentation for approval to be provided to Council for review and comment not less than six weeks prior to being submitted to the responsible authority, with any comments provided by Council to be taken into consideration before a decision is made;
 - q) A requirement for a s173 Agreement dealing with:
 - i. The provision, fit-out, ownership, maintenance and management of a multi-purpose community room;
 - ii. Re-investment of any proceeds from the sale of any dwellings on the land by the Director of Housing in the supply of new public housing located within the City of Boroondara;
 - iii. The widening of Markham Avenue and relocation of the Gardiners Creek Trail Shared Path partially into the subject site to be carried out at the full cost of the developer to the satisfaction of Boroondara City Council and ownership of the land occupied by the relocated shared path to be transferred (gifted) to Council at no cost to Council (including preparing and registering title) prior to the occupation of the development;
 - r) Requirement for a cash 5% open space contribution payable to Council;
 - s) The Building Envelope Plan amended to express building heights in storeys and metres.

Subject to the adoption of the modifications set out in Appendix D, officers have formed the view the development will achieve an acceptable fit in the neighbourhood, will not cause unreasonable off-site amenity impacts and will make an acceptable contribution to addressing the chronic shortage of public housing in Victoria.

Officers are mindful of the views of some in the local community that public land should never be sold for private housing. In response, officers note the development is now substantially comprised of public housing (62%) and represents to close to a 100% increase compared with the number of public apartments formerly on the land (56). Officers are of the view a seamlessly integrated mix of residential tenures located in a high quality, tenure-blind development will assist in removing the stigma some associate with public housing. To this end, it is vital the recommended modifications to the Incorporated Document be adopted by DELWP and the Minister, to ensure the many virtues of the project are actually delivered.

On review of the amendment documents, officers have noted a number of errors and mis-statements relating to DHHS' claimed compliance with the Standards of Clause 55 (Rescode). It is the officers' experience assessing applications against the requirements of Clause 55.07 is complex and requires detail, which is lacking from the amendment documents. Officers are of the view the Boroondara Statutory Planning Department has the necessary experience and expertise to undertake the assessment. For this reason, the recommendation to make the Minister for Planning the responsible authority is not supported as it removes opportunities for independent scrutiny and third-party involvement. Third parties are an important and valued part of the Victorian Planning System. Community consultation conducted by Council does not absolve the Department or Minister from independently fulfilling their statutory obligations in relation to public notice and the provision of a fair hearing.

An assessment of the proposed Amendment against relevant controls and policies are contained in the attachment to this report.

Officers' recommendation

That the Urban Planning Special Committee resolve to inform DELWP and the Minister for Planning that:

1. Council does not support proposed Planning Scheme Amendment C321boro for the following reasons:
 - a) Use of section 20(4) of the Act to by-pass the usual public notice (exhibition) and independent scrutiny (panel hearing) is inappropriate and a denial of natural justice in circumstances where:
 - i. There has never been any formal public consultation or independent review of the form and content of the Incorporated Document;
 - ii. The proposed controls are discretionary, rather than mandatory;
 - iii. The Incorporated Document does not embed many of the commitments espoused by DHHS in support of their Amendment, putting their delivery at risk;
 - iv. The Clause 55 Assessment included with the Amendment documents contains errors or mis-statements in relation to claimed compliance with some Rescode Standards;
 - b) There is no reasonable basis for Council to be removed from its role as the responsible authority for the land;
 - c) The Incorporated Document has seven critical omissions:
 - i. Definitions of "mixed tenure" and "public housing";
 - ii. An ongoing obligation to maintain the public housing as such, or provisions regulating reinvestment of profit in local public housing in the event of the public housing being sold on the private market;
 - iii. Anything to regulate or require the provision of on-site car parking;
 - iv. Details of the protection/retention of any trees, including a Tree Protection Plan;
 - v. The localised widening of Markham Avenue adjacent to the site frontage to facilitate two-way vehicle movement and consequential relocation of the Gardiner's Creek Shared Trail to partially within the subject land;

- vi. A requirement to make an open space contribution in accordance with Section 18 of the *Subdivision Act 1988*, equal to 5 percent of the site value of all of the land, to be paid to Council prior to the issue of a Statement of Compliance under the *Subdivision Act 1988*;
 - vii. A requirement for any plans for endorsement to be submitted to Council for assessment and comment, prior to being given to the Minister for Planning for approval;
 - d) The proposed envelope of Building A will have a detrimental impact on the amenity of adjacent residential properties in Ashburn Grove due to overshadowing and overlooking; and
 - e) The proposed envelopes of Buildings C, D and E will have a detrimental impact on the amenity and character of Markham Reserve (including the adjacent children's playground) and Ashburton Community Garden due to overshadowing and/or visual bulk.
2. If, irrespective of Council's objection, the Minister for Planning determines to approve Amendment C321boro, modifications be made to the Incorporated Document in accordance with the officers' tracked-changes version of the Incorporated Document at Appendix D to this report, which incorporates the various recommendations officers have made throughout this report, including but not limited to:
- a) Changing controls within the Incorporated Document from discretionary to mandatory, including maximum building heights and minimum building setbacks expressed in the Building Envelope Plan and compliance with the objectives and standards of Clause 55;
 - b) Requiring the localised widening of Markham Avenue to facilitate simultaneous two-way vehicle movement, to relieve congestion. This includes the consequential relocation of the Gardiners Creek Trail Shared Path partially into the subject site and transfer of ownership of the occupied land to Council, at no cost to Council;
 - c) The vehicle accessway designed in accordance with the recommendations of Council's Traffic Engineers, to ensure the crossing over the Gardiners Creek Trail Shared Path is safe and prioritises pedestrians and cyclists;
 - d) Requiring a Tree Protection Plan and the retention of all 'moderate' and 'high' value trees;
 - e) Defining public housing and mixed tenure;
 - f) Requiring the development to be a 'salt and pepper' mix of public and private apartments, rather than segregated in separate buildings;
 - g) Requiring the provision of a communal multi-purpose room for use by all residents and the local community;
 - h) A requirement for a Communal Open Space Strategy to ensure equitable access to communal facilities and to define maintenance, management and financial responsibilities;
 - i) The supply and allocation of resident car spaces in full compliance with Clause 52.06;
 - j) The envelopes of Buildings D and E modified to ensure there will be no net increase in the extent or duration of overshadowing of the Markham Reserve

- children's playground or the Ashburton Community Garden between the hours of 9am-3pm at the September Equinox and the Winter Solstice;
- k) The envelope of Building A modified to ensure there will be no net in the extent or duration of overshadowing of the secluded private open space of No. 93A Ashburn Grove between the hours of 9am-3pm at the September Equinox;
 - l) Privacy screening of any west-facing habitable room window or balcony/terrace in Building A;
 - m) All building facades to be articulated;
 - n) All buildings to incorporate rainwater harvesting for re-use in toilet flushing and garden irrigation, and for irrigation of the Ashburton Community Garden;
 - o) Increased detail in the documentation to be submitted to the responsible authority for approval;
 - p) A requirement for copies of the plans and documentation for approval to be provided to Council for review and comment not less than four weeks prior to being submitted to the responsible authority, with any comments provided by Council to be taken into consideration before a decision is made;
 - q) A requirement for a s173 Agreement dealing with:
 - i. The provision, fit-out, ownership, maintenance and management of a multi-purpose community room;
 - ii. Re-investment from the sale of any dwellings on the land by the Director of Housing in the supply of new public housing located within the City of Boroondara;
 - iii. The widening of Markham Avenue and relocation of the Gardiners Creek Trail Shared Path partially into the subject site to be carried out at the full cost of the developer to the satisfaction of Boroondara City Council and ownership of the land occupied by the relocated shared path to be transferred (gifted) to Council at no cost to Council (including preparing and registering title) prior to the occupation of the development;
 - r) Requirement for a cash 5% open space contribution payable to Council;
 - s) The Building Envelope Plan amended to express building heights in storeys and metres.



STATUTORY PLANNING OFFICERS' REPORT

Urban Planning Special Committee

Application Number	Proposed Planning Scheme Amendment C321boro
Date Application Received	Referred to Council by DELWP on 11 November 2019
Planning Officer	Seuna Byrne - Principal Planner
Applicant	The Department of Health and Human Services (DHHS)
Owner	Director of Housing
Property Address	2-18 Markham Avenue ASHBURTON (also known as 10 Markham Avenue)
Proposal	<p>DHHS have made a request to the Minister for Planning for Amendment C321boro to the Boroondara Planning Scheme.</p> <p>The amendment facilitates the redevelopment of the Markham Estate for a mix of public and private dwellings, consisting of 178 dwellings (including <i>"approximately 111 of the dwellings in the development... to be for public housing"</i>) in five buildings ranging between 2-4 storeys.</p> <p>DHHS have requested the Minister exempt himself from the requirement to exhibit the amendment, pursuant to section 20(4) of the <i>Planning and Environment Act, 1987</i>.</p> <p>The amendment would introduce an Incorporated Document to control use and development of the land and would make the Minister for Planning the Responsible Authority for the site.</p> <p>The effect of the Document is the requirements of the planning scheme would not be binding on the land. Any redevelopment of the land would be bound by the conditions set out in the Incorporated Document. This means no planning permits would be required. Any plans for endorsement arising from the conditions in the Incorporated Document are required to be prepared to the satisfaction of the Minister for Planning, not to Council's satisfaction.</p>

Ward	Solway
Zoning	General Residential Zone Schedule 4 (GRZ4 “Super-sized Lots”)
Overlays	None
Aboriginal Cultural Heritage Area	Yes. The entire property is located within an area of Aboriginal Cultural Heritage Significance.
Registered Restrictive Covenant?	There are no registered restrictive covenants registered on the certificate of title for the land.
Potential Overland Flow?	No
Melbourne Water 100 Year Flood Extent?	No
Advertised?	<p>The s20(4) amendment sought by DHHS, if accepted by the Minister, is exempt from third-party notice.</p> <p>Pursuant to s20(5), the Minister (via DELWP) is undertaking consultation with the responsible authority (Council) in respect of the proposed amendment.</p> <p>This report and the tracked-changes version of the Incorporated Document at Appendix D to this report collectively form Council’s response.</p>
Recommendation	<p>That the Urban Planning Special Committee resolve to inform DELWP and the Minister for Planning that:</p> <ol style="list-style-type: none"> 1. Council does not support proposed Amendment C321boro for the following reasons: <ol style="list-style-type: none"> a) Use of section 20(4) of the Act to by-pass the usual public notice (exhibition) and independent scrutiny (panel hearing) is inappropriate and a denial of natural justice in circumstances where: <ol style="list-style-type: none"> i. There has never been any formal public consultation or independent review of the form and content of the Incorporated Document; ii. The proposed controls are discretionary, rather than mandatory; iii. The Incorporated Document does not embed many of the commitments espoused by DHHS in support of their Amendment; iv. The Clause 55 Assessment included with the Amendment documents contains errors or mis-statements in relation to claimed compliance with some Rescode Standards;

	<ul style="list-style-type: none"> b) There is no reasonable basis for Council to be removed from its role as the responsible authority for the land; c) The Incorporated Document has seven critical omissions: <ul style="list-style-type: none"> i. Definitions of “mixed tenure” and “public housing”; ii. An ongoing obligation to maintain the public housing as such, or provisions regulating reinvestment of profit in local public housing in the event of the public housing being sold on the private market; iii. Anything to regulate or require the provision of on-site car parking; iv. Details of the protection/retention of any trees, including a Tree Protection Plan; v. The localised widening of Markham Avenue adjacent to the site frontage to facilitate two-way vehicle movement and consequential relocation of the Gardiner’s Creek Shared Trail to partially within the subject land; vi. A requirement to make an open space contribution in accordance with Section 18 of the <i>Subdivision Act 1988</i>, equal to 5 percent of the site value of all of the land, to be paid to Council prior to the issue of a Statement of Compliance under the <i>Subdivision Act 1988</i>; vii. A requirement for any plans for endorsement to be submitted to Council for assessment and comment, prior to being given to the Minister for Planning for approval; d) The proposed envelope of Building A will have a detrimental impact on the amenity of adjacent residential properties in Ashburn Grove due to overshadowing and overlooking; and e) The proposed envelopes of Buildings C, D and E will have a detrimental impact on the amenity and character of Markham Reserve (including the adjacent children’s playground) and Ashburton Community Garden due to overshadowing and/or visual bulk. <p>2. If, irrespective of Council’s objection, the Minister for Planning determines to approve Amendment C321boro, modifications be made to the Incorporated</p>
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	<p>Document in accordance with the officers' tracked-changes version of the Incorporated Document at Appendix D to this report, which incorporates the various recommendations officers have made throughout this report, including but not limited to:</p> <ul style="list-style-type: none"> a) Inserting a definition of "public housing" and "mixed tenure"; b) Changing controls within the Incorporated Document from discretionary to mandatory, including maximum building heights and minimum building setbacks expressed in the Building Envelope Plan and compliance with the objectives and standards of Clause 55; c) Requiring the localised widening of Markham Avenue to facilitate simultaneous two-way vehicle movement, to relieve congestion. This includes the consequential relocation of the Gardiners Creek Trail Shared Path partially into the subject site; d) The vehicle accessway designed in accordance with the recommendations of Council's Traffic Engineers, to ensure the crossing over the Gardiners Creek Trail Shared Path is safe and prioritises pedestrians and cyclists; e) Requiring a Tree Protection Plan and the retention of all 'moderate' and 'high' value trees; f) Requiring the development to be a 'salt and pepper' mix of public and private apartments, rather than segregated in separate buildings; g) Requiring the provision of a communal multi-purpose room for use by all residents and the local community; h) A requirement for a Communal Open Space Strategy to ensure equitable access to communal facilities and to define maintenance, management and financial responsibilities; i) The supply and allocation of resident car spaces in full compliance with Clause 52.06; j) The envelopes of Buildings D and E modified to ensure there will be no net increase in the extent or duration of overshadowing of the Markham Reserve children's playground or the Ashburton Community Garden between the hours of 9am-3pm at the September Equinox and the Winter Solstice;
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	<ul style="list-style-type: none"> k) The envelope of Building A modified to ensure there will be no net increase in the extent or duration of overshadowing of the secluded private open space of No. 93A Ashburn Grove between the hours of 9am-3pm at the September Equinox; l) Privacy screening of any west-facing habitable room window or balcony/terrace in Building A; m) All building facades to be articulated; n) All buildings to incorporate rainwater harvesting for re-use in toilet flushing and garden irrigation, and for irrigation of the Ashburton Community Garden; o) Increased detail in the documentation to be submitted to the responsible authority for approval; p) A requirement for copies of the plans and documentation for approval to be provided to Council for review and comment not less than four weeks prior to being submitted to the responsible authority, with any comments provided by Council to be taken into consideration before a decision is made; q) A requirement for a s173 Agreement dealing with: <ul style="list-style-type: none"> i. The provision, fit-out, ownership, maintenance and management of a multi-purpose community room; ii. Re-investment of any proceeds from the sale of any dwellings on the land by the Director of Housing in the supply of new public housing located within the City of Boroondara; iii. The widening of Markham Avenue and relocation of the Gardiners Creek Trail Shared Path partially into the subject site to be carried out at the full cost of the developer to the satisfaction of Boroondara City Council and ownership of the land occupied by the relocated shared path to be transferred to Council prior to the occupation of the development r) A requirement for a cash 5% open space contribution payable to Council; s) The Building Envelope Plan amended to express building heights in storeys and metres.
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BACKGROUND

In 2015, the Minister for Housing, Disability & Ageing announced the Markham Avenue public housing estate would be demolished and redeveloped *“to around 240 units, including a 10% increase in social housing onsite.”*

The current Planning Scheme Amendment is the third in a series since the announcement that have attempted to facilitate redevelopment of the land in a mix of social or public housing and private apartments.

Amendment C251

Planning Scheme Amendment C251 was prepared and submitted to the Minister for Planning in February 2017 and approved on 5 October 2017 under Section 20(4) (i.e. with no formal exhibition period¹ or independent panel appointed).

The amendment consisted of an Incorporated Document² allowing the land to be developed for *“no more than 225 dwellings”* and removed Council from its role as the Responsible Authority for the land.

The Document failed to enshrine the minimum number of social housing apartments, however it was understood 62 would be provided (a 10% increase, compared with what formerly existed). The balance (163 apartments) was to consist of homes to be sold on the private market.

The Building Envelope Plan (below) allowed buildings ranging in height between 2-5 storeys.

¹ The applicant (DHHS & Development Victoria) undertook informal consultation with Council and nearby residents, including an information session held at Ashburton Library.

² *Markham Housing Estate, Incorporated Document, August 2017*



Above: The Building Envelope Plan extracted from the *Markham Housing Estate Incorporated Document, August 2017* (Revoked by Parliament, October 2017)

Any plans for endorsement arising from the conditions in the Incorporated Document were required to be prepared to the satisfaction of the Minister for Planning, not to Council's satisfaction. However, the Incorporated Document set out that *"at least 15 business days before the plans and documentation... are submitted to the [Minister], they must be provided to Boroondara City Council for comment."*

In October 2017, Parliament took the extraordinary step of revoking the Minister for Planning's approval of Planning Scheme Amendment C251.

Amendment C298

On 1 February 2018, Amendment C298 was approved under Section 20(4). This time, there was no prior consultation with Council or the local community.

The amendment consisted of an Incorporated Document³ allowing the land to be developed for *"no more than 200 dwellings"* and removed Council from its role as the Responsible Authority for the land. This time, the Amendment enshrined that *"at least 62 of the dwellings in the development must be for social housing."*⁴

The Explanatory Report that accompanied the Planning Scheme Amendment indicated the development would consist of "affordable housing" in addition to social and private housing. It is understood approximately one-third of the total dwellings were to be "affordable", one-third for sale on the private market and one-third social housing.

³ *Markham Housing Estate, Incorporated Document, December 2017*

⁴ As distinct from public housing.

However, this was not enshrined in the Incorporated Document. Nor was a definition of “affordable housing”.

The Building Envelope Plan (below) allowed buildings ranging in height between 2-4 storeys.



Above: The Building Envelope Plan extracted from the *Markham Housing Estate Incorporated Document, December 2017 (Revoked by Parliament, October 2017)*

On 28 March 2018, for a second time, Parliament took the extraordinary step of revoking an amendment that facilitated the redevelopment of the land.

PROPOSAL - AMENDMENT C321

Appendix A - *Markham Housing Estate Incorporated Document, November 2019*

An application has been made to the Minister for Planning by DHHS to facilitate the redevelopment of the Markham Avenue public housing estate by amending the Boroondara Planning Scheme as follows:

- Applying the Special Controls Overlay - Schedule 2 to the site and introducing the associated *Markham Housing Estate Incorporated Document, November 2019*;

- Amending the Schedule to Clause 72.01 - Responsible Authority for the Boroondara Planning Scheme to make the Minister for Planning the Responsible Authority for the site;
- Amending the Schedule to Clause 72.03 - *What does this planning scheme consist of?* to insert Map 19SCO;
- Amending the Schedule to Clause 72.04 - Documents Incorporated in this Planning Scheme, to introduce the Incorporated Document *Markham Housing Estate Incorporated Document, November 2019*.

The *Markham Housing Estate Incorporated Document, November 2019* facilitates the redevelopment of the land, as follows:

- Construction of 178 dwellings, adopting “a mixed tenure approach” and including “approximately 111... dwellings... to be used for public housing”;
- The dwellings are to be contained in five buildings, ranging between 2-4 storeys in height;
- The building siting is controlled by a Building Envelope Plan, which sets out setbacks from all title boundaries;
- Condition 4.2.1 in the Incorporated Document requires the development to “be **generally in accordance with** the building heights and setbacks shown on the Building Envelope Plan and in the conditions [set out in the Incorporated Document]” **[emphasis added]**;
- Should meet the objectives of Clause 55;
- Should not overshadow Markham Reserve for at least five hours between 9am and 3pm on 22 September;
- Any west-facing habitable room window, balcony, terrace, deck or patio with a direct view into the secluded private open space or habitable room window of an existing dwelling within a horizontal distance of 9.0m of the window, balcony, terrace, deck or patio must comply with Standard B22 of Clause 55 (overlooking standard);
- A building with a frontage to Markham Avenue must:
 - a) Provide a respectful presentation to the street;
 - b) Include design elements that visually enhance a fine grain appearance and depth of the façade and minimise the perception of wide, flat facades;
- The development must comply with the Disability (Access to Premises - Buildings) Standards 2010;
- Soft and hard landscaping must be provided throughout the development;
- The setback from the east boundary must allow for safe and viable planting of canopy trees to provide a ‘green edge’ buffer to Markham Reserve, as determined by a qualified landscape architect or arborist.

Table 1, below, provides a summarised comparison of the three planning scheme amendments.

Table 1: Comparison of Amendments C251, C298 and C321boro

	No. of dwellings	Building heights	Status
Amendment C251	62 public apartments + 163 private apartments = 225 (27.5% public, 72.5% private)	Six buildings ranging between 2-5 storeys	Revoked
Amendment C298	62 public apartments + 138 private apartments = 200 (31% public, 69% private)	Six buildings ranging between 2-4 storeys	Revoked
Amendment C321boro	111 public apartments + 67 private apartments = 178 (62.4% public, 37.6% private)	Five buildings ranging between 2-4 storeys	Proposed

Officers are of the view there are seven critical omissions in the 2019 Incorporated Document:

1. Definitions of “mixed tenure” and “public housing”;
2. An ongoing obligation to maintain the public housing as such, or provisions regulating reinvestment of profit in local public housing in the event of the public housing being sold on the private market;
3. Anything to regulate or require the provision of on-site car parking;
4. Details of the protection/retention of any trees, including a Tree Protection Plan;
5. The localised widening of Markham Avenue adjacent to the site frontage to facilitate two-way vehicle movement and consequential relocation of the Gardiner’s Creek Shared Trail to partially within the subject land;
6. A requirement to make an open space contribution in accordance with Section 18 of the *Subdivision Act 1988*, equal to 5 percent of the site value of all of the land, to be paid to Council prior to the issue of a Statement of Compliance under the *Subdivision Act 1988*;
7. A requirement for any plans for endorsement to be submitted to Council for assessment and comment, prior to being given to the Minister for Planning for approval.

The Explanatory Report prepared by DHHS, which accompanies the Amendment request, describes the development as including “*the construction of an integrated development of public and private housing including accessible housing for people with a wide variety of needs that include mobility, aging and vision impairment*” and “*the provision of resident and visitor car parking*”. It is a significant concern to officers that neither of these initiatives are enshrined in the Incorporated Document.

Officers are concerned a number of initiatives promoted and relied on by in support of their Amendment are not enshrined via conditions in the Incorporated Document. For example, unless the Incorporated Document is amended to include additional conditions, there is nothing to compel the future developer to provide any on-site car parking or retain any trees on the land.

Officers are also concerned with the inclusion of the phrase, “*generally in accordance with*” in relation to requirements to be consistent with the permitted building heights (number of storeys) and minimum setbacks set out in the Building Envelope Plan.



Above: The Building Envelope Plan extracted from the *Markham Housing Estate Incorporated Document, October 2019*

Officers note the Building Envelope Plan depicts a single vehicle accessway to the site from Markham Avenue. As the Building Envelope Plan does not purport to regulate vehicle access, it should be enshrined by conditions.

Officers further note the Incorporated Document, at Condition 4.2.11 requires a copy of the plans for endorsement to be provided to Council before they are submitted to the Minister for Planning, but fails to provide a timeframe or any ability/invitation for Council to comment on the plans. This is considered to be unacceptable.

SUBJECT SITE

The land at 2-18 Markham Avenue (also known as 10 Markham Avenue) is currently vacant and was most recently occupied by the Markham Avenue Public Housing Estate (or “Markham Estate”).



Above: 3 October 2019 aerial photo of the site and surrounding area

In early 2016, all of the buildings on the site were demolished. The buildings were constructed in the 1950s, consisting of nine double storey buildings built from pre-fabricated concrete. The buildings were in a style consistent with the mass-production line principles of State housing projects from this period and contained 56 dwellings used for public housing, owned and managed by DHHS.

Two crossovers provide access to the site from Markham Avenue, with one approximately 16.5m from the eastern boundary of the site and the other located approximately 44.0m from the western boundary.



Above: The former DHHS housing at 2-18 Markham Avenue (source: Herald Sun)



Above: September 2015 aerial photo of the site, prior to the demolition of the buildings

The site contains 82 trees, of which 55 are native or indigenous and 27 are exotic species.

The following trees are considered by officers to be of 'high' retention value, due to their location, size and arboriculture value. There are also a number of 'moderate' value trees officers' recommend be retained and protected.

Species	Origin	Location
Swamp She-Oak (<i>Casuarina glauca</i>)	Australian Native	Front boundary to the west of the western crossover
Spotted Gum (<i>Corymbia maculate</i>)	Victorian Native	Four (4) located near entry from the western crossover
Narrow-leaved Peppermint (<i>Eucalyptus nicholii</i>)	Australian Native	West of the accessway from the western crossover
Manna Gum (<i>Eucalyptus viminalis</i>)	Indigenous	Two (2) located centrally near the southern boundary
River Red Gum (<i>Eucalyptus camaldulensis</i>)	Indigenous	South-west corner of the site
Smooth-barked Apple (<i>Angophora costata</i>)	Australian Native	Front boundary of the site, located on the western side of the eastern-most accessway.
Monterey Pine (<i>Pinus radiata</i>)	Exotic Conifer	North-west corner of the site adjacent to the rear property boundary of 2A Markham Avenue



Above: The subject site, viewed from Markham Avenue



Above: The southern boundary of the subject site, viewed from Markham Reserve, looking north



Above: The existing western-most vehicle crossing to Markham Ave for the site

Strategic Context

The site is located within the General Residential Zone Schedule 4 (GRZ4 - “Super-sized lots”). Council’s Neighbourhood Character Policy describes “super-sized lots” as properties *“that are of a size incongruous with the surrounding allotments. These sites are generally larger than 4,000 square metres in area.”* The subject site has an area of approximately 14,650sqm.

Amongst other things, the purpose of the General Residential Zone is *“to encourage development that respects the neighbourhood character of the area”* and *“encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.”*

The Neighbourhood Character Policy sets parameters around the redevelopment of anomalously large sites within the GRZ, so the identified preferred character of the area in which the site sits is replicated around the site’s perimeter, while in the centre of the site, allowances are made *“for development to occur at greater height and density than the surrounding area without detrimentally impacting on the preferred character of the precinct.”* In the time since the Policy was created, Amendment VC110 altered the controls in the General Residential Zone, applying the following mandatory controls:

- A minimum “garden area” requirement of 35% (for sites with an area above 650sqm); and

- A maximum overall building height requirement for dwellings and residential buildings of 3-storeys and 11.0m (12.0m on sloping sites, such as the subject land).

Therefore, it is accepted a planning scheme amendment is necessary to facilitate development of a height greater than 3-storeys and/or 12.0m in circumstances where it appears to otherwise be called for by Council's local policies.

However, in the absence of a mandatory height limit, the development potential of the land should not be considered unfettered. The Neighbourhood Character Policy provides the following preferred character objective and policy directions for land in the General Residential Zone Schedule 4 at Clause 22.05-7:

Preferred character objective

- *To allow for development to occur at greater height and density than the surrounding area without detrimentally impacting on the preferred character of the precinct.*

Policy

- *Ensure development around the perimeter of 'super-sized lots' is consistent with and reinforces the precinct's preferred character.*
- *Support increased building heights within a site where it can be demonstrated that the increased height will not adversely impact the precinct's preferred character.*
- *Ensure the provision of landscaped setbacks around the perimeter.*
- *Ensure the retention of any existing significant or established trees on site.*

Surrounding Road Network



Above: Extract of the Boroondara Road Hierarchy⁵

Markham Avenue

Markham Avenue is a local road managed by Council and is subject to a 50km/h speed limit. The road is aligned in an east-west direction and generally has a carriageway width of approximately 6.9m, set within an approximately 15m wide road reserve. Unrestricted parking is available on the northern side of the carriageway for the majority of Markham Avenue.

Adjacent to the subject site and for the balance of Markham Avenue to the west of the site, the road carriageway narrows to approximately 6.1m. This is due to the alignment of an off-road shared bicycle and pedestrian path located on the southern side of the road reserve. As a consequence of the road narrowing, 'No Parking' signs are posted along the frontage of the subject site (southern side of the road only). This allows unrestricted two-way movement of vehicles. Unrestricted parallel parking resumes immediately west of the subject site and unrestricted 90-degree parking bays are available to the east of the subject site, at selected locations in front of Markham Reserve. This limits vehicle movement to one-direction at a time when cars are parked on both sides of the street.

⁵ Attachment A of the City of Boroondara Traffic Management Policy, dated 8 November 2006

To the east of the site, the shared path is located within Markham Reserve and has no impact on the available road width within Markham Avenue.



Above: Standing at the north-east corner of the site on the shared path, looking east. The change in the alignment of the shared path from inside Markham Reserve to within the road reserve results in the narrowing of the road carriageway

The shared path was constructed in 2009 and connected the Gardiners Creek Shared Trail to the east with the Anniversary Trail to the west, via Markham Avenue. The regional playground within Markham Ave was constructed in 2011.

Traffic counts carried out by Council's Traffic Engineers in November 2016 indicate Markham Avenue⁶ carries approximately 1,304 vehicles per day.

ABORIGINAL CULTURAL HERITAGE

Is the site within an area of Aboriginal cultural heritage sensitivity?	Yes
Is a Cultural Heritage Management Plan required?	Yes

The subject site is located in an area of cultural heritage sensitivity under Regulation 23 (waterways) of the Aboriginal Heritage Regulations 2007, as it is located within 200m of

⁶ Between Ambon Street and Victory Boulevard

Gardiners Creek. The proposed construction of 178 dwellings is defined as a “high impact activity” under Regulation 45(1).

A Cultural Heritage Management Plan has not been prepared as part of the amendment documentation in support of Amendment C321. A Cultural Heritage Management Plan (CHMP No. 14170), prepared by Biosis, dated 18 April 2016, was prepared in support of Amendment C251. That CHMP was approved by the Director Heritage Services Aboriginal Victoria on 10 May 2016. The approved CHMP contains the following recommendation:

“Recommendation 1

The sponsor must ensure that an approved copy of this CHMP must be kept on site at all times and that all employees and contractor staff are aware of the requirements of the Plan. In addition, heritage information (including key CHMP findings and the contingency requirements) must be included in the standard site induction provided to on-site personnel who are required on site following the commencement of works.”

It is noted the location and extent of buildings and works sought by Amendment C321 differs quite significantly to that sought by Amendment C251. It is recommended a new or updated CHMP be required.

COMMUNITY CONSULTATION

The application to the Minister made by DHHS seeks to exempt the Amendment from the usual statutory obligations to give public notice (exhibit) to the people in the local community who will be directly affected by the amendment and the development it seeks to facilitate.

Sections 20 and 20(A) of the *Planning and Environment Act 1987* state the Minister is entitled to take this approach, subject to him consulting with Council, and subject to the Minister being satisfied public notice “*is not warranted, or that the interests of Victoria or any part of Victoria make such an exemption appropriate.*”

This approach is strongly opposed by Council officers. Not only does it remove the opportunity for formal third-party participation, it removes the opportunity for an expert, independent and transparent review of the merits of the planning scheme amendment (other than that undertaken by Council).

Third parties are an important and valued part of the Victorian Planning System. The Act recognises their input can improve decision making. Bypassing this vital step in the planning process should only be undertaken in exceptional circumstances. If this were an ordinary planning permit application, it would not meet the ‘test’ of ‘no material detriment to any person’ to warrant waiving the public notice obligations in the Act.

Officers do not believe there is sufficient basis for making this Amendment pursuant to section 20(4), due to the impact the development will have on the local community and the benefits that can be gained from public notice (exhibition) and independent review (i.e. a Panel hearing).

At the time of granting approval of Amendments C251 and C298, the Minister for Planning was required to make written reasons for his decision to exempt them from public notice publicly available. Under the heading, "Benefits of exemption", the reasons given by the Minister to exempt Amendment C251 include:

"The exemption of the amendment from the usual notice requirements under the Act and the Regulations is warranted in circumstances where targeted consultation was undertaken with potentially affected parties. Their views are well understood, and have been taken into account during the preparation of the amendment. Further consultation would be unlikely to identify any new issues."

The Minister states he was satisfied in exercising the discretion not to give formal notice of Amendment C251 because 'targeted consultation' was undertaken, the views of the potentially affected persons were well understood and had been taken into account during the preparation of the amendment. Further, the Minister espoused the additional benefit of being able to deliver the project in a timely manner.

It is one thing for the Minister to be satisfied the local community are aware of the proposal. Clearly there has been some media attention given to the project since its inception in 2015. However, at no point has there been formal consultation with locals in respect of either C251, C298 or C321boro, or any opportunity for residents' views and concerns to be considered independently from the applicant. Importantly, there has never been any formal consultation with the community in relation to the content of the Incorporated Document. As is clear from this report, it is the view of officers the proposed Incorporated Document has critical omissions. It fails to embed many of the commitments and benefits espoused by DHHS and does not represent best-practice in relation to the provision of affordable housing⁷. The Incorporated Document should not be approved in its current form.

⁷ For example, the conditions contained within the Incorporated Document fail to anticipate the possibility of the development being undertaken by a private developer, in which case, a Section 173 Agreement should be required to set out the number of public housing apartments to be provided, the timing for their delivery, who the recipient and manager of the public housing apartments will be, agreed expectations regarding the length of tenure of the public housing apartments, who will build the apartments, who can own them (i.e. a definition of "public housing", in the absence of it being defined within the Incorporated Document), restrictions on the use of equity for borrowings, restrictions on the reinvestment of proceeds of sale, how long the restrictions in the Agreement will remain in place and enforcement details.

Even if it is accepted targeted consultation in lieu of formal exhibition is adequate, there has been no targeted consultation with the local community in respect of Amendment C321boro or the Incorporated Document. Furthermore, the C251 'targeted consultation' was undertaken in October 2016 and only involved a generically addressed 'letter box drop', which was not sent to absentee-owners. Property ownership or occupancy of adjoining and nearby affected properties may have changed in the three years since.

Working Group meetings held between DHHS, DELWP, Development Victoria, Council representatives and members of the Ashburton Residents' Action Group should not be relied upon by the Department or the Minister as 'targeted consultation'. Firstly, DHHS insisted the meetings be confidential, which restricted the ability of ARAG representatives or Council to liaise more broadly with the community. Secondly, to the expressed frustration of participants, DHHS repeatedly failed to provide adequate detail of what they were proposing throughout the course of the Working Group sessions. DHHS ultimately abandoned the Working Group forum, submitting their Amendment request without informing the participants they were doing so and before obtaining written feedback from Council, despite an agreed understanding they would do so.

In the absence of a formal exhibition period, Council officers have invited local residents to review the proposal and provide feedback. Following a 3-week consultation period undertaken in January 2020, a total of 24 submissions have been received.

The following issues have been raised:

- All of the dwellings on the land should be used for public housing, to address the severe shortage of public housing in Victoria. The original Markham estate was set aside in the 1950s for public housing and it should remain as public land in perpetuity;
- Council should be retained as the Responsible Authority for the land, rather than the State being the proponent and the decision-maker;
- The process proposed by DHHS is deeply flawed. The removal of the need for planning permits, with no community consultation and no oversight by Council is an undemocratic, high-handed abuse of power and denies local people any voice or right of appeal;
- DHHS have given insufficient notice to residents affected by this development. The application should involve the local community in a full and proper process of consultation;
- There is no underground parking proposed. Some underground parking should be incorporated, to help achieve the Clause 52.06 standard parking rates. The Clause 52.06 car parking rates should be fully met (i.e. no dispensations);
- There is insufficient space within the proposed internal streets for on-street visitor parking;
- Insufficient on-site car parking will lead to parking spilling out into neighbouring streets;

- The height of the 3-4 storey buildings adjacent to the rear yards of the Ashburn Grove houses will impact residents and should be reduced to a maximum of 2-storeys;
- Traffic congestion within the narrow carriageway of Markham Avenue needs to be addressed. The road is currently too narrow for cars to pass one another;
- Safety conflicts between vehicles entering/exiting the site and users of the shared path;
- The development remains too large;
- The number of dwellings on the land should be decreased to a maximum of 120-150;
- The building heights exceed the allowable limits and is out of context with the surrounding 1 and 2-storey buildings;
- Proximity of sheer 4-storey Buildings A and C, adjacent to the backyards of homes in Ashburn Grove, will cause visual bulk. Should be changed to 2-storeys, rising to 4-storeys away from the neighbouring houses;
- The buildings facing Markham Avenue should be increased in height to 3-storeys, to enable the buildings adjacent to the western boundary to be decreased in height. Markham Avenue is not affected by heritage controls so can accommodate additional height instead of it being at the expense of the amenity of neighbouring residents;
- The application includes no overshadowing analysis. Detailed analysis is required of the loss of sunlight to homes in Ashburn Grove;
- Overshadowing, visual bulk and overlooking of dwellings in Ashburn Grove;
- Balconies facing towards the rear yards of Ashburn Grove homes should incorporate privacy screening to prevent overlooking;
- The increased residential population will strain existing infrastructure and resources, including the already overcrowded local primary schools;
- Removal of trees is not supported as they are important for health and shade;
- What will happen to No. 3 Markham Avenue?
- Residents should be given the contact details of the developer/builder, so they can contact them if problems occur, such as dust or noise pollution;
- The development does not incorporate adequate water management measures. The development should incorporate rainwater harvesting for re-use by Ashburton Community Garden;
- The development and proposed planting within the eastern boundary setback will overshadow plots in the Ashburton Community Garden;
- Although the development incorporates some positive aspects, it increases the height of buildings adjacent to Ashburn Grove homes and decreases on-site car parking in a manner that is not commensurate with the decreased number of dwellings proposed;
- This development/process will create a precedent for the Government to develop other public housing sites;
- The site is located in an area of sensitive aboriginal heritage and adjacent to sensitive ecological and environmental areas;

- The green-edge buffer suggested in the Incorporated Document at Clause 4.2.9 should also apply to the western boundary, to create a natural screen and encourage biodiversity;
- The use of “should” and “intended” throughout the Amendment documents is too loose and will allow the developer to bend the rules in their favour;
- What opportunities/method for contact will there be between managers of the public housing (DHHS or otherwise) and the local community, if issues arise once the housing is occupied? How will safety and security issues be managed? Clear contact details for the site manager need to be available to local residents, when issues arise;
- The development must incorporate commercial skip bins to address extreme waste management issues experienced at other local public housing sites, due to high and sudden turnover of tenants;
- Local assets, such as the nearby community garden and Markham Reserve, need to be protected during construction.

Having undertaken consultation on behalf of Council does not absolve the Department or Minister from independently fulfilling their statutory obligations in relation to public notice and the provision of a fair hearing. The fact the Minister is conferred wide discretion under the Act is not reason enough in this instance for doing away with the principles of natural justice. Any failure to carry out public consultation, followed by public hearings and an independent recommendation to the Minister will be a denial of natural justice for the local community.

INTERNAL REFERRALS

The Amendment was referred to the following internal departments for advice:

Urban Designer

Appendix B: Urban Design referral advice

The advice prepared by Council's Urban Designer is provided at **Appendix B** to this report.

Planner's comments:

The recommendations of Council's Urban Designer in relation to increased building articulation, the design of car parking facilities where they are visible from the public realm and the inclusion of disabled access have been included in the officers' tracked-changes version of the Incorporated Document, located at Appendix D to this report. In particular, officers seek to have the design of the main north-south aligned vehicle accessway incorporate the principles of 'woonerf' street typology, to create a high-quality and attractive shared traffic zone with priority for pedestrians and incorporating some car parking spaces.

Traffic & Transport Department - Traffic Engineers

Appendix C: Traffic & Transport (Traffic Engineers) plan for Markham Avenue widening and Gardiners Creek Trail shared path relocation

Council's Traffic Engineers advise localised widening of Markham Avenue is required adjacent to the subject site to accommodate increased traffic congestion as a consequence of the development. Even with the decreased total number of dwellings, it is estimated the development will generate in the order of 1,068 vehicle movements per day⁸.

Widening the road carriageway and relocating the shared path 1.8m into the title boundaries of the site will enable two vehicles to pass one another unhindered. On-street parking would be maintained on the northern side of the street. No on-street parking would be provided on the southern side of the street, however this is consistent with the existing condition.

It is considered these works are necessary directly as a consequence of the proposed development and should form part of the Incorporated Document, to ensure full transparency for whichever agency or private developer undertakes the project.

A copy of the Markham Avenue road-widening plan prepared by Council's Traffic Engineers is provided at **Appendix C** to this report and is included in the tracked-changes version of the Incorporated Document prepared by officers, at Appendix D.

Officers recommend the road widening and shared path relocation be enacted via a section 173 Agreement requiring the works to be undertaken at the cost of the developer and requiring ownership of the land occupied by the relocated shared path be transferred (gifted) to Council, at no cost to Council. Transfer of ownership is recommended to provide certainty in relation to management, maintenance and liability responsibilities. As the land is contiguous with the existing footpath and shared path, there are no foreseeable issues.

Community Planning & Development

Council's Community Planning and Development Department have reviewed the proposed Incorporated Document and formed the view it should incorporate an indoor multi-function community space. The advice received from Community Planning follows.

⁸ Based on an average of 6 vehicle movements per dwelling, per day.

“Markham Estate community space

Vision

A flexible, multipurpose community space providing programs, services and meeting space to residents of the Markham Estate and surrounding area, of all tenure types.

Opportunities include:

- *Homework club;*
- *Playgroups / children’s activities;*
- *Yoga, exercise, wellbeing classes;*
- *Programs promoting social interaction and connecting residents;*
- *Local activities and engagement for youth;*
- *Bookable meeting space - e.g. for local community groups, resident or tenant groups, children’s birthday parties;*
- *1:1 service delivery and support, for example:*
 - *Financial counselling;*
 - *Centrelink worker;*
 - *DHHS housing worker;*
 - *Other outreach services - e.g. Camcare.*

Management / operation:

- *DHHS retains ownership;*
- *Council role?*
- *Day-to-day management, program delivery / service coordination?*

Space requirements:

- *Accessed at ground level, external to the building; visible, easy to find, accessible and welcoming entrance;*
- *Centrally located and accessible for residents of all tenure types; open to the broad community;*
- *Plenty of windows / access to natural light and block-out blinds on windows;*
- *Adjacent to outdoor community space - e.g. linking indoor and outdoor community spaces - could include landscaping, shaded seating area, public BBQ, etc.;*
- *Larger multipurpose room, minimum size 60sqm*
 - *Furnished with:*
 - *Flip tables;*
 - *Stackable chairs + chair trolley;*
 - *Basic AV setup (i.e. projector and screen);*
 - *Kitchenette including (minimum):*
 - *Sink with hot and cold Zip taps;*
 - *Dishwasher;*
 - *Fridge;*

- *Cabinetry - shelves / cupboards - stocked with appropriate crockery (including glasses, cups, plates, cutlery etc.);*
- *Storage adjoining to multipurpose room - size sufficient to store chairs and other equipment - include some shelving;*
- *Smaller office or consultation room, soundproofed for privacy, adjoining multipurpose room - e.g. for 1:1 appointment-based service delivery*
 - *Furnished with:*
 - *A desk and desk chair;*
 - *Chairs and/or lounge and smaller meeting table, appropriate to 1:1 service delivery;*
- *Durable floor covering appropriate to diverse activities - e.g. yoga or exercise classes, art classes, playgroups or other children's activities;*
- *Adjoining but discrete access to M and F toilets, both with baby change, and an accessible toilet with shower facility;*
- *Adjacent parking including a loading bay;*
- *Design with consideration for safety / security of service delivery workers and users - e.g. lines of sight, duress system, adequate lighting etc.;*
- *Neutral design / decoration to ensure the space is appropriate for all ages use."*

Planner's Comments:

Officers recommend the Incorporated Document be amended to include conditions requiring the provision of an indoor multi-purpose space for use by residents of the development and surrounding area and by local community groups.

EXTERNAL REFERRALS

Head, Transport for Victoria

Due to the number of dwellings proposed exceeding 60, the Head, Transport for Victoria would be a determining referral authority pursuant to Section 55 of the Act, if the Planning Scheme provisions were binding on the application.

There is no information to indicate the application has been referred to the referral authority by DHHS or DELWP for their consideration and response.

GOVERNANCE ISSUES

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights contained in the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

The officers responsible for this report have no direct or indirect interests requiring disclosure.

CONSIDERATIONS

In assessing this application, consideration has been given to the following:

- The objectives of planning in Victoria as detailed in Section 4 of the *Planning & Environment Act 1987*;
- Section 60 of the *Planning & Environment Act 1987*;
- The relevant provisions and decision guidelines of the Boroondara Planning Scheme including the decision guidelines of Clause 65;
- The submissions received.

This proposal raises significant adverse social impacts. These matters are addressed in the planning policy assessment below.

OFFICER ASSESSMENT

Appendix D: Officer-recommended tracked changes version of Incorporated Document

PLANNING POLICY FRAMEWORK

It is the view of officers the planning assessment prepared on behalf of DHHS fails to provide a balanced assessment of the development against the provisions of the PPF, as it glosses over some areas of tension between the proposal and the desired policy outcomes.

Clause 11 - Settlement

The development is consistent with the State policy outcomes described in Clause 11.01-1S, which seek to “*promote and capitalise on opportunities for urban renewal and infill development.*” The Incorporated Document facilitates an increased residential density, from 56 dwellings to 178, in a location within walking distance of the Ashburton activity centre, public transport and public open space and assists with the creation of a “*walkable neighbourhood*”, as sought by Clause 11.02-2S.

However, it is the view of officers there is a conflict between the proposal in its current form, and the outcomes sought by Clause 11.03-1S, which seeks to “*improve access by walking, cycling and public transport to services and facilities.*” The Gardiners Creek Trail shared path runs along the frontage of the site, connecting with the Anniversary Trail in the west, which in turn provides an off-road connection into Ashburton activity centre.

Not only will the development cause a very high volume of vehicle traffic to cross the shared path at a driveway-style intersection (as distinct from a street intersection),

Council's Traffic Engineers have advised the post-development traffic volumes within Markham Avenue will exceed the engineering capacity of the road.

The Traffic Engineers recommend localised road carriageway widening adjacent to the site, to provide the necessary passing opportunities for vehicles while maintaining on-street parking on the northern side of the street. Widening the road carriageway will affect the ability to maintain the Gardiners Creek shared path in its current location. Council's Traffic Engineers explored alternative alignments, such as along the creek itself, however these were ruled out for various reasons⁹. It is considered necessary to both widen the road carriageway and relocate the shared path to ensure the safety of all road and pathway users. Officers have adopted the recommended alignment and road design set out in Appendix C to this report, which partially relies on land within the subject site.

Clause 12 - Environmental and landscape values

In comparison with the earlier proposals, which retained only seven of the existing 82 trees on the site, it is understood the current site layout allows for the retention of between 20-25 existing trees. However, officers are critical of the proposal as this measure is not embedded in the Incorporated Document in any manner.

Proposed condition 4.2.10n in the Incorporated Document requires the preparation of a Tree Management Plan but does not nominate the trees that are to be retained or protected. The submitted planning report states *"20-25 moderate to high value trees are to be retained."*¹⁰ In addition to failing to disclose which trees are retained, the report does not disclose whether any other moderate or high value trees are proposed to be removed. Nor does the Planning Report or Incorporated Document require nearby trees on abutting properties to be protected during construction.

The southern boundary of the site is adjacent to Markham Reserve, which contains Gardiners Creek. In its current state, the treed landscape within the subject site blends seamlessly with the park and creek environs.

⁹ Most notably, due to flooding risk, but also due to lack of natural surveillance and a circuitous route.

¹⁰ Page 10, C321boro Planning Report.

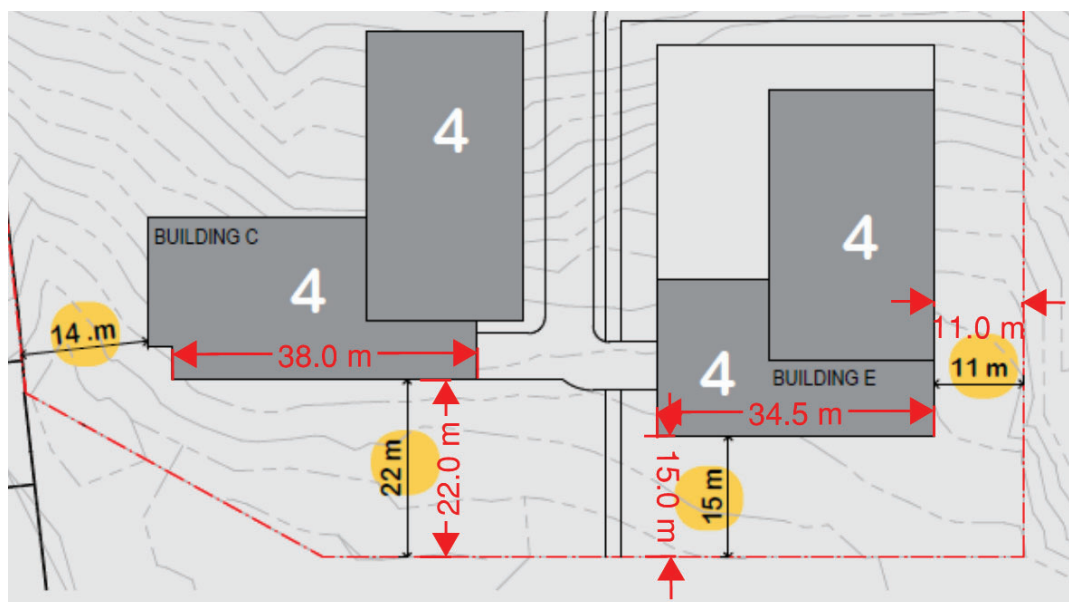


Above: The southern boundary of the subject site, viewed from Markham Reserve, looking north

Clause 12.03-1S seeks *“to protect and enhance river corridors, waterways, lakes and wetlands”*, including by ensuring *“development is sensitively designed and sited to maintain and enhance environmental assets, significant views and landscapes along river corridors...”* Buildings C and E are each proposed to have 4-storey interfaces with the creek corridor. The Building Envelope Plan shows they are to be setback 22m and 15m from the southern boundary, respectively.

Factors that may cause the development to unreasonably affect the amenity and aesthetic of the creek corridor include building scale, visual bulk, tree removal, replacement tree planting and overshadowing.

Assuming a 4-storey building has a maximum overall building height equivalent to 15.0m (on a sloping site, such as this), Rescode Standard B17 would recommend a minimum setback of 10.09m from the southern boundary. The proposed setbacks exceed the minimum recommended by Standard B17. However, the breadth of the buildings is of concern. Officers have scaled the width of Buildings C and E on the Building Envelope Plan and found them to be in the order of 38.0m and 34.5m wide, respectively.



Above: To-scale dimensions of the width of the southern facades of Buildings C and E, extracted from the Building Envelope Plan in the Incorporated Document

The Building Envelope Plan permits the southern façade to have a flat and sheer 4-storey alignment. There are no buildings in the local area which provide context for the scale and breadth of proposed buildings. Nor is there any strategic imperative to depart from the existing domestic residential scale or rhythm of building spacing around the perimeter of the site. Notwithstanding the proposed setbacks from the southern boundary, and as a consequence of the uncertainty in relation to the location of trees to be retained that might otherwise filter views of the buildings from Markham Reserve, it is recommended the Incorporated Document be amended to include a condition requiring the southern façades of Buildings C and E to be articulated vertically and horizontally, to meet the provisions of Clause 12. Officers envisage this should involve the creation of recesses in the building alignment, together with articulation and visual interest through the application of varied materials and finishes.

No shadow plans have been included in the package of information provided with the Planning Scheme Amendment. Condition 4.2.4 requires *“the development should not overshadow Markham Reserve for at least five hours between 9am and 3pm on 22 September.”* However, the wording of the condition is an ineffective tool in preserving the amenity of the park as it creates a vague obligation. Officers have used Bluebeam Revu software to apply overshadowing templates over the Building Envelope Plan. The templates demonstrate the various 4-storey buildings throughout the site will cast shadows over Markham Reserve to the south-west and east of the site and over selected adjacent residential properties between the hours of 9am-3pm at the September Equinox. In most instances, the extent and duration of overshadowing is limited to one hour of the day (either between 9am-10am, or between 2pm-3pm). The

extent and duration of shadows cast by Buildings A, C, D and E are of concern. A more detailed assessment of the impact of overshadowing is provided later in this report.

Condition 4.2.9 in the Incorporated Document requires *“the setback from the east boundary must allow for safe and viable planting of canopy trees to provide a ‘green edge’ buffer to Markham Reserve, as determined by a qualified landscape architect or arborist.”* Although it would be appropriate, the condition fails to apply to the southern interface with the park. Together with the uncertainty surrounding the location of trees to be retained, the Incorporated Document does not include appropriate conditions to ensure the creek corridor is adequately protected or enhanced.

In its current form, it is unclear how the Department or the Minister will be capable of satisfying themselves the development achieves an appropriate, site-responsive outcome without knowing which specific trees are proposed to be retained or removed, or whether the development will have a detrimental impact on neighbours’ trees. Furthermore, Buildings C and E will have a detrimental impact on the aesthetics and amenity of the creek environs due to their unmitigated sheer scale and breadth.

More information is required from DHHS in relation to tree removal/protection and additional conditions are required in the Incorporated Document to ensure the creek environs are enhanced and protected.

Clause 15 - Built environment and heritage

Urban Design

Clause 15 and its sub-clauses seek to *“promote excellence in the built environment”* and ensure *“all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context.”* In particular, Clause 15.01-2S sets out *“to achieve building design outcomes that contribute positively to the local context and enhance the public realm”* through a number of means, including *“[ensuring] the site analysis provides the basis for the consideration of height, scale and massing of new development”*, not the desired dwelling yield.

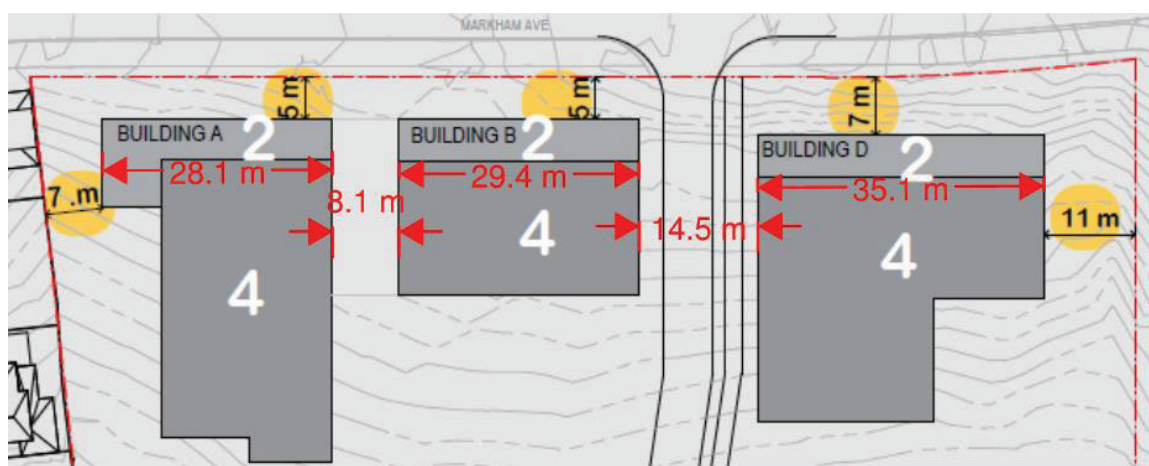
As is already illuminated in this report, officers are of the view the proposal fails to respond appropriately to the Gardiners Creek environs, due to the height and breadth of Buildings C and E, their sheer facades and inadequate information in relation to tree retention/removal and replacement tree planting within the southern boundary setback. Officers also hold concerns with the height and siting of Buildings A, C, D and E, due to the shadows they will cast over the public and private realm.

The concept of locating buildings campus-style throughout the site is supported by officers, as it creates site permeability. The Building Envelope Plan proposes three 2-storey buildings facing Markham Avenue, which rise in height to 4-storeys at their rear. Officers were advised by DHHS that the 4-storey form at the rear of Buildings A, B and

D in-part utilise the fall of the land to achieve their height. This is also supported by officers, as it is consistent with the 2-storey scale of buildings in Markham Avenue. Although the Building Envelope Plan shows Buildings A, B and D also have wide front facades (in the order of between 28m-35m wide) any concerns that officers might have with visual bulk are addressed by Condition 4.2.6, which requires:

“A building with a frontage to Markham Avenue must:

- a) Provide a respectful presentation to the street.*
- b) Include design elements that visually enhance a fine grain appearance and depth of the façade and minimise the perception of wide, flat facades.”*



Above: To-scale dimension of the width of the southern facades of Buildings A, B and D, extracted from the Building Envelope Plan in the Incorporated Document

A more detailed assessment of the proposal against Council’s Neighbourhood Character Policy is provided later in this report.

Energy and resource efficiency

Clause 15.02-1S seeks to “encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions” by various means, including “encouraging retention of existing vegetation and planting of new vegetation as part of development and subdivision proposals” and improving “the energy, water and waste performance of buildings and subdivisions through environmentally sustainable development.” The Incorporated Document does not prescribe any ESD measures, other than requiring “a stormwater drainage system incorporating integrated water management design principles” at Condition 4.2.10k. Officers consider the condition to be inadequate with regard to the water sensitive urban design objectives described at Clause 53.18 and insufficient as the solitary response to the objective of Clause 15.02-1S. Officers recommend Condition 4.2.10k be reworded and additional conditions requiring the implementation of ESD measures be inserted into the Incorporated Document.

Aboriginal cultural heritage

The entire site is located within an area of Aboriginal cultural heritage sensitivity, due to its proximity to Gardiners Creek. The proposed development is not exempt from requiring an approved Cultural Heritage Management Plan (CHMP). The submitted Planning Report relies upon the CHMP approved as part of Amendment C251¹¹.

Clause 15.03-2S requires *“the protection and conservation of places of Aboriginal cultural heritage significance”* by ensuring *“that permit approvals align with the recommendations of any relevant Cultural Heritage Management Plan approved under the Aboriginal Heritage Act 2006.”* The approved Cultural Heritage Management Plan found *“no new Aboriginal archaeological places”* and *“no Aboriginal cultural heritage material”* within the subject site. The report concludes, *“the likelihood of further cultural heritage material in the Activity Area is low due to the disturbance that has occurred. It is unlikely that isolated artefacts remain in intact contexts across the Activity Area.”* However, the report includes ongoing obligations relating to any unexpected discovery of Aboriginal cultural heritage material that may be discovered during the course of the development. Officers note the conditions in the proposed Incorporated Document fail to require the development to be carried out in accordance with the contingency requirements and recommendations set out in the approved Cultural Heritage Management Plan.

Clause 16 - Housing

The objectives of Clause 16 include that *“planning for housing should include the provision of land for affordable housing.”* The current proposal includes *“approximately 111 of the dwellings in the development... to be for public housing”*, at Condition 4.2.2. This is almost double the number previously proposed (56). However, officers note there is no apparent reason for the inclusion of the word *“approximately”* in this context. In addition, the Incorporated Document does not define *“public housing”*.

If Council accepts it is appropriate for a portion of the proposed dwellings to be sold privately at market-rates, it is recommended the word *“approximately”* be deleted from the Incorporated Document and replaced with *“not less than”*.

Clause 16.01-1R seeks to create certainty by allowing *“for a range of minimal, incremental and high change residential areas that balance the need to protect valued areas with the need to ensure choice and growth in housing.”* Council implements this through its Neighbourhood Character Policy. As an anomalously large land holding, Council's choice of land zoning (GRZ4) and policies recognise the development potential of the site is different to that of neighbouring properties with regard to building

¹¹ Cultural Heritage Management Plan 14170, dated 18 April 2016, prepared by Biosis, approved by the Director Heritage Services Aboriginal Victoria on 10 May 2016.

scale and density. However, the site's potential is not unmitigated. This is supported by Clause 16.01-3S, which encourages *"the development of well-designed medium-density housing that respects the neighbourhood character."* An assessment of the proposal against the requirements of the Neighbourhood Character Policy is provided later in this report.

Notwithstanding any reservations Council or the community may have in relation to the provision of private dwellings on publicly owned land, it is acknowledged the delivery of increased residential densities (of any tenure) at this location is supported by State and Local policy due to its location within an established residential area, in proximity to employment opportunities, public transport, community services and recreational facilities.

Housing affordability

Clause 16.01-4S seeks *"to deliver more affordable housing closer to jobs, transport and services."* Strategies to achieve this objective include:

- *[Increasing] the supply of well-located affordable housing by:*
 - *Facilitating a mix of private, affordable and social housing in suburbs, activity centres and urban renewal precincts.*
 - *Ensuring the redevelopment and renewal of public housing stock better meets community needs.*
- *[Facilitating] the delivery of social housing by identifying surplus government land suitable for housing.*

The strategies at Clause 16.01-4S were inserted into the Victorian Planning Provisions by Amendment VC148 on 31 July 2018 and appear specifically tailored to provide a basis for the State Government's Public Housing Renewal Program (PHRP). The Markham project is not part of the PHRP, but has many similarities, such as being a proposal for a mix of public/private apartment developments on land owned by DHHS, facilitated by planning a scheme amendment that makes the Minister for Planning the responsible authority. DHHS states the PHRP is *"part of Homes for Victorians, a \$2.7 billion package of initiatives aimed at addressing housing and homelessness."*¹² The main difference between PHRP matters and Amendment C321boro is the Minister appointed an Advisory Committee to review the merits of the PHRP projects.

Homes for Victorians - Affordability, Access and Choice (Victorian Government, 2017) is a reference document listed at Clauses 16.01-1S and 16.01-4S. The document is a Government-adopted strategy for providing improved housing choice. One of the key tenants of the strategy is *"increasing the supply of housing through faster planning"* by reducing uncertainty and decreasing the time and cost of obtaining planning approval. The strategy seeks to fast-track social housing redevelopments, stating these *"will be*

¹² <https://www.dhhs.vic.gov.au/public-housing-renewal-program> (updated on 31/07/2019)

the first implementation priority for streamlined planning approvals", going on to state *"this will be facilitated by consideration of social housing redevelopments through an advisory committee process."* To date, the Minister has not sought advice from either an independent Panel or Advisory Committee, in relation to the Markham project. If the Minister were to approve C321boro following the process proposed by DHHS, he would be inconsistent with the Government's own policy document, which spruiks the benefits of *"good design, public consultation and consistent decision making"*¹³ in the delivery of social housing projects.

Clause 18 - Transport

There are two critical matters arising from the project directly related to transport systems. Firstly, the impact of increased traffic volumes on the local road network and managing its impact on the safety and operation of the Gardiners Creek Shared Path. Secondly, the supply and allocation of car parking and bicycle facilities for future residents and their visitors. Of relevance, Clause 18.01-2S seeks to *"ensure that pedestrian and cyclist access to public transport is facilitated and safeguarded."* The development will have a direct impact on the safety and operation of the Gardiners Creek Shared Path, which provides an important off-road link to nearby Alamein Station, due to the high volume of vehicles which will cross over the shared path at the driveway entrance for the site. The Incorporated Document does not recognise the importance of this infrastructure, or compel the future developer to have regard to its function.

Clauses 52.06 and 52.34 are the Particular Provisions which set out the applicable car parking and bicycle facilities requirements for multi-dwelling residential development. An assessment of those clauses is provided later in this report.

Clause 19 - Infrastructure

Open space

It is the view of officers the project will erode the interconnections between important areas of open space through its failure to address the impact of the development on the Gardiners Creek shared path. At a local level, the shared path provides safe off-road access to Council's award-winning regional playground to the east of the site, residential areas and the Ashburton activity centre to the north. The path's connection with the Anniversary Trail and Main Yarra Trail means the path also serves as important link to inner-Melbourne's network of regional parks. Clause 19.02-6S seeks to *"ensure that open space networks are linked, including through the provision of walking and cycling trails"* and *"incorporate, where possible, links between major parks and activity areas, along waterways and natural drainage corridors, connecting places of natural*

¹³ Page 25, Fast tracking social housing redevelopments, *Homes for Victorians - Affordability, access and choice*, Victorian Government, 2017

and cultural interest". Officers have identified the development will have a detrimental impact on the safety and operation of the shared path, due to the high number of vehicle movements crossing the path to/from the development site and the inadequate road width in front of the site. Any decrease in the safety of the shared path risks undermining the value it provides in linking valued areas of open space within the municipality.

Council's Traffic Engineers have recommended localised modifications to the road width adjacent to the site and the consequential relocation of the shared trail partially onto land within the subject site. In addition, the plan prepared by Council's Traffic Engineers at Appendix C to this report details recommended design treatments for the accessway into the site, such as a raised threshold treatment, 'give way' line marking, a signalling system and fencing design restrictions, to prioritise shared path-user safety. Officers recommend these design requirements and modifications be embedded into the Incorporated Document. Council's Traffic Engineers estimate the cost of the road and shared path works would be in the order of \$300,000.

Development and infrastructure contributions plans

Clause 19 requires "*planning authorities*" to "*consider the use of development and infrastructure contributions in the funding of infrastructure.*" Development contributions are payments or in-kind works, facilities or services provided by developers towards the supply of infrastructure required to meet the future needs of the community. Sub-section 9 of the "*Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans*"¹⁴ exempts "*housing provided by or on behalf of the Department of Health and Human Services*" from an infrastructure contribution. The Ministerial Direction only applies to declared Metropolitan Greenfield Growth Areas, but provides a useful distinction between imposing levies on housing provided on behalf of DHHS (i.e. public housing, which in itself has a community benefit, so might be considered community infrastructure) and other housing tenures. This approach was recommended by the Minister's Advisory Committee in respect of projects they reviewed under the Public Housing Renewal Program.

Chaired by Kathy Mitchell, the Social Housing Standing Advisory Committee was appointed to provide the Minister with advice in relation on the redevelopment of nine social housing sites in Melbourne, including Bills Street, Hawthorn, but not including Markham Avenue. The Advisory Committee hearings for Bills Street have not yet taken place, however hearings at other sites including New Street, Brighton (City of Bayside) have taken place. The Advisory Committee heard submissions that the redevelopment of the Estates "*will result in rapid and significant population increase*" and "*that there has been no targeted increase in infrastructure, or infrastructure funding, to support the population increase.*" The Advisory Committee was of the view the on-site development infrastructure, such as a local street or open space, does not satisfy the developer's

¹⁴ Richard Wynne MP, Minister for Planning, 1 July 2018.

obligation to contribute to shared community and related infrastructure. The Advisory Committee was *“not persuaded that the provision of social housing, whether it is gifted or not to the State, should obviate the need for the private developer to contribute to shared infrastructure that will be used by residents of the private apartments.”* The Advisory Committee concluded, *“the fact is, the additional population will generate additional demand for community and related infrastructure and services, which will need to be provided by Councils. In the Committee’s view, there should be a mechanism for funding the additional community and related infrastructure that will be required.”*

The Advisory Committee made the following recommendation to the Minister for Planning:

“Prior to the approval of each Amendment, the Department of Health and Human Services work with the relevant Council to reach agreement regarding a development contribution in respect of the private component of each redevelopment proposal, and make any amendments to the relevant Development Plan Overlay schedule as required.”

The Minister for Planning did not accept it was necessary to enshrine a development contributions levy into the approved Amendments, noting DHHS *“is engaging with each respective council to determine an appropriate contribution.”*¹⁵

DHHS has not engaged with Council in respect of any appropriate development contribution for the redevelopment of Markham Avenue. Therefore, officers recommend the Incorporated Document including conditions requiring a development contribution (either the setting aside of a community room within the development, designed in consultation with Council’s Community Planning and Development Department, or payment of a financial contribution to Council in lieu) in respect of the private component of the development.

LOCAL PLANNING POLICY FRAMEWORK - MSS & LOCAL PLANNING POLICIES

When the new-format residential zones were introduced in Boroondara in 2014, Council sought to balance the need to accommodate increased residential densities against retaining the high levels of amenity and attractive suburban residential character the municipality renowned for. When it was first introduced, the widely used Neighbourhood Residential Zone (NRZ) included a mandatory requirement restricting the maximum number of dwellings permitted per allotment to two. It was apparent to officers there were a number of anomalously sized allotments located in areas otherwise best suited to the NRZ that were clearly physically capable of accommodating substantially more

¹⁵ *“Response to the Social Housing Renewal Standing Advisory Committee”*, Richard Wynne MP, Minister for Planning, 22 March 2018.

than two dwellings without affecting character or residential amenity. In response, Council created its Schedule 4 of the GRZ.

The application of the GRZ4 is described in Clause 22.05-7 of Council's Neighbourhood Character Policy, which says the GRZ4 *"consists of 'super-sized lots' that are of a size incongruous with the surrounding allotments. These sites are generally larger than 4,000 square metres in area."* At the time the GRZ4 was first implemented by Council in 2014, the GRZ included a discretionary requirement in relation to the overall height in metres and number of floors of dwellings and residential buildings, with the option to include mandatory maximum requirements. Given the preferred character for land within the GRZ4 was *"to allow for development to occur at greater height and density than the surrounding area without detrimentally impacting on the preferred character of the precinct"*, Council did not specify a mandatory maximum building height in metres or storeys in Schedule 4. It was only when the Government introduced Amendment VC110 on 27 March 2017 when the 12m/3-storey height controls became mandatory restrictions. In effect, the Government's own planning scheme amendment necessitated this current amendment and created a conflict with the outcomes sought by Council's Neighbourhood Character Policy, insofar as it relates to land within the GRZ4.

Some residents have raised concerns with the height of buildings allowed by the proposed Incorporated Document because, at 4-storeys, they exceed the now mandatory height limit of 3-storeys. When the history of the GRZ4 is understood, it is clear to officers it was never Council's intention to apply a unilateral height control on a large site such as this. That does not mean height is unfettered. It is policy to *"ensure development around the perimeter of 'super-sized lots' is consistent with and reinforces the precinct's preferred character"* and to *"support increased building heights within a site where it can be demonstrated that the increased height will not adversely impact the precinct's preferred character."* Officers have undertaken an assessment of the proposal against Clause 55 (provided later in this report) and find the proposed building envelopes will cause a detrimental impact on the amenity of some adjacent residential properties to the west and on the Markham Community Garden, to the east. As a consequence, officers do not support the proposed extent of the 4-storey envelope of Buildings A, C, D and E, due to the extent and duration of shadows that would be cast by these buildings. We note it may be possible to address the overshadowing issue through a combination of reduced building heights and increased setbacks.

Setbacks of 22m and 15m are proposed from the southern boundary of Buildings C and E, respectively, both of which are proposed to be 4-storeys. Earlier in this report, officers noted concerns with the height of these buildings, due to overshadowing, and also recommended the Incorporated Document be amended to include the following conditions:

- *The setback from the south boundary must allow for safe and viable planting of canopy trees to provide a 'green edge' buffer to Markham Reserve, as determined by a qualified landscape architect or arborist.*

- *The southern façades of Buildings C and E must be articulated vertically and horizontally, to ensure building mass is modulated in a manner that reflects the preferred character and spacing of buildings in the local area.*

Subject to the inclusion of these conditions and the overshadowing issue being addressed, officers are satisfied the proposed height and siting of buildings is consistent with the outcomes sought by Council's Neighbourhood Character Policy.

PARTICULAR PROVISIONS

Clause 52.05 - Advertising signs

The Incorporated Document and Planning Report do not disclose details of any proposed advertising signs, however condition 4.2.12 contemplates the display of signs, affixed to hoarding or otherwise located on the land.

Officers consider it inappropriate for the provisions of Clause 52.05 to not be binding on the land in the absence of any detail of the proposed signs. Officers assume sub-clause 4.2.12 of the Incorporated Document is intended to enable the display of signs promoting the sale of dwellings on the land throughout the construction period, and perhaps for some time after their construction. However, in its proposed form, the Incorporated Document would enable the display of any type, size and number of advertising signs.

It is the officer's experience with the revoked amendments (C251 and C298) that it was intended to install a number of very large advertising signs attached to hoardings around the perimeter of the site, including facing directly into Markham Reserve. As part of Amendment C251, it was disclosed the advertising signs were to promote the sale of dwellings on the land and would have areas of 10.5sqm (Sign A), 10.5sqm (Sign B), 142.8sqm (Sign C) and 91.35sqm (Sign D), for a total advertisement area of 255.15sqm. Sign A was to be attached to the eastern boundary, facing directly into Markham Reserve. Pursuant to Clause 52.05-10, each of these signs would require a planning permit, as they exceed 10sqm in area.

With no details of any proposed advertising signs disclosed in the Amendment material, officers consider it to be manifestly unfair and a denial of natural justice for the development to be made exempt from the usual advertising sign permit requirements, prohibitions and decision guidelines, including the policy directions contained in Council's Advertising Signs Policy.

It is recommended the Incorporated Document be re-drafted so the provisions of Clause 52.05 (Advertising signs) and 22.01 (Advertising signs policy) are still binding on the land and no signs be permitted to face directly into Markham Reserve. Alternatively, new conditions should be inserted requiring plans of any proposed advertising signs to

be submitted to the responsible authority for approval and the provisions of these clauses to be considered and applied as a decision guideline.

To protect the visual amenity of the local area, it is recommended the Incorporated Document include conditions prohibiting the display of advertising signs facing into Markham Reserve and restricting the size and number of signs facing Markham Avenue (a 'building envelope' for the signs, as such). Furthermore, it would be inappropriate for any signs to be displayed on the land beyond the scope of what might reasonably be construed as related to the proposed development. Therefore, it is recommended the Incorporated Document specifically only grant permission for the display of signs promoting the sale of dwellings on the land.

Clause 52.06 - Car parking

Provision of on-site car parking

The submitted Planning Report states the redevelopment will incorporate a total of 160 car spaces, consisting of 76 car spaces for private dwellings, 67 car spaces for public dwellings and 17 visitor car spaces. However, this commitment is not embedded in the Incorporated Document. Instead, the Incorporated Document requires a Traffic Management Report to be prepared that addresses matters of car park and accessway design, but fails to nominate a minimum car parking requirement. The Planning Report states the private apartment car spaces will be allocated in accordance with the rates set out in Clause 52.06, but the public apartment car spaces will be allocated at a rate of 0.6 car spaces per apartment (i.e. a dispensation of 0.4 car spaces per apartment, assuming there are no 3-bedroom public apartments).

The provision of 17 visitor car spaces for the development exceeds the requirements of Clause 52.06¹⁶, which does not require any on-site visitor car parking. It is not known whether the visitor car parking would be distributed throughout the site to ensure private and public apartment visitors have equitable convenient access.

By making the planning scheme not binding on the land and failing to concurrently embed a minimum number of car spaces for the development in the Incorporated Plan, DHHS would be entitled to provide no on-site car parking for any of the 178 apartments, if it were to choose to do so. The provisions of the Incorporated Document are incomplete and inadequate to manage a development on the basis of such limited publicly available information and documentation. Officers recommend the Incorporated Document be amended to incorporate a minimum car parking requirement consistent with the rates set out in Clause 52.06, irrespective of the residential tenure-type.

¹⁶ The car parking rate in Column B applies because the site is located within the Principal Public Transport Network Area, due to its proximity to Alamein Railway Station, approximately 373m walking distance to the north-west. The Column B rate for dwelling visitors is zero car spaces. The Column B rate for dwelling residents is 1 car space to each 1 or 2-bed dwelling and 2 car spaces to each 3 or more bedroom dwelling. The Column B rate for dwelling residents is the same as the Column A rate for residents.

Council's Traffic Engineers do not support the proposed car parking dispensation for public housing residents, on the basis that the car ownership statistics relied on by the applicant represent only a snapshot in time. The *Social Housing Renewal Standing Advisory Committee Common Issues* report noted and gave weight to the comments of Submitter 158 from Flemington Estate. The comments of the Submitter are relevant to Markham Estate:

- *Car ownership rates are not static;*
- *Many Estate residents aspire to owning a car in order to gain employment and convenience. A lack of car ownership is also an indicator of current disadvantage;*
- *The social repercussions of not planning for equitable access to car parking should be seriously considered ... The impact of illegal parking on other community members, including private tenants and residents of neighbouring streets, could create localised tensions also.*¹⁷

On this basis, officers do not accept the proposed provision of car parking at a rate of 0.6 car spaces per public housing apartment will meet the reasonable needs of future public residents without causing material detriment to other residents within or nearby to the development (also noting this reduced rate is not embedded in the Incorporated Document as a minimum requirement).

Furthermore, officers have an in-principle objection to the treatment of public housing differently from private housing. The Planning Report in support of the project states, *"the development is proposed to be tenure blind"*¹⁸. Again, we note that although DHHS rely on this as a societal virtue of the development, the commitment is not embedded in the Incorporated Document. Officers are of the view the concept of 'tenure blind' to which the project aspires, extends to more than simply the appearance of the buildings. It also extends to access to facilities, including communal open space and on-site car parking for residents and their visitors. People in the private housing market are better positioned to make an informed choice about whether they wish to reside in a home with no allocated car parking. The people who are reliant on public housing have less choice about where they live and are less able to decline housing that does not suit their needs with respect to access to on-site car parking.

Car parking and accessway design

Officers object to the requirements of Clause 52.06-9 (Design standards for car parking) being omitted from Section 4.2 of the Incorporated Document as a condition applying to the use and development of the land.

¹⁷ Page 27, Section 4.2 Parking rates, sub-section (i) Evidence and submissions, *Social Housing Renewal Standing Advisory Committee Common Issues*, Report No. 1, 10 November 2017

¹⁸ Page 7, Section 4 - The Proposal, Amendment C321, Markham Housing Estate Planning Report, author and date unknown.

With regard to vehicle access, Council's Traffic Engineers support the provision on only one accessway from Markham Avenue, as it confines the conflict point with the shared path to a single point. Earlier iterations of the development proposed two access points. Officers note there is no specific requirement within the proposed Incorporated Document with regard to vehicle access. The Planning Report appears to be satisfied the Building Envelope Plan (which provides an indicative location of a vehicle accessway) can be relied upon for this purpose, however officers are of the view specificity is required. Officers recommend the Incorporated Document be amended to incorporate the accessway design requirements recommended by Council's Traffic Engineers and depicted in Appendix C to this report.

Traffic congestion

The submitted Planning Report fails to undertake any assessment of the impact traffic generated by the development will have on the safety or operation of the local road network.

In the vicinity of the site, Markham Avenue has a road carriageway width of 6.1m (measured from face-of-kerb to face-of-kerb), with parking permitted on one side of the street only (the northern side). Based on these characteristics, Markham Avenue is classified as an "Access Street - Level 1" by Table C1 of Standard C21¹⁹, which has an "indicative maximum traffic volume for 24-hour period" of 1,000 to 2,000 vehicles per day.

Traffic counts carried out by Council's Traffic Engineers in November 2016 indicate Markham Avenue²⁰ carries approximately 1,304 vehicles per day. Factoring in two percent growth year-on-year to 2020, this can reasonably be expected to have increased to approximately 1,410 vehicle movements per day, including 141 movements in each AM and PM peak hour. Based on the design parameters set out within Clause 56, Markham Avenue is currently comfortably operating within its optimal design limitations.

Council's Traffic Engineers estimate each apartment in the proposed development will generate in the order of six vehicle movements per day, for a total of 1,068 vehicle movements per day, including up to 106 movements in each AM and PM peak hour. Consequently, the post-development traffic volumes within Markham Avenue are expected to increase to 2,478 daily movements, including 248 movements in each peak hour. This is approximately 23% above the recommended upper limits of the streets' engineering capacity. It is the view of Council's Traffic Engineers that without traffic management intervention, the safety and operation of the local street will be detrimentally affected, together with the amenity of local residents. The proximity of the

¹⁹ Clause 56.06-8 - Lot access objective. Clause 56 is known as "Rescode" for subdivision applications.

²⁰ Between Ambon Street and Victory Boulevard

shared path facility is considered an additional imperative for ensuring the operation of the local road network remains safe and efficient.

Council's Traffic Engineers suggest the traffic management response necessary to address this concern is the localised widening of the road carriageway and relocation of the shared path partially to within the subject site, in accordance with the design described in Appendix C, attached to this report. The proposed widening will enable simultaneous two-way movement in the street, even if cars are parked on the north side of the street, relieving congestion.

Clause 52.17 - Native Vegetation

Clause 52.17 aims to ensure permitted clearing of native vegetation results in no net loss to Victoria's biodiversity as a result of the removal of native vegetation. Applicable guidelines adopt a three-step approach:

1. ***Avoid*** the removal, destruction or lopping of native vegetation.
2. ***Minimise*** impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.
3. *Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.*

(Emphasis added)

The submitted Planning Report notes *"20-25 moderate to high value trees are to be retained."*²¹ The report does not describe whether any of the trees to be removed are native. The report also fails to provide details of the location or species of the 20-25 trees purported to be retained. Officers note, with concern, a footnote in the report in relation to landscaping indicates, *"numbers indicated above are subject to change as a result of detailed design development."*²²

As highlighted in this report, the Incorporated Document and Planning Report each fail to provide details of the trees to be retained and removed from the site, or details of the trees located on neighbouring properties that require protection from the impacts of the development.

The Incorporated Document includes the following condition in relation to native vegetation offset:

"Native vegetation offsets must be provided in accordance with the Permitted clearing of native vegetation - Biodiversity assessment guidelines (Department of Environment and Primary Industries,

²¹ Page 10, Planning Report, Amendment C321, author and date unknown.

²² Page 10, Planning Report, Amendment C321, author and date unknown.

September 2013), except as otherwise agreed by the Secretary to the Department of Environment, Land, Water and Planning.”

It is not known how DELWP or the Minister, in their assessment of this proposed Amendment, could be satisfied firstly that the removal of native vegetation has been avoided, and secondly, that the impacts from the removal of native vegetation have been minimised, with no information provided in relation to the proposed retention or removal of native vegetation.

As noted earlier in this report, the failure to include tree protection/retention details (including a Tree Protection Plan) in the Incorporated Document, is one of seven critical omissions officers have identified in the Incorporated Document.

More information is required from DHHS in relation to tree removal/protection and additional conditions are required in the Incorporated Document to ensure the creek environs are enhanced and protected. Until such time as this information is provided, officers cannot reasonably form a view on the merits of the proposal.

Clause 52.34 - Bicycle facilities

The submitted Planning Report indicates a total of 54 bicycle parking spaces are to be provided onsite. However, this commitment is not embedded in the Incorporated Document. The report also indicates bicycle storage space is to be located within the basement, however no details are provided of how the bicycle spaces will be allocated between public and private housing and visitors.

At page 17 of the submitted Planning Report, it incorrectly states *“the proposal has a statutory requirement of 12 spaces.”* Pursuant to Clause 52.34, in developments of four or more storey, one bicycle space is required for residents to each five dwellings and once bicycle space is required for visitors to each 10 dwellings. This equates to a statutory requirement of 36 bicycle parking spaces for residents²³ and 18 bicycle spaces for visitors, based on a total of 178 dwellings. Officers concede not all of the buildings proposed are four or more storeys in their entirety, however are of the view that as each individual building envelope attains a height of up to 4-storeys, the calculation is required to be based on all dwellings.

It is possible, but not likely, the conclusion relied on by DHHS that the statutory requirement of 12 bicycle spaces is based on only those dwellings located within the 4-storey buildings parts of the buildings. However, if this is the case, the DHHS assessment is based on information that has not been made available to Council.

²³ Pursuant to Clause 52.34-5, *“if in calculating the number of bicycle facilities the result is not a whole number, the required number of bicycle facilities is the nearest whole number. If the fraction is one-half, the requirement is the next whole number.”*

By making the planning scheme not binding on the land and failing to concurrently embed a minimum number of bicycle parking spaces for the development in the Incorporated Plan, DHHS would be entitled to provide no on-site bicycle spaces for any of the 178 apartments, if it were to choose to do so. As with car parking facilities, the provisions of the Incorporated Document are incomplete and inadequate to manage a development on the basis of such limited publicly available information and documentation. Officers recommend the Incorporated Document be amended to incorporate a minimum bicycle facilities requirement. Notwithstanding that it would meet the statutory requirement set out in Clause 52.34, officers are of the view the provision of 54 bicycle parking spaces is inadequate. In circumstances where DHHS are proposing some dwellings not be allocated an on-site car space (albeit, this is not supported by officers) officers are of the view a secure bicycle parking space should be provided to each dwelling without a car space, in addition to 1/5 spaces for residents and 1/10 spaces for visitors. This is consistent with the approach recommended by the Social Housing Renewal Standing Advisory Committee. We also note Clause 52.34-5 states a bicycle space for a resident *“must be provided either in a bicycle locker or at a bicycle rail in a lockable compound.”* Officers therefore recommend the Incorporated Document be amended to require the design of bicycle facilities for residents and visitors be in accordance with the requirements of Clause 52.34-5 and Clause 52.34-6. Bicycle facilities directional signage should also be provided, in accordance with Clause 52.34-7.

Clause 55 - Rescode

Without architectural plans, it is not possible for officers to carry out a detailed or accurate assessment against all of the standards and objectives in Clause 55. The Clause 55 Assessment included in the Amendment documents for DHHS includes an assessment which states it is the *intention* the development will comply with those standards it is not currently able to demonstrate compliance. For example, in relation to Standard B28 (Private open space) the Amendment document states, *“it is intended to comply with this objective. This will be worked through at detailed design.”* Officers support the applicant’s intention to comply with the Standards of Clause 55 and note that under section 4.2 of the Incorporated Document, Condition 4.2.3 states, *“the development **should** meet the objectives of Clause 55 of the Boroondara Planning Scheme.” (emphasis added)* Officers are of the view this condition should be amended to change “should” to “must” and to require compliance with the standards, in addition to the objectives of Clause 55.

Officers note the threshold for applying mandatory controls is high, however compliance with the standards and objectives of Rescode should be mandatory (i.e. “must”) rather than discretionary, due to the lack of community consultation or opportunity for third party review at this stage of the proposal, and into the future. In circumstances where there is no community involvement or independent review, it is vital a very high degree of certainty and transparency be locked in by the Amendment approval.

To follow is an assessment of key Rescode Standards.

Standard B1 - Neighbourhood character

Council's assessment of preferred neighbourhood character is informed by the outcomes sought by the Neighbourhood Character Policy for land within the GRZ4. The policy recognises the ability for 'super-sized lots' to accommodate increased height and residential density, while preserving building scale around the site's perimeter in a manner consistent with the prevailing character of the broader area. Officers note the assessment criteria for neighbourhood character is different to those for amenity impacts. While it is the case officers are of the view the building scale is appropriate in terms of neighbourhood character, subject to conditions addressing the massing and articulation of Buildings C and E (with regard to their presentation to the park, to their south), officers have formed the view Building A will cause unreasonable amenity impacts as a consequence of its proposed siting and scale, due to overshadowing of No. 93A Ashburn Grove. It is possible the amenity impacts could be addressed solely by altering the proposed siting of Building A, with no change to its 4-storey height (i.e. by increasing its setbacks from the western boundary). If that were the case, officers would be satisfied with the proposed 4-storey scale of Building A.

Officers note the submissions of some residents, including the Ashburton Residents' Action Group, who call for both buildings in proximity to the western boundary to be restricted to a maximum height of 2-storeys (i.e. Buildings A and C reduced to a maximum of 2-storeys). The residents' call for this change appears to largely be in response to amenity impact concerns (overlooking, visual bulk and overshadowing) in addition to concern with varying a currently mandatory height limit. However, as noted in this report, it was never Council's strategic intention in applying the GRZ4 to this site to mandate a maximum height limit of 3-storeys across the site. Instead, it was Council's intention to provide the flexibility to determine the appropriate building height on a site-by-site basis, subject to the parameters set out in the Neighbourhood Character Policy. In response to the residents' amenity concerns, an assessment against the overshadowing and setback standards of Rescode follows. The assessment raises concerns with the height and siting of Buildings A, D and E, due to the shadows they will cast over the public and private realm, rather than concerns with regard to character.

Officers are of the view the proposal fails to respond appropriately to the character of the Gardiners Creek environs, due to the height and breadth of Buildings C and E, their sheer facades and inadequate information in relation to tree retention/removal and replacement tree planting within the southern boundary setback. Setbacks of 22m and 15m are proposed from the southern boundary of Buildings C and E, respectively, both of which are proposed to be 4-storeys. Earlier in this report, officers noted concerns with the height of Building E, due to overshadowing, and also recommended the Incorporated Document be amended to include the following conditions:

- *The setback from the south boundary must allow for safe and viable planting of canopy trees to provide a 'green edge' buffer to Markham Reserve, as determined by a qualified landscape architect or arborist.*
- *The southern façades of Buildings C and E to be articulated vertically and horizontally, to ensure building mass is modulated in a manner that reflects the preferred character and spacing of buildings in the precinct.*

Subject to the inclusion of these conditions and the overshadowing issue being addressed, officers are satisfied the proposed height and siting of buildings is consistent with the outcomes sought by Council's Neighbourhood Character Policy.

Standard B2 - Residential policy and Standard B3 - Dwelling diversity

The key concern with respect to residential policy is the potential lack of dwelling diversity. It appears the development predominantly consists of one and two-bedroom apartments and may incorporate a small number of three-bedroom apartments (potentially 10 x 3-bedroom apartments, based on officers' assumptions derived from the number of car spaces intended for residents of the private apartments).

When a global view is taken, it is conceded that regardless of the apartment mix, the development contributes to the diversity of housing stock found within Ashburton, which predominantly consists of single, detached dwellings. However, when the site is viewed in isolation, officers are of the view there is an inadequate range of dwelling types proposed. This issue was considered by the Tribunal in the matter of *Caydon Cremorne No.1 Development Pty Ltd v Yarra CC* (known as 'the Nylex site' in Cremorne). In that development a total of 264 apartments were proposed, consisting of 207 x 1-bedroom (78%), 42 x 2-bedroom (16%) and 15 x 3-bedroom (5%). The Tribunal concluded "*there is an unacceptable concentration of one bedroom apartments and that planning scheme policies aimed at facilitating a diversity of housing options is not achieved by this proposal.*" Larger residential developments, such as the one proposed, should provide for a mix of dwelling types to suit single people, family groups of varying sizes, students, the elderly, people of limited mobility and people of low to moderate income. Officers have formed the view the development should incorporate a minimum of 10% 3-bedroom apartments (i.e. not less than 18 x 3-bedroom apartments). Officers are also of the view the 3-bedroom apartments should not be exclusively for the private housing market.

The Clause 55 assessment submitted with the Amendment states, "*the development will provide a range of 1, 2, and 3-bedroom unit types*"²⁴. If this is the case, the conclusion is not corroborated by any other information provided to Council, such as the Incorporated Document.

²⁴ Page 1, Appendix 1, Clause 55 Assessment, Interim Plans Assessment: 15 October 2019, Amendment C321, author unknown.

Standard B6 - Minimum street setback

Buildings A, B and D face Markham Avenue, with respective setbacks of 5.0m, 5.0m and 7.0m. The proposed setbacks exceed the requirements of the Standard, which recommends a minimum setback of 3.0m, based on the setback of the adjacent dwelling to the west, at No. 2A Markham Avenue.

We note Council's Traffic Engineers seek to have the Gardiners Creek Shared Path occupy part of the frontage, to a depth of 1.8m. Officers are of the view this setback should be treated as the new property boundary line. This would mean any setback shown on the Building Envelope Plan from the northern boundary would be a setback from the realigned shared path. This can be achieved with no loss of residential floor area. The affected buildings can simply be moved 1.8m further south, decreasing the internal separation between Buildings A/B and C, and between Buildings D and E. The realigned shared path and change to the siting of Buildings A, B and D can be achieved with no impact on the retention of trees located within the front setback (Tree Nos. 5, 40, 46, and 81). In effect, Buildings A, B and D would be setback 6.8m, 6.8m and 8.8m from the current northern title boundary.

Standard B7 - Building height

This planning scheme amendment is required to enable consideration of building heights in excess of 9m/3-storeys. As stated, officers are of the view the concept of 4-storey built form is consistent with the outcomes envisaged by Council when it applied the GRZ4 zoning to the land, subject to the amenity impacts associated with overlooking, overshadowing and visual bulk being addressed. Although the proposed buildings will be 4-storeys in height, officers are of the view they are not located around the site perimeter, as they have setbacks in the order of 11m - 22m from the perimeter boundaries. This buffer, if appropriately managed via conditions in the Incorporated Document, will act as a sufficient and appropriate landscaped transition-zone.

The provision of 2-storey built form along Markham Avenue is consistent with the character of the street.

Standard B8 - Site coverage

The Planning Report and Clause 55 Assessment provided with the Amendment each state the development will have a site coverage of 34%. If it is accurate, it complies with the Standard, however it is unclear how it has been calculated without architectural plans or adequate dimensions on the Building Envelope Plan.

Using the scaling and measurement tools in the software program, Bluebeam Revue, officers have calculated the floor area of the buildings shown on the Building Envelope Plan to be 912.5sqm for Building A, 624.4sqm for Building B, 1341.1sqm for Building C,

1028.4sqm for Building D and 1158.4sqm for Building E, for a total floor area of 5064.9sqm. This would equate to 34.57% coverage of the site, which has an area of approximately 14,650sqm and is consistent with the figure supplied by DHHS in their submission. However, the DHHS assessment is inaccurate as it fails to include the site coverage caused by the undercroft car parking structure located to the north of Building E. When this is included, the proposed site coverage is found to be 38%. Although still compliant with Standard B8, the inaccuracy is a concern to officers and highlights the benefit of independent scrutiny.

Standard B9 - Permeability

The Clause 55 Assessment provided with the Amendment documents states, *“the proposed development complies with the requirement of the standard for the minimum percentage of pervious surfaces.”* It is not known how such a conclusive statement could be made when no landscaping details have been provided. If the conclusion is based on information not forming part of the Planning Scheme Amendment Documents, it is considered to be procedurally unfair the material has not been made available to Council. This issue again highlights the need for the Incorporated Document to be amended to explicitly require demonstrated compliance with the Rescode Standards.

Standard B10 - Energy efficiency

The Clause 55 Assessment provided with the Amendment documents states, *“the building has been designed to meet this objective.”* Again, without any details of dwelling layouts or building materials, it is not known how such a conclusive statement can be made. If DHHS have architectural plans with details of apartment layouts and building materials they have relied on to undertake their assessment, these should form part of the amendment documentation.

Standard B12 - Safety

Officers are concerned with the proposed undercroft car parking areas, as they have the potential to create concealed, secluded spaces and decrease opportunities for activity in the public realm. Each of these contribute to an increased risk for anti-social behaviour. Council's Urban Designer makes the following observations:

“From an urban design perspective, under-croft car parking degrades the public realm because it decreases activity and vibrancy and undermines safety and security in the street.

Empirical research has demonstrated the deadening effect the blank frontages of ground floor car parking can have on the public environment. Depriving streets of life and interaction at ground floor invites antisocial behaviour and leads to crime and other social problems. It was one of the most criticised design elements in the

Modernist Movement in the early/mid-20th century, and a direct impact of the invention and primacy of cars, eventually leading to banal and alienating streets and unsafe public environment.

The Planning Scheme emphasises the need for the design to ensure that buildings and their interfaces with the public realm support personal safety, perceptions of safety and property security.

Based on the current material, the overall quality of the public realm within the estate is questioned. Seemingly, the design relies heavily on quality finishes to conceal under-croft car parking and minimise its negative impact on the interface with public spaces (streets and open spaces). Quality finishes may improve the façades aesthetically but, without real activity, their effect is limited and rather superficial, one layer deep.

We recommend the following measures be adopted to mitigate the negative impact of the under-croft car parking:

- 1. Minimising the extent of exposed under-croft car parking by embedding the lower ground floor levels of buildings within the land slope;*
- 2. Introducing multiple pedestrian entrances to each building and where appropriate some form of activity that sheathes and enfolds the car park;*
- 3. Finally, exploring the 'woonerf' street typology for the main north-south vehicular access-way in the development (circled in the above diagram), which is a shared traffic zone with priority for pedestrians while accommodating a reasonable number of on-street parking spaces. Refer to the attached 2-page document that explores the genesis and evolution of the 'Woonerven'. By incorporating some parking spaces within the street environment, the design can clear up some of the ground floor areas for more active uses, including ground floor apartments, and improve the interface with the public realm. Careful design and management of the street as a resource to be shared by all users (car, pedestrians and cyclists) helps enhance the street environment and reclaim the street as a vital part of the public realm."*

In addition, it is recommended the Incorporated Document be amended to require all car parking areas be designed in accordance with the principles described in Section 5.4 (Buildings: Car parking structures) of the *Urban Design Guidelines for Victoria*. This includes:

- Ensuring car parking structures support an active and safe interface with the street (including streets internally within the site);
- Maximising informal surveillance opportunities within car parking structures;
- Ensuring safe and convenient pedestrian movement around and within car parking structures; and
- Protecting sensitive adjacent uses from vehicle noise, vibrations and emissions.

To be clear, the Guidelines suggest this is best achieved by locating car parking below ground, or within buildings if they are wrapped with a residential or commercial use. Any structure used to conceal car parking facilities should be visually interesting in appearance and may include decorative cladding, artwork or graphics.

Standard B13 - Landscaping

The Clause 55 Assessment provided with the Amendment documents states, *“the development complies with the landscaping objectives by respecting the existing natural features of the site and neighbourhood and integrating them into the design proposal.”* It is unclear to officers how such a conclusive statement can be made when the Amendment material does not even make clear which trees are proposed to be removed or retained. In fact, the amendment material includes a footnote that the stated 20-25 trees to be retained *“are subject to change as a result of detailed design development”*.

A landscape plan or arboricultural report have not been provided to verify any of the conclusions made by DHHS in their Amendment documents.

As stated earlier in this report, in its current form, it is unclear how the Department or the Minister will be capable of satisfying themselves the development achieves an appropriate, site-responsive outcome without knowing which specific trees are proposed to be retained or removed, or whether the development will have a detrimental impact on neighbours' trees. Officers are not satisfied the development will adequately integrate with and enhance the Markham Reserve/Gardiners' Creek environs and recommend Condition 4.2.9 in the Incorporated Document be amended to apply to the southern interface with the park, in addition to the eastern interface.

More information is required from DHHS in relation to tree removal/protection and additional conditions are required in the Incorporated Document to ensure the creek environs are enhanced and protected.

Standard B14 - Access

The Clause 55 Assessment prepared for DHHS notes the development complies with Standard B14 *“by providing only one crossover to Markham Avenue for the main vehicular carriageway into the site”*, however it is not embedded as a requirement in the

Incorporated Document. Limiting vehicle access to the site to one crossing is preferred by Council's Traffic Engineers, to minimise impacts on users of the shared path. Officers recommend the Incorporated Document be amended to include a condition limiting vehicle access to one crossing and requiring the crossing to be designed and constructed in accordance with the specifications provided by Council's Traffic Engineers, at Appendix C to this report.

Standard B17 - Side and rear setbacks

There are limitations and assumptions in any assessment undertaken by officers against Standard B17, in the absence of any architectural plans. Although the maximum height of the buildings is shown in the Incorporated Document in storeys, their height in metres is not known. In addition, as officers have noted, the Incorporated Document currently only requires any future development to be *"generally in accordance with the building heights and setbacks shown on the Building Envelope Plan and in the conditions below and are subject to confirmation pending detailed design development."* Officers are of the view such uncertainty is inappropriate in circumstances where DHHS are requesting the Minister exclude Council and the local community from any future involvement in the approval process and to not appoint an independent Panel to review this Amendment. Officers recommend the Building Envelope Plan in the Incorporated Document be amended to express maximum building heights in metres, in addition to in storeys.

Officers have assumed a 4-storey building to have a maximum external wall height of 15.0m (on a sloping site, such as this). Rescode Standard B17 would recommend a minimum setback of 10.09m.

Buildings A and C are located proximate to the western boundary interface with the rear yards of homes in Ashburn Grove. The 4-storey components of the proposed buildings are set back approximately 11.1m and 14m from the west, respectively. Officers are critical of the lack of dimensioned setbacks on the Incorporated Document Building Envelope Plan. The setback of 11.1m from the south-west corner of Building A to the western boundary has been scaled by officers and is an estimate (notwithstanding the Incorporated Document says the future development only needs to be *"generally in accordance with"* the building envelope). If the estimated dimension of the setback is accurate, and if the height of the building does not exceed 15.0m, and if the development is built in accordance with the Building Envelope Plan, the setback exceeds the minimum 10.09m required by Standard B17. Further north, the setback of the 4-storey section of the building increases to a maximum of 14.2m (scaled), some 4.11m more than the minimum required by Rescode.

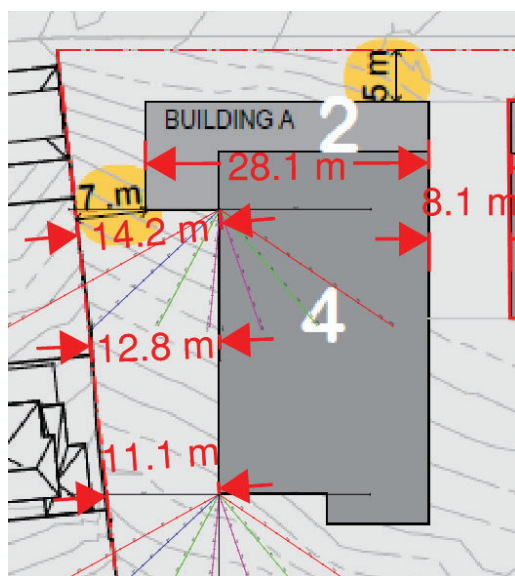
It is vital the setback areas to the west of Buildings A and C are kept at natural ground level and used for deep-soil canopy tree planting. There does not appear to be any significant trees located in this part of the subject site suitable for retention, however there are a number of trees within the neighbouring properties (such as at Nos. 91, 95,

97 and 99 Ashburn Grove) which require protection during construction. Officers recommend the Incorporated Document be amended to expressly require advanced canopy tree planting (minimum 3.0m when planted) within the western boundary setbacks of Buildings A and C, incorporating species that will attain a height of at least 15m at maturity. This will assist with filtering views of the development.

If we are to assume the 2-storey section of Building A is half the height of the 4-storey section, it will have an external wall height of approximately 7.5m. Standard B17 recommends a minimum setback of 2.59m. The proposed setback of 7.0m exceeds this and is acceptable.

Officers are satisfied the proposed setbacks of Buildings A and C are adequate, subject to the inclusion of conditions relating to landscaping the western boundary setback.

However, our assessment of the impact of overshadowing from the development indicates the height and siting of Building A will cause unreasonable overshadowing over the rear yard of No. 93A Ashburn Grove and will not comply with Standard B21 of Rescode. An assessment of the shadow impacts follows.



Above: Extract from the Building Envelope Plan, with a scaled dimensioned setback from the western boundary added by officers

Standard B21 - Overshadowing open space

The Clause 55 Assessment provided with the Amendment documents states, *“the proposed development complies with the requirements of the standard with the private open space of the adjoining properties to the west receiving a minimum of five hours of sunlight between 9am and 3pm on 22 September.”*

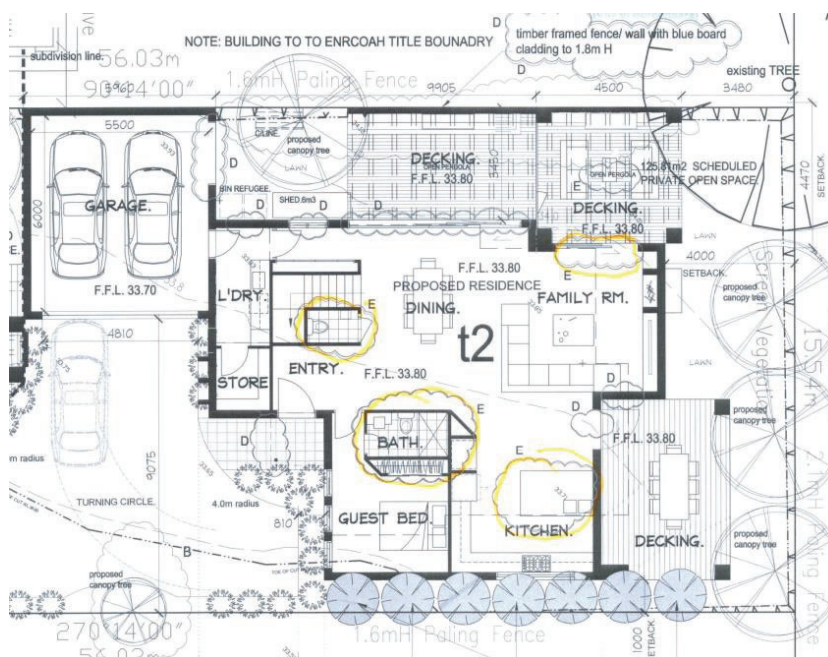
Firstly, officers do not understand how a definitive conclusion can be made in support of the proposal in the absence of overshadowing plans.

Secondly, if overshadowing plans exist and have been relied upon by DHHS as a basis for supporting their Amendment, the plans should have been included in the Amendment documentation for review by Council and DELWP.

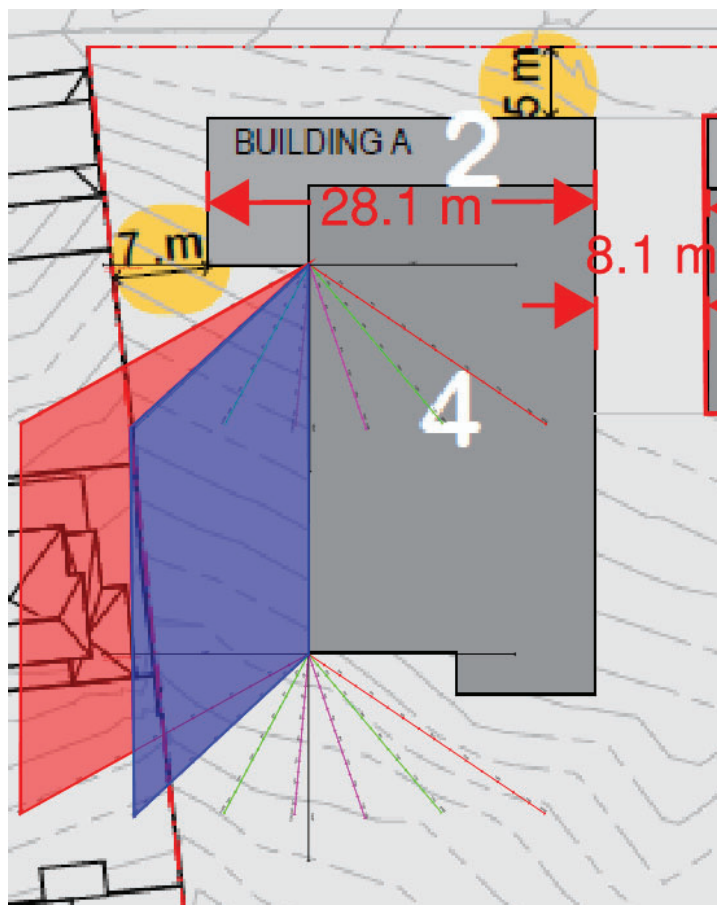
Thirdly, and most importantly, the conclusion the development complies with Standard B21 is incorrect.

It appears DHHS have not properly applied the requirements of the Standard, as they do not appear to have taken into consideration the existing shadows cast over the adjacent properties, including shadows cast by the neighbouring buildings and fences themselves. Standard B21 says *“if existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.”*

Due to its size, configuration and orientation, the secluded private open space of No. 93A Ashburn Grove does not currently receive sunlight to *“at least 75%, or 40sqm with minimum dimensions of 3m, whichever is the lesser...”* for *“a minimum of five hours of sunlight between 9am and 3pm on 22 September.”* Therefore, the Standard says the amount of sunlight it receives should not be further reduced.



Above: Extract from the endorsed ground floor plan of 93A Ashburn Grove (See PP10/00298 and Post12/00968, endorsed by Council on 19 December 2012)



Above: Overshadowing analysis prepared by Council officers using Bluebeam Revue software, depicting the extent and duration of shadows cast by (presumed) 15m high, 4-storey Building A at 9am (red) and 10am (blue) on 22 September

Officers have prepared their own shadow analysis (above) which confirms the development (if it attains an external wall height of 15m) will cast shadows over the secluded private open space of No. 93A Ashburn Grove at 9am and 10am on 22 September, reducing its already limited solar access. This means the proposal in its current form will not comply with Standard B21 and is considered to be unreasonable. Officers note it appears the height of the north-south aligned section of Building A would need to be reduced to a maximum of 10m (approximately 2-storeys on a sloping site) to ensure the extent of shadows cast by the development does not exceed those cast by the existing boundary fence. Alternatively, the setback of the building from the western boundary should be increased, or a combination of height reductions and setback increases. As with the DHHS assessment of the Rescode site coverage standard which was found to be inaccurate.

Officers are aware DHHS proposes to segregate the public housing apartments into Buildings A, B and C, with private apartments located in Buildings D and E. Therefore, any potential reduction in the floor area of Building A as a consequence of achieving compliance with Standard B21 could affect the amount of public housing delivered by the project. Officers do not accept this needs to be the case. The number of apartments in the development overall may be reduced, but the number of public housing apartments should not be less than 111. Any reduction in the quantity of public housing apartments in Building A should be recouped by providing public housing in Buildings D and E.

Standard B22 - Overlooking

The Incorporated Document includes a condition requiring any west-facing habitable room window, terrace, balcony, deck or patio with a direct view into the secluded private open space of an existing dwelling within a horizontal distance of 9m must comply with Standard B22 of Clause 55.

Based on the Building Envelope Plan, there is only one opportunity for the development to contain windows located within 9m of the common boundary, in the 2-storey section of Building A. The balance of Building A and the entirety of Building C are set back more than 9m from the common boundary with residential properties in Ashburn Grove (minimum setbacks of 11.1m and 14m, respectively). The proposed 14m setback distance is considered adequate to not require privacy screening for Building C. However, notwithstanding that it satisfies the requirements of the Standard, officers recommend the Incorporated Document condition be amended to require privacy screening be applied to all west-facing apartments in Building A (except those at ground level, unless the finished floor level is elevated and causes direct views). This is considered necessary for Building A, due to its proximity to No. 93A Ashburn Grove, which has a confined outlook, the broad-side of Building A being oriented towards the neighbouring properties and the absence of any mature vegetation to filter views. Officers note the submitted Planning Report (though, not the Incorporated Document) states Buildings A, B and C will contain all of the public housing, with all of the private apartments located in Buildings D and E²⁵. Due to the vulnerability and potential limited mobility of some residents in public housing, it is important for the layout of any west-facing apartments in Building A to be designed with care, to ensure they achieve an acceptable level of internal amenity, notwithstanding the requirement to incorporate privacy screening.

Clause 55.07 - Apartment developments
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Clause 55.07 is an extension of 'Rescode' which applies to apartment-style developments on residentially-zoned land.

²⁵ Officers do not support the proposed segregation of public and private apartments into separate buildings. A genuine 'salt and pepper' approach is recommended.

Standard B35 - Energy efficiency

The submitted Clause 55 Assessment does not address the requirements of the Standard, which requires apartments to not exceed a maximum NatHERS annual cooling load of 21 MJ/M². The Incorporated Document should be amended to require an ESD Report demonstrating the maximum cooling load is not exceeded in all apartments.

Standard B36 - Communal open space

For a development containing 178 dwellings, the Standard requires a minimum of 250sqm of communal open space that is accessible, practical, attractive, easily maintained and integrated with the layout of the development. This may be provided in the form of indoor or outdoor spaces.

The submitted Clause 55 Assessment states, *"it is intended for the proposed development to comply with the objective and standard. A variety of communal open spaces will be provided..."* Officers recommend the Incorporated Document be amended to insert conditions requiring the preparation and implementation of a Communal Open Space Strategy which describes in plan and written form the layout, design and dimensions of communal open spaces and details of solar access to communal outdoor open space at the winter Solstice (in accordance with Standard B37). Importantly, the Strategy must also set out details of a maintenance regime and responsibilities, and details of which buildings/apartments have access to the various communal spaces. Officers have noted (and object to) the proposed segregation of public and private apartments into different buildings. Officers are concerned this will also lead to segregated access to communal open space. The Communal Open Space Strategy should deal with this and put in place requirements to ensure it does not occur.

Standards B41 (Accessibility), Standard B43 (Private open space above ground floor), Standard B44 (Storage), Standard B46 (Functional layout), Standard B47 (Room depth), Standard B48 (Windows) and Standard B49 (Natural ventilation)

These Standards deal with the internal amenity of the proposed apartments. It is not possible to undertake an assessment without architectural plans.

Officers recommend the Incorporated Plan require the following documentation be submitted as part of any future approval process, to enable assessment against the requirements of Clause 55.07:

Enlarged, dimensioned and annotated floor plans for each unique apartment layout which clearly detail:

- a) *Which apartment/s the floorplans represent (i.e. the apartment number/s);*
- b) *Whether the apartment has 1, 2 or 3 bedrooms;*
- c) *Which apartments are intended to be adaptable apartments, in accordance with Standard B41;*
- d) *For the adaptable apartments:*
 - i. *The clear opening width of the apartment entry door;*
 - ii. *The clear opening width of all bathroom/ensuite doors;*
 - iii. *The dimensioned width of any pathway between the dwelling entrance, the main bedroom, an adaptable bathroom and the living area;*
 - iv. *Label whether the adaptable bathroom is designed in accordance with Design Option A or Design Option B of Table B7 in Standard B41 and dimension the bathroom layout to demonstrate compliance;*
- e) *Bedroom length and width, excluding wardrobes (noting that for the purposes of Standard B43, if one bedroom has an ensuite and the remaining bedrooms do not, the bedroom with the ensuite is the 'master bedroom');*
- f) *The total area of each courtyard / terrace / balcony;*
- g) *The "useable area" of each courtyard / terrace / balcony, including minimum and maximum dimensions (noting the dimensions must be taken from the inside of any balustrade and are to exclude areas set aside for planting, including garden beds and planter boxes, in accordance with the requirements of the Apartment Design Guidelines for Victoria, 2017, see page 70);*
- h) *The location of any cooling or heating units. If none are to be located on the balcony / terrace / courtyard, a notation to that effect is required;*
- i) *The volume of storage space provided within the kitchen, bathroom/s and bedroom/s;*
- j) *The volume of any other storage provided for the apartment;*
- k) *The minimum finished-floor to finished-ceiling height clearance proposed;*
- l) *The depth of all single-aspect habitable rooms, measured from the external surface of the habitable room window;*
- m) *Dimensioned breeze paths (if cross-ventilation is possible) with a minimum length of 5.0m and a maximum length of 18.0m. For each location where cross-ventilation is achieved, provide details of the area of the ventilation opening at each end of the breeze path (noting Standard B49 recommends openings generally be of an equivalent area).*

It is the officers' experience assessing applications against the requirements of Clause 55.07 is complex and requires detail. Failure to provide the information described above is likely to result in an incomplete or erroneous assessment.

Clause 53.01 - Public Open Space Contribution and Subdivision

The Incorporated Document is silent with regard to the requirements of Clause 53.01, which states, *“a person who proposes to subdivide land must make a contribution to the council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both). If no amount is specified, a contribution for public open space may still be required under section 18 of the Subdivision Act 1988.”*

The Planning Report submitted with the Amendment states, *“public open space contribution provided to council will be considered at time of subdivision. Which at the present time is proposed to take place upon completion of the development.”*

Although the Incorporated Document does not include a condition requiring payment of an open space contribution to Council, and despite the intention for Council to no longer be the responsible authority for the land, Council retains the ability to impose an open space contribution pursuant to section 18 of the *Subdivision Act 1988*. This means even though a planning permit will not be required for subdivision, a plan of subdivision will still need to be submitted to Council for certification and a statement of compliance, pursuant to sections 5(3)(c) and 5(3)(d) of the *Subdivision Act*. At that time, Council will be able to seek payment of an open space contribution.

Notwithstanding the above, officers consider it is preferable to include an open space contribution levy as a condition in the Incorporated Document, as it will make the obligation transparent and more readily discoverable for the developer, noting the developer may end up being a private entity.

Having regard to Council’s policies set out at Clause 22.04 (Public Open Space Contribution Policy) it is recommended the Incorporated Document include the following condition:

Open space contribution

- *Prior to the issue of a statement of compliance, cash in lieu of the open space equivalent to five per cent of the site value of the land must be paid to the Council, pursuant to Section 18 of the Subdivision Act 1988.*

Clause 53.18 - Stormwater management in urban development

The submitted Planning Report fails to undertake an assessment of the development against the requirements of Clause 53.18. The clause seeks to ensure stormwater is managed to mitigate its impacts on the environment, property and public safety. This is to be achieved through a variety of means, including by encouraging stormwater management that maximises the retention and reuse of stormwater.

No information has been supplied with the Amendment request to demonstrate the objectives of Clauses 53.18-4, 53.18-5 and 53.18-6 will be met, or are capable of being met subject to conditions.

The land is currently vacant and understood to largely be devoid of hard surfaces (i.e. impermeable surfaces). The submitted Clause 55 Assessment, prepared on behalf of DHHS, states *“the proposed development complies with the requirement of the standard for the minimum percentage of pervious surfaces.”*²⁶ However, no details have been provided of the proposed maximum proportion of pervious and impervious surfaces. If it is the case the development satisfies Standard B9 of Clause 55, it is on the basis of information not provided to Council.

It is known the proportion of the site covered with impervious surfaces will increase substantially as a consequence of the development, as a result of the construction of buildings and associated roads, paths and other infrastructure. As a consequence, there is the potential for increased stormwater runoff. Provision should be made in the development to harvest the runoff for re-use for toilet flushing and garden irrigation. There is also an opportunity for stormwater to be harvested and re-used off-site for garden irrigation by the neighbouring Ashburton Community Garden. The President of the Community Garden has made a written submission indicating they would be receptive to this initiative. An ESD report should be required, which sets out the minimum recommended stormwater tanks necessary to accommodate the runoff from balconies/terraces (with any necessary treatment) and non-trafficable roofs throughout the development and includes some diversion of harvested stormwater to irrigate the Ashburton Community Garden.

Other Matters

Overshadowing of the public realm

Officers are highly critical of DHHS for their failure to include shadow diagrams with their Amendment documents. The Incorporated Document sets out, in the view of officers, an unhelpful condition to regulate the impact of overshadowing over Markham Reserve. The condition states, *“the development should not overshadow Markham Reserve for at least five hours between 9am and 3pm on 22 September.”* It is the opinion of officers the condition does not adequately protect the sensitive park interfaces, in particular, the newly constructed children’s playground located to the south-west of Markham Reserve pavilion and the Ashburton Community Garden.

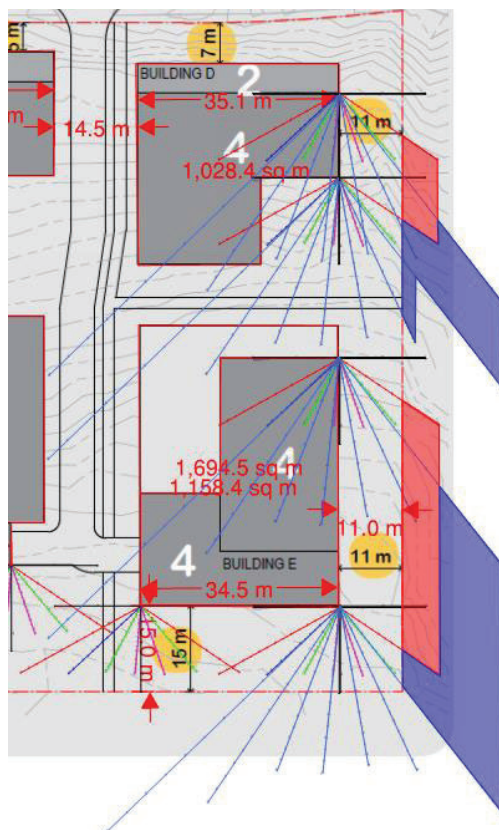
This assessment undertaken by officers is unreasonably hindered by the lack of shadow diagrams in the Amendment documents. Officers have used Bluebeam Revue software to plot the extent of shadows cast by Buildings D and E at the September Equinox.

²⁶ Page 4, Appendix 1, Clause 55 Assessment, Interim Plans Assessment: 15 October 2019, Amendment C321, author unknown.

These demonstrate the 4-storey section of Building D²⁷ will cast shadows over part of the children's playground soon after 2pm. The extent of shadows appears to extend beyond the shadows cast by the pavilion building itself (i.e. there would be a net increase in the extent and duration of shadows cast over the children's playground). It is important to protect the amenity of this shared resource, particularly in circumstances where demand for its use is likely to increase as a direct result of the introduction of an additional 178 households next door. Due to the setbacks and predominantly east-west orientation of Building D, it is likely only modest modifications to the height or setback of the fourth floor would be required to address this issue.

Shadow analysis undertaken by officers demonstrates the 4-storey section of Building E will cast increased shadows over the Ashburton Community Garden at the September Equinox and June Solstice. Officers have included winter shadow analysis in the assessment of the impact on the public realm due to its importance as a shared community resource. The assessment undertaken earlier in this report of shadow impacts over the private realm (i.e. the backyards of homes in Ashburn Grove) was confined to Equinox shadows because it is the standard set by Rescode.

²⁷ Assumes a maximum external wall height of 15.0m.



Above: Shadow analysis annotated onto the Building Envelope Plan using Bluebeam Revue software. The plan highlights the extent and duration of shadows cast over Markham Reserve and the Ashburton Community Garden by 15m high (presumed), 4-storey Buildings D and E at 3pm at the September Equinox (red) and Winter Solstice (blue)

An earlier version of this development proposal (Amendment C251) was reviewed by the Office of the Victorian Government Architect's Design Review Panel. The Panel produced a report which was critical of overshadowing of the community garden and children's playground, noting the site's interfaces were "*particularly sensitive*" and suggested the proposal should "*protect the amenity of the existing community facilities adjacent to the site's eastern boundary, in particular, the community garden to the south.*"²⁸ Officers concede the building setbacks from the eastern boundary have increased significantly between Amendment C251 and C321, however the impact of the development on these sensitive interfaces remains an issue of concern.

²⁸ Markham Avenue, Ashburton Project - Return Design Review 19 October 2016, 31 October 2016, Office of the Victorian Government Architect.

In their submission to Council, the Ashburton Community Garden has come to the understanding shading of the community garden has been addressed by the current plan. It appears they have been influenced by the applicant's Clause 55 Assessment which, incorrectly, states the development complies with the Clause 55 overshadowing requirements of Standard B21. This Standard is not relevant to the assessment of overshadowing of the public realm. In fact, none of the Amendment documents examine the extent or duration of shadows cast by the development over Markham Reserve. The only assessment undertaken is this one, by officers, which concludes the impact is unreasonable.



Above: The recently constructed pavilion and children's playground to its south-west in Markham Reserve, looking west towards the subject site

Plots in the community garden are predominantly used to grow vegetables. Research shows the fastest-growing vegetables need full sun - at least 6 to 8 hours of direct sunlight a day, without blockage from trees, shrubs or fences²⁹. The submission from the Community Garden notes the proposal includes a condition requiring *"planting of canopy trees to provide a 'green edge' buffer to Markham Reserve."*³⁰ The submission from the Community Garden requests this planting not be undertaken adjacent to the community garden (i.e. adjacent to the length of Building E) as it *"will shade the plots next to the fence and possibly take nutrients from the soil under the [community garden]."* Officers cannot support the request to remove obligations for canopy tree planting adjacent to the eastern setback of Building E, given its proposed 4-storey scale. The building is setback in the order of 11m from the common boundary with the community garden. Officers have consulted with Council's Arborists, who confirm if

²⁹ Better Homes and Gardens, <https://www.bhg.com/gardening/vegetable/vegetables/planning-your-first-vegetable-garden/>

³⁰ Condition 4.2.9 in the Incorporated Document.

canopy trees are planted centrally within the setback and limited to species that will attain a mature height in the order of 8m-10m, their canopy spread is unlikely to cast shadows beyond those of the buildings themselves. This recommendation is made in conjunction with the officer's recommendation to delete or reduce the extent of the fourth level of Buildings D and E, so they no longer cast shadows over the community garden and children's playground.

Officers recommend Condition 4.2.4 in the Incorporated Document be amended to read:

"The development to not overshadow the children's playground in Markham Reserve and the Ashburton Community Garden between the hours of 9am-3pm at the September Equinox and Winter Solstice."

Officers recommend conditions in the Incorporated Document restrict canopy trees planted in the eastern setback of Building E be located centrally and be capable of attaining a maximum height at maturity of 8m-10m.

Social and economic impacts

Pursuant to Section 60(1)(f) of the *Planning and Environment Act 1987* (the Act), before deciding on an application, the responsible authority must consider *"any significant social effects and economic effects which the responsible authority considers the use or development may have."*

Social effects are not defined in the Act, but typically include the effects of a proposal on:

- The demand for use of community facilities and services;
- Access to social and community facilities;
- Choice in housing, shopping, recreational and leisure services;
- Community safety and amenity; and
- The needs of particular groups in the community.³¹

It is considered the development, as proposed, will result in an unacceptable planning outcome which is not in the interests of net community benefit, as it will cause the significant, detrimental social effect of further isolating and stigmatising residents of public housing.

The Planning Report which forms part of the Amendment documents states, *"the development is proposed to be tenure blind and offer equitable access to the visual and*

³¹ *"Significant Social Impacts and Community Participation - Community Input into Development Assessment Decision Making in Victoria in the Light of Recent Amendments to the Planning and Environment Act 1987"* for the Australasian Conference of Planning and Environment Courts and Tribunals, 11-14 October 2016, presented by Laurie Hewet, Senior Member, VCAT:

communal amenity of Gardiner's Creek and internal landscaped courtyards." The Incorporated Document itself is silent with regard to what it means by *"the development is to... adopt a mixed tenure approach."* It does not embed the same commitments made in the Planning Report, of equitable access and design.

The Office of the Victorian Government Architect endorses a "tenure blind" approach, as does Council's Urban Designer and Community Planning Department. However, on review of the Amendment documentation, it is apparent a "tenure blind" approach is not what has been proposed. The proposal entrenches the isolation and stigma attached to public housing, including the following examples:

- The private dwellings are provided with adequate on-site car parking. The public housing is provided with car parking at a reduced rate, entrenching disadvantage associated with reduced mobility;
- The proposed segregation of tenure types into different buildings (Buildings A, B and C to be solely used for public housing, Buildings D and E to solely be used for private apartments). Officers question how this achieves best practice with regard to integrated housing tenure.

Officers are concerned the following aspects of the proposal will result in significant undesirable social effects:

- The segregated approach of isolating public housing from private housing, within separate buildings, is not supported. A 'salt and pepper' distribution of housing tenure types throughout all of the buildings should be achieved;
- A "tenure blind" approach is supported, however a genuine "tenure blind" approach has not been proposed;
- Further analysis of the current profile of public housing needs in the municipality is required to determine whether the mix of public housing apartments (proposed to be limited to 1 and 2-bedroom apartments) is most appropriate;
- The permanent loss of publicly held land available for the delivery of public housing, due to the inclusion of private apartments in the development.

With regard to the issue of the loss of public land for the delivery of public housing, officers recommend the proceeds from the sale of any dwellings on the land by the Director of Housing (whether they be the private apartments as currently proposed, or any public housing apartments into the future) be required to be re-invested in the delivery of new public housing located within the City of Boroondara. It is recommended this be implemented by a section 173 Agreement.

<p>Whether heights and setbacks should be expressed as mandatory or discretionary</p>
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All of the conditions in the Incorporated Document and the building heights and setbacks in the Building Envelope Plan are expressed as discretionary rather than

mandatory. In its current form, there is a risk of a development proposal being approved by the Minister for Planning (in his proposed role as the responsible authority for the land) which exceed the height and setback requirements set out in the Incorporated Document. Officers concede the introduction of mandatory controls could potentially result in a trade-off in terms of design flexibility. However, officers are not persuaded discretionary controls are appropriate in this instance, due to the lack of community consultation and independent scrutiny to date and into the future. Given the Amendment proposes to remove a mandatory height limit put in place by the Government to provide certainty over development outcomes, officers consider there are compelling reasons why mandatory maximum heights and minimum setbacks should be applied. Altering the Incorporated Document in this manner is consistent with the outcomes recommended by the Standing Advisory Committee for development proposals in the Public Housing Renewal Program.

The proposed statutory process

The proposal to utilise section 20(4) of the *Planning and Environment Act* to by-pass the usual public exhibition and independent review of this planning scheme amendment, together with the removal of third party appeal rights, is unwarranted and considered to be a denial of natural justice.

The proposed Incorporated Document has never been the subject of formal community consultation or the subject of independent scrutiny. Officers also note its contents are not consistent with the recommendations made by the Social Housing Renewal Standing Advisory Committee, despite the similarities with the projects considered by the Committee.

Officers do not support the use of an Incorporated Document to facilitate the project, due to the lack of detail provided and the failure to conduct formal consultation with the local community. It is accepted a planning scheme amendment is necessary to remove the mandatory height restriction and 'garden area' requirements in the zone. However, Council should be retained as the responsible authority and development approval should be sought via an application for a planning permit, with the usual public notice provisions and opportunities for third-party review.

Content of the Incorporated Document

Appendix D: Officer-recommended tracked changes version of Incorporated Document

As described throughout this report, officers have a number of concerns with the content of the Incorporated Document, largely due to critical omissions and the inclusion of the phrase, "*generally in accordance with*", which causes the conditions and requirements to be discretionary, rather than mandatory.

The Document fails to set an overall objective or aspiration for the development, which officers believe should be *“to facilitate a contextural and site responsive exemplar for mixed tenure housing projects.”*

It appears the Incorporated Document has been drafted based on the assumption the project developer will be DHHS or Development Victoria, rather than a private developer. However, in meetings held with Council officers, DHHS indicated a whole different range of delivery models were being explored and it had not been decided if DHHS would build it themselves, have Development Victoria build it, or have another party join/build it. Officers are of the view the Incorporated Document must anticipate potential private developer involvement through the inclusion of explicit conditions regulating the use and development. Officers are of the view it is necessary for the Incorporated Document to include explicit and detailed conditions in the event of private developer involvement, to provide transparent safeguards in circumstances where DHHS are seeking to by-pass the usual third party involvement (exhibition) and independent review (panel hearings).

Furthermore, officers are of the view the Incorporated Document should embed all of the commitments relied upon and disclosed in the Planning Report submitted with the Amendment documents, which form the basis for DHHS' justification for seeking support for the Amendment.

At Appendix D, officers have prepared a tracked-changes version of the Incorporated Document which includes the various recommendations officers have made throughout this report, including but not limited to:

- a) Defining “public housing” and “mixed tenure”;
- b) Changing controls within the Incorporated Document from discretionary to mandatory, including maximum building heights and minimum building setbacks expressed in the Building Envelope Plan and compliance with the objectives and standards of Clause 55;
- c) Requiring the localised widening of Markham Avenue to facilitate simultaneous two-way vehicle movement, to relieve congestion. This includes the consequential relocation of the Gardiners Creek Trail Shared Path partially into the subject site;
- d) The vehicle accessway designed in accordance with the recommendations of Council's Traffic Engineers, to ensure the crossing over the Gardiners Creek Trail Shared Path is safe and prioritises pedestrians and cyclists;
- e) Requiring a Tree Protection Plan and the retention of all ‘moderate’ and ‘high’ value trees;
- f) Requiring the development to be a ‘salt and pepper’ mix of public and private apartments, rather than segregated in separate buildings;
- g) Requiring the provision of a communal multi-purpose room for use by all residents and the local community;

- h) A requirement for a Communal Open Space Strategy to ensure equitable access to communal facilities and to define maintenance, management and financial responsibilities;
- i) The supply and allocation of resident car spaces in full compliance with Clause 52.06;
- j) The envelopes of Buildings D and E modified to ensure there will be no net increase in the extent or duration of overshadowing of the Markham Reserve children's playground or the Ashburton Community Garden between the hours of 9am-3pm at the September Equinox and the Winter Solstice;
- k) The envelope of Building A modified to ensure there will be no net in the extent or duration of overshadowing of the secluded private open space of No. 93A Ashburn Grove between the hours of 9am-3pm at the September Equinox;
- l) Privacy screening of any west-facing habitable room window or balcony/terrace in Building A;
- m) All building facades to be articulated;
- n) All buildings to incorporate rainwater harvesting for re-use in toilet flushing and garden irrigation, and for irrigation of the Ashburton Community Garden;
- o) Increased detail in the documentation to be submitted to the responsible authority for approval;
- p) A requirement for copies of the plans and documentation for approval to be provided to Council for review and comment not less than four weeks prior to being submitted to the responsible authority, with any comments provided by Council to be taken into consideration before a decision is made;
- q) A requirement for a s173 Agreement dealing with:
 - i. The provision, fit-out, ownership, maintenance and management of a multi-purpose community room;
 - ii. Re-investment from the sale of any dwellings on the land in the supply of new public housing located within the City of Boroondara;
 - iii. The widening of Markham Avenue and relocation of the Gardiners Creek Trail Shared Path partially into the subject site to be carried out at the full cost of the developer to the satisfaction of Boroondara City Council and ownership of the land occupied by the relocated shared path to be transferred to Council prior to the occupation of the development
- r) Requirement for a cash 5% open space contribution payable to Council;
- s) The Building Envelope Plan amended to express building heights in storeys and metres.

CONSULTATION SUBMISSION RESPONSE

Those matters not already addressed in the foregoing report are discussed below:

Total Number of Submissions Received:	24
Summary of Submissions	Officer's Comments
All of the dwellings on the land should be used for public housing, to address the severe shortage of public housing in Victoria. The original Markham estate was set aside in the 1950s for public housing and it should remain as public land in perpetuity	<p>Officers note the development is now substantially comprised by public housing (62%) and represents close to a 100% increase compared with the number of public apartments formally on the land (56). Officers are of the view a seamlessly integrated mix of residential tenures located in a high quality, tenure-blind development will assist in removing the stigma some associate with public housing.</p> <p>However, officers agree with the sentiment and recommend the proceeds from the sale of any dwellings on the land by the Director of Housing (whether they be the private apartments as currently proposed, or any public housing into the future) be required to be re-invested in the delivery of new public housing located within the City of Boroondara. It is recommended this be implemented by a section 173 Agreement, registered on the title to the land.</p>
Council should be retained as the Responsible Authority for the land, rather than the State being the proponent and the decision-maker	This is no reasonable basis for the removal of Council from its usual role as the responsible authority. Council should be retained as the responsible authority.
The process proposed by DHHS is deeply flawed. The removal of the need for planning permits, with no community consultation and no oversight by Council is an undemocratic, high-handed abuse of power and denies local people any voice or right of appeal	<p>Officers do not support the proposed use of section 20(4) of the Act to by-pass the usual public notice (exhibition) and independent scrutiny (panel hearing) is inappropriate and a denial of natural justice in circumstances where:</p> <ul style="list-style-type: none"> a) There has never been any formal public consultation or independent review of the form and content of the Incorporated Document; b) The proposed controls are discretionary, rather than mandatory;

	<p>c) The Incorporated Document does not embed many of the commitments espoused by DHHS in support of their Amendment;</p> <p>d) The Clause 55 Assessment included with the Amendment documents contains errors or mis-statements in relation to claimed compliance with some Rescode Standards;</p> <p>e) There is no reasonable basis for Council to be removed from its role as the responsible authority for the land;</p> <p>f) The Incorporated Document has critical omissions;</p> <p>g) The proposed envelope of Building A will have a detrimental impact on the amenity of adjacent residential properties in Ashburn Grove due to overshadowing and overlooking; and</p> <p>h) The proposed envelopes of Buildings C, D and E will have a detrimental impact on the amenity and character of Markham Reserve (including the adjacent children's playground) and Ashburton Community Garden due to overshadowing and/or visual bulk.</p> <p>Officers are of the view this application should be made as a combined planning scheme amendment and planning permit application, with the usual public notice (exhibition) and independent review (panel hearing).</p>
DHHS have given insufficient notice to residents affected by this development. The application should involve the local community in a full and proper process of consultation	<p>DHHS have given no notice of the Planning Scheme Amendment to residents. DHHS have requested the Minister approve their amendment with no notice. The approach proposed by DHHS is not supported by officers.</p> <p>Council has sought the views of the local community, as part of this report. However, officers are of the view that Council having undertaken this consultation does not absolve DELWP or the Minister from satisfying themselves the local community has been adequately consulted with.</p>
There is no underground parking proposed. Some underground parking should be incorporated, to help achieve the Clause 52.06 standard parking rates. The Clause 52.06 car parking	<p>Council officers recommend the development be amended to require full compliance with the resident car parking rates set out in Clause 52.06 (i.e. no dispensation).</p> <p>Officers would also support the inclusion of basement parking in the development, subject to the basement</p>

rates should be fully met (i.e. no dispensations)	envelope not exceeding the envelope of the building it sits below (to protect nearby trees and provide deep soil planting opportunities). Locating parking in basements, instead of at ground level, assists in minimising the height of buildings, providing activated building facades and creating a safer pedestrian environment.
There is insufficient space within the proposed internal streets for on-street visitor parking	The Planning Report included with the amendment documents indicates 17 visitor car spaces will be provided, however this commitment is not embedded in the Incorporated Document. The location of the visitor car spaces is also not known. Officers have recommended visitor parking be provided at the higher rate of 1 car space per 5 dwellings (i.e. 35 visitor car spaces) and for equitable access to the spaces (e.g. not available exclusively to private apartment visitors).
Insufficient on-site car parking will lead to parking spilling out into neighbouring streets	Officers agree the impact of illegal parking on other community members, including private tenants and residents of neighbouring streets, could create localised tensions. Officers do not support the proposed car parking rate of 0.6 for the public housing apartments or the provision of only 17 visitor car spaces. It is recommended the resident parking rate be amended to achieve full compliance with the rates set out in Clause 52.06 for both public and private apartments. It is also recommended the number of visitor car spaces be increased to a rate of 1 space per 5 dwellings.
<p>The height of the 3-4 storey buildings adjacent to the rear yards of the Ashburn Grove houses will impact residents and should be reduced to a maximum of 2-storeys</p> <p>Proximity of sheer 4-storey Buildings A and C, adjacent to the backyards of homes in Ashburn Grove, will cause visual bulk. Should be changed to 2-storeys, rising to 4-storeys away from the neighbouring houses</p>	<p>Officers have found Building A will have a detrimental impact on the amenity of No. 93A Ashburn Grove due to overshadowing. For this reason, officers recommend the building envelope be altered. However, officers do not agree it is necessary to mandate a maximum height of 2-storeys. The overshadowing issue requires a performance-based modification to the building envelope. The issue may be able to be addressed through a combination of reduced building height and increased setbacks. Officers are reluctant to depart from a performance-based measure as a blunt requirement to decrease the building heights to 2-storeys will reduce the number of public housing apartments supplied by the development.</p> <p>Using Rescode Standard B17 as a guide, officers find Buildings A and C (even if maintained at 4-storeys) will not have an unreasonable visual bulk impact on the Ashburn Grove properties, due to the setbacks of those</p>

	buildings and the intervening space being set aside for deep soil planting. Officers have assumed a (conservative) maximum external wall height of 15m (DHHS have been less conservative and assumed 14m). At a height of 15m, Standard B17 recommends a minimum setback of 10.09m. At its closest corner, Building A has a setback (scaled) of 11.1m, increasing to 14.2m. However, we note this height is likely to be decreased, or the setback increased, in response to the overshadowing concern. At its closest corner, Building C has a dimensioned setback of 14.0m, increasing to 17.4m. In addition, officers have recommended conditions requiring all building facades to be articulated and visually interesting.
Traffic congestion within the narrow carriageway of Markham Avenue needs to be addressed. The road is currently too narrow for cars to pass one another	Officers recommend this issue be addressed by the localised widening of Markham Avenue, which will assist in relieving the congestion created by the development by enabling simultaneous two-way vehicle movement.
Safety conflicts between vehicles entering/exiting the site and users of the shared path	Officers recommend vehicle access to the site be restricted to a single vehicle crossing and the crossing be designed in accordance with the specifications recommended by Council's Traffic Engineers. These are described in Appendix C to this report.
The development remains too large	Subject to the recommended changes suggested throughout this report, officers are satisfied the development will be site responsive and make a positive contribution to the local area.
The number of dwellings on the land should be decreased to a maximum of 120-150	It is anticipated the recommended modifications to the building envelopes (to address overshadowing concerns and to increase articulation) may result in a reduced number of dwellings in the development. The final number of apartments is not known, as officers have not been provided with the basis for DHHS' conclusion the proposed envelopes can accommodate 178 apartments. Nonetheless, officers do not believe dwelling density is a good indicator of whether a development will achieve a good fit in its location. The building volume and setbacks provide a more appropriate indicator of suitability and responsiveness to its location. Furthermore, Council's Neighbourhood Character Policy explicitly seeks to facilitate development <i>"at a greater height and density than the surrounding area"</i> (emphasis added).

<p>The building heights exceed the allowable limits and is out of context with the surrounding 1 and 2-storey buildings</p>	<p>A planning scheme amendment is required to enable buildings to exceed 10m / 3-storeys in height. Officers support this aspect of the proposal. The form of the GRZ4 controls originally created and implemented by Council did not include any mandatory height limits. This was done purposefully on selected anomalously large sites such as this one, as they are capable of accommodating development at a greater height and density than the surrounding area with no unreasonable amenity impacts, by virtue of their large size.</p>
<p>The buildings facing Markham Avenue should be increased in height to 3-storeys, to enable the buildings adjacent to the western boundary to be decreased in height. Markham Avenue is not affected by heritage controls so can accommodate additional height instead of it being at the expense of the amenity of neighbouring residents</p>	<p>There may be some scope to increase the height of Buildings A, B and D facing Markham Avenue to 3-storeys in part or in full, however officers have assessed the merits of the proposal before us.</p>
<p>The application includes no overshadowing analysis. Detailed analysis is required of the loss of sunlight to homes in Ashburn Grove</p>	<p>Officers have prepared their own overshadowing analysis, using a conservative estimated maximum wall height of 15m (rather than 14m used by DHHS). The analysis finds the extent and duration of shadows cast by the development will not comply with Rescode in relation to the dwelling at No. 93A Ashburn Grove. Although some other dwellings will also be overshadowed, the extent and duration complies with Rescode. Officers recommend the envelope of Building A be amended to ensure there is no net increase in the extent and duration of shadows cast over No. 93A Ashburn Grove between the hours of 9am-3pm at the September Equinox.</p>
<p>Overlooking of dwellings in Ashburn Grove</p> <p>Balconies facing towards the rear yards of Ashburn Grove homes should incorporate privacy</p>	<p>With the exception of the 2-storey section of Building A (which has a setback of 7m from the western boundary), all buildings are set back more than 9m from the western boundary (Building C has a minimum setback of 14m).</p> <p>Notwithstanding it has a setback predominantly more than 9m, officers recommend privacy screening</p>

screening to prevent overlooking	treatments be incorporated into all west-facing apartments in Building A (except those at ground level). Officers have adopted this recommendation because the broad side of the building is presented towards the Ashburn Grove properties. This means it is likely a number of apartments will face towards the west, which will have a cumulative impact on the privacy of the neighbours.
The increased residential population will strain existing infrastructure and resources, including the already overcrowded local primary schools	<p>Officers note the conclusions of the Social Housing Standing Advisory Committee, appointed by the Minister to provide advice in relation on the redevelopment of nine social housing sites in Melbourne, including Bills Street, Hawthorn, but not including Markham Avenue. The Advisory Committee was <i>“not persuaded that the provision of social housing, whether it is gifted or not to the State, should obviate the need for the private developer to contribute to shared infrastructure that will be used by residents of the private apartments.”</i> The Advisory Committee concluded, <i>“the fact is, the additional population will generate additional demand for community and related infrastructure and services, which will need to be provided by Councils. In the Committee’s view, there should be a mechanism for funding the additional community and related infrastructure that will be required.”</i></p> <p>The Advisory Committee made the following recommendation to the Minister for Planning:</p> <p><i>“Prior to the approval of each Amendment, the Department of Health and Human Services work with the relevant Council to reach agreement regarding a development contribution in respect of the private component of each redevelopment proposal, and make any amendments to the relevant Development Plan Overlay schedule as required.”</i></p> <p>Officers recommend the Incorporated Document be amended to require a Section 173 Agreement which requires a development contribution from DHHS to Council in respect of the private component of the development proposal.</p>

Removal of trees is not supported as they are important for health and shade	Although the amendment documents state more trees are able to be retained as part of the revised development scheme, no details have been provided of which trees are to be retained or which are to be removed. Officers recommend all 'moderate' and 'high' value trees be retained and protected.
What will happen to No. 3 Markham Avenue?	No. 3 Markham Avenue was included in the Incorporated Documents approved by Amendments C251 and C298, to enable it to be used as a display showroom for the development without the need for the usual planning permit approval. Amendment C321boro does not apply to No. 3 Markham Avenue. Therefore, if it remains the intention to use the land for a display office, a planning permit will need to be sought from Council and will include the usual public notice to residents.
Residents should be given the contact details of the developer/builder, so they can contact them if problems occur, such as dust or noise pollution	The Incorporated Document requires the preparation of a Construction Management Plan to the satisfaction of the responsible authority (proposed to be the Minister for Planning). The approved Construction Management Plan is required to include <i>"contact details of key construction site staff"</i> in the event of any issues arising.
The development does not incorporate adequate water management measures. The development should incorporate rainwater harvesting for re-use by Ashburton Community Garden	Officers recommend the Incorporated Document be amended to require an ESD Report be submitted for approval which requires stormwater harvesting and re-use in garden irrigation and toilet flushing on the site, and for irrigation of plots in the Ashburton Community Garden.
The development and proposed planting within the eastern boundary setback will overshadow plots in the Ashburton Community Garden	Officers note the proposed building envelopes will cause overshadowing of the Ashburton Community Garden and have recommended they be redesigned so this does not occur at the September Equinox and Winter Solstice. In addition, officers recommend planting of canopy trees within the eastern setback be centrally located and limited to species capable of attaining a maximum height at maturity of 8m-10m, to minimise the impact of shadows over the neighbouring community space.
This development/process will create a precedent for the Government to develop other public housing sites	Officers are aware of nine other public housing estates which the Government have announced are proposed to be redeveloped in a similar manner to Markham Estate (i.e. with a mix of public and private dwellings). Of the nine other sites, all require planning scheme

	<p>amendments to facilitate those developments. All are proposed to go through the usual public exhibition period and will be the subject of public hearings and independent review by an expert Committee (the Standing Advisory Committee referred to in this report). Given the similarities of the projects, it is unclear to officers why Markham Estate is being treated differently to those sites with respect to the planning process proposed by DHHS. Officers do not support the proposed use of section 20(4) of the Act by DHHS.</p>
The site is located in an area of sensitive aboriginal heritage and adjacent to sensitive ecological and environmental areas	An Aboriginal Cultural Heritage Management Plan was prepared and approved as part of Amendment C251. Officers recommend the Plan be updated or a new plan prepared, noting the differences in the proposed building layouts.
The green-edge buffer suggested in the Incorporated Document at Clause 4.2.9 should also apply to the western boundary, to create a natural screen and encourage biodiversity	This suggestion has been incorporated in the recommended changes to the Incorporated Document.
The use of “should” and “intended” throughout the Amendment documents is too loose and will allow the developer to bend the rules in their favour	Officers do not support the proposed use of discretionary controls, rather than mandatory, throughout the Incorporated Document, particularly given the request from DHHS to by-pass the usual formal exhibition and independent review of the amendment. It is noted the Standing Advisory Committee supported mandatory controls for the Public Housing Renewal Project sites, even though those projects did go through public exhibition.
What opportunities/method for contact will there be between managers of the public housing (DHHS or otherwise) and the local community, if issues arise once the housing is occupied? How will safety and security issues be managed? Clear contact details for the site manager need to be available to local residents, when issues arise	The consideration of this planning application is confined only to the construction of the dwellings, the residential use of the dwellings does not require a planning permit and is not a planning matter. Residential noise associated with a dwelling is considered normal and reasonable in an urban setting. Any future issues of amenity, if they arise should be pursued as a civil matter.

The development must incorporate commercial skip bins to address extreme waste management issues experienced at other local public housing sites, due to high and sudden turnover of tenants	Officers have recommended the Waste Management Plan required by the Incorporated Document address hard rubbish storage and collection.
Local assets, such as the nearby community garden and Markham Reserve, need to be protected during construction	A Construction Management Plan is required to be prepared and implemented by the Incorporated Document. In addition, construction would be overseen by a Registered Building Surveyor and project builder who assume responsibility for ensuring neighbouring land is protected throughout the construction period.

MARKHAM HOUSING ESTATE

Incorporated Document

November 2019

1. INTRODUCTION

This document is an incorporated document at Clauses 45.12 – Special Controls Overlay and the Schedule to Clause 72.04 – Documents incorporated in this Planning Scheme of the Boroondara Planning Scheme (planning scheme) pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.

The land identified in Clause 3.0 of this document may be used and developed in accordance with the specific control in Clause 4.0 of this document.

The control in this document prevails over any contrary or inconsistent provision in the planning scheme.

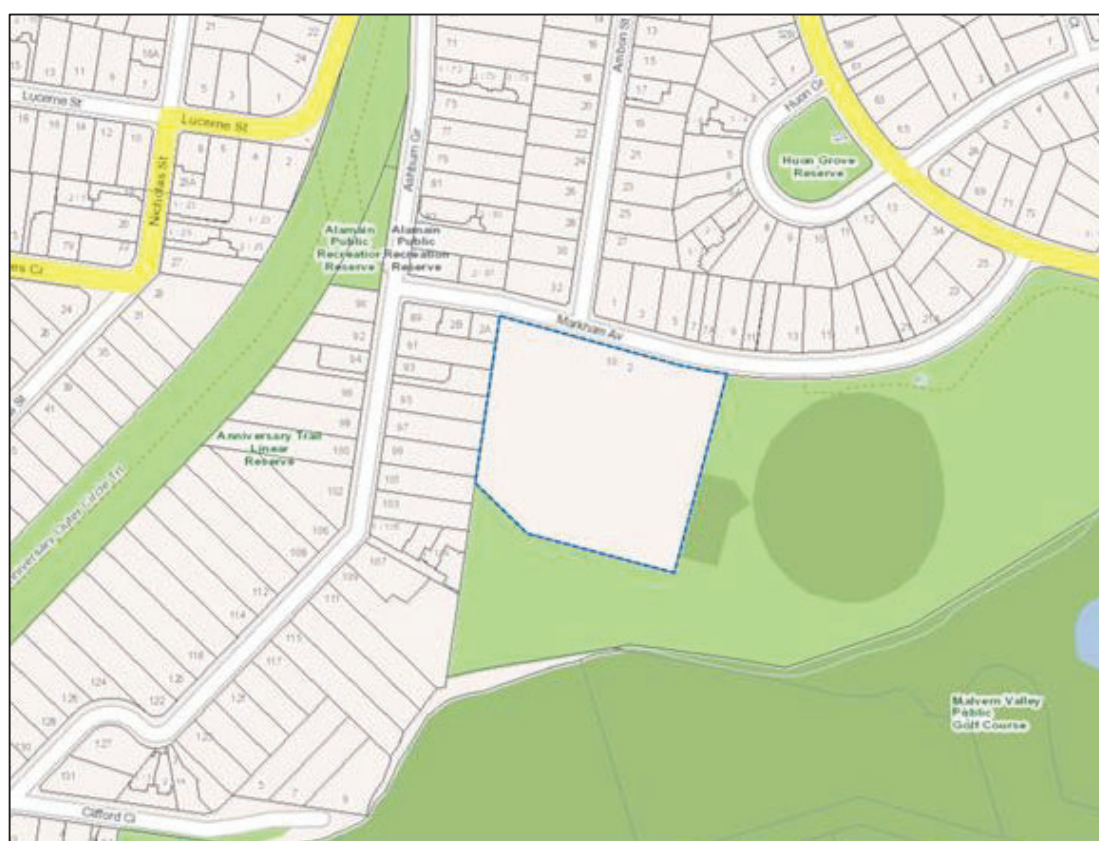
The incorporated document includes a Locality Plan and Building Envelope Plan.

2. PURPOSE

The purpose of the control in this document is to allow the use and development of land for the purposes of the redevelopment of the Markham Housing Estate.

3. LAND TO WHICH THIS INCORPORATED DOCUMENT APPLIES

The control in this document applies to land at 10 Markham Avenue, Ashburton, as shown on the Locality Plan below.



4. CONTROL

4.1 EXEMPTION FROM PLANNING SCHEME REQUIREMENTS

Despite any provision to the contrary or any inconsistent provision in the planning scheme, no planning permit is required for, and no provision in the planning scheme operates to prohibit, control or restrict, the use or development and subdivision of the land for the purposes of the redevelopment of the Markham Housing Estate in accordance with the conditions in Clause 4.2 of this document, except as otherwise agreed by the responsible authority.

4.2 CONDITIONS

Conditions applying to land at 10 Markham Avenue, Ashburton

Use and development

- 4.2.1 The development should be generally in accordance with the building heights and setbacks shown on the Building Envelope Plan and in the conditions below and are subject to confirmation pending detailed design development.
- 4.2.2 The development is to include 178 dwellings and adopt a mixed tenure approach. Approximately 111 of the dwellings in the development are to be for public housing.
- 4.2.3 The development should meet the objectives of Clause 55 of the Boroondara Planning Scheme.
- 4.2.4 The development should not overshadow Markham Reserve for at least five hours between 9am and 3pm on 22 September.
- 4.2.5 A west facing habitable room window, balcony, terrace, deck or patio with a direct view into the secluded private open space or habitable room window of an existing dwelling within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio must comply with Standard B22 of Clause 55 of the Boroondara Planning Scheme.
- 4.2.6 A building with a frontage to Markham Avenue must:
 - a. provide a respectful presentation to the street.
 - b. Include design elements that visually enhance a fine grain appearance and depth of the façade and minimise the perception of wide, flat facades.
- 4.2.7 The development must comply with the Disability (Access to Premises – Buildings) Standards 2010.
- 4.2.8 Soft and hard landscaping must be provided throughout the development.
- 4.2.9 The setback from the east boundary must allow for safe and viable planting of canopy trees to provide a 'green edge' buffer to Markham Reserve, as determined by a qualified landscape architect or arborist.

Plans and documentation

- 4.2.10 Before the development starts (excluding demolition, bulk excavation, site preparation, hoarding and advertising signs), the following plans and documentation must be submitted to and approved by the responsible authority. The plans must be drawn to scale with dimensions and three (3) copies provided.
 - a. A staging plan detailing how the project will be staged over time.
 - b. A site plan showing existing ground levels to Australian Height Datum.
 - c. A design response explaining how the development:
 - i. Meets the objectives of Clause 55 of the Boroondara Planning Scheme.

- ii. Responds to the existing neighbourhood character as described in the City of Boroondara Neighbourhood Character Study Precinct Statements 2013.
- d. A site plan, floor plans and elevations.
- e. Shadow diagrams based on the equinox.
- f. A schedule of the mix and type of accommodation to be provided in the development, including number of bedrooms.
- g. A traffic management report (and accompanying plans) generally in accordance with the report prepared by OneMileGrid (dated December 2016) and the requirements of Clause 52.06 of the Boroondara Planning Scheme. The report must address:
 - i. The internal design of the car parking areas including loading docks, storage facilities and/or bicycle facilities.
 - ii. The positioning of any boom gates, car readers, control equipment (including car park control points).
 - iii. The internal road layout and at-grade car parking.
 - iv. Ramp grades.
 - v. Pedestrian and cyclist safety at points of access and egress.
- h. A schedule of the number and allocation of car parking spaces and bicycle facilities.
- i. A façade strategy including three dimensional drawings or photo montages depicting the development in the context of nearby buildings and open space, taken from multiple viewpoints including pedestrian eye-level.
- j. A schedule of colours, materials and finishes, including the colour, type and quality of materials showing their application and appearance. This must 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.
- k. A stormwater drainage system incorporating integrated water management design principles.
- l. A landscape plan prepared by a suitably qualified landscape architect. This plan must:
 - i. Specify the location and type of vegetation to be retained and removed.
 - ii. Specify the location and type of all proposed vegetation.
 - iii. Include a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
 - iv. Include a schedule of all hard landscaping treatments.
 - v. Include other design elements such as wayfinding signage, lighting and outdoor furniture.
 - vi. Incorporated water sensitive urban design principles.
- m. A construction management plan must be prepared in accordance with Boroondara City Council's Construction Management Plan Template and provide details of the following:
 - i. Hours for construction activity in accordance with any other condition of this document.
 - ii. Measures to control noise, dust, water and sediment laden runoff.
 - iii. Measures relating to removal of hazardous or dangerous material from the site, where applicable.
 - iv. A plan showing the location of parking areas for construction and subcontractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any car parking areas on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay.
 - v. A Traffic Management Plan showing truck routes to and from the site.

- vi. Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction.
 - vii. A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site.
 - viii. Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the construction management plan.
 - ix. Contact details of key construction site staff.
 - x. A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like.
 - xi. Any other relevant matters.
 - n. A tree management plan and tree protection plan prepared by a suitably qualified arborist in relation to the management and maintenance of trees on the site. The tree management plan must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites to ensure that trees remain healthy and viable during construction.
- 4.2.11 Prior to the submission of plans and documentation to the responsible authority under Clause 4.2.10, they must be provided to Boroondara City Council.
- 4.2.12 Before the construction of hoarding or the display of an advertising sign, plans showing the location and details of hoarding and advertising signs must be submitted to and approved by the responsible authority. The plans must be drawn to scale with dimensions and three (3) copies provided.

Layout not to be altered

- 4.2.13 The use and development as shown on the approved plans must not be altered without the written consent of the responsible authority, unless the changes do not trigger a need for a planning permit.
- 4.2.14 All buildings, works and landscaping must be maintained in good order and appearance to the satisfaction of the responsible authority.
- 4.2.15 Once the development has started it must be continued and completed to the satisfaction of the responsible authority.

Landscape completion and maintenance

- 4.2.16 Before the occupation of the development, or by such later date as approved in writing by the responsible authority, the landscaping works shown on the endorsed landscape plan must be carried out and completed to the satisfaction of the responsible authority. The landscaping shown on the endorsed landscape plan must be maintained and be to the satisfaction of the responsible authority by:
- a. Implementing and complying with the provisions, recommendations and requirements of the endorsed landscape plan.
 - b. Not using the areas set aside on the endorsed landscape plan for landscaping for any other purpose.
 - c. Replacing any dead, diseased, dying or damaged plants.

Native vegetation offset

- 4.2.17 Native vegetation offsets must be provided in accordance with the Permitted clearing of native vegetation - Biodiversity assessment guidelines (Department of Environment and Primary Industries, September 2013), except as otherwise agreed by the Secretary to the Department of Environment, Land, Water and Planning.

Drainage

- 4.2.18 The approved stormwater drainage system must be constructed before the occupation of the development and provision made to connect this system to Boroondara City Council's stormwater drainage system.
- 4.2.19 The site must be drained to the satisfaction of Boroondara City Council.

Parking and access

- 4.2.20 Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the responsible authority.
- 4.2.21 The areas for the parking of vehicles must be clearly indicated on the floor and the boundaries of all car parking spaces and access lanes and the direction in which vehicles should proceed along the access lanes must be in conformity with the approved plans.
- 4.2.22 Low intensity lighting must be provided to ensure that car park areas and pedestrian accessways are adequately illuminated without any unreasonable loss of amenity to the surrounding area, to the satisfaction of the responsible authority.
- 4.2.23 Before the occupation of the development, all necessary vehicle crossings must be constructed and all unnecessary vehicle crossings must be demolished and the footpath, kerb and channel reconstructed, in accordance with plans and specifications approved by Boroondara City Council.

Waste management

- 4.2.24 Provision must be made on the land for the storage and collection of solid waste, recyclables and other wastes.
- 4.2.25 Before the occupation of the development, a Waste Management Plan (WMP) must be submitted to and approved by Boroondara City Council. The WMP must detail waste storage and collection arrangements. Waste storage and collection arrangements must not be altered without the consent of Boroondara City Council.

Construction management

- 4.2.26 The construction management plan approved under Clause 4.2.10(m) must be implemented to the satisfaction of the responsible authority.
- 4.2.27 The recommendations of the tree management plan and tree protection plan approved under Clause 4.2.10(n) must be implemented to the satisfaction of the responsible authority.

Advertising signs

- 4.2.28 The lighting of a sign(s) must be positioned so that no direct light or glare shall be visible from any street or from adjoining properties.
- 4.2.29 All promotion signs and hoardings on the land must be removed before the occupation of the development.

Building appurtenances

- 4.2.30 All building plant and equipment on roofs and public thoroughfares must be concealed to the satisfaction of the responsible authority. The construction of any additional plant machinery and equipment, including but not limited to all air-conditioning equipment, ducts, flues, all exhausts including car parking and communications equipment shall be to the satisfaction of the responsible authority.

- 4.2.31 Any satellite dishes, antennas or similar structures associated with the development must be designed and located at a single, unobtrusive area on each building in the development to the satisfaction of the responsible authority, unless otherwise approved by the responsible authority.

Subdivision

- 4.2.32 The owner of the land must enter into an agreement with:

- a) a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
- b) a suitable qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

- 4.2.33 Before the issue of a Statement of Compliance for any stage of the subdivision under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:

- a) a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
- b) a suitable qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

- 4.2.34 The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plans in accordance with the authority's requirements and relevant legislation at the time.

- 4.2.35 All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.

- 4.2.36 The plan of subdivision for certification under the *Subdivision Act 1988* must be referred to the relevant authority in accordance with Section 8 of that Act.

4.3 EXPIRY

The control in this document expires if any of the following circumstances apply:

- The development allowed by the control is not started by 31 March 2023.
- The development allowed by the control is not completed by 31 March 2027.

The responsible authority may extend these periods if a request is made in writing before the expiry date or within six months afterwards.

BUILDING ENVELOPE PLAN

Markham Estate Redevelopment, 10 Markham Avenue, Ashburton

Urban Design Advice on Amendment C321

The proposed development plans, as shown in the Incorporated Document copied below, presents a considerably improved scheme in its mix of public and private housing, retention of existing trees, and reduced site coverage and density.

The total number of dwellings has decreased from the original 225 in the first amendment with only 28% public units to 178 dwellings in the latest scheme, of which 62% are public - a total of 111 dwellings.

As in previous schemes, the proposed dwellings are contained within five buildings A, B, C, D and E. The public housing component in the current scheme is contained within Buildings A, B and C while the private in Buildings D and E.

As may be appreciated from the Building Envelope Plan below, extracted from the Incorporated Document, the setbacks from all boundaries are greater than the minimum setback figures prescribed by Council. The 5m and 7m setbacks from Markham Avenue should suffice if measured from the widened carriageway and shared bike path to the building edge.

The proposed building heights also sound reasonable with buildings rising from two storeys at the front to four at the rear. When combined with the natural slope of the land, the stepped building profile should be appreciable in the views from surrounding environs, in particular from the lower environs of Markham Reserve east and southeast and the Gardiner's Creek corridor south. The southern extremities of Buildings C and E may reach four storeys in height but are set in deeply from the south boundary, 22m and 15m respectively with a dense tree canopy of existing and new trees filtering views through and softening the southern interface.

BUILDING ENVELOPE PLAN



Car Parking

The main weakness of the scheme lies in the under-croft format of car parking, which occupies the ground floor. The total number of car parking spaces produced from this arrangement is 160, of which 67 spaces are set aside for public housing and 76 spaces for the private dwellings in the development.

The Amendment report indicates that the development utilises the natural fall of the land from north to south to accommodate the under-croft parking, which is primarily housed under the proposed building footprints as roughly depicted on the diagram below. In the absence of detailed plans and cross-sections, we are inclined to think this would potentially form the ground floor or street level at any particular point for most buildings if not all.



From an urban design perspective, under-croft car parking degrades the public realm because it decreases activity and vibrancy and undermines safety and security in the street.

Empirical research has demonstrated the deadening effect the blank frontages of ground floor car parking can have on the public environment. Depriving streets of life and interaction at ground floor invites antisocial behaviour and leads to crime and other social problems. It was one of the most criticised design elements in the Modernist Movement in the early/mid-20th century, and a direct impact of the invention and primacy of cars, eventually leading to banal and alienating streets and unsafe public environment.

The Planning Scheme emphasises the need for the design to ensure that buildings and their interfaces with the public realm support personal safety, perceptions of safety and property security.

Based on the current material, the overall quality of the public realm within the estate is questioned. Seemingly, the design relies heavily on quality finishes to conceal under-croft car parking and minimise its negative impact on the interface

with public spaces (streets and open spaces). Quality finishes may improve the façades aesthetically but, without real activity, their effect is limited and rather superficial, one layer deep.

We recommend the following measures be adopted to mitigate the negative impact of the under-croft car parking:

1. Minimising the extent of exposed under-croft car parking by embedding the lower ground floor levels of buildings within the land slope;
2. Introducing multiple pedestrian entrances to each building and where appropriate some form of activity that sheathes and enfolds the car park;
3. Finally, exploring the 'woonerf' street typology for the main north-south vehicular access-way in the development (circled in the above diagram), which is a shared traffic zone with priority for pedestrians while accommodating a reasonable number of on-street parking spaces. Refer to the attached 2-page document that explores the genesis and evolution of the 'Woonerven'. By incorporating some parking spaces within the street environment, the design can clear up some of the ground floor areas for more active uses, including ground floor apartments, and improve the interface with the public realm. Careful design and management of the street as a resource to be shared by all users (car, pedestrians and cyclists) helps enhance the street environment and reclaim the street as a vital part of the public realm.

Interface with Markham Avenue

The second most critical element in the design is the interface with Markham Avenue, which should not only interact and engage with the street but also reflect and continue the fine-grain rhythm and development pattern in the neighbourhood.

To this end, the Incorporated Document includes a provision relating to the Markham Avenue frontage and architectural treatment, which may need minor refinement as detailed in the following section.

Recommended additions to the Incorporated Document - Amendment 321

Use and development

Section 4.2 of the Incorporated Document lists a few conditions to be imposed on the development of the land at 10 Markham Avenue. The following are some recommended additions to this section. The additions are indicated in bold italics.

4.2.1 The development should be generally in accordance with the building heights and setbacks shown on the Building Envelope Plan and in the conditions below and are subject to confirmation pending detailed design development. ***Buildings should respect and maintain the natural landform by stepping down with the slope of the land and minimising visual intrusion on the setting and impact on adjoining properties.***

4.2.6 A building with a frontage to Markham Avenue must:

- a. provide a respectful presentation to the street ***and adequate mass modulation and visual relief in the built form.***
- b. Include design elements that visually enhance a fine grain appearance and depth of the façade and minimise the perception of wide, flat facades.
- c. ***Incorporate multiple pedestrian entrances within each building to provide a positive street address and enhance activation and engagement with the public domain.***

4.2.7 The development must comply with the Disability (Access to Premises – Buildings) Standards 2010. ***Consider disabled access and a choice of routes for various groups of users in the public and private realm.***

4.2.8 Soft and hard landscaping must be provided throughout the development. ***Ensure landscaping is an integral part of the design, minimises the visibility and impact of car parking and contributes to the visual amenity of the development and streetscape.***

4.2.9 The setback from the east boundary must allow for safe and viable planting of canopy trees to provide a 'green edge' buffer to Markham Reserve, as determined by a qualified landscape architect or arborist.

Add the following draft conditions to address car parking:

4.2.10 Configure the car parking component in the development in the least intrusive and detrimental manner to the public realm and minimise the visual and environmental impacts of above ground parking where unavoidable. Explore the 'woonerf' street model for the primary north-south street in the development and design it as a green spine, view corridor and shared zone, with on-street parking and priority for pedestrians and cyclists.

4.2.11 Where ground floor or under-croft car parking is proposed, consider the following measures to mitigate its negative impact on building facades and the public domain in general.

- a) Where possible and facilitated by the topography, integrate car parking into the landform and minimise its visibility above the ground and from the public realm;**
- b) Locate car parking and vehicular entries on the side or rear of the building away from the primary street frontage;**
- c) Introduce multiple, direct and safe pedestrian entries from the street to buildings to enhance street activation and safety;**
- d) Where practical, encase/wrap ground floor parking within other uses, such as entrance foyers, small double-storey apartments with direct access from the street or SOHO apartments (Small Office/Home Office);**
- e) Ensure parking is incorporated into the landscape design of the development by extending planting and paving materials into the car park area;**
- f) Employ clever and thoughtful design measures to conceal car parking and diminish its visibility from adjoining streets and open spaces, such as landscaping, screening, public art and other façade systems that are genuinely integrated into the design concept.**

The above are just draft conditions suggested for inclusion in the Incorporated Document and can be re-worded or modified as appropriate to address the issues of concern.

Council's Urban Designer: Sylvia Georges
Date: 17 December 2019

Street Typologies - Living Streets (Woonerven)

A number of national and international development models were researched for inspiration.

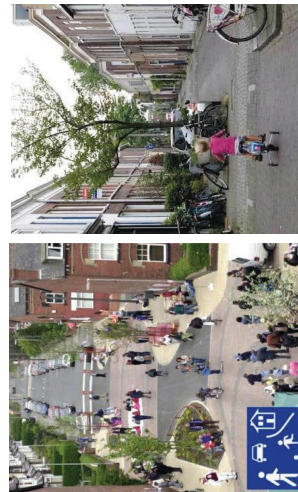
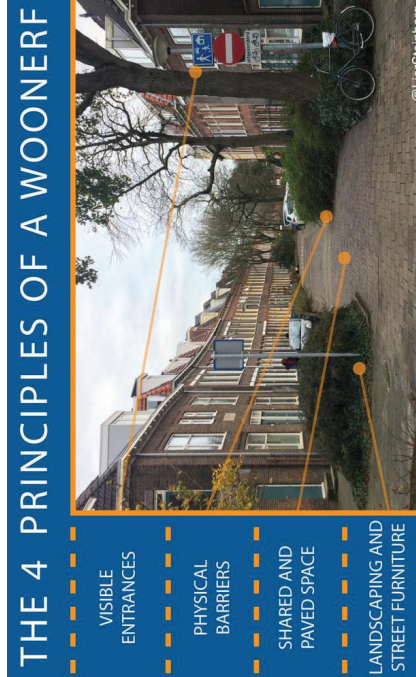
The most relevant street typology that could work in a denser environment like this appears to be the 'Woonerf' or the 'living street' model. The 'Woonerf' is a shared zone with traffic-calming measures and low-speed limits. During the 1960s and 1970s, scholars such as Niek de Boer and Joost Vahl developed the woonerf concept in the city of Delft, the Netherlands, and is directly translated as the 'living yard' from Dutch.

The woonerf was an innovative and conscious attempt at the time to mix social activities with traffic and to simply reclaim streets from cars. A 'woonerf' is stripped off many of the conventional street design elements; uses fewer traffic signs and has a lesser separation between the road and the footpath. The concept soon became popular in the Netherlands and other European countries: Denmark, Germany, France and the United Kingdom where they are called 'home zones'. In the US, a variation to the model called 'complete streets' was implemented, where equal priority is given to all modes of transportation including cars, bicycles and pedestrians, though usually with separate rather than shared right-of-way.

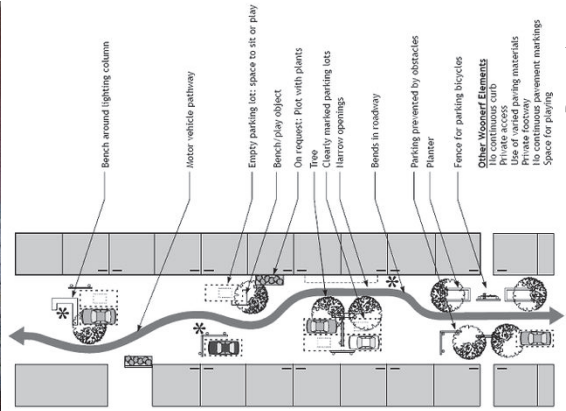
'Living Streets' or 'Woonerven' are residential streets designed primarily with the interests of pedestrians and cyclists in mind and as social spaces where people can meet and children can play safely. According to the Dutch traffic regulations, pedestrians are allowed to use the entire width of a woonerf, while cars are limited to 15 km/h within the street. Using physical barriers and obstacles, the design conveys the impression that pedestrians can use the entire road while cars are restricted in their movement, which results in the reduction of traffic volumes.

Despite the popularity of the woonerf concept and its adoption in different countries, it was criticised later for the high cost of its implementation and on-going maintenance, which involved more complicated engineering and design specifications, partly due to landscaping and street furniture. Since then though a range of innovative methods have been developed to address these concerns. For example, the invention of stratacells and silvaceles, which are modular structural systems that enable the planting of large trees in hard paved urban areas. These systems have many benefits such as access to healthy soil for tree growth, storm water management/urban water infiltration and reducing heat island effect. Refer to images below.





The woonerf sign: people are bigger than cars. Various examples of woonerven with different widths, arrangements and design detailing.



The four principals of the woonerf, adapted from Ben-Joseph's 1995 article:

- Visible Entrances: the entrances of the woonerf are distinctly marked by a sign in which people are larger than cars. The sign communicates visually the supremacy of pedestrians among all the street users.
- The woonerf is a shared and paved space, intended to all street users.
- Using physical barriers, such as curves, car traffic is slowed down.
- The woonerf accommodates landscaping and street furniture.

The woonerf concept gained momentum in the 1960-70s with the Post Modernist movement, which called for reclaiming streets as a vital part of the public realm. To some extent, it was a direct reaction to the continuing rise and growing popularity of cars following WW2, the associated segregation of vehicles and pedestrians and the consequential degrading impact that had on city streets, dehumanising them and stripping them of life.

In 2003, Ben Hamilton-Baillie, a British architect and urban designer, re-adapted the 'woonerf' to urban streets, calling it a "shared space", which gives all road users an equal priority.

The Australian Experience

In Australia and New Zealand, the implementation of a 'living street' was in the form of 'shared zones', adapted from the British 'shared space' model, where pedestrians, cyclists and motorised traffic share the same road space. The implementation of shared zones generally has been limited to urban streets in shopping centres/activity centres where the higher density, intensity and mix of uses generate sufficient pedestrian movement and street activation to make them safe and vibrant throughout the day.

Shared zones are effectively streets where vehicles and pedestrians equally share the road space. In these zones, traffic speed limits are typically reduced to 10 km/h. There may be no road lines, kerb or gutter in a Shared Zone to show that pedestrians and vehicles are equal. Drivers must give way to pedestrians at all times.

A number of variations of shared zones have been implemented including in Boroondara, e.g. Cambridge Street and Campbell Grove in Hawthorn East, see images to the right. The primary objective though in most of these applications appears to be calming traffic in residential streets.

The increasing popularity of 'New Urbanism' has also seen many new master-planned residential areas, especially outer suburbs, which promote a mix of uses and activities, dedicate less of the public domain to traffic, promote walkability and encourage sharing of the roads by different users.

MARKHAM ESTATE: Markham Avenue widening & Gardiners Creek Trail shared path relocation - December 2019



MARKHAM HOUSING ESTATE

Incorporated Document

November 2019

1. INTRODUCTION

This document is an incorporated document at Clauses 45.12 – Special Controls Overlay and the Schedule to Clause 72.04 – Documents incorporated in this Planning Scheme of the Boroondara Planning Scheme (planning scheme) pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.

The land identified in Clause 3.0 of this document may be used and developed in accordance with the specific control in Clause 4.0 of this document.

The control in this document prevails over any contrary or inconsistent provision in the planning scheme.

The incorporated document includes a Locality Plan, ~~and~~ Building Envelope Plan, Markham Avenue Widening, Gardiners Creek Trail Shared Path Relocation and Accessway Design Plan and Tree Protection Plan.

2. PURPOSE AND OBJECTIVE

The purpose of the control in this document is to allow the use and development of land for the purposes of the redevelopment of the Markham Housing Estate.

The objective of this document is to facilitate a contextural and site responsive exemplar for integrated mixed-tenure housing projects, including accessible housing for people with a wide variety of needs, including limited mobility, aging and vision impairment within a diverse mix of dwelling sizes, comprising one, two and three-bedroom apartments.

3. LAND TO WHICH THIS INCORPORATED DOCUMENT APPLIES

The control in this document applies to land at 10 Markham Avenue, Ashburton, as shown on the Locality Plan below.



4. CONTROL

4.1 EXEMPTION FROM PLANNING SCHEME REQUIREMENTS

Despite any provision to the contrary or any inconsistent provision in the planning scheme, no planning permit is required for (with the exception of the erection and display of advertising signs), and no provision in the planning scheme operates to prohibit, control or restrict, the use or development (with the exception of the erection and display of advertising signs) and subdivision of the land for the purposes of the redevelopment of the Markham Housing Estate in accordance with the conditions in Clause 4.2 of this document, except as otherwise agreed by the responsible authority.

4.2 CONDITIONS

Conditions applying to land at 10 Markham Avenue, Ashburton

Use and development

- 4.2.1 The development ~~should must not exceed be generally in accordance with the~~ maximum building heights and minimum setbacks shown on the Building Envelope Plan and in the conditions below ~~and are subject to confirmation pending detailed design development.~~
- 4.2.2 The development is to include not more than 178 dwellings and adopt a mixed tenure approach. ~~Approximately Not less than~~ 111 of the dwellings in the development are to be for public housing.
- 4.2.3 The development must be 'tenure blind' and offer equitable access to the visual and communal amenity of Gardiner's Creek, communal landscaped courtyards, car parking facilities and any other communal facilities.

- 4.2.4 The development must include a 'salt and pepper' distribution of housing tenure types throughout the various buildings.
- 4.2.5 A minimum of 10% of dwellings in the development must have three bedrooms and must not exclusively be allocated to the private housing market.
- 4.2.6 The development must include a flexible, multi-purpose community space for the provision of programs, services and meeting spaces to residents of the Markham Estate and surrounding area, of all tenure types. The space must be located at ground level, with external windows, adjacent to outdoor communal space and consist of a large multi-purpose room with a minimum clear floor area of 60sqm and provide a kitchenette, secure storage space, small sound-proofed office or consultation room, male and female toilet facilities and an accessible toilet with shower facility.
- 4.2.7 The development must include the localised widening of Markham Avenue and relocation of the Gardiners Creek Trail Shared Path at the cost of the developer, in accordance with the design shown on the Markham Avenue Widening, Gardiners Creek Trail Shared Path Relocation and Accessway Design Plan.
- 4.2.8 Vehicle access to the development must be limited to one vehicle crossing to Markham Avenue and be designed and constructed in accordance with the Markham Avenue Widening, Gardiners Creek Trail Shared Path Relocation and Accessway Design Plan.
- 4.2.9 Buildings A, B and D to have minimum front setbacks of 6.8m, 6.8m and 8.8m, respectively, from the existing northern title boundary to facilitate relocation of the Gardiners Creek Trail Shared Path.
- 4.2.10 The development must set aside a minimum of 35% of the site as 'garden area' in accordance with the definition at Clause 73.01 of the Boroondara Planning Scheme.
- 4.2.11 The development must allocate a minimum of one car space for dwelling residents of each one or two bedroom dwelling and two car spaces for dwelling residents of each three or more bedroom dwelling.
- 4.2.12 The development must provide a minimum of one visitor car space to every five dwellings.
- 4.2.13 The design of all car parking spaces and accessways on the land must satisfy the requirements of Clause 52.06-9 (Design standards for car parking) in the Boroondara Planning Scheme.
- 4.2.14 Any under-croft car parking should be designed to minimise the extent of exposed under-croft car parking by embedding the lower ground floors of buildings within the land slope and by introducing multiple pedestrian entrances to each building and, where appropriate, some form of activity that sheathes and enfolds the car park and designed in accordance with the principles described in Section 5.4 (Buildings: Car parking structures) of the *Urban Design Guidelines for Victoria*.
- 4.2.15 The design of the main north-south aligned accessway must incorporate the principles of 'woonerf' street typology, to create a high-quality and attractive shared traffic zone with priority for pedestrians and incorporating some car parking spaces.
- 4.2.16 The development must include secure bicycle parking at a rate of one bicycle space to each dwelling without a car space plus one resident space to each five dwellings and one visitor space to each 10 dwellings.
- 4.2.17 The design of all bicycle parking spaces and bicycle facilities must satisfy the requirements of Clause 52.34-6 (Design of bicycle spaces) in the Boroondara Planning Scheme.
- 4.2.24.2.18 The development must include bicycle signage designed and displayed in accordance with the requirements of Clause 52.34-7 (Bicycle signage) in the Boroondara Planning Scheme.
- 4.2.19 The development ~~should~~ must meet the objectives and standards of Clause 55 of the Boroondara Planning Scheme (with the exception of Standard B7 - Building height).
- 4.2.34.2.20 The development must retain and protect all 'moderate' and 'high' value trees on the land and protect all trees on neighbouring properties in accordance with the Tree Management Plan required by this Incorporated Document.

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Commented [SB1]: This wording is only required if car parking dispensation is permitted for dwelling residents

~~4.2.21~~ The development ~~should not overshadow Markham Reserve for at least five hours between 9am and 3pm on 22 September~~ must not cause a net increase in the extent or duration of overshadowing of the Markham Reserve children's playground or the Ashburton Community Garden between the hours of 9:00am-3:00pm at the Equinox and Solstice.

~~4.2.44~~ ~~2.22~~ The development must incorporate building heights and setbacks to achieve compliance with Standard B21 of Clause 55 of the Boroondara Planning Scheme.

~~4.2.54~~ ~~2.23~~ Any west facing habitable room window, balcony, terrace, deck or patio in Building A with a direct view into the secluded private open space or habitable room window of an existing dwelling in Ashburn Grove within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio must incorporate privacy screening that complies ~~comply~~ with Standard B22 of Clause 55 of the Boroondara Planning Scheme.

~~4.2.6~~ A building with a frontage to Markham Avenue must:

~~4.2.24~~ provide a respectful presentation to the street.

~~a.~~ All building facades must:

~~4.2.25~~ Include design elements that visually enhance a fine grain appearance and depth of the façade and minimise the perception of wide, flat facades.

~~b-4.2.26~~ The southern facades of Buildings C and E must be articulated vertically and horizontally, to ensure the building mass is modulated in a manner that reflects the preferred character and spacing of buildings in the local area.

~~4.2.74~~ ~~2.27~~ The development must comply with the Disability (Access to Premises – Buildings) Standards 2010.

~~4.2.84~~ ~~2.28~~ Soft and hard landscaping must be provided throughout the development.

~~4.2.29~~ The setback from the ~~east boundary~~ eastern and southern boundaries must allow for safe and viable planting of canopy trees in deep soil to provide a 'green edge' buffer to Markham Reserve, as determined by a qualified landscape architect or arborist.

~~4.2.30~~ The setback from the western boundary must allow for safe and viable planting of canopy trees in deep soil to provide a 'green edge' buffer to dwellings in Ashburn Grove, as determined by a qualified landscape architect or arborist.

~~4.2.94~~ ~~2.31~~ The requirements and recommendations contained in the approved Tree Management Plan, Waste Management Plan, ESD Report, Aboriginal Cultural Heritage Management Plan, Functional Layout and Line-marking Plan, Communal Open Space Strategy and Construction Management Plan required by these conditions must be implemented to the satisfaction of the responsible authority.

Plans and documentation

~~4.2.104~~ ~~2.32~~ Before the development starts (excluding demolition, bulk excavation, site preparation, hoarding and advertising signs), the following plans and documentation must be submitted to and approved by the responsible authority. The plans must be drawn to scale with dimensions and three (3) copies provided:

- a. A staging plan detailing how the project will be staged over time.
- b. A site plan showing existing ground levels to Australian Height Datum.
- c. A design response explaining how the development:
 - i. Meets the objectives of Clause 55 of the Boroondara Planning Scheme.
 - ii. Responds to the existing neighbourhood character as described in the City of Boroondara Neighbourhood Character Study Precinct Statements 2013.

~~d.~~ A site plan, floor plans, ~~and~~ elevations ~~and~~ cross-sections.

~~e-e.~~ A tree retention/removal plan.

~~e-f.~~ Shadow diagrams based on the equinox ~~and~~ solstice drawn in the context of adjacent buildings.

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g. A schedule of the mix and type of accommodation to be provided in the development, including number of bedrooms and the distribution of tenure-types within each building.

f.h. A development summary detailing the percentage of site coverage, permeable surfaces, deep soil planting zones and 'garden area'.

g.i. A traffic management report (and accompanying plans) generally in accordance with the report prepared by OneMileGrid (dated December 2016) and the requirements of Clause 52.06 of the Boroondara Planning Scheme. The report must address:

- i. The internal design of the car parking areas including loading docks, storage facilities and/or bicycle facilities.
- ii. The positioning of any boom gates, car readers, control equipment (including car park control points).
- iii. The internal road layout and at-grade car parking. The design of the main north-south aligned accessway must incorporate the principles of 'woonerf' street typology, to create a high-quality and attractive shared traffic zone with priority for pedestrians and incorporating some car parking spaces.
- iv. Ramp grades.
- v. Pedestrian and cyclist safety at points of access and egress.

h.j. A schedule of the number and allocation of car parking spaces and bicycle facilities.

i.k. A façade strategy including three dimensional drawings or photo montages depicting the development in the context of nearby buildings and open space, taken from multiple viewpoints including pedestrian eye-level.

j.l. A schedule of colours, materials and finishes, including the colour, type and quality of materials showing their application and appearance. This must 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.

k.m. A stormwater drainage system incorporating integrated water management design principles.

n. Enlarged, dimensioned and annotated floor plans of each unique apartment layout which clearly detail:

i. Which apartment/s the floorplans represent (i.e. the apartment number/s);

ii. Whether the apartment has 1, 2 or 3 bedrooms;

iii. Which apartments are intended to be adaptable apartments, in accordance with Standard B41 in Clause 55.07 of the Boroondara Planning Scheme;

iv. For the adaptable apartments:

- The clear opening width of the apartment entry door;
- The clear opening width of all bathroom/ensuite doors;
- The dimensioned width of any pathway between the dwelling entrance, the main bedroom, an adaptable bathroom and the living area;
- Label whether the adaptable bathroom is designed in accordance with Design Option A or Design Option B of Table B7 in Standard B41 in Clause 55.07 of the Boroondara Planning Scheme and dimension the bathroom layout to demonstrate compliance;

v. Bedroom length and width, excluding wardrobes (noting that for the purposes of Standard B43 in Clause 55.07 of the Boroondara Planning Scheme, if one bedroom has an ensuite and the remaining bedrooms do not, the bedroom with the ensuite is the 'master bedroom');

vi. The total area of each courtyard / terrace / balcony;

vii. The "useable area" of each courtyard / terrace / balcony, including minimum and maximum dimensions (noting the dimensions must be taken from the inside of any balustrade and are to exclude areas set

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- aside for planting, including garden beds and planter boxes, in accordance with the requirements of the Apartment Design Guidelines for Victoria, 2017, see page 70):
- viii. The location of any cooling or heating units. If none are to be located on the balcony / terrace / courtyard, a notation to that effect is required;
 - ix. The volume of storage space provided within the kitchen, bathroom/s and bedroom/s;
 - x. The volume of any other storage provided for the apartment;
 - xi. The minimum finished-floor to finished-ceiling height clearance proposed;
 - xii. The depth of all single-aspect habitable rooms, measured from the external surface of the habitable room window;
 - xiii. Dimensioned breeze paths (if cross-ventilation is possible) with a minimum length of 5.0m and a maximum length of 18.0m. For each location where cross-ventilation is achieved, provide details of the area of the ventilation opening at each end of the breeze path (noting Standard B49 recommends openings generally be of an equivalent area);
- h-o. A landscape plan prepared by a suitably qualified landscape architect. This plan must:
- i. Specify the location and type of vegetation to be retained and removed.
 - ii. Specify the location and type of all proposed vegetation.
 - iii. Include a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
 - iv. Show any necessary on-site detention system tank/s and associated infrastructure located outside the Tree Protection Zones of the trees to be protected and outside the "deep soil" planting area/s;
 - v. Any hard surfaces proposed within the Tree Protection Zones of trees to be retained:
 - Constructed of a permeable material in accordance with water sensitive urban design (WSUD) industry best practice;
 - Constructed above current grade;
 - Constructed on un-compacted foundations no greater than 5cm in depth;
 - Note that all works carried out within the Tree Protection Zone must be supervised by the project Arborist;
 - vi. All canopy trees selected as advanced species, minimum height 3.0m when planted;
 - vii. Canopy trees planted within the western boundary setbacks of Buildings A and C to consist of species capable of attaining a minimum height of 15m at maturity.
 - ~~iii-viii.~~ Canopy trees planted within the eastern boundary setback of Building E to be located centrally between the building façade and title boundary and to consist of species capable of attaining a maximum height of 8m-10m.
 - ~~iv-x.~~ Include a schedule of all hard landscaping treatments, including high-quality, attractive materials consistent with the 'woonerf' street typology for use in the north-south aligned vehicle accessway.
 - x. Include other design elements such as wayfinding signage, lighting and outdoor furniture.
 - ~~v-xi.~~ Plumbed irrigation to all landscaped areas using harvested rainwater with mains back up.
 - ~~vi-xii.~~ Incorporate water sensitive urban design principles.
- p. A Functional Layout and Line-marking Plan for all internal accessways and the intersection with Markham Avenue.

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g. An Environmentally Sustainable Design (ESD) report which is to the satisfaction of the responsible authority must be prepared by a suitably qualified expert and submitted to the responsible authority for approval. The report must address ESD principles for the development, including but not limited to:

- i. Energy efficiency;
- ii. Stormwater collection and re-use on the site for toilet flushing and landscape irrigation and for powered irrigation of the Ashburton Community Garden;
- iii. Waste;
- iv. Building materials;
- v. A NatHERS assessment of the maximum cooling load of each apartment and demonstrate each apartment satisfies the requirements of Table D1 of Standard B35 in Clause 55.07 in the Boroondara Planning Scheme. In the event of any apartment not satisfying the requirements of Table D1, the development must be amended to achieve compliance to the satisfaction of the responsible authority;
- vi. Demonstrated achievement of a Melbourne Water STORM Rating of not less than 100% and a plan detailing the minimum recommended capacity of stormwater tank/s necessary to accommodate the runoff from balconies/terraces (with any necessary treatment) and non-trafficable roofs throughout the development.

Any changes to the building/s recommended in the approved ESD report must be incorporated into the floorplans and elevations required by these conditions.

r. A Communal Open Space Strategy which is to the satisfaction of the responsible authority must be prepared and submitted to the responsible authority for approval. The Strategy must describe in plan and written form:

- i. The layout, design and dimensions of communal open spaces;
- ii. Details of solar access to communal outdoor open spaces at the winter Solstice (in accordance with Standard B37 in Clause 55.07 of the Boroondara Planning Scheme);
- iii. The proposed maintenance regime for communal open spaces;
- iv. Details of assignment of responsibilities (including financial) for undertaking maintenance and management of communal open spaces;
- v. Details of access to communal open space, including measures to ensure there are no unreasonable restrictions of access for any resident within the development;
- vi. Strategies to deal with any anti-social behaviour.

~~44-S.~~ A construction management plan must be prepared in accordance with Boroondara City Council's Construction Management Plan Template and provide details of the following:

- i. Hours for construction activity in accordance with any other condition of this document.
- ii. Measures to control noise, dust, water and sediment laden runoff.
- iii. Measures relating to removal of hazardous or dangerous material from the site, where applicable.
- iv. A plan showing the location of parking areas for construction and subcontractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any car parking areas on the land must be made available for use by sub-contractors/tradespersons upon completion of such areas, without delay.
- v. A Traffic Management Plan showing truck routes to and from the site.
- vi. Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction.
- vii. A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site.

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- viii. Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the construction management plan.
- ix. Contact details of key construction site staff.
- x. A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like.
- xi. Any other relevant matters.

t. A tree management plan and tree protection plan prepared by a suitably qualified arborist and must set out recommendations and requirements in relation to the retention, protection, management and maintenance of all moderate and high value trees on the site and all trees located on adjacent properties within 5m of the common boundary. The tree management plan must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and detail the following to the satisfaction of the responsible authority to ensure that trees remain healthy and viable during construction:

i. A Tree Protection Plan drawn to scale that shows:

- Tree protection zones and structural root zones of all trees to be retained/protected;
- All tree protection fenced-off areas and areas where ground protection systems will be used;
- The types of footings within any tree protection zones;
- Any services to be located within a tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the project arborist;

ii. Details of how the root system of any tree to be retained or protected will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the project arborist;

iii. Details of any remedial pruning works required to be performed on tree canopies located within the subject site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur.

4.2.144.2.33 Prior-Not less than six weeks prior to the submission of plans and documentation to the responsible authority under Clause 4.2.4032, they-an electronic copy of the plans and documentation must be provided to Boroondara City Council for review and assessment. Any comments provided by Council must be taken into consideration before a decision is made.

4.2.124.2.34 Before the construction of hoarding or the display of an advertising sign, plans showing the location and details of hoarding and advertising signs must be submitted to and approved by the responsible authority. The plans must be drawn to scale with dimensions and three (3) copies provided.

Layout not to be altered

4.2.134.2.35 The use and development as shown on the approved plans must not be altered without the written consent of the responsible authority. Copies of any proposed amendments must be referred to Boroondara City Council for review not less than four weeks prior to submission to the responsible authority and any comments provided by Council be taken into consideration before a decision is made, unless the changes do not trigger a need for a planning permit.

4.2.144.2.36 All buildings, works, ~~and~~ landscaping and plant and equipment must be maintained in good order and appearance to the satisfaction of the responsible authority.

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4.2.154.2.37 Once the development has started it must be continued and completed to the satisfaction of the responsible authority.

Section 173 Agreement

4.2.38 Before the development starts, the owner of the land must enter into an agreement with Boroondara City Council under section 173 of the Planning and Environment Act 1987 to provide for the following:

- a. The provision, fit-out, ownership, maintenance and management of a multi-purpose community room, at no expense to Council, consistent with the advice provided by Council's Community Planning and Development Department, dated 4 February 2020;
- b. Re-investment of any proceeds from the sale of any dwellings on the land by the Director of Housing in the supply of new public housing located within the City of Boroondara;
- c. Reporting mechanisms to provide timely verification to Council of compliance with Part b);
- d. The widening of Markham Avenue and relocation of the Gardiners Creek Trail Shared Path partially into the subject land to be constructed in accordance with the plan and conditions in the Markham Estate Incorporated Document at no cost to Boroondara City Council, to the satisfaction of Boroondara City Council;
- e. Ownership of the land occupied by the relocated Gardiners Creek Trail Shared Path to be transferred (gifted) to Council prior to the occupation of the development, at no cost to Council (including the preparation and registration of title);
- f. The circumstances in which this Agreement may be removed from Title.

Before the development is commenced, application must be made to the Registrar of Titles to register the section 173 agreement on the title to the land under section 181 of the Act. The owner of the land must pay the costs of Boroondara City Council in relation to the preparation, execution and registration of the section 173 agreement (including legal costs).

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Landscape completion and maintenance

4.2.164.2.39 Before the occupation of the development, or by such later date as approved in writing by the responsible authority, the landscaping works shown on the endorsed landscape plan must be carried out and completed to the satisfaction of the responsible authority. The landscaping shown on the endorsed landscape plan must be maintained and be to the satisfaction of the responsible authority by:

- a. Implementing and complying with the provisions, recommendations and requirements of the endorsed landscape plan.
- b. Not using the areas set aside on the endorsed landscape plan for landscaping for any other purpose.
- c. Replacing any dead, diseased, dying or damaged plants.

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Native vegetation offset

4.2.174.2.40 Native vegetation offsets must be provided in accordance with the Permitted clearing of native vegetation - Biodiversity assessment guidelines (Department of Environment and Primary Industries, September 2013), except as otherwise agreed by the Secretary to the Department of Environment, Land, Water and Planning.

Drainage

[4.2.184.2.41](#) The approved stormwater drainage system must be constructed before the occupation of the development and provision made to connect this system to Boroondara City Council's stormwater drainage system.

[4.2.194.2.42](#) The site must be drained to the satisfaction of Boroondara City Council.

Parking and access

[4.2.204.2.43](#) Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the responsible authority.

[4.2.214.2.44](#) The areas for the parking of vehicles must be clearly indicated on the floor and the boundaries of all car parking spaces and access lanes and the direction in which vehicles should proceed along the access lanes must be in conformity with the approved plans.

[4.2.224.2.45](#) Low intensity lighting must be provided to ensure that car park areas and pedestrian accessways are adequately illuminated without any unreasonable loss of amenity to the surrounding area, to the satisfaction of the responsible authority.

[4.2.234.2.46](#) Before the occupation of the development, all necessary vehicle crossings must be constructed and all unnecessary vehicle crossings must be demolished and the footpath, kerb and channel reconstructed, in accordance with plans and specifications approved by Boroondara City Council.

Waste management

[4.2.244.2.47](#) Provision must be made on the land for the storage and collection of solid waste, recyclables and other wastes.

[4.2.254.2.48](#) Before the occupation of the development, a Waste Management Plan (WMP) must be submitted to and approved by Boroondara City Council. The WMP must detail waste storage and collection arrangements, including the storage and collection of hard waste, recyclables and food and organic waste. Waste storage and collection arrangements must not be altered without the consent of Boroondara City Council.

Construction management

[4.2.264.2.49](#) The construction management plan approved under Clause 4.2.10(m) must be implemented to the satisfaction of the responsible authority.

[4.2.274.2.50](#) The recommendations of the tree management plan and tree protection plan approved under Clause 4.2.10(n) must be implemented to the satisfaction of the responsible authority.

Advertising signs

[4.2.284.2.51](#) The lighting of a sign(s) must be positioned so that no direct light or glare shall be visible from any street or from adjoining properties.

[4.2.52](#) All promotion signs and hoardings on the land must be removed before the occupation of the development.

[4.2.53](#) No advertising signs on the land (including hoarding signs) may face towards Markham Reserve.

[4.2.294.2.54](#) Any advertising signs to be erected and displayed must satisfy the objectives and requirements of Clauses 52.05 (Advertising signs) and 22.01 (Advertising signs policy) in the Boroondara Planning Scheme.

Building appurtenances

4.2.304.2.55 All building plant and equipment on roofs and public thoroughfares must be concealed to the satisfaction of the responsible authority. The construction of any additional plant machinery and equipment, including but not limited to all air-conditioning equipment, ducts, flues, all exhausts including car parking and communications equipment shall be to the satisfaction of the responsible authority.

4.2.314.2.56 Any satellite dishes, antennas or similar structures associated with the development must be designed and located at a single, unobtrusive area on each building in the development to the satisfaction of the responsible authority, unless otherwise approved by the responsible authority.

Subdivision

4.2.324.2.57 The owner of the land must enter into an agreement with:

- a) a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
- b) a suitable qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

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4.2.334.2.58 Before the issue of a Statement of Compliance for any stage of the subdivision under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:

- a) a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
- b) a suitable qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

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4.2.344.2.59 The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plans in accordance with the authority's requirements and relevant legislation at the time.

4.2.354.2.60 All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.

4.2.364.2.61 The plan of subdivision for certification under the *Subdivision Act 1988* must be referred to the relevant authority in accordance with Section 8 of that Act.

Open Space Contribution

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4.2.62 Prior to the issue of a statement of compliance, cash in lieu of the open space equivalent of five per cent of the site value of the land must be paid to Boroondara City Council, pursuant to Section 18 of the Subdivision Act 1988.

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Aboriginal Cultural Heritage Management

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4.2.63 Before the commencement of the development, a new or updated Cultural Heritage Management Plan must be prepared to the satisfaction of the responsible authority.

4.2.64 An approved copy of the Cultural Heritage Management Plan required by these conditions must be kept on site at all times during the excavation and construction phases of the development and all employees and contractor staff must be made aware of the requirements of the Plan. In addition, heritage information (including key CHMP findings and the contingency requirements set out in the approved CHMP) must be included in the standard site induction provided to on-site personnel who are required on site following the commencement of any site works whatsoever.

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4.3 EXPIRY

The control in this document expires if any of the following circumstances apply:

- The development allowed by the control is not started by 31 March 2023.
- The development allowed by the control is not completed by 31 March 2027.

The responsible authority may extend these periods if a request is made in writing before the expiry date or within six months afterwards.

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5. DEFINITIONS

Public housing: Long-term rental housing owned and managed by the Director of Housing, used to house people on low incomes that are most in need, including those who have recently experienced homelessness, family violence or have other special needs and are on the Victorian Housing Register.

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Mixed-tenure: Public and private-market housing integrated in a 'salt and pepper' manner throughout the various buildings in the development.

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BUILDING ENVELOPE PLAN



AMEND THE BUILDING ENVELOPE PLAN AS FOLLOWS:

- Express maximum building heights in metres and storeys;
- Dimension the minimum setback between the south-west corner of Building A and the western boundary;
- Change the front setbacks of Buildings A, B and D to 6.8m, 6.8m and 8.8m, respectively, to accommodate the relocated shared path partially into the site. This is to be achieved by decreasing the setbacks between Buildings A/B and C, and Buildings D and E.

MARKHAM AVENUE WIDENING, GARDINERS CREEK SHARED PATH RELOCATION AND ACCESSWAY DESIGN PLAN

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TREE PROTECTION PLAN

[Insert a Tree Protection Plan which identifies all trees on the subject land to be retained and protected, and all trees located on neighbouring properties to be protected]

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