Abstract

Proposal
The Minister for Planning has written to Council and is seeking its views by mid-February 2017 in relation to the final proposed design for the redevelopment of the Markham Avenue Housing Estate.

Places Victoria, acting on behalf of the Department of Health and Human Services (DHHS), has requested the Minister for Planning to prepare, adopt and approve Planning Scheme Amendment C251. Places Victoria propose to redevelop the Markham Avenue Housing Estate for 250 dwellings (62 public housing dwellings plus 188 private dwellings), including a 2-lot subdivision, the creation of easements, the removal of native vegetation and a reduction of the car parking requirements and bicycle facilities requirements associated with dwelling residents and dwelling visitors. Planning approval is also sought for the use and development of a non-portable land sales office, the erection and display of one (1) sign exceeding 10sqm publicising the sale of dwellings on the property on which the sign is displayed and the erection and display of three (3) major promotion signs.

Council previously considered a draft version of this proposal at its Urban Planning Special Committee Meeting on 19 December 2016, at which time Council resolved to inform the Minister that it does not support the proposed redevelopment or the process being followed to facilitate the redevelopment, for a number of reasons set out in that report. Council’s concerns were set out in a letter addressed to the Minister, dated 23 December 2016 and copied to Places Victoria, the Minister for Public Transport and Major Projects, the Minister for Housing, Disability and Ageing and the Department Secretary for the Department of Health and Human Services.

Issues
The following are key issues in respect of this application:

- The failure to adequately consider or address the issues of concern raised by Council in its letter to the Minster for Planning, dated 23 December 2016;
- The inclusion of amendments to the Landscape Plans that significantly increase the impact of the development on the existing trees proposed to be retained, jeopardising their health and stability;
- The seeking of planning permission for advertising signs that are prohibited by the Boroondara Planning Scheme;
• Council has not yet been provided with a complete copy of the Planning Scheme Amendment Application;
• Council has sought, but not yet received, an assurance from the Minister for Planning that he will not make a decision on this matter until after he has received and properly considered Council’s position in relation to the final proposed design and supporting documents, including Council’s comments on the final conditions in the proposed Incorporated Document.

Officer’s response
The following report describes the modifications incorporated into the final plans submitted to the Minister and analyses whether those amendments adequately address the issues of concern previously raised by Council in its letter dated 23 December 2016.

Officers’ recommendation
That the Urban Planning Special Committee resolves to inform:

1. The Minister for Planning;
2. The Minister for Housing, Disability and Ageing;
3. The Minister for Public Transport and Major Projects;
4. The Department of Health and Human Services; and
5. Places Victoria;

That:

a) The amended plans received by Council on 2 February 2017 (prepared by Architectus Architects, dated 1 February 2017) have failed to fully address the issues raised by Council in its letter dated 23 December 2016 and that Council remains opposed to the proposed development and the proposed changes to the Boroondara Planning Scheme for the following reasons:

i. Council is qualified, capable and experienced in assessing and determining planning applications of equal or greater complexity than is currently proposed, within the timeframes allowed for by the Planning and Environment Act 1987 and should be maintained as the responsible authority for the site and the planning authority for the development application;

ii. The failure to carry out formal public notice to abutting and nearby property owners and occupiers and the removal of third party appeal rights is unwarranted and is a denial of natural justice;

iii. The development would cause unreasonable detrimental social effects, as it would entrench the isolation, stigma and disadvantage attached to public housing, through the failure to propose a genuine “tenure blind” proposal;

iv. The objective of achieving a ‘cost neutral’ delivery of public housing is not necessary, and the consequential provision of 188 private dwellings in the form proposed will cause an unreasonable detrimental impact on the site, the local area and nearby residents;

v. The inclusion of the market value of the land in the cost of the development is fundamentally flawed and results in an overdevelopment of the site;
vi. The development is inconsistent with the objectives of the General Residential Zone, because it seeks to achieve an outcome that delivers dwellings at a density that exceeds what could reasonably be considered ‘moderate growth’ having regard to the specific context of the land and the adopted preferred character for the precinct;

vii. The development fails to comply with Council’s adopted Neighbourhood Character Policy with regard to the retention of significant trees and space for replacement tree planting and the scale of buildings around the perimeter of the site;

viii. The development fails to comply with the requirements and objectives of Clause 15 and the Guidelines for Higher Density Residential Development with regard to the following matters:

- The extent and duration of shadows cast over Markham Reserve, the Ashburton Community Garden and Gardiner’s Creek Reserve;

ix. The development fails to comply with the standards and objectives of Rescode with regard to the following matters:

- Standard B1 - Neighbourhood Character;
- Standard B2 - Residential Policy;
- Standard B6 - Front Setback;
- Standard B7 - Building Height;
- Standard B8 - Site Coverage;
- Standard B9 - Permeability;
- Standard B21 - Overshadowing; and
- Standard B22 - Overlooking;

x. The development fails to comply with the Better Apartments Design Standards with regard to the following matters:

- Functional Layout;
- Energy Efficiency;
- Solar Access to Communal Open Space;
- Private Open Space;
- Landscaping;
- Accessibility; and
- Integrated Water and Stormwater Management;

xi. The development fails to provide sufficient on-site car parking or bicycle facilities for residents and visitors;

xii. The development fails to incorporate sufficient traffic management strategies to mitigate the amenity impacts that would be caused by post-development increases in traffic volumes;

xiii. The development would have an unreasonable impact on the amenity and function of Markham Reserve and the Ashburton Community Garden due to visual bulk and overshadowing;

xiv. The development fails to achieve a net increase in public housing within the City of Boroondara, having regard to the net loss of public housing at this site and within Bills Street, Hawthorn in recent years;
xv. The design concerns raised by the Office of the Victorian Government Architect and the Victorian Design Review Panel have not been adequately addressed with regard to the following matters:

- Achieving a landscape-led design;
- Retention of established on-site trees;
- Impact of the development on the sensitive public realm interfaces to the east and south with regard to the extent and duration of shadows and visual bulk;

b) Council has not been provided with a complete copy of the Planning Scheme Amendment Application, as the proposed Incorporated Document, revised ordinances and draft conditions have not been supplied.
### STATUTORY PLANNING OFFICERS REPORT

**Urban Planning Special Committee**

<table>
<thead>
<tr>
<th>Application Number</th>
<th>PSA15/00001</th>
</tr>
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<tbody>
<tr>
<td>Date Application Received</td>
<td>28 October 2016 (amended plans received 2 February 2017)</td>
</tr>
<tr>
<td>Planning Officer</td>
<td>Seuna Byrne</td>
</tr>
<tr>
<td>Applicant</td>
<td>Department Of Health And Human Services C/- Places Victoria</td>
</tr>
<tr>
<td>Owner</td>
<td>Director of Housing</td>
</tr>
<tr>
<td>Property Address</td>
<td>2-18 Markham Avenue, Ashburton (also known as 10 Markham Avenue)</td>
</tr>
</tbody>
</table>
| Proposal | C251 - Amend the Schedule to Clause 52.03 to insert an Incorporated Document to facilitate the redevelopment of the Markham Avenue Housing Estate by DHHS and Places Victoria for:  
   - 250 dwellings (62 public housing dwellings plus 188 private dwellings), including a 2-lot subdivision, creation of an easement, the removal of native vegetation and a reduction of the car parking requirements and bicycle facilities associated with dwelling residents and dwelling visitors; and  
   - The use and development of a non-portable land sales office; the erection and display of a sign exceeding 10sqm publicising the sale of dwellings on the property on which it is displayed; and the erection and display of major promotion signs |
| Ward | Solway |
| Zoning | General Residential Zone Schedule 4 (GRZ4 “Super-Sized Lots”) |
| Overlays | None |
| Drainage Area of Interest? | No |
| Advertised? | The planning scheme amendment has not been exhibited in accordance with the requirements of the Act. Places Victoria has indicated they will request the Minister exempt himself from the requirement to exhibit the amendment, pursuant to 20(4) of the Act. “Community engagement” was conducted by Places Victoria, |
commencing on 28 October 2016 by publishing copies of draft plans and supporting reports on their website and letterbox-dropping selected occupants of properties nearby to the site. Pop-up information kiosks were held by Places Victoria on 9 and 14 November and community information sessions were held at Ashburton Library on 16 and 19 November. Notice of the information sessions was published on page 18 of the Progress Leader on 1 November 2016.

Direct notice of the proposal has not been given to any persons who may be an absentee-owner of an abutting or nearby property that may be affected by the development.

Notice of the revised (February) plans has not been given to persons who made a submission to Places Victoria throughout the November 2016 community engagement period. Copies of the February amended plans have not been made available to view on Places Victoria’s website.

| Number of Objections Received | Submissions were made directly to Places Victoria. Council officers have not been provided with copies or advised how many submissions have been made. An Engagement Report prepared for Places Victoria (dated December 2016) states that “241 pieces of feedback were received from stakeholders and the community”.

Some residents have forwarded copies of their submissions to Council. A total of eight have been received. |

| Recommendation | That Council advise:

1. The Minister for Planning;
2. The Minister for Housing, Disability and Ageing;
3. The Minister for Public Transport and Major Projects;
4. The Department of Health and Human Services; and
5. Places Victoria;

That:

a) The amended plans have failed to fully address the issues raised by Council in its letter dated 23 December 2016 and that Council remains opposed to the proposed development and the proposed changes to the Boroondara Planning Scheme for the reasons outlined in this report;
b) Council has not been provided with a complete copy of the Planning Scheme Amendment Application, as the
proposed Incorporated Document, revised ordinances and draft conditions have not been supplied.

PLANS ASSESSED IN THIS REPORT
Plans received from Places Victoria on 2 February 2017.

PROPOSAL

Appendix A - Amended plans received on 2 February 2017

By letter dated 21 December 2016, the Minister for Planning advised that he had received the final design proposal for Markham Avenue from Places Victoria and that he was seeking Council’s views on the final design “by mid-February 2017”.

Council was provided with a copy of the documentation submitted to the Minister on 22 December 2016. On review, it became apparent that the documentation was incomplete, as it did not include the final design for Building F (in the south-east corner of the site) and did not include draft planning permit conditions that are required to form part of a Section 96A “combined amendment/permit” application.

Following a query from Council officers, an email was received from Places Victoria on the evening of 13 January 2017 which advised that the Department of Environment, Land, Water and Planning (DELWP) had informed Places Victoria that the Department’s preferred approach for approval of the Markham project is now through the use of an Incorporated Document, and not through the Section 96A “combined amendment/permit” process. Places Victoria advised that DELWP apparently believe this to be “a more straightforward way of facilitating the development”.

This change in approach will necessitate the drafting of new planning scheme provisions. The details of the planning scheme provisions (an Incorporated Document, draft conditions for the regulation of the development and draft amended ordinances) have not been provided to Council. It is presumed by Council officers that the planning scheme amendment will now seek to amend the Schedule to Clause 52.03 to insert an Incorporated Document that is site-specific to 2-18 Markham Avenue, making the development exempt from requiring planning permission (subject to compliance with the requirements of the Incorporated Documents), rather than making the Minister for Planning the Responsible Authority for the site. However, it is expected that the Incorporated Document would be drafted to still make the development subject to the Minister’s approval.

On 31 January 2017, the Mayor wrote to the Minister for Planning advising that Council will not be in a position to provide the Minister with its views until such time as Council is provided with the final version of the development, including the Incorporated Document, draft conditions and associated plans (incorporating the finalised layout of Building F). The Minister was informed that Council officers’ ability to prepare a report
for Council to formulate its views was contingent on the timely provision of a full set of completed documents from Places Victoria, which had previously been promised to be provided to Council prior to Christmas. The Mayor sought an assurance from the Minister that he would not make a decision on this matter until after he had received and properly considered Council’s resolution in relation to the final proposed design and supporting documents, including Council’s comments on the final conditions in the proposed Incorporated Document.

On 2 February 2017, Council received a copy of final plans for the development (including the finalised layout of Building F) from Places Victoria. However, the proposed Incorporated Document, revised ordinances and the draft conditions have not been provided.

No response has been received from the Minister in relation to Council’s request for more time.

The February submission from Places Victoria is comprised of plans for two separate developments:

1. Use and development of proposed Lot B for a non-portable land sales office, the erection and display of advertising signs exceeding 10sqm publicising the sale of dwellings on the property on which it is displayed, and the erection and display of major promotion signs\(^1\); and

2. The construction of 250 dwellings (62 public housing dwellings and 188 private dwellings) within buildings ranging between 2-7 storeys, a 2-lot subdivision, creation of an easement, the removal of native vegetation and a reduction of the car parking requirements and bicycle facilities associated with dwelling residents and dwelling visitors.

**AMENDMENTS TO THE PROPOSAL**

Places Victoria and DHHS have prepared an Engagement Response Report that outlines their responses to the matters raised during the community and stakeholder engagement period.

Places Victoria’s website provides the following description of the amendments made following the community engagement period:\(^2\):

\(^1\) The advertising signs proposed to be displayed have been described by officers as “major promotion signs”, as the number of signs publicising the sale of dwellings on the land exceed the number permitted to be displayed with a permit pursuant to Clause 52.05-4.

**Development proposal**

Places Victoria’s approach to the redevelopment of this site has been design-led and has considered important urban design factors including neighbourhood character, overshadowing, open space, parking and its proximity to parkland, public transport and community facilities.

The proposal has been developed and updated following engagement with stakeholders and the community. Some of the changes to the design include:

- Lowering the level of the basement to follow the natural fall of the land and increasing its setback from the south-east corner;
- Reconfiguring the ground floor and lobbies to buildings E and F;
- Removing the sixth storey on Building F;
- Reducing the overall number of private units by two, for a total of 188;
- A small increase to visitor parking;
- Increasing setbacks on the eastern and southern boundaries to create more ‘breathing space’ between the site and adjoining parkland;
- Further enhancing the landscape design, in particular maximising deep soil planting, providing more connectivity from north to south through the site and increasing landscaping on the site boundaries;
- Providing permeable paving and more deep soil zones to assist with minimising hard surface rainwater collection; and
- Establishing rainwater harvesting from Building E for the community garden.

Places Victoria is continuing to make further changes to the design of the south-east corner of the site, acknowledging concerns about overshadowing of the adjoining parkland and community garden. Places Victoria will finalise refinements to this part of the design before the Minister for Planning makes a final decision on the proposal.

In the absence of architectural plans for the public to view or a detailed explanation of all changes that have actually been made to the plans, the summary by Places Victoria of the amendments made is considered to be superficial and in many instances, officers disagree with how the amendments have been described. For example:

- It is stated that the sixth storey has been removed from Building F, which implies a significant decrease in the height of that building. In fact, the central part of the
building that faces towards Markham Reserve (the east elevation) has been increased in height by 900mm (from RL 47.8m to RL 48.7m).

- It is stated that the levels of the basement have been lowered to follow the natural fall of the land. According to the Basement Level 2 Floor Plan, the finished floor levels of the basement have not been altered from (north to south) RL 32.5m, RL 32.2m, RL 31.5m, RL 29.5m and RL 29.0m. The lowest floor of apartments within Building F (located on Basement Level 1) have a finished floor level of RL 32.8m, as they did in the plans considered by Council in December.

- It is stated that the Basement Level 2 setbacks have been increased from the south-east corner (below Building F). It is also stated that the eastern and southern boundary setbacks have been increased “to create more breathing space between the site and adjoining parkland.” The setbacks have changed as follows:

<table>
<thead>
<tr>
<th>Boundary</th>
<th>Basement Level 2 Setback in December plans</th>
<th>Basement Level 2 Setback in February plans</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern</td>
<td>2.0m - 11.8m</td>
<td>11.8m</td>
<td>0m / +9.8m</td>
</tr>
<tr>
<td>Southern</td>
<td>0m</td>
<td>2.83m</td>
<td>+2.83m</td>
</tr>
</tbody>
</table>

The description of the amendment implies that the area for deep soil planting directly adjacent to the park has been increased. Contrary to this, the Basement Level 1 plan shows that the setback area would now be occupied by an elevated private outdoor terrace that offers no additional opportunity for the planting of large trees with spreading canopies. Furthermore, in the instance of the southern boundary, the setback would now be occupied by a 2.5m wide sewerage easement, making it unsuitable for the planting of large trees.

The description of the amendment also implies that the building setbacks have uniformly increased for the buildings adjacent to the park. However, the eastern boundary setbacks for Building E have not been changed from 2.8m and in some instances, the setbacks for Building F have been significantly decreased from the eastern boundary.

<table>
<thead>
<tr>
<th>Boundary</th>
<th>Basement Level 1 Setback in December plans</th>
<th>Basement Level 1 Setback in February plans</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern</td>
<td>2.0m - 11.2m - 12.5m</td>
<td>4.49m</td>
<td>+2.49m / -6.71m / -8.01m</td>
</tr>
<tr>
<td>Southern</td>
<td>1.75m - 2.75m</td>
<td>2.68m³</td>
<td>+0.93m / -0.07m</td>
</tr>
</tbody>
</table>

- It is stated that the ground floor and lobbies to Buildings E and F have been reconfigured. What has not been disclosed is that the lobby for Building F has been relocated so there is no longer a physical gap between Buildings E and F. The plans considered by Council in December included a setback of approximately 5.5m between the buildings. That setback was added by the project architects in

³ The southern setback of Building F will now be occupied by a 2.5m wide sewerage easement
response to criticisms made by the Office of the Victorian Government Architect in relation to an earlier version of the development. The reinstatement of the attached built form is contrary to the advice of the OVGA, noting that the OVGA were not satisfied that even the 5m separation distance had ameliorated their concerns of visual bulk impacts when the development is viewed from Markham Reserve.

- It is stated that the landscape design has been further enhanced, in particular through maximising deep soil planting and increasing landscaping on the site boundaries. However, officers are of the view that the additional areas of deep soil are compromised and not available for canopy tree planting as they are covered by elevated decks located within the private open space areas of the new apartments. Places Victoria has justified their inclusion of the decked areas within the calculation of deep soil planting zones on the basis that the decks will be permeable (presumably pier and beam construction, not on a concrete slab). Council’s Arborist has advised that while it is conceivable for tree roots to access soil volume beneath a deck, it is not a location where they would prosper, as it would be very dry and would not naturally receive organic matter. The actual genuine deep soil zones that are not compromised by decks or private open space areas are too narrow to support the growth of large canopy trees to their maximum potential. In particular, along the sensitive interfaces to the north, south and east where the scale and mass of the new buildings will require softening through landscaping, the “deep soil garden beds” are compromised by decks (northern and eastern setbacks) and by a sewerage easement (southern setback). Officers are also aware that it is common to receive ‘nuisance complaints’ and applications for tree removal from residents that have small outdoor spaces located next to large trees. The submitted Landscape Plan states that medium and large trees will be planted along the eastern boundary. Council’s Arborist has advised that one of the tree species nominated on the plan, *Acacia dealbata*, is not suitable for urban sites as it is highly prone to attack by borers and often only lives for 30 years.

- It is stated that the landscape design has been further enhanced. However, in relation to the few trees that are proposed to be retained, the modifications made to the landscape design appear to place those trees in greater jeopardy of decline or death as a consequence of the development, compared to the original landscape design. For example, the entire tree protection zone surrounding Trees 27 and 29 (both large Manna Gums) is proposed to be surfaced with granitic sand. While this material is permeable, no notes have been included on the plan to suggest it will be laid at-grade. It is most likely intended to cut away all of the existing turf to lay a compacted surface of the gravel to form a flat, stable pedestrian path. In addition, the revised landscape plans show a new deck and impervious hard paving within the tree protection zones. None of these elements have been considered by the Arborist acting for Places Victoria as none are disclosed in the Arborist’s report that has been submitted to the Minister for his review.

- It is stated that increased connectivity has been provided from the north of the site to the south. The Planning Report that accompanies the February plans goes further, suggesting that this connectivity makes the space accessible to the general
public and is sufficient justification for reducing the public open space levy (payable to Council) from 5% of the site value to 2.5%. What is not mentioned is that the pathways shown in the February plans do not extend as far to the south as the pathways shown in the plans previously considered by Council. In addition, according to the draft Plan of Subdivision, the ‘public open space’ will not be vested in Council and will not be affected by a carriageway easement. This means it will be left to the discretion of the Owner’s Corporation as to who will be permitted to access the land.

Officers have reviewed the February plans and the amendments that have been made to the development are summarised as follows:

- The number of apartments has decreased by two, from 252 to 250. There will still be 62 public apartments but there will now be 188 private apartments instead of 190.
- The setback from the eastern boundary to the southern-most section of Basement Level B1 (above ground) of Building F was 2.385m - 11.2m - 12.5m in the plans considered by Council. The setbacks to the floors located at ground level and above have been partially increased and partially decreased to 4.49m, measured to elevated private outdoor terraces on Basement Level B1 and 11.4m for the floors above.
- The number of visitor car spaces for the private apartments has increased by three (3) from 26 to 29 (dispensation of 8 instead of dispensation of 12). Three (3) new visitor parking spaces are now allocated to the public apartments (dispensation of 9 instead of dispensation of 12). The application still seeks dispensation for 31 public resident car spaces.
- Bicycle facilities for the public housing have been increased and improved in design and location. However, dispensations are still sought in relation to both dwelling residents and dwelling visitors for both the public and private dwellings. In a location directly adjacent to the shared path network and where car parking dispensations are also sought, the proposed dispensation of bicycle facilities is not supported.
- The Planning Report prepared by Places Victoria that accompanied the February plans recommends the payment of a 2.5% public open space levy to Council, based on Lot B only. Officers remain of the view that there is no reasonable basis to reduce the percentage payable from a 5% contribution.
- The number of trees to be removed has not changed, however additional details have been added and modifications made to the landscape design. In relation to the few trees that are proposed to be retained, the modifications made to the landscape design appear to place those trees in greater jeopardy of decline or death as a consequence of the development, compared to the original landscape design.
- The application has been expanded to include the seeking of a permit for the use and development of a non-portable sales display suite with eight (8) car spaces and
four associated hoarding signs with areas of 10.5sqm (Sign A), 10.5sqm (Sign B), 142.8sqm (Sign C) and 91.35sqm (Sign D). The signs would have a total advertisement area of 255.15sqm, including Sign A with an advertisement area of 10.5sqm attached to the eastern boundary and directly facing Markham Reserve. It is noted that pursuant to Clause 52.05-4, one (1) sign of this type is permitted to be displayed without the need for a planning permit. It is not possible under Clause 52.05-4 to obtain planning permission to display additional signs advertising the sale of dwellings on the land. As a consequence, three (3) of the proposed signs are prohibited by Clause 52.05-9.4 The proposed hours of operation for the sales office have not been disclosed.

- In general, much of the information requested in Council’s ‘request for information’ letter dated 18 November 2016 has been supplied.

**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.

**OFFICER ASSESSMENT**

The following assessment is limited to those aspects of the development that have been amended, compared to the plans considered by Council at its meeting on 19 December 2016.

**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; and
- The draft planning scheme provisions proposed by Planning Scheme Amendment C229, as appropriate (the Local Planning Policy Framework Review).

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4 The 10.5sqm signs are defined as “promotion” signs. As their advertisement area exceeds the 2sqm allowed by Clause 52.05-9, the signs are prohibited. The 91.35sqm and 142.8sqm signs are defined as “major promotion” signs. These signs are prohibited within “high amenity areas” such as land within the General Residential Zone.
In December 2016, the Urban Planning Special Committee resolved to inform the Minister for Planning and others of its opposition to the proposed development and proposed changes to the Boroondara Planning Scheme (refer to Appendix B - Officer Abstract and Report, 19 December 2016).

The reasons for Council’s opposition to the project are listed below, together with analysis of whether the amendments incorporated into the February plans adequately address Council’s concerns.

1. **Council is qualified, capable and experienced in assessing and determining planning applications of equal or greater complexity than is currently proposed, within the timeframes allowed for by the Planning and Environment Act 1987 and should be maintained as the responsible authority for the site.**

Although it appears that an alternative mechanism will now be relied upon, the outcome remains the same: Boroondara City Council will not be the decision-maker for what is effectively a straight-forward planning permit application and there will be no right for third parties to seek a merits review of the outcome.

2. **The failure to carry out formal public notice to abutting and nearby property owners and occupiers and the removal of third party appeal rights is unwarranted and is a denial of natural justice.**

The parties involved in the preparation of this planning application continue to exclude the community from having meaningful involvement in the formulation of an appropriate development outcome for the site.

The February amended plans have not been made available to submitters to the application and have not been published on Places Victoria’s website.

The community has been denied appropriate notice and review rights and the views of Council and the community have not been adequately considered or addressed by the amended plans.

3. **The development would cause unreasonable detrimental social effects, as it would entrench the isolation, stigma and disadvantage attached to public housing, through the failure to propose a genuine “tenure blind” proposal.**

There has been no change to the approach of DHHS and Places Victoria with regard to achieving a genuine ‘tenure blind’ development or distributing the public housing apartments throughout the various proposed buildings.
4. **The objective of achieving a ‘cost neutral’ delivery of public housing is not necessary, and the consequential provision of 190 private dwellings in the form proposed will cause an unreasonable detrimental impact on the site, the local area and nearby residents.**

There has been no change to the approach of the State Government with regard to the funding model for this development.

The reduction in the number of private dwellings, from 190 to 188 and the minor changes to building setbacks have not addressed concerns with regard to the visual bulk impacts of the development.

5. **The inclusion of the market value of the land in the cost of the development is fundamentally flawed and results in an overdevelopment of the site.**

There has been no change to the approach of the State Government with regard to the funding model for this development.

6. **The development is inconsistent with the objectives of the General Residential Zone, because it seeks to achieve an outcome that delivers dwellings at a density that exceeds what could reasonably be considered ‘moderate growth’ having regard to the specific context of the land and the adopted preferred character for the precinct.**

It is considered that the provision of 250 dwellings on the site remains at a density that exceeds what could reasonably be considered ‘moderate growth’. If the development is approved in its current form, it will be contrary to the objectives of the General Residential Zone.

7. **The development fails to comply with Council’s adopted Neighbourhood Character Policy with regard to the retention of significant trees and space for replacement tree planting and the scale of buildings around the perimeter of the site.**

The amended plans have not addressed the matters raised by officers in the December report, including the retention of trees on the site or measures to protect trees located on neighbouring properties.

Places Victoria’s submission suggests that building setbacks have been increased and that this successfully creates ‘breathing space’ between the buildings and the adjacent parkland, notwithstanding that in some instances, the setbacks have been decreased.
Where the setbacks have been increased from the eastern boundary, the additional setback is utilised for private open space and consists of elevated decks or decks/paving constructed on concrete slabs. This precludes the ability to plant large trees with spreading canopies adjacent to the eastern boundary to soften the appearance of the development. The setback from the southern boundary of the built form above ground has not been revised. Below ground, the basement setback has been increased from 0m to 2.83m. However the ability to plant large trees with spreading canopies in this location is compromised by the newly proposed 2.6m wide sewerage easement.

Council’s Arborist is of the view that:

- There are a number of high-value trees on the site that are worthy of retention that are proposed to be removed;
- The large building footprints and extensive use of hard surfaces leaves insufficient space to replace the existing large trees that are to be removed. There is insufficient space for the proposed trees to reach the height of 15m suggested in the Landscape Plans as there will not be enough permeable space to support thriving root systems and there will not be enough air-space to support trees with spreading canopies;
- The encroachment of buildings and works into the Tree Protection Zones (TPZ) of Trees Nos. 95 and 96 (located within the rear yards of Nos. 95 and 91 Ashburn Grove, respectively) has not been decreased and remains at a level that would have a detrimental effect on the health and stability of the trees and is not in accordance with the Australian Standard for Amenity Trees. The encroaching works consist largely of the paving associated with the public housing car parking and the south-west corner of Building A. The Landscape Plan has been revised to show that the public housing car parking area will be paved with permeable paving. However, the architectural plans show that the permeable paving is to be laid above approximately 800mm of fill, with a retaining wall to be constructed within the TPZ. Council’s Arborist has advised that the use of permeable paving in this location will be of no benefit to the retained trees, given the extent and depth of fill proposed and the location of the retaining wall. In particular, Tree 95 will be severely affected and it is expected that the works will directly lead to the rapid decline and death of the tree;
- The inclusion of new buildings and works within the TPZ of the large Manna Gums proposed to be retained, located to the south of Building D (Trees 27 and 29) and the resurfacing of their entire TPZ with granitic sand is not supported and is expected to directly lead to the rapid decline and death of the trees;
- The Arborist’s report prepared for Places Victoria and submitted to the Minister has not been updated to reflect the revisions made to the Landscape Plans, so does not present an up to date assessment of the impact of the development on the trees to be retained.
8. The development fails to comply with the requirements and objectives of Clause 15 and the Guidelines for Higher Density Residential Development and the Safer Design Guidelines for Victoria.

Officers do not accept that the revisions made to the plans result in the development having an acceptable impact on the adjacent public realm with regard to visual bulk or overshadowing.

Overshadowing

The revisions made to the setbacks of Building F have not led to the complete removal of shadows cast over the Ashburton Community Garden or the barbeque and picnic facilities located adjacent to the Markham sports pavilion. In addition, the submitted plans clearly show that the extent and duration of shadows cast over Markham Reserve is significant. As a consequence, it remains the view of officers that the development will have a detrimental impact on an important public space. It is unclear how a view could reasonably be formed that this outcome protects or “enhances the public realm” or ensures that the public’s enjoyment of the public park is not “compromised by undesirable overshadowing”, as is required by Clause 15.01-2 (Urban design principles).

The extent and duration of overshadowing of the adjacent public land is at its worst at 9am and 3pm. There is no time of day at the Solstice or Equinox where the development would not overshadow Markham Reserve\(^5\). At the Winter Solstice, 5,830sqm of public open space within the park would be overshadowed at 9am and 3,734sqm at 3pm. At the September Equinox, 1,232sqm of the park would be overshadowed at 9am and 764sqm at 3pm.

Notwithstanding the changes to the eastern boundary setbacks of Building F, the community garden will still be progressively overshadowed between 1pm-3pm at the Winter Solstice (21 June) and between 2pm-3pm at the September Equinox (22 September).

The community picnic facilities located within Markham Reserve (located between the sports pavilion and the community garden) and the children’s playground (located to the west of the sports pavilion) will be progressively overshadowed by Building E between 1pm-3pm at the Winter Solstice and between 1pm-3pm at the September Equinox.

\(^5\) Between the hours of 9am - 3pm.
The Safer Design Guidelines for Victoria

The revisions made to the location and design of the public housing bicycle facilities has fully resolved officers’ concerns with regard to compliance with the Safer Design Guidelines for Victoria, as the bicycle storage area located within Building A has been incorporated into an enclosed, secure room that is both externally and internally accessible and is in a location that will benefit from natural surveillance.

9. The development fails to comply with the standards and objectives of Rescode.

Limited modifications have been made to the development to address the Rescode non-compliances found in the December plans. The development continues to fail to comply with the following standards:

- **Standard B1 - Neighbourhood character**: the proposed revised design continues to fail to “respect the existing or preferred neighbourhood character and respond to features of the site.” The preferred character for this site is set out in the draft Neighbourhood Character Policy adopted by Council as part of Planning Scheme Amendment C229. The Amendment is currently with the Minister for Planning, awaiting his approval and is required to be considered before making a decision on this development. The draft policy was independently reviewed and supported by a Planning Panel appointed by the Minister. For “super-sized lots”, the draft policy seeks to create a landscape buffer around the entire perimeter of the site, with space to plant canopy trees in conjunction with the retention of existing canopy trees. With regard to building scale, the policy seeks to mimic the preferred building scale of the broader precinct around the perimeter (in this instance, 1-2 storeys), with taller built form located within the centre of the site. The development proposed by Places Victoria instead concentrates the taller built form adjacent to the southern and eastern site boundaries, with minimal or no opportunities for canopy tree planting to soften the appearance of these interfaces due to the siting of decks, terraces and an easement.

- **Standard B2 - Residential policy**: the proposal fails to satisfy planning policies at a local level, which seek to protect and maintain the existing character of urban areas within Boroondara.

- **Standard B6 - Front setback**: the proposal fails to achieve the minimum setback required of 9m. The proposed front setbacks for Buildings A, C and E are 4.23m, 3.5m and 5.91m-7.32m, respectively.

- **Standard B7 - Building height**: the building heights adjacent to the eastern and southern boundaries have not been revised in a manner that would meet the standard or objectives of Standard B7.
• **Standard B8 - Site coverage**: The material lodged with Council in October stated that the proposed site coverage was 46%. Officers formed the view that this appeared to under-state the actual proposed site coverage. The February plans confirm officer’s observations. Even after taking into consideration the reduced built form of Building F at the south-east corner, the February plans indicate the proposed site coverage is 65%. This exceeds the maximum of 60% recommended by Rescode and is not supported by officers as it is incongruous with the preferred character of the area.

• **Standard B9 - Permeability**: details of site permeability have been removed from the February plans. Instead, the architectural submission describes the proportion of the site occupied by “deep soil zones” as 15%. This is lower than the recommended minimum of 20% in Rescode. As with the plans considered in December, the architects’ calculations in the February plans fail to exclude areas of decking, retaining walls and seating, so it is expected that the proposed proportion of permeable surfaces is likely to be lower than 15%.

• **Standard B21 - Overshadowing**: The new information contained in the February plans confirms that the extent and duration of shadows cast by the development over the secluded private open space of No. 93A Ashburn Grove and No. 2A Markham Avenue at the September Equinox is not compliant with Standard B21.

• **Standard B22 - Overlooking**: The new information contained in the February plans confirms that the development is not compliant with Standard B21. Building A contains four (4) apartments with west-facing habitable room windows sited within 9m of the common boundary that will unreasonably overlook the secluded private open space of Nos. 2A Markham Avenue and 91 & 93A Ashburn Grove. The apartments that require privacy screens to be added to their west elevations are AG01, AG07, A101 and A107. In addition, the south-facing balconies associated with apartments AG07 and A107 also require privacy screening to be added to the balcony balustrades to prevent unreasonable views into Nos. 91 and 93A Ashburn Grove.

The provision of additional information on the plans has enabled officers to carry out a more detailed assessment of the development. In relation to the following Rescode Standards, the additional information or modifications to the design have brought the development into compliance:

• **Standard B17 - Side and rear setbacks**: The calculations required to carry out an assessment under Standard B17 for the plans considered in December were based on scaling the building heights and setbacks (due to a lack of information from the architects). Those calculations indicated that the apparent 4.0m setback of Level 01 of Building A from the western boundary was not sufficient given the building’s apparent height of 10.5m. The February plans now include dimensions of building heights and setbacks, as sought by Council. The plans now indicate that Level 1 of Building A has a setback of 4.4m from the western boundary, with an external wall...
height of 8.875m. Standard B17 would require a minimum setback of 3.965m. Therefore, the setback complies with the Standard.

- **Standard B18 - Walls on boundaries**: The plans considered by Council in December showed a 53m long wall would be constructed abutting the southern boundary. A setback of 2.83m is now provided to Basement Level 2, so there will no longer be any walls constructed to the external boundaries of the site.

10. The development fails to comply with the Draft Better Apartments Design Standards.

In the time since officers last considered this matter, the State Government has released the final version of its Better Apartments Design Standards (BADS). The final document is noticeably different to the draft Guidelines published in mid-2016, as many of the prescriptive requirements have been removed. Most notably, the prescriptive building separation distances that were proposed in the Draft Guidelines have been completely removed. Instead, the Building Setback Objective now sets out a performance-based approach that requires a design to respond to the urban context, provide daylight to new dwellings and private open space, limit overlooking and provide a reasonable outlook - not all that dissimilar to the current requirements of the Higher Density Design Guidelines that the Standards will replace. The Standards are intended to be implemented by the State Government in March 2017.

The Planning Report prepared by Places Victoria states that “the apartments provide a best practice response”\(^6\) to the Better Apartment Guidelines. However, an assessment by officers has found the revised development remains non-compliant with a number of the new standards. This includes:

- **Functional Layout standard**: This standard sets out minimum bedroom and living room sizes. Of the 40 different apartment typologies proposed, 34 have been found to be non-compliant, including 14 apartment typologies that contain multiple non-compliances. The non-compliant apartment typologies are as follows:
  
  - **Inadequately sized main bedroom**: K1, J2, J3, K3, K5, A2, C2, C6, C7, TH1 and TH2;
  - **Inadequately sized other bedroom**: K6, K3, K5, B1, C1, C2, C3, C6, C7, D3, D5, E1 (flexi study/bedroom), E2 (flexi study/bedroom and second bedroom), E3 (flexi study/bedroom), E4 (flexi study/bedroom and second bedroom) and TH1 (second and third bedrooms);
  - **Inadequately sized living room (studio or 1-bedroom)**: J2, J3, A5 and A6;
  - **Inadequately sized living room (2 or 2+ bedroom)**: KA, LA, L1, K2, B1, B2, C1, C2, C3, C4, C5, C6, C7, D2, D4, E2, E3 and TH1;

\(^6\) Page 14, December 2016 report
• **Room Depth:** Insufficient information has been provided to assess this standard (floor-ceiling clearances);

• **Storage:** Insufficient information has been provided to assess the standard in relation to internal storage (internal storage volumes);

• **Noise Impacts:** Insufficient information has been provided to assess this standard (acoustic analysis);

• **Energy Efficiency:** This standard requires that "living areas and private open space should be located on the north side of the development, if practicable." Places Victoria propose to clear the site of almost all constraints (e.g. buildings and trees) however the development proposes only 50 out of 250 dwellings that will have a north-facing living area or private open space (20%). It is considered that the development fails to optimise the inclusion of north-facing habitable room windows or living areas;

• **Solar access to communal open space:** This standard requires “at least 50 percent or 125sqm, whichever is the lesser, of the primary communal outdoor open space area to be used by occupants should receive a minimum of two hours of sunlight between 9am and 3pm on 21 June.” The primary area of communal open space set aside for residents of the private dwellings is the area located between Buildings D and F. This area does not receive two hours of sunlight at the Winter Solstice. The primary area of communal open space set aside for the residents of the public dwellings is located in the south-west corner of the site. This location has an area of approximately 200sqm that will receive a minimum of two hours of solar access at the Winter Solstice;

• **Natural ventilation:** Insufficient information has been provided to assess this standard (breeze path distances);

• **Private open space:** A number of dwelling typologies do not meet the requirements of this standard. In particular, those apartments that would be located at ground level, which are required to have private open space areas of 15sqm - 25sqm but are typically provided with only 10.5sqm;

• **Landscaping:** This standard requires sites with an area exceeding 2,500sqm (the subject site has an area of 14,652sqm) to set aside a minimum of 15% of the site area with a minimum width of 6m for deep soil planting. The architectural drawings indicate this standard is met, noting areas of 473sqm at the south-west corner, 1,042sqm adjacent to the southern boundary and 670sqm adjacent to the eastern boundary. However, both the southern and eastern areas are compromised by elevated decks and terraces, which Council’s Arborist has advised will not be effective deep soil planting zones. On that basis, only approximately 3% of the site would be set aside as a deep soil zone with a minimum width of 6m;

• **Accessibility:** This standard requires that at least 50% of apartments be designed to be accessible. The DDA Access Report prepared on behalf of Places Victoria indicates it is proposed to include 3 x 1-bedroom and 4 x 2-bedroom apartments
within Building A that will be fully accessible, whereas all other dwellings will be designed to “allow for future modifications, including full wheelchair accessibility”. Those dwellings are considered by the Access consultant as “potentially accessible”. The provision of seven (7) accessible apartments out of 250 (2.8%) is significantly short of the 50% (125) required by the Standard;

- **Integrated water and stormwater management**: This standard recommends that buildings be designed to collect rainwater for non-drinking purposes, such as flushing toilets, laundry appliances and garden use. It is proposed to harvest stormwater from Building E for re-use irrigating the Ashburton Community Garden. No details have been provided regarding whether the necessary pump infrastructure will form part of this system. No measures to collect or re-use stormwater from the other buildings in the development are proposed. On that basis, it is considered that the development fails to meet the Standard.

### 11. The development fails to provide sufficient on-site parking or bicycle facilities for residents and visitors.

**Car parking**

It is noted that three (3) visitor car spaces are now proposed for the public housing apartments and three (3) additional visitor car spaces are now proposed for the private apartments (increasing from 26 to 29 private visitor spaces). Council’s Traffic Engineers remain of the view that no dispensations should be granted in relation to visitor parking in this location. Therefore, the proposed revised dispensation of 18 visitor spaces across the entire development is not supported.

The “flexi-style” apartments within Building E have not been amended and remain proposed to be allocated only one (1) car space each. It is the view of Council’s Traffic Engineers that these apartments should be treated as 3-bedroom apartments and allocated two (2) car spaces each. Therefore, the proposed dispensation of 23 private dwelling resident car spaces is not supported.

The provision of car parking for public housing residents has not been amended. Council’s Traffic Engineers remain of the view that the rate of provision should be increased from 0.5 car spaces per dwelling to 0.7 car spaces per dwelling (i.e. a total of 43 car spaces, based on 62 public dwellings).

**Bicycle facilities**

The Planning Report prepared by Places Victoria states it is proposed to provide 81 bicycle parking spaces within the development. However, a review of the architectural plans indicates 80 spaces are proposed, located and allocated as follows:
• 40 bicycle spaces located within Basement Level 2, allocated to private dwelling residents;
• 30 bicycle spaces located outdoors on the Lower Ground Floor, 12 of which are allocated to public housing visitors and 18 allocated to private housing visitors;
• 10 bicycle spaces located within the Lower Ground Floor of Building A, allocated to public housing residents.

The proposed dispensations sought are summarised in the following table:

<table>
<thead>
<tr>
<th></th>
<th>Required</th>
<th>Proposed</th>
<th>Dispensation sought</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public housing residents</td>
<td>62/5 = 12</td>
<td>10</td>
<td>shortfall of 2</td>
</tr>
<tr>
<td>Public housing visitors</td>
<td>62/10 = 6</td>
<td>12</td>
<td>surplus of 6</td>
</tr>
<tr>
<td>Private housing residents</td>
<td>188/5 = 38</td>
<td>40</td>
<td>surplus of 2</td>
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<tr>
<td>Private housing visitors</td>
<td>188/10 = 19</td>
<td>18</td>
<td>shortfall of 1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>75</td>
<td>80</td>
<td>3 (any surplus is not offset by any shortfalls)</td>
</tr>
</tbody>
</table>

12. The development fails to incorporate sufficient traffic management strategies to mitigate the amenity impacts that would be caused by post-development increases in traffic volumes.

No modifications have been made to address the issues raised by Council’s Traffic Engineers.

13. The development would have an unreasonable impact on the amenity and function of Markham Reserve and the Ashburton Community Garden due to visual bulk and overshadowing.

See No. 8, above.

14. The development fails to achieve a net increase in public housing within the City of Boroondara, having regard to the loss of public housing at this site and within Bills Street, Hawthorn in recent years.

There has been no change to the number of public housing apartments included within the development.

15. The design concerns raised by the Office of the Victorian Government Architect and the Victorian Design Review Panel have not been adequately addressed.
The report prepared by the Office of the Victorian Government Architect (OVGA), dated October 2016, states “we still have some fundamental concerns regarding contextual sensitivity of the response and the project’s capacity to be an exemplar for a housing joint venture of this type.” The OVGA noted the following issues:

**Design Strategy and Principles**
- That the design has “introduced significantly more hard paved areas at the expense of retaining trees. There are reduced opportunities to introduce new landscaping, particularly in the northern section of the site.” Going on to state, “we are of the view that the site should be designed to more clearly contribute to the amenity and landscape of its surrounds rather than simply ‘borrowing’ from the established parkland amenity. Key to this is providing more considered landscape buffers to the site perimeter, which is currently predominantly buildings. Overall, although several improvements have been made, our concern remains that the design strategy citing a landscape-led ambition is still not clearly evident in the project. ”

The February plans have introduced even more hard paving to the plans, compared to those reviewed by the OVGA. This report has revealed that many of the areas described by Places Victoria as ‘deep soil’ planting zones are compromised by decks and elevated terraces. In addition, a setback has been included from the basement to the southern boundary, but is proposed to be occupied by a sewerage easement which will limit planting opportunities.

**Trees**
- That few established on-site trees are to be retained. In relation to this, the OVGA stated, “this is of concern, and we maintain our previous strong recommendation that more of the existing trees on the site should be retained as they are of inherent value to the site, its context and place.”

No additional trees are proposed to be retained and ill-considered modifications made to the landscape plans put those trees that were to be retained in jeopardy.

**Sensitive public realm interfaces**
- The OVGA noted that the building separation, to create two separate buildings (Buildings E and F) was supported as it “assists in breaking down the building mass when viewed from Markham Reserve. However, the eastern setback of Building E remains at 2-3 metres, which is considered too narrow to accommodate appropriate buffer landscape (such as trees) and will result in the adjoining children’s playground and picnic tables and barbeques in Markham Reserve being overshadowed from about 12pm on 22 September.”

It is clear from the OVGA’s report that the creation of separation between Buildings E and F was supported but on its own was not considered enough to address their concerns regarding the effects of visual bulk on Markham Reserve. The reinstatement
of the attached built form is contrary to the recommendations of the OVGA. Furthermore, it is noted that the setbacks of Building E remain at 2.8m and the children’s playground and other facilities noted in Markham Reserve continue to be overshadowed. It cannot be said that this issue of the OVGA has been adequately addressed.

- The OVGA noted that “we remain of the view that the building envelopes to the parkland interfaces to the east (Building E and the southern-most portion of Building F) and south (Buildings B and F) need considerably more ‘breathing space’”.

While Places Victoria would argue that the February plans address the concerns of the OVGA in relation to Building F and the eastern interface (not a view shared by Council officers), no modifications have been made to Buildings B and F to provide the southern interface with the desired ‘breathing space’.

It is noted that Places Victoria has not presented the final design to the OVGA for their review.