

*Planning and Environment Act 1987*

# Panel Report

Monash Planning Scheme

Amendment C86

Brandon Park Major Activity Centre Structure Plan

**13 September 2013**



*Planning and Environment Act 1987*


Panel Report pursuant to Section 25 of the Act

Amendment C86 to the Monash Planning Scheme

Brandon Park Major Activity Centre Structure Plan



Cathie McRobert, Chair



Jane Osborn, Member

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## List of Abbreviations

B1Z	Business 1 Zone
B2Z	Business 2 Zone
B3Z	Business 3 Zone
BPMAC	Brandon Park Major Activity Centre
C1Z	Commercial 1 Zone
C2Z	Commercial 2 Zone
DDO	Design and Development Overlay
DEECD	Department of Education and Early Childhood Development
DPO	Development Plan Overlay
DTPLI	Department of Transport, Planning and Local Infrastructure
EAO	Environmental Audit Overlay
IN1Z	Industrial 1 Zone
LPPF	Local Planning Policy Framework
MAC	Major Activity Centre
MSDS	Monash Special Development School
MSS	Municipal Strategic Statement
MUZ	Mixed Use Zone
PN56	<i>Practice Note 56: Activity Centre Zone, September 2009</i>
PN58	<i>Practice Note 58: Structure Planning for Activity Centres, April 2010</i>
PN60	<i>Practice Note 60: Heights and Setbacks in Activity Centres April 2010</i>
PUZ2	Public Use Zone 2 (Education)
R1Z	Residential 1 Zone
RGZ	Residential Growth Zone
RDZ1	Road Zone 1
SPPF	State Planning Policy Framework
The Advisory Committee	DEECD Surplus Land Rezoning Project Standing Advisory Committee
The Draft Structure Plan	<i>The Draft Brandon Park Major Activity Centre Structure Plan 2013</i>
The former school site	Former Brandon Park Secondary College, 6-30 Brandon Park Drive, Wheelers Hill
The VicRoads site	482 Ferntree Gully Road, Mulgrave

## Amendment Summary

<b>The Amendment</b>	Amendment C86 to the Monash Planning Scheme
<b>Purpose of Amendment</b>	<p>To implement the recommendations of the <i>Draft Brandon Park Major Activity Centre Structure Plan 2013</i> (the Draft Structure Plan) by:</p> <ul style="list-style-type: none"> <li>• Amending the Municipal Strategic Statement (MSS) Clause 21.06 to introduce a strategy statement for the Brandon Park Major Activity Centre (BPMAC) and reference the Draft Structure Plan.</li> <li>• Rezoning land at: <ul style="list-style-type: none"> <li>- 539-597 Springvale Road and 1A Village Court, Mulgrave from Industrial 1 Zone (IN1Z) to Business 3 Zone (B3Z).</li> <li>- 6-30 Brandon Park Drive, Wheelers Hill (the former school site) from Public Use 2 (Education) Zone to Residential 1 Zone (R1Z).</li> <li>- 482 Ferntree Gully Road, Mulgrave (the VicRoads site) from Road Zone 1 (RDZ1) to Business 2 Zone (B2Z).</li> <li>- 622-624 Ferntree Gully Road and 2 Brandon Park Drive, Wheelers Hill from Business 1 Zone (B1Z) to B2Z.</li> </ul> </li> <li>• Introducing the Schedule 8 to the Design and Development Overlay (DDO8) to implement the design and development provisions identified in the Draft Structure Plan.</li> <li>• Introducing Schedule 4 to the Development Plan Overlay (DPO4) which specifies the development requirements for the former school site.</li> </ul>
<b>The Proponent and Planning Authority</b>	Monash City Council (the Council)
<b>Exhibition</b>	18 April to 24 May 2013

## Panel Process

<b>The Panel</b>	Cathie McRobert, Chair Jane Osborn
<b>Directions Hearing</b>	22 July 2013
<b>Panel Hearing</b>	13 and 15 August 2013
<b>Site Inspections</b>	13 and 15 August 2013 (unaccompanied).
<b>Appearances</b>	<p>The Council represented by Terry Montebello of Maddocks Department of Education and Early Childhood Development (DEECD) represented by Sarah Porritt who called planning evidence from Amanda Ring of SJB Planning.</p> <p>VicRoads represented by Gerard Gilfedder of Sweet Group. MH Brandon Pty Ltd represented by Lewis Sayer of WSC Planning Steve Yanko Brandon Park Residents Association represented by John Shives</p>
<b>Submissions</b>	A total of 50 submissions (from 48 separate people or organisations), were received in response to exhibition of the Amendment. Two of

	<p>these submissions did not seek any changes to the Amendment.</p> <p>VicRoads made a late submission in response to Council advice that it supported the application of the Mixed Use Zoned (MUZ) to the VicRoads works depot in Ferntree Gully Road, rather than the exhibited B2Z.</p> <p>Submissions are listed in Appendix A.</p>
<b>Date of this Report</b>	13 September 2013

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## Overall conclusions and consolidated recommendations

In reaching its conclusions and recommendations, the Panel has read and considered the submissions and a range of other material referred to it. This includes written submissions, evidence and verbal presentations.

### Overall conclusions

The Brandon Park Major Activity Centre (BPMAC) has not been the subject of strong development pressures and the Panel is satisfied that the Amendment facilitates development in line with broader State and local planning policy. State level documents are identified in the Amendment as providing guidance on design issues and this is appropriate.

Although the analysis underpinning the Draft Structure Plan is 'patchy', particularly in relation to built form issues, the limited level of objection to Amendment provisions relating to precincts other than the former Brandon Park Secondary College site, suggests there is a broad level of acceptance of the proposed planning framework.

The former school site, which was the focus of most submissions, is a large strategic redevelopment site within a MAC and the Panel agrees with submissions from DEECD that development should optimise the opportunity it presents. This supports an intensive form of development and will mean that the character of the site and the immediate area will change. The Panel agrees with submissions that the new Residential Growth Zone (RGZ) provides a good match with the strategic intentions for the site – as Ms Porritt asked – *'If a 5.75 ha site within a major activity centre is not an appropriate site for inclusion in the residential growth zone – where would be?'*

The former school site presents an excellent opportunity to provide alternative forms of housing to meet changing housing needs and to provide more affordable housing options. However, the Panel does not consider the proposed reference to *'a significant component'* of affordable housing is helpful.

The Panel considers the two storey form of development identified in the Amendment for the eastern portion of the former school site is too conservative and the proposed requirement for a 15% public open space contribution has not been justified.

The Panel queried whether the proposed framework for the former school site justified the removal of third party rights via the Development Plan Overlay (DPO). We consider there is scope to refine the planning framework to address key development parameters, such as the development of a building envelope based on more sophisticated analysis and the retention of large canopy trees that are grouped in the centre of the site and near boundaries. If this occurs, the Panel considers the removal of third party rights is appropriate and it is reasonable to rely on assessment of the development plan and future applications by Council. The opportunity for review of a revised planning framework for the site by the forthcoming Advisory Committee process provides an additional level of comfort.

The Panel does not consider this site should be subject to requirements to resolve existing parking issues, deficiencies in local open space and flooding in the locality, although the



opportunity may exist for negotiations through the development planning process to progress improvements in current circumstances.

The Panel has suggested consolidation of the Amendment provisions in a neutral translation to the Activity Centre Zone (ACZ), except in relation to precinct 3 provisions. If this does not occur, the Panel agrees with Council that the MUZ should apply to the VicRoads site (precinct 6).

In Chapter 8 the Panel recommends a range of changes to the structure and drafting of the Amendment documents, which are intended to provide a clearer, more concise planning framework.

### Consolidated recommendations

Based on the reasons set out in this Report, the Panel recommends:

**Amendment C86 to the Monash Planning Scheme should be adopted as exhibited subject to the following recommendations:**

1. Update the maps associated with Clauses 21.04 and 21.01 that relate to residential development and character policies to recognise that precinct 3 is located in a Major Activity Centre.
2. DEECD and/or Council use the guidance provided in Chapter 3.11.2 of this report to prepare a refined planning framework for precinct 3 for consideration by the Advisory Committee.
3. Apply the Residential Growth Zone to precinct 3.
4. Delete Design and Development Overlay Schedule 8 from precinct 3 and decant relevant parts of that overlay to Development Plan Overlay Schedule 4.
5. Delete the Development Plan Overlay Schedule requirement for a public open space contribution of 15%.
6. Revise the Development Plan Overlay Schedule 4 development plan requirements as follows:

*The Brandon Park Residential Development Plan should show:*

*residential use that provides a diverse mix of housing types, including a ~~significant component of Affordable Housing~~.*

*retention within the front setbacks of buildings, public open space and street reserves of ~~significant~~ mature canopy trees that were rated as 'moderate' by the Treelogic Arboricultural Assessment dated 26 April 2013. In particular, the design should incorporate the retention of groups of trees in the centre of the site, the row of trees along Strada Crescent that are within the Heritage Overlay and trees within 15 metres of existing street boundaries.*

7. In precinct 3, revise the requirements for setbacks from the frontages to existing roads (specified in the table in the exhibited Design and Development Overlay Schedule 8) to provide for:
  - 1) *A setback sufficient to accommodate existing large trees within 15 metres of the street that were rated moderate in the Treelogic assessment dated April 2013; and*
  - 2) *At least 4.5 metres opposite existing houses.*

8. Council consider the merits of translating the exhibited Amendment provisions, with changes recommended by this Panel, to the Activity Centre Zone.
9. If precinct based zoning is maintained, apply the Mixed Use Zone to the VicRoads site with a site specific schedule which reflects the land use and built form provisions of the exhibited Amendment. VicRoads should be consulted or further notice should be given to VicRoads regarding site specific provisions relating to the VicRoads site.
10. Apply the Environmental Audit Overlay to the VicRoads site.
11. Update Clause 21.06C to provide consistency with the new Commercial Zones, including revisions to :
  - 1) The legend on the Framework Plan in Clause 21.06C to identify the preferred predominant uses (as indicated in the Draft Structure Plan) and complementary uses allowed under the zone that will be facilitated.
  - 2) Implementation measures.
12. Identify a mixed use role that includes some residential use as preferred in precinct 7, rather than *'retain the existing mix of uses'*.
13. Revise the last dot point of the Clause 21.06C policy to read:  
*'provide for increased intensity and scale of development within the Major Activity Centre while respecting the existing character of adjoining areas'*.
14. Revise the heights and setbacks, except for the setbacks from Ferntree Gully Road and Springvale Road, nominated in Design and Development Overlay Schedule 8 and the Draft Structure Plan to, at least, align with the building envelope of existing development and the existing development approvals in precinct 7.
15. Add a decision guideline in Design and Development Overlay Schedule 8 that sets out relevant matters for permit applications that propose a reduction to setbacks along Ferntree Gully Road and Springvale Road.
16. (See recommendation 8)
17. Edit the exhibited Clause 21.06C policy to:
  - 1) Remove duplication between the 'Key Issues' and 'Structure Plan Objectives' and consider consolidating these sections of the policy.
  - 2) Delete descriptive background material included under the Framework plan and the map of precincts.
18. Consider focusing on 'land use' provisions in Clause 21.06C and consolidating the 'development' provisions in Design and Development Overlay Schedule 8.
19. Give explicit recognition to the relevance of the 'Garden City' character policy in the Clause 21.06C policy.
20. In Design and Development Overlay Schedule 8:
  - 1) Specify the 3 metre setback to all other roads and streets.

- 2) **Include a map to illustrate the height and setback provisions (The map would be derived from figure 6 in the Draft Structure Plan with updating to reflect Panel recommendations).**
21. **Review Design and Development Overlay Schedule 8 with a view to removing generic sub-clause 2 provisions that are addressed elsewhere in the planning scheme.**
22. **Revise the Design and Development Overlay Schedule 8 exemption from notice and review to:**
  - 1) **Apply the exemption to land that is more than 30 metres from land (not a road) which is in a residential zone, land used for a hospital or an education centre or land in a Public Acquisition Overlay to be acquired for a hospital or an education centre.**
  - 2) **Delete the condition *'which complies with the building and works requirements in this schedule'*.**
23. **Delete references to the Draft Structure Plan in Clause 21.06C policy implementation; Design and Development Overlay Schedule 8 (DDO8) objectives and decision guidelines; and Development Plan Overlay Schedule 4 (DPO4) conditions and requirements for permits.**

# 1 Introduction

The Amendment proposes to implement a structure plan for the BPMAC. Many of the submissions related to the scale of redevelopment of the former school site, which has been declared surplus by DEECD, and the provision of parking for the pre-school in precinct 3. Other submissions from landowners in precincts 5, 6 and 7 requested changes to the planning framework for their land. There were no submissions relating to precincts 1, 2, or 8.

This chapter sets out the background to the Amendment, with discussion of the issues raised in submissions or by the Panel in the following chapters of this report.

## 1.1 The Amendment

The new Clause 21.06C sets out:

- The key issues for BPMAC;
- The vision for the centre and the eight precincts (See Table 1 below); and
- Structure plan objectives relating to land use (shown in the framework plan below), built form, the public realm, accessibility, land configuration and ownership.

In addition to the objectives within the policy, the implementation measures indicate the Responsible Authority will consider the Draft Structure Plan and State guidelines relating to design for higher density residential development, safe design, the urban design charter and activity centre design.

Precinct	Vision
1 Brandon Park Shopping Centre	<i>To update the free standing shopping centre so that it consolidates its function as the retail core of the Activity Centre.</i>
2 Brandon Park Drive Office	<i>Maintain the precinct as a focus for office development.</i>
3 Residential and Education	<i>Redevelop the vacant land for residential purposes with a mix of housing types including a significant component of Affordable Housing. Retain significant mature vegetation within the public open space reserves and where possible, trees scattered throughout the site.</i>
4 Springvale Road Mixed Use	<i>Encourage an appropriate mix of commercial uses (restricted retail, office etc) incorporating higher density residential development in the precinct. Retail (Shop) uses are discouraged.</i>
5 Rosemary Court Industrial	<i>Maintain the precinct as an employment precinct focusing on industry, service industry and car sales uses.</i>
6 Freeway Office	<i>Encourage office development on the site with the inclusion of medical centre facilities. Retail uses are discouraged.</i>
7 Brandon Office Park	<i>Continue to encourage office development within the precinct with an appropriate transition in building height to the adjoining residential area.</i>
8 Service and Community	<i>Continue to provide the existing mix of recreation, community and service uses.</i>

Table 1 Clause 21.06C Precinct Visions

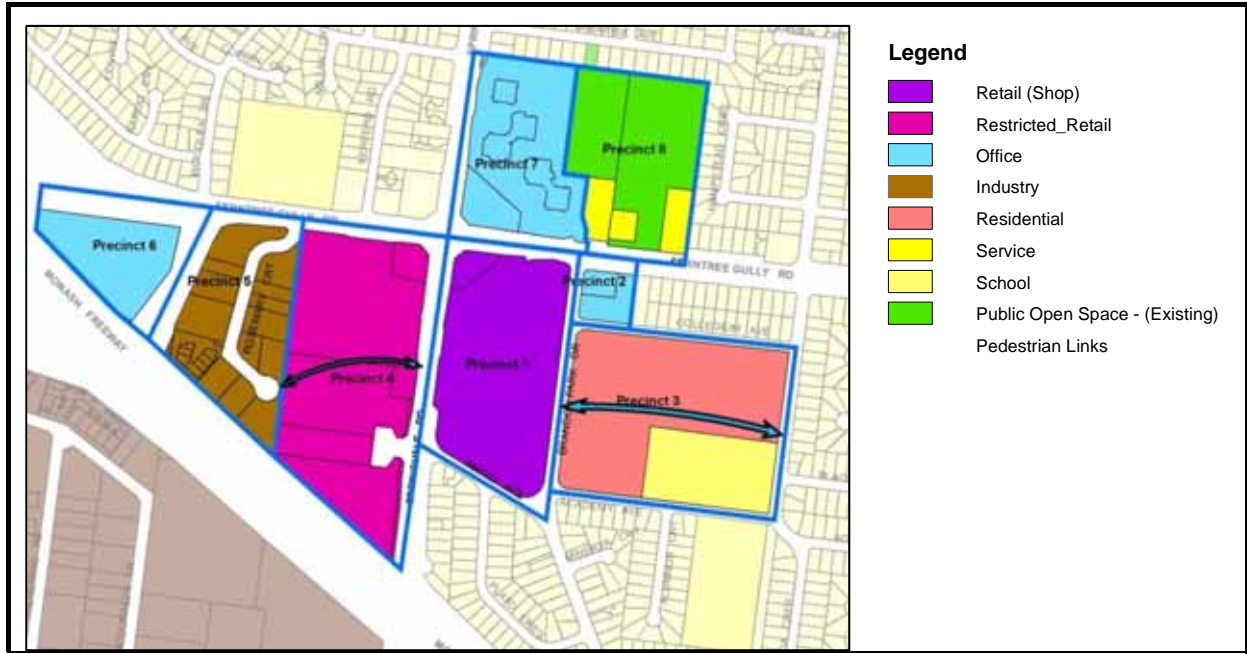


Figure 1 Structure Plan and Proposed Clause 21.06C Framework Plan

DDO8 applies across the BPMAC. It reaffirms the application of the Clause 21.03-3 Garden City Character policy to the centre and calls for consistency with the design objectives and requirements of the Draft Structure Plan. In addition to more generic ‘good design’ principles, DDO8 specifies:

- Development must maintain the ‘boulevard’ character of Ferntree Gully and Springvale Roads.
- Setbacks ranging from 3 metres (from the freeway) to 12 metres are specified.
- Preferred building heights ranging from 24 metres (6 storeys) at the intersection of Springvale and Ferntree Gully Roads down to 8 metres are specified and illustrated in the Figure 2 below (from the Draft Structure Plan).

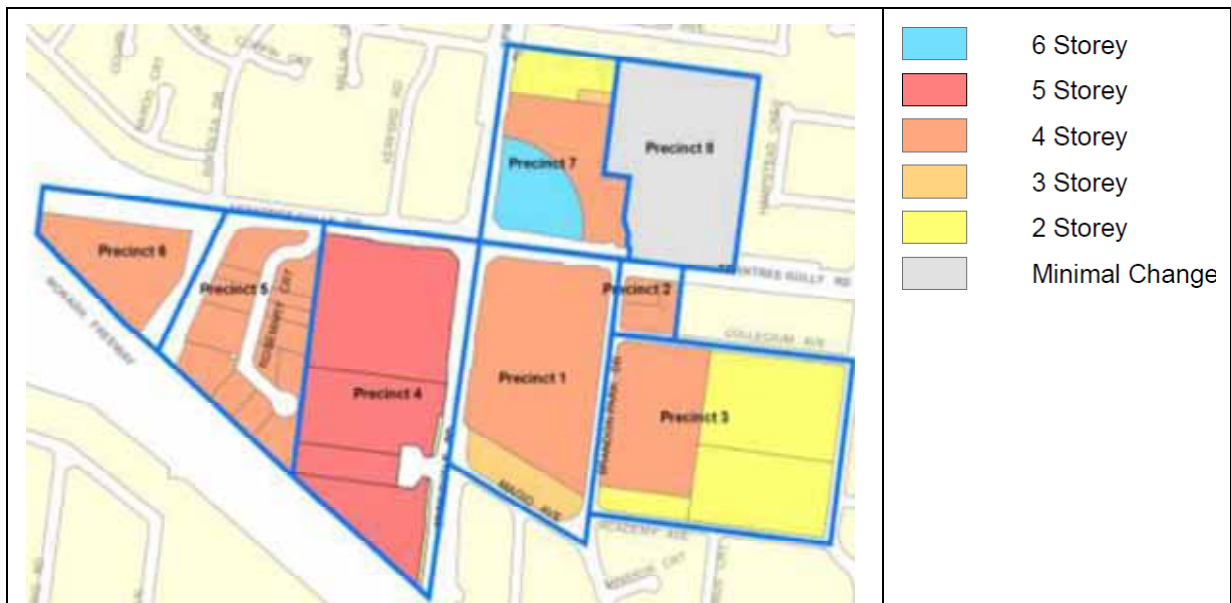


Figure 2 Preferred Building Heights (from the Draft Structure Plan)

DPO4 applies to the DEECD land in precinct 3. It sets out permit and development plan provisions, which are addressed in Chapter 4, relating to:

- Consistency with the Draft Structure Plan and the development plan to be approved under the overlay.
- Design objectives which, in addition to generic objectives directed at good quality design outcomes, aim to:
  - *protect significant trees and other vegetation and provide opportunities for a treed canopy to be established within the site.*
  - *limit development generally to two storeys but provide opportunities for townhouse and apartment style development at the western section of the site that may rise to four storeys above ground.*
  - *contribute to the improvement of on-site and off-site local stormwater drainage systems.*
- The requirements for the development plan include the following site specific provisions:
  - *residential use that provides a diverse mix of housing types, including a significant component of Affordable Housing.*
  - *preferred building heights of:*
    - *14 metres (4 storey) within 130 metres of Brandon Park Drive and more than 30 metres from Academy Ave.*
    - *9 metres (ResCode residential) across the balance of the site.*
  - *development, including car park areas, setback a minimum of 7.5 metres to Brandon Park Drive, Collegium Avenue, Strada Crescent and Academy Avenue.*
  - *provision of at least six indented car spaces on Collegium Avenue opposite the existing Kindergarten and Infant Welfare Centre for short term parking associated with these uses.*
  - *provision of a pedestrian link from Strada Cres through the proposed public open space to Brandon Park Drive.*
  - *provision of 15% of the site set aside as Public Open Space (This includes the 15 metre wide plantation reserve adjacent to Strada Crescent).*
  - *retention of significant mature vegetation within the public open space reserves and where possible, trees scattered throughout the site.*

## **1.2 The area**

The BPMAC is centred on the intersection of Ferntree Gully and Springvale Roads within the suburbs of Glen Waverley, Wheelers Hill and Mulgrave. It is 2.5 kilometres south of the Glen Waverley Principal Activity Centre and abuts the Monash Freeway to its south-west. A number of bus routes provide access to various destinations in Melbourne.

The activity centre is a collection of non-residential development with the main uses comprising:

- The Brandon Park Shopping Centre (precinct 1)
- The Brandon Park Office Park (precinct 7)

- The former Brandon Park Secondary College site (the former school site) and the Monash Special Development School (MSDS)(precinct 3)
- The Village Green hotel (precinct 4)
- Barlow World car sales (precinct 5)
- A VicRoads depot (precinct 6)

While more recent office development in the MAC has been of a higher architectural quality, the following description from the Draft Structure Plan Background Report remains relevant:

*The built form could be described as suburban and bland with little architectural merit apart from some of the newer office buildings within the Centre. It would appear that the function of buildings was of primary importance in the development of the design.*

The BPMAC has residential area interfaces to the north, south and east which contain predominantly detached dwellings of one or two storeys that were developed within the past 30 years.

### 1.3 Existing zones and overlays

Figure 3 shows the zoning of land before the new commercial zones were introduced in July 2013. The B1Z and B2Z on the eastern side of Springvale Road are now within the C1Z; to the east of Springvale Road properties in Public Use Zones reflect the nature of existing uses, with the exception of the PUZ that applies to the former school site; the IN1Z applies to land on the western side of Springvale Road and the VicRoads depot at the junction of Ferntree Gully Road and the Monash Freeway is in the RDZ1.

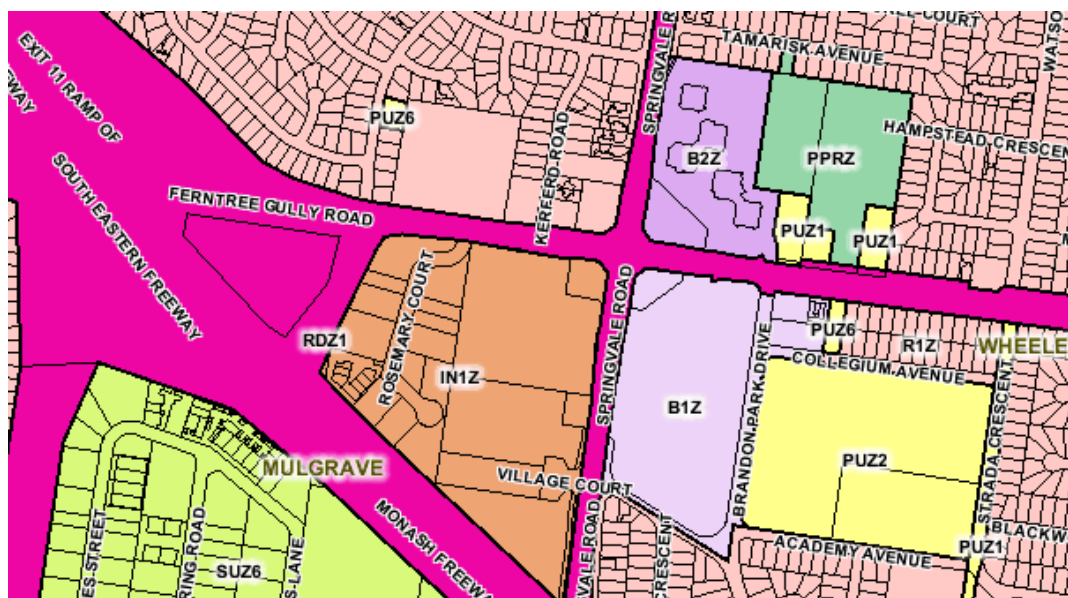


Figure 3 Existing Zoning

### 1.4 New zones

#### The new commercial zones

New commercial zones allowing for a wider range of uses were introduced on 15 July 2013. In all cases, land zoned Business 1, Business 2 and Business 5 was converted to the

Commercial 1 Zone (C1Z). Land zoned Business 3 and Business 4 was converted to the Commercial 2 Zone (C2Z). One significant effect is that retail uses become as of right on land that was previously zoned B2Z.

Council submitted that in all but one of the commercial precincts the automatic translation to the new commercial zone is appropriate, at least for the time being. However, Council considered the MUZ, rather than the C1Z, is appropriate in precinct 6 Freeway Office (the VicRoads site).

### **The new residential zones**

Reformed residential zones for Victoria were approved on 1 July 2013. The existing Residential 1 Zone, Residential 2 Zone and Residential 3 Zone are to be replaced by the:

- Residential Growth Zone
- General Residential Zone
- Neighbourhood Residential Zone.

Transitional provisions for the introduction of the new residential zones allow 12 month for Councils to implement the zones in the planning scheme.

In an updated report for the former school site (dated 15 July 2013) Urbis recommended that the RGZ be applied rather than the exhibited R1Z. DEECD adopted this advice in its submissions to the Panel (see discussion in Chapter 3.11).

## **1.5 Ministerial Direction 1 potentially contaminated land**

The purpose of Ministerial Direction 1 is to ensure that potentially contaminated land is assessed and appropriately treated where an amendment allows a sensitive use. An EAO must be applied to a potentially contaminated site proposed for sensitive land uses under an amendment unless a certificate of environmental audit has been issued for the site.

The issue has been highlighted as relevant to precincts 3 and 7 (see Chapters 3.10 and 6.4).

## **1.6 The DEECD surplus land rezoning project standing advisory committee**

The Minister for Planning has appointed<sup>1</sup> the DEECD Surplus Land Rezoning Project Standing Advisory Committee (the Advisory Committee) to provide independent advice on the suitability of the proposed rezoning of DEECD 'Surplus Land Rezoning Project' sites in Greater Bendigo, Casey and Monash. All of the sites are currently zoned PUZ2 and need to be rezoned to allow for their disposal.

The Advisory Committee submission and hearing process has been initiated for nine surplus school sites, including the former Brandon Park Secondary College site. The key Advisory Committee dates for the Brandon Park Secondary College site are:

- Submissions accompanied by a submission coversheet and Request to be Heard Form should be lodged by 6 September 2013.
- A directions hearing will be held on Wednesday 18 September 2013.
- A hearing will be held on Monday 30 September 2013.

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<sup>1</sup> Pursuant to Section 151 of the *Planning and Environment Act 1987*.



Interactions between the Advisory Committee and Panel processes were discussed at the Panel directions hearing. Ms Eamons reaffirmed the request in DEECD's written submission in response to the exhibition of the Amendment for deferral of further consideration of new planning controls for the former school site to the forthcoming Advisory Committee process. She highlighted that the Premier and the Minister for Planning established the Advisory Committee process to facilitate the rezoning of 22 sites that are surplus to requirements for education purposes and to provide an extended (3 month) consultation process leading up to the Advisory Committee hearings. Ms Eamons expressed concern that the two separate processes relating to the rezoning of the former school site would require a duplication of effort from parties to both processes. It was of particular concern that residents have just been advised of the Advisory Committee submission and hearing arrangements and the parallel Panel process is likely to be a source of confusion, particularly for residents.

Mr Montebello emphasised that:

- The Advisory Committee terms of reference limit consideration of issues such as open space provision and public use zoning, whereas the Act requires the Panel to consider all of the issues raised in submissions to the Amendment.
- The broader scope of the matters to be considered under the Panel process enables a more holistic assessment of the Draft Structure Plan and the associated planning framework for the BPMAC as a whole. He submitted this is essential and will provide an appropriate context for evaluation of the proposed rezoning and planning framework for the former school site.

The proposed planning framework for the former school site is discussed in Chapter 3.

## **1.7 Issues dealt with in this report**

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

There was a very strong focus in submissions on the proposed planning framework for the former school site with only three submissions relating to other precincts.

DEECD and Victorian Investment and Properties, which has an interest in developing the former school site, supported rezoning of the land to the new RGZ to facilitate residential development of a form and intensity that optimises the opportunity presented by such a large strategic redevelopment site. Dr G Moore, the Brandon Park Residents Action Group and others also expressed support for the development of housing for older people on the site in recognition of the scarcity of this form of housing and the site's proximity to activity centre services.

The key issues raised in submissions objecting to the proposed planning framework for precinct 3 related to:

- The retention of the land for future educational or other public purposes;
- The scale and intensity of development of up to four storeys:
  - Being inconsistent with the valued existing character of the area;

- Adversely affecting the residential amenity, particularly to the south in Academy Avenue; and
- Impacting on the privacy and amenity of the special school.
- The inclusion of a significant component of affordable housing, with concerns expressed about what this means, social consequences and adverse impacts on property values;
- The adequacy of the requirement to provide 15% public open space;
- Increased traffic from the development exacerbating existing traffic congestion, particularly during peak hours;
- The importance of a pedestrian link across precinct 3 and also the need to ensure it is safe and does not create a location for criminal activity;
- The need to address inadequate parking for the pre-school and maternal health centre in Collegium Avenue and unsafe pick up and drop off arrangements. The provision of 30 car spaces (rather than six drop off spaces) was advocated by many;
- The need to address existing flooding in the area and ensure drainage issues are not made worse.

MH Brandon Pty Ltd, the owner of Brandon Office Park (precinct 7), submitted there should be greater emphasis on high quality design in both the private and public realms and mixed use development, including substantial residential use. It was submitted that active frontages along Springvale and Ferntree Gully Roads may not be appropriate and building envelopes that accord with those approved under existing permits were also requested.

The owners of 8 Rosemary Court sought rezoning of their land to the new C2Z to compliment the employment generating focus of the C1Z to the east and west, rather than maintaining precinct 5 as an isolated area of core Industrial 1 zoning.

VicRoads did not object to the exhibited B2Z and supported the translation to C1Z rather than the MUZ proposed by Council after the introduction of the new commercial zones.

Some submissions also advocated redrafting of some Amendment provisions to reflect the intent of the Draft Structure Plan, to clarify the planning intent, to address specific issues raised or to align with existing conditions.

The submission from C and J Sweetten raised concerns about the adequacy of freeway noise barriers and impacts from late night operation of the Village Green Hotel. These existing problems are not addressed further in this report as they are beyond the scope of the Panel's assessment as the Amendment, which provides a framework for decisions relating to proposed uses and development.

This report deals with the issues under the following headings:

- Does the Amendment have a sound strategic basis?;
- Precinct 3 – the former school site;
- Precinct 5 - Rosemary Court;
- Precinct 6 – the VicRoads site;
- Precinct 7- Brandon Office Park; and
- The form and drafting of amendment provisions.

## 2 Does the Amendment have a sound strategic basis?

### 2.1 Consistency with planning policy

#### 2.1.1 Activity centre policy context

State planning policy<sup>2</sup> aims to develop a network of activity centres where major retail, residential, commercial, administrative, entertainment and cultural are encouraged to capitalise on investment in infrastructure and to provide high levels of community access to these broad urban functions and services. Brandon Park is designated as a MAC and State activity centre policy of particular relevance includes to:

*Provide a focus for business, shopping, working, leisure and community facilities.*

*Encourage economic activity and business synergies.*

*Broaden the role of stand-alone centres to provide a greater mix of uses and improving linkages to the Principal Public Transport Network.*

*Encourage a diversity of housing types at higher densities in and around activity centres.*

*Ensure Principal and Major Activity Centres:*

*Have a mix of activities that generate high number of trips including business, retail, services and entertainment.*

*Are well served by multiple public transport routes and are on the Principal Public Transport Network or capable of linking to that network.*

...

*Have the potential to grow and support intensive housing developments without conflicting with surrounding land-uses.*

It is also State housing policy<sup>3</sup> to identify strategic redevelopment sites for large residential development (more than 10 dwellings) in or within easy walking distance of MACs and to ‘encourage higher density housing development on sites that are well located in relation to activity centres, employment corridors and public transport’.

In Monash, Glen Waverley is nominated as a Principal Activity Centre and Oakleigh, Brandon Park, Clayton and Mt Waverley are designated as MACs. The Monash MSS Clause 21.06 identifies Activity centres as ‘likely to be the focus of change over the next 30 years’. This clause reinforces state level policy themes for activity centres on matters that are widely recognised as representing good practice for activity centre planning, such as: consolidating centres as a focal point for both economic activity and the community, establishing a rich mix of uses and services appropriate to the type of centre and needs of the target population, improving access for walking and cycling, increasing use of public transport

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<sup>2</sup> Clause 11.01 Activity Centres, 11.04 Activity Centre hierarchy.

<sup>3</sup> Clause 16.01

services, achieving centres with a strong sense of identity and character, the treatment of interfaces with residential areas that recognises the character of the neighbourhood and encouraging active frontages. The Glen Waverley Principal Activity Centre and Oakleigh MAC are identified as the appropriate locations for medium to high rise development (4-8 Storeys).

The BPMAC (together with Clayton and Mt Waverley) is identified as a major focus for higher order goods, specialty retailing, entertainment, mixed commercial uses, offices, apartments, hotels, community facilities and public transport. Medium rise residential development is encouraged within the centre.

### **2.1.2 'Garden City' policy**

Monash has actively pursued a long establish policy to enhance a 'Garden City' character across the municipality. Both the Clause 22.01 Residential Development and Character Policy and the Clause 22.03-2 Industry and Business Development and Character Policy aim to build on the important contribution that landscaping makes to the character and amenity of Monash. The scale of buildings is not intended to be an 'overwhelming' element of the environment, with higher rise development directed to the Glen Waverly PAC and medium rise development is directed to the MACs.

The Clause 22.05 Tree Conservation Policy reinforces the policies to maintain, enhance and extend the Garden City Character throughout Monash. It promotes the retention of mature trees wherever possible and encourages the planting of new canopy trees with spreading crowns in both the public and private realms and seeks the planting of semi-mature canopy trees with spreading crowns as part of any new development, in open space areas, along boundaries adjacent to neighbouring open space and in front setbacks.

## **2.2 Practice notes and guidelines**

*Practice Note 58: Structure Planning for Activity Centres, April 2010 (PN58), Activity Centre Design Guidelines DSE 2005 and Practice Note 60 – Heights and Setbacks in Activity Centres (PN60)* also provide State level guidance on best practice planning for activity centres.

PN58 identifies a planning process that comprises the following steps:

- Step 1: Project planning and establishment
- Step 2: Background research including review of existing literature and policies, identification of community and stakeholders issues and views and the preparation of studies and data collection on matters such as existing conditions and potential opportunities, demographic analysis, including population projections, economic and retail analysis, urban design and built form, transport, services and infrastructure analysis.
- Step 3: Discussion Paper which conveys research findings and puts forward structure plan aspirations.
- Step 4: Draft structure plan and Step 5: Final structure plan (amended and updated following consultation with community, key stakeholders and DPCD) which:
  - consistent with Melbourne 2030 and M@5m
  - provides clear decision guidelines
  - defines the implementation program and statutory framework

### Step 6: Implementation program.

In addition to setting out design objectives the *Activity Centre Design Guidelines* also provide design suggestions around the following themes:

1. Develop a good-quality public environment
2. Promote street-based patterns of connection
3. Improve community safety
4. Encourage a mix of uses
5. Improve pedestrian and cycling amenity
6. Promote a public transport focus
7. Increase accessibility and integration
8. Encourage environmental sustainability.

PN60 indicates that height and setback controls should be aimed at facilitating good design outcomes, not restricting the built form. PN60 states:

*Proposed height and setback controls, whether maximum or minimum, must be soundly based on the outcomes of strategic research that includes a comprehensive built form analysis that is consistent with State policy.*

## 2.3 The 1992 Draft Structure Plan

The *Brandon Park Activity Centre Structure Plan: Draft Final Technical Report January 1992*<sup>4</sup> is a reference document in clause 21.06-4 and has informed and framed the development of the Brandon Park MAC. This document:

- Provided extensive data and analysis of 'opportunities' and 'constraints', need and demand for retail, office and community facilities and the expectations of the community at that time and analysis of movement networks and built form issues;
- Recommended consolidating and strengthening the centre's role as an employment node, enhancing community services, protecting and enhancing the amenity of the residential surrounds and improving vehicular and pedestrian access and safety.

## 2.4 The proposed Structure Plan

### Community stakeholder engagement

Community engagement during the structure planning process commenced in 2006 with a series of meetings and discussions with every property owner within the activity centre boundary. This early consultation contributed to the identification of 'opportunities' and 'constraints' and the formulation of the vision for the activity centre. Exhibition of the draft Structure Plan March 2009 resulted in 99 written submissions and contributed to further assessment, analysis and discussion. Ongoing discussions with DEECD occurred in relation to the potential development options for the former school site but Council advised the Panel

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<sup>4</sup> The study area included:

- a primary study area, being the existing commercial areas that straddle the four corners of Ferntree Gully Road and Springvale Road; and
- a secondary study area, extending to Woodlea Drive in the west, Oleander Street in the north, Watsons Road in the east and Academy Avenue in the south.

that *'Regrettably it was not possible to get any resolution or instructions from the Department about their intended way forward.'*

### **The Analysis**

The Draft Structure Plan recognises opportunities and constraints on the future development of the BPMAC that include:

- Data analysis produced a community profile that anticipates a growing proportion of small households.
- Despite the demographic analysis, the Draft Structure Plan comments:  
*There would appear to be limited demand for higher density housing as there are only a few dual occupancy developments in the residential area. It is considered that the limited market attraction could be due in part to the lot sizes not being large enough for a developer to consider multi-unit development.*
- Review of land holdings and tenure identified the availability of a number of significant sites for redevelopment in the short term:
  - The Heritage Overlay applies to a row of approximately 50 sugar gums along the eastern boundary of the former Secondary College site and should be retained;
  - The intersection of Springvale and Ferntree Gully Roads defines four 'quadrants' for enterprise, retail and business activities;
  - The lack of civic, cultural and education facilities in the centre compared to other MACs;
  - Health and well-being facilities in or surrounding the centre were identified. This included the following significant open spaces within 2km: the Brandon Park Reserve, the Monash Aquatic and Recreation Centre and Jells Park.
- Access to the activity centre via the arterial road was identified as good, however, local amenity and traffic movements are affected by some use of the local streets during peak periods. This has decreased significantly since the opening of EastLink.
- Limitations in connectivity and amenity of pedestrian and cycling connections and public transport were identified. The absence of fixed rail was noted as restricting some of the potential for increased public transport use but local bus services provide for local travel needs and connections to the emerging cross-town bus and rail networks.
- The urban and built form, which was described as follows:  
*The retail and commercial sections of the centre have been designed so that car parking is obvious from the frontage. The end result has been an uninspiring view across a sea of car parking to buildings with minimal architectural interest.*

### **The 'strategic response'**

The Draft Structure Plan provides a 'strategic response' which identifies objectives strategies and actions which encourage:

- A broad mix of commercial and residential uses, with more dwellings within the BPMAC and a greater range of medium density housing options.

- Built form and scale of buildings that respects the context of their surrounds and maximise their highest and best use. Landscape themes are to be strengthened and opportunities to incorporate substantial canopy planting in new development and the public realm is to be maximised. Visual clutter within the centre, particularly that created by excessive signage is to be minimised. New residential development must achieve a high standard of architecture and design that positively contributes to the neighbourhood character.
- The provision of attractive and safe public spaces.
- The development of dedicated pedestrian links from Rosemary Court to Springvale road and Strada Crescent to Brandon Park Drive.
- The increased use of public transport to access the centre and an adequate supply of car parking.

The Draft Structure Plan then identifies preferred land use, building height, building setbacks, pedestrian linkages and zones and overlays for the eight precincts. In precinct 3, works relating to vegetation are identified and in precinct 5 investigation of options to improve the safety of access and egress from Rosemary Court to Ferntree Gully Rd is identified under works.

## **2.5 Discussion**

The Panel is satisfied that the facilitation of more intensive development in the BPMAC through the Draft Structure Plan and Amendment provisions is consistent with State policy and builds on the established policy in the MSS. Further, read in conjunction with complementary policy in the LPPF, Amendment provisions such as the retention and planting of mature trees where possible support policy to reinforce the preferred Garden City character of Monash.

The analysis underpinning the structure plan is patchy. While there is a significant focus in the Draft Structure Plan background report on setting out existing policy, reporting the findings of demographic profiling and a broad description of existing land use and traffic conditions, there is little critical analysis or interpretation of the implications for future development and issues that the planning framework will need to address.

The omission of analysis of built form issues is evident in relation to the Brandon Park Shopping Centre (precinct 1) which is in a prominent location and is an important activity attractor. There is implied criticism in the background report comment about the apparent focus on function in the design of that complex. However, inspection of the centre indicated there are a range of issues in the design of this core precinct - such as the very extensive 'back of house' presentation to multiple frontage, the dominance of car parking, uninviting architecture, blank walls and the like – but the Structure Plan is silent on design expectations for the centre.

More generally in relation to built form, preferred building heights and setbacks are nominated for each precinct without any discussion of the reasons for the proposed building envelopes. The Panel has inferred that the rationale is to achieve a transition to a more intensive form of development using the scale of existing development as a basis. Some discussion of the issues considered in determining whether the proposed envelopes would have assisted in understanding the underlying rationale, particularly for sites with significant

redevelopment potential, such as precinct 3 and the Village Green Hotel site. The presentation of a 'first principles' analysis of the capacity of the sites to absorb larger scale development would have provided a basis for planning framework that advances policy to optimise development outcomes on major redevelopment sites such as these. Such an assessment would have addressed the relationship to existing development at site interfaces, the effect of topography, sight lines and the influence of matters such as drainage and vegetation on the appropriate scale of development (see further discussion relating to precinct 3 in Chapter 3).

Similarly, a requirement for 15% public open space provision on the former school site is proposed, despite the absence of analysis of needs in the background report and the comment in the Draft Structure Plan *'The BPMAC contains a significant open space reserve known as the Brandon Park Reserve. The area is also well serviced by the Monash Aquatic and Recreation Centre (MARC) located approximately 2km to the north of Brandon Park, while Jells Park is located a similar distance to the east'* (see further discussion in Chapter 3.8).

As Council noted, with the exception of Precinct 3, the limited number and scope of issues raised in submissions suggests that the Draft Structure Plan provides a framework that is broadly acceptable to those who will be affected. The Panel is conscious that there are established principles for activity centre planning in the generic policy and design guidance for activity centres and it is reasonable for the extent of research and analysis underpinning a structure plan relate to the expected demands on the planning framework that will not be adequately addressed by broader guidelines. We also accept submissions from Council that the BPMAC is a moderate sized activity centre that is not subject to significant development pressure and further retail development in line with its role as a MAC would be welcomed rather than suppressed. In these circumstances there is some justification for a structure planning analysis that focuses on key sites and issues that are likely to be in contention, rather than exhaustive research on all potential planning parameters.

In the absence of centre specific analysis in the Draft Structure Plan and the background report, the Panel's consideration of issues raised in submissions has referred to the broader policy and guidelines documents, the expert evidence and our own evaluation of the implications of the precinct context, constraints and opportunities.

The Panel agrees with Ms Ring that the maps associated with Clauses 21.04 and 21.01 that relate to residential development and character policies should be updated to recognise that precinct 3 is located in the MAC.

## **2.6 Recommendation**

- 1. Update the maps associated with Clauses 21.04 and 21.01 that relate to residential development and character policies to recognise that precinct 3 is located in a Major Activity Centre.**



## 3 Precinct 3 – the former school site

### 3.1 The issues

- Should development include a significant component of affordable housing?
- Will traffic generated by development have unacceptable impacts on local traffic movements?
- Should more than six car spaces be provided for community uses in Collegium Avenue?
- Does the planning framework provide for appropriate protection of mature trees?
- Does the proposed building envelope appropriately recognise the site's context within a MAC with sensitive interfaces?
- Is the proposed 15% contribution for public open space reasonable?
- Will existing flooding be exacerbated by the development of the site?
- Should the Residential Growth Zone be applied to precinct 3?
- Should third party rights be maintained for precinct 3?

### 3.2 What is proposed?

The proposed Clause 21.06C identifies the following vision for precinct 3 Residential and Education:

*Redevelop the vacant land for residential purposes with a mix of housing types including a significant component of Affordable Housing. Retain significant mature vegetation within the public open space reserves and where possible, trees scattered throughout the site.*

DDO8, which applies to the BPMAC, specifies:

- Building heights of 14 metres (4 storey residential) within 130 metres of Brandon Park Drive and 9 metres (ResCode residential) elsewhere on the site. The reference to ResCode height adds confusion as this implies a 13.5 metre height.
- Front boundary setbacks of 7.5 metres.

DPO4 applies to the DEECD land in precinct 3. It sets out requirements relating to:

- Consistency with the Draft Structure Plan and the development plan to be approved under the overlay.
- Design objectives which, in addition to generic objectives directed at good quality design outcomes, aim to:
  - *protect significant trees and other vegetation and provide opportunities for a treed canopy to be established within the site.*
  - *limit development generally to two storeys but provide opportunities for townhouse and apartment style development at the western section of the site that may rise to four storeys above ground.*
  - *contribute to the improvement of on-site and off-site local stormwater drainage systems.*
- The requirements for the development plan include the following site specific provisions:

- residential use that provides a diverse mix of housing types, including a significant component of Affordable Housing.
- preferred building heights of:
  - 14 metres (4 storey) within 130 metres of Brandon Park Drive and more than 30 metres from Academy Ave
  - 9 metres (ResCode residential) across the balance of the site
- development, including car park areas, setback a minimum of 7.5 metres to Brandon Park Drive, Collegium Avenue, Strada Crescent and Academy Avenue.
- provision of at least six indented car spaces on Collegium Avenue opposite the existing Kindergarten and Infant Welfare Centre for short term parking associated with these uses.
- provision of a pedestrian link from Strada Cres through the proposed public open space to Brandon Park Drive.
- provision of 15% of the site set aside as Public Open Space (This includes the 15 metre wide plantation reserve adjacent to Strada Crescent).
- retention of significant mature vegetation within the public open space reserves and where possible, trees scattered throughout the site.

The Draft Structure Plan, which is a reference document and required to be considered under the proposed DPO4, provides the following precinct plan:

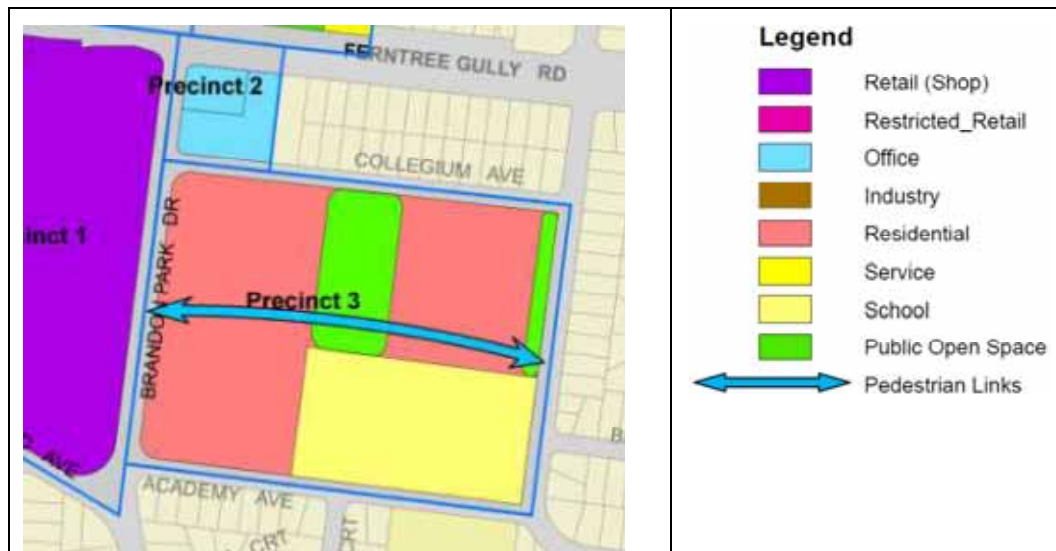


Figure 4 Precinct 3 Framework Plan (Source: the Draft Structure Plan)

### 3.3 Housing mix and affordable housing

#### 3.3.1 Evidence and submissions

The suitability of the site for housing for the elderly was identified in submissions. In his submission on behalf of the Brandon Park Residents Association, Mr Shrivs suggested some single storey development for the elderly should be provided as they do not want to live in boxes (apartments).

A number of resident submitters were concerned about the reference to the inclusion of a significant component of affordable housing on the former secondary school site. Submissions raised concerns about the impact on land values, noting the possibility of the development for 200+ housing commission homes with no parking. Further, they submitted that affordable housing attracts undesirable people to the area which will tarnish the image of the suburb and create an unsafe environment. There was concern regarding the uncertainty about whether dwellings would be sold or rented out and how tenants would be selected.

Referring to principles from discussions in planning Tribunal decisions, Mr Montebello clarified that affordable housing as a land use term simply means housing that in price terms is towards the lower end of the housing market. It does not necessarily mean housing provided by a housing co-operative or the Department of Housing or the like.

In her evidence Ms Ring expressed the opinion that conservative expectations in respect of yield will almost certainly frustrate the delivery of affordable housing. She sought deletion of the word 'significant' in relation to affordable housing.

Victorian Investments Properties confirmed support for affordable housing but also submitted that the term 'significant' proportion in relation to affordable housing is not a practical guide for assessment of proposals and should be removed.

### **3.3.2 Discussion**

Objections on the basis of perceived impacts on the value of existing houses do not justify a departure from sound planning strategies that benefit the broader community.

The Panel accepts that there is a sound strategic basis for planning scheme objectives that seek greater diversity in the housing stock and more affordable housing.

State policy explicitly aims '*To deliver more affordable housing closer to jobs, transport and services*' and to improve housing affordability through strategies that include:

- *Increasing choice in housing type, tenure and cost to meet the needs of households as they move through life cycle changes and to support diverse communities.*
- *Encouraging a significant proportion of new development, including development at activity centres and strategic redevelopment sites to be affordable for households on low to moderate incomes.*
- *Increase the supply of well-located affordable housing by:*
  - *Facilitating a mix of private, affordable and social housing in activity centres, strategic redevelopment sites...*

The Monash Housing Strategy<sup>5</sup> identifies housing affordability as an issue, especially for new migrants and their families. The site represents a major opportunity for new housing, and it is appropriate to seek the inclusion of affordable housing to suit a range of households and to include dwellings that would be appropriate for smaller (one to two person) households.

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<sup>5</sup> *Monash Housing Strategy 2010 (2011 Update) Final Report.*

Housing affordability is a relative concept, can take a range of forms, and is subject to influences such as market forces, fiscal policy and government subsidies to lower income households. It is unlikely that dwellings in a well-serviced location such as the Brandon Park MAC will be especially affordable compared to less well-serviced areas with lower land values, but the development of the site to include smaller dwellings and a mix of tenures may offer more affordable housing relative to local prices. The site may include a component of relatively affordable private housing but may also provide opportunities for development of social and or public housing. It is also worth noting that vacancy chains may result in more affordable family housing due to people downsizing from older houses to homes in the former school site.

With respect to the reference to affordability of a 'significant' proportion of the new housing, the Panel agrees with submissions that the term 'significant' may not be helpful as factors such as government contributions to rents or housing provision may determine the nature of housing and the cost to consumers.

Planning policy and Council's housing strategy also clearly support a mix of housing types to suit households, and in particular a proportion of housing appropriate to the needs of smaller households. The Panel considers it important to include some housing that suits smaller households so that this increasing cohort (due to aging, later marriage, divorce, empty nests, and widowhood) can be accommodated without paying for larger family dwellings. However, this does not translate to single storey form as equality of physical access for a range of households can generally be achieved through lifts serving single level apartments.

### **3.4 Traffic, movement network and parking**

#### **3.4.1 Evidence and submissions**

Mr Shrives, on behalf of the Brandon Park Residents Association, and other submitters wrote that traffic is already congested around the former school site, particularly during peak hours, and will be exacerbated by traffic generated by the intensive redevelopment of precinct 3. Issues of speeding, rat runs on local streets and the bottleneck at Collegium Avenue and Brandon Park Drive during peak hour were highlighted. While it was acknowledged that the opening of EastLink initially resulted in reduced traffic volumes in the neighbourhood, it was submitted that traffic has progressively increased since that time.

It was also submitted that the bicycle path link between Strada Crescent and Brandon Park Drive is incomplete and it would be better to provide a wider footpath and an adjacent bike path along the south side of Collegium Avenue.

Submitters were concerned about the danger from increased traffic for children attending the MSDS, and when taking children from the car into and out of the Council operated pre-school and maternal health centre on the north side of Collegium Avenue. They outlined the difficulties in removing children from cars, setting up prams and crossing to these facilities. Mr Yanko argued that Council provided car parking elsewhere in the municipality and should also ensure the parking and safety issues in the BPMAC are resolved. Mr Yanko and other submitters sought a 30 space car park on the former school site. He explained that parking

had previously been provided on the school site and rosters were arranged to facilitate street crossings.

Concerns were also expressed by a number of submitters that inadequate parking provision for the new development would exacerbate existing traffic and parking issues.

Council does not consider traffic generated from the future residential development of the former school site is likely to have a significant impact on the traffic flow in the Centre. Council submitted that inherent traffic or parking constraints on the development of the site which cannot be satisfactorily addressed through appropriate works carried out by the developer of the site are unlikely. In its response to written submissions Council advised:

- *Council has undertaken three origin-destination surveys during the 7.30am - 9.30am peak period in April 2004, June 2007 and November 2011. These surveys show that the majority of residential roads within the area have experienced a significant decline in through traffic after Eastlink opened in 2008. The through traffic has decreased 44% between 2007 and 2011.*
- *Development of the former Brandon Park Secondary College site, for any use, would add local traffic to the surrounding streets and could be expected to have some impact on the through traffic issues. The former use of the site, as a Secondary College, contributed significant vehicle movements into the Centre.*
- *Without a specific residential design, calculation of traffic volumes and their impact can only be generalised. Such an assessment had been undertaken based upon a potential yield of 189 dwellings, in a mix of apartments and semi-detached dwellings on the site. This yield was provided by Places Victoria, who has expressed interest in purchasing the site.*
- *That assessment indicates that at peak periods, traffic generated from the future development of the sites will add, on average, up to 4 vehicles per traffic light cycle at the intersection of Ferntree Gully Road / Strada Crescent, Ferntree Gully Road / Brandon Park Drive and Magid Avenue / Springvale Road.*

Council acknowledged that the parking difficulties associated with the preschool have been apparent for some time. While discussions between Council, the preschool operators and the Minister for Education have attempted to identify a strategy to alleviate these problems, a resolution has not been reached. Council submitted it will continue to explore opportunities to resolve these car parking issues and will carefully monitor the car parking needs and requirements generated by future uses. As with traffic impacts, the redevelopment will need to take into account of the car parking generated by the proposed uses.

DEECD submitted that the redevelopment of this site should not be subject to a requirement to provide parking for the pre-school and child care centre as this is a Council responsibility. Ms Porritt questioned the equity of such a requirement, noting that other redevelopment, such as the recent development of offices on the land adjoining the pre-school, has not been subject to such a requirement. It was submitted that indented parking, at the cost of

Council, would improve the current circumstances but if additional land beyond the road reserve is required, Council should buy it.

### **3.4.2 Discussion**

While the traffic analysis cited by Council is for 189 dwellings and the former school site could have a greater yield, it indicates that there is capacity in the road network to absorb traffic generated by the redevelopment of the site. Specific evaluation of the traffic impact of residential development on local roads and design measures to maintain safe operating conditions will form part of the development plan and permit processes.

On-site parking for new residences would be required in accordance with the Monash Planning Scheme and will also be assessed through permit processes.

Submissions made it clear that the provision of parking for the kindergarten and maternal health centre is well below the level of provision that would normally be required for new facilities of this type<sup>6</sup>. The Panel does not doubt the challenges for parents dropping off and picking up children from the centre and the need for them to ensure the safety of their children. However, we agree with submissions on behalf of DEECD that the development of the former school site should not be responsible for the provision of parking on site to resolve existing parking deficiencies for community uses.

In the exhibited amendment six indented spaces were to be required for the use of those attending the preschool and the maternal health centre. These spaces would need to be accommodated in the road reserve as they are not generated by the new development on the former school site. There may be scope, however, for Council to purchase additional land in this location to augment the provision of parking for community uses and this could be explored through the development planning process.

The Panel considers that existing parking and safety issues need to be resolved independently of the development of the former school site. Options to improve safety for the families using the childhood services have included a manned crossing. Concerns regarding the overall parking and safety situation on Collegium Avenue should be put to Council, which is responsible for local traffic management. Options such as the installation of better pedestrian and safer connections between the parking in Brandon Park Shopping Centre and the north side of Collegium Avenue could be considered in any further development of the retail component of the shopping centre. A side benefit for better safety for the children's service could be that families would use the shopping centre on the same trip as picking up or taking in children and that there would be better pedestrian connectivity with any development of the former school site.

The Panel notes that there is a driveway with a roundabout that would be used for dropping off students and picking them up within the MSDS site. There are also extensive parking areas on the MSDS site. While it is important to ensure the safety of students, the likely increase in potential traffic from development of the former school site is considered

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<sup>6</sup> The table to Clause 52.06 specifies car parking provision of 0.22 and 0.4 spaces to each child for Child Care Centre and Education Centre – other than listed respectively.

unlikely to cause a significant change to those using the MSDS site given the on-site arrangements for entering and exiting in forward gear.

### **3.5 Retention of existing vegetation**

#### **3.5.1 Evidence and submissions**

Submissions on behalf of Council emphasised the treed character of the former secondary school site and cited relevant local policies at Clause 22.05 of the Monash Planning Scheme as follows:

*To maintain, enhance and extend the Garden City Character throughout Monash by ensuring that new development and redevelopment is consistent with and contributes to the Garden City Character as set out in the Municipal Strategic Statement.*

*To promote the retention of mature trees and encourage the planting of new canopy trees with spreading crowns throughout Monash.*

Resident submissions also expressed the desire to retain the treed character of the site.

Ms Ring was of the view that that a new character could be created on the former secondary school site given the attributes of the land (size, island conformation and location within the MAC). She did not advocate a design priority being given to the retention of existing trees on the basis that development yields should be optimised to capitalise on the opportunity presented by this large redevelopment site within a MAC.

An arboricultural assessment of the vegetation on the former school site was prepared for DEECD by Treelogic. This assessment attributed an arboricultural rating of moderate to 41 trees and three tree groups, 74 trees and three tree groups were rated low, and 10 trees were attributed a rating of none. However the report concluded that not all low-rated trees should be dismissed altogether and, in line with local policy, some low rated trees can be retained where they are not impacted directly by any proposed construction activity or where they perform a role such as screening neighbouring properties or providing protection from erosion, winds, frosts and other actions.

#### **3.5.2 Discussion**

Monash has implemented its garden city policy for many years and the benefits are becoming evident. During the site inspections the Panel noted the strong presence of trees within and around the MAC. This character was particularly evident on the former school site.

Many communities place a high value on the contribution made by large canopy trees and planning policy often advocates the planting of advanced canopy trees to achieve an environment with a strong presence of trees. Established trees exist on the site and development should be designed to take advantage of this asset for the benefit of both the neighbourhood and future residents of the site.

While the Panel agrees with Ms Ring that a new character will be created on the former school site, in this case we consider that the garden character sought throughout the

municipality by planning policy warrants retention of large canopy trees that are in groups in the centre of the site and at residential interfaces.

The Panel considers that, although the trees are not locally indigenous, these mature canopy trees can provide a context for new development and a 'head start' to realise a high amenity-high yield development. The retention of some canopy trees and appropriate new landscaping would assist in the integration of new development, especially at the residential interfaces.

The Panel considers the DPO4 requirement for the development plan to show '*retention of significant mature vegetation within the public open space reserves and where possible, trees scattered throughout the site*' is justified but should also specifically identify the value of retaining trees along the interfaces with residential uses and at the corner of Collegium Avenue and Brandon Park Drive. The Treelogic report suggests there is scope to provide more specific guidance. In particular, the three groups of trees (1, 2 and 6 plus adjoining trees that are rated moderate) and trees within, say, 15 metres of the property boundaries<sup>7</sup> that are rated as moderate (subject to further evaluation), should be retained. The design of roads, pedestrian and cycle paths, and open space should also seek to maximise the retention of tall canopy trees where possible.

### **3.6 Built form requirements**

#### **3.6.1 Evidence and submissions**

A range of built form issues were raised in written submissions with the general emphasis on heights and setbacks of new development that would be consistent with the existing low rise character of the area or provide a gradual increase in the heights and bulk from the current 1 - 2 storey built form in the neighbourhood. Submissions put forward alternative options relating to the building envelope for the site which included a 3 storey maximum height, a height limit of 2 storeys, upper storeys step back from single storey development and any fourth floor recessed 30 metres from a street boundary. In his submission on behalf of the Brandon Park Residents Association, Mr Shrives suggested some single storey development for the elderly. He proposed 3 storey development along Brandon Park Drive with 2 storey development further back to blend with existing housing. Mr Shrives also submitted that, in the locality large family homes, rather than units, are being built to replace older dwellings.

While not opposed to development of the site, the MSDS expressed concerns about the impact of tall buildings on the privacy and amenity of the school's outdoor spaces. The major concern related to the preferred building height of 14 metre (4 storeys) as this:

- Is too high along the school boundary;
- Would invade the privacy of the school, particularly the playgrounds and external learning areas; and
- Would shade future redevelopment of the MSDS site.

Other submitters also raised concern about overshadowing (across streets) by 4 storey development.

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<sup>7</sup> This appears to include trees 1, 2, 4, 6, 7, 8, 9, 11, 15, 21, 26, 31, 35, 36, 37 and 107.



Mr Montebello provided the overall objective for urban design from the Draft Structure Plan as follows:

- *Buildings will enhance public spaces. Connect well to their streets, be energy and resource efficient and able to accommodate changing uses over their lifetime.*

The strategies to achieve the objective are:

- *Ensuring that the form and scale of buildings respects the context of the surrounds.*
- *Ensuring that residential amenity standards for both new and existing residential development are adequate.*
- *Encouraging buildings to be designed having regard to the specific needs and requirements of all people, including those with limited mobility.*
- *Encouraging buildings that maximise their highest and best use.*
- *Mr Montebello submitted that extensive consultation with residents and other stakeholders resulted in provision in the Structure Plan and the proposed DDO8 and DPO4 for development up to four storeys at the western end of the site and a maximum of two storey development at the eastern end.*

Mr Montebello submitted that a strategic redevelopment site can be one that accommodates 10 dwellings (Clause 16.01) and there are a number of sites that would meet this definition in or close to the activity centre. He emphasised the need to respond to the garden character policy expressed in the Monash local policy framework and the discretionary nature of the 'preferred' building heights and setbacks.

Mr Montebello submitted that the Draft Structure Plan has sought to strike an appropriate balance between protecting the amenity of the residential surrounds concurrently with achieving the aims of Melbourne 2030.

In her evidence Ms Ring described the site as follows:

*Undeveloped land of this size (a single parcel of almost 6 hectares) within the metropolitan area is an increasingly rare commodity, and especially so in locations which are proximate to, or on, Major Activity Centres.*

Ms Ring concluded that, the size and characteristics of the land and surrounds, and in particular the MAC context, warrant a change in character with more intensive development. As noted above, Ms Ring saw no imperative to retain the trees on the site. Given the size and island nature of the site, she was of the opinion that for a significant portion of the site the building height and setback aspiration is very conservative and would frustrate the delivery of affordable housing. Ms Ring was of the view that the character of adjoining areas should be respected through a transition from residential interfaces to increased intensity and height but two storey development would fail to optimise on the rare opportunity presented by this large site within a MAC.

DEECD raised concerns about the detailed DDO8 requirements. They considered that these requirements were not responsive to the unique opportunities presented by this site and

that there was little urban context analysis in the Draft Structure Plan or background report to substantiate the proposed height and setback requirements.

The Department submitted that no substantive urban context or visual analysis has been undertaken to justify the proposed built form provisions.

It was submitted that:

- The preferred building setback of 7.5m from all surrounding street boundaries is not based on rigorous urban character analysis, and will reduce the opportunity to achieve objectives for different housing, including affordable housing.
- Acceptable building heights will be influenced by a range of factors including the form, setback, density and typology of the residential development ultimately proposed, as well as the role of existing mature trees in screening and absorbing the visual impact of any higher elements of new built form.

DEECD does not support the preferred height of two storeys that is specified across a significant proportion of the site and considers there is potential for higher than two storeys particularly in the centre of the site. Nevertheless, Ms Porritt, appearing for DEECD, submitted at the end of the hearing that future development of the former school site with two storeys at the residential interfaces and rising to five storeys toward the centre of the site would be acceptable.

### **3.6.2 Discussion**

The immediate context of the former school site is generally residential around the eastern end but is also one of quite intense commercial and community activity. Non-residential interfaces include the Brandon Park shopping centre, three storey office development, the Special Developmental School, pre-school, maternal health centre and medical clinics. Public transport is available in the form of bus routes, which link to fixed rail routes and other centres. There is access to the M1 freeway very close by.

The Draft Structure Plan's response to the built form future of the Brandon Park is as follows:

*Buildings will enhance public spaces. Connect well to their streets, be energy and resource efficient and able to accommodate changing uses over their lifetime.*

*The strategies to achieve the objective are:*

- *Ensuring that the form and scale of buildings respects the context of the surrounds;*
- *Ensuring that residential amenity standards for both new and existing residential development are adequate;*
- *Encouraging buildings to be designed having regard to the specific needs and requirements of all people, including those with limited mobility; and*
- *Encouraging buildings that maximise their highest and best use*

Unfortunately there was no diagrammatic information, nor was there analysis of visual impacts as recommended in the DPCD *Practice Note 60 – Height and setback controls for Activity Centres* April 2010 to demonstrate the possible built form outcomes for precinct 3.

The Draft Structure Plan sets out preferred heights and setbacks for the BPMAC including those for precinct 3. Both DDO8 and DPO4 set out these heights and setbacks but we note that there is some inconsistency between references in the text and the two storey development and the 9 metres (ResCode) height nominated in the tables to the overlays for the same precinct 3 areas.

As discussed in Chapter 3, local and State planning policy (particularly at Clauses 11, 21.04 and 21.06) support more intensive development in such well serviced contexts and this was emphasised in Ms Ring's evidence. Further, the Draft Structure Plan – Built Form Future encourages buildings that achieve the highest and best use of land in the MAC.

In addition to the planning policy support for increased housing, given the MAC location, the type and intensity of built form to be encouraged is in part linked to the relevant demographic and economic issues that were provided to the Panel. These include:

- Population growth occurring in Monash and the wider Melbourne area that needs to be accommodated in well-serviced locations.
- Availability of employment in the locality - the structure plan highlights the employment base in the Activity Centre.
- Ageing of the population (from Monash Housing Strategy 1.2 Emerging Issues).
- Increase in persons aged 18-24 (and this would include students moving into the area as identified in the age distribution summary at 4.1.2 Monash Housing Strategy) and noting that Monash University is close to Brandon Park MAC.

Practice Note 60 – Height and setback controls for activity centres, April 2010 states that:

*Proposed height and setback controls, whether maximum or minimum, must be soundly based on the outcomes of strategic research that includes a comprehensive built form analysis that is consistent with State policy.*

The Panel notes that this analysis is not evident, but there has been a broad attempt to allow for greater intensity of development at the western (more commercial) end of the site and to set a lower height limit at the eastern end where there the surrounds are residential and community uses. The Panel concurs with the DEECD submission that there is an absence of substantive analysis in terms of the basis of built form controls for the site, but will address the built form issues on the material available and our site inspections.

The submissions and evidence before the Panel have identified the main physical issues that could impact on potential development of this site are:

- The trees that need to be retained in relation to relevant planning policy and the Heritage Overlay,
- The existing development of the Monash Special Development School,
- Topography - a portion of the land in the southern portion of the land is elevated when seen from the street,
- Drainage / flooding.

The Panel notes that there is no explicit urban character analysis. Nevertheless, we recognise there is an overall character of trees and gardens, especially around the east end of the site, and that there is a more hard edged non-residential character to the west and

northwest. The detailed information on the trees on site from the Treelogic report has been discussed in Chapter 3.5.

The appearance of built form, as part of the response to neighbourhood character, is a result of a combination of factors including, height, setbacks, articulation (through materials, colours or design), topography, landscaping and distance from potential viewing points. In designing new buildings to respond to urban character, the intent is not to completely remove views of new development but rather to encourage built form that does not dominate and responds to existing character – (ResCode and local policies). The Panel notes that there would be no direct abuttal to existing residential properties, given the island site.

### **Setbacks**

The justification for the exhibited preferred setback of 7.5m, which is greater than the 4.5 metres that would otherwise apply under ResCode, has not been provided. It appears to have been adopted to match residential setbacks in the area, although the closest dwellings are across streets.

The retention of existing mature trees in particular locations, including along the street frontages, would assist in achieving the garden character sought in local policy. Appropriate additional landscaping in combination with existing trees to be retained would assist in integrating new built form. This is especially the case where new development would be opposite existing residential properties with front gardens. Accordingly, the setbacks from the street in these locations should be sufficient to accommodate mature canopy trees so that replacement can occur if the existing trees have to be removed. The Panel sees merit in setbacks being linked to the retention of trees with spreading crowns or providing opportunities for them. The exact setback would need to be based on the need to maintain tree health in retained vegetation - it could be larger than 7.5m where trees are to be retained and smaller than 7.5m where new landscaping is to be provided or the surrounds are non-residential. The Panel finds that garden character, which differs from the surrounding suburban housing and could be higher density housing in a setting where trees have a strong presence, can be affirmed through landscaped setbacks especially opposite residences.

### **Height**

With respect to submissions seeking similar development to that occurring in the residential surrounds at present (i.e. one to two storeys), the Panel notes that two storey housing is already present in the mix around the site and regards single storey as inappropriate given the locational and character attributes.

Building heights in precinct 3 were exhibited at up to 4 storeys to the west of Brandon Park Drive but the heights nominated for the eastern end of the site were inconsistent. The DPO4 text indicated development in the east of the site should be two storeys but prescriptions in both DDO8 and DPO4 specifying 9 metres (ResCode), which would allow three storeys.

The final submission on behalf of DEECD by Ms Porritt included the acceptance of a two storey height limit at the edges of the site that face existing residential development (with a five storey building height further into the site). An increase of one storey at interfaces, with

a rising form as the distance from the residential boundary increases, is often considered reasonable. Thus, the two storey form at the residential interfaces that was accepted by DEECD represents a conservative approach given that the residential properties are across well trafficked streets rather than direct abuttals and the closest residential properties can be developed to two storeys without a permit (and already includes some two storey houses). We consider this conservative approach is not warranted in Strada Crescent given the value of the avenue of heritage trees to be retained in reducing the apparent bulk of buildings. Further consideration could also be given to the height at the western end of Academy Avenue if large setbacks are adopted to retain large trees.

The Panel agrees with Ms Ring that 'inboard areas' have greater potential for development even at the eastern or more residential end of the site as the impact of height of new buildings can be moderated by the combination of views over distance, and intervening landscaping and lower scale buildings.

Setbacks of higher development, further into the site, would need to be planned to avoid unreasonable visual bulk. Using appropriate massing on a large site such as this, with the retention and planting of some taller vegetation should provide for some 5 storey development provided that there is sufficient gradation away from the residential interfaces. If five storey development were included, the overall design would need to be tested against the *Design Guidelines for Higher Residential Development (DSE 2004)* and the other guidelines set out in 21.06C-4.

The size of the setbacks that would be required to retain some of the existing trees is likely to reduce the land area available for housing and is further justification for a minor increase in the height of built form on the site.

Overall, the Panel supports a transition in built form up to higher buildings behind, when seen from low density housing across the street. The Panel considers that this large site could readily accommodate 5 storey development subject to appropriate design parameters. The existing groups of trees on the site identified for retention, which have average heights of 22 and 23 metres, provide a reference point and will intercept or filter views to buildings from Strada Crescent. They are significantly taller than 5 storey building and will maintain a presence in the area.

The Panel recognises that the exhibited Amendment seen by resident submitters showed a preferred height of two storeys and 9 metres (3 storeys) over much of the site. The existence of the Advisory Committee process provides an opportunity for submissions on an alternative framework for the site that provides for the following key elements:

- Two storey buildings along residential interfaces in Collegium and Academy Avenues.
- 3 storeys along Strada Crescent.
- Rising to 5 storeys provided that sight lines show that the presence of higher elements from the houses opposite the site can be minimised.

### **3.7 Privacy and amenity concerns**

#### **Monash Special Development School**

The MSDS's major concern was that of development along the school boundary and in particular a possible 4 storey building height. Existing buildings at the western end of the MSDS site are generally well set back within the school grounds. As the MSDS is located in a MAC, higher built form can be expected, particularly on a site as large as the former school site.

In terms of shading, the Panel notes that the large trees that abut more than half the MSDS northern boundary would already provide shade and that this is a reasonable outcome, especially in warmer months of the year when outdoor activities are likely to take place. The retention of the 'group 2' trees in an open space area would reduce the likelihood of higher built form being located close to the north-west corner of the MSDS site. The Panel does not consider the likely additional shading of the MSDS from future development of the former school site is unreasonable.

With respect to privacy of the outdoor educational areas of the MSDS, the Panel is of the opinion that there are positive benefits to be had if there are some casual surveillance opportunities from new development, including when the school is unoccupied. Further, the present situation of a vacant and treed former school site adjacent to the MSDS may not be ideal in terms of safety and security. During school hours it is likely that some future residents would not be at home, however if some views were obtained of the school, the Panel considers this would be part of the normal context of schools and associated outdoor spaces adjacent to housing. Finally, when the students are at the school it would be expected that a reasonable level of supervision would occur irrespective of whether views into the site are possible.

#### **Resident amenity concerns**

Given the distances across roads, the use of two and three storey development at the residential edges and the landscaped setbacks that would apply, the Panel concurs with Ms Ring's view that distance can ensure no unreasonable overshadowing or overlooking impacts from this site. We note that this would even be the case with four storey development rather than the two and three storeys opposite residential properties.

Safety and security issues such as lighting of public areas or pathways are detailed design issues that can be achieved through the planning permit process.

### **3.8 Public open space requirements**

#### **3.8.1 What is proposed**

The Amendment documents extract the following elements relating to public open space from the Draft Structure Plan.

The Vision for precinct 3 in Clause 21.06B includes:

*...Retain significant mature vegetation within the public open space reserves and where possible, trees scattered throughout the site.*

DPO4 development plan requirements relating to public open space requirements are:

- *provision of 15% of the site set aside as Public Open Space (This includes the 15 metre wide plantation reserve adjacent to Strada Crescent).*
- *retention of significant mature vegetation within the public open space reserves and where possible, trees scattered throughout the site.*

The Draft Structure Plan requires a pedestrian link from Strada Crescent through to the proposed public open space to Brandon Park Drive. It also shows the configuration of public open space for the precinct (see figure 4) which comprises two areas:

- A central area that runs between the MSDS and Collegium Avenue and incorporates a large group of mature trees; and
- The Strada Crescent row of trees (which are subject to the HO).

### **3.8.2 Evidence and submissions**

Many submissions<sup>8</sup> from residents highlighted the contribution of the open space (and trees within it) to the increasingly urban character of the area and the value of pedestrian linkages through parkland. These submissions argued that access to local parks in the area is poor, particularly since access to the open space at the former school was lost<sup>9</sup>. Mr Yanko submitted that the number of children and ageing of the population increases the need for open space. It was submitted that the open space provided should incorporate parkland, space for children to play with balls, a playground and a community garden for new residents of apartments (5m<sup>2</sup> per household).

There was strong support for the incorporation of a substantial area of public open space into redevelopment of the former school site, with one submitter advocating retention of the whole site as open space, another submitting that the land should be retained as open space until it is required for an alternative public purpose, some advocating a requirement for more than 15% of the site should be open space and others submitting that the proposed 15% is the minimum that should be provided.

Mr Montebello cited state and local policy support for the protection and improvement of the network of regional and local open space to serve the diverse needs of the community (Clauses 11.03-1 and 21.10).

It was Council's view that the proposed requirement to provide land for public open space on this site is reasonable having regard to the existence of significant trees on the land, the continuing community use of the site including passive recreation and the future increase in population on the site. Mr Montebello argued that *'Higher density development requires higher amenity.'* He and resident submitters emphasised the importance of open space for community health and well-being, particularly in high density living environments, as recognised by the *Inquiry into Environmental Design and Public Health in Victoria*<sup>10</sup>. It was

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<sup>8</sup> For example the submissions from Gardner, Wilshier, Evans, Binks, Carbone, Cummins, Sweetten, Vanderwert, Olin, Yanko, Brandon Park Residents Group, Gates and McQuienn.

<sup>9</sup> Mr Shrives advised that agreements had existed for out of hours use of school open space, including two ovals.

<sup>10</sup> *Inquiry into Environmental Design and Public Health in Victoria Final Report*, May 2012 (Parliament of Victoria).

put that *'the identification of the area of public open space to coincide with areas of vegetation provides great opportunities to provide readymade areas which will provide significant community benefit to the new residents of the area.'*

Council argued that the low level of open space provision in Monash generally and in the vicinity of the former school site justifies a requirement in excess of the default provision (5%) under Clause 52.01 and the *Subdivision Act 1988*. Mr Montebello cited examples of other planning schemes where contributions well in excess of 5% apply<sup>11</sup>.

While Mr Montebello acknowledged that Monash has not prepared an open space strategy that establishes a specific basis for the proposed 15% open space requirement for precinct 3, he emphasised that Monash is one of the bottom six municipalities in terms of open space provision with public open space being about 9.9% of the land area or 4.4 hectares per 1,000 people, compared to a median across Metropolitan Melbourne of 6.6 hectares per 1,000<sup>12</sup>. Mr Montebello submitted that:

*...these conditions will continue to deteriorate if there is no manifest provision of open space where it is needed most – which is in areas that are identified for increased provision of housing.*

Mr Montebello also highlighted that the proposed DPO4 requires compliance with Clause 56 subdivision requirements. He referred to Standard C13 of clause 56.05-2 which, amongst other things, specifies that neighbourhood public open space should include:

- *Local parks within 400 metres safe walking distance of at least 95 percent of all dwellings. Where not designed to include active open space, local parks should be generally 1 hectare in area and suitably dimensioned and designed to provide for their intended use and to allow easy adaptation in response to changing community preferences.*
- *Additional small local parks or public squares in activity centres and higher density residential areas.*

Council prepared some aerial mapping for the hearing to demonstrate that public open space within the development is necessary to comply with this requirement.

If the open space sought by Council is not provided, Council submitted it will not be possible to provide open space for this development with only a 5% mandatory contribution. Council made it clear that it *'has no current intention, plan or budgetary provision to purchase open space in the nearby area'*. In closing Mr Montebello submitted:

*The more equitable way forward is for the development to provide its open space land as required for its large population and Council should incur the cost of improving it to make it useable. That cost sharing approach is a reasonable proposition.*

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<sup>11</sup> For example, Levanto Street, Mentone where DPO3 to the Kingston Planning Scheme requires 44.9% of the residential development site to be transferred to the council for open space and a scout hall; and the Eastern Golf Course Key Redevelopment Site, where the clause 22.17 to the Manningham Planning Scheme seeks to a minimum area of 20% of the site to be set aside for public open space.

<sup>12</sup> *Metropolitan Melbourne Investigation Final Report* August 2011 Victorian Environmental Assessment Council.



DEECD submitted that the open space requirement is excessive given that:

- There has not been an open space strategy for the municipality or other analysis that is normally required to justify open space contributions in excess of the 5% default requirement.
- The MSS describes extensive open space within the City of Monash (clause 21.10-1) and the Draft Structure Plan identified the area as being well-served by significant open spaces that include Brandon Park Reserve, the Monash Aquatic and Recreation Centre (MARC) and Jells Park. Ms Porritt referred to Brandon Park Reserve, Brentwood Reserve and a neighbourhood park within 500m and analysis by Urbis indicating in excess of 25% of land within 5kms is public open space.
- It is inequitable and unreasonable to treble the open space requirement that applies elsewhere in the municipality where there is no evidence of a critical need for more open space. No other sites within the MAC are subject to an open space requirement beyond that specified at Section 18 of the Subdivision Act.
- It is not possible to ascertain the actual need for open space arising from this development as the form of the development and future resident needs are not known – an aged care facility will have a different open space requirement to a building with predominantly studio apartments.
- To the extent that this requirement relates to a desire to retain trees on the site, preliminary assessment on behalf of DEECD does not suggest the trees are of any special significance (except those covered by the Heritage Overlay). This is a matter which is best addressed in conjunction with a specific proposal for development of the land.

Ms Porritt, for DEECD, noted that, while the text of the Draft Structure Plan indicates that the tree row along Strada Crescent forms part of the 15% contribution, calculations by Urbis indicate that the depiction of the proposed open space shows the area excluding the tree row to be 15%.

For similar reasons to DEECD, Ms Ring did not consider a strategic basis has been established for a requirement that is three times the figure applied elsewhere in the municipality. It was her view that *'the requirement should have some nexus to the type and extent of the development proposed for the land and, further, that it be in a form which offers the residents of the area the best open space outcome in the circumstances.'* She also raised the impact of quarantining 8000 m<sup>2</sup> (approx) of developable land in a strategic redevelopment site.

### **3.8.3 Discussion**

The key issues in relation to the proposed public open space contribution appear to be:

- What should be deemed to be public open space for the purposes of contributions?
- Is specific justification required to depart from the public open space requirements applicable to the rest of the municipality, and if so, has it been established for a 15% contribution in this instance?
- Should open space requirements be determined now (or at a later stage) and if so what requirements or criteria should apply?

**What is deemed to be public open space?**

It was not entirely clear whether the row of trees along Strada Crescent was to be deemed to be part of the public open space contribution. While some judgement is invariably involved, the Panel agrees with the Whittlesea C81 and Greater Dandenong C87 Panels that encumbered land can have a complementary open space function and may reduce the requirement for public open space but should not be included as part of that contribution. The Panel considers this principle is relevant to trees in Strada Crescent that are to be retained for heritage conservation purposes (and local amenity purposes). Therefore the subsequent discussion of open space provision and contributions does not include the Strada Crescent trees. The same principle would apply to land required for drainage purposes which may have a complimentary public open space function.

It is also important to note that developments may incorporate communal open space that remain privately owned and where public access is restricted. This land is also excluded from the Panel's consideration of public open space requirements.

**Justification for a 15 % contribution**

The Panel does not agree with Mr Montebello that:

*It is a nonsense to submit that Council needs to first establish a need for the open space. Need is self-evident. It is also a nonsense to submit that Council needs to establish how open space might be used. That should also be self-evident.*

*The "strategy" for the provision of open space is clearly articulated in the provisions of the scheme in the SPPF and the LPPF and in clause 55...*

There is the option to simply rely on the 5% public open space contribution established under the *Subdivisions Act 1988*. While the inclusion of that 'default' rate in the planning scheme would not need to be justified beyond establishing that there is a need for public open space, where much higher rates of provision proposed, such as in this case, the nexus between the requirement and needs should be established. As Ms Ring and DEECD noted, this typically occurs through the preparation of an open space strategy with implementation relying at least in part through public processes such as planning scheme amendments or permits.

Section 18(1A) of the *Subdivision Act 1988* and Practice Note 70 – Open Space Strategies (PN70) illustrate the range of matters to be taken into account in planning for public open space. They extend well beyond the broad comparison put forward by Mr Montebello of relative proportions of land devoted to open space on a municipal basis. The *Subdivision Act 1988* requires consideration of factors influencing open space needs such as the existing and proposed use or development of the land; increases in the intensity of the use of open space after development, and the adequacy of existing places for recreation. PN70 puts forward a methodology that involves situational analysis followed by the development of an analysis framework that defines the study precincts, open space classification (that differentiates between catchments, landscape character, function and settlement types), core service levels and principles. The existing supply and demand are analysed to gain an understanding of gaps in opportunities (in terms of distribution, diversity, quantity, quality and location)

which then informs strategies for open space provision and design. Issues and objectives are then canvassed through a discussion paper leading to Draft and Final Strategy documents. The open space strategy is expected to address implementation with contributions secured through the planning scheme identified as one option for consideration.

The development of a strategy promotes effective delivery of open space to meet identified needs. It also promotes transparency and equity in requirements for contributions. The apportionment of the cost of projects should reflect the extent to which an existing deficiency in open space is to be addressed (as Mr Montebello and some submitters sought to illustrate) as distinct from a need for increased and/or improved open space as a result of the proposed development.

The identification of relatively low rates of public open space provision across the municipality may suggest the need for a strategy in Monash to address the issue but does not justify a requirement for a public open space contribution on one site that is triple the contribution required for any other site in the municipality. Similarly, if analysis confirmed that there is an existing deficiency in local open space provision, the costs of redressing the deficiency should be borne by both the existing community and the new development, having regard to the demand generated by each.

The objectives of 56.05-2 Public open space provision objectives are appropriate but it is not workable to expect to achieve standards directed at higher order components of the broader open space network on brownfield sites and certainly not to impose that obligation on specific sites unless the planning authority is prepared to meet a fair proportion of the costs. The Panel considers it is appropriate for a site of this size to provide local recreation space but even in greenfield locations Clause 56 does not nominate the quantum of this form of open space. As DEECD noted, the type of open space to be provided should be responsive to the needs of the residents to be accommodated - it may be space to kick a football, space for community gardening or passive areas depending on the market population.

The Panel does not consider a public open space contribution in excess of the 5% required by Clause 52.01 has been justified for the former school site.

### **Should open space requirements be determined now?**

There are benefits in identifying the key parameters for public open space provision, particularly if the DPO removes third parties rights in subsequent planning processes. However, the Panel does not consider that a contribution in excess of the default 5% (plus encumbered areas) has been justified. We note that the delineation of open space on the precinct plan in the Draft Structure Plan has limited status as it is within a reference document rather than being incorporated in the planning scheme. Nevertheless, we are not convinced that the configuration of the open space shown in the Draft Structure Plan in the centre of the site is necessarily the optimum design (although it may prove to be). There should be scope for the design process to adopt an alternative layout that takes account of the configuration of the development, the function of specific areas, including whether they are publicly owned, communal or private open space.

While the DPO should not dictate a particular design outcome, we do think a number of parameters in the proposed planning framework represent sound open space planning for this site. The linking of the pedestrian network, the retention of significant trees for amenity purposes and, perhaps, a drainage retarding basin with public open space is good planning and should be maintained in DPO provisions.

### **3.9 Drainage**

#### **3.9.1 What is proposed?**

The proposed DPO4 includes an objective *‘To contribute to the improvement of on-site and off-site local stormwater drainage systems’* and the development plan requirements include *‘the principal features of the drainage systems, in particular works proposed to manage on-site stormwater detention’*.

The issue is also addressed in clauses 21.11-1 and 22.04 of the planning scheme, both of which deal with stormwater management.

#### **Submissions**

Mr Shrives, on behalf of the Brandon Park Residents Association, and the written submission from C Evans raised concerns that more hard surfacing associated with development in the MAC, and precinct 3 in particular, will exacerbate existing drainage issues. Mr Shrives referred to houses east of precinct 3 being flooded eight times in the last 10 years, with 21 residents affected in the east, and 12 on Brandon Park Drive.

Council responded that flooding issues are recognised. The Draft Structure Plan acknowledges that part of precinct 3 is subject to overland flows and flooding during major storm events because drains in the Brandon Park Drive area were designed to cater for stormwater from the more frequent storm events and the construction of the Monash Freeway has effectively stopped stormwater from reaching the retarding basin within Freeway Reserve. The Draft Structure Plan identifies three responses to these drainage issues:

- Clause 22.04 of the Monash Planning Scheme Drainage strategies details requirements to detain stormwater to ensure that the stormwater runoff from this site will not exacerbate the stormwater issues experienced downstream of the site.
- Council will continue to implement the recommendations of the *Mile Creek East Catchment Drainage* report by GHD 1997 for the City of Monash, including the temporary retardation of water at the Brandon Park Reserve site which will ensure that stormwater upstream of Brandon Park Drive will be held for a short period of time during major storm events, to prevent it flowing through properties downstream.
- Upgrading the stormwater drains from the Brandon Park Drive area under the Monash Freeway will be investigated in conjunction with Melbourne Water and VicRoads.

### 3.9.2 Discussion

Drainage issues are an existing issue in the precinct that needs to be addressed. However, as the Panel noted at the hearing, it is not reasonable to burden the development of the former school site with the resolution of drainage issues for the wider catchment. We accept Council advice that strategies are being implemented to resolve drainage issues in the wider area.

The Draft Structure Plan, which is proposed as a reference document, the proposed DPO and existing LPPF provisions (Clause 21.11-1 and 22.04) all recognise the need to address drainage issues to ensure that new development does not exacerbate existing flooding problems.

The Panel is satisfied that the proposed planning framework appropriately identifies flooding as an issue to be address in precinct 3 as part of the development planning and permit processes.

### 3.10 Potential contamination

It was initially proposed to apply the Environmental Audit Overlay (EAO) to the former school site as part of this Amendment. The correspondence from the Department associated with the authorisation of the Amendment (AO2495 - 15 March 2013) noted that:

*...there needs to be a reference in the Explanatory Report as to the reason for introducing an Environmental Audit Overlay.*

Council provided a desktop review by Prensa Pty Ltd (19 January 2012) which drew on two earlier assessments:

- *Environmental Site Assessment: Former Brandon Park Secondary College, Wheelers Hill, Victoria* (18 May 2009) prepared by Atma Environmental; and
- *Preliminary Soil Contamination Assessment: 6 – 30 Brandon Park Drive, Brandon Park* (1 September 2009) prepared by Golder Associates.

Based on the analysis of these reports, Prensa confirmed that the site is unlikely to pose a potential health risk to future users of the site if it is rezoned for a sensitive land use. Council accepted the Prensa Pty Ltd conclusion that the site is not '*potentially contaminated land*' as defined in the *Potentially Contaminated Land – General Practice Note* (June 2005). The Panel also accepts this advice and concludes that the EAO does not need to be applied to the former school site.

### 3.11 The proposed planning framework for precinct 3

#### 3.11.1 Evidence and submissions

As noted at the directions hearing, a change from the exhibited R1Z to RGZ for the former school site has been foreshadowed in documentation relating to the disposal of surplus DEECD sites but could not be exhibited in Amendment C86 as the zone had not been introduced. The DEECD Surplus Land Rezoning Project Standing Advisory Committee directed that those who may be affected be advised of the proposed change.

Submissions from DEECD and Ms Ring's evidence emphasised that following purposes of the RGZ match precisely the planning intent for the former school site:

*To provide housing at increased densities in buildings up to and including four storey buildings;*

*To encourage a scale of development that provides a transition between areas of more intensive use and development and areas of restricted housing growth.*

Further, it was submitted that the site accords with each of the criteria identified in Practice Note 78 for the application of the RGZ, namely: The RGZ is identified as appropriate for sites:

- Where new residential character is envisaged – as opposed to replication of surrounding development forms;
- In areas identified for growth and change;
- Where no environmental constraints apply and a low risk of hazard;
- Which are urban renewal sites;
- In an area with clear strategic support for change to higher density;
- With good access to shopping, community services and transport choices.

Ms Porritt posed the question *'If a 5.75 ha site within a major activity centre is not an appropriate site for inclusion in the residential growth zone – where would be?'*

Ms Ring stated that the proposed DDO is unnecessary as the RGZ includes or otherwise cross-references controls that can reasonably be relied on to deliver a range of well-designed housing at the higher densities suited to MACs and the Brandon Park Activity Centre in particular.

Although Council had not determined a position on the appropriate zoning of the former school site, the arguments put in favour of the RGZ were not challenged at the Hearing.

Although Council had supported the exhibition of the DPO and the associated removal of third party rights, at the hearing Council submitted that there is no warrant for the wide exemption as exists under the DPO. Council submitted that the planning framework for the precinct provides a very high degree of latitude and no semblance of any certainty in terms of the outcomes for a community that has demonstrated a significant level of interest in the future development of the site. Further, the former school site, which is surrounded by established residential development does not meet the criteria in the *PN23 Applying the Incorporated Plan and Development Plan Overlays* for use of the overlay. The PN23 states:

*Because the DPO has no public approval process for the plan, it should normally be applied to development proposals that are not likely to significantly affect third-party interests, self-contained sites where ownership is limited to one or two parties and sites that contain no existing residential population and do not adjoin established residential areas.<sup>13</sup>*

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13 PN23 Applying the Incorporated Plan and Development Plan Overlays (January 2003) page 3.

Council also noted that PN23 discourages the use of informal consultation processes and VCAT tends to take a fairly firm approach on not allowing third parties to get involved in such proceedings notwithstanding the ability for a third party to seek to become a party.<sup>14</sup>

### **3.11.2 Discussion**

#### **Should third party rights be maintained?**

The DPO removes third party rights in both the development planning process and, if the proposal is consistent with the approved development plan, for an application under any provision of the planning scheme.

The Panel raised the question of whether third party rights should be maintained in precinct 3. This panel process has provided the opportunity for those who may be affected to ventilate issues of concern to them. Further opportunity will be provided for refinement of the planning framework to respond to resident concerns through the Advisory Committee process. We are satisfied that the planning framework for the precinct can provide a level of comfort that the interests of third parties will be appropriately addressed.

As noted above, an underlying concern in submissions from residents related to preserving the existing character of the area, however, we agree with the alternative view that this site within a MAC presents an opportunity for redevelopment at higher densities to create a new character. It should not be necessary to revisit this issue through subsequent review processes.

The Panel considers that the absence of direct abutments to sensitive residential uses is a relevant consideration. We are satisfied that the road network has capacity to accommodate additional traffic generated by the development of the site and, unlike in greenfield areas, connections to a future road network beyond the site are not critical in this case and do not need to be nominated at this point in the planning scheme. Technical traffic management issues – such as specific access points, intersection design and the like - can reasonably be evaluated by the responsible authority through development planning and permit processes.

The Panel concludes that the removal of third party right for subsequent planning processes is reasonable in precinct 3 provided that the DPO delivers an appropriate level of assurance that key parameters – such as the building envelope, the retention of mature vegetation, pedestrian linkages and drainage - will be addressed to create a precinct with a new character without unreasonable impacts on the amenity of the surrounding residential area.

#### **The appropriate zone**

As discussed in Chapters 6 and 8 of this report, the Panel considers the Activity Centre Zone (ACZ) has the advantage over the proposed precinct based zoning and overlays of providing a consolidated planning framework that can implement the specific outcomes sought by the

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<sup>14</sup> The Panel was referred to *West Valentine Pty Ltd v Stonnington CC* [2005] VCAT 224 (9 February 2005) and *Lascorp Development Group (Aust) Pty Ltd v Ballarat CC & Anor* [2013] VCAT 132 (12 February 2013).

Draft Structure Plan. We see strong focus on redevelopment of the former school site for housing supports maintaining a precinct based approach in precinct 3.

The Panel agrees with the submissions and evidence that the RGZ is clearly the appropriate new residential zone to implement the planning objectives for precinct 3. The issue then arises of whether the schedule to the RGZ should be utilised instead of or in conjunction with the proposed overlays.

The schedule to the RGZ provides for variation of nominated ResCode standards but the Panel considers, despite the disadvantage of planning framework complexity, the proposed overlays would provide a more effective mechanism.

The ResCode objectives and standards remain broadly relevant to residential development in precinct 3 and departures from them have only been foreshadowed in the Amendment for two elements – height and frontage setbacks.

The purposes of the RGZ refer to development up to four storeys and there is discretion to consider development of greater height. However, if a greater height is nominated in the schedule to the RGZ, that height limit becomes mandatory. The Panel's consideration of building height concluded there should be flexibility to consider proposals that provide for a transition in height to five storey development on parts of the site. We are confident that parts of the site can accommodate four storey development and expect that taller development is also likely to be appropriate in some areas but the available analysis has not been provided to justify a **mandatory** maximum height. The Panel considers that the proposed overlays are capable of addressing height issues more effectively than the schedule to the RGZ.

With regard to variation of frontage setbacks, the Panel supports an approach that provides for greater setbacks where large canopy trees can be retained (within, say, 15 metres of the frontage) a minimum of 4.5 metre setbacks opposite existing houses, and design based determination of setbacks elsewhere. The schedule to the RGZ does not readily accommodate such an approach and we consider the overlays should be utilised.

### **Mechanisms to manage future development in precinct 3**

The multiple mechanisms used in the Amendment to implement the structure plan has resulted in a significant level of duplication leading to DEECD and Ms Ring expressing the view that DDO8 is not necessary and Council submitting that the DPO is not required and the relevant provisions can be decanted to other parts of the planning scheme.

With further development of the design and or performance guidelines to provide parameters that manage potential impacts on residents and community uses in the locality, the Panel sees merit in maintaining the DPO4 to establish a framework for the integrated development of this large strategic site. As noted above, we believe the DPO removal of third party rights is reasonable in those circumstances.

However, the Panel is not in a position to develop a detailed development envelope or to nominate specific trees that should be retained. We put forward the following parameters and suggest that DEECD and/or Council use this guidance to prepare a refined planning



framework, which may be in the form of text or a conceptual plan within the DPO schedule, or both, for consideration by the Advisory Committee:

- The three groups of trees (tree groups 1, 2 and 6) and the trees within, say, 15 metres of roads that were rated as moderate in the *Treelogic Arboricultural Assessment dated 26 April 2013* should be retained where possible (this includes the trees in the heritage overlay area along Strada Crescent).
- A building height of 2 storeys opposite existing low rise residential development in Collegium and Academy Avenues, 3 storeys opposite houses in Strada Crescent graduating up to 5 storeys further away from residential interfaces. The envelope for higher elements should be based on sight lines from residential interfaces along Strada Crescent and Collegium and Academy Avenues, provided that these sight lines show that the presence of higher elements from the houses opposite the site can be minimised.
- Variation in frontage setbacks to accommodate existing large trees within 15 metres of the street that were rated moderate in the Treelogic assessment dated April 2013 and with a minimum setback of 4.5 metres elsewhere.
- Public open space contributions of at least 5% public open space that is unencumbered by trees to be retained for heritage conservation purposes and land with a primary function to drainage requirements.
- Open space areas to include the trees in Group 2 (Treelogic Report) and to capitalise on land required for drainage purposes and pedestrian links.
- A pedestrian link across the site between Strada Crescent and the Shopping Centre.
- Requires the building envelopes, building articulation, landscaping and the development design response to recognise the variation of topography on the site, sensitive residential interface and objectives to integrate built form in the streetscape.
- Consideration of drainage and flooding issues and the provision of guidance on likely solutions, if possible.
- Indented parking along Collegium Avenue to provide at least six car spaces for community uses. If Council is in a position to fund land acquisition and construction costs for additional spaces, a higher minimum number could be specified.

For the sake of simplicity, we consider DDO8 should not apply to precinct 3 and relevant parts of that overlay should be decanted to DPO4.

### **3.12 Recommendations**

- 2. DEECD and/or Council use the guidance provided in Chapter 3.11.2 of this report to prepare a refined planning framework for precinct 3 for consideration by the Advisory Committee.**
- 3. Apply the Residential Growth Zone to precinct 3.**
- 4. Delete DDO8 from precinct 3 and decant relevant parts of that overlay to DPO4.**
- 5. Delete the DPO4 requirement for a public open space contribution of 15%.**
- 6. Revise the Development Plan Overlay Development Plan requirements as follows:  
*The Brandon Park Residential Development Plan should show:***

- *residential use that provides a diverse mix of housing types, including a significant component of Aaffordable Hhousing.*
  - *retention within the front setbacks of buildings, public open space and street reserves of significant mature canopy trees that were rated as 'moderate' by the Treelogic Arboricultural Assessment dated 26 April 2013. In particular, the design should incorporate the retention of groups of trees in the centre of the site, the row of trees along Strada Crescent that are within the Heritage Overlay and trees within 15 metres of existing street boundaries.*
7. In precinct 3, revise the requirements for setbacks from the frontages to existing roads (specified in the table in the exhibited Design and Development Overlay Schedule 8 (DDO8) to provide for:
- 1) A setback sufficient to accommodate existing large trees within 15 metres of the street that were rated moderate in the Treelogic assessment dated April 2013; and
  - 2) At least 4.5 metres opposite existing houses.

## 4 Precinct 5 – Rosemary Court

### 4.1 The issue

Should the new C2Z be applied to the land at 8 Rosemary Court, Mulgrave instead of maintaining the existing IN1Z as exhibited?

### 4.2 What is proposed?

The MAC Structure Plan sets out the preferred uses for precinct 5 as retention of industrial and car sales uses and inclusion of medical facilities. The retention of the IN1Z is proposed.

### 4.3 Submissions

The written submission on behalf of the owners of the land at 8 Rosemary Court Mulgrave by SJB planners sought rezoning from IN1Z to the new a C2Z for the subject land. SJB submitted:

- *The new Commercial 2 zone provides more opportunities for office, commercial businesses, restricted retail premises, trade supplies and some limited retail activity. Floor area restrictions for office and some retail would be removed (in many instances) to create opportunities for office and retail growth. This zone would be appropriate to the Rosemary Court Industrial Precinct (Precinct 5) as it would provide consistency with adjacent zonings, reflect the vision of the Brandon Structure Plan and maintain the precinct as an employment Precinct whilst allowing more employment generating uses to locate in the activity centre. Accommodation remains a prohibited use, avoiding any ‘residential creep’ into key employment areas within the centre.*

At the hearing Mr Montebello on behalf of Council responded as follows:

*The zone reforms have revised the IN1Z and most significantly:*

- *The default floor area for an office of 500 square metres in the IN1Z has been removed; and*
- *Councils have the ability to schedule in a floor area requirement where justified through a schedule to the zone.*

*No zoning change is required for this precinct. The modifications to the IN1Z do not negatively impact on the future development of this precinct in accordance with the Structure Plan. Furthermore, it is noted that the removal of the default floor space area restriction for office provides some assistance to the owners and occupiers of 8 Rosemary Court giving some broader options in terms of future planning.*

### 4.4 Discussion

The new C2Z provides more opportunities for restricted retail premises and some retail activity. The Draft Structure Plan does not emphasise retail as a preferred use in precinct 6 which is at the outer western limit of the MAC. For precinct 4, to the east of the Rosemary

Court, a B3Z was proposed to replace the existing IN1Z, however this precinct is immediately opposite the core retail area of the MAC (precinct 1).

The Panel considers that the retention of the IN1Z (as recently modified) allows sufficient flexibility for a range of uses. Further, it is appropriate in the context of the gradation away from retail to the west of the Brandon Park Shopping Centre. The Panel finds that IN1Z is consistent with the preferred outcomes for precinct 5 as set out in the Draft Structure Plan.

## 5 Precinct 6 – the VicRoads site

### 5.1 The issues

- Should the VicRoads site be zoned Commercial 1, which is the translation of the exhibited B2Z, or Mixed Use Zone (MUZ), as proposed by Council after exhibition due to the introduction of new Commercial Zones?
- Should retail uses be facilitated on the VicRoads site?

### 5.2 What is proposed?

The 2.12 ha island site, which is occupied by a VicRoads Works Depot, is entirely surrounded by major roads. Vehicle access to the site is via Ferntree Gully Road, comprising fully directional access adjacent the freeway on ramp and a left in/out access approximately 100 metres to the west (See Figure 5 below).



Figure 5 The VicRoads site.

The exhibited Amendment proposed to rezone the VicRoads site, from RDZ1 to B2Z. DDO8 would also apply to the land. The B2Z would be translated to C1Z under the new zones that were introduced in July 2013. As Council does not support retailing on the VicRoads site, it proposed a post-exhibition change to rezone the land to MUZ.

### 5.3 Submissions

Council acknowledged that the appropriate zone choice is not straight forward but considers, of the new suite of zones, the MUZ is the best fit for this site. Council submitted that, notwithstanding the significant road infrastructure adjacent to the site, limited shop and office development can be allowed and some residential development could be accommodated. Council regarded the MUZ provides sufficient flexibility to consider future uses, with most uses triggering the need for a permit and few prohibited uses. This would allow a proper analysis of a proposal.

Council does not consider that the C1Z is an appropriate zone for precinct 6 because:

- The vision for precinct 6 envisages development for offices, possibly with the inclusion of medical centre facilities.
- All forms of retail development are inappropriate on this site, whereas the C1Z allows 'as of right' shop uses (without limits). Council submitted:

*Allowing shop uses as of right in Precinct 6 has no planning logic to it. The potential to allow a cluster of isolated retail uses to emerge on an island site on the corner of the Monash Freeway and Ferntree Gully Road which is separated from the core retailing Shopping Centre (Precinct 1) by industrial (Precinct 5) and office development (Precinct 4) has no foundation to it and would not be consistent with orderly planning.*

- The commercial zones are not strategically based but rather are broad and flexible (rather than focused). A schedule could be more strategically based but, Council has not gone down that path.

Council noted that an EAO should be applied whether the site is rezoned C1Z or MUZ as Accommodation is as of right in the C1Z and a permit required in the MUZ.

VicRoads did not object to the exhibited B2Z. It supports the rezoning of the site to C1Z on the basis that:

- *The C1Z facilitates a broader range of diverse employment and services land uses appropriate to Brandon Park's role as an MAC, in accordance with the Metropolitan Strategy policy framework;*
- *Significant previous Tribunal decisions have reinforced the appropriateness of assessing the strategic land use impact of development-only applications against the full range of relevant strategic planning provisions;*
- *The C1Z is directly supported by a range of strategic provisions of the Monash Planning Scheme, including elements of the Monash MSS that stipulate Council support of business endeavours and municipal economic competitiveness;*
- *A MUZ risks potential residential development on a site that has limited potential as a residential site, due to poor interfaces, PCL (potentially contaminated land) considerations, air/noise pollution and isolation; and*
- *Preliminary traffic modelling (by O'Brien Traffic) suggests that retail uses can be established without impact on the road network.*

VicRoads also provided written traffic engineering advice from Mr Beale of O'Brien Traffic on the suitability of the site for retail use and the impact on the adjoining road network. The report indicated:

- Given the existing traffic volumes adjacent the subject site and the very low likelihood of further development on the northern side of the Ferntree Gully Road, the site could support (at least) retail uses at the low end of the traffic generation spectrum (e.g. car sales and some forms of Restricted Retail Premises);
- The office and medical centre identified for the site in the draft Structure Plan does not represent a profoundly better traffic engineering outcome than retail use as:

- Although peak traffic generation rate would be lower than most retail uses, a substantially greater total floor area would be likely than retail development; and
- In contrast to retail use, the peak traffic generation of office use coincides with the on-road peak.
- If the capacity and safety of the form of access to the site is appropriate to the level/intensity of use, retail use would not significantly disrupt the surrounding road network. It was noted that:
  - There is not a strong likelihood of patrons mistaking the on ramp as an access point to the site because it does not present as a private access; and
  - In relation to implications for the Ferntree Gully Road off-ramp for entry to the site from Ferntree Gully Road (both directions) and U-turn traffic from the west:

*The extent to which U-turns are an issue is largely dependent on the level/intensity of development and whether or not fully directional access is provided to the site which would require new traffic signals west of the freeway off-ramp. However, under either scenario there is a potential safety issue with traffic seeking to access the subject site from the freeway needing to weave across the eastbound lanes of Ferntree Gully Road over what is currently a relatively short distance in order to U-turn. This is an issue under any development scenario although I note there is already significant weaving from the freeway off ramp in the PM peak as motorists seek to then turn right at Springvale Road.*

*If signalised access to the site was provided west of the off-ramp it would be somewhat easier for motorists to perform the weave. It may also be feasible to reduce the risk of crashes by rationalising the existing median openings/turn lanes to the east but this would require detailed investigation/analysis.*

At the hearing the Panel asked about guidelines for access and the location of lights or signals that would be relevant to this site. After the hearing, VicRoads provided the following advice based on discussion between VicRoads officers and O'Brien Traffic Engineers:

- *There are unofficial design /access management guidelines that have been used previously by VicRoads and which are not publically available as they have not been approved.*
- *An indication of a possible signal configuration and distance between signals can be seen in the existing arrangement and relationship of the signals at the intersections of Ferntree Gully Road with Springvale Road and Brandon Park Drive respectively.*
- *The site is approximately 600 metres west of Springvale Road and the existing driveway approximately 100 metres from the existing on ramp.*
- *The provision of lights would need to be designed and located to ensure there was no impact on the intersection of the off ramp and the east boundary carriageway of Ferntree Gully Road as well as the on ramp/Woodlea Drive/Ferntree Gully Road intersection and to ensure that the area under the Freeway bridge was well lit and*

*signposted/provided with warning lights to alter east bound traffic to the signals. This would be a matter for detailed assessment and design with any future application.*

## 5.4 Discussion

VicRoads was comfortable with the exhibited B2Z which encourages office and associated commercial development; it allows shop, accommodation and industry with a permit. It appears to the Panel that VicRoads submissions in support of the C1Z, rather than the MUZ advocated by Council, centres on:

- A desire to preserve the as of right option for retail use;
- Concern that the EAO would apply as the MUZ is in the residential suite of zones.

### **Should the planning framework provide for as of right retail use on the VicRoads Site?**

The Panel considers the Draft Structure Plan identification of offices as the preferred use for this site is sound. There may also be some potential for a residential component. We agree with Council that a significant retail component is not appropriate on this site due to its isolation from precinct 1 (Brandon Park Shopping Centre) which the proposed planning framework identifies as the retail core of the Activity Centre. Some form of display use could be accommodated but the limited exposure of the land reduces the appeal for that form of use.

Although the preliminary O'Brien assessment suggested acceptable access could be achieved for retailing of some form, we have significant concerns about access to the site. As that assessment acknowledged, and our inspections confirmed, access to the site presents real challenges for any development as the intensity of trips generated increases, particularly access from the northern boundary where there is very real potential for conflict with traffic on the freeway on ramp.

Mr Gilfedder referred the Panel to:

- *Burns Bridge Services PL v Greater Bendigo CC (Red Dot) [2005] VCAT 1155 (17 June 2005)* which held that strategic land use is a relevant issue in the consideration of a development application. However, in that case, it was the extent of development proposed in a small strip of B1Z that was an issue given the strategies to establish a higher order activity centre in the vicinity of the proposal, rather than whether retail use should be accommodated.
- *Doncaster Road Property Partnership v Manningham CC [2004] VCAT* which stated:

*We take the view that whilst we must apply those policies that are specifically relevant to development and built form outcomes, we must do so in a way that supports the overall vision and objectives of the planning policy framework. It is not appropriate to attempt to divide the overall planning scheme vision/objectives for Doncaster Hill into neat and separate use and development categories and say that some are not relevant because this is a development only application. That is an excessively narrow approach and one which misinterprets the purpose of all the zones, overlays and various other provisions expressed throughout the planning scheme, which is to implement the State Planning Policy Framework and the*



*Local Planning Policy Framework, including the Municipal Strategic Statement and Local Planning Policies.*

While the consideration of development applications extends to the strategic implications of the proposed development, the Panel does not consider it is good practice to establish a planning framework that provides for as of right retail use on the expectation that the development application process will then qualify the extent of the as of right retail use allowed on the basis of strategic planning intent.

### **What is the appropriate zone?**

Given our view about retailing on this site, we do not consider the translation of the exhibited B2Z to C1Z would provide an appropriate planning framework.

As Council and VicRoads acknowledged, the Activity Centre Zone (ACZ) provides a planning framework specifically designed to implement activity centre structure plans. However, Council advised that the ACZ was investigated in Monash but has not been applied because:

- Council was concerned about the car parking rates proposed to be applied in the ACZ as exhibited by DPCD, including the proposed zero car parking for a dwelling. It was not until clause 52.06 was amended as recently as 19 April 2013 that there was certainty about this issue.
- Council understood that the ACZ is viewed primarily as a zone facilitating major change, which is not envisaged at Brandon Park.

The Panel considers the translation of Amendment C86 zone and overlay provisions to the ACZ would provide a mechanism to tailor the use and development provisions to the circumstances of Brandon Park. It would be necessary to ensure that such a post-exhibition translation is policy neutral. Otherwise, re-exhibition would be necessary.

If it is determined that a combination of zones and overlays should be maintained, the Panel agrees with Council that the MUZ is an appropriate zone for the VicRoads site. The new MUZ allows local objectives and decision guidelines to be specified and for a wide range of uses to be considered. The drafting of a schedule to the MUZ should reflect the built form and land use intent of the exhibited Amendment. It would also be appropriate to seek the views<sup>15</sup> of the landowner, VicRoads, before the Amendment is approved. Given the isolation of the site, notice to others should not be necessary.

Irrespective of whether the ACZ, C1Z or MUZ is applied to the VicRoads site, the EAO should apply as these zones would facilitate sensitive uses on land that is potentially contaminated.

## **5.5 Recommendations**

- 8. Council consider the merits of translating the exhibited Amendment land use and built form provisions, with changes recommended by this Panel, to the Activity Centre Zone.**

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<sup>15</sup> For example the Act provides in Section 33 Notice of changes:

(1) *The Minister may direct the planning authority to give notice of any changes to the amendment which—*  
(a) *the planning authority has made under section 29...*

- 9. If precinct based zoning is maintained, apply the MUZ to the VicRoads site with a site specific schedule which reflects the land use and built form provisions of the exhibited Amendment. VicRoads should be consulted or further notice should be given to VicRoads regarding site specific provisions relating to the VicRoads site.**
- 10. Apply the EAO to the VicRoads site.**

## 6 Precinct 7 - Brandon Office Park

### 6.1 The issues

Should the Draft Structure Plan and relevant Amendment provisions:

- Place greater emphasis on achieving a mix of uses, including residential uses?
- Show setbacks and heights that reflect existing development and permits issued for the Brandon Office Park?

### 6.2 What is proposed?

Preferred uses for precinct 7 are set out in the Draft Structure Plan as follows:

- *Retain the existing mix of uses, (that is office/business park, café/restaurant, petrol station and take away food premises)*
- *Include medical facilities*
- *Additional 2 storey building towards the northeast corner of Nos 530-540 Springvale Road and Ferntree Gully Road*
- *Satisfy any increase demand for car parking on site*

The exhibited Amendment C86 retained the existing B2Z for the land which translates to the C1Z under the new commercial zones. The C1Z allows for retail and shop uses without a permit whereas the B2Z was primarily an office zone.

### 6.3 Submissions

Council was prepared to accept a direct translation to the C1Z as it was considered unlikely that there will be an impetus to change the office focussed area into a shopping centre as:

- Retailing is not thriving at the moment and even if it were sought at a later time Council does not have the same degree of concern given the site's location proximate to precinct 1.
- Although residential use is not encouraged specifically in this precinct, under the C1Z accommodation uses are now as-of-right provided that any frontage at ground floor level does not exceed 2 metres.

In closing submissions Council supported the following change to the wording of the precinct 7 citation in the Draft Structure Plan and Clause 21.06C policy as:

- *'There may be some scope for limited complementary commercial and residential use'*

Mr Sayer submitted on behalf of M H Brandon that there is space for further intensification on the site, including higher density housing and that the opportunity to do so later should not be ignored.

It was submitted that building height and setback provisions should be consistent with those approved by existing planning permits. A building height of 13 metres (not 12 metres) was sought within 50 metres to 72 metres (not 68 metres) of the northern boundary of the site. Submissions advocated reduced setback requirements in DDO8.

A number of changes to the Brandon Park MAC Structure Plan were recommended in Mr Sayer's submission. These comments and suggested changes will be considered in the discussion by the Panel.

## 6.4 Discussion

### The role of the Brandon Park office precinct

Mr Sayer submitted that the strategies should emphasise the status of the Brandon Park office precinct as a major employment node and major economic contributor to the region, not just a precinct in the BPMAC. The Panel notes that the Brandon Park Shopping Centre is also an employment and economic node at a sub-regional level. Further, the more detailed descriptions of the activities are given for each precinct later in the Draft Structure Plan. The Panel concurs with the Council submission that the emphasis on the role of a single precinct in this overarching section of the Draft Structure Plan is not necessary. The Panel concurs with the view that the word 'enterprise' in the objective for *Enterprise, Retail and Business*, is not completely clear in isolation but finds it appropriate in terms of the context in an overall objective. In addition the Strategies and Actions that unfold in the Draft Structure Plan further clarify this term. The Panel finds that there is insufficient reason to change this wording.

### Should uses other than offices have greater policy support in precinct 7?

At present the uses in precinct 7 are offices, medical suites, a restaurant and ancillary uses. Council's preference is that the precinct 7 citation should refer to predominantly office use and that there may be some scope for limited complementary commercial and residential use.

Mr Sayer submitted that the scope for greater diversity of uses under the C1Z is consistent with a MAC in a key strategic location in the metropolitan area. The issue is one of what mix of uses is appropriate for the future in precinct 7.

The purpose of the C1Z is as follows:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.*
- *To provide for residential uses at densities complementary to the role and scale of the commercial centre.*

Under the overall heading Activities and Land Use in the Draft Structure Plan, the actions set out for the Enterprise, Retail and Business section include the following:

- *Encourage the expansion of a broad mix of commercial and residential uses that support the viability of the BPMAC*

Under the heading Residential in Section 7 Strategic Response – The Future, the Draft Structure Plan does not specifically highlight residential as a preferred use in precinct 7.

As highlighted by Mr Sayer, Figure 4 of the Draft Structure Plan shows predominant uses for precincts 1, 4 and 7, rather than the capacity for a mix of uses. The Panel notes that the uses for precinct 7 were determined before the introduction of new commercial zones. In any event, the Panel agrees that updating of the legend to reflect the available mix of uses with the application of the new commercial zones is appropriate.

The preferred land uses for precinct 7 are set out in the precincts plan at section 9 of the Draft Structure Plan. As Mr Sayer noted, the preferred uses do not include accommodation use, which does not require a permit in the C1Z provided that any frontage at ground floor level does not exceed 2 metres. Further, Mr Sayer submitted that residential development in conjunction with office use may be feasible in the future.

Although Council suggested a 'limited' role for residential use, the Panel is of the view that at least a 'partial' residential use role should be 'preferred' in precinct 7 for the following reasons:

- The C1Z promotes a vibrant mix of uses, including accommodation;
- The size of the site is sufficient to accommodate commercial development to link with the MAC and more intensive residential use;
- The adjacent public open space to the east could be shared by existing and future residents;
- The reciprocal benefits between the Brandon Park Office Park and the BPMAC. That is, the retail and other services of the Brandon Park shopping centre would be readily available to additional residents and the economic benefit would flow back to the shopping centre;
- Demographic change indicates the need for sites to accommodate different housing in the MAC.

Given that the Brandon Park shopping centre is across Ferntree Gully Road, the Panel agrees with Council's submission that retail should have only a 'limited role' in precinct 7.

The Panel finds that:

- A mixed use role, that includes some residential use, should be identified as preferred in precinct 7, rather than '*retain the existing mix of uses*'.
- The legend of Figure 4 should be updated to reflect the available mix of uses with the application of the new commercial zones.

### **Setbacks from major roads – Ferntree Gully Road and Springvale Road**

Mr Sayers questioned whether the proposed 10 metre setbacks from Springvale and Ferntree Gully Roads in the Draft Structure Plan and DDO8 are necessary for the landscape outcome associated with the boulevard concept. In particular, he sought a reduction in setback to Ferntree Gully Road. He submitted that large landscaped setbacks were originally for industrial and office parks and that there is room in the road reserve for the desired landscape outcome. Mr Sayer posed the broad design solution that you could pull buildings up to the road reserve and have landscaping behind. He submitted that the major roads and associated setbacks proposed tend to result in somewhat disjointed relationships between the different precincts of the MAC.

Given that the main connection between the Brandon Park office park and the other precincts in the MAC is a north-south connection, or crossing Ferntree Gully Road, the setbacks along Springvale Road are not seen as problematic in terms of the linkage to the MAC. The Panel is satisfied that the discretionary 10 metre setback should remain for Springvale Road.

With respect to Ferntree Gully Road, the connection between precinct 7 and the retail core of the MAC is important. It is noted that there is a service station and takeaway food outlet at the corner of Springvale and Ferntree Gully Roads and this is the closest point in terms of pedestrian connection to other precincts (and in particular the major retail precinct) of the MAC. Ferntree Gully Road is a multi-lane, high volume traffic route, and a reduction in building setbacks alone is therefore unlikely to result in a significant change to the sense of connection to the BPSC.

While there are approved building setbacks in Planning Permit No 38965 and for existing buildings on the site, given the change in zoning and the reality that permits are not always taken up, there may be different proposals in the future. The following are some considerations for future planning decisions in relation to setbacks from Springvale and Ferntree Gully Roads in precinct 7:

- The likely maximum building height closest to Springvale and Ferntree Gully Roads (i.e. expressed as six storeys in the DDO provisions);
- The policy support for a boulevard character along Springvale and Ferntree Gully Roads and to what degree that is to be achieved on private land in addition to the road reserve;
- The possibility, given the mix of uses in the new C1Z that land on the corner of the two major roads could in the future be redeveloped with active commercial uses fronting the major roads and residential above and in this scenario a treed or landscaped setback may provide some amenity to residents; and
- Whether reduced setbacks combined with active commercial frontages would enhance the sense of connection between the BPMAC, and in particular the Brandon Park Shopping Centre, and the Brandon Park office park.

As there is existing policy support for a boulevard character, the Panel is not convinced that there is sufficient reason to justify a reduction in the exhibited discretionary setbacks. However, some flexibility is considered appropriate in recognition of the greater land use flexibility under the new C1Z. The Panel finds that it would be appropriate to add decision guidelines in DDO8 to set out relevant matters to be considered where a permit application proposes a reduction to the discretionary setbacks along Ferntree Gully Road and Springvale Road in precinct 7.

### **Active Frontages**

Given the traffic volumes on Springvale and Ferntree Gully Roads, advice that demand for retail floorspace is limited in the BPMAC and the service station site on the corner, the Panel agrees that it may not be necessary or feasible to require active frontages along the entire southern and western edge of built form in precinct 7. Active frontages should be tied to commercial usage and encouraged in locations opposite the MAC so that visual and commercial connectedness is enhanced.

The Panel notes that the references to active frontages in the Amendment and the Draft Structure Plan are broad statements of principle that are consistent with State guidelines relating to activity centres, rather than specifically advocating the inclusion of active frontages in precinct 7. On that basis, we do not consider revision of Amendment provisions relating to active frontages is necessary.

### **Design Issues**

Mr Sayer submitted that the strategies under the headings Built Form and Public Realm should note the importance of design objectives for spaces within private development sites which are effectively part of the public realm, not just the relationship with publicly owned spaces. Having visited the subject site and the surrounding area, the Panel notes the opportunity to enhance existing and possible future links between public and private space, (for example of the public open space that abuts the eastern boundary of the Brandon Park office park site). The Brandon Park shopping centre is also a clear example of where, although the land is in private ownership, the implementation of 'public realm' design principles would enhance the precinct. The Panel acknowledges the submission that several precincts will allow for extensive development with multiple buildings and 'public' spaces between and agrees with Mr Sayer that further work could be undertaken on design objectives for development on public and privately owned land that contributes to the 'public realm'. In the mean time, the referencing of State guidelines relating to activity centre design provides sound guidance.

Key issues of the Draft Structure Plan are set out in the proposed Clause 21.06C policy. Mr Sayer submitted that, with respect to the last dot point, appropriate future development will not necessarily integrate with the scale and character of the prevailing built form of single storey houses in interface areas. The Panel concurs with this submission as an increase in the scale of development can be expected within a MAC. Scale is only one component of character and can be managed at interfaces with existing residential properties through design measures including articulation, the use of colour, landscaping and the like. New built form can certainly be a greater height than one or two storeys and still be appropriate in the MAC context. The Panel finds that the wording *'integration with the scale and character of the prevailing built form of single storey houses in interface areas'* does not convey an appropriate design message at the edge of a major activity centre and that the wording should be in terms of *'provide for increased intensity and scale of development within the Major Activity centre while respecting the existing character of adjoining areas'*.

The Panel also agrees with Mr Sayer's submission that design strategies should not just address the commercial/residential interface but also that redeveloped commercial precincts require high quality amenity and design objectives.

### **Precinct 7 development framework**

The Draft Structure Plan at Figure 4: Activity and Land Use Plan shows Precinct 7 as Office. As already noted above under the mix of uses, the Panel concurs with Mr Sayer's submission that those precincts where there is now capacity for a mix of uses should be shown as complementary uses to the preferred uses, on the legend to Figure 4.

### **Consistency with existing Permits**

Mr Sayer sought changes to the heights and setbacks specified in the Amendment and the Draft Structure Plan to ensure consistency with the buildings approved in Planning Permit No 38965 and the actual heights and setbacks approved for other buildings on the Brandon Park office park site. Earlier, the Panel considered the setbacks from Springvale and Ferntree Gully Roads, and found that it would be desirable to include decision guidelines, setting out matters to be considered in permit applications that involve proposed reduction to the discretionary DDO8 setbacks along Ferntree Gully Road and Springvale Road.

Given that there would be opportunity to consider these discretionary setbacks in future development applications, the Panel finds that, except for the setbacks from Springvale and Ferntree Gully Roads, the heights and setbacks nominated in DDO8 and the Draft Structure Plan should provide at least the building envelope that would be consistent with both the existing approvals and actual development in precinct 7.

### **6.5 Recommendations**

- 11. Update Clause 21.06C to provide consistency with the new Commercial Zones, including revisions to:**
  - 1) The legend on the Framework Plan in Clause 21.06C to identify the preferred predominant uses (as indicated in the Draft Structure Plan) and complementary uses allowed under the zone that will be facilitated.**
  - 2) Implementation measures.**
- 12. Identify a mixed use role that includes some residential use as preferred in precinct 7, rather than *'retain the existing mix of uses'*.**
- 13. Revise the last dot point of the Clause 21.06C policy to read**  
***'provide for increased intensity and scale of development within the Major Activity Centre while respecting the existing character of adjoining areas'*.**
- 14. Revise the heights and setbacks, except for the setbacks from Ferntree Gully Road and Springvale Road, nominated in DDO8 and the Draft Structure Plan to, at least, align with the building envelope of existing development and the existing development approvals in precinct 7.**
- 15. Add a decision guideline in DDO8 that sets out relevant matters for permit applications that propose a reduction to setbacks along Ferntree Gully Road and Springvale Road.**



## 7 The form and drafting of amendment provisions

The Panel considered precinct specific issues in preceding chapters, including consideration of the planning framework for precinct 3 in some detail in Chapter 4, and does not repeat that discussion in this chapter.

### 7.1 The issues

- Have the most effective planning scheme tools been used?
- Does the Amendment provide a clear, concise decision making framework for the BPMAC?

### 7.2 The use of the MSS, zones and overlays

#### The Activity Centre Zone

Although *PN56 The Activity Centre Zone* identifies the ACZ as the preferred tool to guide and facilitate the use and development of land in activity centres, the Amendment utilises a combination of the following planning scheme tools to implement the Draft Structure Plan: the MSS; commercial, industrial and residential zones; a DDO; and a DPO (in precinct 3). The Panel requested that Council address the reason for applying the proposed planning framework rather than the ACZ.

The Council advised that the ACZ was not used due to concerns about the car parking rate originally proposed to be applied in the ACZ (as exhibited by DPCD) but amendment of clause 52.06 (19 April 2013) has now provided certainty about this issue. Council had also understood that the ACZ was viewed primarily as a zone facilitating major change. Council expressed the view that, since the introduction of the new commercial zones which do not directly align with the land use intentions of the Draft Structure Plan, the advantages of the ACZ are more apparent.

As noted in Chapter 6, all of the provisions proposed in the exhibited Amendment could be translated to the ACZ. The Panel sees considerable merit in consolidating the use and development provisions applicable to the activity centre in one place in the planning scheme through the ACZ, rather than relying on multiple tools. In addition to providing a more user friendly framework, the ACZ would provide a better fit with the structure plan intentions, for example in relation to precincts 6 and 7. If the translation was policy neutral, with only the substantive changes recommended in this report, issues of transformation of the Amendment and further exhibition should not arise. If it was considered that the changes warrant notice to those who may be affected, section 33 of the *Planning and Environment Act 1987* provides for such a process.

Given the strong focus on redevelopment for residential purposes in precinct 3, the case for the use of the ACZ is not as strong, although the benefit of a planning framework that is consolidated in one place does apply.

## Revisions to precinct based zones

If the precinct based approach to zoning is maintained (with the translation to the new commercial zones), the Panel has recommended in preceding chapters that precinct 3 be zoned RGZ (see discussion in Chapter 4.11) and precinct 6 be zoned MUZ (see discussion in Chapter 6).

## The Clause 21.06C Policy

The Panel considers there is scope for major editing of the exhibited Clause 21.06C policy. We suggest the following changes to remove content that does not assist in decision making. This includes:

- The 21.06C-1 'Key Issues' read as objectives; they should be reviewed for duplication and consolidated with 21.06C-3 Structure Plan Objectives.
- The descriptive background material included under the 21.06C-2 Framework plan does not assist in decision making and should be deleted. Those who are interested can refer to the Draft Structure Plan reference document from which this text has been extracted.
- The map of precincts does not add anything as the precincts are shown on the Framework plan.
- Reference to ensuring that the form and scale of buildings meet the design objectives of the relevant precinct as design objectives are not specified anywhere for precincts.

Consideration could also be given to focusing on 'land use' provisions in Clause 21.06C and consolidating the 'development' provisions in DDO8.

The Panel also agrees with Council's closing submission that there should be some explicit recognition of the relevance of the 'Garden City' character policy to the BPMAC.

## DDO8

The Panel agrees with submissions from Council in support of the following changes to DDO8:

- To specify the 3 metre setback to all (other) roads and streets.
- Include a map in to illustrate the height and setback provisions. The map would be derived from figure 6 in the Draft Structure Plan with updating to reflect Panel recommendations.

Council submitted that third party exemptions under DDO8 (where proposals are in accord with the overlay) should be turned off as many of the DDO8 provisions are not black or white and this makes it difficult to know when a proposal satisfies the condition for exemption. The Panel shares this concern but is not convinced that new third party rights should be introduced. Under the current commercial and industrial zones, third party rights only apply where the proposal is within 30 metres of land (not a road) which is in a residential zone, land used for a hospital or an education centre. Rather than removing the exemption, we think:

- The usual qualification that applies to exemptions from notice in non-residential zones should apply; and
- The condition relating to compliance with DDO provisions should be deleted.

The Panel also queries whether many of the generic DDO8 sub-clause 2 provisions under design requirements, engineering design and services are (or should be) addressed under more general provisions of the planning scheme.

### **The function of the Draft Structure Plan in decision making**

The Clause 21.06C policy implementation; DDO8 objectives and decision guidelines; and DPO4 conditions and requirements for permits all elevate the Draft Structure Plan to a status beyond a reference document to a document that directs decision making.

This is contrary to the advice in relevant Practice Notes that a document should be incorporated where it will be used to guide the exercise of discretion by the responsible authority. Reference documents are intended to have a much more limited role:

*Reference documents provide background information to assist in understanding the context within which a particular policy or provision has been framed. A variety of different types of document may perform this role. They may be wide-ranging in their content and contain information not directly relevant to specific decisions under the planning scheme (PN13 Incorporated and Reference Documents).*

The references to the structure plan beyond its role as a reference document, in the Amendment illustrate the problems associated with relying on external documents in planning decisions. In this case it compounds the uncertainty about the expected setbacks in the eastern portion of precinct 3 (2 storeys, nine metres or 13.5 metres) and the status of the configuration of public open space in precinct 3 in the Draft Structure Plan would be open to debate. Recommended changes to Amendment provisions derived from the Draft Structure Plan could also add to ambiguity and uncertainty about the status of Structure Plan content unless the Draft Structure Plan is updated to align with those changes.

The Panel considers the relevant content has been extracted from the Draft Structure Plan and it should only be identified as a reference document.

## **7.3 Recommendations**

- 16. Council consider the merits of translating the exhibited Amendment land use and built form provisions, with changes recommended by this Panel, to the Activity Centre Zone.**
- 17. Edit the exhibited Clause 21.06 policy to:**
  - 1) Remove duplication between the 'Key Issues' and 'Structure Plan Objectives' and consider consolidating these sections of the policy.**
  - 2) Delete descriptive background material included under the 21.06C-2 Framework plan and the map of precincts.**
- 18. Consider focusing on 'land use' provisions in Clause 21.06C and consolidating the 'development' provisions in DDO8.**
- 19. Give explicit recognition to the relevance of the 'Garden City' character policy in the Clause 21.06C policy.**

**20. In DDO8:**

- 1) Specify the 3 metre setback to all (other) roads and streets.**
- 2) Include a map to illustrate the height and setback provisions (the map would be derived from figure 6 in the Draft Structure Plan with updating to reflect Panel recommendations).**

**21. Review DDO8 with a view to removing generic sub-clause 2 provisions that are addressed elsewhere in the planning scheme.**

**22. Revise the DDO8 exemption from notice and review to:**

- 1) Apply the exemption to land that is more than 30 metres from land (not a road) which is in a residential zone, land used for a hospital or an education centre or land in a Public Acquisition Overlay to be acquired for a hospital or an education centre.**
- 2) Delete the condition 'which complies with the building and works requirements in this schedule'.**

**23. Delete references to the Draft Structure Plan in Clause 21.06C policy implementation; DDO8 objectives and decision guidelines; and DPO4 conditions and requirements for permits.**

## Appendix A List of Submitters

*Note: Submissions were duplicated in two instances.*

### Submitter

Melbourne Water

K Wilshier

C Evans

R Binks

D Tiong

C Cameron

A Carbone

L Squires

C and J Sweetten

C Vellis

E D'Souza

G Field

C Fletcher

C D'Souza

M Nesmith

S Sulisty

MH Brandon Pty Ltd

D Vanderwert

M Hernandez

D Olin

M Hayes

Owners of 8 Rosemary Court, Mulgrave

R Yanko

S Yanko

R Ramos

S Abarca

Victorian Investment and Properties

Department of Education and Early Childhood Development

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L Donohue

---

M Gardner

---

S Wu

---

R Caruso

---

Monash Special Development School

---

B and J Duffin

---

Y Seak

---

K Wilson

---

The Brandon Park Residents Action Group

---

L McGinley

---

D and L Gates

---

T Smith

---

G McQuienn

---

A Cabrera

---

A Somerville

---

B Yeo

---

J Cummins

---

Dr G Moore

---

K Stevenson

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VicRoads

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