

**Whitehorse Planning Scheme Amendment C220whse  
Residential Corridors Built Form Study**

**Correction to the Panel Report**

*Planning and Environment Act 1987*

**20 July 2023**

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*Planning and Environment Act 1987*

Correction to the Panel Report pursuant to section 25 of the PE Act

Residential Corridors Built Form Study

**20 July 2023**

A handwritten signature in blue ink, appearing to read 'Lisa Kendal', is positioned above the printed name.

Lisa Kendal, Chair

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## Overview

### Amendment summary

The Amendment	Whitehorse Planning Scheme Amendment C220whse
Common name	Residential Corridors Built Form Study
Brief description	<p>Implement the <i>Whitehorse Residential Corridors Built Form Study 2019</i> into the Planning Scheme by:</p> <ul style="list-style-type: none"> <li>- introducing Schedule 11 to the Design and Development Overlay (DDO11)</li> <li>- applying DDO11 to land zoned Residential Growth Zone (RGZ) along the Whitehorse Road and the Burwood Highway corridors</li> <li>- associated changes</li> </ul>
Subject land	Land along the Whitehorse Road corridor and the Burwood Highway corridor
Planning Authority	Whitehorse City Council
Exhibition	29 September to 31 October 2022
Submissions	Number of Submissions: 16

### Panel process

The Panel	<p>Original appointment (March 2023): Sarah Carlisle</p> <p>Reconstituted Panel (May 2023): Lisa Kendal</p>
Directions Hearing	3 April 2023, online
Panel Hearing	4 and 5 May 2023, at the Whitehorse Civic Centre in Nunawading
Citation	Whitehorse PSA C220whse [2023] PPV
Date of Panel Report	21 June 2023
Date of Panel Report Correction	20 July 2023

# 1 Correction

This report is to be read in conjunction with the Whitehorse Planning Scheme Amendment C220whse Panel Report dated 21 June 2023.

## 1.1 Issue raised

Planning Panels Victoria received an email from Whitehorse City Council on 13 July 2023, which raised the following issue:

A suspected typo has been identified on page 30 where the Panel states "The Panel accepts the six metre building height maximum as appropriate." I think "six metre" should be "six storey".

## 1.2 Panel response

The Panel appointed to consider Whitehorse Planning Scheme Amendment C220whse has reviewed this issue and agrees with Council that "*the six metre building height maximum as appropriate*" referred to on page 30 contains a typographical error.

The Panel notes there are also references on pages 28 and 29 of the report to a maximum building height of 'six metres' which should say 'six storeys'

## 1.3 Revisions

Having considered the above, the Panel recommends that the Panel Report dated 21 June 2023 be changed to:

- 1. Amend references in the report on pages 28, 29 and 30 from a maximum building height of six metre/s to six storey/s.**

The Panel has prepared the correction to the Whitehorse Planning Scheme Amendment C220whse Panel Report dated 21 June 2023 that incorporates these changes.

## 1.4 Notice to submitters

As Council has made the Whitehorse Planning Scheme Amendment C220whse Panel Report dated 21 June 2023 available to the Public, it is required to write to all submitters and advise them of the correction to the Whitehorse Planning Scheme Amendment C220whse Panel Report dated 20 July 2023.

**Whitehorse Planning Scheme Amendment C220whse  
Residential Corridors Built Form Study**

**Panel Report**

*Planning and Environment Act 1987*

**21 June 2023**

### **How will this report be used?**

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

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

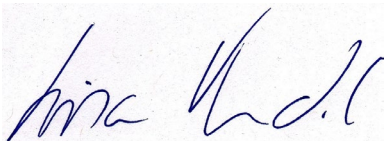
### *Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the PE Act

Whitehorse Planning Scheme Amendment C220whse

Residential Corridors Built Form Study

**21 June 2023**



Lisa Kendal, Chair

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## Glossary and abbreviations

Aveo	Aveo Group
Corridors Study	<i>Whitehorse Residential Corridors Built Form Study 2019</i>
Council	Whitehorse City Council
DDO	Design and Development Overlay
DDO11	Design and Development Overlay Schedule 11
DELWP	Department of Environment, Land, Water and Planning (former)
GRZ	General Residential Zone
NRZ	Neighbourhood Residential Zone
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Whitehorse Planning Scheme
PPN59	<i>Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes</i>
Practitioner's Guide	<i>A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022</i>
RGZ	Residential Growth Zone
RGZ1	Residential Growth Zone Schedule 1
RGZ2	Residential Growth Zone Schedule 2
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions

## Overview

### Amendment summary

The Amendment	Whitehorse Planning Scheme Amendment C220whse
Common name	Residential Corridors Built Form Study
Brief description	Implement the <i>Whitehorse Residential Corridors Built Form Study 2019</i> into the Planning Scheme by: <ul style="list-style-type: none"> <li>- introducing Schedule 11 to the Design and Development Overlay (DDO11)</li> <li>- applying DDO11 to land zoned Residential Growth Zone (RGZ) along the Whitehorse Road and the Burwood Highway corridors</li> <li>- associated changes</li> </ul>
Subject land	Land along the Whitehorse Road corridor and the Burwood Highway corridor (see Figure 1)
The Proponent	Whitehorse City Council
Planning Authority	Whitehorse City Council
Authorisation	Amendment C220 was authorised on 26 August 2022 following changes (see Chapter 1.2 for details)
Exhibition	29 September to 31 October 2022
Submissions	Number of Submissions: 16

### Panel process

The Panel	Original appointment (March 2023): Sarah Carlisle Reconstituted Panel (May 2023): Lisa Kendal
Directions Hearing	3 April 2023, online
Panel Hearing	4 and 5 May 2023, at the Whitehorse Civic Centre in Nunawading
Site inspections	Unaccompanied, 3 May 2023
Parties to the Hearing	Whitehorse City Council, represented by Darren Wong of Planology, who called expert planning evidence from: <ul style="list-style-type: none"> <li>- Paul Buxton of Plan2Place Consulting</li> </ul> Aveo Group, represented by Jane Sharp of Counsel instructed by Linda Choi of Norton Rose Fulbright, who called expert planning evidence from: <ul style="list-style-type: none"> <li>- Marco Negri of Contour Consultants</li> </ul> Brigitte Dewhirst (Borg), representing herself and Joseph Borg Stephen Howell
Citation	Whitehorse PSA C220whse [2023] PPV
Date of this report	21 June 2023

## Executive summary

The *Whitehorse Residential Corridors Built Form Study 2019* (Corridors Study) focusses on the two major east-west transport corridors in Whitehorse; Whitehorse Road and Burwood Highway. Whitehorse City Council commissioned the Corridors Study to achieve a better balance between increased building heights and the interface with the sensitive residential interfaces.

Whitehorse Planning Scheme Amendment C220whse (the Amendment) seeks to implement the outcomes of the Corridors Study into the Whitehorse Planning Scheme. Specifically the Amendment proposes to:

- introduce Schedule 11 to Clause 43.02 (Design and Development Overlay) (DDO11)
- make policy changes at Clause 21.06 (Housing) and Clause 22.03 (Residential development), including reference the Corridors Study
- include the Corridors Study as a background document in Clause 72.08 (Background documents)
- amend Planning Scheme maps to apply the DDO11.

The Amendment applies to areas of land along the Whitehorse Road and the Burwood Highway corridors zoned either Residential Growth Zone Schedule 1 or Residential Growth Zone Schedule 2. It does not include land that is covered by an existing structure plan or urban design framework.

Key issues raised in submissions include:

- justification and strategic basis of the Amendment
- whether provisions should be discretionary or mandatory
- built form metrics and setbacks
- amenity and health impacts
- 100 Station Street, Burwood.

The Panel accepts:

- the Amendment is consistent with planning policy, including to provide design and development guidelines for areas within residential growth corridors
- the Corridors Study provides sufficient strategic basis for the Amendment
- the Design and Development Overlay is an appropriate planning control to achieve the desired outcomes.

In the context of Clause 71.02-3 (Integrated decision making) the Panel is satisfied the Amendment delivers net community benefit and sustainable development. The Panel concludes the Amendment is strategically justified and should proceed subject to the Panel's recommendations.

A key issue before the Panel was whether built form requirements in DDO11 should be discretionary or mandatory. The exhibited DDO11 included mandatory building height and front setbacks, and discretionary side and rear setbacks. Submissions raised issues both supporting and objecting to mandatory provisions. Following exhibition, Council resolved to change the DDO11 to include mandatory side and rear setbacks. This was the position it recommended to the Panel.

Introducing mandatory built form provisions must be well justified. Victoria's planning system is predominantly performance based to ensure planning decisions can be made to achieve objectives while addressing specific circumstances. The Panel considers the proposed mandatory provisions

are not strategically justified by the Corridors Study and the mandatory provisions do not satisfy *Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes*.

Regarding other key issues, the Panel concludes that subject to its recommendations:

- the metrics for building height and setbacks are justified and appropriate
- the definition and application of setbacks can be improved by clarifying the intended interfaces, and the front setback should be redefined as street interface setback
- provisions relating to amenity and health are adequate.

The property at 100 Station Street, Burwood is a strategically located, large parcel of land with non-sensitive interfaces. The property's size, configuration, location and interfaces warrant further consideration in determining suitable planning controls to maximise its development potential while ensuring an appropriate built form response. The Amendment may overly restrict site development that is otherwise supported by planning objectives and policy. The property at 100 Station Street, Burwood should be removed from the Amendment.

The Panel makes drafting suggestions to improve clarity of the:

- DDO11, and ensure consistency with the *Ministerial Guidelines on Form and Content of Planning Schemes*
- local planning provisions Clause 21.06 (Housing) and Clause 22.03 (Residential Development).

The Panel concludes it is not appropriate to include the Corridors Study as a background document in the Planning Scheme due to inconsistencies with the Amendment, including further changes recommended by the Panel

## Recommendations

Based on the reasons set out in this Report, the Panel recommends that Whitehorse Planning Scheme Amendment C220whse be adopted as exhibited subject to the following:

1. **Amend the Schedule 11 to the Design and Development Overlay in accordance with the Panel preferred version in Appendix D.**
2. **Remove the Schedule to Clause 72.08 (Background documents).**
3. **Amend Clause 21.06 (Housing) as follows:**
  - a) **Overview**

**Delete the following paragraph:**

***The Whitehorse Residential Corridors Built Form Study, 2019 identifies built form controls to manage the sensitive interface between development in substantial change areas along major road corridors, and development in adjoining and adjacent lowrise residential areas.***

**Insert the following paragraph:**

***Increased housing densities and a diversity of housing is promoted within the substantial change areas along major road corridors depicted on the Housing Framework Plan. Schedule 11 to the Design and Development Overlay guides the built form change necessary to achieve this outcome and to provide a sensitive interface to low rise residential areas outside the corridor.***

b) Objective

Delete the following paragraph:

*Provide an acceptable built form interface with adjoining and adjacent development in other change areas.*

Insert the following paragraph:

*Support mid-rise buildings that accommodate higher density residential development in the substantial change areas along major road corridors depicted on the Housing Framework Plan that provide an acceptable built form interface with low rise residential areas outside the corridor.*

4. Amend Clause 22.03 (Residential development) as follows:

Delete the following paragraphs:

*Built form controls have been identified to guide development outcomes along key road corridors in the municipality where Substantial Change Areas interface with low-rise residential development.*

*The controls focus primarily on the major east-west tram and road corridors, where there is an interface between the Residential Growth Zone and General Residential Zone or Neighbourhood Residential Zone to the rear or side. Specifically, Burwood Highway, generally between Elgar Road, Burwood and Hanover Road, Vermont South and Whitehorse Road in Mont Albert, Laburnum and Nunawading.*

*The controls relate to building setbacks, architecture and height, building separation, overshadowing, landscaping and pedestrian and vehicle access. In this area the built form of new development should not visually dominate and should transition to the low-rise scale of adjoining development. New development should respect the character and amenity of the surrounding area.*

Insert the following paragraph:

*Mid-rise buildings that accommodate higher density residential development are promoted in the substantial change areas along major road corridors depicted on the Housing Framework Plan at Clause 21.06. Development of these areas should accommodate an increased intensity of developed that is designed to achieve a human scale that does not dominate street frontages and is massed to provide an acceptable interface to the traditional residential areas outside the corridor.*

5. Abandon the application of Schedule 11 to the Design and Development Overlay to 100 Station Street, Burwood.

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The purpose of the Amendment is to implement the outcomes of the *Whitehorse Residential Corridors Built Form Study 2019* (Corridors Study) into the Whitehorse Planning Scheme (Planning Scheme). Whitehorse City Council (Council) is the planning authority and Amendment proponent.

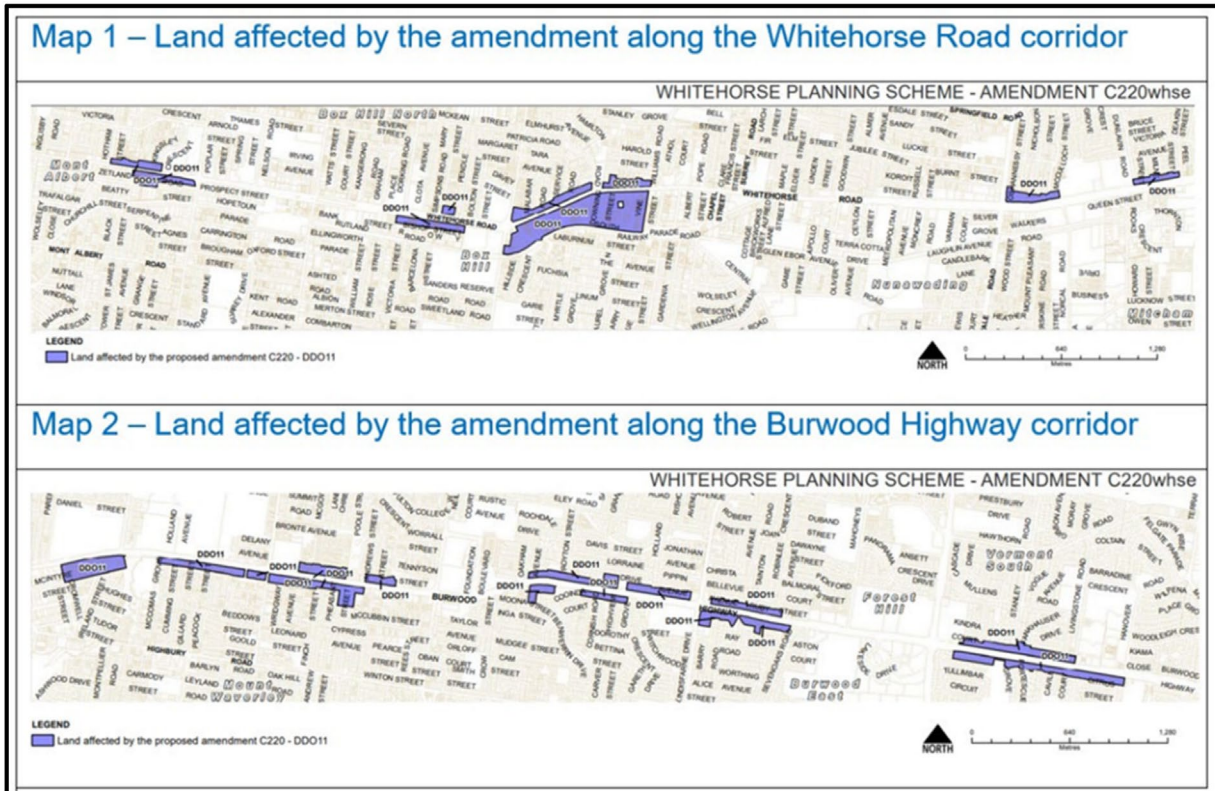
Specifically, the Amendment proposes to:

- introduce Schedule 11 to Clause 43.02 (Design and Development Overlay) (DDO11) into the Planning Scheme
- make policy changes at Clause 21.06 (Housing) and Clause 22.03 (Residential development) including reference the Corridors Study
- include the Corridors Study as a background document in Clause 72.08 (Background documents)
- amend Planning Scheme maps to apply DDO11.

### (ii) The Amendment land

The Amendment applies to land along the Whitehorse Road and the Burwood Highway corridors zoned either Residential Growth Zone (RGZ) Schedule 1 (RGZ1) or RGZ Schedule 2 (RGZ2), as shown in Figure 1. It does not include land within the RGZ1 or RGZ2 that is covered by an existing structure plan or urban design framework.

Figure 1 Amendment land



Source: Council Part A submission (Document 3)

The Amendment land interfaces with more traditional residential development in the Neighbourhood Residential Zone (NRZ) and the General Residential Zone (GRZ).

The preferred maximum building height under RGZ1 and RGZ2 is 13.5 metres. No mandatory maximum building height is specified in either zone schedule.

Schedule 9 to the Significance Landscape Overlay (Neighbourhood Character Areas) applies to the Amendment land.

## 1.2 Chronology

A chronology of events was provided in Council's Part A submission (Document 3), as summarised by the Panel in Table 1.

**Table 1** Chronology of events

Timeline	Timeline
October 2014	Amendment C160 introduced the new residential zones into the Planning Scheme Council explained: <ul style="list-style-type: none"> <li>- while it had adopted Amendment C160 with mandatory maximum building heights of 3 storeys for the RGZ1 and 4 storeys for the RGZ2, these were removed when Amendment C160 was approved. Consequently, the controls <i>"did not, and do not, reflect Council's intentions"</i></li> <li>- the Victorian Civil and Administrative Tribunal (VCAT) has since approved developments up to 6 storeys in the corridors, with <i>"unsympathetic built form and limited landscaping outcomes"</i></li> </ul>
November 2017	Council commissioned Ethos Urban to prepare the Corridors Study
January 2019	Council adopted the Corridors Study
October 2019	Council sought authorisation for a planning scheme amendment to implement the Corridors Study
February 2021	Amendment (then numbered C220whse) was authorised by the then Department of Environment, Land, Water and Planning (DELWP) in February 2021, subject to the following conditions (relevant parts extracted): <sup>1</sup> <p style="margin-left: 40px;"><i>"Revise the drafting of the DDO11 to ensure that:</i></p> <p style="margin-left: 40px;">...</p> <p style="margin-left: 40px;"><i>b) The side and rear setback requirements are discretionary, not mandatory.</i></p> <p style="margin-left: 40px;">...</p> <p style="margin-left: 40px;"><i>d) The design objectives remove reference to equitable development rights and include an objective in relation to lot consolidation.</i></p> <p style="margin-left: 40px;"><i>e) Permit exemptions for small scale buildings and works are included</i></p> <p style="margin-left: 40px;">..."</p>

<sup>1</sup> DELWP was replaced by the new Department of Energy, Environment and Climate Action (DEECA – environment, land and water functions) and Department of Transport and Planning (DTP – planning functions) through a machinery of government change effective of 1 January 2023



Timeline	Timeline
October 2021	<p>Council submitted revised and renumbered (as C239) the amendment for authorisation, including changes in response to conditions to:</p> <ul style="list-style-type: none"> <li>- include an objective supporting lot consolidation</li> <li>- exempting development of 3 storeys or less from the DDO11 (these would be assessed against ResCode under Clause 55)</li> </ul> <p>Some aspects of the conditions were not acceptable to Council, and were not included in Amendment C239:</p> <ul style="list-style-type: none"> <li>- discretionary side and rear setbacks</li> <li>- removal of the reference to equitable development rights</li> </ul>
December 2021	<p>DELWP refused authorisation of C239 on the following basis (quoting DELWP):</p> <ul style="list-style-type: none"> <li>- inadequate strategic basis for the mandatory side and rear setbacks (and inconsistency with <i>Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes</i> (PPN59))</li> <li>- the “effect of the proposed schedule and its mandatory setbacks on development opportunities, including the decrease in the expected yield within nominated growth areas in key road corridors”</li> <li>- ‘equitable development rights’ are not a concept recognised in the Victoria Planning Provisions (VPP) and “speculative future developments should not be used to limit proposed developments”</li> </ul> <p>DELWP advised it was particularly concerned about the impact of mandatory side and rear setbacks on the ability to develop narrower sites</p>
August 2022	<p>DELWP suggested that the Amendment could be re-authorised under the initial amendment number C220whse subject to two outstanding conditions being addressed</p> <p>Council submitted revised Amendment C220whse for authorisation</p>
August 2022	DELWP authorised the Amendment (renumbered back to C220whse)
September – October 2022	Public exhibition of the Amendment
February 2023	<p>Following exhibition of the Amendment and consideration of submissions, Council resolved to:</p> <ul style="list-style-type: none"> <li>- revise the exhibited DDO11 to include mandatory side and rear setbacks in response to issues raised in submissions</li> <li>- request a planning panel to consider unresolved submissions</li> </ul>

### 1.3 Procedural issues

Council submitted further changes to DDO11 during the Hearing.

Following discussion with parties during the Hearing, the Panel issued directions relating to circulation and comment on Council’s final day version of DDO11. In response to the Panel’s directions the following documents were circulated and tabled by the Panel:

- Council final day version of DDO11 (Document 38)
- Aveo Group (Aveo) comment Council’s final day version of DDO11 (Document 39)
- Council reply submission (Document 40).

## 1.4 The Panel's approach

Key issues raised in submissions were:

- justification and strategic basis of the Amendment
- whether provisions should be discretionary or mandatory
- built form and setback provisions
- overlooking, overshadowing, amenity and health impacts
- greening and neighbourhood character
- concerns about increased density and impacts on services and facilities
- increased traffic and parking issues
- impacts of development on drainage infrastructure and potential flooding.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Strategic context and justification
- Built form and setbacks
- Amenity and health
- 100 Station Street, Burwood and properties to the east
- Other issues
- Proposed planning provisions.

## 2 Strategic context and justification

### 2.1 Planning context

This chapter identifies planning context relevant to the Amendment. An overview of the planning context is included in Table 2 and Appendix C highlights key imperatives of relevant provisions and policies.

Table 2 Planning context

	Relevant references
<b>Victorian planning objectives</b>	- section 4 of the <i>Planning and Environment Act 1987</i> (PE Act)
<b>Planning Policy Framework</b>	<ul style="list-style-type: none"> <li>- Clause 11 (Settlement), Clause 11.01-1S (Settlement), Clause 11.01-1R (Settlement – Metropolitan Melbourne), Clause 11.02-1S (Supply of urban land)</li> <li>- Clause 15 (Built environment and heritage), Clause 15.01-1S (Urban design), Clause 15.01-1R (Urban design – Metropolitan Melbourne), Clause 15.01-2S (Building design), Clause 15.01-4S (Healthy neighbourhoods), Clause 15.01-4R (Healthy neighbourhoods – Metropolitan Melbourne), Clause 15.01-5S (Neighbourhood Character)</li> <li>- Clause 16.03 (Housing), Clause 16.01-1S (Housing supply), Clause 16.01-1R (Housing supply - Metropolitan Melbourne), Clause 16.01-2S (Housing affordability)</li> <li>- Clause 18 (Transport), Clause 18.01-1S (Land use and transport integration)</li> <li>- Clause 21.04 (Strategic directions), Clause 21.05 (Environment), Clause 21.06 (Housing)</li> <li>- Clause 22.03 (Residential development), Clause 22.04 (Tree conservation)</li> </ul>
<b>Other planning strategies and policies</b>	<ul style="list-style-type: none"> <li>- <i>Plan Melbourne 2017-2050</i></li> <li>- <i>Urban Design Guidelines for Victoria</i> (DELWP, 2017)</li> <li>- <i>Homes for Victorians – Affordability, Access and Choice</i> (Victorian Government, 2017)</li> <li>- <i>Apartment Design Guidelines for Victoria</i> (DELWP, 2021)</li> <li>- <i>Whitehorse Neighbourhood Character Study, 2014</i></li> <li>- <i>Whitehorse Housing Strategy, 2014</i></li> </ul>
<b>Planning scheme provisions</b>	<ul style="list-style-type: none"> <li>- Clause 32.07 (Residential Growth Zone)</li> <li>- Clause 42.03 (Significant Landscape Overlay)</li> <li>- Clause 43.02 (Design and Development Overlay)</li> <li>- Clause 44.05 (Special Building Overlay)</li> <li>- Clause 52.06 (Car parking)</li> <li>- Clause 55 (Two or more dwellings on a lot and residential buildings)</li> <li>- Clause 58 (Apartment developments)</li> <li>- Clause 71.02-3 (Integrated decision making)</li> </ul>
<b>Ministerial directions</b>	- Ministerial Direction on the Form and Content of Planning Schemes

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	<ul style="list-style-type: none"> <li>- Ministerial Direction 9 (Metropolitan Planning Strategy)</li> <li>- Ministerial Direction 11 (Strategic Assessment of Amendments)</li> <li>- Ministerial Direction 15 (The Planning Scheme Amendment Process)</li> </ul>
<b>Planning practice notes and guidelines</b>	<ul style="list-style-type: none"> <li>- Planning Practice Note 46: Strategic Assessment Guidelines, August 2018</li> <li>- Planning Practice Note 59: The Role of Mandatory Provisions in Planning Schemes (PPN59)</li> <li>- <i>A Practitioner's Guide to the Victoria Planning Provisions</i>, April 2022 (Practitioner's Guide)</li> </ul>

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## 2.2 Whitehorse Residential Corridors Built Form Study 2019

Council's Part A submission states the key aim of the Corridors Study was to *"achieve an outcome where there was a better balance between increased building heights and the interface with the sensitive residential interfaces"*.

Section 1.2 (The Study Area) of the Corridors Study describes the study area (see Figure 2). It explains:

- the study area is divided into four parts, and focusses on the RGZ along the two major east-west transport corridors in Whitehorse; Whitehorse Road and Burwood Highway
- it excludes RGZ land within Burwood Heights, Tally Ho and Box Hill Activity Centres, as these have existing adopted planning controls, and the Australian Road and Research Board Site at 490-500 Burwood Highway, Vermont South, which is subject to a separate Amendment.

The Corridors Study includes the following vision:

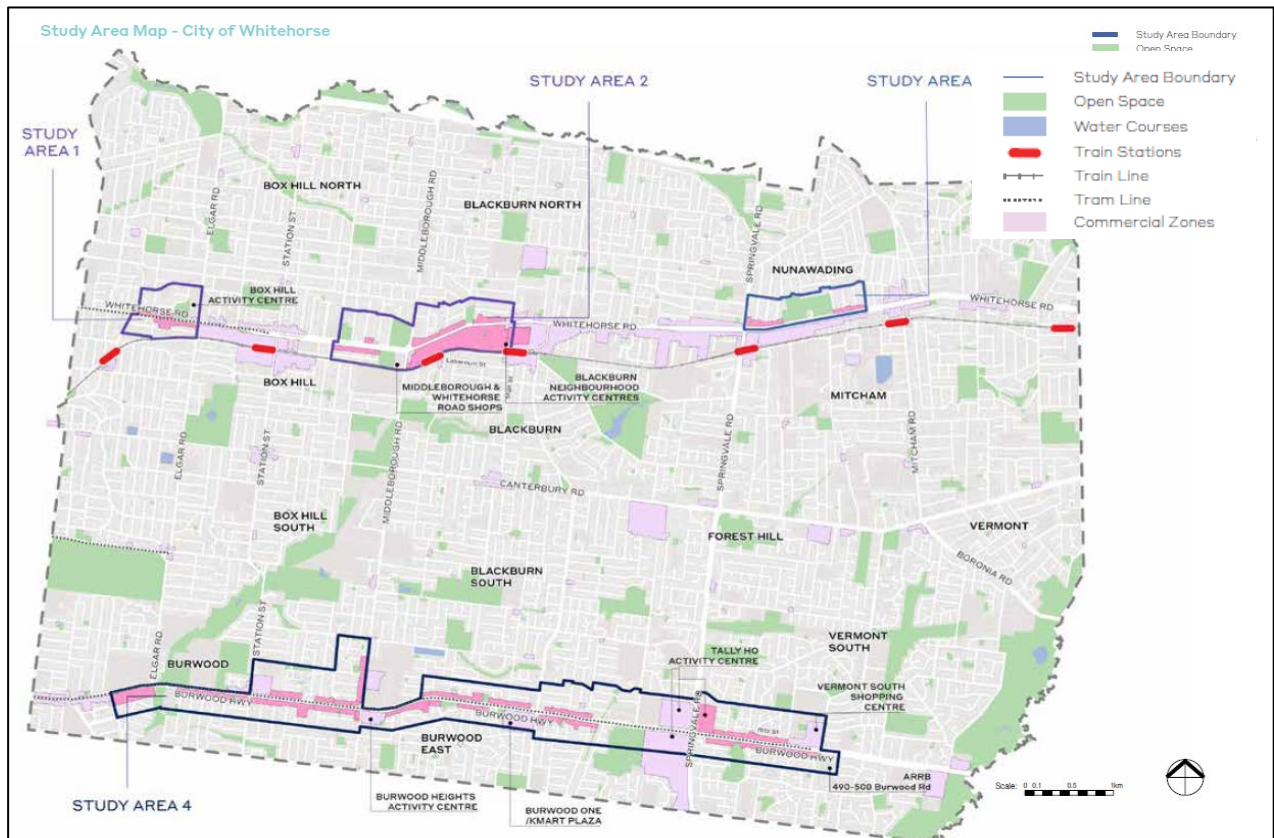
The Residential Corridors along Whitehorse Road and Burwood Highway will showcase the best of contemporary design, reflecting the quality and key landscape attributes of the surrounding suburbs. The interfaces with adjoining residences will be sensitively managed with space for substantial landscaping and careful attention to minimising potential amenity impacts.

It includes urban design principles, built form testing and design objectives and built form outcomes to implement the vision.

Section 5.3 (Implementation Options) states:

- the proposed built form provisions are contained in a schedule to the Design and Development Overlay (DDO)
- it is not recommended to include variations to the schedules to the RGZ as these are limited to Clause 54 and Clause 55 standards
- the proposed DDO11 enables consideration of setbacks for applications affected by Clause 58
- additional policy at Clause 22.03 (Residential Development) will be required to reflect the application of Clause 58 and provide *"strengthened policy objectives associated with design excellence, service integration and presentation of frontages along the corridors"*.

Figure 2 Corridors Study Area Map



Source: Corridors Study, page 8

## 2.3 Strategic justification

### (i) Evidence and submissions

#### Planning policy and growth

Council submitted the Amendment implemented the planning policy framework and addressed questions from the Strategic Assessment Guidelines, as described in the explanatory report.

Council considered the Amendment was consistent with the objectives of planning in Victoria, and supported:

- State planning policy relating to built environment and urban design, housing supply and land use and transport planning
- local planning policy relating to environment, housing, residential development and tree conservation.

Council called Paul Buxton to provide planning evidence. Mr Buxton explained many planning policies were relevant to the Amendment. He considered the Amendment was consistent with State and local policies relating to settlement, housing, design and transport. He noted the Amendment is consistent with:

- Plan Melbourne, as the corridors that are subject of the Amendment are along the Principal Public Transport Network and adjacent to activity centres
- Land Use Framework Plans, which are sub plans under Plan Melbourne
- Suburban Rail Loop plans.

In relation to the *Transport Integration Act 2010*, Mr Buxton said:

Housing change, renewal, diversity and affordability are key issues for transport corridors in the context of population and demographic changes. Mixed-use developments in substantial changes areas are increasingly important to better respond to these issues around transport nodes, commercial areas and existing community and utility infrastructure, without negatively impacting on existing lower scale residential areas and heritage areas.

He explained the Amendment land was RGZ which had *“been applied to land identified as suitable for increased residential development, such as locations offering good access to services and transport”*. In Whitehorse RGZ had generally been applied to land in the Principal Public Transport Network, activity centres and land close to railway stations.

Aveo relied to the policy context detailed in Marco Negri’s planning evidence statement. Mr Negri identified key policy drivers relating to:

- sustainable growth and development
- adequate land supply to accommodate projected population growth
- design and built form that responds to context and character, fosters health and wellbeing
- a distinct and liveable city with quality design and amenity outcomes
- well located, integrated and diverse housing that meets community needs, including affordable housing.

Mr Negri noted guidance in Plan Melbourne provided for housing diversity and consolidation in areas that offer better access to services, jobs and infrastructure, and the new train station proposed at Burwood as part of the Suburban Rail Loop project.

Several submitters objected to the Amendment on the basis that residential development should occur in other parts of the municipality, raising concerns about the impact of growth on services and facilities.

It was Mr Buxton’s evidence that Council had considered social infrastructure needs as part of *“its municipal community and service planning role”*. Greater population would better support commercial facilities and improve viability.

### **Corridors Study**

Mr Buxton described the purpose and outcome of the Corridors Study, stating it:

- was commissioned by Council to develop appropriate built form controls for RGZ areas to better manage outcomes consistent with land use and built form aims and the impact on adjacent land
- focused on major east-west tram and road corridors with interfacing low-rise residential land
- considered four case study areas<sup>2</sup>
- recommended new built form controls (DDO11) to better guide development outcomes, relating to setbacks, architecture and height, building separation, overshadowing, landscaping and access.

<sup>2</sup> The Panel notes that Section 4 in the Corridors Study states *“within the four study areas, six existing permits were selected”* for built form testing.

Mr Buxton said the Corridors Study provided sufficient strategic basis for the Amendment. He considered the case studies included in the study:

- demonstrated the gross floor area of permitted development was equal to, exceeded or not significantly reduced
- provided useful insights into building envelopes, gross floor area, site coverage and areas for mature landscaping.

In response to a direction from the Panel, Council provided a summary of the inconsistencies between the Corridors Study and the DDO11. It submitted the DDO11 reflects the built form controls set out in the Study apart from:

- scope of the controls – the Corridors Study applies to all development, whereas the DDO11 only applies to development above 3 storeys (this change was made in response to the conditions of authorisation)
- design objectives – the objectives in the Corridors Study reference equitable development whereas the DDO11 does not (this change was also made in response to the conditions of authorisation)
- building heights – the Corridors Study sets out preferred maximum heights of 4 and 5 storeys, and a mandatory maximum height of 6 storeys, whereas the DDO11 only has a mandatory maximum of 6 storeys.

Council concluded *“aside from the changes required by the Authorisation Letter, the Amendment is consistent with the Corridors Study”*.

Aveo submitted the Amendment lacked strategic justification and limited weight should be given to the Corridors Study. Aveo was of the view the Corridors Study:

- provided a mix of facts and opinions by the authors who were not called to give evidence before the Panel
- should not be introduced as background document as it is not consistent with the exhibited Amendment.

Stephen Howell (Submitter 12) questioned the study areas in the Corridors Study. He considered that some areas well suited to development had not been assessed, and other areas included were not appropriate for higher density development due to various constraints, in particular road networks and traffic. He specifically referenced:

- the area south of Whitehorse Road, between Blackburn and Laburnum railway stations, noting areas south of Laburnum Station would be suitable for development but were not in the study area and recommending DDO11 not be applied to the Downing-Frankom precinct (between Whitehorse Road and the railway line)
- the area north of Whitehorse Road in the vicinity of Elmore Basin as not suitable for development, on the basis the Amendment did not propose to apply DDO11 to this land.

In response to submissions about the study area, Mr Buxton said the areas had been carefully chosen as high density residential areas. There was no evidence that the areas had been *“chosen on the basis of socio-economic standing of residents in those locations”*.

Several submitters considered the Corridors Study provided inadequate strategic justification for the proposed planning provisions, including mandatory controls.

**(ii) Discussion****Planning policy and growth**

Parties and experts agreed the planning policy framework strongly encourages growth in identified residential growth areas.

The Amendment applies to land zoned RGZ, which are identified substantial changes areas. The purpose of land zoned RGZ is to provide housing at increased densities in buildings up to and including four storeys, encourage diversity of housing types and to encourage a scale of development that provides a transition between areas of more intensive use and development and other residential areas. Objectives for substantial changes areas identified in Clause 21.06 (Housing) include (among others):

- supporting increased densities
- facilitating achieving a new, preferred character through quality developments
- providing space for planting, communal spaces and rooftop gardens to improve the amenity and liveability of dwellings.

It is important to facilitate higher density housing in well-located and well-serviced areas. The Amendment land is identified for growth and is extremely well located along the Principal Public Transport network and adjacent to activity centres, with new major projects underway such as the Suburban Rail Loop at Burwood.

Policy encourages certainty about the scale of growth to be prescribed by appropriate height and site coverage provisions (Clause 16.01-1R). The local planning policy framework also focuses on protecting and enhancing tree canopy cover in residential areas and preferred neighbourhood character and liveability. Clause 22.03 (Residential development) includes strategies for substantial change areas to:

- Ensure buildings interfacing sensitive areas and uses have a scale and massing appropriate to the character and scale of their context.
- Create a new, higher density urban character in areas located away from sensitive interfaces.

The Panel accepts it is consistent with planning policy to provide design and development guidelines for areas within residential growth corridors. The Amendment is supported by the planning policy framework, specifically relating to housing, built form, urban design and integrated land use and transport planning.

In the context of Clause 71.02-3 (Integrated decision making) the Panel is satisfied the Amendment delivers net community benefit and sustainable development.

**Corridors study**

The Panel accepts the study area boundaries are appropriate in the Corridors Study, noting:

- the study areas go beyond the RGZ land and therefore assesses existing character in the wider neighbourhood
- the Amendment only applies to RGZ land within the study area
- between Blackburn and Laburnum railway stations the railway line is used as the study area boundary, consequently the GRZ land south of Laburnum Station is not included in the study area
- the land north of Whitehorse Road in the vicinity of Elmore Basin identified by Mr Howell, not proposed for inclusion in the Amendment, is not zoned RGZ.



The Panel accepts the evidence of Mr Buxton and submissions of Council that the Corridors Study provides sufficient strategic basis for the Amendment, and the DDO is an appropriate planning controls to achieve the desired outcomes. There were no submissions or evidence that the DDO was not the appropriate planning control to apply to achieve the outcomes sought.

While the Panel accepts the Corridors Study as a strategic assessment of the study area designed to assess and inform built form controls, there are notable inconsistencies between the Corridors Study and the Amendment. The Corridors Study intended to apply controls to all residential development along the corridors, during authorisation changes were made to limit application of the provisions to exclude development up to three storeys. Several other changes were made to respond to concerns of DELWP, particularly relating to mandatory and discretionary controls (see Chapter 1.2).

The Panel has addressed issues relating to the Corridors Study in other chapters of this report, including:

- issues relating to discretionary or mandatory controls (see Chapter 3.1)
- whether the Corridors Study provides adequate justification for specific controls (addressed in various chapters)
- whether the Corridors Study is suitable for inclusions as a background document in the Planning Scheme (see Chapter 7.2).

Subject to its conclusions in other chapters of this Report, the Panel accepts the Corridors Study provides an acceptable strategic basis for the Amendment.

### **(iii) Conclusions**

For the reasons set out in this report, the Panel concludes that the Amendment:

- Is supported by, and implements, the relevant sections of the Planning Policy Framework.
- Is consistent with the relevant Ministerial Directions and Practice Notes.
- Is well founded and strategically justified.
- Should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

## 3 Built form and setbacks

### 3.1 Discretionary or mandatory controls

#### (i) The issue

The issue is whether built form controls in DDO11 should be discretionary or mandatory.

#### (ii) Background

A Practitioner's Guide states that a DDO is "*principally intended to implement requirements based on a demonstrated need to control built form and the built environment, using performance based rather than prescriptive controls*".

PPN59 states "*mandatory provisions will only be considered in circumstances where it can be clearly demonstrated provisions are insufficient to achieved desired outcomes*". It identifies:

- mandatory provisions in the VPP are the exception
- the Victorian planning system is based on the principle there should be discretion for most developments and applications tested against objectives and performance outcomes
- while there will be circumstances where a mandatory provision will provide certainty and ensure a preferable and efficient outcome, these circumstances cannot be common practice and "*they may include areas of high heritage value, strong and consistent character themes, or sensitive environmental locations such as along the coast*"
- a balance must be struck between the benefits of a mandatory provision in achieving an objective against any loss of opportunity.

PPN59 establishes criteria for assessing whether or not the benefits of any proposed mandatory provision outweigh any loss of opportunity and the flexibility inherent in a performance based system.

#### (iii) Evidence and submissions

Council explained that following exhibition it had resolved "*that the Amendment should be changed to include mandatory side and rear setbacks*".<sup>3</sup>

Council detailed the authorisation process and the explained the information it had given to DELWP to justify the Amendment. Relating to mandatory requirements it submitted:<sup>4</sup>

It is relevant that DELWP supported the proposed mandatory requirements relating to front setbacks and building height.

Council is obviously aware that its adopted position is now different to the conditions of authorisation. Council considers that this is of no consequence and is simply one of the many positions that it could have adopted after considering the submissions. The Act places a mandatory obligation on Council, in its capacity as the planning authority, to consider the matters raised in submissions and to decide whether any changes to the Amendment are required.<sup>3</sup> Council has undertaken this task in accordance with the Act and decided changes to the Amendment were appropriate.

<sup>3</sup> Council Part A submission, paragraphs 43 and 44 (Document 5)

<sup>4</sup> Council Part B submission, paragraphs 16 – 18 (Document 13)

Importantly, the Panel in making recommendations regarding the Amendment is not confined to the authorisation conditions. Accordingly, it is now a matter for the Panel to consider whether mandatory requirements relating to side and rear setbacks are justified. And then for Council to consider the Panel's recommendations and then for the Minister to make the final decision on the Amendment.

Council submitted the Amendment satisfied PPN59. It was of the view that a practice note provides guidance but does not "*deem an outcome on the Amendment. This means a failure to meet a practice note does not deem that the Amendment must fail and likewise satisfying a practice note does not guarantee that the Amendment succeeds*". Council said a practice note contains criteria that can be used, rather than criteria that must be used.

Council relied on the evidence of Mr Buxton that the proposal satisfied PPN59. It considered mandatory controls would deliver considerable cost savings to Council, applicants and the community, as there will be greater certainty regarding acceptable built form.

Council was concerned that "*without the force of the mandatory requirements*" there would be real risks of inconsistent outcomes, and with preferred heights typically viewed as a starting point, particularly once lot consolidation has occurred.<sup>5</sup>

Council acknowledged Mr Negri's evidence that discretion on an application will still need to be exercised if mandatory controls are introduced, however building height and setbacks will not be in issue. It considered this a good outcome, as the scope of any dispute will be significantly narrowed.

Council submitted:

Mr Negri's recommendation to revert every requirement in DDO11 to be discretionary undermines the certainty that is sought to be achieved by the Amendment. Indeed, the regular debates that Council, applicants and the community have about the acceptability of exceedances to the preferred 4 storey building height in the RGZ, will only continue, albeit with respect to exceeding a preferred height or reducing a preferred setback in DDO11.

Mr Buxton supported application of mandatory provisions as proposed by Council, and considered the Amendment complied with criteria in PPN59. Specifically:

- the Corridors Study recommends mandatory provisions
- the proposed mandatory DD011 height and setback provisions are the mechanism to achieve the objectives of the study and to guide the future development of these corridors
- the built form testing of six sites in the Corridors Study showed in most cases the site coverage was reduced and gross floor areas was retained, increased or minimally reduced with greater site area available for planting
- proposals not in accordance with the mandatory height and setback provisions will be unacceptable as:
  - they could result in higher built form
  - limiting building height to 6 storeys provides for a more appropriate interface with 1 – 3 storey residential development
  - side and rear setbacks are important to provide adequate land for landscaping
- administrative costs will be reduced.

<sup>5</sup> Council Part B submission, paragraph 43.7 (Document 13)

Mr Buxton presented a model of a four storey development that complied with Clause 55, Standard B17 requirements, and concluded it would result in a constrained building envelope compared with the proposed controls. In his opinion, if the DDO11 requirements were applied as mandatory, this would enable a greater level of development compared to what would be enabled by the Clause 55, Standard B17 side and rear setbacks.

Mr Buxton gave evidence he had examined two recent apartment developments against the proposed planning provisions. He concluded:

- the developments demonstrated there had been variable application of building height and setbacks using the performance based approach and discretionary standards of Clauses 55 and 58
- these outcomes pointed to the need for less discretion in the application of building heights and front, side and rear setbacks.

Mr Buxton recommended DDO11 be amended to require mandatory rear and side setbacks. He was of the view mandatory setbacks would guarantee greater building separation and large areas for landscaping and mature tree provision. He stated:

In terms of the mandatory provisions of the Amendment and whether they are consistent with PPN59, there are exceptional circumstances included in PPN59 that enable mandatory provisions to be included in a planning provision where a specific design related public benefit can only be provided through a mandatory requirement. Including mandatory built form requirements to provide for public benefits such as reduced overshadowing of the public realm and an improved interface between development and streets, are consistent with the approach included in PPN59.

Aveo submitted it opposed mandatory provisions. Aveo explained that in its original submission on the exhibited Amendment (dated 29 November 2022) it generally supported the increased height, but raised concerns with the mandatory controls relating to height and street setback. As the exhibited Amendment included discretionary side and rear setbacks, it had raised no issue with this aspect of the Amendment at the time.

Aveo raised concern that Council's post exhibition change was a "*selective*" response to issues raised in submissions to achieve its long held goal to introduce mandatory side and rear setbacks in RGZ areas. It stated:<sup>6</sup>

- while Council has raised concern about the outcome of planning decisions, this does not mean the existing planning context is inadequate or failing or that mandatory controls are necessary
- PPN59 makes it very clear a performance based approach is preferred "*to accommodate variation, innovation, unforeseen uses and development or circumstances peculiar to a particular application to produce results beneficial to the community*"
- the proposed DDO11 is a "*blunt tool*" being applied to a broad area resulting in overly restrictive and unnecessary constraint on development.

Aveo submitted proposed controls should be drafted to ensure "*development of land in the RGZ is not unreasonably curtailed or prevented through broad-brush and inflexible provisions*".<sup>7</sup>

<sup>6</sup> Aveo submission, Document 15

<sup>7</sup> Aveo submission, Document 15, paragraphs 34 and 35

Aveo was of the view greater analysis was necessary to underpin mandatory controls. It was critical of the Corridors Study relying on only six case studies to underpin the proposed planning provisions, and observed the study did not (among others):

- include streetscape modelling testing different building heights and setbacks
- differentiate between different streets and roads across the study area, or consider varying character, streetscapes and street widths
- differentiate between north and south of Whitehorse Road or Burwood Highway
- include streetscape diagrams or cross sections addressing different streetscapes
- include sightline testing of impacts on areas adjacent to in the GRZ or NRZ
- include shadow diagrams demonstrating the setback is necessary to provide sun penetration or wind studies showing the setbacks are necessary to mitigate down-wind draughts
- include examination of sites that do not abut residential zones or are within non-sensitive streetscapes.

Aveo raised concerns of procedural fairness if Council chose to proceed with adopting the Amendment with proposed post exhibition changes.

Aveo submitted Council's final day version of DDO11 did not address the lack of strategic justification for the controls, proposed blanket application of the controls and which would have potentially unintended consequences. It recommended DDO11 be rejected or amended as recommended by Mr Negri to provide performance based built form controls.

Aveo relied on the evidence of Mr Negri in submitting the mandatory controls were not supported by PPN59. In contrast with Mr Buxton's evidence, Mr Negri considered:

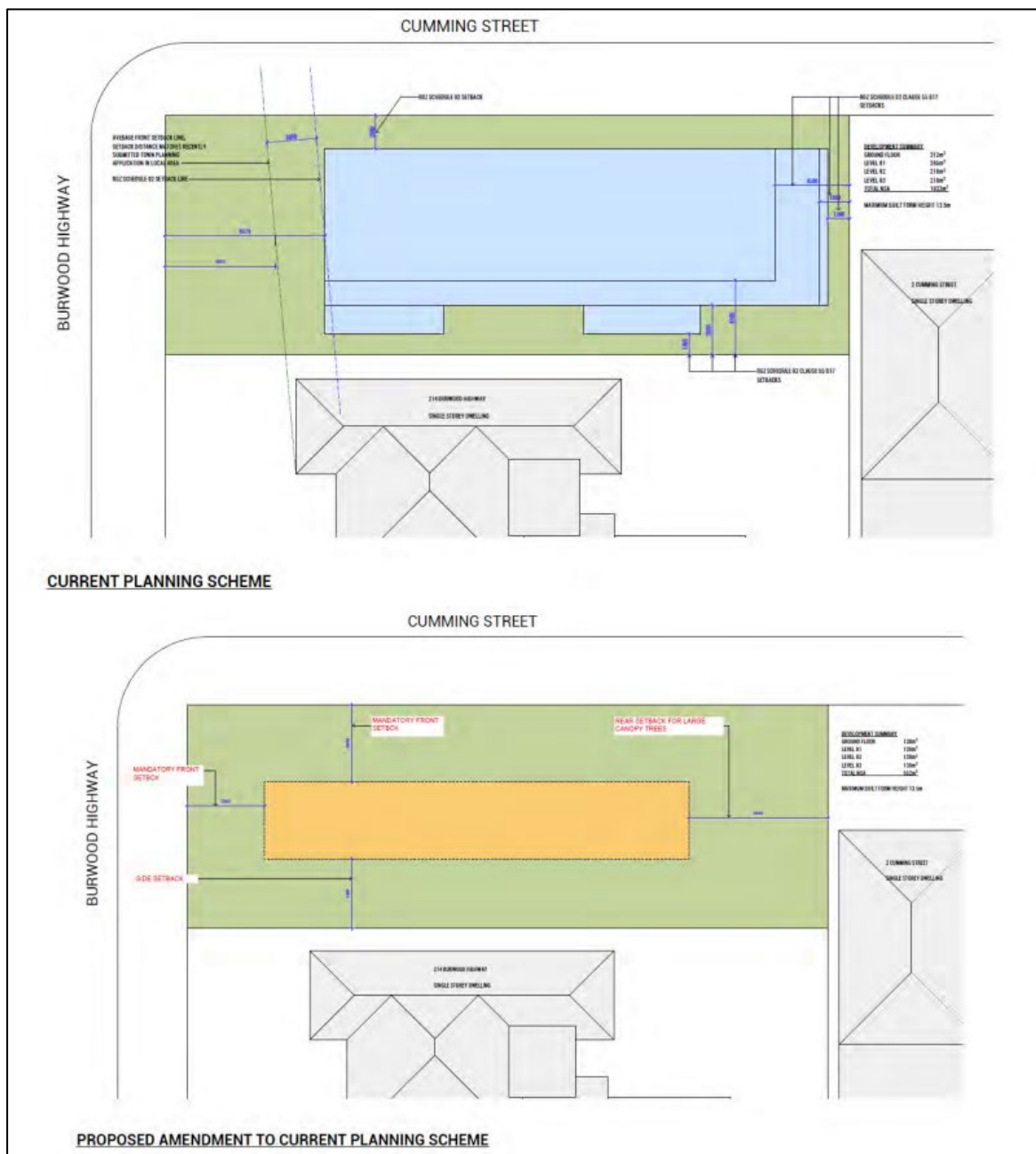
- the blanket mandatory controls do not adequately consider appropriate transitions to interfaces other than lower order residential zones
- while the provisions were intended to manage interfaces between substantial change areas and adjoining low rise residential, as drafted they would apply to all land in the DDO11 area, and would not ensure appropriate development outcomes on sites with non-residential or non-sensitive interfaces
- the provisions do not recognise "*there are properties of varying size and proportion as well as less sensitive interfaces, that have differing development opportunity*", which is a circumstance where discretionary controls should be applied
- it is not likely administrative costs would be reduced.

B&S Burwood Pty Ltd ATF B&S Burwood Trust (Submitter 11) (B&S Burwood Trust) objected to the Amendment and requested the proposed mandatory built form provisions are not applied to its land at 216 Burwood Highway, Burwood. It submitted a comparison of existing versus proposed planning controls for its land, including plans showing the lot layout and building footprint (see Figure 3).

While supportive of the design objectives of DDO11, it submitted the built form provisions should be discretionary, stating:

- more nuanced, performance based built form controls would more effectively accommodate appropriate built form which aligns with the objectives of DDO11
- the proposed mandatory provisions do not allow for case-by-case assessment and are unreasonably restrictive.

Figure 3 Building footprint analysis – 216 Burwood Highway, Burwood



Source: B&S Burwood Trust submission

B&S Burwood Trust submitted the proposed mandatory provisions were inconsistent with planning guidance and PPN59. It shared the concerns of other submitters and also stated:

- discretionary provisions would provide guidance for development proposals while allowing assessment of impacts on neighbouring land case-by-case
- the proposed mandatory provisions will not necessarily achieve the desired outcomes, such as lot consolidation, which may result in this “*growth corridor lying dormant*”
- a preliminary assessment of sites on the southern side of Burwood Highway may be capable of accommodating height in excess of the mandatory provisions and still meet the objectives of DDO11

- administrative costs are unlikely to be reduced, and the opportunity cost of failing to realise development potential of the corridor will result in greater administrative costs to Council and the community over the longer term.

Several submitters supported mandatory building height and side and rear setbacks. Some were concerned that if side and rear setbacks are discretionary then people will build boundary to boundary. Ms Dewhirst (Borg) (Submitter 5) represented herself and Joseph Borg (Submitter 13) at the Hearing (referred to in this Report as Ms Dewhirst or the Dewhirst/Borg submission). Ms Dewhirst recommended rear and side setbacks should be mandatory to manage impacts on overshadowing and privacy.

#### **(iv) Discussion**

Critical issues for the Panel are whether:

- the Corridors Study adequately justifies mandatory controls
- there are any procedural implications if there are changes to the exhibited Amendment.

#### **PPN59 assessment**

Introducing mandatory built form controls must be well justified. Victoria's planning system is predominantly performance based to ensure planning decisions can be made to achieve objectives while addressing specific circumstances.

While the Panel understands Council's view that PPN59 provides criteria that can be used, rather than criteria that must be used, the Panel considers it a useful tool for understanding whether the proposed mandatory controls are appropriate. The Panel notes that Council has assessed the Amendment against PPN59 and considers it complies, and experts have used this tool in assessing the proposal. On this basis the Panel has used PPN59 to guide its assessment. The Panel has considered each of the criteria to assist it in considering the issues.

#### Are the mandatory provisions strategically supported?

The Corridors Study aims to ensure interfaces with adjoining residences are sensitively managed with substantial space for landscaping and careful attention to minimising amenity impacts. It includes design objectives and buildings and works requirements which provide guidance on building height, setbacks, pedestrian interfaces, overshadowing and landscaping. The Corridors Study recommends mandatory building height and setback controls to achieve its objectives.

The Corridors Study relies on built form testing of six case studies across the study area which are used as the basis to demonstrate mandatory controls are necessary. The built form testing involves a comparative assessment of outcomes using existing controls and proposed controls, and focusses on implications of the planning provisions for floor area outcomes, site coverage and built form configuration.

The built form testing is based on limited modelling and analysis of a small number of case study sites which:

- are not representative of the diversity and variety of sites across the study area
- do not consider various context and interface circumstances that may change development potential of a site
- do not assess a range of options and associated outcomes.

It is not evident from the built form testing that the benefits of the mandatory provisions outweigh lost opportunity for development, or that performance based controls are deficient. The Corridors

Study does not identify any particular values or characteristics of the study area, or special circumstances that cannot be managed through the layers of existing planning provisions and proposed DDO11 with discretionary controls.

Fundamentally the Corridors Study does not identify what needs to be protected by mandatory controls that cannot be achieved through discretionary controls. There are no special or exceptional circumstances identified in the Corridors Study or in other policy or guidance that the Amendment area warrants mandatory controls.

Performance based provisions are preferred to achieve an appropriate balance between planning policies objectives. In the absence of exceptional circumstances, it would not be appropriate to unreasonably restrict development potential by applying mandatory controls in an area that is extremely well located and well serviced, and identified as suitable for substantial housing growth.

The Panel considers the proposal does not satisfy the first PPN59 criterion, and the proposed mandatory provisions are not strategically justified by the Corridors Study.

#### Are the mandatory provisions appropriate to the majority of proposals?

The proposed mandatory controls apply a 'one size fits all' approach that does not take into account the specific circumstances of each site, its interfaces and context. In the absence of further analysis, the introduction of mandatory provisions may restrict other policy outcomes or result in unintended consequences.

As shown in the Corridors Study, there are only very few sites across the corridors that could be developed consistent with the proposed mandatory setbacks due to current lot sizes. Future development will rely on site consolidation, which while encouraged under DDO11 may be difficult to achieve in the short term and may be a deterrent to development. This is not an acceptable outcome in the context of current and future projected demand for additional housing, particularly in a corridor designated for residential growth.

Further, the Corridors Study does not assess the sensitivity of interfaces. This is a shortcoming of the study in the context of its objective to better manage sensitive residential interfaces. The implications of the proposed mandatory height and setbacks will be significantly different depending on the specific conditions and context for each site. For example, corner lots, lots with non-residential interfaces and laneways are likely to provide greater development potential and positive amenity outcomes through flexible, objective driven planning controls.

#### Do the mandatory provisions provide for the preferred outcome?

Council and Mr Buxton advocated for the mandatory controls on the basis they would increase certainty. It is not clear to the Panel how this will be achieved in the context of the variability along each corridor regarding land parcel size, streetscape, street width, aspect and interfaces.

The Corridors Study has not demonstrated mandatory controls necessary to achieve desired development, landscaping or amenity outcomes. In the absence of further analysis it is not possible to know whether the mandatory provisions provide for the preferred outcome.

The built form testing showed that to maintain a comparable gross floor area, that a six storey building was required. This may not be the preferred outcome depending on the specific site conditions and context. No contextual assessment was made to understand implications.

There are only a small number of potential development sites along the corridors that would be subject to the DDO11 provisions. Development of three storeys or less will not be required to



comply with DDO11, and would rely on the objectives and standards in Clause 55, which for example, requires different street setbacks.

It is not clear to the Panel that the mandatory provisions will provide for the preferred outcomes sought. Discretionary provisions will provide a more flexible approach to site responsive design.

Will the majority of proposals not in accordance with the mandatory provisions be clearly unacceptable?

As discussed above, in the context of the variability of properties along each corridor, it is not clear that the majority of proposals not in accordance with mandatory provisions will be clearly unacceptable.

While Mr Buxton demonstrated the proposed controls may result in a greater building envelope than existing controls for a four storey development, it is not necessary for the controls to be mandatory to achieve this outcome.

Will the mandatory provision reduce administrative costs?

While Council and Mr Buxton were of the view the proposed mandatory controls would reduce administrative costs, Aveo and Mr Negri considered they would not. While the mandatory controls would establish some non-negotiable provisions, it is not a given that this would result in reduced administrative costs.

The Panel accepts that mandatory provisions will narrow the scope of negotiation around a development proposal, however there was no evidence to suggest it was likely to considerably reduce administrative costs as suggested by Council.

### **Procedural implications**

The Panel acknowledges that its recommendations result in changes to the exhibited Amendment.

If the Panel's recommendations are adopted by Council, this will result in changes to the exhibited Amendment from mandatory to discretionary building height and front setbacks. This would have also been the case if the Panel had agreed with Council's proposed post exhibition change to make the side and rear setback provisions mandatory.

Before proceeding with the Amendment, if it proceeds with the changes to the exhibited DDO11 Council will need to satisfy itself that adequate notice of Amendment has been given.

### **(v) Conclusion and recommendation**

The Panel concludes mandatory controls are not justified.

The Panel recommends:

**Amend the Schedule 11 to the Design and Development Overlay to include discretionary rather than mandatory controls, in accordance with the Panel preferred version in Appendix D.**

## **3.2 Building height**

### **(i) The issue**

The issue is whether maximum building height of six metres is justified and appropriate.

**(ii) Evidence and submissions**

Council submitted that *“consistent with the designation of the Amendment Land within the RGZ and a substantial change area, the Amendment provides clear guidance that building heights that exceed 4 storeys and up to 6 storeys (19 metres) can be contemplated and expected within the corridors”*.<sup>8</sup>

Mr Buxton gave evidence the proposed maximum building height of six metres was well justified as:

- areas of RGZ are identified for substantial growth
- development along these corridors has been approved development at these heights
- the proposed height has been *“carefully modelled based on a reasonable set of amenity expectations and requirements”* for land subject of the Amendment and adjoining residential land
- a building height of three storeys is not supported in an RGZ area where greater height development is anticipated.

Aveo submitted that more than six storeys may be possible at the property at 100 Station Street, Burwood. It said:

The Study notes that building heights of up to six storeys may be possible, with height above this needing to demonstrate excellence in design, compliance with all principles and standards in this report, and methods used to minimise impact on adjoining residences.  
(p41)

Council responded to Aveo that it had misunderstood the context of the quote in the Corridors Study, and this did not refer to buildings heights above six storeys, but the original proposed preferred maximum building heights.

Mr Negri generally supported referencing a preferred, discretionary, building height of 19 metres. In his preferred version of DDO11 he recommended removing the provision relating to rooftop services.

Several submitters raised issues relating to building height, including:

- various views on preferred building height, including buildings should not exceed three, four storeys or six storeys
- support for mandatory building heights
- building height should not include rooftop services
- concern with overshadowing and access to sunlight as a result of building heights.

Ms Dewhirst submitted the Corridors Study documented that most residents believe building heights should not be greater than three to four storeys, and the proposed additional height will create shadowing impacts. The submitter recommended lowering maximum heights on the south side to three to four storeys.

**(iii) Discussion**

The Panel understands that submitters views vary on desired maximum heights, and several prefer building heights lower the exhibited six storey maximum. This is consistent with the findings of

<sup>8</sup> Council Part B submission, paragraph 10

community consultation documented in the Corridors Study. The Corridors Study recommends a range of discretionary and maximum building heights:

- 4 storeys (13 metres) preferred maximum east of Springvale Road
- 5 storeys (16 metres) (preferred maximum)
- elsewhere 6 storeys (19 metres) (mandatory maximum).

Importantly, in the context of the desired character assessment and strategic context and role of the corridors the Corridors Study recommended a six storey mandatory maximum building height, and DDO11 was exhibited with a six storey mandatory maximum building height only.

The Panel agrees with Council and experts that building heights up to six storeys can be contemplated and are appropriate in the in the context of the RGZ as a substantial change area. There was no evidence before the Panel that a different maximum height should be adopted.

The Panel accepts the six metre building height maximum as appropriate. The Panel has concluded in Chapter 3.1 that discretionary planning controls are preferred, and on this basis supports inclusion of a six storey preferred maximum building height.

Development applications will be assessed in the context of other planning controls and objectives of DDO11 which state:

- To ensure that the height of new buildings provides an acceptable built form interface with adjoining development in other zones.
- To ensure the height and built form of new buildings do not visually dominate the street or compromise the character and amenity of adjacent low-rise residential areas.

While the Panel accepts Council's explanation that guidance in the Corridors Study relating to development proposals greater than the preferred maximum heights was not intended for six storeys, as this was proposed as mandatory, there is merit in providing further guidance in DDO11 to assist decision makers when applying discretion. Chapter 5.3 (Implement Options) of the Corridors Study states:

The establishment of clear parameters, informed by the principles as well as the built form outcomes sought, will strengthen consideration of building height above the preferred maximum, including:

- minimal amenity impacts (wind effects, overshadowing)
- resolution of the proposed developments relationship to scale of the surrounding area, design excellence
- exceeding landscaping requirements.

The Panel considers these parameters are relevant in the context of discretionary controls and should be included in the form of decision guidelines in the DDO11. Accordingly the Panel has suggested wording in its Panel preferred version of DDO11 in Appendix D of this report.

The Panel cannot see benefit in removing the building height requirement which states:

Building height excludes rooftop services, such as plant rooms, air conditioning, lift overruns, roof mounted equipment and the like, that cannot be seen from any adjoining public space or are designed as architectural roof top features.

While potentially redundant in the context of a discretionary control, it is appropriate for Council to take this into consideration when assessing a development proposal.

The Panel has addressed interrelated issues in other chapters of this report, including:

- overshadowing (see Chapter 4.2)
- 100 Station Street, Burwood (see Chapter 5).

**(iv) Conclusion and recommendation**

The Panel concludes the maximum building height of 19 metres and six storeys is justified and appropriate.

The Panel recommends:

**Amend the Schedule 11 to the Design and Development Overlay to include decision guidelines for development proposals in excess of the preferred maximum building height, in accordance with the Panel preferred version in Appendix D.**

**3.3 Setbacks****(i) The issues**

The issues are whether:

- the front, side and rear setback metrics are appropriate
- the rear setback should be scaled or stepped
- setbacks are appropriately defined and buildings and works requirements clearly specified.

**(ii) Evidence and submissions****Setback metrics**

Council relied on the evidence of Mr Buxton, who said no changes were necessary to the setback metrics. In relation to the rear setback, Mr Buxton was of the view:

- the 9 metre rear setback is justified in the Corridors Study
- the setback helps mitigate the impact of a 6 storey building, through providing areas for landscaping with large canopy trees
- in some cases a laneway could assist with mitigating the issue of overlooking, however this would be at the expense of providing sufficient landscaping.

Aveo raised concerns about the suitability of proposed side and rear setbacks on its land at 100 Station Street, Burwood, and stated:

With regard to properties that may have a rear boundary to a street (for example, Yarra Bing Crescent, McIntyre Street), the 9m setback is excessive having regard to the natural separation that a street provides as well as the development opportunity for properties with two street frontages usually affords.<sup>9</sup>

Aveo submitted it did not object to the front setback metric, in the context that it objected to it as a mandatory control. It did not object to side setback provisions which seek to achieve landscaping, internal amenity and streetscape benefits, but did not consider these appropriate for its land. In addition to the specific circumstances of its land, Aveo considered mandatory side and rear setbacks may unreasonably constrain development across the corridors.

Mr Negri recommended removing the side and rear setbacks provisions and instead including requirements defined by the interface:

- Any part of a building above 3 storeys in height should be setback a minimum of 4.5m from a boundary to land (other than a road) in the Residential Growth Zone.

<sup>9</sup> Aveo submission, paragraph 81 (Document 15)

- The setback of a building to the boundary identified as a Sensitive Interface must meet the requirements of Clauses 55.04-1, 55.04-2 & 55.04-3 along that boundary and should be sufficient to accommodate canopy planting.

Submitter 14 objected to the rear setback requirements stating:

- the rear setback should reflect the interface, such as GRZ, NRZ or a lane
- where adjacent to a lane, the rear setback of a development should be from the *“rear boundary of the site to the site on the other side of the lane”*
- the 9 metre rear setback is excessive and is not necessary in terms of landscaping and visual bulk
- if two rear yards are abutting, the setback will be 18 metres, which is excessive.

### **Scaled or stepped rear setbacks**

Aveo questioned the evidence base for the proposed six storey rear wall, rather than a stepped interface.

The Dewhirst/Borg submission recommended that the rear setback should be stepped. The submitter made reference to Schedule 3 to the Neighbourhood Residential Zone and requirements of Clauses 54 and 55 which require stepped rear setbacks. The submitter considered these requirements acknowledge that taller buildings impact adjacent properties, and the requirement should be for a stepped rear setback to reduce shadowing and improve privacy for adjoining and adjacent properties.

Submitter 14 considered the six storey shear wall at the rear would be very bulky.

### **Definition and buildings and works requirements**

Aveo submitted the DDO11 should be amended as follows:

- exemptions to “buildings” should be clearly listed and apply to the whole DDO11 rather than attempt to differentiate between front and side and rear setbacks.
- to include definitions relating front, rear and side setbacks.
- to include diagrams/figures that specify what the front, side and rear setbacks along the corridor are and whether they are sensitive or not.

Aveo raises the issue that the setback provisions are proposed to apply to buildings and works *“which essentially encompasses to all buildings or parts of buildings unless exempt under clause 62.02. This raises questions as to how access is to be provided to buildings as well as fences and other structures”*.

Mr Negri gave the opinion that DDO11 should include maps describing ‘street interface’ and ‘sensitive interface’, and the setback requirements can then relate to each interface type. He considered this was required to avoid confusion and clearly present the desired outcome.

Mr Negri suggested changes to DDO11 to clarify application and requirements of the setbacks, including removing Table 2 relating to side and rear setbacks.

Submitter 13 questioned whether the ‘front’ dimensions would apply to both sides of a building on a corner, or only the side facing the street of the property address.

The Dewhirst/Borg submission said it was not clear why the diagrams in the DDO11 were a T-shape.

In its final day DDO11 Council proposed changes to clarify requirements, including removing the reference to *“works”* from the building setback requirements, and providing additional guidance

relating to setback requirements with reference to Clause 62.02 (Buildings and Works) exemptions. It submitted the following changes to the front, side and rear setback requirements:

- A ~~B~~building, except for a front fence, retaining wall or a part of a building providing access to the building such as a basement ramp, and works must be in accordance with the front setback specified in the Table 1 to this schedule. A permit cannot be granted to vary this requirement.
- Where an application applies to multiple lots, the side and rear setbacks are to be measured from the building to the external boundary of the application land.
- A ~~B~~building, except for a retaining wall, and works should **must** be in accordance with the side and rear setbacks specified in Table 2 to this schedule. A permit cannot be granted to vary this requirement.

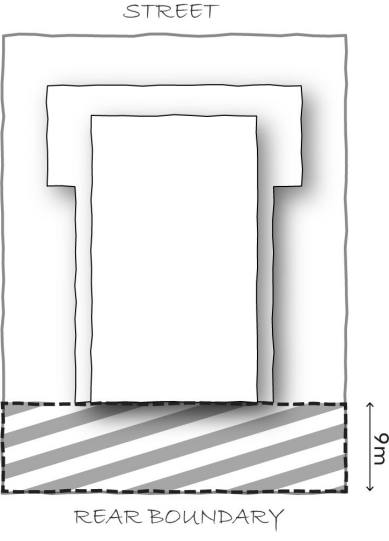
It also suggested the following changes to Tables 1 and 2:

- Table 1 to Schedule 11

Measure		
Front setback	Minimum 5 metres with an additional <u>minimum</u> 3 metres to levels above 4 storeys	

- Table 2 to Schedule 11

Measure		
Side setback	Minimum of 4.5 metres with an additional <u>minimum</u> 4.5 metres to levels above 4 storeys	

Rear setback	Minimum of 9 metres to adjoining land in the <a href="#">General Residential Zone</a> , <a href="#">Neighbourhood Residential Zone</a> or <a href="#">the Public Park and Recreation Zone</a> .	
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In response to Aveo’s comments on Council’s final day DDO11 (Document 39), Council submitted:

- the DDO11 had been carefully drafted with regard to existing definitions in the Planning Scheme
- Clauses 54 and 55 had included the same references to front, side and rear setbacks, which have been undefined for many years.

### (iii) Discussion

#### Setback metrics

The Panel has recommended the provisions in DDO11 should be discretionary. This will assist with addressing concerns of submitters about whether the setback requirements are excessive in a specific context. Discretionary side and rear setback provisions will allow development proposals to be assessed in the context of the site and its interfaces, and with consideration of DDO11 objectives and other relevant planning policies and provisions. This is appropriate.

The Panel notes the concern of submitters that a 9 metre minimum rear setback may be excessive, and this is greater than the accepted requirements for large canopy trees such as required in Clause 58. The Panel accepts the 9 metre metric as a discretionary requirement, on the basis that it is consistent with Corridors Study’s vision for substantial landscaping and the local planning policy framework’s emphasis on canopy tree protection and provision, and associated provision of adequate open space for landscaping in new developments.

#### Scaled or stepped rear setback

The Panel agrees with submitters a scaled or stepped rear wall may provide opportunities to reduce amenity impacts with abutting properties. However, an assessment has not been undertaken as part of the Corridors Study to inform suitable requirements.

The Corridors Study is premised on a mandatory maximum six storey rear building wall setback nine metres from the rear property boundary. The Corridors Study states at page 30:

By contrast a single rear setback can assist in alleviating visual bulk as a stepped form can be more dominating than an element which is setback further and does not allow for significant buffer landscaping.

While the Panel agrees with submitters that the evidence base for this is not clear, in the context of a 9 metre discretionary rear setback, the Panel is satisfied that a suitable setback will be determined in the context of the site and its surrounds, and with consideration of other planning provisions. A stepped setback may be required to achieve other desired performance outcomes.

Considerations relating to shadowing and improve privacy and adequate space for landscaping are discussed in other chapters of this Report.

### **Definition and buildings and works requirements**

The buildings and works requirements of DDO11 relating to setbacks has caused some confusion regarding:

- what must be setback
- what it must be setback from.

Firstly regarding what must be setback, the DDO parent clause allows a schedule to specify 'building setbacks' not 'buildings and works setbacks'. The exhibited 'Building setback' requirements stated "*Buildings and works must be in accordance with ...*". The Panel agrees with Council's proposed post exhibition changes and recommends removing the reference to 'works'.

In response to submissions, Council sought to clarify the buildings components requiring a permit within the setback, with consideration of Clause 62.02. It is not necessary to specify the buildings elements that may or may not require a permit in the schedule requirement relating to 'building setbacks'. It is adequate to say a building should be setback from a specified boundary.

This is consistent with the drafting of other clauses, for example:

- Clause 55.04-1 (Side and rear setback objectives) states "*A new building not on or within 200mm of a boundary should be set back from side or rear boundaries...*"
- Clause 58.04-1 (Building setback objectives) states "*Buildings should be set back from side and rear boundaries...*".

Secondly, regarding what it must be set back from, Council justified its use of terms relating to front, side and rear setbacks as commonplace in the Planning Scheme. The Panel notes Clauses 54 and 55 both:

- refer to 'street setbacks' and differentiates between the requirements for 'front streets' and 'side streets'
- include common provisions for side and rear setbacks, so it is not necessary to define them in this context.

This is different to the proposal before the Panel.

The Panel agrees with Mr Negri the 'front setback' is better defined as 'street interface setback' and this removes confusion associated with corner lots and determination of side and front boundaries. This will be consistent with the objective of the DDO11 which seeks to provide a pedestrian friendly environment. It is also consistent with other provisions in the Planning Scheme which refer to street setback requirements, including Clause 55. The recommendations of Mr Negri relating to street interface setbacks are included in the Panel's preferred DDO11.

The suggestion of Mr Negri to use alternative definitions and requirements for side and rear setbacks, including maps showing sensitive interfaces may be appropriate, however, the Panel considers this a significant change from the exhibited Amendment that would require further work



to justify. It may also raise issues of transformation of the Amendment which would need to be addressed through a separate process.

The Panel accepts a modified version of Council's final day DDO11 defining side and rear setbacks, as shown in the Panel's preferred DDO11. To clarify application of setbacks consistent with the design objectives relating to adjoining residential areas, the Panel:

- adopts Council's suggestion that the rear setback apply to an interface with adjoining land in the GRZ and NRZ, however does not support including a reference to land in the Public Park and Recreation Zone
- recommends the side setback apply to an interface with adjoining land in the GRZ, NRZ and RGZ.

The Panel does not consider the proposed requirement to clarify setbacks for consolidated land necessary.

The Panel agrees with submitters it is not clear why the diagrams in Tables 1 and 2 of DDO11 include T-shapes. The diagrams in Table 1 and 2 of DDO11 should be amended to better explain the setbacks and interfaces, as noted in the Panel preferred DDO11.

#### **(iv) Conclusions and recommendation**

The Panel concludes, subject to its recommended changes to the DDO11:

- Front, side and rear setback metrics are appropriate.
- The front setback should be redefined as a street interface setback.
- The definition and application of setbacks can be improved by clarifying the intended interfaces, as recommended.

The Panel recommends:

**Amend the Schedule 11 to the Design and Development Overlay to clarify and better describe setbacks, in accordance with the Panel preferred version in Appendix D.**

## 4 Amenity and health

### 4.1 The issues

The issues are whether the Amendment adequately considers amenity and health issues, including:

- overshadowing and access to sunlight and daylight
- overlooking, privacy and views
- landscaping and greening
- health.

### 4.2 Overshadowing, sunlight and daylight

#### (i) Evidence and submissions

Several submitters raised issues relating to the impacts of building height on overshadowing and loss of access to daylight and sunlight, including loss of sun access for solar panels. Submitters considered the Amendment should consider impacts of overshadowing on private land as well as public land, and noted the impacts of overshadowing were greater on the south side of the corridor than the north. Further, overshadowing should be assessed based on winter solstice rather than the equinox.

The Dewhirst/Borg submission said:

- access to sunlight is important for sustainability for access to solar water heating and electricity (panels), natural light, growing food and drying clothes
- sunlight and daylight is good for mental health and mood, particularly in winter
- overshadowing may be worse depending on the location and height of plant equipment.

Ms Dewhirst provided models showing impacts of shadowing on her property from new development under DDO11 provisions using the winter solstice. Ms Dewhirst considered the winter solstice provided a more accurate picture of impacts, and the equinox was not an appropriate reference as using the average means that half the time the shadowing will be worse. Ms Dewhirst referenced the 2021 Apartment Design guidelines for Victoria (page 30) which provide guidance to solar access for communal outdoor open spaces, and supporting documentation should:

- Provide shadow diagrams for the communal open space for June 21 to demonstrate existing solar access, and any future overshadowing potential.

Ms Dewhirst questioned why the shadowing for public open space is only required for a two hour period from 12.00pm to 2.00pm.

Ms Dewhirst raised questions about whether the decision guideline which states “... and allows maximum solar access to low-rise residential development in the adjoining and adjacent areas” will achieve maximum solar access for existing properties. She recommended height limits be reduced for new developments on the south side of Burwood Highway and Whitehorse Road to reduce impact of shadowing on neighbouring residential properties.

The Dewhirst/Borg submission was concerned the reduction in access to sunlight and daylight would increase heating and energy use and result in increased greenhouse gas emissions. The submission raised issues relating to the decision guidelines, including:

- what does maximum solar access mean
- whether development is required to provide adequate sunlight, daylight and privacy, and outlook from habitable rooms, for both existing and proposed developments
- why not winter solstice as a measure of overshadowing.

In response to submissions, Mr Buxton said:

- there will be some overshadowing on land adjoining development proposed in the DDO11 areas and this will be mitigated by setbacks
- amenity considerations can be adequately addressed for a development proposal through Clause 58
- overshadowing provisions are included in the DDO11 which state:
  - Developments should not result in additional shadowing to adjacent public open space between 12pm and 2pm on 22 September.
- daylight provisions are included in Clauses 55.04-3 and 55.07-3 of the Planning Scheme, however sunlight is generally not protected
- there are new provisions to protect solar panels that would need to be considered in any planning application in DDO11 areas.

Mr Buxton gave evidence that there will be overshadowing impacts on properties to the east, west and south of DDO11 land, however *“these impacts are considered reasonable given that this land is within the RGZ, the building setbacks proposed in DD011 and the policy framework that supports higher density development in transport corridors along the [Principle Public Transport Network]”*.<sup>10</sup>

In terms of overshadowing impacts, Mr Buxton gave evidence the equinox is commonly used to assess impacts and measure the average, not the extremes. He was of the view specific considerations can be adequately addressed through the apartment provisions at Clause 58 and are likely to affect sites on the south side of Burwood Highway and Whitehorse Road.

Mr Buxton did not support the recommendation to extend the overshadowing provisions to private open space on the basis the DDO11 areas are strategically important for housing supply and diversity and it is appropriate they allow greater development. He did not support the suggestion of submitters to reduce height limits to reduce overshadowing, but did support making the side and rear setbacks mandatory.

## **(ii) Discussion and conclusion**

The Panel agrees with submitters and Mr Buxton that future development along the corridors is likely to create overshadowing and may have some impact on access to sunlight and daylight. The RGZ corridor areas are designated residential growth corridors and are critical for provision of housing in a well-serviced, well-located area. The Panel is of the view these impacts can be adequately managed through existing planning provisions and DDO11, subject to recommendations of the Panel.

The impacts of overshadowing and access to sunlight and daylight will vary greatly depending on the site and its context. The Panel has recommended the provisions in DDO11 should be discretionary, which will assist with addressing submitter concerns about whether mandatory

<sup>10</sup> Mr Buxton, Expert Witness Statement, paragraph 5.3.6

building height provisions will result in unreasonable overshadowing or loss of daylight and sunlight. Discretionary side and rear setback provisions will allow development proposals to be assessed in the context of the site and its interfaces, including consideration relevant to a site and its context on the south or north side of the corridor. An assessment against the discretionary DDO controls will require consideration of DDO11 objectives and other relevant planning policies and provisions.

Existing planning provisions in Clauses 55 and 58 require assessment of overshadowing, overlooking and landscaping. For example, Clause 55 includes objectives, standards and decision guidelines relating to daylight to existing windows, north facing window and overshadowing private open space. Both Clause 55 and 58 include energy efficiency objectives for apartment developments with the standard that *“Buildings should be sited and designed to ensure that the energy efficiency of existing dwellings on adjoining lots is not unreasonably reduced”*.

The Panel is satisfied the combination of discretionary controls and proposed DDO11 will result in adequate assessment of overshadowing and access to sunlight and daylight.

The Corridors Study states:

Sunlight access is usually measured at the equinox (22 September) in Planning Schemes across Victoria. Limiting shadowing to the equinox is also considered to provide a balance between good solar access at key times of the day whilst not unduly limiting development opportunities along the residential corridors.

The Panel accepts the evidence of Mr Buxton that it is appropriate to assess the impact of overshadowing on public open space with regard to the Spring equinox as proposed in DDO11, on the basis of recommendations in the Corridors Study. While the Panel understands the concerns of submitters this is an average and does not represent the experience of overshadowing on the shortest day of the year, further strategic work is required to justify an alternative reference point for assessing impact.

As discussed in Chapter 3.2, the Panel recommends an additional decision guideline requiring considering of whether a development proposal greater than the preferred maximum heights *“minimises amenity impacts, including wind effects and overshadowing”*.

As discussed in Chapter 7.1, the Panel recommends changes to the decision guidelines to refine drafting. This includes removing unnecessary or unclear decision guidelines relating to assessment of maximum solar access and access to sunlight and daylight, on the basis these are adequately addressed through the RGZ and other provisions of the Planning Scheme.

The Panel concludes the provisions relating to overshadowing, sunlight and daylight are adequate, subject to the Panel’s recommendations.

## 4.3 Overlooking, privacy and views

### (i) Evidence and submissions

Several submitters raised issues relating to overlooking, and loss of privacy and views. Ms Dewhirst submitted:

- adjoining and adjacent properties will lose privacy through overlooking and there is no requirement for window screening
- the lack of a stepped rear setback means less privacy and increased overlooking

- to protect views, building heights should be based on the local landscape, for example height limits should be reduced for developments on the crest of hills
- the proposal places more importance on protecting expansive sky views along the corridor than for adjacent properties.

Ms Dewhirst raised questions about how the decision guideline relating to provision of *“adequate... outlook from habitable rooms, for both existing and proposed development”* would be determined.

In response to submissions, Mr Buxton said:

- overlooking impacts are mitigated by the proposed 9 metre rear setback
- views have been taken into consideration through recommended building height and setback, locations for the application of the DDO11 and case studies.

## **(ii) Discussion and conclusion**

The Panel is satisfied the issues relating to overlooking and privacy will be suitably mitigated through the proposed DDO11 and existing planning provisions in Clause 55 and 58. For example, Clause 58 includes building setback objectives to *“To limit views into habitable room windows and private open space of new and existing dwellings”*.

No significant views have been identified and the Corridors Study did not include an assessment of views. The Corridors Study identifies expansive or open sky views as a desired built form outcome, and this is appropriately included in DDO11 in the decision guidelines.

As discussed in Chapter 7.1, the Panel recommends changes to the decision guidelines to refine drafting, including removing the provision of concern to Ms Dewhirst. These requirements are adequately addressed through the RGZ and other provisions of the Planning Scheme.

The Panel concludes the provisions relating to overlooking, privacy and views are adequate, subject to the Panel’s recommendations.

## **4.4 Landscaping and greening**

### **(i) Evidence and submissions**

Mr Negri submitted the requirement and decision guideline relating to landscaping should be removed, as the objective, standard and decision guidelines at Clause 58.03-5 (Landscaping objectives) are sufficient.

Council’s final day version of the DDO11 recommended removing the landscaping requirement which stated development should:

- Provide a minimum deep soil area relative to tree height, which is a minimum depth of 800mm (for small trees), 1000mm (for medium trees) and 1200mm (for large trees).

Several submitters raised issues including:

- loss of green space
- support for maintaining and encouraging green character of the area
- support for tree lined streets
- setbacks should be provided for planting
- greening is important for shade, habitat and wellbeing.

In response to submissions, Mr Buxton said the Amendment aimed to enable open space areas with vegetation and canopy trees, for amenity and environment benefits, including contributing to wildlife corridors.

**(ii) Discussion and conclusion**

The Corridors Study and DDO11 identifies a design objective to maintain the visual prominence of landscaping and ensure space for medium and large trees on site. DDO11 provides for this through setbacks with adequate space for landscaping canopy tree planting. This is strongly supported by local policy and is an appropriate focus of the Amendment.

The Panel is satisfied the discretionary setback requirements will allow for substantial landscaping, including tree planting.

The Panel agrees with Mr Negri the landscaping requirements in DDO11 are not required, as provisions are already made by both Clause 55.03-8 and Clause 58.03-5.

The Panel concludes the 'Building and works' requirement relating to landscaping should be removed, as shown in the Panel preferred version of DDO11.

**(iii) Recommendation**

The Panel recommends:

**Amend the Schedule 11 to the Design and Development Overlay to clarify and better describe setbacks, in accordance with the Panel preferred version in Appendix D**

## 4.5 Health

**(i) Evidence and submissions**

Some submitters raised concerns about health and safety impacts.

Ms Dewhirst submitted that access to sunlight was important for mental health. She acknowledged limited evidence specific to mental health impacts of recent development (as Council has responded to her original submission), however she explained there was evidence of Seasonable Affective Disorder and 'winter blues' where mental health and wellbeing is reduced by decreased access to sunlight and daylight. Ms Dewhirst provided research papers supporting her concerns, and information about a recent Merri-bek City Council decision to reject a development on human rights grounds as it would block a neighbours access to sunlight.

Ms Dewhirst submitted she understood the need for development however decision makers *"need to be very conscious of the long term consequences for low rise residences in surrounding properties"*.

In response to submissions, Mr Buxton said there had been no specific evidence about the direct impacts from recent development on mental health. He also said that pollution, noise and safety will be addressed through development proposals in DDO11 areas through provisions in Clause 58 of the Planning Scheme.

**(ii) Discussion and conclusion**

The Panel acknowledges Ms Dewhirst's submissions that there is a growing evidence base associated with mental health benefits associated with access to sunlight, and concerns for the

impact of higher rise development on existing residences. The Panel was not presented with any evidence or submissions relating to further refinements to address this issue.

The Panel has discussed issues relating to access to sunlight in Chapter 4.2. The Panel is satisfied the Amendment adequately addresses access to sunlight, subject to the Panel's recommendations.

Planning objectives for Victoria and the planning policy framework identify the need for planning to contribute towards health, wellbeing and safety. Various policy provisions include objectives and strategies relate to health, including Clause 15.01-1S (Urban design) which seeks to create urban environments that are safe and healthy.

The Panel is satisfied that the Amendment, combined with other Planning Scheme provisions, includes checks and balances to adequately assess impacts of proposed development with regard to health and safety.

## 5 100 Station Street, Burwood and properties to the east

### (i) The issues

The issues are whether:

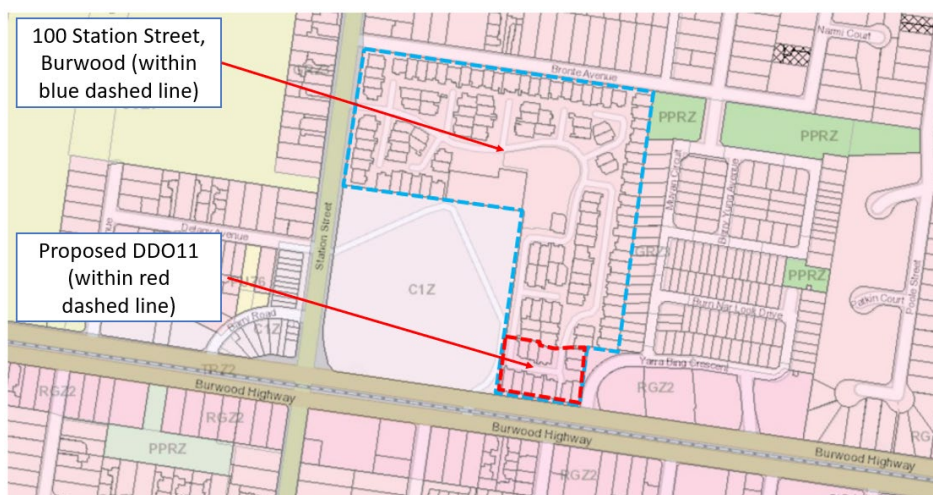
- the exhibited building height and setback requirements should apply to 100 Station Street, Burwood
- 100 Station Street, Burwood should be removed from the Amendment
- properties to the east of 100 Station Street, Burwood should be removed from the Amendment.

### (ii) Evidence and submissions

Aveo submitted the proposed planning provisions should be changed or removed from its land at 100 Station Street, Burwood (see Figure 4). It explained the land has the following characteristics:<sup>11</sup>

- It is used for the purpose of a retirement village known as Fountain Court Retirement Village;
- It is large site of over 3.6 ha with a frontage of 83.96m to Burwood Highway;
- It comprises of 130 individual lots with common property access, communal facilities and open space areas;
- It has a vehicle access to Burwood Highway but its main vehicle and pedestrian access extends from Station Street;
- It abuts Commercial 1 zoned land to the west and south (Greenwood Business Park) which comprises of several 2-3 storey office buildings and to the immediate west, a side driveway and landscaping; and
- To the east it abuts open space, Yarra Bing Crescent and private open space areas of a relatively recent apartment and townhouse development.

**Figure 4** 100 Station Street Burwood, zoning plan and proposed DDO11



Source: Negri Expert Witness Statement, page 10, with Panel notations

<sup>11</sup> Aveo submission, paragraph 5 (Document 15)



Aveo submitted that development on its land does not front Burwood Highway, but rather fronts Station Street or an internal common road. It was not clear where the setbacks should be applied.

Mr Negri gave evidence the Amendment was not an appropriate strategic response to the context of 100 Station Street, Burwood. He said the property is located between a Neighbourhood Activity Centre and Burwood Heights Major Activity Centre, and within proximity to the Deakin University Burwood Campus and the proposed Suburban Rail Loop station. The land is identified as a 'Substantial Change Area' in Clause 21.06 (Housing).

Mr Negri said the land provided a significant opportunity to provide for increased housing density and diversity with the residential growth corridor, due to the substantial land size and limited sensitive interfaces. Located on the north side of Burwood Highway and adjoining land in the Commercial 1 zone, with no external interface to land in the GRZ or NRZ, it offered opportunities for built form change.

Mr Negri noted the purpose of the Amendment was to address RGZ interfaces with "*more traditional residential development*", as expressed in the Explanatory Report. He did not regard the existing retirement village to the north a 'traditional residential development'. He explained 100 Station Street, Burwood had a distinct context that distinguished it from other parts of the corridor and it did not have the sensitivity of interface sought to be protected by the Amendment.

Mr Negri did not agree with Council that it was justified to apply the same built form requirements along the corridor, in the context there are few commercial interfaces with the DDO11. He considered this provided a basis to draft provisions that respond to specific circumstances of different parts of the corridor.

Mr Negri recommended 100 Station Street, Burwood "*and the discrete properties east of Yarra Bing Road*" (paragraph 95) (see Figure 5) should be removed from the Amendment on the basis:

It is a sub-precinct that contains properties that have recently been developed with apartment buildings. The Aveo Property is located between this row of apartment buildings and land used and developed for commercial purposes. The sub-precinct does not have a sensitive interface to the more traditional low scale residential areas.

Mr Negri explained:

It is a sub-precinct that contains properties that have recently been developed with apartment buildings. The Aveo Property is located between this row of apartment buildings and land used and developed for commercial purposes. The sub-precinct does not have a sensitive interface to the more traditional low scale residential areas.

The Panel did not receive submissions from the land owners of properties to the east of 100 Station Street, Burwood.

Council noted the particular site circumstances of 100 Station Street, Burwood, however considered the "*planning controls should be applied strategically an in a holistic manner*".<sup>12</sup> Council referred to the Melbourne C270 Panel report recommendations which related to the proposed application of mandatory building height controls for the Windsor Hotel as part of a precinct, in a situation where a permit had been granted.

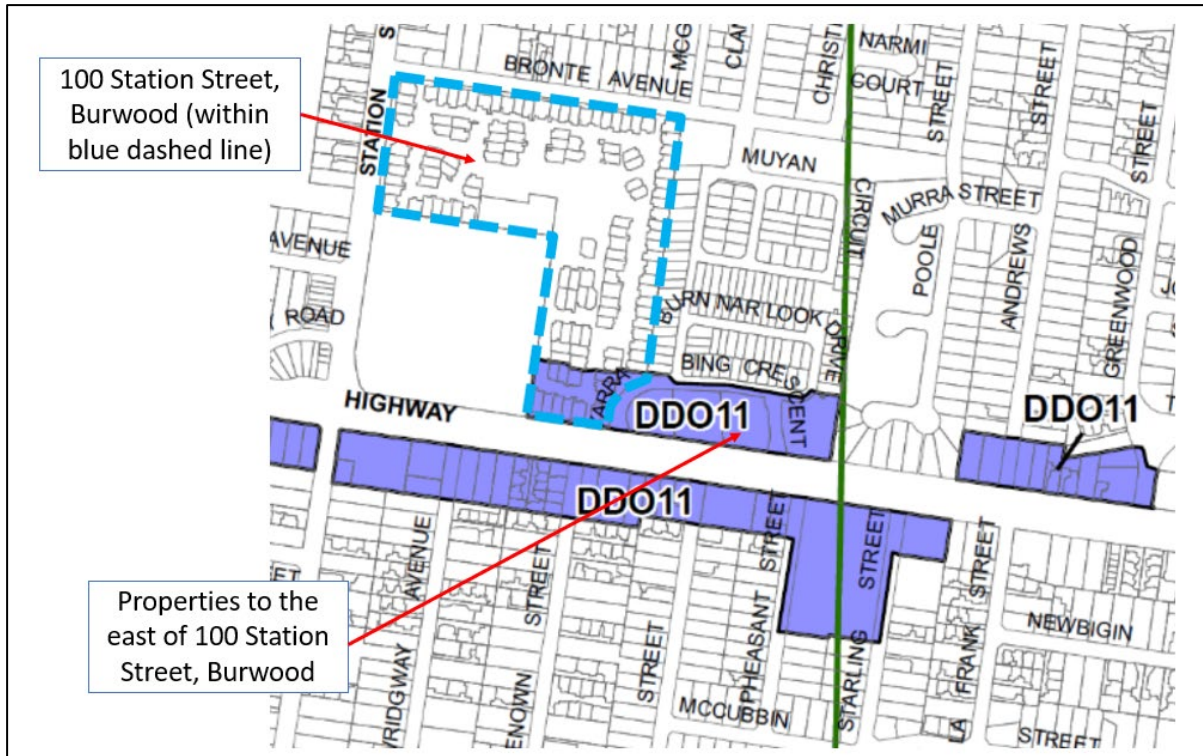
In response to questions of cross examination by Aveo, Mr Buxton said:

- he agreed it was not a traditional residential development

<sup>12</sup> Council Part B submission, paragraph 34 (Document 13)

- he was of the view the property frontage was to Burwood Highway, and the DDO11 provisions should be applied in this way
- the proposed provisions were appropriate on the site.

**Figure 5** Properties to the east of 100 Station Street, Burwood



Source: Negri Expert Witness Statement, page 6, with Panel notations

### (iii) Discussion

The Panel has concluded in previous chapters that the:

- planning provisions relating to building height and setbacks should be discretionary
- definition and application of setbacks should be clarified.

The Panel agrees with Aveo and Mr Negri that the proposed planning provisions are not suitable for the site. The site is a strategically located, large parcel of land with non-sensitive interfaces. Relevant planning policy seeks to ensure a sufficient supply of well-located and serviced land for housing to facilitate sustainable growth and development. The property's size, configuration, location and interfaces warrant further consideration in determining suitable planning controls to maximise its development potential while ensuring an appropriate built form response.

Regarding the relevance of the panel finding in Melbourne C240 (noting, the Panel could not find the reference provide by Council in the Melbourne C270 panel report but did find it in the C240 report), the Panel does not consider the matters comparable. The matter before this Panel does not involve and existing permit or heritage considerations, and the Panel has concluded mandatory building height provisions are not appropriate due to lack of strategic justification (see Chapter 3.1).

The Panel did not receive submissions from other land owners in the precinct suggested for removal from the Amendment. The properties are more consistent with other land along the corridors with regard to size and interfaces. In the absence of further evidence and submissions,

the Panel is satisfied that its recommendations to apply discretionary controls and refined setback provisions will address some of the concerns raised by Aveo and Mr Negri in relation to the precinct.

**(iv) Conclusions and recommendation**

The Panel concludes

- The blanket controls proposed through the Amendment do not adequately take into consideration site-specific context and considerations at 100 Station Street, Burwood.
- The Amendment may overly restrict appropriate development that is supported by planning objectives and policy.
- The properties to the east of 100 Station Street, Burwood should not be removed from the Amendment.

The Panel recommends:

**Abandon the application of Schedule 11 to the Design and Development Overlay to 100 Station Street, Burwood.**

## 6 Other issues

### 6.1 Traffic and car parking

#### (i) The issue

The issue is whether traffic and car parking has been adequately considered in the Amendment.

#### (ii) Evidence and submissions

Several submitters raised issues relating to traffic and car parking resulting from development. Dewhirst/Borg raised concerns no consideration had been given to design around vehicular access, egress or parking.

Council relied on the evidence of Mr Buxton. Mr Buxton said traffic and car parking had not been specifically considered in the Amendment as these would be assessed for each development proposal under Clause 52.06 (Car parking) of the Planning Scheme.

#### (iii) Discussion and conclusion

The Corridors Study does not directly address traffic and car parking. This is appropriate in the context that it was intended to assess and make recommendations relating to design and built form, and other planning provisions guide decision making in relation to traffic and car parking. The Panel notes:

- the parent RGZ clause includes application requirements relating to traffic
- Clauses 55 and 58 variously include provisions relating to parking location, access and car parking
- Clause 52.06 (Car parking) applies to increased floor area or site area of an existing use.

The Panel concludes traffic and car parking has been adequately considered in the Amendment.

### 6.2 Flooding

#### (i) The issue

The issue is whether drainage infrastructure and potential flooding have been adequately considered in the Amendment.

#### (ii) Evidence and submissions

Two submitters were concerned:

- the local drainage system in the Special Building Overlay area was not adequate for higher density development
- basement car parking may be subject to flooding.

In response to submissions, Mr Buxton said drainage infrastructure improvement could easily be addressed through site by site development proposals.

#### (iii) Discussion and conclusion

Drainage infrastructure and flooding will be considered through other provisions in the Planning Scheme. Some areas in the study area are subject to the Special Building Overlay which includes a

provision to ensure, among other things, *“that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity”*.

The Panel accepts the evidence of Mr Buxton and concludes drainage infrastructure and potential flooding have been adequately considered in the Amendment.

## 7 Proposed planning provisions

### 7.1 Design and Development Overlay - Schedule 11

#### (i) Design objectives

##### The issues

The issues are whether the design objectives:

- provide a clear understanding of the change promoted along the corridors
- should be amended as recommended by Mr Negri.

##### Evidence and submissions

Aveo submitted the design objectives did not reflect the Corridors Study and should be amended to more accurately reflect the controls. Aveo relied on the evidence of Mr Negri, who proposed the design objectives be redrafted to provide a clearer understanding of the extent of change promoted along the corridors. He recommended the following wording:

To promote mid-rise development in the residential growth corridors to accommodate housing at increased densities and a diversity of housing type.

To ensure the height and built form of new buildings provides a suitable transition from the residential growth corridors and adjoining commercial areas to neighbouring lower scale residential areas in the General Residential Zone and the Neighbourhood Residential Zone.  
~~do not visually dominate the street or compromise the character and amenity of adjacent low-rise residential areas.~~

To ensure development achieves contributes to a high quality public realm ~~and public open space in relation to human scale and micro-climate conditions by providing a comfortable, pedestrian-friendly urban environment.~~

~~To ensure that the height of new buildings provides an acceptable built form interface with adjoining development in other zones.~~

~~To ensure the height and built form of new buildings do not visually dominate the street or compromise the character and amenity of adjacent low-rise residential areas.~~

~~To maintain the visual prominence of landscaping and ensure space for medium and large trees on site, particularly within the front and rear setbacks.~~

~~To encourage lot consolidation in order to achieve the maximum building heights and to provide for sufficient building setbacks to deliver high levels of internal amenity.~~

The Dewhirst/Borg submission raised concerns that encouraging consolidation would result in visually dominant tall buildings.

Council did not propose any changes to the design objectives of DDO11 in response to submissions.

In response to questions under cross examination by Aveo, Mr Buxton stated that DELWP did not support design objectives relating to growth in the schedule.

##### Discussion

The Panel agrees with Mr Negri it would be beneficial to redraft some of the design objectives with a view to:

- ensuring a strong nexus with the Corridors Study informing the Amendment
- clearly articulating the scale of change promoted along the corridors.

The vision and urban design principles in the Corridors Study emphasises quality public realm and pedestrian friendly environments, space for substantial landscaping and sensitively managed interfaces and amenity.

The Panel recommends a modified version of changes suggested by Mr Negri to enhance the focus on the anticipated and promoted built form change along the corridors, and to refine the wording of provisions while still retaining five objectives as required by the *Ministerial Guidelines on Form and Content of Planning Schemes*.

The Panel considers it appropriate to retain the design objectives relating to landscaping and lot consolidation. It is important recognise land consolidation as a design objective to achieve the potential of the residential growth corridor, and issues associated with design and amenity impacts are addressed by the requirements in the DDO11.

### Conclusions and recommendation

The Panel concludes:

- The wording of design objectives can be refined to provide a clear understanding of the anticipated and promoted change.
- A modified version of Mr Negri's proposed changes is appropriate.

The Panel recommends:

**Amend the Schedule 11 to the Design and Development Overlay to amend the design objectives, in accordance with the Panel preferred version in Appendix D.**

### (ii) Decision guidelines

#### The issues

The issues are whether the decision guidelines should be redrafted to:

- reflect the controls
- to remove duplication with other relevant planning provisions.

#### Evidence and submissions

Aveo submitted the decision guidelines should be amended to more accurately reflect the controls. Aveo relied on the evidence of Mr Negri, who proposed the decision guidelines be redrafted as follows:

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme, which must be considered, as appropriate, by the responsible authority:

- Whether the development provides an appropriate transition from the residential growth corridor and any adjoining commercial area to lower scale residential areas in the General Residential Zone and the Neighbourhood Residential Zone ~~an adjoining residential zone~~ or public open space.
- Whether the development ~~maintains~~ achieves a mid-rise scale to accommodate housing at increased densities and a diversity of housing type that enhances the sense of openness, maintains access to expansive sky views along the corridor ~~and allows maximum solar access to low-rise residential development in the adjoining and adjacent areas.~~
- ~~Whether the development provides for adequate sun penetration at street level and mitigates wind down draughts through upper level setbacks.~~
- Whether the development achieves an acceptable built form interface with the public realm, so as not to ~~dominate the streetscape or~~ appear as a continuous wall at street

level or nearby vantage points if adjoining and/or nearby sites are developed in a similar manner.

- ~~• Whether the development allows for deep soil planting and landscaping within the front, side and rear setbacks.~~
- ~~• Whether the development achieves high architectural quality.~~
- ~~• Whether the development provides adequate sunlight, daylight and privacy, and outlook from habitable rooms, for both existing and proposed developments.~~
- Whether any additional overshadowing of adjacent public open space will:
  - Reduce the extent to which sunlight will be available between 12 pm and 2 pm on 22 September, including the cumulative impacts if adjacent land is developed in accordance with the planning scheme.
  - Have an adverse impact on the landscaping, including plants, trees and lawn or turf surfaces in the public open space.
  - Compromise the existing and future use, quality and amenity of the public open space.

The Dewhirst/Borg submission raised several issues relating to the decision guidelines, including:

- who decides what is an ‘appropriate transition’ is to adjoining residential zoned land
- support for retaining expansive sky views, noting the proposal is unlikely to achieve this for the submitter’s property
- how does lot consolidation achieve built form that does not dominate.

Council proposed two changes to the decision guidelines in response to submissions:

- Whether the development maintains a mid-rise scale that enhances the sense of openness, maintains access to expansive sky views along the corridor ~~and allows maximum solar access to low-rise residential development in the adjoining and adjacent areas.~~
- ~~Whether the development provides adequate sunlight, daylight and privacy, and outlook from habitable rooms, for both existing and proposed developments.~~

Council made the changes in response to Mr Negri’s evidence, and considered the issue could be considered through provisions in the RGZ, including Clause 32.07-10 (Buildings on lots that abut another residential zone) and decision guidelines depending on the interface.

## Discussion

The Panel accepts Council’s changes to the decision guidelines, noting that:

- Clause 32.07-10 states that any buildings or works constructed on a lot that abuts land which is in a GRZ, NRZ or Township Zone must, along that boundary, meet the requirements of:
  - Clauses 55.03-5 (energy efficiency objectives)
  - Clause 55.04-1 (Side and rear setback objectives)
  - Clause 55.04-2 (Walls on boundary objective)
  - Clause 55.04-3 (Daylight to existing windows objective)
  - Clause 55.04-5 (Overshadowing open space objective)
  - 55.04-6 (Overlooking objective).
- the RGZ parent clause decision guidelines include:
  - the impact of overshadowing on existing rooftop solar energy systems on dwellings on adjoining lots in a Mixed Use Zone or Residential Growth Zone
  - a requirement to consider Clause 55 provisions for dwellings or residential building of less than five storeys, and Clause 58 for apartment developments of five or more storeys.



The existing provisions provide adequate guidance including objectives, standards and decision guidelines.

The Panel agrees with Aveo and Mr Negri there is opportunity to further redraft some of the decision guidelines to ensure there is a clear nexus with the controls, including objectives and requirements, and to remove provisions already covered by the parent clause of the RGZ and other parts of the Planning Scheme. The Panel has adopted a modified version of Mr Negri's evidence, as show in the Panel preferred version of DDO11.

### Conclusions and recommendation

The Panel concludes:

- The wording of decision guidelines can be refined to provide a clear nexus with the controls and to reduce duplication of provisions in the Planning Scheme.
- Council's recommended changes are appropriate along with a modified version of Mr Negri's recommended changes.

The Panel recommends:

**Amend the Schedule 11 to the Design and Development Overlay to amend the design objectives, in accordance with the Panel preferred version in Appendix D.**

### (iii) Other drafting issues

#### Discussion and conclusion

The Panel has discussed drafting issues relating to built form and setbacks in Chapter 3.

Aveo submitted that while DDO11 proposes that a permit is not required for development up to three storeys, the parent DDO clause requires buildings and works be constructed in accordance with the requirements of the schedule to the overlay, unless the schedule specifies otherwise.

Council's final day version of DDO11 proposed the following changes to clarify what the provisions apply to:

#### 2.0 Buildings and works

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C220whse

A permit is not required to construct a building or construct or carry out works for a development up to and including 3 storeys.

A permit is required to construct a front fence.

The following buildings and works requirements apply to an application to construct a building or construct or carry out works:

The Panel accepts these changes as they provide clarity and are consistent with the *Ministerial Guidelines on Form and Content of Planning Schemes*.

For consistency with its recommendations relating to setbacks in Chapter 3, the Panel also recommends the front fence requirement be reworded to state:

A permit is required to construct a ~~front~~ fence with a street interface.

Mr Negri recommended a number of other changes to DDO11, including:

- under 'Subdivision' to state:  
A permit is not required to subdivide land.
- to remove the wind provisions under 'Application requirements' as the provisions at Clause 58.04-4 (Wind impacts objective) are sufficient.

The Panel agrees with Mr Negri's recommendations and these are included in the Panel's preferred DDO11 in Appendix D.

### **Recommendation**

The Panel recommends:

**Amend the Schedule 11 to the Design and Development Overlay, in accordance with the Panel preferred version in Appendix D**

## **7.2 Corridors Study as a background document**

### **(i) The issue**

The issue is whether the Corridors Study should be included as a background document.

### **(ii) Evidence and submissions**

Aveo submitted the Corridors Study should not be included as a background document in the Planning Scheme.

Aveo relied on the evidence of Mr Negri who stated the Corridors Study should not be included as a background document in its current form due to the reference to mandatory built form requirements. Further, inclusion of an updated version of the study, adopting a performance based approach, is not necessary, subject to clear drafting of the relevant planning provisions.

Council did not propose to remove the Corridors Study as a background document to the Amendment as a result of submissions. In response to questions of cross examination by Aveo, Mr Buxton said he supported the Corridors Study as a background document.

### **(iii) Discussion**

*A Practitioner's Guide* states that background documents:

- provide information explaining the context of a particular requirements in the Planning Scheme, or substantiate a specific issue or provide background to a provision
- are not part of the Planning Scheme, and the substantive planning elements of the document such as built form guidelines will have been included in the Planning Scheme in either a local policy or a schedule
- must relate directly to a specific policy or provision

Further it states:

Do not make a document a background document if the substantive elements of the document have been included in the scheme and require no further explanation.

The Panel agrees with Mr Negri and Aveo that the Corridors Study should not be included as a background document in the Planning Scheme. The substantive elements of the study will be introduced into the Planning Scheme through the Amendment, and there are some inconsistencies in the document with the Amendment that may cause confusion, notably the recommended mandatory controls.

In this context, it is not considered the document will add value to understanding how to apply the provisions and the key elements of the document are reflected in the proposed controls.

**(iv) Conclusion and recommendations**

The Panel concludes it is not appropriate to include the Corridors Study as a background document in the Planning Scheme due to inconsistencies with the Amendment, including further changes recommended by the Panel.

The Panel recommends:

**Amend Clause 21.06 (Housing) to remove the reference to the *Whitehorse Residential Corridors Built Form Study 2019*.**

**Remove the Schedule to Clause 72.08 (Background documents).**

**7.3 Clauses 21.06 and 22.03****(i) The issue**

The issue is whether Clause 21.06 (Housing) and Clause 22.03 (Residential Development) should be amended as recommended by Mr Negri.

**(ii) Evidence and submissions**

Aveo relied on the evidence of Mr Negri. Mr Negri gave evidence Clauses 21.06 and 22.03 should be modified to better emphasise the *“strategic role of the corridors to promote larger buildings that are capable of accommodating increased housing densities and a diversity of housing type”*.

Mr Negri recommended changes to Clause 21.06 on the basis:

- the overview placed too much emphasis on management of interfaces without describing the strategic opportunities
- the Substantial Change Area objective should provide clear guidance in respect of the outcome.

He suggested the following wording changes to the new provision:

- Overview

~~The Whitehorse Residential Corridors Built Form Study, 2019 identifies built form controls to manage the sensitive interface between development in substantial change areas along major road corridors, and development in adjoining and adjacent lowrise residential areas.~~

Increased housing densities and a diversity of housing is promoted within the substantial change areas along major road corridors depicted on the Housing Framework Plan. Schedule 11 to the Design & Development Overlay guides the built form change necessary to achieve this outcome and to provide a sensitive interface to low rise residential areas outside the corridor.

- Objective

~~Provide an acceptable built form interface with adjoining and adjacent development in other change areas~~

Support mid-rise buildings that accommodate higher density residential development in the substantial change areas along major road corridors depicted on the Housing Framework Plan that provide an acceptable built form interface with low rise residential areas outside the corridor.

Mr Negri recommended the following changes to proposed new provision relating to residential development in Clause 22.03:

~~Built form controls have been identified to guide development outcomes along key road corridors in the municipality where Substantial Change Areas interface with low-rise residential development.~~

~~The controls focus primarily on the major east-west tram and road corridors, where there is an interface between the Residential Growth Zone and General Residential Zone or Neighbourhood Residential Zone to the rear or side. Specifically, Burwood Highway, generally between Elgar Road, Burwood and Hanover Road, Vermont South and Whitehorse Road in Mont Albert, Laburnum and Nunawading.~~

~~The controls relate to building setbacks, architecture and height, building separation, overshadowing, landscaping and pedestrian and vehicle access. In this area the built form of new development should not visually dominate and should transition to the low-rise scale of adjoining development. New development should respect the character and amenity of the surrounding area.~~

Mid-rise buildings that accommodate higher density residential development are promoted in the substantial change areas along major road corridors depicted on the Housing Framework Plan at Clause 21.06. Development of these areas should accommodate an increased intensity of developed that is designed to achieve a human scale that does not dominate street frontages and is massed to provide an acceptable interface to the traditional residential areas outside the corridor.

Council did not propose any changes to Clauses 21.06 or 22.03 in response to submissions.

### (iii) Discussion

Regarding Clause 21.06, the Panel prefers the wording recommended by Mr Negri. The wording is more refined and it provides an appropriate focus on the purpose of the corridors to accommodate higher density residential development juxtaposed with objectives relating to character, built form and managing sensitive residential interfaces.

It also removes reference to the Corridors Study which is consistent with the Panel's recommendation to remove it as background document.

As currently drafted Clause 22.03 contains unnecessary content and context, which does not assist with understanding the intent and directions of the policy. The Panel prefers the wording recommended by Mr Negri, noting the wording is more refined and it provides clear nexus with the recommended provisions.

### (iv) Conclusions and recommendations

The Panel concludes Clause 21.06 (Housing) and Clause 22.03 (Residential Development) should be amended as recommended by Mr Negri.

The Panel recommends:

#### **Amend Clause 21.06 (Housing) as follows:**

##### **a) Overview**

**Delete the following paragraph:**

***The Whitehorse Residential Corridors Built Form Study, 2019 identifies built form controls to manage the sensitive interface between development in substantial change areas along major road corridors, and development in adjoining and adjacent lowrise residential areas.***

**Insert the following paragraph:**

***Increased housing densities and a diversity of housing is promoted within the substantial change areas along major road corridors depicted on the Housing Framework Plan. Schedule 11 to the Design and Development Overlay guides the built form change necessary to achieve this outcome and***

*to provide a sensitive interface to low rise residential areas outside the corridor.*

b) Objective

Delete the following paragraph:

*Provide an acceptable built form interface with adjoining and adjacent development in other change areas.*

Insert the following paragraph:

*Support mid-rise buildings that accommodate higher density residential development in the substantial change areas along major road corridors depicted on the Housing Framework Plan that provide an acceptable built form interface with low rise residential areas outside the corridor.*

Amend Clause 22.03 (Residential development) as follows:

Delete the following paragraphs:

*Built form controls have been identified to guide development outcomes along key road corridors in the municipality where Substantial Change Areas interface with low-rise residential development.*

*The controls focus primarily on the major east-west tram and road corridors, where there is an interface between the Residential Growth Zone and General Residential Zone or Neighbourhood Residential Zone to the rear or side. Specifically, Burwood Highway, generally between Elgar Road, Burwood and Hanover Road, Vermont South and Whitehorse Road in Mont Albert, Laburnum and Nunawading.*

*The controls relate to building setbacks, architecture and height, building separation, overshadowing, landscaping and pedestrian and vehicle access. In this area the built form of new development should not visually dominate and should transition to the low-rise scale of adjoining development. New development should respect the character and amenity of the surrounding area.*

Insert the following paragraph:

*Mid-rise buildings that accommodate higher density residential development are promoted in the substantial change areas along major road corridors depicted on the Housing Framework Plan at Clause 21.06. Development of these areas should accommodate an increased intensity of developed that is designed to achieve a human scale that does not dominate street frontages and is massed to provide an acceptable interface to the traditional residential areas outside the corridor.*

## Appendix A Submitters to the Amendment

No	Submitter
1	Alvin Soh
2	Lucille Dushani and Nadika De Silva
3	David Chan
4	Damien and Jennifer Sammut
5	Brigitte Dewhirst (Borg)
6	Yuan Zhang
7	Loris McPherson
8	Emmy Teoh
9	Elena and Chris Marshall
10	Nadine Seager
11	B&S Burwood Pty Ltd ATF B&S Burwood Trust (B&S Burwood Trust)
12	Stephen Howell
13	Joseph J Borg
14	Qing Dong Liu
15	Steven McKenzie
16	Mark Nutter, Aveo Group, on behalf of Fountain Court Retirement Village Pty Ltd (Aveo)

## Appendix B Document list

No.	Date	Description	Provided by
1	3 Apr 23	Panel Directions and Hearing Timetable (version 1)	Planning Panels Victoria (PPV)
2	4 Apr 23	Whitehorse Residential Corridors Built Form Study (Consolidated)	Whitehorse City Council (Council)
3	“	Proposed post-exhibition changes to Design and Development Overlay Schedule 11 (DDO11), in track changes	Council
4	“	Nunawading Civic Centre Car Parking map	“
5	20 Apr 23	Council Part A submission, including attachments: - Email from Council to DELWP, 26 August 2022 - Whitehorse PSA C230whse [2023] PPV Panel Report	“
6	24 Apr 23	Email to Panel – no longer seeking to be heard	B&S Burwood Trust
7	26 Apr 23	Panel Hearing Timetable (version 2)	PPV
8	27 Apr 23	Expert Witness Statement, Paul Buxton of Plan2Place Consulting	Council
9	“	Expert Witness Statement, Marco Negri of Contour Consultants	Aveo Group (Aveo)
10	1 May 23	Panel Hearing Timetable (version 3)	PPV
11	“	Panel reconstitution	“
12	2 May 23	Hearing submission, including attachment: - revised DDO11	Brigitte Dewhirst (Borg) and Joseph Borg
13	3 May 23	Council Part B submission	Council
14	4 May 23	Copy of current planning applications, with attachments: - 77-83 Whitehorse Road, Blackburn - 216 Burwood Highway, Burwood - 419-423 Whitehorse Road, Vermont South - 771-773 Whitehorse Road, Mont Albert	“
15	“	Hearing submission	Aveo
16	“	Letter - Amendment C220 Authorisation	“
17	“	Letter - Amendment C239 Authorisation refusal	“
18	“	Burwood Highway Projects Pty Ltd c Whitehorse CC [2018] VCAT 1052	“
19	“	Letter – Council to DELWP – 24 January 2020	“
20	“	Council response to DELWP issues	“
21	“	Email – DELWP to Council 7 February 2022	“

No.	Date	Description	Provided by
22	“	Email – DELWP to Council 26 August 2022	“
23	“	Letter – DELWP to Council	“
24	“	Matthews v Yarra Ranges SC [2022] VCAT 404	“
25	“	Pitard Knowles Pty Ltd v Glen Eira CC [2016] VCAT 920	“
26	“	Clause 43.02 Design and Development Overlay	“
27	“	DDO11 (marked up)	“
28	5 May 23	Council meeting attachment 8 August 2022	Council
29	“	Residential Capacity Assessment Methodology Report, 2014	“
30	“	Revised DDO11	“
31	“	Everbright Group Pty Ltd v Whitehorse CC [2015] VCAT 1227	Aveo
32	“	The Charlnet Pty Ltd v Whitehorse CC [2016] VCAT 1660	“
33	“	Schedule 28 to Clause 43.02 Design and Development Overlay	“
34	“	Endorsed Plans, 1-3 Sergeant Street, Blackburn	“
35	“	Endorsed Plans, 1 Charlnet Drive, Vermont	“
36	“	Lend Lease Apartments (Armadale) Pty Ltd v Stonnington CC [2013] VCAT 1663	Council
37	8 May 23	Further Panel directions relating to comment on Council’s final day version of the DDO11	PPV
38	12 May 23	Council revised final day version of DDO11	Council
39	19 May 23	Submissions on Council final day version of DDO11	Aveo
40	25 May 23	Letter – Council to Panel regarding final day version DDO11 comments	Council



## Appendix C Planning context

### C:1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

#### Victorian planning objectives

The Amendment will assist in implementing the following State policy objectives set out in section 4 of the PE Act:

- (a) to provide for the fair, orderly, economic and sustainable use, and development of land;
- (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
- (d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
- (f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);
- (g) to balance the present and future interests of all Victorians.

#### State planning policy

Table 3 includes relevant objectives and strategies in state planning policy.

**Table 3 State planning policy objectives**

Clause	Key relevant purpose, objectives and strategies
Clause 11 (Settlement)	<p>Planning is to recognise the need for, and as far as practicable contribute towards:</p> <ul style="list-style-type: none"> <li>- health, wellbeing and safety</li> <li>- diversity of choice</li> <li>- economic viability</li> <li>- a high standard of environmental sustainability, urban design and amenity</li> </ul> <p>Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns and investment in transport, utility, social, community and commercial infrastructure and services</p>
Clause 11.01-1S (Settlement)	Objective - To facilitate the sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of settlements
Clause 11.01-1R (Settlement – Metropolitan Melbourne)	<p>Strategies:</p> <ul style="list-style-type: none"> <li>- Develop the Suburban Rail Loop through Melbourne's middle suburbs to facilitate substantial growth and change in major employment, health and education precincts and activity centres beyond the central city at an appropriate scale to address the needs of Melbourne's rapidly growing population</li> <li>- Create mixed-use neighbourhoods at varying densities, including through the development of urban-renewal precincts, that offer more choice in housing, create jobs and opportunities for local businesses and deliver better access to services and facilities</li> </ul>
Clause 11.02-1S (Supply of urban land)	Objective - To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses

Clause	Key relevant purpose, objectives and strategies
Clause 15 (Built environment and heritage)	<p>Planning is to recognise the role of urban design, building design, heritage and energy and resource efficiency in delivering liveable and sustainable cities, towns and neighbourhoods</p> <p>Planning should ensure all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context</p> <p>Planning must support the establishment and maintenance of communities by delivering functional, accessible, safe and diverse physical and social environments, through the appropriate location of use and development and through high quality buildings and urban design</p>
Clause 15.01-1S (Urban design)	Objective - To create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity
Clause 15.01-1R (Urban design – Metropolitan Melbourne)	Objective - To create a distinctive and liveable city with quality design and amenity
Clause 15.01-2S (Building design)	Objective - To achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development
Clause 15.01-4S (Healthy neighbourhoods)	Objective - To achieve neighbourhoods that foster healthy and active living and community wellbeing
Clause 15.01-4R (Healthy neighbourhoods – Metropolitan Melbourne)	Strategy - Create a city of 20 minute neighbourhoods, that give people the ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home
Clause 15.01-5S (Neighbourhood Character)	Objective - To recognise, support and protect neighbourhood character, cultural identity, and sense of place
Clause 16.03 (Housing)	<p>Planning should provide for housing diversity, and ensure the efficient provision of supporting infrastructure</p> <p>Planning should ensure the long term sustainability of new housing, including access to services, walkability to activity centres, public transport, schools and open space</p> <p>Planning for housing should include the provision of land for affordable housing</p>

Clause	Key relevant purpose, objectives and strategies
Clause 16.01-1S (Housing supply)	<p>Objective - To facilitate well-located, integrated and diverse housing that meets community needs.</p> <p>Strategies:</p> <ul style="list-style-type: none"> <li>- Increase the proportion of housing in designated locations in established urban areas (including under-utilised urban land) and reduce the share of new dwellings in greenfield, fringe and dispersed development areas.</li> <li>- Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport.</li> <li>- Identify opportunities for increased residential densities to help consolidate urban areas.</li> <li>- Facilitate diverse housing that offers choice and meets changing household needs by widening housing diversity through a mix of housing types.</li> <li>- Encourage the development of well-designed housing that: <ul style="list-style-type: none"> <li>o Provides a high level of internal and external amenity.</li> <li>o Incorporates universal design and adaptable internal dwelling design</li> </ul> </li> </ul>
Clause 16.01-1R (Housing supply - Metropolitan Melbourne)	<p>Strategies:</p> <ul style="list-style-type: none"> <li>- Manage the supply of new housing to meet population growth and create a sustainable city by developing housing and mixed use development opportunities in locations that are ... areas for residential growth ... areas near existing and proposed railway stations that can support transit oriented development.</li> <li>- Identify areas that offer opportunities for more medium and high density housing near employment and transport in Metropolitan Melbourne.</li> <li>- Facilitate increased housing in established areas to create a city of 20 minute neighbourhoods close to existing services, jobs and public transport.</li> <li>- Provide certainty about the scale of growth by prescribing appropriate height and site coverage provisions for different areas.</li> </ul>
Clause 16.01-2S (Housing affordability)	<p>Objective - To deliver more affordable housing closer to jobs, transport and services</p>
Clause 18.01-1S (Land use and transport integration)	<p>Objective - To facilitate access to social, cultural and economic opportunities by effectively integrating land use and transport.</p> <p>Strategies:</p> <ul style="list-style-type: none"> <li>- Plan movement networks and adjoining land uses to minimise disruption to residential communities and their amenity.</li> <li>- Plan the use of land adjacent to the transport system having regard to the current and future development and operation of the transport system.</li> <li>- Support urban development that makes jobs and services more accessible.</li> </ul>

## Local planning policy framework

Table 4 identifies key relevant directions in the local planning policy framework.

**Table 4** Local planning policy framework

Outcome	Key relevant directions
Clause 21.04 (Strategic directions)	<p>Key strategic directions relate to environment, housing, economic development and infrastructure.</p> <p>A Strategic Framework Plan includes land use and development opportunities and areas of significance and environmental constraints on future development</p>
Clause 21.05 (Environment)	<p>Objectives:</p> <ul style="list-style-type: none"> <li>- To protect and enhance tree canopy cover in residential areas</li> <li>- To protect and enhance the preferred neighbourhood character and the liveability of residential areas within the municipality</li> </ul> <p>Strategies:</p> <ul style="list-style-type: none"> <li>- Providing adequate open space and landscaping for new development</li> <li>- Requiring the planting of upper canopy trees and other vegetation that enhances the character of the area</li> <li>- Encouraging development in those areas with adequate infrastructure and excellent public transport links</li> </ul>
Clause 21.06 (Housing)	<p>Overview:</p> <p>The City of Whitehorse is under increased pressure to accommodate more people who are attracted to the area due to its strategic location, high amenity residential areas and quality services and facilities. The community is concerned about maintaining the high quality residential environment and ensuring that areas of environmental, heritage or special character are protected as the City's population grows. The municipality's leafy character is particularly valued, strengthened by the presence of quality canopy trees and other native and exotic vegetation. Trees and vegetation are considered one of the most significant determinants of neighbourhood character in the municipality, and therefore tree preservation and regeneration is of vital importance if the character of residential areas is to be maintained and enhanced.</p> <p>The Council's <i>Housing Strategy 2014</i> identifies areas of substantial, natural and limited growth. Substantial Change areas provide for housing growth with increased densities, including inside designated structure plan boundaries and opportunity areas, in accordance with the relevant plans as well as around most train stations, adjoining tram routes and around larger activity centres.</p> <p>Objectives - Substantial Change Areas:</p> <ul style="list-style-type: none"> <li>- Support increased residential densities.</li> <li>- Support increased housing choice by allowing for a diversity of dwelling types, sizes and tenures to suit a range of household types.</li> <li>- Facilitate achieving a new, preferred character for these areas over time through quality developments.</li> <li>- Support the master planning of larger sites to facilitate the development of diverse, high amenity precincts which have an identifiable sense of place.</li> <li>- Encourage the provision of shop-top dwellings and low scale apartment developments in activity centres, particularly within key Neighbourhood Activity Centres and on sites abutting the Principal Public Transport Network and main roads.</li> <li>- Provide space for planting, communal spaces and rooftop gardens to improve the</li> </ul>

Outcome	Key relevant directions
	<p>amenity and liveability of dwellings.</p> <p>Objectives – Housing Design:</p> <ul style="list-style-type: none"> <li>- To enhance the design quality and character of residential development.</li> <li>- To build resilience in the City’s housing stock to the impacts of climate change.</li> <li>- To improve the environmental performance of new and existing housing.</li> <li>- To protect environmentally sensitive areas from inappropriate development.</li> </ul> <p>To encourage the provision of well designed, adaptable and accessible housing</p>
<p>Clause 22.03 (Residential development)</p>	<p>Applies to land in the Residential Growth Zone.</p> <p>Objectives:</p> <ul style="list-style-type: none"> <li>- To ensure that residential development within the City of Whitehorse is consistent with the built form envisaged for the three categories of housing change, those being limited, natural and substantial change.</li> <li>- To ensure development contributes to the preferred neighbourhood character where specified.</li> <li>- To ensure that new development minimises the loss of trees and vegetation.</li> </ul> <p>Strategies for substantial changes areas include:</p> <ul style="list-style-type: none"> <li>- Ensure buildings interfacing sensitive areas and uses have a scale and massing appropriate to the character and scale of their context.</li> <li>- Create a new, higher density urban character in areas located away from sensitive interfaces.</li> </ul>
<p>Clause 22.04 (Tree conservation)</p>	<p>Objectives:</p> <ul style="list-style-type: none"> <li>- To improve the tree canopy cover in residential areas across the municipality.</li> <li>- To protect and strengthen the preferred neighbourhood character of residential areas within the municipality.</li> <li>- To recognise the positive contribution of tree canopy to development and built form outcomes.</li> </ul> <p>Performance standards are included for tree retention and buildings and works near existing trees.</p>

## C:2 Plan Melbourne

*Plan Melbourne 2017-2050* sets out strategic directions to guide Melbourne’s development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved.

**Table 5** Relevant parts of Plan Melbourne

Outcome	Directions	Policies
2: Melbourne provides housing choice in locations close to jobs and services	2.1 Manage the supply of new housing in the right locations to meet population growth and create a sustainable city	2.1.2 Facilitate an increased percentage of new housing in established areas to create a city of 20- minute neighbourhoods close to existing services, jobs and public transport 2.1.3 Plan for and define expected housing needs across Melbourne's regions 2.1.4 Provide certainty about the scale of growth in the suburbs
	2.2 Deliver more housing closer to jobs and public transport	2.2.3 Support new housing in activity centres and other places that offer good access to jobs, services and public transport
	6: Melbourne is a sustainable and resilient city	6.4 Make Melbourne cooler and greener

## 7.4 Planning provisions

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the Planning Policy Framework.

### i) Zones

The Amendment land is in the RGZ. The purposes of the Zone are:

- To provide housing at increased densities in buildings up to and including four storey buildings.
- To encourage a diversity of housing types in locations offering good access to services and transport including activity centres and town centres.
- To encourage a scale of development that provides a transition between areas of more intensive use and development and other residential areas.
- To ensure residential development achieves design objectives specified in a schedule to this zone.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

### ii) Overlays

The Amendment proposed to introduce the DDO. Its purpose is:

- To identify areas which are affected by specific requirements relating to the design and built form of new development.

The Amendment land is subject to the Significant Landscape Overlay Schedule 9 (Neighbourhood Character Areas). The landscape character objectives sought to be achieved are:

To retain and enhance the canopy tree cover of the Garden and Bush Suburban Neighbourhood Character Areas.

To encourage the retention of established and mature trees.

To provide for the planting of new and replacement canopy trees.

To ensure that development is compatible with the landscape character of the area.

Some of the Amendment land is subject to the Special Building Overlay. Its purposes include:

To identify land in urban areas liable to inundation by overland flows from the urban drainage system as determined by, or in consultation with, the floodplain management authority.

To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.

To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater

### iii) Other provisions

Relevant purposes of particular provisions include:

- Clause 52.06 (Car parking):
  - To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.
  - To support sustainable transport alternatives to the motor car.
  - To promote the efficient use of car parking spaces through the consolidation of car parking facilities.
  - To ensure that car parking does not adversely affect the amenity of the locality.
  - To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.
- Clause 55 (Two or more dwellings on a lot and residential buildings):
  - To achieve residential development that respects the existing neighbourhood character or which contributes to a preferred neighbourhood character.
  - To encourage residential development that provides reasonable standards of amenity for existing and new residents.
  - To encourage residential development that is responsive to the site and the neighbourhood.
- Clause 58 (Apartment developments):
  - To encourage apartment development that provides reasonable standards of amenity for existing and new residents.
  - To encourage apartment development that is responsive to the site and the surrounding area.
- Clause 71.02-3 (Integrated decision making) states:
 

The Planning Policy Framework operates together with the remainder of the scheme to deliver integrated decision making. Planning ... authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

## C:3 Ministerial Directions, Planning Practice Notes and guides

### Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and Mr Buxton's evidence provides a response to *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018. That discussion is not repeated here.

### Planning Practice Notes

PPN59 sets out criteria to test if proposed mandatory provisions are appropriate, with consideration of whether:

- the mandatory provision is strategically supported
- the mandatory provision is appropriate to the majority of proposals
- the mandatory provision provides for the preferred outcome
- the majority of proposals not in accordance with the mandatory provision will be clearly unacceptable
- the mandatory provision reduces administrative costs.

### Practitioner's Guide

*A Practitioner's Guide to Victorian Planning Schemes Version 1.5*, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the VPP in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.



## Appendix D Panel preferred version of the Design and Development Overlay Schedule 11

### Tracked against the exhibited version

#### Tracked Added

#### ~~Tracked Deleted~~

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C220whse-

### SCHEDULE 11 TO CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as **DDO11**.

#### RESIDENTIAL GROWTH CORRIDORS

#### 1.0 Design objectives

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C220whse

To promote mid-rise development in the residential growth corridors to accommodate housing at increased densities and a diversity of housing type.

To ensure development ~~achieves~~ contributes to a high quality public realm ~~and public open space~~ in relation to human scale ~~and micro-climate conditions~~ by providing a ~~comfortable~~, pedestrian-friendly urban environment.

~~To ensure that the height of new buildings provides an acceptable built form interface with adjoining development in other zones.~~

To ensure the height and built form of new buildings provide an acceptable built form interface, amenity outcomes, and transition to adjoining neighbouring lower scale residential areas in the General Residential Zone and the Neighbourhood Residential Zone ~~do not visually dominate the street or compromise the character and amenity of adjacent low rise residential areas.~~

To maintain the visual prominence of landscaping and ensure space for medium and large trees ~~on site, particularly within the front and rear setbacks.~~

To encourage lot consolidation in order to achieve the maximum building heights and to provide for sufficient building setbacks to deliver high levels of internal amenity.

#### 2.0 Buildings and works

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C220whse

A permit is not required to construct a building or construct or carry out works for a development up to and including 3 storeys.

A permit is required to construct a ~~front~~ fence with a street interface.

The following buildings and works requirements apply to an application to construct a building or construct or carry out works:

#### Building height

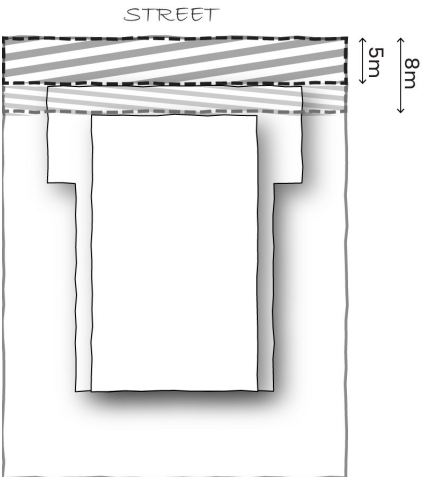
- A building ~~must~~ should not exceed a height of 19 metres and 6 storeys, except where the height of an existing building on the land already exceeds 19 metres, in which case new buildings and works must not exceed the height of the existing building in metres and storeys. ~~A permit cannot be granted to vary this requirement.~~
- Building height excludes rooftop services, such as plant rooms, air conditioning, lift overruns, roof mounted equipment and the like, that cannot be seen from any adjoining public space or are designed as architectural roof top features.

**Building setbacks**

- The setback of a building to a road identified as a street interface ~~Buildings and works must should~~ be in accordance with the front street interface setback specified in the Table 1 to this schedule. ~~A permit cannot be granted to vary this requirement.~~
- The setback of a building to a side or rear interface should be in accordance with the side and rear setbacks specified in Table 2 to this schedule.

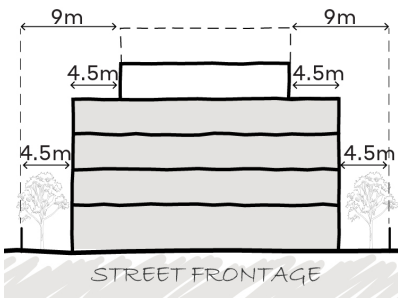
**Table 1 to Schedule 11**

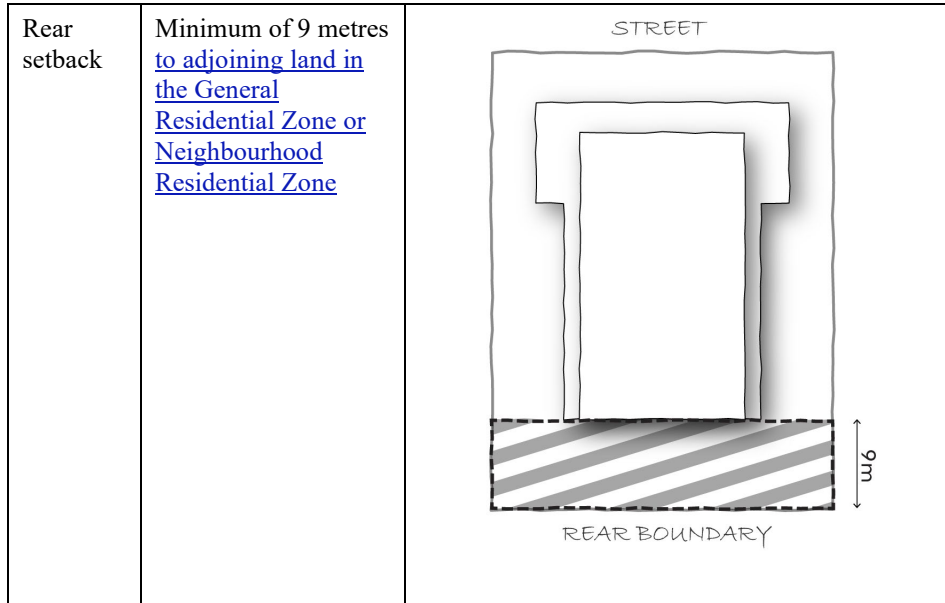
*[Panel note: revise the diagrams in Tables 1 and 2 to remove the 'T' shape, and clarify the setback interface as described in the measure]*

Measure	
<p><del>Front</del> <u>Street interface</u> setback</p>	<p>Minimum 5 metres with an additional <u>minimum</u> 3 metres to levels above 4 storeys</p> 

**Table 2 to Schedule 11**

- ~~Buildings and works must be in accordance with the side and rear setbacks specified in Table 2 to this schedule.~~

Measure	
<p>Side setback</p>	<p>Minimum of 4.5 metres with an additional <u>minimum</u> 4.5 metres to levels above 4 storeys, <u>to adjoining land in the Residential Growth Zone, General Residential Zone or Neighbourhood Residential Zone</u></p> 



**Pedestrian interface**

- Buildings at the ground floor should:
  - Present attractive, pedestrian orientated frontages, which avoid blank walls, car parking areas and wide car park entrances.
  - Avoid service areas and other utility requirements, including fire hydrants and mailboxes, unless they are integrated into a landscaped front setback.
  - Avoid unscreened waste storage areas when viewed from a street.
  - Maximise windows at ground level and avoid high front fences to provide passive surveillance of the street.

**Overshadowing**

- Developments should not result in additional shadowing to adjacent public open space between 12pm and 2pm on 22 September.

**Landscaping**

- ~~▪ Developments should:
 
  - Provide a minimum deep soil area relative to tree height, which is a minimum depth of 800mm (for small trees), 1000mm (for medium trees) and 1200mm (for large trees).
  - Ensure the green character and tree canopy of the area is enhanced with deep soil plantings in the front, side and rear setbacks.~~

**3.0 Subdivision**

~~---/20---  
C220whse~~ pecified. A permit is not required to subdivide land.

**4.0 Signs**

~~---/20---  
C220whse~~ None specified.

**5.0 Application requirements**

~~---/20---  
220whse~~ None specified.

~~The following application requirements apply to an application for a permit under Clause 43.02, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:~~

- ~~▪ A wind tunnel assessment prepared by a suitably qualified person that:
 
  - ~~○ Models the wind effects of the proposed development and its surrounding buildings.~~
  - ~~○ Demonstrates the proposed development will not cause unsafe wind conditions.~~
  - ~~○ Explains the effect of the proposed development on the wind conditions in publicly accessible areas.~~
  - ~~○ Shows the development will allow for comfortable sitting in any public open space, standing in any pedestrian entrance and walking in any pedestrian walkway.~~~~

## 6.0 Decision guidelines

~~—/—/20—  
C220whse~~

The following decision guidelines apply to an application for a permit under Clause 43.02, in addition to those specified in Clause 43.02 and elsewhere in the scheme, which must be considered, as appropriate, by the responsible authority:

- Whether the development provides an appropriate transition from the residential growth corridor and any adjoining commercial area to lower scale residential areas in the General Residential Zone and the Neighbourhood Residential Zone ~~an adjoining residential zone~~ or public open space.
- Whether the development ~~maintains~~ achieves a mid-rise scale to accommodate housing at increased densities and a diversity of housing type that enhances the sense of openness, maintains access to expansive sky views along the corridor ~~and allows maximum solar access to low rise residential development in the adjoining and adjacent areas.~~
- Whether a proposal that exceeds the preferred maximum building height:
  - Minimises amenity impacts, including wind effects and overshadowing
  - Responds appropriately to the scale of development in the surrounding area
  - Achieves design excellence
  - Exceeds landscaping requirements.
- ~~▪ Whether the development provides for adequate sun penetration at street level and mitigates wind down draughts through upper level setbacks.~~
- Whether the development achieves an acceptable built form interface with the public realm, so as not to dominate the streetscape or appear as a continuous wall at street level or nearby vantage points if adjoining and/or nearby sites are developed in a similar manner.
- Whether the development allows for deep soil planting and landscaping within the front, side and rear setbacks.
- ~~▪ Whether the development achieves high architectural quality.~~
- ~~▪ Whether the development provides adequate sunlight, daylight and privacy, and outlook from habitable rooms, for both existing and proposed developments.~~
- Whether any additional overshadowing of adjacent public open space will:
  - Reduce the extent to which sunlight will be available between 12 pm and 2 pm on 22 September, including the cumulative impacts if adjacent land is developed in accordance with the planning scheme.
  - Have an adverse impact on the landscaping, including plants, trees and lawn or turf surfaces in the public open space.
  - Compromise the existing and future use, quality and amenity of the public open space.