

Planning Delegated Committee Meeting

Agenda

11 August 2021 at 6:30pm

Virtual Meeting



PUBLIC SUBMISSIONS

- Due to COVID-19 restrictions around public gatherings the following has been put in place.
- Public representations may be made on any items listed on the agenda in a Planning Delegated Committee Meeting apart from those listed in the confidential section.
- To ensure the public can still participate, submissions must be emailed to governance@ballarat.vic.gov.au by no later than 4.30pm on the day of Planning Delegated Committee; and limited to no more than 200 words that will be read out by the Chief Executive Officer or nominated delegate at the virtual meeting prior to the matter being considered.
- If you would like to make your submission personally at the Virtual Council Meeting, please contact governance@ballarat.vic.gov.au to arrange this.

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1. WELCOME TO COUNTRY



The City of Ballarat acknowledges the Traditional Custodians of the land we live and work on, the Wadawurrung and Dja Dja Wurrung People, and recognises their continuing connection to the land and waterways. We pay our respects to their Elders past, present and emerging and extend this to all Aboriginal and Torres Strait Islander People.

2. APOLOGIES FOR ABSENCE

3. DECLARATION OF CONFLICT OF INTERESTS

4. CONFIRMATION OF MINUTES

5. OFFICER BRIEFING

6. PLANNING DELEGATED COMMITTEE REPORTS

6.1. C220BALL - DOWLING FOREST

Division: Development and Growth
Director: Natalie Robertson
Author/Position: Terry Natt – Manager Strategic Planning

PURPOSE

1. To present Council with further advice, options and recommendations relating to Amendment C220ball to the Ballarat Planning Scheme (Dowling Forest Equine Planning Controls Review).

BACKGROUND

2. Amendment C220ball was prepared to implement the recommendations of the Dowling Forest Equine Planning Controls Review.
3. Among other matters, it proposes to:
 - Rezone 26 properties from the Special Use Zone – Schedule 13 (SUZ13) to the Special Use Zone – Schedule 19 (SUZ19);
 - Rezone 14 properties from Farming Zone – Schedule Area B (FZB) to Special Use Zone 17 (SUZ17);
 - Rezone 27 properties from Farming Zone – Schedule Area A (FZA) to Special Use Zone 18 (SUZ18)
 - Rezone 6 properties from Farming Zone (FZ) to SUZ13 on Midas Road that adjoin the Dowling Forest Racecourse;
 - Rezone 103 Branchline Court, Miners Rest, from FZA to SUZ13
4. Amendment C220ball was publicly exhibited in June and July 2020. At its meeting on 24 February 2021, Council resolved to note the submissions received and to proceed with a Planning Panel.

KEY MATTERS

5. Council officers are currently preparing for the Planning Panel process and have sought and received an independent peer review of the proposed controls. As part of the peer review process, it is emerging that this Amendment is unlikely to receive Ministerial support based on lack of strategic justification and should not proceed to panel in its current form.
6. An independent peer review of the controls has concluded that the proposed controls are inconsistent with the Panel's findings in respect of the previous Amendment C149. The Panel in Amendment C149 supported restrictive controls to achieve land use outcomes that were focused on supporting thoroughbred horse training not rural living. In short, it sought to avoid the area becoming a de facto rural living area.
7. The planning controls proposed by Amendment C220 will facilitate the use and development of much of the area for rural living purposes contrary to the intent of the C149 Panel. The amendment can be properly characterized as seeking a rural residential outcome.
8. Although it is acknowledged that planning policy can change over time, should Amendment C220 seek to facilitate a rural living outcome contrary to the previous intent of Amendment C149, further strategic justification must be undertaken to progress the amendment.
9. If Council seek to pursue a rural living outcome for this area in the future, it is recommended that strategic planning work be undertaken in accordance with Planning Practice Note 37, relating to the Rural Residential Development. Among other matters, it requires a strategic assessment that answers the following questions in sequence:
 - **Strategy:** Does rural residential development align with the overall strategic planning of the municipality?
 - **Housing need:** How much rural residential development is required to provide appropriate housing diversity and choice to meet housing need?
 - **Location:** Where should new rural residential development take place?
 - **Subdivision and design:** Is the new rural residential development subdivided and designed in an attractive setting offering high amenity and efficient infrastructure?
10. The above questions would most effectively be addressed through the preparation of an update to the Ballarat Rural Land Use Strategy that considers strategy for the future development and use of the properties affected by the Amendment in the context of the broader rural land use and settlement issues within the Municipality.
11. This assessment would need to counter the findings of the C149 Panel that there is sufficient supply of rural living land. It would also need to demonstrate that the area is appropriately located to accommodate rural residential development to advance the overall strategic planning ambitions for the municipality.
12. In the absence of such an assessment, it is advised that the Amendment cannot be strategically justified.
13. As noted above, it is likely that the Panel will find that there is not sufficient strategic justification and recommend Council to either abandon or redraft and re-exhibit the amendment.

14. If the Planning Delegated Committee is minded to support the recommendation contained herein, Council officers will be required to contact Panels Victoria to inform them of the abandonment of this amendment prior to the 14th August.

OFFICER RECOMMENDATION

15. That the Planning Delegated Committee:

- 15.1 Resolves to abandon the current Amendment C220ball and commence a new Planning Scheme Amendment once the appropriate strategic justification has been prepared. This option will allow Council officers to undertake the appropriate strategic work and to further engage with the community to achieve improved planning outcomes.**

ATTACHMENTS

1. Governance Review [6.1.1 - 2 pages]
2. Marco Negri's advice(40754.1) [6.1.2 - 5 pages]

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ALIGNMENT WITH COUNCIL VISION, COUNCIL PLAN, STRATEGIES AND POLICIES

1. The abandonment of Planning scheme amendment C220ball is supported by City Ballarat Council Plan that seeks strategic alignment, community engagement and efficient use of council resources to deliver improved outcomes.

COMMUNITY IMPACT

2. In correspondence, the SUZ13 Action Group Members have confirmed they wish to abandon the Panel process and work directly with Council and DELWP in good faith to resolve issues relating to this area.

CLIMATE EMERGENCY AND ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

3. The recommendation has no impact on either consideration.

ECONOMIC SUSTAINABILITY IMPLICATIONS

4. By removing the restrictive Special Use Zone - Schedule 13 from properties within the area, landowners will be able to use and develop their properties for a range of purposes consistent with the creation of a more general equine area. This will increase the economic sustainability of the area.

FINANCIAL IMPLICATIONS

5. The recommendation of abandonment of this amendment will ensure Council does not undertake a fruitless and costly panel process. The cost of strategic analysis to underpin any future planning scheme amendment to this area will be required.

LEGAL AND RISK IMPLICATIONS

6. As noted in the report and attachment, legal advice has been received that recommends abandonment of this amendment as it is not considered to be defensible at a Planning Panel.

HUMAN RIGHTS CONSIDERATIONS

7. There are no implications on human rights resulting from the abandonment of this amendment.

COMMUNITY CONSULTATION AND ENGAGEMENT

8. Three stages of consultation were undertaken to inform the review commencing in 2019. This included stakeholder and community sessions, and release of an issues and options paper. Amendment C220ball was formally exhibited between 16 November 2020 and 21 December 2020. 5 submissions were received (see Attachment 5 – Consideration of submissions for further discussion). 4 submissions were unresolved and a Planning Panel organised for submitters to have their say through a formal planning process
9. Further direct engagement with submitters has occurred through the Panel preparation period.

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10. Further engagement will be required with key stakeholders through a future strategic planning process to provide considered and defensible strategic merit for any changes.

CONFLICTS OF INTEREST THAT HAVE ARISEN IN THE PREPARATION OF THIS REPORT

11. No Council Officer who has provided advice in relation to this report have a conflict of interest regarding this matter.

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Memorandum

To: Mimi Marcus
Marcus Lane Group

CC.:

From: Marco Negri

Date: 12 April 2021

Subject: Amendment C220ball to the Ballarat Planning Scheme

Thank you for requesting our peer review of Amendment C220ball to the Ballarat Planning Scheme.

The amendment implements the 'Dowling Forest Equine Precinct Planning Controls Review – Final Report' (October 2020). The Explanatory Report indicates that the Amendment applies to:

...the Dowling Forest Racecourse and surrounding private land bound by Gillies Road, Sharpes Road, Garlands Road and Ballarat-Maryborough Road.

The Dowling Forest Racecourse is of significance and is said to be one of Victoria's premier thoroughbred racing and training facilities.

The significance of the facility was sought to be supported by planning controls in the first VPP Format Ballarat Planning Scheme that provided opportunity for smaller lot sizes on some neighbouring land in the Farming Zone (4ha & 10ha) subject to the land being used for the purpose of horse stables.

These planning controls were reviewed as part of the Dowling Forest Precinct Master Plan 2011 and were found to be ineffective and had promoted rural living outcomes.

In response, Amendment C149 was prepared to introduce controls to advance strategy related to the significant thoroughbred training industry based at the Dowling Forest Racecourse.

Among other matters Amendment C149 proposed to:

- Rezone the Dowling Forest Racecourse and Reserve to the Special Use Zone 7 (SUZ7).
- Rezone land immediately south, east and west of the Dowling Forest Racecourse to SUZ13.
- Restrict the subdivision of land and the construction of dwellings within the SUZ13 unless land is used for thoroughbred horse training and horse stables, and dwellings are in accordance with this use and occupied by a licensed horse trainer.
- Rezone land in the northern and outer portions of the Precinct to FZA and FZB. The schedule to the zone allowed land used for thoroughbred horse training to be subdivided into lots of 4 hectares (FZA) and 10 hectares (FZB) respectively. It also allowed for a lot with an area of 4 hectares (FZA) and 10 hectares (FZB) respectively to be used for the purpose of a dwelling without a permit provided the land is used for thoroughbred horse training.

The Panel Report in relation to Amendment C149 observed that:

Amendment C149 proposes to vary the planning controls applied to land around the Ballarat (Dowling Forest) Racecourse ("the Racecourse"). Existing controls allow land around the Racecourse to be subdivided to 4 or 10ha and allow dwellings as-of-right if the land is used for



horse stables. The Council has found that the controls and policy have not achieved their intended outcome. That is because too many dwellings are being used for rural living with little or no association with horses and because some land is being used for racing codes that are not preferred in this location (eg harness racing) rather than for thoroughbred horses.

It found that the Amendment had strategic justification given the substantial racecourse infrastructure. It supported the view that restrictive controls were warranted and that all dwellings should require a permit in the proposed Special Use Zone Schedule 13. It considered that there should be some further flexibility to respond to land use and development scenarios that foster thoroughbred horse training.

The Panel was adamant that the amendment was not *about freeing up this land for rural living lots* (p. 56). Rather, the aim was for the area to be set aside for a special purpose – thoroughbred horse training. The Panel indicated that it:

...has been persuaded that there is a legitimate role for a restrictive approach, in principle, to achieve the desired planning outcome and to avoid a defacto rural living area.

It found that:

The starting point for the Panel's consideration is that the land involved in this Amendment is currently zoned Farming with a focus on achieving a relationship with horse racing. It is not land that is intended or proposed for rural living purposes and the role of this Amendment is not to achieve a rural living outcome. Rather, the focus is on changing the current planning control regime to achieve a particular planning outcome for which there is sound strategic justification. (p55)

This finding was made in the context of the Panels deliberation on Amendment C148 (implementing the Ballarat Rural Land Use Strategy) where it observed that:

...The Strategy concludes that there is a sufficient supply of land zoned for rural living purposes within the municipality and immediately adjacent to it in abutting Shires to meet demand over at least 15 years...(p.1)

The Panel concluded that:

... the Strategy's calculations are an appropriate basis for the decision not to add further land to the Rural Living Zone at this time. The Panel has found that on the best available information there is an ample existing supply of land that is zoned Rural Living to service demand for at least 15 years within the City of Ballarat. That is supplemented by an expansive area of Rural Living Zone immediately abutting the Shire, within Golden Plains, that is readily proximate to Ballarat. Practice Note 37 provides a basis for concluding that the strategic work by the Council is fundamentally sound as is the proposed Amendment in this respect. No objective evidence was provided to the Panel to refute the Council's conclusions. The Panel has not supported any of the requests for rezoning that have been made through submissions.

Amendment C149 was gazetted on 8 December 2012 and introduced the current planning controls.

The Executive Summary to the 'Dowling Forest Equine Precinct Planning Controls Review – Final Report' (October 2020) (**the Review**) indicates that:

Since the introduction of the current planning controls to land surrounding the Racecourse, development of training facilities by trainers has almost exclusively occurred on the Racecourse, as opposed to the land previously zoned to facilitate training facilities. This has left many of the



surrounding landowners questioning why the contents of the controls are so restrictive and also so exclusive of other types of equine activities. The controls have not facilitated an uptake of land for thoroughbred training purposes as the restrictiveness of the provisions is not attractive or viable for trainers looking to establish a new facility. Many landowners have expressed concerns about these planning controls and the associated inability to develop or sell their properties (p2).

Amendment C220ball was prepared to implement the recommendations of the Review. Among other matters it proposed to:

1. Rezone 26 properties from Special Use Zone – Schedule 13 (SUZ13) to Special Use Zone - Schedule 19 (SUZ19);
2. Rezone 14 properties from Farming Zone – Schedule Area B (FZB) to Special Use Zone 17 (SUZ17);
3. Rezone 27 properties from Farming Zone – Schedule Area A (FZA) to Special Use Zone 18 (SUZ18);
4. Rezone 6 properties from Farming Zone (FZ) to SUZ13 on Midas Road that adjoin the Dowling Forest Racecourse;
5. Rezone 103 Branchline Court, Miners Rest, from FZA to SUZ13.

The proposed zone modifications are depicted in Figure 1.

The proposed controls are inconsistent with the Panel's findings in respect of Amendment C149. The Panel in Amendment C149 supported restrictive controls to achieve land use outcomes that were focused on supporting thoroughbred horse training not rural living. It sought to avoid the area become a de facto rural living area.

The planning controls proposed by Amendment C220ball will facilitate the use and development of much of the area for rural living purposes contrary to the intent of the Panel.

In this regard:

- The use of land for the purpose of a single dwelling will not require a permit in the Special Use Zone – Schedule 17. The minimum lot size for land affected by this schedule will be 10ha.
- The use of land for the purpose of a single dwelling will not require a permit in the Special Use Zone – Schedule 18. The minimum lot size for land affected by this schedule will be 4ha.
- The use of land for the purpose of a single dwelling will not require a permit in the Special Use Zone – Schedule 19. The minimum lot size for land affected by this schedule will be 2ha.

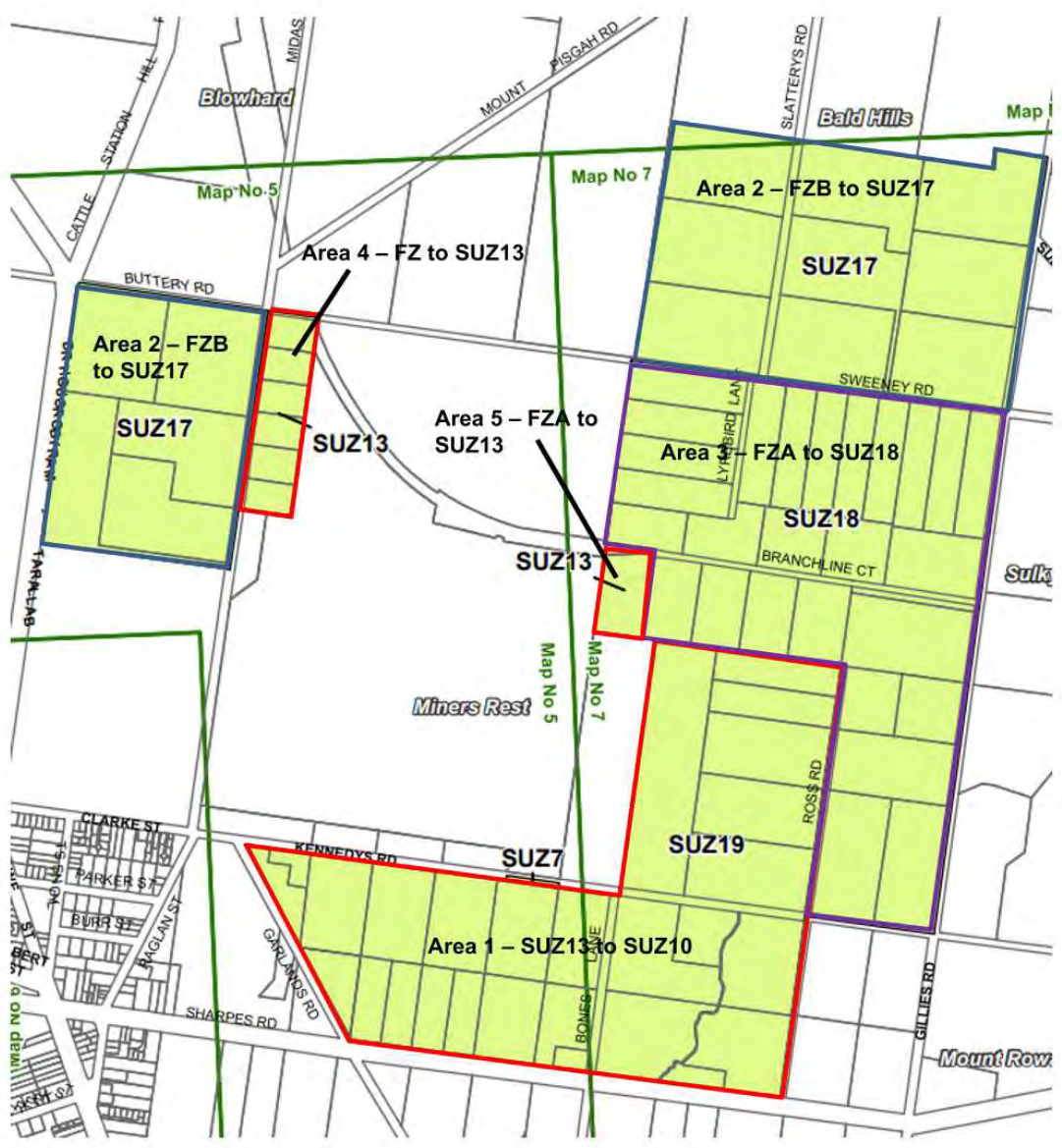
The amendment can be properly characterised as seeking a rural residential outcome.

Planning Practice Note 37 relates to Rural Residential Development. Among other matters it requires a strategic assessment that answers the following questions in sequence:

- **Strategy:** Does rural residential development align with the overall strategic planning of the municipality?
- **Housing need:** How much rural residential development is required to provide appropriate housing diversity and choice to meet housing needs?
- **Location:** Where should new rural residential development take place?
- **Subdivision and design:** Is the new rural residential development subdivided and designed in an attractive setting offering high amenity and efficient infrastructure?



Figure 1 Amendment C220ball Zoning Plan





The Panel in Amendment C148 and C149 considered the framework set out in Practice Note 37 and concluded that there is a sufficient supply of land zoned for rural living purposes within the municipality.

In the event that the Planning Authority intends to pursue Amendment C220ball in its current form, it should carry out the strategic assessment required to Practice Note 37.

This should involve the preparation of an update to the Ballarat Rural Land Use Strategy that considers strategy for the future development and use of the properties affected by the Amendment in the context of broader rural land use and settlement issues within the Municipality.

This assessment would need to counter the findings of the Panel that there is a sufficient supply of rural living land.

It would also need to demonstrate that the area is appropriately located to accommodate rural residential development to advance the overall strategic planning ambitions for the municipality.

Absent such an assessment, the Amendment is not strategically justified.

We are unable to provide evidence in support of the Amendment.

We trust that this preliminary commentary is of assistance.

6.2. 1415-1425 STURT STREET NEWINGTON, 2-24 AJAX STREET NEWINGTON, 15-23 AJAX STREET NEWINGTON AND 1 MURRAY STREET NEWINGTON

Division: Development and Growth
Director: Natalie Robertson

PURPOSE

1. The purpose of this report is to determine whether Council provides a written response consisting of a statement of objection/ no objection to the application to expand Clarendon College.

BACKGROUND

2. In December 2019 Amendment VC180 changed the Ballarat Planning Scheme to introduce fast tracked assessment pathways for non-government schools. The Amendment designated the Minister for Planning as the Responsible Authority for the *construction of buildings and works at an existing non-government school with an estimated cost of development of \$3 million or greater.*
3. The Minister has given notice of the application to Council in accordance with Section 52(1)(b) of the *Planning and Environment Act 1987*. The Department of Environment Land Water and Planning (DELWP) will determine whether additional notice is required.
4. At the time of writing, public notification of the application had not been undertaken.

DATE RECEIVED	20/4/2021
PROPERTY ADDRESS	1415 – 1425 Sturt Street, Newington 2-24 Ajax Street, Newington 15-23 Ajax Street, Newington 1 Murray Street, Newington
APPLICANT	Kaufmann Property Consultants Pty. Ltd.
ZONE	General Residential Zone – Schedule 1 Special Use Zone – Schedule 5
OVERLAY/S	Design and Development Overlay – Schedule 11 Design and Development Overlay – Schedule 20 Heritage Overlay – Schedule 164 Vegetation Protection Overlay – Schedule 2
PERMIT TRIGGERS	37.01-4 – Buildings and works in SUZ 32.08-2 – Use of land in General Residential Zone 32.08-9 – Buildings and works associated with Section 2 use 43.01-1 – Buildings and works, including demolition and roadworks in a Heritage Overlay 43.02-2 – Buildings and works in Design and Development Overlay 42.02-2 – Vegetation removal in Vegetation Protection Overlay
CURRENT USE/ DEVELOPMENT	School and dwellings
CULTURAL HERITAGE MANAGEMENT PLAN	Not required

SUBMISSIONS	DELWP will carry out public notification. To date no public notice of the application has been undertaken.
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Proposal

5. This is an application to redevelop the site as follows:

- Formalisation of parking along Sturt Street, including creation of a drop off zone and planting of new trees;
- Changes to the Sturt Street interface;
- Introduction of new sporting facilities, including basketball courts and a new Health and Physical Education centre on land which is currently developed with dwellings. Works include the demolition of dwellings at 17 Ajax Street, 23 Ajax Street and 1 Murray Street along with the partial demolition of dwellings at 15 Ajax Street;
- Expansion of Science Centre;
- Expansion of Senior Centre;
- Relocation of existing dwelling at 19 Ajax Street to 17 Ajax Street. The dwellings will then form part of the Health and Physical Education Centre;
- Relocation of dwelling at 21 Ajax Street to 10 Ajax Street.

6. The plan below provides an overview of the works proposed.



Figure 1 – Project overview. Source: Application documents



Figure 2 – Dwelling demolition and relocation plan. Source: Application documents.

7. In addition to the above, the application also seeks to address some of the traffic management issues experienced in and around the College, including along Wanliss Road and Junction Road as well as within the internal car park accessed via Wanliss Road.
8. These works include:
 - A staff car parking area on site which contains 53 spaces. The current car park contains 18 spaces only;
 - The provision of a new roundabout at the intersection of Wanliss Road and Junction Street;
 - The provision of a safety barrier along Wanliss Road; and
 - New footpaths along Junction Street and Wanliss Road.

Subject site and locality

9. The subject site is shown in the image below. The site includes the existing Clarendon College buildings and grounds, along with a number of dwellings on Ajax Street and Murray Street.
10. St Patrick's College is located to the west of Wanliss Road, while the remainder of interfaces are residential. Sturt Street is an arterial road, with service lane.



Figure 2 – Aerial image, site is highlighted in red

Permit/ site history

11. PLP/2011/381

Council refused this application with concerns around loss of heritage buildings, impact on character and car parking.

In August 2012 VCAT issued a Planning Permit for the use and development of a primary school, secondary school, demolition of dwellings, fencing and outbuildings at 18, 20, 22 and 24 Ajax Street and buildings and works associated with a new science building.

12. Amendment C207 and PLP/2017/444

An application in accordance with Section 96A of the *Planning and Environment Act 1987* (known as Amendment C207 and PLP/2017/444) was later lodged requesting the application of a Special Use Zone (SUZ) to the entire school campus. Amendment C207 sought to facilitate the use and development of the campus for educational use under a new schedule to the zone (No. 17). SUZ17 was intended to enable permit approvals in accordance with the Ballarat Clarendon College Sturt Street Campus Master Plan 2017-2030.

Planning Permit PLP/2017/444 sought permission to demolish three dwellings, tennis courts and an existing school building, relocate a dwelling and modifications to two other dwellings and their conversion into school buildings, development of a sports field, associated buildings and works, including fences, road works and car parks and the removal of a pedestrian easement.

Following an exhibition process in March 2019, a total of 29 submissions were received. At the Council meeting of 3 July 2019, Council resolved to abandon the amendment.

Public notification

Public notification will be undertaken by DELWP.

Referrals

The following internal referrals have been carried out:

Department	Advice
Engineering	Standard conditions should be applied
Officer comment	Noted

Department	Advice
Heritage	<ul style="list-style-type: none"> • Previous development has seen the demolition of a range of similar contributory residential dwellings located towards the north-west corner of Ajax Street (numbers 18-24) in order to construct a substantial school building. The current proposal seeks to demolish the dwellings on the opposite side of Ajax Street toward the south-west corner, being numbers 15-23, which will result in the loss of (or relocation and subsequent removal of context and value) of almost 1/3 of the dwellings in Ajax Street. • All of the buildings proposed for demolition are identified as being of Significance to HO164 for the contribution they make to the aesthetic and historical significance of the West Ballarat Precinct overall. • The proposal will result in a substantial and unacceptable degree of change to the western end of Ajax Street through the loss of another tranche of contributory dwellings and relocation of contributory dwellings (which once removed from their context will lose part of their significance and meaning). The large 'hole' which is created, comprised of non-contributory elements (in numbers 18-24 and 15-23 Ajax Street plus adjacent non-contributory elements located on the Clarendon College land) will weaken the integrity of the precinct overall and lead to an aesthetic and historic fragmentation in this key location. • There is likely to be significant disturbance and damage to the bluestone guttering which runs down both sides of Ajax Street. This is also identified as a significant element of the precinct. • The proposal is likely to have an adverse impact on the significance and character of the heritage precinct through the construction of playing fields and outdoor spaces which have no contextual, aesthetic or historic relationship to the single storey residential character of Ajax Street. • Local policy does not support the demolition or relocation of contributory elements. The extent of demolition proposed is substantial in the context of this portion of the

	<p>precinct, but also contributes to a cumulative effect which is likely to result in higher numbers of development applications seeking to demolish contributory dwellings within this and other heritage precincts. This, in turn, would result in an overall erosion of the integrity of heritage fabric and heritage precincts within Ballarat.</p> <ul style="list-style-type: none"> • The school is clearly outgrowing its facilities and as enrolments continue further development pressure is likely to be placed on the surrounding residential streetscapes. Both the Peer Review and the HIS discuss 'acceptable levels of change' and a 'balance' between conserving heritage and allowing the school to expand. The concepts set out in these documents are agreed with, but the measures which are identified are, in my opinion, unacceptable. The proposal represents an over-development of the school grounds and interference into the significant residential heritage precinct which surrounds the campus. There must be a limit to the extent to which the Minister will accept that further demolition of existing, tested heritage precincts is not acceptable for the creation of new recreational facilities for a school. Perhaps it is appropriate to consider whether the school campus is fit for purpose now and in the future and whether alternate options should be considered rather than redevelopment of residential streetscapes surrounding the school.
<p>Officer comment</p>	
<p>Traffic and Transport</p>	<p>Supported in principle pending review of detailed plans</p>
<p>Vegetation</p>	<ul style="list-style-type: none"> • Canopy Loss = Rough estimate of approximately 1,165sqm of canopy loss due to proposed tree removals (mainly as a result of the proposed construction of new netball courts); • Council previously proposed planting 26 trees along the Sturt Street service road and splitter island. Arborist report suggests 14 new trees only; • The Structural Root Zone (SRZ) needs to be measured and shown on plan for retained trees. Tree Data Table missing SRZ information. • Clarify if Tree #20 will be retained or removed (Tree Data shows retain. Tree location map identifies remove); • Clarify if Tree #22 will be retained or removed. Unclear as to its retention possibilities (Tree data Table 1 says remove. Tree location map shows tree being retained); • Explore possible retention of Tree #22. Establish SRZ for Tree 22 and supply encroachment measurement into TPZ. This will drive the retention possibilities and construction design; • Clarify if Tree #9 will be retained or removed (Tree Data shows retain. Architectural plans show it removed); • Clarify if Tree #8 will be retained or removed. Tree location map shows retain. Tree data shows remove;

	<ul style="list-style-type: none"> • Clarify if Tree #13 will be retained or removed. Paragraph 5.17 says retain, tree data shows remove. Paragraph 5.27 says remove also; • Explore tree planting opportunities in Wanliss Street both sides. <i>Pyrus calleryana</i> 'Chanticleer' nominated. Select different species due to relatively short life span/poor structure; • All new trees to be planted as per City of Ballarat's adopted tree pit design, including protection bollards. Standards can be supplied; • Concerns exist with regard to the proximity of existing mature street trees along Sturt Street to parking bays. The 600mm clearance identified in the submitted Arborist report is too small. This may limit the number of parking bays possible. As a guide, minimum distances from the trees should be approximately based on the Structural Root Zone (SRZ).
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Officer Direct or Indirect Interest

No officer involved in the preparation of this report has declared a conflict of interest.

Planning Policy Framework

The following policies are relevant to the consideration of this application:

-
- 11.01-1S– Settlement
- 11.01-1R – Settlement – Central Highlands
- 15.01-1S – Urban design
- 15.01-2S – Building design
- 15.03-1S – Heritage conservation
- 15.01-5S – Neighbourhood character
- 17.01-1S – Diversified economy
- 19.02-2S – Education facilities
- 21.06-1 – Urban design
- 21.06-2 – Heritage
- 21.07-1 – Economic growth
- 21.07-2 – Regionally significant precincts
- 22.01 – Non residential uses in residential areas
- 22.05 – Heritage conservation and heritage precincts.
- 71.02-3 – Integrated decision making

Zoning

The site is included in two zones:

- General Residential Zone – Schedule 1;
- Special Use Zone – Schedule 5.

Overlays

The following overlays apply to the land:

- Design and Development Overlay – Schedule 11;
- Design and Development Overlay – Schedule 20;
- Heritage Overlay – Schedule 164;

- Vegetation Protection Overlay – Schedule 2.

Relevant Particular Provisions

Clause 52.06 – Car parking

The application results in 35 additional car parking spaces being provided on site.

KEY MATTERS

13. Policy support

Clarendon College is one of Ballarat's pre-eminent schools and is noted as regularly achieving the best VCE results in Victoria, demonstrating the important role it plays in educating young adults to a high standard.

The school has a long history on this site having first open in 1912. The campus has evolved over many years, with new facilities being added and facilities upgraded and it has expanded into adjacent residential sites addressing Sturt Street, Ajax Street and Murray Street.

The school sits within the Sturt Street Regional Education Precinct, although the Planning Scheme notes that Ballarat as a whole is a Key Regional Centre for Education and Schooling Excellence. The strategic direction of the Precinct is to:

Facilitate the ongoing expansion of high-quality education services for Ballarat and Western Victoria through being responsive to the individual needs and aspirations of schools and tertiary institutions.

The Planning Scheme at Clause 21.07-1 (Economic Growth) also recognises that service industries, including those in the education sector, have experienced strong growth over the last decade such that it seeks to:

- *Plan for growth within regionally significant precincts;*
- *Encourage the colocation of business, education and research in close proximity to the CBD to strengthen Ballarat's competitive and innovative capacity and its role in Western Victoria as a centre of knowledge, innovation and research.*

These policy directions reflect state planning policy at Clause 19.02-2 (Education facilities) which seeks to:

- *Facilitate the establishment and expansion of primary and secondary education facilities to meet the existing and future education needs of communities. Recognise that primary and secondary education facilities are different to dwellings in their purpose and function and can have different built form (including height, scale and mass).*
- *Locate secondary school and tertiary education facilities in designated education precincts and areas that are highly accessible to public transport.*

It is clear that there is strong policy support at state and local level for the expansion of Clarendon College.

The buildings and works which are being undertaken within the existing school site are supported and result in an improved usage of the campus along with an improved presentation of the site when viewed from its key public interface – Sturt Street.

14. Greening Ballarat

There are opportunities to achieve additional street tree planting to assist with Council's Greening Ballarat objectives as outlined in the Urban Forest Action Plan, March 2019. It will be critical to ensure that the new formalised parking and drop off zones along Sturt Street do not compromise the existing street trees which contribute to the character of the area.

15. Residential amenity

The application seeks to increase the footprint of the school, and expand to the southern side of Ajax Street. The southern expansion comprises outdoor sport courts and a dedicated health centre. The use of the health centre is not considered to result in adverse amenity impacts as its operation will be limited to internal use only, and the nature of the use will not result in external noise generation. With respect to the sport courts, as lights are not proposed, the operation of the courts will be limited to daylight hours. The applicant has also advised that the courts will not be used for competition, rather class-room based physical education activity. Furthermore, an acoustically responsive treatment has already been implemented on the common boundary fencing with 13 Ajax Street, in addition to a generous landscaped treatment.

Due to the limited use of the courts, the physical separation proposed (through landscaped setbacks or laneways) and the acoustic attenuation measures already in place, it is considered the use of the sport courts will not result in unacceptable amenity impacts to surrounding residents.

16. Heritage

As noted, VCAT has previously permitted the demolition of four dwellings in Ajax Street to provide for the expansion of the school.

Ultimately, VCAT determined that net community benefit was achieved and as such a permit could be issued. VCAT held that the demolition of two heritage dwellings to make way for tennis courts and a car park did not generate net community benefits.

In allowing the demolition of the dwellings on Ajax Street, VCAT noted at Paragraph 22:

Important to our decision is that the contributory dwellings on the south side of Ajax Street will be undisturbed and the majority of the north side will, as put by Mr. Raworth, continue to read as a valuable portion of the heritage overlay precinct, noting that he reached this view when contemplating demolition of six dwellings compared to the four we are allowing.

The school now seeks to demolish or relocate the dwellings on the southern side of the street, the retention of which were detailed by VCAT as being an important factor in approving the demolition of dwellings on the northern side.

In assessing the application before Council it is important to consider the VCAT findings and weigh them against the competing considerations including net community benefit which is considered further in this report.

The application proposes buildings and works to facilitate the campus expansion that are considered to deliver both gains and losses when considering heritage matters. Council's heritage advisor does not support the proposed demolition and relocation of dwellings along Ajax Street due to the perceived 'interference into the significant residential heritage precinct which surrounds the school' and as it is considered 'the development represents an

overdevelopment of...the school grounds themselves.' However, it is important that the purpose of the works along Ajax Street are recognised as part of the decision-making process, and that the works are not considered in isolation from the associated heritage improvements being delivered by the proposal. For reasons that follow, it is considered the proposed expansion delivers greater heritage and community benefits than losses, and as such will deliver an acceptable planning outcome from a heritage perspective.

The proposal seeks the demolition of three contributory heritage dwellings and the relocation of two contributory heritage dwellings to other sites along Ajax Street. These works will allow for the creation of a health and physical education centre within retained contributory heritage dwellings (with minor works proposed to combine the two dwellings) and the creation of an open sports ground containing cricket nets and playing fields. The proposal also seeks to demolish the existing chapel, tennis courts and caretakers dwelling within the Sturt Street frontage of the campus, predominantly replacing these areas with open landscaping.

With respect to the West Ballarat Precinct (HO164), the 'Ballarat Heritage Precincts – Statement of Significance (2006)' states that the historical presence of collections of denominational school buildings on substantial campuses is a key component of the significance of the precinct, with Ballarat and Clarendon College specifically identified as one of such campuses. The primary campus buildings of Ballarat and Clarendon College facing Sturt Street are also classified by the Victorian National Trust as having 'State significance.' The tree-lined, boulevard character of Sturt Street containing 'extensive areas of grassed and landscaped public and private open space' is also specifically identified as a key contributor to the 'creation of a stately provincial City with magnificent wide thoroughfares, tree-lined avenues, parks, gardens and substantial educational institutions.' The residential precincts are also identified as having local historic, aesthetic and architectural significance to the Precinct, as dwellings 'consist of a wide variety of substantially intact residential buildings of outstanding architectural quality that are associated with Victorian, Federation and Inter-War eras', and serve as examples of interwar prosperity.

It is clear there will be an impact on the residential heritage precinct along Ajax Street as a result of the works proposed. However, it is considered that these impacts will be benign and concentrated to the western end of Ajax Street only, where the campus already has a presence. The relocation of two dwellings to non-contributory sites will allow for a more consistent residential streetscape pattern along Ajax Street, and the permeable boundary fence of the open sports court will allow the contributory dwellings along Ajax Street to remain the focal points due to the absence of structures on these sites. As such, the net loss of two contributory dwellings along Ajax Street and one along Murphy Street is not considered to compromise the architectural integrity and significance of residential streetscapes of the West Ballarat Precinct (HO164) as a whole.

Importantly, the works along Ajax Street must not be viewed in isolation, as they comprise only part of the associated heritage works proposed by the application. Significant enhancements to the Sturt Street streetscape are achieved through the relocation of the sports courts to Ajax Street (and subsequent removal of high, cyclone-wire fencing along Sturt Street) and the demolition of an existing chapel constructed in 1986 located to the front of the original campus building and within the Sturt Street frontage. Demolition of these elements will allow for a return to the open, landscaped garden area contributing to the heritage significance of the Sturt Street boulevard, and a greater celebration of the original State and locally significant campus buildings from the public realm.

Ballarat and Clarendon College is a large, complex heritage place due to the historical significance of the educational institution itself and the State and local significance of the campus buildings. The works proposed under the masterplan allow for the delivery of

necessary facilities and amenities to support the demonstrated growth in student numbers the campus is experiencing. When considering the need for these facilities in conjunction with the complex heritage considerations of the site, it is considered that on balance the works successfully allow for necessary additional campus facilities that provide greater heritage gains than losses when considered in totality.

17. Net community benefit

Clause 71.02-3 (Integrated Decision Making) asks planning and responsible authorities 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.'

As such, the impacts of the proposal, and in particular the heritage impacts cited in earlier sections of this report, must be considered on balance with the benefits delivered by the expansion of the campus itself. As outlined in earlier sections, there is clear State, regional and local policy support for the enhancement and establishment of educational institutions within this precinct and Ballarat more broadly, and the utilization of existing infrastructure to allow campuses to meet existing and future community needs. There is also clear State, regional and local policy support for the protection and enhancement of residential heritage streetscapes, including discouraging demolition and relocation of contributory buildings. These conflicting objectives must therefore be considered in favour of net community benefit, also acknowledging that responsible authorities must ensure proposals produce an 'acceptable' outcome rather than an 'ideal' or 'perfect' outcome.

The proposal is considered to deliver a net community benefit when considering the demonstrated need for the campus expansion, and the policy support for utilization of existing social infrastructure in preferred locations. Ballarat and Clarendon College has advised that in catering to population increases, their facilities must provide for an increase from 985 to 1,200 students. The works proposed under the master plan will allow for the logical, orderly and efficient expansion of the campus, and will relocate necessary facilities (such as the outdoor sports courts) to more suitable locations both operationally and aesthetically. The addition of a dedicated health centre within proximity to the majority of proposed and existing sports courts will ensure that the safety, health and wellbeing of students is provided for, with the location on the periphery of the campus also ensuring student privacy is protected when accessing health services. The expansion of the existing science centre will ensure that current and future students are provided with the necessary facilities and space to benefit from this valuable resource.

Proposed upgrades to the surrounding road networks and existing on-site car parking and access will allow for substantially reduced congestion in surrounding residential streets and a safer pedestrian environment. And the inclusion of security gates across the campus will provide significant improvements to on-site amenity and the safety of students, in particular due to recent events cited by the applicant which have occurred on campus and compromised the safety of students.

The above components of the master plan clearly demonstrate that the proposal delivers significant on and off-site benefits to the existing campus and its operation. It is also clear that the proposal will deliver significant benefits to current and future students upon its expansion. Furthermore, the master plan also ensures significant heritage elements of the campus are improved and enhanced to accommodate the required expansion. These benefits allow for a

substantial enhancement to one of Ballarat's pre-eminent and highest achieving schools, utilizing existing facilities and infrastructure, that ensures the educational needs of current and future generations are met. For these reasons, it is considered a net community benefit is achieved by the proposal which outweighs the heritage losses cited within this report.

18. Integrated approach

It is accepted that the Minister for Planning is the Responsible Authority pursuant to Clause 72.01-1 of the Ballarat Planning Scheme.

It is noted that there are works which are proposed outside of the title boundaries. It is understood that the Minister is not the Responsible Authority for these works. Given that Council's Traffic Engineers have not raised concern with these works, it is suggested that the Minister should determine the entirety of the application and that the works within the road reserve could be considered part of the planning unit.

It is noted that if there is no vegetation removal proposed in the road reserve, any future application to Council would be exempt from notice.

An easement allowing public access to the site currently extends through it. The plans submitted to the Minister show the blocking of this accessway with the introduction of fencing. If an application is made to Council, this application will be subject to public notice and third parties would benefit from appeal rights.



Figure 4 – Location of easement

Without the Minister determining the works and easement removal, the application becomes piecemeal, with different decision makers and different timings, resulting in a complicated process for the applicant and for the community.

If the Minister is to focus his decision on the internal layout of the site only, it is suggested that this will result in an inability to assess the global impacts of the proposal and will likely result in coordination issues with regard to the alignment of condition expiry dates, as issued by different authorities.

In *Rowcliffe Pty Ltd v Stonnington CC [2005] VCAT 1535 (29 July 2005)* VCAT addressed the issue of piecemeal applications by focusing on three key issues:

- Is there any risk to orderly planning by excluding a portion of land from the proposal?
- Is there any risk to orderly planning involving the excluded portion of the land, by excluding it from the subject proposal? Alternately, is there any constraint of future discretion in respect of the excluded portion of the land?
- Is there any inherent unfairness to the public in splitting proposals? This adverts to their need to fight two proposals instead of one, to incur two sets of costs, two lots of time and labor.

It is considered that separating the application into discrete parts with different decision makers could impact on orderly planning and will result in inherent unfairness and uncertainty for both the community and the applicant.

OFFICER RECOMMENDATION

It is recommended that Council writes to the Minister for Planning advising:

- It supports the redevelopment of the existing school site at 1415-1425 Sturt Street, Newington;
- It supports the works proposed in the road reserve along Sturt Street, Wanliss Road and Junction Street, Newington provided these works do not impact on the Structural Root Zones (SRZs) of mature trees in Sturt Street;
- It supports additional tree planting along road reserves to complement the Greening Ballarat objectives;
- It supports the extension of the school into the residential area to the south given the demonstrated net community benefit associated with the campus expansion; and
- It encourages the Minister for planning to make a wholistic assessment of the application, including the works along road reserves and the removal of an easement.

ATTACHMENTS

1. Governance Review [6.2.1 - 2 pages]
2. Clarendon College Plans [6.2.2 - 56 pages]
3. Letter from Minister for Planning [6.2.3 - 2 pages]



OFFICIAL

ALIGNMENT WITH COUNCIL VISION, COUNCIL PLAN, STRATEGIES AND POLICIES

1. As detailed in report

COMMUNITY IMPACT

2. DELWP will determine public notification requirements for the application

CLIMATE EMERGENCY AND ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

3. There are no climate emergency and environmental sustainability implications identified for this application.

ECONOMIC SUSTAINABILITY IMPLICATIONS

4. There are no economic sustainability implications for this application.

FINANCIAL IMPLICATIONS

5. There are no financial implications for Council.

LEGAL AND RISK CONSIDERATIONS

6. As required by the relevant legislation, Council will respond to the referral from the Minister for Planning

HUMAN RIGHTS CONSIDERATIONS

7. It is considered that the report does not impact on any human rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

COMMUNITY CONSULTATION AND ENGAGEMENT

8. As Council is not the responsible authority for this application, community consultation and engagement are determined by DELWP.

GENDER EQUALITY ACT 2020

9. There are no gender equality implications identified for the subject of this report.

CONFLICTS OF INTEREST THAT HAVE ARISEN IN PREPARATION OF THE REPORT

10. Council officers affirm that no general or material conflicts need to be declared in relation to the matter of this report.

OFFICIAL

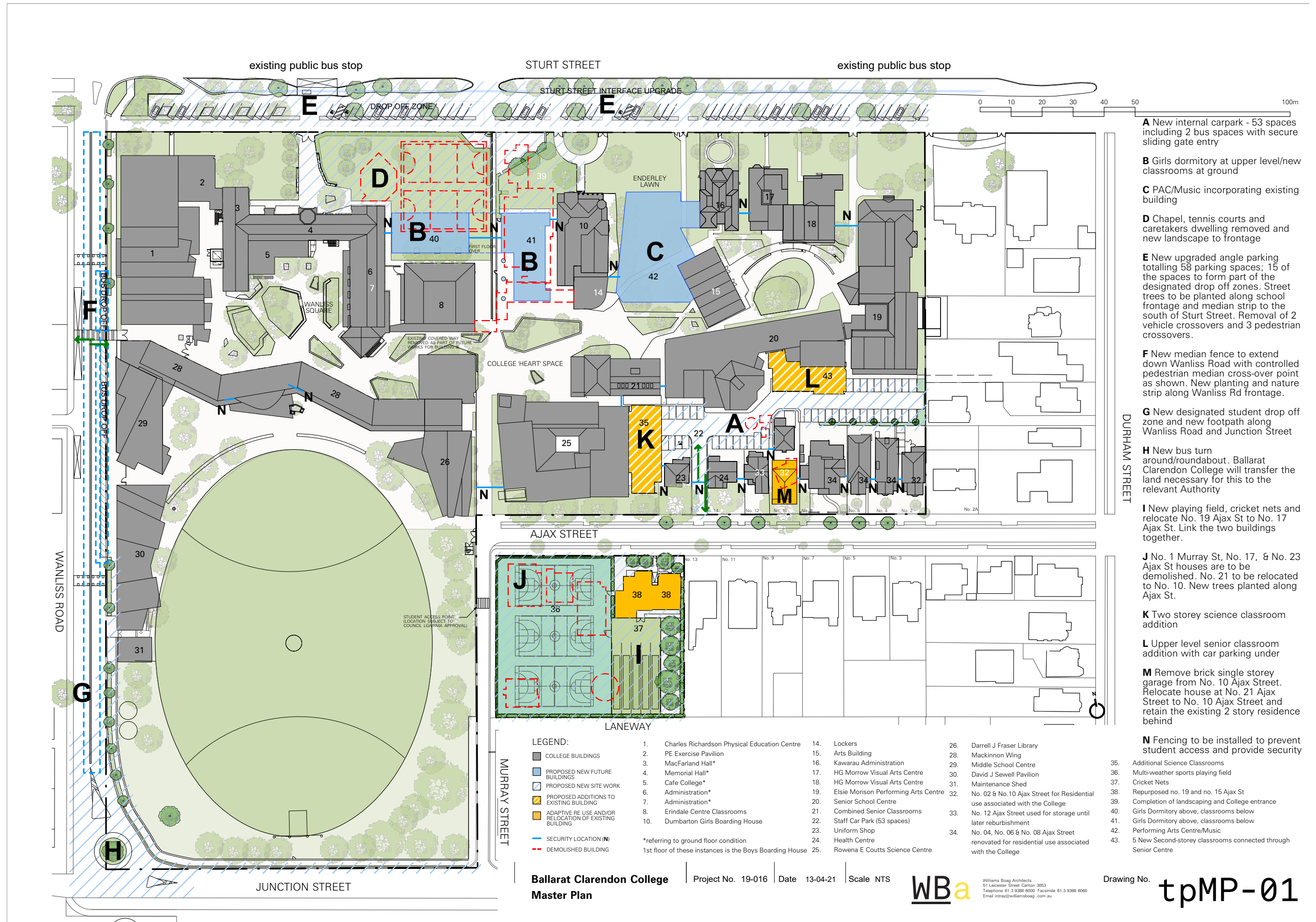
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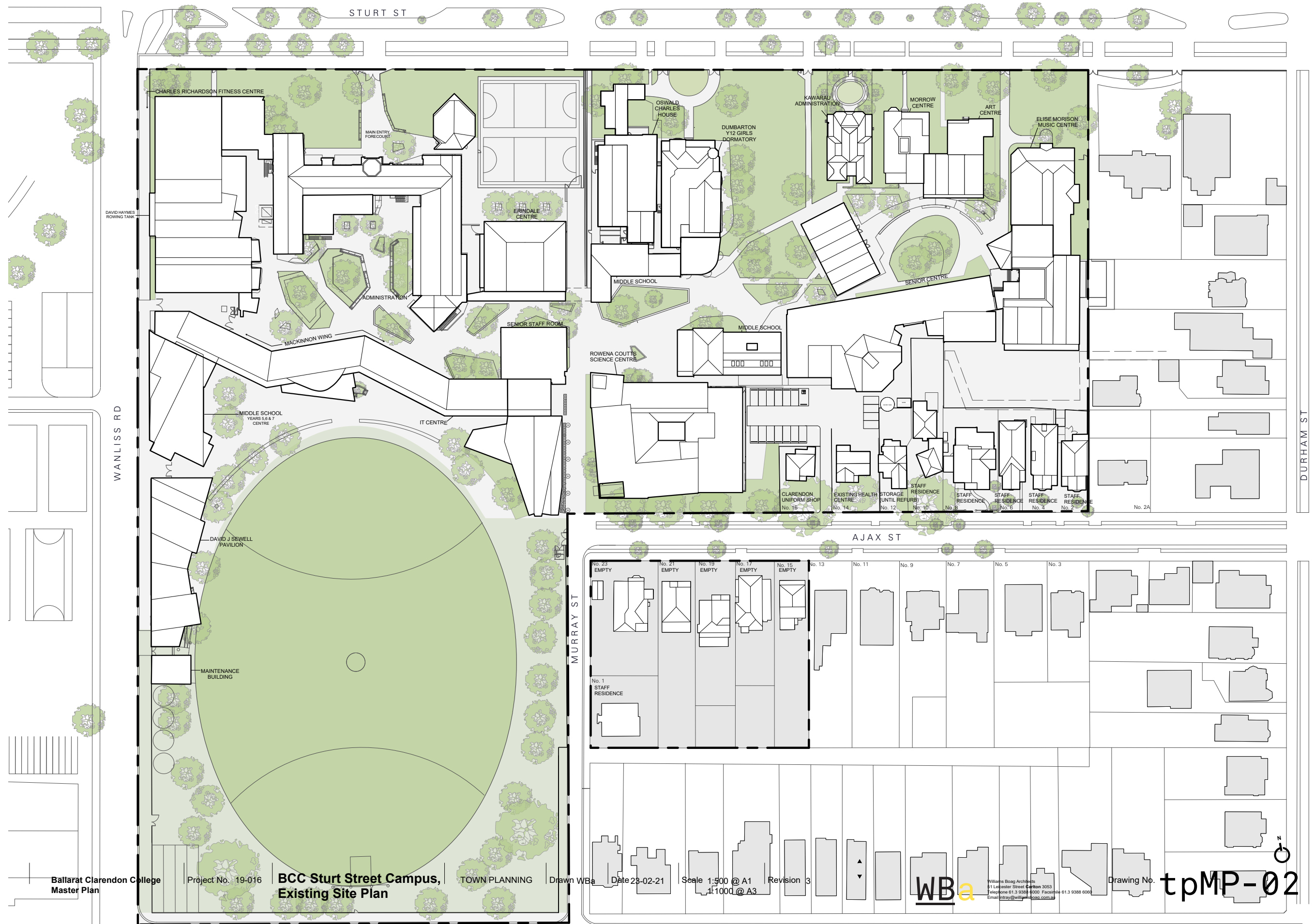
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Ballarat Clarendon College Master Plan Town Planning Application

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Project 6 10 Ajax Street Relocation	tpAJ-00 to tpAJ-05





Ballarat Clarendon College
Master Plan

Project No. 19-016

**BCC Sturt Street Campus,
Existing Site Plan**

TOWN PLANNING

Drawn WBa

Date 28-02-21

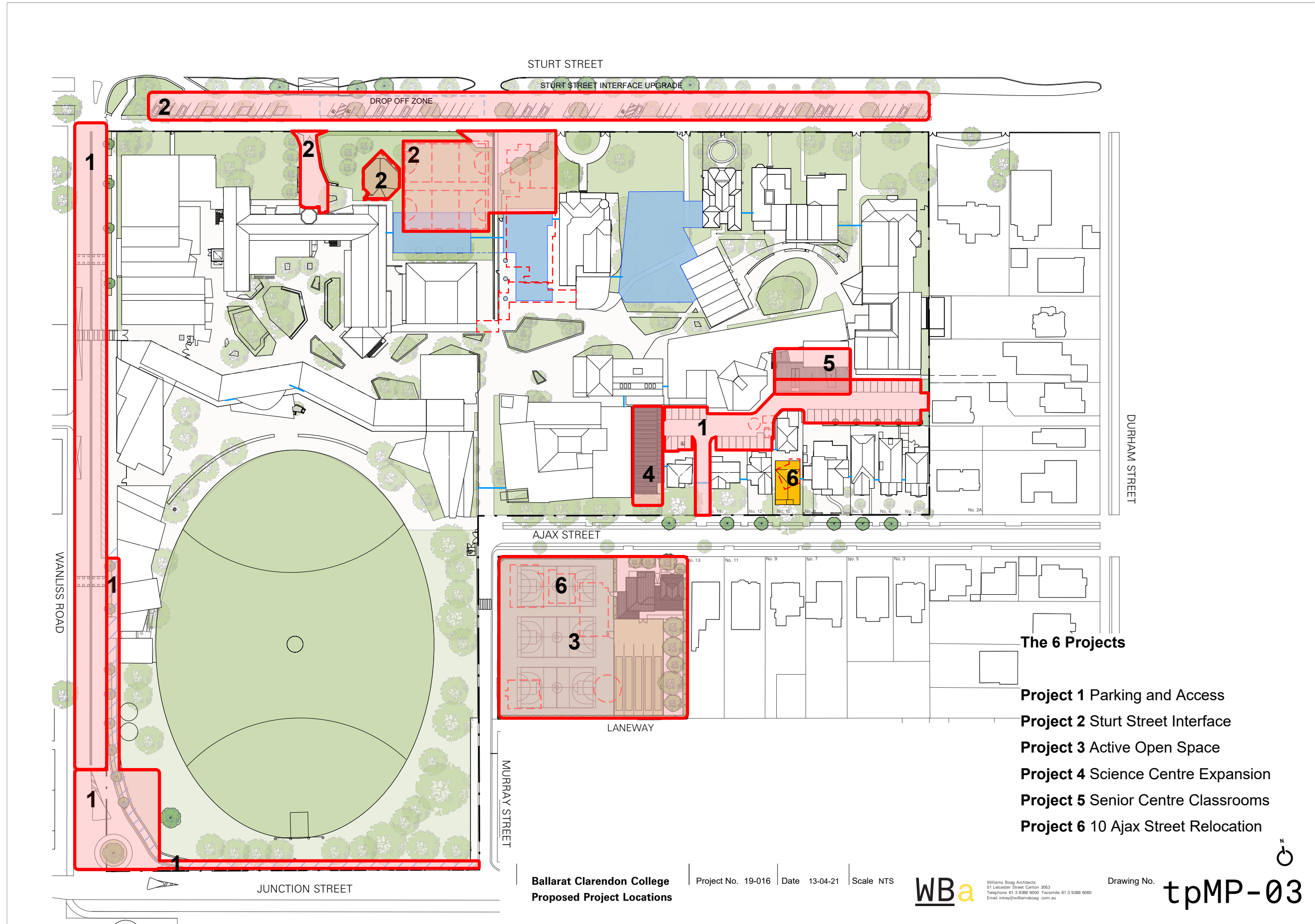
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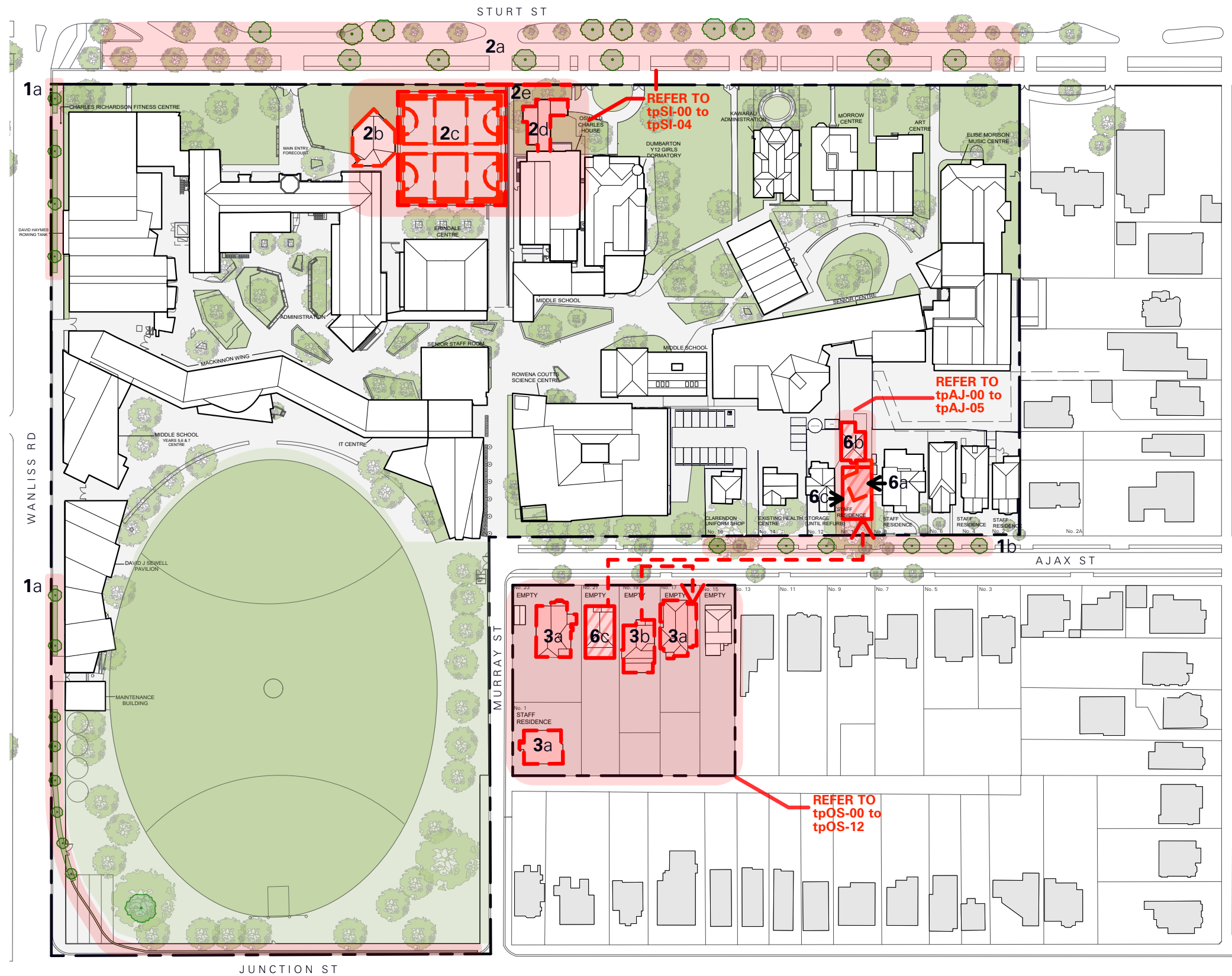
Revision 3

WBA

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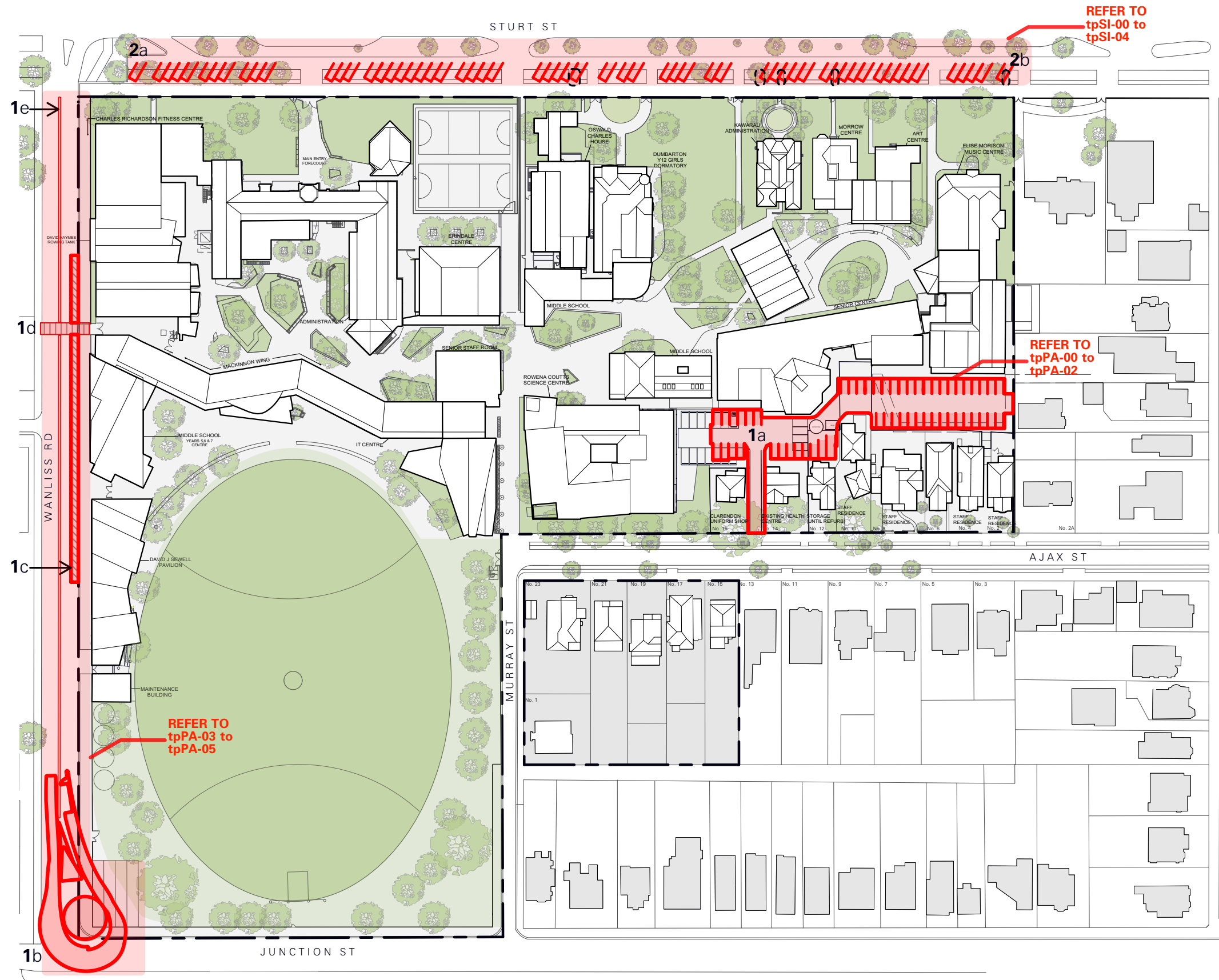
Drawing No. **tpMP-02**





Heritage Projects

- 1a Wanliss Rd landscaping
- 1b Ajax St landscaping
- 2a Sturt St works and new landscaping
- 2b Chapel demolished
- 2c Tennis courts removed
- 2d Carport and caretaker's dwelling demolished
- 2e Section of fence removed
- 3a No. 1 Murray St, No. 17, & No. 23 Ajax St houses to be demolished
- 3b No. 19 Ajax St relocated to No. 17; No. 17 linked with No. 15.
- 6a No.10 Ajax St brick garage to be demolished
- 6b No.10 Ajax St residence behind to be retained
- 6c No.21 Ajax St house to be relocated



Traffic Projects

- 1a** New 53 spce staff carpark entered on Ajax Street
- 1b** New bus roundabout at intersection of Junction Street and Wanliss Road
- 1c** New defined bus drop off zone
- 1d** New pedestrian crossing
- 1e** New centre of road safety barrier
- 2a** Upgraded parking off Sturt Street service road to include a total of 59 carparks
- 2b** Existing highlighted crossovers removed