

### **3 ADOPTION OF PLANNING SCHEME AMENDMENT C226**

FILE REFERENCE INT189387

RESPONSIBLE GENERAL MANAGER Andrew Paxton

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#### **RECOMMENDATION**

That Council adopt the Amendment C226 to the Cardinia Planning Scheme under Section 29 of the *Planning and Environment Act 1987* and submit the Amendment to the Minister for Planning for approval under Section 31 of the *Planning and Environment Act 1987*.

#### **Attachments**

- |   |   |          |
|---|---|----------|
| 1 | Planning Scheme Amendment C226 documents                                | 24 Pages |
| 2 | Panel Report - Cardinia Planning Scheme Amendment C226 (5 January 2018) | 21 Pages |

#### **EXECUTIVE SUMMARY**

The amendment was considered under delegation as the Minister for Planning authorised the Amendment to be processed under section 20(2) of the Planning & Environment Act 1987, which involves limited notification in order to fix up inconsistencies in the Officer Precinct Structure Plan.

Amendment C226 was placed on public exhibition for a period from Thursday 22 June 2017 to Monday 24 July 2017. The amendment seeks to correct an inconsistency between Officer Precinct Structure Plan (PSP) (2011) Incorporated Document, the Urban Growth Zone Schedule 3 (UGZ3) and the Rural Conservation Zone (RCZ).

The Panel hearing was held on Tuesday 14th December 2017 at Cardinia Shire Council. On 5 January 2018, the Panel Report was received with a recommendation that the Amendment C226 be adopted as exhibited and Council Officers support the Panel's recommendations. There was no contest to the strategic justification of the Amendment or to the form of the controls apart from Keymore's submission that further changes should be made to the Amendment.

Following exhibition of the amendment two (2) opposing submissions were received, one from Keymore Pty Ltd and the other from APA VTS. APA VTS (referral authority for the major gas transmission pipeline) withdrew their submission. As a result only one submitter, Keymore presented at the panel hearing.

At the directions hearing the Panel expressed concern at its ability to consider matters outside the scope of the Amendment as sought by the submitter. The Officer Development Contributions Plan became the central issue for the submitter who claimed that the Amendment was piecemeal and should be reviewed.

Council Officer's contended and maintained that the Amendment was to correct an inconsistency between the Urban Growth Zone and Rural Conservation Zone schedules and the Officer Precinct Structure Plan to allow the landowners to be able to develop the land under the provisions of the Cardinia Planning Scheme. Otherwise, the landowners would not be able to develop their land. To further support this, the Minister for Planning allowed the Amendment to proceed as a 20(2) Amendment under the Act, which allows Council to undertake limited notification.

The Panel report states that Council had time to form a position regarding Keymore's request for clarification of Council's position about the application of the DCP, when in fact this matter was not brought to forefront at the directions hearing. Furthermore, Council advised in writing that the question around the review and DCP matters were outside the scope of the amendment and that it could not provide a response about matters that are to be dealt with at another time.

Council Officer's have undertaken that a review of the Officer Precinct Structure Plan will be commenced within two years in conjunction with the Victorian Planning Authority and the Department of Environment Land Water and Planning. Council is not able to commit other agencies to a process and timeline.

## **BACKGROUND**

In 2011, the Minister for Planning approved the Cardinia Planning Scheme Amendment C149 which incorporated the Officer Precinct Structure Plan and Officer Development Contributions Plan. The land was already zoned Urban Growth Zone and the subject land zoned Rural Conservation Zone within the Urban Growth Boundary.

The Conservation Living Area is approximately 27.5 hectares of land in the north-west section of the precinct which has limited development potential. The majority of the area is located within the Bushfire Management Overlay (BMO) and remnant vegetation to be protected under the Officer Native Vegetation Precinct Plan (Officer NVPP).

The retention of vegetation protects the character and biodiversity values of the area. The area is of high landscape value providing a green backdrop of the southern foothills of the Dandenong Ranges.

Surrounding the Conservation Living Area is a zone that has a high risk of bushfire. The combination of topography and proximity to vegetation to be retained within the Officer NVPP limits the development potential of the area. Therefore, larger lots are required to achieve the vegetation protection objectives and adequate defendable space around dwellings and ensure dwellings can be constructed to an appropriate standard against bushfire.

The Amendment was placed on exhibition from Thursday 22 June 2017 to Monday 24 July 2017 with two (2) submissions received with both opposing the proposed planning scheme amendment. Council officers recommend that the submissions be referred to an independent planning panel to be appointed by the Minister for Planning.

### **The Panel report**

The Panel hearing for Planning Scheme Amendment C226 was held on 14 December 2017 at the Cardinia Shire Council offices with Council and one submitter requesting to be heard. The Panel report was provided to Council and released to the public on 1 February 2018.

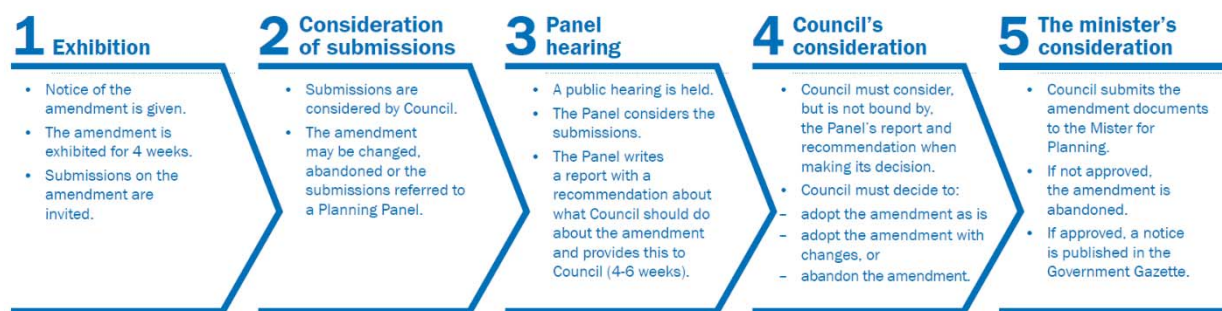
The Panel report recommends that the amendment be adopted as exhibited.

Council Officer's had concerns with the way in which the panel hearing was conducted on the day and the cost of the panel hearing being high in comparison to other recent planning panels. Council Officer's have taken further action but raising these concerns with Planning Panels Victoria and are currently awaiting a response.

### **Next steps**

The Amendment is at Stage 4 of the Planning Scheme Amendment Process as detailed below in

Figure 1.



If Council resolves to adopt the Amendment, officers will prepare the final documents and submit these to the Minister for Planning for approval (Stage 5). Approval timeframes of the Amendment cannot be confirmed and are subject to process undertaken by DELWP.

## POLICY IMPLICATIONS

### Plan Melbourne Metropolitan Planning Strategy 2017 - 2050

Plan Melbourne is the Metropolitan Planning Strategy for Melbourne and sets the vision for and guides Melbourne's growth through to the year 2050.

The relevant directions and initiatives of Plan Melbourne are as follows:

- **Direction 2.1 - Manage the supply of new housing in the right locations to meet population growth and create a sustainable city**

Policy 2.1.1 - Maintain a permanent urban growth boundary around Melbourne to create a more consolidated, sustainable city

### State Planning Policy Framework (SPPF)

The directions of Plan Melbourne are reflected in policy contained in the State Planning Policy Framework (SPPF) of the Cardinia Planning Scheme.

*Clause 9 Plan Melbourne* of the SPPF requires consideration of Plan Melbourne.

### *Clause 11 Settlement*

Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.

Of particular relevance is sub **Clause 11.02-1 Supply of Urban Land** which seeks to ensure that sufficient supply of land is available for residential uses and supporting infrastructure to support sustainable urban development is provided for. Planning for urban growth should consider as relevant:

- Neighbourhood character and landscape considerations.
- The limits of land capability and natural hazards and environmental quality.

Sub Clause **11.02-2 Planning for growth areas** to locate urban growth close to transport corridors and services and provide efficient and effective infrastructure to create benefits for sustainability while protecting primary production, major sources of raw materials and valued environmental

areas. Strategies include meet housing needs by providing diversity of housing type and distribution.

Sub **Clause 11.04-2 Housing Choice and affordability** to provide a diversity of housing in defined locations that cater for different households and are close to jobs and services. Strategies include understand and plan for expected housing needs.

#### *Clause 12 Environmental and landscape values*

To protect the health of ecological systems and biodiversity they support and conserve areas with identified environmental and landscape values.

Sub **Clause 12.01-1 Protection of biodiversity** aims to assist the protection and conservation of Victoria's biodiversity, including important habitat for Victoria's flora and fauna and other strategically valuable biodiversity sites. Planning ensures to avoid and minimise significant impacts on land use and development on Victoria's biodiversity.

Sub **Clause 12.01-2 Native vegetation management** aims to ensure that permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity.

#### *Clause 13 Environmental Risks*

Planning should adopt a best practice environmental management and risk management approach, which aims to avoid or minimise environmental degradation and hazards.

Sub **Clause 13.05-1 Bushfire planning strategies and principles** objective is to assist to strengthen community resilience to bushfire. Relevant strategies include the following:

- Prioritise the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire.
- Where appropriate, apply the precautionary principle to planning and decision making when assessing the risk to life, property, community infrastructure from bushfire.
- Identify in planning schemes areas where bushfire hazards require that:
  - Consideration needs to be given to the location, design and construction of new development and the implementation of bushfire measures.
  - Development should not proceed unless the risk to life and property from bushfire can be reduced to an acceptable level.
- Consult with the relevant fire authority early in the strategic and settlement plan making process and implement appropriate bushfire protection measures.
- Ensure that planning to create or expand a settlement in an area at risk from bushfire:
  - Addresses the risk at both the local and broader context.
  - Reduces the risk to future residents, property and community infrastructure from bushfire to an acceptable level.
  - Ensures any biodiversity and environmental objectives specified in the planning scheme are compatible with planned bushfire protection measures.
  - Ensures the risk to existing residents, property and community infrastructure from bushfire will not increase as a result of future land use and development.
  - Ensures future residents can readily implement and manage bushfire protection measures within their own properties.

### *Development control strategies*

In areas identified in the planning scheme as being affected by the bushfire hazard, require a site-based assessment to be undertaken to identify appropriate bushfire protection measures for development that has the potential to put people, property or community infrastructure at risk from bushfire. Only permit new development where:

- The risk to human life, property and community infrastructure from bushfire can be reduced to an acceptable level.
- Bushfire protection measures, including the siting, design and construction of buildings.
- Vegetation management, water supply and access and egress can be readily implemented and managed within the property.
- The risk to existing residents, property and community infrastructure from bushfire is not increased.

### *Clause 15 – Built Environment and Heritage*

The objective is to ensure that planning creates quality built environments that supports the social, cultural, economic and environmental wellbeing of our communities, cities and towns.

The objective of sub **Clause 15.01-1 Urban design** is to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.

The relevant strategy is as follows:

- Ensure new development or redevelopment contributes to community and cultural life by improving safety, diversity and choice, the quality of living and working environments, accessibility and inclusiveness and environmental sustainability.
- Require development to respond to its context in terms of urban character, cultural heritage, natural features, surrounding landscape and climate.

Sub Clause **15.01-3 Neighbourhood and subdivision design** aims to ensure that the design of subdivisions achieves attractive, liveable, walkable, cyclable, diverse and sustainable neighbourhoods. The relevant strategy aims to provide for a range of lot sizes to suit a variety of dwelling and household types to meet the needs and aspirations of different groups of people.

Sub Clause **15.01-4 Design for safety** of which the objective is to improve community safety and encourage neighbourhood design that makes people feel safe.

### *Clause 16 Housing*

Planning should provide for housing diversity, and ensure the efficient provision of supporting infrastructure.

**Sub Clause 16.01-2** Location of residential development of which the objective is to locate new housing in or close to activity centres and employment corridors and at other strategic redevelopment sites that offer good access to services and transport.

**Sub Clause 16.01-4 Housing diversity** to provide for a range of housing types to meet increasingly diverse needs.

In summarising how the Amendment supports and implements the State Planning Policy Framework (SPPF), the Amendment seeks to ensure that sufficient supply of land is available for residential uses and supporting infrastructure. The land is located within the urban growth zone and suitably meets the housing needs by providing diversity of housing, lot type and distribution across this area.

The environmental objectives are supported in that planning ensures to avoid and minimise significant impacts on land use and development by ensuring that permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity.

The SPPF further supports the Amendment through adopting a best practice environmental management and risk management approach, which aims to avoid or minimise environmental degradation and hazards. Relevant strategies have been put in place to ensure that the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire is at the forefront. Other strategies such as applying the precautionary principle to planning and decision making when assessing the risk to life, property, community infrastructure from bushfire where appropriate.

Another key strategy that is relevant is in relation to ensuring that planning schemes identify and consider the needs to be given to the location, design and construction of new development and the implementation of bushfire measures and that development should not proceed unless the risk to life and property from bushfire can be reduced to an acceptable level.

Consideration is to be given in consulting with the relevant fire authority early in the strategic and settlement plan making process and implement appropriate bushfire protection measures. This process was undertaken throughout the course of the Officer PSP amendment C149, in which bushfire measures were full considered in the development and adoption of the Officer PSP. The above ensures that any biodiversity and environmental objectives specified in the planning scheme are compatible with planned bushfire protection measures.

The amendment supports and responds to the State provisions by allowing the land to be developed in accordance with the Officer PSP, in addition to ensuring that the development of this land will provide for a choice in housing options. Furthermore, the environmental aspects of the area will be protected and conserved through the development of the land on larger lots.

#### ***Local Planning and Policy Framework (LPPF)***

The Amendment is consistent with and gives effect to the Local Planning Policy Framework (LPPF) as outlined below:

#### ***Clause 21.01 Cardinia Shire Key Issues and Strategic Vision***

This clause identifies that the anticipated population growth within the Cardinia Shire.

Sub **Clause 21.01-3 Key issues** identifies the following relevant key issues:

- *The protection of life and property in terms of flooding and wildfire.*
- *The management of urban growth.*

Sub **Clause 21.01-4 Strategic vision** includes the Strategic Vision for the municipality, which is to foster the sustained wellbeing of the community and environment in the Cardinia Shire through:

- *Developing a strong economic base.*

- *Recognising and protecting the diverse and significant environmental values in the municipality.*
- *Providing opportunities to create and maintain a cohesive and robust community.*
- *Enhancing the experience of people who live, work and visit the municipality.*

#### *Clause 21.02-3 Biodiversity*

The most relevant key issues for this amendment is recognising that native vegetation provides habitat for key fauna species and provides for diverse flora species throughout the municipality.

The objective is to achieve a net gain in the quantity and quality of native vegetation in the municipality.

Relevant strategies:

- Protect areas of significant remnant vegetation (particularly endangered and vulnerable Ecological Vegetation Classes) as shown on the mapped Ecological Vegetation Classes provided by the Department of Sustainability and Environment.
- Ensure that siting of buildings and works avoids and minimises the removal or fragmentation of native vegetation especially in areas of biodiversity significance and where appropriate, building envelopes should be approved as part of subdivision plans to minimise the removal of vegetation.

In response to the above, the applied zone is a Rural Conservation Zone with an Environmental Significance Overlay, Bushfire Management Overlay the Officer PSP and Officer Native Vegetation Precinct Structure Plan, which contains development, controls that address the strategies within the LPPF.

#### *Clause 21.02-4 Wildfire management*

This section further builds on the content of the Clause 13.05 Bushfire. The key issues as relevant to this amendment are as follows:

- Ensuring the appropriate design of subdivisions in areas of high wildfire risk.
- Designing and siting of accommodation, including individual dwellings on sites within areas of high wildfire risk. The key issues include the location, access to the site and access to water supply, type and form of vegetation in the area including required vegetation management.
- Balancing the protection of native vegetation with wildfire risk management.

The objective is to recognise that areas in the municipality are prone to wildfire and to minimise the potential risk to life, property and the environment.

Relevant strategies include:

#### *Subdivision*

- Ensure that the siting and design of subdivisions has fully considered the impact of existing slope, aspect and vegetation in terms of risks of wildfire, particularly with regard to the location of building envelopes.

#### *Siting and design*

- Ensure that the siting and design of houses and other accommodation in high risk wildfire areas minimises the potential risk of loss of life or property from wildfire, particularly in terms of the existing slope, aspect and vegetation.
- Ensure all development has appropriately designed access for emergency vehicles.
- Ensure development provides adequate access to water.
- Encourage the use of roads as a buffer between housing and bushland.

*The strategies in relation to wildfire management will be implemented through the planning scheme by:*

- Use of policy and exercise of discretion
- When deciding on applications for use and development of land including subdivision, considering, as appropriate:
- Reference documents listed in the State Planning Policy Framework at Clause 13.05 (Bushfire)
- When developing Precinct Structure Plans and Township Strategies, considering the issue of wildfire risk.

In response to the above, the Officer PSP further expands on the strength of the state and local planning policies by providing specific planning and design guidelines around the siting, design and assessment of planning applications within areas prone to bushfire.

#### *Clause 21.03 - Settlement and Housing*

Sub **Clause 21.03-1 Housing** identifies that housing within Cardinia Shire is currently dominated by detached dwellings in both urban and rural areas. The urban growth area in the Cardinia Shire will continue to attract predominantly young families into the foreseeable future. However, as the housing market progressively matures and the needs of households change there will be increasing demand for more diverse forms of housing. Housing needs may differ between the townships of the municipality and the urban growth area.

The relevant key issue is as follows:

- Providing for a diversity of housing types and densities, including increased housing density around activity centres.

Objective 1 seeks to encourage diversity in housing to meet the needs of existing and future residents.

The relevant strategy to achieve this objective is as follows:

- Ensure that future housing growth is effectively managed to maintain and enhance the qualities of the municipality.
- Encourage a range of lot sizes and housing types in new developments that satisfy the needs and aspirations of the community.

Sub **Clause 21.03-2 Urban growth area** identifies the subject site as being within the *Casey-Cardinia Growth Area Framework Plan* and located in the Pakenham Precinct. The objective of this clause is to create a functional, attractive, safe and sustainable urban environment for the existing and future community of the Cardinia Urban Growth Area.

It is considered that the Amendment supports the relevant clauses and their objectives of the LPPF by including a new schedule to allow the subdivision of the land in accordance with the Officer PSP.



## RELEVANCE TO COUNCIL PLAN

The Liveability Plan 2017–29 focuses on liveability, and recognising the role of urban planning in creating environments which enhance the health and wellbeing of our community and the natural environment. The Victorian Government sets the policy for land use planning in Victoria, with Plan Melbourne 2017–2050 setting the long-term vision for Melbourne’s liveability. However, it is the responsibility of Council to govern and implement land use policy locally.

**The relevant challenge within this plan is ‘open spaces and places’, specifically by ensuring that areas of environmental significance are protected and enhanced.**

## CONSULTATION/COMMUNICATION

All submitters have received email notification of the release of the Panel report and also notified of this General Council Meeting agenda.

## FINANCIAL AND RESOURCE IMPLICATIONS

The adoption of the *Amendment* seeks to correct an inconsistency with the Officer Precinct Structure Plan required to allow the subdivision and subsequently the development of the land in accordance with the Officer Precinct Structure Plan (September 2011) and corrects an inconsistency between the policy intentions of the Officer Precinct Structure Plan (PSP), the Urban Growth Zone Schedule 3 (UGZ3) and the Rural Conservation Zone (RCZ). The Amendment will facilitate the subdivision of the land in accordance with the Officer Precinct Structure Plan.

Council is required to pay the costs of the panel hearing.

## CONCLUSION

The approval of Amendment C226 corrects an inconsistency with the Officer Precinct Structure Plan required to allow the subdivision and subsequently the development of the land in accordance with the Officer Precinct Structure Plan (September 2011) and corrects an inconsistency between the policy intentions of the Officer Precinct Structure Plan (PSP), the Urban Growth Zone Schedule 3 (UGZ3) and the Rural Conservation Zone (RCZ). The Amendment will facilitate the subdivision of the land in accordance with the Officer Precinct Structure Plan and this was supported by the panel report.

Therefore, it is recommended that Council resolve to adopt Amendment C226 to the Cardinia Planning Scheme under Section 29 of the Act and submit to the Minister for Planning for approval under Section 31 of the Act.

*Planning and Environment Act 1987*

**CARDINIA SHIRE COUNCIL PLANNING SCHEME**

**AMENDMENT C226**

**INSTRUCTION SHEET**

The planning authority for this amendment is the Cardinia Shire Council.

The Cardinia Planning Scheme is amended as follows:

**Planning Scheme Ordinance**

The Planning Scheme Ordinance is amended as follows:

1. In Zones – Clause 35.06, insert a new Schedule 3 in the form of the attached document.
2. In Zones – Clause 37.07, replace Schedule 3 with a new Schedule 3 in the form of the attached document.

End of document

*Planning and Environment Act 1987*

## CARDINIA PLANNING SCHEME

### AMENDMENT C226

#### EXPLANATORY REPORT

##### Who is the planning authority?

This amendment has been prepared by the Cardinia Shire Council, who is the planning authority for this amendment.

The Amendment is being prepared by Cardinia Shire Council on behalf of Keymore Pty Ltd and Planning People Places.

##### Land affected by the Amendment

The Amendment applies to the following lots in the Officer Precinct Structure Plan (OPSP) area, described below and shown in Figure 1:

- Lot 2 PS327845 130 Whiteside Road (PSP Property No: 377)
- Lot 5 PS321195 Whiteside Road (PSP Property No:376)
- Lot W PS738911 part of 325 Princes Highway (previously Lot 2a PS517997) (PSP Property No: 152)



**Figure 1. Location of land affected by the amendment**

##### What the amendment does

The Amendment is to correct an inconsistency between Officer Precinct Structure Plan (PSP) (2011) Incorporated Document, the Urban Growth Zone Schedule 3 (UGZ3) and the Rural Conservation Zone (RCZ). The amendment corrects inconsistencies between the applied zone being the Rural Conservation Zone (RCZ) and the Officer PSP through the inclusion of a specific schedule to allow the land to be developed in accordance with the Officer PSP.

Specifically, the Amendment makes the following changes to the Cardinia Planning Scheme:

- Inserts a new Schedule – Rural Conservation Zone Schedule 3 (RCZ3) to Clause 35.06 (which is the applied zone in the Urban Growth Zone 3), to remove the minimum subdivision area (40 hectares) and insert a new minimum subdivision area of 0.1ha for the 3 sites specified to correct the inconsistency with provisions in the Urban Growth Zone Schedule 3 (UGZ3), Rural Conservation Zone (RCZ) and the Officer PSP.
- Amending Table 1 in Clause 37.07-3 UGZ3 subclause 2.2, from 'Rural Conservation Zone' to 'Rural Conservation Zone, Schedule 3'.

The Amendment does not seek to alter or remove any other subdivision or development controls of the site.

## **Strategic assessment of the Amendment**

### **Why Is the Amendment required?**

The amendment is required to allow the subdivision and subsequently the development of the land in accordance with the Officer Precinct Structure Plan (September 2011) and corrects an inconsistency between the policy intentions of the Officer Precinct Structure Plan (PSP), the Urban Growth Zone Schedule 3 (UGZ3) and the Rural Conservation Zone (RCZ).

The Officer PSP identifies the Conservation Living Area as having a density of 9 dwellings. Furthermore, the planning and design guidelines that must be met for the Conservation Living Area are as follows:

- Ensure any development meets the requirements of:
  - The Officer Native Vegetation Precinct Plan (NVPP); and
  - The bushfire management provisions set out in Section 4.5.11 of the Officer PSP.
- Development of up to 3 dwellings on PSP Property No:376 Lot 5 PS321195 is permitted, provided that:
  - All dwellings are located in the south west corner of the site;
  - Each dwelling is located on a separate lot; and
  - Native vegetation to be retained is located in a lot that contains a dwelling.
- A single dwelling is permitted on PSP Property No: 377 Lot 2 PS327845.
- Development of up to 4 dwellings on PSP Property No: 152 Lot 2a PS517997 is permitted, provided that:
  - Each dwelling is located on a separate lot; and
  - Native vegetation to be retained is located in a lot that contains a dwelling.

The land is shown within the applied zone as Rural Conservation Zone (RCZ). The schedule to the zone Rural Conservation Zone (RCZ) allows for the minimum subdivision area of 40 hectares, which results in the conflict between the Officer PSP and the Rural Conservation Zone (RCZ) as the Conservation Living Area is approximately 27.5 hectares of land.

This Amendment, seeks to include a new schedule 3 to the Rural Conservation Zone (RCZ) that allows for a minimum subdivision area of 0.1 hectares and to align the Rural Conservation Zone (RCZ) and the Officer Precinct Structure Plan (OPSP) to allow subdivision and development of the land in accordance with the Officer Precinct Structure Plan (OPSP).

In 2011, the Minister for Planning approved the Cardinia Planning Scheme Amendment C149 which incorporated the Officer Precinct Structure Plan and Officer Development Contributions Plan. The land was already zoned Urban Growth Zone and the subject land zoned Rural Conservation Zone within the Urban Growth Boundary.

The Conservation Living Area is approximately 27.5 hectares of land in the north-west section of the precinct which has limited development potential. The majority of the area is located within the Bushfire Management Overlay (BMO) and remnant vegetation to be protected under the Officer Native Vegetation Precinct Plan (Officer NVPP).

The retention of vegetation protects that character and biodiversity values of the area. The area is of high landscape value providing a green backdrop of the southern foothills of the Dandenong Ranges.

Surrounding the Conservation Living Area is a zone that has a high risk of bushfire. The combination of topography and proximity to vegetation to be retained within the Officer NVPP limits the development potential of the area. Therefore, larger lots are required to achieve vegetation protection objectives and adequate defendable space around dwellings and ensure dwellings can be constructed to an appropriate standard against bushfire.

The Officer PSP states that the CFA have advised that rather than extending the BMO further into the precinct, a mechanism should be put into place to manage bushfire risk through the subdivision process.

### **How does the Amendment implement the objectives of planning in Victoria?**

The amendment implements the objectives of planning in Victoria by providing for the orderly, economic and sustainable use and development of the land by ensuring that the zone applying to the land is in accordance with the objectives set out in paragraphs (a), (b), (c), (d) (e) and (g) of Section 4 of the *Planning and Environment Act 1987*.

The objectives of planning in Victoria and the appropriate use of the planning framework will be implemented by the amendment that will result in allowing development 'subject to planning permission'; within an area that has approval under the incorporated Officer Precinct Structure Plan (2011).

#### ***1(a) To provide for the fair, orderly, economic and sustainable use, and development of land.***

The Amendment facilitates the subdivision of the land in accordance with the Officer Precinct Structure Plan. The site is appropriately located, providing for the fair and orderly use and development of the land.

#### ***1(c) To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.***

The development will provide for the development of the land in accordance with the provisions of the Officer PSP. The development of the land is to be planned and designed to be safe and convenient without detrimental impacts on the surrounding and in accordance with the Officer PSP and relevant provisions of the Cardinia Planning Scheme.

### **How does the Amendment address any environmental, social and economic effects?**

As the amendment is required to correct an inconsistency between the Officer Precinct Structure Plan (PSP), the Urban Growth Zone Schedule 3 (UGZ3) and the Rural Conservation Zone (RCZ), the PSP provides for specific subdivision and development requirements for these sites.

The Officer Precinct Structure Plan provides decision planning and design guidelines specifically to address the environmental, bushfire, lot density and design guidelines aspect of this area to ensure that development does not compromise the objectives of the clauses within the Officer PSP.

The proposed amendment does not impact social and economic considerations of the *Planning and Environment Act 1987*.

**Does the Amendment address relevant bushfire risk?**

The land is covered by a Bushfire Management Overlay (BMO) and is also subject to further considerations of the Officer PSP. The subject land went through a rigorous planning scheme amendment process when the Officer Precinct Structure Plan (OPSP) was approved by the Minister for Planning and incorporated into the Cardinia Planning Scheme. The Officer PSP contains planning and design guidelines regarding development requirements in relation to vegetation management and bushfire risk controls.

In addition to the Bushfire Management Overlay (BMO) controls, an application would require referral to the Country Fire Authority who is the referral authority. Furthermore, the minimum construction standards will apply which will also be governed by Building Surveyors.

It is worthy to note that an amendment is being considered by the Department of Environment, Land, Water and Planning (DELWP) in relation to changing the Bushfire Management Overlay (BMO). The amendment seeks to include additional areas into the BMO and include schedules to the overlay.

The introduction of schedules to the overlay, adds further strength and support in relation to the 'bushfire attack level' (BAL) ratings that can be applied to certain areas. The proposed BMO amendment will add further support to this amendment.

**Does the Amendment comply with the requirements of any Minister's Direction applicable to the amendment?**

*Ministerial Direction – Form and Content of Planning Schemes*

The Amendment is consistent with Ministerial Direction – The Form and Content of Planning Schemes pursuant to Section 7(5) of the Act.

*Ministerial Direction No.9*

The Amendment has regard to the Ministerial Direction Number 9 (Metropolitan Planning Strategy) Ministerial Direction 9 requires that planning scheme amendments to have regard to *Plan Melbourne: Metropolitan Planning Strategy* (Department of Transport, Planning and Local Infrastructure, 2014). The amendment does not seek to alter the Officer PSP or introduce controls other than to ensure that the schedule to the Rural Conservation Zone is consistent with the Officer PSP. The Amendment seeks the appropriate development of land in accordance with the Officer PSP.

*Ministerial Direction No.11*

The Amendment has been assessed in accordance with the strategic considerations provided by Ministerial Direction No. 11 Strategic Assessment of Amendments and is consistent with these requirements.

*Ministerial Direction No.15*

The Amendment has been assessed against the directions of the Ministerial Direction No. 15 The Planning Scheme Amendment Process. The Amendment will be processed in accordance with the directives as specified.

**How does the Amendment support or implement the State Planning Policy Framework and any adopted State policy?**

The following clauses of the State Planning Policy Framework are relevant to this amendment:

Clause 11 Settlement

Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.

Of particular relevance is sub **Clause 11.02-1 Supply of Urban Land** which seeks to ensure that sufficient supply of land is available for residential uses and supporting infrastructure to support sustainable urban development is provided for. Planning for urban growth should consider as relevant:

- Neighbourhood character and landscape considerations.
- The limits of land capability and natural hazards and environmental quality.

Sub **Clause 11.02-2 Planning for growth areas** to locate urban growth close to transport corridors and services and provide efficient and effective infrastructure to create benefits for sustainability while protecting primary production, major sources of raw materials and valued environmental areas. Strategies include meet housing needs by providing diversity of housing type and distribution.

Sub **Clause 11.04-2 Housing Choice and affordability** to provide a diversity of housing in defined locations that cater for different households and are close to jobs and services. Strategies include understand and plan for expected housing needs.

#### Clause 12 Environmental and landscape values

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Sub **Clause 12.01-2 Native vegetation management** aims to ensure that permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity.

#### Clause 13 Environmental Risks

Planning should adopt a best practice environmental management and risk management approach, which aims to avoid or minimise environmental degradation and hazards.

Sub **Clause 13.05-1 Bushfire planning strategies and principles** objective is to assist to strengthen community resilience to bushfire. Relevant strategies include the following:

- Prioritise the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire.
- Where appropriate, apply the precautionary principle to planning and decision making when assessing the risk to life, property, community infrastructure from bushfire.
- Identify in planning schemes areas where bushfire hazards require that:
  - Consideration needs to be given to the location, design and construction of new development and the implementation of bushfire measures.
  - Development should not proceed unless the risk to life and property from bushfire can be reduced to an acceptable level.
- Consult with the relevant fire authority early in the strategic and settlement plan making process and implement appropriate bushfire protection measures.
- Ensure that planning to create or expand a settlement in an area at risk from bushfire:
  - Addresses the risk at both the local and broader context.
  - Reduces the risk to future residents, property and community infrastructure from bushfire to an acceptable level.
  - Ensures any biodiversity and environmental objectives specified in the planning scheme are compatible with planned bushfire protection measures.
  - Ensures the risk to existing residents, property and community infrastructure from bushfire will not increase as a result of future land use and development.

- Ensures future residents can readily implement and manage bushfire protection measures within their own properties.

#### *Development control strategies*

In areas identified in the planning scheme as being affected by the bushfire hazard, require a site-based assessment to be undertaken to identify appropriate bushfire protection measures for development that has the potential to put people, property or community infrastructure at risk from bushfire. Only permit new development where:

- The risk to human life, property and community infrastructure from bushfire can be reduced to an acceptable level.
- Bushfire protection measures, including the siting, design and construction of buildings.
- Vegetation management, water supply and access and egress can be readily implemented and managed within the property.
- The risk to existing residents, property and community infrastructure from bushfire is not increased.

#### Clause 15 – Built Environment and Heritage

The objective is to ensure that planning creates quality built environments that supports the social, cultural, economic and environmental wellbeing of our communities, cities and towns.

The objective of sub **Clause 15.01-1 Urban design** is to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity.

The relevant strategy is as follows:

- Ensure new development or redevelopment contributes to community and cultural life by improving safety, diversity and choice, the quality of living and working environments, accessibility and inclusiveness and environmental sustainability.
- Require development to respond to its context in terms of urban character, cultural heritage, natural features, surrounding landscape and climate.

Sub **Clause 15.01-3 Neighbourhood and subdivision design** aims to ensure that the design of subdivisions achieves attractive, liveable, walkable, cyclable, diverse and sustainable neighbourhoods. The relevant strategy aims to provide for a range of lot sizes to suit a variety of dwelling and household types to meet the needs and aspirations of different groups of people.

Sub **Clause 15.01-4 Design for safety** of which the objective is to improve community safety and encourage neighbourhood design that makes people feel safe.

#### Clause 16 Housing

Planning should provide for housing diversity, and ensure the efficient provision of supporting infrastructure.

Sub **Clause 16.01-2 Location of residential development** of which the objective is to locate new housing in or close to activity centres and employment corridors and at other strategic redevelopment sites that offer good access to services and transport.

Sub **Clause 16.01-4 Housing diversity** to provide for a range of housing types to meet increasingly diverse needs.

In summarising how the Amendment supports and implements the State Planning Policy Framework (SPPF), the Amendment seeks to ensure that sufficient supply of land is available for residential uses and supporting infrastructure. The land is located within the urban growth zone and suitably meets the housing needs by providing diversity of housing, lot type and distribution across this area.



The environmental objectives are supported in that planning ensures to avoid and minimise significant impacts on land use and development by ensuring that permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity.

The SPPF further supports the Amendment through adopting a best practice environmental management and risk management approach, which aims to avoid or minimise environmental degradation and hazards. Relevant strategies have been put in place to ensure that the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire is at the forefront. Other strategies such as applying the precautionary principle to planning and decision making when assessing the risk to life, property, community infrastructure from bushfire where appropriate.

Another key strategy that is relevant is in relation to ensuring that planning schemes identify and consider the needs to be given to the location, design and construction of new development and the implementation of bushfire measures and that development should not proceed unless the risk to life and property from bushfire can be reduced to an acceptable level.

Consideration is to be given in consulting with the relevant fire authority early in the strategic and settlement plan making process and implement appropriate bushfire protection measures. This process was undertaken throughout the course of the Officer PSP amendment C149, in which bushfire measures were full considered in the development and adoption of the Officer PSP.

The above ensures that any biodiversity and environmental objectives specified in the planning scheme are compatible with planned bushfire protection measures.

The amendment supports and responds to the State provisions by allowing the land to be developed in accordance with the Officer PSP, in addition to ensuring that the development of this land will provide for a choice in housing options. Furthermore, the environmental aspects of the area will be protected and conserved through the development of the land on larger lots.

### **How does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?**

The Amendment is consistent with and gives effect to the Local Planning Policy Framework (LPPF) as outlined below:

#### Clause 21.01 Cardinia Shire Key Issues and Strategic Vision

This clause identifies that the anticipated population growth within the Cardinia Shire.

Sub **Clause 21.01-3 Key issues** identifies the following relevant key issues:

- *The protection of life and property in terms of flooding and wildfire.*
- *The management of urban growth.*

Sub **Clause 21.01-4 Strategic vision** includes the Strategic Vision for the municipality, which is to foster the sustained wellbeing of the community and environment in the Cardinia Shire through:

- *Developing a strong economic base.*
- *Recognising and protecting the diverse and significant environmental values in the municipality.*
- *Providing opportunities to create and maintain a cohesive and robust community.*
- *Enhancing the experience of people who live, work and visit the municipality.*

#### Clause 21.02-3 Biodiversity

The most relevant key issues for this amendment is recognising that native vegetation provides habitat for key fauna species and provides for diverse flora species throughout the municipality.

The objective is to achieve a net gain in the quantity and quality of native vegetation in the municipality.

Relevant strategies:

- Protect areas of significant remnant vegetation (particularly endangered and vulnerable Ecological Vegetation Classes) as shown on the mapped Ecological Vegetation Classes provided by the Department of Sustainability and Environment.
- Ensure that siting of buildings and works avoids and minimises the removal or fragmentation of native vegetation especially in areas of biodiversity significance and where appropriate, building envelopes should be approved as part of subdivision plans to minimise the removal of vegetation.

In response to the above, the applied zone is a Rural Conservation Zone with an Environmental Significance Overlay, Bushfire Management Overlay the Officer PSP and Officer Native Vegetation Precinct Structure Plan, which contains development, controls that address the strategies within the LPPF.

#### Clause 21.02-4 Wildfire management

This section further builds on the content of the Clause 13.05 Bushfire. The key issues as relevant to this amendment are as follows:

- Ensuring the appropriate design of subdivisions in areas of high wildfire risk.
- Designing and siting of accommodation, including individual dwellings on sites within areas of high wildfire risk. The key issues include the location, access to the site and access to water supply, type and form of vegetation in the area including required vegetation management.
- Balancing the protection of native vegetation with wildfire risk management.

The objective is to recognise that areas in the municipality are prone to wildfire and to minimise the potential risk to life, property and the environment.

Relevant strategies include:

#### *Subdivision*

- Ensure that the siting and design of subdivisions has fully considered the impact of existing slope, aspect and vegetation in terms of risks of wildfire, particularly with regard to the location of building envelopes.

#### *Siting and design*

- Ensure that the siting and design of houses and other accommodation in high risk wildfire areas minimises the potential risk of loss of life or property from wildfire, particularly in terms of the existing slope, aspect and vegetation.
- Ensure all development has appropriately designed access for emergency vehicles.
- Ensure development provides adequate access to water.
- Encourage the use of roads as a buffer between housing and bushland.

*The strategies in relation to wildfire management will be implemented through the planning scheme by:*

- Use of policy and exercise of discretion
- When deciding on applications for use and development of land including subdivision, considering, as appropriate:
- Reference documents listed in the State Planning Policy Framework at Clause 13.05 (Bushfire)
- When developing Precinct Structure Plans and Township Strategies, considering the issue of wildfire risk.

In response to the above, the Officer PSP further expands on the strength of the state and local planning policies by providing specific planning and design guidelines around the siting, design and assessment of planning applications within areas prone to bushfire.

### Clause 21.03 - Settlement and Housing

Sub **Clause 21.03-1 Housing** identifies that housing within Cardinia Shire is currently dominated by detached dwellings in both urban and rural areas. The urban growth area in the Cardinia Shire will continue to attract predominantly young families into the foreseeable future. However, as the housing market progressively matures and the needs of households change there will be increasing demand for more diverse forms of housing. Housing needs may differ between the townships of the municipality and the urban growth area.

The relevant key issue is as follows:

- Providing for a diversity of housing types and densities, including increased housing density around activity centres.

Objective 1 seeks to encourage diversity in housing to meet the needs of existing and future residents.

The relevant strategy to achieve this objective is as follows:

- Ensure that future housing growth is effectively managed to maintain and enhance the qualities of the municipality.
- Encourage a range of lot sizes and housing types in new developments that satisfy the needs and aspirations of the community.

Sub **Clause 21.03-2 Urban growth area** identifies the subject site as being within the *Casey-Cardinia Growth Area Framework Plan* and located in the Pakenham Precinct. The objective of this clause is to create a functional, attractive, safe and sustainable urban environment for the existing and future community of the Cardinia Urban Growth Area.

It is considered that the Amendment supports the relevant clauses and their objectives of the LPPF by including a new schedule to allow the subdivision of the land in accordance with the Officer PSP.

### **Does the Amendment make proper use of the Victoria Planning Provisions?**

The amendment makes proper use of the Victorian Planning Provisions by applying a site specific control to the land in order to provide for a particular land use and development outcome that has been previously approved through Planning Scheme Amendment C149.

### **How does the Amendment address the views of any relevant agency?**

The Department of Environment, Land, Water & Planning and Victorian Planning Authority are supportive of the amendment.

Advice was sought from the Country Fire Authority as the Authority and as the referral authority for the Bushfire Management Overlay (BMO). To date the Country Fire Authority have not provided a response to Council as to whether the proposed amendment is supported.

[The panel did not raise any concerns about the CFA not providing a response. As the Bushfire Management Overlay applies to the land, any planning application lodged with Council will be required to be referred to the CFA in accordance with the Cardinia Planning Scheme.](#)

~~Therefore, the views of the relevant agencies will be considered through the exhibition process.~~

### **Does the Amendment address relevant requirements of the Transport Integration Act 2010?**

The amendment is consistent with the *Transport Integration Act 2010*. The Amendment will not have a significant impact on the transport system.

**Resource and administrative costs****• What Impact will the new planning provisions have on the resource and administrative costs of the responsible authority?**

The new planning provisions will have negligible impact on the resource and administrative costs of the Responsible Authority.

**Where you may inspect this Amendment**

The Amendment is available for public inspection, free of charge, during office hours at the following places:

- Cardinia Shire Council Offices, 20 Siding Avenue, Officer.

The Amendment can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at [www.delwp.vic.gov.au/public-inspection](http://www.delwp.vic.gov.au/public-inspection).

**Submissions**

~~Any person who may be affected by the Amendment may make a submission to the planning authority. Submissions about the Amendment must be received by 24<sup>th</sup> July 2017.~~

~~Electronic submissions are encouraged. Submissions must be sent to:~~

~~mail@cardinia.vic.gov.au or posted to:~~

~~Growth Area Planning — Amendment C226~~

~~Cardinia Shire Council,~~

~~PO Box 7~~

~~PAKENHAM VIC 3810~~

**Panel hearing dates**

~~In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:~~

~~• directions hearing: 23<sup>rd</sup> October 2017~~

~~• panel hearing: 4<sup>th</sup> December 2017~~

## CARDINIA PLANNING SCHEME

Proposed  
C226

**SCHEDULE 3 TO CLAUSE 35.06 RURAL CONSERVATION ZONE**

Applies to land referred to as 'Conservation Living Area' in the Officer Precinct Structure Plan (PSP) and Urban Growth Zone Schedule 3 (UGZ3).

**CONSERVATION VALUES**

The lots in the north-west section of the Officer Precinct include remnant vegetation comprising large patches of high quality Grassy Forest, which is endangered in the Gippsland Plains bioregion. The lots are also affected by bushfire risk. Subject to meeting assessment criteria contained within the Officer Precinct Structure Plan (PSP) some limited development opportunities exist. Development within these lots must also meet the requirements set out in the PSP.

**1.0****Subdivision and other requirements**

Proposed  
C226

	Land	Area/Dimensions/Number
Minimum subdivision area (hectares)	Lot 2 PS327845 130 Whiteside Road, Lot 5 PS321195 Whiteside Road and Lot W PS738811 part of 325 Princes Highway	0.1 hectares
Maximum floor area for which no permit is required to alter or extend an existing dwelling (square metres)	None specified	None specified
Maximum floor area for which no permit is required to construct an out-building associated with a dwelling (square metres)	None specified	None specified
Maximum floor area for which no permit is required to alter or extend an existing building used for agriculture (square metres).	None specified	None specified

## CARDINIA PLANNING SCHEME

Permit requirement for earthworks	Land
Earthworks which change the rate of flow or the discharge point of water across a property boundary	All Land
Earthworks which increase the discharge of saline groundwater	All Land

CARDINIA PLANNING SCHEME

01/06/2013  
C194  
Proposed C226

**SCHEDULE 3 TO CLAUSE 37.07 THE URBAN GROWTH ZONE**

Shown on the planning scheme map as **UGZ3**.

**OFFICER PRECINCT STRUCTURE PLAN (SEPTEMBER 2011) – RESIDENTIAL AREA**

**1.0 The Plan**

12/01/2012  
C149

Map 1 shows the future urban structure proposed in the Officer Precinct Structure Plan (September 2011).

**Map 1 to Schedule 3 to Clause 37.07**



<p><b>LEGEND</b></p> <p>Urban Growth Zone 3/4/ea Urban Growth Boundary</p> <p><b>Movement Network</b></p> <p>Arterial Road (VicRoads) Potential Future Arterial Road (VicRoads) Local Arterial / Connector Street (Boulevard) Connector Street Main Street Access Street - Level 2 Access Place / Street - Level 1 (important connection) Access Street - Level 1 with Landscape trail Signalised intersections (arterial roads only) Grade Separated Crossing Railway Line, Station &amp; Potential Bus Interchange PPTN - Principal Public Transport Network (Bus)</p>	<p><b>Residential Land</b></p> <p>Residential Land Large-Lot Residential Environmental Residential</p> <p><b>Employment Land</b></p> <p><b>Major Activity Centre (MAC)</b> MAC Core Business MAC Peripheral Commercial</p> <p><b>Neighbourhood Centres</b> Neighbourhood Activity Centre (NAC) Neighbourhood Convenience Centre (NCC) Core Business Peripheral Commercial</p> <p><b>Community and Schools</b> Community facilities and public uses (CC = Community Centre) Education facilities P = Primary School, PPS = First Primary School, PS = Private School, SS = Special School</p>	<p><b>Open Space and Environment</b></p> <p>Public open space (unencumbered) Public open space (encumbered) Regional Open Space District sports reserves (SHA) District Parks Proposed pedestrian crossings Existing creeks Major Drainage Lines Ecological Vegetation Classes (EVC's) to be retained</p> <p><b>Other Land</b></p> <p>Existing Major Easements Conservation Living Area Future Development Area (subject to EPBC approval)</p>
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CARDINIA PLANNING SCHEME

**2.0 Use and development**

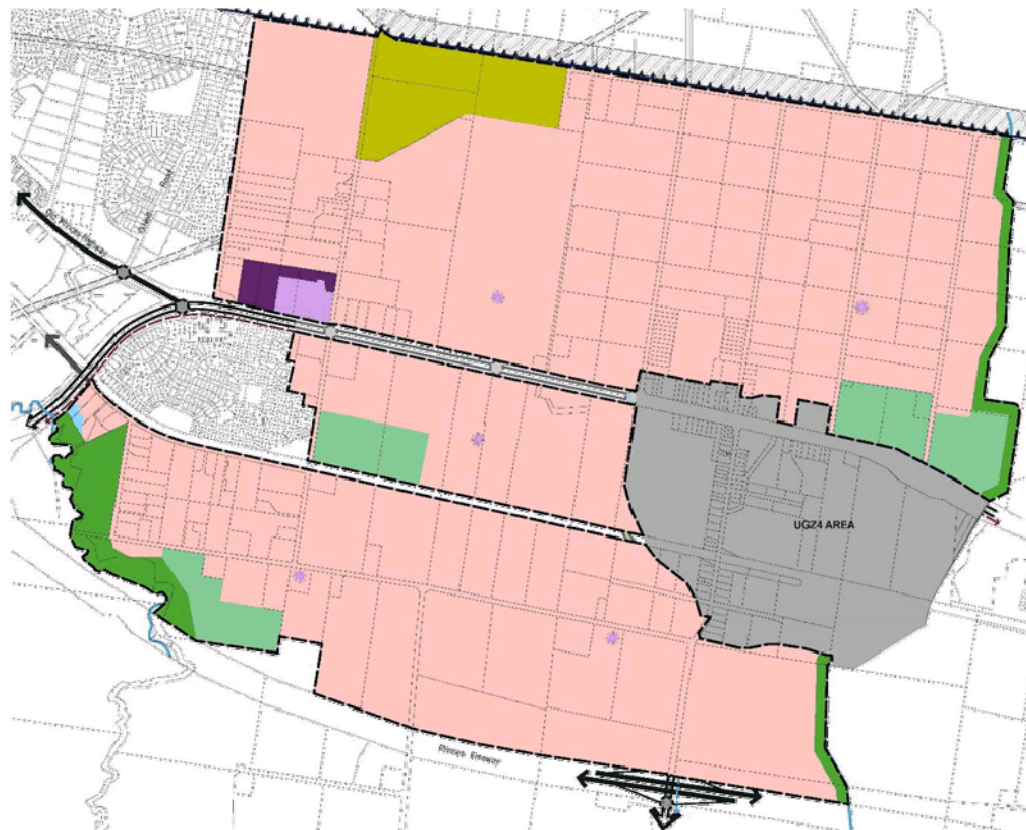
8/10/2013  
C194

**2.1 The Land**

12/01/2012  
C149

The use and development provisions specified in this schedule apply to the land shown in Map 2.

**Map 2 to Schedule 3 to Clause 37.07**



**APPLIED ZONES LEGEND**

-  UGZ3 Boundary
-  Residential
-  Core Business
-  Peripheral Commercial
-  Convenience Centre
-  Conservation Living Area
-  District Park
-  Conservation Area
-  Floodway



## CARDINIA PLANNING SCHEME

**2.2**01/06/2013  
C194  
Proposed  
C226**Applied zone provisions**

The applied zones set out in Table 1 apply to the land shown on Map 2.

**Table 1: Applied zone provisions**

Land shown on Map 2 of this Schedule	Applied Zone Provisions
Core Business / Convenience Centre / Peripheral Commercial	Clause 34.01 – Commercial 1 Zone
Conservation Living Area	Clause 35.06 – Rural Conservation Zone <a href="#">Schedule 3</a>
District park	Clause 36.02 – Public Park and Recreation Zone
Conservation area	Clause 36.03 – Public Conservation and Resource Zone
Floodway	Clause 37.03 – Urban Floodway Zone
All other land	Clause 32.08 – General Residential Zone

The precise boundary of the zone is to be determined by the designation of land in a relevant plan of subdivision to the satisfaction of the responsible authority.

Where a public land zone is applied in Table 1 and the land is in private ownership the bodies specified below are the public land manager for the purposes of the applied zone.

Applied Zone	Public Land Manager
Public Park and Recreation Zone	Cardinia Shire Council
Public Conservation and Resource Zone (adjacent to Cardinia Creek)	Parks Victoria
Public Conservation and Resource Zone (adjacent to Gum Scrub Creek)	Melbourne Water or Cardinia Shire Council as appropriate

**2.3**12/01/2012  
C149**Specific provisions - Use of land for a dwelling**

Prior to the use of any dwelling:

- the dwelling must be connected to a reticulated recycled water supply system for toilet flushing and garden watering where available to the lot; or
- where a reticulated recycled water supply system is not available to the lot, the dwelling must be connected to a rainwater tank with a minimum capacity of 2,500 litres for toilet flushing and garden watering or an alternative grey water recycling system to the satisfaction of the responsible authority; and
- the dwelling must be connected to a reticulated sewerage system.

**2.4**01/06/2013  
C194**Specific provisions - Use of land**

The following provisions apply to the use of land.

**Table 2: Use**

Use	Requirement
Where the applied zone is General Residential Zone: Car wash Food and drink premises (other than Restaurant) Service station	The use is a Section 3 Use.

## CARDINIA PLANNING SCHEME

Use	Requirement
Residential Aged Care Facility where the applied zone is General Residential Zone	The use is a Section 2 Use.
On land marked as peripheral commercial on Map 1: Beauty salon Hairdresser	The use is a Section 2 Use.
On land marked as peripheral commercial on Map 1: Retail Premises (other than beauty salon and hairdresser) Industry	The use is a Section 3 Use.
Shop where the applied zone is Commercial 1 Zone (except where shown as peripheral commercial on Map 1 to this schedule)	A permit is required to use land for a shop if the combined leasable floor area of all shops exceeds the following areas (square metres) for the relevant centre as described in the Officer Precinct Structure Plan: 8000 – Neighbourhood Activity Centre – Princes Highway and Whiteside Road 2000 – Neighbourhood Convenience Centre – Timbertop Boulevard North 500 – any other neighbourhood convenience centre

## 2.5 Specific provisions - Berwick Pottery Site

12/01/2012  
C149

A permit may be granted for the following uses on properties numbered 185 & 186 in the Officer Precinct Structure Plan (Lot 1 on TP20791 and Lot 1 on TP20642), also known as the Berwick Pottery:

Use	Condition
Retail premises (other than Food and drink premises, Community market, Convenience shop, Plant nursery, Tavern, Betting agency, Gambling premises, Gaming premises, Motor vehicle, boat, or caravan sales and Shop)	
Restricted retail premises	Must be in one occupation with a leasable floor area of at least 1000 square metres.

## 2.6 Specific provisions - Subdivision of area shown as Environmental Residential (north of Princes Highway)

12/01/2012  
C149

An application to subdivide land in the area shown as Environmental Residential B in Plan 8 of the Officer Precinct Structure Plan (September 2011) and Lot 2 PS312844 must provide lots that are a minimum of 4000 square metres where any proposed lot contains native vegetation to be retained in the Officer Native Vegetation Precinct Plan (September 2011) unless a planning permit has been granted for the removal of native vegetation within the proposed lot.

## 2.7 Specific provisions - Subdivision of Whiteside Road Neighbourhood Activity Centre

12/01/2012  
C149

## CARDINIA PLANNING SCHEME

An application to subdivide land in the Whiteside Road Neighbourhood Activity Centre including all land south of the Boulevard Connector between May and Whiteside Roads in Map 1 must be consistent with an urban design framework approved under this schedule.

**2.8**12/01/2012  
C148**Specific provisions - Construction of one dwelling on a lot**

A permit is not required to construct or extend one dwelling on a lot with an area less than 300 square metres where an approved building envelope as defined in Part 4 of the Building Regulations 2006 applies to the lot.

**2.9**01/08/2013  
C194**Specific provisions - Construction and extension of one dwelling on a lot of 1000 square metres or more**

A permit is required to construct or extend one dwelling on a lot of 1000 square metres or more where the applied zone is General Residential Zone, except where buildings and works are generally in accordance with an approved building envelope (as defined in Part 4 of the Building Regulations 2006).

**2.10**12/01/2012  
C148**Specific provisions – Buildings and works on Encumbered Open Space**

A permit is required for buildings and works on land shown as Encumbered Open Space in Map 1 except works carried out by or on behalf of the public land manager.

**2.11**12/01/2012  
C148**Public transport referral requirements**

For the purpose of Clause 52.36-1 of the scheme a development is generally in accordance with the Officer Precinct Structure Plan (September 2011) where the following requirements are met:

- A road nominated on *Plan 17 – Public Transport* in the *Officer Precinct Structure Plan* as a potential bus route is constructed in accordance with its corresponding cross section in the *Officer Precinct Structure Plan*; and
- Signalised intersections that contain a proposed Principal Public Transport Network (PPTN) route in the *Officer Precinct Structure Plan* include bus priority measures to mitigate delays to bus travel times, to the satisfaction of the Director of Public Transport; and
- Any roundabouts or other road management devices on potential bus routes are constructed to accommodate ultra low floor buses in accordance with the Public Transport Guidelines for Land Use and Development; and
- The proposal includes the construction of the bus stops shown on *Plan 16 – Public Transport* in the *Officer Precinct Structure Plan (September 2011)*, including bus stop hard stands with direct and safe pedestrian access to a pedestrian path (all in accordance with the Public Transport Guidelines for Land Use and Development and compliant with the Disability Discrimination Act – Disability Standards for Accessible Public Transport 2002) at no cost to the Director of Public Transport all to the satisfaction of the Director of Public Transport.

A responsible authority may address any of the above matters through planning permit conditions.

**3.0**12/01/2012  
C148**Application requirements**

If the responsible authority is satisfied that a requirement is not relevant to the evaluation of an application, the responsible authority may waive or reduce the requirement unless otherwise indicated below.

**3.1**12/01/2012  
C148**General subdivision**

All applications for subdivision must be accompanied by the following information to the satisfaction of the responsible authority.

## CARDINIA PLANNING SCHEME

- Details of the proposed use and development of each part of the land.
- A table setting out:
  - the amount of land allocated for the proposed uses; and
  - the mix of lot sizes.
- An indication of staging of subdivision and timing.
- Details of how the road connections, open space, pedestrian and bicycle linkages and drainage networks of the proposed development integrates with and responds to existing and planned developments on adjacent sites.
- Include a Transport Impact Assessment Report to the satisfaction of the relevant roads authority (be it VicRoads or Council).
- A plan showing access arrangements for properties adjacent to all existing and future arterial roads.
- A Public Infrastructure Plan which addresses:
  - The extent of any stormwater drainage works and road works proposed or required under this permit.
  - The land which is required to be set aside for infrastructure identified in the Officer Development Contributions Plan (September 2011) or the Officer Precinct Structure Plan (September 2011) including land required for public open space and community facilities and any proposed reconciliation payment in respect of the land having regard to its value set out in the Officer Development Contributions Plan (September 2011).
  - An estimate of the extent of equalization which is required in respect of public open space to be provided having regard to the Officer Precinct Structure Plan (September 2011) and the Officer Development Contributions Plan (September 2011).
  - Subject to the consent of the Collecting Agency, any infrastructure works set out in the Officer Development Contributions Plan (September 2011) which can be provided "in lieu" of development contributions in accordance with the Officer Development Contributions Plan (September 2011).
  - The effects of the provision of infrastructure on the land or any other land.
  - Any other relevant matter related to the provision of infrastructure reasonably required by the responsible authority.
- A hydrogeological assessment of groundwater conditions on the site and the potential impacts on the proposed development including any measures required to mitigate the impacts of groundwater conditions on the development.
- An approved Cultural Heritage Management Plan that is endorsed by the future public land manager/s of any reserve to be created as part of the development or advice from a suitably qualified cultural heritage professional that confirms that a Cultural Heritage Management Plan is not required. This requirement may not be waived.
- A Conservation Management Plan for land within the Heritage Overlay, prepared in accordance with Conservation Management Plans: Managing Heritage Places – A Guide (Heritage Council of Victoria 2010).
- A Safety Management Study for any land adjacent to or including a gas pipeline easement to the satisfaction of Energy Safe Victoria.
- A site assessment of the land by a suitably qualified environmental professional including:
  - detail of the nature of the previous and existing land use/activities on the land;
  - an assessment of the potential level and nature of contamination on the land.
  - advice on whether the environmental condition of the land is suitable for the proposed use/s and whether an environmental audit of all, or part, of the land is recommended having regard to the Potentially Contaminated Land General Practice Note June 2005, DSE, as amended from time to time.

## CARDINIA PLANNING SCHEME

**3.2**12/01/2012  
C149**Residential subdivision**

In addition to the general subdivision requirements, an application that includes subdivision of land shown as residential on Map 1 must be accompanied by the following information to the satisfaction of the responsible authority:

- An overall masterplan for all land in contiguous ownership of the landowner demonstrating the lot yield, diversity and distribution across the subject area, consistent with the principles outlined in the *Officer Precinct Structure Plan (September 2011)*.
- Subdivision and Housing Design Guidelines prepared to the satisfaction of the responsible authority in accordance with the *Officer Precinct Structure Plan (September 2011)*.
- A building envelope plan that addresses the planning and design guidelines set out in the *Officer Precinct Structure Plan (September 2011)* for land:
  - shown as Environmental Residential (north of the Princes Highway) in Map 1;
  - included in Character Area 1c (CA1c) shown in Plan 7 of the Officer Precinct Structure Plan (September 2011).

The building envelope must provide for:

- All outbuildings and water tanks to conform with the building envelope on the relevant lot;
- A setback of at least 30 metres from any native vegetation in the relevant lot, which is identified to be protected and retained under the *Officer Native Vegetation Precinct Plan (September 2011)*, unless a planning permit is approved for the removal of that vegetation.

This requirement may not be waived or reduced.

- A Fire Risk Assessment prepared by a suitably qualified bushfire risk management professional for all land in contiguous ownership that is located within the area shown as Environmental Residential (north of the Princes Highway) in Map 1, including:
  - identification of the Bushfire Attack Level (BAL) curves generated by the fire threat/s;
  - an assessment of the BAL standards applicable to each individual building envelope;
  - advice about the impact of dwellings in closer proximity to the identified fire threat/s on the requirements for lots within than 100 metres of the fire threat/s, including requirements for defensible space and applicable BAL standards for dwellings.

This requirement may not be waived or reduced.

**3.3**12/01/2012  
C149**Neighbourhood Convenience Centres**

Applications for buildings and works must be accompanied by a Site Context Report to the satisfaction of the responsible authority for Neighbourhood Convenience Centres.

The site context report must address the requirements set out in the *Officer Precinct Structure Plan (September 2011)* (specified in section 4.3.3b).

An application to use land for a shop in a Neighbourhood Convenience Centre must be accompanied by a retail demand assessment to the satisfaction of the responsible authority.

**3.4**12/01/2012  
C149**Whiteside Road Neighbourhood Activity Centre**

An application to use or subdivide land, or to construct a building or construct and carry out works within the Whiteside Road Neighbourhood Activity Centre must be accompanied by an urban design framework which is to the satisfaction of the responsible authority.

## CARDINIA PLANNING SCHEME

The urban design framework must be generally in accordance with the Officer Precinct Structure Plan (September 2011). The urban design framework may be amended to the satisfaction of the responsible authority.

### 3.5 Sustainability statement requirements

12/01/2012  
C149

An application for subdivision of 60 or more lots, or to construct a building in the areas shown as Peripheral Commercial or Core Business must be accompanied by a Sustainability Statement as set out in the Officer Precinct Structure Plan (September 2011).

### 4.0 Conditions and requirements for permits - general

12/01/2012  
C149

#### Urban Design Framework

A permit within an area of an approved urban design framework must be generally in accordance with the approved urban design framework.

A permit may be granted to subdivide land or to construct a building or construct and carry out works prior to the approval of an urban design framework if, in the opinion of the responsible authority, the grant of the permit is consistent with the requirements for the Urban Design Framework as set out in the *Officer Precinct Structure Plan (September 2011)*.

### 4.1 Native Vegetation Precinct Plan Implementation

12/01/2012  
C149

Any:

- Works carried out in respect of any subdivision;
- Construction of buildings and associated works; and
- Removal, lopping or destruction of native vegetation on the land as authorised by the Native Vegetation Precinct Plan (NVPP) applying to the land -

must be carried out in accordance with all of the requirements set out in the incorporated NVPP applying to the land to the satisfaction of the responsible authority.

Only the native vegetation which is identified for removal in the incorporated NVPP applying to the land may be removed, lopped or destroyed without a permit.

Before the removal, destruction or lopping of any native vegetation within any property (identified by the PSP Property Number in Map 1 of the Officer NVPP) the owner of the land from which the native vegetation is being removed must provide offsets consistent with the incorporated NVPP by either:

- providing an allocated credit extract issued by the Department of Sustainability and Environment; or
- preparing and submitting an Offset Plan to the satisfaction of the Department of Sustainability and Environment and have the Offset Plan approved by responsible authority.

Where an Offset Plan is approved:

- before the removal, destruction or lopping of any native vegetation, the owner of the land from which the native vegetation is being removed must provide on-title security for the Offset Site to the satisfaction of Department of Sustainability and Environment that provides for the implementation of the Offset Plan and pay the reasonable costs of the preparation, execution and registration of any on-title agreement; and
- offsets must be initiated within 12 months of approval of the Offset Plan or before the removal of Very High Conservation Significance vegetation, whichever is earlier, and be implemented according to the schedule of works in the Offset Plan to the satisfaction of the responsible authority.

### 4.2 Environmental Assessment of Potentially Contaminated Land

12/01/2012  
C149

## CARDINIA PLANNING SCHEME

Before the development associated with the subdivision starts, (this requirement does not apply to bore holes and excavation associated with an environmental site assessment), an environmental site assessment of the land by a suitably qualified environmental professional must be undertaken which provides information including:

- The nature of the previous and existing land use/activities on the land.
- An assessment of the potential level and nature of contamination on the land.
- Advice on whether the environmental condition of the land is suitable for the proposed use/s and whether an environmental audit of all or part of the land is recommended having regard to the Potentially Contaminated Land General Practice Note June 2005, DSE, as amended from time to time.

If an environmental site assessment recommends an environmental audit of all or part of the land, then:

- prior to the commencement of any use for a sensitive purpose; or
- prior to any buildings or works; or
- prior to the certification of a plan of subdivision

whichever is the earlier of or in respect of all or that part of the land as the case may, the following must be provided to the responsible authority, either:

- A certificate of environmental audit issued for the relevant land in accordance with Part 1XD of the Environmental Protection Act 1970, or
- A statement by an environmental auditor appointed under the Environment Protection Act 1970, in accordance with Part 1XD of that Act that the environmental conditions of the relevant land are suitable for a sensitive use (with or without conditions on the use of the site);

If a Statement of Environmental Audit is provided rather than a Certificate of Environmental Audit and the Statement of Environmental Audit indicates that the environmental conditions of the relevant land are suitable for a sensitive use subject to conditions, the owner of the land must enter into an agreement with the responsible authority under Section 173 of the Planning and Environment Act 1987 before the issue of a Statement of Compliance or before the construction of any building on the relevant land, whichever is the earlier;

- implementation of and on-going compliance with all conditions in the Statement of Environmental Audit; and
- the responsible authority's reasonable legal costs and expenses of drafting/reviewing and registering the agreement to be borne by the owner of the relevant land.

**4.3**

1201/2012  
C148

**Construction Environmental Management Plan**

Prior to the commencement of any buildings or works a Construction Environmental Management Plan (CEMP) is to be prepared, where appropriate.

The CEMP must specifically address significant flora and fauna where the buildings or works are within:

- 50 metres of any native vegetation to be retained in the *Officer Precinct Native Vegetation Precinct Plan (September 2011)*; and/or
- 100 metres of any waterbody (including creeks, drains, dams and wetlands) under the provisions of the *Officer Precinct Structure Plan Conservation Management Plan (excluding Cardinia Creek) (15 September 2011)*; and/or
- the area shown as Environmental Residential (south of the railway line) in Map 2.

The CEMP must address all requirements specified in the *Officer Native Vegetation Precinct Plan (September 2011)* and the relevant Conservation Management Plan and be to the satisfaction of the responsible authority.

## CARDINIA PLANNING SCHEME

**4.4 Conservation Management Plan**12/01/2012  
C148

Where the *Officer Precinct Structure Plan Conservation Management Plan (excluding Cardinia Creek) (Ecology Partners, 15 September 2011)* or the *Officer Precinct Structure Plan Cardinia Creek Conservation Management Plan (Ecology Australia, 8 September 2011)* has been approved by the Secretary to the Department of Sustainability and Environment and it applies to the land (refer Plan 13 of the *Officer Precinct Structure Plan (September 2011)*), any permit granted for subdivision or the construction of a building or the carrying out of works must include the following conditions:

- The actions which identify the responsible agent as the “landowner” or “developer” in the Conservation Management Plan (**CMP**) must be implemented to the satisfaction of the Department of Sustainability and Environment.

and the following conditions, where appropriate:

- Prior to any works commencing within 100 metres of the edge of any waterbody which is to be retained, a highly visible fence is to be installed 20 metres from the edge of the water body.
- No polluted and/or sediment laden run-off is to be discharged directly or indirectly into drains or watercourses.
- Pollution or litter traps must be provided on the land at appropriate points along the drainage system or drainage lines.
- A salvage and translocation plan must be prepared and implemented to the satisfaction of the Department of Sustainability and Environment and the approval of the responsible authority.

Where the land is identified to have suitable habitat approved to be removed in Appendix 8 of the *Officer Precinct Structure Plan: Cardinia Creek Conservation Management Plan (8 September 2011)*, any permit granted for subdivision or development must contain the following condition:

- Prior to the issue of a Statement of Compliance under the Subdivision Act, the landowner must enter into a legally binding agreement (or an alternative agreement approved by DSE) for the payment to implement the *Officer Precinct Structure Plan: Cardinia Creek Conservation Management Plan (8 September 2011)* in accordance with Section 2.3.1 Management Responsibilities and Funding and Appendix 8 to the satisfaction of the Department of Sustainability and Environment. The landowner must pay the reasonable costs of the preparation, execution, and registration of the agreement.

**4.5 Subdivision permits**12/01/2012  
C149

Any permit for subdivision must contain the following conditions as appropriate:

- The setback from the rail reserve and interface between the rail line and the proposed subdivision is to be to the satisfaction of the Department of Transport and the approval of the responsible authority.
- If any part of the land is shown in the incorporated *Officer Precinct Structure Plan (September 2011)* as unencumbered passive public open space that land must be transferred to Council subject to equalisation in accordance with the equalisation provisions in the incorporated *Officer Precinct Structure Plan (September 2011)*. This requirement does not apply if the responsible authority advises the owner that it does not require the land.
- Land required for road widening must be transferred to or vested in the relevant roads authority at no cost to the relevant road authority unless the land is funded by the *Officer Development Contributions Plan (September 2011)*.

**4.6 Small lot housing code**12/01/2012  
C149

Any permit for subdivision that allows the creation of a lot less than 300 square metres must contain the following conditions:



## CARDINIA PLANNING SCHEME

- The Small Lot Housing Code forming part of the *Officer Precinct Structure Plan (September 2011)* applies to the subdivision of the land under this permit and the application of the Small Lot Housing Code must be shown on any endorsed plans which are part of this planning permit.
- Before a plan is certified for a subdivision (or the relevant stage of a subdivision) where a building envelope is proposed, the plans endorsed under this planning permit must show a building envelope for each lot with an area less than 300 square metres that is in accordance with the Small Lot Housing Code forming part of the *Officer Precinct Structure Plan (September 2011)* to the satisfaction of the Responsible Authority.

#### 4.7 Use of a building envelope plan

12/01/2012  
G149

Where a building envelope plan is proposed and/or required, any permit for subdivision must contain the following conditions:

- The building envelopes must be applied as a restriction on the plan of subdivision or through an agreement under section 173 of the Act that is registered on the title to the land. The restriction or the agreement must provide for:
  - the building envelope plan to apply to each relevant lot;
  - all buildings being constructed in accordance with the building envelope on the relevant lot;
  - the construction of a building outside the building envelope only with the written consent of the Responsible Authority; and
  - a building envelope to cease to apply to any building on a lot less than 300 square metres that is affected by the envelope after the issue of a Certificate of Occupancy for the whole of a dwelling and any garage or carport on the land.

#### 5.0 Advertising signs

01/08/2013  
G184

Advertising sign requirements are set out in the relevant applied zones shown in Table 1.

Despite the provisions of Clause 32.08, a permit may be granted to display an advertising sign that promotes the sale of land or dwellings. The permit must specify an expiry date of 5 years from the date the permit is issued.

#### 5.1 Land and home sales signs

12/01/2012  
G149

Despite the provisions of Clause 52.05, signs promoting the sale of land or homes on the land (or on adjoining land in the same ownership) may be displayed without a permit provided:

- The advertisement area for each sign does not exceed 10 square metres.
- Only one sign is displayed per road frontage. Where the property has a road frontage of more than 150 metres multiple signs may be erected provided there is a minimum of 150 metres distance between each sign, with a total of not more than 4 signs per frontage.
- The sign is not animated, scrolling, electronic or internally illuminated sign.
- The sign is not displayed longer than 21 days after the sale (not settlement) of the last lot.
- The sign is setback a minimum of 750mm from the property boundary.

*Planning and Environment Act 1987*

Panel Report

Cardinia Planning Scheme Amendment C226

Correction to subdivision controls for the Conservation Living Area in the Officer Precinct Structure Plan

5 January 2018




*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Cardinia Planning Scheme Amendment C226

Correction to subdivision controls for the Conservation Living Area in the Officer Precinct Structure Plan

5 January 2018



Geoff Underwood, Chair

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### Appendix A Document List

## List of Abbreviations

BMO	Bushfire Management Overlay
CFA	Country Fire Authority
CLA	Conservation Living Area
DCPO	Development Contributions Plan Overlay
DELWP	Department of Environment, Land, Water and Planning
LPPF	Local Planning Policy Framework
ODCP	Officer Developer Contributions Plan
ONVPP	Officer Native Vegetation Precinct Plan
OPSP	Officer Precinct Structure Plan
PSP	Precinct Structure Plan
RCZ	Rural Conservation Zone
RCZ3	Rural Conservation Zone Schedule 3
SPPF	State Planning Policy Framework
VPA	Victorian Planning Authority

## Overview

Amendment summary	
<b>The Amendment</b>	Cardinia Planning Scheme Amendment C226
<b>Common name</b>	Correction to subdivision controls for the Conservation Living Area in the Officer Precinct Structure Plan
<b>Brief description</b>	The Amendment proposes to remove inconsistencies across subdivision controls in the planning scheme
<b>Subject land</b>	Three lots are affected by the Amendment. Two have frontage to Whiteside Road, Officer and one abutting lot that forms part of the neighbouring residential estate
<b>The Proponent</b>	Cardinia Shire Council
<b>Planning Authority</b>	Cardinia Shire Council
<b>Authorisation</b>	A03554 3 May 2017
<b>Exhibition</b>	22 June to 24 July 2017
<b>Submissions</b>	Number of Submissions: 2 APA Group Keymore Pty Ltd
Panel process	
<b>The Panel</b>	Geoff Underwood, Chair
<b>Directions Hearing</b>	At the Offices of the Cardinia Shire Council, Siding Avenue, Officer on 14 November 2017
<b>Panel Hearing</b>	At the Offices of the Cardinia Shire Council, Siding Avenue, Officer on 5 December 2017
<b>Site inspections</b>	Unaccompanied inspections were carried out on 14 November 2017 after the Directions Hearing and on 5 December 2017 after the Hearing.
<b>Appearances</b>	<ul style="list-style-type: none"> <li>• Cardinia Shire Council represented by Ms Angela Gleeson, Principal Growth Area Planner</li> <li>• Keymore Pty Ltd represented by: <ul style="list-style-type: none"> <li>- At the Directions Hearing, Mr Guillermo Cabala, Senior Town Planner of Bosco Jonson</li> <li>- At the Hearing, Mr John Carey of Minter Ellison, solicitors, accompanied by Mr Cabala of Bosco Jonson and Mr Don Welsh of Keymore Pty Ltd.</li> </ul> </li> </ul>
<b>Date of this Report</b>	5 January 2018

## Executive summary

### (i) Summary

Cardinia Planning Scheme Amendment C226 (the Amendment) seeks to correct an inconsistency between current planning controls that operate to prohibit the subdivision of a small area of 27.62 hectares of land identified as the Conservation Living Area in the Officer Precinct Structure Plan approved in 2011 with an underlying zone of Rural Conservation Zone.

The need for the Amendment arose when the Council was unable to process a permit application for subdivision for one of the only three lots in the Conservation Living Area because of conflicts across the zone provisions and the structure plan. The proposed solution is to reduce the minimum lot size allowed within the zone from 40 hectares to 1,000 square metres by inserting a new Schedule 3 to the Rural Conservation Zone; a consequential amendment will follow to identify this new schedule the Urban Growth Zone that applies across the Officer Precinct Structure Plan.

The three lots are owned by two parties. One landowner, Keymore Pty Ltd (Keymore), was a submitter to the Amendment, the other landowner did not lodge a submission, but attended the Hearing to support the submitter. The only other submission was the APA Group concerned about protection of a high-pressure gas pipeline that traverses the area of the Amendment. Prior to the Hearing, the APA Group withdrew its submission.

The submission and presentations by Keymore centred on its argument that the Amendment did not go far enough to change all inconsistencies in the controls and what it claims are other provisions within the structure plan that are unclear and uncertain in their application to all the (three) lots covered by the Amendment. Keymore sought further changes to the controls beyond those exhibited in the Amendment.

Council supports the Amendment as the essential first step in correcting the controls and opposes any further changes as outside the scope of the Amendment. Instead, Council commits to a review of the Officer Precinct Structure Plan, which would consider what, if any, further changes should be made to the structure plan and other documents. The commitment to a review was sufficient to persuade the APA Group to withdraw its submission while Keymore responded to that commitment by reducing the matters for presentation to the Panel.

The key issue for the Panel is how to reconcile the competing positions of the Council and the submitter. The submitter seeks changes to the Amendment that the Council says are beyond the scope of the Panel. The submitter presents a solid legal basis to support the Panel acting to make the changes. If the Panel supports the submitter, the Council says it will consider abandoning the Amendment. If the Panel does not support the submitter, it says the Panel should abandon the Amendment describing it as piecemeal in its approach to resolving the inconsistencies across the controls.

The Panel concludes that the Amendment should be adopted as exhibited.

Whether or not it goes far enough as the submitter argues, the changes to the subdivision controls as proposed in the Amendment are necessary. The Amendment is the first step to enabling subdivision as envisaged by the structure plan. That there may be other changes is

a matter for another day after the review of the structure plan that the Council now offers. The Panel acknowledges that there is no timing on the review as the Council has to consult its stakeholder partners the Department of Environment, Land, Water and Planning and the Victorian Planning Authority about the review. The Panel lends its weight to the Council approach to its partners.

**(ii) Recommendations**

**Based on the reasons set out in this Report, the Panel recommends that Cardinia Planning Scheme Amendment C226 be adopted as exhibited.**



# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The Explanatory Report for the Amendment states the intention is to include *a new Schedule 3 to the Rural Conservation Zone (RCZ) that allows for a minimum subdivision area of 0.1 hectares and to align the Rural Conservation Zone (RCZ) and the Officer Precinct Structure Plan (OPSP) to allow subdivision and development of the land in accordance with the Officer Precinct Structure Plan (OPSP)* and describes two main changes to the Cardinia Planning Scheme. The Amendment:

- Inserts a new Rural Conservation Zone Schedule 3 (RCZ3) to Clause 35.06 (which is the applied zone in the Urban Growth Zone 3), to remove the minimum subdivision area (40 hectares) and insert a new minimum subdivision area of 0.1ha for the 3 sites specified, to correct the inconsistency with provisions in the Urban Growth Zone Schedule 3 (UGZ3), Rural Conservation Zone (RCZ) and the Officer PSP.
- Amends Table 1 in Clause 37.07-3 UGZ3 subclause 2.2, from 'Rural Conservation Zone' to 'Rural Conservation Zone, Schedule 3'.

The Explanatory Report states the Amendment was prepared at the request of Keymore Pty Ltd (Keymore), one of two landowners within the area covered by the Amendment and the only submitter to appear before the Panel. At the Directions Hearing, the Council and the submitter agreed that a better description was that the Amendment was prepared by the Council itself after it found it was unable to process a planning permit application for subdivision of land in the Conservation Living Area (CLA) because of *an inconsistency between (the) Officer Precinct Structure Plan (PSP) (2011) Incorporated Document, the Urban Growth Zone Schedule 3 (UGZ3) and the Rural Conservation Zone (RCZ)*.

### (ii) The subject land

The Amendment applies to three lots in the Officer Precinct Structure Plan (OPSP) area described below and shown in Figure 1:

*Lot 2 PS327845 130 Whiteside Road (PSP Property No: 377)*

*Lot 5 PS321195 Whiteside Road (PSP Property No:376)*

*Lot W PS738911 part of 325 Princes Highway (previously Lot 2a PS517997) (PSP Property No: 152)*

Figure 1 The Subject site



The Keymore lot is PSP property 152, the eastern-most of the lots. It now has a different title description but nothing turns on a further title change that results from subdivision of the adjoining residential estate by Keymore.

## 1.2 Panel process

During exhibition of the Amendment, two submissions were received. As part of the consideration process, Council discussed the content of submissions with each of the submitters on the basis that the changes that were being sought were outside the scope of the Amendment. Notwithstanding the approaches by Council, each submitter held their position and the Council meeting on 23 October 2017 resolved to refer the submissions to a Panel.

After the appointment of the Panel but prior to the Directions Hearing, the APA Group, withdrew its submission<sup>1</sup>.

Following the Directions Hearing the Panel issued a direction that Keymore was to advise the Panel and parties whether it wished to argue its submission at the Hearing scheduled for 5 December 2017. In response, by letter dated 27 November 2017, Minter Ellison as solicitors for Keymore advised that Keymore wished to present at the Hearing but that it would limit its submission if the Council confirms a commitment to review the OPSP by June 2019.

## 1.3 Procedural issues

The APA Group withdrew its submission on the basis of a commitment by the Council to undertake a review of the OPSP and during that review, to consider better identification and protection of a high-pressure gas pipeline that traverses the area covered by the Amendment. That commitment was confirmed at the Hearing albeit without the setting of an end date as sought by Keymore because, Council submitted, it had to rely upon corresponding

<sup>1</sup> APA Group letter dated 9 November 2017

commitments from its stakeholder partners at the Department of Environment, Land, Water and Planning (DELWP) and the Victorian Planning Authority (VPA). Despite this caveat, Keymore accepted the Council commitment and the hearing proceeded to consider other aspects of the Keymore submission and, of course, Council's supporting submission.

#### 1.4 Background to the proposal

In 2011 the Minister for Planning approved Cardinia Planning Scheme Amendment C149 which incorporated the OPSP and Officer Development Contributions Plan (ODCP). The land within C149 was already zoned Urban Growth Zone and the subject land zoned RCZ within the Urban Growth Boundary.

The CLA is approximately 27.62 hectares of land in the north-west section of the OPSP. It is the only CLA land within the entire OPSP area; it represents a very small portion of the 645.84 hectares that make up the OPSP. The CLA is the hatched area in Figure 2 which shows the CLA in the context of the OPSP.

Figure 2 The CLA in the context of the Officer PSP



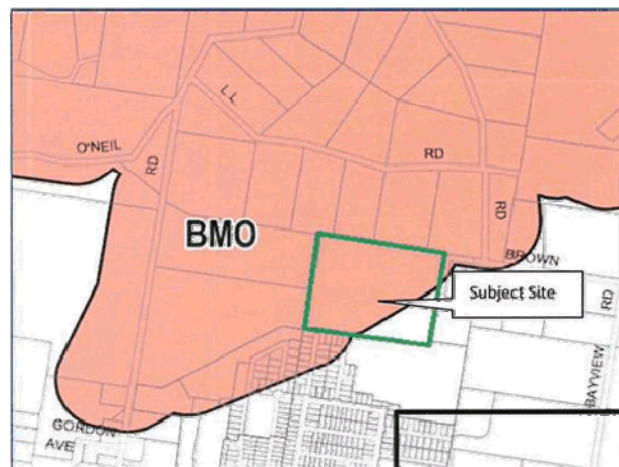
The OPSP limits the development potential of the CLA to:

- A single dwelling is permitted on PSP Property No: 377
- Up to 3 dwellings are permitted on PSP Property No:376 provided that:
  - All dwellings are located in the south west corner of the site;
  - Each dwelling is located on a separate lot; and
  - Native vegetation to be retained is located in a lot that contains a dwelling.

- Development of up to 4 dwellings are permitted on PSP Property No: 152 (the Keymore lot) provided that:
  - Each dwelling is located on a separate lot; and
  - Native vegetation to be retained is located in a lot that contains a dwelling.

The majority of the area is located within the Bushfire Management Overlay (BMO) and remnant vegetation is to be protected under the Officer Native Vegetation Precinct Plan (ONVPP). Figure 3 is taken from the submission by Bosco Jonson for Keymore during exhibition of the Amendment as it shows the extent of the BMO over the Keymore land as applied by Amendment GC13 to the Cardinia Planning Scheme on 3 October 2017 when revised bushfire management provisions were introduced statewide. The two other lots within the CLA are fully covered by the BMO.

Figure 3 The extent of the BMO in the Amendment area



The Explanatory Report states that retention of vegetation protects the character and biodiversity values of the area and that the area is of high landscape value, providing a green backdrop of the southern foothills of the Dandenong Ranges.

Surrounding the CLA is an area that has a high risk of bushfire. Figure 4 is an aerial map of the three land parcels within the Amendment area.<sup>2</sup>

<sup>2</sup> This map appeared as figure 2 in the officer's report to the Council meeting 16 October 2017

Figure 4 The Amendment and the vegetation coverage on the lots



The Explanatory Report provides further context for the land within the Amendment area stating it is the combination of topography and proximity to vegetation to be retained within the ONVPP that led to the OPSP limiting the development potential of the area. The minimum lot size in the OPSP was required to achieve vegetation protection objectives and adequate defensible space around dwellings as well as to ensure dwellings can be constructed to an appropriate standard against bushfire.

The Explanatory Report also cites the OPSP reference to advice from the Country Fire Authority (CFA) that rather than extending the BMO further into the precinct, a mechanism should be put into place to manage bushfire risk through the subdivision process.

The Amendment seeks to deal with these constraints while allowing development within the limits of the OPSP. The change that introduces the RCZ3 reduces the minimum lot size for subdivision from 40 hectares to 1,000 square metres to allow the subdivision of the three properties that lie in the CLA. This reduction in the minimum lot size does not diminish the importance of any of these provisions.

There are cascading planning controls applying to the CLA:

- The OPSP guides subdivision of the land including the number of properties that may be created.
- The OPSP applies the ONVPP for the retention and removal of vegetation.
- The UGZ and UGZ3 apply land use and development controls to the CLA.
- A Development Contributions Plan Overlay (DCPO4) applies over the OPSP area.
- The BMO reflects the local conditions with the CLA abutting bushland in a wildfire management area and the unique site considerations with a dense cover of grassy forest.
- The RCZ and RCZ3 apply development controls for subdivision of the lots.

The Amendment varies the RCZ3 to amend the minimum subdivision size permitted for each lot and the UGZ3 to cite RCZ3.

### **1.5 Summary of issues raised in submissions**

With the commitment to review the OPSP, the submission by the APA Group is resolved and elements of the Keymore submission will be addressed. There are, however, matters remaining with the Keymore submission particularly its primary position that the Amendment does not go far enough to facilitate development of the land as it fails to increase the number of dwellings allowed on the land and does not vary the development contribution to make the levy more affordable.

Keymore has a principal interest in the processing of the Amendment as one of only two landowners within the CLA and as the developer of the neighbouring residential estate being constructed in accordance with the OPSP. With a maximum of four dwellings on the Keymore land, it will be developed at a much lower density rather than the standard 15 lots per net developable hectare called for in the OPSP and as provided on the adjoining estate.

The owner of the other two lots covered by the Amendment was not a submitter but attended the Hearing. The landowner confirmed Keymore's advice that he was supportive of its submissions that the Amendment did not go far enough to achieve a fair outcome for the development of the land particularly as it did not clarify the application of the DCP to the CLA.

While welcoming the change to the minimum subdivision size, Keymore's submission stated that development of the land cannot occur unless:

- allotments are configured and located in an efficient manner
- the Development Contribution levied on the land is affordable
- the tree retention and fire prevention provisions allow for efficient subdivision and development.

Keymore is critical that none of these changes are proposed in the Amendment and looks to the Panel to make what it sees as the necessary additional changes to the various controls.

#### **(i) Planning Authority**

The Council promoted the Amendment because it would lead to a development outcome that matched the policy intention of the OPSP with the provisions of the UGZ3 and the applied RCZ. While acknowledging the Keymore submission, the Council maintains that the Amendment takes the essential first step toward development within the CLA. Council stands on its position that those other changes sought by Keymore are outside the scope of the Amendment and must be left for consideration in a future review of the OPSP that Council commits to undertake.

### **1.6 Issues dealt with in this Report**

Keymore's response to the Panel direction gave notice of its intention to argue that the Panel should make the changes as submitted. The submission was comprehensively argued during the Hearing. The issues raised and the Council opposing submission are dealt with in section 3 of the report.

It is noted that neither submitter took issue with the form of the new Schedule 3 to the RCZ or the consequential amendment to UGZ3. Both changes are machinery in nature and are uncontentious. They are inconsequential to the APA Group and are steps in the process for Keymore. The Panel has only to deal with the issues of process and scope put during the Hearing; it does that in section 3.

## 2 Planning context

As the Amendment proposes to correct an inconsistency in the relationship of planning controls already in the planning scheme, the strategic justification is not as material as it would be for new controls. Nonetheless, the Council provided a response to the Strategic Assessment Guidelines and compliance with policy and the requirements of relevant Ministerial Directions as part of the Explanatory Report.

### 2.1 Policy framework

#### (i) State Planning Policy Framework

Background material supplied by the Council addressed the following provisions of the State Planning Policy Framework (SPPF) and relevant sub-clauses within:

- Clause 11 Settlement
- Clause 12 Environmental and landscape values
- Clause 13 Environmental Risks
- Clause 15 Built Environment and Heritage
- Clause 16 Housing.

The Panel accepts the Council summary position that the Amendment:

- supports and implements the SPPF
- seeks to ensure that sufficient supply of land is available for residential uses and supporting infrastructure
- supports environmental objectives in that planning ensures to avoid and minimise significant impacts on land use and development by ensuring that permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria's biodiversity
- adopts a best practice environmental management and risk management approach which aims to avoid or minimise environmental degradation and hazards; and includes strategies to ensure the protection of human life over other policy considerations in planning and decision-making in areas at risk from bushfire.

#### (ii) Local Planning Policy Framework

The Council submitted that the Amendment is consistent with and gives effect to the Local Planning Policy Framework (LPPF) and the following clauses:

- Clause 21.01 Cardinia Shire Key Issues and Strategic Vision
- Clause 21.02-3 Biodiversity
- Clause 21.02-4 Wildfire management
- Clause 21.03 Settlement and Housing.

The Panel accepts the statement in the Explanatory Report that *'the Amendment supports the relevant clauses and their objectives of the LPPF by including a new schedule to allow the subdivision of the land in accordance with the Officer PSP'*.



**(iii) Other planning strategies or policies used in formulating the Amendment**

The OPSP and companion controls and policy approaches are background to the formulation of the Amendment.

**2.2 Planning scheme provisions**

The Amendment deals only with the RCZ and provisions in UGZ3 existing in the planning scheme and makes minor changes to them by inserting a new schedule to the RCZ and an insertion in the UGZ3. The changes are an appropriate use of planning controls.

**2.3 Ministerial Directions**

Council submitted that the Amendment meets the relevant requirements of:

- Ministerial Direction – Form and Content of Planning Schemes
- Ministerial Direction No.9
- Ministerial Direction No.11
- Ministerial Direction No.15.

**2.4 Conclusion**

There was no contest about the strategic justification of the Amendment or to the form of the controls, apart from Keymore's submission that further changes should be made to the Amendment. The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the SPPF and LPPF, and is consistent with the relevant Ministerial Directions.

## 3 Can and should changes be made to the Amendment

### 3.1 The issue

At the Directions Hearing the Panel expressed concern at its ability to consider matters outside the terms of the Amendment as sought by both submitters. It observed that any attempt to make the changes to the OPSP and DCP could open the way for other landowners not presently affected by Amendment C226 to make submissions for changes to the OPSP and DCP.

As noted, the APA Group withdrew its submission on the basis of Council's commitment to review the OPSP. Minter Ellison, solicitors for Keymore, stated that if the Council confirmed the commitment to review the OPSP by June 2019, the submitter would not seek to pursue its submission about matters in the OPSP that specify the maximum number of dwellings for the subject land and the control that vegetation to be retained must be on a lot containing a dwelling. By circumscribing those matters, the letter maintained the submission about the application of the DCP.

This position was reiterated in Keymore's presentation at the Hearing where the relevance of the DCP and the Panel's ability to make changes to the Amendment to accommodate Keymore was the major matter for consideration.

### 3.2 Submissions

The relevance of the DCP is central to the Keymore position on the Amendment. Keymore submitted that unless the Amendment varies the DCP to state the levy does not apply or, if it does, that it should be charged on a per dwelling basis, then the Amendment should be abandoned. This is because it is a piecemeal amendment which does not fully enable development of the CLA (and particularly the Keymore land) for its intended purpose.

The Council submission makes two points, firstly that the Amendment facilitates subdivision and should proceed as exhibited, and secondly that Council would consider abandoning the Amendment if the submission by Keymore is agreed to by the Panel.

Ms Gleeson advised the Hearing that Council is committed to a review of the OPSP and the DCP within 2 years, without setting a specific date, as it must be guided by DELWP and the VPA as partners in the review.

During the Hearing, Ms Gleeson sought advice from senior Council officers to respond to Keymore's call for clarification of Council's position about the application of the DCP. She conveyed the response that Council needed time to consider its position. This is despite the Keymore submission at exhibition and the correspondence circulated before the Hearing asking that question.<sup>3</sup>

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<sup>3</sup> And since 2015, Keymore says, when the issue was among a number of conflicting and unresolved matters within the OPSP and DCP regarding the CLA that were identified when it lodged an application for a planning permit for subdivision of the subject land.

Keymore called for the Panel to abandon the Amendment if their submissions for clarity about the relevance of the DCP are not accepted. That is:

- Keymore wants the Panel to report the DCP does not apply, in which case no change to the DCP or the OPSP is required; or
- If the Panel sees it necessary, for it to recommend edits to the OPSP and the DCP to clarify the exclusion of the CLA; or
- If the Panel concludes that the development contribution applies but does not recommend the levy be paid on a 'per dwelling' basis, the Amendment should be abandoned.

Council's position is that the Panel should proceed with the Amendment as exhibited, otherwise the Council will consider abandoning the Amendment if the submission by Keymore is pursued further.

Council holds the view that the changes are outside the terms of the Amendment. Council will consider abandoning it if the Panel recommends the adoption of any of the changes as sought by Keymore.

As discussed at the Hearing, these competing positions present certain options for the Panel to consider. The options agreed between the Panel, Council and Keymore are:

- Option 1 To recommend adoption of the Amendment as exhibited.
- Option 2 To endorse the Keymore submission that the DCP does not apply to the subject land or to recommend adoption of the changes to the OPSP and the DCP as submitted by Keymore.
- Option 3 To direct the council as planning authority to consider and provide a response to the question about how the DCP will be applied to the CLA land and for the response to be provided by a set time nominated by the Panel.
- Option 4 To direct further exhibition of the Amendment to allow any interested party to submit on the changes to the OPSP and the DCP as sought by Keymore.

**About Option 1 - To recommend adoption of the Amendment as exhibited**

Effectively, this option accepts Council's position. As submitted by Council, the Amendment makes a necessary correction to inconsistencies between the applied RCZ and the OPSP to allow the land to be developed in accordance with the OPSP. Council submits that even if it does not go far enough, the Amendment still effects an essential step to facilitate development.

**About Option 2 - To endorse the Keymore submission that the DCP does not apply to the subject land or to recommend adoption of the changes to the OPSP and the DCP as submitted by Keymore.**

Keymore submitted that the correction does not go far enough and should include other changes to the OPSP and the DCP with, at a minimum, clarification about the application of the DCP.

They also submitted that the Panel has power under sections 21, 23, 24, 25, 29 and 32 of the Planning and Environment Act 1987 to consider all submissions and to recommend the changes called for in the submissions.

About Option 3 - To direct the Council as planning authority to seek and provide a response to the question about how the DCP will be applied to the CLA and for the response to be provided by a set time nominated by the Panel.

As noted, Keymore is on record as asking for clarification of the relevance of the DCP over a long period. At the Hearing, Keymore's representative was terse in his criticism of a lack of a policy and no response given the importance of the issue and awareness of the matter. On the other hand, the Council continues to rely upon the officer report put to and accepted by Council at its meeting in October 2017 stating *(t)he issues raised within the submissions are more significant than the scope of this amendment and will be subject to further consideration when Council undertake a broader review of the Officer PSP and Officer Development Contributions Plan in due course* as well as the advice at the Hearing that it needs more time to consider a position.

The issue can be avoided if the Panel accepts Keymore's submission that the subject land is excluded from the DCP and no levy is payable and no editing of the OPSP or the DCP is required.

About Option 4 - To direct further exhibition of the Amendment to allow any interested party to submit on the changes to the OPSP and the DCP as sought by Keymore.

This option arises if the principle Keymore submission that the subject land is excluded from the DCP is not accepted and changes are necessary or proposed to the OPSP and the DCP.

Keymore submits it is open to the Panel to direct further exhibition of changes to the OPSP and the DCP but that it is not necessary to do so as the changes do not impact the quantum of dollars in the standard levy of the DCP and thus the amounts payable by any other landowner.

### **3.3 Discussion and conclusion**

The Panel agrees with Council that the Amendment makes a necessary correction to inconsistencies between the applied RCZ and the OPSP to allow the land to be developed in accordance with the OPSP and that even if it does not go far enough, the Amendment still effects an essential step to facilitate development and making an application for a permit to develop the Keymore land as is the stated intention. Without approval of Amendment C226, development is prohibited. No permit application is possible unless the change is made and no decision on the relevance of the DCP can be definitive unless made as part of a determination of a permit application.

The Panel understands the logic of asking for an indication about how a control will be applied but the definitive answer can only come from the responsible authority.

As far as it is necessary for the Panel to do so, it accepts that the subject land is excluded from the DCP under section 3.1.1 and that no levy is payable and so there is no need for variation to the OPSP and the DCP.

The relevance of section 3.1.5 and whether a levy is then payable, as well as what calculation should apply, are for the responsible authority to decide. Similarly, whether the levy can be apportioned on a 'per dwelling' basis against the prescribed 'per hectare' basis is for the responsible authority to decide.

Deciding on the manner application of a levy is a matter for the responsible authority at the time of determination of a permit application.

The Council has committed to review the other matters presented by the submitters in a future review of the OPSP subject to collaboration with DELWP and the VPA. The Panel does not have to draw conclusions on those matters.

If later and more detailed consideration of the issues raised by Keymore concludes that variations to the OPSP and the DCP are desirable, the Council could action them as part of the implementation of the review.

It is not necessary for the Panel to comment on the legal submissions by Keymore that the Panel has the power to make the changes as sought as the Panel agrees with Council that the changes proposed in the Amendment are an essential step in correcting the inconsistency in the controls. The Panel finds the Amendment should be adopted as exhibited. Any other decision(s) can follow as considered action(s) after the review of the OPSP.

Though the CLA is a small fraction of the total area of the OPSP and therefore might not be reason to prioritise the review, the Panel expresses support for the review and lends its weight to the Council's approach to DELWP and the VPA. The Panel's observations during its inspections of the CLA and surrounding area, including the neighbouring estate under development by Keymore, confirm the issues raised before the Panel are reason to move on this issue.

### **3.4 Recommendation**

The Panel recommends:

- 1. Adopt Amendment C226 as exhibited.**

## Appendix A Document list

No.	Date	Description	Tabled by
1	5 December 2017	Submission by Keymore Pty Ltd	John Carey
2	5 December 2017	VCAT determination	John Carey
3	5 December 2017	Council submission	Amanda Gleeson