

Planning and Environment Act 1987

Panel Report

**Cardinia Planning Scheme Amendment C228
Pakenham Structure Plan**

23 June 2020

Corrected 10 July 2020

How will this report be used?

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

The planning authority must consider this report before deciding whether or not to adopt the Amendment. [section 27(1) of the *Planning and Environment Act 1987* (the Act)]

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

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

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

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Cardinia Planning Scheme Amendment C228

Pakenham Structure Plan

23 June 2020



Lester Townsend, Chair



Peter Boyle, Member

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
ACZ	Activity Centre Zone
Council	Cardinia Shire Council
DELWP	Department of Environment, Land, Water and Planning
DJPR	Department of Jobs, Precincts and Regions
DoT	Department of Transport
the Structure Plan	<i>Pakenham Structure Plan 2019</i>
the UDF	<i>Pakenham Major Activity Centre Urban Design Framework 2019</i>
VPP	Victoria Planning Provisions

Overview

Amendment summary	
The Amendment	Cardinia Planning Scheme Amendment C228
Common name	Pakenham Structure Plan
Brief description	The Amendment gives statutory effect to the objectives and strategies in the <i>Pakenham Structure Plan 2019</i> , which guides the future land use and development in the Pakenham Activity Centre
Subject land	The Amendment applies to the Pakenham Major Activity Centre
Planning Authority	Cardinia Shire Council
Authorisation	22 August 2019 Conditional authorisation
Exhibition	28 October to 6 December 2019
Submissions	Nineteen submissions were received (including one late submission), ten from landowners and residents, and eight from Public Authorities. Three submissions objected to the Amendment, five submission supported the Amendment and the balance sought changes

Panel process	
The Panel	Lester Townsend (Chair) and Peter Boyle
Directions	Given the concerns about COVID-19, the Directions Hearing planned for 1 April 2020 was cancelled. The Directions Hearing was conducted 'on the papers' <ul style="list-style-type: none"> - 27 March 2020: Interim Directions issued - 20 April 2020: Final Directions issued.
Panel Hearing	4 May 2020 by video conference
Site inspections	Unaccompanied, 1 May 2020
Appearances	<ul style="list-style-type: none"> - Council represented by Teresa Hazendonk and Tim Grace - David Young - R Myslinska and R Polonski represented by John McCaffrey, Consultant Town Planner - JAK Investment Group represented by Nick Hooper of Taylors
Citation	Cardinia PSA C228card [2020] PPV
Date of this Report	23 June 2020 Corrected 10 July 2020 to correct an incorrect reference in recommendation 2.6

Executive summary

Cardinia Planning Scheme Amendment C228 (the Amendment) seeks to replace the existing *Pakenham Activity Centre Incorporated Provisions, 20 March 2017 (revised May 2017)* (which expires on 30 June 2021), with the Activity Centre Zone. This involves rezoning land from the Commercial 1 Zone, Mixed Use Zone and General Residential Zone.

The Amendment also proposes to:

- remove the proposed link road from the Clause 43.04 Development Plan Overlay Schedule 1 and delete Development Plan Overlay Schedule 2
- delete the Development Contributions Plan Overlay Schedule 1 from VicTrack and public owned land.

The Activity Centre Zone is based on the *Pakenham Structure Plan 2019* and *Pakenham Major Activity Centre Urban Design Framework 2019*.

This strategic work identified seven precincts:

- Precinct 1 Core retail
- Precinct 2 West Commercial and Mixed Use
- Precinct 3 Princes Highway
- Precinct 4 East Commercial and Mixed Use
- Precinct 5 Pakenham Place – Key Development Site
- Precinct 6 Marketplace
- Precinct 7 Residential.

The Activity Centre Zone sets out preferred heights of 13.5, 14.5 and 15 metres.

The Panel does not consider that the heights of 14.5 metres and 15 metres across the commercial and mixed use areas of the activity centre are justified. The Pakenham activity centre is one of 121 Major Activity Centres in Melbourne and is expected to see significant growth as the surrounding growth areas develop and with the proposed grade separation of the train line that serves the centre.

It is not clear to the Panel how these height limits were derived. This is particularly the case as these essentially four-storey limits have already been overtaken by development aspirations with a permit being granted for a six-storey building in the centre. The Panel accepts that in certain circumstances it is appropriate to set height limits to achieve a preferred character. In this case the preferred height of 13.5 metres that applies to what is now the residential areas is broadly appropriate. However, in the core of the activity centre there would seem to be limited justification for preferring low scale development.

The *Pakenham Structure Plan 2019* and *Pakenham Major Activity Centre Urban Design Framework 2019* are relatively silent on improvements to the public realm. The Panel considers that the Structure Plan and Urban Design Framework could be strengthened by articulating Council's view for how the public realm should be developed. This view will necessarily be affected by the grade separation works and the future development of Bourke Park which is VicTrack land which it does not propose to sell as it may have a future as a transport interchange and which Council has decided not to purchase for open space.

In the view of the Panel the grade separation project will trigger the need to review the Structure Plan and Urban Design Framework.

The Panel is also of the view that the proposed Activity Centre Zone schedule sets out overly complex land use controls – for example a Bar is prohibited in Precinct 5, even though this is a retail precinct. At the Hearing the Panel asked the parties whether these restrictions were a concern – the parties advised that they were not.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Cardinia Planning Scheme Amendment C228 be adopted as exhibited subject to the following:

- 1. Acknowledge the traditional owners of the land in the Structure Plan.**
- 2. In the Activity Centre Zone Schedule:**
 - 2.1 Update the Framework Plan to include the Railway Station.**
 - 2.2 Include Railway as a Section 1 use.**
 - 2.3 Include an additional requirement for new buildings adjoining a residential property or Precinct 7 as follows:**
 - **Achieve Standard B21 of Clause 55.04-5 ‘Overshadowing open space’.**
 - 2.4 Replace all occurrences of ‘must’ with ‘should’ in:**
 - **Commercial and mixed use requirements and guidelines**
 - **Building height guidelines**
 - **Building setback guidelines**
 - **Precinct guidelines.**
 - 2.5 Remove the preferred height limits from Precincts 1, 2, 4, 5, and 6, and the Building height requirement relation to preferred heights.**
 - 2.6 Include ‘Buildings and works should not exceed 13.5 metres’ in the guidelines in Precincts 3 and 7.**
 - 2.7 Simplify the ‘Building height guidelines’ to refer to a height of 14 metres to trigger a consideration of the building height guidelines.**
 - 2.8 Remove the guidelines for taller buildings relating to:**
 - **energy, water, waste and renewable technologies**
 - **affordable housing**
 - **the upper levels of buildings to be highly articulated including a variety of floor levels and facades**
 - **a designated gateway, as shown in the Pakenham Major Activity Centre Framework Plan in Clause 1, or be a significant consolidated site.**
 - 2.9. Edit the exemption for service equipment including plant rooms and the like to refer the building height guidelines and move it to after the guidelines.**

Further recommendations

The Panel makes the following further recommendations:

- A. Council should revisit the planning for the centre once the government’s intentions for the rail corridor, the station and Bourke Park are known.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The Amendment gives statutory effect to the objectives and strategies in the *Pakenham Structure Plan 2019* (the Structure Plan), which guides the future land use and development in the Pakenham Activity Centre.

Specifically the Amendment proposes to:

- Amend Local Planning Policy at 21.03, 21.04 and 21.06 of the Municipal Strategic Statement to:
 - update the application of zones and overlays in relation to the Pakenham Major Activity Centre
 - remove reference to 'Pakenham Town Centre'
 - remove the Pakenham Activity Centre Incorporated Provisions.
- Apply the Activity Centre Zone (ACZ) in the activity centre (in place of the Commercial 1 Zone, Mixed Use Zone and General Residential Zone) with a new Schedule 1: 'Pakenham Major Activity Centre'.
- Amend the Schedule to Clause 72.04 to delete the *Pakenham Activity Centre Incorporated Provisions, 20 March 2017 (revised May 2017)* which expire on 30 June 2021. These were implemented by Amendment C211.
- Remove the Development Plan Overlay Schedule 1 (Former Pakenham Consolidated School Site) from land intended for a proposed link road and delete Development Plan Overlay Schedule 2 which applies to the Pakenham Central Marketplace.
- Delete the Development Contributions Plan Overlay Schedule 1 from VicTrack and public owned land.

(ii) The Pakenham Major Activity Centre

The activity centre is located about 60 kilometres south-east of Melbourne's Central Business District and covers about 181 hectares. The activity centre operates as a regional hub servicing areas within and beyond the municipality.

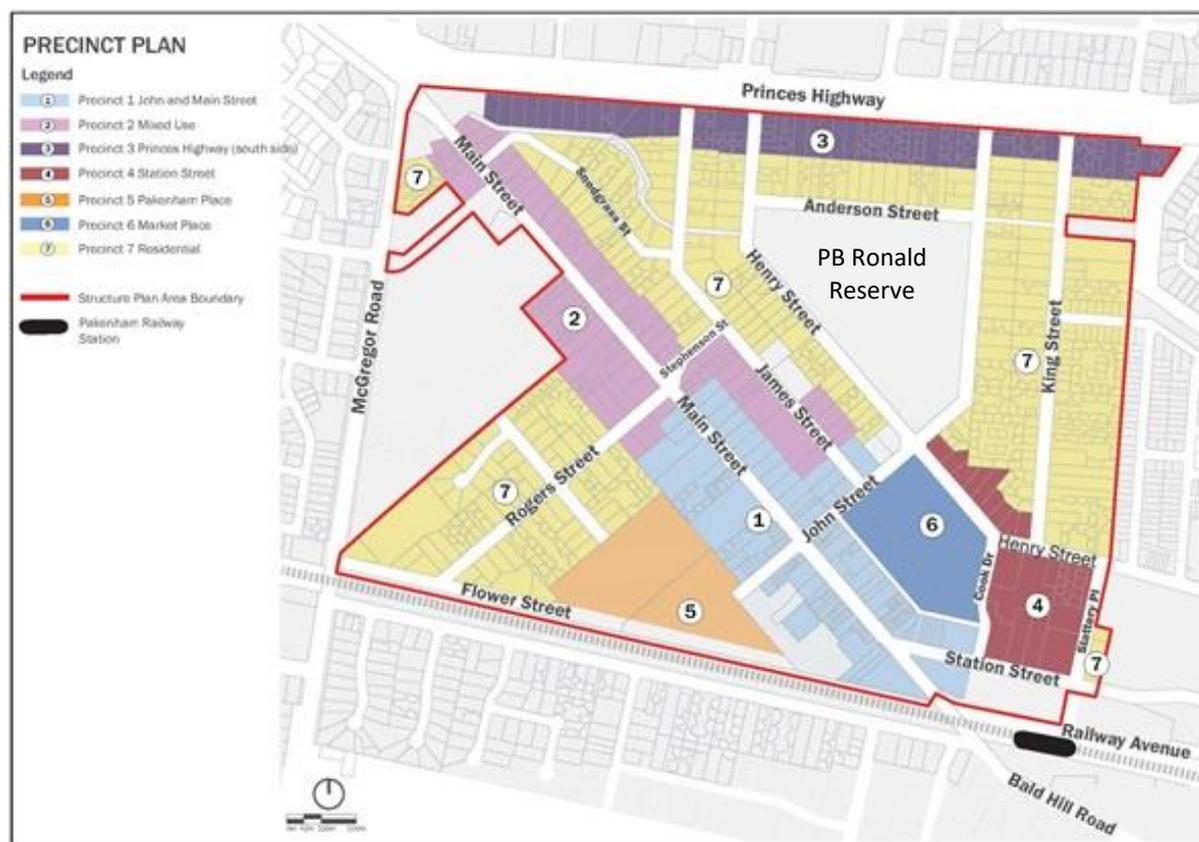
Significant nearby activity centres outside the municipality include Fountain Gate-Narre Warren and Dandenong Metropolitan Activity Centres, and Berwick Major Activity Centre.

The activity centre is in the Casey-Cardinia Growth Area. There are emerging employment areas such as the Cardinia Road Employment Precinct, South East Business Park, and Pakenham Employment Precinct. These areas are envisaged to be multi-functional employment areas that deliver a diverse mix of jobs to the Casey-Cardinia region.

The broader catchment area is characterised by a mix of established and recent development to the north and south. To the east, west and southwest are established areas, with the exception of the Bald Hill Road industrial area, which is still under development.

The activity centre is bordered by Princes Highway, McGregor Road, Pakenham Railway Line and the former Pakenham Racecourse development site to the east. See Figure 1.

Figure 1: Pakenham Major Activity Centre



The Pakenham Railway Station is located towards the south-eastern end of the activity centre. Commuters have access to both a metropolitan rail service as well as V-Line services to regional Victoria. The railway line has three level crossing points enabling north-south road, cycle and pedestrian traffic movement to and from the activity centre. These level crossings at Main Street, McGregor Road, and Racecourse Road are planned to be removed.

The centre comprises the John and Main Street shopping strips, Pakenham Place (⑤) and Pakenham Central Marketplace (⑥) shopping centres, the adjoining residential neighbourhoods, open space (PB Ronald Reserve and Bourke Park located just north of the station), and sporting and community facilities. There are purpose-built sporting facilities close to the activity centre, including Cardinia Life, Pakenham Regional Tennis Centre and Toomuc Reserve, that cater for the regional catchment.

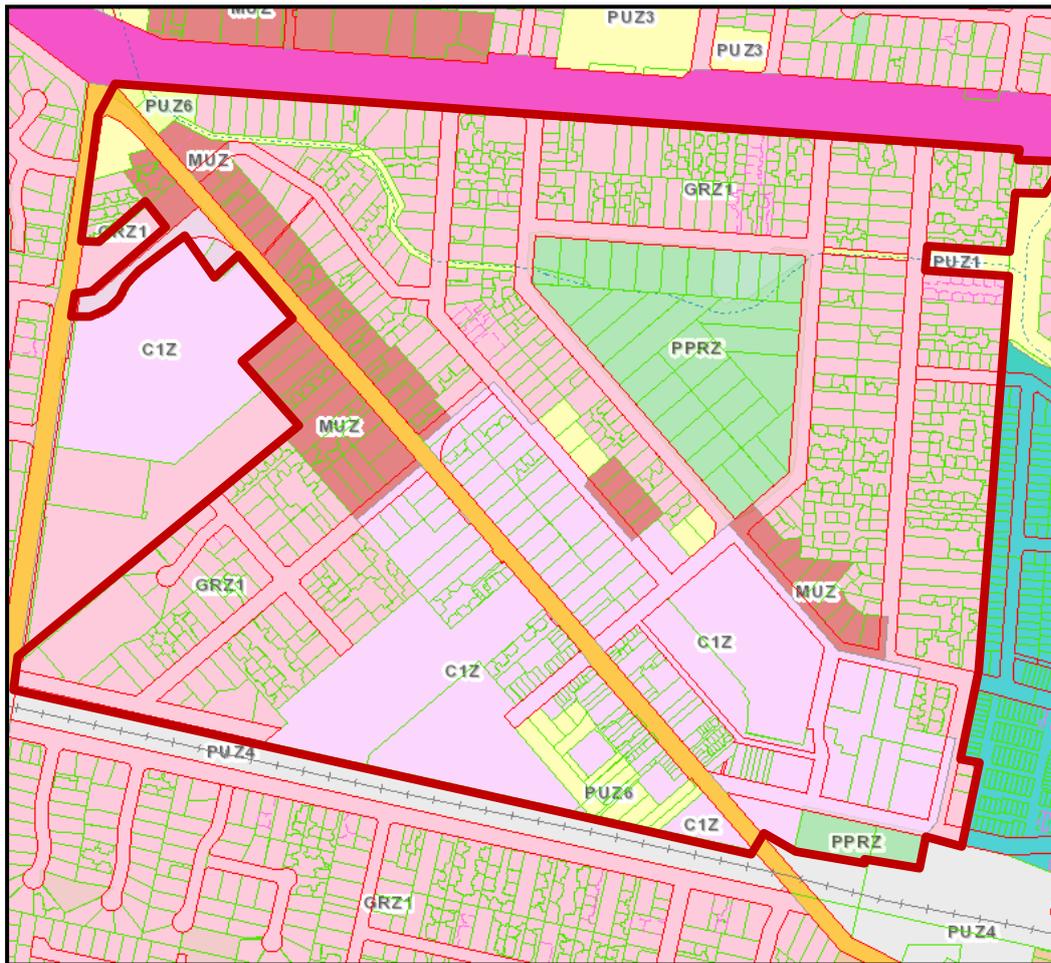
The commercial core of the activity centre has traditionally been located on Main Street between John and Station Street. Over the years, development has progressively dispersed away from this central point with the development of Pakenham Place in the mid-1980s and more recently Pakenham Central Marketplace (mid-2012).

The activity centre is relatively flat with some creeks flowing through and around it. Some of these waterways are covered drains.

(iii) The subject land

The Amendment applies to land shown in Figure 2.

Figure 2: Area to be rezoned to Activity Centre Zone



The current zones include:

- C1Z – Commercial 1 Zone
- MUZ – Mixed Use Zone
- PUZ1– Public Use Zone 1 – Service and Utility
- PUZ4 – Public Use Zone 4 – Transport
- PUZ6 – Public Use Zone 6 – Local Government
- PPRZ – Public Park and Recreation Zone
- GRZ1 – General Residential Zone Schedule.

Current planning overlays include:

- Development Plan Overlay Schedule 1 (DPO1)
- Development Plan Overlay Schedule 2 (DPO2)
- Development Contributions Plan Overlay Schedule 1 (DCPO1)
- Land Subject to Inundation Overlay (LSIO)
- Special Building Overlay (SBO)
- Heritage Overlay (HO)
- Public Acquisition Overlay 4 (Cardinia Shire Council – Civic and Professional Precinct redevelopment including development of Municipal Offices) (PAO4).

1.2 The Structure Plan and Urban Design Framework

Council prepared the Structure Plan to provides an integrated response to the changes envisaged for the activity centre until the year 2035.

The Structure Plan is intended to communicates the community's shared vision for the activity centre. Specifically, the Structure Plan is intended to provide certainty for the community, business owners, developers and planning applicants regarding the level and types of changes in the development of the activity centre.

An Action Plan forms part of the Structure Plan and lists the actions required to implement the structure plan and indicates which Council department, agency or organisation is responsible; the timeframe and measure allocated to each action.

The UDF accompanies the Structure Plan. It presents preferred character statements, requirements and illustrations that are intended to give direction to landowners, designers, Council officers and the community about the expected built form outcomes to be achieved.

1.3 Summary of issues raised in submissions

Nineteen submissions were received:

- eight from Public Authorities
- eleven from residents, land owners and other interested parties.

Ten submissions requested changes or objected to parts of the amendment or strategic documents, while eight submissions generally supported or remained neutral on the amendment.

Key issues included:

- issues with Precinct 3 which envisages mixed use development along the Princes Highway – in particular traffic implications and impact on the adjoining residential Precinct
- the possibilities that the level crossing removal create and how this might affect the development of the centre
- pedestrian and cycling connections and the public realm
- how to better integrate the disparate parts of the activity centre
- built form requirements and guidelines, in particular the relatively low heights specified and the prescriptive controls.

Amanda Hutchings, J Templar, Melbourne Water, the Victorian Planning Authority, the Department of Education (Victorian School Building Authority), the Environment Protection Authority, and the Country Fire Authority generally support the amendment.

Council presented an amended version of the ACZ Schedule 1 showing possible changes in response to submissions.

1.4 The Panel's approach

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

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

After setting out the planning context in Chapter 3 and exploring what is sought to be achieved in Chapter 3, this Report deals with the issues in Chapter 4, under the following headings:

- Cultural diversity
- Heritage
- The boundary of the activity centre
- The possibilities that the level crossing removal create
- Pedestrian and cycling connections and the public realm
- Property for acquisition
- Making railway as of right
- Precinct 3 uses
- The interface of Precinct 3 with Precinct 7
- Integrating Precincts 6, 5 and 1
- Built form requirements and guidelines
- Rail interface.

The Panel has focused primarily on the proposed planning scheme changes and has not addressed issues in the Structure Plan or UDF in any great detail. These are important background documents and potentially have an important role in setting the direction for the activity centre but will not have the same status as planning scheme provisions.

2 Planning context

2.1 Background

Pakenham is identified as a Major Activity Centre in *Plan Melbourne 2017-2050*. With this designation, it is expected that the activity centre will experience significant growth in the number of jobs, job diversity, and housing density and diversity.

To accommodate this projected growth, Council refreshed the *Pakenham Structure Plan 2017* and adopted an updated version of the *Pakenham Structure Plan 2019* (the Structure Plan) together with the *Pakenham Major Activity Centre Urban Design Framework 2019* (the UDF).

The Structure Plan provides a 20-year strategic vision for the activity centre with a strong focus on residential growth, developing the commercial areas and businesses in Main Street, and providing a safe and connected pedestrianised centre.

The UDF accompanies the structure plan to provide detailed guidance for future development in the activity centre, focusing on built form, interfaces, urban structure and the public realm. The UDF provides overarching principles and specific guidance to ensure new development that positively contributes to the functionality, amenity and vibrancy of the activity centre.

Cardinia Planning Scheme Amendment C211

A structure plan for Pakenham was first adopted by Council in April 2015. The *Pakenham Structure Plan 2017* was later incorporated into the Cardinia Planning Scheme as the 'Pakenham Activity Centre Incorporated Provisions, 20 March 2017 (revised May 2017)' with an expiry date of 31 December 2019 via Amendment C211 on 20 March 2017.

Council submitted (Part A:30):

The C211 Planning Panel raised concerns about the implementation of the structure plan as an Incorporated Document, as well as the need for the structure plan to be reduced and made succinct to be appropriately used as a statutory document. It was concluded the Incorporated Document would be an appropriate interim provision pending the implementation of the Activity Centre Zone and Amendment C211 was subsequently approved with the following requirements:

1. The Structure Plan and its built form requirements be implemented via the appropriate planning tool, the Activity Centre Zone.
2. An expiry date of 31 December 2019 be placed on the structure plan to ensure that the objectives of the structure plan are achieved by implementing its requirements regarding built form through the appropriate planning tool.
3. Council and VicTrack must determine the future of Bourke Park prior to the finalisation of the Activity Centre Zone and future amendment for the Pakenham Activity Centre.

Amendment C228 responds to requirements 1 and 2.

In response to requirement 3, Council advised that officers have engaged with VicTrack and the relevant land authority, the Department of Jobs, Precincts and Regions (DJPR). VicTrack:

- confirmed that they are not selling the land (Bourke Park) as it has potential future development opportunity as a transit hub
- requested that Council rezone the land from Public Park and Recreation Zone (PPRZ) to Public Use Zone - Schedule 4 Transport (PUZ4) to appropriately identify the intended land use for this site.

Council considered the request outside the scope of the Amendment, but advised that assistance will be provided to VicTrack in future when a formal amendment request is made.

Council advised that it has previously resolved not to seek to purchase the Bourke Park land from VicTrack.

The Framework Plan included in the ACZ is significantly different to the plan defining the activity centre in the current incorporated plan. These differences include:

- a significant reduction in the extent of the Structure Plan area
- a significant reduction in the extent of the area defined as Precinct 3
- the inclusion of Precinct 7 defining residential areas previously undefined
- the deletion of the former Precinct 6 (Former Consolidated School) and other land abutting McGregor Road
- deletion of former Precinct 5 (Former Pakenham Racecourse) and former Precinct 7 (High Amenity Employment).

Table 1 presents a chronology of key events.

Table 1: Summary of events

Date	Event
April 2015	The <i>Pakenham Structure Plan 2015</i> was adopted by Council.
20 March 2017	Amendment C211 is gazetted with conditions. The <i>Pakenham Structure Plan 2017</i> became an Incorporated Document in the Cardinia Planning Scheme as the ' <i>Pakenham Activity Centre Incorporated Provisions, 20 March 2017 (revised May 2017)</i> ' with an expiry date of 31 December 2019.
19 November 2018	Council adoption of: - The Pakenham Structure Plan, 19 Nov 2018, and - The Pakenham Major Activity Centre Urban Design Framework, Sep 2018. Council resolves to seek ministerial authorisation to prepare and exhibit Amendment C228.
20 May 2019	Council adopts revised: - Pakenham Structure Plan, 20 May 2019 Pakenham Major Activity Centre Urban Design Framework, 20 May 2019 - Activity Centre Zone Schedule 1.
22 August 2019	Minister for Planning grants conditional authorisation for Amendment C228.
30 August 2019	Amendment C242 gazetted. The Pakenham Structure Plan Heritage Review, February 2018 (May 2019) is implemented in the Cardinia Planning Scheme through new and revised Heritage Overlays.

Date	Event
September 2019	In response to conditions of the Minister’s Authorisation, the following documents are updated to the satisfaction of the DELWP: <ul style="list-style-type: none"> - The Pakenham Structure Plan, 25 Sep 2019 - The Pakenham Major Activity Centre Urban Design Framework, Sep 2019 - The Activity Centre Zone Schedule 1.
28 October to 6 December 2019	Amendment C228 is formally exhibited.
12 December 2019	Amendment C260 is gazetted. The expiry of the ‘Pakenham Activity Centre Incorporated Provisions, 20 March 2017 (revised May 2017)’ is extended to 30 June 2021.

Cardinia Planning Scheme Amendment C242

Amendment C242 flows from Action 82 in the Structure Plan. The heritage places and precincts listed by Amendment C242 were initially identified by the *Pakenham Structure Plan inter-war and post-war heritage study, May 2013*.

A 2017-18 review of the study – the *Pakenham Structure Plan Heritage Review, February 2018* – analysed the recommendations and the places and precincts identified by the 2013 study. This process either re-affirmed or reduced the significance of the places and precincts.

Amendment C242 implemented the recommendations from the *Pakenham Structure Plan Heritage Review, February 2018 (May 2019)*, ensuring the protection of the Pakenham Activity Centre’s cultural, aesthetic and architectural heritage by applying heritage controls to the identified places and precincts.

Figure 3: Pakenham Major activity Centre Heritage Sites

Background Documents to the Amendment

Council submitted that the principal background documents to the Amendment are:

- The *Pakenham Structure Plan 2019*
- The *Pakenham Major Activity Centre Urban Design Framework 2019*.

Council submitted that the following strategies and studies underpin these documents and the Amendment:

- Pakenham Parking Precinct Plan (2018)
- Pakenham Structure Plan Traffic Action Plan Review Report (11 May 2018)
- Cardinia Pedestrian and Bicycle Strategy (2003, 2007, revised August 2017)
- Pakenham Core Retail and Mixed Use Assessment (December 2016)
- Pakenham Bicycle Network Plan (July 2014)
- St James Estate Comparative Heritage Study (July 2014)
- Greater Pakenham Traffic Model (July 2014)
- Cardinia's Housing Strategy, Strategic Action Plan 2013–18 (December 2013)
- Pakenham Town Centre Grade Separations (December 2013)
- Drainage Assessment Pakenham Town Centre (June 2013)
- Pakenham Inter War and Post War Heritage Study (May 2013)
- Retail Core Analysis and Recommendations (August 2012)
- Pakenham Urban Design Framework Study (November 2012)
- Plan Melbourne, Victorian State Government 2017
- Urban Design guidelines for Victoria, Department of Environment Land, Water and Planning 2017

- Stormwater Management, Melbourne Water 2017.

2.2 Relevant policy

(i) Planning policy framework

Council submitted that the Amendment is supported by:

- Clause 11.03-1S (Activity Centres) by:
 - encouraging the concentration of major retail, commercial, administrative, entertainment and cultural developments into the activity centre
 - encouraging the concentration of higher density housing and employment opportunities with access to services and public transport.
- Clause 15.01-1S (Urban Design) and Clause 15.01-2S (Building Design) by
 - encouraging high quality architecture and positive urban design outcomes focusing on interfaces, built form, environment, the public realm and changing neighbourhood character. The Framework provides guidance for new development within the activity centre.
- Clause 16.01-3S (Housing Diversity) and Clause 21.03 Settlement and Housing by:
 - encouraging higher residential density in the activity centre and supporting a diverse range of housing
 - providing for development of high density quality housing within the Pakenham Major Activity Centre.
- Clause 17.01-1S (Diversified Economy) and Clause 17.02-1S (Business) and Clause 21.04 Economic Development by:
 - providing for a range of opportunities for commercial uses – including retail, entertainment, office and other commercial facilities – and business growth and providing a framework for the location and management of growth
 - supporting employment and jobs in the activity centre by expanding and encouraging a diverse range of commercial uses and services within the activity centre.
- Clause 18.01-1S (Land use and transport planning) and Clause 18.02-2S (Public Transport) by:
 - encouraging and facilitating growth, including increased residential density and development within the Pakenham Major Activity Centre which is well serviced and close to public transport.
- Clause 21.06 Particular Uses and Development by:
 - supporting good design outcomes ensuring future development is site and context responsive, providing a strong character and identity for the Pakenham Major Activity Centre by introducing the *Pakenham Major Activity Centre Urban Design Framework Sep 2019*.

The Panel notes that the following policies are also relevant:

In Clause 11 (Settlement):

- Clause 11.02-1S (Supply of urban land) that supports a sufficient supply of land for residential, commercial, retail, industrial, recreational, institutional and other community uses.

- Clause 11.02-2S (Structure planning) that supports the orderly development of urban areas.

In Clause 15 (Built environment and heritage):

- Clause 15.01-1R (Urban design – Metropolitan Melbourne) that supports the creation of a distinctive and liveable city with quality design and amenity.
- Clause 15.01-5S (Neighbourhood character) that supports the recognition, support and protection of neighbourhood character, cultural identity, and sense of place.
- Clause 15.03-1S (Heritage conservation) that supports the conservation of places of heritage significance.

In Clause 16 (Housing):

- Clause 16.01-2R (Housing opportunity areas – Metropolitan Melbourne) that supports housing and mixed use development opportunities in major activity centres.

In Clause 18 (Transport):

- Clause 18.02-2R (Principal Public Transport Network) that supports maximising the use of existing infrastructure and increasing the diversity and density of development along the Principal Public Transport Network, including, activity centres.

(ii) Plan Melbourne

Plan Melbourne includes various policies that support the development of activity centres, including:

- 1.2.1 Support the development of a network of activity centres linked by transport
- 2.1.2 Facilitate an increased percentage of new housing in established areas to create a city of 20-minute neighbourhoods close to existing services, jobs and public transport
- 2.1.4 Provide certainty about the scale of growth in the suburbs
- 2.2.3 Support new housing in activity centres and other places that offer good access to jobs, services and public transport
- 4.3.1 Promote urban design excellence in every aspect of the built environment.

2.3 Discussion and conclusion

The structure planning of the activity centre and the Amendment has a history spanning more than five years. The Amendment specifically implements the requirements of the approval of Amendment C211. In this regard the decision to apply the ACZ was made some time ago and at a Departmental level.

There is no debate that the ACZ is an appropriate tool to apply to a major activity centres. The critical issue is whether the provisions within the ACZ are appropriate. For the reasons set out in the following chapters the Panel concludes that the provisions are broadly supported by and implement the relevant sections of the Planning Policy Framework with a number of exceptions. The Amendment should proceed subject to addressing the specific issues raised in submissions and discussed in the following chapters.

3 What is trying to be achieved

(i) Policy changes

The changes to the Local Planning Policy Framework are relatively minor, mostly consisting of reference changes, but also including statements about the application of zones in clauses:

- 21.04-3: *“Applying a Activity Centre Zone to encourage intensified development of the Pakenham Major Activity Centre”*
- 21.06-1: *“Applying the Activity Centre Zone to the Pakenham Major Activity Centre to guide the design and built form of the area”*.

(ii) Zone changes

The critical changes are in the ACZ. The ACZ schedule presents:

- 1.0 A framework plan for the activity centre showing precinct boundaries and existing features but including gateways / entry points.
- 2.0 Land use and development objectives to be achieved under the headings of:
 - Activities and land uses
 - Transport and movement
 - Public realm
 - Built form and environment.

These objectives are broad in nature and, with the following exceptions, could probably apply to any activity centre:

- Create a sense of arrival to the Pakenham Activity Centre at identified key gateway sites through the provision of high quality landscape and/or architectural treatments.
 - Reinforce and enhance the ‘fine grain’ built form pattern established within the retail core of the town centre.
- 3.0 A table of uses which provides for different as-of-right and permitted uses in different precincts.
 - 4.1 Centre wide provisions on the use of land exempting public works by a public land manager and including an amenity provision dealing with transport of materials, appearance and amenity impacting emissions.
 - 4.2 Centre wide subdivision requirements requiring compliance with clause 56.
 - 4.3 Centre wide buildings and works requirements, setting out permit exemptions.
 - 4.4 Design and development requirements including:
 - Dwelling requirements
 - Commercial and mixed use requirements and guidelines
 - Heritage
 - Building height requirement and guidelines
 - Building set back requirement and guidelines
 - Landscape design
 - Environmentally sustainable design.

- 5.0 Precinct provisions for each precinct
 - Precinct map
 - Precinct objectives
 - Preferred building height and preferred building set back
 - Precinct guidelines.
- 6.0 Application requirements.
- 7.0 Notice and review.
- 8.0 Decision guidelines
 - Use
 - Environmental Audit
 - Design and built form
 - Subdivision
 - Transport and movement
 - Non-residential uses and development in Precinct 7.
- 9.0 Signs.
- 10.0 Other provisions of the scheme.
- 11.0 Reference documents.

The precinct plans

The precinct plans in the ACZ set out the urban structure initiatives. The precinct plans show a number of existing elements namely:

- Pakenham Railway Station
- Bus interchange
- Pedestrian link
- Entrance to Market Place
- Open Space
- VicTrack land (Bourke Park)
- Area excluded from the ACZ
- Heritage
- Train line
- Council owned car park.¹

The plans also show proposed or policy elements, namely:

- Active frontage with awning above
- Active frontage with landscaped front setbacks
- Gateways/entry points:
 - Entertainment Plaza (Precinct 1 and 7)
 - North West Entrance (Precinct 2 and 7)
 - Station entrance, Library forecourt (Precinct 4 and 7)
 - New Boulevard (Precinct 7)
- Future pedestrian link (in Precinct 6 this notation omits 'future')
- Future local road link

¹ This is shown in Precinct 5 but what would seem to be the corresponding objective is in precinct 6, namely: *"Support the redevelopment of the Council and car park as a multi-deck car park and commercial development."*

- Improve landscape interface treatment
- Passive surveillance interface treatment to open space.

Most of these elements are self-explanatory, but some such as the ‘Entertainment Plaza’ is covered in more detail in the Structure Plan.

Building heights

The ACZ sets a preferred height of 13.5 metres to 15 metres depending on the precinct.

The building height guidelines include:

Buildings and works which exceed the preferred building height ... must ... provide a maximum Street Wall Height of 15 metres.

The building setback guidelines include:

Buildings and works which exceed the preferred maximum building height should be designed so the upper levels cannot be seen from the street.

Table 2: Preferred building heights and setbacks in the ACZ

Precinct #	Name	Preferred building height	Preferred setback
Precinct 1	Core retail	15 metres	0 metre front setback 0 metre setback from the road reserve of any adjoining street or laneway
Precinct 2	West Commercial and Mixed Use	14 metres	2 metre front setback
Precinct 3	Princes Highway	13.5 metres	4 metre front setback
Precinct 4	East Commercial and Mixed Use	14 metres	Minimum 2 metre front setback 0 metre front setback from Station Street
Precinct 5	Pakenham Place – Key Development Site	15 metres	0 metre front setback
Precinct 6	Marketplace	15 metres	0 metre front setback
Precinct 7	Residential	13.5 metres	4 metre front setback

4 Issues

4.1 Cultural diversity

Glynis Ramsay (Submission 5) raised concerns that there was no mention in the Structure Plan of cultural diversity in the population breakdown.

Council submitted that including extra details about the diversity of cultures in the activity centre in the Structure Plan would be nice but would not likely change the outcomes sought by the proposed ACZ.

The Panel agrees with Council. Cultural diversity is important but it is not a driver of land use and built form outcomes under planning schemes.

4.2 Heritage

J Goldsack (Submission 2) raised concerns regarding the preservation of heritage in the activity centre and respect of history.

M and J Robinson (Submission 4) raised concerns that there was no acknowledgement in the Pakenham Structure Plan of aboriginal heritage.

Council explained that much of Pakenham's heritage was impacted by redevelopment before Council was able to apply heritage controls. Council did recently apply heritage overlays to heritage properties in Pakenham through Amendment C242 which was approved by the Minister for Planning on 30 August 2019.

The Panel acknowledges that Council has addressed post contact heritage through Amendment C242, but agrees with submitters that there should be some acknowledgement of the traditional owners of the land in the Structure Plan.

The Panel recommends:

Acknowledge the traditional owners of the land in the Structure Plan.

4.3 The boundary of the activity centre

(i) The issue

The Department of Transport (submission 14) submitted that the Railway Station and other key transport elements such as the railway should be included in the Pakenham Major Activity Centre boundary.

(ii) Submissions

The Department of Transport (submission 14) – submitted that no planning controls should be placed on VicTrack owned land including Bourke Park.

Council submitted that the railway land owned by VicTrack was not proposed to be rezoned to ACZ1 and will remain in the Public Use Zone (PUZ4). Bourke Park, also owned by VicTrack, is currently in the Public Park and Recreation Zone (PPRZ) and is not proposed to be rezoned to ACZ1 by this Amendment.

Council said it could amend the Structure Plan, UDF, and the ACZ Schedule 1 to depict the station and the rail line within the activity centre boundary, but that making this change would require about 20 maps from the two background documents and the ACZ schedule 1 to be removed, updated and reinserted, while providing no change to the planning scheme controls.

Council said that this change can also be addressed in the next review of the two background documents which will occur when details of the Level Crossing Removal Project plans are available.

(iii) Discussion

The Panel agrees with the Department of Transport that the railway station and other key transport elements are key components of the Activity Centre and should be included within the boundary.

It is difficult to agree from a planning perspective that a railway station that serves a Major Activity Centre should not be considered as part of that centre.

What was marked as the 'structure plan boundary' in the Structure Plan has become the 'activity centre boundary' in the ACZ, but these are not the same thing. It is not clear why the station was excluded from the Structure Plan but this exclusion should not be carried forward.

The critical map to update is in the ACZ schedule. There is no particular need to update the maps in the Structure Plan or UDF.

(iv) Recommendation

The Panel recommends that in the Activity Centre Zone Schedule:

Update the Framework Plan in the Activity Centre Zone to include the Railway Station.

4.4 The possibilities that the level crossing removal create

(i) The issue

Submissions raised issues about the potential of the level crossing removal project to transform the centre.

(ii) Submissions

David Young (submission 7) thought that the railway station should be moved to Precinct 5 and integrated into the retail precincts to give Pakenham a point of difference to other retail areas. Mr Young noted that the level crossing removal project will provide an opportunity to improve the road network and the draft plan builds on this.

The Department of Transport:

- raised concern about the unknown design, scope and impact of major projects in the boundary of the structure plan including:
 - level crossing removal of McGregor Road and Main Street
 - redesign and possible relocation of the Pakenham Station
 - changes to bus movements
 - changes to the overall movement network in the activity centre

- supported the Structure Plan key objectives relating to a fully integrated multi modal public transport interchange but noted that the bus interchange is isolated and needs to be redesigned to integrate with the core business area
- submitted that the Structure Plan be updated to provide flexibility for the development of the Pakenham Level Crossing Removal Project including the location of the rail line, Pakenham Station and future gateways
- did not support Section 4.2 Station Gateway of the UDF due to the likely redesign of the Pakenham Station.

Council considered that relocating the station was outside the scope of the Amendment.

Council acknowledged that DoT is seeking to improve public transport networks. The major Level Crossing Removal Project is supported by Council. Council's view was that the Structure Plan, the UDF, and the proposed ACZ in their current form present no impediment to the future Level Crossing Removal Project.

Council advised that meetings between Council and the Level Crossing Removal Project team had recently begun, with the intention of bringing forward delivery of the project approximately two years. Accurate timings for the project were still not at hand. Council submitted that when there is more certainty about the Level Crossing Removal Project and details of the final location of the bus interchange are identified, the Structure Plan and UDF will be updated with the next review of these documents.

Council submitted that changes to the Design Requirements of Section 4.2 Station Gateway of the UDF and to the Role and Function statement regarding the Station Entrance could be considered to provide for flexibility in relation to the future development of the station.

Council stated that the request for changes to the Structure Plan to provide flexibility for future major rail projects was reasonable and supported by Council, although given the current level of detail regarding the Level Crossing Removal Project is minimal, changes will likely be limited.

M and J Robinson (Submission 4) raised concerns about maintenance of the open drain at the Pakenham Railway Station saying Council and VicTrack should work together in relation to this issue.

Council advised that the area with the open drain is located in the Land Subject to Inundation Overlay and that addressing the drainage problems in this area will be an important issue for the Level Crossing Removal Project and the rail station upgrade.

Flower Street extension

JAK Investment Group generally supported the Precinct 5 map with the one exception:

The extension of Flower Street through the site to the extension of John Street is supported. The eastern leg of the Flowers Street extension, east of the John Street extension is in doubt and it is submitted that it should either be deleted or be downgraded to a possible future road link.

There are a few reasons for this uncertainty. The continuation of Flowers Street further east is not clear and its desirability and necessity is also questioned.

The Level Crossing Removal Authority are examining the railway station and the Main Street crossing a little further east and there is some chance that the railway station may be located adjacent to my client's land. In that instance, alternative interfaces other than a road may be appropriate.

Given the uncertainty of above matters, it is submitted that deletion or downgrading of the road in this location is desirable.

(iii) Discussion

The Panel agrees with Council that these major projects will have a significant impact on the activity centre, but that the unknown design and scope of the project should not delay changes to the planning scheme.

The Structure Plan and UDF are essentially silent regarding the Level Crossing Removal Project. The Panel believes that the documents would benefit from discussion of Council's expectations of outputs and outcomes from the project, but this is not necessary for the Amendment to proceed.

The Structure Plan and UDF would benefit from Council having informed itself, at least at the conceptual level, of the issues and opportunities associated with options for station location and rail over road or rail under road.

Given its strategic importance, the station curtilage, including Gateways 1 and 2 and Bourke Park, warrant a comprehensive design-led masterplan to ensure integrated outcomes for the form, function and amenity of the precinct. The current situation where the land is used as a park but owned by VicTrack is not sustainable in the long term. At the point VicTrack is clear that it no longer needs the land for transport purposes it may well seek to sell the land. This would be consistent with State government policies on public land ownership.

As it now stands significant changes are likely to the rail corridor, the station and Bourke Park and the planning for the centre is essentially silent on these issues.

The Panel accepts that until the level crossing removal works are specified planning for the centre will be uncertain, this includes the need for the extension of Flowers Street.

(iv) Recommendation

The Panel recommends that:

Council should revisit the planning for the centre once the government's intentions for the rail corridor, the station and Bourke Park are known.

4.5 Pedestrian and cycling connections and the public realm

(i) The issue

The Structure Plan refers to several transport and movement strategies such as new pedestrian and cycling routes, truncation of Main Street, Webster Road extension and various elements. Concerns were raised about a number of these elements.

Concerns were raised about pedestrian and cycling initiatives as well as proposals to improve the public realm.

(ii) Submissions

David Young (Submission 7) submitted that cycling and pedestrian infrastructure needs to be upgraded and updated for an increasing number of mobility scooters and electric wheelchairs. The Structure Plan should include more detail on improving this infrastructure.

DoT (Submission 14) raised concerns about the pedestrian and cycling only environment on Main Street by the creation of the 'Entertainment Plaza' gateway which implies the truncation of Main Street. It did not support the inclusion of buses to this environment for safety and reliability reasons. It considered that Council should undertake a comprehensive transport planning and modelling exercise to inform proposed changes to the movement network.

J Goldsack (Submission 2) raised concerns about the provision of art works, gardens, and shared use paths, as well as the need for attractive open space with seating, gardens, community gardens.

Council submitted that:

- Council will fund and deliver artworks through a separate program to enhance artwork across the Municipality. Artwork will also be provided through the Level Crossing Removal Project.
- There is a community garden at Living Learning Pakenham at 6B Henry Street.
- Additional shared use paths will be provided in line with Council's Pedestrian and Bicycle Strategy 2017 through the capital works program and, where possible, through new development approvals. Additional shared paths will also be provided as part of the Level Crossing Removal Project which includes redevelopment of the rail station.

Council advised that the Structure Plan and the Amendment have been developed with consideration of the most current information regarding transport movements and strategies in the area, as provided by the Pakenham Structure Plan Traffic Engineering Review 11 May 2018 by One Mile Grid Pty Ltd. Council advised that this document had been provided to the Level Crossing Removal Project Team to assist their planning of the project.

Council thought that it was likely that additional open space areas will be freed up as a result of the Level Crossing Removal Project. Council would seek that these areas are appropriately embellished with seating, landscaping and activity infrastructure if space allows.

(iii) Discussion

The precinct plans in the ACZ identify a number of new pedestrian links as well as active frontages. The Panel accepts that Council will improve cycling and pedestrian linkages over time.

The critical issue is the treatment of Main Street. The Structure Plan says:

Vehicular movements are significant along Main Street creating congestion in its current function as a 'through-road'. The truncation of Main Street intends to alleviate congestion by altering the operation of the road. This will be achieved through alternative road connections and infrastructure treatments creating a pedestrian focused 'destination' occurring at the time of the road closure.

In the ACZ this is reflected in the notation of 'Gateways/entry points–Entertainment Plaza' and a Precinct Objective of:

Create a pedestrian focused and prioritised Entertainment Plaza in the south east corner of the precinct which provides outdoor dining, civic facilities and space for community activities/festivals.

In response to questions from the Panel, Council advised that the focus of the Structure Plan and UDF were to guide development on private land, but not on public land. The Panel notes that one of the zone's five purposes is:

To create through good urban design an attractive, pleasant, walkable, safe and stimulating environment.

The Panel considers that, in addition to the included 'Gateway Projects', the Structure Plan and the UDF would be stronger if they referred to planned or projected public realm improvements in the activity centre to better address the pedestrian environment purpose of the zone.

Council advised that they have commenced consultation with the Level Crossing Removal Authority regarding the removal of the Main St level crossing which has an anticipated reduced time frame of approximately two years. Whilst the nature of the new infrastructure is not yet determined, the project will, clearly, have a major impact on the form, function, appearance and amenity of the immediate rail corridor and its abutting land uses and including the wider activity centre.

The Panel shares DoT's concern regarding the proposed treatment of Main Street. Pedestrian mall treatments in locations such as this are not always successful and can have unintended consequences that contribute to sub-optimal outcomes for adjacent properties, businesses and the spaces themselves, particularly outside normal business hours. The level crossing removal project may present an option to explore how the traffic function of Main Street can be decreased while still maintaining some traffic access in a pedestrian friendly street.

When there is more certainty about the Level Crossing Removal Project and full traffic modelling is undertaken, the implications for the structure plan area should be considered and any necessary updates be made, such as possibly deleting the truncation of Main Street.

(iv) Conclusion

The Panel has previously recommended that Council should revisit the planning for the centre once the government's intentions for the rail corridor, the station and Bourke Park are known. Part of this exercise should be to review the truncation of Main Street.

4.6 Property for acquisition

The *Pakenham Structure Plan 2017*, which is currently incorporated in the Cardinia Planning Scheme, identifies an orbital road (essentially the north-eastward extension of Stephenson Street to Henry Street) which, if it proceeded, would require the acquisition of several properties including the property at 24 James Street.

M and J Robinson (Submission 4), owners of 24 James Street, sought more clarity about the removal of the proposal for an orbital road.

Council advised that the initial *Pakenham Structure Plan 2017* identified the property for acquisition. The updated Structure Plan no longer requires the property for a road connection.

The Structure Plan reviewed the need for this orbital road and concluded the benefit would not outweigh the costs involved and therefore removed the road from the Structure Plan.

Council advised that it had sent letters to all affected land owners to explain the change.

4.7 Making railway as of right

DoT said that 'Railway' should be made a Section 1 (permit not required) use within the schedule to the Activity Centre Zone and that an additional exemption for building and works associated with a railway is added to subclause 4.3 of the schedule to ACZ.

Clauses 4.1 and 4.3 the ACZ already provide exemptions for 'use' and 'buildings and works' that are carried out by, or on behalf of, the public land manager.

Council submitted:

Given the exemptions already provided and VicTrack does not own land within the ACZ area, including Railway as a Section 1 Use seems superfluous but is willing to include if the Panel deems it necessary.

It is not clear that this exemption is needed but it is not appropriate to require a permit to use land for a railway. Including it as a Section 1 use would provide clarity.

The Panel recommends that in the Activity Centre Zone Schedule:

Include Railway as a Section 1 use.

4.8 Precinct 3 uses

(i) The issue

Concerns were raised regarding the potential impact of development in Precinct 3 on the Princes Highway and adjoining properties.

(ii) Submissions

Council submitted that the Princes Highway, as a high traffic volume arterial road, creates a specific urban environment that, amongst other functions, provides significantly increased opportunities for access and visibility than a standard residential street. These attributes resulted in the decision to develop a separate precinct to guide the development of land that directly interfaces with the highway to address this environment with Precinct 3 seeking a mixed use outcome with higher density residential and the types of commercial uses limited to child care centres, medical centres and the like.

R Myslinska and R Polonski (Submission 6) were concerned about the potential impact of development in Precinct 3 on their residential property in Precinct 7. They submitted that the proposed Precinct 3 redevelopment to a mix of commercial (child care and medical) and residential is inappropriate for the following reasons:

- The lots facing Princes Highway are separated from the main thoroughfare by a landscaped outer separator reserve and service road and derive no particular benefit from the highway frontage.
- There is a connectedness and homogeneity with the established residential area which extends from the highway south to the township core.
- It is not appropriate to provide for the creation of a ribbon of commercial development along this service road frontage which bears no relationship with or connectivity to the core of the Pakenham township commercial/business area.
- Properties in Precinct 3 should be integrated with and be subject to the same development controls as the abutting residential areas to the south.

VicRoads (Submission 13) was concerned that the Objectives of Precinct 3 include complementary residential uses such as aged care, medical and health related services, child care centres, and offices, and that these activities will generate higher numbers of vehicle movements than the existing residential properties. Although all properties gain access via the service lane, the service lane is still part of the Road Zone Category 1.

VicRoads submitted that proposals for minor intensification such as dual-occupancy developments on an existing single residential site are unlikely to cause significant impact on the arterial road because of the service lane access. More significant development such as offices, medical centres, child care and aged care facilities may have impacts on the through-lanes of Princes Highway even if it does not result in physical alteration of access due to the limited vehicle deceleration opportunities at the existing entry points to the service lane. VicRoads reminded Council to have regard to these considerations as they exercise their discretion in relation to the proposed notice and review requirements under Clause 37.08-7 (Activity Centre Zone) as well as Clause 52.29 (Land adjacent to a Road Zone Category 1).

Council supported including additional specific guidelines/requirements relating to traffic movement impacts on the Princes Highway service road in Precinct 3, such as requiring the submission of an empirical traffic impact assessment that addresses any specific matters as identified by VicRoads. It said that changes can be made to the ACZ schedule at:

- Clause 6.0 – Application Requirements
- Clause 8.0 – Decision Guidelines under the heading of ‘Transport and Movement’.

Council noted that Clause 7.0 – ‘Notice and Review’ does not exempt development applications in Precinct 3 and 7 from third party notice and review and it is normal practice to refer any application fronting an arterial road in a Road Zone Category 1 to VicRoads and to heed the advice provided, even when it is not a statutory referral.

(iii) Discussion

The Panel agrees with Council that the Princes Highway creates a specific urban environment that provides greater opportunities for access and visibility than a standard residential street. The Panel thinks that there is merit in providing for a mixed use outcome with higher density residential and commercial uses limited to child care centres, medical centres and the like in Precinct 3 as part of the broader activity mix in the area.

In respect of traffic access, the Panel notes that Clause 66.03 makes the Roads Corporation a Determining referral authority for an application under Clause 52.29 for:

An application to create or alter access to, or to subdivide land adjacent to, a road declared as a freeway or an arterial road under the Road Management Act 2004, land owned by the Roads Corporation for the purpose of a road, or land in a [Public Acquisition Overlay] if the Roads Corporation is the acquiring authority for the land, subject to exemptions specified in the clause.

The Panel does not support the requirement for an additional traffic assessment. This can be determined on a case by case basis depending on the application.

The Panel observes that ensuring adequate access ought to be considered before an area is identified for intensification or land use change. Having said this the presence of the service road should mean that range of uses can be accommodated, but this is something that may need to be re-examined in the future. This re-examination ought to assess the overall traffic

capacity for the service land and its corresponding intersections with the through lanes to guide a more informed strategic response to land with a service land frontage.

(iv) Conclusion

The Panel concludes:

- additional provisions requiring traffic assessments in Precinct 3 in the Activity Centre Zone are not warranted.

4.9 The interface of Precinct 3 with Precinct 7

(i) The issue

Related to the issues discussed in the previous Chapter, R Myslinska and R Polonski (Submission 6) raised concerns about Precinct 3 – Princes Highway saying that it should be included in Precinct 7 Residential, and that the properties along Princes Highway are not suitable for higher density.

(ii) Submissions

R Myslinska and R Polonski raised concern about the amenity impacts to properties on the boundary (particularly at the rear) of Precinct 3 and Precinct 7, including overlooking concerns and overdevelopment, and stating there is no interface treatment between rear properties in Precinct 7 which adjoins Precinct 3.

Council submitted that Clause 4.4 Design and development in the ACZ, under the heading Dwelling requirements, sets out requirements for multi dwelling developments to provide sympathetic treatments to adjoining residential precincts in line with the requirements of Clause 55. In addition, all apartment developments are subject to the provisions of Clause 58 Apartment Developments.

Clause 4.4, under the heading ‘Commercial and mixed use requirements and guidelines’, sets out requirements for commercial and mixed use developments that interface with Precinct 7:

New buildings adjoining a residential property or Precinct 7 must respect the existing or preferred urban context and respond to the features of the site. Buildings should be set back from side and rear boundaries, and other buildings within the site to:

- Ensure adequate daylight into new habitable room windows.
- Avoid direct views into habitable room windows and private open space of new and existing dwellings.
- Developments should avoid relying on screening to reduce views.
- Provide an outlook from dwellings that creates a reasonable visual connection to the external environment.

Council proposed one change under the heading ‘Commercial and mixed use requirements and guidelines’, at dot point 1, subpoint 3, to read:

- Minimise casting shadows on public space and open space and private open spaces.

Council considered that the requirements of the proposed ACZ1 and Clause 55 will adequately address the interface between Precincts 3 and 7.

R Myslinska and R Polonski pointed out that:

... there are many potential forms of development which are not subject to the requirements of Clause 55 (for example, Offices, Apartments, Residential Aged Care, Medical Centre/Hospital), many of which are to be permitted 'as of right' and which have no height restriction other than a 'preferred' height provision.

(iii) Discussion

The Panel agrees that there is the potential for unacceptable overshadowing of residential open space from development in Precinct 3 onto residential properties in Precinct 7.

The ACZ parent provision requires that an application to construct a building or construct or carry out works must be accompanied by:

Shadow diagrams based on the equinox shown for existing conditions and the proposed development.

The Panel supports the reference to overshadowing in the ACZ but thinks that it needs to sit within the dot point dealing with other private amenity impacts. More detail is warranted for this regarding whether it refers to all private open spaces, as well as the dates and times of shadow, for example, at the equinox between the hours of 10.00am and 2.00pm. The Panel thinks the best way to address these issues is to refer to Standard B21 of Clause 55.04-5 'Overshadowing open space'.

The ACZ schedule includes:

An application to construct a building or carry out works is not exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act if:

- The application is in Precinct 3 or 7, and/or
- The application exceeds the precinct requirements including preferred building heights or preferred building setbacks contained within Clause 5 of this schedule.

This means that third party rights remain for applications in Precinct 3.

(iv) Recommendations

The Panel recommends that in the Activity Centre Zone Schedule

Include an additional requirement for new buildings adjoining a residential property or Precinct 7 as follows:

- **Achieve Standard B21 of Clause 55.04-5 'Overshadowing open space'.**

The changes that would give effect to the Panel's recommendations are set out below.

New buildings adjoining a residential property or Precinct 7 must respect the existing or preferred urban context and respond to the features of the site. Buildings should be set back from side and rear boundaries, and other buildings within the site to:

- Ensure adequate daylight into new habitable room windows.
- Avoid direct views into habitable room windows and private open space of new and existing dwellings.
- Developments should avoid relying on screening to reduce views.
- [Achieve Standard B21 of Clause 55.04-5 'Overshadowing open space'](#).
- Provide an outlook from dwellings that creates a reasonable visual connection to the external environment.

4.10 Integrating Precincts 6, 5 and 1

(i) The issue

David Young (Submission 7) raised concern that Precincts 6, 5 and part of 1 operate as silos and should be integrated to increase their overall value, stating that better integration between central precincts would improve Pakenham.

(ii) Submissions

Mr Young submitted:

Council advised that the Precincts have been identified separately as they provide different formats for retail delivery to the activity centre and have different opportunities for future development. While these differences are recognised through the provision of the separate precincts, the desire for these precincts to integrate through future development is a key objective.

Mr Young also thought that there should be a clear line of sight between the separate precincts and welcoming pedestrian access between the precincts.

Council submitted that the requirements set out in the proposed ACZ and the UDF will provide for appropriate interface treatments between precincts.

In the UDF the role and function for Precinct 5 is described as:

A continuation of retail and commercial activity along John Street linking in to the Retail Core Precinct providing a mixture of retail, commercial and high density residential development.

The role and function for Precinct 6 is described as:

Primarily an infill development opportunity to further activate Treloar Lane, provide additional car parking for the activity centre and link to the Retail Core Precinct.

Council submitted that the role and function described by the Structure Plan and UDF for each of these precincts are reflected in the Precinct objectives and Precinct requirements contained in the ACZ at Clause 5.5 and 5.6.

(iii) Discussion

The Panel agrees with Mr Young and Council's responses that further attention should be given to the integration of the activity centre through future public as well as private development as a key outcome of the Structure Plan. The Panel sees the integration of the activity centre precincts as a key challenge for Council going forward.

That said, this is not necessarily something that can be mandated in the ACZ. Rather, it is something that Council will need to work through with private developers and in its own capital works program. Council will need to be responsive to developments as they arise with an eye towards the future creation of a more coherent and integrated activity centre.

(iv) Conclusion

As noted previously the Structure Plan and UDF would benefit from inclusion of planned public realm improvement projects. This is not, however, something that needs to be addressed in the ACZ schedule.

4.11 Built form requirements and guidelines

(i) The issue

Concerns were raised over the preferred building heights.

JAK Investment Group Pty Ltd (Submission 19) submitted that a number of the requirements were overly prescriptive and do not address or allow for variation to site conditions, orientation of allotments or development potential of each precinct.

(ii) What the ACZ says

The ACZ sets out preferred heights, which are given effect by the following text:

Building height requirement

Buildings and works should not exceed the preferred heights specified in the precinct provisions at Clause 5 of this schedule. This does not apply to service equipment including plant rooms, lift overruns, solar collectors and other such equipment provided the following criteria are met:

- No more than 50% of the roof area is occupied by the equipment.
- The equipment is located in a position on the roof so as to minimise additional overshadowing of neighbouring properties and public spaces.
- The equipment is designed, screened and finished in a non-reflective material and of a colour to the satisfaction of the responsible authority.

Building height guidelines

Buildings and works which exceed the preferred building height specified in Clause 5 of this schedule must:

- provide an environmentally sustainable design which incorporates energy, water, waste and renewable technologies;
- provide affordable housing within the development;
- reduce visual impact by transitioning height to adjoining properties, public realm and streetscape;
- provide a maximum Street Wall Height of 15 metres;
- design the upper levels of buildings to be setback and highly articulated including a variety of floor levels and facades;
- provide sufficient solar penetration throughout the development;
- not adversely impact key public spaces, pedestrian routes and adjoining properties with overshadowing as measured on 21 March/September (Equinox) between 10.30am and 2.00pm; and
- be located at a designated gateway, as shown in the Pakenham Major Activity Centre Framework Plan in Clause 1, or be a significant consolidated site.

A development below the preferred building height which is on a site large enough to accommodate substantially greater development should demonstrate that structurally it can accommodate a larger building.

(iii) Submissions

Building height

David Young (Submission 7) supported six-storey developments, submitting that higher buildings would have the effect of reducing the visual impact of a possible future skyrail in Pakenham. However he raised concern that if the level crossing removal is a skyrail, upper

floors should be set back and sensitively designed to ensure a not so visually intrusive impression.

Joan Templar (Submission 3) also pointed out the benefits of higher built form:

Having seen the damage bush fires can do, why keep building outwards. I am a great believer of building upwards, so more than four floors high is fine by me. ... in Europe the edges of towns do not use up good farming lands. Why do we allow this to happen in Australia?

LJL Group Pty Ltd (Submission 8) objected to the height limit of 14 metres imposed on Precinct 4 – East Commercial and Mixed Use, particularly the area opposite Bourke Park. It requested the removal of the general height limit restriction, suggesting the height limit be determined by individual assessment by the Council's planning department. It stated that strict compliance with the building height will slow overall development and owners will not achieve the expected returns from developments.

LJL Group Pty Ltd pointed out that a development at 48 James Street Pakenham was recently approved for a 6 storey building with basement car park and is 18 metres in height – 4 metres over the general planning restriction.

JAK Investment Group Pty Ltd (JAK) (Submission 19) is purchasing 65,000 square metres of land, and owns about half of the land south of Main Street including all of the land in Precinct 5. Existing improvements on the land include a Coles supermarket, Target and over 750 car parks.

JAK objected to the preferred height limit of 15 metres (4 storeys) in Precincts 1 and 5 which are identified as key development sites.

JAK also queried why there was such a narrow range of preferred heights.

Precinct 5 is listed as having a preferred building height of 15 metres. The other precincts range between 13.5 and 15 metres. It is unclear as to why such a tight height range has been adopted across such a large activity centre.

Whilst recognising that these limits are preferred, it is submitted that a wider range of heights could have been employed to reflect that the different precincts are capable of different outcomes.

Given the substantial area of land owned by my client, its abuttal to the railway line and proximity to the existing station, it is submitted that the height limit in Precinct 5 should be 20 metres.

Council submitted that the proposed ACZ allows consideration of developments higher than 4 storeys, requiring a sensitive design with upper floors setback.

R Myslinska and R Polonski (Submission 6) raised concerns that Neighbourhood character is currently one and two storeys and there is no justification for the higher density development that is proposed.

Council submitted that the ACZ identifies a preferred height limit of 14 metres for Precinct 4. It is not a mandatory height limit. While the ACZ indicates preference that developments higher than four storeys are located at a designated gateway or on a significant consolidated site, other sites can be considered if the design is appropriate and it generally satisfies the objectives, requirements, and guidelines of the zone, and the outcomes sought by the Structure Plan and UDF.

Council advised that although the development application for a six-storey development at 48 James Street (precinct 2) occurred prior to the exhibition of the Amendment, the draft ACZ schedule was considered as part of the assessment of the planning application, as a ‘seriously entertained document’.

In respect of residential character Council submitted that the character of the centre is expected to change over time. Pakenham is designated by Plan Melbourne as a Major Activity Centre in close proximity to a transport hub, a railway station and major arterial roads. Policy direction from the State government is for Pakenham to continue its transition from a town centre to a higher density Major Activity Centre with employment, services and housing.

Building height guidelines

JAK believed that the requirements as drafted will substantially impact on the built form outcomes possible for any redevelopment and will limit the potential to deliver the broader strategic objectives for the Activity Centre:

... under the heading of Building height guidelines it is submitted that the requirements should be met rather than must be met. It is my understanding that guidelines should not be definitive and therefore the use of the word must is improper in this instance. It is submitted that the word must be replaced with the word should.

JAK was of the view that:

... the second dot point (provide affordable housing within the development) should be amended as there will be situations where buildings that exceed the height limits will not contain residential development. It is recommended that it be amended to read *provide affordable housing within residential developments*.

Council submitted that it was not clear exactly which requirements the JAK was referring to. However Council acknowledged that the heading ‘Building height guidelines’ under Clause 4.4 Design and Development, and the word ‘must’ rather than ‘should’, creates confusion about the preferred height being mandatory. Also, the requirement for affordable housing should state that it applies only to residential and mixed use developments. Council proposed amending the ACZ Schedule 1 to remove this confusion by:

- amending the heading to ‘Buildings above or below the preferred height guidelines’
- amending the last two dot-points under this heading to ‘shoulds’ rather than ‘musts’
- amending dot-point 2 to make clear that this requirement applies to residential and mixed use developments only.

(iv) Discussion

Building height

The Panel agrees that the ACZ sets out a narrow range of preferred heights:

- 13.5 metres: Precinct 3 Princes Highway and Precinct 7 Residential
- 14 metres: Precinct 2 West Commercial and Mixed Use
- 15 metres: the Core retail, East Commercial and Mixed Use and the precincts containing the ‘standalone malls’: Pakenham Place and Marketplace.

The activity centre is designated by Plan Melbourne as a Major Activity Centre. It contains a transport hub, a railway station and major arterial roads. The activity centres will continue its transition from a town centre to a higher density Major Activity Centre with employment, services and housing close to a significant rail station.

A fundamental issue is how much restriction on the development in a Major Activity Centre is appropriate.

Plan Melbourne identifies 121 existing and future Major Activity Centres across Melbourne. Major Activity Centres are places that provide a suburban focal point for services, employment, housing, public transport and social interaction. They have different attributes and provide different functions, with some serving larger subregional catchments.

The critical issue is whether a four storey height limit is appropriate for a Major Activity Centre. Certainly, there will be parts of activity centres with sensitive interfaces where such limits are applicable. The issue is whether such a limit ought to apply in precincts that do not have a sensitive interface. In answering this question, it is important to consider what future character for the centre might be appropriate, rather than simply reflect on the existing character.

The UDF specifies a maximum of four storeys for Precinct 5 (p.29, 3.5.1, para c), despite identifying it with potential for “*significant redevelopment*”. It is not clear how this height, or any of the heights in the UDF, were derived. At the Hearing, the Panel asked how the heights were derived. The Panel understands that while there was consensus with DELWP and Council on what the appropriate heights should be, no formal analysis was presented to the Panel.

The Panel agrees with Mr Young and Ms Templar that the activity centre is capable of accommodating buildings higher than four storeys in certain locations due to the nature of adjacent land uses and the ability to limit off-site impacts through careful building design.

The Panel was told that a permit had recently been granted for a six-storey development in an area with a preferred height of four storeys – this challenges the basis of the proposed controls.

The Panel agrees that the intended separation between rail corridor and built form should enable development of taller buildings in adjacent to the rail corridor with appropriate interface design.

The impact of Level Crossing Removal Projects across Melbourne has enabled the re-imagination and restructuring of Activity Centres, which will be expected for Pakenham.

Given that the ACZ envisages only a narrow band of preferred heights from 13.5 metres to 15 metres the Panel believes it would be more appropriate to remove the preferred heights and trigger the building height guidelines for any building over 14 metres. The Panel accepts that this opens the door to higher building forms. The Panel notes that JAK sought a preferred height limit of 20 metres and this can be taken as the expected level of developer interest at the current time. The Panel can see no policy reason why the planning controls should not accommodate this aspiration in the core of the activity centre.

In respect of the residential areas the Panel thinks there is less justification for a significant increase in height at this time. The purpose of the zone includes, “*to encourage a diversity of uses and the intensive development of the activity centre.*” The Panel agrees with Council that the character of the area will change, and that some limited increase in height is justified.

A maximum height of four storeys or 13.5 metres is proposed which is one storey, or 2.5 metres, higher than permitted under the existing General Residential Zone.

Use of ‘must’ or ‘should’

The parent provision of the ACZ states:

A permit may be granted to construct a building or construct or carry out works which is not in accordance with any design and development requirement in the schedule to this zone unless the schedule to this zone specifies otherwise.

While the use of ‘must’ to convey a mandatory requirement and ‘should’ for a discretionary requirement is good practice drafting in a schedule, it is not formally set out in the VPP.

The ACZ would be clearer if it said that a permit cannot be granted to construct a building or construct or carry out works that are not in accordance with requirement expressed with the term ‘must’.

The Council proposed a number of changes to the schedule to give more discretion. The Panel agrees that more discretion is desirable for many of the guidelines. Where a mandatory requirement or guideline does not specify a clear measure it will be of little practical effect.

For these reasons the Panel considers that ‘must’ should be replaced with ‘should’ throughout the guidelines, except the guidelines in relation to residential development.

The Panel draws the distinction between prescriptive controls which set out a metric to be met and mandatory control which cannot be varied. Mandatory controls in schedules are often expressed using ‘must’ rather than ‘should’.

Council’s response to submissions is supported to the extent that it seeks to make mandatory control discretionary.

Building height guidelines

The Panel has a number of concerns with the guidelines for exceeding the preferred height:

- The reference to energy, water, waste and renewable energy technologies may imply the requirement for specific technology or appliances within the development rather than the broader requirement that the development be environmentally sustainable – this part of the dot-point should be deleted.
- The provision of affordable housing² is an important aspiration in the Victorian planning system but there has been no justification as to why it ought to be included in the activity centre for exceeding a height limit – further there is no indication of how much affordable housing ought to be provided. It is not clear that households with less than a “*moderate income*” are currently having trouble purchasing a house in Pakenham.
- Setting back the upper levels of buildings is an accepted technique to reduce the impact of taller buildings but it is not clear why the buildings need to be “*highly articulated*”. Further it is unclear why there should be a variety of floor levels and facades.

(v) Recommendations

The Panel recommends that in the Activity Centre Zone Schedule:

Replace all occurrences of ‘must’ with ‘should’ in:

² Affordable housing is defined in the *Panning and Environment Act*.

- Commercial and mixed use requirements and guidelines
- Building height guidelines
- Building setback guidelines
- Precinct guidelines.

Remove the preferred height limits from Precincts 1, 2, 4, 5, and 6, and the Building height requirement relation to preferred heights.

Include 'Buildings and works should not exceed 13.5 metres' in the guidelines in Precincts 3 and 7.

Simplify the 'Building height guidelines' to refer to a height of 14 metres to trigger a consideration of the building height guidelines.

Remove the guidelines for taller buildings relating to:

- energy, water, waste and renewable technologies
- affordable housing
- the upper levels of buildings to be highly articulated including a variety of floor levels and facades
- a designated gateway, as shown in the Pakenham Major Activity Centre Framework Plan in Clause 1, or be a significant consolidated site.

Revise the exemption for service equipment including plant rooms and the like to refer the building height guidelines and move it to after the guidelines.

The changes that would give effect to the Panel's recommendations are set out below.

Building height guidelines

Buildings and works which exceed ~~the preferred building height specified in Clause 5 of this schedule~~ 14 metres ~~must~~ should:

- ~~provide an~~ Be environmentally sustainable, ~~design which incorporates energy, water, waste and renewable technologies;~~
- ~~provide affordable housing within the development;~~
- Reduce visual impact by transitioning height to adjoining properties, public realm and streetscape;
- Provide a maximum Street Wall Height of 15 metres;
- design Setback the upper levels of buildings, ~~to be setback and highly articulated including a variety of floor levels and facades;~~
- Provide sufficient solar penetration throughout the development;
- Not adversely impact key public spaces, pedestrian routes and adjoining properties with overshadowing as measured on 21 March/September (Equinox) between 10.30am and 2.00pm; ~~and~~
- ~~be located at a designated gateway, as shown in the Pakenham Major Activity Centre Framework Plan in Clause 1, or be a significant consolidated site.~~

A development ~~below the preferred building~~ less than 14 metres in height ~~which is~~ on a site large enough to accommodate substantially ~~greater~~ taller development should be constructed ~~demonstrate that structurally it can~~ to accommodate ~~a larger~~ conversion to a taller building.

Building height requirement

~~Buildings and works should not exceed the preferred heights specified in the precinct provisions at Clause 5 of this schedule.~~ The building height guidelines ~~This does~~ do not

apply to service equipment including plant rooms, lift overruns, solar collectors and other such equipment provided the following criteria are met:

- No more than 50% of the roof area is occupied by the equipment.
- The equipment is located in a position on the roof so as to minimise additional overshadowing of neighbouring properties and public spaces.
- The equipment is designed, screened and finished in a non-reflective material and of a colour to the satisfaction of the responsible authority.

4.12 Rail interface

(i) The issue

DoT (Submission 14) raised concern about Precincts interfacing with the rail and road corridors which have potential for higher density development, suggesting that noise and visual amenity controls should be included for these precincts.

(ii) Evidence and submissions

Council supported including clearer direction to address noise impacts emanating from road and rail corridors on future developments, such as requiring the submission of an Acoustic Report.

Council noted that the proposed ACZ1 proposes the extension of Flower Street which runs parallel to the rail corridor. If this objective is met no property boundary in the Activity Centre, with the one exception of the Pakenham Hotel site, will directly abut the rail corridor. A road reserve between the rail corridor and properties will provide a separation between built form and the railway.

(iii) Discussion

The Panel considers that the Flower Street extension should enable adequate separation between the rail line and future development, creating an interface not uncommon in a Melbourne context.

The inclusion of a provision for an acoustic report for sensitive uses such as dwellings (presumably apartments) would create repetition given the requirements already included for apartment developments in Clause 58.04-3 Noise Impacts Objectives. The *Urban Design Guidelines for Victoria* also address this in 4.4 Rail Corridor Environs – specifically *Objective 4.4.2- To enhance the amenity and safety for adjacent uses in the railway corridor environs*.

The Panel therefore does not support including a requirement to provide an acoustic report in the ACZ1.

(iv) Conclusion

No change is required to address noise issues from the railway.

Appendix A Submitters to the Amendment

No.	Submitter
1	Amanda Hutchings
2	Jennifer Goldsack
3	Joan Templar
4	Michael & Jenny Robinson
5	Glynis Ramsay
6	Ms Myslinska and Mr Polonski
7	David Young
8	LJL Group
9	Cardinia Ratepayers and Residents Association
10	Kathleen Reimert
11	South East Water
12	Melbourne Water
13	VicRoads
14	Department of Transport
15	Victorian Planning Authority
16	Victorian School Buildings Authority (Department of Education)
17	Environmental Protection Authority
18	Country Fire Authority
19	JAK Investment Group Pty Ltd