

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

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Panel Report pursuant to section 25 of the Act

Cardinia Planning Scheme Amendment C226

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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

The Amendment	Cardinia Planning Scheme Amendment C226
Common name	Correction to subdivision controls for the Conservation Living Area in the Officer Precinct Structure Plan
Brief description	The Amendment proposes to remove inconsistencies across subdivision controls in the planning scheme
Subject land	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
The Proponent	Cardinia Shire Council
Planning Authority	Cardinia Shire Council
Authorisation	A03554 3 May 2017
Exhibition	22 June to 24 July 2017
Submissions	Number of Submissions: 2 APA Group Keymore Pty Ltd

Panel process

The Panel	Geoff Underwood, Chair
Directions Hearing	At the Offices of the Cardinia Shire Council, Siding Avenue, Officer on 14 November 2017
Panel Hearing	At the Offices of the Cardinia Shire Council, Siding Avenue, Officer on 5 December 2017
Site inspections	Unaccompanied inspections were carried out on 14 November 2017 after the Directions Hearing and on 5 December 2017 after the Hearing.
Appearances	<ul style="list-style-type: none"> • Cardinia Shire Council represented by Ms Angela Gleeson, Principal Growth Area Planner • Keymore Pty Ltd represented by: <ul style="list-style-type: none"> - At the Directions Hearing, Mr Guillermo Cabala, Senior Town Planner of Bosco Jonson - 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.
Date of this Report	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 submission¹.

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

¹ 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



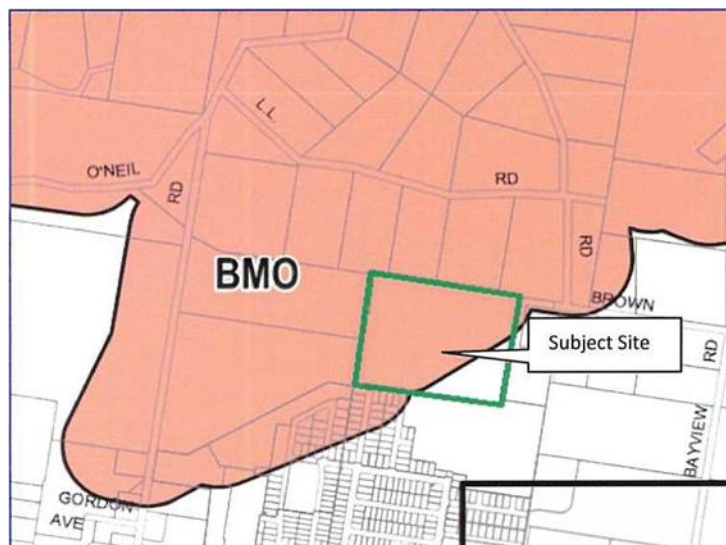
The OPSP limits the development potential of the CLA to:

- 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.²

² 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.³

³ 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