

*Planning and Environment Act 1987*

**Panel Report**

**Cardinia Planning Scheme Amendment C244**

**Pakenham Parking Precinct Plan**

**29 April 2019**

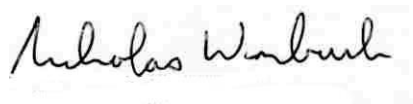
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Panel Report pursuant to section 25 of the Act

Cardinia Planning Scheme Amendment C244

Pakenham Parking Precinct Plan

29 April 2019



Nick Wimbush, Chair

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## Glossary and abbreviations

Council	Cardinia Shire Council
Parking Plan	Pakenham Precinct Parking Plan
Practice Note	Planning Practice Note 57: The Parking Overlay

## Overview

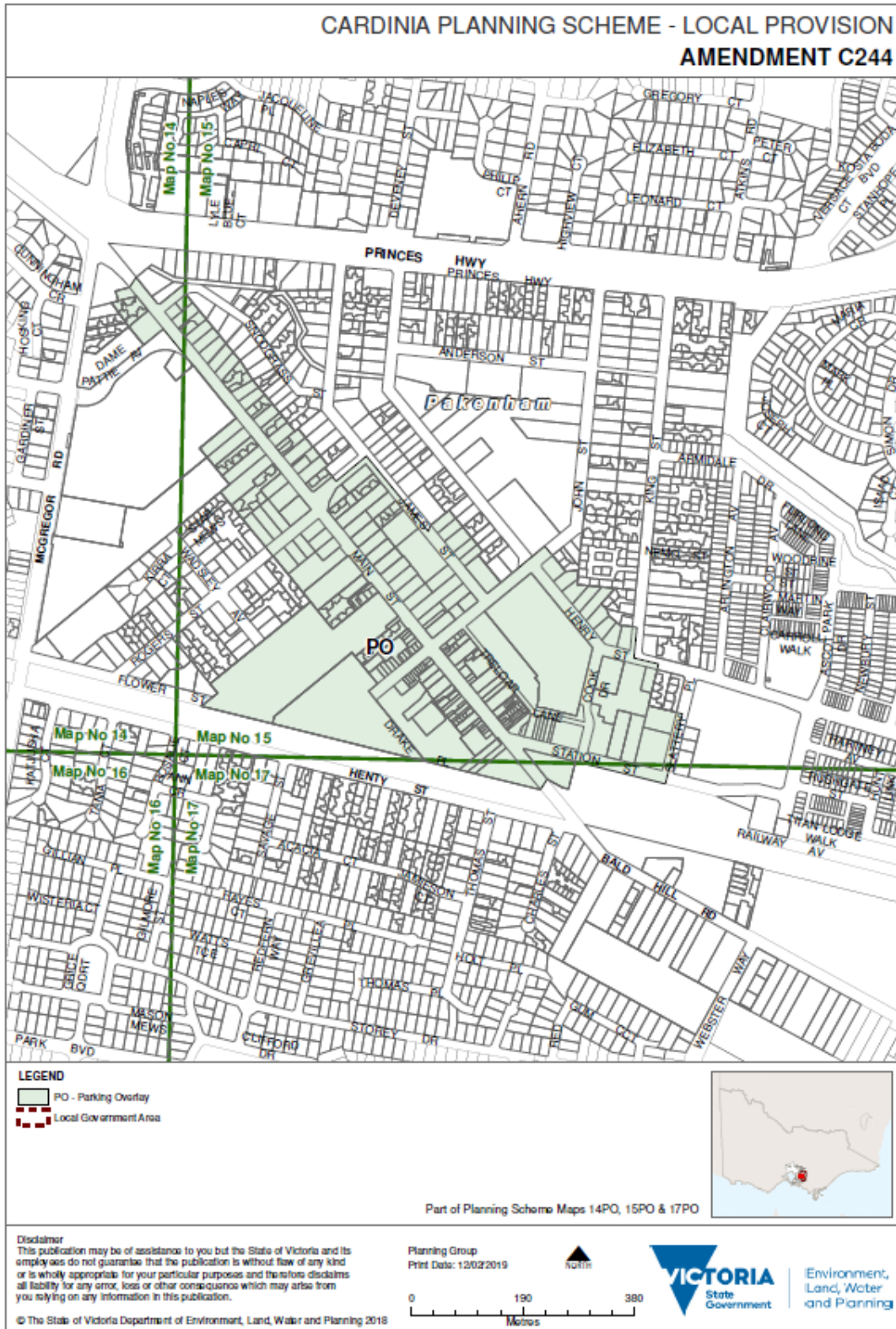
### Amendment summary

<b>The Amendment</b>	Cardinia Planning Scheme Amendment C244
<b>Common name</b>	Pakenham Parking Precinct Plan
<b>Brief description</b>	The Amendment implements the Pakenham Parking Precinct Plan 2018 by applying the Parking Overlay to the Pakenham Town Centre and introducing associated planning scheme text change
<b>Subject land</b>	Pakenham Town Centre as shown on Figure 1
<b>The Proponent</b>	Cardinia Shire Council
<b>Planning Authority</b>	Cardinia Shire Council
<b>Authorisation</b>	A03784, 17 August 2018
<b>Exhibition</b>	4 October to 6 November 2018
<b>Submissions</b>	Six submissions were received from: B. McDonald (objection) EPA Victoria (no objection) CatholiCare Family and Relationships Program (changes sought) Dr I. Michael (objection) Aldi Stores (objection – changes sought) QACPF Pakenham Pty Ltd (objection)

### Panel process

<b>The Panel</b>	Nick Wimbush
<b>Directions Hearing</b>	Cardinia Shire Council, Officer, Friday 22 March 2019
<b>Panel Hearing</b>	No Panel Hearing, the matter was considered on the papers
<b>Site inspections</b>	Unaccompanied of the Amendment area on Friday 22 March 2019
<b>Citation</b>	Cardinia Shire Council PSA C244 [2019] PPV
<b>Date of this Report</b>	29 April 2019

Figure 1 Post Exhibition Proposed Parking Overlay



## Executive summary

Cardinia Planning Scheme Amendment C244 (the Amendment) seeks to introduce the Parking Overlay to the Pakenham Activity Centre to implement the Pakenham Parking Precinct Plan (2018).

The Amendment will provide a tool for Council to address increased forecast parking demand by enabling the collection of a cash-in-lieu contribution for parking in some circumstances to be put towards projects to improve parking in the centre.

The Amendment was exhibited in late 2018 and attracted six submissions, five of which were objections or sought changes to the Amendment. Issues raised in submissions included:

- the nexus for projects to be funded
- parking in private compared to public carparks
- past payment for car parking
- parking permits
- exemptions to the scheme sought
- parking rates.

The Panel has reviewed the Amendment and concludes it is strategically justified and appropriate for an activity centre such as Pakenham. Council has made a number of changes in response to submissions which are also supported by the Panel. One more substantive change in response to a submission is suggested, that of including the actual parking projects in the schedule rather than a reference to a secondary document.

### Recommendations

Based on the reasons set out in this Report, the Panel recommends:

- 1. Adopt Cardinia Planning Scheme Amendment C244 as exhibited subject to the following changes and further recommendations in this report:**
  - a) Apply the revised Pakenham Parking Precinct Plan (February 2019).**
  - b) Apply the revised Schedule 1 to Clause 45.09 titled *Cardinia C244 45\_09s\_card proposed changes post Exhibition changes*.**
  - c) Apply the Parking Overlay as shown in Figure 1 of this report, but amending the notation PO to PO1.**
- 2. Further modify the Pakenham Parking Precinct Plan (February 2019) to:**
  - a) Revise the header to ensure the correct date is entered.**
  - b) Check pagination to ensure figure and table numbers and titles are in the correct position.**
- 3. Further modify the post exhibition Schedule 1 to Clause 45.09 to:**
  - a) Review the two references in the application requirements and decision guidelines in Section 4 to Clause 45.09.**
  - b) Replace the bullet points at the bottom of Section 5.0 in the Schedule to Clause 45.09 with specific reference to the projects in actions 7, 8, and 9 of the Pakenham Parking Precinct Plan (February 2019) relating to the James Street and Drake Place car park upgrades.**

# 1 Background

## 1.1 The Amendment

### (i) Amendment description

The Amendment will:

- add the Pakenham Parking Precinct Plan (Parking Plan) as a reference document at Clause 21.04
- introduce Clause 45.09 Parking Overlay and Schedule 1 to the Overlay
- introduce PO1 to maps 14, 15 and 17 of the planning scheme
- amend the Schedule to Clause 72.03.

The Amendment applies to land shown in Figure 1. Exhibition and referral to a Panel were as shown in the Overview table.

## 1.2 Procedural issues

### (i) On the papers

Notification of the Directions Hearing was provided to submitters via an e-mailed letter on 12 March 2019. By the Directions Hearing on 22 March 2019 only Council had responded that it wished to be heard.

Some of the submitters in their original submissions had indicated that they wished to be heard at the Panel Hearing. With Council's agreement the office of Planning Panels Victoria contacted submitters again via e-mail and telephone. This occurred between 22 March and 28 March. One submitter claimed they had not seen the original letter and request to be heard form, so the 12 March letter was resent.

No requests to be heard were received by the Panel. The Panel subsequently advised Council and submitters by e-mailed letter on 1 April 2019 that a Hearing was not required, and the matter would be considered on the papers.

## 1.3 Post exhibition changes and drafting issues

### (i) Post exhibition changes

Following exhibition, a number of minor changes to the Amendment documents were made in response to submissions and system changes. These were summarised in the Council Minutes of 18 February 2019 as:

- The inclusion of Appendix 1 and 2 which were not provided in the current adopted version
- Minor formatting and typographical changes
- Updating of Section 2 in accordance with Amendment VC148
- The inclusion of details on the Principal Public Transport Network area as introduced by Amendment VC148
- The deletion of Action 3 and 12 as they have now been completed

- Amended wording in Section 7 which provides additional information and actions to strengthen the role of enforcement within the Pakenham Activity Centre; and
- Inserting a new section to acknowledge existing car parking credits and how they will be taken into consideration.

An application for an empirical car parking demand assessment has also been added to the Schedule to Clause 45.09 in response to submissions and other relatively minor wording changes to the Schedule have been made.

In the Panel's view none of the post exhibition changes are substantive or change the fundamentals of the Amendment.

## **(ii) Other drafting issues**

The Panel's review of the documentation and material provided by Council has identified several other minor matters for consideration. These changes are included in the recommendations at the start of the report.

### **Map**

At the Directions Hearing Council advised that the Parking Overlay map as exhibited had included residential zoned properties on the corner of Henry Street and Slattery Place by mistake. The revised map is shown in Figure 1 of this report. The map needs to be further revised to include the notation PO1.

### **Parking Plan**

The Parking Plan (February 2019) should be further modified to:

- Revise the header to ensure the correct date is entered.
- Check the pagination to ensure figure and table numbers and titles are correct and in the correct position.

### **Schedule to Clause 45.09**

The post exhibition Schedule 1 to Clause 45.09 should be reviewed to determine if the two references in the application requirements and decision guidelines to Clause 45.09 in Section 4 are correct. The Panel thinks the second reference in each instance should be to Clause 52.06.

An additional more substantive change to the Schedule is discussed in Section 3.2.

## **1.4 Submissions and Panel approach**

Having reviewed the submissions and Council's response, the Panel addresses the issues raised in Section 3. The issues are dealt with under the following headings:

- Planning context
- Private parking
- Nexus
- Empirical analysis
- Column B rates in Clause 52.06
- Recognition of prior car parking payments
- Parking permits



- Exemption of not for profit organisations
- Existing traffic situation

## 2 Planning context

### 2.1 Strategic justification

The Explanatory Report for the Amendment goes into considerable detail as to why the Amendment is required. Essentially this can be summarised as Pakenham is recognised as an Activity Centre and is near to significant growth areas for Melbourne. In future this is expected to significantly increase the demand for parking in Pakenham, and Council has prepared the Parking Plan in response.

The Amendment seeks to implement the findings of the plan and projects into the scheme, to allow for cash-in-lieu contributions to be taken, in some circumstances, to improve the overall parking situation in Pakenham and cater for future demand.

Whilst there were a number of objections to the Amendment, the Panel does not consider that these challenged the fundamental necessity of the need to more strategically plan for parking in Pakenham. The issues in submissions are addressed in Section 3.

The Panel considers that the strategic justification for the Amendment is sound.

### 2.2 Planning Policy Framework

Council identified various clauses in the Planning Policy Framework that support the Amendment.

#### **Plan Melbourne Metropolitan Planning Strategy 2017-2050**

The following Directions are relevant:

- **Direction 3.3** – Improve local travel options to support 20-minute neighbourhoods and specifically **Policy 3.3.3** – improve local transport choices.
- **Direction 5.1** – Create a city of 20-minute neighbourhoods and specifically **Policy 5.1.2** – support a network of vibrant neighbourhood activity centres.

#### **Clause 11 (Settlement)**

The Amendment will improve parking within the activity centre and facilitate better access.

#### **Clause 17 (Economic development)**

The Amendment supports opportunities for growth in the activity centre and the provision of car parking to meet demand.

#### **Clause 18 (Transport)**

The Amendment will help in transport planning for the activity centre which is rich in public transport whilst ensuring there is adequate car parking to meet demand.

#### **Clause 21.04-3 (Activity centres)**

The Amendment implements the strategy:

Developing car parking precinct plans and a local schedule for car parking provision in activity centres.

### **2.3 Amendment VC148**

Amendment VC148, gazetted on 31 July 2018, made significant changes to all planning schemes in Victoria. Post exhibition, Council made a number of changes including, updating terminology in Section 2 of the Parking Plan, and reference to the Principle Public Transport Network in Section 7.3.4. The Panel is satisfied that the changes address the relevant parts of VC148 and do not significantly change the Amendment.

### **2.4 Planning Practice Note 57**

Planning Practice Note 57, The Parking Overlay (Practice Note) is the most relevant for the Amendment. It provides guidance to Councils on the use and form of the Parking Overlay. The Panel has considered the Amendment against the Practice Note, and with one notable exception discussed in Section 3.2 considers the Amendment is consistent.

### **2.5 Discussion and conclusion**

The Panel has reviewed the Amendment against the planning scheme and considers it is soundly developed and will be an important tool to help Council manage parking provision in the Pakenham Activity Centre. The use of the Parking Overlay is a well-recognised and understood mechanism and the use of cash-in-lieu contributions in some circumstances will allow greater flexibility in providing and managing parking as the centre develops more intensively.

The Amendment is strategically justified, and subject to the recommendations in this report, should be supported.

## **3 Issues and Panel consideration**

### **3.1 Private parking**

#### **(i) The issue and submission**

ALDI Stores submitted that as a significant amount of parking in the centre is private (16%), development of these sites will further reduce parking in the centre and this should be a strategic consideration in whether parking waivers and a cash-in-lieu contribution should be allowed. ALDI were specifically concerned that the reduction in parking could affect their own customer parking by encouraging use by non-customers.

Council responded<sup>1</sup> by noting that the planning control requires Council to consider whether a waiver and cash contribution is appropriate, and that the provision of car parking during development is a key consideration.

Council also noted that the Parking Plan has been modified at Clause 7.2.3 to include reference to Council working with private car park owners on improving enforcement to encourage turnover.

#### **(ii) Discussion**

The Panel is satisfied that the two issues around overall car park provision and cooperation on enforcement are satisfactorily addressed in the Amendment and Amendment changes. The Parking Plan and Amendment have as central objectives to encourage and improve car parking. Careful consideration of where cash-in-lieu in the place of actual car parks will need to be given by Council to ensure adequate parking is provided; the Amendment will facilitate this consideration.

The Panel does not consider the submission warrants a change to, or abandonment of, the Amendment.

### **3.2 Nexus**

#### **(i) The issue and submission**

The submission on behalf of Aldi questioned whether the principle of 'nexus' mentioned in the Practice Note<sup>2</sup> has been established for the projects listed by Council. Specifically the submission questioned whether items such as bicycle and pedestrian facility improvement and the provision of electric charge points would meet these principle.<sup>3</sup> The submission went on to say that the Schedule to Clause 45.09 should specify the exact projects to be

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<sup>1</sup> Council meeting minutes of 18 February 2019.

<sup>2</sup> Need, Nexus, accountability and equity are principles in the Practice Note but the submission focused on Nexus.

<sup>3</sup> The submission mentions 'electric car charging' as does the Parking Precinct Plan but the only Action (13) refers to electric bicycle charging.

funded by the contributions; those projects being the ones with a direct nexus to reduction in parking and the provision of parking supply and demand in the centre.

Council in their response considered that the principles have been addressed in accordance with the Practice Note, and that consultation during plan development identified pedestrian movement improvements would increase the use of under-utilised car parks. They also considered that in future the provision of electric bike charging points could help reduce parking demand in the centre.

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

The Panel has reviewed the submission, Council's response and the proposed schedule. The Panel considers that the submission should be accepted at least in part. Appendix 2 to the Practice Note in 4.0-3 includes in a note:

In order to ensure that a car parking cash-in-lieu scheme is legally valid, it is essential that:

- The Schedule to Clause 45.09 identifies the projects for which cash-in-lieu contributions must be used by the responsible authority; and
- The relevant projects are for proper planning purposes that are consistent with the objectives in Section 4 of the Planning and Environment Act.

The Panel does not consider that it is adequate to include reference to the Parking Plan Figure 3 (which also needs correction) or to refer to 'other projects' in the Plan. This is unacceptably vague and could conceivably allow for the Plan to be changed without an Amendment, thus changing the whole nature of the cash-in-lieu scheme.

The Panel considers the infrastructure elements identified in the Plan, primarily relating to the James Street and Drake Place car parks, should be specifically included in the schedule. In relation to the pedestrian movements and electric bike charging stations, the Panel considers these could meet the principles in the Practice Note and be for 'proper planning purposes', but in the Parking Plan are listed for action for future consideration in the plan review. They should not be included in the schedule at this point in time.

The Panel has made a recommendation accordingly.

## **3.3 Empirical analysis**

### **(i) The issue and submission**

The submission from QACPF Pty Ltd objected to the Amendment. One of the grounds was that any development proposal should require an empirical analysis of car park utilisation and predicted demand from the new use.

Council accepted this part of the submission and included in the revised Schedule to Clause 45.09 an application requirement for such an empirical assessment.

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

The Panel notes the additional wording proposed in the Schedule to Clause 45.09 and considers it appropriate to address the submission and provide a sound evidence base for

Council when considering applications. The Panel's support is covered in the general recommendation proposing adoption of the revised Schedule to Clause 45.09.

### **3.4 Column B rates in Clause 52.06**

#### **(i) The issue and submission**

QACPF also objected to the cash-in-lieu contribution being based on the Column B rate in Clause 52.06 on the basis that it may not align with the calculated parking rates.

Council responded that the parking rates in Column B are being applied in accordance with the Practice Note.

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

The car parking rates in Clause 52.06 were standardised some years ago and Council in the Panel's view has correctly used the scheme put forward by Clause 52.06 and the Practice Note. The Panel notes that Amendment VC148 has made the Column B rates apply by default through Clause 52.06 as part of the proposed overlay is now in the Principal Public Transport Network area.<sup>4</sup> Council's use of Column B even without this recent change was appropriate given the Activity Centre nature of Pakenham.

The Column B rates are the car spaces to be provided; the Schedule to Clause 45.09 may allow for a reduction in the number of car spaces to be permitted, but in this case the cash-in-lieu component will apply. The scheme is not designed to allow for a reduction in spaces and no contribution as the broader objectives are to improve parking in the Pakenham Centre.

The Panel does not consider the submission warrants a change to, or abandonment of, the Amendment.

### **3.5 Recognition of prior car parking payments**

#### **(i) The issue and submission**

The submission from Dr Michael from the Eastcare Medical Centre expressed concern that a considerable sum has already been paid to Council (\$25,000 in 1995) for car parking, and that an exemption from the Parking Overlay should be granted.

Council's response in the Council minutes outlined the previous rate schemes used to collect cash for parking provision in 1983 and 1999. The funds collected were used to acquire land in the centre for car parks and for their development. Council noted that Clause 52.06-7 allows the responsibility authority to consider past payments for car parking under different schemes.

The revised Parking Plan (February 2019) includes this text from Clause 52.06 in Section 8.2.

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<sup>4</sup> See addition of 7.3.4 in the Pakenham Precinct Parking Plan and Clause 52.06.

**(ii) Discussion and conclusions**

Without commenting on the specific facts in Dr Michael's submission, it is clearly the case that recognition of past contributions would be an important factor in future decisions on parking cash in lieu considerations.

The Panel is satisfied that Clause 52.06-7 provides for consideration of this issue and that Council can give due consideration to past payments.

The submission also suggests that other businesses in the area were not required to contribute to parking, by implication an unfair situation. Again, without commenting on the specific facts the Panel considers that fairness and equity should be objectives of parking in the area. The Panel is satisfied that introducing the Parking Overlay as proposed will establish such an overall framework that, whilst perhaps not righting past wrongs to the satisfaction of the submitter, should provide a clear and transparent mechanism for contributions in future.

The Panel does not consider the submission warrants a change to, or abandonment of, the Amendment.

### **3.6 Parking permits**

**(i) The issue and submission**

Dr Michael also submitted that he can no longer use carparks near his workplace without being fined and has to park some way away which is inconvenient at best and problematic in terms of emergency visits.

In response Council noted that the Parking Plan (at 7.2.5) flags the future consideration of parking permits including Trader and staff permits in the activity centre.

**(ii) Discussion and conclusions**

The Parking Precinct Plan discusses the possible future consideration of parking permits in future but without any specific action to be undertaken within a given timeframe. The Panel considers that whilst the plan could have been more specific in relation to permits, the issue is not critical to the overall scheme of the Amendment, the introduction of the Parking Overlay and the capacity of Council to take cash in lieu payments to improve parking in the centre.

The Panel does not consider the submission warrants a change to, or abandonment of, the Amendment.

### **3.7 Exemption of not for profit organisations**

**(i) The issue and submissions**

The submission from CatholiCare Family and Relationships Program suggested that not for profit organisations should be exempt from the Parking Overlay proposal. The submission appears to express concern that clients of the service may be required to pay in some way through the Parking Overlay.

In the Council report Council officers made the point that a cash contribution will only be required if parking spaces are not provided through development in accordance with the Parking Overlay Schedule and Clause 52.06.

**(ii) Discussion and conclusion**

The Panel notes that the service runs out of an existing residential dwelling in the Mixed Use Zone. There is nothing in the Amendment or the application of the Parking Overlay that will increase the impost on the service or the clients of the existing operation. The Parking Plan recommends Council consider paid parking in the centre in the next five yearly review but that will be subject to future processes.

If the service wishes to redevelop the site for similar or other purposes, then parking will need to be provided on-site as required by the planning scheme. If onsite spaces are not to be provided, then a cash contribution will need to be considered.

The Panel does not consider the submission warrants a change to, or abandonment of, the Amendment.

### **3.8 Existing traffic situation**

**(i) The issue and submission**

The submissions from B. McDonald suggested the Amendment would add to existing 'mayhem' on Main Street Pakenham.

**(ii) Discussion and conclusion**

There was no rationale or explanation in the submission on either existing traffic or why the Amendment will make it worse. The Panel does not consider the submission warrants a change to, or abandonment of, the Amendment.