

Planning and Environment Act 1987

Section 34 Panel Report

**Cardinia Planning Scheme Amendment C234
Pakenham East Precinct Structure Plan**

11 May 2020

Planning and Environment Act 1987

Panel Report pursuant to section 34 of the Act

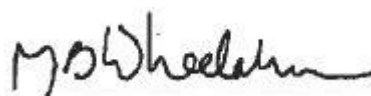
Cardinia Planning Scheme Amendment C234

Pakenham East Precinct Structure Plan

11 May 2020



Lester Townsend, Chair



Michael Wheelahan, Member

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Glossary and abbreviations

Term	Meaning
BAL	Bushfire attack level
CFA	Country Fire Authority
Council	Cardinia Shire Council
DCP	Development Contributions Plan
DELWP	Department of Environment, Land, Water and Planning
DSS	Development Services Scheme
GAA	Growth Areas Authority (now the VPA)
GAIC	Growth Areas Infrastructure Contribution
GRZ	General Residential Zone
GWZ1	Green Wedge Zone 1
ICO	Infrastructure Contributions Overlay
ICP	Infrastructure Contributions Plan
IPO	Incorporated Plan Overlay
NDA	net developable area
NDHa	net developable hectares
NVPP	<i>Pakenham East Native Vegetation Precinct Plan</i>
PE Act	<i>Planning and Environment Act 1987</i>
PPF	Planning Policy Framework
PPN03	<i>Planning Practice Note 3 – Applying the Special Use Zone</i>
Proposed changes	the Minister’s proposed changes to the Amendment
PSP	<i>Pakenham East Precinct Structure Plan</i>
removed land	Land proposed to be deleted from the PSP, namely PSP Parcels 1 to 4: <ul style="list-style-type: none"> - 155 Dore Road, Pakenham - 365 Seymour Road, Nar Goon North - 325 Seymour Road, Nar Goon North - 85 Mount Ararat North Road, Nar Nar Goon North.
revised northern boundary	Generally the southern boundary of the removed land, but following the southern boundary of the electricity easement on Lot 14
RGZ	Residential Growth Zone
SUZ	Special Use Zone
UGB	Urban Growth Boundary
UGZ	Urban Growth Zone
VCAT	Victorian Civil and Administrative Tribunal
VPA	Victorian Planning Authority
VPP	Victoria Planning Provisions
VSBA	Victorian School Building Authority

Overview of the Amendment and first panel

The Amendment	Cardinia Planning Scheme Amendment C234
Common name	<i>Pakenham East Precinct Structure Plan</i>
Brief description	The Amendment incorporates three new documents into the Cardinia Planning Scheme titled <i>Pakenham East Precinct Structure Plan 2017</i> , the <i>Pakenham East Native Vegetation Precinct Plan 2017</i> and the <i>Small Lot Housing Code 2014</i> . The Amendment also rezones the majority of land to Urban Growth Zone Schedule 5 to facilitate the development of the land generally in accordance with the Precinct Structure Plan and makes a number of other consequential changes to support the implementation of the Precinct Structure Plan.
Subject land	The Amendment applies to approximately 630 hectares of land generally bounded by Deep Creek and Ryan Road to the west, Mount Ararat Road to the east and the Princes Freeway to the south.
The Proponent	The Victorian Planning Authority
Planning Authority	The Victorian Planning Authority
Exhibition	15 January to 23 February 2018
Submissions	Number of Submissions: 75 Resolved: 19
The first panel	Michael Ballock (Chair), Tanya Burdett, John Hartigan
Directions Hearing	30 April 2018, Victorian Planning Authority
Site inspections	Unaccompanied, 25 May 2018
Panel Hearing	30 May 2018, Victorian Planning Authority 31 May to 1 June 2018, Cardinia Shire offices 25 June to 3 July 2018, Planning Panels Victoria.
Report of the first panel	10 September 2018

Adoption and post adoption process

10 October 2018	VPA adopts the Amendment
12 October 2018	Amendment submitted to Minister for approval
16 April 2019	The VPA requests that the Minister prepare, adopt and approve complementary Amendment C251card to implement the <i>Pakenham East Infrastructure Contributions Plan</i>
21 June 2019	DELWP briefs the Minister on the Amendment and Amendment C251card. The brief identifies concerns with the inclusion of PSP Parcels 1-4 in the PSP due to development constraints on this land caused by the electricity transmission easement.
21 July 2019	The Minister advises DELWP that he would like to consult with affected landowners and Cardinia Shire Council on changes that he is proposing to the Amendment, which include removing PSP Parcels 1-4 from the PSP
9 September 2019	DELWP briefs the Minister outlining the process for directing notice under section 33(1)(b) of the Act
18 September 2019	The Minister directs the VPA to give notice of the Proposed changes

Overview of the Proposed changes

Proposed changes summary

Brief description	The Proposed changes seek to: <ul style="list-style-type: none"> - remove certain land from the north of the PSP, namely PSP Parcels 1 – 4 (the removed land) - impose interface control on land to the south of the removed land on the basis that this land may be a long-term urban–rural interface.
Exhibition of Proposed changes	1 October to 31 October 2019
Final submissions received	9 December 2019
Submissions	Ten submissions received
Submissions referred to a panel	13 January 2020

Section 34 Panel process

The Panel	Lester Townsend (Chair) and Michael Wheelahan
Panel appointed	24 January 2020
Site inspections	Unaccompanied, 11 February 2020
Directions Hearing	Planning Panels Victoria, 14 February 2020
Adopted version of the PSP circulated by the VPA	24 February 2020
Statement of reasons for Proposed changes circulated by the Minister	2 March 2020
Panel Hearing	Planning Panels Victoria with concurrent video conference, 25 March 2020
Parties to the Hearing	<p>Minister for Planning represented by Hayley Presnell and Peita Tapper</p> <p>Victorian Planning Authority represented by Bonnie Mather and Paul Cassidy</p> <p>Cardinia Shire Council represented by Marcelle Bell</p> <p>Lendlease represented by Jason Black of Insight Planning instructed by Noor Shamsul of Urbis, tabling the following expert evidence:</p> <ul style="list-style-type: none"> - Bushfire from Jason Hick of Emerge Associates - Traffic from Jason Walsh of the Traffix Group - Engineering from Raymond Robert James Todd of Cossill and Webley - Urban design from Mark Sheppard of Kinetica - Planning from Rob Milner of Kinetica

	Paul and Penny Carney Bauenort Management Pty Ltd represented by Anton Pound
Submission of material post Hearing	8 April 2020
Citation	Cardinia PSA C234card (section 34 process) [2020] PPV
Date of this Report	11 May 2020

Executive summary

About this Panel

On 10 October 2018 the Victorian Planning Authority (VPA) adopted the Cardinia Planning Scheme Amendment C234 (the Amendment) and sent the Amendment to the Minister for Planning (the Minister) for approval.

The Amendment proposes to:

- incorporate the *Pakenham East Precinct Structure Plan 2017* (the PSP) and the *Pakenham East Native Vegetation Precinct Plan 2017* into the Cardinia Planning Scheme
- rezone land to Urban Growth Zone Schedule 5 to facilitate the development of the land generally in accordance with the PSP.

The Minister proposed certain changes to the Amendment (the Proposed changes). The Proposed changes essentially seek to:

- remove certain land from the north of the PSP (the removed land)
- impose interface controls on land to the south of the removed land on the basis that this land may be a long-term urban–rural interface.

The removed land consists of four lots which are partly inside the Urban Growth Boundary (UGB) and partly outside. The lots are constrained by an electricity transmission easement that covers approximately half of the land inside the UGB.

The Minister directed that the VPA give notice of the Proposed changes pursuant to section 33(1)(b) of the *Planning and Environment Act 1987* (the PE Act). In response to the notice ten submissions were received. Under section 34(2) of the PE Act the submissions were referred to a panel.

This is the Report of the panel appointed pursuant to Section 34 of the PE Act to hear submissions in relation to the Proposed changes.

Does the land have an urban future?

The UGB was introduced into this area as part of the logical inclusions process, but the boundary does not accord with the recommendation of the committee that made recommendations on where the UGB should be located.

If the UGB had followed the southern boundary of the easement as discussed in the logical inclusion process many, if not all, of the issues raised in relation to development in this area would not have arisen.

The land is highly constrained and the Minister's reasons for proposing to exclude the land are based on legitimate concerns over the future development of the land. The Panel agrees that the adopted PSP runs too high a risk of permitting an unacceptable planning outcome.

However, removing the land from the PSP would not address these concerns, and would introduce further complications into an already complex situation.

In the absence of relocating the UGB the Panel thinks the best course of action is to recognise that the land will have a transitional role between the green wedge and conventional development, but will not have a fully urban future.

What does the adopted Precinct Structure Plan say?

The Minister and the VPA disagree on whether the adopted PSP will deliver an acceptable planning outcome.

The Minister says:

The PSP does not prevent the development of standard density lots north of the easement, and therefore does not provide for a natural and orderly transition from the urban area to the rural area.

But the VPA says:

The adopted version of the PSP does not contemplate or enable this density within and north of the transmission easement. The PSP guides that an average of around 4 dwellings per NDHa should be delivered in the overall area (see G26 and Table 3).

As read by the Panel, the PSP supports both interpretations. This might have been seen a simple drafting issue had the VPA's position not been reported by the first panel as:

The VPA submitted that 800 or 2,000 square metre lots would be inconsistent with the proper utilisation of the resource that is land within the UGB.

It is simply not possible to tell from the text of the adopted PSP whether the intended outcome for land north of the easement is:

- conventional density at 17 lots per hectare, or
- development at around 4 dwellings per hectare.

The VPA's submissions have not clarified this issue. The Panel supports the Minister's assessment that the PSP does not prevent the development of standard density lots north of the easement and concludes that such development would be an unacceptable planning outcome.

The removed land is constrained, but not so constrained that it cannot be developed, and orderly planning suggests that the future of the removed land should be settled as part of the Amendment. The removed land is not appropriate for conventional urban development, but a lower density development pattern would provide an acceptable planning outcome.

The Panel concludes that the appropriate outcome is development at around 4 dwellings per hectare – a figure for the land from the adopted PSP – but the removed land does not need to be deleted from the PSP to achieve this.

Land in three zones

The Minister was concerned that the Amendment would place the removed land into three different zones. Having land in three zones is not an insurmountable issue, nor is it contrary to policy. Given what is involved in greenfield development, the need to undertake a staged subdivision process should not be a determinative factor in setting urban form.

Payment of the Growth Area Infrastructure Contribution

The Minister was concerned that the Special Use Zone had been applied to the transmission easement to avoid the payment of the Growth Area Infrastructure Contribution (GAIC).

The land is not currently liable for GAIC. The Minister's changes would mean that a GAIC liability would not be imposed by the Amendment because the land would not be zoned Urban Growth Zone (UGZ). The changes do not clarify whether GAIC would or would not be applied in the future. The Minister's reasons imply that GAIC should be applied in the future, but the

Panel thinks that this is a decision that should only be made after there is a defined future for the land.

The Panel recognises that the application of GAIC raises broader issues of public policy and the Panel is not the appropriate forum to determine these. Based solely on the submissions to it, the Panel concludes GAIC should not be payable on the land given its constrained nature, and hence an alternative zone to the UGZ should be applied. If this recommendation is contrary to broader public policy then GAIC can be applied to the land by applying the UGZ.

The Panel agrees with the Minister that the application of the SUZ is contrary to published guidance and the planning outcomes sought by the SUZ can be achieved with an alternative zone and overlay if the UGZ is not applied.

Development feasibility and infrastructure contributions

It is not the role of the planning system to second guess development feasibility where the relevant land owners believe development to be feasible. This is especially the case in growth areas where the area will undergo significant changes.

In respect to the Infrastructure Contributions Plan (ICP), the Panel observes that the ICP boundary is determined by the Infrastructure Contribution Overlay (ICO) which will be applied by Amendment C251card. The ICO could exclude the removed land if its application were deemed unfair. The Panel concludes that its application would be unfair given the limited development potential of the land

Consequential changes

A number of submissions dealt with how interface requirements would be transferred to land to the south of the removed land if the Proposed changes were to proceed. If the removed land is not included in the PSP it would be prudent to assume that the northern boundary of the PSP will form an urban and rural interface. This would impose significant costs on this land – not to achieve an agreed planning outcome, but because an outcome cannot be agreed. This would not be fair or orderly planning, but would be the only prudent course of action.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Cardinia Planning Scheme Amendment C234 be approved as adopted with the following changes:

- 1. Change the second dot point in requirement R9 in the Precinct Structure Plan to read:**
 - **Achieve an average density of 17 dwellings per hectare outside the walkable catchment (excluding interface housing areas, and ‘residential – within and abutting the transmission easement’ shown on Plan 5 – Image and Character, Housing & Community).**
- 2. Apply the General Residential Zone to the easement land and land north of the easement together with an Incorporated Plan Overlay generally along the lines of the exhibited Schedule 2.**
- 3. Do not impose infrastructure contributions on the easement land and land north of the easement.**

In the event that the Minister does not accept the Panel's primary recommendation that the Proposed changes do not proceed:

4. Include flexibility in the Precinct Structure Plan to remove the requirements for the proposed edge road and housing interface area, in the event that an edge road or housing interface area is provided in the removed land under a separate amendment or approval process.
5. Amend the last dot point of requirement R12 in the Precinct Structure Plan to:
 - provide wider lot frontages where the natural gradient of the land is 10 per cent or less.
6. Amend the Future Urban Structure, Plan 5, Plan 6, and Plan 7 in the Precinct Structure Plan to change the northern culvert crossing on Hancocks Gully to a pedestrian crossing.

1 Introduction

1.1 Background

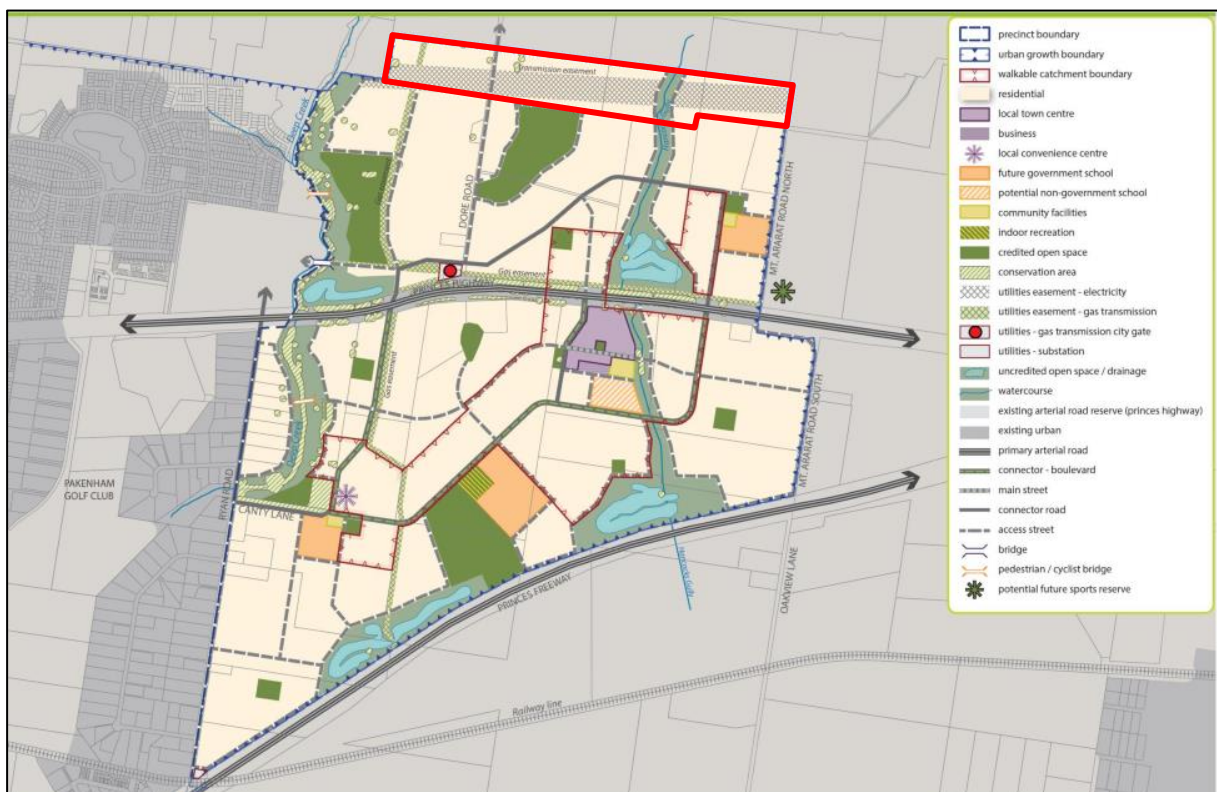
(i) The Pakenham East Precinct Structure Plan

A Precinct Structure Plan is a long-term plan for the future urban development of land. It includes a Precinct Infrastructure Plan, which details what is to be included within an Infrastructure Contributions Plan.

Cardinia Planning Scheme Amendment C234 (the Amendment) proposes to incorporate the *Pakenham East Precinct Structure Plan* (the PSP) and the *Pakenham East Native Vegetation Precinct Plan* (NVPP) into the Cardinia Planning Scheme. The Amendment also proposes to rezone the majority of land to Urban Growth Zone Schedule 5 (UGZ5) to facilitate the development of the land generally in accordance with the PSP and makes a number of consequential changes to the Cardinia Planning Scheme to support the implementation of the PSP.

The Amendment applies to approximately 630 hectares of land generally bound by Deep Creek and Ryan Road to the west, Mount Ararat Road to the east and the Princes Freeway to the south, as shown in Figure 1.

Figure 1: Pakenham East PSP – Plan 3 – Future Urban Structure Plan



Source: Report of the first panel – identification of the removed land added by this Panel

(ii) About this Report

On 10 October 2018 the Victorian Planning Authority (VPA) adopted the Amendment and sent the Amendment to the Minister for Planning (the Minister) for approval.

The Minister proposed certain changes to the Amendment (the Proposed changes). The Proposed changes are described in detail in Chapter 1.4 below, but essentially seek to remove

land from the PSP, identified as in Figure 1 (the removed land). An electricity transmission easement encumbers approximately half of the developable area of the removed land.

The land use budget in the PSP identifies the transmission easement as developable for residential purposes. Dwellings are prohibited in the easement by the beneficiary of the powerlines and the easement, SP Ausnet, but the constrained land could be utilised for rear yards, domestic garages, carports, garden sheds, or tennis courts. This is not an uncommon outcome for such easements in metropolitan Melbourne.

The Minister directed that the VPA give notice of the Proposed changes pursuant to section 33(1)(b) of the *Planning and Environment Act 1987* (the PE Act). In response to the notice ten submissions were received. Under section 34(2) of the PE Act the submissions were referred to a panel.

This is the Report of the panel appointed pursuant to Section 34 of the PE Act to hear submissions in relation to the Proposed changes.

This is not a common process, and the relevant sections of the PE Act are presented here to clarify the nature of the proceedings. These sections follow section 29 dealing with the adoption of an amendment and section 31 requiring the planning authority to submit an amendment to the Minister:

33 Notice of changes

- (1) The Minister may direct the planning authority to give notice of any changes to the amendment which—
 - (a) the planning authority has made under section 29; or
 - (b) the Minister proposes to make.
- (2) The direction may specify the manner and form in which the notice is to be given.

34 Submissions

- (1) The Minister may allow any person affected by a change to an amendment to make a submission to the Minister on the change.
- (2) The Minister may refer any submissions to a panel appointed under Part 8.
- (3) The panel must consider the submissions and give any person who made a submission referred to it a reasonable opportunity to be heard.
- (4) The panel may give any other person affected a reasonable opportunity to be heard.
- (5) The panel must report its findings to the Minister setting out the panel's recommendations on the changes.

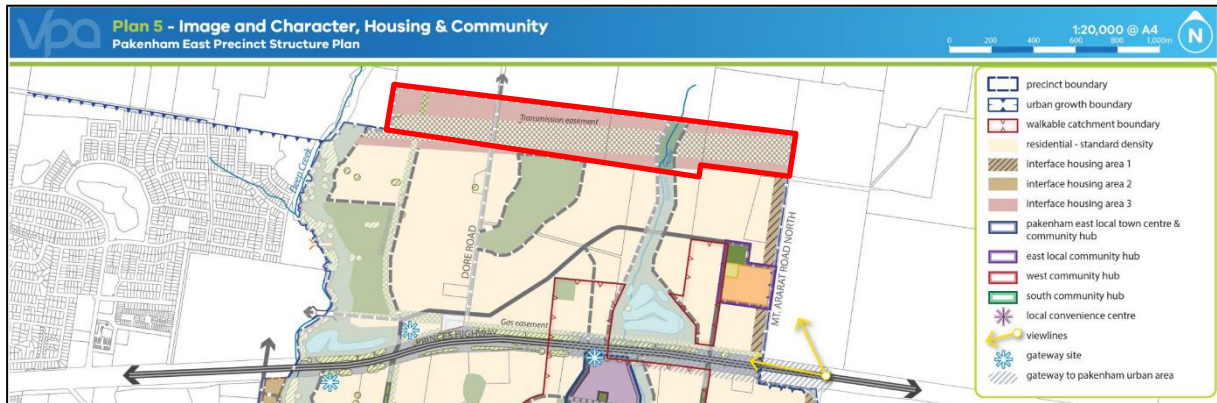
Section 35 dealing with approval by the Minister follows these sections.

1.2 The exhibited Amendment

(i) Urban structure

The removed land was exhibited as part of 'Interface housing area 3' which was guided by requirement R15.

Figure 2: Exhibited PSP



As exhibited, requirement R15 stated:

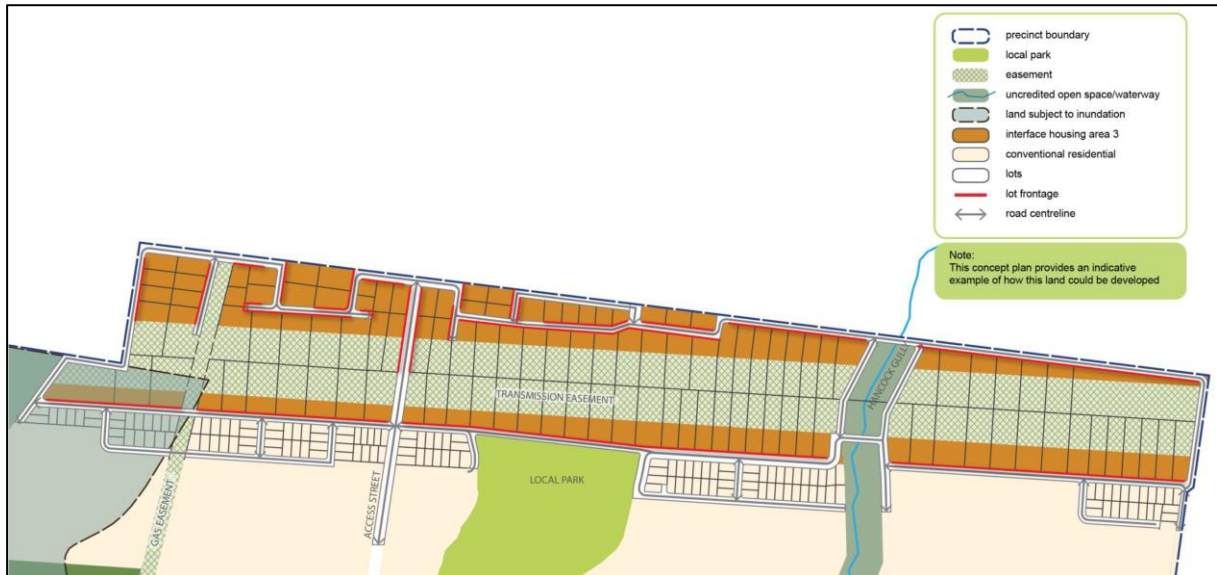
Requirement R15

Subdivision of land in Interface Housing Area 3 as shown in *Plan 5 – Image, Character, Housing and Community* must provide:

- a building envelope to address the ridgeline and electricity line easement
- that the application will achieve an average minimum lot size of 2,000 square metres
- rural fencing that is low scale and visually permeable to facilitate the rural lifestyle character of this area, and
- maximise side setbacks and create openness between the dwellings.

The exhibited PSP included a concept plan for the removed land, shown in Figure 3.

Figure 3: Concept plan for removed land from exhibited PSP



The summary of the exhibited PSP states:

Based on the estimated residential development yield established in *Table 3 – Housing Delivery Guide*, the Pakenham East PSP will generate approximately 7,148 dwellings to accommodate between 20,000–22,200 new local residents.

Requirement R8 requires land within the walkable catchment boundary shown on the *Future Urban Structure* to create lots suitable for the delivery of medium or higher density housing as outlined in *Table 3 – Housing Delivery Guide*, but the table is not otherwise given effect.

Table 3 of the exhibited PSP includes a row relating the removed land:

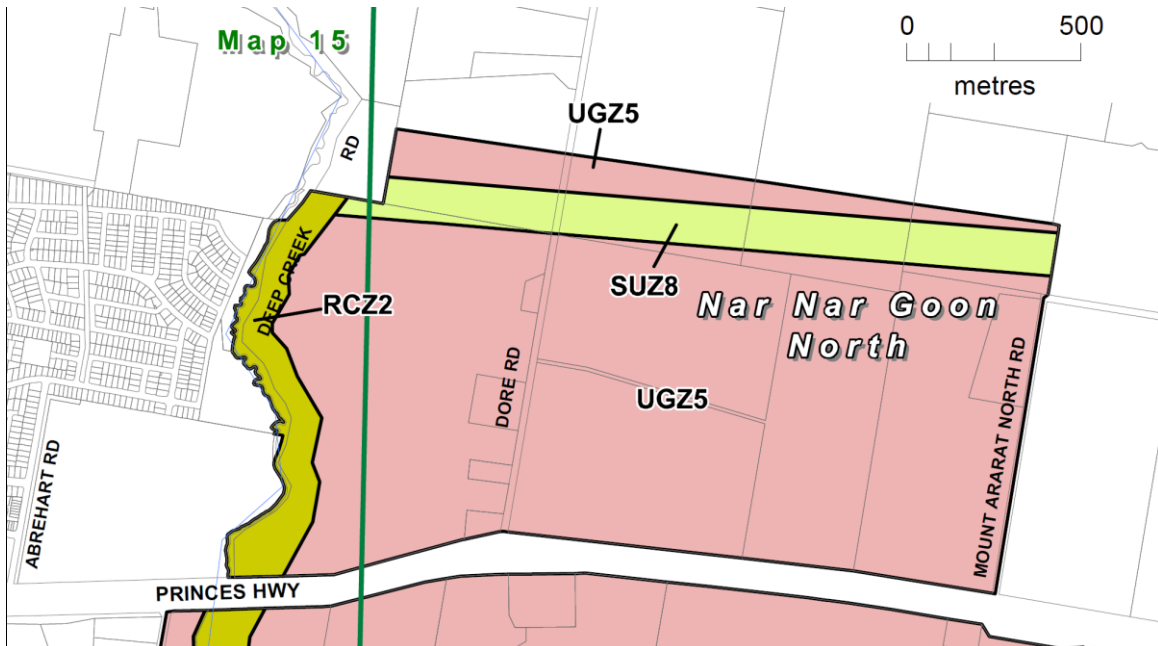
Table 3 – Housing delivery guide

RESIDENTIAL TYPE	NDA (HA)	DWELLINGS / NDHa	DWELLINGS
...			
Residential outside walkable catchment – Interface housing area 3	45.63	2.95	135
...			

(ii) Zoning

The removed land was proposed to be zoned part UGZ5 and part Special Use Zone (SUZ8).

Figure 4: Exhibited zones



1.3 The adopted Amendment


(i) Hearing and adoption


Following the exhibition of the Amendment and during the first panel process, the VPA worked with submitters, landowners, government agencies and Council to resolve issues raised in submissions. This process resulted in the VPA proposing a number of changes to the exhibited documents. The first panel recommended that the Amendment be adopted with certain changes.

The VPA adopted the Amendment, including the PSP and NVPP at its Board meeting on 10 October 2018.

(ii) Urban structure

Plan 3 of the PSP shows the removed land:

- within the Precinct boundary
- as residential
- outside the ‘walkable catchment boundary’
- within an area identified as ‘residential – within and abutting the transmission easement’ shown on Plan 5 in the PSP (shown as  on Figure 5 and enlarged on Figure 6)

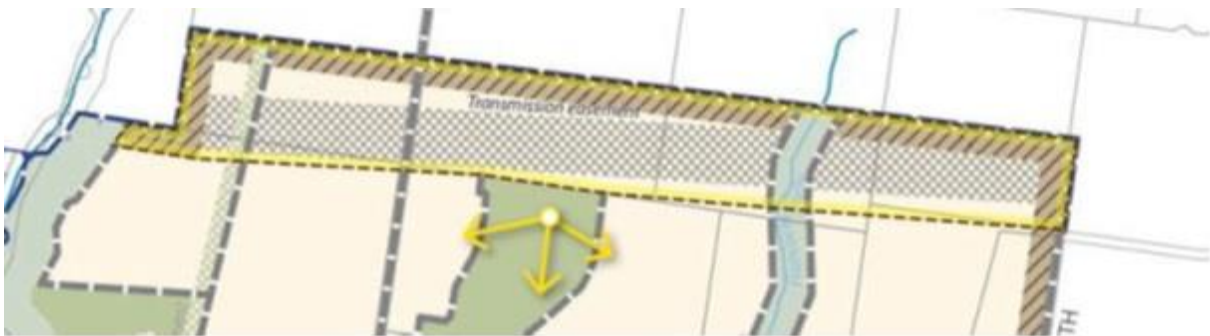
- with interface housing area 1 to the areas that interface with the UGB (shown as  on Figure 5 and enlarged on Figure 6).

The easement is shown as ‘utilities easement – electricity (residential / developable)’.

Figure 5: Adopted Amendment



Figure 6: Enlargement of adopted Amendment




Requirement R9 says:


Requirement R9

Residential subdivision of land within the Precinct boundary shown on Plan 3 - Future Urban Structure, must create lots suitable for the delivery of standard, medium or higher density housing as outlined in Table 2 – Housing type by lot size and Table 3 - Housing Delivery Guide, and:

- Achieve a minimum average density of 22 dwellings per hectare inside the walkable catchment.
- Achieve an average density of 17 dwellings per hectare outside the walkable catchment (excluding interface housing areas shown on Plan 5 – Image and Character, Housing & Community).

Applications for subdivision that can demonstrate how target densities can be achieved over time, to the satisfaction of the responsible authority, shall be considered.

The density requirement excludes the ‘interface housing areas’, but is silent about the required density for the area identified as ‘residential –within and abutting the transmission easement’ shown on Plan 5 in the PSP (shown as  on Figure 6).

The adopted form of the PSP applies the interface housing area 1 requirements to the areas that interface with the UGB, shown as  on Figure 6.

Requirement R12

Subdivision of land within the Interface Housing Area 1 and 2 , as identified in *Plan 5 – Image, Character, Housing and Community*, to minimise amenity impacts on surrounding areas, must:

- be a single dwelling on a lot
- have a minimum front setback of 8 metres
- have a minimum side setback of 1 metre for the first 3 metres of the building envelope
- have no front or side fences greater than 1.2 metres in height within the first 3 metres of the lot
- provide wider lot frontages.

The interface housing area 1 and Requirement 12 do not apply to all land north of the easement and no other requirement applies of the removed land in the adopted PSP. Table 3 of the adopted PSP, housing delivery guide, identifies a lower dwelling density of four dwellings per net developable hectare within and around the transmission easement but no requirement relates to this figure.

The adopted PSP gives effect to *Table 3 – Housing delivery guide* for land outside of the walkable catchment by way of a guideline:

Guideline 26

Subdivision of residential land outside the walkable catchment boundary shown on *Plan 3 – Future Urban Structure*, should achieve the average density outlined in *Table 3 – Housing delivery guide*. Applications for residential subdivision that can demonstrate how target densities can be achieved over time, to the satisfaction of the responsible authority, will be considered. Flexibility in the lot density should be considered within and around the electricity transmission easement.

Table 3 – Housing delivery guide

RESIDENTIAL TYPE	NDA (HA)	DWELLINGS / NDHa	DWELLINGS
...			
Residential outside walkable catchment within and around the transmission easement	42.60	4.00	170
...			

(iii) Zoning


The adopted zones were the same as the exhibited zones for the removed land. The Rural Conservation Zone along Deep Creek was replaced with UGZ5.

1.4 The Proposed changes

(i) Proposed changes

Following submission of the Amendment to the Minister for approval, the Minister proposed changes to the Amendment under Section 33 of the PE Act.

The Proposed changes are:

- remove PSP Parcels 1 – 4 (the removed land¹) from the PSP identified as  on Figure 1
- realign the ‘interface housing area 1’ to the ‘revised northern boundary’ (generally the southern boundary of the removed land, but following the southern boundary of the electricity easement on PSP Parcel 14)
- realign the bushfire interface and edge road to the revised northern boundary

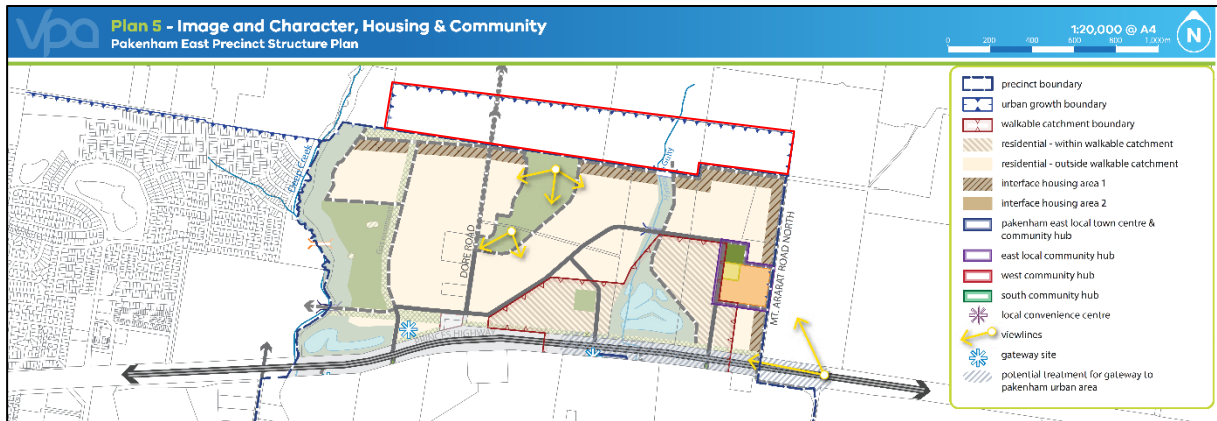
1 155 Dore Road, Pakenham, 365 Seymour Road, Nar Nar Goon North, 325 Seymour Road, Nar Nar Goon North, and 85 Mount Ararat North Road, Nar Nar Goon North

- rezone the portion of PSP Parcel 14 that is encumbered by the electricity transmission easement to UGZ5 rather than to SUZ8.

(ii) Urban structure

The proposed changes have consequential changes for other land (see Figure 7). Notably, land that was not previously covered by ‘interface housing area 1’ would now be covered. This would apply requirement R12 (quoted on page 5) to land that it did not previously apply to.

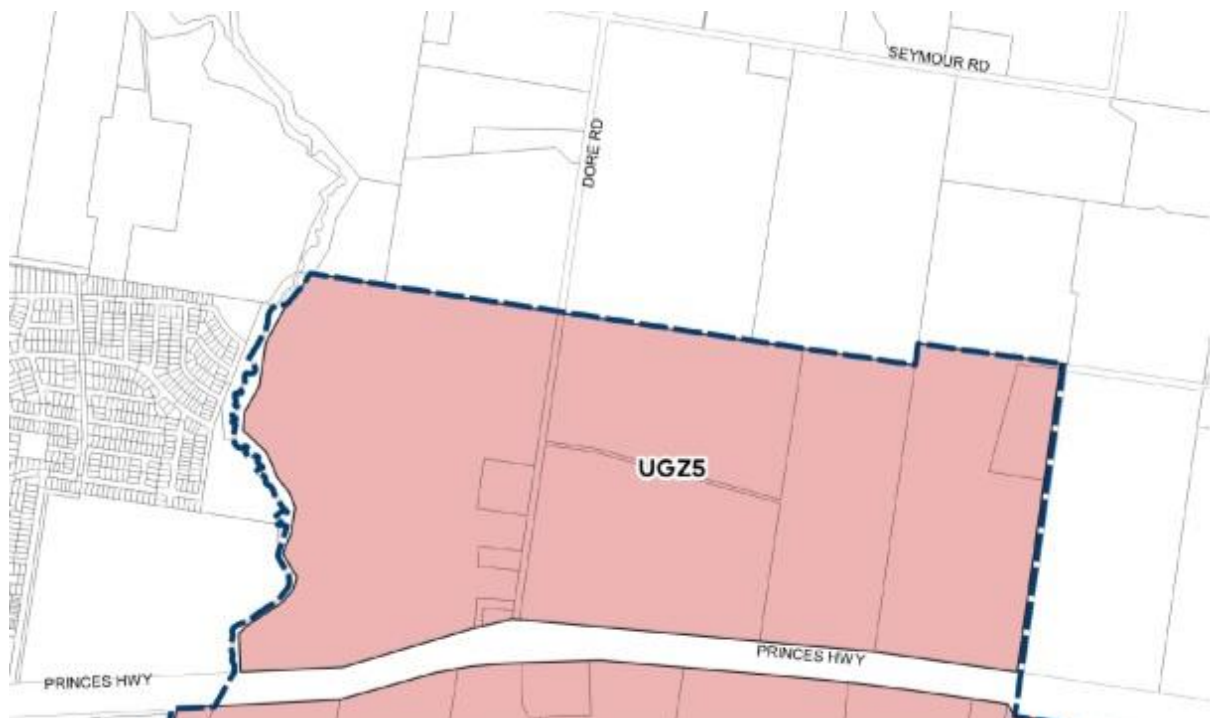
Figure 7: The Proposed changes



(iii) Zoning

The removed land would remain in the Farming Zone and the portion of PSP Parcel 14 that is encumbered by the electricity transmission easement would be placed in the UGZ5 rather than SUZ8.

Figure 8: Proposed zone



2 The scope and approach of the Panel

2.1 The Minister's reasons for the Proposed changes

At the direction of the Panel the Minister published his reasons for the Proposed changes on 29 February 2020 (Document 4). These reasons begin:

An objective of planning in Victoria is to provide for the fair, orderly, economic and sustainable use and development of land. It is vital that the planning of new communities responds to this objective by ensuring appropriate planning tools are used and that the economic impacts of provisions are reasonable and considered.

The Minister provided a summary of the key concerns of including the removed land in the PSP (part B, paragraph 48):

- The PSP does not prevent the development of standard density lots north of the easement, and therefore does not provide for a natural and orderly transition from the urban area to the rural area.
- The adopted amendment results in land in three zones that is not able to logically be subdivided under Clause 64.03 of the VPP. It also provides for further lots in more than one zone which is contrary to the intention of Clause 64.03.
- The use of the SUZ to avoid GAIC is not an appropriate use of the VPP, as it does not provide for the specific use of the land.
- The designation of the transmission easement land as residential backyards means that the land is associated with a use which generates a need for infrastructure. The avoidance of a GAIC obligation on this land is inconsistent with the intended purpose of the GAIC provisions which is to apply GAIC as a broad hectare tax.
- The impact of the transmission easement on PSP Parcels 1 – 4, including their estimated dwelling output ... may render the land economically unviable.

The Minister submitted:

... the land use and development outcome proposed for PSP Parcels 1 – 4 by the adopted form of the amendment does not reflect orderly planning principles and fails to meet the objectives of planning in Victoria, particularly to provide for the fair, orderly, economic or sustainable use and development of the land. [B:47]

2.2 Summary of issues raised in submissions

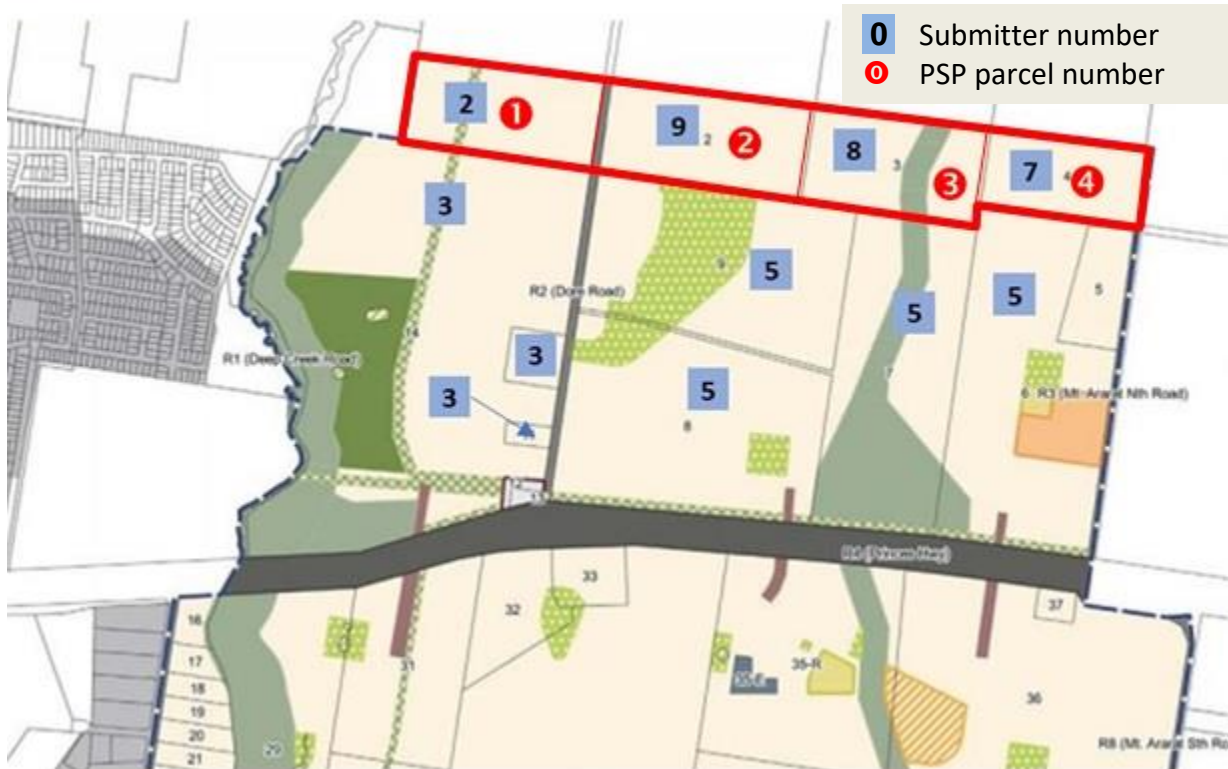
Ten submissions were received regarding the Proposed changes from:

- Government Agencies:
 - Submission 1: Melbourne Water
 - Submission 6: Department of Education and Training (Victorian School Building Authority)
 - Submission 10: Country Fire Authority.
- Cardinia Shire Council (Submission 4)
- Landowners and developers:
 - Submission 2: Bauenort Management Pty Ltd and the landowners of 155 Dore Road, Pakenham (PSP Parcel 1)
 - Submission 3: Paul and Penny Carney owners of 45, 55 and 95 Dore Road, Nar Nar Goon (PSP Parcels 10, 11 and 14)
 - Submission 5: Lendlease (PSP Parcel 6, 7, 8 and 9)
 - Submission 7: Chantelle McLachlan on behalf of Elizabeth Ruprecht landowners of 85 Mount Ararat North Road, Nar Nar Goon North (PSP Parcel 4)
 - Submission 8: Mr Christopher and Mrs Christine Stockwell owners of 325 Seymour Road, Nar Nar Goon North (PSP Parcel 3)

- Submission 9: Patrick and Maree Hyland owners of 365 Seymour Road, Nar Nar Goon North (PSP Parcel 2).

The Panel also received a letter from Parklea seeking to be heard.

Figure 9: Submitter map



(i) Process issues

The VPA submitted that there are the only two options for the Panel to form a view on:

- should the parcels be excised from the PSP as proposed by the Minister, or
- should the parcels be retained within the PSP as per the VPA adopted PSP?

(ii) Development issues

The land owners of the removed land generally opposed its removal, or sought its inclusion in a new amendment in the near future.

Issues about the development potential of the removed land included:

- the expectation that land inside the UGB can be developed
- whether the removed land has any potential for urban development
- the appropriate density of development on the removed land.

Issues about the applications of zones included:

- land in three zones creates subdivision issues for Council, as responsible authority
- whether GAIC should be payable on the easement land
- the application of the SUZ.

The Minister was concerned that development of the land may not be feasible. Part of this concern related to the proposed infrastructure contributions.

(iii) Consequential changes

Changes related to moving interface controls to land to the south of the removed land included:

- the appropriate width of the edge road
- whether lots should have to “provide wider lot frontages”
- the northern culvert crossing on Hancocks Gully
- a proposed cross intersection of the edge road and Dore Road
- whether the size of the sports field SR-01 should be reduced
- whether the size of Hilltop Park (LP-01) should be reduced.

(iv) Issues not related to the Proposed changes

A number of issues were raised that were not submissions related to the proposed changes:

- Parklea were concerned about a condition related to the gas pipeline south of Princes Highway
- Lendlease proposed a review of community and educational facilities every five years
- Government schools in the PSP have been incorrectly labelled and should be labelled as ‘proposed government schools’ and not ‘future government schools’
- Paul and Penny Carney contended that that PSP Parcels 10, 11 and 14 should be removed from the PSP as the Proposed changes combined with ICP and GAIC contributions will make their properties financially unviable to develop if other changes are not made to offset impacts to them
- Paul and Penny Carney also sought:
 - a reduction the width of the proposed drainage easement (WI-06)
 - a reduction in the size of retarding basin WI-05
 - that the three drainage strategies that apply to the PSP should be combined into one, with a single per hectare cost for the entire PSP.

2.3 What can this panel recommend?**(i) The issue**

The VPA submitted:

The VPA understands that this has been an unconventional Panel hearing and that the matters before Panel are unusual, however essentially, there are the only two options for the Panel to form a view on:

- 1 Should the parcels be excised from the PSP as proposed by the Minister, or
- 2 Should the parcels be retained within the PSP as per the VPA adopted PSP.

(ii) Submissions

The VPA said it is open to the Panel to:

- support the Proposed changes and make additional consequential recommendations regarding the PSP, but not about matters that:
 - have been previously addressed in the first panel, or
 - are not directly or materially consequential upon the proposed excision.
- recommend that the adopted PSP be approved.

The VPA submitted that it is not open to the Panel to recommend that the land remain in the PSP but be treated in a different way. The VPA said:

This would not constitute a relevant consideration and could not properly arise from the changes proposed by the Minister.

It might be (in fact most likely would be) that if that land is retained it could be developed in a manner different to that contemplated under the adopted amendment. However, planning does not seek the ideal outcome but rather an acceptable outcome (Knox CC v Tulcany [2004] VSC 375 in the context of a permit application). Subjectively the Panel might prefer some hypothetical alternate outcome. However, that consideration is simply not open to the Panel in the limited circumstances of this proceeding.

The VPA were also concerned that:

... any such change could also lead to further delay, uncertainty and expense for the affected parties, and even the possibility of a further notification and Panel Process, which would be untenable from the VPA's perspective. It is already 18 months since the original Panel report.

Critically the VPA submitted:

In this respect then it is [not] the Panel's job ... to find the ideal outcome, where there is an acceptable outcome already determined by the planning authority.

The VPA considered there is enough flexibility and guidance in the PSP to enable a variety of outcomes that would deliver a suitable interface outcome to the northern boundary of the PSP, wherever it finally resides.

(iii) Discussion

To the Panel the issue is not that there is enough flexibility in the PSP to enable a variety of outcomes, but that there is too much flexibility and a set of controls that could support unacceptable outcomes.

The notice and submission process

In simple terms the Minister has sufficient concerns about the adopted Amendment that he has proposed changes and sought submissions under section 33. The role of the Panel is to consider the submissions referred to it about the changes to the Amendment pursuant to section 33 of the PE Act.

The letter giving notice of the Proposed changes states:

The Victorian Planning Authority (VPA) adopted Amendment C234, including the Pakenham East Precinct Structure Plan (PSP) and Native Vegetation Precinct Plan (NVPP) at its Board meeting on 10 October 2018. Following submission of the amendment to the Minister for Planning for approval, the VPA has been directed by the Minister for Planning to seek your views on proposed changes to the amendment under Section 33 of the *Planning & Environment Act 1987* (the Act).

Section 33(1) of the PE Act states:

- (1) The Minister may direct the planning authority to give notice of any changes to the amendment which—
 - (a) the planning authority has made under section 29; or
 - (b) the Minister proposes to make.

The letter sets out the Proposed changes under section 33(1)(b) relating to the removal of land from the PSP. The letter is silent about section 33(1)(a) changes that relate to the removed land, namely the changes the VPA made under section 29.

The letter states:

The Minister for Planning will only be considering written submissions relating to the proposed changes of Amendment C234 outlined in this letter and associated attachments (emphasis added).

The letter of referral of submissions to the Panel states:

Under delegation from the Minister for Planning in accordance with section 34(2) of the Act, I refer all submissions to a panel appointed under Part 8 of the Act and requested the directions and panel hearings commence as soon as practicable.

The submissions clearly address alternative options to the adopted PSP and the Minister’s changes. It seems reasonable to consider submissions that propose alternatives to the adopted PSP or Proposed changes provided these ‘relate’ to the section 33(1)(b) changes.

The Panel notes the adopted Amendment was not public at the time submissions were referred. To proceed on the basis that the exhibited Amendment was not open for the Panel to consider would be odd when from a practical point of view it was the adopted Amendment that was not available.

Differences between a section 34 panel and a typical section 23 panel

In terms of considering submissions the Panel does not see anything too different for a section 34 panel from a typical section 23 panel where alternatives may arise in the course of the hearing. Table 1 presents the relevant sections of the PE Act.

Table 1: Relevant clause in the PE Act for this Panel compared to a ‘typical’ panel

This Panel	Section 23 panel
s34 (2) The Minister may refer any submissions to a panel appointed under Part 8.	s23 (1) After considering a submission which requests a change to the amendment, the planning authority must: <ul style="list-style-type: none"> (a) change the amendment in the manner requested; or (b) refer the submission to a panel appointed under Part 8; or (c) abandon the amendment or part of the amendment.
s34 (3) The panel must consider the submissions and give any person who made a submission referred to it a reasonable opportunity to be heard.	s24 The panel must consider all submissions referred to it and give a reasonable opportunity to be heard to: <ul style="list-style-type: none"> (a) any person who has made a submission referred to it; ...
s34 (5) The panel must report its findings to the Minister setting out the panel's recommendations on the changes.	s25 (1) The panel must report its findings to the planning authority. s25 (2) In its report, the panel may make any recommendation it thinks fit.
s168 A panel may take into account any matter it thinks relevant in making its report and recommendations.	

The Panel agrees that it needs to confine itself to the Proposed changes and submissions about the changes, but it does not agree that this precludes consideration of alternative approaches that are neither the adopted Amendment nor the Proposed changes.

The Panel notes that the first panel records that:

Following the exhibition of the Amendment and during the Panel Hearing process, the Victorian Planning Authority worked with submitters, landowners, government agencies and Cardinia Shire Council to resolve issues raised in submissions. This process resulted in the Victorian Planning Authority proposing a number of changes to the

exhibited documents which were detailed in the *List of Changes – Precinct Structure Plan 4 July 2018* and *List of Changes – Ordinance and NVPP 4 July 2018*

While these changes² were suggested by the VPA they were not formal changes to the Amendment under section 23(1)(a) of the PE Act and so relied, as it were, on the first panel's ability to consider alternative approaches. Panels routinely recommend changes to amendments.

For the VPA's submission to succeed it would seem that this Panel would need to conclude that the PE Act sets out to limit the scope of section 34 panels, that is:

- *“recommendations on the changes”* does not permit recommending variations to the changes – the Proposed changes or the VPA's section 29 changes – that address the Minister's concerns in an alternative way, or supporting some of the Minister's changes and not others, as opposed to
- *“the panel may make any recommendation it thinks fit”*, which does permit such recommendations.

The Panel considers that there is an alternative reading of the legislation that is equally open to that suggested by the VPA – namely, the reference to 'recommendations' in section 34(5) refers to the power to make recommendations under section 25(2). In other words, the powers of a panel to make recommendations arise under section 25(2), whether it is referred submissions under section 23(1)(b) or section 34(2). Section 25 also constrains the nature of a panel's recommendations and it would seem that these too ought to apply to a panel referred submissions section 34. There is no separate (and more constrained or broader) power to make recommendations for a panel that is referred submissions under section 34.

What is relevant

Section 168 explicitly empowers a panel to *“take into account any matter it thinks relevant”*. This applies to any panel appointed under Part 8, including a panel to which submissions have been referred under section 34. In regard to the scope of its recommendations, this Panel thinks that the appropriate density of development on the removed land and the planning controls to deliver that outcome are relevant matters.

The Panel considers that the VPA's reading of the legislation artificially constrains the powers of a panel. Panels have the advantage of being presented with a range of perspectives, and it ought to be open to them to recommend changes that draw on all those perspectives. This might mean recommendations that reflect a 'middle ground' between opposing submissions. The Panel does not see how this process is fundamentally different.

It is clear from the material in the submissions and in the exhibited PSP that lower density development north of the transmission easement was an option canvassed as part of both the PSP and Amendment processes.

Acceptable outcomes

Submissions raise two different species of submission:

- submissions as to whether the Minister's reasons are justified reasons
- submissions as to whether the Proposed changes deliver an acceptable outcome that address his concerns.

² The Panel observes that it is a strength of the PSP amendment process that the VPA works cooperatively with parties to find alternative ways forward.

The Panel thinks that it is open to it to conclude that the reasons are justified, but that different changes ought to be made to the PSP. This is not because the Panel is trying to seek an optimum outcome – it is not the role of the Panel to stand in the shoes of the VPA or the Minister – but because it seeks to recommend an acceptable outcome. Of course, in making such a recommendation the Panel needs to be mindful of natural justice.

The VPA's submission is based, understandably, on its view that the adopted Amendment delivers an acceptable planning outcome and does not seem to countenance the possibility that what it adopted will not deliver an acceptable outcome. But it cannot automatically follow that recommending against the adopted Amendment means that the Panel must uncritically accept the Proposed changes and confine itself to recommendations on consequential changes.

The Panel agrees with the VPA that further delay, uncertainty and expense for the affected parties should be avoided, and if the Panel formed a view that neither the adopted Amendment nor the Proposed changes were acceptable it would be unwise for the Panel to simply stop there without considering what an acceptable outcome might look like and recommending an approach to move matters forward.

In turning its mind to what an acceptable outcome might look like the Panel would need to be mindful of:

- the issues of natural justice
- the potential need for a further process if the changes would transform the Amendment
- the role of the Panel to consider acceptable outcomes, as opposed to pursuing ideal outcomes
- the fact that it is not the role of a panel to stand in the shoes of the planning authority, but it is a reasonable expectation of a panel to consider whether an amendment is strategically justified, taking into account:
 - the objectives of the PE Act
 - planning policy
 - whether strategic work has been applied in a consistent fashion.

Any recommended approach should:

- be clearly supported by the policy settings of the Victorian planning system
- ideally adopt approaches found in other PSPs
- ideally be within the scope of the PSP as it has evolved, namely:
 - the exhibited Amendment
 - the adopted Amendment
 - the Proposed changes.

The Panel provides its reasons and recommendations in relation to what it considers to be an acceptable outcome in Chapter 4.

Submissions beyond the scope of the Panel

As stated earlier the Panel agrees that it needs to confine itself to the Proposed changes and submissions about the changes and in this regard considers a number of the submissions made to it fall outside its legitimate scope. These are addressed in Chapter 8.

(iv) Conclusions

The Panel concludes that its scope is not limited, as submitted by the VPA, to only two options:

- should the parcels be excised from the PSP as proposed by the Minister, or
- should the parcels be retained within the PSP as per the VPA adopted PSP.

However, if the Panel is wrong in this regard it formally records that in its view the adopted Amendment would not deliver an acceptable planning outcome. The reasons for this conclusion are addressed in Chapter 4.

If it accepted the VPA's submissions, the Panel would recommend the Proposed changes proceed but with certain changes. As discussed in Chapter 3 the Panel does not think this would be an acceptable outcome, but it has the advantage that it would permit further planning that could settle an acceptable outcome. Chapter 7 outlines what further or different changes should be made if the removed land is to be deleted from the PSP.

2.4 The Panel's approach

The Panel has assessed the Proposed changes 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 its site visit, 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.

This Report deals with the issues under the following headings:

- Is the land suitable for urban development?
- What development outcomes are appropriate for the removed land?
- Use of the Special Use Zone and Growth Area Infrastructure Contribution
- Is development feasible?
- Consequential changes if the Proposed changes proceed
- Submissions beyond the scope of the Panel.

3 Is the land suitable for urban development?

(i) The issues

The issue is whether the removed land has any potential for urban development.

(ii) How the land was included in the UGB?

The UGB was amended in 2012 to include the PSP area through the logical inclusions process. In May 2011, the then Minister for Planning announced the Growth Areas Logical Inclusions Review process. The Minister directed the Growth Areas Authority (GAA) to identify land that may be suitable for inclusion within the UGB.

On 16 May 2011, the Minister appointed the Logical Inclusions Advisory Committee to consider the suitability of land for inclusion in the UGB.

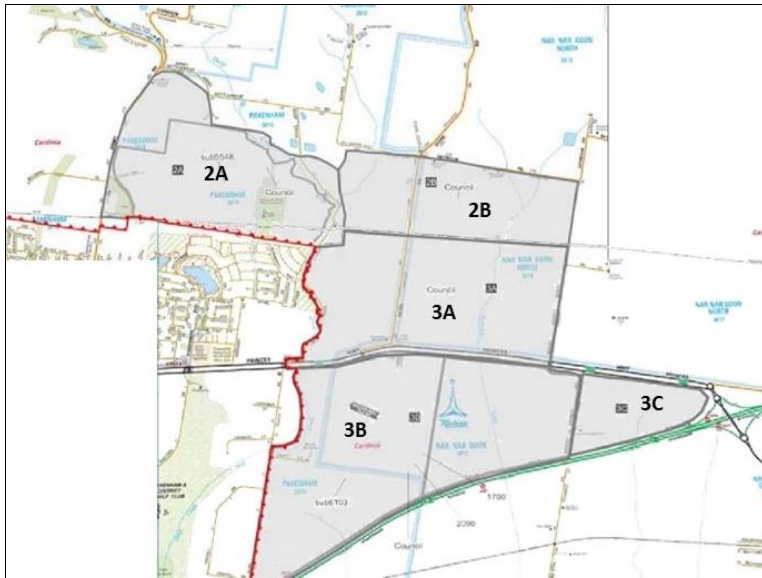
Between July 2011 and August 2011, the GAA notified the public of land being considered for inclusion within the UGB. Following a hearing process, the *Logical Inclusions Advisory Committee Report No. 2 South East Growth Area* was submitted to the Minister for consideration on 11 November 2011.

Overall the *Logical Inclusions Advisory Committee Report* made three main recommendations (see Figure 10):

- Land should be included in the UGB through an amendment process under section 20(4) of the Act. This included Cardinia Areas 3A and 3B, which is the bulk of land covered by the Amendment.
- Land should not be included within the UGB as part of this process but may merit further consideration as part of a later review. This included Cardinia Area 2, including Cardinia Area 2B, which included a larger area North of the transmission line than the removed land.
- Land should not be included within the UGB. This included Cardinia Area 3C.

Mr Milner gave evidence for Lendlease, he observed:

The presentation of mapping in the Inclusionary Committee report did not rely upon a cadastral base but rather the physical presence of the transmission lines.

Figure 10: Logical inclusion areas

Source: Logical Inclusions Advisory Committee Report 2 – Plans complied by this Panel

On 12 June 2012, the Minister resolved to prepare, adopt and approve Amendment C190 to the Cardinia Planning Scheme under section 20(4) of the PE Act. The explanatory report for the amendment lists the relevant changes as follows:

- rezone land generally bound by Princes Highway to the south, Mount Ararat North Road to the east, Deep Creek to the west and transmission line to the north from Green Wedge Zone to Farming Zone (also known as Logical Inclusions Cardinia Area 3A).
- rezone land bounded by the Princes Highway to the north, Ryans Road to the West, Pakenham Bypass to the south and Mount Ararat Road to the east from Green Wedge Zone to Farming Zone (also known as Logical Inclusions Cardinia Area 3B).

Amendment C190 was gazetted on 13 September 2012.

The Minister submitted:

It is noted however that the amendment also included the southern portion of Cardinia Area 2B (land north of the easement) within the mapping for the UGB. [B:64]

No further review of the UGB has been undertaken since the 2011 Logical Inclusions Process.

(iii) The Minister's reasons

The Minister's reasons included:

Landowners within the UGB have an expectation for urban development. This is a reasonable expectation; however, the extent of development must be appropriate in light of constraints affecting the land. [11]

(iv) What did the first panel say?

The VPA advised that during the first panel submissions were received from community members who suggested that the UGB should stop at the southern edge of the electricity transmission line to provide a clear barrier between urban development and rural uses.

This first panel did not report on this issue.

(v) Submissions

Council submitted that if the removed land is to remain as Farming Zone, the Minister should modify the UGB to reflect the proposed changes to the PSP.

The VPA submitted that a realignment of the UGB is not within the remit of the VPA:

Under section 46AE of the Act, a planning authority must obtain authorisation from the Minister to alter the urban growth boundary. On this basis, the VPA considered that it was beyond the scope of the PSP, or the ability of the VPA, to amend the UGB [as part of the first panel].

The VPA noted that realignment of the UGB could not be undertaken as part of the Amendment, however could be undertaken at the Minister's discretion, via a separate planning scheme amendment process if the Minister considers the removed land should be deleted from the PSP.

Bauenort (PSP Parcel 1) objected to the deletion of the removed land from the PSP. It submitted that the affected land has been considered as part of multiple strategic planning processes including the Logical Inclusions Review (2011-2012) and the PSP process. It considered that 91 per cent of the area of Parcel 1 is developable, and that the site and transmission easement line can be logically designed and developed to provide a transition between the urban areas and the rural area.

Mr Stockwell (PSP Parcel 3) submitted:

Under the changes proposed by the Minister for Planning, urban development will come up to the southern boundary of the land. Development on the land (particularly south of the electricity transmission easement) can be readily integrated with the development to the south which would be orderly planning. Without prejudice to our position that all of the land within the UGB can be developed, we say that if the Panel forms the view the land to the north of the easement should not be developed due to the easement, as a minimum the land to the south of the easement should be included within the PSP.

(vi) Discussion

It is not clear why the UGB is in its current location. Its current location is not consistent with the discussions in the logical inclusions report or the explanatory report of Amendment C190 that introduced the UGB. It does appear consistent with the geographic extent of area 3A as presented in plans during the logical inclusion process if one simply scales the map (which was based on the Melway street directory). The transmission line easement is not shown on the Amendment C190 documentation.

Having said that, it is clear from the PSP process that the land can be developed in some form – the land is constrained, but not so constrained that it cannot be developed.

It is not the role of this Panel to review the location of the UGB, and the Panel notes that the Minister has not proposed moving the UGB. On the basis that the land has a future within the UGB, orderly planning would suggest that its future development should be settled as part of this process, if possible. The Panel also thinks that to make the Proposed changes and to move the UGB at this late stage in the planning process, after the land has lain within the UGB for nearly eight years, would not represent orderly planning.

The Panel agrees with the Minister that landowners within the UGB have a reasonable expectation for urban development, but the extent of development must be appropriate in light of constraints affecting the land.

The Proposed changes could be seen to suggest that the land may not have an urban future – why else move the interface notation to the new PSP boundary if this will not be the edge of the urban area? This would leave the intentions for future development of the removed land entirely unclear. It would remain as Farming Zone within the UGB which would permit a wide range of uses.³

The Planning Policy Framework calls for structure planning. Clause 11.02-2S (Structure planning) sets out the objective:

To facilitate the orderly development of urban areas.

It includes strategies to:

Ensure effective planning and management of the land use and development of an area through the preparation of relevant plans.

Undertake comprehensive planning for new areas as sustainable communities that offer high-quality, frequent and safe local and regional public transport and a range of local activities for living, working and recreation.

Facilitate the preparation of a hierarchy of structure plans or precinct structure plans that:

- Take into account the strategic and physical context of the location.
- Provide the broad planning framework for an area as well as the more detailed planning requirements for neighbourhoods and precincts, where appropriate.
- Provide for the development of sustainable and liveable urban areas in an integrated manner.
- Assist the development of walkable neighbourhoods.
- Facilitate the logical and efficient provision of infrastructure.
- Facilitate the use of existing infrastructure and services.

Orderly planning suggests that the future of the removed land should be settled as part of the Amendment. Leaving the removed land in the Farming Zone, but within the UGB would leave it in limbo. It would imply that the adopted PSP was not acceptable and hence rule out conventional development, but would provide no reasonable alternative. Because of the ambiguity in the adopted PSP (discussed in the next Chapter) this approach could also imply that low density residential development was not acceptable.

The Farming Zone is clearly not a long-term option for the land as it is directed at achieving purposes that are simply not appropriate or reasonably likely to occur on the removed land.

The next Chapter addresses what the future use of the removed land might be.

(vii) Conclusions and recommendations

The Panel concludes:

- the removed land is constrained, but not so constrained that it cannot be developed

³ The Farming Zone only prohibits the following uses:

- Accommodation, but not Bed and breakfast, Camping and caravan park, Dependent person's unit, Dwelling, Group accommodation, Host farm or Residential hotel
- Amusement parlour
- Brothel
- Cinema based entertainment facility
- Education centre (other than Primary school and Secondary school)
- Nightclub
- Office
- Retail premises (other than Market, Landscape gardening supplies, Manufacturing sales, Primary produce sales, Restaurant and Trade supplies).

- orderly planning suggests that the future of the removed land should be settled as part of the Amendment.

The Panel recommends:

Approve Cardinia Planning Scheme Amendment C234 as adopted but with the changes recommended in this report.

4 What development outcomes are appropriate for the removed land?

(i) The issue

The exhibited Amendment proposed a low density residential future for the removed land. The adopted Amendment indicated development at conventional densities over part of the land.

(ii) What does the adopted PSP say?

As set out in Chapter 1.3 the adopted PSP:

- Sets out a requirement (R9) to:
 - Achieve an average density of 17 dwellings per hectare outside the walkable catchment (excluding interface housing areas shown on Plan 5 – Image and Character, Housing & Community).
- Includes a guideline (G26) that development should achieve the average density of 4 dwellings per hectare within and around the transmission easement
- Requires (R12) subdivision of land in the interface housing areas 1 and 2, to:
 - be a single dwelling on a lot
 - have a minimum front setback of 8 metres
 - have a minimum side setback of 1 metre for the first 3 metres of the building envelope
 - have no front or side fences greater than 1.2 metres in height within the first 3 metres of the lot
 - provide wider lot frontages.

(iii) Minister's reasons

The Minister's reasons included:

The development of standard density lots in the small portion of land that is irregular in shape between the easement and the UGB would create a non-contiguous urban settlement and present a poor transition from the urban area to the rural Green Wedge Zone 1 (GWZI) land immediately to the north. [2]

(iv) What did the first panel say?

The exhibited PSP identified three interface areas which are located on the west, north and east fringes of Pakenham East.

In the exhibited PSP, the area immediately north and south of the transmission easement, as well as the transmission easement itself was identified as 'interface housing area 3' which sought to have a minimum average lot size of 2,000 square metres with an expected overall yield of approximately 135 dwellings.

The first panel considered the issue (Chapter 4.10 of its report) as to whether:

... the changes proposed by the VPA to requirements ... R15 of the PSP that deal with Interface Housing Areas are appropriate.

Lendlease and Bauenort submitted that the PSP should provide flexibility for the Interface Housing Area rather than stipulating minimum lot sizes. The design response for interface areas should be informed by a range of considerations including:

- market need and values

- balancing overall site constraints with a well-considered design response and viable outcomes
- a design response to site-specific features, views and topography
- landscaping treatments within the edge road and opportunities within lots
- dwelling, building areas and fencing designs that reflect an appropriate transition style that can be implemented via design guidelines
- balancing overall development viability and site constraints.

Both Lendlease and Bauenort recommended the deletion of requirement R15 with an average lot size of 2,000 square metres particularly in relation to the electricity transmission easement of Interface Housing Area 3.

Council recommended the average lot size requirement should be increased to 4,000 square metres and that requirement R15 for Interface Housing Area 3 should be reworded to include the following:

- a building envelope to address the ridgeline (slope) and electricity line easement with reference to Council's *Guidelines for Slope Management* and Ausnet's *A Guide to Living with Transmission Line Easements*
- that the application will achieve an average lot size of 4,000 square metres
- rural fencing that is low scale and visually permeable to facilitate the rural lifestyle character of this area
- maximise side setbacks and create openness between the dwellings
- a road that provides an interface with Green Wedge (rural) land to the north.

The VPA submitted that 800 square metre lots (proposed in interface area 2) or 2,000 square metre lots (interface area 3) would be inconsistent with the proper utilisation of the resource that is land within the UGB. The VPA added that:

The purpose of interface treatment is not to mimic an outcome on the external part of the PSP but is rather to encourage development that sufficiently relates to the outcome within the adjacent lower density lots.

The VPA proposed to retain Interface Housing Area 2 as exhibited and:

- combine Interface Housing Areas 1 and 3 to become Interface Housing Area 1 and amend the requirements of R13
- delete requirement R15
- introduce a performance based, design requirement with a minimum 8 metre front setback and 1 metre side setback as a satisfactory methodology to achieve an adequate 'rural style' interface.

The first panel observed that the interface areas in the PSP marks the transition from urban to non-urban uses. In the first panel's view, it was appropriate that the development of this land recognises this change:

The interface areas are intended to provide a transition from the urban residential development of Pakenham East to the rural areas outside of the UGB. The initial proposal by the VPA was to achieve this by a combination of minimum lot sizes and front setbacks. ...

The first panel accepted the submissions of Lendlease and Bauenort that interface housing requirements should provide the flexibility for the development to respond to design criteria and not be limited by a lot size. In this respect the first panel supported the view of the VPA that the front setback of interface housing should be sufficient to accommodate a canopy tree.

The first panel agreed that the changes proposed by the VPA addressed most of the concerns expressed in submissions. The first panel accepted the view expressed by the VPA that land

in Pakenham East is a finite and valuable resource. In the first panel's view, design criteria could more effectively ensure an appropriate transition between Pakenham East and the surrounding area.

The first panel concluded that the changes proposed by the VPA to requirements R13, R14 and R15 of the PSP as outlined in the Final List of PSP Changes were appropriate.

The adopted Amendment is consistent with VPA's response provided to, and supported by, the first panel.

(v) Evidence and submissions

The VPA advised that it planned the northern section of the PSP area on the basis that the development of land in the transmission easement would be significantly constrained.

The VPA noted that during the preparation of the PSP using the transmission easement for open space was considered; this was not pursued due to:

- the proximity of the UGB to the north
- the lack of connection of the easement to adjoining communities
- Council's concerns regarding maintaining the easement as open space in the long term.

The Minister submitted that areas in PSPs that abut green wedge land should provide for a transition between the urban and rural land. It was considered that this should be a natural transition in development intensity, built form and subdivision size, that accounts for the relevant constraints on the land.

The Minister noted that the exhibited PSP required an average lot size of 2,000 square metres for lots in interface housing area 3, which included the whole of the removed land. The Minister stated that the transmission Easement Concept Plan (Figure 3 of this report) did not provide an appropriate, logical or orderly subdivision layout for the area, nor did it provide a bushfire interface as required to respond to Clause 13.02-1S of the Planning Policy Framework (PPF).

The Minister observed of the adopted PSP:

- identifies a low dwelling density for this area in Table 3, but does not prevent small lots from being provided north of the transmission easement.
- specifies requirements for interface housing area 1 requirements that:
 - do not specify a minimum lot size, nor apply to the entire developable area north of the easement
 - will result in slightly larger lots than those that are expected in the remainder of the PSP, but would be smaller in size than the lots that include the transmission easement in their backyards.
- specifies in requirement R9 that subdivision of land within the precinct boundary must achieve an average density of 17 dwellings per hectare outside the walkable catchment – this density requirement could be applied to that part of the removed land north of the transmission easement and not subject to the interface housing area requirements, encouraging smaller lots to maximise dwelling yield.

Mr Milner gave evidence for Lendlease that:

... it is inappropriate to establish urban densities (17 dwellings to the net developable hectare) of residential development north of the transmission for the reasons previously discussed. [86]

In contrast, Mr Sheppard thought that the PSP anticipated a net developable density of four dwellings per hectare – and this would create a graduated transition.

Mr Sheppard gave evidence that he was not aware of any requirement in the VPP that seeks a particular transition between urban and rural land, but Mr Milner supported a transition:

Unless there is some longer term intent to release additional growth area land to the north of the Subject Site, a more acceptable outcome in this interface condition would be achieved if development adjacent to the easement and particularly to its north was undertaken in a genuinely transitional manner at a low or rural living densities. Such subdivision and development might be in the order of 1 to 2 hectare lots with a view to creating an interface of small hobby farms which could more effectively use and enjoy the land within the easement. [88]

Bauenort submitted:

[Parcel] 1 (and area under consideration more broadly) provides opportunity for truly diverse housing stock, thanks to its role as a 'transition' area. The site's location calls for larger lots than will typically be provided within the balance of the PSP area. This site clearly defines the edge of the PSP area.

Council commented on Mr Milner's evidence:

There are varied opportunities for development within and along the transmission easement. The eventual preferred solution should be determined in conjunction with the overall design response to the land to the south of the transmission easement, as there are many other factors that will influence the best solution for the land affected by the easement. The eventual design solution will likely require combining from multiple scenarios.

Mr Stockwell (Parcel 3) submitted that under the Proposed changes development will reach the southern boundary of Parcel 3. Therefore, Parcel 3 could be readily integrated with the development to the south, particularly the portion of Parcel 3 south of the electricity transmission easement. On this basis, the submitters are opposed to the exclusion of the Property from the PSP.

Mr Milner gave evidence that:

Considered in statutory terms the land suitable for low density residential use and development could remain within the Urban Growth Zone with a low-density residential zone being the applied zone and having a suitable minimum lot size specified in a schedule. [90]

The VPA responded to Mr Milner's questioning of the appropriateness of establishing urban densities of 17 dwellings per NDHa north of the transmission easement, claiming:

The adopted version of the PSP does not contemplate or enable this density within and north of the transmission easement. The PSP guides that an average of around 4 dwellings per NDHa should be delivered in the overall area (see G26 and Table 3).

(vi) Discussion

The Panel accepts that there is no clear guidance of how urban areas ought to transition to rural areas, and the appropriate form of interface will depend on the circumstances, including, for example:

- Does the settlement boundary follow a ridge line, or a waterway?
- Is the settlement bounded by a road?
- What is the bushfire risk?
- What are the ecological values?
- What are the views in the area?
- What is the settlement pattern of the rural area?

Depending on the circumstance a 'hard edge' or a 'transition' might be appropriate at the edge of an urban area, that is:

- hard edge: conventional density → rural
- transition: conventional density → lower density → rural.

The first panel supported a transition:

These interface areas within the PSP mark the transition from urban to non-urban uses. In the Panel's view, it is appropriate that the development of this land recognises this change.

The Panel agrees with the Minister that conventional residential subdivision north of the transmission line is not an appropriate planning outcome. It would mean that the density of the urban area lowered to deal with the transmission easement, and then rose again, potentially creating an 'isolated pocket':

- conventional density → lower density → conventional density → rural.

The extent that the land north of the easement might function as an isolated pocket will be a matter of conjecture or judgement. What is clear is that one would not deliberately design the urban area in this fashion if it were not for the easement. It is a choice forced upon the plan.

People will read the PSP in the light of their existing knowledge of the removed land. For professionals and parties familiar with the land and the discussions about its future development the PSP may well present an appropriate and flexible approach consistent with planning practice. For those not exposed to those discussions the PSP may give the impression that conventional development is proposed north of the transmission easement.

The Panel is confused by VPA's position as reported by the first panel that:

The VPA submitted that ... 2,000 square metre lots [five lots per hectare] would be inconsistent with the proper utilisation of the resource that is land within the UGB.

and its Part B submission, on page 13, to this Panel that:

The PSP guides that an average of around 4 dwellings per NDHa [lots of 2,500 square metres] should be delivered in the overall area (see G26 and Table 3).

The Panel finds VPA's submission unhelpful. It "*acknowledges that alternative and lower density outcomes may be possible for the four northern parcels*" but does not address the merits of this approach, on the basis that it is not a matter before this Panel when:

- a core reason for this Panel is that the Minister considered that the density of the area may be too high
- the PSP was exhibited with a low density outcome for the area.

The issue for the Panel is that guideline G26 would need to be read in conjunction with requirement R9, and it would be fair to think that a requirement would be given more weight than a guideline. Requirement R9 requires a density of 17 dwellings per hectare in the area north of the easement – excluding interface housing areas which only covers part of the land north of the easement (as shown on Figure 6).

The Panel thinks that the Minister's concerns that the PSP supports conventional development north of the easement are well founded.

Rather than try to second guess what a future decision maker would make of the adopted PSP, the Panel thinks it is more fruitful to consider, in the first instance, whether resolving the tension between R9 and G26 would clarify the potential housing lot density and built form outcomes to ensure the PSP is clear on what it is seeking to achieve.

The Panel agrees with the VPA when it says (part B page 17) it:

...is wary of the inclusion of additional site-specific notes and details within the PSP that have the effect of pre-determining a detailed design outcome that is properly the domain of the Post PSP subdivision approval process and should not generally form part of PSPs.

Being clear on outcomes does not need to do more than specify an urban density to ensure that an appropriate transition of density is achieved, and that for this land the desire to maximise housing yield is not a driving factor. The PSP does this in guideline G26 and Table 3, but this is undermined by requirement R9.

The Panel notes that the density in Table 3 is at the upper level of the various densities proposed in potential designs for this area. In 2013 Council appointed SMEC Urban to design and test development options for the electricity transmission easement. The report investigated five development options. These options and the options from the Amendment are presented in Table 2.

Table 2: Estimates of the lot yield of removed land

Source	Lot yield of removed land (approx.)
SMEC Option 5 – rural lots only	33
SMEC Option 4 – no development north of electricity transmission easement	40
Sheppard evidence	72 (estimate – plan presented for only Parcels 2 to 4)
SMEC Option 2 – development with linear trail along transmission easement	88
SMEC Option 3 – development and public use of easement as open space	88
SMEC Option 1 – full development north and south of the transmission easement	106
Exhibited PSP concept plan 3	112 (excluding conventional lots)
Exhibited PSP Table 3	135
Adopted PSP Table 3	170

The critical issue is whether the consistent application of G26 would provide sufficient guidance to avoid the potential adverse impacts that concern the Minister. The Panel believes that it would. G26 states that development should achieve the average density of 4.00 dwellings per hectare within and around the transmission easement. Rather than try to set a density from first principles the Panel thinks G26 represents a reasonable approach for the removed land, and if it were not for R9, G26 would be the expected outcome.

The Panel notes that this is broadly consistent with the lot size requirements for sewered lots in the Low Density Residential Zone which sets an upper limit of density as:

Each lot must be at least the area specified for the land in a schedule to this zone. Any area specified must be at least:

- 0.4 hectare for each lot where reticulated sewerage is not connected. If no area is specified each lot must be at least 0.4 hectare.
- 0.2 hectare for each lot with connected reticulated sewerage. If no area is specified each lot must be at least 0.2 hectare.

If more certainty is required then requirement R9 could specify a maximum density. The Panel does not think this is necessary, but thinks that it would be preferable to include the removed land with a maximum density requirement than to exclude the land from the PSP entirely. If a set maximum density is to be applied, the requirements of the Low Density Residential Zone would be appropriate as Mr Milner suggested. Whether this should be by way of an applied zone in the UGZ or direct zoning of the land is discussed in the next Chapter.

(vii) Conclusions and recommendation

The Panel concludes:

- the removed land is not appropriate for conventional urban development
- a lower density development pattern would provide an acceptable planning outcome for the removed land
- while Table 3 of the PSP anticipates this lower density outcome requirement R9 suggests conventional densities.

The Panel recommends:

Change the second dot point in requirement R9 in the Precinct Structure Plan to read:

- **Achieve an average density of 17 dwellings per hectare outside the walkable catchment (excluding interface housing areas, and 'residential – within and abutting the transmission easement' shown on Plan 5 – Image and Character, Housing & Community).**

5 Use of the Special Use Zone and Growth Area Infrastructure Contribution

5.1 Will the subdivision process be too complex?

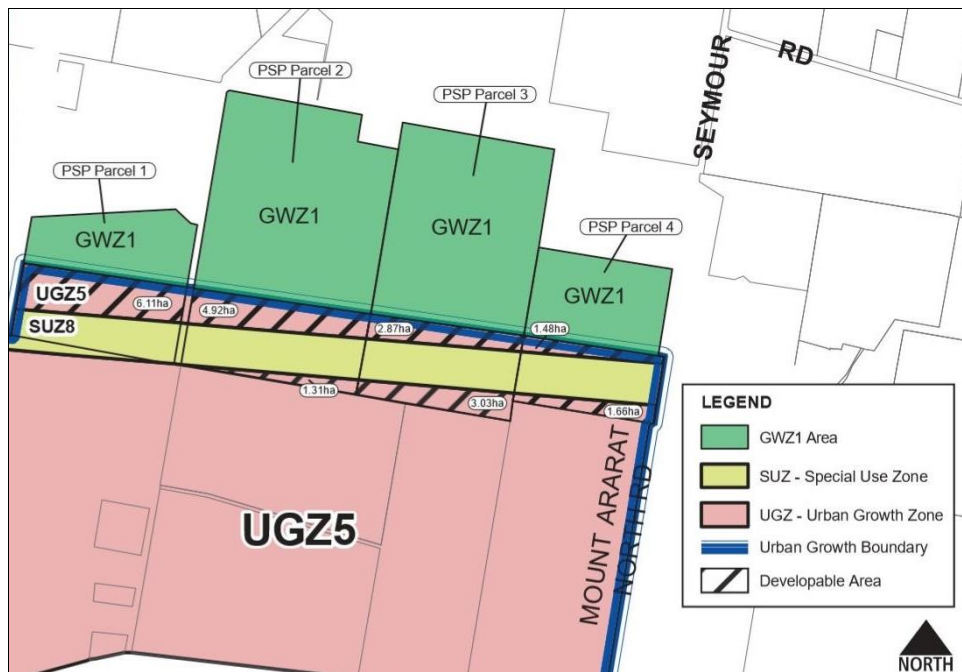
(i) The issues

The adopted Amendment results in the lots containing the removed land being in three zones: Green Wedge Zone Schedule 1 (GWZ1), UGZ5 and SUZ8 (see Figure 11).

The Minister submitted that:

This creates subdivision issues for Cardinia Shire Council, as responsible authority.
[B:24]

Figure 11: Parcels 1-4, including GWZ1 land



(ii) The application of the VPP

Clause 64.03 was introduced into the VPP through Amendment VC60 on 21 September 2009. Before to the introduction of this clause there were a number of VCAT cases⁴ which reached different conclusions as to whether a subdivision of land in two zones required compliance with the requirements of both zones or the zone in which the subdivision was proposed.

The clause reads:

64.03 SUBDIVISION OF LAND IN MORE THAN ONE ZONE

If a provision of this scheme provides that a permit is required to subdivide land and the land is in more than one zone a permit may be granted even if one of the lots does not comply with the minimum lot size requirements of a zone.

⁴ These cases included Miller and Merrigan Pty Ltd v Yarra Ranges SC [2003] VCAT 1939, Rumpf v Melton SC[2007] VCAT 100, Siomos v Banyule CC [2007] VCAT 276 and Guastella v Kingston CC [2008] VCAT 1823.

Permit Requirement

A permit may be granted to create one lot smaller than specified in the scheme if all of the following are met:

- The lot to be subdivided is in more than one zone and cannot comply with the minimum lot area specified in the scheme.
- The proposed subdivision does not create lots where any lot extends into more than one zone. This does not apply to any lots created for the following purposes:
 - To comply with the requirements of the Urban Floodway Zone.
 - To provide access to a road.
- The remainder of the proposed lots must comply with the minimum lot area specified in the scheme.

When introduced it also included as a permit requirement:

- The proposed subdivision does not create more lots or smaller lots than allowed for in green wedge land.

This was removed as part of VC62 (18 June 2010).

Planning Advisory Note 22, published with Amendment VC60, provided the following guidance:

The current VPP provisions prohibit many subdivision applications where land is in multiple zones due to minimum lot size requirements of some zones. This circumstance leads to unintended planning outcomes where land that should be capable of future subdivision due to its zoning is prohibited.

For example, the purpose of the Urban Growth Zone is to encourage housing growth, which would not be possible if the land could not be subdivided because it would create a lot smaller than the required minimum in a restrictive zone, such as Green Wedge Zone.

Council raised concerns about the operation of Clause 57. Clause 57 applies to land outside the UGB (unless the land is in specific zones listed in the clause). Clause 57.01-2 prohibits the subdivision of land to create a lot that is smaller in area than the minimum area specified for the land in the zone unless certain conditions apply (which do not apply here).

The relationship between Clauses 57 and 64.03 has been considered by VCAT. Member Cook in *Gedye v Maroondah CC (2011) VCAT 1270*, stated:

... I am not convinced that clause 57 is operative to prevent reliance on clause 64.03 for Green Wedge zoned land.

... if parliament had the intention to prevent clause 64.03 from applying to Green Wedge zoned land, this would have been more successfully achieved by the former version of that provision.

There is nothing in the VPP that prevents land being in two zones, and nothing that says zone boundaries can only follow lot boundaries though this is generally considered to be good practice.

A Practitioner's Guide to Victorian Planning Schemes says:

Placing a zone boundary

A zone boundary should align with title boundaries or other clearly defined feature such as a road centreline or watercourse unless there is a deliberate reason not to.

The planning scheme does not contain special provisions for land in more than one zone. If land is in more than one zone, the provisions of each zone apply to that part of the land included in the zone.

The Practitioner's Guide reproduces the advice of the *Manual for the Victoria Planning Provisions* that accompanied the introduction of the VPP.

(iii) The Minister's reasons

The Minister's reasons included:

- The adopted Amendment would include the lots in three zones. This creates complicated subdivision issues for Council.
- Although it could be possible for Council to undertake a complicated staged subdivision process to overcome these issues, *"an amendment should ensure an orderly planning outcome that avoids the need for the council to process multiple subdivision applications to overcome complex zoning issues created by an amendment"*.

(iv) What did the first panel say?

This first panel did not address this issue.

(v) Submissions

The Minister's concerns can be summarised as:

- the GWZ1 portion of the lots containing the removed land is less than the required minimum lot size of the GWZ1
- therefore the future subdivision of the lots would have to rely on Clause 64.03, and
- one of the conditions is that any subdivision must not create further lots in more than one zone unless such lots are created to:
 - comply with the requirement of the Urban Floodway Zone, or
 - provide access to a road.

The Minister submitted:

While it is noted that it could be possible for the council to authorise a staged subdivision process to overcome this issue, the amendment should provide an orderly outcome that avoids the need for council to undertake multiple subdivision applications to overcome complex zoning issues created by an amendment. The intent of Clause 64.03 is to resolve zoning inconsistencies. Undertaking multiple subdivision applications to override the requirements of this clause would be contrary to this intention. [28]

Council agreed the subdivision of land with three zones will be complex and sought advice from the Panel that subdivision of the land is possible having regard to:

- Clause 64.03 (Subdivision of land in more than one zone)
- Clause 57 (Green Wedge)
- Clause 37.07 (Urban Growth Zone).

Mr Stockdale submitted:

Whilst three zones may create a complicated planning process for subdivision, there is nothing that says that orderly planning is not complex. Orderly planning is about achieving a sound and structured outcome, not about the bureaucratic mechanisms to achieve this.

(vi) Discussion

The land is already in two zones. The Panel notes that the choice is whether one of those zones is changed to one or two other zones. Given the location of the UGB the land cannot be dealt with in one zone. Development of land within the UGB will need to make use of Clause 64.03.

The Panel does not agree with the Minister's submission that the intent of Clause 64.03 is to resolve zoning inconsistencies. There is nothing inherently inconsistent with land being in two

zones, and in some circumstances it is the most appropriate planning approach. While it is clearly desirable to have zoning controls follow lot boundaries, this should not be at the expense of an appropriate zoning pattern.

Planning controls do not always follow lot boundaries. The Panel notes that certain overlays by their very nature cannot follow lot boundaries, and consequently result in different planning controls applying to different parts of a particular site. This is the same situation with land in two (or three) zones.

The complex zoning arrangement would not prevent the development of the UGZ5 and SUZ8 for urban purposes, though it would require more than one subdivision.

The Panel agrees it would require a staged subdivision process: the first subdivision would need to subdivide along all zone boundaries so as not to “*create lots where any lot extends into more than one zone*”. The UGZ5 and SUZ8 land would then need to be re-subdivided as a complete parcel. This re-subdivision could create lots in two zones provided those lots comply with any minimum lot size requirements.

While it is not ideal that the planning controls require this approach, there is nothing in the required approach that is not supported by the provisions of the VPP. Clause 64.03 is essentially permissive and enabling. It is intended to facilitate precisely this type of situation which is clear from the issues raised in VCAT cases before the clause was introduced into the VPP.

The Panel thinks that decisions about urban development should be forward looking and seek to deliver results ‘on the ground’, and while the planning process to require these outcomes needs to be considered it is important that the tail does not wag the dog. Greenfield development is inherently complex and the need to undertake a staged subdivision process should not be a determinative factor in setting urban form.

The Panel notes that if the Amendment proceeds without the application of a separate zone to the easement this issue evaporates. The balance of this Chapter considers whether the SUZ should be applied.

(vii) Conclusions

The Panel concludes:

- having land in three zones is not an insurmountable issue, nor is it contrary to policy
- decisions about urban development should be forward looking and seek to deliver results ‘on the ground’
- given what is involved in greenfield development the need to undertake a staged subdivision process should not be a determinative factor in setting urban form.

5.2 Should GAIC be payable on the easement land?

(i) The issue

Should GAIC be payable on the easement land?

(ii) The role of the Growth Areas Infrastructure Contribution

The Growth Areas Infrastructure Contribution (GAIC) was established to help fund infrastructure in Melbourne’s growth areas. It is a one-off contribution payable on certain events usually associated with urban property development. These include buying,

subdividing and applying for a building permit on large blocks of land. GAIC only applies to land in the identified contribution area zoned for urban use and development:

- The contribution area includes certain types of land within the growth areas of the municipalities of Cardinia, Casey, Hume, Melton, Mitchell, Whittlesea and Wyndham.
- Different rates of GAIC apply to different types of land.
 - Type A – land zoned residential, industrial, business, comprehensive development zone, priority development zone or UGZ and included in the UGB on 28 November 2005.
 - Type B – land zoned UGZ and included in the UGB on 30 August 2010.
 - Type C – land zoned UGZ and included in the UGB from 1 July 2010.

Land within the Pakenham East PSP area will be classified as Type C land.

(iii) The Minister's reasons

The Minister's reasons included:

- GAIC levy obligations should be payable on the easement land:
 - The use of SUZ8 land as backyards is still associated with urban uses generating a need for infrastructure. It is the intention of the GAIC provisions to provide for the application of GAIC as a broadacre tax.
 - If GAIC obligations applied to the easement land, the rate would be \$115,640 per hectare for the 2019–20 financial year.

(iv) What did the first panel say?

The exhibited and adopted versions of the Amendment apply the SUZ to the transmission easement.

The first panel did not comment on the application of the SUZ.

(v) Submissions

The VPA said that the use of the SUZ reflects the significant development constraints imposed by the transmission easement over large tracts of land (that is, prohibition of dwellings). The land either side of the easement (including the portion of the PSP Parcels 1 to 4 on which a dwelling can be developed) is rezoned UGZ5 (applied General Residential Zone (GRZ)), reflecting its urban development potential.

Submissions raised two issues:

- whether GAIC should apply to the removed land
- the application of the SUZ (which is addressed below).

The VPA has historically rezoned 220kV transmission easements that traverse PSP areas to SUZ (for example, Cardinia Road Employment PSP, Mt Atkinson and Tarneit Plans PSP, Thompsons Road PSP, Cardinia Creek South PSP, Plumpton and Kororoit PSP and Craigieburn North PSP).

The Minister acknowledged that while it is an approach that has been used in the past it was not supported in this instance.

The proposed land use identified in the PSP for the electricity transmission easement is residential, and it is anticipated that the easement land will form part of residential backyards. It is considered that a backyard is still associated with an urban use generating the need for infrastructure. DELWP understands, from a consideration of matters raised in the Second Reading Speech for the *State Taxation Acts Further Amendment Bill 2016*, that the intention of the GAIC provisions is to apply as a

“broadacre tax” to ensure “that landowners make the appropriate contribution to funding essential state infrastructure in growth areas”. [37]

The Minister considered that GAIC should not be avoided on the transmission easement land, but acknowledged that a GAIC obligation on this land would exacerbate the Minister’s concerns regarding the development feasibility of the removed land.

Mr Stockwell submitted:

The objectives of planning in Victoria include the orderly and fair development of land. Where land is heavily constrained such as the electricity transmission line easement, we say it is neither orderly or fair for this land to be levied as if it was unconstrained urban land. It is nonsense for the Minister to suggest that the use of the easement land for backyards is generating an infrastructure need. The extent of any need generated is limited to the land outside the easement which can be developed for a dwelling.

The VPA submitted:

If the Panel should recommend that the UGZ be applied to the transmission easement rather than the SUZ, the VPA does not object.

(vi) Discussion

There is no current GAIC liability on the easement land. The issue is whether a liability ought to be applied given the nature of the proposed development. GAIC would only be payable if the land is rezoned to UGZ. The Minister’s proposed changes to remove the land would mean that GAIC would not be payable on the removed land.

The Panel recognises that the application of GAIC raises broader issues of public policy and the Panel is not the appropriate forum to determine these.

Based solely on the submissions to it, the Panel concludes GAIC should not be payable on the easement land given its constrained nature. The Panel agrees with Mr Stockwell that the backyards under the easement will not generate an infrastructure need.

The Panel would go further and see merit in removing all the land north of the easement from GAIC. As discussed above, the Panel considers that the land should have a low density future. The Panel acknowledges that this future is not one that would typically be expected of land within the UGB. But this is not typical land within the UGB. It may be within the UGB but it is not capable of development at conventional urban densities. It seems to the Panel that a decision to reject conventional density development north of the easement should bring with it the decision not to charge GAIC.

The development density proposed for the land is about one quarter of typical growth area lot density. GAIC is a broadacre charge but this is premised on land in growth areas having the potential to deliver housing at conventional densities. This was the logic that was meant to underpin the application of the UGB, that is to say, the UGB would encompass land capable of development at conventional development to cater for urban growth.

It does not seem fair to say on the one hand that conventional density is not appropriate, and then on the other to levy a charge that is premised on urban growth at conventional densities.

The Panel notes that *Logical Inclusions Advisory Committee Report No. 1: Overview and Summary* (page 59) made it clear that it did not think it was appropriate to extend the UGB to encompass low density development land:

The Committee considers that the UGB should not be expanded to allow for low density or rural residential estates on the fringes of the built up area. In the context of an overall plan for an area some larger lots might be an appropriate planning outcome. This could be to better respond to local constraints or to achieve an outcome such as an inter-

urban break. It will be for other processes to determine if these outcomes are appropriate.

For whatever reasons, the UGB has been expanded to include an area that is only suitable for low density development. The Panel thinks that a different treatment in respect of GAIC to other growth area land is warranted.

The Panel notes the Minister's observation that imposing GAIC will reduce development feasibility, in a situation where this is already a concern for the Minister.

If the decision is taken not to apply GAIC then a further decision is required on how this could be achieved. This is discussed in the next section.

(vii) Conclusions

The Panel concludes:

- it is a matter of broader public policy as to whether GAIC should be payable on the easement land
- based solely on the issues before this Panel, GAIC should not be applied to the removed land because it has a low-density future, and is therefore quite different to typical growth area land.

If these conclusions are not supported, the Amendment can still proceed. GAIC can be applied by including the land in the UGZ. There is no need to remove the land from the PSP.

5.3 Use of the Special Use Zone

(i) The issue

The issue is whether the easement can or should be zoned SUZ8.

(ii) Special purpose zones

A Practitioner's Guide to Victorian Planning Schemes says:

Where the strategic intent of a site is unknown or the application of a combination of zones, overlays and local policies is not able to achieve the desired planning outcomes, a special purpose zone may be used. These zones include the Special Use Zone, the Comprehensive Development Zone, the Urban Growth Zone and the Activity Centre Zone.

Maintaining consistency of planning controls across Victoria is a VPP principle. Using a special purpose zone is therefore discouraged unless there is clearly no suitable alternative.

See PPN03 *Applying the Special Use Zone* for more information on the Special Use Zone.

(iii) The Minister's reasons

The Minister's reasons included:

- applying SUZ8 to the easement land is not justified
- applying SUZ8 to the electricity transmission easement, which has been drafted to duplicate the GRZ, is an inappropriate use of the VPP as its application is inconsistent with the purpose of the zone being to provide for a specific use of the land
- the application of the SUZ is not appropriate when an alternative zone can achieve a similar outcome, with appropriate support from local policies and overlays.

(iv) What did the first panel say?

The first panel did not comment on the application of the SUZ.

(v) Submissions

The Minister submitted that Planning Practice Note 3 (PPN03) – *Applying the Special Use Zone* makes it clear that the application of the SUZ is not appropriate when an alternative zone can achieve a similar outcome with appropriate support from local policies and overlays. PPN03 further states that planning scheme maps identify the statutory requirements which apply to land, not the particular land uses which happen to exist there.

The Minister was also concerned that any change to the VPP and the GRZ via a VC amendment would not be made to SUZ8. In other words, the SUZ8 has the potential to become a fossilised version of the GRZ. A SUZ mirrored on a VPP at the time of approval could become different from a future zone that is to apply to the surrounding land, if effort was not taken to update the SUZ8 each time the GRZ was changed. This could create zoning inconsistencies that may be difficult to resolve.

It was noted that the adopted version of the SUZ8 was already inconsistent with the current GRZ.

It was acknowledged that the application of the SUZ to a transmission easement in a PSP is a common approach used in other PSPs.

Mr Milner presented a table of the use of the SUZ in other PSPs. Mr Milner said:

The table serves to illustrate that panels and the Minister have accepted that the Special Use Zone is appropriate for the identification of transmission easements in new growth areas. [66]

It is not evident whether the issue of avoidance of the GAIC has been raised in these earlier examples, however given the significant constraints upon use and development on land affected by the easement it is reasonable to question whether the GAIC was intended to apply to land with constrained attributes. [67]

(vi) Discussion

This is an issue about the drafting of planning schemes.

The Panel agrees with the Minister that the application of the SUZ is not appropriate when an alternative zone can achieve a similar outcome with appropriate support from local policies and overlays.

The Panel also shares the Minister's concerns that SUZ schedules can become out of date when land use terms changes, and this is an issue that needs to be managed.

The Panel thinks that the test for applying the Special Use Zone can be boiled down to this: 'You can use the SUZ when, and only when, you have legitimate planning outcomes that cannot be achieved with other controls'.

If it is accepted that GAIC should not apply to the removed land or part of it then the question becomes whether this can be given effect with an alternative zone (and potentially an overlay).

GAIC applies to the UGZ land and so any alternative zone to the UGZ would have the effect of switching off GAIC. This can be the SUZ or, in this case, a residential zone. Both would have the effect of removing GAIC from the land.

The issue becomes how to give effect to the PSP in the alternative zone.

The Panel notes that the PSP applies to zones within its boundaries where that zone references the PSP, as set out in the introduction to the PSP:

The PSP guides land use and development where a planning permit is required under the Urban Growth Zone (UGZ) or another zone where that zone references this PSP.

A planning application and planning permit must implement the outcomes of the PSP. The outcomes are expressed as the vision and objectives.

The SUZ8 requires uses, subdivision and buildings and works to be:

... generally in accordance with the *Pakenham East Precinct Structure Plan* applying to the land.

It also exempts matters generally in accordance with the PSP from notice.

The PSP would become an incorporated document in the planning scheme and it could be made to apply to any zone within the transmission easement (or surrounds) by changing the introduction.

The disadvantage of this approach is that it would lack clarity and it may not be clear that the PSP applies. Clarity could be achieved by applying the Incorporated Plan Overlay (IPO). This approach was contemplated by the exhibited Amendment by applying Schedule 2 of the IPO to the land proposed to be zoned Rural Conservation Zone along Deep Creek. This is an approach that has used before, for example, in the *Mt Atkinson and Tarneit Plains Precinct Structure Plan*.⁵

It seems to the Panel that there is an alternative to the SUZ: a residential zone (with a change to the introduction to the PSP if thought necessary) and the Incorporated Plan Overlay.

The Panel cannot comment of the use of the SUZ on transmission easements in the past. The fact that it has been used elsewhere does not justify its use here if a combination of other zones and overlays can achieve the desired planning outcome.

(vii) Conclusions and recommendation

The Panel has already concluded that:

- given the constrained nature of the site GAIC should not be applied.

The Panel concludes:

- past practice indicates that the application of the Special Use Zone to transmission easement can be appropriate
- the application of the Special Use Zone is not warranted in this case because the planning outcomes sought can be achieved with an alternative zone and overlay
- the VPA does not object to a departure from past practice in this instance.

The Panel recommends

Apply the General Residential Zone to the easement land and land north of the easement together with an Incorporated Plan Overlay generally along the lines of the exhibited Schedule 2.

If this recommendation is not supported, the Amendment can still proceed.

⁵ IPO 2 erroneously refers to the *Mt Atkinson and Tarneit Plains Precinct Structure Plan* at one point.

If greater certainty on density outcomes are sought the Low Density Residential Zone could be applied.

6 Is development feasible?

(i) The issue

The Minister was concerned that development of the land may not be feasible. Part of this concern related to the proposed infrastructure contributions.

(ii) How is the Infrastructure Contributions Plan applied?

The Panel understands that:⁶

An ICP commences when it is incorporated into a planning scheme and the Infrastructure Contributions Overlay is applied to the ICP plan area.

The letter from the Minister to the VPA about the Proposed changes refers to Amendment C251:

I refer to ... [the] request of the Victorian Planning Authority (VPA) that I prepare, adopt and approve Amendment C251 to the Cardinia Planning Scheme under section 20A of the Act

Amendments C234 and C251 seek to give effect to the *Pakenham East Precinct Structure Plan* and associated *Pakenham East Infrastructure Contributions Plan* respectively and make associated changes to the Cardinia Planning Scheme.

Section 20A of the PE Act refers to amendments that are prescribed by regulation as being exempt from notice. The regulations include:

- (pa) an amendment to a planning scheme to incorporate an infrastructure contributions plan prepared in accordance with Part 3AB of the Act if—
 - (i) an amendment to the planning scheme has been approved to incorporate a precinct structure plan or strategic plan to which the infrastructure contributions plan relates; and
 - (ii) the infrastructure contributions to be imposed by the infrastructure contributions plan relate to land to which the precinct structure plan or strategic plan applies and do not contain a monetary component that includes a supplementary levy within the meaning of Part 3AB of the Act;

(iii) The Minister's reasons

The Minister's reasons (document 4) included:

- Due to the constraints resulting from the easement, the lot yield expected for the removed land is significantly reduced.
- As the proposed land use identified in the PSP for the electricity transmission easement land is part of residential lots, it has been included in the NDA calculations and is subject to the same infrastructure contributions levy obligations under the monetary component of the ICP as other areas of the PSP, being \$213,862 per net developable hectare for the 2019–20 financial year.
- The rate of contribution in the monetary component under the ICP for the PSP Parcels 1 – 4 is approximately \$53,465.50 per dwelling. The rate for comparable land within the remainder of the PSP is approximately \$12,579.55 per dwelling. This does not include any GAIC obligations.

⁶ Infrastructure Contributions Plan Guidelines, DELWP, November 2019

- The ICP also includes a land component that may require landowners to pay a land equalisation amount if they are under-providing public purpose land. This is on top of the levy obligations of the monetary component.
- The monetary obligations resulting from being included within the PSP may render the development of the area economically unviable.

(iv) What did the first panel say?

The first panel noted that the PSP includes a Precinct Infrastructure Plan, which details what is to be included within the ICP. There was some discussion as to what items should be included in the ICP.

(v) Submissions

The Minister:

... acknowledged that development potential and economic feasibility is varied across the four lots, as the transmission easement affects each lot differently. [B:39]

In his Part C submission the Minister stated:

DELWP seeks to clarify the section on development feasibility in the Minister's statement of reasons for proposing changes to Amendment C234card. [13]

It is understood that development feasibility is complex, relies on many factors and is not solely related to development contributions applied by planning mechanisms, including GAIC and Infrastructure Contribution Plan (ICP) levies. This section of the Minister's statement of reasons identifies that the planning provisions applied to PSP Parcels 1 – 4 via the adopted amendment result in a greater economic burden from ICP levy obligations for these land owners than other landowners within the PSP. [14]

...

DELWP notes that Bauenort Management Pty Ltd undertook a development feasibility study for PSP Parcel 1 that was provided to the VPA and Cardinia Shire Council during preparation of the PSP. This study was provided to the Minister in confidence by the council as part of their submission. It is noted that the study only considered the feasibility of PSP Parcel 1 and not PSP Parcels 2 – 4. [15]

The Minister noted the development feasibility concerns raised by the Carneys (landowners of PSP Parcels 10, 11 and 14). The Minister did not consider that this land was subject to the same economic concerns due to the ICP, as detailed in the Minister's statement of reasons and Part A submission.

Council acknowledged that the development feasibility of the four lots will be a challenge due to the unique characteristics of the area with the electricity transmission easement, slope of the land, required building design responses and the various financial contributions applicable to the land, such as:

- The GAIC levy
- Metropolitan Planning Levy
- Infrastructure Contributions Plan.

In response to the Minister's statement that development of the four lots is economically unviable Council submitted:

It is unclear if the statement relies on a feasibility assessment.

If the figures were based on a feasibility assessment, it will be based on a set of assumptions (for example density of lots), all of which can be changed, meaning that infinite sensitivity testing is possible.

No evidence of independent interrogation of the figures in the statement has occurred to substantiate the lots are economically unviable.

The statement does not provide an assessment of the four lots being in or out of the PSP and the cost implications or comparison for the immediate or longer term.

Council sought assurance that the Pakenham East ICP will remain as a standard levy and there will be surplus in the ICP.

The VPA advised that it had tested the impact of the proposed changes on the Pakenham East ICP and is satisfied that the ICP will remain as a standard levy.

Should the easement be part of the net developable area?

The Minister's Part A Submission stated:

As a consequence of the Minister's proposed changes and the relocation of the bushfire interface, the land encumbered by the electricity transmission easement will not be included in the NDA calculations of PSP Parcel 14. Under the Minister's proposed changes, [23]

Not including the easement land within the NDA is consistent with how other easements in the PSP are treated. [24]

Bauenort submitted that if the removed land were to remain in the PSP the easement land should be removed from the ICP.

(vi) Discussion

A distinction is drawn between economic issues and financial issues in planning assessments. Broadly speaking, economic issues deal with community wide impacts and financial issues with impacts on specific operations or projects. The issue of feasibility is an issue about the financial impacts of the controls. Policy that refers to economic issues cannot automatically be taken to also apply to financial issues.

Care needs to be taken in making planning decisions based on assumed development feasibility especially without a detailed feasibility assessment. The Panel agrees with Council that there is no evidence of independent assessment to substantiate that the lots are economically unviable. Even if the lots were not viable now they may well become viable as the area develops.

More broadly, inclusion in the PSP does not make development unviable; the issue is whether the ICP costs makes development unviable.

The Panel thinks the critical issue is this: given the constraints on the land – under the easement and north of the easement – is the ICP fair?

The Panel has agreed with the Minister (earlier in this report) that conventional density development north of the easement is not appropriate. It follows that applying an ICP charge based on the assumption of conventional density development would be unfair.

The Panel is not aware of any requirement for an ICP to apply to the same area as a PSP, though clearly this is the typical and desirable practice.

(vii) Conclusions and recommendation

The Panel concludes:

- it is not the role of the planning system to second guess development feasibility where the relevant land owners believe development to be feasible
- the issue is not development feasibility impacts of the ICP but rather its fairness

- given the constrained nature of the land the Panel considers that an ICP charge is not appropriate.

The Panel recommends:

Do not impose infrastructure contributions on the easement land and land north of the easement.

This recommendation would be given effect by the extent of the ICO in Amendment C251card. If this recommendation is not supported the Amendment can still proceed.

7 Consequential changes if the proposed changes proceed

7.1 Introduction

Primary concerns of submitters include:

- replicating the planning and design controls that were proposed on the northern boundaries of the removed land onto the new northern boundaries of the PSP will result in a poor planning outcome
- retaining the removed land within the UGB and outside of a PSP will mean that the removed land will need to be planned at a later date, and this creates unnecessary administrative issues and development uncertainty.

There are several changes consequential to the Proposed changes, and further consequential changes requested by submitters.

The Proposed changes include:

- interface treatments
 - the edge road
 - the housing interface
- the proposed culvert
- the proposed new intersection.

The further changes request a reduction in open space areas.

7.2 Interface treatments

7.2.1 Threshold issue

A number of submissions, including Lendlease's, sought deletion of interface treatments from the northern boundary of the PSP area, on the basis that the land remains in the UGB and therefore may be subject to development at a later stage.

Lendlease submitted:

Our concern regarding the affects of affordability directly relates to the changes made by removing [PSP Parcels] 1 – 4 from the PSP and consequently replicating controls previously meant for [PSP Parcels] 1 – 4 which vary significantly from our northern boundary from a topographical perspective. [90]

The Minister's reasons suggest an urban future for the land, albeit subject to the constraints:

Landowner's within the UGB have an expectation for urban development. This is a reasonable expectation; however, the extent of development must be appropriate in light of constraints affecting the land.

The VPA submitted that in the absence of any other information or guidance about the future uses for the removed land, the VPA considered that an appropriate response is to assume that the northern boundary of the PSP will form an urban–rural interface.

The VPA submitted that the PSP could provide greater flexibility to allow the removal of the proposed interface road and housing if the responsible authority were satisfied that an interface road or housing area would be appropriately provided in the removed land under a separate amendment.

If the PSP does not define a clear outcome for the removed land then the planning outcomes for the land will be unclear. This is especially the case as it would mean that the conventional residential development proposed by the adopted PSP would have been rejected as well as the low density residential recommended by the Panel. As discussed in Chapter 3 the Panel thinks that this would be a poor planning outcome and ought to be avoided. However, if the Proposed changes proceed it would not be prudent to assume that the land has an urban future in the absence of a settled development outcome for the removed land. This means that if the Proposed changes proceed the new northern boundary of the PSP should be treated as an urban–rural interface.

The Panel acknowledges that this will impose additional costs on Lendlease.

The issue for the consequential changes is not whether the PSP should address these issues along this interface, but whether the proposed requirements, guidelines and plans are appropriate for land with different physical characteristics.

The Panel agrees with the VPA that some flexibility should be provided in the event that an edge road or housing interface area is provided in the removed land under a separate amendment or approval process.

(i) Conclusions and recommendation

The Panel concludes:

- If the removed land is not included in the PSP it is prudent to assume that the northern boundary of the PSP will form an urban and rural interface.

The Panel recommends that if the Proposed changes proceed:

Include flexibility in the Precinct Structure Plan to remove the requirements for the proposed edge road and housing interface area, in the event that an edge road or housing interface area is provided in the removed land under a separate amendment or approval process.

7.2.2 Bushfire management and the UGB boundary

(i) The issue

Lendlease requested:

Amend cross-section 7 of the draft PSP to show a 14.5 metre road reserve width.

Ms McLachlan on behalf of Ms Ruprecht (PSP Parcel 4) agreed with the submission made by Lendlease to change cross-section 7.

The CFA noted that the bushfire threat interface (shown in a red dashed line on Plan 6 – Open Space) may need to be amended to better demonstrate the location of the bushfire hazard versus areas that are required to be managed to reduce bushfire risk.

(ii) What did the first panel say?

A 20 metre edge road was shown in the exhibited PSP at the UGB interface to manage bushfire risk and ensure BAL 12.5 requirements were met. During the preparation of expert evidence prepared for the first panel, the VPA determined that the 20 metre edge road could be reduced to 19 metres.

An edge road was planned to address and respond to the then Clause 13.05 of the Planning Scheme (now Clause 13.02) which directs population growth and development to low risk

locations. By providing an edge road, additional distance and clearance is provided between possible bushfire risk and personal property.

The front setback of dwellings was not incorporated in the calculation of the buffer. While the front setback of dwellings could be included in the overall buffer distance to reduce the frontage road cross section width, this would seem to require a section 173 agreement to manage the bushfire risk.

During the first panel process the VPA called bushfire evidence that stated it was important that long grass was avoided in the transmission easement. The CFA advised that this could be dealt with by requiring a section 173 agreement to impose this control, or via the issue of municipal fire prevention notices.

The first panel recorded that:

The VPA recommended amending the UGZ5 to include a requirement for a section 173 agreement mandating management for land in the northern electricity easement. In addition, the PSP should include road cross-sections that respond to the achievement of BAL 12.5. (page 73)

The first panel recommended including a section 173 agreement requirement, but this was not ultimately supported by the VPA and Council who considered that the evidence did not support this.

(iii) The effect of the Proposed changes on the PSP

The Proposed changes would apply:

- an edge road to the northern boundary of the Lendlease land and along the easement as it crosses the Carney land
- the bushfire threat interface notation to the revised boundary of the PSP.

The PSP includes:

Requirement R50

A local access street must be provided along the edge of the Urban Growth Boundary and Deep Creek drainage reserve, as shown on Plan 7 – Road Network. The local access street must be in accordance with cross-section 7 to incorporate the minimum 19m defendable space setback required from classified Grassland in accordance with AS3959-2009, to the satisfaction of the responsible authority.

Guideline G41

Where residential land adjoins a bushfire threat area as shown on Plan 6 – Open Space, the required separation distances specified in AS3959-2009 should be achieved by:

- widening the identified road cross section in the PSP to provide for larger nature strips and/or
- incorporating larger front or side setbacks.

(iv) Evidence and submissions

Lendlease submitted that the proposed changes to the PSP impose onerous requirements on the northern boundary of the Precinct area. Lendlease contend that setbacks do not have to be achieved solely via a road interface. Lendlease stated that the widened cross section would result in a loss of NDA valued at \$3.2 million.

Lendlease submitted:

The VPA's adopted PSP has a different bushfire management context compared to the PSP proposed by the Minister. Although all the land in this area is affected by a Bushfire Prone Area, the former scenario has abuttal to farmland outside the UGB and the latter

abuts managed land in an electrical transmission line easement within the boundaries of Metropolitan Melbourne. [49]

Our concern with the width of the proposed road on the northern boundary of properties 6, 7 and 9 are a direct consequence of removing [PSP Parcels] 1 – 4 from the PSP and replicating those controls onto Lendlease's land despite a different physical context. [65]

The widened road reserve is to provide for bushfire protection and is not required for traffic purposes.

Mr Hick gave evidence that:

The bushfire risk considerations associated with the northern boundary of the PSP (either as exhibited or as modified) arise from the boundary of the PSP 'interfacing' with surrounding rural areas. Consequential to this is the embedded assumption that these surrounding areas would remain 'unmanaged' and therefore classified as 'grassland' in accordance with AS3959: 2018, and would pose an ongoing bushfire hazard. Conversely, grassland that is either permanently removed through urban development (and replaced with road surface, buildings, managed parkland with turf etc.) or managed (i.e. mowed to maintain height of less than 100mm) would no longer pose a bushfire hazard. [36]

In terms of the potential management of the easement to mitigate the risk, Mr Hick gave evidence:

Given that the power transmission easement has the potential to remain in its current form (that is, a contiguous grassland bushfire hazard) if not actively managed, and then in a situation whereby the relationship between the bushfire hazard and multiple owners/dwellings becomes more complex and interrelated, it is agreed that ensuring that this area is managed to mitigate potential bushfire hazards and associated risks would be necessary. [62]

Mr Hick agreed that cross-section 7 would be an acceptable approach to deal with the bushfire risk, but to decide whether it would be the most appropriate approach it was important to compare this against the other options to achieve the required 19 metres setback. The setback could be:

- entirely contained in private lots 'backing onto' the bushfire threat interface
- accommodated in open space established as low threat or non-vegetated areas, and then entirely maintained by the local government
- partially accommodated by the required adjacent hazard reduction in the rural interface land (that is, the 10 metre wide internal firebreak as require by the local government in addition to a road reserve – this would put a significant onus on achieving the bushfire hazard reduction/management outcomes on the adjacent rural landowners
- accommodated through a combination of the road reserve and internal lot setbacks to provide the necessary defendable space setback, either:
 - a 16 metre wide road reserve and a 3 metre internal lot setback
 - a 14.5 metre wide road reserve and a 4.5 metre internal lot setback.

It was Mr Hick's opinion that a combination of the road reserve and internal lot setbacks was the preferred option, and therefore the most appropriate given that it adequately responds to Clause 13.03 but provides the most balanced and pragmatic outcome and puts management onus back on the party that relies most on the risk reduction – the owner of the dwelling.

The VPA noted Lendlease's concerns regarding the loss of NDA as a result of the proposed amendment, but considered its proposed approach and use of an interface road appropriately

responded to the existing (and to be retained) rural character to the north and the bushfire interface.

The VPA considered that the urban and rural interface response at the UGB as shown in the adopted version of the Amendment, including a 19 metre interface road, should translate directly to become the response to the northern edge of PSP. The VPA considered that deletion of the removed land would not reduce the rural character or the bushfire threat from the northern edge of land to be developed in the PSP.

The VPA did consider that additional flexibility could be included in the PSP to allow the removal of the proposed interface road, in the event that the responsible authority is satisfied that an interface road would be provided at a future date in the four northern lots under a separate amendment (in the event that such an amendment eventuated).

The VPA did not support a change to the proposed bushfire threat interface as this must be read in conjunction with the corresponding R50.

North of Hilltop park

An edge road is not provided along the north boundary within the small patch of open space (Hilltop Park). The CFA offered no objection to this design, subject to minimum radiant heat exposure benchmarks still being achieved for nearby development

The VPA noted that provision of such a road would be difficult due to the local topography.

(v) Discussion

If the Proposed changes proceed the ultimate development of the removed land will be unclear. Planning for bushfire risk needs to take a long-term view. In the absence of a settled development outcome for the removed land it would not be prudent to assume that the bushfire risk will be managed before it reaches the boundary of the PSP.

The fire risk of the revised PSP boundary appears to be substantially the same as the adopted PSP. The easement does not materially reduce the fire risk.

As the fire risk is essentially the same between the adopted and changed PSP the same approach to fire management should apply. The Panel does not support providing some of the required setbacks in the front lots of properties. There is no justification to take a different approach to bushfire protection along this interface compared to other interfaces in the PSP.

(vi) Conclusion

The Panel concludes:

- The edge road requirements in the proposed changes are appropriate.

7.2.3 Housing interface

(i) The issue

Lendlease requested

- Delete the last dot point in relation to requirement R12, which states “*provide wider lot frontages*”.

(ii) The effect of the proposed changes on the PSP

Requirement R12 states:

Subdivision of land within the Interface Housing Area 1 & 2 , as identified in Plan 5 – Image, Character, Housing and Community, to minimise amenity impacts on surrounding areas, must:

- be a single dwelling on a lot
- have a minimum front setback of 8 metres
- have a minimum side setback of 1 metre for the first 3 metres of the building envelope
- have no front or side fences greater than 1.2 metres in height within the first 3 metres of the lot
- provide wider lot frontages.

(iii) Evidence and submissions

Lendlease submitted that duplicating interface housing requirements from the adopted PSP onto the northern boundaries of Parcels 6, 7 and 9 is not appropriate and disregards the natural slope of the land which includes an undulation both west to east and north to south, creating a significant diagonal cross fall that must be catered for in future residential lots.

Mr Todd gave evidence that land along the revised boundary was:

... materially much steeper than the land along the northern boundary of the exhibited PSP. [10.2]

The Panel was told that the average gradient in the on the northern boundary of Lendlease's land is 10.1 per cent (with some parts having a natural gradient in excess of 15 per cent) compared to the adopted PSP boundary that had an average gradient of 6.8 per cent on the northern boundary.

Mr Todd said that:

... the best way of dealing with land development projects in steep natural terrain is to build roads at right angles to the contour and to build retaining walls on side boundaries parallel to the contour as part of the subdivision phase of the development. [10.7]

... far more cost effective for a ... contractor to undertake earthworks and build retaining walls en masse at the time of subdivision rather than leave such works to the builder and/or home owner.

Retaining and cut and fill on more standard sized lots allows the developer to 'shed' or 'spread' grade more readily through smaller retaining walls, in-line with the Council's Slope Management Guidelines.

In larger lots, Mr Todd stated:

... there are fewer side boundaries and fewer opportunities to build 1 metre high walls on side boundaries to deal with the naturally occurring steep cross-fall. Consequently, with fewer retaining walls on side boundaries, the only way to deal with the naturally occurring steep cross-fall is to introduce more grade through the lots themselves. [10.12]

More grade in the lots does not create a good urban design outcome as it typically results in higher retaining walls due to the 2 metre to 3 metre diagonal fall away from the road.

Mr Todd was also concerned that:

- significant diagonal front to back fall on the interface lots means dwellings will need to be set below the interface housing road and built at a level close to or above the top of much of the fence-line at the rear of the interface lots creating a scenario whereby lots to the rear of the interface housing will have an outlook towards high retaining walls

- the cost of siteworks associated with building houses on large lots on the boundary of properties 6, 7 and 9 would be in the vicinity of \$50,000 to \$100,000 per dwelling compared with building on a retained smaller lot.

The VPA submitted that it would not support the removal of the proposed interface housing approach unless certainty regarding the future land use of the land to north can be determined to deem the interface approach unnecessary.

(iv) Discussion

The issue is whether requirement R9 is appropriate given the different characteristics of the land to which it applied.

The Panel accepts the evidence that the revised boundary has materially different characteristics with respect to slope than the adopted PSP boundary and hence requirement R9 cannot be simply applied to the new boundary. Requiring wider lots on steeply sloping sites has the potential to produce poorer outcomes with a higher cost.

The Panel has not been presented with an urban design analysis as to what an alternative to the wider lot frontages might be to achieve the desired interface. However the Panel accepts that the technique of wider frontages is not appropriate for lots with a slope of more than 10 per cent.

(v) Recommendation

The Panel recommends that if the Proposed changes proceed:

Amend the last dot point of requirement R12 in the Precinct Structure Plan to:

- **provide wider lot frontages where the natural gradient of the land is 10 per cent or less.**

7.3 Hancocks Gully waterway (north eastern part of PSP)

(i) The issue

Lendlease sought:

Amend the Future Urban Structure, Plan 5, Plan 6, and Plan 7 to delete the northern culvert crossing on Hancocks Gully.

(ii) The effect of the proposed changes on the PSP

The Proposed changes:

- remove the road on the east side of the waterway
- introduce a culvert crossing of the waterway as part of the relocated edge road.

(iii) Evidence and submissions

Lendlease submitted that the new culvert crossing was not required because a connector street culvert crossing is already situated some 300 metres to the south.

In evidence for Lendlease, Mr Walsh pointed out:

Future residents of the PSP will be drawn to the south as there is no road connection or local destination to the north. [40]

... a culvert crossing at the northern boundary will not service any material function as it is not on a traffic desire line. Accordingly, in my opinion, the northern culvert crossing adds little convenience or benefit, and therefore is not essential. [41]

The VPA did not object to the deletion of the new culvert.

Cardinia Shire Council in its part B submission state that:

Council considers the culvert and road crossing over Hancock's Gully is a highly desirable feature and facilitates good urban design. The retention of the culvert and road crossing creates:

- Greater permeability from a movement network perspective.
- Less social isolation of the adjacent community and proposed school.
- Greater resilience and redundancy of the local road network (for maintenance, closures, events and emergencies for example) without traffic having to utilise the Princes Highway to access across Hancock's Gully.
- An additional escape route in case of a bushfire emergency, allowing greater moveability and more access points to be accessible to escape imminent threat.

Council position:

It is requested that the Panel recommends that the culvert and road crossing over Hancock's Gully remain as per the exhibited PSP, if the four lots are removed from the PSP.

(iv) Discussion

The revised boundary is materially different to the adopted boundary because of the proximity of the proposed collector road. The Panel agrees there is no traffic need for the culvert.

Good urban design promotes connectivity and supports active transport. In the absence of a pedestrian crossing two houses separated by only the width of the Hancocks Gully reserve may be 600 metres apart in walking distance. This is not a good urban design outcome.

(v) Recommendation

The Panel recommends that if the Proposed changes proceed:

Amend the Future Urban Structure, Plan 5, Plan 6, and Plan 7 in the Precinct Structure Plan to change the northern culvert crossing on Hancocks Gully to a pedestrian crossing.

7.4 Intersection between the edge road and Dore Road

(i) The issue

Lendlease requested that:

... the Future Urban Structure and Plan 7 of the draft PSP to clearly demonstrate that a cross-intersection is not required in this area.

(ii) The effect of the proposed changes on the PSP

The proposed changes to the PSP will create a new intersection between the edge road and Dore Road.

(iii) Evidence and submissions

The northern edge road intersects with Dore Road and is proposed as a cross intersection. Lendlease suggested the intersection design will need to respond to sight lines, fall and resulting spatial arrangement requiring a setback from the transmission easement and northern parcels. This will mean that a cross intersection is not appropriate.

Council anticipated that this will be roundabout. However, according to Mr Todd (para. 13.3):

... a roundabout at this location is not an ideal treatment because of the steep natural occurring terrain at this location. On the Parcel 9 side, the roundabout would need to be “cut” into the land which rises to the east. [13.3]

Mr Walsh stated:

... there is a caged concrete pad on the west side of Dore Road, immediately south of the electricity transmission easement. It appears to contain services of some sort. This area is in the direct alignment of the proposed northern boundary road on the west side of Dore Road, ... In this circumstance, a roundabout is not possible. [36]

Notwithstanding, Mr Walsh stated that he was of the:

... view it is not necessary to treat this intersection as a roundabout or otherwise, as the change in road construction will adequately define the zoning, and I do not expect there will be any material cross traffic in an east-west direction across Dore Road. [37]

The VPA did not object to Lendlease’s desire for a site responsive design for the intersection, but did not agree that further detail in the PSP is required to achieve the outcome. The VPA considered that there is already inherent flexibility in the PSP and accepted notions of ‘generally in accordance’ to accommodate Lendlease's request if required and no further changes are required. Detailed intersection design should be managed through Functional Layout Plan design with the Responsible Authority at planning permit stage.

(iv) Discussion

The fact that a cross intersection is not required at this location for traffic reasons is not an issue. The issue is whether changes are needed to avoid a future decision maker concluding that a cross intersection is in fact desired.

It is not clear how an alternative might be depicted. Lendlease’s concerns about the PSP requiring a cross intersection would equally apply to any other notation. The Panel does not support a specific notation for this intersection as this might imply that other intersections, or elements in the PSP without such a notation were more fixed.

(v) Conclusion

The Panel concludes that if the Proposed changes proceed:

- there is inherent flexibility in the PSP to accommodate Lendlease's concerns regarding the intersection if required.

7.5 Reduction in open space

(i) The issue

The Carneys submitted that the size of SR-01 should be reduced.

Lendlease sought a reduction in the size of Hilltop Park (LP-01) to an overall size of 9.09 hectares to balance the removal of developable land.

(ii) What did the first panel say?

Council advised the VPA before first panel that SR-01 cannot be reduced in size. This issue was raised at the first panel hearing. The first panel supported the VPA and Council position on SR-01. The first panel stated in their report:

The Panel is satisfied that the concept demonstrates that the required active recreation facilities can be accommodated within SR-01, noting however, the Council and XWB reservations on how certain facilities are positioned. The Panel agrees with the VPA

position that the final configuration of SR-01 will be subject to a detailed design – PSP Figure 3 is a concept. (page 61)

The exhibited PSP included a Hilltop Park Concept Plan at Figure 1. The plan sought to provide guidance regarding the key elements to be implemented in detailed design and development of the Hilltop Park.

At the first panel Lendlease submitted that the Hilltop Park Concept Plan should be replaced with its alternative concept plan, which sought to make a number of amendments, including altering access arrangement and more significantly reducing the total of the Hilltop Park by 1 hectare.

The VPA and Council supported the alternative concept plan provided by Lendlease and agreed to reducing the total area of Hilltop Park by 1 hectare based on the alternative concept plan and its response to landscape and topographical features. The VPA also supported a note on the alternative concept plan to allow for an accessway to the satisfaction of the responsible authority.

(iii) The effect of the proposed changes on the PSP

The proposed changes do not alter the size of SR-01, but will increase the overall percentage of land given over to open space because the total area of the PSP will be reduced.

(iv) Evidence and submissions

SR-01 is situated on the Carneys' land. The Carneys were concerned that the reduction in NDA in the PSP would reduce the amount of open space credit they would receive.

Lendlease sought a reduction in the size of Hilltop Park (LP-01) to an overall size of 9.09 hectares to balance the removal of NDA.

The VPA submitted that the adopted PSP updated the Hilltop concept plan giving effect to the reduced size and access arrangements as agreed by Council, Lendlease and the VPA. Detailed design of the future Hilltop Park will be subject to a future planning permit process and subject to the satisfaction of the responsible authority.

(v) Discussion

The Panel accepts that the size of SR-01 is driven by the need to accommodate identified sport and recreation functions. The Proposed changes to the PSP will not reduce the demand for those facilities to the extent that they do not need to be provided.

The Panel also accepts that the Hilltop Park has been planned in response to the significant landscape and topographical features in this part of the PSP. The size and shape of Hilltop Park was refined as part of the process following exhibition of the Amendment, resulting in a reduction of 1 hectare from the exhibited version. No further reduction is considered warranted.

(vi) Conclusions

The Panel concludes that if the Proposed changes proceed:

- deleting the removed land from the PSP does not reduce the need for the facilities proposed on SR-01, and hence its size
- no reduction in the Hilltop Park is warranted.

8 Submissions beyond the scope of the Panel

8.1 Parklea submission

(i) The issue

On 20 March 2020 Parklea Developments Pty Ltd asked the Panel to be invited to attend the Hearing (either in person or by video conference) to make a submission.

The Panel considered its request and determined not to give Parklea or its representatives an opportunity to be heard.

(ii) Discussion

The Parklea request enclosed a copy of a letter (undated) that Parklea had written to the Minister. In that letter Parklea stated:

It has come to our attention that a further Planning Panel has been appointed by you, pursuant to section 34 of the Planning and Environment Act 1987 (PE Act), to hear unresolved submissions regarding the electricity transmission line. Parklea did not receive any notice of this.

The Proposed changes relate to the electricity transmission line along the northern boundary of the PSP area. The Panel was appointed to consider submissions related to the Proposed changes.

Parklea stated:

... the VPA has adopted a version of the PSP dated October 2018 (Amended PSP), which contains a number of changes to the version exhibited and considered by the Panel and submitters in 2018. While a number of those changes reflect outcomes from the Panel hearing, Parklea's review of the Amended PSP has identified a number of significant changes which affect its interests and which were not subject to the exhibition or Panel process, or any further notification.

Parklea gave an example of a condition related to the gas pipeline south of Princes Highway (PL244) which runs through Parklea land. Parklea had a strong objection to this new requirement.

Parklea was concerned about changes to the PSP which it said:

Introduce new issues not raised, exhibited or submitted on by the VPA or others and which directly affect other land parcels within the PSP area.

The issues appear to be unrelated to the Proposed changes that were the subject of the further notice, submissions and referral to this Panel; they also appear to be unrelated to the referred submissions.

The Panel may give any other person affected a reasonable opportunity to be heard under section 34(4) of the PE Act. However, the Panel considered this power should be read in the context of the establishment of the Hearing and consideration of submissions referred to it. The Panel did not consider this power extends to unilaterally considering third party submissions not referred by the Minister.

In advising Parklea of its decision the Panel also noted:

- If the Panel were to give Parklea an opportunity to be heard, the Panel would also need to invite submissions from other parties who may be affected by the issue and from the licensee of the pipeline.

- This would go beyond the remit of the Panel. If the Panel found that there were defects in procedure it is not clear that the Panel would have any power to make directions to address those defects.

(iii) Conclusion

The Panel was established to consider submissions referred to it in relation to removing certain land from the PSP. Because Parklea's issues were not related to the reason the Panel was established the Panel declined its request.

8.2 Review of community and educational facilities every five years

(i) The issue

Lendlease proposed a review of community and educational facilities every five years due to the catchment area, and requested flexibility for land to be used in alternative ways in the event that a specific site was not required for a school.

(ii) Discussion

The Victorian School Building Authority (VSBA) did not object to the Proposed changes. The VSBA believed the anticipated reduction in number of potential dwellings would not create a significant impact to anticipated government school demand.

The VPA noted the position of VSBA that the proposed changes will not impact on anticipated government school demand.

(iii) Conclusion

This issue is not related to the reason the Panel has been established.

8.3 Labelling of schools

(i) The issue

Government schools in the PSP have been incorrectly labelled. Government schools in the PSP should be labelled as 'proposed government schools' and not 'future government schools'.

(ii) Discussion

The VPA supported re-labelling of schools to 'proposed' and noted changes to the labelling of schools can be undertaken at the discretion of the Minister via approval with changes (section 35 of the PE Act).

(iii) Conclusion

This issue is not related to the reason the Panel has been established.

8.4 PSP Parcels 10, 11 and 14 should be removed from the PSP

(i) The issue

The Carneys contended that that PSP Parcels 10, 11 and 14 should be removed from the PSP as the Proposed changes combined with ICP and GAIC contributions will make their properties financially unviable to develop if other changes are not made to offset impacts to them.

The VPA noted these concerns, but submitted that the removal of PSP Parcels 10, 11 and 14 and the requested changes outlined in this submission do not form part of the Proposed changes and are therefore beyond the scope of the Panel.

(ii) Discussion

The submitters have not provided evidence as to how the Proposed changes make their properties unviable. The adopted Amendment shows that, combined, these properties include 43.4 hectares of developable land out of a total combined lot area of 78.1 hectares. This equates to 59.3 per cent developable area, which the VPA advised is not an unusual figure for a precinct structure plan. Based on the PSP anticipated density for this area, this would result in approximately 737 lots (based on 17 dwellings per net developable hectare).

Further, the Pakenham East ICP for the adopted version will result in a credit (compensation) for part of the sports field land (5.09 hectares) on the properties.

The Minister's proposed changes to the Amendment reduce the net developable area by 1.55 hectares to 41.85 hectares with a developability of 57 per cent for a yield of approximately 711 lots (based on 17 dwellings per net developable ha). This change is due to the transmission easement in PSP Parcel 14 being changed from developable land to utility land.

There is also a commensurate change in contribution land within the Precinct resulting in PSP Parcels receiving a credit on 4.7 hectares of the sports field land, being a reduction of 0.39 hectares from 5.09 hectares.

A per parcel breakdown of developable area and yield estimate changes is provided below:

Table 3: Developable area per parcel

Adopted PSP			
Parcel	Gross area Ha	NDA	Est dwellings
10	2.00	2.00	34
11	0.66	0.66	11
14	70.47	40.73	692
Total	73.13	43.39	737
Proposed changes PSP			
Parcel	Gross area Ha	NDA	Est dwellings
10	2.00	2.00	34
11	0.66	0.66	11
14	70.47	39.20	666
Total	73.13	41.85	711
Difference		-1.53	-26

Removal of PSP Parcels 10, 11 and 14 from the PSP would transform the PSP. Such an extensive removal of land would necessitate mechanisms to deliver community, transport and drainage infrastructure on these parcels, such as through public acquisition overlays, or would require reconsideration of the transport, community and drainage infrastructure, which would impact on other areas of the Precinct. It would also require apportionment of the transport and community infrastructure items onto this land through the Pakenham East ICP given that the land remains in UGB and is identified for development.

The Panel discussed in Chapter 3 the importance and policy support for structure planning in growth areas.

(iii) Conclusion

Removal of PSP Parcels 10, 11 and 14 is not in any practical sense a related issue to the Proposed changes.

If this submission were related, the removal of such an extensive area of land would be a disproportionate response and the Panel would not support it for the reasons set out in Chapter 3.

8.5 Proposed drainage changes

(i) The issue

The Carneys sought:

- a reduction in the width of the proposed drainage easement (WI-06)
- a reduction in the size of retarding basin WI-05.

(ii) Discussion

Melbourne Water has not recommended any changes to the development services scheme or sizing of waterways and other drainage assets as a result of the Proposed changes. The drainage in this location is not directly or indirectly impacted by the Proposed changes.

(iii) Conclusion

There is no change to the relevant drainage infrastructure as a result of the Proposed changes and so no basis for recommending changes.

8.6 Combine all three drainage strategies into one

(i) The issue

The Carneys submitted that the three drainage strategies that apply to the PSP should be combined into one, with a single per hectare cost for the entire PSP (as per the ICP).

(ii) Discussion

It is not clear that the allocation of drainage scheme costs is a matter determined by the PSP. In any case the Proposed changes do not affect these costs.

Melbourne Water advised that PSP Parcels 1 to 4 are located in the Dore Road and Hancocks Road Development Services Schemes (DSSs), both of which assume the removed land as financially non-contributing to the scheme, with drainage outfalls for these properties assuming and retaining, in the event of redevelopment, rural conditions.

The VPA noted that Melbourne Water does not object to the Proposed changes and that removal of PSP Parcels 1 – 4 does not impact the cost apportionment of the Dore Road and Hancocks Road DSS.

Melbourne Water advised that the cost of the Dore Road DSS will not increase as a result of the Proposed changes and therefore no change to the DSS is warranted. Melbourne Water are currently, and will remain, the authority responsible for the DSS process for this area.

(iii) Conclusion

Even if this were a matter dealt with in the PSP, there is no change to the relevant drainage scheme as a result of the Proposed changes and so no basis for recommending changes to the allocation of costs for drainage.

Appendix A Details of the Amendment

The exhibited Amendment proposed the following changes to the Cardinia Planning Scheme:

- Introduce Schedule 5 to Clause 37.07 (UGZ5) and rezone the majority of the land within the Pakenham East Precinct Structure Plan area (Pakenham East) to UGZ5. This Schedule includes controls to facilitate land use and development generally in accordance with the PSP.
- Introduce Schedule 8 to Clause 37.01 Special Use Zone (SUZ8) and rezone land within the transmission line easement to SUZ8 generally in accordance with the PSP.
- Rezone land within the Amendment area and within 50 – 100 metres of the midline of Deep Creek to Rural Conservation Zone Schedule 2 (RCZ2).
- Introduce Clause 32.07 Residential Growth Zone (RGZ). This will allow the use and development controls in the RGZ to be applied to Pakenham East via the UGZ5.
- Amend the Schedule to Clause 43.01 Heritage Overlay to insert HO275, HO276 and HO277 and apply heritage controls to the following heritage places identified in the East Pakenham Precinct Post Contact Heritage Assessment, October 2017:
 - HO275 – ‘Carinya’, 32 Mount Ararat South Road, Nar Goon
 - HO276 – 140 Ryan Rd, Pakenham
 - HO277 – *Pyrus communis* (Pear Tree), 40 Dore Road, Pakenham
- Introduce Schedule 2 to 43.03 Incorporated Plan Overlay (IPO2) and apply the IPO2 to land rezoned RCZ2 as part of this Amendment. The IPO2 requires that use and development within the RCZ2 is carried out generally in accordance with the PSP.
- Delete the Environmental Significance Overlay Schedule 1 (ESO1) from land within the Amendment area.
- Delete the Design and Development Overlay Schedule 1 (DDO1) from land within the Amendment area.
- Delete the Vegetation Protection Overlay Schedule 1 (VPO1) from land within the Amendment area.
- Amend the Schedule to Clause 52.16 to include reference to the Pakenham East NVPP.
- Amend the Schedule to 61.03 to update the planning scheme maps.
- Amend the Schedule to Clause 66.04 to require referrals for planning permit applications within the Pakenham East Local Town Centre (LTC) to the Victorian Planning Authority.
- Amend the Schedule to Clause 66.06 to require notice to be given to the licensee for certain uses within the gas pipeline measurement lengths within the Amendment area.
- Amend the Schedule to Clause 81.01 to include three new Incorporated documents titled:
 - Pakenham East Precinct Structure Plan, December 2017
 - Pakenham East NVPP, December 2017
 - Small Lot Housing Code, August 2014.

The adopted Amendment did not progress all these changes.

Appendix B Submitters to the Proposed changes

No.	Submitter
1	Melbourne Water
2	Bauenort Management Pty Ltd and the owners of 155 Dore Road, Pakenham (PSP Parcel 1)
3	Paul and Penny Carney owners of 45, 55 and 95 Dore Road, Nar Goon (PSP Parcels 10, 11 and 14)
4	Cardinia Shire Council
5	Lendlease (PSP Parcel 6, 7, 8 and 9)
6	Department of Education and Training (Victorian School Building Authority)
7	Chantelle McLachlan on behalf of Elizabeth Ruprecht, owners of 85 Mount Ararat North Road, Nar Goon North (PSP Parcel 4)
8	Mr Christopher and Mrs Christine Stockwell owners of 325 Seymour Road, Nar Goon North (PSP Parcel 3)
9	Patrick and Maree Hyland owners of 365 Seymour Road, Nar Goon North (PSP Parcel 2)
10	Country Fire Authority

Appendix C Document list

No.	Date	Description	Circulated by
1	24/2/20	Pakenham East PSP (adopted version) for Panel	VPA
2	26/2/20	Chronology of post-adoption events	Minster
3	27/2/20	Letter to Panel (seeking information from DELWP)	Urbis (Lendlease)
4	2/3/20	Statement of reasons for proposed changes	Minister
5	3/3/20	Letter confirming experts	Urbis (Lendlease)
6	6/3/20	VPA Part A submission	VPA
7	6/3/20	Minister for Planning Part A submission	Minister
8	10/3/20	Cardinia Shire Council Part A submission	Council
9	10/3/20	Parklea submission to Minister on pipeline condition – this submission has not been referred to the Panel	
10	16/3/20	Traffic evidence prepared by Jason Walsh of Traffix Group	Urbis (Lendlease)
11	16/3/20	Civil engineering evidence prepared by Raymond Todd of Cossill & Webley	Urbis (Lendlease)
12	16/3/20	Urban Design evidence prepared by Mark Sheppard of Kinetica	Urbis (Lendlease)
13	16/3/20	Urban Planning evidence prepared by Rob Milner of Kinetica	Urbis (Lendlease)
14	16/3/20	Bushfire Management evidence prepared by Jason Hick of Emerge Associates	Urbis (Lendlease)
15	20/3/20	Parklea – letter to PPV from Herbert Smith Freehills	Heidi Asten
16	23/3/20	Letter to Parklea from Panel	Panel
17	23/3/20	Directions and Timetable on the Papers V2	Panel
18	23/3/20	Minister for Planning Part B submission	Minister
19	23/3/20	VPA Part B submission	VPA
20	23/3/20	Cardinia Shire Council Part B submission	Council
21	24/3/20	Directions and Timetable on the Papers V3	Panel
22	25/3/20	Carney submission	P and P Carney
23	25/3/20	Lendlease submission	Jason Black
24	25/3/20	Stockwell submission	Philip Walton XWB Consulting
25	27/3/20	DELWP response to Parklea request	DELWP
26	8/4/20	Slattery response to Carney submission	Beveridge Williams
27	8/4/20	VPA Part C	VPA
28	8/4/20	Minister Part C submission	Minister