Planning and Environment Act 1987

Advisory Committee Report

Cardinia Planning Scheme
Michael Street Pakenham Advisory Committee

16 September 2013
Planning and Environment Act 1987
Advisory Committee Report pursuant to Section 151 of the Act
Michael Street, Pakenham Advisory Committee

Alison Glynn, Chair

Geoffrey Carruthers, Member

David Mitchell, Member
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<th>Description</th>
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</thead>
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<td>CFA</td>
<td>Country Fire Authority</td>
</tr>
<tr>
<td>CREPSP</td>
<td>Cardinia Road Employment Precinct Structure Plan</td>
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<tr>
<td>CRPSP</td>
<td>Cardinia Road Precinct Structure Plan</td>
</tr>
<tr>
<td>DCPO2</td>
<td>Schedule 2 to the Development Contributions Plan Overlay</td>
</tr>
<tr>
<td>DPCD</td>
<td>Department of Planning and Community Development</td>
</tr>
<tr>
<td>DSE</td>
<td>Department of Sustainability and Environment</td>
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<tr>
<td>EPA</td>
<td>Environment Protection Authority</td>
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<tr>
<td>GAA</td>
<td>Growth Areas Authority</td>
</tr>
<tr>
<td>LPPF</td>
<td>Local Planning Policy Framework</td>
</tr>
<tr>
<td>MSS</td>
<td>Municipal Strategic Statement</td>
</tr>
<tr>
<td>NIRV</td>
<td>Noise from industry in regional Victoria (EPA Publication 1411)</td>
</tr>
<tr>
<td>PDC</td>
<td>Portbury Development Company</td>
</tr>
<tr>
<td>SEPP N-1</td>
<td>State Environment Protection Policy (Control of Noise from Industry, Commerce and Trade) No N-1</td>
</tr>
<tr>
<td>SPPF</td>
<td>State Planning Policy Framework</td>
</tr>
<tr>
<td>UDF</td>
<td>Urban Design Framework</td>
</tr>
<tr>
<td>UGB</td>
<td>Urban Growth Boundary</td>
</tr>
<tr>
<td>UGZ1</td>
<td>Schedule 1 to the Urban Growth Zone</td>
</tr>
<tr>
<td>VPP</td>
<td>Victoria Planning Provisions</td>
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Executive Summary

Portbury Development Company (PDC) owns a 5.89 hectare parcel of land at the south east corner of O’Brien Parade and Mulcahy Road, Pakenham “the proposal land”. Amendment C157 to the Cardinia Planning Scheme proposed to zone this land to Urban Growth Zone Schedule 1 (UGZ1) and amend the Cardinia Road Precinct Structure Plan (CRPSP) to enable residential development on this land. Concurrent to the amendment was a planning permit to develop the land for 149 dwellings in accordance with plans exhibited with the amendment.

In December 2012, Cardinia Shire Council considered submissions received as a result of exhibition of the amendment and resolved to abandon the amendment. In February 2013, Council reviewed a revised planning permit plan for the land that reduced the proposed number of dwellings from 149 to 115. Based on this revised plan, Council determined to write to the Minister for Planning requesting an advisory committee be appointed to consider the proposed amendment with the revised concurrent planning application and submissions received in relation to the amendment.

The appointed Michael Street Pakenham Advisory Committee (the committee) has considered issues raised by submissions to Amendment C157, notably concerns of the EPA and nearby businesses that the proposal will lead to increased amenity conflicts and reduced viability of the industrial land east of the proposal land.

The committee concludes there is strong policy basis not to increase the potential for adverse amenity impacts that may arise from the amendment without strong strategic benefit that outweighs these impacts. The committee is not satisfied that such benefit exists. In summary this is because:

- Whilst existing noise from industry may be addressed through use of a proposed bund and wall system along part of the perimeter of the residential development proposed, it will not address the impact from air emissions. As such it is likely to lead to a compromised residential environment for the area proposed to be used for housing.
- There is significant risk that the expansion of existing businesses and establishment of new businesses in the western end of the existing industrial estate and the directly adjoining peripheral commercial area to the south will be hindered through encroachment of residential use.
- There is no clear rationale for the loss of the employment land or that there is a substantive benefit to the community through residential use of this land. The benefits that can be identified are not seen to outweigh the likely amenity and economic costs.
- The design proposed illustrates the problems with using this site for housing. The extent of buffers required, limited road and pedestrian access lead to an enclosed residential estate that has little connection with its surrounding neighbourhood.

Committee Recommendations

1. The proposal should not be progressed, either in the form proposed in Amendment C157 and its concurrent planning permit, or in the modified planning permit form presented to the committee.
2. If the primary recommendation above (Recommendation 1) is not accepted, the committee recommends that prior to progressing the proposal further a comprehensive review of the CRPSP should occur. This review should include:

2.1 A review of employment needs in the CRPSP area, based on monitoring and review of current employment land take up and likely employment needs, and long term requirements for local employment.

2.2 A review of the CRPSP to determine the amount and location of employment land both in the CRPSP and the adjoining industrial estate, based on the needs analysis.

2.3 A review of the design of the CRPSP to determine how to facilitate long term employment use that is accessible to the community, yet sufficiently separated from residential land use.


The committee also makes a number of other ‘without prejudice’ findings about the amendment and permit documents, if the committee’s primary recommendation is not accepted. These are detailed in Chapter 7.
# 1 Introduction

1.1 Background

Portbury Development Company (PDC) owns a 5.89 hectare parcel of land at the south east corner of O’Brien Parade and Mulcahy Road, Pakenham “the proposal land”. It has a 267 metre frontage to O’Brien Parade, 225 metre frontage to Mulcahy Road and 265 metre frontage to Michael Street. Approximately 2.8 hectares of the north east corner of the land is zoned Industrial 1. This industrial land has a 100 metre frontage to Mulcahy Road and a 280 metre frontage to Michael Street. The remainder of the land is zoned UGZ1 and identified in the associated incorporated CRPSP as land for peripheral commercial, as identified in Figure 1 below.

The land is currently vacant with land directly to the south developed as peripheral commercial, consistent with the CRPSP and used for a Bunnings Warehouse and an Officeworks store. Land to the east of Michael Street is developed for industrial purposes and includes a variety of industrial and service industrial businesses including a Ventura Bus depot directly to the east of Michael Street and Dandy Premix Concrete further east, with frontage to Mulcahy Road.

To the west of the land, the area designated for peripheral commercial at the north west corner of O’Brien Parade and Princes Highway is being developed for a homemaker centre. The area north of this has been subdivided into residential lots, with housing construction underway, in accordance with the CRPSP. O’Brien Parade is a dual carriageway, arterial road designation on the CRPSP and has been constructed in this format between Mulcahy Road and the Princes Highway. A service road then accesses residential land to the west of O’Brien Parade, providing a 33 metre separation between the proposal land and the residential land to the west.

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Figure 1   Section of 2008 CRPSP as incorporated into Cardinia Planning Scheme
1.2 The Proposal

In April 2012, Cardinia Shire Council exhibited Amendment C157 to the Cardinia Planning Scheme to amend the proposal land from part UGZ1 and part Industrial 1, to all UGZ1. The amendment also proposed to change the incorporated CRPSP to designate the proposal land for residential use. A concurrent planning permit exhibited with the amendment was to develop the land for 149 dwellings.

The explanatory statement to Amendment C157 stated the amendment was “required to facilitate the future development of the land for residential purposes. Residential development is not permitted under current Industrial 1 zoning of the site or the Urban Growth Zone unless indicated in the schedule to the zone or through the Precinct Structure Plan.”

On 17 December 2012, Cardinia Shire Council resolved to abandon the amendment after considering the 15 submissions received in response to the exhibition of the amendment. This was a decision of Council against its officer’s recommendation. At a meeting of Council on 18 February 2013, Council reviewed a revised plan for the dwelling proposal that accompanied the exhibited amendment. This report states that Council had abandoned Amendment C157 “due to concerns about the density of the dwellings proposed on the site”.

The revised plan reduced the number of dwellings proposed from 149 to 115, principally by removing the proposed two and three storey townhouses at the north-west corner of the site, near O’Brien Parade. The revised plan replaced the townhouses with single and double storey semi detached dwellings.

Council then resolved to write to the Minister for Planning requesting him to appoint an advisory committee to consider the proposed amendment with revised concurrent planning application and submissions received in relation to the revised dwelling proposal for the site. ‘The proposal’ addressed in this report is a proposed planning scheme amendment (based on Amendment C157) and concurrent planning permit based on the revised plans for 115 dwellings, tabled to Council in February 2013.

1.3 Advisory Committee

On 29 May 2013, the Minister for Planning appointed the Michael Street, Pakenham Advisory Committee (the committee) consisting Alison Glynn (chair), Geoffrey Carruthers and David Mitchell. The purpose of the committee, as identified in the terms of reference, dated 29 May 2013, is to advise on the proposed amendment, concurrent planning permit application, submissions received in context of the revised development plan for the site and how to progress the proposal further.

Specifically the terms of reference requires the committee to produce a written report for the Minister for Planning providing:

- An assessment of all relevant planning issues related to the combined planning scheme amendment and planning permit application.
- An assessment of the issues raised in submissions made to Cardinia Shire Council during the exhibition of Cardinia Planning Scheme Amendment C157.
- Recommendations of whether the Cardinia Planning Scheme should be amended either as proposed or with further modifications and whether the amendment is appropriate to be considered under section 20(4) of the Planning and Environment Act 1987.
• An assessment of submissions to the Advisory Committee.
• Any other relevant matters raised in the course of the Advisory Committee hearing.
• A list of persons who made submissions considered by the Advisory Committee.
• A list of persons consulted or heard.

The committee held a directions hearing on 8 July 2013, to discuss procedural issues and make directions about a public hearing to hear submissions from people who had previously made submissions to Amendment C157. Following the directions hearing, the committee undertook an inspection of the subject site and its surrounds. A further inspection was undertaken on 31 July 2013.

After the directions hearing, Dandy Premix advised that its representative at the hearing would be Mr Andrew Walker, barrister. By email dated 16 July 2013, Committee member David Mitchell, through Planning Panels Victoria advised parties that Andrew Walker is his cousin. The email stated “David and Andrew have not worked together and meet occasionally at family functions. David will not be discussing any matters relating to the Advisory Committee with Andrew outside of the Hearing. If any parties have a concern about this declaration, please respond by return email no later than COB Thursday 18 July 2013.” No correspondence was received by Planning Panels Victoria as a result of this email.

The advisory committee met in the offices of Cardinia Shire on 31 July and 1 August 2013. The committee again declared verbally that Mr Mitchell was the cousin of Mr Walker at the commencement of the hearing.

Those in attendance at the hearing are listed in Table 1.

<table>
<thead>
<tr>
<th>Submitter</th>
<th>Represented by</th>
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<tbody>
<tr>
<td>Portbury Development Company Pty Ltd</td>
<td>Mr Paul Connor, barrister. He called evidence from:</td>
</tr>
<tr>
<td></td>
<td>- Mr Tim Pollock, of GHD.</td>
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<tr>
<td></td>
<td>- Mr Douglas Growcott, of Moss Growcott Acoustics.</td>
</tr>
<tr>
<td></td>
<td>- Mr Nick Hooper of Taylors Development Strategists.</td>
</tr>
<tr>
<td>Cardinia Shire Council</td>
<td>Ms Anita Ransom, town planner with Ms Tracey Parker, town planner.</td>
</tr>
<tr>
<td>Environment Protection Authority (EPA)</td>
<td>Mr John Frame.</td>
</tr>
<tr>
<td>Dandy Premix Concrete Pty Ltd</td>
<td>Directions Hearing: Ms Louise Hicks, barrister.</td>
</tr>
<tr>
<td></td>
<td>Panel Hearing: Mr Andrew Walker, barrister.</td>
</tr>
<tr>
<td></td>
<td>He called evidence from:</td>
</tr>
<tr>
<td></td>
<td>- Mr Graeme Campbell of SLR Global Environmental Solutions.</td>
</tr>
<tr>
<td>Cardinia Transit (Ventura and Grenda buses)</td>
<td>Mr Cameron Nichols.</td>
</tr>
</tbody>
</table>

Table 1 Parties to the Advisory Committee Hearing
In reaching its conclusions and recommendations, the committee has read and considered
the submissions and a range of other material referred to it. This includes written
submissions, evidence and verbal presentations. A list of submitters to Amendment C157 is
tabled in Appendix 1. In addition to this, Mr Walker tabled a submission from Sapphire Spas
at the hearing, dated 29 July 2013. The committee has recorded this letter as information,
but does not consider it a formal submission as neither Council or the proponent were able
to respond to this submission in the same manner as submissions made through the
amendment process.

The committee also notes that Cardinia Transit withdrew its submission opposing
Amendment C157 based on the noise attenuation wall proposed. Mr Nichols attended the
hearing to advise the committee of the operations of Cardinia Transit and Grenda buses, its
parent company. He reiterated that the company was not opposed to the proposal,
provided suitable noise attenuation was sufficiently addressed to enable the current and
proposed operations of the depot.

1.4 Key Issues

The EPA objected to Amendment C157 and the proposal, as presented to the committee, on
the basis that air emission separation distances have not been adequately addressed. The
EPA submitted that amenity impacts may result in the proposed residential area from the
adjacent industrial area and that industry located in the adjacent industrial zone will be
constrained as a result of the proposal.

A number of businesses within the industrial area east of Michael Street made submission
opposing Amendment C157 on the basis that introducing residential development on the
proposal land will increase amenity conflicts and reduce viability of their businesses. These
include Dandy Premix Concrete and Aitkins Transport, represented by Mr Walker at the
hearing.

Council and the proponent submitted there is benefit in the proposal by in increasing the
supply of residential land close to the Lakeside Activity Centre, south of the Princes Highway.

The committee considers the primary issue arising from submissions is whether there is
strategic justification for the proposal. In determining this matter the committee finds the
matters to address are:

- What is the risk of amenity conflicts being created from residential use of the land,
  including noise, odour and traffic?
- Will the loss of employment land create a significant cost to the community?
- Are there benefits of the proposal that outweigh any costs identified?
- Is the proposed residential design acceptable?

The committee then draws together the competing costs and benefits arising from an
analysis of these issues to determine if the proposal is likely to result in net community
benefit, and therefore whether the proposal should proceed, either in its current form or
with any changes that may address possible impacts.

The following chapters of this report discuss the issues identified in context of the planning
provisions affecting the land as outlined below.
1.5 Planning Context

(i) State and Local Policy

The relevant SPPF clauses include:
- Clause 10.04 – Integrated Decision Making
- Clause 11 – Settlement
- Clause 13 – Environmental Risks
- Clause 16 – Housing
- Clause 17 – Economic Development
- Clause 18 – Transport

From a local perspective, the relevant Clauses in the MSS and the LPPF include:
- Clause 21.03 – Settlement and Housing
- Clause 21.04 – Economic Development

(ii) Zones

As detailed in Figure 2, the land is mostly zoned Urban Growth Zone (UGZ1) with the CRPSP affecting the land. Part of the land is zoned Industrial 1.

The UGZ1 was introduced via Amendment C92 to the Cardinia Planning Scheme in 2008. This included zoning a small section of land, (that is now being considered by the committee) from Industrial 1 to UGZ1, but incorporated as ‘peripheral commercial’ in the CRPSP. Amendment C92 also zoned land to the south of the subject land from Business 4 to UGZ1 with a ‘peripheral commercial’ designation. This land had been previously the subject of Amendment C64 (in 2006), zoning the land from Rural and Industrial 1 to Business 4.

Figure 2  Zoning Plan accessed from Planning Maps Online 7 August 2013 and notated by the committee.
(iii) Overlays

The land zoned UGZ1 is affected by the Development Contributions Overlay (DCPO) to implement the CRPSP and its associated development contributions plan. Council advised that this overlay is not affected by the proposal. A separate agreement made under Section 173 of the Planning and Environment Act 1987 is proposed to address development contributions for land currently zoned Industrial 1 that is proposed to be zoned UGZ1.

(iv) Particular Provisions – Clause 52.10

Industrial zones require certain uses to obtain a planning permit if they are within an identified threshold distance of a residential zone or a specified residential use. These thresholds are either listed in the industrial zone, or in Clause 52.10 of the planning scheme. The purpose of Clause 52.10 is to identify uses, that if not appropriately designed and located, may cause offence or unacceptable risk to the neighbourhood. As such, the thresholds are different to the EPA air emission buffers and often greater, addressing more than just the risk of air pollution.

Clause 52.10 is not a stand alone control. It is only triggered if a land use provision refers to the table. In the Industrial 1 Zone, industry does not require a planning permit for use if the following condition is met as follows:

- The land must be at least the following distances from land (not a road) which is in a residential zone, Capital City Zone or Docklands Zone, land used for a hospital or an education centre or land in a Public Acquisition Overlay to be acquired for a hospital or an education centre:
  - The threshold distance, for a purpose listed in the table to Clause 52.10.
  - 30 metres, for a purpose not listed in the table to Clause 52.10.

The UGZ1 in which the site and adjoining residential development sit (both planned and constructed) is not a “residential zone” as defined in the planning scheme and has no “applied zones”. As such the committee is of the view that Clause 52.10 is not currently triggered for any use in the Industrial 1 Zone, from land in the UGZ1 area. The committee considers this may be an unintended consequence of the use of the UGZ1. This technical issue is addressed further in Chapter 7.5.

In addressing the question of strategic justification of the proposal, the committee considers the thresholds of Clause 52.10 remain a useful guide as the preferred separation distances between uses.

(v) State Noise Policies and regulations

State noise policy that affects Pakenham is directed by the Noise from Industry in Regional Victoria (NIRV). In turn this policy relies upon the techniques in the State Environment Protection Policy: Control of Noise from Industry, Commerce and Trade No N-1 (SEPP N-1) to identify and qualify expected noise limits for noise and its impacts on residential land use.

(vi) Industrial residual air emission policies

State Policy in the planning scheme refers to consideration of Recommended Buffer Distances for Industrial Residual Air Emissions (Environment Protection Authority 1990). The EPA advised that this publication has recently been updated by Publication 1518
“Recommended separation distances for industrial residual air emissions” (March 2013). The committee acknowledges that this Publication 1518 has not yet been translated into the SPPF of the planning scheme.

(vii) Cardinia Road Precinct Structure Plan (CRPSP)

Land affected by the proposal is within the CRPSP area. The CRPSP was adopted by Council in September 2008 and formed the basis to Amendment C92 that was reviewed by a Priority Development Panel (PDP) in June 2008. Amendment C92 was introduced into the planning scheme in November 2008.

(viii) Pakenham Homemaker Precinct Urban Design Framework - 2004

This framework is a reference document to clause 21.06 - 1 of the planning scheme and in the CRPSP. Specifically clause 21.06 – 1 of the planning scheme identifies implementing the Pakenham Homemaker Precinct as a key issue. The framework provides urban design and landscape guidelines for the land generally bounded by the Princes Highway, Thewlis Road, Michael Street and Mulcahy Road, including the proposal land.

(ix) Ministerial Direction No 11

Ministerial Direction No 11 requires a planning authority to evaluate how a planning scheme amendment addresses strategic considerations including:

- How the amendment implements the objectives of planning in Victoria.
- How the amendment addresses any environmental effects.
- How the amendment addresses any relevant social and economic effects.
- How the amendment supports or implements the State Planning Policy Framework and any adopted State policy.
- How the amendment supports or implements the Local Planning Policy Framework, and specifically the Municipal Strategic Statement.

(x) Planning Practice Note 46

Planning Practice Note 46, Strategic Assessment Guidelines provides guidance to planning authorities in implementing Ministerial Direction No 11.
2 Amenity impacts and land use needs

2.1 What are the issues?

The EPA and a number of existing businesses east of Michael Street object to the proposal on the basis that encroachment of residential land use, closer to the industrial estate could be the basis for complaints from residents in the proposed residential development, through amenity conflicts with nearby employment uses.

Much of the submission and evidence about addressing amenity impacts related to whether the existing air emissions and noise from existing businesses in the industrial estate could be ameliorated through noise attenuation barriers proposed as part of the accompanying proposal for 115 dwellings.

The committee considers there are two distinct issues:

- Can the proposed development address potential amenity impacts from existing operations?
- Is residential development in this location likely to lead to long term amenity conflict between residential and industrial uses?

2.2 Context, Submissions and Evidence

Clause 13.04 of the SPPF seeks to ensure wherever possible, that there is suitable separation between land uses that reduce amenity and sensitive land uses, both through noise and air emissions. Council’s submission acknowledged that the proposal would reduce the amenity buffer distances to the nearby industrial uses, but regarded the proposed separation as sufficient. The proposal relies on construction of a bund and acoustic attenuation wall along the east and south sides of the subject site, and an acoustic wall part way along the northern boundary. The proponent submitted a Noise Impact Study (April 2011) to Council that had been peer reviewed by Marshall Day Acoustics (MDA for Council, October 2012). These reports concluded that a 3.8m total height of bund and wall would be sufficient to attenuate existing noise emissions.

Council noted that the EPA did not support the proposal, due to the buffer distances being insufficient to provide adequate incident risk margin for air emissions. The EPA’s submission to Amendment C157 (September 2012) recommended that the proponent provide a risk assessment and report on potential air emissions impact.

The proponent then submitted an assessment of the “Potential Constraint on Proposed Residential Development” (GHD, October 2012) to address matters raised by the EPA. The report noted that there are five industries located within the adjacent industrial zoned area: Dandy Premix concrete batching plant, Europa Cheese, Embrey Engineering, Sapphire Spas, and Dollar Sweets that require specified buffer distances in EPA publications. GHD concluded that two of these businesses (Dandy Premix and Sapphire Spas) are located close enough to have potential impact upon the proposed residential development.

EPA Publication 1518 (March 2013) recommends separation distances for industrial air emissions where a concrete batching plant requires a 100m buffer, and a fibreglass manufacturer 250m (when producing greater than 250 tonnes each year). Council noted that GHD’s Assessment report assumed that the Sapphire Spas annual output would be less
than 250 tonnes, and that the 250 metre buffer would not be required. The Sapphire Spas site boundary is 175 metre from the nearest boundary of the subject site. GHD concluded that based upon air dispersion modelling and meteorological data, the directional buffers for both Dandy Pre Mix and Sapphire Spas do not encroach on the proposed development. Council noted that the EPA, in its response to the GHD Assessment report, was critical of adjusting buffers based on meteorology, or due to the quantum of industry production. Embrey Engineering steel fabrication is located approximately 260m from the subject site boundary, and could require a 500 metre buffer under the March 2013 EPA Guidelines. GHD had suggested that due to its small production, Embrey Engineering’s buffer distance might be reduced pro rata to as little as 10 metres.

Council submitted a comparison of the setbacks in metres that is replicated below. The committee has also added in the threshold distances identified in Clause 52.10 of the planning scheme. The committee notes that a transport terminal, such as the Grenda / Cardinia Transit bus depot directly east of the subject site is not addressed by publication 1518 or Clause 52.10.

<table>
<thead>
<tr>
<th>Industry</th>
<th>EPA Guideline 1518 recommendations</th>
<th>Threshold in Clause 52.10 of planning scheme</th>
<th>Physical distance to proposal land boundary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dandy Pre Mix</td>
<td>100</td>
<td>300</td>
<td>120</td>
</tr>
<tr>
<td>Europa Cheese</td>
<td>100</td>
<td>300</td>
<td>330</td>
</tr>
<tr>
<td>Embrey Engineering</td>
<td>500</td>
<td>100 or 5001</td>
<td>260</td>
</tr>
<tr>
<td>Sapphire Spas</td>
<td>250</td>
<td>200</td>
<td>175</td>
</tr>
<tr>
<td>Dollar Sweets</td>
<td>100</td>
<td>variable2</td>
<td>440</td>
</tr>
</tbody>
</table>

*Table 2 Relevant buffer and threshold distances between residential zone and existing industry*  

Council noted that land to the north of the existing industrial area is nominated as being residential within the CRPSP, and is closer to these industries than the subject site (at approximately 120 metres).

Council submitted that the double storey dwellings located near the east of the site may be better relocated closer to the western boundary, to provide greater distance separation from the industrial zone. This was to reduce noise to upper level windows that may not be protected by the noise wall, due to their elevation.

The EPA written submission to the committee (dated 22 July 2013) presented at the hearing by Mr John Frame highlighted that the current guidelines in EPA Publication 1518 required that the following be considered:

- The types of industrial premises that are currently established nearby and which may be permitted to establish in the future.
- Information on industrial processes and production/throughput capacity (where required for buffer assessment).

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1. Structural or sheet metal production has a threshold of 500m. Works producing iron or steel products, up to 1M tonnes per year has a 100m threshold.
2. The production of confectionary is not defined in the table, and therefore is directed by Note 1 to the stable that states the threshold distance is variable, dependent on the processes to be used and the materials to be processed or stored.
• The current standard of air emission control, design and management at these premises and any planned improvements to implement better emission control, design or management measures which may support a reduced buffer.

• Wind regimes, topography and any other potential future activities which may impact on future buffer requirements.

Mr Frame noted that it is unwise to rezone land or permit sensitive land uses within the recommended buffers unless it can be demonstrated that community amenity will not be adversely affected. He highlighted that while the need for a buffer is recognised in the material provided by the proponent, the references to a ‘buffer’ are associated with potential noise impacts rather than potential impacts from industrial air emissions. The EPA written submission states “An earthen bund and acoustic wall around the development will not protect the future residents of the proposed single/double-storey dwellings from adverse amenity impacts due to offensive odours, dust and other air emissions.”

In its July 22 letter, the EPA was critical of GHD’s pro rata approach to decrease buffer separation because of the size of the industry’s output. For example, Mr Frame submitted that applying a Publication 1518 variation to a steel fabrication operation such as Embrey Engineering was “clearly a misuse of the buffer distance adjustment process and should be ignored”. Dr Pollock’s verbal evidence acknowledged that a 10 metre buffer was not the correct measure and considered 500 metres was excessive.

The EPA expressed concern that the “minimum average” background noise levels in the GHD report are higher than would seem to be expected, particularly for Saturday afternoon and in the evenings. The report did not explain why this high background noise level is considered to be representative of the area and the time periods involved. Mr Growcott acknowledged that his Saturday afternoon readings were likely to be incorrect and provided updated modeling at the hearing, based on a revised measurement undertaken on the Saturday before the hearing.

The Industrial Commercial Land Noise emissions were addressed in the Watson Moss Growcott Acoustics (WMG) report using the SEPP N-1 methodology, and no significant noise sources were observed or identified within the industrial estate on the east side of Michael Street.

The noise events identified and measured by the WMG Engineers included concrete mixer trucks, raw materials delivery trucks to Dandy Pre Mix, buses entering and leaving the Grenda Bus depot, deliveries to the Bunnings Warehouse loading dock, and the Bunnings standby generator when tested.

WMG concluded that a 3.8m bund and acoustic wall would be sufficient to attenuate these noise levels. Professional opinions were offered by GHD and SLR Global Environmental Solutions (Graeme Campbell, for Dandy Pre Mix) during the hearing relating to the total height of the bund and wall at various locations along the north, east, and southern boundaries of the subject site. A 4.4m to 4.8m height might be required to shield two storey dwellings on the eastern side of the proposed development, if double glazed windows and other sound attenuation building techniques were not used.

Mr Connor (for the proponent) noted during cross examination several errors in Mr Campbell’s methodology and anomalies in his data interpretation. Mr Campbell acknowledged some of the errors. Mr Connor submitted that the committee should therefore not accept the conclusions reached in Mr Campbell’s evidence.
Portbury Development Company (PDC) submitted “as a responsible land owner, PDC has offered the objectors a number of potential solutions to alleviate their concerns”. A Section 173 Agreement over the land had been proposed stating “that future purchasers accept the land is adjacent to industrial land and therefore there would be no recourse for complaints regarding noise”. No detailed elevation or plan drawings were provided to the committee of the proposed bund and wall. A landscape concept design plan based upon the initial development layout (dated May 2011) was handed-up by Mr Connor during the hearing.

Mr Nichols of Cardinia Transit (Grenda Buses) provided the committee with an explanation of its current operations and planned intensification. This included that buses currently start departing the depot before 5am, and return after 12am. He stated there are currently 70 buses stored on site. A planning permit has been granted to alter the access of the depot to Michael Street. He explained this is to accommodate a potential doubling of buses using the depot over the coming years to accommodate growth in transport needs associated with population growth in the Casey Cardinia area.

2.3 Discussion

(i) Can the proposal address the current amenity conflicts?

The notion of “reverse buffer separation distances” is one currently being considered by the Victorian Government, whereby it could be incumbent upon the proposed new development to provide a satisfactory buffer from the existing conditions. In this proposal, the proponent and Council rely upon the provision of an acoustic barrier wall atop an earthen bund to protect proposed dwellings from the impacts of the existing adjacent industries.

From the evidence presented in relation to noise, it appears that based on current use of the industrial area, the use of a 3.8 metre high wall / bund will enable noise to be mitigated to just meet the maximum noise limits under SEPP- N1 or NIRV, at ground level. This, however, relies on the residential development proposed being enclosed on two and a half of its four boundaries with an acoustic earth mound and wall and potentially acoustic glazing of upper level windows of two storey dwellings. There are design implications to this that the committee further addresses in Chapter 5. The assessments of both noise experts to the hearing are based on noise limits calculated using the underlying zoning\(^3\) of the land and surrounding land. This zoning acknowledges the commercial and industrial uses form part of the expected noise in the area. By comparison, a residential estate with no industrial or commercial interface would be based on a lower zoning co-efficient that would reduce the noise limit considered acceptable. Both assessments therefore assume a compromised residential environment due to the proximity of the industrial and commercial uses, and then determine what is a relative acceptable increase in noise from this already compromised environment.

The proponent submitted that the proposed planning permit for residential development could include a condition that landowners be made aware that they live near an industrial estate with acknowledgement that some reduced amenity occurs in such a location through an agreement placed on title under Section 173 of the Planning and Environment Act 1987. The committee questions the practical implementation of such a condition. The natural

\(^3\) These are zonings identified in the SEPP – N1 noise policy prepared by the EPA. They correlate generally with land use zonings.
justice rights of appeal, objection, and complaint cannot be withdrawn, regardless of such an agreement. This applies equally in this instance to both sides of the zoning interface.

The EPA noted that the bund and wall will have little effect upon odour and dust emissions. The committee would add to this that the risk of noxious gas and fumes in the event of an industrial fire incident or explosion is unknown.

The committee considers the proposal would lead to a compromised residential environment, based on the current uses in the industrial estate. As Mr Frame noted “an earthen bund and acoustic wall around the development will not protect the future residents of the proposed single/double-storey dwellings from adverse amenity impacts due to offensive odours, dust and other air emissions”.

(ii) Will residential development in this location lead to long term amenity conflicts?

The committee considers the more strategic and significant issue relating to the proposal before it is whether it is orderly and proper planning to introduce residential land use adjacent to industrial land use at all. In this regard the committee adopts a similar, more cautious approach as did the Amendment C54 Panel to the Ballarat Planning Scheme (January 2003). This is an approach that “seeks to protect existing industrial development and provide for industries to grow and maximize the reasonable development potential for their sites.” The committee similarly considers that caution should be taken where residential development may constrain the future use and development of existing industrial land. This is consistent with other panel findings such as those of the Amendment C62 Panel to the Latrobe Planning Scheme (July 2009), where the Panel commented that:

A strategy of ad hoc rezonings of parcels within the site as they become available is not sound planning in our view and does not meet the test of the state policy clause requiring industry to be protected from the impacts of unplanned encroachment by sensitive uses. Such a course is simply setting up future conflicts for new residents who could have expected to be able to move to a new location and experience the quiet enjoyment of their land free from the impacts of adjacent or nearby industrial development. It cannot be described as good planning practice, and the fact that it is premeditated does not then allow it to meet the test of being a planned strategy as envisaged by the clause (page 40).

Similarly, the Amendment C61 Panel to the Baw Baw Planning Scheme (May 2009) concluded that:

A more strategic approach to the siting of IN1 zonings away from future residential growth areas would produce better planning outcomes in the future (page 39).

Mr Frame, on behalf of the EPA commented that introducing residential land use as proposed placed more industrial land within designated air emission buffer distances of this land, notably a 100 metre buffer that is required to some businesses in the industrial area, such as Dandy Premix. Mr Connor and Council however contended that there is already residential zoned land north of Mulcahy Street that is 120 metres from most of the industrial estate.

As was commented by both Mr Connor and Mr Walker, people living next to activity centres or industrial areas should expect a lesser level of amenity than in a purely residential area. This is a basic proposition that is upheld regularly in reviews brought to the Victorian Civil
and Administrative Tribunal. As both Mr Walker and Mr Connor acknowledged, this does not stop all complaints from residents about amenity impacts. The committee therefore agrees with the EPA’s submission and concerns that the key issue is to avoid the conflicts in the first place through appropriate separation and minimising direct interface.

As is illustrated below in Figure 3 the proposal being considered extensively increases the area of direct interface between residential use and industrial use. Currently the residential area east of Mulcahy Road is separated from industrial use by the ‘peripheral commercial’ area that in turn is separated with a 33 metre road reserve. The O’Brien Parade edge that has been constructed consistent with the CRPSP provisions appears to have been well planned to minimise conflict through a wide road reserve and interface to ‘peripheral commercial’. The length of existing direct interface is approximately 190 metres to O’Brien Parade and 125 metres to Mulcahy Road, a total of 315 metres.

![Figure 3](image-url) Extent of direct interface between residential and employment use

In the proposal before the committee the extent of direct interface between residential and industrial use includes approximately 100 metres to Mulcahy Road, 266 metres to Michael Street, 220 metres to the existing peripheral commercial to south, and 60 metre interface to the home maker centre west of O’Brien Parade. This creates 546 metres of direct interface that somewhat encircles the proposed residential use. This is a much greater extent of interface that needs to be managed where the risk of amenity conflict (and its associated cost to all parties through addressing complaints) correspondingly increases.

Rather than a planned interface as currently provided to O’Brien Parade, the amelioration of amenity impacts relies on a lesser distance and use of a high wall and bund that will need to be maintained to a suitable standards. This engineered solution brings with it implicit issues of maintenance and risk of amenity associated with failings in the design. The committee notes that whilst there is an existing edge to be addressed between residential and industrial use to the north of Mulcahy Road, both the residential and industrial land is currently vacant. There is therefore a greater scope to design both the industrial and residential edge to minimise conflict.
In addition to the noise, odour and dust issues raised in submissions, the committee comments that there are also noise and amenity impacts from traffic in an industrial area. Both noise experts, and the EPA acknowledged that the NIRV and SEPP N-1 do not directly address traffic noise. The proposal relies on industrial traffic being truncated at Mulcahy Road and the noise bund addressing noise from the bus depot in both its current and likely expanded form.

The committee notes that Grenda Bus depot has planning permission to intensify its operation with a new crossover to Michael Street. This is to enable a larger number of buses to be stored on site, accommodating an expected increase in transport demands from the population growth in the growth corridor. This will lead to additional traffic noise and general disturbance (such as light spill, headlight glare and bus exhaust fumes) in Michael Street.

2.4 Findings

The committee finds there is significant risk that increased amenity impacts will result between employment uses and the proposed residential use. This is through air emissions and general disturbance, as well as increased noise. The planning scheme directs that it is undesirable to introduce greater potential for amenity conflict through noise, air emissions, light spill and general disruption associated with employment uses interfacing directly to residential use. This raises significant concern about progressing this proposal. To do so, there needs to be a significant benefit to the community of Pakenham that outweighs this likelihood of additional conflict, and its associated impacts, both directly as amenity imposts, and indirectly through the cost of addressing the likely increase in complaints.
3 Loss of Employment Land

3.1 What is the issue?

Submissions opposing Amendment C157 raised concern that existing and future businesses operating within the industrial estate to the east of Michael Street may be restricted in current operations and future expansion through encroachment of residential land use within buffer distances identified in Clause 52.10 of the planning scheme.

On the other hand Council and the proponent submit the land is better developed for residential use given its location and the lack of demand for employment land. They contended there is economic and social benefit in pursing the proposal, by creating 115 dwellings close to an activity centre, and developing a currently dormant parcel of land.

3.2 Context, Submission and Evidence

The evidence of Mr Hooper on behalf of the proponent was that the proposal was consistent and supports the relevant objectives of the SPPF by providing a residential development that is well located close to commercial and community facilities and services and is well serviced by public transport. He made this assessment citing reference to clauses 11, 15 and 16 of the SPPF. He made no specific assessment of how the proposal addressed policy at clause 13, 17 or 18 of this framework. Through cross examination at the hearing, Mr Hooper stated he had considered these competing policy provisions and in his assessment the loss of industrial land would not have a detrimental impact on the provision of employment opportunities for the wider community. This was because substantial tracts of land have been set aside elsewhere in the growth corridor for this purpose. His evidence was that the proposal “will not directly affect the surrounding area” and “can provide the necessary interface to the industrial land to the east”.

Council’s submission to the committee was that since the approval of the CRPSP in November 2008, the Cardinia Road Employment Precinct Structure Plan (CREPSP) has been prepared and approved (November 2010). This CREPSP provides for 353 Hectares of employment land (with 167 hectare of this being identified for industrial purposes). Ms Ransom, on behalf of Council noted that the Pakenham Lifestyle Centre to the south west of the proposal land has peripheral commercial development under development with a floor area of nearly 35,000 sqm. This is 10,000 sqm more than the indicative 25,000 sqm of floor area identified in the CRPSP (page 45 of the CRPSP). Council’s submission was that given the floor area under construction already exceeds that expected to occur in the CRPSP for this area as well as the 167 hectares of land identified for industrial uses in the South East Business Park, there is a high level of available land for both peripheral commercial and industrial uses within Cardinia Shire.

Upon questioning by the committee, Council officers stated that no formal review of peripheral commercial or industrial land use needs had occurred. Nor has Council considered whether any other vacant land identified as peripheral commercial or industrial in the CRPSP should be rezoned for other purposes.

The EPA’s submission highlighted that clause 13.04 – 2 of the Cardinia Planning Scheme has an objective to ensure wherever possible that there is suitable separation between land uses that reduce amenity and sensitive land uses. The EPA submitted that if any of the dwellings
proposed are located closer than the recommended buffer distances for the industrial uses to the east, they may impact on the viability of these existing industrial operations. Substantial improvement works (where feasible) or relocation may be required at these premises to ensure that residents are protected from the industrial residual air emissions, such as offensive odours and/or dust. The potential for industrial operations to establish and/or expand within the industrial area may also be impacted.

Mr Walker, on behalf of Dandy Premix and other businesses, similarly raised concern that the proposal will place greater cost on existing industry users to provide amenity protection measures, as new or expanded businesses locate within the buffer distances set out in the planning scheme.

Mr Walker submitted the proposal was contrary to policy at both clause 13 and 17 of the planning scheme and indeed local policy at clause 21.04 to facilitate commercial and industrial activity in this location.

### 3.3 Discussion

On the one hand, State policy at clause 11 and 16 of the Cardinia Planning Scheme encourages residential development close to activity centres, public transport and other community services. This site is close to such facilities, as is identified in the existing CRPSP. However, clause 17 of the SPFF has direction to:

- **Protect and carefully plan existing industrial areas to, where possible, facilitate further industrial development.**
- **Provide an adequate supply of industrial land in appropriate locations including sufficient stocks of large sites for strategic investment.**
- **Protect industrial activity in industrial zones from the encroachment of unplanned commercial, residential and other sensitive uses which would adversely affect industry viability.**

Clause 11.01 directs that activity centre planning should be based on strategic planning with an objective to create a range of land uses that is highly accessible to the community. Clause 11 provides direction that activity centre planning should “improve the social, economic and environmental performance and amenity of the centre”.

Clause 11.02 requires planning to provide a sufficient supply of land for a range of uses, with direction to “monitor development trends and land supply and demand for housing and industry”, and at clause 11.02 – 2 to “provide for significant amounts of local employment opportunities”.

The committee considers that the provisions of Clause 17 are emphatic and should not be dismissed lightly. As such it considers that if employment land is to be removed, it should be based on clear evidence that there is strategic rationale to do so. The evidence of Mr Hooper and submissions of Council were simply that the preparation of the CREPSP has led to an over supply of employment land in the Pakenham area. No evidence that any monitoring or strategic review has occurred to rationalise why the CRPSP, which was only adopted by Council five years ago, and two years before the CREPSP, should now exclude this land from employment use.

The existing CRPSP appears to be based on sound strategic planning. This was not disputed by any party to the hearing. The CRPSP identifies that housing should be intensified within 400 metres of an activity centre and identifies this land as being within this distance, but
then designates the land for peripheral commercial as part of the activity centre and homemaker centre, rather than residential. This appears to be a planned direction of the CRPSP, and the committee considers a logical one given the location of the existing industrial area and the existing direction of expansion for the homemaker centre.

The committee has reviewed the report of the Priority Development Panel (PDP) that considered adoption of the CRPSP in 2008. This report, as the committee put to Mr Hooper, acknowledged that “it may be appropriate to review floor space areas for the Pakenham Homemaker Precinct, in particular, once the South Eastern Employment Precinct structure plan is completed” (page 22 – PDP report to CRPSP – Amendment C92, June 2008).

The committee has no evidence before it that there is an oversupply that warrants rezoning of this land for residential purposes. Mr Hooper’s evidence was that he was not aware of any formal review, and that simply it was his view that there was an obvious oversupply of employment land in the area.

The PDP for Amendment C92 commented that whilst a review of land supply might be warranted, it stated “that it is important not to unduly restrict the long term capacity of the centres to grow, and the design of the centres should ‘future proof’ opportunities for intensification and growth of retail and other commercial uses for the longer term at the end or after the life of the PSP” (page 22 – PDP report for CRPSP – Amendment C92, June 2008).

The committee considers that even if there is a current oversupply of employment land, removing any such land needs to consider the long-term demand and the long-term orderly planning that underpins the location of the employment land. Neither Council nor Mr Hooper were able to explain why this section of land, and only this section of land, is proposed to be removed from the supply of employment land north of the Princes Highway, over other land to the west or north. These other areas of land designated as peripheral commercial and industrial in the CRPSP are not proposed to be removed. However, these appear to have fewer direct interfaces to industrial zoned land and therefore may cause less risk of amenity conflict if designated for residential use. Council advised there was no proposal to identify these parcels for residential use, rather than employment.

Clause 21.04 seeks to encourage economic development and specifically at clause 21.04 – 3 has direction to:

Facilitate the future establishment of associated commercial activities such as bulky goods retailing within the Pakenham Homemaker Precinct and facilitate its effective integration within the Lakeside activity centre.

The committee understands there is no proposal to remove this policy statement, or the references to the Pakenham Homemaker Precinct Urban Design Framework, 2004 that identifies this land as part of the homemaker centre. The committee understands that the LPPF was recently reviewed through Amendment C124 in 2012.

Council’s submission was that the South East Growth Corridor Plan estimates that between 83,000 – 103,000 dwellings will be provided to accommodate a population of 230,000 – 291,000. This population would depend upon 86,000 to 110,000 jobs, and currently approximately 60% of employment for residents is located outside the Cardinia municipal boundary. This raises further consideration in the context of net community benefit, when residents must commute to places of employment, when job opportunities might better be created within the existing urban area of Pakenham.
The committee considers any review of employment land in this area needs to carefully consider not just the short term demand and supply of employment land, but the social impacts and broader economic impacts of providing residential land use in this location. In this regard, the committee considers there remains a potential significant cost to the community in the longer term from the loss of available employment land in an accessible location, without strategic consideration to this loss in either its size and location. This relates to both the loss of the 5.89 hectares of land for employment purposes and the viability of the industrial land to the east as a result of residential encroachment.

Mr Hooper’s evidence was that he was not particularly concerned that the residential use would encroach into the EPA designated buffer distances as he was comforted by the fact that the existing UGZ1 allowed for a dwelling to be established ‘as of right’ in the ‘peripheral commercial’ area. He acknowledged more than one dwelling would require a planning permit and would not be consistent with the incorporated plan and therefore unlikely to be approved. His submission was, however, that as one dwelling was allowable in the zone, the EPA buffer distances were already compromised.

The committee considers this a somewhat specious argument to the strategic issues about avoiding land use conflict and in any event not particularly relevant to a discussion of strategic justification of replacing the designation of the CRPSP from a clearly non residential to residential use of a precinct.

Mr Hooper’s opinion was that employment opportunities in the Michael Street industrial area might not be as important once the Cardinia Road Employment Precinct was established. The committee holds a different view. The CREPSP and South Eastern Business Park are several kilometres from this site, on the southern side of the Princes Freeway, and a significant commute from the Lakeside activity centre and its residential catchment. The committee considers the potential restriction on the existing Michael Street industrial estate, with potential loss of further small industrial factories, warehouses, and commercial office space is an important consideration with respect to net community benefit.

Figure 4 below illustrates that the ‘core’ of the industrial area, east of Michael Street will be reduced through the proposal.

The introduction of residential use impacts future use and expansion of existing employment uses directly east of Michael Street. This includes any expansion of Dandy Premix, that will sit close to 100 metres from the edge of the proposed residential area, and potential expansion of Sapphire Spas that sits within the 200 metres planning scheme threshold to residential land. Expansion of uses within the thresholds prescribed in clause 52.10 would not require planning permits, based on the committee’s reading of UGZ1 and Industrial 1 zone provisions, but would mean an industry would encroach on the recommended EPA buffer distances and therefore may be restricted in current or future operation. Other uses, such as an expansion of the bus depot directly east of Michael Street are not defined as industry and already require a planning permit for use. Expansion or intensification of such a use, that Mr Nichols confirmed through a table of bus departures and arrivals commences operation before 5 am and concludes after midnight, would need to address the noise and general disturbance that occurs with this use on the adjoining residential area.
Addressing any amenity complaints that arise from housing adjoining the employment area will fall upon the employment use, as the source of potentially offending emissions. The committee accepts that there is real risk that the likelihood of complaint will arise with the proposal and that the cost of addressing this complaint may result in significant cost to businesses through site amelioration or moving of businesses.

### 3.4 Findings

The committee finds the proposal will result in the loss of 5.89 hectares of employment land that has not been substantiated through a strategic plan. The committee further finds there is a real and significant risk that the use of the subject land for housing will reduce the viability of the western end of the adjoining industrial estate.

The committee is not satisfied that the strategic directions of clause 17 of the planning scheme are met.

The committee notes that Clause 52.10 may not currently apply to the proposed residential use of the land as the UGZ1 is not a ‘residential zone’. This leaves the proposed residential use exposed to more intensive industrial uses that will be able to establish ‘as of right’ in the industrial area within threshold distances of Clause 52.10 to the subject site applying.
4 What are the benefits of the proposal?

4.1 What is the issue?

The submissions from Council and the proponent were that the proposal will bring economic and social benefits to the community by:

- Increasing housing within a 400 metre walking distance to the Lakeside activity centre:
  and
- Making efficient use of a currently vacant parcel of land, that if not rezoned may remain vacant for many years and therefore be a visual blight on the area.

In order to test if net community benefit can be derived from the proposal the committee considers it important to examine what this benefit might be, so as to balance this against its findings about the likely costs of the proposal to amenity and economic development.

4.2 Context, Submission and Evidence

There was no evidence or submission put to the committee that there is any significant shortfall of residential land supply in the area, other than comment by Mr Hooper and Council that this area is within 400 metres walking distance of an activity centre and therefore a location where residential use is encouraged, consistent with Clause 16 of the SPPF.

Mr Connor submitted there was benefit in seeing the land developed for residential purposes so as to see a currently vacant and underutilised parcel of land developed. He noted the main cost from this land remaining vacant is the fact that it is a cost to the current landowner. He stated this land “was burning a hole in his (the developer’s) pocket”.

4.3 Discussion

The committee accepts that providing residential use close to an activity centre provides a benefit to the broader planning of the area. The question is whether this benefit outweighs the costs of the proposal identified by the committee. With this, the committee notes that the CRPSP identifies that the proposal land was within 400 metres of the activity centre, but then directed its use for employment rather than residential use.

The CRPSP already provides for a proposed 9838 dwellings. The proposal before the committee will increase this supply to 9953, an increase of 1.1%. The committee considers this additional residential supply is very minor in scope of the CRPSP, and is even smaller in the scope of the overall Cardinia Growth Corridor.

There is some benefit in seeing a vacant parcel of land being developed, but the committee considers this benefit minor, and may indeed cause long-term costs if developed inappropriately. In growth areas many parcels of land remain vacant, and indeed are expected to remain vacant until such time that there is demand for appropriate development. The committee notes that land north of Mulcahy Road remains vacant, although it is zoned for use by both industrial and residential purposes. Likewise land west of the homemaker centre remains vacant. The committee considers this a normal consequence of growth area development and does not see any significant burden on the community of Pakenham that these remain vacant for some time. The committee considers
the burden is an individual financial cost to the land developer and not an economic effect of significant concern to the community as a whole.

The committee considers that to accommodate residential use on this land, simply because there is no current demand for commercial use, is short sighted. Having said this, committee notes that the PDP, in 2008 acknowledged (at page 21 and 22) that there may be a need to review the provision of employment land after the CREPSP and South East Business Park plans are completed. No such formal review has occurred.

If there is an oversupply of commercial and industrial land, the committee considers this needs to be strategically considered through a more comprehensive review of employment land in the corridor.

4.4 Findings

The committee finds the potential benefit to the community from any increase in residential land supply close to an activity centre is minor.

The committee finds any benefit in transforming currently ‘undeveloped’ land principally to see the land built upon is short sighted and not a significant benefit to the community of Pakenham.
5 Residential design implications

5.1 What are the issues?

Nearby industries opposed to the proposal submitted that the need to ameliorate the proposed residential use through a bund and wall system would lead to a poor design response as:

- The residential land use relied on a bund wall or noise wall on two and half boundaries of the site and leads to poor circulation.
- O’Brien Parade, which has been constructed with a dual carriageway will be underutilised.

Conversely Mr Connor argued that one of the benefits of this proposal is an improved streetscape and urban outcome.

The committee identifies the key question is whether the use of the subject land for residential use aids or hinders the broader design objectives for connected residential communities as sought by Precinct Structure Plan Guidelines.

5.2 Background, Submission and Evidence

The subject site falls within Cell 2 in CRPSP. In Cell 2 the CRPSP outlines a land use budget that provides for a total net developable residential area of 81.6 hectares. The plan defines an area of medium density residential based on a 400 metres radius from neighbourhood activity centre on Lakeside Boulevard. This 400 metre radius includes the subject site. The land use budget however excludes the subject site, along with other employment land from the calculations of net developable residential area.

Mr Hooper explained at the hearing that the proposal was presented as a medium density housing development rather than subdivision of land into residential lots to enable narrower roads and a higher dwelling yield. He acknowledged that all land within the development would be privately owned and managed either as individual lots or common property.

The 2004 Pakenham Homemaker Precinct Urban Design Framework (UDF) that applies to the site (but is based on a commercial use of the land) proposed a pedestrian link along the southern boundary of the subject site. The existing CRPSP Draft UDF for the Lakeside Boulevard/Princes Highway Activity Centre (page 52 – Figure 17 of the existing CRPSP) likewise identifies a wide pedestrian link across the south of the site, adjoining the Bunnings Warehouse and Officeworks sites. This appears to be the width of a road reserve and is identified as “pedestrian link”. The proposal includes a modification to this diagram to designate the land as residential but retains the pedestrian link in the same format as currently exists. The revised plan also identifies land at the north west corner of the subject land as “medium density housing” (refer Figure 5 below, exhibited change to CRPSP as part of Amendment C157). The changes retain the proposed closure of Mulcahy Road at the end of the existing industrial land, even though the land south of Mulcahy Road will become residential. It retains a black dashed line around the area (including most of the subject land) as the area affected by the 2004 Pakenham Homemaker Precinct UDF with a notation stating “Refer to Pakenham Homemaker Precinct Urban Design Framework 2004 for detailed design controls for development within this precinct.”
The proposal before the committee no longer includes the more intensive housing at the north-west corner of the site and provides a three metre wide pedestrian link along the southern boundary. The proposal does not include any subdivision of land to make this a public link.

The housing directive of Section 3.2 of the CRPSP directs that housing within 400 metres of the activity centre should achieve a density of 20 dwellings per hectare. The proposal for 115 dwellings on 5.89 hectares is just under this criterion at 19.5 dwellings per hectare.

The Pakenham Homemaker Precinct UDF provided for a pedestrian and vehicle connection between the Bunnings Warehouse and Office works car park and the subject land with connecting car park. This car park has been constructed to provide a link from the Office works land to the subject land to the north.

5.3 Discussion

The location of the site and the need to address amenity impacts means the proposed residential design before the committee includes a 3.8m high bund and acoustic wall treatment to the south and east boundaries, and a 3.8m high acoustic wall for the eastern half of the northern boundary. This in effect encloses the site on three sides. The committee is concerned that this response does not meet objectives of Clause 15.01 of the planning scheme to design spaces to be safe and enhance the visual and social experience of the user.
With the need to protect houses from the amenity impacts of the employment uses, it is not possible to provide an active frontage, such as what has been designed between the residential and existing commercial interface at O’Brien Parade. Houses on the western side of this road are well set back from adjoining commercial areas through use of a wide road reserve and service road, or use of topography as occurs to the south between the residential area and homemaker centre under construction south of Havana Parade. In this proposal, the pedestrian link becomes a three metre wide pedestrian path and landscaping with the Bunnings Warehouse and Officeworks buildings directly to the southern boundary and the bund wall to the north.

The road network proposed relies solely on O’Brien Parade with an emergency access to Mulcahy Road, east of the proposed road closure. The committee is unclear why this road closure needs to be retained where it was proposed in the CRPSP, if the land to the south is to be residential. Council and the proponent submitted that this closure point was simply retained in situ from the existing CRPSP.

In his opening submission, Mr Connor stated the “attractive” earth bund provides the orderly creation of a separation between land uses. However, the committee is concerned about the effect of bund on the community. Mr Walker argued that the acoustic treatment is a very poor urban design outcome and will have a visual impact, present an inactive frontage to Michael Street and act as a barrier to pedestrian and bicycle movement.

Overall the committee is concerned that the need to protect future residents of the proposal from amenity impacts of the adjoining commercial and industrial areas leads to an overly isolated and disconnected residential community. It restricts pedestrian connection previously proposed through the site both in a north-south and east-west direction. The committee considers the proposed east west connection is insufficiently wide to make it safe, and in any event is included in common property and therefore not to be publically owned and not necessarily accessible to the public.

The maintenance of the bund and wall is also important, as it will be visually dominant as well as being the key amenity protection device from employment uses. Regular maintenance of the bund and wall would need to occur so that it achieves its purpose and also does not become a visual blight through vandalism (such as graffiti and damage).

(i) Traffic

The Traffix Group prepared a Traffic Report for the proponent dated April 2011, based upon the development layout plan and mix of 149 dwellings exhibited for the abandoned amendment. This report was revised in February 2012, but continued to base assessment upon 149, rather than 115 dwellings considered by the committee. The traffic engineering conclusions generally found that the traffic generated by the proposed development and its adjacent land uses would have negligible impact on the surrounding road network.

Mr Hooper acknowledged that an application was for dwellings (and therefore assessed under Clause 55 of the planning scheme) rather than subdivision (assessed under Clause 56) so that narrower road reserves and a higher dwelling yield could be achieved. This is because the requirements for the standard of road construction as access ways held in common ownership, rather than transferred to Council as public roads. The committee believes that the proposed development of 115 dwellings is likely to generate a volume of internal traffic that includes cars and trucks that is at the upper extent of what is envisaged.
under Clause 55, with a relatively large extent of road, pedestrian path and bund wall all needing to be managed by an owners corporation.

Mr Connor submitted there are advantages of vesting the roads in an owners corporation compared with dedicating roads to Council. He suggested that with even a modest owners corporation fee, a substantial sinking fund could be established in a relatively short time frame to manage maintenance of roads and infrastructure within the common property. He acknowledged that a subdivision of this size would need to contemplate the life of its assets and their useful life expectancy. His experience is that appropriate sinking funds can be established to cover this, and that there are mainstream models used for developments of this sort. He argued this diverts the burden from the public to the owners corporation as is therefore an attractive solution.

The committee accepts that an owners corporation could provide for ongoing maintenance of a bund and wall. The committee remains concerned that the bund and wall is the key to protection from amenity impacts to manage the interface between the proposed housing and employment uses. Therefore this amenity protection device that benefits both the residents and the industry will rely on maintenance by the owners corporation rather than a more transparent body such as Council where the interests of the community as a whole can be addressed.

5.4 Findings

The committee finds the proposed design illustrates the problems with using this site for housing. The extent of buffers required, limited road and pedestrian access all lead to an enclosed residential use that has little connection with its surrounding neighbourhood. Overall the committee finds the need to protect houses from amenity impacts leads to an isolated and poor design outcome.
6 Conclusions and Recommendations

Clause 10.04 of the Cardinia Planning directs that planning authorities should endeavour to integrate the range of policies in the planning scheme, relevant to the issues to be determined, and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. The scheme directs that relevant policies must be taken into account when preparing amendments to the planning scheme. Assessment of policy and the affects of the proposal must be undertaken in context of the objectives set out in Section 4 of the Planning and Environment Act 1987 that are:

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

(b) To provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity.

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

(d) To conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.

(e) To protect public utilities and other facilities for the benefit of the community.

(f) To facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e).

(g) To balance the present and future interests of all Victorians.

6.1 Assessing Net Community Benefit

The committee considers the key test in identifying strategic justification is to determine whether competing policy that may affect the proposal weighs in support of the proposal. In support of achieving net community benefit, Mr Connor submitted that the benefits were:

- The implementation of numerous State and Local policies concerning consolidation and settlement;
- The provision of dwellings, close to facilities, activity centres and employment nodes;
- The orderly creation of a separation between land uses in the form of an attractive earth bund;
- An improved streetscape and urban outcome for this area incorporating a landscape master plan; and
- The productive use and development of this large site.

He did not identify any costs as a result of the proposal. Mr Hooper’s evidence was that empirical analysis that arrived at a net number greater than “one” would deem the proposal satisfactory from a community benefit viewpoint. He did not elaborate further on this statement.
The EPA however, submitted that potential costs would arise through increased risk of amenity conflict between residential zoned land and industrial land in the existing industrial area, east of Michael Street through noise, odour and dust.

Mr Walker on behalf of industrial landowners who oppose the proposal, likewise expressed concern that there is a risk that the proposal has adverse costs to the community through amenity and economic impacts. This was both to future residents through noise, odour and other air emissions and to the productive use of the existing industrial land through encroachment of residential land into existing buffer distances provided through the existing non residential zoning of the land.

Further Mr Walker submitted there was no substantive benefit to outweigh these costs, noting that there is no evidence that there is an over supply of industrial or peripheral commercial land, there is no evidence that there is a significant lack of residential land that justifies creating a potential conflict between land uses.

State and local policy, along with the objectives for planning in Victoria lead the committee to conclude that a proposal to remove employment land in favour of residential use should not be accepted unless there is clear strategic rationale for such a change. Based on the material before it, the committee cannot establish that a clear rationale for the loss of the employment land exists and therefore that net community benefit is achieved.

In summary this is because:

- Whilst existing noise from industry may be addressed through use of a proposed bund and wall system along part of the perimeter of the residential development proposed, it will not address the impact from air emissions. As such it is likely to lead to a compromised residential environment for the area proposed to be used for housing.
- There is significant risk that the expansion of existing businesses and establishment of new businesses in the western end of the existing industrial estate and the directly adjoining peripheral commercial area to the south will be hindered through encroachment of residential use.
- There is no clear rationale for the loss of the employment land or that there is a substantive benefit to the community through residential use of this land. The benefits that can be identified are considered relatively minor and the committee considers they do not outweigh the likely amenity and economic costs.
- The design proposed illustrates the problems with using this site for housing. The extent of buffers required, limited road and pedestrian access lead to an enclosed residential estate that has little connection with its surrounding neighbourhood.

The committee finds there is not strategic justification to proceed with the proposal either as exhibited in Amendment C157, or a revised form.

6.2 Recommendations

The committee recommends that an amendment to the Cardinia Planning Scheme should not be progressed, either in the form proposed in Amendment C157 and its concurrent planning permit, or in the modified planning permit form presented to the committee.

If the above primary recommendation is not accepted, the committee recommends that prior to progressing the proposal further a comprehensive review of the CRPSP should occur. This review should include:
• A review of employment needs in the CRPSP area, based on monitoring and review of current employment land take up and likely employment needs, and long term requirements for local employment.
• A review of the CRPSP to determine the amount and location of employment land both in the CRPSP and the adjoining industrial estate, based on the needs analysis.
• A review of the design of the CRPSP to determine how to facilitate long term employment use that is accessible to the community, yet sufficiently separated from residential land use.
7 Other issues

The committee’s brief is to address any other matters arising from the hearing. In the event that the committee’s primary recommendation in Chapter 6 is not accepted, a review of amendment documentation issues and proposed permit conditions is provided. All findings in this chapter are provided without prejudice to the committee’s primary recommendation that the proposal should not be progressed.

7.1 Permit assessment

(i) Context, Submissions and Evidence

The proposed planning permit is for 115 dwellings, using a template of 12 standard dwellings. This includes double storey terrace style housing to face O’Brien Parade with six metre deep frontages to the road reserve that will be used as the main secluded open space area to these dwellings.

Two road entries are proposed to O’Brien Parade, one near the north end of the site will be a divided entry road that is 15 metres wide with two four metre wide entry and exit road pavements. The southern entry access would be left in and left out only, due to the divided road of O’Brien Parade, with a six metre wide road pavement.

Internally the design relies on a set of generally east to west roads traversing the site with north and south facing dwellings. An internal perimeter road circles the north, east and south edges of the residential development, with a bund wall located to the east and south. A 1600m² park is located at the south east of corner of the site that also includes a retention basin (excluded from the communal open space area calculation).

An assessment of the design against Clause 55 prior to the issue of a permit was not provided as part of Council’s consideration of the permit assessment. Upon a request of the committee, one was provided by Mr Hooper on the second day of the hearing. Likewise dwelling designs for dwelling plan formats ME1 and ME2 were tabled on day two, upon request from the committee. These templates did not form part of the exhibited amendment C157, and replaced more intensive two and three storey townhouses first proposed but removed in the revised plan accepted by Council in February 2013.

Council submitted it was generally satisfied with the proposed design of dwellings and internal roads, but questioned the provision of secluded open space in the front yards of dwellings facing O’Brien Parade. Council’s submission stated that the density was appropriate and that “an increase in density would not be supported”.

Mr Hooper noted that this design is at the “low end” of medium density housing and therefore the measureable requirements of Clause 55 are able to be easily met.

Mr Walker, whilst generally opposed to the development of the site for residential use all together, argued that building a new internal road only fronted by dwellings on one side on the western side of the acoustic bund and fence is an inefficient use of land and infrastructure.
(ii) Discussion

The committee accepts the dwelling proposal is broadly consistent with the provisions of Clause 55 of the planning scheme, except that all dwellings comprise three or four bedrooms, thereby not diversifying housing stock as sought by ResCode in Clause 55, along with Clause 16 and Clause 21.03 of the Cardinia Planning Scheme. Specific design issues of the proposal identified by the committee are:

- The provision of secluded open space to dwellings fronting O’Brien Parade.
- The provision of a walkway along the southern boundary of the site.
- The lack of information about the bund and wall arrangement.
- The design of the communal open space.
- The ‘emergency’ access to Mulcahy Road.
- The need to address noise attenuation in dwelling design.

Design of dwellings facing O’Brien Parade

Ms Ransom submitted that Council was supportive of the two storey dwellings along O’Brien Parade but would prefer to see the front setback to O’Brien Parade reduced to provide better surveillance to the street and increase visibility to the front entry. She stated secluded open space could then be provided to the rear of each dwelling.

Mr Hooper contended that the open space to the front of the dwellings was acceptable given the arterial road interface. The schematic plans that formed part of the exhibited C157 material that were relied upon, show a high wall to the boundary of these front yards to enclose the secluded open space. Mr Hooper’s evidence was that the front setbacks could be reduced to four metres, but this would still leave an insufficient area in the rear yards for usable open space.

The committee agrees with Council that the use of secluded open space in the front yards for all 25 dwellings facing O’Brien Parade is not a good design outcome. It means use of extensive length of high front fencing to provide privacy to the secluded open space areas and the main internal living rooms.

The committee considers however, that reducing the front setbacks and locating the open space to the rear of the site does not necessarily achieve a better outcome. To provide a design that respects the character of the residential area emerging on the west of O’Brien Parade a more open front yard appearance should be provided. The committee is mindful that much of this development does not have any active frontage to the street. To then reduce any active frontage to O’Brien Parade through extensive use of high front walls will further reduce any sense of interaction with the street.

To achieve the secluded open space standard of Clause 55 at ground level, the dwelling setback to O’Brien Parade would need to be reduced to a four metre frontage and the internal floor area reduced by one metre, in order to provide a 3 metres x 8 metres area of open space to the rear of the dwelling between the house and garage. This in itself presents its own design problems with dwellings then very close to the street, and the rear secluded open space, forming a thin wedge between garages and the dwellings, with garages no longer connected to the dwellings.

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4 Secluded open space should have a minimum dimension of 3 metres and a minimum area of 25 sqm. A 3m x 8m area would still not meet the minimum requirement.
The committee therefore considers that dwellings facing O’Brien Parade need to be reviewed if a permit is to be granted. This could include use of reverse living to accommodate living spaces at the upper level, with use of balconies for secluded open space, then leaving the front ground floor area open to the street.

**Southern walkway**

The design includes a 3 metre wide area along the south boundary with a 1.5 metre wide pedestrian path depicted along this southern boundary, and a connection between the residential development between the proposal and the existing Officeworks car park to the south.

Mr Hooper explained that all open space areas of the development would be held in common ownership. The committee is unclear whether the pedestrian access is therefore to be used only by residents or the general public. Regardless of the ownership arrangements, the committee is concerned that a 1.5 metre wide path in a three metre reserve, that has for the most part, high concrete wall to the south⁵ and a 3.8 metres high bund and wall arrangement to the north is not a safe or amenable pedestrian space. The committee supports the pedestrian link as sought in the CRPSP and sees no need to amend this notation. However, based on the specific, narrow path proposed in the permit plans, the committee finds the proposed pedestrian path unacceptable.

The committee finds that if a permit is granted, this path should be deleted from the plans or substantially widened, and made available for public use.

**Bund and wall details**

The committee was provided with a landscape plan that was linked to the exhibited amendment proposal. This does not include details of the bund and wall to a level that enables its design to be adequately addressed. The wall has gaps where pedestrian access is proposed, although Mr Hooper’s evidence was that such access points would be for residents only and potentially gated as the development was to include only common property not general public access.

The committee notes that there are some inconsistencies in the location of the breaks in the southern and eastern bunds for the purposes of pedestrian access and other documents tabled. The landscape master plan shows a break in the southern bund, but the plan before the committee shows a break in the southern and eastern bund.

The committee finds that if a permit is granted further detail of how the bund and wall will work is required. This includes consideration to maintenance, protection from matters such as graffiti and vandalism, as well as how the area is to be landscaped. This should clarify what pedestrian connections are to be provided, if any and if these are to be gated for sole access of residents of the development, or available to the general public.

Mr Hooper and Mr Connor acknowledged that a permit condition is required to ensure that the bund and wall is constructed as part of the first stage of development. The committee agrees.

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⁵ With both the Bunnings Warehouse and Officeworks stores having ‘tilt slab’ commercial walls directly abutting the site.
The committee finds that if a permit is to be granted a condition of the permit should include that no dwelling is to be occupied until the bund and wall arrangement have been constructed. A potential condition is:

1. *No dwelling is to be occupied until the bund and wall arrangement have been constructed in accordance with a report by a suitably qualified acoustic engineer must be submitted to and approved by the responsible authority. When approved the acoustic report will be endorsed to form part of the permit. The report must assess the noise impact on the proposed development resulting from the operation of the industrial land east of Michael Street and the Bunnings Warehouse at 855 Princes Highway, Pakenham and must make recommendations to limit these impacts in accordance with SEPP N-1 to all dwellings proposed to the satisfaction of the responsible authority.*

**Design of communal open space**

The CRPSP directs that where open space is provided, dwellings should face onto this space either directly or located to face across a street from open space. The committee considers that there has not been sufficient attention in the design on the location of houses to the communal open space.

An area of communal open space is proposed at the southeast corner of the site. This appears to be located around a drainage retention basin, rather than designed to be easily accessible to residents of the development, given it is at one corner of the development. The committee notes that only two dwellings face the communal open space from the west. The south and east sides of the communal open space area will be bund and wall. The northern and north-western interface will be a road with side boundary fences of dwellings. The committee considers that there has not been sufficient attention in the design on the location of dwellings in relation to communal open space.

If a permit is granted, the committee finds a condition should require a review of dwellings identified on the concept plan as Number 80, 90 and 115, to better address the communal open space area through active frontage.

**‘Emergency’ access to Mulcahy Road**

The residential design relies on the access to Mulcahy Road as ‘emergency only’ as this part of the road will be to the industrial area, east of a proposed road closure to Mulcahy Road. The committee remains unclear why the road closure needs to stay in the location of the CRPSP if the land south of Mulcahy Road is to become residential. The land to the north that is proposed to be retained as industrial has frontage to Mulcahy Road near the intersection with Michael Street. A better design outcome may be to relocate the road closure, closer to Michael Street and then enable a wider, fully usable access to Mulcahy Road. This would aide in integrating the development to the surrounding area and reduce part of its isolation.

If a permit is granted, the committee finds the Mulcahy Road closure location should be reviewed and a condition imposed on the permit to provide for a wider, fully usable access to Mulcahy Road.
Noise Protection

Through the discussion of amenity impacts to the adjoining industrial area there was some discussion at the hearing as to whether some dwellings should or should not be double storey to reduce noise impacts. Mr Frame stated that a second storey may act as a sound barrier and would be acceptable if adequate acoustic design measures were taken for the second storey. The least acoustic impact at the second storey level is at the northern end where the existing industrial buildings east of Michael Street already provide a partial acoustic barrier between noises from Dandy Pre-mix and the subject site.

There was little rationale provided for the location of double storey and single storey dwellings at the eastern edge of the development. Council indicated that it may be preferable to only have single storey dwellings closer to the industrial area to reduce the impact of noise to upper level windows. There was some discussion between parties at the hearing whether this would have much advantage. Indeed it was suggested that double storey dwellings closer to the eastern boundary provided additional noise attenuation to dwellings further west. The committee understands the provision of single or double storey dwellings was not based on any consideration of noise attenuation.

Mr Connor tabled proposed permit conditions to require that prior to the occupation of the dwellings facing the internal road located at the east of the site, an acoustic report would need to be submitted by a suitably qualified consultant to determine if noise levels of those dwellings comply with SEPP – N1 or if works are needed to be undertaken to meet such requirements. The committee agrees such a report should be provided and implemented. Amended wording however is suggested.

If a permit is granted, three additional conditions should be included in the permit to state:

1. Before the occupation of the dwellings facing the internal road located at the east of the site (adjacent to Michael Street), a report by a suitably qualified acoustic engineer must be submitted to and approved by the responsible authority. When approved the acoustic report will be endorsed to form part of the permit. The report must assess the noise impact on the proposed development resulting from the operation of the industrial land east of Michael Street and the Bunnings Warehouse at 855 Princes Highway, Pakenham, and must make recommendations to limit these impacts in accordance with SEPP N-1 to all dwellings proposed to the satisfaction of the responsible authority.

2. Within two months of the use of dwellings commencing, an updated acoustic report must be prepared by a suitably qualified acoustic consultant and submitted to the satisfaction of the responsible authority demonstrating that the required level of noise attenuation has been achieved in accordance with condition 1), or if not, what works must be undertaken to achieve the required levels of noise attenuation.

3. The recommendations contained in the approved acoustic reports of conditions 1) and 2) must be implemented and completed and where they are recommendations of an ongoing nature, must be implemented and maintained to the satisfaction of the responsible authority.
7.2 Updated CFA and Melbourne Water Conditions

At the conclusion of the hearing on 1 August 2013, Ms Ransom tabled a letter from the CFA (dated 24 July 2013) detailing revised conditions resulting from the amended plans.

Subsequent to the hearing Council forwarded via an email to Planning Panels Victoria a copy of a letter dated 13 August 2013 from Melbourne Water detailing revised conditions resulting from the amended plans.

If a permit is granted the revised conditions of Melbourne Water and the CFA should be included in the permit.

7.3 Environmental Audit

The EPA submitted that prior to development occurring, Council should satisfy itself that the land is not contaminated or require an environmental audit. Council submitted that it was unlikely that any portion of the subject land is contaminated, due to its prior predominantly rural use that no buildings or works had been constructed, or any industrial uses on the site since re-zoned in 2001 Amendment C12.

The committee accepts that this is a matter for Council to satisfy itself of prior to use of the land for housing. The committee has no material before it to indicate that the land is or has been contaminated.

7.4 Amendment documentation

In preparing its report, the committee has identified a number of matters that the proposed amendment appears to have either ‘missed’ or failed to appropriately address. Notably no proposal is provided to amend the Pakenham Homemaker Precinct Urban Design Framework to remove the subject land. Therefore the proposal will result in inappropriate design directions remaining in the planning scheme for the subject land.

Similarly references to the Pakenham Homemaker Precinct Urban Design Framework also remain in the CRPSP and local policy at clause 21.04. These should be updated or removed.

The exhibited CRPSP to Amendment C157 identifies land in the north west corner of the subject land as “medium density housing”, but is now at the same density as the remainder of the site. This reference should be deleted.

The committee finds that if an amendment is progressed references in the Pakenham Homemaker Precinct Urban Design Framework to the proposal land, along with relevant references in local policy of the Cardinia Planning Scheme should be updated.

7.5 Urban Growth Zone not affected by Clause 52.10

As explained in Chapter 1.5, Clause 52.10 is not a stand alone control. It is only triggered if a land use provision refers to the table. In the Industrial 1 Zone, industry does not require a planning permit for use if the following condition is met.

“The land must be at least the following distances from land (not a road) which is in a residential zone, Capital City Zone or Docklands Zone, land used for a hospital or an education centre or land in a Public Acquisition Overlay to be acquired for a hospital or an education centre....
The site and adjoining residential development (both planned and constructed) is in the UGZ1, which is not a “residential zone” as defined in the planning scheme. The committee is of the view that Clause 52.10 is therefore not triggered for industrial uses adjoining the UGZ1 area. The committee considers this may be an unintended consequence of the use of the UGZ1. The committee is also of the view that if the Schedule 1 to the UGZ used ‘applied zones’ this matter would be appropriately addressed. This is a matter beyond the scope of the committee’s brief and therefore no formal recommendation is made on this matter.

The committee, however, notes that if Council amended Schedule 1 to the UGZ to use ‘applied zones’ or to otherwise trigger use of clause 52.10 thresholds from adjoining industrial zoned land this matter would be resolved.

The committee also notes that in July 2013, the commercial, industrial and residential zones of the planning scheme were amended. If ‘applied zones’ were incorporated into Schedule 1 of the UGZ this may lead to the subject land having an applied Commercial 2 zone. This may provide a broader range of uses than the ‘peripheral commercial’ designation provides for in the UGZ1 and pose less restriction on the way the land could be used (which was considered by the proponent as problematic).

7.6 Without Prejudice Findings

Without prejudice to the committee’s primary recommendation in Chapter 6, the committee finds if an amendment is progressed, the following changes should be made prior to amendment approval:

a) Amend the CRPSP, to move the road closure of Mulcahy Road to a point approximately 30 metres west of the intersection of Michael Street and Mulcahy Road.

b) Amend condition 1 of the proposed permit conditions to Permit 1101 to require changes to the application plans to:
   i) Amend the design and layout of dwellings facing O’Brien Parade to provide secluded open space that is not solely reliant on space in the ground floor front setback.
   ii) Delete the pedestrian path along the southern boundary of the site, connecting O’Brien Parade directly to Michael Street.
   iii) Alter dwellings adjacent to the communal open space (e.g. 80, 90 and 115) to better address the communal open space area.
   iv) Amend the access to Mulcahy Road to provide full access, not emergency only access.

c) Insert new conditions into Permit 1101 as follows:

[1]. Before the occupation of the dwellings facing the internal road located at the east of the site (adjacent to Michael Street), a report by a suitably qualified acoustic engineer must be submitted to and approved by the responsible authority. When approved the acoustic report will be endorsed to form part of the permit. The report must assess the noise impact on the proposed development resulting from the operation of the industrial land east of Michael Street and the Bunnings Warehouse at 855 Princes Highway, Pakenham and must make recommendations to limit these impacts in accordance
with SEPP N-1 to all dwellings proposed to the satisfaction of the responsible authority.

[2]. Within two months of the use of dwellings commencing, an updated acoustic report must be prepared by a suitably qualified acoustic consultant and submitted to the satisfaction of the responsible authority demonstrating that the required level of noise attenuation has been achieved in accordance with condition 1), or if not, what works must be undertaken to achieve the required levels of noise attenuation.

[3]. The recommendations contained in the approved acoustic reports of conditions 1) and 2) must be implemented and completed and where they are recommendations of an ongoing nature, must be implemented and maintained to the satisfaction of the responsible authority.

[4]. No dwelling is to be occupied until the bund and wall arrangement have been constructed in accordance with a report by a suitably qualified acoustic engineer must be submitted to and approved by the responsible authority. When approved the acoustic report will be endorsed to form part of the permit. The report must assess the noise impact on the proposed development resulting from the operation of the industrial land east of Michael Street and the Bunnings Warehouse at 855 Princes Highway, Pakenham and must make recommendations to limit these impacts in accordance with SEPP N-1 to all dwellings proposed to the satisfaction of the responsible authority.

d) Amend the conditions of Permit 1101, exhibited with Amendment C157 to reflect updated comments of the CFA dated 24 July 2013 and Melbourne Water dated 13 August 2013.

e) Amend the Pakenham Homemaker Precinct Urban Design Framework 2004 to remove the proposal land from this framework, or specify in all references to this framework in the planning scheme and the CRPSP that this framework does not apply to the proposal land.

f) Amend Figure 17 of the CRPSP to remove reference to ‘medium density housing’ at the north west corner of the proposal land.
## Appendix A  List of Submitters to Amendment C157

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<td>Focus CDS Consultants for Dandy Premix</td>
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## Appendix B  Document List

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<td>1/8/13</td>
<td>Bus timetable for Ventura buses and Cardinia Transit</td>
<td>Mr Nichols</td>
</tr>
<tr>
<td>2.7</td>
<td>1/8/13</td>
<td>Sheet 9 by PDC: floor plans and elevations for units ME1 and ME2.</td>
<td>Mr Hooper</td>
</tr>
<tr>
<td>2.8</td>
<td>1/8/13</td>
<td>Submission from Andrew Walker on behalf of Dandy Premix</td>
<td>Mr Walker</td>
</tr>
<tr>
<td>2.9</td>
<td>1/8/13</td>
<td>Site plan for Lot 6 Dandy Premix- planning permit approved plan</td>
<td>Cardinia Shire Council</td>
</tr>
<tr>
<td>2.10</td>
<td>1/8/13</td>
<td>C54 Ballarat Panel Report</td>
<td>Mr Walker</td>
</tr>
<tr>
<td>2.11</td>
<td>1/8/13</td>
<td>CFA submission recently received (July 31st).</td>
<td>Cardinia Shire Council</td>
</tr>
<tr>
<td>2.12</td>
<td>1/8/13</td>
<td>Landscape master plan associated with the original application</td>
<td>Mr Connor</td>
</tr>
<tr>
<td>2.13</td>
<td>1/8/13</td>
<td><em>Wang v Moreland CC &amp; Ors</em> [2012] VCAT 323</td>
<td>Mr Connor</td>
</tr>
<tr>
<td>2.14</td>
<td>12/8/13</td>
<td>Submission of Melbourne Water – emailed to Panel from Council after the hearing. Amended conditions based on revised plans circulated</td>
<td>Cardinia Shire Council</td>
</tr>
</tbody>
</table>