Planning and Environment Act 1987

Panel Report

Boroondara Planning Scheme Amendment C245

21 December 2016

VICTORIA State Government | Planning Panels Victoria

Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

Boroondara Planning Scheme Amendment C245

21 December 2016

Michael Ballock, Chair

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List of Abbreviations

GRZ	General Residential Zone
LPPF	Local Planning Policy Framework
NRZ	Neighbourhood Residential Zone
SPPF	State Planning Policy Framework

Overview

Amendment Summary	
The Amendment	Boroondara Planning Scheme Amendment C245
Subject Site	Neighbourhood Character Precinct 74 (see Figure 1)
The Proponent	City of Boroondara
Planning Authority	City of Boroondara
Authorisation	A03329 dated 6 May 2016
Exhibition	30 June to 1 August 2016
Submissions	3: Opposed: 1 • Mr Robert Turner • Ms Kiraly Horton • Buchanan Planning

Panel Process	
The Panel	Michael Ballock
Directions Hearing	A Directions Hearing was not held
Panel Hearing	A Panel Hearing was not held. The Amendment was considered on the papers.
Site Inspections	Unaccompanied, 15 December 2016
Date of this Report	21 December 2016

Executive Summary

(i) Summary

Amendment C245 seeks to apply a new Schedule 7 to the General Residential Zone to the area identified as Neighbourhood Character Precinct 74 as shown in Figure 1. The new Schedule 7 proposes variations to the requirements of Clause 54 and 55 dealing with the planting of canopy trees, open space dimensions and walls on a boundary.

(ii) Background

Key issues raised in submissions are whether the application of the proposed Schedule 7 to the General Residential Zone is appropriate and whether it represents an ad-hoc approach that may compromise how such variations may be considered in other parts of Boroondara

The Panel has considered all submissions and concludes that there is sufficient strategic justification for the Amendment.

(iii) Recommendation

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

1. **Adopt Boroondara Planning Scheme Amendment C245 as exhibited.**

1 Introduction

1.1 Panel process

Boroondara Planning Scheme Amendment C245 (the Amendment) was prepared by the City of Boroondara as Planning Authority. As exhibited, the Amendment proposes to apply a new Schedule 7 to the General Residential Zone (GRZ7) to Neighbourhood Character Precinct 74 (Precinct 74). GRZ7 proposes variations to the requirements of Clause 54 and 55.

The Amendment was prepared at the request of City of Boroondara and was authorised by the Department of Environment, Land, Water and Planning on 6 May 2016.

The Amendment was placed on public exhibition between 30 June and 1 August 2016 with one opposing submission received.

At its meeting of 19 September 2016, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 26 September 2016 and comprised Michael Ballock (Chair).

On 29 September 2016, the Panel issued a directions letter and setting out dates for the Directions Hearing and Panel Hearing. The opposing submitter advised the Panel that he did not wish to attend a hearing but would make a further written submission, if acceptable to the Panel. The Panel accepted this approach and the further written submission by Mr Buchanan was received on 17 October 2016.

The two supporting submitters did not request to be heard by the specified date. As a consequence, the Panel issued a further directions letter on 21 October 2016 advising that the Amendment would be considered 'on the papers'.

The City of Boroondara was directed to circulate its submission to all parties and to the Panel by 11 November 2016. An addendum to this submission was received by the Panel dated 17 November. The submitter was invited to provide a response to the Council submission by 18 November. This further submission was received by letter dated 17 November 2016.

The Council was invited to provide a right of reply by 25 November 2016. This was received by the Panel by letter dated 24 November 2016.

1.2 The proposal

(i) The subject area

The Amendment applies to land shown in Figure 1.

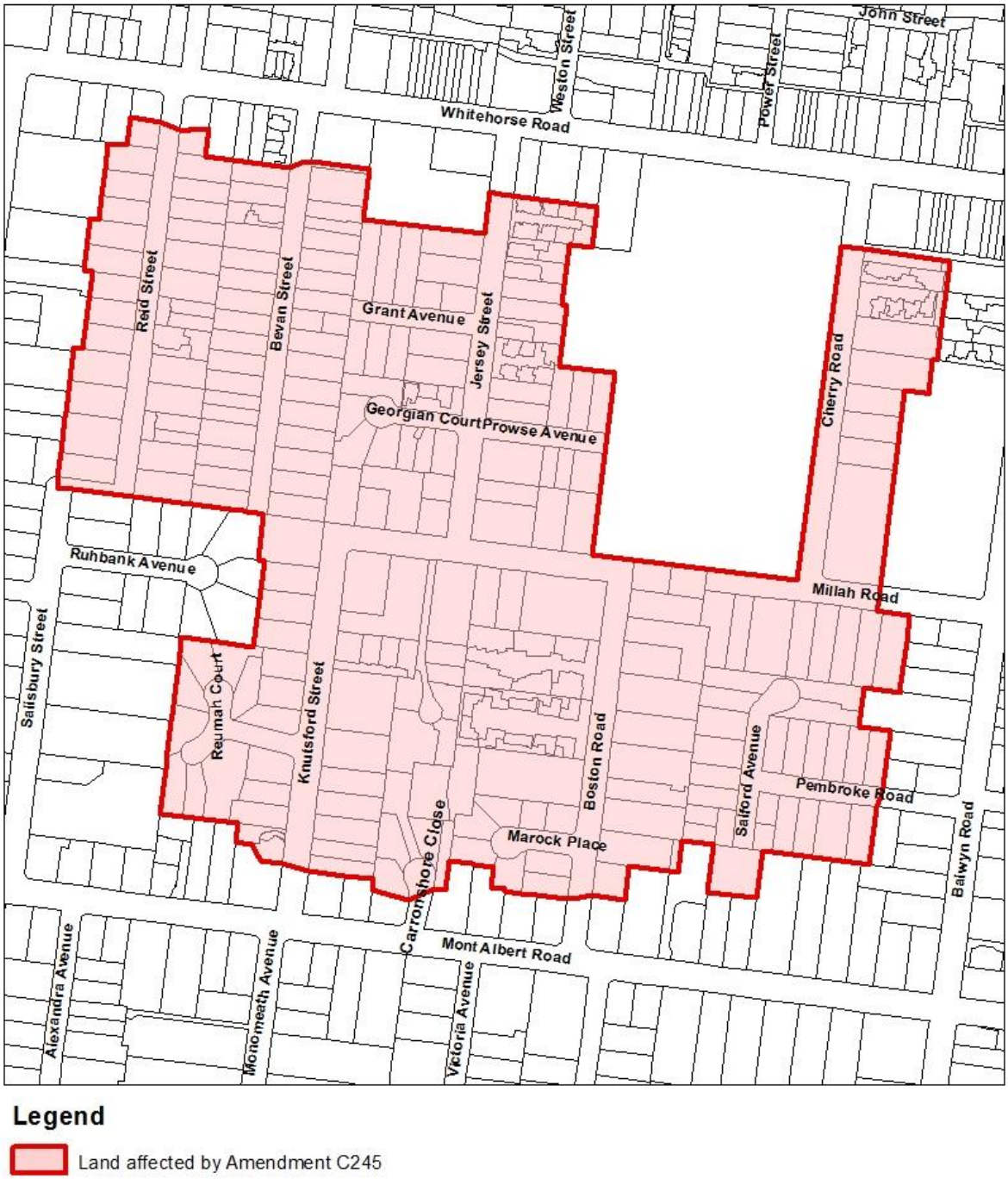

Figure 1 Land affected by Amendment C245

(ii) Amendment description

The Amendment proposes to apply a new General Residential Zone Schedule 7 (GRZ7) to Neighbourhood Character Precinct 74 (Precinct 74). GRZ7 proposes variations to the following requirements of Clause 54 and 55:

- Standard B13 - Landscaping - to require at least one canopy tree to be planted in each ground level private open space.

- Standard A11 and B18 - Walls-on-boundary - to provide additional guidance on when it is appropriate to construct a wall on or within 200mm of a property boundary.
- Standard A17 and B28 - Private open space - to increase the minimum dimensions for secluded private open space to 4 metres, and clarify the minimum area for secluded private open space for ground floor apartments is 25 square metres.

(iii) Purpose of the Amendment

The Amendment proposes to:

- enhance the Precinct's 'leafy feel', by facilitating the planting of new canopy trees through variations to Standards B13, A17 and B28
- retain the Precinct's detached character by varying Standards A11 and B18.

1.3 Background to the proposal

In response to the feedback received in August 2014 and following the adoption of the Boroondara Housing Strategy in October 2015, the Council reviewed of the Neighbourhood Character Precinct Statement and zone as it applied to Precinct 74. The review commenced in December 2015 and concluded in March 2016. The review recommended changes to the Clause 54 and 55 provisions as they applied to Precinct 74.

1.4 Issues dealt with in this report

The main issues dealt with in this report are whether the application of GRZ7 is appropriate and whether it represents an ad-hoc approach that may compromise how such variations may be considered in other parts of Boroondara.

The Panel considered all written submissions, as well as submissions sent to it according to the Directions. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of the precinct.

This report deals with the issues under the following headings:

- Planning context
- General Residential Zone Schedule 7

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Policy framework

(i) State Planning Policy Framework

The State Planning Policy Framework (SPPF) seeks to ensure that planning authorities consider all relevant issues and achieve a balanced outcome that has a net community benefit for current and future generations advocates the protection and enhancement of neighbourhood character and the consideration of community aspirations, while also considering the broader housing needs of the community.

The clauses of the SPPF of most relevance to the Amendment include:

- Clause 11.04-2 Housing choice and affordability, which seeks to provide housing diversity in defined locations.
- Clause 15.01-5 Cultural identity and neighbourhood character, which seeks to recognise and protect neighbourhood character and sense of place.
- Clause 16.04 Housing Diversity, which seeks to ensure that housing stock meets the community's housing needs.

Council submitted that the Amendment seeks to balance community aspirations to protect existing neighbourhood character with the need to ensure the City of Boroondara can provide opportunities for new houses close to the Balwyn Neighbourhood Shopping Centre and public transport.

(ii) Local Planning Policy Framework

Council submitted that the current Local Planning Policy Framework (LPPF) advocates the provision of a mixture of housing types and forms in the City of Boroondara while also maintaining and enhancing the City's current level of residential amenity and a high standard of residential design.

A review of the current LPPF was undertaken in 2015, and adopted by Council on 1 June 2015. Following that review it commenced Amendment C229 to implement the revised LPPF. Like the current LPPF, the revised LPPF also seeks to provide a diversity of house types in accordance with the Boroondara Housing Framework, while protecting preferred character and residential amenity.

Applying a GRZ7 to Precinct 74 implements the objectives of the current and proposed LPPF. The GRZ7 seeks to support the preferred character for Precinct 74 by introducing new standards for landscaping, walls-on-boundary and private open space while retaining the maximum height limit (9 metres) that currently applies to the precinct.

(iii) Other planning strategies or policies used in formulating the Amendment

Boroondara Housing Strategy

The Boroondara Housing Strategy was adopted by Council on 14 December 2015. The Boroondara Housing Strategy sets out Council's policy direction for housing over the next 15 years.

Council submitted that it builds upon the neighbourhood character principles used by Council to apply the new residential zones and existing policy to direct housing growth to commercial areas.

The relevant objectives of the Boroondara Housing Strategy are to:

- ensure new development retains and enhances the key character attributes that contribute to a precinct's preferred character (Objective 1.1)
- ensure the provision of a diverse range of housing (Objective 2.1)
- ensure new multi-dwelling developments in the Neighbourhood and General Residential Zones reinforce a precinct's preferred character (Objective 3.1)
- support greater housing diversity in areas with better access to services and public transport (Objective 3.2)
- encourage high quality residential design (Objective 4.1).

Objectives 1.1 and 3.1 in particular seek to ensure new development achieves the preferred character outcomes and design guidelines in the relevant Neighbourhood Character Precinct Statement (NCPS).

Consistent with the Boroondara Housing Strategy, the Amendment proposes to retain Precinct 74 in the General Residential Zone and maintain the current mix of residential zones, but seeks to introduce higher amenity standards to achieve the precinct's preferred character.

As already noted, the changes proposed are unlikely to have any impacts on future development capacity in Precinct 74 or the precinct's ability to deliver the housing diversity outcomes advocated in the Boroondara Housing Strategy.

2.2 Planning scheme provisions

The land is zoned General Residential Zone Schedule 1. The purpose of the General Residential Zone is:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To encourage development that respects the neighbourhood character of the area.
- To implement neighbourhood character policy and adopted neighbourhood character guidelines.
- To provide a diversity of housing types and moderate housing growth in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

There are no overlays that affect the site.

2.3 Ministerial Directions and Practice Notes

(i) Ministerial Directions

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

Ministerial Direction No 9

The Amendment is affected by *Ministerial Direction No. 9 - Metropolitan Strategy*, which requires all amendments to have regard to the Metropolitan Strategy; Plan Melbourne.

Plan Melbourne highlights the challenges Melbourne will face over the next 40 years. *Plan Melbourne* seeks to ensure suitable accommodation is provided for all age groups. It also seeks to balance the need for new housing with the protection of Melbourne's suburbs from inappropriate development.

Consistent with the objectives and directions of *Plan Melbourne* this Amendment proposes to retain opportunities for housing diversity while also seeking to enhance the low rise, leafy, suburban character of Precinct 74 by varying the landscaping, walls-on-boundary and private open space requirements in the Boroondara Planning Scheme. The variations are necessary to ensure future development makes a positive contribution to the Precinct's preferred character.

Ministerial Direction No 11

The Council submitted that the requirements of *Ministerial Direction No 11 - Strategic Assessment of Amendments* have been considered as part of the preparation of the Amendment.

Ministerial Direction No 16

*Ministerial Direction No 16 Residential Zone*s (MD16) requires a planning authority to use a housing strategy to inform the balanced application of all three Residential Zones. This requirement was introduced by the Victorian Government following the approval of the new residential zones in the City of Boroondara.

Consistent with *Ministerial Direction No 16*, the City of Boroondara adopted the *Boroondara Housing Strategy* (Boroondara Housing Strategy) on 14 December 2015 to guide decisions relating to housing in the City over the next 15 years. The Boroondara Housing Strategy sets out Council's policy direction for housing over the next 15 years.

This Amendment proposes to retain Precinct 74 in the General Residential Zone to ensure the Precinct continues to provide opportunities for a diversity of housing in a location close to public transport and services. The variations to the requirements of Clause 54 and 55 are proposed to ensure the neighbourhood character objectives of the Boroondara Housing Strategy are also achieve by introducing increased amenity standards to achieve the preferred character outcomes for Precinct 74.

(ii) Planning Practice Notes

Practice Note 78 - Applying the Residential Zones

This practice note provides guidance for the application of the new residential zones and schedules.

The Amendment does not propose to change the underlying General Residential Zone currently applying to Precinct 74. As such, PPN78 does not relate to what is proposed by the Amendment.

2.4 Discussion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework.

The Panel concludes that the Amendment is well founded and is strategically justified.

3 General Residential Zone Schedule 7

3.1 The issue

The issue is whether it is appropriate and justified to apply GRZ7 to Neighbourhood Character Precinct 74.

3.2 Submissions

Ms Amanda Seymour, on behalf of Council, submitted that the Amendment applied only to Neighbourhood Character Precinct 74 (Precinct 74) which is made up of predominantly one and two storey dwellings in an area described as having a low rise, detached and leafy character. The Neighbourhood Character Study identified the removal/loss of large canopy trees and the lack of garden spaces for planting as threats to the precinct's character. She informed the Panel that the new Residential Zones were introduced by Amendment C190 on 11 June 2014, and that Amendment C245 also sought to implement the Council's Neighbourhood Character Study. Council explained that after the implementation of the new residential zones it:

> *… received 154 submissions from 110 households in Precinct 74. The majority of the submissions received requested Council to rezone Precinct 74 to the Neighbourhood Residential Zone (NRZ), and expressed a view that the precinct had been incorrectly zoned as part of Amendment C190*

In response to the feedback received, Council resolved on 11 December 2014 to review the appropriateness of General Residential Zone Schedule 1 for Precinct 74, following the completion of a Housing Strategy. Council submitted that the review concluded March 2016 and recommended a new schedule to the General Residential Zone for Precinct 74 which is now the subject of Amendment C245.

Ms Seymour submitted that boundary-to-boundary development, when viewed from the public realm, is incongruous with the preferred character outcomes for the precinct and that the current General Residential Zone Schedule 1 does not prevent this from happening. As a consequence, the Amendment proposes that at least one side wall is to be set back from a side boundary for a distance of 5 metres from the front wall of the dwellings.

The council argued that the increase on the minimum open space dimension will facilitate the creation of private open spaces that can accommodate a canopy tree and contribute to the leafy character of the precinct. She submitted that the minimum dimension also contributes to the creation of more usable private open space and adds to the amenity of dwellings.

Ms Seymour advised the Panel that the Boroondara Housing Strategy was adopted by Council on 14 December 2015 and that two of the objectives sought to ensure that new development achieves the preferred character outcomes and design guidelines in the relevant Neighbourhood Character Precinct Statement.

In response to submissions, Ms Seymour submitted that *Planning Practice Note 78 – Applying the Residential Zones*:

> *acknowledges that multiple schedules can be used to specify application requirements, decision guidelines, siting and design requirements and maximum building heights for specified areas. However, the practice note provides little guidance on when localised zone schedules are appropriate.*

She also advised that:

> *that the variations to Clause 54 and 55 proposed by Amendment C245 are generally consistent with the Residential Zones Standing Advisory Committee principles, and are justified and necessary to implement the neighbourhood character objectives of the Boroondara Housing Strategy, current and recently adopted LPPF and the adopted NCPS.*

Mr Buchanan submitted that the reason for the Amendment was largely due to residents' concern about the General Residential Zone. In addition he argued that the Amendment represents "*a piecemeal or adhoc change to the Boroondara Planning Scheme"* that could undermine the effectiveness and consistency of the zone.

He submitted that, if the Amendment is approved, Precinct 74 would be the only neighbourhood precinct in Boroondara with variations to Clauses 54 and 55 which could impact on regular users of the planning scheme. He argued that in response to the Panel report on Amendment C229, Council was undertaking a review of potential variations to the ResCode provisions. He advised the Panel that under these circumstances Amendment C245 is premature, particularly since further modifications to the General Residential Zone may be required.

He submitted:

> *It is also clear, from the experience of other planning schemes (for example see the Panel Report on Whitehorse Amendment C174 dated 4 May 2015) that planning panels have placed importance on carefully considering any schedule variations, with respect to how they sit in relation to the other zones and schedules of the particular planning scheme, to avoid inconsistent approaches or for example General Residential Zone schedules that may be more restrictive or more onerous than the NRZ schedules.*

Mr Turner submitted that he supported the Amendment but was concerned that canopy trees were planted in locations where there was sufficient soil for them to grow. Ms Horton supported the amendment but also wanted to see a requirement to provide minimum setbacks matching the surrounding housed and a cap on the number of apartments.

By letter dated 17 November the Council sought to make an addendum to its submission to the Panel. This letter (Document 3) is included in Appendix C. The Council advised that Amendment C229 introduces a new LPPF to the Boroondara planning scheme which contains policy directions specific to the residential zone schedules and does not include a reference to GRZ7. Council requested the Panel's view, should both amendments be approved.

3.3 Discussion

Planning Practice Note 78 lists the elements of Clause 54 and 55 that can be modified through the use of a schedule. The practice note also refers to the *Ministerial Direction - The Form and Content of Planning Schemes* which largely outlines how a schedule should be designed. However, the practice note does not provide any specific guidance as to how a schedule should be applied. The practice note does make it clear that the planning authority has the ability to develop schedules in the General Residential Zone.

Consequently, the question for the Panel is whether, in the circumstances it is appropriate to apply GRZ7. The answer to this question is whether there is adequate strategic justification for the Amendment.

The Amendment is supported by the Neighbourhood Character Study, the Boroondara Housing Strategy and in the light of these two documents, a review of the appropriateness of the controls applicable to the precinct. The Panel has reviewed these documents and formed the view that there is adequate strategic justification to support GRZ7.

The Panel agrees with the view expressed by Council that the implementation approach taken by other municipalities when introducing zone schedules and ResCode variations is not relevant to the consideration of this Amendment. *Planning Practice Note 78* would provide more definitive guidance in the application of schedules if a uniform approach was intended.

The Panel does not support the view that the Amendment will increase the burden on regular users of the Planning Scheme or compromise future changes to General Residential Zone Schedules.

At the time of preparing this report, the Panel was unaware of the final form of Amendment C229 and consequently is not in a position to offer a view on the best approach to update the provisions of the LPPF should both amendments be approved. This is a matter that the planning authority should consider once the approved form of both Amendments is known.

3.4 Conclusions

The Panel concludes:

- The Amendment is strategically justified.

3.5 Recommendations

The Panel recommends:

Adopt Boroondara Planning Scheme Amendment C245 as exhibited.

Appendix A Document list

No.	Date	Description	Presented by
1	17/10/2016	Submission on behalf of Greg Buchanan	Mr G Buchanan
2	11/11/2016	Submission	Council
3	17/11/2016	Addendum to the Submission	Council
4	17/11/2016	Further submission from Greg Buchanan	Mr G Buchanan
5	26/11/2016	Right of reply	Council

Appendix B Addendum to Council's submission

BOROONDARA
City of Harmony

17 November 2016

Panels Coordinator
Planning Panels Victoria

laura.agius@delwp.vic.gov.au

Dear Laura,

Addendum to Council's submission to Amendment C245 to the Boroondara Planning Scheme

Further to Council's submission for Amendment C245 to the Boroondara Planning Scheme (circulated on 11 November 2016), Council would like to make an additional submission for the Panel's consideration.

Paragraphs 10.14 to 10.25 of Council's submission briefly discuss the new Local Planning Policy Framework (LPPF) proposed by Amendment C229 to the Boroondara Planning Scheme. As mentioned in Council's submission, Council has adopted Amendment C229 and submitted the amendment to the Minister for Planning for approval.

If approved, the new LPPF will make substantive changes to the current LPPF in the Boroondara Planning Scheme. Of most relevance to Amendment C245 is the policy direction in proposed Clause 21.05 Housing and proposed Clause 22.05 Neighbourhood Character. Both clauses contain policy direction specific to each of the residential zone schedules. As the General Residential Zone Schedule 7 (GRZ7) was not foreshadowed when these clauses were prepared, updates to the proposed clauses will be required if Amendment C229 and C245 are approved to ensure the new clauses contain policy direction for the GRZ7.

Council anticipates that approval of Amendment C229 will precede approval of Amendment C245. If this is the case changes to the new Clause 21.05 and 22.05 will be required to incorporate policy direction for the GRZ7.

The timing of the two amendments meant that changes to these clauses could not be made or exhibited as part of Amendment C245. Consequently, Council would like to foreshadow the need to make changes to the new Clause 21.05 and 22.05 should Amendment C229 and C245 be approved. Council therefore is seeking the Panel's views on the best approach to make future updates the clauses should both amendments be supported by the Minister for Planning.

If you would like any further information regarding this matter, please contact Amanda Seymour, Senior Strategic Planner, by telephone 9278 4591 or email amanada.seymour@boroondara.vic.gov.au.

Yours sincerely

Senior Strategic Planner

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