

PSP 1078 & 1080

Plumpton PSP & Kororoit PSP

**Addendum to Closing
Submission - C146 & C147**
Amendment to the Melton
Planning Scheme

16 December 2016

Submission 6 (Kororoit) - Kellehers Australia (on behalf of Ms Maria Natale)

Address: 173-177 Deanside Drive /#31

1. These submissions respond to the evidence called and submissions made on behalf of the Natales, on 14 and 15 December 2016.

The Panel's Task

2. VPA does not submit that the Panel ought not consider the Natale submissions.
3. Nor does VPA submit that the Panel cannot make recommendations on the various matters raised in the submissions.
4. VPA does submit that the location of the boundary as identified in the Commonwealth approved documents, namely the BCS and the SRSS, is outside of the Panel's role.
5. However VPA accepts that the Panel could make recommendations in relation to the resolution of the PSP.
6. The question is really whether the Panel *ought* make recommendations in relation to the location of the boundary.
7. VPA submits that the Panel ought not.
8. VPA submits that the Panel *should choose* not to usurp the role of the State Department, under the terms of the Commonwealth approval.
9. There is a clear process set up under the MSA in relation to boundary re-alignments, with DELWP clearly intended to be the arbiter of applications for boundary re-alignment. The entire rationale of the MSA is to seek to avoid Panels being required to "re-decide" the location of the boundary in each instance of land affected by a CA.
10. The distinction drawn by the submitter in relation to conservation areas under clause 3 as against clause 4 of the Commonwealth approval is interesting and factually correct, but ultimately does not change the situation. The different clauses apply to different types of conservation area. Some of the conservation areas quoted under clause 4 inherently contain GGF values, but are not classified as GGF conservation areas, rather they are set aside as Nature conservation or Regional Park conservation areas, or have not yet been classified. Clause 3 allows for the consideration of necessary infrastructure to be considered at the PSP stage within GGF conservation areas; whereas such infrastructure is generally not permitted within clause 4 conservation areas, and therefore boundary changes would not be warranted.

11. Whilst DELWP *can* approve changes to the boundaries of the conservation areas that do not result in net loss; and can also recommend to the Commonwealth that it agree to changes which do result in net loss, whether this is appropriate in any given instance is a matter, ultimately, that it is the responsibility of DELWP to assess.
12. DELWP has the in house expertise to assess applications for variation to boundary, and is exercising judgment on this issue on a regular basis.
13. DELWP exercises its discretion according to the terms of the BCS – as explored in cross examination of Mr Lane, and in accordance with the “Guidance Note”. Both of these documents have been approved by the Commonwealth.
14. Note that the “precedent” immediately upstream that Mr Lane referred to is Rockbank North PSP which was developed in parallel with the BCS and pre-dated the preparation of boundary change criteria. It is not an appropriate comparison.
15. To summarise, under both of those documents, the following criteria are relevant:
 - a. Is the re-alignment “necessary”;
 - b. Does the variation reduce the net overall area;
 - c. Is the variation “slight”;
 - d. Is the variation to address issues associated with urban infrastructure where no feasible alternatives are available;
 - e. Is the variation to address issues necessary to meet the urban planning objectives of a PSP, where no feasible alternatives are available;
 - f. Is the variation to exclude existing buildings or other infrastructure on or near the boundary of a CA;
 - g. Is the variation to allow access to land made inaccessible as a result of a CA, where no feasible alternatives are available;
 - h. Has the written agreement of all landowners whom are materially affected been obtained; and
 - i. Has the re-alignment been approved by DELWP?
16. VPA submits that these criteria have not been met in favour of the proposal to vary the boundary, in this case.
17. Most importantly, as ultimately conceded by Mr Lane, there is no ecological reason why it is “necessary” to shift the boundary on this site. VPA also submits that Mr Fairbairn’s evidence ultimately does not support a submission that it is “necessary” to amend the boundary location.

Assertion that wetlands on the Natale land are “not viable”

18. A core assertion made on behalf of the Natales is that the evidence before the Panel is that:
 - a. It is a “fiction that feasible wetlands can be constructed” [7];

- b. The proposed node will not function [heading page 17];
 - c. The site is not suitable [41];
 - d. The site will be unsuitable [49];
 - e. There will be “dysfunctional wetlands” [73]; and
 - f. There is “no prospect of feasible wetlands being developed” [84].
19. The VPA strongly submits that this assertion is in fact not established on the evidence.
 20. Quite to the contrary, the evidence, despite attempting to, does not establish that wetlands would be unviable on the land.
 21. Really, the principal piece of evidence that the Natales rely upon is the evidence of Mr Fairbairn that there will be insufficient water supply for the wetlands.
 22. Evidently, a key consideration of his calculations was how much water he assumed was needed.
 23. If the assumed water volume is incorrect, it follows that all of Mr Fairbairn’s calculations need to be adjusted.
 24. This point is significant in this case.
 25. Mr Fairbairn assumed 60ML of water would be required. His evidence was that a 33ha catchment would not supply sufficient surface water (he said he would need to double the catchment size to have sufficient water) and he did not know whether a groundwater licence allocation would be issued.
 26. Importantly, if rather than 4.5ha of wetlands requiring 60ML of water, only 1 hectare of wetlands requiring 17.1 ML (4.5ML assuming 1.5m deep and 12.6ML assuming 1.8m deep) of water are intended, it is readily comprehended that the wetlands will be viable.
 27. DELWP intends to access a mix of both surface water and ground water. Both are readily available on the site.
 - a. In terms of stormwater run-off, the MW infrastructure has been located upon the site, within the conservation area. It is likely that this water can be used to supply the wetlands. It will receive run-off from a 33ha catchment.
 - b. In terms of groundwater, there is an existing bore on the land. There having previously been farming uses on the land. There are not any bores within close proximity (refer Appendix 18). There is no cap on groundwater allocations, or any particular policy that would prevent a licence allocation being granted

28. Also importantly, VPA submits that the evidence of Mr Fairbairn is not that wetlands of 1 ha are not viable. His evidence simply did not address that point – or the question of what size wetlands *could* be sustained on the land. He had assumed a certain size, and not considered any variants (or any “bottom up” approach).
29. It is unclear why Mr Lane instructed Mr Fairbairn in 2014 to assume that “10 wetlands” or, more properly, wetlands with a total area of 4.5 hectares, would be constructed on the site. There is no specific reference to a proposal for this number of, or this size, wetland upon the subject land in any documents. (Cf [51])
30. The most detailed recent work in relation to the number and size of wetlands to be constructed upon the subject land is the Draft GGF Masterplan. This Masterplan shows two indicative wetland locations on the subject land. DELWP advises that the two wetlands on the subject land are intended to be a total of around 1 hectare in size – one “large” at 0.7ha, and one at 0.3ha.
31. These wetlands are intended to form part of a larger “cluster” of wetlands in the stretch of Kororoit Creek which is in the vicinity of the subject land – including the Deanside wetlands to the west. This cluster will in fact be quite a significant cluster for the species.
32. Diversity of locations is considered a desirable of the Masterplan. Few opportunities in fact present themselves for a larger wetland upon higher, flat, land. The subject land was identified as the best location for such a wetland, which would provide variety from the smaller wetlands on narrower terraces closer to the Creek itself. It was intentionally chosen for this role.
33. VPA submits the assertion of Mr Lane that the frogs movement onto the higher flat land will be impeded by the escarpment along part of the subject land’s boundary with Kororoit Creek is simply incorrect. Note that Mr Lane’s report in fact identified the rocky escarpment area as an area which the frog was “likely” to use as a potential refuge (page 15). The frogs will have no difficulty traversing the slope on the land. An assessment of the photographs provided by the submitter illustrate that the slope will not be a barrier to frog movement.
34. VPA submits that far from being a barren wasteland that will not support the creation of habitat, the subject land is a very good location for the creation of wetlands. Wetlands created on the site will provide for a slightly varied habitat in this reach of Kororoit Creek. To the extent that the water is warm, and salty, or indeed shallow at certain times of the year, these are in fact conditions that will be attractive to the frogs.
35. On the point of water quality, again, it is self evident that a suitable salinity of water will be able to be achieved, by using a mix of surface water and ground water. The evidence of the two experts was that the salinity of the groundwater was suitable.
36. In terms of the need to flush the wetlands, this is an operational matter that can be readily dealt with as and when the need arises. Though note it is not expected the need for this will routinely arise.

37. In terms of the potential for drawing water directly for Kororoit Creek, it remains the case that this is stated as a potential option in the Draft Masterplan – however, DELWP has advised that it is not the preference and hence no questions were asked of Mr Fairbairn about it.
38. Note too that other similar wetlands have been constructed in basalt, and using clay liners to minimise leakage.
39. The Natales seek to point to various factors in support of the assertion that the wetlands “will” not work. Ultimately however, none of the concerns have in fact been substantiated – despite the site specific assessments of the two experts.
40. In relation to the Natale submission that there is no evidence before the Panel from DELWP, the VPA submits this is of little moment. Of course the Panel should take the evidence into account. However the weight to be attributed to the evidence is a matter for the Panel. The Panel can choose to accept the evidence, or not. That is, the Panel can make findings of fact in relation to the evidence, that it is not persuasive. The Panel is also entitled to have regard to all of the materials and submissions before it in making a judgment call, informed also by its own expertise.

Work undertaken to establish the boundary

41. The Natales criticised the work undertaken by and for the Department, which supports the location of the CA boundary.
42. The VPA submits this criticism is unfounded.
43. An assessment of the relevant work reveals that in fact it has involved an appropriate level of assessment and input from relevant experts. To say that there is no evidence that any of the VPA, DELWP or any other body has carried out any study, survey or other “technical research” in relation to the proposed metapopulation node on the subject land (see [30]) is to ignore the reality of the work done.
44. To highlight but a few points by way of reply:
 - a. Past surveys have identified the presence of GGF upon the subject land, as detailed in the BCS and SRSS. This is a key fact – it flies in the face of the Natale submission that no site specific assessment has ever been undertaken, and that no surveys have been carried out on the Natale land (33.1).
 - b. In the 2012 Biosis report, VPA notes the involvement of Mr Craigie, and a team of ecologists.
 - c. In 2014, VPA notes the email dated September 2014 handed up on behalf of the Natales, from Biosis, which records the involvement of a hydrologist whom had

provided information on how the proposed wetland locations were developed. Note the reference to an instance of topography giving rise to a consideration that construction of wetlands was not feasible. (Note too in respect of this email that the last dot point, contained on page 26 of the Natale submission, relates to naturally fed by groundwater wetlands – that is, wetlands that are deep enough to access the water table). DELWP intends to pump groundwater, not rely on natural groundwater seepage.

- d. In April 2015, an expert workshop was held which included GGF ecologist and hydrologist familiar with the Western Growth Corridor. These persons examined GGF records, existing habitat and other waterbodies, native vegetation, buildings, heritage constraints, topography and high quality aerial imagery from wet and dry years. To suggest that this group had “significantly limited data and inputs” [46] is erroneous.
- e. DELWP also has dedicated staff with expertise in GGF habitat design.

45. Ultimately, the conclusion which the Natales invite the Panel to reach, is that despite all of the expert meetings and reviews by ecologists and waterway experts, including in relation to this site, everyone has overlooked the complete unviability of the site, which the Natales submit is so obvious this Panel ought now make a clear finding that the wetlands will never work. With respect, this submission does not ring true.

46. Note too, that the Masterplan does not represent a “shift” in thinking. Rather, it represents the development of thinking, along the same track, and within the same boundaries.

Necessity of the size of the identified CA

47. A question that was raised by the Natales was whether, if the constructed wetlands are only 1 hectare in size, the area of land set aside for conservation can be reduced?

48. VPA submits that this would not be appropriate. In short, the whole of the identified land will be of utility for the species.

49. It is important to observe that the land is located with the Creek bordering it on two sides, within a bend. A distance of 100m from the Creek is a standard distance applied to adequately protect just the Creek habitat, and even with this application, a good portion of the land is within the CA. To then provide for wetlands of the greatest utility, a buffer distance is applied (to create an “off-line” water body). Further, the wetlands are in fact sought to be located upon the higher and flatter land, rather than downslope close to the Creek. Lastly, the areas surrounding the wetlands also provide valuable terrestrial habitat, and areas, especially in terms of foraging and dispersal. Extensive foraging habitat is needed around breeding wetlands.

Value of the wetlands

50. It is important to observe that the evidence of Mr Lane was not that the subject land is not of any conservation value, or not of any potential conservation value.
51. Mr Lane's conclusion that the subject land had been "mistakenly" identified as a site for a metapopulation node was contingent upon Mr Fairbairn's evidence that wetlands would be unviable.
52. In cross examination Mr Lane was asked to assume that the wetlands would be viable; and then asked to agree that if that were the case, that from an ecological point of view, there would be an enhancement to the conservation of the GGF. Mr Lane, after initially simply reverting to Mr Fairbairn's evidence, ultimately agreed.
53. This evidence is important.
54. It appears accepted by Mr Lane and the Natales that the Kororoit Creek is a high priority Creek for conservation of the GGF. Too, that the GGF is a species vulnerable to extinction, and ought be protected. In addition, this particular stretch of the Kororoit Creek contains a number of contiguous, significant, conservation areas. This is an excellent part of the Creek in which to seek to add wetlands. That this is so is confirmed by the recent Masterplan, which in fact identifies this stretch of Kororoit Creek as a place where funds will be allocated.

Economics of the wetlands

55. The Natales submit that the wetlands will be economically unfeasible (page 27).
56. VPA observes that Mr Fairbairn was very careful to state that his costings were very preliminary.
57. VPA also observes that insofar as Mr Fairbairn has assumed 4.5ha of wetlands, that obviously any reduction in the size of the wetlands would result in a reduction in cost. In fact, if the wetlands are in fact 1 hectare in size, that is, less than a quarter of the size assumed by Mr Fairbairn, it would not be unreasonable to assume that the cost would also be less than a quarter of the estimation – that is, in the order of \$2M. This is precisely what DELWP considers the approximate cost will be.
58. The funding of the wetlands is a matter that DELWP has considered under the Masterplan.

Alternative sites

59. Three alternative sites were mentioned by the submitter.

60. The identification of these alternative sites has not been the subject of such thorough analysis that the Panel can conclude that they would be “better” sites. There is no “better” evidence that they would work – or that they would provide the type and size of wetlands desired to be placed upon the Natale land. The Natale submission accepted the assessment of Mr Fairbairn could probably be described as a desk top assessment – noting that details of any site inspections or ‘drive bys’ were unclear.
61. The alternative sites would require boundary re-alignments to be achieved if there is to be no net loss.
62. Any shift of CA onto the land owned by other people would need to be the subject to notice to those land holders. Note the Natale’s reliance upon *Whittlesea C187*, in which the Panel considered it ought be satisfied that the consequent changes to the PSP would not adversely affect a person who has not had the opportunity to make submissions about the change.
63. The VPA submits that marking potential alternative locations on a map based upon a desk top assessment is not a substitute for the years of work undertaken by DELWP to map appropriate locations for wetlands. The Panel cannot be confident these other sites are “better” than the one identified.
64. Further, as noted at (9), the entire rationale of the MSA is to seek to avoid Panels being required to “re-decide” the location of the boundary in each instance of land affected by a CA.

History of correspondence in relation to this land

65. The Natales referred in submission to the volume of correspondence that has passed between them and the Department. The VPA accepts that there has been a high amount of correspondence.
66. Yet this should not be taken to imply some fault, or lack of attention of DELWP. DELWP has engaged in extensive correspondence with the Natales representatives and has sought to ensure that the Natales have been given a fair go in terms of submitting an application for a boundary re-alignment – similar to other submitters along the Creek that the Panel has heard other submissions about.
67. The material submitted on behalf the Natales in support of a boundary re-alignment was assessed. The material did not satisfy DELWP that there should be a boundary re-alignment. This is self evident, as no approval decision was made.
68. DELWP has provided the Natales with a further opportunity to demonstrate that the boundary change proposal is appropriate, by highlighting the two (out of four) criteria that had not been addressed. DELWP has not ruled out the prospect that an application may be successful. This included an invitation to possibly address a criterion that had not at the time, and still has not, formally made its way into the Guidance Note. The April 2016 letter

stated that DELWP “expect” the revised Guidance Note will be ready in May 2016 – as it turns out it has not been finalised. This is the reason this criterion has not made its way to the Natales – it has not been formalised into the Guidance Note. Note too the reference in the April 2016 letter to the future invitation to a “stakeholder briefing” – rather than a promise of consultation (cf [50]).

69. As it currently stands, no successful application has been made as the Natales have not demonstrated that the outstanding two criteria have been met.
70. It is also true that no conclusive rejection of the application has been made.
71. However as all parties now appear before the Panel, the Panel is not in a position where there is a decision of DELWP, or a concluded view of DELWP, that the boundary ought be the subject of any recommendation for re-alignment.

Recommendations sought from the Panel

72. For the reasons set out above, VPA submits that the recommendations sought on behalf of the Natales ought not be supported by the Panel.
73. The VPA submits the Panel ought not seek to usurp the role of the State Government Department, as is invited in the Natale submission Option 1, being that the Panel recommend that DELWP vary the boundaries (on both the Natale and third party land). This would amount to the Panel directing DELWP how to exercise its discretion.
74. The VPA also submits that Option 2 in the Natale submission is also not desirable. DELWP has considered the site specific evidence provided; so a meeting on the same material is unlikely to achieve anything. Further, it is unreasonable to suggest that all experts involved in preparing the Masterplan are present at a meeting. But most importantly, it would be unnecessary – on the merits – and unreasonable, to all other landowners in the PSP, to hold up these Amendments on the basis of the issues raised by the Natales. Note that VPA accepts that if DELWP agrees to shift the boundary, then a PSA can be effected to follow that agreement (rather than the other way around).
75. At the very least, if the Panel is minded to recommend further action or consideration in respect of the Natale land, this should not hold up the remainder of the Amendment, and the Panel should make this clear.
76. VPA submits that the conclusions which the Panel ought reach in relation to this particular site are:
 - a. The Panel finds there is no convincing evidence that constructed wetlands upon the subject land will be unviable.

- b. The Panel also considers that the question of whether the boundary should be re-aligned is a decision more properly made by DELWP, and in the absence of such a decision, the Panel will not make recommendations that the boundary should be shifted.
 - c. The Panel supports the exhibited location of the boundary on the Natale land.
 - d. The Panel therefore declines to make the recommendations sought by the Natales.
77. VPA would in fact encourage the Panel to find that the construction of wetlands upon the site would enhance the conservation of the GGF as intended to meet outcomes established in the BCS under the Commonwealth's approval for urban development (EPBC Act part 10), and should be supported.
78. In this instance of a species vulnerable to extinction, it is desirable to err on the side of caution, and protection.

Submission 11 (Plumpton) – Plumpton Property Developments

Address: 167-233 Beattys Road / #27

1. In summary, VPA seeks the panel ought recommend as follows:
 - There is no change necessary to exhibited wording of vision related to Beattys Rd
 - Changes sought to Local park wording in PSP are not necessary

Function of Beattys Road

2. VPA does not supporting adding that it is a key access route between the northeast and the southwest of the Precinct as it will no longer have a continuous road function (although it will have a continuous path function).
3. Beattys Road will operate at a local road in part and as a connector road level in part. It will provide adjacent owners access to their land with no associated landtake, and provide access to the broader road network from local streets within individual subdivisions.
4. With regard to ICP: other connector/ local roads in the the PSP are not proposed as ICP funded roads.
5. VPA has developed a delivery model for Beattys Road which most submitters accept is fair and reasonable.

Flexibility in location of LP-12

6. There is sufficient flexibility offered in R42, so VPA does not support amending the description in LP-12 in Table 7.

7. The VPA notes that it agrees with the changes proposed in Council Closing Submission at paragraphs 27.1 and 27.2 but does not support Council's proposal in 27.3 as a single owner may have multiple properties and may be able to propose a good outcome for council consideration across these properties while meeting distribution requirements.

Other matters

8. The VPA notes that Villawood does not support the PSP approval to be delayed by the ICP.
9. In relation to UGZ Schedule 11 Clause 4.2, refer the VPA's earlier response to Melton City Council's submission.
10. The VPA notes that Villawood supports Dacland's proposed reconfiguration of the community hub and does not support the design put forward by UDM.
11. Refer VPA's earlier response at 2.6 'Dealing with the Urban Floodway Zone'.
12. VPA confirms also that Melbourne Water has agreed in principle to the Alluvium Design Option 3 proposal subject to further detailed design in its letter to property consultant, Celia Konstas, on the 23rd of November 2016. In addition, Melbourne Water made an email response on the first of December 2016 for in principle approval to the Alluvium report, November 2014, option 3, with specific detailed comments to the report.
- 13.

Submission 8 (Plumpton) - Marantali

Address: 989, 1043, 1069, 1097, and 1125 Melton Hwy, Plumpton / #21, #19, #18, #17, and #16

APA supplementary submission

Subdivision, use and building and works control

1. The APA submits that an application for subdivision, in addition to use and buildings and works applications, should trigger a permit within the PML.
2. The VPA makes the following observations.
3. The VPA does not support the inclusion of an additional permit trigger for subdivision or buildings and works.
4. The VPA considers that the determining factor of appropriateness of development of land within the PML should be assessed on the use proposed, and relies on its submissions already put to the Panel on this matter.
5. We note the APA's submission does not provide any rationale as to why an application for subdivision should trigger a permit within the PML.
6. VPA also submits that it is not workable to say 'subdivision for use X'. This appears to seek to impose a qualification for a permit trigger where a subdivision is associated with a use

and/or development application, which we submit will be difficult to implement for planning officers.

7. VPA also submits that a subdivision permit trigger is already required in the majority of instances of subdivision. It appears what APA is really seeking is notice of subdivision applications rather than an additional trigger.
8. In addition, we note that the inclusion of a permit trigger for subdivision will apply to a number of applications including minor subdivisions.

Density control

9. VPA does not agree with the density control by APA as the VPA's approach is more appropriate to these PSP's.

Decision guidelines Text "C"

10. VPA observes that these additional guidelines are entirely new and have not been subject of any submissions to date nor discussion in APA's principal submission.
11. VPA submits the Panel ought not support the addition of these decision guidelines.
12. VPA submits they will not be workable in practice. They call up an incredibly broad range of considerations. Many matters are technical. We note that it will be the Council that is required to consider these matters. We observe that there is reference to guidelines that may or may not exist, and which are not before this Panel. We observe that the trigger for these decision guidelines is all applications within the PML (i.e. it is not limited to sensitive uses or other prescribed matters that the APA are submitting should trigger a permit).

Overlay

13. VPA notes that the overlay separates applications for 'sensitive uses' and those where the 'likely population density' will increase. We note that retail premises is listed under the second category, not included in the list of 'sensitive uses'.
14. VPA also submits the wording of the permit trigger 'where the likely population density' is vague and presents implementation issues for Council.
15. VPA notes that there is no utility in including (b)(vii) and (b)(viii) as we already noted in our earlier submission that accommodation (other than single dwelling on a lot) automatically triggers any application where there is a dwelling density of two dwellings or more.
16. VPA submits that it is not clear who the appropriate referral authority will be as there are three separate bodies referred to in section (c), which we say will present further implementation issues for Council. And as earlier noted the decision guidelines refer to assessment tools that may or may not exist, and which are not before this Panel, and which VPA considers are too general and are not of the expertise of Council.
17. VPA strongly opposes the inclusion of an overlay that has not been subject of an extensive review process, as would any Planning Scheme amendment.