

PSP 1067 & 1096

# Donnybrook / Woodstock

Precinct Structure Plan

Closing Submission - GC28  
Amendment to the Whittlesea  
and Mitchell Planning Scheme

June 2016

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**Submissions**

- Submission 2 - M & J Harte*
- Submission 3 - Lou Dibella*
- Submission 4 - Glenn Halliday*
- Submission 6 - Angela and Sam Galileos*
- Submission 7 - Dennis Family Corporation*
- Submission 8 - Mitchell Shire Council*
- Submission 10 - Catholic Education Office*
- Submission 12 - Boral*
- Submission 14 - Mason Family*
- Submission 17 - City of Hume*
- Submission 18 - Friends of Donnybrook Train Station*
- Submission 19 - Melbourne Water*
- Submission 22 - Mirvac*
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- Submission 24 - Somerton Road Garden Supplies*
- Submission 25 - Greg Heffernan*
- Submission 26 - Anthony Monteleone*
- Submission 27 - Monteleone Family*
- Submission 31 - APA GasNet*
- Submission 34 - Friends of the Merri Creek*

## 1. Introduction

These closing submissions are made on behalf of the Metropolitan Planning Authority (MPA), and as Planning Authority for the Amendment.

The general background and strategic basis of the Amendment are set out in the MPA's Part A submissions. This is expanded in the MPA's Part B submissions, as well as addressing individual unresolved submissions.

The Donnybrook and Woodstock Precincts comprise a large area north of Donnybrook Road and south of the Outer Metropolitan Ring Road Reservation. It is one of the largest PSPs undertaken by the MPA with an area of some 1785 ha, in two Municipalities.

There were 34 submissions to the Amendment.

What needs to be put into perspective is that 16 Submitters have appeared before this panel and called evidence on biodiversity, traffic, retail and drainage. The biodiversity evidence generally related to requested changes to the boundaries of conservation areas as well as the proposal to develop drainage infrastructure in the Growling Grass Frog Conservation area 34, known as the "bulge". These are matters for DELWP. The bulk of traffic, retail and drainage evidence generally related to rebuttal of the traffic, retail and drainage evidence put forward by Submitter 27.

The submissions and evidence generally demonstrate a high level of co-operation and narrowing of issues between the parties.

Version 3 of the MPA's list of changes was distributed on Friday 10 June 2016 during the Panel Hearing, and includes the MPA's most up to date agreed changes to the PSP. It should be noted that as indicated table 3 and 4 on page 7 of this document should be replaced with hearing document 41.

## 2. Closing Submissions

### 2.1. Planning Controls

#### 2.1.1. Applied Residential Zones

##### **Residential Growth Zone or General Residential Zone.**

The Panel heard expert evidence called on behalf of Lavsor and Stanton Grant Legal from Jason Black (Managing Director-Insight Planning Consultants) on planning matters including state policy framework and zoning.

In relation to the use of the RGZ Mr Black specified in his evidence statement that:

*“At a minimum, I support the application of the RGZ to all land within proximity to the train station(s) and town centres and therefore support the MPA’s approach to applying the RGZ rather than the GRZ, but the planning provisions must ensure that a building height greater than 13.5 metres can be accommodated.”*

Mr Black’s evidence indicated that we need to “get real” about increased height and density particularly around transport nodes.

He advocated the best way to achieve increased height and higher density was the use of the Residential Growth Zone throughout all residential areas proposed in the PSP.

When questioned by Mr Montebello about the “fear” of not being able to develop higher buildings and densities under the GRZ because Council’s would be reluctant to grant permits for them, he answered that the fear was likely to become a reality.

Plan Melbourne Refresh - Background Paper 1 Managing Growth Infrastructure for Melbourne’s outer suburbs December 2015 specifies at page 5:

*“Melbourne’s population is growing rapidly and is expected to reach as much as 7.7 million by 2051. Population growth is currently fastest in Melbourne’s outer suburbs, which are projected to accommodate almost half of metropolitan Melbourne’s new housing requirements over the next decade.”*

The MPA submit that we need to have our crystal ball on the table to look at what development will be occurring and what height and density will be not only desirable but achievable in this area in 20-30 years time.

It should be noted that the PSP contains the existing Donnybrook train station which provides commuter services and a proposed Lockerbie train station.

## Housing Design Response

Part 2 of the PSP Guidelines sets a series of questions which the PSP must address in relation to density, yield and diversity. The design response included in the PSP should address inter alia:

*What opportunities have been taken to maximise the housing yield and increase density and diversity of housing types (for example by applying a variety of residential and mixed use zones)?*

*How has provision been made for a variety of housing types, sizes and tenures and for future increases in housing diversity as new communities mature and additional housing choices are required?*

*What opportunities have been taken to maximise higher density housing close to public transport, shops and jobs?*

*How is the delivery of more affordable housing closer to jobs, transport and services implemented?*

The MPA considers the RGZ will provide the greatest flexibility and opportunity to ensure these questions are addressed in Growth Areas planning in the future.

### 2.1.2. Development Contributions Plan Overlay

Alternative wording to the DCPO has been provided by Mr Montebello in relation to Clause 4.0 of Schedule 17 to the DCPO (Whittlesea), as follows:

#### 4.0 Land or development excluded from development contributions plan

A permit may be granted to subdivide land, construct a building or construct or carry out works before a precinct wide contributions plan has been prepared to the satisfaction of the responsible authority if any of the following apply:

- ~~• An agreement under section 173 of the *Planning and Environment Act 1987* has been entered into with the responsible authority that makes provision for the delivery of items listed in the Precinct Infrastructure Plan within the *Donnybrook/Woodstock Precinct Structure Plan*, incorporated document.~~
- The permit contains a condition requiring an agreement under section 173 of the *Planning and Environment Act 1987* that makes provision for a monetary contributions to items listed in the Precinct Infrastructure Plan within the *Donnybrook/Woodstock Precinct Structure Plan*, incorporated document with the agreement being required to be entered into ~~before the commencement of development prior to the issue of any Statement of Compliance.~~ At the discretion of Council, the agreement may make provision for works in kind to be carried out having regard to the infrastructure projects set out in the Precinct Infrastructure Plan contained in the *Donnybrook/Woodstock Precinct Structure Plan*.

- The responsible authority considers that the permit does not compromise the orderly planning of the precinct for the construction of a building or construction or carrying out of works associated with:
  - Additions or alterations to a single dwelling or development ancillary to the use of land for a single dwelling.
  - An existing use of land provided the gross floor area of the existing use is not increased by more than 1000 square metres.
  - A sign.
  - ~~The A~~ permit which only allows the consolidation of land or a boundary realignment.

The MPA supports the alternative wording provided by the City of Whittlesea.

### **Catholic Education Melbourne – school site exemption from DCPO provisions**

Catholic Education has noted that the DCPO should state that non-government schools are exempt from the provisions of this overlay. This was an omission in the Part A Submission.

In accordance with the Ministerial Direction in relation to Development Contribution Plans, the following applies:

#### Exemption for non-government schools

Under section 46M of the Planning and Environment Act 1987, I direct that a development contributions plan must not impose a development infrastructure levy or a community infrastructure levy in respect of the development of land for a non-government school.

The MPA intends to include in the exemptions to the DCPO as follows;

*Land required for the following is exempt from the provisions of this overlay:*

- *Use and development for a non-government school*

Logically, the Mitchell Shire DCPO should also make these changes.

### **2.1.3. IPO Schedule 3 (Mitchell) and Schedule 7 (Whittlesea)**

The Panel Chair has queried why the IPO schedules are proposed in this Amendment.

The following is an abstract from the exhibited Explanatory Report:

*Proposed planning provisions will protect and conserve the natural and scientific assets around and along the Merri and Darebin Creeks and Hayes Hill, through the use of the RCZ. In addition*

*to the RCZ, an IPO will also be implemented over areas affected by the RCZ to ensure that the PSP also applies to these areas.*

The IPO provides as follows:

### **43.03 INCORPORATED PLAN OVERLAY**

Shown on the planning scheme map as IPO with a number.

#### **Purpose**

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To identify areas which require:

The form and conditions of future use and development to be shown on an incorporated plan before a permit can be granted to use or develop the land.

The incorporated plan in this instance is the PSP document.

## **2.2. Education**

### **Catholic Education Melbourne (CEM)**

#### Suitability of School Site north of Cameron Street.

The letter from Patrick Love to Mr Wren on 31 May indicates that the CEM position is to retain the current layout as exhibited, however would consider an option for location of the Catholic school on the east of the north south road.

Panel heard that negotiations may have been underway to relocate the non-government school, but have not heard any result of those negotiations.

#### **Designation of non –government school within the PSP**

This matter was canvassed at the recent Rockbank PSP Panel hearing;

*“..The Panel considers that there is a fundamental tension between the understandable wish of the MPA not to identify particular nongovernment providers in a PSP, and the need of CEM to gain the benefit of greater certainty from its appropriate participation the planning process. The Panel accepts that identifying individual providers is not the role of a PSP. The problem appears to be in part that the Catholic education system is effectively defined as a private sector operator, despite educating almost one quarter of students in the state and being majority funded by government.*

*The Panel agrees with the Panel for Amendment C66 to the Surf Coast Planning Scheme that it is not the role of the Panel to address this policy dilemma in a one off manner, but rather to urge the MPA to further address this policy issue. The Panel is of the view that more certainty needs to be provided to ensure that where CEM appropriately participates in the PSP planning process, it can be given greater certainty about its ability to purchase the site identified as meeting its needs. Other more 'footloose' private education providers should be discouraged from acquiring sites identified in the planning process when they have not been involved in that process. While the Panel understands the anxiety of CEM to have this issue resolved, there was no evidence provided that in this particular instance that there is an immediate threat from another provider to acquire the site in the Rockbank PSP effectively identified for CEM."*

The Panel concluded that:

*The Panel concludes that there should be no change to the designation of non-government schools in the Rockbank PSP.*

**Dennis Family Submission regarding G28 - should it also include government as well as non government schools which can be redeveloped for residential purposes.**

The submission of Dennis Family raised the issue of a government school site where they are not required for use as a schools.

The MPA consider that government school sites should not have a 'release' requirement or guideline for residential redevelopment if the school for some reason does not proceed. This has not been included for any government school site in any previous PSPs.

If a government school does not proceed in a location that is generally in accordance with a PSP, that PSP may need to be amended.

It is appropriate that the PSP be reviewed and amended as government schools are very often a significant land holding as well as significant destination and component of a PSP and community hub. If a government school does not go ahead, the location of other features (community centres, sports fields etc etc) might also need to be reviewed and altered.

This is due to the fact that when government school sites are strategically chosen by the Education Department they are purposely located close to other school sites, activity centres, sporting facilities and community facilities.

The planning and locational requirements for schools if very detailed, in accordance with the standards of the PSP Guidelines.

It is also Whittlesea Council's view that if a government school site is not required for education purposes, that a review of that part of the PSP should be undertaken to ascertain whether any changes to the PSP are required.

### 2.3. APA GasNet

The Panel heard expert evidence for the Dennis Family Corporation from Michael Barlow (Director-Urbis) on planning matters involving Gas Pipelines.

*“I accept that the pipeline operator is required to know about land use changes that might be occurring in order to undertake its responsibilities under AS2885, however, this can be achieved through a simple planning permit requirement that applies to land within the measurement length.*

*I make the recommendation that a new application requirement be introduced into the PSP that requires any planning permit application within the measurement length of the pipeline to submit evidence that it has notified the pipeline operator of the application. This will ensure that the pipeline operator can be kept up to date with all current planning permit activity and ensure that it meets its obligations, under separate legislation and AS2885, to maintain pipeline safety in response to changing land use considerations.*

*This will also avoid the administrative burden of a Clause 66.06 notice provision being put forward by the MPA in its Part A Submission.”*

#### **Notice Requirements to Gas Transmission Pipeline Licensee**

##### UGZ4 (Mitchell) and UGZ6 (Whittlesea)

Clause 5.0 of UGZ4 (Mitchell) and UGZ6 (Whittlesea) specifies the notice requirements to the gas transmission pipeline licensee. The following drafting attempts to clarify and simplify the provisions presented to the Panel.

As compared to the Panel version, the reference to ‘Dwelling where density will equal or exceed 30 dwellings per net developable hectare’ has been removed and replaced with a trigger for the construction of dwellings. The clause has also been reformatted to better reflect VPP formatting standards.

In the applied residential zones, even though use of a dwelling is as-of-right, a permit is required to construct a dwelling on lots under 300sqm in area or to construct more than one dwelling on a lot. It is proposed to remove the previously stated ‘30 dwelling per hectare’ trigger, which has inherent uncertainties in its application, as raised by Whittlesea, with the more certain triggers of one dwelling on a lot less than 300sqm and more than one dwelling on a lot triggers under the residential zones.

The gas transmission pipeline licensee will not be notified of ordinary residential subdivisions or single dwellings on lots more than 300sqm.

Whittlesea have agreed to the following draft wording.

## 5.0 Notice to gas transmission pipeline licencee

Notice of an application of the kind listed below must be given in accordance with section 52(1)(c) of the Act to the person or body specified in the Schedule to Clause 66.06:

~~A~~An application, Notice must be given to the person or body listed in the Schedule to Clause 66.06 of an application on land shown within:

~~341 metres of the Keon Park to Wodonga (T74.2 300mm) pipeline with Pipeline Licence PL101; or~~

~~590 metres of the Wollert to Broadford (T119 400mm) pipeline with Pipeline Licence PL101~~

~~and~~ shown as 'gas pipeline measurement length' on 'Plan 2 -- Precinct Features' in the incorporated *Donnybrook/Woodstock Precinct Structure Plan for Accommodation (other than a dwelling on a lot or a Dependent person's unit), Dwelling where density will equal or exceed 30 dwellings per net developable hectare, a Child care centre, an Education centre, a Place of Assembly, Retail premises, a Cinema based entertainment facility, Hospital or Aged Care Facility*, where the application is to use land for, or to construct a building to accommodate, any of the following:

- Accommodation (other than a Dependent person's unit)
- Aged Care Facility
- Child care centre
- Cinema based entertainment facility
- Education centre
- Hospital
- Place of assembly
- Retail premises.

*Note: There are two gas transmission pipelines in the same easement within the Donnybrook/Woodstock growth area precinct: 1) The 300mm diameter 341 metres of the Keon Park to Wodonga pipeline, which, for the purposes of AS2885.1-2012 generates a 'measurement length' of 341 metres either side of the pipeline; and 2) 590 metres of the 400mm diameter Wollert to Broadford pipeline, which, for the purposes of AS2885.1-2012 generates a 'measurement length' of 590 metres either side of the pipeline. The measurement lengths are represented as the 'gas pipeline measurement length' in the precinct structure plan*

## 2.4. Railway Noise Attenuation

Mitchell Shire Council submits that it would be appropriate for the Panel to recommend that UGZ4 be amended to include railway noise attenuation measures using those in Schedule 8 to the UGZ in the Melton Planning Scheme as a basis.

The example cited was based on the railway noise attenuation application requirement and condition at clauses 3.4 and 4.5 of Schedule 8 to the UGZ in the Melton Planning Scheme, which apply to the Paynes Road PSP.

MPA agrees that it is appropriate for the UGZ Schedule 4 (Mitchell) and UGZ Schedule 6 (Whittlesea) to include a Railway Noise Assessment application requirement. However, we are not of the view that it is necessary to impose a permit condition also and propose the following:

### ***Railway noise attenuation***

*An application for use or development on land that is reasonably likely in the opinion of the responsible authority to be impacted by noise from the train operations on the Sydney-Melbourne railway line must be accompanied by an acoustic assessment report prepared by a qualified acoustic engineer or other suitably skilled person to the satisfaction of the responsible authority. The acoustic assessment report must demonstrate compliance with the Local Access Street and Railway Interface cross-sections in the PSP. The acoustic assessment report must also include (as appropriate to the particular use or development):*

- *An assessment of noise levels on the land taking into account the existing and likely future noise levels associated with the ongoing operation of the Sydney-Melbourne rail line.*
- *Recommendations for noise attenuation measures designed to ensure internal bedroom noise levels will not exceed 65 dB LAmax and 40 dB LAeq,8h for the night period from 10pm to 6am.*
- *Recommendations for limiting the impact of railway noise on future buildings within the proposed subdivision.*
- *A design response that addresses the recommendations of the acoustic assessment including all necessary architectural noise attenuation treatments.*

## 2.5. Dry Stone Walls

### **UGZ4 Mitchell Planning Scheme**

Mitchell Shire Council have submitted that:

Clause 3.6 of the UGZ4 applies to dry stone wall provisions for Mitchell. Specifically, it applies to dry stone walls with moderate to very high retention value.

The August 2013 Context report that informs the Amendment indicates that there are only low retention value walls in Mitchell.

On the above basis, there would seem to be no barrier to deletion of this clause.

It is noted that MPA agrees to delete Clause 3.6 from UGZ4 regarding dry stone walls in Mitchell.

### **UGZ6 Whittlesea Planning Scheme**

MPA's submission in relation to Dry Stone Walls remains unchanged from the mechanisms and adjustments made prior to the Panel hearing commencing, which were submitted to Panel and outlined in the Part A submission.

## **2.6. Contaminated Land**

Several landowners have submitted that the present wording of the UGZ6 schedule (Clause 3.3) currently requiring sites identified as having a medium or lower risk of contamination may proceed via an assessment route that could avoid the need for an environmental audit. Sites ranked "High" risk require an environmental audit and the issue of either a Statement or a Certificate under the Environment Protection Act.

A number of parties see this approach as onerous and an alternative proposal has been suggested which is based broadly on the model adopted in the Wollert Panel. This approach puts the EAO to one side and instead devises a provision within the UGZ schedule which deals with the management of potentially contaminated sites.

Whittlesea have revised their position on this matter and now submit that *"Subject to the final drafting being acceptable to Council, Council is prepared to agree to a revised methodology which provides the potential to avoid a Certificate of Environmental Audit but only on the basis that the process does not require or call upon Council to exercise a judgement (such as whether land is acceptable or requires an Audit) on matters of site contamination as these issues are beyond its expertise."*

MPA is supportive of this revised approach and consistency with the Wollert Panel.

This is the revised agreed position:

Proposed UGZ4 and UGZ6 wording to be added is drafted for consideration as follows:

### **3.3 Use or develop land for a sensitive purpose – Environmental Site Assessment**

An application to develop land identified as High Risk and Medium Risk described in Table 3 below for a sensitive use (including accommodation, child care centre, kindergarten, primary school or public open space) must be accompanied by a detailed site investigation (Phase 2 assessment) conducted by a suitably qualified professional (contaminated land), of the Environmental Assessment Areas ranked as 'High Potential for Contamination' and 'Medium Potential for Contamination' in the Woodstock Precinct Structure Plan 1096, Environmental, Hydrological & Geotechnical Assessment (Meinhardt, June 2013) and Growth Areas Authority - Donnybrook Precinct Structure Plan 1067,

Environmental, Hydrological & Geotechnical Assessment (Meinhardt, June 2013). The Phase 2 assessment must provide for the following information:

- Further detailed assessment of potential contaminants on the relevant land;
- Further detailed assessment of surface and subsurface water conditions and geotechnical characteristics on the relevant land and the potential impacts on the proposed development including any measures required to mitigate the impacts of groundwater conditions and geology on the development and the impact of the development on surface and subsurface water; and
- An unequivocal recommendation on whether the environmental condition of the land is suitable for the proposed use/s or whether an environmental audit in accordance with Part IXD of the Environment Protection Act 1970 for all or part of the land is recommended having regard to the Potentially Contaminated Land General Practice Note June 2005, DSE.

**Table 3**

Address	Legal Description
1025 Donnybrook Road, Donnybrook	Lot 1 TP843230 only
895A & 895B Donnybrook Road, Donnybrook	Lot 3 PS334583
855 Donnybrook Road, Donnybrook	Lot 1 PS334583
875 Donnybrook Road, Donnybrook	Lot 2 PS334583
835 Donnybrook Road, Donnybrook	Lot 2 PS449806
905 Donnybrook Road, Donnybrook	Lot 1 TP663551
915 Donnybrook Road, Donnybrook	Lot 1 TP248727
975 Donnybrook Road, Donnybrook	Lot 1 TP444829
1085 Merriang Road, Woodstock	Lot 8 LP56455
1131 Merriang Road, Woodstock	Lot 1 LP83456
1135 Merriang Road, Woodstock	Lot 3 LP56455
1145 Merriang Road, Woodstock	Lot 2 LP99885
1165 Merriang Road, Woodstock	Lot 1 LP99885
1305 Donnybrook Road, Woodstock	Lot 2 LP130685
1285 Donnybrook Road, Woodstock	Lot 1 LP130685
1145 Donnybrook Road, Woodstock	Lot 2 LP208748 only
1315 Merriang Road, Woodstock	Lot 2 LP123745
825 Donnybrook Road, Donnybrook	Lot 1 PS449806
845 Donnybrook Road, Donnybrook	Lot 1 TP827515
1085 Donnybrook Road, Donnybrook	Lot 1 LP77367
1025 Merriang Road, Woodstock	Lot 14 LP64456
1343-1345 Donnybrook Road, Woodstock	Lot 16 LP56455
1325 Donnybrook Road, Woodstock	Lot 17 LP56455
1035 Merriang Road, Woodstock	Lot 13 LP56455
1045 Merriang Road, Woodstock	Lot 12 LP56455
1055 Merriang Road, Woodstock	Lot 11 LP56455
1065 Merriang Road, Woodstock	Lot 10 LP56455

Address	Legal Description
1075 Merriang Road, Woodstock	Lot 9 LP56455
1105 Merriang Road, Woodstock	Lot 2 LP82581
1115 Merriang Road, Woodstock	Lot 1 LP82581
1125 Merriang Road, Woodstock	Lot 2 LP83456
1265 Donnybrook Road, Woodstock	Lot 19 LP56455
1255 Donnybrook Road, Woodstock	Lot 20 LP56455
1145 Donnybrook Road, Woodstock	Lot 1 LP208748
1235 Merriang Road, Woodstock	Lot 2 TP366337 only

This would result in Clause 3.4 relating to medium potential contamination sites being deleted as the above drafted wording combines high and medium potential sites into one application requirement.

## 2.7. Heritage Overlay on property 19

### 2.7.1. Property 19

Mr Dibella objects to the Heritage Overlay (HO) on his property. Much weight was given by his representative Ms Scullion to the absence of any specific recommendation for inclusion in the HO in the Context report.

The Panel has been advised by Council that the purposes of the Context report was to identify properties that may contain places of heritage significance. Council have also provided a number of reasons why the property should be included in a HO and as outlined in our Part B submissions, the HO will not necessarily mean the dwelling will be retained, but at least a heritage assessment of the site will be undertaken at the subdivision stage.

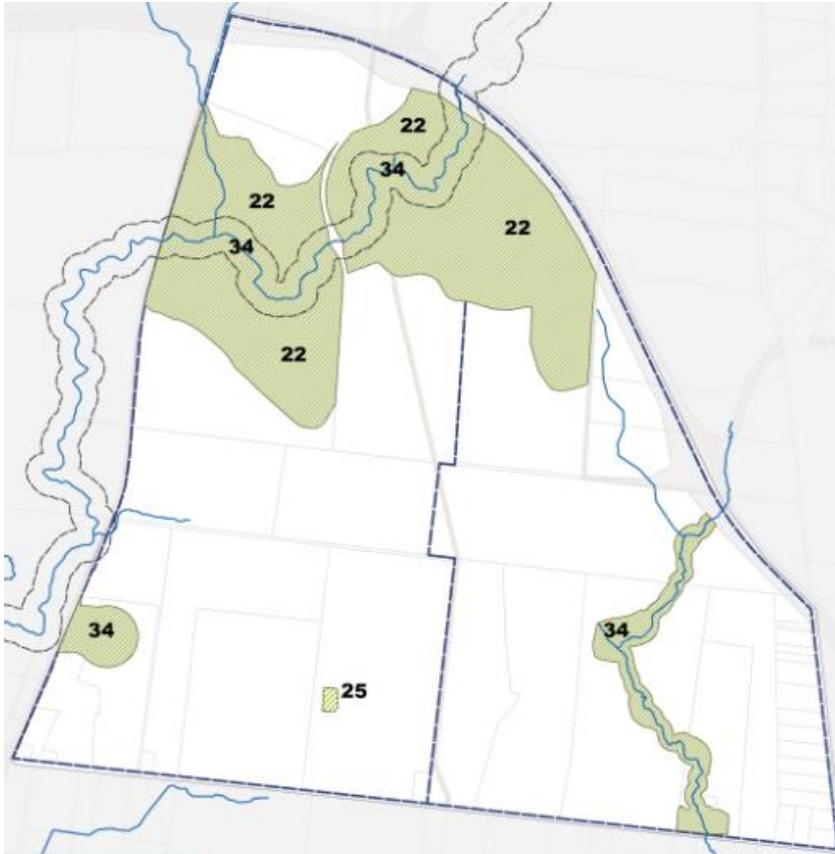
The MPA supports Council in its request for the application of the HO.

### 2.7.2. HO185/187

It is understood from Whittlesea council that a report was commissioned by DFC from Tardis Consultants regarding the Heritage Overlay on property 32. The MPA will provide a copy of this report when it has completed printing at some 237 pages long.

## 2.8. Conservation Areas

### Review of Conservation Area Boundaries



Submission 12 – Boral  
 Submission 14 – Mason Family  
 Submission 7 – Dennis Family Corporation

The above submitters have requested an alteration of boundaries to the conservation areas shown on the map above.

Three of the Conservation Areas are being reviewed by DELWP. This work is not yet complete and therefore cannot be incorporated into the PSP document until it is completed and approved.

The Conservation Area Concept Plans (CACPS) will be updated when the revised boundaries are identified. It should also be noted that any increase in developable area associated with a reduction in Conservation Area will be subject to the payment of native vegetation offsets and the City of Whittlesea's tree retention policy.

Until such time this review is completed and approved, the MPA can only show the current designated BCS boundary.

### 2.8.1. Rural Conservation Zone Schedule 2

DELWP's submission to the MPA specified that:

“DELWP does not require an additional schedule to the Rural Conservation Zone clause to implement the BCS conservation areas. The VPP Rural Conservation Zone clause is sufficient for this purpose”.

DFC are concerned that the minimum size for subdivision in the RCZ itself is 40ha. DFC are concerned that this will not allow the subdivision of the 10ha and 14ha conservation reserves on their respective development sites.

In practical terms, there are two ways of addressing this. The first is to include Schedule 2 with smaller subdivision sizes nominated.

The second is to rely on Clause 64.03 of the Whittlesea Planning Scheme, which is designed to specifically address the issue of allowing smaller lots to be subdivided when land is in more than one zone. This provision states:

#### **64.03 Subdivision of land in more than one zone**

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

#### **Permit Requirement**

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

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

Therefore, as the land will be subject to more than one zone, it is not necessary to reinstate an RCZ schedule or include an exemption in the RCZ head provision.

We understand that DELWP will not support any application for a dwelling within the conservation areas.

## 2.9. Infrastructure Contributions Plan

You have heard that the ICP is imminent and have been tendered the letter from Vicroads to specify how they will deal with road construction and intersection pursuant to the new system. The new ICP system costs intersections on standard templates and standard contributions.

It is the MPA and Council's preferable course of action for the PSP to continue to be processed but ultimately not be finalised until the ICP has been resolved. This is pertinent given that this will be the first PSP approved under the new ICP system.

## 2.10. Public Acquisition Overlay Removal

The PSP was exhibited with a PAO on 1085 Merriang Road.

On the 7<sup>th</sup> June, the MPA received the following email from the landowners representative in respect of the removal of the PAO.

Subject: 1085 Merriang Road Woodstock Vic 3751

Hi Stephen,

Further to our discussions last week, I confirm that our client Mr Antonino Montalto has requested that the acquisition overlay remain on the property at 1085 Merriang Road Woodstock.

Also, as previously requested, we require the positioning of the overlay to be adjacent the southern boundary bordering his other property at 1075 Merriang Road Woodstock.

Our valuers and property consultants believe that the removal of the acquisition overlay will severely impact him financially.

Should you wish to discuss this matter further we will be able to have a meeting with you after the 14th June 2016

I look forward to your reply.

Kind Regards

Tony Delinaoum | Director | The Real Estate Business Pty Ltd

The MPA understand council's reasoning as has been explained to the panel today, and agrees that the PAO is not necessary for development to occur in that area. The Dennis Family do not object to the removal of the PAO. It is unclear how the PAO came to be included in the exhibited version of the PSP, if it was not at the request of Council.

The purposes of the Clause 45.01 – Public Acquisition Overlay include:

- To identify land which is proposed to be acquired by a Minister, public authority or municipal council.
- To reserve land for a public purpose and to ensure that changes to the use or development of the land do not prejudice the purpose for which the land is to be acquired.
- To designate a Minister, public authority or municipal council as an acquiring authority for land reserved for a public purpose.

If it is not the intention of Council, the Minister or a public authority to acquire or purchase the land, then there is no purpose in retaining the PAO on 1085 Merriang Road, Woodstock.

## 2.11. Melbourne Water DSS

The Panel heard expert evidence for the Dennis Family Corporation from Warwick Bishop (Director-Water Technology) on the matter of drainage.

He found that “The PSP reflects the latest design from the Lockerbie East DSS and provides an appropriate drainage solution for the PSP area.”

The Panel heard expert evidence for Mirvac and Boral from Jonathon McLean (Senior Consultant-Alluvium) on the matter of drainage.

*“The current PSP layout is not an appropriate response to manage stormwater runoff from Catchment 5 as it does not provide a wetland asset in the north western corner of property 8. I would recommend that the response to manage stormwater runoff should be based upon the natural catchment boundaries. As a result I believe that the PSP should include a wetland at the low point of Catchment 5 and provide a drainage reserve land budget of 1.7 hectares.”*

This has been agreed upon between Boral and Melbourne water as detailed in the submissions of Mr Paul Connor.

### Constructed Waterway vs Pipe

The Panel further heard in oral evidence from Mr Mclean, the significant benefits in environmental and community terms, of constructed waterways in new developments.

The Panel heard expert evidence for the Monteleone Family from Andrew Prout (Senior Principal Engineer-Engeny) on the matter of drainage and piping the current proposed constructed waterway.

Melbourne Water support the location of the proposed retarding basin in the revised Engeny evidence, but do not support the piping of 1.2km of a waterway/floodplain of the Merri Creek.

The piping of this existing floodplain would not be consistent with Melbourne Water objectives to retain significant waterways in urban areas as open systems. The long term benefits of an open

waterway would be sacrificed at the expense of maximising developable land for one landowner, these benefits that would be lost forever are (Melbourne Water 2016):

- Benefits to the environment: contribute to the biological diversity of the area and provide future habitat for plants and animals. Assist in the processing of nutrients and regulating the flow of water downstream.
- Benefits to the community: people benefit from the environmental services provided by headwater streams (reduction in urban heat island effect, improved air quality, and nutrient cycling). Provide people with opportunities to interact with the natural environment.
- Benefits to land managers: land managers can benefit from well-planned and designed constructed waterways, with positive influences on community well-being and amenity of an area.

The Panel heard expert evidence for the Monteleone Family from Malcolm Wright (Senior Ecologist-Brett Lane and Associates) on the matter of drainage and infrastructure within the Growling Grass Frog Conservation Area.

*“Engeny have identified that the conservation area is in a natural low point in the landscape and propose to use this location as a retarding basin. However, four of the six ponds proposed will be located above the 20-year flood event and two ponds located above the 50-year flood event. This will ensure that predatory fish will not be able to access these ponds regularly, providing a refuge from predators for the frog.*

*It is considered that in light of these findings, the Engeny proposal will allow for the creation of constructed Growling Grass Frog habitat which meets or exceeds current construction standards.”*

DELWP does not support the proposal to construct a bypass channel through the existing large dam within the conservation area 34. GGF has been recorded at this waterbody in the recent past and existing large dams (even if currently dry) will be a priority for GGF habitat enhancement.

DELWP would not support a break in connectivity between WL2 and the GGF conservation area. Locating WL3 adjacent to the northwestern corner of the conservation area enables better connectivity with Merri Creek populations via the larger culverts under the railway line. Engeny's proposal to locate WL3 within the GGF conservation area would result in a gap between WL2 and the GGF conservation area.

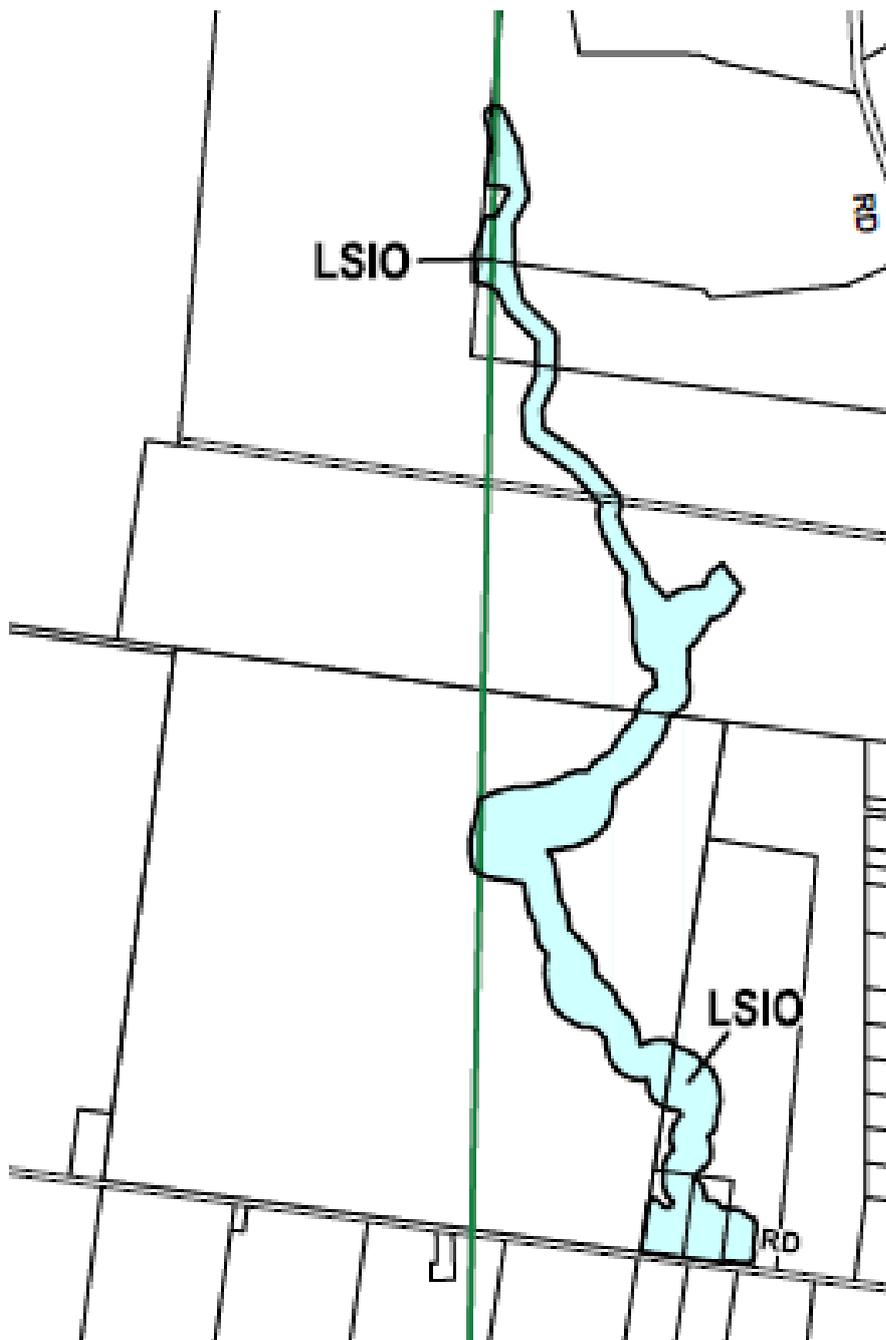
DELWP supports Melbourne Water's Drainage Services Scheme on the basis that there has been significant engagement in the development of drainage plans through the precinct structure planning process to date. DELWP has previously determined that the northwest corner of this portion of the "bulge" is the most suitable location for wetland 3 and that the remainder would be required for GGF wetlands and terrestrial foraging habitat. (see attached email from DELWP to MPA)

## 2.12. Extent of LSIO along Darebin Creek from Dennis Family Corporation submission

Dennis Family Corporation submitted for the LSIO to be removed from this Amendment as it encroaches onto residential land.

It has since been clarified that the exhibited map only covers the the extent of the BCS area and not residential landholdings.

Melbourne Water confirmed this on the 16 June 2016.



### 2.13. Temporary Access Street

Mr Cicero submitted this morning that the temporary access street east of Gunns Gully Road near the OMR be constructed to a “low order rural road”. There is no cross section for a “low order rural road” in the PSP, however as part of any subdivision application in relation to property 25, the road would have to be constructed to the satisfaction of the Responsible Authority. The temporary nature of the road should be taken into consideration in the requirements for construction.

### 2.14. Mr Gallileos submission regarding the Park located on his property

The PSP is proposed to to be approved with an ICP. At this stage it is not clear what the Minister will direct with regard to the content and administration.

Compensation for the land will be paid using the PLEM methodology, which is the agreed methodology between developers, Councils and the MPA. This methodology compensates the provider for over provision of open space.

The purpose of the open space as allocated on the site includes to protect existing mature trees.

A permit will be required for the removal of the large tree on the Merriang Road frontage, and is something that has not been raised prior to the submissions of the landholder.

### 2.15. Intersection Treatments

The closing submissions of Mitchell indicate at Para 40 in relation to interim on ultimate intersection layouts, indicate that the Council and this Panel must consider what is before it.

In relation to the intersections, what is before this panel is a list of infrastructure items and a plan showing the locations of the infrastructure items. As Panel is aware, there is no exhibited DCP or intersection designs, and no estimated costings.

The Panel will recall that Mr Hunt from Cardno had done some interim intersection designs, but agreed in cross examination that this was not a matter before this Panel. Under the proposed ICP system, we are of the understanding that ICP funded intersections will be provided for with standard templates which are funded by a per hectare development levy.

## 2.16. Traffic and Transport

The Monteleone Family submitted that the road identified as “Monteleone Way” should be funded in the Infrastructure Contributions Plan. The submission was supported by the evidence of Terry Hardingham.

The essence of Mr Hardingham’s opinion was that the street would carry some north south traffic outside the Donnybrook/Woodstock precinct (especially to the employment area to the south) and within the precinct, including to both railway stations. Its location would be a substitute for a north-south arterial that would logically be located close to the rail line. Related to this was reliance upon traffic modelling which showed sections of the proposed street carrying more than 7,000 vehicles per day. On this basis, Mr Handingham concluded as follows:

“I submit that it would be more equitable to include the total cost of the north-south road in the Infrastructure Contributions Plan. If this cost was added to the funded projects the 9 percent contribution of the Monteleone land would total around \$9.41m.”

Stephen Hunt of Cardno expressed a contrary view. In his opinion, the likely traffic volumes of the proposed road would not warrant designation as an arterial road. To Mr Hunt, at most the proposed road ought to be classified as a boulevard connector road.

We submit that the panel should prefer Mr Hunt’s evidence on this issue, and Mr Hardingham’s evidence should not be accepted.

There are four flaws in Mr Hardingham’s conclusion.

Firstly, Mr Hardingham’s evidence on the function of the proposed road was unsupported by any modelling. He did not know how much traffic would use the proposed road as an arterial road. Indeed, he had no empirical basis to say that *any* traffic would use it as such.

As it is, Mr Handingham accepted that the proposed road would not carry enough through traffic to be classified as a primary or as a secondary arterial road in accordance with VicRoads’ working document “Guidance for Planning Road Networks in Growth Areas” or under the MPA’s document “PSP Notes – Our Roads: Connecting People”. This was a significant concession. The PSP Notes give the following description of a secondary arterial road:

*In some circumstances, an arterial may not have a strong through traffic role. These streets carry higher traffic volumes than connector streets and typically appear on a traditional 1.6 km (1 mile) grid. Local arterials normally have two to six trafficable lanes, with a speed limit of 60 – 70 km/hr. Some road space may be dedicated to prioritise public transport services and bicycle movement.*

- *Local arterials are more likely than declared arterials to provide entry points to larger developments such as public facilities and shopping centres and provide for priority public transport services and for bicycles; and*
- *Activity centres should abut, but normally not straddle, local arterials.*

The VicRoads document employs a very similar definition of the role and function of a secondary arterial road.

The VicRoads working document and the PSP Notes are important to Mr Handingham's evidence because they, in contrast to clause 56.06 of the Victoria Planning Provisions, import a functional requirement into the definition of "arterial road". This is perhaps not surprising, as clause 56.06 of the VPPs is directed to providing safe access to lots, not to classifying roads for the purpose of identifying a preferred road funding mechanism or establishing a broader road grid layout within a growth area. That role is performed by the VicRoads working document and the PSP Notes.

Mr Handingham's concession was therefore significant. On the one hand, Mr Handingham largely spurned a classification of the proposed road on the basis solely of traffic volumes. On the other, he insisted upon classification of the proposed road as an "arterial road" that was expressly at odds with the two policy documents that import a functional requirement into the definition of "arterial road". The implication of Mr Handingham's evidence is that this panel should accept that there is a third kind of arterial road – neither a primary nor a secondary arterial road – that is not recognised in clause 56.06 of the VPPs, the VicRoads working document, or the PSP Notes, and that would have a weaker through traffic role than a secondary arterial road. In our submission, this would be a novel and unjustifiable departure from the existing policy framework.

Secondly, Mr Handingham's reliance upon traffic volumes was at odds with his stated preference for the proposed road's classification to be determined by reference to its likely function. As it is, on most sections of the proposed road traffic volumes are not estimated – by any of the experts whose opinions are available to the panel – to exceed 7,000 vehicles per day. If volume were to be the determinant, then only limited parts of the road, and in limited directions, would satisfy the test.

Happily, both the VicRoads working document and the PSP Notes both address the classification of roads that have a local function and may, on occasion, have traffic volumes that exceed 7,000 vehicles per day. As Mr Hunt noted in his evidence, the estimated traffic volumes for the proposed road would comfortably be accommodated in a connector road.

Thirdly, Mr Handingham also accepted that the design of the proposed road ought to be that of a connector road, and not of an arterial road. Whatever volume of through traffic the proposed road would carry, it could be accommodated on a road with the width and accessibility of a connector road. We submit that Mr Handingham's analysis on this point is correct – the proposed road does not need to be built as an arterial road. Once this is accepted, however, it removes any justification for classifying the proposed road as an arterial road on a functional or a volume basis. If the proposed road will be built, and will function, as a connector road, then it should be classified as a connector road.

It is in this context that the Panel may return its attention to clause 56.06 of the VPPs. If, as the Monteleone Family submits, this clause is a critical factor in classifying the proposed road as an arterial road, then it ought to follow that the proposed road ought to be built as an arterial road in accordance with that clause. That is not what Mr Handingham suggests, or what the Monteleone Family ask for. Indeed, building the proposed road as an arterial road would significantly disrupt the layout of the precinct by potentially requiring the relocation of LCC-1 and the schools and community facilities along its length. That would be a most undesirable outcome.

Fourthly, Mr Hardingham’s opinion would result in unfairness to other landowners because his analysis only supports the classification of the proposed road as an arterial road, and not any other connector road in the precinct, despite their function or traffic volume. For example, the proposed Hayes Hill Boulevard would extend into the south employment precinct. In places it would carry more than 7,000 vehicles per day. It would connect different parts of the precinct and give access to shops, schools and community facilities. If Monteleone Way ought to be classified as an arterial road, then so should Hayes Hill Boulevard.

The reason that both roads are not so classified is because they are expected to perform a local function and carry traffic volumes that do not justify classification as arterial roads. This expectation is founded upon largely uncontested traffic modelling and accords with the best current policies on the classification of roads. A well considered arterial road network has been proposed precisely to carry through traffic. The proposed land use layout of the precinct is predicated, in part, upon both roads being built and functioning as connector roads. Equity is then served by policy treating the funding of all such connector roads the same.

The policy in the PSP is clear, as stated in Requirement 98 all connector roads are not to be included in the ICP. This position is fair. It reflects the local function of the proposed roads. We submit that the Panel should not accept Mr Hardingham’s evidence and should not recommend any change to the classification or proposed funding of Monteleone Way.

## 2.17. Economics and Retail

### 2.17.1. Revised Tables 3 and 4

During the hearing revisions were made to tables 3 and 4 and the ordinance to reflect tables 3 and 4 – Urban Growth Zone Schedule. This section addresses the wording of these documents, in the context of evidence about the proposed hierarchy of the LCCs and LTCs shown in the PSP. Before turning to these, however, it is important to respond to the attack made on the integrity of the MPA by the Monteleone Family in the choice of location and designation of retail centres in the precinct.

#### **The public interest**

The proposed location and designation of LCC-1, LTC-3 and LCC-2 is not, and has not been, motivated by any desire to disadvantage the Monteleone Family. The current form of the PSP has been prepared following an exhaustive, open consultative process that has spanned years and had been informed by extensive expert evidence.

For example, the first report by Essential Economics provided an evidentiary basis to include support for a discount department store at LTC-1.

At LCC-1, previous versions of the plan had 1 ha of retail space on Monteleone Land and DFC land and this has now moved to the Donnybrook train station precinct. This change was requested by the Monteleone’s family in the Frantello consultancy letter.

Finally, the second report by Essential Economics provided support for an expanded role for retail at LCC-2. The principles embodied in, and underlying, this PSP are consistent with well-established policies.

Indeed, on this topic – retail planning – there was no evidence before this panel that the principles which have governed the location of the proposed retail centres and the hierarchy between LCCs and LTCs were not soundly based or were not applied appropriately. Quite the contrary. There was broad consensus from no fewer than six witnesses about the appropriateness of the proposed location and designation of retail centres. The only real point of contention was whether LCC-1 should have a soft cap of 2,500 sqm of retail floor space, including support for a supermarket, or a soft cap of 1,500 sqm of retail floor space, with no support for a supermarket. These are very small stakes, in the context of a precinct of the size and complexity of Donnybrook/Woodstock, for the implication of an allegation of bad faith against the MPA.

There has been no improper conduct by the MPA. The panel has heard expert witnesses on the foundation and substance of the PSP. In our submission, the task for this Panel is to analyse this issue with the same even-handedness and concern for maximising net community benefit as has the MPA in order to determine whether an additional 1,000 sqm of retail floor space, with support for a supermarket, should be recommended for LCC-1.

#### **Retail hierarchy**

Substantial retail demand evidence was led before the Panel. No fewer than four experts sought to estimate the likely population of the precinct upon completion and the retail expenditure likely to be captured in the precinct. We submit that their evidence supports the following findings with respect to LCC-1:

- LCC-1 would be viable with 1,000 sqm of retail floor space, and no supermarket;
- LCC-1 would be viable with 1,500 sqm of retail floor space, and no supermarket;
- the presence of the existing cheese factory and restaurant has been excluded from all of the retail models employed by the experts, and would therefore have no material impact upon the viability of LCC-1;
- the presence of a supermarket at LCC-1 would negatively impact upon the performance of LCC-2, LTC-3 and LTC-2;
- an increase in the retail floor space at LCC-1 would negatively impact upon the performance of LCC-2, LTC-3 and LTC-2;
- a supermarket generally has a floor space of 1,000 sqm, or more. While brands that operate supermarkets may have shops with less floor space, such shops will lack the breadth of range to warrant classification, either in commercial or planning terms, as supermarkets;
- a proposed retail hierarchy embodied in planning policies and controls can guide investment decisions; and
- early movers can affect subsequent investment decisions taken by other potential users and developers in a precinct.

Three witnesses also gave evidence on the planning merits of the exhibited size, function and role of LCC-1. We submit that their evidence supports the following findings with respect to LCC-1:

- there are constraints on the provision of an appropriate number and type of retail centres in the precinct. These include the gas pipeline easement, the conservation area, the railway line and the OMR;
- the location of all of the proposed retail centres accorded with relevant policy principles contained in the VPPs and the broader policy context;
- the establishment of a hierarchy between those that would serve daily shopping needs, and those that would serve weekly shopping needs, accorded with relevant policy principles contained in the VPPs and the broader policy context;
- it would be undesirable to locate a LCC on an arterial road;
- approximately 80% of households in the precinct would be within 1 km of a supermarket, assuming a supermarket was established at LCC-2;
- if there is an undersupply of retail floor space in the precinct, it would be in the south western part of the precinct; and
- all else being equal, it is desirable to co-locate activity centres with public transport infrastructure such as buses and, where possible, heavy rail.

Of the seven witnesses who gave evidence on this topic, only one – Michael Chappell of Pracsys – supported an increase in retail floor space at LCC-1 to 2,500 sqm, with support for a supermarket. Michael Barlow, called by DFC, was at best ambivalent about the topic. The other five experts did not support this proposed change to the PSP. Their reasons were as follows:

- provision of a supermarket at LCC-1 would have the potential to disturb the carefully selected location of LTCs in the precinct by threatening to disrupt the provision of a supermarket at LCC-2 and, perhaps, at LTC-2. This is because the size of the catchment in the south western corner of the precinct may only support one supermarket there and the existence of an early competitor at LCC-1 may affect whether a supermarket would be established at LCC-2;
- provision of supermarket at LCC-1 would not increase the number of households within 1 km of a supermarket, especially if a supermarket did not open at LCC-2;
- preference ought to be given to elevating the role and function of LCC-2 because of its proximity to a railway station. If there is to be any increase in retail floor area, it should be allocated there; and
- LCC-1 does not need a supermarket in order to be viable.

We submit that this Panel should prefer the views of Nicholas Hooper, Nicholas Brisbane, Mark Woodland, Matthew Lee and Rhys Quick to those of Mr Chappell on this point. Their evidence was well-considered, appropriately informed by detailed and robust retail modelling and relied upon the the planning policies and controls applicable in this State to the location of retail centres and their sorting into a retail hierarchy. None were shaken from their views despite very lengthy cross examination.

There were substantial defects in Mr Chappell's evidence. Mr Quick listed many of them in his written response to Mr Chappell's report. The MPA relies upon them in this submission. Mr Chappell had little reliance upon the planning policies and controls applicable in this State to the location of retail centres and their sorting into a retail hierarchy, despite their importance. More

significantly, Mr Chappell conceded without notice when he gave evidence before the Panel that he had made significant errors in his report, including in the identification of the trade area and then to his allocation of the likely retail spend in the precinct. He explained that he had had insufficient time to prepare his report, and indicated that still more time would be required to bring his work to his preferred standard.

Simply put, Mr Chappell is a well credentialed expert. One day he may give well-considered evidence to a Panel on an issue within his area of expertise. He did not do so in this Panel hearing.

We therefore submit that the Panel should not recommend that the retail floor space in LCC-1 be increased to 2,500 sqm, with support for a supermarket.

#### **Wording of tables 3 and 4**

For these reasons, the MPA supports the form of the tables presently before the Panel (document #41). The MPA would, however, support amendments to the text that clarified the role and classification of each retail centre so as better to signal the proposed retail hierarchy. Specifically:

- the column headed “location and ancillary” uses may be amended to say to “Role and Function”; and
- above the row containing the main headings the first four columns are identified as “Guideline” and the “Role and Function” column be identified as “Requirement”.

The MPA would not oppose LCC-2 being classified as an LTC. As we have already submitted, the weight of the evidence supports the opinion that LCC-2 would have an elevated role in the retail hierarchy to LCC-1, akin to that of a LTC. In particular, the MPA supports a supermarket at LCC-2. It is this function as a centre capable of serving weekly shopping needs that would justify re-classification of LCC-2 as an LTC, irrespective of the total retail floor area of the centre.

### 3. Summary

Review of the submissions made to the Donnybrook/Woodstock PSP shows support across State Government and all associated key agencies.

The MPA is appreciative of the high level of cooperation it has received from landowners and stakeholders.

The MPA commends the Amendment to the Panel.

Adele Patterson

Isaacs Chambers

Ian Munt

Castan Chambers

For and on behalf of the Metropolitan Planning Authority



Donnybrook/Woodstock Precinct Structure Plan - Amendment to the Whittlesea & Mitchell Planning Scheme June 2016

