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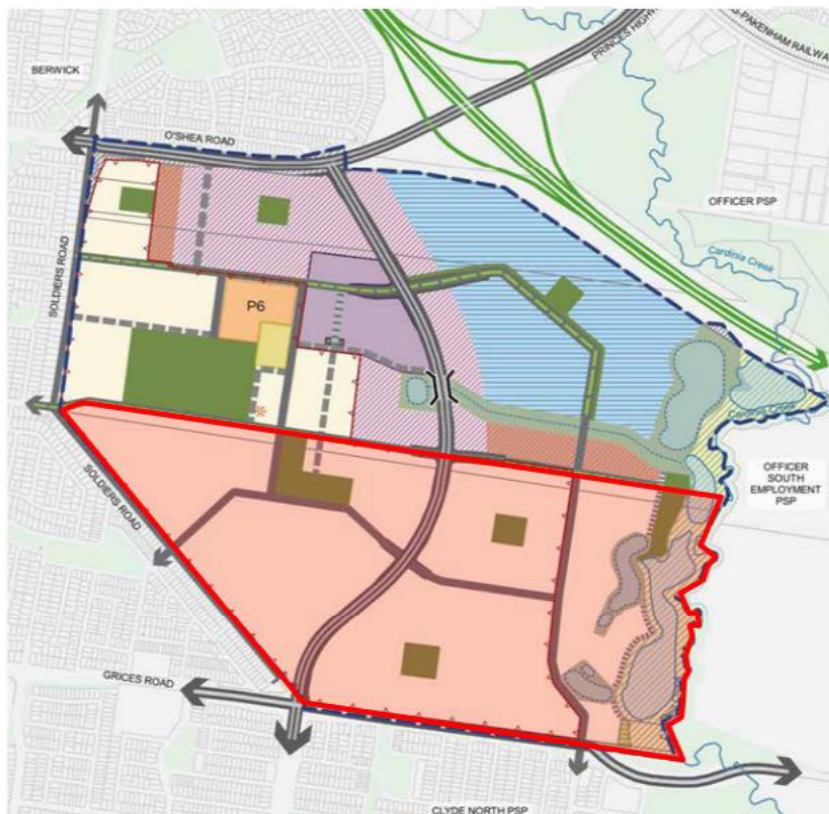
Via Email: [brent.mclean@vpa.vic.gov.au](mailto:brent.mclean@vpa.vic.gov.au)

Dear [REDACTED]

**Submission to Amendment C269 to the Casey Planning Scheme  
Minta Farm 'Final' Infrastructure Contributions Plan**

Stockland is the registered owner of 280 Grices Road, Berwick (being Vol. 11436 Fol. 906) which forms the southern portion of the Minta Farm precinct (**Stockland Land**). It has a western abuttal to Soldiers Road and southern abuttal to Grices Road. Ian Marshall Baillieu owns the northern portion of the PSP area (being Vol. 11436 Fol. 905, Vol. 11383, Fol. 840, Vol. 11157 Fol. 738).

The Stockland Land is identified for residential development in the Minta Farm Precinct Structure Plan and is proposed to be developed by Stockland as the Minta Estate (see Figure 1 below).



**Figure 1** – Red outline shows the location of the Stockland Land in the Minta Farm precinct

## Background

The Minta Farm Precinct Structure Plan (**the PSP**) was approved by the Minister for Planning in December 2018 and gazetted on 17 January 2019 as part of Amendment C228 to the Casey Planning Scheme (**Amendment C228**). Amendment C228 was a combined planning permit application and planning scheme amendment under s. 96A of the *Planning and Environment Act 1987* (**PE Act**).

Stockland lodged the s.96A application which applied to part of 2-106 Soldiers Road, Berwick and proposed the development of approximately 12 hectares of land to provide a total of 231 residential lots over 4 stages. Amendment C228 also applied the Infrastructure Contributions Plan Overlay to the Stockland Land and according to that control, no planning permits, including Stockland's Section 96A permit application, could issue until an Infrastructure Contributions Plan (ICP) was incorporated into the Planning Scheme.

During the Panel hearing for Amendment C228 (**PSP Panel**), the *Planning and Environment Amendment (Public Land Contributions) Act 2018* was introduced. As a result, the ICP could not be prepared and considered together with the PSP at the PSP Panel in April-May 2018.

Accordingly, the Minta Farm 'Interim' Infrastructure Contributions Plan was gazetted on 18 July 2019 as part of Amendment C266 (**Interim ICP**). The Interim ICP was not exhibited or subject to a panel hearing even though the exhibited documents encompassed a monetary component that included both a standard and supplementary levy.<sup>1</sup> Of note, there are also inconsistencies between the gazetted Interim ICP and the PSP itself including the land budget.

Upon gazettal of the Interim ICP, the City of Casey (**the Council**) issued Planning Permit PlnA00075/19 (**Permit**) which allows the subdivision of the first four stages (237 lots) of the Minta Estate.

Amendment C269 (currently on exhibition) now seeks to introduce the Minta Farm 'Final' Infrastructure Contributions Plan (**Final ICP**) and proposes to apply the Public Acquisition Overlay (Schedule 3) to land identified in the PSP as the north-south road arterial and is referred to as the extension of Bells Road.

Overall, the Stockland Land has the potential to accommodate around 1,800 residential allotments.

## Documents underpinning the Infrastructure Contributions Plan

As set out in the ICP, the document has been prepared having regard to:

- Part 3AB of the PE Act.
- The *Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans* (**Ministerial Direction**)
- The Department of Environment, Land, Water and Planning's *Infrastructure Contributions Plan Guidelines* (**Guidelines**). It is noted that this document is in draft form.
- *Benchmark Infrastructure Costings* prepared by Cardno for the Victorian Planning Authority (**VPA**). The VPA website indicates that these costings were expected to be completed in November 2018, but it is understood that they are still in draft form.

The above documents are referenced throughout this submission.

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<sup>1</sup> In accordance with s. 20A(1) of the PE Act and regulation 8(pa) of the Planning and Environment Regulations 2015 the exemption from exhibition and notice provisions only applies where the amendment does not contain a monetary component that includes a supplementary levy. This anomaly in process was explained by the VPA in its response to Stockland's written submissions to the Panel in Amendment C228.

## Introduction to Key Issues

Stockland has identified a number of challenges with the new ICP system of which the Minta precinct is a clear demonstration of these issues.

Many of these issues remain consistent with previous communication and in large part were raised in Stockland's submissions to the PSP Panel. In summary, these issues broadly relate to:

- The exhibition process for Amendment C269 has demonstrated challenges with this new ICP system and particularly the exhibited ICP with issues arising from a combination of the Ministerial Direction, the PE Act and the structure and fragmented roll out of the Minta Farm ICP. These are all intrinsically linked, and it is difficult to make a submission which does not cut across the Ministerial Direction or the PE Act. Stockland submits that issues with the Ministerial Direction and Part 3AB of the PE Act need to be addressed immediately as they directly and problematically input into the ICP which is being considered as part of this Amendment.
- The valuation methodology that has been built into the PE Act and the impact that this is having on the cost of developing greenfield land at Minta Farm and in other similar precincts. Further to this, the VPA has commissioned valuations to inform land credit and equalisation payments contained in the ICP. However, under the current ICP system, Stockland does not have the right to review these valuations, comment on, or contest those valuations. In Stockland's view, this is a flaw within the existing system, creating inequality.
- Stockland is one of two landowners in the Minta Farm precinct and is considered an under-provider of Inner Public Purpose Land (IPPL). It is therefore required to make a substantial public land equalisation payment in addition to the monetary contribution (comprising both a standard and supplementary levy). When the exhibited standard and supplementary levy and Stockland's land equalisation payment are combined, this results in a per hectare rate of approximately \$500,000. This is around \$150,000 per hectare (or >40%) above the expected figure suggested by the VPA at the PSP Hearing in April-May 2018. This financial impact significantly affects economic viability of delivering the Minta Farm Estate. The broader issues with the ICP system identified in this submission have implications for other residential developments in the growth area councils impacting on the successful delivery of the relevant PSPs throughout Victoria.
- Limited information on the Interim ICP was made available at that PSP Panel Hearing and since that time documentation has been provided to Stockland on a piecemeal basis and not always in their fullest form, preventing Stockland and any other relevant parties from undertaking a holistic review of the Minta ICP.
- Stockland submits that the Minister for Planning should appoint an Advisory Committee to consider the operation of the ICP system more broadly, as the issues raised in this submission are relevant to other landowners and are likely to be raised in the course of other ICP panel hearings, resulting in unnecessary expense and delay. In particular, for the purposes of this Amendment C269, Stockland submits that the Minister should appoint a Panel to consider the submissions on this Amendment as both a Panel and Advisory Committee so that the terms of reference are not restricted by current limitations of the PE Act and Planning and Environment Regulations 2015, and are wide enough to consider issues with the PSP Public Infrastructure Plan (PIP) and all the key elements of the ICP including the monetary component (standard and supplementary levy), the land valuation, the land credit amount and land equalisation amount.



## Discussion of Specific Issues

### **1. Land valuation methodology and the imbalance of rights in Part 3AB of the PE Act**

In its letter to the VPA on 9 May 2019, Stockland expressed concern that the proposed land equalisation rate for Minta Farm (c\$2.9 million per hectare) was ‘significantly overstated and suggestive of errors in the valuation’ and that ‘the lack of transparency in the preparation of the valuation advice informing the ICP presents a range of issues regarding the accuracy and validation on what is a high value component of the ICP.’

Stockland acknowledges that the Ministerial Direction sets the valuation methodology but is of the view that this methodology and its interpretation needs to be addressed before Amendment C269 is gazetted and the equalisation rate becomes enshrined in the ICP. Moreover, this is an issue impacting other ICPs which reinforces the need for a holistic review.

Importantly, the land valuation methodology, the PSP and the ICP are intrinsically linked. Had Stockland been aware of the land equalisation rate at the time the PSP was being considered, it would have been in a position to make submissions. This is a key issue given that the cost escalation of circa \$150,000 per hectare since the PSP Panel and the revised valuation by the VPA since the PSP Panel.

The ICP also proposes to revalue land every three years. Stockland submits that land valuations should be more frequent, to ensure that land equalisation payments are reflective of actual market conditions.

The issues with the land valuation methodology are compounded by the fact that the PE Act provides no mechanism for an under-provider to contest the land valuation that has been prepared to inform the land equalisation rate.

Under s. 46GO of the PE Act, an ‘affected owner’ (i.e. an over-provider of public purpose land) must be given notice of the inner public purpose land and the estimated land credit amount and may make written submissions and provide its own valuation evidence.

There is no similar provision made for under-providers in the legislation. Instead, under-providers only receive notice of the land equalisation rate and the amount they are required to pay under the ICP and are not able to contest the valuation on which the land equalisation rate is based.

Further to this, s. 23(5) of the PE Act provides that where an ICP is exhibited in a planning scheme amendment, a planning authority is not required to consider submissions which request a change to the land credit amount or land equalisation amount specified in an ICP or the estimate of the value of the inner public purpose land.

Evidently there is no opportunity, either through the land valuation process or the preparation of the Final ICP, that an under-provider can contest the land equalisation rate.

Stockland submits that a process should be implemented whereby all landowners in a precinct can undertake a valuation review to validate the proposed land valuation before it is included in the ICP. Stockland further submits that any landowner party to an ICP should have the right to contest the valuation as an ‘affected owner’, not just the party that has contributed more land to the ICP than is required. Amending the definition of ‘affected owner’ in s. 46GO of the PE Act to refer to ‘all landowners’ in the ICP plan area would allow for equal and equitable input into the land equalisation model by all parties.

Stockland has frequently requested details regarding the valuation methodology and background reports from the VPA but has been denied this information. For the ICP to be properly tested, all landowners within the relevant precinct should have access to all information that has impacted a decision related to the land valuation of a precinct.

Again, Stockland submits that this inequity must be addressed so that the land valuation can be contested before it is enshrined in a gazetted ICP. Stockland raises this matter as it is an under provider in this particular ICP, but it should be noted, Stockland is an over-provider in other projects. It nonetheless seeks to regularise this imbalance as part of this amendment.

The method of calculating the estimated value of IPPL is set out at paragraph 31 of Annexure 1 of the Ministerial Directions. It requires the valuer engaged by the planning authority to determine the value using the assumptions set out in subparagraph 31(a), including that (in summary):

- i. the subject land is zoned for an urban purpose and valued at its unencumbered, highest and best use within this context;
- ii. land in around town centres in a PSP will be assumed to be zoned for residential purposes;
- iii. the subject land is readily serviceable and accessible by road;
- iv. the land is regular in shape and GAIC paid and any infrastructure contribution has been provided;
- v. the subject land is at the development front and market demand exists.

The above methodology generally suggests land should be valued as being 'zoned and *ready* for development' whereas the land equalisation rate disclosed in this instance at circa \$2.9 million per hectare suggests the land valuation has been misinterpreted and in fact valued as '*already developed*'.

Stockland submits that the valuation of IPPL in the Minta ICP is unsound and consequently the land equalisation amount in the ICP is incorrect.

## 2. Changes to the Gazetted Precinct Infrastructure Plan

The Guidelines make it clear that a Precinct Structure Plan sets the strategic foundation for the projects which will be funded through an ICP. In this case, the exhibited ICP contains a different list of infrastructure projects to those contained in the PSP. Significantly, the ICP proposes a different and more costly means of delivering Bells Road and alters the scope of the associated infrastructure projects. Stockland notes that this constitutes a fundamental change to the Minta precinct.

Figure 2 below depicts the projects identified in the PSP PIP, specifically, five intersections along Bells Road (being IN-01, IN-02, IN-03, IN-04 and IN-05) with four road projects funding the construction of Bells Road between each intersection extent (specifically, RD-01, RD-02, RD-03, and RD-04). This approach has traditionally been taken under the Development Contributions Plan system.

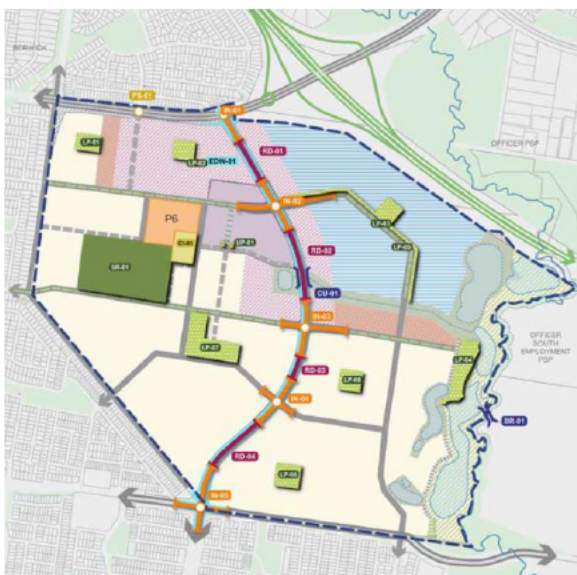


Figure 2 – Extract from Plan 13 of the Minta Farm PSP

Figure 3 below shows the change in the VPA's approach to the projects required to deliver Bells Road. There are new projects, scope changes and a deleted project. For example, the exhibited ICP introduces new road project RD-01-04 which appears to be a combination of the construction components of RD-01, RD-02, RD-03 and RD-04.

The inconsistencies between the PSP PIP and the ICP are reflective of the issues that can and will arise in instances where a PSP and ICP are not exhibited simultaneously and are not able to be considered holistically when they are intrinsically linked. This supports Stockland's submission to the PSP Panel that the PSP should not have been progressed in isolation of an ICP and must reviewed in its entirety now at one point in time.

Despite these significant amendments, no changes to the PSP are proposed as part of Amendment C269. Stockland submits that amendments to the PSP PIP should be made as part of Amendment C269, to allow the Panel to hear submissions on the merits of all the projects proposed to be included in the ICP and to ensure consistency between PSP PIP and ICP projects. Stockland submits that these are significant amendments that require exhibition and notice in accordance with sections 17, 18 and 19 of the PE Act.



Figure 3 – Extract from Plan 2 of the Exhibited ICP

## Apportionment of Bells Road

During the PSP Panel, Stockland submitted that there should be external apportionment associated with the delivery of the extension of Bells Road (the north south arterial). Stockland's position on this matter remains unchanged. On various occasions, Bells Road has been noted as an arterial road that services the wider road network and surrounding precincts.

The change in the VPA's approach to the delivery of Bells Road, early financing costs and the change in scope of associated projects furthermore demonstrates that this road is regionally significant.

Stockland submits that the north-south arterial road has now been further proven to be regional/state based infrastructure and that if all facts and components of the PIP, infrastructure costings and the exhibited ICP were available at the time of the PSP Panel, the Panel may have reached a different conclusion on apportionment. Therefore, Stockland submits that the proposed regional based road projects should be removed from the PSP PIP and the ICP as it is unjust for a localised precinct to fund regional/state based road infrastructure.



### 3. Selection of Projects Funded by the Standard vs Supplementary Levy

As discussed above, Stockland submits that due to its function within the wider road network, Bells Road is a regional road and therefore is unsuitably classified as standard or supplementary levy items in the Minta ICP.

This is supported, amongst many items, by traffic modelling undertaken by AECOM in July 2014 for the Thompsons Road, Clyde Creek and Casey Fields South (Residential) PSPs which showed Bells Road as the primary north south route to support surrounding PSP areas and growth east of Berwick-Cranbourne Road.

It is Stockland's submission that Bells Road is state infrastructure meaning it cannot be funded by the Standard Levy under the Ministerial Direction, nor can it be funded by the Supplementary Levy given its location within a GAIC contribution area.<sup>2</sup> Stockland does not agree that the transport infrastructure items (including Bells Road) funded by the Supplementary Levy fit the definition of Allowable Items set out in the Ministerial Direction.<sup>3</sup>

Stockland and its consultants are also concerned that the VPA has taken a 'best-fit' approach with regard to the allocation of project items and simply found a mix of projects that fit within the Standard Levy cap as closely as possible, and that any remaining transport projects have then been allocated as Supplementary Levy items.

Stockland intends to review all standard and supplementary projects, regardless of their classification and make further submissions to Panel.

#### Veracity of Project Design and Costings

Stockland are undertaking a detailed review of the costings and intersection designs made available by the VPA and will present its findings at the upcoming Panel hearing. Initial review by Stockland's engineers suggest that there are substantial differences in suitable design options and project estimates.

### 4. General matters of review

#### Errors in PSP Land Use Budget

Stockland notes that the Land Use Budget in the PSP contains errors and does not reflect the Land Use Budget in the exhibited ICP. This needs to be addressed as part of the Amendment process.

#### Full Cost Recovery

The draft Infrastructure Contributions Plan Guidelines (June 2019), make it clear that ICPs '*will not necessarily fund the full cost of infrastructure to be provided through an ICP*'. The exhibited ICP appears to have been drafted on a full cost recovery basis which is both inequitable and at odds with the Guidelines.

#### Works in Kind (WIK)

Stockland submits that Section 5.10 of the exhibited ICP should be strengthened to ensure that the WIK credit for the provision of the infrastructure is equal to the costs contained in the exhibited ICP (taking into account indexation). This

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<sup>2</sup> The note to Table 6 of the Ministerial Direction states that: 'Under section 46GH of the Act, an infrastructure contributions plan must not impose an infrastructure contribution in relation to the development of land in the GAIC contribution area unless the development agency responsible for carrying out the works, services or facilities or for the plan preparation costs being funded by the levy is a municipal council'

<sup>3</sup> Paragraph 16 of the Ministerial Direction provides that 'a supplementary levy may only fund (a) any works, services or facilities that are listed as supplementary levy allowable items in the applicable Annexure to this Direction; and (b) plan preparation costs if those costs are incurred in respect of works, services or facilities to be funded by the supplementary levy'.

will provide certainty to both the Council and landowners with respect to the projects proposed to be undertaken as WIK and removes the administrative burden from the Council in renegotiating the costs of each project.

Additionally, it should be explicitly stated that the credit for the WIK will be applied irrespective of whether the works are funded by the Standard Levy or the Supplementary Levy.

Stockland notes that the ICP will collect approximately \$8 million through project EDW-01 for the financing of projects IN-01 (EDW), IN-05 (EDW), and RD-01-04 (EDW). The inclusion of project EDW-01 assumes that Council will deliver these works and the ICP will continue to collect funds for this project, even if the works are delivered by a landowner as WIK. It is Stockland's submission that there needs to be some provision made to enable this project to be 'switched off' or distributed to the entity delivering the infrastructure and bearing the costs, otherwise landowners are at risk of contributing unnecessary funds. With regard to 'switching off the project', this can only be achieved through deletion of the item in the ICP which in itself requires a planning scheme amendment. Text should be included in the ICP which supports an early review of this line item in the event that it is not required, and that also acknowledges that refunds or credits will be provided against any payments already made.

Stockland recognises that project EDW-01 has been included by the VPA as a way of ensuring early delivery of the extension of Bells Road but urges the Panel to consider whether this is a realistic outcome given the complexities of the project and the impact of potential delay by the Council in delivering such projects.

While a Public Acquisition Overlay is proposed to apply to that area of the Stockland Land identified as Bells Road, Stockland submits that project EDW-01 cannot fund the acquisition, on the basis that land payments cannot be collected as part of the monetary contribution, and there can be no transfer of funds between these two 'buckets'.

## **Conclusion**

In summary, Stockland's issues with the exhibited ICP relate to:

### **1. Land valuation methodology and the imbalance of rights in Part 3AB of the PE Act**

- the land valuation methodology in the Ministerial Direction and the impact that this has had on the land equalisation rates in the exhibited ICP;
- the inability for anyone other than an affected owner (within the meaning of the PE Act) to challenge the valuations undertaken by the VPA to inform the land equalisation rate in the exhibited ICP. Some reform of the PE Act will be required with regard to Part 3AB of the PE Act, for example, in relation to notice requirements;

### **2. Changes to the Gazetted Precinct Infrastructure Plan**

- projects in the exhibited ICP do not reflect the list of projects in the PSP PIP, and Amendment C269 does not provide for subsequent amendment of the PSP, including the fact that the PSP land use budget is not proposed to be updated to reflect the land use budget in the ICP;
- the apportionment of Bells Road, which is state based infrastructure;

### **3. Selection of Projects Funded by the Standard vs Supplementary Levy**

- the allocation of items to the Standard Levy versus the Supplementary Levy;
- the veracity of project design solutions and costings

### **4. General matters of review**

- the appropriateness of the full cost recovery model;
- the early works funding model;
- errors in the PSP and land use budget;
- the impact on the economic viability of delivering the Minta Estate;



- the piecemeal approach to this PSP PIP and ICP;
- land versus infrastructure cross funding; and
- refining the wording around the provision of WIK.

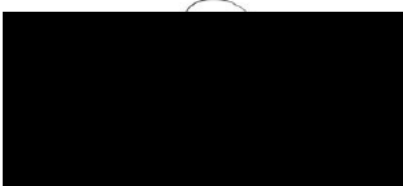
Stockland is firmly of the view that there are fundamental issues with the ICP framework that need to be addressed and the Minta PSP PIP and ICP are key examples of the flaws in the model. Stockland submits that if Amendment C269 follows its current trajectory, the Panel will not be able to give full consideration to the ICP, because it will not have the jurisdiction to amend or make comment on matters associated with the Ministerial Direction, the PE Act or the draft Guidelines and Benchmark Costings.

There needs to be a holistic review of the operation of these documents and the legislation to fully understand the implications of the new ICP system. This will also allow any issues in both the Minta Farm ICP and other similar ICPs to be adequately addressed and rectified.

The issues raised above cannot be properly resolved through the planned structure of the upcoming hearing for the exhibited ICP. Stockland submits that it is appropriate for the Panel to be appointed as an Advisory Committee with broader terms of reference, so that a wider range of issues across the PSP PIP and ICP, as noted, can be dealt with at one time.

Stockland is willing to meet with the VPA to discuss this submission in more detail in the coming weeks.

Regards,



Project Director, Victoria  
Stockland Communities