

INDEPENDENT PLANNING PANEL  
APPOINTED BY THE MINISTER FOR PLANNING  
PLANNING PANELS VICTORIA

IN THE MATTER of Amendment C269 to the Casey Planning Scheme

BETWEEN:

**VICTORIAN PLANNING AUTHORITY**

Planning Authority

-and-

**VARIOUS SUBMITTERS**

**AFFECTED LAND:** All land within the boundaries of the Minta Farm  
Precinct Structure Plan.

**PART B SUBMISSIONS OF THE PLANNING AUTHORITY**

**I. INTRODUCTION**

1. The Victorian Planning Authority (**VPA**) is the Planning Authority for Amendment C269 (the **Amendment**) to the Casey Planning Scheme (the **Scheme**). The Amendment seeks to incorporate the final Minta Farm Infrastructure Contributions Plan (**ICP**) into the Scheme to allow the funding of infrastructure identified in the Minta Farm Precinct Structure Plan (**PSP**).
2. The Amendment has been prepared in accordance with the *Planning and Environment Act 1987* (the **Act**), including the *Planning and Environment Amendment (Public Land Contribution) Act 2018* (**PLC Act**) and the *Ministerial Direction on the Preparation and Content of Infrastructure Contribution Plans* (the **Ministerial Direction**). The Amendment has been prepared in collaboration with the Casey City Council, relevant authorities, stakeholders and landowners.
3. This Part B submission is made in accordance with the Panel's Directions dated 18 December 2019 and is to be read in conjunction with the Part A submission circulated on 26 August 2020 and the expert evidence called from the following witnesses:
  - a) Ben Mentha of Cardno (traffic infrastructure design);

- b) Will de Waard of Traffix Group (traffic engineering);
  - c) Michael Steer of Cardno (infrastructure costings); and
  - d) Paul Shipp of Urban Enterprise (planning and economics).
4. The Panel's Directions dated 18 December 2019 required this Part B submission to address:
- a) any progress the VPA has made in resolving the issues raised in submissions, including through the expert meeting processes;
  - b) any further changes that may be required to the ICP and Amendment documentation as a result;
  - c) its response to the unresolved issues raised in submissions;
  - d) its response to evidence tabled;
  - e) any further changes the VPA proposes to make to the Amendment in response to expert evidence or submissions; and
  - f) its final position on the Amendment.
5. Accordingly, this Part B submission addresses key aspects of the Amendment, and responds to issues arising from the various submissions made in response to exhibition and to the evidence tabled.

## II. PROGRESS MADE IN RESOLVING SUBMISSIONS

6. Following exhibition of the Amendment, the VPA received five submissions from Casey City Council (**Casey CC**), the Department of Transport, Cardinia Shire Council (**Cardinia SC**), the Minta Farm Group and Stockland Development Pty Ltd (**Stockland**). These five submissions raised 39 matters.
7. The VPA has consulted with all submitters and confirms 28 of these 39 matters have subsequently been resolved. All matters resolved and unresolved are detailed within the submission summary at Appendix B to the Part A submission.
8. All issues raised in the submissions of Casey CC and the Department of Transport have been resolved. The Department of Transport submission related to the ultimate intersection layouts proposed within the ICP, and specifically the location of indented bus bays within the existing ultimate land take. The VPA has, subsequent to the

circulation of the Part A submission, resolved this submission with the Department of Transport. The VPA proposes to include a layout plan as an appendix to the ICP, with indented bus stops provided on the north and south departures to demonstrate how bus stops and bus priority can be accommodated within the existing arterial reservation land take. No changes are required to the PAO as the bus bays can be accommodated within its existing boundaries.

9. The design and costing conclaves have resolved the form of the interim and ultimate design and costings of all infrastructure items, with the exception of the interim designs of IN-02 and IN-03.

### **III. FURTHER CHANGES TO THE ICP AND AMENDMENT**

10. The VPA's Part A submission contained (at Appendix A) a table of the proposed changes to the ICP incorporated document and Infrastructure Contributions Overlay (**ICO2**). The finalisation of the ICP will also require minor amendments to the PSP as part of a separate amendment to ensure consistency and operation as intended, in accordance with Appendix A to the Part A submission.
11. The changes include replacement of the exhibited interim plans with the revised plans which were circulated on 13 March 2020 (the **March 2020 Plans**)<sup>1</sup> and are attached to the evidence statement of Mr Mentha.<sup>2</sup> These plans were prepared following a revision of the design speed of the north-south arterial from 80km/h to 60km/h. The March 2020 Plans remove the third carriageway, consistent with the design speed reduction, and adopt an ultimate lane configuration for the connector street legs for IN-02 and IN-03.
12. The VPA further proposes to update the ultimate road and intersections plans as an to show an update to the northern part of the precinct to reflect the ultimate alignment in the one mile grid plan<sup>3</sup>, to reflect the approved Stockland ultimate alignment (as reflected in the permit for subdivision at 80 Grices Road) and to show the slip land in the north-east corner of IN-02, as agreed at the expert witness conclave.

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<sup>1</sup> Document 17b as amended by Document 39a in relation to IN-02.

<sup>2</sup> Document 27.

<sup>3</sup> Attachment to Document 25.

#### IV. UNRESOLVED ISSUES RAISED IN SUBMISSIONS

13. The VPA's Part A submission identified a number of matters raised by submitters to the Amendment which are currently unresolved. These outstanding issues are:

a) **Stockland:**

- i. apportionment of the north-south arterial road;
- ii. selection of projects funded by the standard or the supplementary levy;
- iii. preference for Option 2 plans for IN-02 and IN-03;
- iv. consistency of full cost recovery of the ICP with the draft *Infrastructure Contributions Guidelines (June 2019)*. It is noted the June 2019 Infrastructure Contributions Guidelines have now been replaced with by the *Infrastructure Contributions Guidelines (November 2019)*(**ICP Guidelines**);
- v. arrangements for works in kind: Stockland submits the ICP should specify that works in kind will be equal to the value of the works identified in the ICP, taking into account indexation, and that credits apply to items contained in both the standard and supplementary levies; and
- vi. provision for EDW-01 to be 'switched off' or distributed to the entity delivering the infrastructure.

b) **Cardinia SC:**

- i. the funding proposed for Grices Road and connection into the Officer South Employment PSP;
- ii. whether the Grices Road bridge should be declared State infrastructure; and
- iii. costs associated with the pedestrian bridge BR-01.

c) **Minta Farm Group:**

- i. concern regarding non-developer landholders triggering GAIC liability through the subdivision of land<sup>4</sup>; and
- ii. consideration as to whether IN-03 should be funded wholly within the standard or supplementary levy.

## V. MATTERS OUTSIDE PANEL CONSIDERATION

14. The VPA notes a number of submissions made and evidence filed on behalf of submitters to the Amendment address matters which are out of scope of the consideration of the panel for the Amendment.
15. These include submissions and/or evidence regarding land equalisation amounts and land valuation methodology (later withdrawn), proposed amendments to the Victorian Planning provisions and matters which were within the scope of the panel which considered and made recommendations about the PSP (**PSP Panel**), including the proposed apportionment of the north-south arterial and the lot cap.
16. Section 21 of the Planning and Environment Act 1987, relevantly provides:

*Section 21 – Who may make a submission?*

- (1) *Any person may make a submission to the planning authority about an amendment of which notice has been given under section 19 or in accordance with a condition imposed under section 20(2)(b). [emphasis added]*

17. Section 22 of the Act provides:

*Section 22 – Planning authority to consider submissions*

- (1) *A planning authority must consider all submissions made on or before the date set out in the notice.*

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<sup>4</sup> The Casey CC have advised of their intent to consider the use of a Section 35 plan to minimise the impact of GAIC through subdivision. This includes Casey CC and a landowner entering into a deed prior to the processing of a Section 35 subdivision for land required for road infrastructure. The deed is proposed to set out that a landowner will provide Council with a bond or bank guarantee for the approximate amount of the value of the GAIC payable on the land to be excised (the road/intersection land). Within 60 day of approval of the Section 35 plan, the landowner will contact the SRO to pay GAIC as it applies to the excised land and receive the relevant certificate. Upon receipt of the certificate, Council will release the bond/bank guarantee to the landowner. This approach has the benefit of ensuring GAIC is appropriately paid on land vested in Council, without triggering GAIC on a wider parcel of land.

18. Accordingly, the role of a panel is to consider all submissions made about the amendment in questions, or rather, submissions within scope. This Panel is not empowered to reinterrogate matters about which findings were made by the PSP Panel (and have now been properly incorporated into the Planning Scheme) or to inquire more broadly into the operation of the ICP system in the manner of an Advisory Committee.

A. THE 'LOT CAP'

19. With specific regard to the inclusion of a cap on the number of lots that can be developed before the north-south arterial is delivered, the appropriateness of the inclusion of a lot cap within the PSP was the subject of extensive submissions and evidence before the PSP Panel. The PSP Panel concluded the lot cap was appropriate to mitigate traffic impacts, particularly on Soldiers Road, and to provide an incentive for the early delivery of the north-south arterial road.<sup>5</sup> The PSP includes R94:

*The north-south arterial road as funded by the Minta Farm ICP must be delivered prior to the subdivision of the 1,001st aggregate residential lot unless other agreed in writing by the relevant road management authority.*

20. The Amendment does not propose any change to R94 of the PSP. Accordingly, submissions or evidence in relation to R94 or the provisions of the UGZ Schedule are not within the scope of the Amendment.

B. APPORTIONMENT OF THE NORTH-SOUTH ARTERIAL

21. Stockland's submission to the VPA provided, inter alia:

***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 the scope of associated projects furthermore demonstrates that this road is regionally significant.*

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<sup>5</sup> Minta Farm PSP (Amendment C228) Panel Report, page 71.

*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. 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.*

22. The infrastructure items contained within the ICP were strategically justified through the PSP amendment process and included in the Precinct Infrastructure Plan (**PIP**) which forms part of the PSP. The gazetted PSP provides the strategic justification for all infrastructure items to be funded through the ICP.
23. The infrastructure items from the PSP that are listed in the ICP are consistent with the definitions of allowable items specified in the Ministerial Direction.
24. As detailed within the VPA's Part A submission:

*With respect to criteria b) and c), all items nominated under the ICP are included within the Precinct Infrastructure Plan of the Minta Farm Precinct Structure Plan, October 2019 (Incorporated Document) approved under Amendment C228. The strategic justification and significance of each item, including its nexus to the orderly development of the area, were the subject of submissions and findings of the panel during the Amendment C228 process; it was through this process that the strategic justification for each item was established.*

*-The VPA submits that there is no scope for this Panel to reconsider the strategic justification for inclusion of an infrastructure item within the PSP nor the accompanying ICP.*

25. The inclusion of the north-south arterial in the PIP within the PSP was supported by PSP Panel. Casey Planning Scheme Amendment C228 (11 July 2018) (the **PSP Panel Report**) provides:

*There was unanimous agreement amongst the experts, the VPA, Casey, the Minta Group and Stockland that the early delivery of the north-south arterial road is essential to mitigate the impacts on the surrounding road network not only from traffic generated by the development of Minta Farm but traffic from development of PSP areas to the south. Ideally, the north-south road to its interim standard should be constructed concurrently with the extension and duplication of O'Shea Road, i.e. by the year 2022.*

*The road is also a key element of the Minta Farm PSP street network and its construction will be required to enable development of the Precinct.<sup>6</sup>*

26. The PSP Panel supported the inclusion of the ultimate land required for the north-south arterial road and its interim construction (2 lane carriageway).
27. This approach to the planning for essential infrastructure, namely funding the ultimate land required and the construction of the first carriageway, is consistent with the approach to development of arterial roads in all previous ICPs to date and is consistent with development of arterial roads within Development Contributions Plans (**DCPs**). It is established and well understood practice. Nothing has altered in the approach to funding these items of infrastructure with the introduction of the new ICP system.
28. Responsibility for the future duplication works or any additional road widening required is the responsibility of the road authority, or State Government if the arterial road is subsequently declared a State Arterial road.
29. The PSP Panel Report is clear that delivery of the interim construction of the north-south arterial is essential to enable development of the precinct.
30. The exhibited Amendment proposed the north-south arterial with a design speed of 80km/h. To accommodate this design speed, the curve of the road and the spacing of the intersections, the design resulted in adjacent intersection tapers merging, requiring an additional third lane. Accordingly, this initial inclusion of the third lane was a safety requirement, based on the design speed of the road. The reduction of the interim design speed to 60km/h, as reflected in the March 2020 Plans, results in the removal of this additional lane.
31. It is standard practice for arterial roads to be provided as part of a 1.6km grid network with alternating primary and secondary arterial roads (both east-west and north-south).<sup>7</sup>

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<sup>6</sup> Casey Planning Scheme Amendment C228 (11 July 2018), page 59.

<sup>7</sup> Expert evidence statement of Paul Shipp, [72]-[73].

The Ministerial Direction provides within Table 3 that both the upgrade of existing arterial roads and new arterial roads are standard levy allowable items, based on a typical 1.6km arterial road grid.

32. The VPA relies upon the evidence of Mr Shipp that the funding by the ICP of the costs associated with the ultimate land requirement and the interim construction of the north-south arterial road and associated intersections is appropriate and is consistent with standard practice, the Ministerial Direction and the ICP Guidelines.

33. Mr Shipp's evidence provides:

97. *In my view, having regard to the traffic analysis which informs the PSP and Exhibited ICP, it is appropriate for the north-south arterial road to be fully funded in its interim form by the Minta Farm precinct. This is because it is designed to meet the needs of the precinct residents and to accommodate the internal traffic demands. The fact that the road is likely to be used by residents of other precincts is not, in my view, a relevant consideration, given that the Minta Farm precinct would require the road whether there were other 'occupied' precincts in the vicinity or not. This view is supported by the evidence of Mr Mentha and the Panel Report for the Minta Farm PSP which noted that "The north-south arterial road will play a critical role in the regional road network as well as providing access to the Precinct that will enable its development".*

...

105 *In the case of the north-south arterial road, the PSP and supporting traffic analysis identifies that the interim construction of the road (and associated intersections) are needed to support the development of the precinct. Therefore, it is not appropriate, in my view, to apply any external cost apportionment to this item.*

34. Any suggestion that the ICP should not fully fund the first carriageway and ultimate land required for the north-south arterial is inconsistent with standard practice and does not have proper regard to logistical challenges this would present. If the ICP sought to exclude funding for any proportion of the north-south arterial that may be utilised externally, this would result in a situation whereby numerous other PSP areas would be required to contribute small percentages of funding for the north-south arterial; conversely, this ICP should then similarly properly fund a proportion of all construction or land requirements for all arterial roads in all other PSPs in the corridor. After all, residents and workers in Minta Farm will certainly utilise these roads.

35. Such an approach would undoubtedly create significant and unreasonable challenges for the Council as collecting and development agency, as well as timing issues for developers within any precinct.

36. Moreover, the ICP does not seek to fund any east-west arterial roads as O'Shea Road to the north is to be delivered by the State government as part of the Monash Freeway Upgrade. Having regard to the standard arrangements for funding for arterial roads and in accordance with the Ministerial Direction, the construction of this road to an interim standard would ordinarily be funded by the ICP. As one of the last precincts to develop in the broader area, Minta Farm has benefited from the earlier development of roads both by the State government and surrounding PSP areas. To now claim that the precinct should seek a contribution from other PSP areas is not only logistically impossible in terms of precincts that have already had their contributions determined, but pays no regard to fairness and equity, as these other precincts would contribute toward the north-south arterial within Minta Farm, but would receive no contribution from land within Minta Farm to the cost of the roads funded by the development contributions within their precincts.
37. The South East Corridor is now nearing completion and has (in accordance with other PSPs in growth areas) efficiently and effectively adopted the principle that a PSP should deliver the associated land and first carriageway of an arterial road.
38. The evidence statement of Mr Woodland states:
- 144. Had the ICP been before the Panel in 2018 then the magnitude of all of the costs associated with delivering Bells Road would have been clearer, as would the potential gap between these costs and what could reasonably be funded under a standard ICP levy.*
39. And:
- 15. Had the costs outlined in the Minta Farm ICP (and the method of funding them via a combination of standard and very high supplementary levies) been known by the parties to the PSP at the time of its preparation it is my view that a different approach might have been taken to the design, scoping and apportionment of infrastructure contained within it*
40. The need for the north-south arterial and its nexus to the precinct was determined by the PSP Panel. Whether the scope of the project is properly to be included within the ICP is determined by reference to the Ministerial Direction and well understood concepts of whether the infrastructure proposed may properly be considered 'basic and essential'. The system does not determine the design, scope and apportionment of transport infrastructure on the basis of reducing the ultimate cost of the infrastructure

to be borne by a single developer because it may impact the viability of their development.

41. Minta Farm is a precinct which is to be intensely developed to accommodate 3,043 dwellings and 11,436 workers. The north-south arterial is required to ‘unlock’ the development of the precinct, as determined by the PSP panel. This is reflected in the VPA’s support for inclusion of financing costs in a supplementary levy to support early delivery of the north-south arterial<sup>8</sup> and the Panel’s acceptance that financing costs for infrastructure items associated with the north-south arterial would be an allowable item for inclusion in a supplementary levy.<sup>9</sup>

### C. REVIEW OF THE ICP SYSTEM

42. Stockland has also made submissions and called evidence from Mr Woodland and Mr McNeill regarding review of the ICP system and changes it considers desirable to the system generally, including changes to the policy framework.
43. The VPA is committed to ongoing consultation and review of the operation of the ICP system, including through a current Ministerial review, however this is properly outside of the planning scheme amendment process.
44. In January 2019 an ICP Advisory Group was established, co-chaired by the VPA and DELWP and comprised of the CEOs of the growth area councils and key industry groups ((Urban Development Institute of Australia (UDIA), Property Council Australia (PCA), the Housing Industry of Australia (HIA) and Victorian Planning & Environmental Law Association (VPLEA)). The ICP Advisory Group identified a number of early implementation issues with the ICP system including the land valuation methodology, clarification of how a supplementary levy is applied, ambiguity in the wording of the Ministerial Direction, early acquisition of land by councils, cash flow between the monetary levy and the land equalisation and credits and the potential impact of changing government policy.

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<sup>8</sup> Minta Farm PSP (Amendment C228) Panel Report, page 62.

<sup>9</sup> Minta Farm PSP (Amendment C228) Panel Report, page 66.

## **VI. MATTERS FOR PANEL CONSIDERATION**

45. Arising from the scope of the Amendment and the matters raised in submissions and evidence, the key matters for consideration by the Panel include:
- a) suitability of projects to be included in the supplementary levy;
  - b) whether it is appropriate to adopt the Option 1 or Option 2 design of IN-02 and IN-03, noting that the design and cost of Option 2 was agreed through the conclave process;
  - c) provision for EDW-01 to be ‘switched off’;
  - d) funding for the construction of Grices Road and the bridge over Cardinia Creek;
  - e) clarification of CU-01 and BR-01;
  - f) implementation of the ICP system more generally, including:
    - i. the appropriateness of ICPs seeking to fund the full cost of infrastructure; and
    - ii. specification of works-in-kind credits.
46. Each of these issues is addressed below.

## **VII. SUITABILITY OF PROJECTS TO BE INCLUDED IN THE SUPPLEMENTARY LEVY**

47. The ICP proposes to fund IN-04, a portion of IN-03, CU-01, a portion of BR-01 and the early delivery of works for the north-south arterial via the supplementary levy. The VPA submits the funding of these projects via the supplementary levy is consistent with the requirements of the Ministerial Direction.
48. Table 5: Other supplementary levy allowable items within the Ministerial Direction plainly specifies that early delivery of works is a supplementary levy allowable item, provided the early delivery is essential to the orderly delivery of the area, and the financing costs are incurred by the development agency in relation to a standard or supplementary levy item.
49. The VPA relies upon the PSP Panel Report that established the early delivery of the north-south arterial was essential to the orderly delivery of the area:

*The conclave of experts agreed that the north-south arterial road was an important link that would benefit the region and the Precinct and that it would be important to deliver the road as soon as possible. If external funds were available, it would be sensible to construct a duplicated cross-section (ie the ultimate six-lane, divided road) but the conclave noted that the duplication was not the responsibility of the Minta Farm PSP, provided that the intersections had adequate capacity.*

...

*The road is also a key element of the Minta Farm PSP street network and its construction will be required to enable development of the Precinct. The Panel agrees with the VPA that this should provide sufficient incentive for the landowners to facilitate the road's early delivery.*

...

*The Panel concludes:*

- *The north-south arterial road will play a critical role in the regional road network as well as providing access to the Precinct that will enable its development.*
- *Early delivery of the north-south arterial road over its full length is essential. The objective should be to construct the road to at least an interim standard at the same time as the 2022 extension of O'Shea Road.<sup>10</sup>*

50. With regard to the inclusion of the intersection projects within the supplementary levy, the VPA relies upon the evidence of Mr Shipp:

*In my view, the associated intersections meet the definition of Supplementary Levy Allowable Items, given that there are three internal intersections along the north-south arterial road, which meets the definition of "an additional number of intersections above the standard" of 800m spacing. The PSP requires five intersections within a space of approximately 1.7km, considerably greater than the three intersections that would otherwise be needed under the standard spacing<sup>11</sup>.*

51. The VPA further notes the evidence of Mr Hunt:

*In my opinion, the introduction of a Supplementary Levy to fund additional upgrade works as proposed in the ICP is allowable for the following reasons:*

- *Bells Road will be located approximately 2.5 km east of Berwick Cranbourne (Clyde) Road, greater than 1.6 km,*
- *Intersections along Bells Road are proposed in the PSP at spacings of between 370m and 500m which is less than the 800m spacings specified, and*
- *The configuration of two through lanes in each direction as proposed exceeds the standard requirement of one through and one short lane<sup>12</sup>.*

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<sup>10</sup> Minta Farm PSP (Amendment C228) Panel Report, at pages 53, 57 & 59.

<sup>11</sup> Evidence statement of Mr Shipp, at [87].

<sup>12</sup> Evidence statement of Mr Hunt, [5.5.7].

## VIII. PROJECT DESIGN & COSTING OF IN-02 AND IN-03

52. The concept layout plans circulated on 13 March 2020 adopt the ultimate lane configuration for the connector street legs for IN-02 and IN-03.<sup>13</sup> The ultimate lane configuration for the connector legs was sourced from the ultimate layout plans previously prepared by Traffix Group, and based upon a first principles SIDRA analysis of ultimate conditions.

53. The PSP Panel Report noted that the PIP included the ultimate lane configurations for intersections:

*The PSP Plan 10 (Street Network) includes the north-south arterial road as ultimately a divided, six lane primary arterial road between the extension of O'Shea Road and Grices Road. The PSP Precinct Infrastructure Plan (PIP) lists the full length of the north-south arterial road, its intersections with O'Shea Road and Grices Road and intersections with three connector streets internal to the Precinct. The PIP includes the ultimate land requirement, construction to an interim (single carriageway) standard and intersections in the ICP. ICP intersection concept plans included in the PSP (Appendix 9) show 'flared' intersections essentially constructed to the ultimate standard. Construction of the road to the ultimate standard between the intersections is not funded as part of the ICP.<sup>14</sup>*

54. At the Functional Design Conclave, the experts could not agree on whether the interim construction of the connector legs should be the ultimate configuration, or a lesser 'template' configuration. Further, the experts could not agree whether a left turn slip lane on the north-east corner of IN-02 should be provided as part of the interim construction while it was agreed it should be provided on the ultimate configuration. There was agreement that the land component for the ultimate design of the connector legs and slip lane should be included.

55. It was agreed that alternative 'Option 2' plans be prepared demonstrating a 'template' lane configuration of the connector legs for IN-02 and IN-03. The Option 2 plans were circulated on 22 May 2020.

56. The VPA understands Stockland considers the ICP should adopt the Option 2 design of intersections IN-02 and IN-03. The key changes within the Option 2 plans are:

a) IN-02:

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<sup>13</sup> Noting the IN-02 plan was corrected in May 2020 in document 39: V181544-TR-DG-0302 Rev 3 to include extension of the left turn lane by 18m to match the ultimate design.

<sup>14</sup> Minta Farm PSP (Amendment C228) Panel Report, page 53.

- i. removal of the slip lane on the north-east corner; and
    - ii. reduction in the extent of the connector street legs.
  - b) IN-03:
    - i. reduction of the extent of the eastern leg; and
    - ii. reduced right hand turn lane from the north to the east (one lane instead of two).
57. The VPA considers Option 1 of IN-02 and IN-03 is appropriate.
58. ICPs are developed to funding the initial basic and essential infrastructure to facilitate access and development, with authorities then responsible for required upgrades of that infrastructure due to surrounding development. Connector legs of intersections are typically developed in their ultimate condition, as there is no anticipated duplication of these connector legs at a later date. Accordingly, all Benchmark Cost Report template intersections include the ultimate conditions for the connector legs. It is reasonable and appropriate that the connector legs of the intersections be funded wholly by the ICP, as the traffic using them is, by and large, locally based.
59. The PSP provides the basic infrastructure needed for access i.e. the first carriageway, with the subsequent duplication, necessitated by surrounding development, undertaken by the road authority on behalf of the wider community. For the connector legs, there is no wider community component, the connectors are there to serve the local development and link the local development to the arterial network.
60. The scale of the intersections is driven by the assumed density of residential and employment development and in this case, the constrained access alternatives on the eastern approach, including the Freeway and Cardinia Creek.
61. In Minta Farm, the volume of traffic expected to utilise these intersections is somewhat higher than in other PSPs, however this is reasonably to be expected given the constrained nature of the PSP in that there is no alternative arterial road access to the north or east by virtue of the Freeway and Creek. Hence, all development traffic is forced onto the north-south arterial via IN-02, IN-03 and IN-04, resulting in increased intersection scale.

62. Incorporation of the Option 2 plans into the ICP would necessitate costly rebuilding of the intersections at a later time.
63. Further, Option 2 of IN-02 seeks to remove a slip lane to the industrial connector leg. Based on the VicRoads handbook an industrial connector leg should include a slip lane as it better supports truck movements. The VPA Benchmark Costs Report has not produced a benchmark item for an industrial precinct and therefore it is appropriate that the template design be altered in this instance.
64. Submissions were also made on behalf of the Minta Farm Group regarding whether the approach to funding of IN-03 was consistent with the Mt Atkinson & Tarneit Plans ICP. The Panel Report for Amendment C201 to the Melton Planning Scheme considered it was inappropriate for an ICP to seek to apportion ICP items pursuant to which line items of an infrastructure item may appropriately be funded by a supplementary levy. The Mt Atkinson Panel considered that if line items of an infrastructure project were appropriately supplementary levy items, the totality of that project should properly be funded via the supplementary levy.
65. The suggestion in the submission that the funding of IN-03 is inconsistent with the Panel Report for Amendment C201 misunderstands the proposed approach to funding of the infrastructure item.
66. IN-03 meets the test for transport construction supplementary levy allowable items due to the additional number intersections above the standard, the intersection design treatment required, and the construction costs, which cannot be wholly funded through the standard levy due to the limited precinct NDA to fund construction as per the Ministerial Direction.
67. The ICP has not applied a 'line item' or a sub-component of the project to the supplementary levy; rather the item has been split to ensure that all of the standard levy is allocated before applying a supplementary levy.
68. The appropriateness of this approach was confirmed by the planning panel in Amendment GC102 to the Mitchell and Whittlesea Planning Scheme, with regard to the Donnybrook-Woodstock Infrastructure Contributions Plan:

*It is not the role of this Panel to resolve questions of law, or the proper legal interpretation of the Ministerial Direction. Nevertheless, the Panel makes the following observations in relation to the issue.*

*It seems nonsensical, and contrary to the purposes of the ICP system, that a supplementary levy could not be imposed where an otherwise allowable supplementary levy item could be partially funded from the standard levy to some extent. The standard levy could partially fund an almost endless number of projects, if the amount allocated to each project from the standard levy pool was limited. For example, if the standard levy pool was only used to fund \$100 of the cost of every infrastructure item, a lot of items would have to be provided to exhaust the standard levy pool.*

*The Panel does not consider that the system is intended to operate in this way. One of the purposes of the ICP system is to ensure that infrastructure in new communities is properly (although not necessarily fully) funded by contributions from those who develop the land for these new communities. With this in mind, the Panel considers that the only sensible way to interpret the Ministerial Direction is in the way that Mirvac and the VPA have interpreted it.*

*In other words, if there are funds left over in the standard levy pool after all of the standard levy allowable items have been funded, the leftover funds should be used to fund any supplementary levy allowable items. The planning authority should only consider applying a supplementary levy if (and to the extent that) the total funds in the standard levy pool are insufficient to fund the cost of the supplementary levy allowable items.*

*For example, consider a situation where the standard levy pool will collect \$10,000,000. The standard levy allowable items are costed at \$8,000,000, leaving \$2,000,000 in the standard levy pool that is not required to fund standard levy items. The supplementary levy allowable items are costed at \$5,000,000. The Panel considers that the intent behind the Ministerial Direction is that the planning authority should apply the remaining \$2,000,000 to the supplementary levy allowable items before it considers applying a supplementary levy.*

*Further, the amount of the excess in the standard levy pool should be taken into account when calculating the amount of the supplementary levy – in the above example, the supplementary levy should not exceed \$3,000,000, as this is the maximum extent to which the supplementary levy items are unable to be funded from the standard levy pool.*

*The VPA has taken this approach in preparing this ICP, and the Panel supports that approach.<sup>15</sup>*

69. Further, Mr Shipp's evidence provides:

*The Exhibited ICP uses the unused 'balance' of the Standard Levy to fully fund two of the five intersections along the north-south arterial and partially fund a third (IN-03). In my view, this approach appropriately considers criteria (a) of Clause 17. This approach has also been applied in the recently completed Final Donnybrook Woodstock ICP and was endorsed by the Planning Panel in that case which concluded that "the phrase 'wholly or partially funded from a standard levy' in the Ministerial Direction is intended to encourage the use of any funds 'left over' in the standard levy pool to fund any supplementary levy allowable items before a supplementary levy is applied"<sup>16</sup>.*

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<sup>15</sup> Amendment GC102 to the Mitchell and Whittlesea Planning Schemes, page 22.

<sup>16</sup> Expert evidence statement of Paul Shipp, [97].

## IX. PROVISION TO ENABLE EDW-01 TO BE 'SWITCHED OFF'

70. Stockland's submission included that the inclusion of early delivery works for the north-south arterial necessarily assumes Council will deliver these works and expressed concern that the ICP would continue to collect funds for the project even if the works are delivered by a landowner as works-in-kind. Consequently, Stockland's submission sought provision be made to enable this project to be 'switched off' or distributed to the entity delivering the infrastructure to avoid the contribution of unnecessary funds. Stockland considered that as the deletion of an item in an ICP could only be achieved through a planning scheme amendment, it was appropriate that text be included in the ICP to support an early review of this item in the event that it is not required and acknowledge that refunds or credits may be provided against payments made.
71. The VPA considers it is appropriate that the ICP address a situation whereby early delivery works funding is not required due to agreed works-in-kind.
72. The VPA proposes Table 6 of the ICP be amended to split EDW-01 into individual parts as per the Borrowing Cost report. Each of the items will be listed as a new line item in the table (e.g. EDW RD01-04, EDW IN-01, EDW IN-05). EDW-01 would then become the subtotal adding up to the total borrowing costs of \$8 million as per the exhibited ICP. The Borrowing Cost report will be attached as an appendix to the ICP, following the panel process.
73. The following text will be included under Table 6 to provide clarity:

*The rate of each of the components of the Supplementary Levy as set out in Table 6 as they relate to early works projects is subject to adjustment downwards by the Collecting Agency in the following circumstances:*

- *Where the Collecting Agency does not borrow funds for the purpose of providing any or all of the projects identified as EDW RD01, EDW IN-01, EDW IN-05 (together EDW01) being those projects which have to be financed by early works funding; and*
- *The Development Agency enters into an agreement for the works in kind (WIK Agreement) provision of any or all of the EDW01 projects which were intended to be financed by early works funding, and that agreement does not require the Development Agency or the Collecting Agency to procure a loan of funds for the purpose of satisfying its obligations to the person undertaking the works in kind under the WIK Agreement.*

74. The VPA has confirmed that Casey CC and Stockland support the insertion of this text into the ICP. Accordingly, this submission is resolved.

## **X. FUNDING FOR CONSTRUCTION OF GRICES ROAD & THE BRIDGE OVER CARDINIA CREEK**

75. Cardinia SC has made submissions regarding the proposed funding of Grices Road. Cardinia SC notes the PSP<sup>17</sup> identifies Grices Road is to be constructed as a 4 lane secondary arterial road (ultimate treatment), 100% apportioned to the Clyde North DCP for purchase of the land and construction of a two lane road (interim treatment). The submission further notes that land and construction costs for Grices Road to Cardinia Creek have been set aside in the Clyde North DCP, with the exception of a small section of Grices Road near Cardinia Creek that is not highlighted in the DCP as forming part of construction costs.

76. Cardinia SC seeks that the ICP, the Clyde North DCP and the Officer South Employment ICP all contribute a monetary amount to the construction of this section of road on both sides of Cardinia Creek, based on need and nexus, and to avoid an inequitable outcome whereby the Officer South Employment ICP is required to pay for both the east and west side of Cardinia Creek road construction.

77. Cardinia SC have also sought clarification that the proposed Grices Bridge over Cardinia Creek is considered State infrastructure.

78. The Panel for the Minta Farm PSP considered there was not a sufficient nexus for the Minta Farm precinct to require interim infrastructure arrangements towards the east of the precinct, demonstrated by the removal of a proposed signalised intersection item at Grices Road. Even if the Panel had not so concluded, as the PSP process is now finalised, it would be inappropriate for the ICP to now seek to fund items not identified within the PSP.

79. Whether it is appropriate for the Officer South Employment Precinct to contribute to the funding of the identified section of Grices Road will be appropriately determined through that process.

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<sup>17</sup> Minta Farm Precinct Structure Plan, page 50.

80. The Grices Bridge over Cardinia Creek has not been classified as State infrastructure and while the State Government may commit funding for this strategic infrastructure in the future, this has not been confirmed.

## **XI. CLARIFICATION OF CU-01 AND BR-01**

81. Cardinia SC's submission regarding the Amendment also sought clarification of the scope of two transports construction projects: CU-01 and BR-01. Specifically Cardinia SC sought to clarify whether CU-01 was a pedestrian bridge project incorporating culverts, as the legend to Plan 2 identified a 'bridge/culvert' project. No pedestrian bridge is proposed as part of CU-01. Table 6 - Supplementary Levy Transport Construction Projects identifies item CU-01 to only provide for the construction of a culvert crossing over the constructed waterway.
82. Cardinia SC also sought clarification about the width of the pedestrian bridge, rate loading and number of pylons proposed at BR-01 to ascertain whether it could be utilised by Melbourne Water for vehicle maintenance purposes. BR-01 is a 4 metre wide pedestrian and cyclist bridge only. Its costs have been determined consistent with benchmark costing Item 24 – Pedestrian 80m Long Super T Bridge Ultimate.

## **XII. IMPLEMENTATION OF THE ICP (AND ICPS GENERALLY)**

### **A. FUNDING THE FULL COST OF INFRASTRUCTURE**

83. Submissions made on behalf of Stockland submitted that, in circumstances where the ICP Guidelines state that ICPs will not necessarily fund the full cost of infrastructure, preparing the ICP on a full cost recovery basis is at odds with the Guidelines.
84. The ICP Guidelines provide a high-level overview of the ICP system and preparation, implementation and administration of an ICP.
85. Page 9 of the ICP Guidelines provides:

#### ***Equity***

*Development which contributes to the need for new infrastructure should pay a fair and reasonable contribution towards its provision.*

*Developers, local government, state agencies and other stakeholders all share the responsibility for funding infrastructure and the contribution made by development should be proportionate to the need it is projected to generate. Accordingly, infrastructure contributions will not necessarily fund the full cost of infrastructure to be provided through an ICP.*

86. The Guidelines are not referenced in the Act or the Ministerial Direction and do not have statutory weight. The purpose of the Guidelines is to provide information and guidance about the operation of the ICP system.
87. It is standard practice for ICPs to be developed based on the estimated cost of the infrastructure to be provided. This is no guarantee that the actual costs of an item will in fact be fully funded. ICPs are administered over lengthy periods of time and changes in construction costs mean that it is by no means certain that a project will not become significantly underfunded over time. Further, as the community and recreation levy is capped, projects identified within this levy are typically underfunded to a significant degree.
88. The ICP Guidelines also anticipate that there will be some infrastructure that will be funded by developers, some by Council, some by State agencies and some by a combination.
89. It is important to note that, contrary to the Stockland submission, the ICP is not proposing full cost funding of the north-south arterial. The ICP only seeks to fund the land and interim construction costs (now for a two lane, rather than three lane carriageway). The ultimate construction costs will be borne by others, even though many of the road users will be the residents and workers within the Minta Farm precinct.
90. The VPA submits the proposed funding of infrastructure within the ICP is appropriate and consistent with both standard practice and the direction contained within the ICP Guidelines that development should pay a 'fair and reasonable' contribution to its provision.
91. The VPA further notes that, even if there were some question as to the appropriateness of the approach adopted, Stockland has not established an evidentiary basis upon which a lower proportion of funding has been properly identified.

## B. SPECIFICATION OF WORKS-IN-KIND CREDITS

92. Stockland has made submissions that Section 5.10 of the ICP should be 'strengthened' to ensure that any works-in-kind credit is equal to the costs contained in the ICP, allowing for indexation, and will be applied irrespective of whether the works are

funded via the standard or supplementary levy. Stockland submits this will provide certainty to both the Council and landowners.

93. Similar submissions were made to the panels that considered both the Mt Atkinson ICP and the Donnybrook-Woodstock ICP.
94. The Panel Report for Melton Planning Scheme Amendment C201 concerning the Mt Atkinson and Tarneit Plans ICP, concluded at page 2 of the Executive Summary:

***Works in kind credits***

*Works in kind credits should be negotiated between the developer and the Collecting and Development Agencies. They should not be fixed at the cost estimate specified in the ICP. The ICP will remain in place over a long period. Construction costs will inevitably vary over this period, and flexibility should be maintained. Fixing the costs now, based on estimates, will potentially reduce the willingness of Collecting and Development Agencies to accept works in kind (or indeed developers' willingness to offer works in kind), which could result in the loss of the shared benefit of early delivery of the infrastructure.*

95. The Panel Report for Mitchell and Whittlesea Planning Scheme Amendment CG102, Donnybrook-Woodstock ICP, concluded at page 4 of the Executive Summary:

***Works in kind credits***

*Mirvac proposed additional text in the ICP to make explicit that the amount of the credit for a project delivered as works in kind would be no less than the ICP value for that project, if the actual costs equalled or exceeded the ICP value. The Panel considers that the existing works in kind provisions in the ICP are adequate, and that this change is unnecessary. Works in kind are a matter of negotiation and agreement between the developer and the collecting agency, and in the Panel's view these negotiations should be subject to as few restrictions as possible to allow the parties to reach a mutually satisfactory outcome.*

96. The VPA submits that the reasoning of the panels in each of these instances was sound, consistent and appropriate to be applied to the current ICP.

### **XIII. FURTHER CHANGES PROPOSED AS A RESULT OF THE EXPERT EVIDENCE & SUBMISSIONS**

97. The VPA does not propose to make any additional changes to the Amendment as a result of expert evidence or submissions received, beyond those changes identified in Appendix A to the Part A submission, and this Part B submission.

#### **XIV. CONCLUSION**

98. The ICP is supported by robust background and strategic work and the VPA respectfully requests that it be recommended for adoption by the Panel.
99. The VPA will address further issues which arise over the course of the Panel hearing in its reply in the form of a Part C submission.

**Susan Brennan**

**Carly Robertson**

**Counsel for the Planning Authority**

**2 September 2020**