

Our Ref: DV:AG:1085249

11 October 2021

By Email

Victorian Planning Authority
C/- Arden Precinct
Level 25, 35 Collins Street
MELBOURNE VIC 3000

Email: Arden@vpa.vic.gov.au

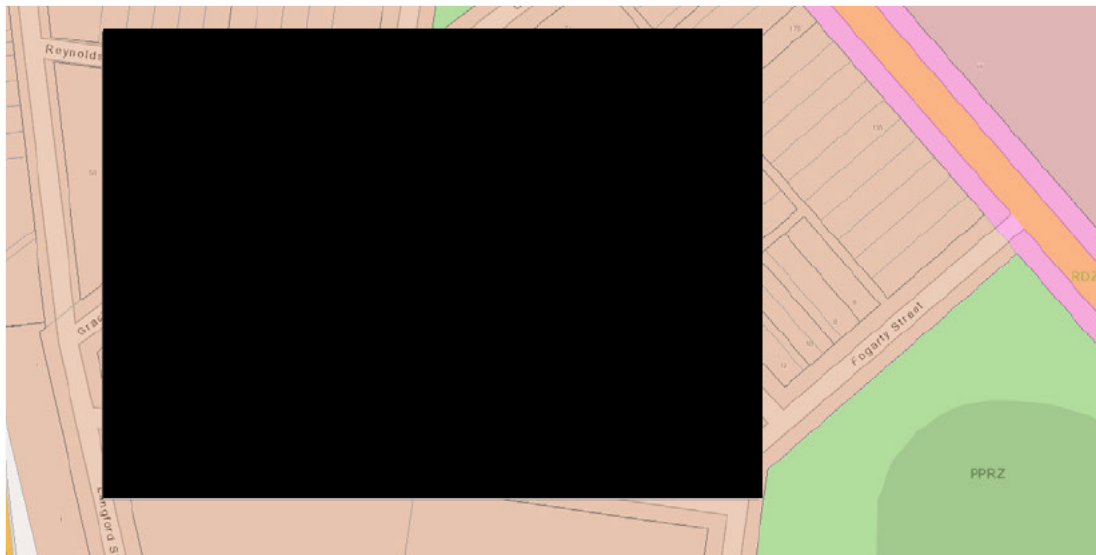
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Dear Sir / Madam

**Submission to Draft Amendment C407melb
49-51 Henderson Street, North Melbourne (Land)**

We act on behalf of the owner of the Land, RSA Holdings Pty Ltd (**RSA**) and Barkly International College Pty Ltd trading as Barkly International College (**Clients**).

The Clients' Land is shown as follows:



The Clients' Land is currently used and developed for the purpose of an education college, operated by Barkly International College Pty Ltd. Substantial investments have been made to ensure the ongoing viability of Barkly International College, which provides educational

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services to approximately 500 students.¹ Barkley International College Pty Ltd intends to continue the use of the Land and exercise its option to renew the long-term lease agreement currently in place. Our Clients were also intending to work together to increase the size of the building by two storeys, to double the student capacity on-site to approximately 1,000 students.

Our Clients' Land has been nominated as 'new integrated stormwater management open space' in the August 2021 iteration of the Arden Structure Plan. RSA submits that:

1. The Land is not required for drainage purposes, and the Amendment lacks strategic justification in terms of setting aside otherwise developable land for drainage purposes; and
2. The Land is not required for public open space, and sufficient public open space is otherwise nominated in the precinct to meet the needs of future residents.

Further and in the alternative, if the Land is required for a public purpose, the landowner ought to be properly compensated. The Land is not encumbered and does not have any environmental or landscape constraints which would affect its continued use and/or development potential. If the Land is required for a public purpose, it is because a planning decision has been made to use the Land (and surrounding titles) for the purpose of a retention basin for the benefit of other land in the precinct.

The Amendment contemplates the use of a Development Contributions Plan (**DCP**) to fund the provision of infrastructure in the Precinct, and critically to fund the acquisition of land for public purposes. However, it is not possible for RSA to make meaningful submissions in respect of the appropriateness of a DCP because the estimated land costs have not been revealed. To provide procedural fairness and allow RSA and others potentially affected by acquisitions to make informed submissions to the Arden Structure Plan, it is submitted that the VPA should publish the estimated land costs before any Directions Hearing.

The DCP notes the Land as part of an uncredited 'ancillary open space project'. At a minimum, if the Land is nominated to perform an open space function, it ought to be creditable.

Likewise, at a minimum, if the Land is required for a public purpose, the Public Acquisition Overlay should be applied contemporaneously with the approval of the Amendment or alternatively shortly thereafter.

In the absence of an appropriate compensation mechanism, the nomination of the whole of the Land as 'new integrated stormwater management open space' in our submission would result in a fatally poor planning outcome and would lead to an inequitable result. The proposed Special Use Zone - Schedule 7 (**SUZ7**) calls into question the urban structure of the Precinct. If our Clients wish to continue the use of the Land but requires a planning permit (for instance, in respect of buildings and works but also potentially use), it is likely that such a permit could be refused on the basis that the Land is required for a public purpose. The same would be true of an application to develop the Land for residential purposes in accordance with the general expectations of the Precinct.

¹ The student cohort at this site is temporarily reduced to approximately 500 as a result of the current COVID restrictions.

In both circumstances:

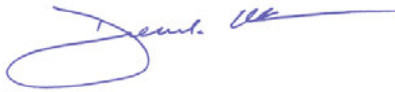
1. the compensation provisions of s 98(2) of the *Planning and Environment Act 1987* would not apply if, properly characterised, the SUZ7 prohibits or otherwise prevents the type of use or development that has been applied for;² and
2. if the PAO has been imposed, compensation would be payable however there is a live question as to the measure of compensation which is appropriate, and the VPA's position on this matter is not clear at this stage.

Under an alternative scenario, if the Amendment is approved in its current form, and RSA sells the Land for less than it might otherwise be expected to receive if the Land was not nominated in the Structure Plan for public purposes, and if the PAO has not been imposed, the landowner would be denied any right to compensation.³

Our Clients reserve the right to make further submissions in respect of the Amendment if and when further material is provided.

If you have any queries please contact us.

Yours faithfully



David Vorchheimer

[Redacted]
[Redacted]
[Redacted]
[Redacted]



Alex Gelber

[Redacted]
[Redacted]
[Redacted]
[Redacted]

² *Planning and Environment Act 1987*, s 98(2A)

³ *Planning and Environment Act 1987*, s 98(1A)