

## MINISTERIAL ADVISORY COMMITTEE

### BEVERIDGE NORTH WEST PRECINCT STRUCTURE PLAN SUPPLEMENTARY LEVY INFRASTRUCTURE CONTRIBUTIONS PLAN QUARRY PLANANING PERMIT APPLICATION ADVISORY COMMITTEE PSP 1059 – Beveridge North West

## CLOSING SUBMISSIONS ON BEHALF OF VICTORIAN PLANNING AUTHORITY

### 1 INTRODUCTION

1. These closing submissions are made on behalf of Victorian Planning Authority.
2. The submissions have been prepared to provide the VPA's closing position in respect of the draft planning scheme amendments and quarry planning permit application. Being in the nature of a reply submission, they are not comprehensive but have been prepared to address key issues that the VPA considers it will be necessary for the Committee to report upon. Where issues are not addressed in this submission, the VPA relies on its earlier materials filed in this proceeding,
3. This submission is accompanied by a table of changes as required by direction 41(a) and tracked changes version of the draft amendments.
4. The tracked changes:
  - 4.1. For the ordinance are shown against the base of the documents filed with the VPA Part A Submission;
  - 4.2. For the PSP are shown against the base of the document filed with the VPA Part A Submission;
  - 4.3. For the ICP are shown against the base of the document filed with the VPA Opening Submission.

### 2 APPROACH TO THE MATTER

5. The VPA adopts the sensible submissions of counsel for Yarra Valley Water concerning the approach of the Council. Council look to defeat the proposed quarry permit and, accordingly, have adopted a position in relation to the strategic planning that highlights perceived problems - more often than not without suggesting specific solutions. Where solutions are proposed, this has not been done in a timely manner – e.g. the forward funding issue and without reasonable specificity. The VPA surmises that Council's witnesses were also briefed in this vein – for example Mr Milner, Dr Spiller, Mr Pelosi, Mr Fetterplace. For example, notwithstanding the position now advanced by the Council, Mr Spiller was not briefed to assess forward funding.
6. Despite there being a limited number of conflicts of interest between the VPA and Council, Council's conduct of this case, on account of the quarry permit application, represents a significant departure from the normally cooperative and solution seeking approach to conducting PSP/ICP matters.
7. The VPA raises this because it is important that the Committee does not permit the approach of Council, mediated as it appears to be by the quarry permit application, to force these amendments into a strategic planning vacuum that delays the strategic planning framework (including a framework for fair assessment of the current and any future quarry permit application). This would:

- 7.1. Compromise the delivery of an important urban community that is needed to accommodate Melbourne's growing population.
- 7.2. Be grossly unfair to the development community that has now participated in close to 50 hearing days in respect of this PSP over two matters. What harms the development community also harms the general community.
8. The VPA is currently well progressed in the preparation of the Wallan South PSP which it is working collaboratively with the Council on. Given there exist some structural linkages (such as arterial roads and the operation of the SCO) between the two areas, it is important that the strategic framework for the BNW PSP, ICP and SCO be finalized so that there is certain baseline on these limited matters for the exhibition of the Wallan South PSP.

### **3 QUARRY MATTERS**

#### Time limits

9. The VPA now understands there exists broad agreement between the Council, VPA, Gilbo and YVW about the appropriateness of a time limit for the complete rehabilitation of the site in 2052 and there is support for the 20 year timeframe for blasting advocated for by the VPA, albeit the VPA acknowledges its oral submissions about the absence of evidence firmly establishing that rehabilitation could not be complete by 2052 if blasting persisted longer than the 20 years. As the VPA has stated the absolute date is 2052 to ensure reasonable, albeit delayed, progression of development. Beyond this timeframe, significant uncertainty is introduced for the future community and the operation of the ICP is affected.
10. The VPA joins with Council's concern expressed at its Paragraph 25 where it highlighted that at C106 Conundrum presented an ability to move from permit to quarrying in 12-18 months. This was the information that the VPA had before it in preparing the strategic documents and in truth no evidence has been adduced to suggest that this could not occur. Indeed, it is not clear from Conundrum's case what has changed in the last two years or what actions Conundrum has taken to engage with DJPR in that intervening period. The VPA is not aware of engagement that goes to the critical issues of timing and rehabilitation standards.
11. The VPA does not accept Council's suggestions at 4.13 that:
  - 11.1. the current application should be the only application.
  - 11.2. it would be appropriate for any permit to expire within 2 years if no work commences, the expiry provisions under the SCO are sufficient.
  - 11.3. the rehabilitation plan should mandate levels that match adjoining land. It is for a rehabilitation plan to present a workable and ultimately acceptable proposition.

#### Buffers

12. The VPA notes the very high degree of conformity between its position on the control of buffers and that of YVW. The Gilbo submission also seeks the ability for development to occur within the buffers as the quarry works through its phasing.
13. VPA supports YVW's suggested conceptual approach to buffers generally being:
  - 13.1. Outer zone of potential risk (outer buffer) - previously referred to as the sensitive use buffer, including dust and noise which is 500 metres from a distance 20 metres inside of the Work Authority boundary (to reflect the position under Clause 52.09 of the Planning Scheme).

- 13.2. Inner zone of higher potential risk (inner buffer) - previously referred to as the blast buffer, that including impacts beyond blasting, such as air emissions which is 250 metres again measured from 20 metres inside of the Work Authority boundary.
14. These distances reflect the default buffers under EPA publication 1518 for a blasting (500 metres) and non-blasting (250 metres) quarry.
15. The submission on behalf of Ms Gilbo seeks either a notation that '*quarry buffers are to be located on land owned or controlled by the proponent of the quarry*' or alternatively elevating such text to a requirement of the PSP.<sup>1</sup> In response to questions from the Committee, Ms Gilbo's representative acknowledged such a control could also be included in the SCO or the permit conditions. The VPA does not consider it is realistic to impose a requirement of this nature through the planning control. The absence of control over buffers is clearly a matter that is relevant in evaluating whether a permit application is acceptable, but given control of buffers represents a policy position under the Planning Scheme, the VPA consider the SCO should not mandate the outcome. If a quarry proponent can secure control of the buffers then this may operate in favor of the grant of a planning permit but equally not controlling the buffer should not prohibit a quarry (which would import a higher requirement than the existing Planning Scheme).
16. During submissions, Ms Gilbo's representative queried why application requirements are specified in the SCO for applications within the sensitive use buffer but no such requirements are listed for applications within the blast buffer. By way of clarification, the VPA observes:
- 16.1. The two buffers overlap and therefore any application inside the 250-meter blast buffer will also be an application under the sensitive use buffer requirements.
- 16.2. On the VPA's drafting, only a very limited number of uses, buildings or works could be permitted inside the 250-meter blast buffer.
17. Many community submitters (such as Wallan Environment Group) have opposed the grant of the planning permit and/or sought that WA1473 and associated buffers ought to be removed from the PSP. The VPA does not seek to dismiss the legitimately held concerns of the community and trusts that the Committee will have been assisted by hearing from community members directly.
18. The VPA has proceeded on the basis that the Committee's Terms of Reference limit the scope of enquiry to 'how' the C106 Panel's recommendation in chief has been implemented. The VPA does not dispute, as a matter of law, the propositions put (in particular by Mr Morris and adopted by Ms Kaczmarek) that it is open to the Committee to recommend the PSP be approved without showing a quarry. However, the VPA submits that it has appropriately implemented the recommendation of the C106 Panel to plan for extraction at WA1473 and it is submitted the Committee should find accordingly. In respect of the Quarry Planning Permit Application, however, the VPA maintains its position that the application does not respond appropriately to the VPA's proposed controls and therefore a permit ought not be issued.

### Rehabilitation

19. The VPA position on rehabilitation, its foundation under the Planning Scheme and the level of consistency of its position with contemporary practice under the MRSDA will be clear to the Committee at this stage. These submissions solely comments on matters raised in submissions of the parties **after** the VPA case.

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<sup>1</sup> Document 165: Submissions on behalf of Mrs Gilbo, 7 June 2022.

20. Council says the suggestion of the VPA that Fyansford or Niddrie represent an appropriate landform for the quarry site is 'extraordinary' and 'irresponsible'<sup>2 3</sup>. This is not what the VPA said. The Committee is referred to the VPA Paragraph 66 in full, however, it observes that the Part B submission states:

*The VPA does not seek to mandate an unrealistic rehabilitation proposal or deprive Conundrum from controlling its proposal. It is entirely probable that timing, efficiency and cost means that **something closer to a Fyansford outcome or a Niddrie outcome** is the appropriate solution that the figure that a number of witnesses have been taken to from the Tract Planning Report identifies. [emphasis added]*

21. In short, the VPA has indicated that the quarry operator will need to present a plan for the future landform, properly informed by supporting reports. Whether that is full filling because of an opportunity arising or partial fill to create the appropriate landform, that is for contemplation in a properly prepared rehabilitation plan.
22. Conundrum's submissions to C106 and the Tract permit application contemplated that post quarry land use could include residential use. The VPA's strategic response is consistent with these representations.
23. In terms of the development capability of land within the rehabilitated quarry, Council refer to the dwelling densities as though they are mandatory maximums<sup>4</sup>. Requirement 2 makes it clear that the densities in Table 25 are minimum densities. There is the capacity for a developer to undertake innovative development over a rehabilitated quarry. Niddrie, which the Committee has indicated it will visit contains dwellings across that site at a range of densities from standard to medium density.

#### 4 TRANSPORT ISSUES

##### Old Sydney Road

24. At Paragraph 19 (and sub-paragraphs) the Council expresses concern about the delivery of Old Sydney Road. For the following reasons the VPA states that the concerns of Council are overstated and /or misinterpret the proper operation of PSPs.
25. Firstly it is important to recognise that the Tribunal decision relied upon by Council at Paragraph 19.12<sup>6</sup> is not a case concerning a PSP, but a case concerning a DPO. This is important because the operation of provisions under the UGZ are profoundly different. Clause 37.07-10 states:

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<sup>2</sup> Document 148: Council submission, Paragraph 5.10.

<sup>3</sup> Document 148: Council Submission Paragraph 37.9.

<sup>4</sup> Document 148: Council Submission at Paragraph 5.2.

<sup>5</sup> Document 16: Page 15 of Part A PSP.

<sup>6</sup> *Autumn Care Properties Pty Ltd v Casey CC* [2021] VCAT 54 (22 January 2021).

### 37.07-10 Subdivision of land

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VC77

A permit is required to subdivide land. Any requirement in the schedule to this zone or the precinct structure plan must be met.

A permit granted must:

- Be generally in accordance with the precinct structure plan applying to the land.
- Include any conditions or requirements specified in the schedule to this zone or the precinct structure plan.

26. The provision is clear that any requirement in the Precinct Structure Plan must be met. This provision of the UGZ has been interpreted by the Tribunal in respect of other PSPs including the Greenvale Central PSP<sup>7</sup>:

9 I therefore find that there is a consistency in the wording between the Urban Growth Zone and the GCPSP. Clause 37.07-10 establishes a framework for the creation of mandatory requirements within either the schedule to the zone, or the precinct structure plan. While the word 'mandatory' is not used in this Clause, the phrases that, 'any requirement ... must be met,' and, 'a permit granted must ... include any conditions or requirements,' gives clear direction that a requirement in a precinct structure plan acts as a mandatory requirement. If any other outcome was intended, then one would expect to find a 'should' rather than a 'must', or added word such as, 'to the satisfaction of the responsible authority,' or 'generally in accordance.' While the words, 'generally in accordance' are found at Clause 37.07-10, they apply to the consideration of a precinct structure plan as a whole, not to the requirements which 'must be met.' The language used at Clause 37.07-10 does not provide for any alternative interpretation, other than that the requirements set out in a precinct structure plan are mandatory requirements.

27. In this instance there is an appropriate requirement. R32 (now R33) appears to have been overlooked by Council in framing its submission on including developer works provision within the ICP. R32 from the Part A version of the PSP states (it is extracted in two parts as the requirement extends overleaf):

#### 3.7.2 Subdivision Works

REQUIREMENTS	
<del>R31</del> R32	<p>Subdivision of land within the PSP must provide and meet the cost for all local infrastructure, other than that provided for within the Beveridge North West ICP. This includes (but is not limited to):</p> <ul style="list-style-type: none"><li>• connector roads and local streets, including Old Sydney Road</li><li>• local bus stop infrastructure (where locations have been agreed in writing by Public Transport Victoria)</li><li>• landscaping, including canopy tree planting, of all existing and future roads and local streets</li><li>• intersection works and traffic management measures along arterial roads, connector streets, and local streets</li><li>• council approved fencing and landscaping (where required) along arterial roads and reserves</li><li>• shared pedestrian and bicycle paths along local arterial roads, connector roads, utilities easements, local streets, waterways and within local parks including bridges, intersections, and barrier crossing points</li></ul>

<sup>7</sup> Prime Land Development & Advisory Group Pty Ltd v Hume CC [2017] VCAT 674.

	<ul style="list-style-type: none"> <li>• bicycle parking</li> <li>• appropriately scaled lighting along all roads, major shared and pedestrian paths, and traversing public open space</li> <li>• <u>basic</u> improvements to local parks and open space <u>to the satisfaction of the Responsible Authority</u> (refer to open space delivery below)</li> <li>• local drainage system and water sensitive urban design (WSUD) features</li> <li>• local street or pedestrian path crossings of waterways unless outlined as the responsibility of another agency in the Precinct Infrastructure Plan</li> <li>• infrastructure as required by utility service providers including water, sewerage, drainage (except where the item is funded through a Development Services Scheme), electricity, gas, and telecommunications.</li> <li>• construction of shared paths along waterways and open space</li> <li>• remediation and / or reconstruction of dry-stone walls where required.</li> </ul>
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28. The VPA considers that requirement and the operation of the UGZ serve to differentiate the current circumstances from the *Autumn Care* decision given the specific reference to Old Sydney Road being developer works.

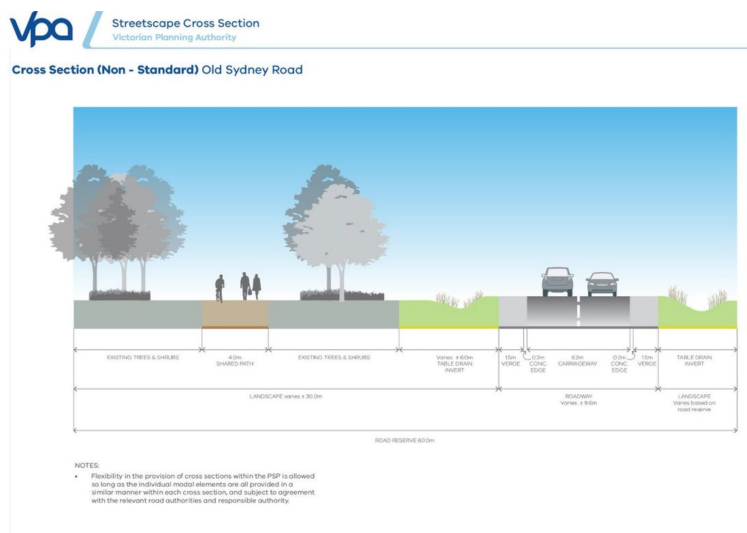
29. The VPA would agree however to a minor amendment to the provision by inserting the following words:

*Connector roads and local streets, including Old Sydney Road **at the time of abutting subdivision.***

30. To further clarify the position on Old Sydney Road, the VPA also support Council's request to update the Precinct Infrastructure Plan within the PSP to reflect the upgrade of OSR adjacent to the PSP area, while noting that this infrastructure is not an ICP item.

#### Deletion of OSR shared path

31. The VPA opposes YVW's submission to remove the shared path external to Precinct Structure Plan on OSR in the relevant cross section. The VPA notes that this cross section was part of the previous C106 PSP and not contested. Extracted below are the current and previous cross sections which are functionally identical.



32. The VPA's position on ICP funding and the upgrade of Cameron's Lane west of IN03 is outlined in the Part B submission.
33. The VPA observes that Council also appears concerned in a similar vein to the construction of Old Sydney Road in respect of Camerons Lane west of IN-03.<sup>8</sup> The situation in this location is to be distinguished. Whereas OSR is outside of the PSP boundary, Camerons Lane is within it and so the text of R32 in relation to connector roads binds a future developer. There is no further amendment required.

34. Having received the evidence, the VPA supports YVW's submission to retain the EAR's alignment in its original location, abutting WA1473. The balance of evidence on quarry impacts and the evidence in relation to the delivery of the alternate structure plan supports this location. Importantly there is no evidence before the Committee which would suggest that the consultation draft location is not workable.

35. Throughout the matter there has been a question surrounding the orientation of the WAR in two respects:
  - 35.1. Whether the road should generally align with the consultation draft alignment, and if so, should it be rerouted to a straighter route at burrung buluk.
  - 35.2. Whether the road should go through the saddle further to the west.
36. The DoT have indicated a preference for the WAR to go through the saddle rather than around the hill, however, the views of the Traditional Owners are sought prior to a decision being made on this matter. As indicated below this position has not been received.
37. The VPA will proceed with finalising the PSP with the current alignment, albeit with further refinement to ensure it meets the safety standards identified by DoT
38. Should the Traditional Owners provide a preference for the road to go over the saddle prior to approval of the PSP, the nature of this view will be considered, and the VPA will finalise the design in consultation with the DoT, the land owner and the traditional owners.

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39. The location of pedestrian signalised intersections will be finalised with DoT once alignment of WAR is confirmed.

#### Delivery of the EAR

40. The Council raises a concern that the EAR will need to be delivered during the life of the PSP at a time prior to the conclusion of quarrying works and further prior to the collection of adequate funds under the ICP.
41. The DoT in C106, along with the VPA, successfully contended for a dual arterial system to improve network resilience in the area. This remains the appropriate traffic outcome and importantly the evidence confirms that the quarry will not limit the delivery of the EAR from the time that blasting is 200 metres from the road (or possibly less if other methods are used such as closures).
42. The Council's position on no development in buffers may slow the delivery of infrastructure contributions and this may, in the event that other funding is not available, delay delivery.
43. To test the impact of delayed delivery of the EAR, Mr Humphreys in his evidence conducted a conservative modelling analysis of the performance of the network without the EAR, assuming full build out of the PSP and northern growth corridor. He found, in this scenario, the network will function, albeit not as is planned for in the ultimate scenario (see figures below).

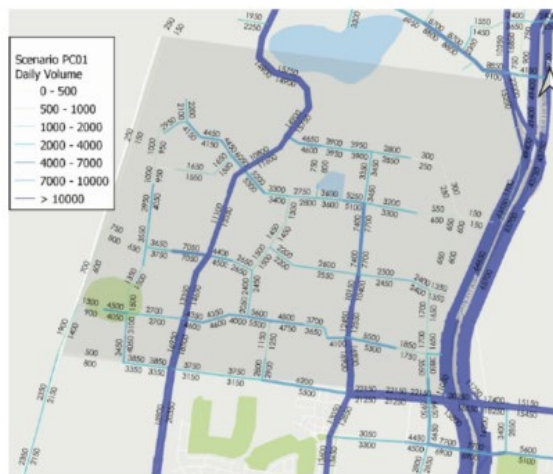


Figure 8: Daily Volumes in Beveridge North West without Eastern Arterial

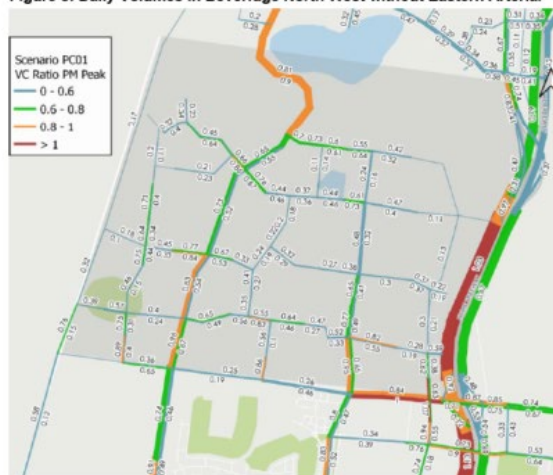


Figure 9: Volume to Capacity in Beveridge North West without Eastern Arterial (PM Peak)



44. The Committee can take comfort that while it is appropriate to ensure that the EAR can be delivered, the concerns articulated by the Council are not concerns that would warrant changes to or the non-approval of the PSP and ICP.

#### The Walsh alternative network

45. No party in submissions sought to agitate the downgrading of the western arterial to a connector or local road. The Walsh alternative ought to be dismissed.

#### Apportionment of Hadfield Road intersections.

46. The VPA in its Part B submission submitted that the 50% apportionment for IN08 and IN09 should be reduced to a 25% contribution. Yarra Valley Water, having accepted apportionment in C106 when the roads were situated on the current alignment of Hadfield Road, now oppose apportionment because of modelling based on an agency draft road formation for Wallan South.
47. The ICP Guideline principles speak to need and nexus and equity. The ICP Guidelines state in respect of each:

*Need and nexus: The need for the infrastructure to be funded through, and the public purpose land to be provided under, the ICP must be related to the proposed development of land in the ICP plan area. **That is, planning authorities must demonstrate that the development will likely use the infrastructure to be provided. The need for infrastructure should be considered in the context of the wider planning framework.** That context may include existing and proposed development that may also use that infrastructure, as well as existing infrastructure that may have spare capacity.*

*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.<sup>9</sup> [emphasis added]*

48. There is no explicit guidance on how likely use, or fair and reasonable contributions should be calculated with usage one factor and population another.<sup>10</sup> In this instance the traffic modelling suggests that the location of Hadfield Road to the north in the agency consultation draft for Wallan South reduces the level of usage. However, this intersection location is not confirmed.
49. In the VPA's submission it is appropriate to have a reduced contribution in the nominated amount of 25%. The Committee can be satisfied that there is a need for the intersections generated by BNW, there is a nexus, the remaining question being where equity lies. In the absence of finalized information of the location of the intersections the extent of contribution meets the fair and reasonable requirement. It does so in part because as Crystal Creek Properties validly submit in their primary submission, it would be unreasonable that PSP to take responsibility for all of the cost.

#### Alteration of location of the east west connector adjacent to northern town centre

50. The VPA has straightened the east west connector at the northern town centre. This alignment is preferable for the delivery of the boulevard connector through the Gilbo land as

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<sup>9</sup> Document 144c): ICP Guidelines at 9.

<sup>10</sup> For example, in Hume c243.

it will create lots on both sides of the road, it improves the opportunity for any future redeveloped quarry connection in this location and it improves spatial arrangements around the northern town centre.

## **5 INTERIM USES**

51. The VPA has prepared amendments to the ICPO to address Yarra Valley Water's concern about interim uses expressed at paragraph 96 of its submission.

## **6 SCO DRAFTING**

52. The VPA has prepared an updated SCO drafting after considering the comments of the parties.

## **7 AN INTERIM MODEL OR MODELS**

53. There are two parties that agitate for the preparation of an interim model in respect of the PSP area in their primary submission:
- 53.1. Yarra Valley Water contend that the preparation of an interim model would assist in the development planning of the PSP area at a permit stage.
- 53.2. The Council, in addition to the matter above, contends that an interim model would also assist in determining the appropriate time for delivery of infrastructure to inform forward funding of ICP items.
54. The VPA deals with these issues separately.
55. It is the position of the VPA that an interim model prepared at this time for a single scenario has little utility in the planning of infrastructure for the area at the permit stage. The VPA relies on the submissions in its Part B submission – the assessment of what is occurring at a given time and the interim modelling that Ms Marshall undertakes is a fundamentally different task.
56. Given the scope of works that can occur under the ICP, in the VPA's submission, mostly delivered by works in kind but potentially by the Council, it is the VPA's position that an interim model, which models a 75% build out scenario which was the historic approach under DCPs, will have little utility in guiding individual permit decisions. Rather, an interim model will describe an estimated point in time network at 75% build out and the performance of the estimated network at that time.
57. The VPA considers that the interim model is very unlikely to influence what items are included on the Precinct Infrastructure Plan that must be submitted with application for permit under the provisions of the UGZ. This information will be guided by the physical locality – the planning unit – and the road network that needs to be delivered to serve that unit or adjacent to it.
58. In particular, there will be a range of enabling works, being the intersections with Camerons Lane, that will be delivered in the very early stages. Subsequent to that, development and delivery of infrastructure will essentially follow how and where development is proposed to occur. With the advent of benchmark intersections there is no longer a need to determine and size function of the intersections – this is predetermined.
59. Perhaps more importantly, it is the submission of the Council that interim modelling will answer the question of when the WAR may or may not be essential to the development of the defined ICP Plan Area (that being the Beveridge North West PSP area and not beyond).
60. In the VPA's submission, this is completely misconceived. The exercise that is required to deliver an assessment of timing for infrastructure works is not a single interim model.

61. The VPA has already articulated the varied and inherently uncertain assumptions that must be made to prepare a model for the determination of timing of infrastructure.
62. In reality, modelling for the purpose of determining the timing of infrastructure is not the same as an interim model in the manner considered above. It is actually a series of model runs, each representing a point in time, utilising a series of assumptions regarding infrastructure delivery and development build out that seeks to determine when the system no longer functions satisfactorily.
63. In the next 20 years, infrastructure may be delivered which impacts upon the operation of Beveridge North West. These projects include triplication of the Hume Freeway, delivery of the Camerons Lane interchange, delivery of the BIFT, and the delivery of the OMR - to name a few.
64. The models required would consider a range of combinations of the delivery of these projects. For example, it would be necessary to determine what impact the triplication of the Hume has in isolation, and with one, two or three of the other items. This would create a set of model presumptions that build upon the modelled presumptions of subdivision layout and population growth within Beveridge North West.
65. Even were these sequential and varied models prepared, the question of when the system becomes unworkable is not an easy one to articulate. It is commonly recognised that in growth area planning, roads frequently carry volumes above their environmental capacity during build out. The reasons for these are varied but essentially amount to the partial delivery of an ultimate road network that might see a connector playing an interim upgraded role while additional connectors in other parts of the Future Urban Structure are delivered. Is this failure of the system, or is this merely the nature of delivery of urban development? These interim conditions may result in volumes approaching a Degree of Saturation greater than 1.0 in some parts of the road network. This is simply one demonstrable measure of failure but equally across the metropolitan area it does not represent an uncommon peak hour situation.
66. The assertions of the Council ignore the complexity by neatly packaging the request in the form of an "interim model". This is a "creature" that is not neatly packaged, is not easily described and which is not ultimately, to borrow the words of counsel for Yarra Valley Water, useful in the way that modelling can sometimes be.
67. The VPA submits that demands for provision of an interim model in the traditional DCP manner, ignores the advances in the approach to infrastructure delivery brought by the ICP system and the VPA's benchmark designs and obfuscates the more sophisticated matter of modelling to determine need for forward funding.

## **8 INFRASTRUCTURE CONTRIBUTIONS**

68. There exist a range of matters relevant to the ICP that remain in contention. Highest among these are the submission of the Council on the issue of forward funding. This closely relates to the question of the many interim model runs required to attempt to determine whether the funding of the western arterial constitutes essential funding and could possibly meet the Ministerial direction. These matters are set out the VPA Part B submission.

### ICP Collections

69. The Council has provided calculations which it says describe the shortfall in the delivery of infrastructure contributions associated with the introduction of the quarry buffers. Council's propositions are conservative as they are advanced on the basis of no progressive development of buffers. Even when assessed on this basis, the VPA says that Council's calculations are wrong. The VPA has prepared the table below which reflects the corrected contributions for this area. It appears that the error in the Council's calculations is that there exists an area of double counting.

		Exhibited	Part A ICP	Part B ICP
<b>COUNCIL CALCULATION</b>				
Quarry Area	49	\$14.4m	\$14m	\$13.43m
Buffer Areas	130	\$38.3m	\$37.1m	\$35.64m
TOTAL	180	\$51.1m	\$52.7m	\$49m
		<b>Nov-21</b>		
	Standard	\$216,564	\$216,564	\$216,564
	Standard Transport	\$124,370	\$124,370	\$124,370
	Supp	\$69,065	\$78,081	\$57,593
	Transport Total	\$193,435	\$202,451	\$181,963
	Total	\$285,629	\$294,645	\$274,157
Quarry Area (Submission)	49	\$13,995,821	\$14,437,605	\$13,433,693
Buffer Areas including Quarry (Submission)	130	\$37,131,770	\$38,303,850	\$35,640,410
TOTAL (Submission)	180 (Looks like double count of areas)	\$51,413,220	\$53,036,100	\$49,348,260
<b>VPA CALCULATION</b>				
NDA Area under Quarry Works Boundary (VPA Calc)	35.44	\$10,122,691.76	\$10,442,218.80	\$9,716,124.08
NDA Area under the 250m + 500m buffers (VPA Calc)	73.39	\$20,962,312	\$21,623,997	\$20,120,382
TOTAL NDA Area under Quarry Works Boundary + Buffers (VPA Calc)	108.83	\$31,085,004.07	\$32,066,215.35	\$29,836,506.31
<b>Transport Infrastructure</b>				
NDA Area under Quarry Works Boundary (VPA Calc)	35.44	\$6,855,336.40	\$7,174,863.44	\$6,448,768.72
NDA Area under the 250m + 500m buffers (VPA Calc)	73.39	\$14,196,195	\$14,857,879	\$13,354,265
TOTAL NDA Area under Quarry Works Boundary + Buffers (VPA Calc)	108.83	\$21,051,531.05	\$22,032,742.33	\$19,803,033.29
<b>Community Infrastructure</b>		<b>Levy rate</b>	<b>Total Collection</b>	

Total	768.89	\$92,194	\$70,887,044.66	
NDA without Quarry and Buffers	660.06	\$92,194	\$60,853,571.64	
		Difference	\$10,033,473.02	
SR01 Cost (50%)	\$6,380,478	Gap (Difference – Cost)	\$3,652,995.52	

70. It is appropriate to identify that the Council's calculations are premised on all contributions for this area, not the Transport Levy that might contribute to the delivery of the arterials. At its paragraph 17.14, the Council states that it will not fill any shortfall in funding occasioned by the quarry or costings. The VPA agrees that the method of works in kind will largely obviate the need for Council contributions but also notes that a statement of this nature, is inconsistent with manner in which this contributions system was established.
71. The Second Reading of the *Planning and Environment Amendment (Infrastructure Contributions) Bill 2015* states that:

*The new system, which is to be called the infrastructure contributions system, is based on the principles that developers, local government, state agencies and other stakeholders share the responsibility for funding infrastructure and levies are a contribution towards infrastructure provision.*<sup>11</sup>

#### Initial Estimation of Funding Costs

72. The VPA has undertaken preliminary estimation to determine the potential financing costs of funding the relevant portion of the WAR. This preliminary estimation has been prepared on the basis of:
- 72.1. Adoption of the alternate future urban structures for the northern portion of the ICP which would see the active open space relocation to the east and housing realised along the WAR to the south of burring buluk.
  - 72.2. Assuming no development within the quarry buffers to establish a conservative position.
  - 72.3. Adopting the development scenario adopted by Dr Spiller which is in turn based on the historic Patch material.
  - 72.4. Adopting an alternative delivery scheme that the VPA considers more logical given the allowance within ordinance for consideration of a quarry proposal.
  - 72.5. Adopting the methodology utilised at Minta Farm ICP.
  - 72.6. Assuming the scenario that there is a need for WAR (i.e. that Wallan South has developed to a point where this northern connection is required) but that the residential area to the west of burring buluk has not developed until 2055-60, notwithstanding that if Wallan South has reached this area then that land can be developed.<sup>12</sup>

<sup>11</sup> Hansard 10 June 2015, Page 1886.

<sup>12</sup> This is an unlikely scenario given that this area will develop as an extension of Wallan South further to the south potentially or through an interim access arrangement to the WAR. Either of these eventualities would likely result in a reduction in the extent of the WAR that would need to be funded.

<sup>13</sup> <https://vpa-web.s3.amazonaws.com/wp-content/uploads/2019/10/Benchmark-Infrastructure-Costs-Guide.pdf> at Page 6.

73. It is important to note that this is only one part of the equation, and realistically the easy part. The difficulty arising in determining that this connection to the north must be delivered early and is 'essential' for the ICP Plan Area and when it becomes so.
74. The analysis is contained within the memorandum to be found at Appendix A to this submission. The net result of this assessment is that:
- 74.1. Assuming delivery in 2040 on the Patch Spiller roll out assumptions, the financing costs over 20 years would be \$2.9M.
- 74.2. Assuming delivery in 2040 on the VPA PSP roll out assumptions, the financing costs over 20 years would be \$860K.
75. These estimates are based upon the costing including in the Part B ICP version.
76. The total cost of the transport levy is approximately \$130M in the final ICP version.
77. Having regard to the total cost of the transport levy and the broad scope of assumptions inherent in the assessment of essential, the VPA considers the cost benefit to seeking to justify that these items are essential is marginal given the vagaries inherent in the process to undertake that assessment. The VPA is fortified in this view by the nature in which the ICP transport items are calculated. This process uses the P90 costings which the VPA Benchmark Costing Report explains the rationale for:
- While the most likely cost could be adopted, this would result in the estimated cost being exceeded 50% of the time (hence it is known as the P50 cost) and could readily lead to an under-funded ICP. To address this, a P90 estimate has been adopted as the benchmark local infrastructure cost estimate. Adopting the P90 value should see an estimate exceeded only 10% of the time, providing a robust basis for determining the ICP levy needed to reliably fund basic and essential infrastructure.<sup>13</sup>*
78. The net position is that the Committee should be comfortable that the costings methodology utilised are more than robust and the implications of funding a conservatively large estimate of the necessary portion of the WAR are not substantial, having regard to the fluctuating nature of funding over the life of the ICP.
79. While the VPA acknowledges that the Ministerial Direction makes financing costs possible, the test in that document as outlined in the Part B is a mandatory test. The shortfall, if any, is limited and not inconsistent with the usual ebb and flow of management of the ICP making financing a speculative request.

#### Payment of Land Credits and negotiation of timing

80. Council articulated at paragraph 18.5 of its submission that the ICP land credit statutory system was 'not so accommodating' suggesting that it provided some lesser negotiation strength for timing of payment for public land over-providers, compared with works, services or facilities. The VPA considers that the Council has misconstrued the operation of the ICP system. Section 46GZ(7) provides:
- (7) The collecting agency must pay to each person who must provide an infrastructure contribution under the approved infrastructure contributions plan any land credit amount to which the person is entitled under section 46GW.*
81. Section 5.8 of the ICP states:

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<sup>13</sup> <https://vpa-web.s3.amazonaws.com/wp-content/uploads/2019/10/Benchmark-Infrastructure-Costs-Guide.pdf> at Page 6.

*A person is entitled to be paid the land credit amount specified in this ICP in relation to a parcel of land if:*

- on development of that parcel the person must, in accordance with section 46GV(4) of the Act, provide inner public purpose land forming part of that parcel to the collecting agency or a development agency; and*
- the parcel contribution percentage of the parcel of land to be developed is more than the ICP land contribution percentage for that class of development.*

*The land credit amount is to be paid by the Collecting Agency to the landowner at a time to be agreed, but not before lodgement of a subdivision plan. This may be formalised in a section 173 agreement if the Collecting Agency and landowner agree.*

82. In short, the land credit amount timing forms part of the other negotiations that ordinarily occur with a permit application in terms of settling arrangements for contributions. The Committee should not place weight on the position advanced by the Council in respect of land contributions.

#### Funding of connector to the west of IN03

83. At Paragraph 20 of its submission, Council states that the road west of IN-03 is able to be funded under the Ministerial Direction. There is no analysis to support how such funding could occur under the Ministerial Direction given its status as a connector road. For a connector road to be funded, it needs to meet all the following tests<sup>14</sup>:

- The item must be a works, service or facility that a developer of land normally provides on or to the land in order to develop the land for urban purposes.*
- The item must be constructed on, or adjoin, land in fragmented ownership and the fragmented ownership must make provision of the item by the developer difficult.*
- The relevant municipal council must have agreed to be the development agency for the item.*
- The estimated cost of the item must be fairly levied amongst the developers who will benefit from the delivery of the item.*

84. The item sits within the ICP Plan area boundary and adjoins BN-09 and BN-10. This cannot be regarded as a fragmented ownership structure. The Council's case is not made out.

#### IN-03 leg funding

85. The VPA considers there to be merit in Council's submission that IN-03 should be 75% funded given that the BNW PSP will be providing three of the four legs. The ICP will be updated accordingly.

#### Culverts to the west of CU-03 in ICP

86. The VPA maintains east of IN-03, Camerons Lane, has always been shown as a connector street in Plan 09 of the Part A and Part B PSP. Therefore, the applicable cross section remains a Connector and the VPA does not support Council's request to include the culverts to the west of CU-03 in the ICP because the connector road status of this road means that it is clearly developer works under R32.

#### Other content within the ICP

87. At Paragraph 23, the Council suggests that Clause 5.10 of the ICP prevents accepting works in kinds for land contributions. Council states that this line should be removed. The VPA

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<sup>14</sup> Document 144b): Table 5 on Page 15 of the Ministerial Direction.



will amend the wording in Section 5.10 as requested. However, the VPA maintains all collecting agencies need to adhere to the Planning and Environment Act 1987 and any other relevant legislation during the implementation of the ICP. In particular the works in kind regime under Section 46GX is confined to 'works services or facilities'.

88. The VPA maintains Old Sydney Road remains developer works and is not regarded as allowable under the current Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans dated February 2021.
89. The VPA considers it is not necessary to include a developer works clause. For the reasons set out above the ability to require conditions is sufficiently grounded in R32 of the PSP and the UGZ. While it could be argued that replicating the provision in the ICP does not cause harm, this does not appear to be a sound basis where the other mechanism is appropriate. Council note IN-02 is updated to a 4-way intersection. The VPA can confirm Plan 02-Monetary Component Transport Projects has been updated accordingly.

## 9 burrung buluk

90. The Committee has heard competing submissions regarding the future of burrung buluk. At this juncture at the close of a second planning panel process, it is useful to revisit to the findings of the C106 Panel.
91. In respect of biodiversity issues, the C106 Panel Report observed that 'No evidence was called on biodiversity' <sup>15</sup> and records that 'FOMC submitted that there should be a focus on ecological restoration in such a degraded landscape and this would have not only positive biodiversity impacts, but social and landscape impacts as well.' <sup>16</sup> Unlike the C106 Panel, the Committee has heard evidence regarding the ecological values of burrung buluk and has the benefit of hydrological evidence regarding the catchment available to support a wetland.
92. Further, unlike C106, the views of landowner parties have been clearly expressed. The VPA understands that:
  - 92.1. Crystal seeks to confine the extent of burrung buluk to this PSP and has led evidence of degraded ecological values in burrung buluk north. Like in the earlier proceeding, the Crystal group submission remains focused on ecological issues, rather than the broader range of cultural issues and consideration of landscape features that the VPA submits are also relevant.
  - 92.2. The landowner, Yarra Valley Water, does not oppose the general approach to burrung buluk in the Draft Amendment, subject to resolving the zoning and future mechanism to determine the ultimate extent and vision for the swamp.
93. Despite these differences between the two proceedings, the following observations of the C106 Panel remain relevant:

*The Panel is not able to say that all of Hanna Swamp must be protected. As noted a significant portion of it is in the Wallan South PSP. However, the Panel does consider there should be further investigation of how Hanna Swamp might be protected, and its natural values restored and utilised in planning for both PSPs. To do otherwise would be a significant lost opportunity.* <sup>17</sup>

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<sup>15</sup> C106 Panel Report, page 101

<sup>16</sup> C106 Panel Report, page 101

<sup>17</sup> C106 Panel Report, page 101

94. This Committee is similarly unable to say that all of burrung buluk must be protected. The fact remains that the future of burrung buluk north of the PSP boundary must be determined through the Wallan South PSP.
95. The VPA continues to maintain its position that retention of the southern portion of burrung buluk, in Beveridge North West PSP is appropriate as it aligns with the current zoning of RCZ, responds to the landscape – in the same way as the hilltops retain as RCZ, gives effect to the C106 recommendations, gives effect to the desires of the traditional owners, accords with the ecological evidence and retains options for the northern portion, contained in Wallan South, without constraining any outcomes.
96. While it may be relevant for this Committee to note the inputs that will influence the future of burrung buluk, the VPA agrees with Crystal that the Committee should make no findings on burrung buluk north.
97. The VPA is continuing to work with the landowners, Council and the Department of Transport regarding the drafting for the concept plan. This consultation is ongoing at the time of writing and the VPA anticipates that an agreed set of drafting will be tabled during the 'without prejudice drafting process' to follow.

#### Concept Plan and zoning

98. It is submitted the concept plan will allow a process for the vision for burrung buluk to be completed at a time when more is known about the inputs that will influence burrung buluk's future.
99. Competing views have been expressed during this hearing regarding the appropriate zone to apply (whether as a hard zone or an applied zone) to burrung buluk.
  - 99.1. The VPA understands that YVW agrees to the UGZ being used with an applied zone to provide flexibility.
  - 99.2. In contrast submitters such as Wallan Environment Group seeks a wider connection between Spring Hill and the hills to the west, rezoning of Spring Hill and burrung buluk to PCRZ and zoning of additional land as PPRZ.
100. In respect of the appropriate zoning, the VPA maintains the position put in its substantive submission that the UGZ should be applied to burrung buluk with an applied rural conservation zone.
101. Regarding broader matters regarding the application of zones for areas of landscape significance, the VPA also relies on the findings of the C106 Panel regarding the planning for a landscape connection or urban break between Spring Hill Cone and the western hills.
102. While these discussions regarding the concept plan remain ongoing, the VPA can confirm its position on the following parameters, in addition to the list of inputs the VPA articulated in its Part B must be considered in the development of the concept plan.
103. The use of an applied zone and concept plan should not be taken as a mechanism for the generally in accordance principle to significantly decrease the extent of burrung buluk or convert the area to developable land. This requires the PSP provisions to be drafted with a high degree of direction so as to confine the degree to which a concept plan may depart from the PSP while being 'generally in accordance'.
104. To the extent that the concept plan may reduce the extent of burrung buluk, the VPA envisages it would be to the limited extent that may be necessary for the WAR be straightened to meet Department of Transport requirements, and even then, would be in the form of 'clipping' the swamp buffer rather than wholesale traversing areas of ecological value.

105. Retention doesn't inherently mean inundation. The corollary of this is that even if the whole of burrung buluk south will not or cannot be regularly inundated, this does not mean the balance not subject to inundation should be filled and developed.
106. The concept plan should recognize that burrung buluk is not retained on ecological values alone, but a wider range of considerations, including the interplay between the landscape of high and low lands, a connection between the hilltops, government intention to create a Wallan Regional Park and for values identified by the Wurundjeri Woi Wurrung Aboriginal Cultural Heritage Corporation.
107. The concept plan should respond to future planning decisions made within the Wallan South PSP and plan would be approved by the Mitchell Shire Council.
108. The VPA does not foresee further public consultation as an inherent part of the future concept plan. Groups such as Wallan Environment Group, Friends of Merri Creek and Merri Creek Management Committee have participated in this hearing and their views are well known. The VPA trusts that the approval process administered by the responsible authority will provide an opportunity for the detailed views articulated in this process to be considered. In this way the product of the extensive opportunities for comment and submission in this process will not be lost, and a further, potentially tokenistic, consultation process will be avoided.
109. These matters will be further articulated in the without prejudice drafting session, whether through an agreed proposal or the VPA response to the drafting that may be advanced by Yarra Valley Water or Council.

#### 10 NORTHERN TOWN CENTRE, SPORTS RESERVE AND SCHOOL LOCATION

110. YVW are seeking the northern school site to be adjacent to the Northern Active Open Space as depicted on the plan below.



111. The VPA was guided by DET in determining the appropriate school location DET's preference is for the school to remain in its current location, south of the E-W connector

road. If located north of the E-W connector road, a local access road would need to be provided between the school and AOS.

112. The school would then be bounded by a connector road on one side and local access road on two sides. The VPA agrees that this is workable but in a growth area where there exists the opportunity, it is better to plan for the superior outcome. Designing the school on the two connectors is DET's preference because it affords better access and thereby greater flexibility when designing a school on the site.
113. The northern location provides less distance between the school and the WAR.
114. The east west local access road has a potential intersection connection to the WAR, that would be subject to approval from DoT once the WAR is duplicated.
115. Before duplication, Council may not permit full turning movements at the intersection (in anticipation of the restrictions to movements post duplication).
116. The school shape is irregular in the north which again is not a preference because of the potential for development constraints when designing the school.

## **11 RELOCATION OF EASTERN NON-GOVERNMENT SCHOOL SITE**

117. The VPA do not oppose the proposed relocation of the eastern non-government school site westward, away from the drainage reserve and adjacent to the property boundary. The revised Future Urban Structure in the updated PSP accompanying this document shows the proposed change.

## **12 AFFORDABLE HOUSING**

118. Council's submission says, "it is remarkable that the provision of affordable housing has not been progressed any further in the PSP, despite encouragement from the C106 Panel". The submission states the VPA ought to "undertake the necessary strategic work and the proposed Guideline should be revised accordingly, supported by a proper strategic basis". This submission neglects to acknowledge that Council has not prepared a study for its municipality, notwithstanding it is best placed to do this. The approach adopted by the C106 Panel and in the amendments is one that will benefit in implementation if Council undertakes this work. The structure within the amendment which makes affordable housing an application and decision guideline and the existence of Mitchell policy would further guide the implementation of this matter.
119. The C106 recommendation responds to the question "Are the proposed provisions relating to affordable housing appropriate?" stating "There is clear and unambiguous policy support for the delivery of affordable housing in Victoria. The VPA and other parties must be commended for working together during the Hearing and proposing an untested and new approach to deliver on this policy intent in a growth area context" (p85). The Panel's conclusions and recommendations are located at page 86 and 87 of the C106mth report:

**(iv) Conclusions and recommendations**

The Panel concludes:

- Growth areas play a fundamental role in the delivery of affordable housing in Melbourne.
- Affordable housing should be encouraged through guidelines in the PSP.
- An application requirement and associated decision guideline is appropriate to ensure affordable housing is suitably considered during the application process.
- In the absence of a strategic study or assessment and a clear delivery framework for affordable housing, mandatory requirements and specific target metrics are not supported.
- In the absence of legislation supporting mandatory contributions, the delivery of affordable housing should be through negotiation and voluntary agreements between the parties.

120. The VPA has as it was required to do, implemented the recommendations of C106 Panel. At that Panel the VPA presented a joint position to the Panel and should the Committee seek to revisit the Panel recommendations from C106, the VPA submits it would support a return to the C106 provisions agreed to by the parties to that matter.
121. The VPA do not propose to carve out a higher standard for YVW for affordable housing, it accepts the submissions of YVW on this issue.

**13 BALCON MATTERS:**

122. The submission on behalf of Balcon seeks several changes to the PSP on the basis of the Balcon Beveridge Masterplan. These include:
- 122.1. Relocation of CI-06 to the south west side of the local park as shown on the Balcon Beveridge Masterplan;
- 122.2. Including the land area of the local convenience centres in the PSP;
- 122.3. Reverting to the original wording of Requirement 32 to omit reference to open space improvements 'to the satisfaction of the responsible authority'
- 122.4. Removal of reference to 'skate parks' in Requirement 33.
123. The VPA understands that these concerns have arisen out of pre-application discussions with Council. In the VPA's view these discussions play an important role in the planning system, but the areas of disagreement through those discussions should not shape the strategic planning under which future applications will be made. Such applications will almost invariably be the subject of further refinement and negotiation, conditions, and if necessary review proceedings, and in the VPA's submission this provides a conventional and appropriate framework to resolve such issues.
124. Balcon also seeks either the removal of the bridges/culverts or their inclusion in the ICP. In response the VPA submits that the connector road network in the PSP is necessary for the transport connectivity of the precinct. It follows that it is not simply a matter of being able to design out bridge/culvert structures.
125. Connector roads are a category of essential infrastructure that is planned at the PSP level that are not funded by an ICP. The situation is therefore not as binary as put on behalf of Balcon – it is possible for the connector roads and the culverts required to facilitate them to be both essential to the transport network and not be funded by the ICP. Indeed, this is recognised by the ICP Ministerial Direction which:

- 125.1. Contemplates that connector roads are not usually included in ICP levies;
- 125.2. Connector roads may be included in a supplementary levy subject to meeting all the prescribed requirements, including that:

*The item must be constructed on, or adjoin, land in fragmented ownership and the fragmented ownership must make provision of the item by the developer difficult.*

and

*The relevant municipal council must have agreed to be the development agency for the item<sup>18</sup>*

126. The VPA submits these requirements are not met in the case of the bridge/culvert structures on connector roads on the Balcon site.

#### **14 BRIDGE BR-01 OR A CULVERT**

127. The Committee has heard extensive submissions and evidence regarding BR-01.
128. Merri Creek Management Committee request that in any consideration about whether the crossing is a bridge or culvert, it provides for an off-road pedestrian and bicycle network with a 'There is a strong community preference for shared paths along waterways to go under roads, especially major roads, providing these 'under-crossings' are well-designed, safe spaces'<sup>19</sup> under roads. The VPA agrees that this represents an advantage of the bridge design.
129. 615 Hume Freeway Pty Ltd and Balcon Beveridge Pty Ltd seek to convert the proposed 'Super T' bridge into a culvert structure. The VPA does not agree for the reasons stated in its substantive submission.
130. Since the filing of the substantive submissions, however, the VPA has filed the memorandum dated 10 June 2022 (Document 185) and the Version 15 Cardno costings report (Document 186).
131. Relevantly these materials confirm:
- 131.1. The Super T bridge structure is now proposed to have a 50 metre span over a 45 metre waterway, whereas the earlier materials and the ICP had assumed a 165 metre span.
- 131.2. The P90 cost estimate for the bridge is \$7,556,000, whereas the longer bridge was costed at \$21,749,000.
132. In the VPA's submission, when the reasoned preference of Melbourne Water for the Super T bridge design (as articulated in paragraphs 231-235 of the VPA substantive submission) and the reduced cost are weighed, the balance lies in adopting the VPA proposed design.
133. In the event that, through detailed design, the bridge may be delivered using a cheaper culvert structure and Melbourne Water agree to the structure, the VPA submits that either:
- 133.1. The cost saving would be a saving realised by Council as development agency, freeing up other funds for other projects;

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<sup>18</sup> Document 144c): ICP Ministerial Guidelines, page 15

<sup>19</sup> Document 174: Section 2 MCMC submission.

- 133.2. If the project were delivered as works in kind, Council (in its capacity as collecting agency) could factor this cost saving into the value of any works in kind credit offered to that developer – noting of course that the common practice for Council's to credit the full value of a project as stated in the ICP regardless of actual costs incurred is not a legislative requirement, and it is open to a collecting agency to enquire as to actual delivery costs in setting the sum of credit offered.

## 15 YVW SOUTHERN TOWN CENTRE INTERSECTION

134. Yarra Valley Water seeks that Plan 9 – Transport, within the PSP, depict a T- intersection along Camerons Lane providing access to the Southern Town Centre. The intersection is not proposed to be funded under the ICP, but it is said would assist in the early delivery of the Southern Town Centre. The intersection in the proposed location is opposed by the whole of Government position and specifically by DoT. The reason for this is that the legs of the intersection to the east of the proposed Yarra Valley Water intersection would terminate close to or at the proposed intersection IN-01.



135. DoT is concerned that an additional break in traffic along the important route which Camerons Lane is, would negatively impact traffic flows at a critical part of the transport system. Based on the DoT's concerns, the VPA oppose the introduction of this intersection through the PSP process.
136. It is notable that this issue is argued but it is not a matter Ms Marshall addressed.
137. All this is not to say that the intersection could not be sought to be delivered at the time a permit application is made in this part of the PSP. An application in this location would be referred to the DoT and could be properly considered at that time in line with the design. Given there is no prohibition for such an application, and in circumstances where the identification of the intersection does not serve to initiate any funding arrangements, it is the view of the VPA that its identification on plan 9 is premature at this time.

## 16 ORDERS IN RESERVE CONCERNING THE REGIONAL PARK AND WESTERN ARTERIAL ALIGNMENT

138. There are two matters that have outstanding information that has been identified by the Committee and parties and which may influence the Future Urban Structure. These are the position of the registered Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation in respect of the alignment of the WAR and the release of the Wallan Regional Park Feasibility Study.
139. Based on present understanding, the VPA considers it unlikely that a resolution on either matter will be received in the course of the hearing or alternatively during the period in which the Committee prepares its report.
140. However, it is appropriate to consider this potentiality in respect of one or both of the matters and expedient to put in place orders that would permit the parties to address these issues if either matter is advanced before receipt of the Committee's report.



141. The VPA proposes that the following orders are made at the conclusion of the hearing but that the orders will require positive action in the event that one of the two relevant triggering events occurs.

142. The proposed orders are:

*Until such time as the Committee releases its report to the Minister, if the VPA receives notification of either*

- *The release of the Wallan Regional Park Feasibility Study or any related decision of the relevant Minister in respect of that study; or*
- *Notice from the Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation of a position on its preferred alignment of the Western Arterial Road;*

*(a “Relevant Matter”)*

*the VPA must without delay write to the Committee, copy the parties, with the publicly available information concerning the Relevant Matter.*

*All parties have a period of five business days from timing of notification to provide the Committee with any written submission that solely addresses the implications of the Relevant Matter, for the matters raised in the proceeding. No new matters, other than matters directly consequential to the release of the Relevant Matter will be accepted by the Committee.*

*The VPA has a period of five business days following close of time for receipt of any submissions from the parties to provide a written response to any submission to the Committee. The VPA’s submission must only address matters raised in any written submissions submitted to the Committee on behalf of a party.*

## 17 CONUNDRUM ISSUES

143. These submissions address the Conundrum substantive submissions separately notwithstanding that thematically some issues such as rehabilitation overlap with other reply matters. The VPA adopts this approach on the basis that it will assist the Committee in the assessment of the permit application, and it is substantively the first time in the process when Conundrum have articulated its case in detail

### The Strategic Response to the C106 Panel Report

144. It is appropriate to return to the recommendation in chief of the C106 Panel in responding to the submissions of Conundrum. The C106 Panel recommended that:

***Revise Mitchell Planning Scheme Amendment C106 to explicitly include precinct level planning for resource extraction from Work Authority 1473.***

145. This position was adopted and the VPA has set about its work accordingly. For all of Conundrum’s criticisms about the standard of the VPA’s works it seems that it agrees that the VPA got the bones right – a PSP, ICP and SCO that explicitly plan for resource extraction and retracting buffers. In truth, the real criticism of Conundrum is not the PSP and ICP, but the time limits the VPA has included within the SCO.

146. It is necessary to correct some matters that were put by counsel for Conundrum but which are in the VPA’s opinion baseless and inflammatory.<sup>20</sup>

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<sup>20</sup> Document 184: Conundrum Submission, Paragraph 39 and 40.

147. On 20 May 2021, the VPA met with Conundrum to discuss the work underway and Conundrum's proposals. In attendance at the meeting were two of Conundrum's planners and two persons from Conundrum.
148. On 10 September 2021 two of Conundrum's planners and three persons from Conundrum met with the VPA to discuss the proposed controls. Such was the importance the VPA placed on this engagement that it prepared an internal script for the purpose of the meeting to ensure that no matter the VPA regarded as relevant was missed. The power point presentation includes the following slide:

### Response to recommendations Planning for resource extraction

Key objectives:

1. Enable resource extraction over the short to medium term
2. Plan for urban development over the long term
3. Establish controls that:
  - a. Set a clear timeframe for resource extraction
  - b. Specify any particular management requirements during resource extraction
  - c. Require quarry to be rehabilitated to a predetermined level
4. Enable a mechanism for value capture (GAIC/ICP contributions)



149. Within the speaking notes for the presentation it states:

#### **Planning for resource extraction**

- how to provide for resource extraction in the short term, while at the same time planning for the long-term urban structure
- Several methods available to enable resource extraction
- The approach that we're currently pursuing is UGZ + SCO
  - SCO it can be used to enable resource extraction - directly responds to the panel's recommendation
  - Mechanism is self-contained
    - Not embedded into 'base zone' - 'sits on top' of the underlying zone
    - Can be removed once purpose served, leaving a clean suite of long-term planning provisions
  - Strong message that this isn't a BAU quarry
    - BAU would be SUZ
    - not just trying to enable a quarry, we are trying to balance competing policy outcomes within a set timeframe – the lifespan of a PSP
    - SCO sets expectation about future outcomes
    - reasonable time for extraction, rehabilitate, urbanisation
- Mechanism still being worked through, expected to include
  - Timeframe – commencement and cessation
  - Rehabilitation

▪ *Management issues*

*Approach establishes framework for assessment of application*

150. In January 2022, VPA officers contacted Tract to alert them to the need to prepare any amendment to the planning permit application. The indication was that the proposal would not be amended.
151. Perhaps unsurprisingly there have been subsequent meetings between Conundrum and the VPA or its representatives.
152. Of course, the principle manner in which consultation occurs is the nature of the process pursuant to the terms of reference itself which afforded Conundrum the opportunity to present substantive and justified reasoning to support its contentions. Given the brevity of Conundrum's submission it is convenient to extract that submission in full:

*31 January 2022*

*Dear Tony,*

*Planning Scheme Amendment Mitchell C158 and Planning Permit PLP268/19 – submission by Conundrum Holdings Pty Ltd Tract continues to act on behalf of Conundrum Holdings Pty Ltd (Conundrum), which company is the holder of Statutorily Endorsed Work Plan WA1473 (Work Plan) applicable to the land at 175 Northern Highway (Subject Site).*

*Conundrum is the Applicant in respect of Planning Permit Application No. PLP268/19 (Permit Application), which seeks approval for use and development of the Subject Site for the purpose of stone extraction and creation of access to a road in a Road Zone Category 1.*

*Our client is pleased to make the following submission to assist the Victorian Planning Authority's (VPA) processing of proposed Mitchell Planning Scheme Amendment C158 (Amendment).*

*In summary, Conundrum supports the Amendment and submits as follows:*

- The Specific Controls Overlay (SCO) is one appropriate tool to manage use and development of the land for the purpose of stone extraction, subject to some amendments to ensure clarity in the outcomes, uses, timing of same and consistency with the Work Plan and requirements of the Mineral Resources (Sustainable Development) Act 1990 (MRSDA), and the responsibilities of the Department of Jobs, Precincts, and Regions (DJPR). There may be alternative zoning or planning controls that may also deliver suitable outcomes, and these can be explored at the hearing. It is also noted that the Amendment contemplates a timeframe for extraction of 20 years, which is inconsistent with the timeframes nominated by Conundrum in the Permit Application. The timeframes in the Permit Application should be permitted;*
- The responsible authority should be amended to be the Minister for Planning to ensure that the processing of any post-permit matters occurs efficiently and utilises expertise commensurate to the significance of this project to the State of Victoria;*
- The land designated as 'proposed quarry' and 'buffer' should either be excluded from the Infrastructure Contributions Plan (ICP) and Infrastructure Contributions Overlay (ICO), deferred until urban residential development occurs, or some form of exemption included in the ICO in respect of the non-residential use contemplated by the Permit Application. This is because the use contemplated by the Permit Application does not contribute toward residential services and the roll-out of the residential outcomes contemplated by the Beveridge North Precinct Structure Plan will not be adversely impacted should such an exemption apply, given the appropriate services and infrastructure will be funded and delivered commensurate to the new community.*

*The key objective in advancing the above submission is to clarify and align the planning outcomes for the Subject Site with the requirements of the MRSDA and Work*

*Plan, ensuring that any duplication between the two processes is reduced given that such occurrence would impact the timely and efficient processing of post-permit requirements for the Subject Site.*

*Conundrum may expand upon or add to this submission at a later date.*

153. In the event, Conundrum did not expand on its submission at a later date and further, in the face of the reasonable request of Council, refused to even provide grounds in response to the Council's grounds of refusal for the permit application. The net import of all this being that Conundrum:
- 153.1. Advanced only a bare submission to the process that "[t]he timeframes in the Permit Application should be permitted" and certainly no submission advanced on grounds of viability.
  - 153.2. Determined to run to hearing with a permit application including a permit application report that was prepared under the prevailing rather than proposed zoning which is conflict the task before the Committee.
  - 153.3. Appears based on the answers of its counsel to have taken an active forensic decision not to advance evidence of viability in the running of the case.<sup>21</sup> It is open to the Committee to draw an inference from this. Certainly no weight can be afforded to a bare assertion from the bar table that the VPA proposed position is 'self-evidently not viable'.
154. In the circumstances the approach of Conundrum to this matter is surprising to the VPA but perhaps not as surprising as the representations made as to consultation in its primary submission.
155. It should also be observed that Conundrum asserts that the VPA has prepared the amendments and this matter without recourse to DJPR. The Committee is reminded that contrary to C106 where DJPR presented independent submissions, in this process DJPR is within the whole of government position and has been consulted throughout, consistent with that position. The submission of Conundrum on this matter is baseless.
156. Conundrum is critical of the VPA's position on the strategic framework on the basis that it fails to take account of the realities of operating a quarry. As a planning authority the VPA cannot have a window to the closely guarded economics of the quarry operator, at least while the quarry operator keeps the curtains firmly drawn, but it can have regard to the strategic planning. Indeed, this is the VPA's 'one wood'.
157. Accordingly the VPA is eminently well placed to assess the implications of an unreasonable protraction in the delivery of this planned community and it has carefully assessed and formed that view that some delay, while inconsistent with limited aspects of its own guidelines (such as the ICP guidelines) and with placemaking principles, is acceptable. When one steps back and assesses the counter veiling submissions that Conundrum presented last week on timelines, there is nothing that goes higher in evidentiary terms, than assertion. It would certainly not be sound strategic planning to plan this area effectively on the basis of how and for how long Conundrum would prefer to operate. As has already been said more than once in this process, sound planning follows the evidence, or relevantly here, the lack of it.
158. The only relevant matter that Conundrum has advanced on the issue of timing (and with which the VPA has also premised its case) is the strategic support for stone extraction. However if one extracts a large and significant basalt reserve or one extracts a slightly larger basalt reserve the commonality between the two is that they are both significant basalt

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<sup>21</sup> The VPA was surprised at this as indicated by it having briefed Mr Huntly, refer to 114-117 of his evidence.

resources and accordingly are both supported by policy – this is not a case where the VPA's position runs counter to stone extraction policy. The weighing of these issues is a matter of balancing objectives and having now heard the position advanced on behalf of Conundrum regarding timing the VPA sees no reason to depart from the submissions presented in its Part B submission.

### Rehabilitation

159. The VPA has presented detailed submission and cross examined extensively on the issue of the rehabilitation requirements. It is not necessary to return to the source documents in replying to the Conundrum case.

160. It is necessary to respond to the assertion by Conundrum that the VPA justifies its position on rehabilitation of a quarry on the basis '*[i]t says this might be required because of the Mineral Resources Sustainable Development (Extractive Industry) Regulations 2019 (Vic) (the MR Regulations)*'. This is simply not correct. While the extractive industry rehabilitation guidelines clearly articulate what an appropriate contemporary rehabilitation scenario is, the VPA submission plainly grounds its position in the planning system, the Committee is referred to the paragraphs from 61 in the Part B submission:

*61. In these instances, there exists a clear planning nexus for reasonable rehabilitation requirements for a contemporary quarry. The ERR document is indicative of what appropriate contemporary rehabilitation is. Clause 14.03-1S makes it a strategy to:*

*Ensure planning schemes do not impose conditions on the use or development of land that are inconsistent with the Mineral Resources (Sustainable Development) Act 1990, the Greenhouse Gas Geological Sequestration Act 2008, the Geothermal Energy Resources Act 2005, or the Petroleum Act 1998.*

*62. There is nothing inconsistent with the MRSDA regime proposed by the VPA in terms of rehabilitation.*

*63. It is a decision guideline under Clause 52.09-4 to consider:*

*The ability to rehabilitate the land so it can be used for a purpose or purposes beneficial to the community.*

*64. The beneficial use of this land is for the purpose of residential development and service open space.*

*65. The justification for a rehabilitation plan underlies the principle of orderly planning and is the policy balance, inherent in the case.*

161. At Paragraph 71, Conundrum state that the application of MRSDA Regulations will be determined by the mineral resources regulatory regime. This appears to suggest that if DJPR require a rehabilitation form for a residential use in accordance with those guidelines then this will be addressed through the section 77G submission of a work plan.

162. What then to make of the protestations at Paragraph 80 and 81 which assert that it is not realistic to plan for a form for rehabilitation. The arguments presented appear internally illogical. Again, for the record, what the VPA said at Paragraph 60 of its Part B is:

*What we know from the evidence that the Committee has heard is that it would be eminently possible for there to be a rehabilitation plan prepared that would deliver the land at the end of quarrying life, on the basis of progressive rehabilitation, in 30 years in a form capable of development. [EMPHASIS ADDED]*

Note the reference to form and the fact that the VPA has made it abundantly clear that it is not anticipated it would be considered necessary to plan internal plan street grids. Rather the approach would be to create the platforms and to ensure that there are available external connections.

163. The assertion that a planned landform outcome cannot be prepared now is unsustainable. This is exactly what they have done in the pastoral rehabilitation plan but to a different standard.
164. Finally, on rehabilitation the Committee should entirely reject the proposal of Conundrum to have a concept plan prepared late in the life of the quarry. Firstly, there is no undertaking to complete this work – it is a paper tiger – and secondly, it makes a mockery of progressive rehabilitation which is necessary to facilitate the quick transition of land to urban use. In short, the position advanced by Conundrum is no advance on Conundrum's earlier position.

#### Rate of Extraction

165. Mr Natoli for Conundrum provided evidence that of the two methods of speeding up extraction being plant and hours, hours are more likely to be possible. Counsel for Conundrum suggested that this was not possible because the proposed hours are already up until 6:00pm and there is a risk to intruding into night hours.
166. This assertion requires a little more scrutiny. Regulation 116 of the Environmental Protection Regulations 2021 defines the day period as extending to 6:00pm and the evening period from 6:00pm until 10:00pm. The permit application provides the following hours of operation:

##### **3.3.1 Operating Hours**

**The quarry is proposed to operate as per the following hours:**

- **Sales**
  - **Monday to Friday – 6am to 5pm**
  - **Saturday – 7am to 12 noon**
- **Extraction**
  - **Monday to Friday – 6am to 6pm**
  - **Saturday 6am – 12 noon**
- **Processing Plant**
  - **Monday to Friday – 7am – 4pm**
  - **Saturday – 7am to 11am**
- **Blasting**
  - **Monday to Friday – 12noon – 5pm**

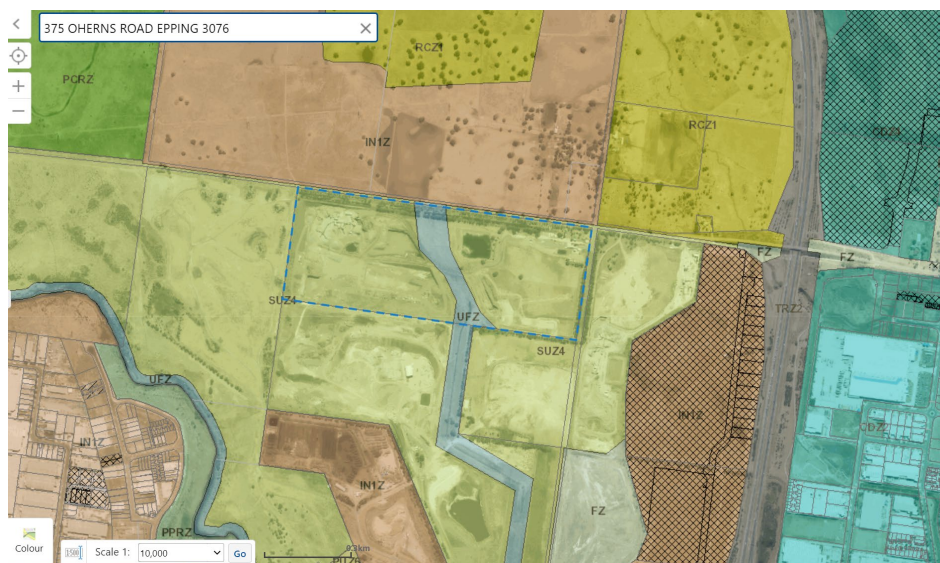
**Administrative and maintenance works are proposed to operate on Sundays and public holidays however the uses outlined above are not proposed to operate on those days.**

167. Firstly, what is clear is that the evening period precedes the night and it has different controls. Secondly in the early life of the quarry when there are few relevant residences in close proximity, compliance is readily attainable. Thirdly the processing operation ceases not at 6pm but at 4 pm. Simple mathematics suggest that an additional day of processing is available by extending hours across the week in the day period.
168. There may be reasons why this is difficult, and it is probably the case that it is different from the O'Herns Road site. But so is the context. The Committee should not on the strength of counsel's few comments discard the evidence of Mr Natoli given his vast experience in the industry.



## PERMIT APPLICATION.

169. The VPA has framed its response to the quarry permit application as follows during the proceeding on the basis that it has always remained capable of persuasion that if presented with an appropriate case it would respond to that case appropriately.
170. Having considered the submissions presented on behalf of Conundrum, it is the VPA's considered position that the Committee should recommend that no permit is granted in Planning Permit Application PLP268/19. This is not to say that a permit could not be granted pursuant to a future application under the proposed controls. Indeed, in anticipation of this eventuality, the VPA has sought to construct a strategic planning framework that facilitates consideration of extractive industry and would allow a further application. However, the form of the current permit application and the work that would be left to conditions and secondary consent to cure defects in the proposal is not of a scope that the VPA considers ought properly be left to secondary consent.
171. Principally, this concerns the complete absence in engagement in the application materials with the prompt facilitation of a development scenario post extraction and the absence of the permit applicant presenting any material that would support a conclusion such a plan could be appropriately conditioned. In these circumstances, it is appropriate that the Committee, should it accept the VPA's position, frame its reasons for recommending refusal and these reasons if adopted by the Minister will assist Conundrum or any alternate permit applicant to prepare a new application.
172. In balancing the potential to cure defects via conditions of permit or to seek refusal the VPA has considered the nature of the permit application material put before the Committee. The framework for this matter established by the Minister facilitates an opportunity to respond to the controls as proposed. The type of rehabilitation plan called upon by Clause 52.09-5 and the type of plan that separately the MRSDA requires applicants to prepare is set out in the controls. Conundrum's response to these propositions are unpersuasive.
173. The Committee has been told that the proposed quarry is a replacement for the dwindling northern quarry. It appears on the strength of the submissions advanced by Conundrum that it considers a like for like replacement is appropriate. However, planning principles require an analysis of opportunities and constraints of a site. The context at 375 O'herns Road Epping could not be more different - being surrounded by industrial uses.



174. Perhaps it is the experience of this industrial setting that has set the consistent references in Conundrums submission to the experience at Shenstone Park the Conundrum primary submission. But the Shenstone Park PSP was cast in reliance upon the different context



created by the North Growth Corridor plan that had identified and protected the buffers. The relevant portions of the North Growth Corridor are presented below.



175. Whatever the case, what is abundantly clear in the matter is that the site context opportunities and constraints are different in this matter. Accordingly, the presentation of the permit application premised on a draft work plan principally prepared in 2015 to the standards of that time including a pastoral rehabilitation plan falls well short of both contemporary quarrying standards and, more importantly, the expectations of the Planning Scheme.
176. In the absence of information presented to the contrary, the VPA observes that a rehabilitation plan that properly accounts for the future land form to support development may change levels of extraction, may impact the manner of progressive rehabilitation of the site (recall the evidence of Mr Caitlan about sheer walls) and may require reassessment of matters such as vehicle numbers and the like. The VPA submits that the extent of uncertainty in the proposal are of such magnitude that the appropriate course is to start again so that any future proposal is evaluated having been prepared in the context of the gazetted controls and with appropriate forethought to the surrounding environment and strategic planning framework.

#### FINAL POSITION ON AMENDMENT

177. The VPA acknowledges the work of the Committee to date in providing a fair and transparent vehicle for the ventilation of issues in the matter and for the parties' participation in an undoubtably complex process. The VPA also recognises that much work lies ahead for the Committee.
178. The VPA requests that the Committee recommend that:
  - 178.1. Planning Permit Application PLP268/19 be refused.
  - 178.2. That Amendments C158 and Amendment C161 be approved with changes.

14 June 2022

**GREG TOBIN & AARON SHRIMPTON**  
**HARWOOD ANDREWS**  
on behalf of  
**VICTORIAN PLANNING AUTHORITY**