



S & K PLANNING LAWYERS

ABN 27 261 987 205

Level 35, Olderfleet
477 Collins Street
MELBOURNE VIC 3000
AUSTRALIA

office@skplanninglawyers.com.au
www.skplanninglawyers.com.au

27 October 2023

Justin O'Meara
Executive Director – Metropolitan Melbourne
Victorian Planning Authority

Direct line

Email

Your reference

Our reference
MS:202102012

By online lodgement

Dear Mr O'Meara

Officer South Employment Precinct Structure Plan, Supplementary Infrastructure Contributions Plan and draft Amendment c274card

We act for Officer (Handford Lane) Pty Ltd, the registered proprietor of 94 Princes Freeway, Officer 3809, more particularly described as Lot 1 on PS602632 in certificate of title volume 11131 folio 091 (**Land**).

The Land is currently developed and used as a freeway service centre.

This letter is our client's submission to the Officer South Employment Precinct Structure Plan (**PSP**), Supplementary Infrastructure Contributions Plan (**ICP**) and draft Amendment c274card (**Amendment**).

Our client does not oppose the Amendment in principle, subject to the changes requested in this submission.

1 Executive Summary

- 1.1 The Land should be excluded from ICP on the basis that it is a fully developed freeway service centre which is designed and located to provide essential services to vehicles on the Princes Freeway and not to the land within the PSP area.
- 1.2 There are additional, consequential changes which are sought which are set out in the summary table in section 10 of this submission.

2 Background

- 2.1 Freeway service centres play an important road safety function. They are a distinct land use in the Planning Scheme (regulated under clause 53.05) and they form part of the infrastructure of the freeway to which they are attached. Unlike service stations which serve the local communities in which they are located, freeway service centres are "cut off" from the surrounding local road network and perform a regional function.
- 2.2 On 23 June 2008, Cardinia Shire Council issued Planning Permit T060528 for use and development of the Land for a freeway service centre, the creation of access to land in a public acquisition area and the removal of native vegetation (**Permit**).

- 2.3 The freeway centre at the Land services westbound traffic on the Princes Freeway (**Westbound FSC**) and is one of a pair of twin freeway service centres. The eastbound freeway service centre, diagonally opposite the Land, is located at 1/65 Princes Freeway, Officer (**Eastbound FSC**).
- 2.4 The Westbound FSC and the Eastbound FSC are easily identifiable in the NearMap image below:



- 2.5 An important feature of both freeway service centres is that vehicle access is only available to them via the Princes Freeway. The Permit is subject to a condition which expressly prohibits access to the local road network:

Direct vehicle access between the freeway service centre and the local road network will not be permitted and barriers must be constructed along the boundaries between the subject properties and abutting local roads to prevent vehicle access to and from local roads to the satisfaction of VicRoads and the Responsible Authority

- 2.6 The NearMap image of the Land below shows the freeway on and off ramps which provide the only access to/from the Westbound FSC.
- 2.7 Pedestrian access to Handford Lane and Stephens Road is not permitted and, in accordance with the requirements of the Planning Permit, security fences have been installed and are maintained to ensure pedestrians cannot access the Land:



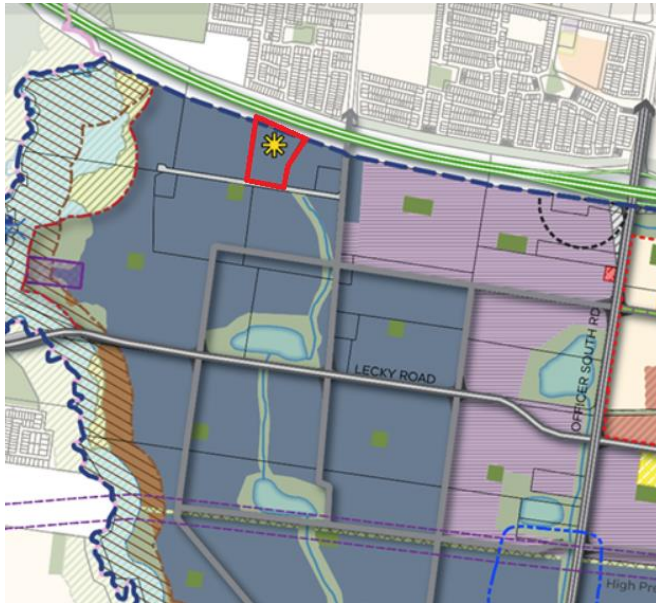
- 2.8 The Land is located within the Urban Growth Zone (shown below) and is not subject to any overlays.



- 2.9 The Land is located within a Designated Bushfire Prone Area and parts of the Land are identified as areas of cultural heritage sensitivity.

3 The Land within the PSP

- 3.1 The Land is shown as 'Industry' and marked as 'existing service station' on 'Plan 3-Place Based Plan' of the draft PSP – shown in red below:



- 3.2 No precinct infrastructure is shown as being provided on the Land. The PSP is silent in respect of the 'existing service station' designation.
- 3.3 'Plan 4 – Road Network' (extracted in part below) depicts the road network proposed as part of the PSP:



- 3.4 It can be seen from the image above that while additional connector streets are proposed in the industrial precinct, no new access between the Land and the balance of the PSP area is proposed.

4 The Land within the ICP

- 4.1 The Land is identified as Parcel 4 in the ICP.
- 4.2 The Land is included as part of the contribution land for the ICP and is designated within the 'commercial and industrial' class for the purpose of the infrastructure contribution levy.
- 4.3 The Land is identified as being an under-provider of public purpose land and, consequently is liable to pay a land equalisation amount for the equivalent of 0.22 hectares. No dollar amount per net

developable area has been included in the ICP as yet. We understand from discussions between our client's planning consultant, kennelly planning & development, and the VPA that:

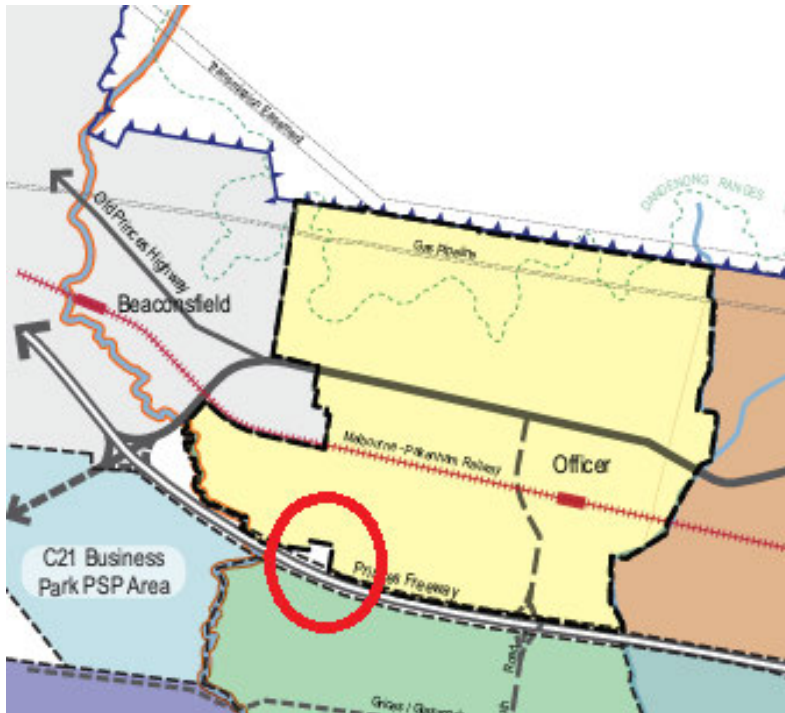
- (a) no land valuation had been undertaken yet to enable a dollar amount per net developable area to be fixed; but
- (b) land valuation will be actioned prior to gazettal of the amendment.

5 Proposed Amendment c274card

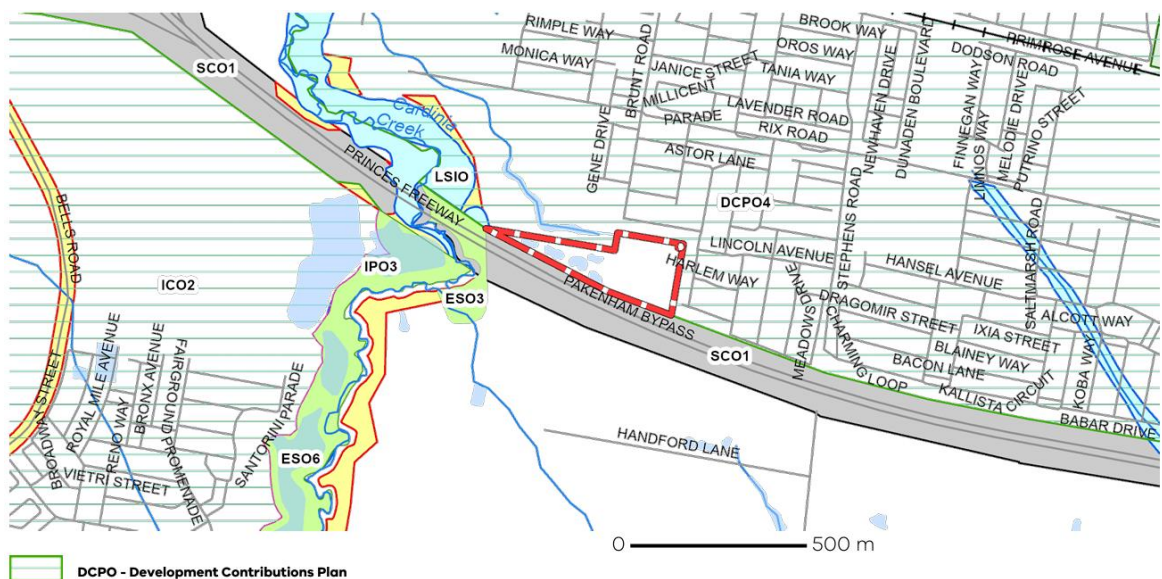
- 5.1 The proposed UGZ Schedule 7 (Officer South Employment PSP) (**UGZ Schedule**) identifies the underlying zone for the Land as Industrial 1 Zone (**IN1Z**).
- 5.2 An Environmental Audit Overlay (**EAO**) is proposed to be applied to the Land.

6 The Land should be excluded from the ICP charge area

- 6.1 In our submission, the Land should be excluded from the ICP charge area. This is because the Westbound FSC is designed to service traffic on the Princes Freeway and, as such, does not rely on, and will not benefit from, any of the infrastructure delivered through the ICP.
- 6.2 Indeed, clause 53.05 of the Planning Scheme includes a mandatory requirement that prohibits vehicular access between a freeway service centre with access to a metropolitan freeway and the local road network. Consequently, the Land can never have access to land in the ICP charge area for as long as the Westbound FSC is operating.
- 6.3 Both the Westbound and Eastbound FSCs are fully developed and have been in use for a number of years. Their access to the Princes Freeway is permitted and regulated by access agreements with the State which impose strict obligations on how the sites are used. The likelihood of redevelopment is very low. In our client's submission, it would be inappropriate for the ICP to apply to the Land where there is little to no prospect of the Land having a physical connection to the land in the ICP charge area.
- 6.4 It would also be contrary to the principles of the ICP system to collect funds from land which does not contribute to, nor receive any benefit from, the infrastructure to be funded by the ICP.
- 6.5 It is noted that there is precedent for freeway service centres being excluded from PSPs and DCPs. In the Officer Precinct Structure Plan, the Eastbound FSC was excluded from the PSP area by being carved out of the PSP (shown below):



- 6.6 The exclusion of the Eastbound FSC was carried through to the approved Officer Development Contributions Plan and, as a consequence, the Eastbound FSC is not subject to the Development Contributions Plan Overlay which applies to the surrounding area and is not required to pay DCP levies:



- 6.7 In our client's submission, the same principles which justified the exclusion of the Eastbound FSC from the Officer Development Contributions Plan apply to the Westbound FSC, which should be similarly excluded from the proposed ICP charge area.
- 6.8 In the current circumstances, it is not necessary to exclude the Land from the PSP area or to disrupt the plans prepared as part of the Amendment in order to excise the Land. Clause 9 of the ICP Overlay, 'Land or development exempt from payment of an infrastructure contribution' provides the appropriate mechanism for excluding the Land (in the context of its freeway service centre use) from the operation of the ICP. It also has the benefit of reactivating the requirement to pay the infrastructure contribution levy in the unlikely event that the Land is ever redeveloped.

- 6.9 It is therefore requested that clause 9 of the schedule to clause 45.11 Infrastructure Contributions Plan Overlay be amended to include:
- Use and development associated with the freeway service at 94 Princes Freeway, Officer 3809 (Lot 1 on PS602632 in certificate of title volume 11131 folio 091)*
- 7 The reference in Plan 3 should be amended from ‘existing service station site’ to ‘existing freeway service centre’**
- 7.1 It is important to note that ‘service station’ and ‘freeway service centre’ are two distinct and differently defined land use terms in the Planning Scheme.
- 7.2 A service station is defined as:
- Land used to sell motor vehicle fuel from bowsers or charge electric vehicles. It may include the:*
- a) selling of motor vehicle lubricants, accessories or parts;*
- b) selling of food, drinks and other convenience goods;*
- c) hiring of trailers;*
- d) servicing or washing of motor vehicles; and*
- e) installing of motor vehicle accessories or parts.*
- 7.3 A ‘freeway service centre’ is defined as:
- Land which has direct access to a freeway and is used to provide essential services and facilities which encourage drivers to stop and take an effective break in the interests of driver safety.*
- 7.4 The two land uses fulfil different roles and, consequently, are treated very differently under the Planning Scheme. Clause 53.03 sets out the specific requirements which freeway service centres must meet, including:
- (a) connection to an existing freeway; and
- (b) demonstrating an identifiable need to provide essential services and facilities along a freeway where those services and facilities are not readily available.
- 7.5 Freeway service centres must meet certain design requirements and must include, for instance, an indoor sit-down eating area and a safe play area for children. Freeway service centres must operate 24 hours/day, 7 days/week as clause 53.05-1 requires that all essential services and facilities be available at all times.
- 7.6 These are not requirements which apply to service stations and so it is important that the PSP accurately describe the existing use of the Land. It is therefore requested that the reference to ‘existing service station’ on Plan 3 (and on all other pages of the exhibited documents) be replaced with the words ‘existing freeway service centre’.
- 7.7 That said, it would appear that the purpose of the notation on Plan 3 is to enable reference to be made to the ‘existing service station’ for the purposes of the decision guidelines in the UGZ Schedule and the referral requirement under clause 66.04 (both discussed below).
- 7.8 As it is our client’s submission that both those clauses should be deleted, our client would also be content for the notation on the Land to be removed from Plan 3 entirely if there is no work for it to do.

8 The decision guideline referring to the 'Princes Freeway Service Station' in the UGZ Schedule should be deleted

8.1 The decision guidelines for the UGZ Schedule contains a specific guideline in respect of the 'Princes Freeway Service Station':

Before deciding on an application to subdivide or develop land at the 'existing services station site' on Plan 3 – Place Based Plan of the incorporated Officer South Employment Precinct Structure Plan, the responsible authority must consider, as appropriate:

- *Whether the proposed subdivision or use should still benefit from the existing access to the Princes Freeway.*

8.2 The inclusion of this decision guideline appears to assume that a future redevelopment of the Land, however unlikely, would (or could) continue to have access to the Princes Freeway and that such access would be at the discretion of the responsible authority. This is not correct.

8.3 If the Land were no longer used as a freeway service centre then, under the terms of the access agreement, the right to access the Princes Freeway would terminate. Future access to the Freeway is at the absolute discretion of the Head, Transport for Victoria.¹

8.4 In our client's submission, this decision guideline is misconceived and misleading and should be deleted.

9 The referral requirement relating to the 'existing service station' under the schedule to clause 66.04 (Referral of permit applications under local provision) should be deleted

9.1 Noting the submissions above, this referral requirement is unnecessary and should be deleted.

9.2 Clause 52.29 and the referral requirements under clause 66.03 appropriately cover the circumstances in which referral is required to the Head, Transport for Victoria. As noted above, if the Land were redeveloped for a purpose other than freeway service centre (noting again that such redevelopment is highly unlikely) consent to access the Freeway would need to be obtained under the *Road Management Act 2004*.

9.3 It is requested that this referral requirement be deleted.

10 Summary of changes requested

10.1 Set out below is a summary of the changes requested:

Issue	Change requested
Clause 9 of the schedule to clause 45.11 Infrastructure Contributions Plan Overlay	Insert the following: <i>Use and development associated with the freeway service centre at 94 Princes Freeway, Officer 3809 (Lot 1 on PS602632 in certificate of title volume 11131 folio 091).</i>
Plan 3 of the PSP	The reference to 'existing service station' on Plan 3 (and on all other pages of the exhibited documents) be replaced with 'existing freeway service centre' or, alternatively, deleted.

¹ Clause 1, Schedule 2 of the *Road Management Act 2004*

Decision Guideline referring to the 'Princes Freeway Service Station' in the UGZ Schedule	Deleted
The referral requirement relating to the 'existing service station' under the schedule to clause 66.04 (Referral of permit applications under local provision)	Deleted


11 Officer South Drainage Strategy

- 11.1 Our client has received notice of Melbourne Water's draft drainage strategy for the PSP area and has sought further information from Melbourne Water about the implications of the Strategy for the Land.
- 11.2 Our client understands that drainage schemes facilitate the delivery of drainage and water treatment infrastructure required for the development of an area, and that this infrastructure is generally paid for by contributions collected from the developing land holders at the time of development. A drainage scheme must also consider and maintain the existing drainage requirements of the relevant area.
- 11.3 As the Land is already fully developed and no redevelopment or change in the existing freeway service centre use is contemplated, our client does not anticipate that it will be required to contribute financially to the drainage scheme. We are instructed that our client's engineering consultants, Beveridge Williams, have sought and obtained confirmation of this from Melbourne Water.
- 11.4 On that basis, our client makes no substantive submissions in relation to the Officer South Drainage Strategy, beyond seeking to ensure that the existing drainage arrangements at the Land are taken into account in the design for the broader area.

We thank the VPA for its consideration of our client's submission and would welcome the opportunity to discuss it further with the VPA at the appropriate time.

Please contact me on [REDACTED] or [REDACTED] of kennelly planning & development on [REDACTED] with any queries.

Yours sincerely



Megan Schroor
Principal
S & K Planning Lawyers