

IN THE MATTER OF
AMENDMENT C258 TO THE CASEY PLANNING SCHEME
ACTIVITY CENTRES STRATEGY

**OUTLINE OF SUBMISSIONS ON BEHALF OF
KAMEEL PTY LTD**

Introduction

1. These submissions are made on behalf of Kameel Pty Ltd in relation to Planning Scheme Amendment C258 (**Amendment**) to the Casey Planning Scheme (**Planning Scheme**).
2. Kameel Pty Ltd (**Kameel**) is a submitter (#15) to the Amendment. The Panel is referred to the two letters dated 23rd March 2020 and 20th April 2020 sent on behalf of Kameel to Casey City Council (**Council**) and the Panel.
3. The Amendment seeks to:
 - a) Implement the City of Casey Activity Centre Strategy 2019 (**AC Strategy**);
 - b) Amend Clause 21.05 (Economic Development);
 - c) Replace Clause 22.01 (Retail Policy) with a new Clause 22.01 (Activity Centre Policy);
 - d) Amend Clause 22.02 (Non-Residential Uses in Residential and Future Residential Areas policy);
 - e) Amend various clauses in Clause 21.01-21.25 to implement the AC Strategy.
4. Importantly, the Amendment does not seek to re-zone any land, determine any permit or amendment application, or determine the composition of a specific use and development within any existing or proposed activity centre. Despite the tenure of some submissions, this is not a Panel hearing to determine whether a full-line

supermarket or a specific amount of shop floor space should be approved at Berwick Springs.

5. Further, the Amendment does not seek to introduce a new *retail policy* into the Scheme, but rather to introduce an *activity centre* policy which looks beyond retail uses and seeks to emphasis non-retail job creation within Casey with the overarching goal:

To provide a diverse range of non-residential uses in Casey primarily located within a network of vibrant activity centres, which are thriving economic and social hubs offering convenient access to goods, services, facilities, jobs and housing.

6. The Amendment seeks to implement a forward-thinking strategic plan that will guide decision-making concerning activity centres and planning for retail, commercial and non residential land uses into the future.
7. The Panel is being asked to consider whether the Amendment will achieve a net community benefit and provide for sustainable development for the municipality of Casey.
8. With regard to Berwick Springs, Kameel submits the Amendment will achieve these objectives. It will:
 - a) Appropriately recognise an existing large group of commercial uses located at 20S Michelle Drive, Berwick (**Berwick Springs**) as an activity centre;
 - b) It will categorise Berwick Springs as a Neighbourhood Activity Centre (Medium) (**Medium NAC**) in accordance with the AC Strategy;
 - c) The identification of Berwick Springs as a Medium NAC in the Scheme will pave the way for a future planning scheme amendment to replace the existing General Residential Zoning (**GRZ**) to unlock the potential for Berwick Springs to provide a wide range of employment-generating uses;
 - d) This wider range of uses will benefit the community through the creation of a broader employment base and the provision of goods and services;

- e) It will provide competition, choice and variety for the community of Berwick South;
 - f) The Medium NAC nomination will facilitate a more co-ordinated and unified development of Berwick Springs and surrounds and will attract investment (private and potentially public) funding to improve the private and public interfaces; and
 - g) The aspiration to combine Berwick Springs and Eden Rise into a Major Activity Centre (**MAC**) will potentially benefit both centres and the community through a coordinated approach in terms of intensification and broadening of land use, connectivity between the centres and improvements to the public realm.
9. Kameel submits that the Amendment is supported by sound strategic planning and economic analysis and it is consistent with Plan Melbourne and State and local policy which directs Councils to regularly review and upgrade their planning schemes to plan for the future.
 10. Importantly, this is an Amendment that is driven by Council and strongly supported by Council. It is not a proponent-lead Amendment.
 11. With regard to the objection to the Amendment from Charbury Pty Ltd (as it relates to Berwick Springs) it is submitted that it is essentially a commercial objection seeking to protect financial interests.
 12. Kameel submits this commercial interest is a relevant factor going to the weight to be given to the submissions. However, it is acknowledged that the objection raises some relevant matters to be considered by the Panel.
 13. An analysis of the strategic support behind the Amendment reveals that it is a positive, well-considered Amendment which will deliver long term benefit for Berwick South and the City of Casey.
 14. Kameel relies on these submissions and the written and oral evidence of:
 - Mr Peggie in relation to town planning; and

- Mr Stephens in relation to economics.

15. Kameel seeks that the Panel recommend that Amendment C258 be approved by Council and that the submissions of Charbury Pty Ltd be dismissed.

Net community benefit and an acceptable planning outcome

16. The objectives of planning in Victoria include providing for the fair, orderly, economic and sustainable use and development of land; securing a pleasant, efficient and safe working and living environment for all Victorians; facilitating development in accordance with these objectives; and balancing the present and future interests of all Victorians.
17. The objectives of the planning framework established by the Act reiterate the goals to “facilitate development” and “to encourage” the achievement of planning objectives through positive actions by planning authorities.
18. Clause 71.02-3 of the Planning Policy Framework of the Planning Scheme embeds the requirement of integrated decision making into all planning schemes:

Integrated decision making

Society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.

Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However, in bushfire affected areas, planning and responsible authorities must prioritise the protection of human life over all other policy considerations.

Planning authorities should identify the potential for regional impacts in their decision making and coordinate strategic planning with their neighbours and other public bodies to achieve sustainable development and effective and efficient use of resources.

19. The Courts, the Tribunal and panels have frequently upheld the principle that the concept of net community benefit is not about ideal outcomes but about acceptable outcomes arising from a balancing of the benefits and disbenefits of a proposal. This is just as true in the context of planning scheme amendments as in permit applications.
20. In the context of this Amendment, it is submitted that the strong employment opportunities and economic benefits of the Amendment generally, and the specific identification of Berwick Springs as a Medium NAC, well outweigh any negative or “non-ideal” outcomes.
21. In this regard, the road separation between Berwick Springs and Eden Rise is acknowledged as not being “ideal”. However, it is not usual or insurmountable; crossing from one corner to another is less than 100m, walking distance is approximately 10 minutes from the Coles at Eden Rise to the vacant land parcel or Masala Bar and Grill,¹ pedestrian connections are clearly available and the land is flat and sight-lines are very good, noting there is clear visual connection between the two sites.
22. Further, strategic and urban design work to further improve connections within and around activity centres is encouraged by Council and is sought in policy such as:
 - a) Plan Melbourne, Policy 4.1.2 states

Integrate place-making practices into road-space management

Streets are both places to pass through and destinations. There is a need to balance the competing demands of movement and place in defining the priority functions of streets. This will help create a sense of place and structure across the city.

VicRoads is applying a new transport-planning approach, based on principles relating to ‘movement and place’, to better engage with the community in considering how streets should perform their movement and place function. This will help the government work with the community to determine what types of movement should be prioritised in each location, and encourage greater interaction between people and places.

¹ As estimated by Mr McGurn

This approach will define the ways in which transport problems are understood, future needs are considered and the outcomes for active transport and place-making are identified and support the development of liveable and thriving communities.

There is an opportunity to incorporate the movement and place principles into the planning system to support improved place-making outcomes within the metropolitan road network.

- b) Urban Design Guidelines for Victoria, 2017 Activity Centre Structure includes objectives:
- To ensure accessible and functional activity centres;
 - To ensure activity centre structure supports public transport access;
 - To ensure activity centre structure supports safety and amenity;
 - To activate the activity centre's interface with its barrier edges
 - To respond to change within an activity centre
- c) Clause 22.01-4 Activity Centres seeks that *“New retail and commercial development proposals are to make an appropriate contribution to infrastructure provision, including road and intersection works, streetscape upgrades, linking trails, community facilities, youth spaces, public art and other public spaces;”*
- d) Clause 21.05-4 (as exhibited) Strategy 3.8 *“Promote and prioritise pedestrians and cyclists over vehicles in and around activity centres;”*
- e) Clause 22.01-7 (as exhibited) Great Places for People *“Transport infrastructure, crossings, intersections and traffic signals should be located and designed to promote and prioritise local walking and cycling trips over vehicular through traffic in and near activity centres”* and
- f) AC Strategy contains detailed Urban Design Guidelines at pages 55-64 to promote safe, accessible, connected activity centres.
23. As submitted by Council to this Panel, Council expects that any new zoning proposal for Berwick Springs will be required to do “lots of work” to improve the

urban design and connectivity of Berwick Springs. This is an opportunity that this Amendment will provide and one that will clearly benefit the community.

24. In terms of submissions that the Amendment may result in negative impacts, the submissions on behalf of Charbury have been framed in the context of there being a “risk” that:
 - a) Berwick Springs is re-zoned Commercial 1 zone once it has an activity centre status and all retail floorspace will become as-of-right which will result in fragmentation of retail and employment opportunities, will draw activity away from Eden Rise, reduce the scope for concentration of activities on Eden Rise and potentially upset the activity centre hierarchy in Casey; or
 - b) Berwick Springs is re-zoned Comprehensive Development Zone with no opportunity for third party participation by Charbury presumably to ensure that the above “risks” won’t occur.²
25. It is submitted that these negative impacts anticipated by Charbury are premature, exaggerated and entirely focussed on potential shop floor space outcomes which may or may not occur. They do not take a holistic approach to the Amendment and in particular, the clear focus of the Amendment to promote activity centre planning for a whole range of uses including retail and non-retail employment opportunities to meet future demand.
26. There is no re-zoning application before this Panel, let alone a re-zoning application for a Commercial 1 zoning over Berwick Springs or indeed “unfettered” land use and development at Berwick Springs.
27. In fact, Council has been very clear in its submissions to this Panel that the future re-zoning of Berwick Springs is not determined and that “lots of work” by Kameel is required before a planning scheme amendment is supported by Council.
28. At present, Council is considering a Comprehensive Development Plan Zoning for the land which, contrary to the “risk” identified in the submissions of Charbury,

² Noting the existing DPO1 applying to Eden Rise and Berwick Springs at present does not provide for third party rights if the development is generally in accordance with an approved development plan.

provides for a tailored, site specific and structured response to the Site and its surrounds including Eden Rise Medium NAC.

29. Any potential re-zoning of Berwick Springs, when it occurs is highly likely to be the subject of a public planning scheme amendment and it is expected at that time, the detail of what land uses, how much floor space, the economic impact on Eden Rise and the activity centre network will be assessed. Which side of the road a supermarket may be located on, how much shop floor area is to be provided at Berwick Springs or the exact land use and development potential at Berwick Springs is not before this Panel.
30. As properly conceded by both Mr Duane and Mr McGurn, there are a range of uses that may be appropriate for Berwick Springs that would not be problematic for Eden Rise. Not all are permissible under the existing GRZ. These include shops, restricted retail and offices. A dispute about the scale of these uses may be inevitable in the future but the impact (positive or negative) depends on the uses, the tenants and the policy setting.
31. The question for this Panel is whether there is strategic support for the Amendment generally, and in terms of the identification of Berwick Springs as a Medium NAC, whether that identification will achieve a net community benefit for Berwick South and the municipality of Casey.

Strategic support for the Amendment

32. It is submitted that the strategic support for this Amendment is to be found in a number of sources including:
 - a) State wide policy in the Planning Scheme and in *Plan Melbourne*;
 - b) Local planning policy specific to the municipality of Casey;
 - c) The Activity Centres Strategy 2019;
 - d) The reference documents to the Strategy including *Casey C21 – Creating a Great City 2017* and the *Casey Activity Centres Retail and Other Employment Floorspace Assessment 2017 (SGS Assessment)*;

- e) The Development Plan (Cell T Development Plan) that applies to the Site;
and
 - f) The existing use and development of the Site.
33. Through its submissions, background documentation and evidence Council has provided to this Panel a detailed background to this Amendment.
34. Mr Peggie and Mr Stephens also assess the strategic support behind the Amendment.
35. At a State-wide level Policy 1.1.7 in *Plan Melbourne* seeks that:

Plan for adequate commercial land across Melbourne

Population growth will continue to drive demand for well-located and competitively priced commercial land. Growth could create demand for an additional 8 million square metres of stand-alone office floor space and 8 million square metres of retail floor space by 2051.

An adequate supply of commercial land needs to be secured to accommodate this growth, as well as a range of services, entertainment and civic activities in suburban locations.

Increasingly, there is desire for activity centres and commercial areas to allow mixed-use development, including retail, commercial and residential. While this approach supports greater flexibility of uses, it can also lead to residential uses competing with commercial uses and employment opportunities. Once a commercial site is converted for a residential use, it is likely to be permanently lost to that market. Consideration needs to be given to ways in which commercial and residential development can be developed together.

To ensure Melbourne maintains a competitive commercial market and is able to facilitate local access to employment, future commercial land requirements need to be quantified by region. There is also a need to estimate the likely distribution of future job growth and commercial land requirements within the network of national employment and innovation clusters and activity centres.

36. The establishment, identification and direction for activity centres such as that proposed in the Strategy is clearly a vital element of orderly planning for Melbourne.

37. However, as Plan Melbourne makes clear, planning for activity centres is not just about planning for retail floor space but is about planning for space for offices, commercial uses, mixed uses and residential use.

38. Relevantly, Plan Melbourne defines “activity centres” as

Areas that provide a focus for services, employment, housing, transport and social interaction. They range in size and intensity of use from smaller neighbourhood centres to major suburban centres and larger metropolitan centres.

39. “Neighbourhood Activity Centres” are defined as:

Local centres that provide access to local goods, services and employment opportunities and serve the needs of the surrounding community.

40. “Major Activity Centres” are defined as:

Suburban centres that provide access to a wide range of goods and services. They have different attributes and provide different functions, with some serving larger subregional catchments. Plan Melbourne identifies 121 Major activity centres.

41. *Practice Note 58, Structure Planning for Activity Centres* provides activity centre boundary criteria and states that in setting a boundary for an activity centre, consideration should include:

- sufficient land to provide for the commercial (retailing, office, fringe retailing and support activities such as entertainment) activities needed over a 15 to 20 year time frame and then into the 30-year horizon
- residential areas that are integrated into the activity centre or surrounded by other uses that have a strong functional inter-relationship with the activity centre even where limited development opportunities exist
- key public land uses that have or are intended to have a strong functional inter-relationship with the activity centre even where there are no or limited redevelopment opportunities
- public open space areas that have or are intended to have a strong functional inter-relationship with the activity centre.

42. The Urban Design Guidelines for Victoria, 2017 defines activity centres as:

Activity centre

Activity centres within cities and towns are a focus for enterprises, services, shopping, employment and social interaction. They are where people meet, relax, work and often live. Usually well-served by public transport, they range in size and intensity of use from local neighbourhood strip shopping centres to traditional town centres and major regional centres. An activity centre generally has higher intensity uses at its central core with smaller street blocks and a higher density of streets and lots. The structure of activity centres should allow for higher intensity development, street frontage exposure for display and pedestrian access to facilities.

43. At Section 1.2 Activity Centre Structure, the guidelines state:

Activity centres, although of different sizes and types, are a focus for enterprise and social interaction, incorporating community facilities and services, shopping, employment and residences. Activity centres are the focus of public transport nodes where services converge. Activity centres include metropolitan centres, regional cities and town centres in rural areas.

An activity centre generally has an intense central core with smaller street blocks and a higher density of streets and lots. The structure of activity centres should allow for more intensive development, street frontage exposure for display, safe public spaces and pedestrian access to facilities.

Why is it important?

Activity centres provide residents, visitors and workers with easy access to a range of services and facilities as well as opportunities for establishing businesses, or simply being sociable and meeting others. By providing a variety of lot sizes and shapes in a connected movement network, an activity centre can accommodate a wide variety and scale of uses and buildings and respond to the changing needs of residents, businesses and visitors.

Some specialised and single-focus activity centres may have extended periods of inactivity with poor safety out-of-hours. Activity centres with a diverse mix of activities and uses adds to their vibrancy and economic viability as well as improving perceptions of safety and reducing opportunities for crime.

44. Clearly activity centres are not just applicable to commercially zoned land or land that is used for retail purposes.
45. At the State-wide level, there is no question that the planning scheme requires the identification of a sufficient supply of land for residential, commercial, retail, industrial, recreational, institutional and other community uses (Clause 11.02-1S).
46. Clause 11.03-1S seeks *“To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community.”*
47. Clause 17.02-1S seeks *“To encourage development which meet the communities’ needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.”*
48. The Strategies seek to:

Plan for an adequate supply of commercial land in appropriate locations.

Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.

Locate commercial facilities in existing or planned activity centres.

Provide new convenience shopping facilities to provide for the needs of the local population in new residential areas and within, or immediately adjacent to, existing commercial centres.
49. At a local planning policy level, again, there is support for the implementation of an updated activity centre hierarchy into the Scheme such as:
 - a) **Clause 21.03-2:** Settlement and Housing seeks to *“Focus activity into identified activity centres and community places to create a sense of place, create physical community landmarks and focal points, and reinforce community identity.”*
 - b) **Clause 21.03-4** Objective 3 is *“To recognise, value, provide and facilitate a choice of facilities, including learning centres and services that reflect the diverse needs of the Casey community.”*

- c) **Clause 21.05-3** Objective 2 *“To take advantage of Casey’s competitive edges to create local employment opportunities across a diverse economic base to secure a sustainable and prosperous future.”* and
- d) **Clause 21.05-3** Activity Centres 2.5 *“Promote leading practice activity centre development that provides for economically robust centres with a vibrant community focus, and which can evolve to accommodate changing needs.”*

50. Whilst there is criticism by Mr McGurn that the Amendment (as it relates to Berwick Springs) does not find express support in the existing local planning framework, this is not surprising as the existing Planning Scheme generally reflects the Activity Centres Strategy 2006, which did not propose Berwick Springs as an activity centre at that time. Relevantly, this Amendment proposes to amend these local planning provisions to implement the new AC Strategy.
51. With regard to Berwick Springs and Eden Rise, it is observed that the strategic identification and/or support behind these centres has changed over time in line with the growth of the broader residential area and the concentration of non-residential uses on the Site. This is evidenced by the fact that the Activity Centres Strategy 2006 identified Eden Rise as *“re-zoned, yet to be developed”*³ and Berwick Springs as *“proposed convenience centre”* and since this time, Eden Rise has developed to a Medium NAC with over 15,000sqm in commercial floor area and Berwick Springs into a commercial area of over 7.35ha in non-residential floor area housing a hotel, bottle shop, restaurant, function centre, convenience restaurants, medical centres, gym, takeaway venues, BP service station, offices and a childcare centre.
52. Kameel submits that this volume of contiguous commercial uses at Berwick Springs is an important strategic justification for this Amendment as it relates to Berwick Springs. This volume of commercial uses (which includes 17 businesses) is bigger than many activity centres identified in the Amendment as Local NACs or Medium NACs and it is substantial in both land area and its presence along Clyde Road.
53. Indeed, it is submitted that the many terms that have been used by parties to identify Berwick Springs (without actually calling it an “activity centre”) such as

³ Page 38

“comprehensive development area”, “mixed use area”, “commercial area”, “out-of-centre development”, “Berwick Springs Strip” and “centre” demonstrates that Berwick Springs already has an existing character that clearly distinguishes it from its surrounding area.⁴

54. Further, it is submitted that there comes a point in time, where incremental or “*ad hoc*” development reaches a level of significance in a planning and economic sense that it performs the role of an activity centre. Indeed, it is submitted that with the exception of planned towns (such as through a PSP process), many activity centres have developed from a small conglomeration of uses that have grown incrementally over time. The question of whether a centre is being “rewarded” or not, is not relevant – particularly when there is no evidence of wrong-doing.
55. The growth of Berwick Springs and its changing status is reflected in the different applicable policies over time. For example:
 - a) When amended in 2005, Cell T Development Plan identified Berwick Springs as “comprehensive development” area. At that stage, the Development Plan identified that there were a number of developments already approved including a tavern, petrol station and convenience shop and car wash, medical centre and veterinary centre and medium density housing.

For land south of the service station, the Development Plan provided that a comprehensive mixed use development was planned (or part developed) for the existing uses and reception centre, motel, family restaurant, pharmacy/chemist and video shop.

The Development Plan further stated that:

“This development is complementary commercial development to the core Berwick South Activity Centre (located to the south east corner of the intersection) as part of Council’s Activity Centres Strategy and is comprised of a comprehensive ‘package’ of uses. Together, these developments will create an important place of activity, and a focus for the rapidly developing local community.”

⁴ See description of Berwick Springs in *McDonald’s Australia Pty Ltd v Casey CC* [2007] VCAT1364, paragraphs 13, 14 and 17

- b) The most recent version of the Development Plan, amended in 2009, continues to identify the land as “comprehensive development.” With regard to land to the north of the service station states:

“A comprehensive development proposal is proposed for the land (formerly approved medium density housing site) to include a range of restaurants, fast food outlets and a child care centre.

The proposed use and development is considered to be appropriate for this site, subject to detailed conditions. The site is one of the few sites in the part of Berwick south of the Freeway that is suitable and available for commercial development to service the needs of the local community.”

- c) In 2012, the *Activities Areas and Non-Residential Uses Strategy* identified the southern part of Berwick Springs as a potential candidate for a rezoning with a small supermarket and speciality retailing (not more than 2000sqm) to be included within a structure plan with Eden Rise.

Page 38 states:

Prepare a Structure Plan for the Berwick South/ Eden Rise Large Neighbourhood Activities Area to provide a wide range of uses, including the possibility of small supermarket on the west side of Clyde Road.

- d) In 2016, Charter Keck Cramer was engaged by Council to assess future floor space requirements within Berwick South and provide advice where and how this should be accommodated.⁵ This report recommended a new neighbourhood activity centre at Berwick Springs and stated in the Executive Summary that:

A new neighbourhood activity centre within Berwick South will provide residents with the choice of all three major supermarket chains as well as a wider choice of specialty retailers and other businesses. The proposed Berwick Springs Neighbourhood Activity Centre would consolidate retail and commercial activity around Eden Rise Village and the adjacent commercial precinct, thereby potentially supporting a greater number of higher-

⁵ Berwick South Retail and Commercial Needs and Projections Analysis & Review

order retailers. This will provide households with a wider choice of retail goods and services that if a new centre were located elsewhere, as well as providing the benefits of a more competitive retail environment.

Accessibility via various transport modes is comparable across all three potential neighbourhood centre locations, although the Berwick Springs site offers better access from the Clyde Road north-south arterial and the convenience of potentially still visiting Eden Rise Village as part of a single trip. The Berwick Springs site also offers the opportunity to consolidate activity into a single, centrally located retail / commercial precinct, thereby providing greater opportunity to support a range of non-retail activities including business services, health services, hospitality and entertainment. Consolidating retail activity into Berwick Springs / Eden Rise would also be expected to support the precinct's competitiveness relative to both new neighbourhood activity centres to the south and the expanded Casey Central. Similarly, through servicing a wider trade area, businesses will attract a more diverse range of households.

Any competitive impacts of a new centre upon Eden Rise Village are more likely to be moderated by locating such a centre on the Berwick Springs site compared to alternative locations, as Eden Rise Village will have greater opportunity to compete for household expenditure than if shoppers were split between two separate centres.

- e) In 2017, in the SGS Assessment, Berwick Springs was identified as an “out-of-centre activity area” with a recommendation to integrate Berwick Springs into the activity centre hierarchy. At page 34, the SGS states:

The seven identified out-of-centre activity areas are all relatively small and have organically evolved overtime. They may now be functioning somewhat as pseudo activity centres to the local community. While outside the formal hierarchy they play an important local convenience role and fill demand gaps as the corridor rapidly grows and the official activity centre hierarchy establishes.

Council has received enquiries regarding rezoning of some of these clusters, and/or formal designation as neighbourhood centres. These enquiries should be assessed on a case by case basis with strong consideration made to the designated network. However, in general they should remain as small local convenience offerings (either as out-of-centre activity areas or

at the bottom of the designated hierarchy). This will help reinforce 20 minute neighbourhoods and more diverse uses within the municipality, while not impacting on higher order designated centres and overall supply/demand alignment

Where they are directly adjacent designated centres they should be integrated into the designated centre so that an integrated and holistic planning approach can be established.

- f) At least since 2017, Clause 21.10-5 has identified Berwick Springs as an area which should “Facilitate the development of a mixed use precinct in manner complementary to Eden Rise Neighbourhood Activity Centre”; and
 - g) In 2019, the AC Strategy and Amendment before this Panel now seeks to formally identify Berwick Springs as a Medium NAC with a policy to support an “aspiring” status that the two centres will become a single MAC in the future— noting this Amendment does not include planning scheme provisions identifying the centres as a combined MAC.
56. It is submitted that this changing and evolving identification of Berwick Springs is a natural consequence of the development of Berwick Springs over time, and further it is entirely appropriate that it be recognised for what it is now; an activity centre.
57. In this regard, it may not be on commercially-zoned land, or be a supermarket-based activity centre, it is nonetheless a local centre that provides “access to local goods, services and employment opportunities and serve the needs of the surrounding community.”
58. As opined by Mr Peggie:
- 17. *Despite its current General Residential Zoning, the existing offer and scale of commercial and retail outcomes at Berwick Springs makes it a larger centre by floorspace than many of the other Neighbourhood Centres identified by the Strategy across the municipality.*
 - 18. *I consider that not identifying Berwick Springs as an Activity Centre would be tantamount to ignoring what is currently a centre that serves the needs of the surrounding community by providing convenient access to a variety of local goods, services and employment opportunities and has the capacity to grow and diversify in the future. In my opinion, failing to properly designate Berwick Springs in the Activity Centre hierarchy*

and leaving it without appropriate strategic intent would be a sub-optimal planning outcome.

59. In response to submissions (and the evidence of Mr McGurn)⁶ that Berwick Springs does not meet the characteristics and function identified for a Medium NAC in the AC Strategy and Clause 21.05-7, Kameel submits that this approach incorrectly applies these policies in a prescriptive manner.
60. As stated in the AC Strategy⁷ and submitted by Council,⁸ the floor space ranges are indicative only and should not be used as a cap on potential non-residential floorspace.
61. In this regard, it is noted that the definitions in AC Strategy are found at pages 2 and 3. These definitions do not refer to Table 1 and are broader in scope than Table 1.
62. In terms of the Table 1 Activity Centre Hierarchy in the AC Strategy and Clause 21.05-7, it is submitted by Council and Kameel that the characteristics and functions are a “guide” to classification of activity centres. They are not determinative.
63. Clearly, Table 1 and Clause 21.05-7 do not contain an inventory of what exists on the ground today (because many of the centres either don’t exist yet or don’t satisfy all the characteristics including Eden Rise) and it is submitted they are not a check-list of all characteristics that must be satisfied before a centre is given a classification.
64. In response to submission that supermarkets play an important part in activity centre development and classification, Kameel agrees. However, Kameel also submits that each activity centre is different and Berwick Springs is already different to Eden Rise.
65. Further, given the changing nature of retail, activity centres in the future will take a different form to activity centres today and particularly supermarket-based activity centres such as Eden Rise.

⁶ Noting that at paragraph 73, Mr McGurn refers to “the threshold definition” with regard to Local NAC.

⁷ Page 25

⁸ Part B Paragraphs 40 and 41

66. Relevantly, Berwick Springs is very large already, has a range of retail and non-retail uses and has the potential to expand this range of uses, including for shops, offices and commercial space in the future.
67. Whilst Mr Duane considers that the potential for a full-line Woolworths supermarket at Eden Rise (which would result in potentially two full-line supermarkets and one discount supermarket at Eden Rise) means that there “would be no potential for another supermarket in the Berwick Springs area,”⁹ he conceded that smaller footprint supermarket such as IGA or Foodworks might locate at Berwick Springs.
68. Mr Stephens considers that even if Woolworths does establish at Eden Rise (noting there is no evidence of a lease with Woolworths), the population growth and high profile location could potentially attract an independent supermarket or specialist food store such as La Manna Fresh, Tasman Butchers or an Asian Grocery.
69. However, as there is no application for any sized supermarket before this Panel, the question of what, when, how and the impact is a matter for the future.
70. In terms of the argument that without a supermarket the nomination of Berwick Springs as Medium NAC is not strategically justified, Kameel submits this argument is short-sighted in terms of activity centre planning, loses sight of the significant concentration of uses already located at Berwick Springs without an activity centre classification, and fails to recognise the opportunity to improve the area and deliver a more integrated and mixed-use outcome with an activity centre designation.
71. It is entirely appropriate and necessary that the Planning Scheme reflect the future strategic direction for Berwick Springs.
72. Kameel relies on the evidence of Mr Peggie in this regard noting his evidence that:
- a) Berwick Springs already provides for a multitude of different commercial and retail uses;
 - b) Despite its size and collection of uses, it is not explicitly designated an activity centre in planning policy;

⁹ Paragraph 4.38

- c) An activity centre nomination can refer a range of activity centres that differ in size, role and function;
 - d) Berwick Springs satisfies the definition of Neighbourhood Activity Centre in *Plan Melbourne* as “local centres that provide access to local goods, services and employment opportunities and serve the needs of the surrounding community;”
 - e) Berwick Springs is directly accordant with the definition of a Medium NAC in the AC Strategy as “*Centres that provide access to local goods, services and employment opportunities and serves the needs of the surrounding community. They are dominated by small business. They are accessible to a viable user population by walking/cycling, have access to at least some local bus services, and provide an important community focal point for a range of community, educational, health and recreational needs;*”
 - f) All activity centres have differing characteristics and strengths that enhance the vitality and vibrancy of the broader activity centre network;
 - g) Nomination of Berwick Springs as a Medium NAC is sound;
 - h) It will broaden the mix of uses in activity centres and create further employment generation;
 - i) It has the potential to satisfy the 25% non-retail target in the AC Strategy;
 - j) It is forward-thinking, practical and proactive to acknowledge Berwick Springs as a Medium NAC; and
 - k) It will allow for achieve management and planning for Berwick Springs to provide sound outcomes for the broader community.
73. In response to submissions that the *status quo* should remain for Berwick Springs; that is, that the land continue to be zoned GRZ and that new use and development be managed by the Cell T Development Plan and Clauses 17.01-2 and 22.02 for “out of centre” development, Kameel makes the following submissions:
- a) First, whilst the existing use and development is lawful and has approval under the relevant planning scheme requirements, it has not successfully achieved a

cohesive, unified centre in terms of its layout, landscaping, car parking and pedestrian movements and focal points;

- b) Second, there is a distinct possibility that without a change in the relevant policy framework, new development at Berwick Springs will be much the same as the existing development;
- c) Third, there is a large vacant parcel of land that is not currently identified for any particular use in the Development Plan and which has the potential for substantial use and development for employment generating uses;
- d) Fourth, all witnesses before this Panel agree that Berwick Springs has the potential to develop for a range of uses in the future beyond those which the current zoning would allow for (for example, shops, offices, restricted retail);
- e) Fifth, whilst a substantial housing development is possible on the vacant site, this would not create employment generating uses which is an important objective of the AC Strategy;
- f) Sixth, whilst Eden Rise has potential for an expansion in floor space, it is a retail-focused centre and it is not proposed to broaden the type of uses it offers to the community;
- g) Seventh, the status quo will not allow for flexibility into the future, given the significant constraints of the GRZ and the policy framework which seeks to “*avoid a concentration of non-residential uses in a particular location that detracts from the primary function of the area for residential purposes;*” and
- h) Lastly, the status quo is highly unlikely to produce urban design outcomes sought by Council that would improve the physical and functional connection between Berwick Springs and Eden Rise.

74. In response to the submission that structure planning is required *before* the Amendment is approved with respect to Berwick Springs, Kameel submits that this is a “chicken and the egg argument.”

75. It is submitted that there is no need, and nor is it appropriate, to stall the approval of the Amendment to require structure planning for Berwick Springs (and Eden Rise).
76. The mix of uses, how they are located, what building works are required and what impact potential development at Berwick Springs may or may not have on Eden Rise should properly be assessed at a planning scheme amendment or planning permit stage.
77. Likewise, whether or not uses surrounding Zagame's Hotel with gaming machines are appropriate or not will be determined when a re-zoning application is proposed.
78. All witnesses before this Panel agree that a mix of uses at Berwick Springs beyond those which are existing, and beyond which are permissible under the GRZ, may be appropriate and will achieve the objectives of the AC Strategy and the Amendment to encourage employment-generating land uses in Casey.
79. To facilitate this outcome, an activity centre identification is strategically desirable and will provide a framework for future planning decisions.
80. Consistent with the submissions of Council and in reliance of the evidence of Mr Szafraniec, Mr Peggie and Mr Stephens, it is submitted that there is a strong strategic basis for the Amendment already and that structure planning is not necessary.
81. In response to submissions regarding Covid 19 and the suggested two to three year delay with respect to this Amendment and Berwick Springs, Kameel submits this would be a big mistake. The last thing that the Victorian economy needs at the moment is a halt in decision making, inflexibility in strategic planning and restrictions on employment-generating opportunities. Indeed, it is submitted that the changing nature of the economy, the manner in which people work and the opportunities that these changes may bring requires a proactive and flexible approach to strategic planning.
82. Kameel submits that this Amendment comes at an important time in strategic planning with respect to commercial land use and employment, and decisions

should be hastened, not stalled. Stimulation of the economy by proactive planning for employment generating land uses is vitally important at this time.

The Aspiring Major Activity Status

83. Whilst not part of the proposed planning controls pursuant to this Amendment, the SGS Assessment (supported in the evidence of Mr Szafraniec, Mr Stephens and Mr Peggie) suggest that Eden Rise NAC and Berwick Springs NAC should be identified as a Major Activity Centre in the future.
84. Kameel supports this policy aspiration and submits that it makes sense for it to be considered in the future, as it will allow for a coordinated approach to activity centre planning in Berwick South and particularly encourage a complementary use and development between the two centres, noting that the existing Clause 21.10-5 already seeks that development on Berwick Springs be complementary to Eden Rise.
85. In Mr Peggie's opinion:

“53. I support the idea of providing acknowledgement of the potential for the future consolidation and establishment of a Berwick South Central Major Activity Centre that would be the combination of the Eden Rise (No. 9a) and Berwick Springs (No.9b) Medium Neighbourhood Activity Centres into a single entity. Evidently, as the City of Casey continues to grow, develop and evolve the scale and importance of these centres will also increase and become closer to a Major Activity Centre in their role and function.

54. I believe that the clear acknowledgement by Council of this “aspirational major” designation provides market participants and the Community with an understanding of the future intent of the centre. It will also assist Council to advocate for the recognition of the role and function of the centre at a higher level, including designation under further updates to Plan Melbourne. I think there are clear benefits that accrue from the acknowledgment of the potential future Major Activity Centre concept in the interim period as further planning occurs at both Berwick Springs and Eden Rise, specifically with the regard to informing infrastructure improvements and broader employment outcomes including further retail, service uses, office and institutional uses as well as higher density residential.”

Economic justification for the Amendment

86. The economic justification for this Amendment is principally provided in the SGS Assessment and is supported by the evidence of Mr Szafraniec. Council has already provided detailed submissions with regard to these. Kameel supports these submissions.
87. The SGS Assessment has also been independently assessed by Mr Stephens.
88. In summary, Mr Stephens considers that:
- a) The AC Strategy represents an evolution of long-standing activity centres policy in the City of Casey.
 - b) The City of Casey takes seriously, and appropriately resources, activity centre planning and development policy.
 - c) The strategic framework laid out is appropriate and strategically justified and the background SGS Assessment, considered in its full context, provides an appropriate background to the AC Strategy.
 - d) Berwick Springs activity centre contains approximately 9,000m² of retail and commercial leasable floorspace and the lack of an activity centre classification for Berwick Springs is untenable in current circumstances, as in functional terms that is exactly what is operating from the site, notwithstanding the current planning controls.
 - e) The classification of Berwick Springs as an activity centre in the AC Strategy is both strategically sound and overdue.
 - f) An activity centre classification will be to the benefit of the community and consistent with relevant planning objectives relating to retail and commercial activity.
 - g) Significant economic benefits are associated with the more diverse range of uses and investment unlocked at Berwick Springs through formal recognition as an activity centre.

- h) The aspiration for both Berwick Springs and Eden Rise to integrate as a Major Activity Centre is appropriate and justified in both economic and strategic terms.
- i) That this combination of Berwick Springs and Eden Rise in a Major Activity Centre is more around strategic outcomes rather than physical integration (at least in the near term) does nothing to undermine the merit of this outcome as identified in the AC Strategy.
- j) Major activity centre status would reflect the scale and mix of uses across the combined centre and allow for a more coherent planning and development outcome.
- k) The potential for Eden Rise to continue growing and evolving in the future is not undermined by either activity centre status for Berwick Springs, nor inclusion within a combined Major Activity Centre.

89. Kameel relies on Mr Stephen's evidence.

The identification of Berwick Springs as a Medium NAC will provide a net community benefit

90. The identification of Berwick Springs as a Medium NAC through this Amendment is a very positive outcome for the community of Berwick South which will fulfil the objectives of the AC Strategy:

"To provide a diverse range of non-residential uses in Casey primarily located within a network of vibrant activity centres, which are thriving economic and social hubs offering convenient access to goods, services, facilities, jobs, and housing."

91. It will provide a net community benefit as follows:

- a) It will appropriately recognise the existing uses and development at Berwick Springs for what they are;
- b) It will provide a catalyst for a re-assessment of the appropriate future zoning of Berwick Springs;

- c) It will facilitate consideration of a range of uses for Berwick Springs that are currently not available including shop, restricted retail and offices;
 - d) It will potentially provide choice, variety and competition in goods and services for Berwick South;
 - e) It will pave the way for the optimal development of a large, currently vacant site;
 - f) It will provide additional employment opportunities;
 - g) It will provide the opportunity for urban design improvements to Berwick Springs and the area more broadly including greater integration with Eden Rise; and
 - h) It will provide direction and stimulus for new investment both from the private and public sectors.
92. It is submitted that the alleged, potential negative impacts on Eden Rise are exaggerated and alarmist and the identification of Berwick South as a Medium NAC pursuant to this Amendment will have no impact on the primacy of Eden Rise or undermine the activity centre hierarchy.
93. Furthermore, a future combination of Berwick South NAC and Eden Rise NAC as MAC will provide a long term benefit for both centres and for the community of Berwick Springs.

Conclusion

94. In conclusion, in reliance on the above submissions and the evidence of Mr Peggie and Mr Stephens, Kameel submits that the Panel should recommend approval of Amendment C258 as exhibited.

16 June 2020

Jane Sharp

Counsel for Kameel Pty Ltd