



*Planning and Environment Act 1987*

# Panel Report

Glen Eira Planning Scheme

Amendment C106

Western Precinct, Monash University, Caulfield Campus

**12 March 2014**



*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act

Glen Eira Planning Scheme Amendment C106

Western Precinct, Monash University, Caulfield Campus

A handwritten signature in black ink, appearing to read "Kevin Breen". The signature is fluid and cursive, with "Kevin" on top and "Breen" below it.

Kevin Breen, Chair

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## **List of Abbreviations**

LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
SPPF	State Planning Policy Framework
VPP	Victoria Planning Provisions

## Executive Summary

Amendment C106 to the Glen Eira Planning Scheme proposes to rezone land at the western portion of Monash University Caulfield Campus from part Commercial 1 and part Priority Development Zone to Public Use Zone 2 (Education); apply the Environmental Audit Overlay (EAO) across the site; and make consequential changes to schedules to the planning scheme.

The subject land is owned by Monash University, apart from Post Office Place. Current uses include educational facilities, the Caulfield Plaza Shopping Centre, a childcare centre for university use and commercial premises fronting Derby Road. The University has limited interfaces with private land, other than the Derby Road shops.

In 2006 the majority of the subject site was rezoned to Priority Development Zone (Schedule 1), including Post Office Place, to facilitate the 'Monash University Caulfield Campus Western Precinct Development'. This development did not proceed and has now been superseded by a new Masterplan developed by Monash University for the Caulfield campus. With the intended deletion of the Priority Development Zone from the Victoria Planning Provisions, the current Amendment was deemed to be required to apply the most appropriate zone to the subject site to reflect its existing and future use and development for tertiary education and research purposes.

Monash University has now prepared the *Monash Caulfield Masterplan 2011* that provides a vision for the western precinct (incorporating the subject site) that includes the addition of student living accommodation, a café, small supermarket and ancillary retail offerings primarily to meet the immediate requirements of the staff and students of the university.

A substantive issue raised was whether Post Office Place, which still remains in the name of the original subdivider, can and should be included in a Public Use Zone. The Panel finds that Post Office Place is vested in the Council as a public road and so its inclusion in the Public Use Zone is in proper accordance with the Ministerial Direction – The Form and Content of Planning Schemes.

Property owners whose properties adjoin Post Office Place, and who rely on access through Post Office Place to the rear of their properties, were concerned that their future rights of access may be compromised by zoning Post Office Place to Public Use. Both the Council and Monash University confirmed that the zone does not affect 'right of way' privileges and that any alteration to Post Office Place must be negotiated with affected landowners. The Panel agrees.

The Panel supports the use of the Public Use Zone 2 (Education) to replace the existing Priority Development Zone and is appropriate to respond to the education, research and ancillary uses proposed under the University's Masterplan for its Caulfield campus. Furthermore, the realisation of the Masterplan will not adversely affect the Derby Road shops within the Caulfield East commercial precinct.

Sundry issues raised by objectors including the loss of Council revenue that would result from the rezoning to Public Use (Education); perceived loss of heritage overlay for some Derby Road properties; urban design issues associated with development of the University campus; and a lack of planned streetscape improvements to Derby Road were found not to be relevant to this Amendment, or to have been adequately responded to by the Council, and so do not affect this Amendment.

### **Recommendation**

**Based on the reasons set out in this Report, the Panel recommends that Glen Eira Planning Scheme Amendment C106 should be adopted as exhibited.**

# 1 Introduction

Glen Eira Planning Scheme Amendment C106 (the Amendment) was prepared by the Glen Eira City Council as Planning Authority. The Amendment proposes to:

- Rezone land at the western portion of Monash University Caulfield Campus from part Commercial 1 and part Priority Development Zone to Public Use Zone 2 (Education);
- Apply the Environmental Audit Overlay (EAO) across the site; and
- Make consequential changes to schedules to the planning scheme.

A more detailed description of the Amendment proposal is provided in Chapter 2.1 below.

The Amendment applies to land generally bounded by Dandenong Road to the north, Derby Road to the west, Sir John Monash Drive and Caulfield Railway Station to the south and the remainder of the Monash University Campus to the east.

The Amendment was prepared at the request of Urbis Pty Ltd on behalf of Monash University (the proponent) and was authorised by the Department of Transport, Planning and Local Infrastructure (DTPLI) on 1 October 2013, as advised by the Council.

The Amendment was placed on public exhibition between 24 October and 25 November 2013, with two (2) opposing submissions received as follows:

- Mr Trevor Hillyer of Beytron Pty Ltd; and
- Mr Bruce Young.

At its meeting of 17 December 2013, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 7 January 2014 and comprised Kevin Breen (Chair).

A Directions Hearing was held in relation to the Amendment on 28 January 2014. Prior to the Panel Hearing the Panel member undertook an inspection of the subject site and its surrounds.

The Panel then met in the offices of Glen Eira City Council on Wednesday 19 February 2014 to hear submissions in respect of the Amendment. Those in attendance at the Panel Hearing are listed in Table 1.

Table 1      Parties to the Panel Hearing

Submitter	Represented by
Monash University	Mr Ian Pitt SC of the firm, Best Hooper, Solicitors
Glen Eira City Council	Ms Jacqui Brasher, Principal Strategic Planner
Mr Trevor Hillyer	
Mr Bruce Young	

In reaching its conclusions and recommendations, the Panel has read and considered the submissions and a range of other material referred to it. This includes written submissions, evidence and verbal presentations. The following chapters of this report discuss the issues raised in submissions relating to the Amendment in further detail.

## 2 The Proposal

### 2.1 The Amendment

The Amendment seeks to:

- Rezone the land at the western portion of the Monash University Caulfield Campus from the Priority Development Zone (PDZ) to the Public Use Zone – Schedule 2 (PUZ2);
- Rezone the two small parcels of land within Derby Road from Priority Development Zone (PDZ) to Commercial 1 Zone (C1Z) (which is the zone over the remainder of Derby Road). **This is required to remove all areas of PDZ zoning from the area;**
- Rezone the properties under the ownership of Monash University fronting Derby Road from a Commercial 1 Zone (C1Z) to the **Public Use Zone – Schedule 2 (PUZ2);**
- **Amend the Schedule to Clause 61.03 to remove map 2RXO from the planning scheme;**
- Delete reference to the ‘Monash University Caulfield Campus - Western Precinct Development – Incorporated Plan dated 17 July 2006’ from the Schedule to Clause 81.01 of the Glen Eira Planning Scheme;
- Delete Schedule 1 to the Priority Development Zone (PDZ1) as this Schedule will no longer apply to any land;
- Delete the Road Closure Overlay (RXO) from Princes Avenue as this Avenue ceased to be a public road on 23 November 2007; and
- Apply an Environmental Audit Overlay (EAO) across the site.

### 2.2 The subject site and surrounds

Dandenong Road generally bounds the subject site to the north, Derby Road to the west, Sir John Monash Drive and Caulfield Railway Station to the south and the remainder of the Monash University Campus to the east.

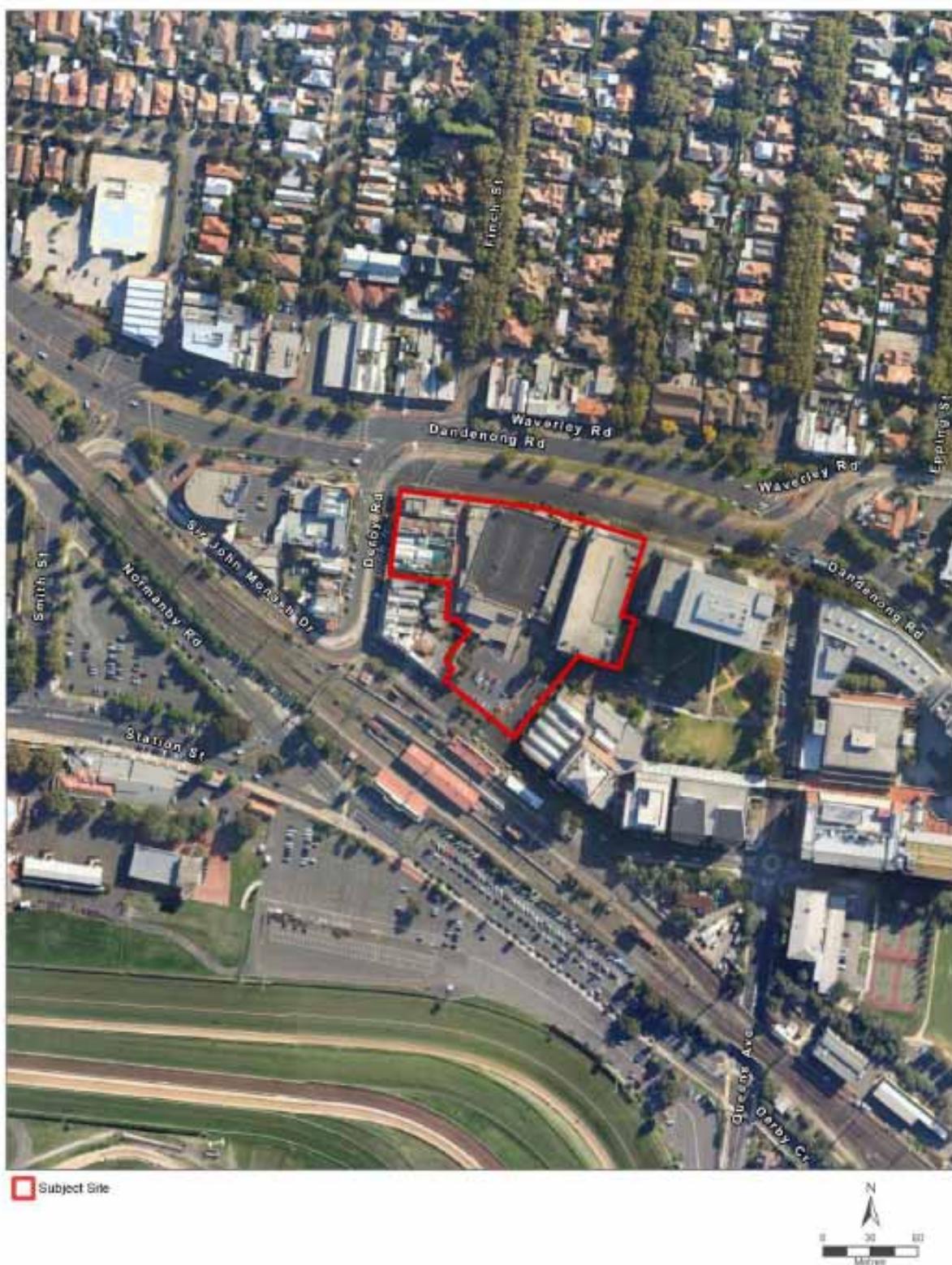
The current components of the subject site include educational facilities, Caulfield Plaza Shopping Centre, and a childcare centre and commercial premises fronting Derby Road.



**Figure 1 Subject site**

The site forms part of the Caulfield Major Activity Centre, as identified in Melbourne 2030. This activity centre includes a number of uses/developments of regional and/or metropolitan significance. These include:

- Caulfield Railway Station (Listed on the Victorian Heritage Register and cited as the seventh busiest railway station in Melbourne);
- Monash University;
- Caulfield Race Course and the Melbourne Racing Club land to the south of the railway line which was rezoned to Priority Development Zone in July 2011 (C60) to facilitate a large development including new residential, retail and commercial development on this land, known as 'Caulfield Village'; and
- Derby Road shopping centre, noted in the Glen Eira Heritage Management Plan 1996 as being 'significant at the metropolitan level as a predominantly post-Federation shopping street....';



**Figure 2** Subject site and surrounding area

## 2.3 Background to the proposal

Monash University owns the subject site, land known as the ‘western precinct’, except the Post Office Place laneway that services the rear of Derby Road properties and a number of properties fronting Sir John Monash Drive. This laneway remains in the name of the original owners who subdivided the land in the 1880s.

In 2006 the majority of the subject site was rezoned to Priority Development Zone (Schedule 1), including Post Office Place, to facilitate the ‘Monash University Caulfield Campus Western Precinct Development’. This development did not proceed and has now been superseded by a new Masterplan developed by Monash University for the Caulfield campus. With the intended deletion of the Priority Development Zone from the Planning Scheme, the current Amendment was deemed to be required to apply the most appropriate zone to the subject site to reflect its existing and future use and development for tertiary education and research purposes.

The current elements of the subject site include educational facilities, the Caulfield Plaza Shopping Centre, a childcare centre for university use and commercial premises fronting Derby Road. The University has limited interfaces with private land, other than the Derby Road shops. Significantly, Post Office Place provides an ongoing role in servicing non-University owned properties facing both Derby Road and Sir John Monash Drive.

Monash University has now prepared the *Monash Caulfield Masterplan 2011* that provides a vision for the western precinct (incorporating the subject site) that includes the addition of student living accommodation, a café, small supermarket and ancillary retail offerings primarily to meet the immediate requirements of the staff and students of the University.

## 3 Identification of Issues

### 3.1 Summary of issues raised in submissions

The key issues raised in the submissions of the various parties are briefly summarised as follows:

#### (i) Planning Authority

The key issues for the Council were:

- Appropriateness of the use of the Public Use Zone 2 to replace the existing Priority Development Zone;
- Rezoning of Post Office Place to the Public Use Zone, rather than the Commercial Zone, given that this land is not owned by Monash University;
- Potential closure of the pedestrian link between Caulfield Plaza and Derby Road shops;
- Impact of rezoning on the Derby Road shops within the Caulfield East commercial precinct; and
- Appropriateness of the Environmental Audit Overlay.

#### (ii) Proponent

The key issues for the proponent were:

- Consistency with the Ministerial Direction – the Form and Content of Planning Schemes as the laneway should be deemed to be vested in the Council and so the appropriateness of including Post Office Place in the Public Use Zone;
- Continuing right of way access for adjoining non University property owners and the requirement for alternative and satisfactory access for all affected landowners if Post Office Place is altered; and
- Impact of the Amendment on the Derby Street properties.

#### (iii) Individual Submitters

The key issues by submitters were:

- Continued right of way access to the rear of Derby Road properties;
- Lack of strategic justification for the Amendment;
- Adverse impacts of the proposed rezoning to the future development of the Derby Road commercial precinct; and
- Urban design and the need for streetscape enhancement.

### 3.2 Issues dealt with in this Report

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

This report deals with the following issues:

- Strategic Planning Context;

- Whether Post Office Place as private land can and should be properly included under the Public Use Zone (PUZ);
- Whether there is any threat to continuing right of way access in Post Office Place for adjoining non University property owners and the requirement for alternative and satisfactory access for all affected landowners if Post Office Place is altered;
- Appropriateness of the use of the Public Use Zone 2 to replace the existing Priority Development Zone;
- Potential adverse impact of rezoning to the Public Use Zone (Education) on the Derby Road shops within the Caulfield East commercial precinct;
- Sundry issues raised by objectors included the loss of Council revenue that would result from the rezoning to Public Use (Education); perceived loss of heritage overlay for some Derby Road properties; urban design issues associated with development of the University campus; and a lack of planned streetscape improvements to Derby Road; and
- Several uncontested procedural and consequential matters.

## 4 Strategic Planning Context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

### 4.1 Policy framework

#### 4.1.1 State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the SPPF:

Clause 10.02 (Goal)

The Amendment will apply a zoning mechanism that will protect the on-going use of the subject site for educational purposes for the benefit of the community.

Clause 11 (Settlement)

The Amendment will allow for the future redevelopment of the University campus in line with the Masterplan which provides land for education, housing, employment, recreation, **open space** and commercial uses and therefore is considered to be consistent with Clause 11.

Clause 19.02-2 (Education Facilities)

The subject land is located within a Major Activity Centre providing excellent levels of public transport accessibility (access to Frankston, Cranbourne and Pakenham railway lines at Caulfield Station, a tram route along Derby Road and Smart Bus route along Sir John Monash Drive). The integration of education facilities with local and regional communities is consistent with Clause 19.02-2.

The Heritage Overlay will be retained over the shops along Derby Road, which is consistent with Clause 15 (Built Environment and Heritage), to ensure the conservation of places of heritage significance.

#### 4.1.2 Local Planning Policy Framework

Council submitted that the Amendment supports the following local planning objectives:

##### **Municipal Strategic Statement (MSS) and Local Planning Policy**

MSS: Clause 21.03 – Vision – Strategic Framework

Council identifies land use visions for the ‘Phoenix Precinct’ with a major focus on ‘educational, cultural and recreational uses plus local convenience retailing, entertainment facilities and higher density residential development, particularly student housing, in the surrounding area’. The Amendment will facilitate the ongoing development of the University campus to increase educational uses and local convenience retailing within the Western Precinct.

#### MSS: Clause 21.09 – Public Uses/Community Facilities

The proposal is in accordance with Clause 21.09 (Public Uses/Community Facilities), which advocates the application of a Public Use Zone to recognise community services and facilities.

#### Clause 22.01 - Heritage

The Amendment does not propose any change to properties affected by the Heritage Overlay. Council will continue to apply existing heritage planning controls and guidance as per the current Heritage Overlay, Heritage Policy and 'Derby Road Draft Heritage Guidelines June 2003' as part of the consideration of future proposals for buildings and works at 16-28 Derby Road.

#### Clause 22.06 – Phoenix Precinct Policy

The Phoenix Precinct includes Caulfield Railway Station, Derby Road/Caulfield Plaza, Monash University, East Caulfield Reserve, Caulfield Racecourse and associated land and nearby residential areas. This contains a mix of regionally significant commercial, educational, recreational and transport services.

The policy is based on an Urban Design Framework. Objectives of the policy include:

- To promote the Phoenix Precinct as a regionally significant (major) activity centre;
- To convey and implement the preferred vision for land use, development and infrastructure within the Precinct and to ensure that all use and development of land and infrastructure provision is coordinated and undertaken to achieve a balanced planning outcome for the community;
- To create a high quality, vibrant urban environment with a strong sense of place and community, high standards in architecture and urban design, safety, permeability and a strong pedestrian and public transport focus; and
- To ensure that all use and development of land and infrastructure provision is coordinated and undertaken to achieve a balanced planning outcome for the community.

The policy encourages Monash University to prepare a Masterplan for the future of all land held or occupied by it within the Precinct. This has been done through the *Monash Caulfield Masterplan 2011*.

The Amendment will facilitate the future redevelopment of the Phoenix Precinct Areas 5 and 6. The area specific objectives for both of these areas are:

Area 5: To retain and enhance valued built form, enhance the vitality of the precinct, enhance safety and amenity and improve permeability and links to Monash University and the transport interchange.

Area 6: To improve the interface between Monash University and the Railway Station, Caulfield Plaza and Dandenong Road.

To encourage the development and use of Monash University Campus so that it has a strong sense of campus, architectural identity, high quality urban design, mixed land use, a greater

utilisation of land holdings, responsible traffic management, a public transport focus and pedestrian focus.

The policy details preferred land uses for each precinct. For sites facing Derby Road, the preferred uses are shops, shop top housing and residences, food and drink premises and uses in accordance with the [Derby Road Action Plan 1998](#).

Council noted that this Policy is based on an urban design framework approved in 1998. Council is looking to review this policy in 2014, together with a number of other local policies.

If approved, the Public Use Zone will allow the development of buildings for educational purposes without the need for a planning permit. The exception to this is the properties at 16-28 Derby Road, which will require permits for buildings and works due to their location within the Heritage Overlay.

## 4.2 Planning scheme provisions

### (i) Zones

The Amendment proposes to rezone the subject site from the existing Priority Development Zone to the Public Use Zone 2 (Education).

The purpose of the Priority Development Zone includes:

*To recognise or provide for the use and development of land for projects and areas of regional or State significance.*

*To provide for a range of uses and the development of land in accordance with a plan incorporated in this scheme.*

In this case, the Incorporated Plan exists as Schedule 1 in the Glen Eira Planning Scheme and has the stated objective:

*To facilitate the redevelopment of the Monash University Caulfield Campus by bringing together education, commerce, living and shopping into an integrated model of a new transit orientated urban village.*

The Department advises that the Priority Development Zone will be removed from the Victoria Planning Provisions and all planning schemes through a later State-wide amendment, in consultation with local government. The current Amendment anticipates the removal of the Priority Development Zone by proposing the Public Use Zone 2 (Education). The Public Use Zone includes the purpose:

*To recognise public land use for public utility and community services and facilities.*

*To provide for associated uses that are consistent with the intent of the public land reservation or purpose.*

The table of public land use lists Education as PUZ 2.

Under Clause 36.01-5 a permit is not required to use land, or to construct a building or construct or carry out works on land, listed in a schedule to the zone, **provided any condition** in the schedule is complied with.

#### **(ii) Overlays**

The Derby Road properties and Post Office Place components of the subject site are covered by Schedule 71 to the Heritage Overlay that addresses Derby Road and environs, Caulfield North. The Heritage Overlay is intended to remain in place under this Amendment and so a permit would be required pursuant to clause 43.01-1 to demolish or remove an existing building or to construct a building or construct or carry out works.

A road closure overlay exists for Princes Avenue, a parcel of land that adjoins but not within the subject site to be rezoned. This Amendment proposes to delete the Road Closure Overlay (RXO) from Princes Avenue as this Avenue ceased to be a public road on 23 November 2007.

#### **(iii) Other planning strategies**

As noted above, under Local Planning Policy Framework, the Phoenix Precinct policy notes preferred land uses for sites facing Derby Road, including shops, shop top housing and residences, food and drink premises and uses in accordance with the Derby Road Action Plan 1998.

Council advised that this Policy is based on an urban design framework approved in 1998 and Council is looking to review this policy in 2014.

### **4.3 Ministerial Directions and Practice Notes**

Clause 12 of the Ministerial Direction – The Form and Content of Planning Schemes, states that:

*A planning scheme may only include land in a Public Use Zone, a Public Park and Recreation Zone or a Public Conservation and Resource Zone if the land is Crown land, or is owned by, vested in or controlled by a Minister, government department, public authority or municipal council.*

In this Amendment, Post Office Place land is not owned by any of the bodies nominated in the Direction but it was the subject of submissions for the proponent that Post Office Place is vested in Council and therefore can be properly be included in this Amendment. As this issue was the subject of submissions, consideration of this matter is dealt with as one of the key issues in this report.

### **4.4 Strategic Assessment**

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework.

## 5 Post Office Place

### 5.1 The Issue

Whether Post Office Place as private land can and should be properly included in the Public Use Zone (PUZ).

### 5.2 Evidence and submissions

The documentation provided in conjunction with this Amendment included information that prior to exhibition of the Amendment, the proponent sought reconsideration from the Minister to include Post Office Place under the proposed PUZ. This request to the Minister followed initial Departmental advice to the Council to exclude Post Office Place from the PUZ because it is privately owned land, and to take the nearest practical zone, the Business 1 Zone (now Commercial 1 Zone). The initial Departmental advice to the Council was on the basis that Post Office Place land is not owned by a public authority, as apparently required under the Ministerial Direction – The Form and Content of Planning Schemes. This Direction states that:

*A planning scheme may only include land in a Public Use Zone, a Public Park and Recreation Zone or a Public Conservation and Resource Zone if the land is Crown land, or is owned by, vested in or controlled by a Minister, government department, public authority or municipal council (Panel emphasis).*

Authorisation was subsequently granted to the Council in July 2013 by the Director, Planning Statutory Services to prepare the Amendment for exhibition to include Post Office Place under the PUZ as an exception to the Ministerial Direction on the basis of *Monash University's firm intention to pursue the purchase of Post Office Place and the fact that it has the support of Council officers*. The merits of the rezoning were to be assessed through the Amendment process. Council advised subsequently in correspondence to an objector that rather than them offering 'support' for placing Post Office Place in the PUZ they were *happy for the Amendment to be exhibited as requested by Urbis* (for the proponent).

In submissions, the Council opposed the inclusion of Post Office Place in the PUZ and stated that:

*Given the opposition to both the rezoning and future purchase of the laneway from nearby property owners (the submitters), it is considered appropriate to disallow the rezoning of the laneway (to Public Use Zone 2) until such time as the laneway is purchased.*

They continued on to say because the Priority Development Zone is to be removed from the Victorian Planning Provisions that Post Office Place should be rezoned to Commercial 1 and so be in accordance with the Ministerial Direction. They state in their submission:

*The Commercial 1 Zoning will be in accordance with the Ministerial Direction on the Form and Content of Planning Schemes.*

This statement indicates their view that placing Post Office Place in the PUZ is not in accordance with the Ministerial Direction.

The Council also established that Post Office Place is on the Council's Roads Register and further that the two private owners named on the titles are the original owners, dating from 1884 and 1887, who are now likely deceased. Attempts by the Council to contact the owners through the original addresses on the titles were unsuccessful.

Email correspondence from Mr Little of Planning and Property Partners, for Mr Hillyer, to the Council states:

*It is inappropriate that Post Office Place be considered for re-zoning as part of the amendment given the practice note associated with the implementation of 'The Form and Content of Planning Schemes' as identified by the DTPLI in the cover letter Authorising the amendment.*

*Any process to apply the Public Use Zone to privately owned land is at odds with the purpose of the PUZ.*

The email goes on to state:

*We see no reason why Post Office Place cannot be appropriately zoned to the underlying Commercial 1 Zone and access rights for our clients and other users of Post Office Place preserved. This would not prevent a separate process commencing in the future; and in circumstances that the ownership of the land changes as a consequence of that process, that would be the appropriate catalyst for any consideration of a Public Use Zone.*

Mr Pitt, for Monash University, submitted that in fact, Post Office Place, despite being privately owned, is vested in Council because it is a public road by common usage and its designation as a road in Council's Roads Register. As it is so vested in the Municipal Council it is appropriate for the Public Use Zone to apply, in proper accordance with the Ministerial Direction – The Form and Content of Planning Schemes. He therefore contends that no exemption to Ministerial Direction was required.

Mr Pitt confirmed that Post Office Place is included in the Roads Register and that such inclusion occurred because the Council, as the Road Authority under the Road Management Act 2004, has made a decision that the road is reasonably required for public use.

In his written submission he nominated the basis of establishing that the road clearly vests in Council and its use as a public road dating back to 1887 when it was set aside for that purpose by Lodged Plan 1777 and its connection to the public road network in the same year.

He cited relevant case law to support that Post Office Place is indeed a public road and vested in the Council. He states in his submission:

*The decision of the Supreme Court of Victoria in Calabro v Bayside City Council [1999] VSC 509 establishes that land marked as a road on a Plan of Subdivision constitutes an offer to dedicate the land to the public as a road and once this dedication has been accepted by public user (sic) it could not be revoked and that the effect of section 203 of the Local Government (Miscellaneous) Act 1993 was to vest the land comprised in a public highway in the Local Council.*

### **5.3 Discussion**

Dispute over, or opposition to, the inclusion of Post Office Place in the proposed PUZ because it did not comply with the Ministerial Direction – The Form and Content of Planning Schemes appeared to rely on its private ownership status. That ownership still remains in the names of the original owners from the 1880s was not disputed by any party. What Mr Pitt for Monash University persuasively contended is that, regardless of ownership, the laneway was originally set aside as a roadway and has been a public road since the late 1880s. As such, Post Office Place vests in the Council as a public road and so meets the requirements of the Ministerial Direction. By meeting the conditions of the Ministerial Direction that the subject land vests in the municipal Council, no exception was in fact required to allow the inclusion of Post Office Place in exhibiting this Amendment.

There was no dispute from any party, (the proponent, the Council or the two objectors who are adjoining landowners) that Post Office Place is and has been a road open for public use. No opposing argument was made regarding the issue of whether Post Office Place is a public road and as such vests in the Council. **Further, on the basis that there was no stated opposition to the position that Post Office Place vests in Council it is reasonable for Post Office Place to be included in the PUZ.**

There was no dispute that a public road can be included in a PUZ. This report considers separately whether rights of access are in any way weakened because of inclusion in a PUZ rather than some other zone, such as the Commercial 1 Zone. It is noted that Post Office Place currently sits in the Priority Development Zone.

### **5.4 Conclusion**

The Panel accepts that the privately owned Post Office Place is appropriately included in the PUZ because it is a public road that by definition is vested in the Council by virtue of its reservation as a road, its continuous use as a road for over 125 years and its formal inclusion in the Council's Road Register.

### **5.5 Finding**

The Panel finds that Post Office Place is appropriately included in the Public Use Zone and complies with the Ministerial Direction – The Form and Content of Planning Schemes.

## 6 Right of Way access to Post Office Place

### 6.1 The Issue

Whether there is any threat to continuing 'right of way' access to Post Office Place for adjoining non-University property owners and the requirement for alternative and satisfactory access for all affected landowners if Post Office Place is altered.

### 6.2 Evidence and submissions

The ability for landowners to preserve their ongoing regular and historic use of Post Office Place to access the rear of their properties for a range of purposes including parking was the principal concern of the two submitters who objected to the Amendment.

Hillyer noted in his written submission:

*Post Office Place provides rear access to approximately fifteen (15) businesses located in both Derby Road and Sir John Monash Drive.....These businesses are reliant on access through 'Post Office Place' for staff parking, client parking, public access to business entrances, supplier/trade access, deliveries and pick ups. In short, all the businesses rely on Post Office Place for the conduct of their day to day activities.*

Mr Hillyer reinforced the importance of maintaining access through Post Office Place when he stated that compliance with planning permit conditions regarding car-parking requirements for his business premises at 12 Derby Road is dependant on continued access.

Further, he believed that a history of road closures of roads that previously provided access to the rear of affected properties limiting access only via Dandenong Road fans fears that the Council is considering closure of his sole access. Consequently, he submitted that Post Office Place should be rezoned to Business 1 (now Commercial 1) and not for Educational use.

Mr Young also expressed opposition to a rezoning of the area to educational uses because in relation to Post Office Place:

*The inclusion of this access road in overlay of Public Use (Educational) (sic) without justification places in danger property owners existing right of access for both residential and commercial purposes.*

The Council submitted that placing Post Office Place in a Public Use zone does not jeopardise property owners' right of way access. As their submission stated:

*It must be clearly stated that rezoning of the laneway and the purchase of the laneway by Monash are two completely different processes. Development on or over the laneway cannot occur unless Monash is successful in the process of purchasing the laneway. Should Council (and ultimately the Minister) decide not to allow the rezoning of this laneway, Monash still has the ability to commence proceedings with Council to purchase the land? The zone of this piece of land is irrelevant to the potential purchase.*

*The purchase of the laneway is a process that will involve all affected parties (i.e. all property owners and occupiers who currently have right of access to the*

*laneway, as well as service providers). New rear access for these affected properties to a nearby road will need to be negotiated with Council and property owners. This may or may not be able to be achieved.*

Urbis' response, for the proponent, in relation to objector concerns about the rezoning of Post Office Place stated:

*The rezoning of Post Office Place does not change its access status, which would be subject to a further process. We note that there are existing right of way rights over this laneway to the land fronting Derby Road (the shops). Any future development by the University which would change or remove access from Post Office Place could not proceed unless an alternative and satisfactory access was provided to all relevant landowners with rights over Post Office Place.*

Mr Pitt highlighted that the relevant section of Post Office Place already exists within the Priority Development Zone and:

*Neither its existing zone or the proposed zoning alters the status of Post Office Place as a public highway vested in the Council.*

*The Proponent has acknowledged that any alteration to Post Office Place would require an alternative and satisfactory access to all affected landowners but ultimately the decision about any alteration to Post Office Place will be one for the Council as the relevant Road Authority and Planning Authority and the land comprised in the relevant Post Office Place cannot be sold by the Council unless the land proposed to be sold has first been discontinued as a road.*

*The opportunity to discontinue any part of Post Office Place is no more or less than it would be under the existing zoning (or Commercial 1 Zone, as Mr Pitt verbally added at the Hearing).*

### **6.3 Discussion**

The Panel supports the arguments as submitted by both the Council and the proponent, that placing the relevant portion of Post Office Place in a Public Use Zone (Education) does not increase the likelihood of a road closure that would deny property owners rights of access. The fact is that the laneway is already under the Priority Development Zone. Rezoning the laneway to the Public Use Zone does not affect property owners' rights to the access they currently have or indeed a negotiated alteration of access that is acceptable to them.

Due process exists within legislation to protect property owners' rights of access and this principle sits as central to Local Government's responsibilities.

### **6.4 Conclusion**

The Panel is satisfied that rezoning Post Office Place from the existing Priority Development Zone to the Public Use Zone (Education) does not jeopardise the existing or future rights of access to the rear of landowners' properties.

## **6.5 Finding**

The Panel finds that rezoning Post Office Place from the existing Priority Development Zone to the Public Use Zone (Education) does not jeopardise the existing or future rights of access to the rear of landowners' properties.

## 7 Public Use Zone 2

### 7.1 The Issue

Appropriateness of the use of the Public Use Zone 2 to replace the existing Priority Development Zone.

### 7.2 Evidence and submissions

Mr Young stated in his email to Council of 5 December 2013 that there was no information provided as to why the Priority Development Zone was not acceptable as *by its very nature (it) should be adequate for Urbis/Monash, who has taken 40 years to get to this stage.*

The Council submitted that part of the area is already used for University purposes and that the University intends to redevelop the Caulfield Plaza site for education purposes when a key lease expires in 2018.

*Therefore the rezoning of this land to Public Use Zone (Education) is considered acceptable and appropriate.*

The Council also points out that the Priority Development Zone will be removed from the Victorian Planning Provisions shortly.

### 7.3 Discussion and Conclusion

The Panel agrees that the Public Use Zone 2 (Education) is the appropriate zone for the future education and ancillary uses as planned by Monash University.

The Department of Transport, Planning and Local Infrastructure advises that the Priority Development Zone is to be deleted as a zone under a future State-wide amendment. Therefore, the existing zone will need to change.

The Panel considers that the Public Use Zone 2 (Education) is appropriate as it includes the purpose:

- To recognise public land use for public utility and community services and facilities; and
- To provide for associated uses that are consistent with the intent of the public land reservation or purpose.

The table of public land use lists Education as Public Use Zone 2.

### 7.4 Finding

The Panel finds that the Public Use Zone 2 (Education) is the most appropriate zone to replace the existing Priority Development Zone.

## 8 Impact on Derby Road shops

### 8.1 The Issue

Potential adverse impact of rezoning to the Public Use Zone (Education) on the Derby Road shops within the Caulfield East commercial precinct.

### 8.2 Evidence and submissions

The objecting submission from Mr Young expressed several interconnected concerns, primarily contending that it would threaten the economic viability of the Derby Road commercial area because of unspecified future educational uses of Derby Road properties; the closure of Caulfield Plaza as a major attractor within the commercial precinct; and the potential closure of the pedestrian link between Derby Road and the existing Caulfield Plaza. To this extent, he argues that the Amendment lacks strategic justification as:

*....this MAJOR REZONING OF A COMMERCIAL AREA at present fully utilised by commercial/community ratepayers provides ABSOLUTELY NO DETAIL OF JUSTIFICATION for this substantial change to the long-term planning prospects for Caulfield East (Submitter's emphasis).*

The Council submitted that strategic justification for the rezoning is adequately made in the Planning Report prepared by Urbis for Monash University in that:

*Monash own the land, they want to develop it for education and related purposes and the most appropriate zone for this type of development is the Public Use Zone 2.*

The Council addressed the threat to the future economic viability of the Derby Road commercial precinct in its submission by highlighting that there has been long history of change and redevelopment in this area and the loss of Caulfield Plaza may well be offset by the significant increase in the student population which would have a positive effect on Derby Road. The Monash University Masterplan envisages ancillary retail and commercial uses in Derby Road.

In Urbis' written response to the objections, they stated that:

*The intent of the University Masterplan is to utilise these (Derby Road frontage) buildings for uses that are complementary to the Derby Road commercial area including retail, food and beverage and other compatible uses.*

Mr Pitt reinforced the potential positive impact of an expanding university presence when he stated in submissions:

*The University is a major attractor and generator of people and economic activity in not only this area but within the municipality generally.*

He pointed out that the Incorporated Plan under the existing Priority Development Zone that covers the subject site, including Post Office Place, already allows for substantial building heights ranging from 17 metres on the south east corner of Derby Road and Dandenong Road and up to 34 metres on the east side of Post Office Place behind the privately owned properties fronting Derby Road.

The potential closure of the pedestrian walkway linking Derby Road and the existing Caulfield Plaza, and future expanded University, was a related issue raised as posing a threat to the commercial precinct.

Mr Pitt advised in submissions:

*The walkway linking Derby Road to Post Office Place is land owned by the University and its future use as a walkway is unaffected by the Amendment.*

The Executive Summary of the Caulfield Campus Masterplan 2011 – 2030 (Document 7) shows the retention of the pedestrian walkway from Derby Road into a series of public space within the redeveloped University campus. The Masterplan more broadly commits to strengthening relationships under its theme of Urban Village:

*Monash University will seek and sustain mutually beneficial relationships between users of the campus and the surrounding community, both city-wide and at Caulfield. Opportunities will be created to strengthen connections and build sustainable partnerships.*

For the Council's part, they submitted that they have no knowledge that Monash University is proposing to remove or develop the walkway. They also state in their submission:

*.... regardless of which zone this land is located in (Priority Development, Commercial 1 or Public Use Zone), Council cannot prevent Monash from applying to build upon this vacant space if they decide to do so. Therefore, concern over the potential future closure of the pedestrian link is not a valid reason to disallow the rezoning of the subject site.*

### 8.3 Discussion

The Panel notes that the subject site is already zoned Priority Development Zone with the Incorporated Plan providing for substantial increases in building height over the existing built form, which demonstrates an intensification of on-site uses. The University Masterplan for the site that would replace the Incorporated Plan, albeit not within the Planning Scheme, maintains the substantial increase in building heights over what currently exists. The objective of the University is to eventually have a student population of 15,000 effective student load (ESL) in excess of the existing 10,000 (ESL) on the Caulfield Campus, and that much of the new development is to occur within the western precinct. The Masterplan provides for an increase in total floor area from 90,000 sqm to 168,000 sqm and allows for 800 student beds on, and adjacent to, the campus. The proponent plans uses for Derby Road frontage buildings that are complementary to the Derby Road commercial area including retail, food and beverage and other compatible uses. The planned increases in intensity of use of the campus site and the intended complementary uses of Derby Road frontages strongly indicates opportunities for improved economic activity in the area. The extent that realisation of the Masterplan would offset or even surpass the economic activity generated from Caulfield Plaza, is not quantified but, at a minimum, indications are that a redevelopment of the area would provide a significant economic stimulus for the area. However, this issue relating to the closure of Caulfield Plaza is largely a moot point as the existing Priority Development Zone already provides for the redevelopment of Caulfield Plaza.

The Panel is also satisfied that the retention of the walkway connecting Derby Road to a future redeveloped Caulfield campus, as a contributor to the economic vitality of the Derby Road commercial precinct, is envisaged by the University's Masterplan. It is not the role of this Panel to specifically address the future function of this walkway but notes the commentary earlier in this report regarding retention of public roads, which may have bearing on any future action to close what has been a public walkway.

#### **8.4 Conclusion**

The Panel finds that the Amendment that rezones the subject site from the existing Priority Development Zone to the Public Use Zone (Education) does not adversely affect the economic viability of the Derby Road commercial precinct. The University Masterplan includes provision for the retention of the walkway linking Derby Road and the future redeveloped campus to the east.

#### **8.5 Finding**

The Panel finds that rezoning the subject site from the existing Priority Development Zone to the Public Use Zone (Education) does not adversely affect the economic viability of the Derby Road commercial precinct.

## 9 Other Issues

### 9.1 The Issue

Sundry issues raised by objectors include the loss of Council revenue that would result from the rezoning to Public Use (Education); perceived loss of the heritage overlay for some Derby Road properties; urban design issues associated with development of the University campus; and a lack of planned streetscape improvements to Derby Road.

### 9.2 Evidence and submissions

Mr Young raised a number of issues in his letter of objection to the Amendment in addition to the substantive issues discussed in the sections above. These issues include:

- Monash University development displacing commercial activities will decrease rate revenue from this site and so increase the rates burden on other ratepayers in the city;
- His letter of objection refers to the Heritage Overlay *abandoned for this rezoning*, and therefore decreasing *the protection of community interests*;
- A perception that property owned by Monash University will be developed in isolation from the rest of the properties on the east side of Derby Road and that Monash development will be *inward facing ghetto style*; and
- The rezoning of Derby Road properties should include proposals for a coordinated streetscape renewal.

The Council's responses to these issues are, respectively:

- Council will be most affected by any loss of rate revenue and this has not been raised as an issue within Council;
- The Heritage Overlay will be maintained for all properties in Derby Road, including those owned by Monash University;
- That the development by Monash University would be inward facing, they state:

*The Heritage Overlay along Derby Road will ensure that Council retains control over development occurring along this boundary. When heritage buildings are involved in a development, it is frequently considered beneficial for taller buildings to be set behind the important facades and to be 'bland' in terms of colours and materials so that the heritage building stands out as the most significant building in the streetscape (with other buildings blending into the background).*

*Council would obviously prefer that other buildings within the subject area (particularly any new building proposed along Sir John Monash Drive or Dandenong Road) be of a high urban design standard and include active frontages, however this is not considered reason enough to restrict Monash University in their pursuit of a planning zone that is appropriate to their future development and will facilitate timely development as funding for different buildings becomes available.*

- In their written submission, the Council noted that the relevant Clause 22.01 – Phoenix Precinct Policy of the Glen Eira Planning Scheme is based on an urban design framework

and that preferred uses for sites facing Derby Road are in accordance with the Derby Road Action Plan 1998 but that the *Council is looking to review this policy in 2014*.

Additionally, Council advised that traffic and parking issues within Post Office Place were raised during a planning conference in early December 2013 to resolve matters in relation to this amendment but state that:

*While this issue is very relevant to owners of properties with access to Post Office Place, it is not an issue in relation to this amendment.*

The Urbis letter of 5 December 2013, on behalf of the proponent, confirms that the Heritage Overlay is retained under this Amendment for those properties in Derby Road currently covered and, further, that the University *Masterplan makes it clear that future development would engage with the Derby Road frontage*.

In relation to concerns over the threat of an inward looking University development, Urbis reiterate the University's intention as expressed in the Masterplan:

*Monash University will seek and sustain mutually beneficial relationships between users of the campus and the surrounding community, both city-wide and at Caulfield. Opportunities will be created to strengthen connections and build sustainable partnerships.*

Mr Pitt stated in submissions in relation to the built form that:

*In light of the existing provisions and bearing in mind the HO (Heritage Overlay) it is submitted that the proposed rezoning is unlikely to make any significant difference to the scale of buildings facilitated by the Amendment proximate to the objecting submitters' premises.*

### 9.3 Discussion

Issues raised by objecting submitters regarding the loss of Council revenue that would result from the rezoning to Public Use (Education); perceived loss of heritage overlay for some Derby Road properties; urban design issues associated with development of the University campus; and a lack of planned streetscape improvements to Derby Road, are all addressed adequately by the Council and the proponent insofar as they are relevant to this Amendment.

The retention of the Heritage Overlay on properties in Derby Road currently covered and the principles of redevelopment as expressed by the University indicate their clear intentions both to respect the urban design interface with the Derby Road commercial precinct and further develop complementary uses in Derby Road that support the area's commercial character.

How the Council plans for and manages its city-wide rates base, taking into account the economic multiplier effects of uses such as the presence of a major University campus, is a matter for Council. In the Panel's view, intensified University use of the subject site will create a net community benefit for the immediate area, city-wide and indeed State-wide.

Lastly, the issue of streetscape improvements in Derby Road is beyond the scope of this Amendment but the Panel notes the Council's intention to review the urban design framework and assumes that the streetscape will form part of that review.

#### **9.4 Conclusion**

The Panel is satisfied that the various additional matters raised by objectors, as they are relevant to this Amendment, are adequately provided for.

#### **9.5 Finding**

The Panel finds that rezoning issues relating to Council rate revenue, heritage, urban design and streetscape improvements, as they are relevant to the Amendment, are adequately dealt with.

## 10 Uncontested elements of the Amendment

### 10.1 The Issue

The Amendment provides for several matters, procedural and consequential in nature, that were uncontested by parties:

- Rezone the two small parcels of land within Derby Road from Priority Development Zone (PDZ) to Commercial 1 Zone (C1Z) (which is the zone over the remainder of Derby Road). This is required to remove all areas of PDZ zoning from the area;
- Amend the Schedule to Clause 61.03 to remove map 2RXO from the planning scheme;
- Delete reference to the 'Monash University Caulfield Campus - Western Precinct Development – Incorporated Plan dated 17 July 2006' from the Schedule to Clause 81.01 of the Glen Eira Planning Scheme;
- Delete the Road Closure Overlay (RXO) from Princes Avenue as this Avenue ceased to be a public road on 23 November 2007; and
- Apply an Environmental Audit Overlay (EAO) across the site.

### 10.2 Discussion and conclusions

The Panel accepts that procedural and consequential matters supporting the key Amendment objectives of rezoning the predominant Priority Development Zone to Public Use Zone (Education), deletion of a Road Closure Overlay and the application of an Environmental Audit Overlay (EAO) across the site.

The Amendment proposes the removal of or changes to existing schedules and maps in the Planning Scheme to keep the Scheme current.

The deletion of the road closure overlay covering the former Princes Avenue is required as the road was sold to Monash University and ceased being a public road in late 2007.

The Council advised in relation to the Environmental Overlay:

*The application of the Environmental Audit Overlay (EAO) will ensure land is appropriate for any future sensitive land uses. The Environmental Site Assessment prepared by Coffey Environments Australia Pty Ltd noted several high risk activities that have previously been located on the site. Therefore it is considered appropriate that an Environmental Audit Overlay be applied to the site.*

As noted, these matters were uncontested and should be supported.

## Appendix A List of Submitters

No.	Submitter
1	Urbis for Monash University
2	Mr Trevor Hillyer, Beytron Pty Ltd
3	Mr Bruce Young
4	EPA Victoria
5	South East Water
6	Melbourne Water

## Appendix B Document List

Document Number	Date	Description	Presented by
1	19/2/2014	Submission by Glen Eira City Council	Ms Jacqui Brasher
2	19/2/2014	Existing zoning map, aerial photos and map showing objectors' premises	"
3	19/2/2014	Marked up map of zoning plan as proposed by Council in Hearing submission	"
4	19/2/2014	Submission on behalf of Monash University	Mr Ian Pitt, SC
5	19/2/2014	Excerpt from Road Management Act 2004	"
6	19/2/2014	Decision of Supreme Court of Victoria. Calabro v Bayside City Council [1999] VSC509	"
7	19/2/2014	Executive Summary, Caulfield Campus Masterplan 2011 - 2030	"
8	19/2/2014	Incorporated Plan, Monash University Caulfield Campus, Western Precinct Development, July 2006	"
9	19/2/2014	Series of photographs, Post Office Place	Mr Trevor Hillyer