

Planning and Environment Act 1987

Panel Report

Melton Planning Scheme Amendment C201

**Mt Atkinson & Tarneit Plains Infrastructure Contributions
Plan**

7 August 2019

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Melton Planning Scheme Amendment C201

Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan

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A handwritten signature in blue ink, appearing to read 'Sarah Carlisle'.

Sarah Carlisle, Chair

A handwritten signature in blue ink, appearing to read 'Michael Ballock'.

Michael Ballock, Member

A handwritten signature in black ink, appearing to read 'John Hartigan'.

John Hartigan, Member

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
BR-[number]	Bridge project [number] described in the Mt Atkinson & Tarneit Plains ICP
Cardno Mt Atkinson report	Report titled <i>Benchmark Infrastructure Costing – Result Application Mt Atkinson & Tarneit</i> , Cardno, 12 April 2019
Council	Melton City Council

ICO	Infrastructure Contributions Overlay
ICO3	Schedule 3 to the Infrastructure Contributions Overlay
ICP	Infrastructure Contributions Plan
interim ICP	Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan, July 2018
IT-[number]	Intersection project [number] described in the Mt Atkinson & Tarneit Plains ICP
Ministerial Direction	<i>Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans</i> , 1 July 2018
NDHa	Net Development Hectare
PS-[number]	Pedestrian signalisation project [number] described in the Mt Atkinson & Tarneit Plains ICP
RD-[number]	Road project [number] described in the Mt Atkinson & Tarneit Plains ICP
VPA	Victorian Planning Authority

Overview

Amendment summary

The Amendment	Melton Planning Scheme Amendment C201
Common name	Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan
Brief description	Incorporation of an Infrastructure Contributions Plan and associated Schedule 3 to the Infrastructure Contributions Overlay to impose standard and supplementary levies for infrastructure contributions
Subject land	All land included within the Mt Atkinson & Tarneit Plains Precinct Structure Plan
The Proponent and Planning Authority	Victorian Planning Authority
Exhibition	13 August to 14 September 2018 Further notification from 15 April to 10 May 2019, and from 3 June to 17 June 2019
Submissions	<ol style="list-style-type: none"> 1. Mt Atkinson Holdings 2. Melton City Council 3. Transport for Victoria 4. 50 Meskos Road, Rockbank (Meskos) (referred following further notification)

Panel process

The Panel	Sarah Carlisle, Chair John Hartigan, Member Michael Ballock, Member
Directions Hearings	Planning Panels Victoria, 14 December 2018, 15 and 22 March 2019 and 14 May 2019
Panel Hearing	Planning Panels Victoria, 1, 2 and 4 July 2019
Site inspections	Not required

Appearances

VPA - Carly Robertson of Counsel, instructed by Rory O'Connor and Gemma Hallett, Hall & Wilcox with Elizabeth McIntosh, VPA. Ms Robertson called evidence from Stephen Howe of Cardno on the benchmark costings project, functional layout and infrastructure costings

Melton City Council – Greg Tobin of Harwood Andrews, who tabled evidence from Sian McKenna of WT Partnership in relation to infrastructure costings

Mt Atkinson Holdings – Jennifer Trehwella of Counsel, instructed by Gemma Robinson of Rigby Cook

Meskos - Edward Mahoney of Best Hooper, who tabled evidence from Anthony Grodzki of Urban Design and Management in relation to costings for IT-01

Citation Melton PSA C201 [2019] PPV

Date of this Report 7 August 2019

Executive summary

(i) Summary

Melton Planning Scheme Amendment C201 (the Amendment) applies to land in the Mt Atkinson & Tarneit Plains Precinct Structure Plan (PSP) area. It seeks to incorporate the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan (ICP) into the Melton Planning Scheme, and to revise Schedule 3 to the Infrastructure Contributions Overlay (ICO3) to specify (among other things) a new supplementary levy rate applicable to development in the PSP area.

Along with the Donnybrook-Woodstock ICP, the Mt Atkinson & Tarneit Plains ICP is the first growth area ICP prepared by the Victorian Planning Authority (VPA) using benchmark costs to inform costings for certain infrastructure items.

Key issues raised in submissions included:

- discrepancy between the benchmark and bespoke costings on which the ICP is based and various submitter cost estimates, and the impact these cost differences have on the adequacy of the levies
- whether whole projects should be funded from a supplementary levy, or whether the supplementary levy should only be used to fund the particular line items that meet the criteria for a supplementary levy
- sufficiency of the standard capped community and recreation levy
- whether credits for works in kind should be based on project costs as set out in the ICP, or whether they should be negotiated between developers and the Collecting and Development Agencies at the time a works in kind agreement is entered into
- consistency issues between the PSP and the ICP, including in relation to project scope, design and staging (timing), and consistency of terminology with the Ministerial Direction
- whether public land can be used for indoor recreation facilities
- the method for how land obligations will be met.

Some of the issues raised in submissions are beyond the scope of the Amendment, and are more systemic in nature. The Panel has made no formal recommendations in relation to these issues, but has included some commentary in Chapters 5.3 and 7 which it hopes will be of assistance to the VPA.

The Panel concludes that the Amendment is strategically justified and should be supported, subject to the recommendations in this report. The Planning Policy Framework expressly encourages the preparation of ICPs, particularly in growth areas, to ensure planned infrastructure is delivered and funded with certainty, efficiency and timeliness.

Many of the issues raised in original submissions were resolved by the time the Hearing commenced. In particular, primarily through the expert witness conclave process, the parties reached agreement in relation to project design and costings for all the infrastructure projects listed in the ICP. The Panel acknowledges the efforts of the parties and their experts in continuing to seek resolution of these issues.

That said, the Panel has concerns in relation to the VPA's process in preparing the Amendment, and progressing the Amendment leading up to the Hearing. The VPA recommended three rounds of significant changes to the ICP well after the Amendment came off exhibition. These resulted in significant increases in the amount of the supplementary levy, from \$2,797/NDHa (as exhibited) to \$18,514/NDHa (the VPA's final recommended figure) – an increase of more than 600 per cent. The benchmark costings were simply not ready when the Amendment was prepared. The design (and therefore the costings) for some projects were still not finalised by the time the Amendment went on exhibition, and the VPA made several errors in calculating the costs of road and intersection projects. These errors should have been picked up much earlier in the process, preferably before exhibition.

Benchmark costings

The Panel broadly supports the principle of using benchmark costs to guide ICP cost estimations. This should theoretically result in a greater degree of consistency and transparency in the design and costing of projects that are able to be based on standard template functional layouts. That said, bespoke designs and/or costings will often be needed, due to the variation in topography, geology, physical constraints and the like across Melbourne's growth areas, or particular design requirements for particular projects.

The benchmark costings used to inform the Mt Atkinson & Tarneit Plains ICP (and the Donnybrook-Woodstock ICP) are contained in a report titled Benchmark Infrastructure Report, April 2019, prepared by Cardno for the VPA. The Panel makes no findings in relation to the suitability of the methodology or outcomes in the Benchmark Infrastructure Report. Similarly, it does not make any findings as to whether the Benchmark Infrastructure Report represents a suitable basis to apply benchmark costs in future ICPs.

Line items (rather than whole projects) as supplementary items

The Panel does not support the VPA's recommended approach of separating out line items in a particular project for a supplementary levy. This is not consistent with the Act or the Ministerial Direction which, in the Panel's view, support a 'whole of project' approach rather than a line item approach. If the particular line item arises from topographical, geographical, environmental or other physical constraints or conditions that significantly affect the estimated cost of the project as a whole, then to the extent that there are insufficient funds in the standard levy to cover the cost of the project, the whole project qualifies for a supplementary levy, not just the line item.

Works in kind credits

Works in kind credits should be negotiated between the developer and the Collecting and Development Agencies. They should not be fixed at the cost estimate specified in the ICP. The ICP will remain in place over a long period. Construction costs will inevitably vary over this period, and flexibility should be maintained. Fixing the costs now, based on estimates, will potentially reduce the willingness of Collecting and Development Agencies to accept works in kind (or indeed developers' willingness to offer works in kind), which could result in the loss of the shared benefit of early delivery of the infrastructure.

The sufficiency of the community and recreation levy

Although this issue is beyond the Panel's remit, it appears to the Panel that the capped community and recreation levy may lead to substantial shortfalls in the actual costs of delivering important community and recreation infrastructure in new communities. This is based on the amount of the levy likely to be collected in both this ICP and the Plumpton Kororoit ICP, and the cost estimates of delivering the community and recreation infrastructure listed in both those ICPs. The Panel urges the VPA to continue to work with DELWP and the Growth Area Councils to address this systemic issue.

Consistency between the PSP, the ICP and the Ministerial Direction

Given the PSP provides the strategic justification for the ICP, there should be as much consistency as possible between the two. The terminology in ICPs and PSPs should be consistent with the Ministerial Direction. That said, the Panel acknowledges that inconsistencies may arise when PSPs and ICPs are prepared in stages.

Council picked up a number of inconsistencies between the exhibited ICP and the approved PSP, which were largely corrected in the various iterations of the ICP presented by the VPA. Some remaining inconsistencies should also be corrected. The VPA proposes to deal with inconsistencies between the terminology used in the PSP and the Ministerial Direction through a separate section 20(4) amendment to the PSP at the time the Amendment is submitted to the Minister for approval. The Panel agrees that this is an appropriate means of dealing with the inconsistencies.

Other matters

The Panel supports the VPA's proposed approach to:

- updating cost estimates to reflect the agreed position reached between experts and reflected in the July 2019 version of the ICP
- including reference in the ICP to an exemption from the relevant restrictions in the Ministerial Direction effectively preventing use of public land for indoor recreation facilities
- apply the 2019-2020 indexed rates when adopting the Amendment
- including information in relation to road lengths in Appendix 3 of the ICP.

Matters relating to land credit and land equalisation amounts are beyond the scope of the Panel's remit, and it makes no comments on those matters.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends:

- 1. Adopt Amendment C201 to the Melton Planning Scheme as exhibited, with the following changes:**
 - a) Substitute the exhibited Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan, August 2018 with the July 2019 version tabled by the Victorian Planning Authority on the final day of the Hearing (Document 114), after making the changes and corrections referred to in other recommendations in this Report.**

- b) **Substitute the exhibited version of the Infrastructure Contributions Overlay Schedule 3 with the version tabled by the Victorian Planning Authority on the final day of the Hearing (Document 116A), after:**
 - **changing the date of the Infrastructure Contributions Plan from June 2019 to July 2019**
 - **making the changes referred to in other recommendations in this Report.**
 - c) **Update the Schedule to Clause 72.04 to refer to the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019.**
- 2. **If the demolition of the existing pavement and construction of the slab to protect the high pressure gas pipeline significantly add to the cost of Intersections IT-01, IT-02, IT-03, IT-04, IT-15 and IT-16, then:**
 - a) **amend the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019 (Document 114) to allocate the whole of those projects to the supplementary levy (to the extent that there are insufficient funds in the standard levy)**
 - b) **amend the supplementary levy amount in the Infrastructure Contributions Overlay Schedule 3 (Document 116A) accordingly.**
- 3. **Delete the last dot point in section 5.10 of the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019 (Document 114).**
- 4. **Make the following changes to the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019 (Document 114):**
 - a) **Change the net developable area for property R5 in Table 17 to 3.56 hectares.**
 - b) **In the Project Title and Description of CI-01 in Table 8, replace the word “Specialised” with “Major”.**
 - c) **In the Project Title and Description of CI-02 in Table 7, add the word “Atkinson” between “Mt” and “Major”.**
 - d) **In section 5.3, change the reference to Table 11 to Table 15.**
- 5. **Change the final clause before the heading ‘4.1 Inner and Outer Public Purpose Land’ on page 23 of the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019 (Document 114) as follows:**
 - a) **after the words “Annexure 1” in the second line, add the words “of the Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans and Ministerial Reporting Requirements for Infrastructure Contributions Plans dated 1 July 2018”.**
- 6. **Update the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019 (Document 114) and the Infrastructure Contributions Overlay Schedule 3 (Document 116A) to reflect the 2019-2020 indexed standard and supplementary levy rates published in July 2018.**

1 Introduction

1.1 The Amendment

(i) Amendment description

As exhibited, the Amendment proposes to:

- remove the *Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan*, July 2018 (the interim ICP) from the Melton Planning Scheme, and incorporate an updated ICP dated August 2018
- amend Schedule 3 to Clause 45.11 Infrastructure Contributions Overlay (ICO3) to:
 - increase the supplementary levy rate for transport construction from \$600/NDHa to \$2,797/NDHa
 - insert land credit amounts and land equalisation amounts into the Schedule.

The Victorian Planning Authority (VPA) prepared the Amendment and the ICP, and is the planning authority for the Amendment.

The VPA recommended a number of iterative changes to the ICP and ICO3 in the leadup to, and at, the Hearing. In the final (July 2019) version of the ICP and ICO3 presented by the VPA at the Hearing, the VPA recommended increasing the supplementary levy to \$18,514/NDHa.

(ii) The subject land

The Amendment applies to all land within the Mt Atkinson & Tarneit Plains Precinct Structure Plan (PSP) area, as shown in Figure 1.



Figure 1 The affected land

Source: Melton C201 Explanatory Report

(iii) The infrastructure projects

The exhibited ICP lists a number of infrastructure projects in Appendix 3:

- 12 road projects (RD-01 to RD-12)
- 16 intersection projects (IT-01 to IT-16)
- two pedestrian crossings (PS-01 to PS-02)
- three bridges (BR-10 to BR-03)
- one culvert (CU-01)
- three community building projects (CI-02, CI-03 and CI-04 – there is no CI-01)
- three sport and recreation projects (OS-01, OS-02 and OS-03).

The strategic justification or need for the projects was not before the Panel, having been resolved through the PSP process and Amendment C162 which introduced the Mt Atkinson & Tarneit Plains PSP into the Melton Planning Scheme.

(iv) The levies

The ICP specifies a standard levy and a supplementary levy.

The maximum standard levy rates are set by the *Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans* dated 1 July 2018 (the Ministerial Direction). The ICP adopts the maximum standard levy rates for both transport construction and community and recreation construction. They are set out in Table 1. These rates are indexed annually under the Ministerial Direction.

Table 1 Standard levy rates in the ICP (per NDHa)

Development class	Community and recreation	Transport	Total
Residential	\$86,627	\$114,062	\$200,689
Commercial and industrial	\$0	\$114,062	\$114,062

The VPA recommended several changes to the supplementary levy rate in the leadup to the Hearing, described in Table 2. The circumstances leading to the recommended changes are described in Chapter 1.2.

Table 2 VPA's recommended supplementary levy rate (per NDHa)

Current levy (interim ICP)	Exhibited levy	April changes	May changes	June changes
\$600.83	\$2,797	\$10,743.48	\$15,940	\$18,514

(v) The Benchmark Infrastructure Report

In a separate but related piece of work, the VPA engaged Cardno to undertake the benchmark costings project, to develop template functional layouts and standard costings for basic and essential infrastructure to be provided pursuant to growth area PSPs and ICPs. The template functional layouts and benchmark costs are contained in a report by Cardno titled *Benchmark Infrastructure Report*. Some (but not all) of the projects in the Mt Atkinson & Tarneit Plains

ICP are informed by the template functional layouts and benchmark costings contained in the Benchmark Infrastructure Report.

Cardno produced three versions of the Benchmark Infrastructure Report that the Panel is aware of:

- the original version July 2018, on which the exhibited Amendment and the August 2018 ICP were based
- an updated version dated 1 March 2019
- a further updated version dated 11 April 2019.

In this Panel report, references to the Benchmark Infrastructure Report are references to the 11 April 2019 version, unless otherwise specified.

The benchmark costings project is discussed in more detail in Chapter 3.

(vi) **Benchmark, hybrid and bespoke projects**

The projects to be funded under the ICP fall into three categories – ‘benchmark’, ‘hybrid’ and ‘bespoke’. Benchmark and hybrid projects are informed by the benchmark costings. Table 3 describes these categories in more detail, and which category applies to each project (as exhibited).

Table 3 Project categories (benchmark, hybrid and bespoke)

Category	Description	Projects
Benchmark projects	<ul style="list-style-type: none"> - Standard design based on template functional layouts - Standard quantities extracted from the applicable template functional layout - Standard costs estimated by applying the benchmark rates to the standard quantities 	<ul style="list-style-type: none"> - All road projects (RD-01 to RD-12) - All community facilities (CI-02 to CI-04) - All sport and recreation facilities (OS-01 to OS-03)
Hybrid projects	<ul style="list-style-type: none"> - Bespoke design - Quantities extracted from the bespoke design - Costs estimated by applying the standard benchmark rates to the quantities extracted from the bespoke design 	<ul style="list-style-type: none"> - All intersection projects (IT-01 to IT-16)*
Bespoke projects	<ul style="list-style-type: none"> - Bespoke design - Costs estimated on the basis of the bespoke design 	<ul style="list-style-type: none"> - All bridge projects (BR-01 to BR-03) - Culvert (CU-01)

* In the exhibited Amendment, all intersections were hybrid projects. They had bespoke designs which were developed as part of the PSP process, but were costed on the basis of the benchmark rates. However, by the Hearing the VPA had recommended that all intersection projects be bespoke.

Figure 2 summarises the VPA's methodology for categorising projects as benchmark, hybrid or bespoke.

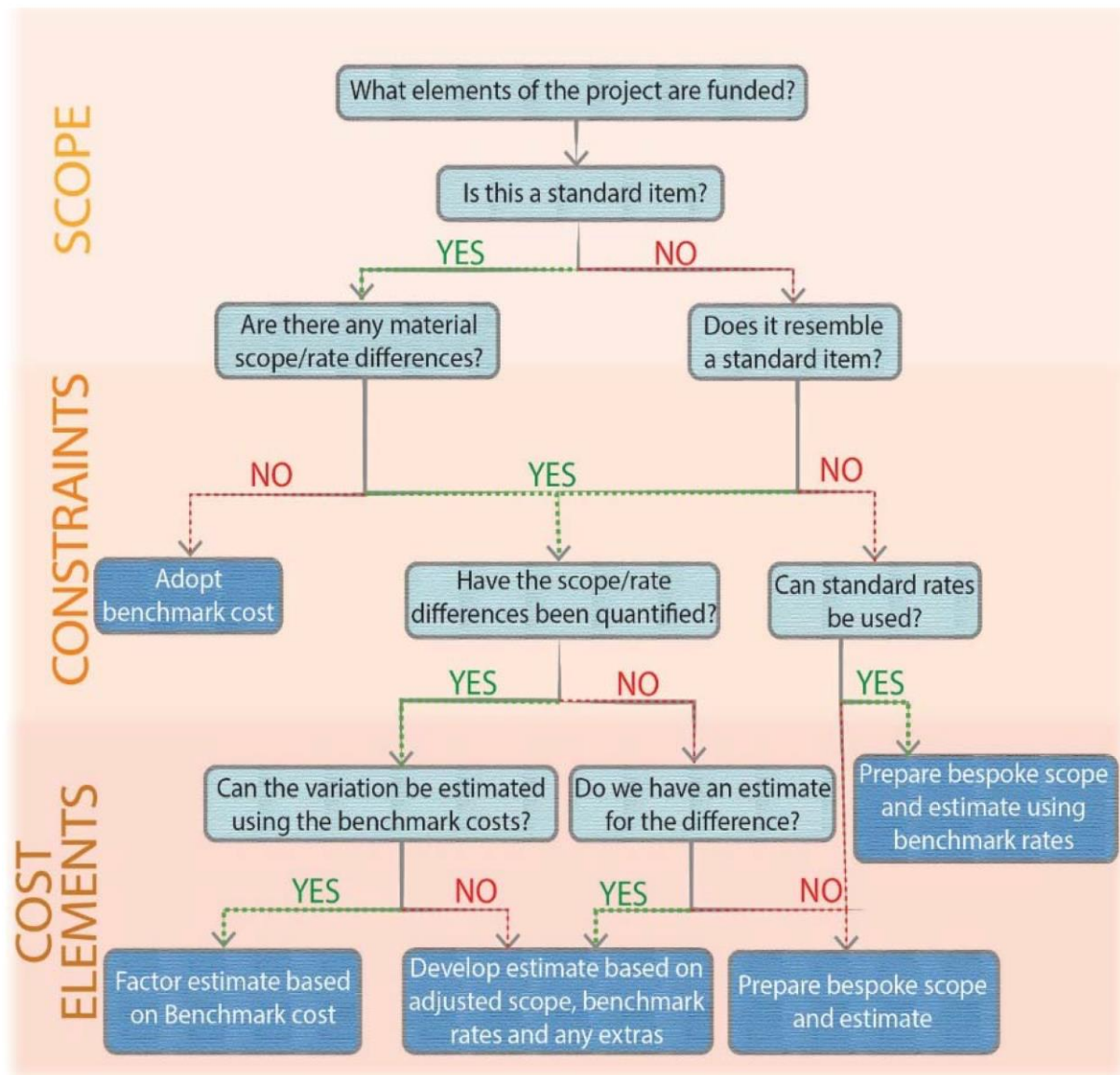


Figure 2 VPA's methodology for categorising projects as benchmark, hybrid or bespoke

1.2 Background

(i) The PSP and original ICP

The Mt Atkinson & Tarneit Plains PSP was introduced into the Melton Planning Scheme by Amendment C162, which was gazetted and came into effect on 12 September 2017. On the same day, Amendment C183 was gazetted and introduced the *Mt Atkinson & Tarneit Plains Metropolitan Greenfield Growth Area Standard Levy Infrastructure Contributions Plan*, July 2017 (the original ICP).

(ii) The public land contribution system and the interim ICP

The ICP system has undergone substantial reform over the last 12 to 18 months, with the introduction of the *Planning and Environment Amendment (Public Land Contributions) Act 2018* on 2 July 2018. This Act introduced a new land contribution model for the provision of infrastructure through ICPs. Land is now directly acquired from landowners, rather than being funded through levies collected under an ICP. Land contributions are valued and apportioned among landowners through a land credit amount, and a land equalisation amount.

With the introduction of the land contribution system, changes were made to ICO schedules. Schedules are now required to specify land credit amounts and land equalisation amounts. Matters related to land credit amounts and land equalisation amounts are beyond the Panel's remit.

When the land contribution system came into operation in July 2018, the original ICP needed to be replaced with an ICP that met the requirements of the new legislation. An interim ICP dated July 2018 was introduced, which applies the current supplementary levy of \$600.83. The interim ICP was put in place to allow permits to continue to be issued and some contributions to be collected while the final ICP was being developed.

(iii) Preparation and exhibition of the Amendment

The final Mt Atkinson & Tarneit Plains ICP is one of the first ICPs to use benchmark costings. The other is the Donnybrook-Woodstock ICP, which is proposed to be implemented by Amendment GC102 to the Whittlesea and Mitchell Planning Schemes. Amendment C201 and Amendment GC102 were exhibited together in August and September 2019. The VPA received three submissions in response to Amendment C201, and six submissions in response to Amendment GC102.

Two panels were appointed in November 2018 to consider submissions on each Amendment. At the VPA's request, the same members were appointed to both panels, and the Hearings were initially scheduled to run concurrently given a number of common issues raised in submissions (largely arising from the use of benchmark costs).

(iv) Revised benchmark costings

Exhibited Amendments C201 and GC102 were based on the July 2018 version of the Benchmark Infrastructure Report.

At around the same time as the Amendments were exhibited, the VPA undertook stakeholder consultation in relation to the Benchmark Infrastructure Report. Cardno considered the feedback received through that consultation, as well as the submissions on the Amendments, and produced revised versions of the Benchmark Infrastructure Report dated 1 March 2019 and 11 April 2019. The changes are explained in two Cardno reports:

- *Stakeholder Comments Review, Benchmark Infrastructure Costings Project*, 12 December 2018¹
- *Benchmark Infrastructure Costings – Result Application Mt Atkinson & Tarneit*, 12 April 2019 (the Cardo Mt Atkinson report).²

The Panel notes that the Cardo Mt Atkinson report is confusingly titled, as it relates ‘non-standard’ infrastructure items (ie hybrid or bespoke projects) in the Mt Atkinson & Tarneit Plains ICP, not the benchmark projects which are based on the standard template layouts and benchmark costs contained in the Benchmark Infrastructure Report.

(v) The first three Directions Hearings

The Panel conducted the first of four Directions Hearings on 12 December 2018. The VPA indicated at the first Directions Hearing that it was expecting revised benchmark costings following the conclusion of the stakeholder consultation process on the benchmark costings.

The Panel directed the VPA to circulate the revised benchmark costings by 1 March 2019, with a Part A (Part 1) submission. The Part A (Part 1) submission attached the 1 March 2019 version of the Benchmark Infrastructure Report.³

The Panel conducted a second Directions Hearing on 15 March 2019, to discuss the implications of revised benchmark costings for the exhibited ICPs and Amendments. The VPA indicated that it would be recommending a significant increase in the amount of the supplementary levy for Mt Atkinson & Tarneit Plains, from \$2,797/NDHa (exhibited) to \$10,740/NDHa.

The VPA had not resolved its position on whether further notice should be provided in relation to these proposed changes. The Panel convened a third Directions Hearing on 22 March 2019 to discuss notice, following which it directed the VPA to provide further notice of the revised ICP and revised ICO3 to all landowners and potentially affected parties.

(vi) The April changes

Pursuant to the Panel’s directions, the VPA conducted further notification between 15 April and 10 May 2019. The renotification package included:

- a covering letter⁴
- a document prepared by the VPA which provided a summary of the changes⁵
- a revised ICP⁶ (changes were not tracked against the exhibited version)
- a revised ICO3⁷ (this was tracked, but against the current (interim) ICO3 rather than the exhibited ICO3)

¹ A copy of this report was attached to Mr Howe’s costings evidence, Document 79

² Document 47

³ Document 7

⁴ Document 42

⁵ Document 43

⁶ Document 47

⁷ Document 49

- a further revision of the Benchmark Infrastructure Report dated 11 April 2019⁸
- the Cardno Mt Atkinson report.⁹

These are collectively referred to as the April changes.

The April changes went considerably beyond those arising from the revised benchmark costs circulated on 1 March 2019. They included:

- further revised benchmark costs contained in the 11 April version of the Benchmark Infrastructure Report, resulting in changes to costs for the benchmark projects:
 - the costs of all road projects increased by between \$309,000 and \$1,225,000
 - the costs of all community building projects increased by \$1,210,000 per project
 - the costs of sport and recreation projects reduced by between \$670,000 and \$2,657,000
- re-categorisation of all intersection projects from ‘hybrid’ to ‘bespoke’, with revised costings for each intersection (costs for the intersection projects changed significantly, with cost savings of up to \$1,115,000 on some projects and costs increases of up to \$2,626,000 on others)
- changes to the design and costings for BR-02, resulting in a cost reduction of \$945,000
- changes to the costings for BR-03 (despite no design changes), increasing the costs by \$67,000
- changes to the costings for CU-01, reducing the costs by \$1,320,000
- multiple changes to the land credit and land equalisation amounts in the ICO3 (notwithstanding that landowners are not able to make submissions, and the Panel is not able to consider, submissions on these matters)
- formatting changes to the ICP “to improve clarity”.

The VPA did not foreshadow any of these further changes at either the second or the third Directions Hearings, other than passing verbal references to updating land calculations and ongoing work on the costings including in relation to BR-01 and a culvert. The inclusion of this additional material in the April notification package, without a clear explanation or advance warning being provided at the Directions Hearing, caused confusion and frustration for both the parties and the Panel.

In the Panel’s view, the notification package failed to clearly explain the April changes, or the reasons for those changes. The Cardno Mt Atkinson report did not greatly aid in understanding the changes, as it used different terminology to that used by the VPA in its summary documents, its Part A (Part 1) submission and in the ICP itself. Cardno’s categorisation of benchmark and bespoke projects (which Cardno referred to as ‘standard’ and ‘non-standard’ projects) did not match the VPA’s categorisations of benchmark, hybrid and bespoke projects outlined in its Part A (Part 1) submission, causing further confusion.

⁸ Document 44

⁹ Document 47

(vii) The fourth Directions Hearing

Following notification of the April changes as directed by the Panel, the VPA received a revised submission from Melton City Council, and a new submission from Meskos. These were referred to the Panel on or around 13 May 2019.

The Panel conducted a fourth Directions Hearing on 14 May 2019, following which the Panel issued Directions¹⁰ that in effect:

- split the Melton C201 Hearing from the GC102 Hearing
- added Meskos as a party to the C201 Hearing
- issued a revised timetable for the C201 Hearing.

(viii) The May changes

On 29 May 2019, the Panel received correspondence from the VPA¹¹ indicating that:

- there was an error in the costings for road projects, relating to an incorrect measurement of road lengths
- it wished to reallocate two projects (BR-01 and IT-04) from the standard levy to the supplementary levy.

The VPA indicated that as a result, it would be recommending a further increase in the supplementary levy rate, from \$10,740/NDHa (as notified in the April changes) to \$15,940/NDHa. These are referred to collectively as the May changes.

On 30 May 2019, the Panel directed the VPA to provide further notice to all landowners and potentially affected parties of the May changes.¹² Notice was given between 3 June and 17 June 2019, although it appears Council did not receive notification of these changes until later. The VPA did not receive further or revised submissions following the further notification.

(ix) The June changes

On 27 June 2019, one clear business day before the start of the Hearing, the Panel received correspondence from the VPA¹³ indicating that it would be recommending further changes to the ICP. These arise from:

- a further error in relation to the design and costings of intersection projects IT-05 to IT-15, which were not designed to taper into the undivided mid-block road sections
- further agreement on several matters reached between the experts after the costings conclave (these were described in a 'post-conclave' agreed statement attached to the VPA's letter)¹⁴
- reallocation of IT-04 from the supplementary levy to the standard levy, save for the following line items:
 - the additional costs associated with site demolition of existing pavement
 - the high pressure gas pipeline protection slab

¹⁰ Document 75

¹¹ Document 77

¹² Document 78

¹³ Document 93

¹⁴ Document 93(i)

- reallocation of the same line items for IT-01, IT-02, IT-03, IT-14 and IT-16 from the standard to the supplementary levy.

As a result of these changes, the VPA sought a further increase in the supplementary levy, from \$15,940/ha (as notified in the May changes) to \$18,514/ha. These are referred to collectively as the June changes.

(x) The final recommended ICP

The Panel received six versions of the ICP:

- the version exhibited with the Amendment, dated August 2018
- the version reflecting the April changes, dated April 2019 (Document 46)
- the version reflecting the May changes, dated May 2019 (extracts only, part of Document 77)
- the version reflecting the June changes, dated June 2019 (part of Document 93)
- the version tabled on Day 1 of the Hearing, dated June 2019 that included all of the April, May and June changes (Document 101)
- the version tabled on Day 3 (the final day), dated July 2019 (Documents 114 (clean version) and 115 (marked up version)).

The July version reflected the June version tabled on Day 1 but included some minor drafting improvements identified through the course of the Hearing.

In this Report, references to the ICP are references to the July version (Document 114) unless otherwise specified.

1.3 Procedural issues

A number of procedural matters arose in the lead-up to the hearing. These are recorded and summarised in Appendix A.

1.4 Day 1 clarifications

As set out in Chapter 1.2, the VPA recommended three rounds of changes to the Amendment documentation between the third Directions Hearing and when the Hearing commenced. In all cases, the changes were substantial and resulted in the VPA recommending significant increases in the amount of the supplementary levy. This generated a substantial amount of documentation in the lead-up to the Hearing (98 of the 118 tabled documents were received before the Hearing commenced), and in some cases the changes were not clearly explained.

As a result, the Panel sought clarification of multiple issues on Day 1 of the Hearing. The Panel foreshadowed the issues in correspondence to all parties on 27 June 2019, prior to the start of the Hearing.¹⁵ The VPA prepared a written response to the Panel's request¹⁶ which it presented on Day 1. The Panel has summarised the key points arising from the VPA's clarifications (some of which were elaborated on in the VPA's Part B submission¹⁷) in the following table.

¹⁵ Document 92
¹⁶ Document 100
¹⁷ Document 104

The Panel was disappointed that such a significant number of issues required clarification before the Hearing proceeded.

Table 4 **Summary of Day 1 clarifications**

Matter	Clarification/explanation
Project categorisations	<ul style="list-style-type: none"> - Following the April changes, all intersection projects are now fully bespoke projects, not hybrid projects - Final project categorisations are as otherwise summarised in Table 3 in this Report (as confirmed in Appendix A of Document 99)
<p>The purpose of the various Cardno reports:</p> <ul style="list-style-type: none"> - <i>Benchmark Infrastructure Report</i>, 1 March 2019 (Document 7(c)) - <i>Benchmark Infrastructure Report</i>, 11 April 2019 (Document 44) - <i>Stakeholder Comments Review, Benchmark Infrastructure Costings Project</i>, 12 December 2018 (attached to Mr Howe's costings evidence, Document 79) - <i>Benchmark Infrastructure Costings – Result Application Mt Atkinson & Tarneit</i>, 12 April 2019 (Document 47) 	<ul style="list-style-type: none"> - These reports provide background information in relation to the strategic work underpinning the Amendment and the VPA's response to submissions - They have been superseded by Mr Howe's expert evidence, the costings conclave statement and the post-conclave agreed statement (Documents 18, 79, 87 and 93(i))
Changes between the March and April versions of the Benchmark Infrastructure Report	<ul style="list-style-type: none"> - Changes were made to the turn lanes and auxiliary lanes in various standard intersection types - These changes did not impact the ICP or the Amendment, as all the intersections are bespoke designs
Details of implications of the road length error	<ul style="list-style-type: none"> - Exhibited ICP incorrectly measured the road lengths as between ultimate (not interim) intersection layouts - The distance between interim intersections is larger than the distance between ultimate intersections, because the ultimate intersection layouts have longer leg lengths - The result is a shortfall of 1,078 metres of road length across all 12 road projects, representing an additional cost of \$4,716,250 to be funded from the standard levy

Matter	Clarification/explanation
Additional costs associated with tapering IT-05 to IT-15	<ul style="list-style-type: none"> - Additional costs (agreed between Mr Howe and Ms McKenna) were \$146,394 per leg - A taper design and the revised costs associated with the tapers are included in the June version of the ICP (Document 93) - The tapering costs are included in the standard levy, as they do not meet the criteria in the Ministerial Direction for funding from a supplementary levy
Reallocation of IT-04 from supplementary to standard levy	<ul style="list-style-type: none"> - On reassessment, the VPA considered that IT-04 does not meet the criteria in the Ministerial Direction for funding from a supplementary levy, other than costs associated with demolition of existing pavement and protection slab for the high pressure gas pipeline <p><i>Note: this issue is discussed in detail in Chapter 5.1</i></p>
Reallocation of demolition costs and high pressure gas pipeline slab costs from IT-01, IT-02, IT-03, IT-14 and IT-16 from standard levy to supplementary levy	<ul style="list-style-type: none"> - The VPA considered that these items meet the criteria in the Ministerial Direction for funding from a supplementary levy <p><i>Note: see Chapter 5.1 for more detail</i></p>
Status of design and costing for BR-02 and CU-01	<ul style="list-style-type: none"> - Resolved as part of the 'post-conclave' agreement between experts - Final costing for BR-02 is \$7,186,000 - Final costing for CU-01 is \$1,180,000 - Agreement confirmed in post-conclave statement (Document 93(i)) - Costings and designs for all projects now agreed
Status of the three pedestrian crossings referred to in the VPA's Part A (Part 1) submission	<ul style="list-style-type: none"> - Only two pedestrian crossings are included, reference in the Part A (Part 1) submission to PS-03 was an error - Costings in the June ICP (\$276,614 per crossing) were based on similar projects in the Plumpton-Kororoit ICP and various gazetted DCPs - VPA does not consider that specific designs or cost sheets are required, as pedestrian crossings have a very standard design (and cost)

Matter	Clarification/explanation
Implications of the 2019-2020 indexation of standard levy rates published in July 2019	<ul style="list-style-type: none"> - The 2019-2020 standard levy rates will be incorporated into the final adopted ICP - The supplementary rates will be similarly indexed in accordance with the Ministerial Direction
Possible second interim ICP to replace the current interim ICP	<ul style="list-style-type: none"> - On 6 May 2019 the VPA requested the Minister to approve a Ministerial Amendment (without notice) to implement the May version of the ICP (supplementary levy rate of \$10,743/NDHa) as a second 'interim' ICP - The intent was to ensure the interim ICP is as close to the finalised figures as practicable - If approved, the second interim ICP will be replaced with the final approved ICP following the VPA's consideration of this Report <p><i>(Note: to the Panel's knowledge, no Ministerial Amendment has been gazetted as at the date of this Report)</i></p>
Proposed approach to use of land for indoor sports facilities	<ul style="list-style-type: none"> - The ICP will include a paragraph stating that the Minister exempts the ICP from the relevant restrictions in the Ministerial Direction, effectively allowing the ICP to specify a land contribution for indoor sports facilities - The Minister will, in effect, grant the exemption by approving the ICP containing this paragraph - The same approach was adopted for the Plumpton-Kororoit ICP
Consistency between ICP and PSP (project descriptions, project staging)	<ul style="list-style-type: none"> - The VPA agreed with Council that the ICP and PSP should be consistent in their descriptions of projects and project staging - Both the ICP and the PSP should be consistent with the Ministerial Direction - This requires the PSP to be updated - The VPA proposes to seek a Ministerial Amendment to update the PSP at the same time as the ICP is approved. Both amendments are intended to be gazetted together
Correct schedule number for the Infrastructure Contributions Overlay	<ul style="list-style-type: none"> - The Explanatory Report incorrectly refers to Schedule 2. The correct reference is to Schedule 3

1.5 Issues in dispute

(i) Agreement reached on project designs and costings

By the time the Hearing commenced, the experts had reached agreement in relation to the design and costings of all of the ICP projects. Agreement was reached through the circulation of expert evidence and the conclave meeting between costings experts directed by the Panel, and further agreement reached between the experts following the costings conclave.¹⁸ Council, Mt Atkinson Holdings and Meskos each confirmed their agreement to the revised project designs and costings as reflected in the June ICP (Document 101) on Day 1 of the Hearing. The final July ICP (Document 114) did not include any further changes to project designs or costings.

(ii) Unresolved issues

The unresolved issues within the Panel's remit are:

- treatment of line items (as opposed to whole projects) as supplementary items
- credits for works in kind
- the appropriateness of the costings for community and recreation projects included in the ICP
- the costings of community and recreation infrastructure and the resulting shortfall in funding arising from the capped community and recreation levy
- consistency of terminology in the ICP and PSP with the Ministerial Direction.

Unresolved issues are dealt with in Chapter 5.

The Panel has briefly recorded the resolution of the resolved issues in Chapter 6, but has largely accepted the submissions and evidence of the parties in relation to these matters. It has not generally interrogated resolved matters.

Chapter 7 deals with other more systemic issues that are beyond the scope of the Amendment. Although the shortfall in funding resulting from the capped community and recreation levy is a systemic issue that is beyond the scope of the Amendment, the issue is dealt with in Chapter 5.3 because of its relationship with the issue of the adequacy of the cost estimates for the community and recreation projects in the ICP.

This Report deals with the issues under the following headings:

- Planning context
- The benchmark costings project
- Overall assessment of the Amendment
- Unresolved issues
- Resolved issues
- Systemic issues
- Final form of the Amendment.

¹⁸ Recorded in the post-conclave statement dated 26 June 2019, part of Document 93

2 Planning context

2.1 Planning scheme provisions

Clause 19 of the Melton Planning Scheme relates to infrastructure. It includes objectives to provide social and physical infrastructure in a way that is efficient, equitable, accessible and timely, and to ensure that growth and redevelopment of settlements is planned to provide for the logical and efficient provision and maintenance of infrastructure. Clause 19 specifically encourages planning authorities to consider the use of development and infrastructure contributions in funding infrastructure.

All land within the scope of the Amendment is included in the Urban Growth Zone. No changes to zones are proposed as part of this Amendment.

The purpose of the ICO are:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To identify the area where an infrastructure contributions plan applies for the purpose of imposing contributions for the provision of infrastructure.

To identify the infrastructure contribution imposed for the development of land.

2.2 Ministerial Directions

(i) Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans

The Ministerial Direction guides the preparation and content of ICPs:

- clauses 10 to 19 relate to the monetary component of an infrastructure contribution and provide requirements for imposing a standard levy and a supplementary levy
- clauses 20 to 28 relate to the land component of an infrastructure contribution and include methods for calculating the value of public purpose land, land credit amounts and land equalisation amounts per land parcel, and the adjustment of public purpose land values.

Levies under an ICP can only be used to fund 'allowable items'. Allowable items are listed in Annexure 1 of the Ministerial Direction:

- Table 2 lists allowable items for the community and recreation standard levy – these include a range of community and sport and recreation facilities, such as kindergartens, neighbourhood houses, football ovals, netball courts and the like.
- Table 3 lists allowable items for the transport construction standard levy – these include arterial roads, intersections and minor culverts constructed up to specified standards. For example, for arterial road lanes, the standard of provision is 'construction of one through lane in each direction'.
- Table 4 lists allowable items for the transport construction supplementary levy. These include arterial roads, intersections, road bridges, pedestrian bridges and major culverts.

Clause 17 sets criteria that a planning authority must consider when deciding whether to impose a supplementary levy. They are:

- whether the item can be funded wholly from a standard levy
- whether the item is essential to the orderly development of the area
- whether the item is identified in a PSP or equivalent strategic plan
- whether the land has particular topographical or other physical constraints that “significantly affect the estimated cost of allowable items to be funded through the infrastructure contributions plan”
- any other criteria specified in an Annexure to the Ministerial Direction.

Table 4 in Annexure 1 specifies additional criteria. For example, to fund a pedestrian bridge or accessway from a supplementary levy, it must provide access across a railway, arterial road or other major obstacle.

(ii) Other Ministerial Directions

The VPA provided a response to the Strategic Assessment Guidelines, *Ministerial Direction No. 9 – Metropolitan Strategy*, *Ministerial Direction No. 11 – Strategic Assessment of Amendments* and the Ministerial Direction on the Form and Content of Planning Schemes as part of the Explanatory Report. That discussion is not repeated here.

2.3 Infrastructure Contributions Plan Guidelines

DELWP has published *Infrastructure Contributions Plan Guidelines*, October 2016 (the ICP Guidelines). They provide a high level overview of the ICP system, and advice to councils (and presumably the VPA) on how to prepare, implement and administer an ICP. Revised Guidelines are expected to reflect the introduction of the *Planning and Environment Amendment (Public Land Contributions) Act 2018*, but are yet to be published.

2.4 Mt Atkinson & Tarneit Plains Precinct Structure Plan

The Mt Atkinson & Tarneit Plains PSP provides guidance for the development of the land. Plan 3 in the PSP (extracted in Figure 3) describes the future urban structure of the PSP area.

Table 9 in the PSP describes the infrastructure required for the PSP area, and identifies which of the infrastructure projects will be funded through an ICP. Table 9 in the PSP is broadly consistent with the list of infrastructure projects in Appendix 3 of the ICP.

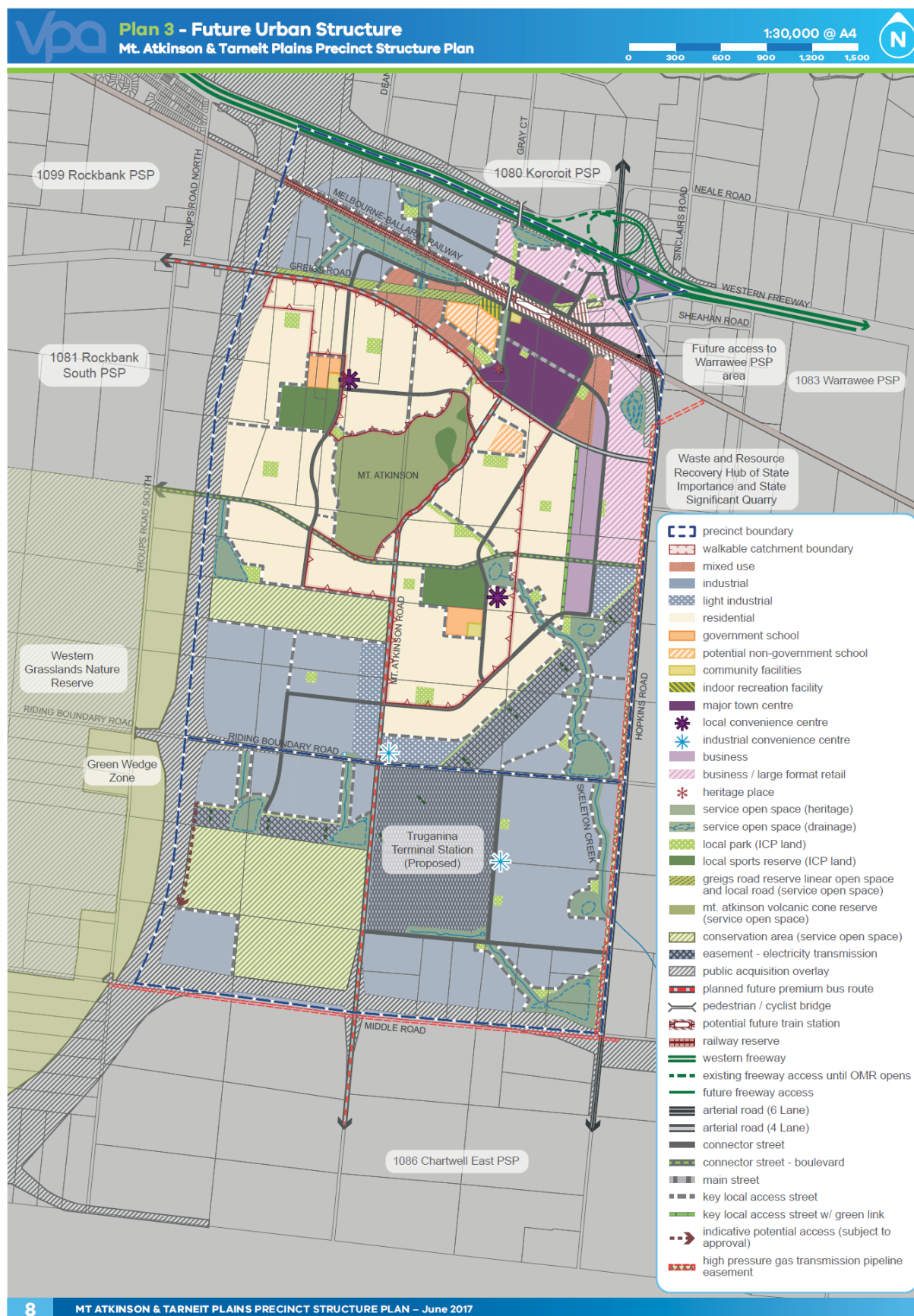


Figure 3 Future Urban Structure plan extracted from the PSP

3 The benchmark costings project

3.1 Introduction

The benchmark costings project, and the resulting Benchmark Infrastructure Report, is directed at a range of basic and essential infrastructure including mid-block roads, intersections, culverts, bridges, community facilities and sports pavilions. The Benchmark Infrastructure Report provides the following for 43 basic and essential infrastructure items:

- standard template designs
- rates defined by cost per unit, for example dollars per square metre of road pavement (the benchmark rates)
- detailed cost estimations derived by applying the benchmark rates to quantities extracted from the standard designs.

The VPA submitted:

By calculating benchmark costs for a range of basic and essential infrastructure items, the Benchmark Costings aims to systematically, consistently and transparently guide ICP cost estimations. This approach is consistent with the premise of the new ICP system which is focussed on the application of a standard levy.

3.2 Methodology

Part A of the Benchmark Infrastructure Report explains the infrastructure items that have been costed, and what elements (such as earthworks, drainage pits and the like) are included for each item. Cardno extracted quantities from the standard designs, and modelled P90 cost estimates for each item using a 'Monte-Carlo' analysis. (A P90 cost estimate means that there is a 90 per cent probability level that the project will be completed within the estimated cost).

The cost estimates include a number of 'delivery' items which include survey and design fees, council and other authority fees, site establishment, supervision and project management, traffic management and a contingency allowance.

The methodology for the Benchmark Infrastructure Report is described in Part B of the report. The main steps are broadly summarised in the following table. Assumptions applied by Cardno are outlined in sections 3.4 and 3.5 of the Benchmark Infrastructure Report.

Table 5 Methodology for developing the benchmark costings

Step	Description
Extracting source cost data	<ul style="list-style-type: none"> - source cost data provided by the VPA consisted of cost estimates for projects derived from 26 Development Contributions Plans - baseline rates extracted from the source data, by extracting individual rates for each element included in the cost data, accounting for topographical or geographical variances and standardising the measurement units - data compared to typical civil details and quantities, to ensure no gaps - gaps were supplemented with Cardno internal construction cost data

Step	Description
Developing template designs	<ul style="list-style-type: none"> - template functional layouts created using design briefs provided by the VPA and a range of VicRoads and Austroads standards, manuals and standard drawings - templates are contained in Appendix A of the Benchmark Infrastructure Report
Extracting quantities	<ul style="list-style-type: none"> - quantities extracted from each template design
Pricing the projects	<ul style="list-style-type: none"> - projects priced using a Monte-Carlo probabilistic analysis to account for uncertainty and variability - mean cost and normal distribution identified for each project element - unit costs from normal distribution curve derived for each element (contained in Appendix B of the Benchmark Infrastructure Report) - costs derived by multiplying unit rate by quantities for each element, and adding all elements to derive a total cost - repeating over several thousand iterations to derive most likely cost outcome, P50, P75 and P90 costs

The Benchmark Infrastructure Report includes the following diagrammatic representation of the methodology:

Figure 3-1 Proposed methodology workflow

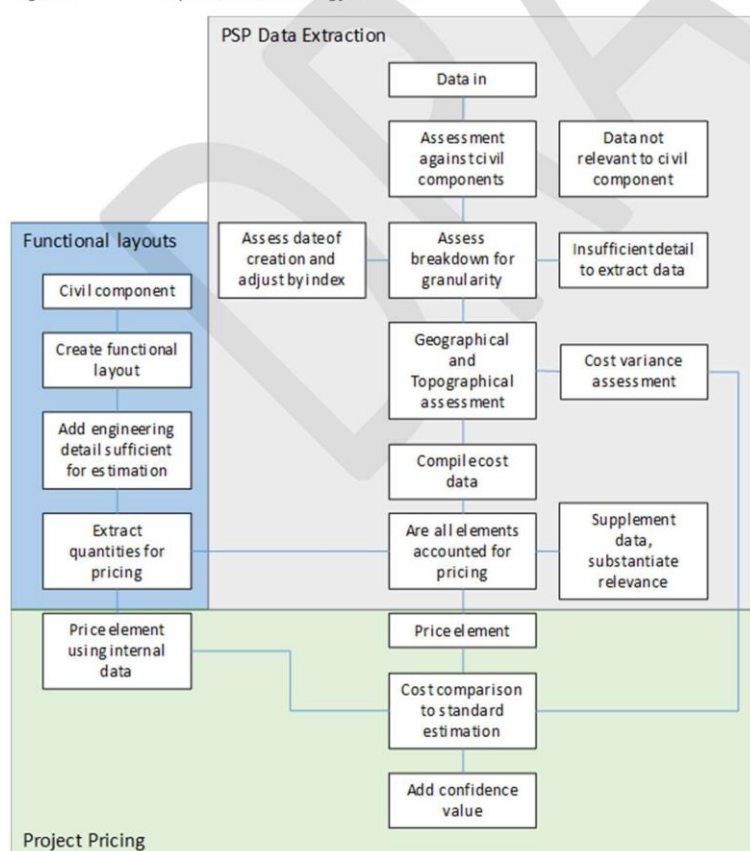


Figure 4 Diagram of the Benchmark Infrastructure Report methodology

3.3 Consultation and stakeholder engagement

The benchmark costings project included consultation with a technical working group that included the Growth Area Councils, the Urban Development Institute of Australia, the Property Council of Australia, the Housing Industry Association, the Victorian Planning and Environmental Law Association and DELWP.

Cardno presented its initial findings and recommendations at two stakeholder workshops in August 2018, one for transport infrastructure and the other for community and recreation infrastructure.

Workshop attendees provided submissions which are analysed in Cardno's report titled *Stakeholder Comment Review*, 12 December 2018. A copy of this report was attached to Mr Howe's functional layout evidence.¹⁹ The feedback received from the stakeholder consultation, and the changes made to the benchmark costings as a result, are summarised in section 3.6 of the Benchmark Infrastructure Report. Section 3.6 also outlines additional changes to various intersection items made in response to submissions on the Donnybrook-Woodstock ICP exhibited as part of Amendment GC102.

3.4 Submissions

The Panel issued directions after the first Direction Hearing seeking an explanation of the methodology of the benchmark costings. While the VPA's Part A submissions provided a high-level explanation of the purpose, preparation and application of the benchmark costs, its Part B submission was largely silent on the benchmark costs. It did not become clear to the Panel until it asked a direct question of the VPA on Day 1 of the Hearing that the VPA did not wish the Panel to make any findings in relation to the methodology or outputs of the benchmark costings. It would have been helpful for the VPA to have let the Panel know much earlier in the process that this was the case.

The Panel queried whether the VPA was intending to have its Board endorse the Benchmark Infrastructure Report, as indicated in its Part A (Part 1) submission. The VPA responded that the Benchmark Infrastructure Report is a working document, and has always been seen that way, and will therefore not be endorsed by the Board.

Council cautioned the Panel against engaging in the merits or accuracy of the benchmark costings – firstly because the Panel is not an advisory committee on benchmark costings, and secondly because *"the Panel lacks sufficient information to make an informed general assessment of the benchmark costings to other PSP areas and any such assessment would be premature"*.

Council noted that neither the exhibited ICP nor the revised ICP (it was referring to the May version) are entirely costed using the benchmark costs. While the road projects were costed using the benchmark costings, they were peer reviewed and an agreed position reached in the expert conclave, which in Council's submission was procedurally the same as if bespoke rates had been used. It submitted that *"the fact that the benchmark rates are appropriate for roads in the Mt Atkinson and Tarneit Plains PSP area does not necessarily mean they are appropriate"*

¹⁹ Document 18

elsewhere". Council noted that benchmark costings were applied to the community and recreation items but submitted that *"this is of little practical consequence given the community and recreation levy is capped and a supplementary levy is unavailable"*.

Council submitted:

The benchmark costings have been, and continue to be, in a state of flux. This is demonstrated by the revisions to the benchmark costings that have informed the VPA's recommended changes in both April and May 2019. The VPA Part A (Part 1) submission notes that *"The final draft Benchmark Costings will receive approval from the VPA Board and DELWP at a future date"*.²⁰ It is unclear whether this has occurred or may occur at a future time on the basis of a further costings.

The benchmark costings do not have any formal or legal status. At most, once adopted by the VPA Board, they will have the status of adopted policy of a public authority.

The Panel has not been provided with information on how the benchmark costs would perform in other PSP areas... Further the Panel does not have before it information on matters such as topography and soil conditions in other PSP areas.

3.5 Discussion

In the absence of detailed submissions or evidence on the methodology used to prepare the Benchmark Infrastructure Report, the Panel makes no findings as to the suitability of the methodology or outcomes in the Benchmark Infrastructure Report. Similarly, it does not make any findings as to whether the Benchmark Infrastructure Report represents a suitable basis to apply benchmark costs in future ICPs.

The Panel notes the VPA's indications that the Benchmark Infrastructure Report is no more than a working document, and that the VPA does not intend to seek endorsement of the Benchmark Infrastructure Report from its Board. The document has no formal status. The Panel has accordingly not afforded the Benchmark Infrastructure Report any weight, but has rather relied on the expert review of the ICP costs based on the benchmark costs in assessing whether those costs are appropriate.

²⁰ Part A Part 1 Submission, para 2.3.2.

4 Overall assessment of the Amendment

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

4.1 Strategic support

The Planning Policy Framework expressly encourages the preparation of ICPs, particularly in growth areas, to ensure planned infrastructure is delivered and funded with certainty, efficiency and timeliness. The Panel supports the use of an ICP in this particular context, and regards it as consistent with the policy framework. The ICP will, in the Panel's view, deliver a net community benefit by providing certainty, contributing to the delivery of essential transport and community infrastructure, and ensuring an equitable sharing of infrastructure costs between landowners and developers.

Like the Panel considering the Plumpton Kororoit ICP²¹, this Panel broadly supports the principle of using a set of benchmark costs to guide ICP cost estimations. This should theoretically result in a greater degree of consistency and transparency in the design and costing of projects that are able to be based on the standard template functional layouts. That said, bespoke designs and/or costings will often be needed, due to matters such as the variation in topography, geology and the like across Melbourne's growth areas, or particular design requirements or constraints for particular projects.

As noted in Chapter 3, the Panel makes no findings in relation to the suitability of the methodology or outcomes in the Benchmark Infrastructure Report. Similarly, it does not make any findings as to whether the Benchmark Infrastructure Report represents a suitable basis to apply benchmark costs in future ICPs.

4.2 The outcome

The Panel is satisfied that the final Mt Atkinson & Tarneit Plains ICP (July version) meets the requirements of the Ministerial Direction. The VPA prepared a detailed assessment of the projects against the criteria for applying a supplementary levy in section 6.5 of its Part A (Part 2) submission, and in paragraph 54 of its Part B submission. The Panel is satisfied that the various projects listed in the ICP are 'allowable items' under the Ministerial Direction, and that the criteria for applying a supplementary levy have been met.

Consistent with the requirements of the Ministerial Direction, detailed cost estimates have been prepared which demonstrate that not all the infrastructure projects can be funded from the standard levy.

The costings for the projects in the ICP have been subject to a comprehensive review by Council's expert, Ms McKenna. While her estimates varied from those of Cardno on certain line items, following the conclave and post-conclave process their assessments of total costs

²¹ Refer to page 14 of that Panel's report, Melton PSA C195 [2018] PPV.

for each project were within an acceptable range of variance (ie within 5 per cent). No party disputed the costings at the Hearing.

On that basis, the Panel concludes that the Amendment is supported by, and implements, the planning policy framework and is consistent with the relevant Ministerial Directions. The Amendment is well founded and strategically justified and should proceed, subject to addressing the specific issues raised in submissions and discussed in the following chapters.

4.3 The process

Notwithstanding its conclusions that the Amendment should be supported, the Panel has significant concerns with the way in which the VPA prepared the Amendment and presented its case.

This matter would have been far less complex, procedurally and substantively, had the VPA presented the material more clearly, and resolved key aspects of the ICP before exhibiting the Amendment. The fact that the Panel found it necessary to seek clarification of such a large number of issues before proceeding with the Hearing (as outlined in Chapter 1.4) is indicative of the confusion and complexity created by the VPA's process in preparing and finalising the Amendment and related documentation.

The Mt Atkinson & Tarneit Plains ICP, along with the Donnybrook-Woodstock ICP, are the first two ICPs to be based on benchmark costs – an approach which the VPA indicated it intends to pursue with future ICPs. The benchmark costs were a fundamental input into the ICPs, for the design and costings of the benchmark projects and the costings of the hybrid projects (which together constituted the majority of projects included in each of the exhibited ICPs).

As described in Chapter 1.2, the benchmark costs were substantially revised not once but twice, well after the Amendment was exhibited. This was a major contributing factor to the significant increase in the recommended amount of the supplementary levy as part of the April changes. This, in turn, required further notice which delayed the process.

In the Panel's view, it was a mistake to attempt to run the Amendment process and the consultation on the benchmark costings project effectively in parallel. It is clear from Figure 2 in the VPA's Part A (Part 1) submission that consultation on the benchmark costings continued until December 2018. It took Cardno a further three months to consider the results of that consultation, and to prepare the revised costings (both benchmark and bespoke) that contributed to the April changes. Meanwhile, exhibition of the Amendment finished in September 2018. In the Panel's view, consultation on the benchmark costings should have been completed (and the benchmark costings updated accordingly, if not fully resolved) before the ICP was prepared and the Amendment was exhibited. Equally, the bespoke costings should have been far better resolved before the Amendment was exhibited.

The Panel had difficulty in understanding and reconciling the VPA's various explanations of which projects in the ICP were benchmark projects, designed and costed on the basis of the benchmark costings, and which were bespoke projects. The categorisations of projects in Figure 4 in the VPA's Part A (Part 1) submission did not reconcile with Mr Howe's expert evidence, or the Cardno Mt Atkinson report. Further, it was not clear to the Panel until the circulation of the Part A (Part 1) submission that there was a third category of project – namely

the hybrid projects that had bespoke designs, but were costed on the basis of the benchmark rates.

Further difficulties arose because the Panel was not provided with a copy of the Benchmark Infrastructure Report until it received the VPA's Part A (Part 1) submission. As a result, the Panel had difficulty in initially understanding the basis on which the benchmark costs were derived, including the methodology. Nor was Cardno's role in developing the ICP, including providing cost estimates for bespoke projects, clearly explained at the start of the process.

This resulted in extensive directions from the Panel as to what the VPA needed to include in its Part A (Part 1) submission, including:

- an explanation of how the benchmark costs were derived, including the methodology used, the assumptions made in calculating the costs and any exclusions
- an explanation of how benchmark costs had been tested or verified
- an explanation of how the bespoke costs were derived, including the methodology used, the assumptions made in calculating the costs and any exclusions
- an explanation of which projects were costed using benchmark costs, and which were costs using bespoke costs, and why.

Despite having issued these directions in December 2018, it did not become clear to the Panel until it asked a direct question of the VPA on Day 1 of the Hearing that the VPA did not wish the Panel to make any findings in relation to the methodology or outputs of the benchmark costings.

The April changes went significantly beyond changes arising from the revised benchmark costings. The VPA's Part A (Part 1) submission provided little explanation of the changes, and no explanation was provided at the second or third Directions Hearings in late March, although by this stage it must have been clear to the VPA that further changes would be required.

Instead, the VPA chose to leave this explanation to the renotification process directed by the Panel (the purpose of which was to inform landowners and potentially affected parties of the changes, not the Panel). The Panel found the VPA's explanation of the April changes confusing and unclear. The renotification package included voluminous documentation, much of which was not exhibited with the Amendment and had not previously been provided to potentially affected parties, submitters or the Panel.

It did not become clear until the second Directions Hearing (on 15 March 2019, six months after the Amendment came off exhibition) that the VPA had not satisfactorily resolved designs for some projects. Details of these changes were not provided until the further notification associated with the April changes.

While the Panel understands the VPA's desire to 'wrap up' all the changes it wished to make to the exhibited Amendment in a complete package, the changes to the land credit and land equalisation amounts should not, in the Panel's view, have been included in this process. The Panel is not able to consider submissions about these matters, and introducing them late into the Panel process caused further confusion. The changes should have been made by the VPA through the adoption process instead.

Finally, the errors outlined in the May and June changes should have been picked up by the VPA much earlier in the process.

The Panel appreciates that the Mt Atkinson & Tarneit Plains ICP (and the Donnybrook-Woodstock ICP) are the first ICPs to be prepared and exhibited under the new legislation and using the benchmark costings approach. Nonetheless, the Panel has been frustrated by the VPA's approach. It has resulted in unnecessary complexity, and inefficiencies in the Panel process that could have been avoided had the Amendment and the underlying documents been better prepared and resolved prior to exhibition.

The Panel hopes that these comments are taken into consideration by the VPA in preparing for the GC102 Hearing, and in preparing future ICP amendments, particularly those that rely to some degree on benchmark costings.

4.4 Conclusion and recommendation

The Panel concludes:

- The Amendment is strategically justified and should be supported, subject to the recommendations in this report.

The Panel recommends:

- 1. Adopt Amendment C201 to the Melton Planning Scheme as exhibited, with the following changes:**
 - a) Substitute the exhibited Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan dated August 2018 with the July 2019 version tabled by the Victorian Planning Authority on the final day of the Hearing (Document 114), after making the changes and corrections referred to in other recommendations in this Report.**
 - b) Substitute the exhibited version of the Infrastructure Contributions Overlay Schedule 3 with the version tabled by the Victorian Planning Authority on the final day of the Hearing (Document 116A), after:**
 - changing the date of the Infrastructure Contributions Plan from June 2019 to July 2019
 - making the changes referred to in other recommendations in this Report.
 - c) Update the Schedule to Clause 72.04 to refer to the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019.**

5 Unresolved issues

5.1 Treatment of line items as supplementary items

(i) Introduction

The criteria for a supplementary levy are set out in clause 17 of the Ministerial Direction. They include:

(d) whether the land has particular topographical, geographical, environmental or other physical constraints or conditions that significantly affect the estimated cost of allowable items to be funded through the infrastructure contributions plan.

As part of the June changes, the VPA recommended that for projects IT-01 to IT-04, IT-14 and IT-16, only the particular line items that meet the criteria for a supplementary levy should be funded from the supplementary levy. It recommended that the balance of those projects be funded from the standard levy. Previously, the whole of IT-04 was treated as a supplementary allowable item (at least the proportion of the costs for that project that could not be funded from the standard levy), while all of IT-01 to IT-03, IT-14 and IT-16 were treated as standard levy items.

(ii) The issue

The issue is whether line items, as opposed to whole projects, should be treated as allowable supplementary levy items.

(iii) Submissions

The VPA acknowledged that in all the iterations of the ICP leading up to the June version (tabled one day before the start of the Hearing), it had treated intersection project IT-04 as a supplementary item given it requires specific and substantial allowances for the high pressure gas protection slab. In its Part B submission, it stated:

Upon further review of IT-04, the VPA is of the view that only those transport construction costs that are required to respond to the land's "*particular topographical, geographical, environmental or other physical constraints or condition that significantly affect the estimated cost of allowable items*" should be listed under the supplementary levy. That is, only the cost of the high-pressure gas line protection slab, as well as the cost of demolition for the existing pavement should be listed under the supplementary levy amount rather than a proportion of the overall cost estimate (that is, 68.3%).

The VPA recommended applying the same principles to IT-01, IT-02, IT-03, IT-14 and IT-16, and submitted:

This change has been made as the VPA considers it appropriate to only include the construction costs required to respond to the physical conditions of the land, that is, the line items that are 'non-standard' in the supplementary levy. This is considered to be consistent with the supplementary levy criteria and consistent with the intent of a capped standard levy rate.

If a proportion of the overall costs of the intersection are listed in the supplementary levy, rather than just the non-standard line items, the supplementary levy would be paying for 'standard' line items with standard rates. The VPA does not consider this to be consistent with the Ministerial Direction.

Council submitted that the VPA's recommended approach is incorrect, and argued it amounts to an artificial accounting exercise which is inconsistent with the Ministerial Direction.

Council submitted that the ICP identifies the relevant intersection projects (and in fact all projects) as single entities, not split projects or single line item projects. It submitted that the allowable items, which are set out in clause 13 of the Annexure to the Ministerial Direction, are described at "*levels of generality*", for example:

- allowable items for community facilities include a kindergarten, a playgroup facility, a neighbourhood house, a cricket oval and a tennis court
- standard transport construction levy allowable items include arterial roads including upgrades, or new arterial roads, traffic signals, roundabouts and the like
- supplementary transport construction levy allowable items include arterial roads, and (relevantly) intersections where construction costs cannot be wholly or partially funded from the standard levy because:
 - of the topographical, geographical, environmental or other physical conditions of the land
 - the road is designed to primarily service industrial development
 - the NDHa area of the precinct is limited.

Clause 20 of the Annexure states that an allowable item includes any works, services or facilities reasonably required to provide that item, including things like design, site preparation, services, foundations etc. Council submitted that clause 20 "*lends itself against the selective line by line reckoning of certain matters for supplementary levies*", because each of the matters listed in clause 20 are themselves line items. It submitted:

... so it appears to Council that an analysis such as that undertaken by the VPA to remove one line item as a supplementary matter would necessarily include all relevant related line items for that particular allowable item. This is not how the ICP has been prepared ...

Council noted that the Act does not use the terminology 'allowable item', and considers allowable items only in general terms, being 'works services or facilities'. It further submitted that the strategic justification for the allowable items in the ICP describes the projects as whole projects, not as parts of projects or specific line items.

The VPA responded to Council's submission in its closing submission. It disagreed that the allocation of individual line items to the supplementary levy is not consistent with the Ministerial Direction and submitted that it is "*both reasonable and appropriate*":

The classification of these line items as supplementary should not trigger the ability to allocate additional standard costs into the supplementary levy so that the supplementary levy acts as an 'overflow' when the standard cap is exceeded. It is considered that the standard costs can still be partially funded from the standard levy as identified in Clause 17, and this is consistent with the intent of the levy to provide a 'contribution' towards future infrastructure.

(iv) Discussion

The submissions raise an important issue about the interpretation of the Ministerial Direction. The Panel prefers Council's interpretation.

Clause 4(b) of the Ministerial Direction describes an allowable item as:

... the plan preparation costs, works, services or facilities specified in this Direction or in an Annexure to this Direction that may be funded by an infrastructure contributions plan.

It refers to 'works, services or facilities' – the same language as used in the Act. The Panel agrees with Council that the language does not lend itself to identifying allowable items as line items. Rather, the language suggests that the 'works', 'services' or 'facilities' as a whole should be considered an allowable item. This is reinforced when regard is had to the description of allowable items in the annexure, which describes types of projects (such as a kindergarten or an arterial road), not line items in a particular type of project (such as the construction of a slab to protect underlying infrastructure).

Both the PSP and ICP identify the infrastructure to be funded as 'projects', including the relevant intersection projects. Throughout the Hearing, parties referred to the elements of the ICP as 'projects'. While the detailed cost sheets for each project attached to the ICP include a number of line items, the line items, in combination, produce a single project. In the Panel's view, the 'works', 'services' or 'facilities' are the collection of line items making up the project. Splitting the 'works', 'services' or 'facilities' into separate line items seems to the Panel to be a somewhat artificial approach that stretches the language and intent of the Act and the Ministerial Direction.

The Panel acknowledges the VPA's submission that there is a risk that, if the 'whole project' approach is adopted, one single relatively minor element of the project (for example, the need to construct a more substantial slab to protect a high pressure gas pipeline beneath the project) would effectively qualify an otherwise standard project to be funded from the supplementary levy. In the Panel's view, the Ministerial Direction addresses this risk. Under clause 17(d), allowable items are only able to be funded from a supplementary levy if there are topographical, geographical, environmental or other physical constraints or conditions that significantly affect the estimated cost of item. Single line items that only have a minor cost implication will not qualify an otherwise standard project for a supplementary levy. Further, under clause 17(a) a planning authority must consider whether the project can be funded from the standard levy before deciding whether to apply a supplementary levy.

(v) Conclusions and recommendations

The Panel concludes:

- It does not support the VPA's recommended approach of separating out line items in a particular project for a supplementary levy. If the particular line item arises from particular topographical, geographical, environmental or other physical constraints or conditions that significantly affect the estimated cost of the project, then the whole project qualifies for a supplementary levy, not just the line item (provided the remaining criteria in clause 17 of the Ministerial Direction are also met).

The Panel recommends:

- 2. If the demolition of the existing pavement and construction of the slab to protect the high pressure gas pipeline significantly add to the cost of Intersections IT-01, IT-02, IT-03, IT-04, IT-15 and IT-16, then:**

- a) **amend the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019 (Document 114) to allocate the whole of those projects to the supplementary levy (to the extent that there are insufficient funds in the standard levy)**
- b) **amend the supplementary levy amount in the Infrastructure Contributions Overlay Schedule 3 (Document 116A) accordingly.**

5.2 Credits for works in kind

The works in kind provisions of the Mt Atkinson & Tarneit Plains ICP (June 2019)²² are contained in sections 5.10 and 5.11.

The relevant part of section 5.10 states:

If the Collecting and Development Agencies accept the provision of works in kind:

- The value of the works in kind will be negotiated between the Collecting Agency and the applicant;
- The monetary component of the infrastructure contribution payable by the applicant will be offset by the agreed value of the works in kind; and
- If the agreed value of the works in kind exceeds the monetary component of the infrastructure contribution, the applicant will be reimbursed the difference between the two amounts at a time negotiated between the applicant and the Collecting and Development Agencies.

Section 5.11 states:

If the Collecting Agency agrees to accept works under section 46GX of the Act and the value of those works is greater than the monetary component of the infrastructure contribution payable by the applicant, the applicant is entitled to be reimbursed the difference between the two amounts.

The details of a reimbursement must be negotiated with, and agreed to by, the Collecting Agency and Development Agency.

(i) The issue

The issue is whether credits for works in kind should be fixed at the project cost estimate specified in the ICP, or whether they should be subject to negotiation.

(ii) Submissions

Mt Atkinson Holdings owns or has an interest in 703 Ha of the 1,531 Ha in the PSP area. It informed the Panel that it intends to deliver “*most, if not all*” of the infrastructure projects to be located on its land as works in kind. It submitted that the works in kind credit for the provision of this infrastructure must be equal to the indexed costs contained in the ICP.

Mt Atkinson Holdings argued that wording in sections 5.10 and 5.11 of the ICP should be amended to achieve this outcome. Mt Atkinson Holdings’ amended wording, included in Document 109, would replace the last three dot points in section 5.10 with the following:

- The value of the works in kind will be equal to the value of the works identified in this ICP, taking into account the impact of indexation;

²² Document 114

- The monetary component of the infrastructure contribution payable by the applicant will be offset by the value of the works in kind; and
- Notwithstanding whether an infrastructure item is funded via the standard levy or the supplementary levy, the administrative provisions relating to credit for works in kind shall remain the same.

Mt Atkinson Holdings referred the Panel to the Wyndham North DCP which contained similar wording and the Panel report for Amendments C175, C176 and C177 to the Wyndham Planning Scheme, where the Panel supported similar changes to the works in kind provisions proposed by the then Metropolitan Planning Authority (now the VPA). The changes had a similar effect of referencing the credit for works to the value of the works in the DCP. It added that clause 5.11 should be deleted.

Council submitted that the responsibility for the delivery of the projects in the ICP rested with Council, and that as a consequence, the ICP system placed a *“degree of control and discretion”* with Council with respect to works in kind. Council referred the Panel to the works in kind wording in the Rockbank DCP which states:²³

- The credit for the works provided (unless an alternative approach is agreed with the collection agency) shall equal the final cost of the works up to the maximum identified in the DCP, taking into account the impact of indexation, or to an alternative figure approved by the collecting agency.
- The value of works provided in accordance with the principle outlined above will be offset against the development contributions liable to be paid by the development proponent.
- No further financial contributions will be required until the agreed value of any credits are used.

Council also referred to the Plumpton and Kororoit ICP which states:²⁴

- The credit for the works provided shall be negotiated between the Collecting Agency and the development proponent;
- The value of the works provided as agreed to by the Collecting Agency, will be off-set against the monetary component contributions liable to be paid by the development proponent; and
- Credit for the provision of works in kind shall be at a time to be negotiated between the development proponent and the Collecting and Development Agencies.

Council submitted that while these two schemes (both of which apply in Melton) and the Mt Atkinson & Tarneit Plains ICP had slightly different wording, they contained a common thread which was that the amount of the credit was a matter for negotiation between the Collecting and Developing Agencies and the developer.

Council argued that works in kind are not the right of the property owner, but a discretion exercised by the Collecting and Developing Agencies. It submitted:

Understandably it is common for developers to seek to facilitate early development of their land by providing works in kind. Inevitably this is a negotiation that occurs in the context of the grant of a permit and assessment of the development front. Both parties benefit from this arrangement. The Collecting Agency and the Development Agency

²³ Document 111

²⁴ Document 112

get works delivered early and the developer delivers product early and by providing DCP standard intersections and infrastructure reduces sacrificial works.

Council added that in managing the provision of infrastructure, it needs flexibility. It said the changes proposed by Mt Atkinson Holdings would lock in the value of works in kind which may have adverse impacts on the delivery and timing of infrastructure provision. Council concluded that this outcome may make works in kind much less attractive to the Collecting and Delivering Agencies.

Council submitted that there was no reason to delete section 5.11 as proposed by Mt Atkinson Holdings and recommended rewording the provision to make it clearer. Council proposed replacing the wording of clause 5.11 with the following:

- Where the Collecting Agency agrees that a development proponent can provide an infrastructure item the situation may arise where the development proponent makes a contribution with a value that exceeds their ICP monetary component obligation.
- In such a case the development proponent is entitled to a cash reimbursement for the value above their monetary obligation.
- The details of credits and reimbursements must be negotiated with, and agreed to by the Collecting Agency.

The VPA acknowledged that works in kind agreements are negotiated between the Collecting and Development Agencies and landowners, and indicated that it would accept the Panel's recommendation on the wording of the works in kind provisions. Nevertheless, the July 2019 version of the ICP included the following text, which the VPA submitted was "*standard for the ICP system*":

- The value of the works in kind will be negotiated between the Collecting Agency and the applicant;
- The monetary component the infrastructure contribution payable by the applicant will be offset by the agreed value of the works in kind; and
- If the agreed value of the works in kind exceeds the monetary component the infrastructure contribution, the applicant will be reimbursed the difference between the two amounts at a time negotiated between applicant and the Collecting and Development Agencies.

The VPA stated that the text used in the Plumpton Kororoit ICP, which has been submitted to the Minister for Planning for approval, was appropriate for dealing with over provision and "*would ensure consistency*". The VPA did not support Mt Atkinson Holdings' proposal to delete section 5.11 or Council's proposed amended wording, and submitted that the word 'details' should be replaced with 'timing', to read as follows:

If the Collecting Agency agrees to accept works under section 46GX of the Act and the value of those works is greater than the monetary component of the infrastructure contribution payable by the applicant, the applicant is entitled to be reimbursed the difference between the two amounts.

The ~~details~~ timing of a reimbursement must be negotiated with, and agreed to by, the Collecting Agency and Development Agency.

(iii) Discussion

The parties were largely agreed on the following principles regarding works in kind contributions:

- The decision to accept works in kind is made by the Collecting and Development Agencies.
- The value of the works in kind will be offset against the infrastructure contribution payable by the landowner.
- The maximum value of works in kind is set at the value specified in the ICP.
- If the value of the works in kind is greater than the land owner's infrastructure contribution, then the landowner is entitled to be reimbursed the difference.

What is at issue is whether the value of the works should be fixed at the value nominated in the ICP, or whether it should be negotiated between the land owner and the Collecting Agency (in this case Council).

The Panel accepts Council's submission that, as the Collecting Agency, it bears the risk of projects being underfunded. As a consequence, it is appropriate that the Collecting Agency has the flexibility to negotiate the value of the works in kind as part of its acceptance of these works. The Panel agrees with Council that if a Collecting Agency could not negotiate the value of the works, it could be less inclined to agree to works in kind, possibly resulting in the loss of the shared benefit of early delivery of the infrastructure. For these reasons, the Panel does not accept the changes submitted by Mt Atkinson Holdings and agrees that the value of the works in kind should be negotiated.

The Panel notes that this is consistent with section 5.4 of the ICP Guidelines, which states:

Accepting a WIK proposal is at the discretion of the collecting agency. Before accepting a proposal, the collecting agency must consult with and obtain the approval of the relevant development agency specified in the ICP. This ensures the development agency has oversight of any decision by the collecting agency that may affect the timing or funding of infrastructure projects that it must provide under the ICP.

There is no right of review if a collecting agency refuses to accept WIK.

In terms of drafting, in the Panel's view, there is a degree of unnecessary repetition between sections 5.10 and 5.11. Both provide for the landowner to be reimbursed the amount by which the value of the works exceeds the landowner's monetary contribution obligation, to be negotiated between the landowner and the Collecting and Development Agencies. The wording should be rationalised.

The Panel does not support the additional dot point in section 5.10 proposed by Mt Atkinson Holdings:

- Notwithstanding whether an infrastructure item is funded via the standard levy or the supplementary levy, the administrative provisions relating to credit for works in kind shall remain the same.

There is nothing in the Act or the Ministerial Direction to suggest that works in kind funded by standard and supplementary levies should be administered differently. Section 46GX only makes reference to an infrastructure contribution payable. In the Panel's view, the dot point does not provide any additional clarity and is unnecessary.

(iv) Conclusions and recommendations

The Panel concludes:

- Sections 5.10 and 5.11 of the July 2019 ICP are appropriate, subject to the deletion of the last dot point in section 5.10 to avoid unnecessary repetition.

The Panel recommends:

- 3. Delete the last dot point in section 5.10 of the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019 (Document 114).**

5.3 The capped community and recreation levy

(i) The issues

The issues are:

- the appropriateness of the costings for community and recreation projects included in the ICP
- the shortfall in funding arising from the capped community and recreation levy.

(ii) Submissions

Council expressed concerns about the capped rate for the community and recreation levy. The standard levy is set at \$86,627 per NDHa by the Ministerial Direction. Council submitted that this is “*well below*” the actual costs of constructing the community and recreation projects included in the ICP.

Council indicated that it had engaged Turner and Townsend to prepare cost estimates for the sport and recreation projects, which were slightly higher (in the order of 7 to 12 per cent) than the costings included in the July ICP. Council submitted that its preference was for the Turner and Townsend estimates to be used for the ICP but acknowledged that those costings are not before the Panel.

Council submitted:

This is now the second ICP where Council will experience a significant shortfall between what the community and recreation levy will collect and the costs of delivering the community and recreation projects.

Across the ICP's for Mt Atkinson and Tarneit Plains and Kororoit and Plumpton this shortfall is in the order of \$57,830,89425. This shortfall is equivalent to the total estimated costs of the community and recreation construction projects in the ICP.

This shortfall will have serious financial consequences for Council. This is particularly so given Council's role in accommodating residential growth in Melbourne if this trend is amplified across subsequent ICPs.

Council requested that DELWP work with the VPA and Growth Area Councils to review the cost of delivering essential community infrastructure to ensure that the capped levy is fair and reasonable, and appropriate to deliver this essential infrastructure.

²⁵ Based on 2018-19 levy rates.

In its closing submissions, the VPA acknowledged Council's submissions but submitted that it is outside the scope of the Amendment to address any discrepancy between the funds to be collected and the community and recreation infrastructure required. It submitted that the cost estimates provided by Cardno and reflected in the July ICP are reasonable and appropriate.

(iii) Discussion

The Panel acknowledges the position of Council in relation to the likely shortfall between the funds collected pursuant to the standard capped community and recreation levy, and the actual cost of delivering the community and recreation infrastructure. The Panel observes that the capped rate may result in compounding shortfalls across the two Melton ICPs that have to date come before Planning Panels Victoria – the Plumpton and Kororoit ICP (Melton C195), and this ICP. Although infrastructure contributions are meant to be just that – a contribution toward funding community infrastructure – the shortfalls identified by Council in these two cases are significant.

It is beyond the scope of the Panel's remit to make formal recommendations in relation to the capped community and recreation levy. Nevertheless, the Panel urges the VPA to work with DELWP and the Growth Area Councils to review this issue holistically across all growth areas.

The Panel notes Council's submissions that the cost estimates in the July ICP are likely to be lower than the actual costs of delivering the community infrastructure projects. However, in the absence of any evidence testing or challenging the benchmark costs developed by Cardno, the Panel is in no position to make a finding that the costs reflected in the ICP are anything other than appropriate, or that the Turner and Townsend costings are to be preferred.

(iv) Conclusions

The Panel concludes:

- The Panel encourages the VPA to continue to work with DELWP and the Growth Area Councils to review the apparent shortfall in the cost of delivering community infrastructure in growth areas arising from the capped community and recreation levy. As this matter is beyond the scope of the Amendment, it makes no formal recommendations in this regard.

5.4 Consistency of terminology

(i) The issues

The issues are:

- whether the project descriptions in the ICP should be altered to be consistent with the PSP
- whether the terminology used in both the PSP and the ICP should be altered to be consistent with the Ministerial Direction.

(ii) Submissions

Council submitted that, whilst a number of discrepancies between the approved PSP and the exhibited ICP had been addressed in the later iterations of the ICP, some differences remained.

In its written submission Council referred to the May ICP, submitting that a number of project descriptions in the May ICP did not match the description in the PSP.

For example, Council submitted that the text in the Project Title and Description for RD-01 in Table 5 of the ICP should be amended as set out below, to be consistent with the text in Table 9 of the PSP:

Construction of a ~~secondary arterial road (4 Lanes) comprising~~ 2 lane carriageway, excluding intersections (interim treatment) within the existing Greigs Road reserve.

Council added that the same change should be made for road projects RD-02 through to RD-12.

Council added it had identified the following errors in the May ICP:

- The net developable area for property R5 in the ICP Table 17 (3.24 hectares) should match the area in Appendix A of the PSP (3.56 hectares).
- The Project Title and Description of CI-01 in ICP Table 8 should replace the word “Specialised” with “Major”.
- The Project Title and Description of CI-02 in ICP Table 7 should add the word “Atkinson” between “Mt” and “Major”.
- Tables 12 and 13 through to 17 has been incorrectly labelled.
- The reference to Table 11 in 5.3 should be to Table 15.

The VPA agreed with Council that:

... the project descriptions of the ICP and PSP be consistent with both one another, and consistent with the allowable item description in the Ministerial Direction. In some instances, this may require the PSP to be updated.

The VPA added that all transport infrastructure items should include the descriptions in the first column of Tables 3 and 4 of the Ministerial Direction by inclusion of the words ‘arterial road’ or ‘arterial and arterial road intersection’. The VPA submitted that once the descriptions in the tables of the Ministerial Direction had been applied:

... any remaining inconsistency between the PSP and the proposed ICP is due to inconsistency between the PSP and the Ministerial Direction.

Council acknowledged that the VPA proposed to update the PSP to align with the wording in the Ministerial Direction. However, Council argued that the PSP formed the strategic justification for the ICP and there had been no argument presented as to why the ICP should be different from the PSP. Council submitted that the ICP should reflect the PSP or the necessary changes to the PSP should have been exhibited with the ICP.

(iii) Discussion

The Panel notes that the July 2019 ICP (Document 114) appears to have dealt with and corrected the labelling of Tables 12 and 13 through to 17. However, the other matters raised by Council remain unaltered.

The Panel agrees with Council that the following matters are minor errors in the ICP and should be corrected to be consistent with the PSP:

- The net developable area for property R5 in the ICP Table 17 (3.24 hectares) should match the area in Appendix A of the PSP (3.56 hectares).

- The Project Title and Description of CI-01 in ICP Table 8 should replace the word “Specialised” with “Major”.
- The Project Title and Description of CI-02 in ICP Table 7 should add the word “Atkinson” between “Mt” and “Major”.
- The reference to Table 11 in 5.3 should be to Table 15.

The remaining issue is the project descriptions. Both Council and the VPA agreed that the project descriptions in the ICP and PSP should align. The disagreement appears to be around how this alignment occurs. The VPA’s position is that the descriptions in the ICP and Ministerial Direction are consistent and effectively, the PSP should be brought into line. Council argued that the ICP descriptions should be brought into line with the PSP.

The Panel notes that in the June ICP (Document 101) and the ‘clean’ July ICP (Document 114) Table 5 in the road projects uses the description ‘secondary arterial road’ whereas in the tracked changes July ICP (Document 115), Table 5 refers to ‘an arterial road’ in the road projects and ‘primary road’ and ‘secondary arterial road’ in the intersection projects.

The Panel notes that in the Ministerial Direction the first column of Table 3 refers only to ‘arterial roads’ and the only reference to ‘secondary’ occurs in the standard of provision in the third column. Table 4 has no reference to ‘secondary’. In the Panel’s view this inconsistency in the VPA’s submission and the documents provided is disconcerting and confusing.

Nevertheless, the Panel agrees with Council and the VPA that the descriptions of projects should be consistent across the PSP, ICP and Ministerial Direction and the disparity in terminology is largely the result of when these documents were finalised. The Panel agrees with Council that the PSP provides the strategic justification for the ICP and changing the PSP to match the ICP is somewhat akin to putting the cart before the horse.

Essentially the argument becomes one of procedure. The impact of the differences in description does change the estimated cost of the project or its design or timing. The Panel does not accept Council’s argument that the differences in project description somehow diminish the significance of the PSP in strategically justifying the ICP. The PSP is not the first planning document to be overtaken by changes in terminology or definitions and it will not be the last.

From a process perspective, the Panel agrees with Council that changes to the PSP required to make the project descriptions consistent with the Ministerial Direction should have been part of the information provided with the exhibition of the ICP. That does not mean re-exhibiting the PSP, but simply identifying the changes needed to make the documents consistent.

The Panel agrees with the VPA that, in the circumstances, an appropriate process is:

... to amend the PSP to ensure it is consistent with the Ministerial Direction at the time the ICP is submitted to the Minister.

The Panel interprets this to mean a Ministerial Amendment without notice, which is appropriate given the minor nature and impact of the changes.

(iv) Conclusions and recommendations

The Panel concludes:

- Ideally, changes to the PSP required to make the project descriptions consistent with the Ministerial Direction should have been part of the information provided with the exhibition of the ICP.
- The amendment of the PSP via a Ministerial Amendment at the time the ICP is submitted to the Minister for approval is an appropriate means of dealing with the differences in project descriptions and bringing the PSP into alignment with the Ministerial Direction.
- The other corrections recommended by Council should be made to the ICP.

The Panel recommends:

- 4. Make the following changes to the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019 (Document 114):**
 - a) Change the net developable area for property R5 in Table 17 to 3.56 hectares.**
 - b) In the Project Title and Description of CI-01 in Table 8, replace the word “Specialised” with “Major”.**
 - c) In the Project Title and Description of CI-02 in Table 7, add the word “Atkinson” between “Mt” and “Major”.**
 - d) In section 5.3, change the reference to Table 11 to Table 15.**

6 Resolved issues

6.1 Matters agreed between the experts and the parties

Matters agreed between the experts and/or the parties are summarised in Table 6. The changes required to the Amendment as a consequence are summarised in Chapter 8, and are reflected in the July ICP (Document 114). The Panel supports these changes.

Table 6 Agreed issues

Resolved issue	Panel comment
Costs for road projects RD-01 to RD-12	<p>All road projects in the ICP are secondary arterial roads. Experts agreed that the road projects should be based on the template design in the Benchmark Infrastructure Report.</p> <p>Cardno adjusted the benchmark per unit rate for secondary arterial road projects in the April 2019 version of the Benchmark Infrastructure Report, from \$3,685/m to \$4,375/m.</p> <p>Experts agreed that:</p> <ul style="list-style-type: none"> - the revised benchmark per unit rate was appropriate - the costs should be recalculated to rectify the error in calculating road lengths (the May changes) <p>Agreement is recorded in the costings conclave statement, Document 87.</p>
Costs for intersection projects IT-01 to IT-05, IT-07, IT-08, IT-13 to IT-15	<p>Experts agreed that Cardno's revised costings which informed the April changes were appropriate. Agreement recorded in Document 87.</p>
Costs for bridge project BR-03	<p>Experts agreed that Cardno's revised costings which informed the April changes were appropriate. Agreement recorded in Document 87.</p>
Intersection project IT-09	<p>Final agreement reached between Mr Howe and Ms McKenna, recorded in the post-conclave statement (Document 93).</p>
Intersection project IT-16	<p>Final agreement reached between Mr Howe and Ms McKenna, recorded in the post-conclave statement (Document 93).</p>
Intersection projects IT-06, IT-09 and IT-10 to IT-12	<p>Experts agreed that Cardno's revised costings which informed the April changes were appropriate, subject to Ms McKenna verifying pavement quantities. Agreement recorded in Document 87. Final agreement on the overall costings recorded in the post-conclave statement (Document 93).</p>
Plan 4 in the ICP failed to include the land requirement for BR-02	<p>Corrected in the April ICP and reflected in the July ICP.</p>

Resolved issue	Panel comment
Corrections to various drafting inconsistencies between the PSP and the ICP	Recorded in Tables 1 and 2 in Council's revised submission to the Amendment (Document 72), following notification of the April changes. The corrections are reflected in the July ICP, save for the further corrections referred to in the Panel's recommendations in Chapter 5.4, which should also be included.

6.2 Hopkins Road freeway and rail crossing

By letter to the VPA dated 14 September 2018, Transport for Victoria (TfV) made the following submissions regarding the Amendment:

TfV has reviewed the supporting documents related to the proposed Amendment C201 and has no objection to the proposal. TfV however wish to clarify that the State cannot guarantee to deliver the ultimate cross section for Hopkins Road for the crossing of the Western Freeway and the Ballarat Train Line. Any development of the Hopkins Road intersection IT01 and IT02 would be expected to tie into the existing Hopkins Road.

The Panel sought clarification as to whether this requirement that IT-01 and IT-02 tie into the existing Hopkins Road has implications for the design or cost of those intersection projects. The VPA confirmed that IT-01 and IT-02 have been designed based on the ultimate alignment of Hopkins Road. It is expected that the interim construction of Hopkins Road will be delivered by the time IT-01 and IT-02 are constructed and that no tie-ins to the existing road will be required.

No changes are required to the Amendment in response to this issue.

6.3 Pedestrian crossing projects PS-01 and PS-02

The ICP includes two pedestrian crossing projects in Table 5, both of which will be funded from the standard transport construction levy:

- PS-01: Construction of pedestrian signals on Mt Atkinson Road opposite the Mt Atkinson Conservation Reserve.
- PS-02: Construction of pedestrian signals on North-South Boulevard Connector Road north of Mt Atkinson East Community Hub.

Each of these projects has an estimated cost of \$276,614, although no designs or detailed cost sheets are included in the ICP. The Panel sought clarification of the status of the costings for these projects from the VPA. The VPA indicated that pedestrian crossings are very standard in nature, and confirmed that the cost estimates are an average of the cost of pedestrian signal projects identified in various gazetted DCPs, indexed to the July 2018 costs. The VPA's position was that these items do not require a design or a cost estimate and that the above costs are appropriate to inform the ICP. The Panel accepts the VPA's position.

No changes are required to the Amendment in response to this issue.

6.4 Land for indoor recreation facilities

Table 7 in the Ministerial Direction lists the allowable public purposes for which public purpose land may be used or developed, and allows land acquired for community and recreation facilities to be used or developed for the *"construction of any community facilities or sports*

and recreation facilities as set out in Table 2". Table 2 does not include an indoor recreation facility among the allowable items. The VPA advised the Panel that this was an error in the Ministerial Direction.

The error impacts on the Mt Atkinson & Tarneit Plains ICP because Project CI-01 is an indoor recreation facility. The VPA proposes to address this issue by including the following note in the ICP, thereby allowing the ICP to specify a land contribution for Project CI-01 in Table 17:

Note: The Minister has exempted the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan from complying with Table 7 of Annexure 1 in respect of the land required for project CI-01 (Indoor Recreation Facility (Mt Atkinson Town Centre)). This exemption has been granted on the basis that the 'land for indoor sports facilities was unintentionally excluded from the Ministerial Direction when it was revised as a result of the commencement of the Planning and Environment Amendment (Public Land Contributions) Act 2018.

Council supported this approach but submitted that the note be elevated to an ordinary clause (to which the VPA agreed), and that the Ministerial Direction be specifically referenced in the clause. The Panel agrees this provides additional clarity and certainty.

The Panel recommends:

5. **Change the final clause before the heading '4.1 Inner and Outer Public Purpose Land' on page 23 of the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019 (Document 114) as follows:**
 - a) **after the words "Annexure 1" in the second line, add the words "of the Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans and Ministerial Reporting Requirements for Infrastructure Contributions Plans dated 1 July 2018".**

6.5 Public land contributions

Council submitted that there is a lack of clarity around the definition of 'contribution land' in both the ICP and the Ministerial Direction. It noted that while section 5.4 of the ICP defines contribution land as excluding "*encumbered land, land already used or developed for a public purpose and land that is exempt from paying an infrastructure contribution under the Ministerial Direction...*", it is not clear on the face of the ICP which parts of each property are included in contribution land and which parts are not. It submitted implementation of the ICP would be assisted if the ICP clearly identified what land areas have been included and excluded to derive the 'Total Contribution Land' as expressed at Table 17.

The VPA made changes in the July version (Document 114) which specify which land contributions are toward public purpose land, and the total land contributions being made in respect of each parcel. The Panel supports these changes.

No further changes are required to the Amendment in response to this issue, beyond those contained in the July ICP.

6.6 Additional information in relation to road projects

Mount Atkinson Holdings suggested the following information be included in Appendix 3 of the ICP:

- the measured road lengths for each of the road projects
- a column identifying the authority responsible (either Council or VicRoads) for the ultimate project.

The VPA agreed that it would be of benefit to provide the measured road lengths for each of the road projects, but submitted it is unnecessary to specify the authority responsible for the delivery of ultimate project as sections 5.1 and 5.2 of the ICP clearly state that Council is both the Collecting and Development Agency.

The Panel supports the inclusion of the measured road lengths (which are included in the July ICP, Document 114), and agrees that it is not necessary to specify the responsible delivery agency.

No further changes are required to the Amendment in response to this issue, beyond those contained in the July ICP.

6.7 Updated indexed rates

The VPA confirmed in its Response to Questions of the Panel (Document 99) and again in its closing submission that it intends to apply the 2019-2020 indexed rates published in July 2019 when it adopts the Amendment. The Panel supports this, and notes that it is consistent with the Ministerial Direction.

The Panel recommends:

- 6. Update the Mt Atkinson & Tarneit Plains Infrastructure Contributions Plan July 2019 (Document 114) and the Infrastructure Contributions Overlay Schedule 3 (Document 116A) to reflect the 2019-2020 indexed standard and supplementary levy rates published in July 2018.**

7 Systemic issues

7.1 The issues

The Panel process identified a number of systemic issues that are not unique to this Amendment, but impact on ICPs more broadly. They are:

- discrepancies between contributions paid under interim and final ICPs
- administration of the ICP system
- anticipated shortfalls in the capped community and recreation levy (dealt with in Chapter 5.3).

7.2 Discrepancy between contributions paid under interim and final arrangements

Under the current interim ICP and ICO3, the supplementary levy rate for both residential and commercial and industrial development is \$600.83/NDHa, substantially lower than the \$18,514/NDHa proposed under the July ICP and updated ICO3. The current arrangements also do not include land values.

The Panel directed the VPA to comment in its Part A (Part 2) submission on how any discrepancies in contributions paid under the interim arrangements and the final approved ICPs may be dealt with.

The VPA explained that the interim arrangements were put in place to allow permits to issue, pending preparation and finalisation of the final ICP. According to Council, six permits have issued (many of which relate to the Mt Atkinson Holdings land). Development has commenced under some of those permits.

The Act sets out a mechanism for dealing with any amounts that may be left over when an ICP expires, but it does not provide for a reconciliation mechanism between amounts paid under an interim arrangement, and amounts due under a final arrangement. If contributions are fully paid under the interim arrangements, a collecting agency is not able to impose an additional or different amount of contribution under a final ICP in respect of that development.

Council submitted that the issue of reconciling the lower supplementary levy in the current interim ICP with the higher proposed rate in the July ICP is of great significance to Council. It submitted that in the absence of a statutory reconciliation mechanism, developers and Council have negotiated private arrangements (implemented under section 173 agreements) in order to facilitate development and the collection of appropriate contributions until the final ICP is gazetted.

While the Panel was not privy to the terms of private agreements negotiated between developers and Council, it presumes that the section 173 agreements would have included some form of reconciliation mechanism to deal with the differences paid under the interim and final arrangements. In the absence of a statutory mechanism to deal with the issue, this seems to the Panel to be a suitable workaround.

7.3 ICP administration

Council noted that updated ICP Guidelines are yet to be published following the commencement of the *Planning and Environment Amendment (Public Land Contributions) Act 2018* over 12 months ago. Council noted that the Ministerial Direction does not deal with a number of “*pertinent issues*”, and submitted:

The absence of approved ICP guidelines and a complete Ministerial Direction hinders Council’s implementation of the system. The difficulties experienced by Council and submitters in analysing the impacts of the ICP in the absence of Ministerial Guidelines are equally difficulties placed on the Panel.

Council identified the following gaps in the Ministerial Direction and/or the ICP:

Table 7 **Systemic issues raised by Council**

Issue	Summary
Interest accruing on monies held	<ul style="list-style-type: none"> - land equalisation payments collected from under-providing parcels of land may not adequately meet the land credit amounts payable to over-providing land owners - PSPs are expected to develop over 30 years, making it necessary and prudent for councils to invest monies collected to facilitate equal growth in funds - Council presumes that in the absence of anything preventing this approach, it will proceed on this basis
Changes in the public land budget	<ul style="list-style-type: none"> - public land budgets in PSPs are finely balanced, while PSPs facilitate development at a level of ‘general accordance’ - there will inevitably be changes in development footprint that will alter the absolute areas of public land and developable land - Council noted that section 5.3 of the ICP gives the collecting agency discretion in this regard
Ministerial Direction does not deal with contribution land	<ul style="list-style-type: none"> - contribution land is not a term that is used in the Ministerial Direction, raising questions regarding whether the new methodology for land contribution is in accordance with the Ministerial Direction

The Panel notes these submissions for the record, but is not in a position to make findings or recommendations about them.

8 Final form of the Amendment

The VPA recorded its final position on the Amendment in its Part B submission, in response to the Panel's Directions. The Panel supports the following changes as outlined in the VPA's Part B submission (in summary):

- Changes to the ICO3:
 - amend Clause 3.0 to reflect the updated supplementary levy amount as informed by updates to all cost estimates for all construction projects except PS-01, PS-02 and BR-01 in response to submissions (as reflected in the July ICP, Document 114)
 - amend Clauses 4.0 and 5.0 to update the land contribution area calculation to accord with the Act (as reflected in the July ICP, Document 114)
 - amend Clauses 6.0, 7.0 and 8.0 to update the method and timing of indexation to accord with the Act and Ministerial Direction (to reflect the 2019-2020 indexed rates published in July 2019).
- Changes to the Mt Atkinson & Tarneit Plains ICP:
 - amend the exhibited project cost estimates for all projects excluding PS-01, PS-02 and BR-01 to reflect those contained in the July ICP (Document 114)
 - amend the supplementary levy to include all of the estimated costs for infrastructure items BR-01, BR-02, BR-03, CU-01
 - amend the staging triggers in the ICP so that the staging of the projects in the ICP reflects that set out in the PSP
 - include a note (now a clause) that CI-01 (land for indoor recreation facility) is exempt from the Ministerial Direction to accommodate an erroneous omission of indoor recreation facility as an allowable land component item
 - amend the ICP land component by:
 - updating the document to ensure consistency with the Act. This includes defining contribution land and adding in additional tables to explain how the land component is calculated
 - re-calculating the ICP land contribution percentage, all land credit amounts and land equalisation amounts
 - deleting infrastructure item RD-09 from Table 8 as it has no public land component.

As set out in Chapter 5.1, the Panel does not support the VPA's proposal to only include part of the estimated costs for infrastructure items IT-01, IT-02, IT-03, IT-04, IT-14 and IT-16 in the supplementary levy. Provided the costs associated with the demolition of existing pavement and construction of the protection slab for the high pressure gas pipeline significantly affect the overall cost of these projects, the whole of the projects should be included in the supplementary levy (assuming the other criteria in clause 17 are met), and the total value of the supplementary levy recalculated accordingly.

Appendix A Procedural matters

A1 Request for appointment of an Advisory Committee

Submissions from Melton, Whittlesea and Mitchell Councils on the exhibited Amendments raised concerns that the community and recreation levy (which is capped under the Ministerial Direction at \$86,627/NDHa) would be insufficient to fund the community facilities and sports and recreation facilities identified in the ICPs. They were concerned that they, as the delivery agencies for this infrastructure, would be left with significant shortfalls in funding.

On 23 January 2019, the Councils sent a joint request to the Minister for Planning, seeking that the two Panels appointed to consider submissions on Amendments C201 and GC102 also be appointed as an Advisory Committee under section 151 of the *Planning and Environment Act 1987* (the Act).²⁶ The purpose of the request was to allow the Advisory Committee the scope to make recommendations as to whether the Minister should exercise his discretion under the Ministerial Direction to exempt the need to comply with the capped community and infrastructure levy.²⁷ The Minister did not support the request.²⁸

A2 Directions to provide further notice

As mentioned in Chapter 1.2, the Panel directed the VPA to provide further notice on two occasions:

- further notice of the April 2019 recommended changes (which were based on the revised benchmark costings)
- further notice of the May 2019 recommended changes (which were based on the error in calculating road lengths, and the reallocation of two projects from the standard levy to the supplementary levy).

The further notice of the April changes resulted in a revised submission from Melton City Council, and a new submission from Meskos (who was added as a party to the Hearing at the fourth Directions Hearing on 17 May 2019). The Panel has had regard to these submissions in preparing its report.

Council submitted that it did not receive notice of the May changes, and did not become aware of the May ICP until 6 June 2019, when the VPA's lawyers notified Council of the changes in response to questions regarding the functional layout plan for BR-02 contained in the April ICP. This resulted in a slight delay in the circulation of Council's expert evidence in relation to costings.

The VPA did not provide further notice of the June 2019 changes, but submitted that:²⁹

²⁶ Document 38a

²⁷ The Minister has such discretion under clause 29 of the Ministerial Direction

²⁸ Document 38b

²⁹ Paragraphs [17]-[19] of the VPA's Part B submission, Document 104

The VPA considers that non-submitting landowners have been updated appropriately on the progression of the Amendment and the associated updates to the supplementary levy amount, including through two further notification periods following the initial formal exhibition during August and September 2018.

The latest increase in supplementary levy is largely due to the experts' recommendations in the post-conclave statement and particularly in relation to BR-02, which increased in cost by \$2,002,000 from the cost estimate identified in the Recommended Changes (May) ICP. The additional cost for the taper corrections are listed under the standard levy.

The gazetted [sic] supplementary levy amount is not viewed as a substantial change from the amount identified in the last notification to landowners in May.

A3 Expert evidence

The Panel directed the staggered circulation of expert evidence:

- evidence in relation to design (functional layout) of the ICP projects was circulated first, on 13 March 2019
- a functional layout conclave was then conducted, with the agreed statement circulated on 22 March 2019
- evidence in relation to infrastructure costings for Amendment C201 was then circulated on 6 June 2019
- a costings conclave was then conducted, with the agreed statement circulated on 14 June 2019.

The reasoning behind the staggering of evidence in this way was that costings evidence would necessarily be informed by design evidence, and that identifying (and possibly reducing) the areas in dispute in relation to the design or functional layout of the ICP projects would inform the subsequent costings evidence.

A4 Participation in the functional layout conclave

One of the submissions to Amendment GC102 raised the issue of needing to ensure that VicRoads has committed to the design of the ICP road and intersection projects, to ensure it would not later seek a higher specification or further works. Another submission indicated that the intersection footprints used to calculate the benchmark costings do not meet VicRoads requirements.

The Panel raised these issues at the first Directions Hearing on 19 December 2018, including the possibility of inviting VicRoads to participate in the Hearing to provide clarity in relation to these issues. The VPA responded that its submissions at the Hearing would represent a 'whole of government' position that would include the views of VicRoads. There was general agreement (including from VicRoads) that VicRoads officers should be invited to attend the functional layout conclave, to provide assistance to the independent experts in relation to design and functional layout matters. The Panel accordingly directed that VicRoads be invited to attend.³⁰

³⁰ Document 5 Direction 16

Prior to the second Directions Hearing, the Panel received correspondence from Whittlesea City Council indicating that it intended to call internal technical experts to support Council's submission at the Hearing. It proposed that the internal technical experts participate in the functional layout conclave. Whittlesea clarified that it was not intending to call its internal officers as expert witnesses. Rather, they would be supporting Council's submissions and be available to provide assistance to the Panel if required.

There was some dispute at the second Directions Hearing as to whether it was appropriate for Council officers to participate in the conclave meeting, on the basis that the purpose of the conclave was to allow the independent experts to identify areas of agreement and dispute, not to 'mediate' and seek to reach agreement. Some parties considered that it was therefore not appropriate for Council officers to attend the conclave.

The parties sought a ruling from the Panel. The Panel provided a ruling on 18 March 2019³¹ that Whittlesea's internal technical expert officers were permitted to attend the functional layout conclave meeting, to provide advice and assistance to the independent experts. They were not permitted to advocate for a particular position, and were not to be signatories to the conclave statement.

Shortly following the second Directions Hearing, the VPA sought an urgent ruling that the VPA's Transport Planning Manager be permitted to attend the functional layout conclave.³² The Panel issued a ruling on 20 March 2019³³ that the VPA's Transport Planning Manager be permitted to attend on the same basis as the Whittlesea officers as outlined in the Panel's ruling dated 18 March 2019.

A5 Hearing dates and adjournment requests

The pre-set hearing dates for Amendments C201 and GC102 were in the week of 18 February 2019. These hearing dates were vacated after the first Directions Hearing, when the VPA advised that it was expecting revised benchmark costings, but that it would not be in a position to circulate those revised costings before the end of February 2019. Hearing dates were set for the week commencing 13 May 2019.

Following the second and third Directions Hearings, when the extent of changes arising from the revised benchmark costings became clear, the Panel determined that further notice of the changes was required (discussed in Chapter 1.2). This required the May hearing dates to be vacated, and new dates were tentatively set in the first week of July 2019.³⁴ At this stage, the Hearings for Amendment C201 and Amendment GC102 were still linked.

³¹ Document 22

³² Document 23. Responses from other parties are Documents 24 and 25, and further correspondence from the VPA is Document 26

³³ Document 27

³⁴ Document 33

On 30 April 2019, one of the parties to Amendment GC102 wrote to the Panel indicating that its preferred Counsel were unavailable for the tentative hearing dates in July, and that it was concerned that there was insufficient time for its client to retain new consultants and prepare new evidence to proceed on 1 July 2019. It requested that the dates be vacated and the Hearings relisted in October 2019.³⁵

Whittlesea Council wrote to the Panel on 3 May 2019 expressing concern that there would be insufficient time for their expert (and any further experts Council may need to retain) to prepare for a Hearing commencing on 1 July 2019, and providing availability in October 2019 (and confirming availability for the week of 1 July 2019).³⁶

On 13 May 2019, the Panel received correspondence from Melton Council indicating that it would be ready to proceed with Amendment C201 in the week commencing 1 July 2019, and requesting the Panel to direct (among other things) that the Hearing for Amendment C201 proceed in July 2019.³⁷

These matters were discussed at the fourth Directions Hearing on 14 May 2019, at which the VPA, Melton Council, Mt Atkinson Holdings and Meskos (all the parties to the C201 Hearing) confirmed they would be ready to proceed on 1 July 2019. The Panel issued Directions³⁸ that, in effect, provided for the C201 Hearing to proceed in the first week of July, and the GC102 Hearing to be delayed until the week commencing 28 October 2019.

Some of the parties to GC102 submitted that the July hearing dates should be used for the GC102 Hearing, not the C201 Hearing. Not all parties to GC102 agreed with the Hearing dates commencing on 28 October 2019. These matters will be recorded in the report for Amendment GC102 in due course.

³⁵ Document 68

³⁶ Document 69

³⁷ Document 71

³⁸ Document 75

Appendix B Document List

No.	Date	Description	Presented by
Melton C201 and GC 102 pre-hearing documents			
1	04/12/18	Whittlesea City Council submission – GC102	Ms Stuart, VPA
2	06/12/18	Mirvac submission addenda – GC102	“
3	07/12/18	Email regarding matters to be addressed at the first Directions Hearing	Ms Harwood, PPV
4	13/12/18	Mitchell Shire Council submission – GC102	Ms Stuart, VPA
5	19/12/18	Panel Directions and Timetable (v1)	Ms Harwood
6	01/03/19	Referral of late submission from Donnybrook JV P/L – GC102	“
7	“	VPA’s Part A (Part 1) submission Tabling letter Submission Appendix 1 – Final draft <i>Benchmark Infrastructure Report</i> (Cardno, 1 March 2019) Appendix 2 – Stakeholder Comments Review, Benchmark Infrastructure Costings Project (Cardno, 12 December 2018) Appendix 3 – table comparing July 2018 benchmark costs and March 2019 benchmark costs	Mr O’Connor, Hall and Wilcox
8	06/03/19	Confirmation of second Directions Hearing and revised Distribution List (v2)	Ms Harwood
9	07/03/19	Melton City Council – Response to Direction 1 (confirmation of expert witnesses)	Mr Tobin, Harwood Andrews Lawyers
10	“	DFC Woodstock PTY Ltd – Response to Direction 1	Mr Snyder, Best Hooper Lawyers
11	08/03/2019	Mirvac – Response to Direction 1	Ms Kaczmarek, Norton Rose Fulbright
12	“	Whittlesea Council – Response to Direction 1	Mr Saisanas, Whittlesea Council
13	“	Donnybrook JV Pty Ltd – Response to Direction 1	Ms Schutz, Schutz Consulting

No.	Date	Description	Presented by
14	“	Panel response to expert witness confirmation and clarification of Direction 9(a) (expert meeting on functional layout)	Ms Harwood
15	12/03/19	Correspondence advising of circulation timeframe for revised ICP	Mr O’Connor
16	“	Whittlesea request for clarification regarding participation of internal Council officers in the Panel process	Ms Mahoney, City of Whittlesea
17	“	Panel response to Whittlesea request 12/03/19	Mr Morrow, PPV
18	13/03/19	Evidence of Mr Howe on functional layout	Ms Negri, Hall and Willcox
19	“	Evidence of Mr Woolcock on functional layout – GC102	Mr Snyder
20	14/03/19	Evidence of Mr Walsh on functional layout – GC102	Ms Schutz
21	“	Evidence of Mr Hunt on functional layout – GC102	Ms Kaczmarek
22	18/03/19	Further Panel Directions (VPA proposal for further notification)	Mr Morrow
23	19/03/19	Correspondence from VPA requesting urgent ruling on VPA Transport Manager’s participation in functional layout expert meeting	Mr O’Connor
24	“	Correspondence from City of Whittlesea and Mitchell Shire supporting VPA request 19/03/19	Mr Montebello, Maddocks
25	“	Correspondence from DFC Woodstock Pty Ltd opposing VPA request 19/03/19	Mr Snyder
26	20/03/19	Correspondence from VPA responding to DFC Woodstock Pty Ltd opposition	Mr O’Connor
27	“	Panel Ruling on VPA request 19/03/19	Mr Morrow
28	“	Correspondence advising on VPA’s delayed response to Panel Directions 28 and 29 (regarding VPA’s proposal for further notice)	Mr O’Connor
29	“	VPA response to Panel Direction 28 (proposal for further notification)	“
30	“	VPA response to Panel Direction 29 (proposal for further notification)	“
31	“	Correspondence from City of Whittlesea and Mitchell Shire responding to VPA proposal for further notification	Mr Montebello

No.	Date	Description	Presented by
32	22/03/19	VPA revised maps for further notification: Mt Atkinson & Tarneit Plains ICP map Donnybrook & Woodstock ICP map	Mr O'Connor
33	"	Panel Further Directions (further notification)	Mr Morrow
34	"	Email from VPA advising functional layout expert agreed statement timing	Mr O'Connor
35	29/03/19	Functional layout expert agreed statement	"
36	1/4/19	Email from VPA seeking clarification on Directions 9(b) and 20(b)	"
37	"	Panel Chair's clarification of Directions 9(b) and 20(b)	Mr Morrow
38	3/4/19	Letter from Minister for Planning to CEOs of Melton, Mitchell and Whittlesea responding to request to appoint Panel as Advisory Committee	"
39	10/4/19	Email from Donnybrook JV Pty Ltd requesting updated functional layout plan for intersection IN-03 – GC102	Ms Schutz
40	11/4/19	Email from PPV advising that request in Document 39 will be addressed at fourth Directions Hearing	Mr Morrow
Renotification Documentation – C201 and GC102 (the April changes)			
41	17/4/19	Email from VPA regarding renotification and updated documents	Mr O'Connor
42	"	Example renotification letter	"
43	"	VPA summary of recommended changes	"
44	"	Final Draft (revised) <i>Benchmark Infrastructure Report</i> (Cardno, 11 April 2019)	"
45	"	Update of Appendix 3 to VPA's Part A (Part 1) submission - table comparing July 2018 benchmark costs and April 2019 benchmark costs	"
Renotification Documentation – C201 (the April changes)			
46	"	<i>Mt Atkinson & Tarneit Plains ICP</i> (VPA Recommended changes to the Panel) April 2019	"
47	"	<i>Benchmark Infrastructure Costing – Result Application Mt Atkinson & Tarneit</i> (Cardno, 12 April 2019)	"
48	"	C201 Track Changed Schedule 3 to Clause 45.11 ICO – VPA recommended changes April 2019	"
49	"	Consolidated C201 Submission 1, Mt Atkinson Holdings 13 September 2018	"

No.	Date	Description	Presented by
50	“	Consolidated C201 Submission 2, Melton City Council 19 October 2018	“
51	“	Consolidated C201 Submission 3, Transport for Victoria	“
Renotification Documentation – GC102 (the April changes)			
52- 55	“	NOT USED (repeats of Documents 42-45)	“
56	“	<i>Donnybrook-Woodstock ICP</i> (VPA Recommended changes to the Panel) April 2019	“
57	“	Benchmark Infrastructure Costing – Result Application Donnybrook-Woodstock (Cardno, 12 April 2019)	“
58	“	GC102 - Track Changed Schedule 1 to Mitchell Clause 45.11 Infrastructure Contributions Overlay – VPA recommended changes April 2019	“
59	“	GC102 - Track Changed Schedule 1 to Whittlesea Clause 45.11 Infrastructure Contributions Overlay – VPA recommended changes April 2019	“
60	“	Consolidated GC102 Submission 1, Mirvac 14 September 2018	“
61	“	Consolidated GC102 Submission 2, Dennis Family Corporation DFC (Woodstock) 14 September 2018	“
62	“	Consolidated GC102 Submission 3, Dennis Family Corporation DFC (Donnybrook) 14 September 2018	“
63	“	Consolidated GC102 Submission 4, City of Whittlesea 28 November 2018	“
64	“	Consolidated GC102 Submission 5, Mitchell Shire 7 December 2018	“
65	“	Consolidated GC102 Submission 6, Schutz Consulting, 25 February 2019	“
Tabled pre-hearing documents continued – C201 and GC201			
66	26/4/19	Whittlesea Council response to VPA Part A (Part 1)	Ms Chen, City of Whittlesea
67	“	Melton City Council advising no response at this point to VPA Part A (Part 1)	Mr Shrimpton, Harwood Andrews
68	30/4/19	DFC Woodstock Pty Ltd letter regarding evidence and Hearing dates	Mr Snyder

No.	Date	Description	Presented by
69	3/5/19	Whittlesea City Council letter regarding Hearing dates	Ms Chen
70	7/5/19	Email from Panel Chair regarding matters to be considered at fourth Directions Hearing	Mr Morrow
71	13/5/19	Melton Shire letter outlining preferred Hearing arrangements	Mr Shrimpton
72	“	Email from VPA notifying of impending referral of new and revised submissions	Ms Stuart, VPA
73	“	Correspondence regarding VicRoads position	Ms Stapleton, VicRoads
74	16/05/19	Circulation of new and revised submissions Melton City Council revised submission – C201 T and E Meskos new submission – C201 Mirvac revised submission – GC102 Satterley new submission – GC102	Mr O’Connor
Melton C201 pre-hearing documents			
75	17/05/19	Further Panel Directions, Revised Hearing Timetable (v2) and Distribution List (v3)	Ms Harwood
76	23/05/19	Rigby Cook letter notifying withdrawal of expert for Mt Atkinson Holdings	Ms Robinson, Rigby Cook
The May changes			
77	29/05/19	Correspondence re error in road costing calculation: <ul style="list-style-type: none"> Exhibited and recommended changes (April) Road Lengths – tables 5 and 6 Updated recommended changes (May) Road Lengths – tables 5 and 6 Updated recommended changes (May) Road Lengths – table 1 – 28 May 2019 Plan of Road Lengths – 28 May 2019 	Mr O’Connor
78	30/05/19	Further Panel Directions re further notification of VPA’s 29/5/19 letter and revised Distribution List (v4)	Ms Harwood
79	07/05/19	Evidence of Mr Howe on infrastructure costings	Mr O’Connor
80	“	Rigby Cook letter requesting opportunity to call evidence in costings and landscape	Ms Robinson
81	“	Evidence of Mr Grodzki on infrastructure costings	Mr Mahony
82	“	Panel response to Rigby Cook request 7/5/19, including request for clarification	Ms Harwood

No.	Date	Description	Presented by
83	11/06/19	Harwood Andrews letter regarding late circulation of evidence statement	Mr Shrimpton
84	“	Evidence of Ms McKenna on infrastructure costings	Mr Shrimpton
85	13/06/19	Rigby Cook response to Panel request 7/5/19	Ms Robinson
86	14/06/19	Rigby Cook letter advising that Mt Atkinson Holdings no longer intends to call evidence	“
87	17/06/19	Costing Expert Witness Conclave Statement	Mr O'Connor
88	18/06/19	Revised Hearing Timetable (v3) and revised Distribution List (v5)	Ms Harwood
89	19/06/19	Best Hooper letter advising Meskos no longer intend to call evidence	Mr Mahony
90	21/06/19	Part A (Part 2) – Submission and appendices Comparison table of exhibited v recommended ICP Tracked changes exhibited ICP	Mr O'Connor
91	25/06/19	Revised Hearing Timetable (v4) and Distribution List (v6)	Ms Harwood
92	27/06/19	Panel request for clarification of matters from VPA at commencement of the Hearing	“
The June changes			
93	27/06/19	The June changes - email attaching various <ul style="list-style-type: none"> • Letter to the Panel Chair in respect of an error in calculating intersection costings • Taper corrections designs and costs • 'Post' conclave statement of experts dated 26 June 2019 • Updated design IT-06 as agreed post-conclave • Updated ICP Recommended Changes tables 1, 5, 6, 13 and 14 • Updated costs as agreed post-conclave • Updated Part A (Part 2) Appendix (infrastructure item summary) • Updated Recommended Changes summary • Updated ICO3 	Ms Hallett, Hall and Wilcox
94	28/06/19	VPA request for adjournment of Day 1	“
95	“	Email advising Melton CC no longer intend to call Ms McKenna	Mr Tobin

No.	Date	Description	Presented by
96	“	Panel response refusing VPA’s request for adjournment	Ms Harwood
97	“	Response to Melton CC advising Ms McKenna is to be made available if the Panel requests	Ms Harwood
98	“	Revised recommended changes document schedule	Ms McIntosh
Melton C201 documents tabled at the Hearing			
99	1/07/19	Response to Questions of the Panel	Ms Robertson
100	“	Extract from Plumpton & Kororoit ICP – 4.0 Public Land Provision	“
101	“	ICP – VPA Recommended Changes – June 2019	“
102	“	Email to Mr Mahoney re Conclave Statement	Ms Harwood
102A	“	Mt Atkinson Holdings proposed wording for work in kind provisions in the ICP	Ms Robinson
103	2/07/19	Presentation on benchmark costings	Mr Howe
104	“	VPA Part B Submission	Ms Robertson
105	“	Submissions on behalf of Melton City Council	Mr Tobin
106	“	Mt Atkinson Approvals	Mr Tobin
107	“	Extract – Mt Atkinson & Tarneit Plains ICP – Intersection Projects	“
108	4/07/19	Outline of Submissions on behalf of Mt Atkinson Holdings	Ms Trehwella
109	“	Attachments to Submissions – Mt Atkinson	“
109B	“	Overall Masterplan – Mt Atkinson	“
110	“	Reply Submissions on behalf of Melton City Council	Mr Tobin
111	“	Extract – Rockbank DCP – 4.1.3 Works-in-kind	“
112	“	Extract – Plumpton & Kororoit ICP – 5.9 Works in Kind	“
113	“	VPA Part C Submission: Reply	Ms Robertson
114	“	Mt Atkinson & Tarneit Plains ICP, July 2019 – VPA Recommended Changes	“
115	“	Mt Atkinson & Tarneit Plains ICP, July 2019 – VPA recommended changes to exhibited ICP (marked up)	“
116	“	C201 – Mt Atkinson & Tarneit Plains ICP – Appendix 1 – Key Changes Table	“
116A	“	Updated ICO3, reflecting the Mt Atkinson & Tarneit Plains ICP, July 2019 version	“

No.	Date	Description	Presented by
117	“	Extract – Standard Development Contributions Advisory Committee – Report 2 “Setting the Levies” – 31 May 2013	“
118	“	Works in kind - Credit for Over Provision – proposed wording by MAH	Ms Trewhella
