

*Planning and Environment Act 1987*

**Panel Report**

**Mitchell and Whittlesea Planning Schemes  
Amendment GC102**

**Donnybrook-Woodstock Infrastructure Contributions Plan**

**9 December 2019**

*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Mitchell and Whittlesea Planning Schemes Amendment GC102

Donnybrook-Woodstock Infrastructure Contributions Plan

9 December 2019

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

Sarah Carlisle, Chair

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

John Hartigan, Member

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

Michael Ballock, Member

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## Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
Austrroads Guide	Austrroads Guide to Road Design 2017 edition
BR-[number]	Bridge project [number] described in the Donnybrook-Woodstock ICP
Councils	Mitchell Shire and Whittlesea City Councils
DCP	Development Contributions Plan
DELWP	Department of Environment, Land, Water and Planning
DoT	Department of Transport
ICO	Infrastructure Contributions Overlay
ICO1	Infrastructure Contributions Overlay Schedule 1
ICP	Infrastructure Contributions Plan
IT-[number]	Intersection project [number] described in the Donnybrook-Woodstock ICP
Ministerial Direction	<i>Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans</i> , 1 July 2018
NDHa	Net Development Hectare
PED-[number]	Signalised pedestrian crossing [number] described in the Donnybrook-Woodstock ICP
PPF	Planning Policy Framework
RD-[number]	Road project [number] described in the Donnybrook-Woodstock ICP
VPA	Victorian Planning Authority

# Overview

## Amendment summary

<b>The Amendment</b>	Mitchell and Whittlesea Planning Schemes Amendment GC102
<b>Common name</b>	Donnybrook-Woodstock Infrastructure Contributions Plan
<b>Brief description</b>	Incorporation of an Infrastructure Contributions Plan and associated Schedules to the Infrastructure Contributions Overlay to impose standard and supplementary levies for infrastructure contributions
<b>Subject land</b>	All land within the Donnybrook-Woodstock Infrastructure Contributions Plan. Refer to Figure 1
<b>The Proponent and Planning Authority</b>	Victorian Planning Authority
<b>Exhibition</b>	16 August to 14 September 2018
<b>Submissions</b>	8 submissions, all of which requested changes: <ul style="list-style-type: none"> <li>- Mirvac Victoria Pty Ltd (Submissions 1 and 8 – Submission 8 was received following further notification of the VPA’s proposed changes to the Amendment)</li> <li>- DFC Woodstock Pty Ltd (Peppercorn Hill Estate) (Submission 2)</li> <li>- DFC Donnybrook Pty Ltd (Donnybrae Estate) (Submission 3)</li> <li>- Whittlesea City Council (Submission 4)</li> <li>- Mitchell Shire Council (Submission 5)</li> <li>- Donnybrook JV Pty Ltd and 960 Blueways Pty Ltd (Submission 6)</li> <li>- Satterley Property Group Pty Ltd (Submission 7)</li> </ul>

## Panel process

<b>The Panel</b>	Sarah Carlisle, Chair John Hartigan, Member Michael Ballock, Member
<b>Directions Hearing</b>	14 December 2018, 15 and 22 March and 14 May 2019
<b>Panel Hearing</b>	28, 29, 30 October and 1, 7 November 2019
<b>Appearances</b>	Refer to Appendix A
<b>Site inspections</b>	Not required
<b>Citation</b>	Mitchell and Whittlesea PSA GC102 [2019] PPV
<b>Date of this Report</b>	9 December 2019

## Executive summary

Mitchell and Whittlesea Planning Schemes Amendment GC102 (the Amendment) applies to all land in the Donnybrook-Woodstock Precinct Structure Plan (PSP) Area. It seeks to incorporate the Donnybrook-Woodstock Infrastructure Contributions Plan (ICP) into the Planning Schemes, and to revise Schedule 1 to the Infrastructure Contributions Overlay (ICO1) in each Scheme to specify (among other things) an updated standard levy rate and a new supplementary levy rate applicable to development in the PSP area.

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

Issues in relation to the design and costings for many of the individual projects listed in the ICP were resolved by the time the Hearing commenced. The Panel acknowledges the efforts of the parties and their experts in continuing to seek resolution of these issues. Key issues that remained in dispute included:

- the interim configuration for intersection IN-03 (Donnybrook Road and Patterson Drive)
- whether the interim secondary arterial roads (Patterson Drive, Cameron Street and Koukoura Drive) should be constructed as single or divided carriageways
- whether the road projects should include an allowance for landscaping the whole road reserve, or only the disturbed portion
- whether shared user paths should be provided on both sides of the roads, or only on one side
- discrepancy between the VPA's costings and the Councils' costings for intersections IN-08, IN-12 and IN-17
- whether the supplementary levy should include financing costs to allow the early delivery of two community facilities
- whether (and how) the ICP should deal with the treatment of credits for works in kind
- whether Hayes Hill Reserve should be treated (and credited) as public purpose land
- whether land in respect of which a development permit has already issued should be removed from the ICP.

Submissions (both to the Amendment and made at the Hearing) also raised a number of threshold or systemic issues which are not unique to this Amendment, but impact on ICPs more broadly. They are:

- whether 'basic and essential' amounts to a test that must be satisfied in order to fund infrastructure items in an ICP
- whether the criteria in clause 17 of the *Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans* (the Ministerial Direction) are pre-conditions for applying a supplementary levy
- the meaning of the phrase 'wholly or partially funded from the standard levy' used in the Ministerial Direction
- whether funds collected for a particular project can only be spent on that project

- whether development agencies are obliged to deliver infrastructure identified in an ICP if there are insufficient funds to enable it to do so
- shortfalls in the capped community and recreation standard levy.

The raising of these issues no doubt reflects the fact that the ICP system is in its relative infancy, and the details of its implementation and operation are still being worked through. While some of these issues arguably extend beyond the scope of the issues raised in submissions to the Amendment, these issues were discussed extensively through submissions made at the Hearing and the Panel considers that it is important that these issues are not lost. Accordingly, the Panel has included some observations which it hopes will assist the VPA, growth area councils and other stakeholders to gain clarity in relation to aspects of this new system.

No formal recommendations are made in respect of these threshold and systemic issues, although the Panel's findings on some of these issues informed its findings on the unresolved issues raised in submissions.

### **Overall assessment of the Amendment**

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.

### **Unresolved issues**

#### **Intersection IN-03**

A number of designs for intersection IN-03 were put to the Panel. There was the original 'outside in' design attached to the exhibited ICP (prepared by One Mile Grid for the PSP), a revised 'outside in' design with two additional through lanes in Donnybrook Road, a revised 'compact' design (prepared by Cardno and attached to the April ICP) that provided the additional through lanes in Donnybrook Road within the existing road reserve, a revised compact design prepared by Mr Hunt for Mirvac that fitted the interim intersection within the existing road reserve, and a revised design prepared by Mr Walsh for Donnybrook JV that included wider traffic lanes and verges.

The original design and Mr Walsh's design had wider lanes and verges that are more consistent with relevant guidance and standards. The Panel prefers these designs (land constraints aside). However, there are potential difficulties in delivering these designs, as they require land in the Shenstone Park PSP area owned or controlled by Donnybrook JV.

The Panel appreciates the offer made by Donnybrook JV at the Hearing to make its land available to allow the construction of Mr Walsh's design. However, too much uncertainty remains in relation to the details of the offer, how it would be legally secured, what it would cost and the impacts on the other landowners and the Donnybrook-Woodstock ICP and the future Shenstone Park PSP and ICP. Mr Walsh's design was produced late in the process, and there was no opportunity to properly test the design through the Panel process.

The ICP should therefore proceed on the basis of the revised compact design attached to the April ICP. This design was supported by the VPA and the Department of Transport (formerly



VicRoads), and all of the traffic experts other than Mr Walsh. Although it involves some compromises, the compromises are, on balance, acceptable from a traffic management and safety perspective.

#### Divided or undivided carriageways

Cameron Street (RD-01) and Patterson Drive (RD-03 and RD-04) should be constructed as undivided carriageways in their interim configurations. The PSP expressed a clear preference for these roads to be constructed as undivided carriageways, and there are practical difficulties associated with constructing divided carriageways, as the divided carriageway design requires land in different ownership on either side of the roads.

Koukoura Drive (RD-05), on the other hand, should be constructed as a divided carriageway. This is consistent with the PSP, and will deliver better urban design outcomes. As DFC Woodstock controls the land on both sides of the road, the practical difficulties associated with delivering Patterson Drive and Cameron Street as divided carriageways do not apply.

#### Landscaping

The costings for the road and intersection projects should include landscaping the whole road reserves for all roads (whether they are constructed as divided or undivided carriageways). Landscaping only part of the road reserves and intersections would potentially result in an untreated 'no man's land' developing in the unconstructed portion of the road reserve. It also has the potential to result in lop-sided plantings along what will ultimately be boulevards, given the upgrade of the roads to their ultimate (duplicated) configuration (and the planting of the trees along the second carriageway) may not occur for many years.

#### Shared paths

The VPA has only allowed for a shared user path on one side of the arterial roads and intersections. The Councils argued that shared user paths should be provided on both sides of the roads and intersections. The Panel has concluded that shared user paths on both sides of Koukoura Drive are justified as part of the interim divided carriageway treatment recommended by the Panel. However the Panel does not consider shared user paths on both sides of Patterson Drive and Cameron Street are justified as part of the interim treatment. The Panel has recommended that Patterson Drive and Cameron Street be constructed as interim undivided carriageways. There are practical difficulties in delivering a shared user path on both sides of these roads due to land ownership arrangements, and the Panel was not persuaded that a second shared user path on the unconstructed side of the road reserve is justified.

#### Intersections on Merriang Road

On the basis of the evidence and submissions before the Panel, the relocation or removal of the powerline poles from intersections IN-08 and IN-12 should be included in the costings for these intersections. The functional layout plans for the intersections should be noted to clearly indicate the poles may need to be moved or relocated.

### Financing costs for the early delivery of community facilities

Financing costs for the early delivery of works are an allowable supplementary item under the Ministerial Direction. The Councils sought to have included in the supplementary levy an allowance for financing costs associated with borrowing funds to allow the early delivery of two community centres. The Panel does not consider that adequate justification has been provided as to why the early delivery of the community centres is essential to the orderly development of the area.

### Works in kind credits

Mirvac proposed additional text in the ICP to make explicit that the amount of the credit for a project delivered as works in kind would be no less than the ICP value for that project, if the actual costs equalled or exceeded the ICP value. The Panel considers that the existing works in kind provisions in the ICP are adequate, and that this change is unnecessary. Works in kind are a matter of negotiation and agreement between the developer and the collecting agency, and in the Panel's view these negotiations should be subject to as few restrictions as possible to allow the parties to reach a mutually satisfactory outcome.

### Hayes Hill Reserve

Ordinarily, the question of whether a particular parcel of land should be identified as public purpose land is settled through the PSP process, and it is not appropriate to revisit that issue through the ICP process. However, Donnybrook-Woodstock represents an unusual set of circumstances, in that the PSP was being settled at around the same time as the introduction of the public land contribution system.

For that reason (and that reason alone), the Panel considered whether Hayes Hill should be reclassified as credited public purpose land in the ICP. It found that it should not. The land is zoned Rural Conservation Zone, which suggests that the land has some conservation value. Further, development on its steeper slopes is not permitted pursuant to Requirements R4 and R5 in the PSP. On that basis, the Panel is not satisfied that the classification of Hayes Hill Reserve in the PSP (and ICP) as encumbered (and therefore uncredited) open space is necessarily incorrect or requires revisiting.

### Removing permitted land from the ICP

The Panel does not consider that permitted land should be removed from the ICP. There is no guarantee that the works under a permit will be completed, or that the permit will not expire before the development of the land is complete. If another permit is sought for the development of the land, then it is appropriate that the developer at that time is required to make infrastructure contributions in accordance with the ICP. Permitted land should therefore remain in the ICP.

## **Threshold and systemic issues**

### 'Basic and essential'

'Basic and essential' is not a legal test or criterion that must be met in deciding whether a certain infrastructure item can be funded under an ICP. It is, however, a useful concept to guide the standard to which infrastructure should be funded under an ICP. The Panel considers that the VPA had generally applied the 'basic and essential' concept appropriately

in preparing the ICP. That said, what amounts to ‘basic and essential’ is ultimately a matter of judgement, and the Panel has reached a different conclusion to the VPA on what amounts to ‘basic and essential’ on some matters.

#### The clause 17 criteria as pre-conditions to a supplementary levy

The clause 17 criteria of the Ministerial Direction are not pre-conditions to the imposition of a supplementary levy. They are matters that a planning authority must consider in exercising its discretion as to whether to apply a supplementary levy.

#### The meaning of ‘wholly or partially funded from a standard levy’

The Panel considers that the phrase ‘wholly or partially funded from a standard levy’ in the Ministerial Direction is intended to encourage the use of any funds ‘left over’ in the standard levy pool to fund any supplementary levy allowable items before a supplementary levy is applied. It should not be interpreted to preclude the application of a supplementary levy where supplementary levy items can be partially (but not wholly) funded from the standard levy pool. The VPA has taken this approach in preparing this ICP, and the Panel supports that approach.

#### Using funds collected for one project on another project

The Panel considers that infrastructure contributions are intended to be pooled, so that funds collected in respect of one project that is delivered ‘under budget’ can be allocated to another project that is ‘over budget’. That said, the Ministerial Direction limits the extent to which funds from one pool can be spent on projects funded from another pool. It allows ‘left over’ funds in the community and recreation levy pool to be spent on transport projects, but it does not expressly allow funds from the transport levy pool to be spent on a community and recreation project.

#### Obligations of development agencies to deliver infrastructure listed in an ICP

It has long been a fundamental principle of both the DCP and the ICP systems that contributions plans are not intended to fully fund the infrastructure listed in the plan. Development/infrastructure contributions are just that – a contribution to the funding of essential infrastructure in new communities. Local government (and other agencies) are also expected to contribute to the cost of providing new infrastructure.

The Panel does not consider that the submissions made on behalf of the Councils in this matter suggested that they should not be required to contribute toward infrastructure costs in new communities. Rather, the Panel understood the Councils to be highlighting the risk that, if infrastructure contributions collected under the ICP result in significant shortfalls in funding, they may be required to make some difficult decisions as to whether they can afford to provide certain infrastructure items, given their general financial management obligations.

It is neither necessary nor appropriate for the Panel to go further and to draw a conclusion as to whether the principle of local government sharing the responsibility to contribute to the cost of infrastructure in new communities translates to a direct legal obligation on a council to deliver all of the infrastructure listed in an ICP, irrespective of the extent of funding available under the ICP.

### Shortfalls in the capped community and recreation levy

It seems likely that there will be a significant shortfall between the amount collected under the capped community and recreation levy, and the actual cost of providing the community and sport and recreation infrastructure identified in the Donnybrook-Woodstock ICP. This is similar to the situation that is likely to arise under the Mt Atkinson and Tarneit Plains ICP, and the Panel's comments in relation to the shortfall in the community and recreation levy (in Melton PSA C201 [2019] PPV) are equally applicable to this ICP. The cap is set by the Ministerial Direction, and it is not a matter that the VPA is able to address. Nevertheless, the Panel encourages the VPA to continue to work with the relevant agencies (including DELWP and the growth area councils) to monitor this issue holistically across growth areas.

### **Recommendations**

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

- 1. Adopt Amendment GC102 to the Mitchell and Whittlesea Planning Schemes as exhibited, with the following changes:**
  - a) Substitute the exhibited Donnybrook-Woodstock Infrastructure Contributions Plan dated August 2018 with the October 2019 version tabled by the Victorian Planning Authority on the final day of the Hearing (Document 174), after making the changes and corrections referred to in other recommendations in this Report.**
  - b) Update the exhibited Infrastructure Contributions Overlay Schedule 1 in both planning schemes as follows:**
    - in the heading, change the date of the Infrastructure Contributions Plan from August 2018 to October 2019
    - in Clause 2.0, include the standard levy amounts contained in Tables 1 and 12 of the revised Infrastructure Contributions Plan (October 2019 version)
    - in Clause 3.0, include the supplementary levy amounts contained in Tables 1 and 13 of the revised Infrastructure Contributions Plan (October 2019 version)
    - in Clause 4.0, update the land contribution percentage to 13.12 percent, consistent with Table 2 of the revised Infrastructure Contributions Plan (October 2019 version)
    - in Clause 5.0, update the land credit amounts and land equalisation amounts, consistent with Table 3 in the revised Infrastructure Contributions Plan (October 2019 version).
  - c) Update the Schedule to Clause 72.04 in both planning schemes to refer to the Donnybrook-Woodstock Infrastructure Contributions Plan October 2019.**
- 2. Amend the Infrastructure Contributions Plan (October 2019 version) to include:**
  - a) a revised functional layout plan for RD-05 (Koukoura Drive interim configuration), showing it as a divided carriageway consistent with the cross section on page 97 of the Donnybrook-Woodstock Precinct Structure Plan**
  - b) revised costings for RD-05 based on the revised functional layout plan**

- c) revised functional layout plans for the intersections along Koukoura Drive (IN-04, IN-07, IN-11 and IN-15) showing the Koukoura Drive legs as a divided carriageway for the whole of the extent of works, rather than tapering to an undivided carriageway
  - d) revised costings for IN-04, IN-07, IN-11 and IN-15 based on the revised functional layout (if required).
- 3. Amend the Infrastructure Contributions Plan (October 2019 version) to include revised costings for:
  - a) RD-01 to RD-05 that include the costs of landscaping the whole road reserve (including topsoil, grass and trees)
  - b) those intersections identified in Mr Howe's memo dated 7 November 2019 (Document 170), for which the costings did not include landscaping on the non-developed edges of the intersections, to include landscaping (topsoil and grass) on those edges.
- 4. Amend the Infrastructure Contributions Plan (October 2019 version) to include:
  - a) revised costings for RD-05, IN-04, IN-07, IN-11 and IN-15 to include a shared user path on both sides of Koukoura Drive
  - b) notations on the functional layout plans for all the intersections, to clearly indicate where shared user paths are to be provided
  - c) revised costings for IN-06, IN-09, IN-11 and IN-17 that include the amounts contained in Table 4 in this Report.
- 5. Amend the Infrastructure Contributions Plan (October 2019 version) to include:
  - a) revised costings for intersections IN-08 and IN-12, that include the relocation of the existing powerline poles located along Merriang Road
  - b) notations on the functional layout plans for intersections IN-08 and IN-12, to clearly indicate that the powerline poles may need to be relocated.
- 6. Update the Infrastructure Contributions Plan (October 2019 version) as follows:
  - a) include a note on the functional layout plans for intersections IN-01 to IN-05 (the Donnybrook Road intersections) to indicate that:
    - the shared user path on the north side of Donnybrook Road will be located in the services corridor to the north of the Donnybrook Road road reserve
    - existing services in the road reserve can be relocated to the services corridor to the north of Donnybrook Road
  - b) attach updated functional layout plans for IN-04 and IN-05 showing only one through lane in each direction on Donnybrook Road
  - c) attach the updated box culvert designs for BR-03 and BR-04 (Document 134)
  - d) amend Table 7 (Standard Levy Community and Recreation Construction Projects) to reflect the apportionment of funding for CI-01 and SR-01 to the English Street Development Contributions Plan
  - e) include the following paragraph in Section 4.1 (Inner and outer public purpose land):

The Minister has exempted the Donnybrook-Woodstock ICP from complying with Table 7 of Annexure 1 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 in respect of the land required for project SR-05 (Koukoura Drive Sports Facility). 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*.

7. Before adopting the Amendment, check that the correct benchmark design for intersections IN-16 and IN-17 are attached to the Infrastructure Contributions Plan (October 2019 version), given that Plan 3 in the Precinct Structure Plan indicates that these intersections are secondary arterial/connector street intersections, not secondary arterial/boulevard connector street intersections.

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The Amendment as exhibited proposes to:

- remove the *Donnybrook-Woodstock Infrastructure Contributions Plan*, July 2018 (the interim 1 ICP) from the Mitchell and Whittlesea Planning Schemes, and incorporate an updated ICP into both schemes
- amend the Infrastructure Contributions Overlay Schedule 1 (ICO1) in each Planning Scheme to:
  - reflect the revised supplementary levy rate for transport construction (exhibited at \$412 per net developable hectare (NDHa))
  - include land credit and lend equalisation amounts in each schedule.

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

### (ii) The subject land

The Amendment applies to all land within the Donnybrook-Woodstock Precinct Structure Plan (PSP) area, as shown in Figure 1.



**Figure 1** Subject land

Source: GC102 Explanatory Report

**(iii) The infrastructure projects**

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

- 5 road projects (RD-01 to RD-05)
- 17 intersection projects (IT-01 to IT-17)
- five bridge or culvert projects (BR-01 to BR-05)
- three pedestrian crossings (PED-01 to PED-03)
- seven community facilities (CI-01 to CI-07)
- seven sport and recreation projects (SR-01 to SR-07).

The strategic justification or need for the projects was not before the Panel, having been resolved through the PSP process and Amendment GC28 which introduced the Donnybrook-Woodstock PSP into the Mitchell and Whittlesea Planning Schemes.

**(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). Different rates apply to residential land, and commercial and industrial land, however there is no commercial and industrial land in this ICP.

The ICP adopts the maximum standard levy rates for both transport construction and community and recreation construction, which are (based on the 2019/20 indexed rates):

- transport standard levy – \$124,344/NDHa
- community and recreation standard levy – \$89,518/NDHa.

The VPA recommended several changes to the supplementary levy rate in the leadup to, and at, the Hearing:

- exhibited supplementary levy rate – \$412/NDHa
- April ICP supplementary levy rate – \$34,777/NDHa
- October ICP (final) – \$22,895/NDHa.

The final recommended total levies, and amounts to be collected, are set out in Table 1. These rates and amounts (which the Panel has rounded to the nearest \$5) are reflected in the final (October 2019) version of the ICP presented by the VPA at the Hearing (Document 174). They are based on the 2019/20 indexed rates.

**Table 1 Levies applicable under the final recommended ICP**

Levy	Rate/NDHa	Total amount
Standard levy – transport and community and recreation	\$213,860	\$220,856,315
Supplementary (final)	\$22,895	\$23,643,925
<b>Total levies</b>		<b>\$244,500,240</b>



## 1.2 Background

### (i) History

The VPA's Part A (Part 2) submission (Document 113) contains a detailed discussion of the history of the ICP system, and how various key events in that history resulted in changes to the Donnybrook-Woodstock ICP. In short:

- The 'standard' ICP was introduced in November 2017 by Amendment GC61, along with the PSP.
- The first interim ICP (Interim 1 ICP) was introduced in July 2018 in response to changes made by the *Planning and Environment Amendment (Public Land Contributions) Act 2018* (the PLC Act). The Interim 1 ICP:
  - applied land contribution percentages, but did not specify land values
  - applied a supplementary levy of approximately \$810/NDHa.
- The second interim ICP (Interim 2 ICP) was introduced in November 2018 to apply resolved estimates of land value. No changes were made to the standard or supplementary levies.
- The third interim ICP (Interim 3 ICP) was introduced in July 2019 and remains in place at the time of writing this Report. The Interim 3 ICP:
  - revised the land contribution percentages, based on:
    - a slight increase in the amount of public purpose land required for IN-03 and IN-04
    - including public purpose land in the calculation of the land contribution percentage
  - recalculated the land credit and land equalisation amounts accordingly
  - increased the supplementary levy from \$810/NDHa (as per the Interim 1 ICP) to \$34,777/NDHa (as per the April ICP, discussed in Chapter 1.2(iii) below).

### (ii) Preparation and exhibition of the Amendment

The Donnybrook-Woodstock ICP is one of the first ICPs to use benchmark costings. The other is the Mt Atkinson and Tarneit Plains ICP, which is proposed to be implemented by Amendment C201 to the Melton Planning Scheme. The benchmark costings are discussed in more detail in Chapter 4.2.

The ICPs and related amendments were exhibited together in August and September 2019. The VPA received six submissions in response to Amendment GC102 (including one late submission), and three submissions in response to Amendment C201.

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).

The Panel provided its report on Amendment C201 to the Melton Planning Scheme to the VPA on 7 August 2019. That report (Melton PSA C201 [2019] PPV, which has since been publicly released) sets out in detail the shared history of the two amendments.

**(iii) The April ICP**

The VPA prepared a revised ICP in April 2019 based on (among other changes) revised benchmark costings prepared by Cardno in April 2019. The April ICP recommended an increase in the supplementary levy rate from \$412/NDHa (as exhibited) to \$34,777/NDHa.

Given the substantial increase in the amount of the supplementary levy, the Panel directed the VPA to conduct further notification in relation to both Amendment GC102 and Amendment C201. The VPA received two further submissions in relation to GC102, an updated submission from Mirvac, and a new submission from Satterley Property Group. These have been referred to the Panel.

**(iv) The October ICP**

On the final day of the Hearing, the VPA tabled a revised October version of the ICP (Document 174) that incorporated:

- further changes agreed between the parties since the April version
- the recommendations of Mr Shipp discussed in Chapter 3.1(ii)
- updated standard and supplementary levy rates based on the above, indexed in accordance with the 2019-2020 rates published in July 2019.

The October version reduced the amount of the supplementary levy rate from \$34,777/NDHa (as per the April version) to \$22,895/NDHa. The reduction reflects (among other things) an increase in the standard levy rate pursuant to the 2019-2020 indexed rates.

**1.3 Issues****(i) Agreement reached on several project designs and costings**

Through the circulation of expert evidence, the expert conclaves and further negotiations between the parties following the conclaves, many of the matters in dispute were resolved by the time the Hearing commenced. The chronology in Table 2 summarises the key steps in the resolving those issues, and the documents in which the resolution is recorded.

**Table 2** Chronology of resolution of disputed issues

Date	Details	Document no.
29 March 2019	First conclave between functional layout experts took place in March 2019 and considered the designs appended to the exhibited ICP. Agreement reached on a number of design changes, which are summarised in the first conclave statement	Document 35
17 April 2019	Revised ICP (April version) circulated which incorporated a number of changes arising from: <ul style="list-style-type: none"> <li>- submissions</li> <li>- revised benchmark costings</li> <li>- first functional layout conclave</li> <li>- changes to land equalisation and land credit amounts</li> </ul>	Document 56

Date	Details	Document no.
18 September 2019	<p>The VPA circulated a whole of government response to the first functional layout agreed statement that:</p> <ul style="list-style-type: none"> <li>- represents the positions of the VPA and the Department of Transport (DoT), formerly VicRoads, in relation to the matters recorded in the first functional layout agreed statement</li> <li>- outlines further changes to the April ICP in response to the first functional layout agreed statement</li> </ul>	Document 90
20 September 2019	<p>Second conclave between functional layout experts took place in September 2019 and considered revised designs prepared following the first conclave. Agreement reached on a number of further design changes to a number of projects, which are summarised in the second functional layout conclave statement.</p>	Document 91
18 October 2019	<p>A conclave between costings experts took place in October 2019 and considered the agreement reached through the first and second functional layout conclaves. The agreed statement from this conclave was circulated on 18 October 2019, with revised costing sheets referred to in the conclave statement circulated shortly thereafter.</p>	Documents 114 (agreed statement) and 115 (revised costing sheets)
25 October 2019	<p>Several costings remained in dispute following the costings conclave, as between:</p> <ul style="list-style-type: none"> <li>- Mirvac and the VPA</li> <li>- the Councils and the VPA</li> </ul> <p>VPA circulated updated ICP Tables 5 and 6 with revised costings for a number of projects, including:</p> <ul style="list-style-type: none"> <li>- resolved cost for BR-05</li> <li>- an increase of 4.5 percent to costings which remained unresolved as between the VPA and Mirvac, which brought the estimates from Mirvac and the VPA to within 5 percent (and therefore resolved).</li> </ul>	Document 125
7 November 2019	<p>VPA tabled a further revised ICP (October version) which incorporated further changes arising from:</p> <ul style="list-style-type: none"> <li>- the conclaves</li> <li>- the revised costings in Document 125</li> <li>- Mr Shipp's recommendations (see Chapter 3.1(ii)).</li> </ul>	Document 174

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

**(ii) Unresolved issues**

The unresolved issues are:

- the appropriate interim design for arterial roads (single or divided carriageway)
- landscaping costs for the road projects (landscaping of the whole of the road reserve, or just the disturbed portions)
- the appropriate interim design for intersection IN-03 (a compact design within the existing road reserve, or an alternative design that extends into the ultimate road reserve)
- whether shared user paths should be provided on one or both sides of the arterial roads and associated intersection legs
- whether financing costs for the early delivery of two community and recreation projects should be included in the supplementary levy
- how credits for works in kind should be treated in the ICP
- whether Hayes Hill Reserve should be reclassified as public purpose land in the ICP
- whether land subject to a development permit should be removed from the ICP.

Unresolved issues are dealt with in Chapter 5.

**(iii) Threshold and systemic issues**

The submissions also raised some threshold and systemic issues that impact not just on this Amendment, but also on the preparation of future ICPs. Chapter 4 deals with these issues.

## **1.4 Procedural issues**

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

## 2 Planning context

### 2.1 Planning scheme provisions

Clause 19 of the Planning Schemes 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.

The purposes 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'. Annexure 1 of the Ministerial Direction includes tables which list and describe the allowable items for each type of levy (refer to Table 3).

**Table 3** Allowable items for standard and supplementary levies

Levy	Table	Allowable items
Standard – community and recreation	Table 2	Community and sport and recreation facilities, such as kindergartens, neighbourhood houses, football ovals, netball courts and the like
Standard – transport	Table 3	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'

Levy	Table	Allowable items
Supplementary – transport	Table 4	Arterial roads and intersections that exceed the specified standards for a standard levy allowable item, road bridges, pedestrian bridges and major culverts

Even where an ICP proposes to fund projects that qualify as supplementary allowable items, the planning authority must exercise its discretion as to whether to apply a supplementary levy. The matters that the planning authority must consider in exercising that discretion are set out in clause 17 of the Ministerial Direction. They are:

- whether the item can be wholly or partially funded from the 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.

## (ii) Other Ministerial Directions

The VPA provided a response to *Ministerial Direction No. 9 – Metropolitan Strategy* and *Ministerial Direction No. 11 – Strategic Assessment of Amendments* in its Part A (Part 2) submission. The Panel agrees that the Amendment is consistent with those Ministerial Directions, as it:

- facilitates the collection of developer levies to fund the required infrastructure to service future urban land within the Urban Growth Boundary
- implements the objectives of planning in Victoria by providing for the fair, orderly, economic and sustainable use of land identified for urban purposes
- provides for infrastructure items that are not expected to have negative environmental impacts as considered during the PSP process
- provides opportunities for positive social effects by establishing a funding mechanism to provide essential services for the future community.

## 2.3 Infrastructure Contributions Plan Guidelines

DELWP has published revised *Infrastructure Contributions Plan Guidelines*, November 2019 (the ICP Guidelines). They provide a high level overview of the ICP system, and advice on how to prepare, implement and administer an ICP. The Guidelines have been updated from the original October 2016 version to reflect the introduction of the *Planning and Environment Amendment (Public Land Contributions) Act 2018*.

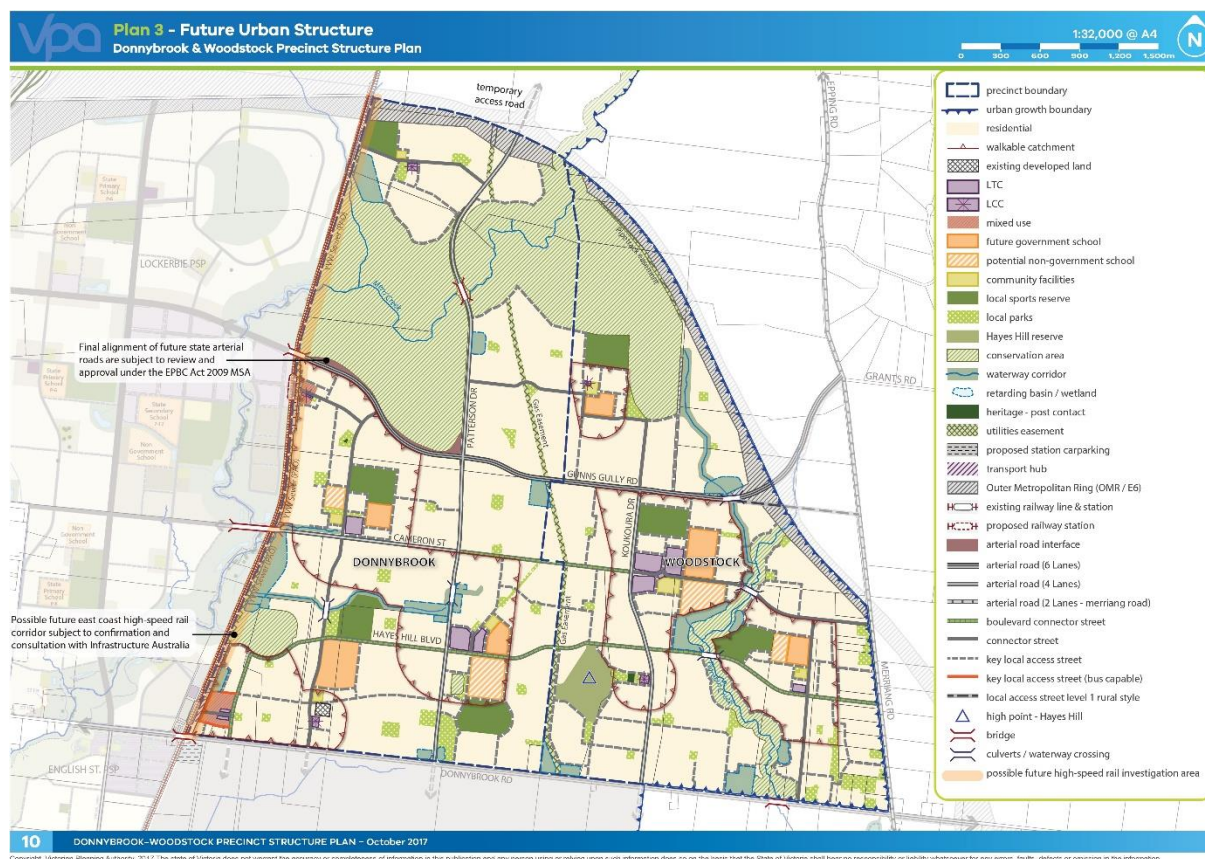
The ICP Guidelines state on page 8:

Infrastructure contributions help fund basic and essential infrastructure for new and growing communities, such as local roads, community centres, kindergartens, maternal and child health facilities, local parks and sporting facilities, which are vital for creating sustainable communities. They help to ensure that new communities have the essential infrastructure to meet their needs.

The ICP Guidelines outline a number of principles of the ICP system on page 9:

- infrastructure is basic and essential
- timely and orderly provision of infrastructure
- need and nexus
- equity
- certainty
- accountability and transparency.

## 2.4 Donnybrook-Woodstock Precinct Structure Plan



**Figure 2** Future urban structure of the PSP

Source: Plan 3 from the Donnybrook-Woodstock ICP

The Donnybrook-Woodstock PSP provides guidance for the development of the land. Plan 3 in the PSP (extracted above in Figure 2) describes the future urban structure of the PSP area. Table 9 in the PSP (the Precinct Infrastructure Plan) describes the infrastructure required for the PSP area and identifies which of the infrastructure projects will be funded through an ICP.

The list of infrastructure projects in Appendix 3 of the ICP is broadly consistent with Table 9 in the PSP.

### 3 Overall assessment of the Amendment

#### 3.1 Evidence and submissions

##### (i) General matters

The VPA called Mr Shipp to provide expert evidence in relation to the suitability of the ICP in the context of the requirements of the Act and the Ministerial Direction. His evidence was that the April ICP addressed all the requirements of the Act and is appropriately and clearly structured.

Mr Shipp considered the VPA's process of estimating the infrastructure costs for the purposes of the ICP. He noted the importance of accurate cost estimates, and that cost estimates for ICPs and Development Contributions Plans (DCPs) are often based on high-level concept designs well before detailed designs are required, warranting relatively high contingency allowances and often excluding consideration of site conditions.

Mr Shipp was generally supportive of the approach of using benchmark costs and considered that the benchmark costings *"provides useful information which will assist in creating a more transparent and efficient approach to the preparation of ICPs"*. He stated:

It is noted, however, that benchmark costs and designs will not always perfectly match the infrastructure requirements or conditions of all PSP areas, warranting consideration of bespoke designs or costs for particular items if necessary.

He went on to state:

In the case of the Donnybrook Woodstock ICP, my opinion is that:

- If there are specific site conditions that are known and are likely to materially influence the cost of a particular infrastructure item or group of items, it is important for those conditions to be taken into account when estimated costs for inclusion in the ICP. This approach appears to have been taken by Cardno when adjusting cost estimates between the Exhibited and [April] ICP versions.
- For the transport items in the [April] ICP that are based on benchmarks, the benchmark approach can be applied where there is consistency between the design and cross section of the road shown in the PSP and the benchmark design and there are no known local conditions that could materially impact the total item costs. If either the design or conditions deviate from what has been designed and costed as the benchmark, then a bespoke design, a bespoke cost or both may be required.

##### (ii) Standard and supplementary levy items

The exhibited ICP only included one supplementary levy item (BR-02). The rest of the projects were to be funded from the standard levies for transport construction and community and recreation infrastructure.

The April ICP (which raised the supplementary levy from \$412/NDHa to \$34,777/NDHa) included a number of additional projects as supplementary levy items:

- IN-02 and IN-03
- all the bridge and culvert projects (BR-01 to BR-05)
- two of the pedestrian signalisation projects (PED-02 and PED-03).



Mr Shipp assessed the infrastructure items against the requirements in Tables 2, 3 and 4 of the Ministerial Direction, and (for supplementary items) the criteria in clause 17 of the Ministerial Direction. He concluded that all projects listed as standard transport items in the ICP were consistent with the Ministerial Direction. He also concluded that all projects listed as supplementary levy items were appropriate to include as supplementary levy items, except for the two pedestrian crossings.

Specifically, Mr Shipp's evidence was:

- the service relocation costs for IN-02 and IN-03 (and IN-01, IN-04 and IN-05), which ranged from 6.4 percent to 10.3 percent of the total project costs, were, in his view, 'significant' (referring to the criterion in clause 17(d))
- BR-01 and BR-05 (road bridges) qualify as supplementary allowable items in Table 4 and are appropriate to include in a supplementary levy
- BR-02, BR-03 and BR-04 (culverts) can be included in a supplementary levy, as they exceed the minimum dimensions in Table 4 to classify as a 'major' culvert
- PED-02 and PED-03 should be shifted to the standard transport levy, as they are relatively standard surface level crossings and Table 4 only includes pedestrian bridges and accessways over a railway, arterial road, waterway, easement or other major obstacle as a supplementary allowable item.

The October version of the ICP reflected the April version, save that the two pedestrian crossings (PED-02 and PED-03) were shifted back to the standard transport levy, in accordance with Mr Shipp's recommendation.

## **3.2 Discussion**

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 Schemes.

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 Mr Shipp, the 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, it agrees with Mr Shipp that bespoke designs and/or costings will often be needed, due to matters such as local site conditions, or particular design requirements or constraints for particular projects.

The Panel is satisfied that the October version of the ICP (Document 174), which incorporates Mr Shipp's recommendation that PED-02 and PED-03 be shifted to the standard transport levy, meets the requirements of the Ministerial Direction. The Panel is satisfied that the various projects listed in the ICP are 'allowable items' under the Ministerial

Direction, and that they have been listed against the appropriate levy (standard or supplementary), consistent with the Tables in Annexure 1 of the Ministerial Direction.

Detailed cost estimates have been prepared for each of the ICP projects except the pedestrian crossings, which the Panel understands are relatively standard items that do not require detailed costings (refer to the discussion in Chapter 6.3 of Melton PSA C201 [2019] PPV). The costings have been subject to a comprehensive review by a number of costings experts. While estimates of the experts varied on certain line items, following the conclave between costings experts (Document 114), and the VPA's 4.5 percent increase in all remaining costs disputed by Mirvac (Document 125), the costings for most projects were within an acceptable range of variance (ie within 5 per cent).

No party disputed the costings at the Hearing apart from the Councils, who only contested the costings on the road projects and a limited number of intersection projects (as discussed in Chapters 5.1, 5.3, 5.4 and 5.5).

The Panel has considered the matters set out in clause 17 of the Ministerial Direction which a planning authority must consider when deciding whether to apply a supplementary levy. The Panel finds:

- the costings demonstrate that it is not possible to fund all the infrastructure projects from the standard levy
- all the supplementary levy items are identified in a PSP
- no party disputed, and the Panel has no reason to doubt, that the supplementary levy items are essential to the orderly development of the area
- the Panel accepts Mr Shipp's evidence that the service relocation costs associated with supplementary levy items IN-02 and IN-03 significantly add to the cost of those projects.

The Panel considers that it is appropriate to apply a supplementary levy.

Overall, 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.

### **3.3 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 GC102 to the Mitchell and Whittlesea Planning Schemes as exhibited, with the following changes:**
  - a) Substitute the exhibited Donnybrook-Woodstock Infrastructure Contributions Plan dated August 2018 with the October 2019 version tabled by the Victorian Planning Authority on the final day of the Hearing (Document 174), after making the changes and corrections referred to in other recommendations in this Report.**

- b) **Update the exhibited Infrastructure Contributions Overlay Schedule 1 in both planning schemes as follows:**
- in the heading, change the date of the Infrastructure Contributions Plan from August 2018 to October 2019
  - in Clause 2.0, include the standard levy amounts contained in Tables 1 and 12 of the revised Infrastructure Contributions Plan (October 2019 version)
  - in Clause 3.0, include the supplementary levy amounts contained in Tables 1 and 13 of the revised Infrastructure Contributions Plan (October 2019 version)
  - in Clause 4.0, update the land contribution percentage to 13.12 percent, consistent with Table 2 of the revised Infrastructure Contributions Plan (October 2019 version)
  - in Clause 5.0, update the land credit amounts and land equalisation amounts, consistent with Table 3 in the revised Infrastructure Contributions Plan (October 2019 version).
- c) **Update the Schedule to Clause 72.04 in both planning schemes to refer to the Donnybrook-Woodstock Infrastructure Contributions Plan October 2019.**

## 4 Threshold and systemic issues

### 4.1 The issues

Submissions raised a number of threshold and systemic issues. These issues are not unique to this Amendment, but impact on ICPs more broadly. The issues are:

- the appropriateness of the benchmark costs
- the significance of ‘basic and essential’
- whether the clause 17 criteria are pre-conditions for applying a supplementary levy
- the meaning of the phrase ‘wholly or partially funded from the standard levy’ used in the Ministerial Direction
- whether funds collected for a particular project can only be spent on that project
- whether development agencies are obliged to deliver infrastructure identified in an ICP if there are insufficient funds to enable it to do so
- shortfalls in the capped community and recreation standard levy.

Strictly speaking, some of these issues are beyond the scope of the Amendment. However, the Panel has made some observations about these issues, given the submissions made at the Hearing and given the ICP system is in its relative infancy, and the details of its implementation and operation are still being worked through.

### 4.2 Benchmark costs

#### (i) Context

The VPA engaged Cardno to prepare benchmark costings for growth area infrastructure contributions plans. The benchmark costings provide template functional layouts and standard costings for basic and essential infrastructure. Some (but not all) of the projects in the Donnybrook-Woodstock ICP are informed by the benchmark costings (either their designs or their costs).

The exhibited ICP was prepared based on draft benchmark costings prepared by Cardno for the VPA in July 2018. Cardno produced revised benchmark costings in April 2019, which were updated in response to the submissions on the Amendment and Amendment C201 (which implements the Mt Atkinson and Tarneit Plains ICP), as well as broader industry consultation. The changes between the July 2018 version and the April 2019 version are outlined in detail in the Panel’s report in relation to the Mt Atkinson and Tarneit Plains ICP (Melton PSA C201 [2019] PPV).

Since then, the benchmark costings (April 2019 version) have been endorsed by the VPA Board in October 2019. The VPA has produced a Benchmark and Infrastructure Costs Guide (October 2019) based on the April 2019 benchmark costings. According to the VPA’s Part A (Part 2) submission (Document 113), the Guide provides guidance on the need for, and scope of, ‘basic and essential’ infrastructure and the VPA’s approach to costing it. It is:

... a consolidated document that incorporates the technical outputs of the Cardno Benchmark Costings while also providing guidance regarding how the VPA will use benchmark costs in preparing ICPs. This is being made available to assist all

stakeholders to productively participate in the process. The BIC [Guide] is intended to be a living document and will be regularly reviewed, updated and improved.

A copy of the Benchmark and Infrastructure Costs Guide is attached to the VPA's Part A (Part 2) submission (Document 113) as Appendix 4.

## **(ii) Submissions and evidence**

Several submissions to the Amendment raised concerns over the use (and accuracy) of the benchmark costs. Satterley Group's submission (submission 7) put the concerns succinctly:

- The supplementary levy appears to have been determined on the basis of benchmark costings that have not yet been formally approved by the VPA Board or the Department of Environment, Land, Water and Planning. It is not appropriate for a 'final' ICP to be based on 'interim' benchmarks.
- Submissions made by others (Councils and landowners) to date show that there is concern over the accuracy of these benchmarks and how they can be applied in a greenfield context.
- We do not support any further increase in the supplementary levy as exhibited until the benchmarks are finalised and approved.

Mr Shipp's evidence provides general support for the use of benchmark costings where the benchmark design and associated quantities are consistent with the requirements of the PSP, and there is a high degree of consistency of design, layout, quantities and costs of delivering the type of item for which a benchmark cost is being applied. He notes, however, that relatively few projects in the ICP are costed on this basis, and he makes no specific findings in relation to the accuracy or appropriateness of the benchmark costs that are applied in the ICP.

Similarly, the Mesh report titled *Donnybrook-Woodstock ICP (Amendment GC102) – Background and evolution of the ICP* dated 9 October 2019 (Document 108) describes the history of the development of the benchmark costings, and notes that some of the projects in the ICP are based on benchmark designs and/or costings, but makes no specific findings in relation to the accuracy or appropriateness of the particular benchmark costs that are applied in the ICP.

## **(iii) Discussion**

The infrastructure costs contained in the ICP are a combination of benchmark and bespoke designs and cost estimates. Many projects are 'hybrid' projects which are based on bespoke designs costed using benchmark unit rates and/or bespoke allowances. Others are purely bespoke, and do not rely on the benchmark costings at all.

The only projects that appear to be based on benchmark designs and benchmark costs are the community infrastructure projects. These were not the subject of detailed evidence. While the road projects and one intersection project (IN-16) are based on benchmark designs, these are hybrid projects as their costings are not purely benchmark. For example, the road projects have additional allowances for rock excavation. There was therefore limited opportunity to independently test the benchmark costs through the evidence presented to the Panel.

The Melton C201 Panel report (Melton PSA C201 [2019] PPV) includes a discussion of benchmark costings in Chapter 3, including the purpose of benchmark costings, the methodology used by Cardno in preparing the benchmark costings, and the consultation with stakeholders undertaken in connection with the development of the benchmark costings.

Section 7 of the VPA's Part A (Part 2) submission (Document 113) includes a detailed discussion of how the benchmark costings were prepared and how they informed the ICP. They were extensively revised (and generally increased) following stakeholder feedback received through the benchmark costings project, and the submissions to this Amendment and Amendment C201 to the Melton Planning Scheme. The benchmark costings have now been endorsed by the VPA Board.

In response to the issues raised in the Satterley Group submission (and others), the Panel observes that the revised benchmark costings (the April 2019 version endorsed by the VPA Board) are generally higher than the draft benchmark costings (the July 2018 version) on which the exhibited ICP was based. However, the revised benchmark costings have not, to the Panel's knowledge, been independently verified or tested. The Panel did not receive detailed submissions or evidence testing the benchmark costings or the methodology used to prepare them, other than limited evidence from Ms McKenna who provided alternative costings for the road projects (which, in any event, were hybrid projects that were not solely based on the benchmark costings).

In the absence of independent testing, the Panel makes no findings as to the suitability of the methodology or outcomes in the benchmark costings.

## **4.3 Basic and essential**

### **(i) The ICP Guidelines**

The ICP Guidelines contain multiple references to 'basic and essential' infrastructure, including in:

- the overview of the ICP system (page 8)
- a discussion of what type of infrastructure the monetary components of an infrastructure contribution is to fund (pages 17 and 19)
- a discussion of allowable items (page 21)
- a discussion of how to determine the strategic justification and infrastructure need (page 38).

On page 9, the Guidelines discuss principles of the ICP system, including:

#### **Infrastructure is basic and essential**

The provision of community, recreation, transport and drainage infrastructure and associated public purpose land is necessary for creating liveable, sustainable and affordable new communities. Just as residents need access to water, gas and electricity, they also need access to roads, parks, kindergartens, sporting fields and other essential infrastructure.

Infrastructure contributions should fund infrastructure that is basic and essential to the health, well-being and safety of the community, and secure public purpose land required for construction of that infrastructure.

Infrastructure should be planned and designed to be fit for purpose ('basic') to ensure it does not result in unnecessary additional costs ('gold plating') that could impact the provision of other essential infrastructure.

## (ii) Submissions and evidence

The concept of 'basic and essential' was referred to by Mesh in its report (Document 108), where it stated (at page 10):

The 2016 ICP system is based on the concept of standard levies that are pre-set for particular development settings (i.e. greenfield growth areas, strategic development areas) and classes of development (land use types) in order to fund the construction of basic and essential infrastructure to service the growing urban communities.

The Councils submitted that 'basic and essential' is not a test relevant to identifying infrastructure that can be funded through an ICP. Rather, it is *"a confusing new reference"* that should not be adopted early in the life of ICPs, to ensure that the new ICP system starts off on the right footing:

It is critical at this stage in the life-cycle of the ICPs that the Panel not allow ad hoc tests such as basic and essential which are subject to interpretation to prevail over the Ministerial Guideline [sic - Direction] which relies on clear definition.

The Councils submitted that the Ministerial Direction sets out what is an allowable item, based on clear categories rather than by reference to vague expressions capable of multiple interpretations. They submitted that 'basic and essential' is not referenced anywhere in the Ministerial Direction, and that one of the very core issues that the new ICP system sought to address was to provide a list of allowable items *"in preference to what used to be the basic and essential guidance that governed DCPs"*. They submitted:

The Panel should not adopt a regressive approach to this issue. We are particularly concerned that the VPA Part A Part 2 submission goes to the unusual length of using dictionary type definitions to interpret the ICP Guideline. One would have thought that the purpose of a guideline is to avoid debate and not engender debate. In any event, the Guideline is not a relevant part of the statutory framework and should not be given any credence. It is liable to change from day to day, has no parliamentary imprimatur and is not a document envisaged or condoned by the Act, unlike the Ministerial Direction.

The Councils provided two examples to demonstrate how *"out of hand"* they considered the approach to 'basic and essential' is getting. Both related to the VPA's approach to the extent of funding sought for the interim secondary arterial road projects listed in the ICP. The first was the VPA's suggestion that the area of the road reserves that is not required for the interim configuration of the roads should be *"left as a no man's land as Mr Czarny describes it"*, as undisturbed paddock, because that is what is 'basic'. The second was the VPA's suggestion that as urban design objectives are not listed as an allowable item in the Ministerial Direction, the interim configuration of secondary arterial roads should not be delivered as a boulevard for urban design purposes.

DFC Woodstock similarly submitted that nothing in the Act or the Ministerial Direction supports the imposition of some further or additional test of 'basic and essential', beyond consideration of whether a particular item is an allowable item. It submitted:

Having said that, simply because an item of infrastructure can lawfully be funded through an ICP does not mean that it must or should be funded through the ICP or

that it must be delivered to a certain standard beyond that required to fulfil its essential function(s). There is a discretion to be exercised that, like any discretion, must be exercised reasonably.

In considering the reasonableness of any funding decision, it would be entirely appropriate for the Panel (and submitters) to have regard to a broad range of matters, including, for example, whether the provision of a particular standard of infrastructure is excessive in all the circumstances.

The end result is that the kind of matters encompassed by the 'basic and essential' test are appropriate matters which can be considered in determining whether particular infrastructure should be provided and to what standard, but they do not comprise a legal test that must be met before infrastructure can be funded under an ICP.

The VPA responded to these arguments in its Part C submission. It submitted that the term 'basic and essential' has been associated with the development of the ICP system since its early inception. The VPA referred to:

- several extracts from the Standard Development Contributions Advisory Committee Report dated 17 December 2012, which indicate that:
  - allowable items should be those required to enable the basic functioning of a new community, to meet its initial needs for the first 5 to 10 years of its development
  - submissions to that Committee referred to the problem of 'scope creep' expanding the extent of items that have come to be regarded as 'basic and essential' in (then) recent DCPs
- the Minister for Planning's second reading speech for the legislation that introduced the ICP system into the Act, which refers to basic and essential infrastructure
- the 2016 ICP Guidelines and the 2019 Guidelines, which both use the expression 'basic and essential' to describe the infrastructure that may be funded through an ICP.

The VPA accepted that 'basic and essential' does not appear in the Ministerial Direction but submitted that it is both necessary and appropriate to limit the infrastructure which can be funded through an ICP to essential infrastructure (and not funding more than is essential). The VPA submitted that the Council's approach of allowing any infrastructure to be funded through the ICP as long as it fell within the category of an allowable item:

... would be to invite the addition of extravagant or frivolous features for infrastructure items (colloquially referred to as 'gold plating'). There are two problems with this approach: first, it risks Councils using the ICP system to avoid or minimise their own contribution to the provision of infrastructure in new suburbs; and second, it encourages the very real problem of scope creep that the ICP reforms were directed to curing.

The VPA submitted that if developers or councils wish to pay for higher quality infrastructure for a particular subdivision, they should be willing to resource the additional costs of doing so.

Mr Shipp was cross examined by both the Councils and DFC Woodstock in relation to 'basic and essential'. His oral evidence was that it is a concept that has been used for a considerable period of time to guide what is appropriate to include in a DCP or ICP. He did not regard the concept as a test or criterion and indicated that what constitutes 'basic and



essential’ is a matter of judgement that has to be exercised in the context of the content of the PSP.

### **(iii) Discussion**

The VPA has clearly relied on the concept of ‘basic and essential’ in determining what should be funded through the ICP, as has Cardno in preparing the benchmark costings.

‘Basic and essential’ is a well recognised concept that has informed decisions in relation to the infrastructure that should be funded through DCPs (and more recently ICPs) for a considerable period of time. It was recognised by the Standard Development Contributions Advisory Committee in the context of ‘scope creep’ and the need to avoid gold plating and was carried through to the ICP system in both the 2016 and 2019 ICP Guidelines (which are non-statutory).

The Panel agrees with the Councils and DFC Woodstock that ‘basic and essential’ is not a legal test or criterion that must be met in deciding whether a certain infrastructure item can be funded under an ICP. It is, however, a useful concept to guide the planning authority’s discretion in deciding to what standard infrastructure should be funded under an ICP. The proposition that ICPs (or DCPs) should not be used to fund ‘gold plating’ is uncontroversial. It is in this context that the concept of ‘basic and essential’ becomes relevant.

The Panel considers that ‘basic and essential’ has generally been used by both the VPA and Cardno to guide the standard of infrastructure to be funded under the ICP, rather than as a threshold test as to whether or not the infrastructure item should be funded under the ICP. This latter question has been determined by a consideration of whether the item constitutes an allowable item under the Ministerial Direction (as borne out by Mr Shipp’s evidence).

Ultimately, the standard of construction that should be funded under an ICP is a question of judgement that is guided by the principle of ‘basic and essential’. In this case, there are differing opinions among the Councils, the VPA and the developers as to what constitutes the ‘basic and essential’ standard for some of the allowable items funded under the ICP, particularly in relation to the road projects. This is discussed in Chapters 5.1 to 5.4.

## **4.4 Clause 17 criteria**

### **(i) The Ministerial Direction**

Clause 17 of the Ministerial Direction states as follows:

Criteria for applying a supplementary levy

17. When deciding whether to impose a supplementary levy, the planning authority must consider:
  - (a) whether the plan preparation costs, works, services or facilities can be wholly or partially funded from a standard levy, unless the applicable Annexure to this Direction specifies those supplementary levy allowable items must not be funded from a standard levy;
  - (b) whether the works, services or facilities are essential to the orderly development of the area;
  - (c) whether the works, services or facilities are identified in a precinct structure plan or equivalent strategic plan applying to the land;

- (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; and
- (e) any other criteria specified in the applicable Annexure to this Direction.

## **(ii) Submissions**

Mirvac submitted that the clause 17 criteria should not be regarded as ‘pre-conditions’ which must be met before a supplementary levy can be imposed. Rather, they should be regarded as matters that a planning authority is required to consider when exercising its discretion as to whether or not to apply a supplementary levy.

## **(iii) Discussion**

The Panel agrees with Mirvac that the clause 17 criteria are not pre-conditions to the imposition of a supplementary levy. They are matters that a planning authority must consider in deciding whether to apply a supplementary levy.

A planning authority preparing an ICP has a discretion as to whether or not a supplementary levy should be applied. The criteria in clause 17 guide the exercise of that discretion. They are mandatory considerations that the planning authority must consider, but they are not pre-conditions. This is clear from the wording of the introduction to clause 17 – *“when deciding whether to impose a supplementary levy, the planning authority must consider ...”*. If the criteria were intended to operate as pre-conditions, the Panel expects that clause 17 would have been worded differently, for example *“the planning authority must not impose a supplementary levy unless ...”*.

There may be situations where a planning authority elects not to apply a supplementary levy notwithstanding that one or more of the criteria in clause 17 are met. For instance, there may be a situation where the amount of the supplementary levy required was only, say, \$1,000. The planning authority may form the view that it would not be worth applying a supplementary levy in these circumstances, given that this would necessitate a full planning scheme amendment process to introduce the ICP, and given that the imposition of a supplementary levy would increase the administrative and accounting burden on the collecting agency.

## **4.5 The meaning of ‘wholly or partially funded from the standard levy’**

### **(i) The Ministerial Direction**

Table 4 in the Annexure to the Ministerial Direction lists criteria for transport construction supplementary levy allowable items. For an item to be a supplementary levy allowable item, it must meet at least one of the listed criteria, which include that the construction costs of the item *“cannot be wholly or partially funded from the standard levy...”*.

This wording is effectively mirrored in clause 17, which states:

- 17. When deciding whether to impose a supplementary levy, the planning authority must consider:

- (a) whether the plan preparation costs, works, services or facilities can be wholly or partially funded from a standard levy ...

**(ii) Submissions**

Mirvac submitted that the meaning of the phrase *“is not free from doubt, and in this respect the drafting of the Ministerial Direction could have been better”*. It submitted that the meaning is uncertain because:

- The standard levy is a fixed sum which is not referable to, or determined by, the costs of any project.
- The levy is placed in a pool of funds which are then applied to fund the delivery of standard infrastructure items. The funds are not tied to any of those individual items, and can be allocated to fund the identified projects at the development agency’s discretion.
- However, the determination of whether or not a supplementary levy can be imposed needs to be done on an item by item basis.

Mirvac submitted that on one view, any allowable item could be at least partially funded from the standard levy, because the allocation of the standard levy funds is a matter for the development agency:

Faced with 10 items of equal cost (all of which theoretically qualify to be funded under the supplementary levy) the total cost of which exceeds the amount available in the standard levy pool, it could choose to fund 10 percent of all of them, or 100 percent of one of them from the standard levy pool.

Mirvac submitted that a purposive approach should be applied to resolve this uncertainty, and to ensure that the ICP system operates *“fairly, reasonably and in accordance with the relevant objectives and provisions of the PE Act”*. It submitted that the proper approach to applying this criterion is:

- First, identify the total funding available to fund infrastructure through the standard levy.
- Second, identify the total costs of the necessary infrastructure required for the PSP area.
- Third, if the total costs of the necessary infrastructure exceed the amount that can be collected through the standard levy, identify by how much.
- Fourth, identify which items are capable of being funded through a supplementary levy (ie which are supplementary levy allowable items).
- Finally, consider whether a supplementary levy should be used (and if so, how much it should be) to fully or partially fund those allowable items to meet the shortfall between the standard levy pool, and the total cost.

The VPA noted in its closing submissions that there is no need to determine this question because no submitters have disputed which items are proposed to be funded through the supplementary levy. Nevertheless the VPA submitted:

... The expression “wholly or partially funded from the standard levy” used in both Table 4 and Clause 17 is difficult to interpret. On one view, it would prevent the imposition of a supplementary levy if any funds (even insufficient funds) were available in the standard levy to partially fund the item. On another view, if either criterion is satisfied in relation to an item, namely it cannot be wholly funded from the standard

levy or it cannot be partially funded from the standard levy, then an item will be an allowable item which may be funded by a supplementary levy. The latter approach has been taken for the purposes of this ICP.

### **(iii) Discussion**

The submissions of Mirvac and the VPA raise an important question about the interpretation of the Ministerial Direction, which goes to the fundamental operation of the ICP system.

It is not the role of this Panel to resolve questions of law, or the proper legal interpretation of the Ministerial Direction. Nevertheless, the Panel makes the following observations in relation to the issue.

It seems nonsensical, and contrary to the purposes of the ICP system, that a supplementary levy could not be imposed where an otherwise allowable supplementary levy item could be partially funded from the standard levy to some extent. The standard levy could partially fund an almost endless number of projects, if the amount allocated to each project from the standard levy pool was limited. For example, if the standard levy pool was only used to fund \$100 of the cost of every infrastructure item, a lot of items would have to be provided to exhaust the standard levy pool.

The Panel does not consider that the system is intended to operate in this way. One of the purposes of the ICP system is to ensure that infrastructure in new communities is properly (although not necessarily fully) funded by contributions from those who develop the land for these new communities. With this in mind, the Panel considers that the only sensible way to interpret the Ministerial Direction is in the way that Mirvac and the VPA have interpreted it.

In other words, if there are funds left over in the standard levy pool after all of the standard levy allowable items have been funded, the leftover funds should be used to fund any supplementary levy allowable items. The planning authority should only consider applying a supplementary levy if (and to the extent that) the total funds in the standard levy pool are insufficient to fund the cost of the supplementary levy allowable items.

For example, consider a situation where the standard levy pool will collect \$10,000,000. The standard levy allowable items are costed at \$8,000,000, leaving \$2,000,000 in the standard levy pool that is not required to fund standard levy items. The supplementary levy allowable items are costed at \$5,000,000. The Panel considers that the intent behind the Ministerial Direction is that the planning authority should apply the remaining \$2,000,000 to the supplementary levy allowable items before it considers applying a supplementary levy.

Further, the amount of the excess in the standard levy pool should be taken into account when calculating the amount of the supplementary levy – in the above example, the supplementary levy should not exceed \$3,000,000, as this is the maximum extent to which the supplementary levy items are unable to be funded from the standard levy pool.

The VPA has taken this approach in preparing this ICP, and the Panel supports that approach.

## 4.6 Using funds collected for one project on another project

### (i) Submissions

The Councils submitted in their opening submissions that councils are “*significantly constrained*” in the way that they are able to manage the funds collected under an ICP, which limits their ability to spend funds collected on one project (or for one purpose) on another project:

...

- Fifth, from the ICP Guidelines it would appear that the cash portion of the levy which is the monetary component (which would comprise the Standard + Supp for Transport and the Standard for Community and Rec) is not available for making any payments for Land Credit amounts and the monetary component of the Land Contribution is not available for funding anything other than Land Credit Amounts even from a cash management perspective.

The issue of the ability of a development agency to use funds collected for one project on another project also arose in the context of a discussion about the possible costs of relocating power poles for intersections IN-08 and IN-12 (the two intersections on Merriang Road). Mr Howe for the VPA suggested in oral evidence that if the allowance for relocating services was insufficient, and the contingencies for these two projects was insufficient, contingency allowances on other projects could be used to cover any shortfall. The Councils responded to this proposition in their closing submissions:

In our opening submissions we made the point that contingencies for separate projects are not open to be used for other projects. That is, each project's contingency is only available for use for the project to which it assigned. There is no ability to move contingency funds around in the same way that there is no ability to use any other part of an unspent project cost to fund another project. The approach to the contingency by those that rely upon it in this way is wrong and unlawful.

The VPA pointed out that the Councils “*seemingly contradicted*” this position at paragraph 65 of the Councils’ submission, which states:

Furthermore, under the new ICP system, Collecting Agencies and Development Agencies are no longer dictated to by a set of specific projects with a set of specific costings. Rather, councils are provided with a list of infrastructure and a “bucket” of money up to the Standard Levy to spend on Allowable Items. So, it is not correct to say that divided interims are not based on precedent. To the contrary, under the ICP system, where no Supplementary Levy is required a council is free to spend the Transport Levy on divided interim roads because they are within the category of Allowable Items. It is up to the Collecting Agency and Development Agency to determine how to deliver the infrastructure within the context of the available capped budget.

### (ii) Discussion

Again, it is beyond the scope of the Panel’s remit to make findings on the proper legal interpretation of the Act, the Ministerial Direction or the (non-statutory) ICP Guidelines in relation to the management of funds collected under an ICP. Nonetheless, the Panel makes some observations.

Firstly, the Panel observes that a planning authority is not obliged to individually cost projects to be funded from the standard levy unless the ICP imposes a supplementary levy.

Where a supplementary levy is proposed, clause 18(a) of the Ministerial Direction requires both the standard levy items and the supplementary levy items to be individually costed. See also section 46GI(1)(r). This suggests that – for standard levy ICPs at least – the system is not intended to operate to effectively sequester the funds collected in respect of a particular project for use only on that project. Sequestering funds collected in this way would not be possible unless individual projects were individually costed.

The Panel further observes that:

- Section 46GD(2) of the Act states that the monetary component of an infrastructure contribution (ie the standard levy and the supplementary levy) can only be used to fund works, services or facilities identified in the ICP, or the plan preparation costs of the ICP. It does not appear to limit the ability to allocate funds collected in respect of one project to fund another project.
- Section 46GY(1) requires a collecting agency to keep separate accounts and records for:
  - any monetary component (levies) and any land component (land equalisation amounts and land credit amounts)
  - any monetary component received by the collecting agency, and any monetary component paid to a development agency.

It does not require the collecting agency to separately account for the monetary component received or paid in respect of a particular project.

- A collecting agency is required to forward “*any part*” of the monetary component imposed for works to the development agency responsible for those works, and to report on “*any infrastructure contribution*” provided to it in a financial year (with no reference to individual projects) – refer to section 46GZ(2) and clause 5 of Annexure 2 of the Ministerial Direction.
- A development agency is required to keep separate accounts and records of “*any part*” of the monetary component forwarded by the collecting agency, and “*any part*” of the monetary component expended by the development agency (with no reference to individual projects) – refer to section 46GZA(1) and clause 6 of Annexure 2 of the Ministerial Direction.
- Section 46GZB(3) requires a development agency to apply the monetary component only for the provision of works for which the development agency is responsible under the ICP (with no reference to individual projects).
- Section 46GZD requires a development agency and collecting agency, where an amount of the monetary component has not been expended by the time the ICP expires, to either:
  - repay the unspent amount to the landowners at the time, or
  - with the consent of the Minister, spend the funds on other works in the ICP plan area (again with no reference to individual projects).

The Panel does not see any reason to read these various provisions of the Act and the Ministerial Direction as limiting the ability of a collecting or development agency to allocate funds collected in respect of one project that is delivered ‘under budget’ to another project that is delivered ‘over budget’. Instead, the Panel considers that the legislative framework

establishes a system whereby levies are pooled, and can be spent on projects that the ICP specifies will be funded from that pool at the development agency's discretion.

Further, clause 11 in Annexure 1 of the Ministerial Direction allows any leftover funds in the standard (capped) community and infrastructure levy to be applied to transport construction (although there is no specific provision allowing leftover transport levy funds to be spent on community and recreation infrastructure). This provision further suggests that ICPs are intended to operate on a 'pool' basis rather than a project by project basis.

This is further supported by the non-statutory ICP Guidelines, which state on page 55 (Panel's emphasis):

**Pooling of funds and borrowing**

The ICP system allows for the pooling of funds within the monetary component of an ICP account to provide sufficient funds to build facilities. However, the monetary component cannot be used to fund the acquisition of public purpose land, and any land equalisation amount cannot be used to fund the provision of infrastructure, or plan preparation costs.

## **4.7 Obligations of development agencies to deliver infrastructure**

### **(i) Submissions**

After outlining the financial management responsibilities that a council must meet under the *Local Government Act 1989*, the Councils submitted (Panel's emphasis):

... Put bluntly, the two councils which are at the very forefront of delivering and implementing the ICP are both bodies with limited funds, with limited funding powers but which are loaded with significant future liabilities, statutory obligations and rules as to how their finances are to be managed. For this reason, although precinct structure plans propose and identify certain infrastructure, and infrastructure plans (both DCP and ICP) then provide a mechanism for funding those items of infrastructure, the councils both reserve to themselves the right to determine which infrastructure will and will not be [delivered]. That decision is ultimately made by the councils in the context of their obligations under section 136 of the LGA. If any item of infrastructure is or becomes underfunded to the extent that it is unaffordable for the councils, they will at an appropriate point in time determine not to deliver that infrastructure and then seek to comply with section 46GZD of the Planning Act in terms of dealing with the funds which have been collected.

The way that the councils (and other growth area councils) exercise that judgement is largely determined by decisions made at panel hearings such as this. Keeping development or infrastructure contribution rates seemingly low might be worthy of a press release about keeping housing costs down, but the victory is only really pyrrhic. The long term results are a denial of essential infrastructure for the growth areas or a denial of the timely provision of such infrastructure

Both Mirvac and the VPA responded to the proposition that councils (as development agencies) ultimately have a discretion as to whether or not to deliver infrastructure funded under an ICP in circumstances where the infrastructure is underfunded by levies collected under the ICP.

The VPA submitted that it "*categorically does not agree with the Councils' position*". The VPA pointed to the VCAT decision in *Dennis Family Corporation v Casey CC* [2006] VCAT 2372, where the Tribunal stated at [63]:

The responsibility for the provision of infrastructure remains with the council in its local government role, and once an approved development contributions plan is included in the planning scheme the council is committed to the provision of the infrastructure included in it and for which levies are payable.

The VPA submitted that ICPs fund infrastructure that is essential to the development of new communities, and that councils have a responsibility to future communities to provide that infrastructure. It submitted:

The requirements and obligations contained within the Act and the Ministerial Direction provide no support for the Councils' position that they may elect not to provide items if they are not fully funded, or become underfunded to an extent that the Council determines unacceptable.

Mirvac submitted:

Further, the proposition put in submissions by the Councils that they can elect not to construct certain items of infrastructure if the standard levy funds are exhausted should not be accepted by this Panel. The legal basis for this submission has not been identified, and Mirvac does not accept that it is legally correct. However, it is not necessary for the Panel to resolve this debate in the context of this hearing.

## **(ii) Discussion**

It is not the role of this Panel to resolve whether or not development agencies are legally obliged to provide the infrastructure identified in an ICP, irrespective of whether sufficient funds are available to do so – as was acknowledged by both the VPA and Mirvac in responding to the Councils' submissions.

That said, the Panel makes the observation that it has long been a fundamental principle of both the DCP and the ICP systems that infrastructure plans are not intended to fully fund the infrastructure listed in the plan. Development/infrastructure contributions are just that – a contribution to the funding of essential infrastructure in new communities. This is clear from the Minister for Planning's second reading speech for the legislation which introduced the ICP system:

There has been incremental scope creep in the scope and standard of infrastructure being funded under the existing system, and a shift in the extent of cost recovery expected from levies toward full cost recovery. This has contributed to increased levies over time.

...

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

This is consistent with the ICP Guidelines, which state at page 9 (where they discuss the principles of the ICP system):

### **Equity**

Development which contributes to the need for new infrastructure should pay a fair and reasonable contribution towards its provision. Developers, local government, state agencies and other stakeholders all share the responsibility for funding infrastructure and the contribution made by development should be proportionate to the need it is projected to generate.



Accordingly, infrastructure contributions will not necessarily fund the full cost of infrastructure to be provided through an ICP.

It is clear, at least from these extraneous materials, that some contribution is expected from local government toward the cost of infrastructure in new communities.

The Panel does not consider that the Councils' submissions suggested that they should not be required to contribute toward infrastructure costs in new communities. Rather, the Panel understood the Councils' submission to be highlighting the risk that, if infrastructure contributions collected under the ICP result in significant shortfalls in funding, they may be required to make some difficult decisions as to whether they can afford to provide certain infrastructure items, given their general financial management obligations.

It is neither necessary nor appropriate for the Panel to go further and to draw a conclusion as to whether the principle of local government sharing the responsibility to contribute to the cost of infrastructure in new communities translates to a direct legal obligation on a council to deliver all of the infrastructure listed in an ICP.

## **4.8 Shortfalls in the capped community and recreation levy**

### **(i) Context**

All the community facilities and sport and recreation facilities in the ICP are to be funded from the capped community and recreation levy.

The benchmark costings include benchmark designs and costs for three types of community facility (Level 1, Level 2 and Level 3), and four types of sport and recreation facility (Level 1 and Level 2 multi-purpose centres, and sporting pavilions/reserves in two sizes). All the community facilities in the ICP are based on the benchmark designs and costs. The sports facilities are all benchmark designs and costs, other than SR-03 and SR-05, which are based on benchmark designs but with hybrid costs.

### **(ii) Submissions**

Whittlesea City Council's submission to the Amendment (Submission 4) generally supported the exhibited cost of the Level 1 community facilities but considered the exhibited cost for the Level 2 and 3 community facilities and all of the sports facilities other than SR-07 were too low. This was reiterated in Whittlesea City Council's response to the VPA's Part A (Part 1) submission (Document 66).

The VPA's Part A (Part 2) submission noted that the April ICP increased the exhibited costs for all community facilities, mostly by indexing, but also by introducing provision for environmentally sustainable design and increasing the rate for the 'playground' line item. The exhibited costs for SR-03 and SR-05 were reduced in the April ICP, while the costs for the remaining sports facilities remained largely the same. The VPA considered that the costs (and designs) reflected in the April ICP are appropriate to inform the capped community and recreation levy.

The Councils submitted that the capped community and infrastructure levy will result in a substantial shortfall in the funding of community and sport and recreation infrastructure, to the tune of between \$51 million and \$66 million, based on "*similar projects already*

*constructed in nearby PSP areas compared with the so called hypothetical benchmark rates".* They submitted:

If the Standard Levy for community and recreation infrastructure was able to properly reflect the cost of PSP planned infrastructure, it would be increased from its present cap of \$86,627 (\$2018/19) to approximately \$136,257 (\$2018/19) per NDHa.

### **(iii) Discussion**

Melton City Council made similar submissions in relation to the Mt Atkinson and Tarneit Plains ICP as those made by Mitchell and Whittlesea Councils in relation to this ICP. The Panel noted in Melton PSA C201 [2019] PPV (at page 33):

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 GC102 Councils acknowledged the limitations the Panel faces in relation to being able to make recommendations about the adequacy or otherwise of the community and recreation levy, and they did not pursue these submissions in detail at the Hearing. They did, however, submit that the Panel is able to ensure that:

- funds can be borrowed to finance a loan to fund otherwise unfunded early delivery of community and recreation infrastructure
- the standard and supplementary levies for transport infrastructure are properly funded to ensure that the Councils (particularly Whittlesea) do not potentially face other avoidable shortfalls which would *"place further pressure on the Council finding funds for grossly underfunded Community and Recreation Infrastructure"*.

Ms McKenna's costings evidence only considered the transport projects. She did not provide a detailed analysis of the costings for the community and sport and recreation facilities. Nor did any of the other costings experts address the actual costs of providing the community and sport and recreation infrastructure identified in the ICP. In the absence of evidence challenging the costs in the April ICP, the Panel is not in a position to make a finding that the costs are not appropriate, or to make any findings on the actual extent of the likely shortfall, and whether it might be between \$51 million and \$66 million as the Councils submitted.

That said, it seems that the shortfall will be substantial. While the cap is set by the Ministerial Direction, the Panel encourages the VPA to continue to work with the relevant agencies, including DELWP and the growth area councils, to monitor this issue holistically across growth areas.

## 5 Unresolved issues

### 5.1 Intersection IN-03

#### (i) The issue

The issue is whether intersection IN-03 (Donnybrook Road and Patterson Drive) in its interim configuration should be constructed as a 'compact' design within the existing road reserve for Donnybrook Road, or whether it should be constructed as an 'outside in' design with wider lanes and verges, which would require land from the Shenstone Park PSP area.

#### (ii) Context

The ICP will fund five intersections on Donnybrook Road (IN-01 to IN-05). Donnybrook Road is on the southern boundary of the PSP land, and the Shenstone Park PSP area is located on the other side of Donnybrook Road.

The exhibited ICP proposed four legged cross intersections on Donnybrook Road, with southern legs extending into Shenstone Park. They were 'outside in' designs which used the whole (ultimate) road reserve and incorporated a central median on the Donnybrook Road legs.

Shortly after the first functional layout conclave (precisely when is unclear), the intersections (including IN-03) were redesigned to:

- substitute four legged cross intersections with three legged T intersections (removing the southern leg)
- substitute the exhibited 'outside in' designs with compact designs with no central median and reduced lane widths (3m).

The changes meant that the intersections could be accommodated within the existing Donnybrook Road reserve, avoiding the need to acquire land in Shenstone Park. The compact design for IN-03 also added an additional through lane in each direction on Donnybrook Road, taking the total number of through lanes from one (as exhibited) to two.

#### (iii) Austroads Guide

The Austroads Guide to Road Design 2017 edition (Austroads Guide) states that:

- current practice in Australia and New Zealand is to provide standard lane widths of 3.5 metres, with narrower lanes (down to 3.3 metres) considered where the road reserve or existing development prevent wider lanes
- the desirable lane width for all lanes in greenfield areas is 3.5 metres
- urban arterial roads should have 3.5 metre lanes, with 3 to 3.4 metre lanes on low speed roads with low truck volumes.

#### (iv) Evidence and submissions

Donnybrook JV owns land in Shenstone Park at the location of IN-03. Relying on expert evidence from Jason Walsh, Donnybrook JV objected to the compact design of IN-03.

Mr Walsh undertook a SIDRA analysis of the exhibited intersection design, and concluded that with only a single through lane in each direction on Donnybrook Road, the exhibited design was not 'fit for purpose', and would not appropriately serve development traffic from Mirvac's Olivine Estate, let alone Shenstone Park. He considered that the intersection should be based on the Cardno primary to secondary arterial benchmark design.

The traffic experts agreed at the first functional layout conclave that the exhibited design would be substituted with the Cardno benchmark design. This is recorded at point 2.6(a) and point (g) of the first conclave statement (Document 35).

At some point following the first functional layout conclave, the revised compact design for IN-03 was prepared. Document 90 contains a 'whole of government' (VPA and DoT) response to the first functional layout agreed statement. That document indicates that DoT's position on the compact design for IN-03 is:

- DoT supports the compact design in this instance as it delivers positive road network outcomes within the interim timeframe.

It notes that DoT considers the number of through lanes sufficient to accommodate predicted volumes in the interim period, and that bus queue jump lanes are not required in the interim configuration.

The revised compact design was considered by the relevant traffic experts (Mr Mentha for the VPA, Mr Hunt for Mirvac and Mr Walsh for Donnybrook JV). Mr Hunt and Mr Mentha concluded that the compact design, while not ideal, was acceptable. Mr Walsh did not support the compact design.

Mr Mentha's evidence was that while the compact design *"makes some compromises to normal design standards with regards to lane and verge widths"*, there are similar examples of arterial road intersections around metropolitan Melbourne with similar lane widths, and that he had been involved with similar layouts for 'pre-interim' conditions in greenfield areas where similar compromises had been made due to neighbouring land being unavailable for development.

Mr Mentha conceded in cross examination by Donnybrook JV that the compact design for IN-03 was only a concept design, and that there is always an element of doubt as to whether the compact design would in fact fit within the existing road reserve. He conceded that it was preferable to have consistent lane widths in the mid-block sections and the intersection legs, which would not be possible with the compact design. However, he did not consider that the compact design involved a significant compromise on road safety, or that there was any reason why VicRoads (DoT) would not approve the ultimate design for a compact layout, notwithstanding the compromises that it involves.

In response to questions from the Panel, Mr Hunt indicated that the compact design was generally appropriate from a traffic capacity, road safety and functionality perspective, although if there were no constraints preventing a more generous design with 3.5 metre lanes, that would be a preferable outcome.

Both Mr Hunt and Mr Mentha indicated that there are multiple examples in Melbourne of intersections with lane widths of 3 metres or less (even down to 2.7 metres), including intersections that carry substantial amounts of truck traffic (Mr Mentha's examples are

documented in Document 171, provided by the VPA with its closing submissions). They acknowledged however, that these are existing intersections in established areas where it is difficult to acquire land to widen the intersections, rather than greenfield areas where intersections are being designed 'from scratch'.

Mr Walsh provided an analysis of the revised compact design in an addendum to his expert evidence (Document 89). He concluded that the updated compact design (which included two through lanes in each direction on Donnybrook Road) *"provides for a similar level of capacity to the Cardno Benchmark Plan (my recommended intersection), however I have some reservations as to whether VicRoads would approve the intersection and also reservations regarding the constructability of the intersection"*. His reservations related to:

- 3 metre through lanes, particularly considering quarry trucks use Donnybrook Road (he considered that VicRoads would likely require 3.3 to 3.5 metre lanes to accommodate the heavy vehicle traffic, which could not be accommodated within the existing road reserve)
- the verges are too narrow to safely accommodate the two-way bike path on the north side of Donnybrook Road and separate footpath on both sides of Donnybrook Road
- most of the interim construction would be redundant on duplication
- there is a prospect that the Shenstone Park PSP would have to fund a completely new interim intersection that aligns with the ultimate intersection configuration
- the revised plan does not illustrate how services or bus stops are to be accommodated.

Mr Walsh prepared a redundancy plan showing the extent of what he considered to be redundant works in the revised compact design (Document 140), and a revised design for IN-03 (Document 157) which was based on a three legged T intersection, but with wider traffic lanes (3.5 metres) and verges that could, in his view, safely and comfortably accommodate the bike path and footpaths. Mr Walsh's revised design would require land from Shenstone Park.

Donnybrook JV pointed to the fact that no road safety audit had been provided in support of the compact design, and expressed concern that the Shenstone Park PSP or ICP would require the interim IN-03 to be reconfigured at the cost of Shenstone Park to a (they say) safer design with wider lanes that more closely aligns with the ultimate intersection configuration. It submitted that despite numerous efforts on the part of Donnybrook JV's solicitors, neither the VPA nor DoT had provided a legally enforceable undertaking that this would not occur (Documents 154 and 155).

Further, the VPA had not been able to provide any examples of DoT or VicRoads approving an intersection in a greenfield area with 3 metre lane widths. Donnybrook JV advised the Panel that 960 Blueways Pty Ltd is undertaking the nearby Platform Estate development to the west of the railway line, which included the delivery of an intersection that VicRoads had:

... repeatedly refused to approve 3 metre though lane widths. On 18 September 2019, it approved a number of options for the intersection with through lanes ranging from 3.5 metres down to 3.2 metres, and turn lanes ranging from 3.5 metres down to 3 metres.

Donnybrook JV put an offer on the table at the Hearing to make its land available to allow Mr Walsh's revised design to be constructed. The land would be licenced for \$1 to allow the construction of the intersection and would then be vested in the road authority when the intersection was complete. It also offered to meet 50 percent of the (it said marginal) additional cost in constructing 3.5 metre lanes as opposed to the 3 metre lanes costed as part of the compact design. Donnybrook JV submitted that this would:

- avoid the need for 3 metre lanes, which it said were unprecedented and unwarranted in a greenfield context
- reduce the unnecessary redundancies inherent in the compact design.

Mirvac submitted that it would be "*inconceivable*" that VicRoads would change its position on the interim design for IN-03 in light of Document 90.

In its closing submissions, the VPA submitted that the compact design was a "*pragmatic and appropriate response*" that was considered acceptable by DoT, Mr Mentha and Mr Hunt. While standards generally require the provision of 3.5 metre lanes, narrower lanes of 3 metres or more could be considered where suitable. It submitted:

The 3 metre lanes will provide functionally for the movement of traffic along the road. Whilst ideally truck traffic would be provided with wider lanes, in the consideration of the overall treatment, including 3.5 metre lanes at mid-block, the proposed intersection will enable traffic to pass effectively.

Cardno has provided the VPA with a list of existing intersections that operate with a lane width narrower than 3.5 m. These intersections are arterial roads and most have speed limits of 60 km/hr. These intersections carry traffic volumes of up to 34,000 vehicle movements per day and truck volumes ranging from 4 to 7 percent, including in some instances truck volumes in greater absolute numbers than for Donnybrook Road.

The speed limit currently sign-posted along Donnybrook Road is 80 km/hr. It is likely that as the surrounding land is developed, DoT will reclassify Donnybrook Road from rural to urban and reduce the sign-posted speed to 60 km/hr.

In relation to Donnybrook JV's offer to make land in Shenstone Park available to accommodate Mr Walsh's design, the VPA submitted that:

Simply put, the 'solution' proposed is not a solution, nor is it appropriate, capable of being adequately understood or supportable in the circumstances of this panel process.

It submitted that Donnybrook JV had provided no analysis of how the solution would be incorporated into the ICP, effects on other parties, implications for costings or land take requirements, cost apportionment between the Donnybrook-Woodstock ICP and the Shenstone Park ICP, or how a mere licence agreement would legally enable Mirvac to develop the intersection. It noted that the 'solution' had not been put to either Mr Mentha or Mr Hunt, and submitted that given the degree of uncertainty, the 'solution' should not be further entertained by the Panel.

## **(v) Discussion**

It is clear, and consistent with the evidence from all the relevant experts, that in a greenfield context 3.5 metre wide lanes in an intersection are preferable. This is consistent with the Austroads Guide, and the Panel considers that it represents a preferred outcome. Further,

Mr Walsh's design (Document 157) would allow more room for footpaths on both sides of Donnybrook Road, and more room for bus stops.

That said, there are difficulties in delivering an intersection that provides adequate capacity (with two through lanes in each direction), and the preferred lane widths. This requires land in Shenstone Park, outside the PSP area.

While the Panel acknowledges the offer made by Donnybrook JV to make its land available, the Donnybrook JV solution is not sufficiently certain for the Panel to support it. Mr Walsh's design (Document 157) was prepared very late in the process and was a preliminary design for discussion purposes. No party or expert has had the time to properly analyse the design and determine whether it represents a suitable solution from a traffic management perspective. The design has not been costed and it is not clear how Mr Walsh's design would impact on other parties or the ICP (or the Shenstone Park ICP) more broadly.

Further, there is no guarantee that the land access arrangements required to enable Mr Walsh's design to be constructed can be secured – particularly if Donnybrook JV sells the land to a third party before the intersection is constructed. If the ICP were approved in a form that required Mr Walsh's design to be delivered, it would effectively require Mirvac and/or the road authority to negotiate with another private landowner to secure the land. This would create a power imbalance, as (notwithstanding the terms of the offer put verbally at the Hearing) Donnybrook JV could effectively 'name its price' to make the necessary land available. To approve an ICP with this level of uncertainty would not, in the Panel's view, constitute good and orderly planning.

On balance, the Panel supports the ICP proceeding on the basis of the compact design for IN-03. It notes that no crash statistics were provided which demonstrated the safety of an intersection configured in this way in this context. Notwithstanding, the compact design is considered acceptable from a safety and traffic management perspective by the planning authority (the VPA), the road authority (DoT) and all of the traffic experts other than Mr Walsh. These agencies and experts supported the compact design notwithstanding that Donnybrook Road has a speed limit of 80 kph and a significant amount of truck traffic from the nearby quarry.

In response to questions from the Panel, Mr Hunt confirmed that he thought the compact design would remain acceptable even if the intersection is not upgraded to its ultimate configuration for 15 to 20 years.

Further, while it appears that the compact design would likely involve a higher level of redundancy when the intersection is upgraded to its ultimate configuration, there was no compelling evidence that persuaded the Panel that the compact design would involve an unacceptable level of redundancy. The Panel notes that DoT (which will be responsible for replacing any redundant works when the intersection is upgraded to its ultimate configuration) did not raise any concerns in relation to redundancy.

The Panel notes Donnybrook JV's concerns that the VPA was not able to provide any other examples of VicRoads (DoT) having approved 3 metre wide lanes in a greenfields intersection, and that there is a possibility that DoT may reconsider its support for a compact design once the land in Shenstone Park becomes available. However, DoT has stated on a

number of occasions, primarily in Document 90, that it supports the compact design. There would need to be compelling justification for DoT changing its position when the Shenstone Park PSP or ICP is being prepared.

While the Panel supports the compact design, it agrees with the various experts that (land ownership constraints aside) more generous lane and verge widths would be a preferable outcome. The Panel therefore encourages the VPA to continue to work with Donnybrook JV to progress the Donnybrook JV solution. If the uncertainties outlined above are able to be satisfactorily resolved prior to the Amendment being adopted, the compact design of intersection IN-03 should be revisited.

#### **(vi) Conclusion**

The Panel concludes:

- Unless the uncertainties associated with the Donnybrook JV solution to IN-03 are able to be satisfactorily resolved prior to the Amendment being adopted, the ICP should proceed based on the compact design.

## **5.2 Interim arterial roads as single or divided carriageways**

### **(i) The issue**

The issue is whether the interim secondary arterial roads should be constructed as single or divided carriageways.

### **(ii) Context**

The Councils initially sought all arterial roads to be constructed as interim divided carriageways. However, at the Hearing, they indicated that they no longer wished to pursue the interim construction of RD-02 (Gunns Gully Road) as a divided carriageway.

Gunns Gully Road is the only primary arterial road to be funded through the ICP. The secondary arterial road projects (all of which the Councils say should be divided) are:

- RD-01 (Cameron Street – railway line to Patterson Drive)
- RD-03 (Patterson Drive – Donnybrook Road to Merri Creek)
- RD-04 (Patterson Drive – Merri Creek to Outer Metropolitan Ring Road reservation)
- RD-05 (Koukoura Drive).<sup>1</sup>

### **(iii) Relevant policies**

Clause 15.01-1R of the Planning Policy Framework states:

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<sup>1</sup> The Panel notes that the PSP identifies Koukoura Drive (RD-05) as both a primary and a secondary arterial – refer to page 11, Plan 3 and Plan 13 (where it is identified as a secondary arterial), and R52 and the cross-section on page 99 (where it is identified as a primary arterial). The Panel understands that references in the PSP to Koukoura Drive as a primary arterial road are incorrect and its correct designation is secondary arterial. The Panel has proceeded on the basis that it is a secondary arterial.



## 15.01-1R Urban design - Metropolitan Melbourne

### Objective

To create a distinctive and liveable city with quality design and amenity.

### Strategies

Support the creation of well-designed places that are memorable, distinctive and liveable.

Integrate place making practices into road space management.

Strengthen Melbourne's network of boulevards.

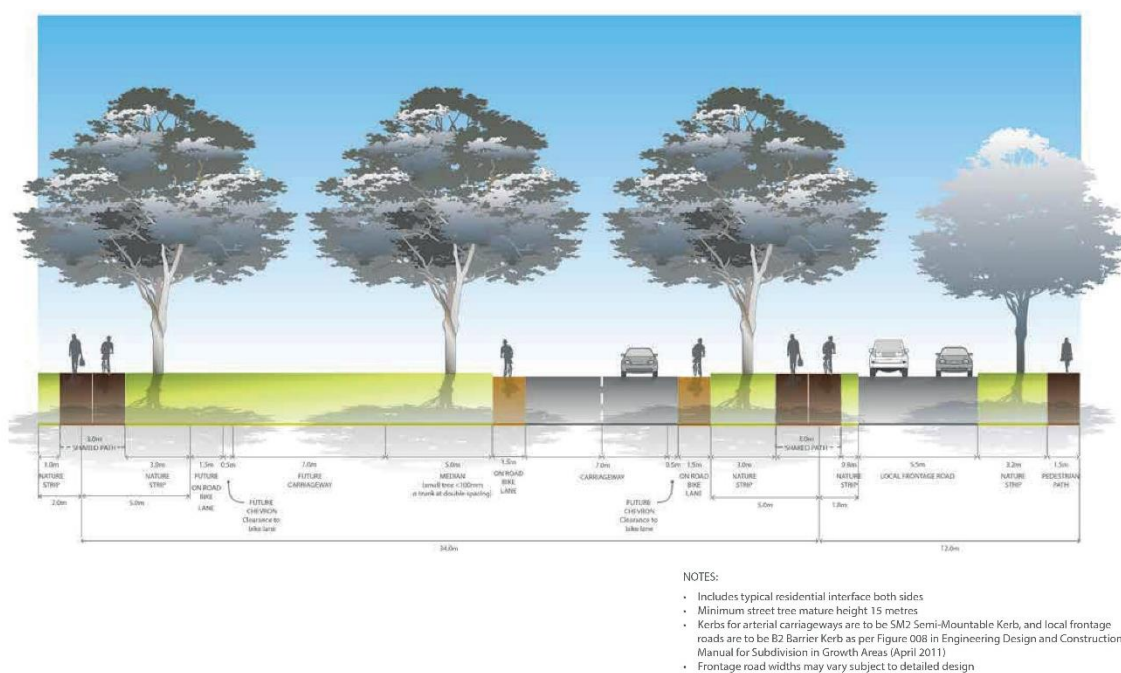
Create new boulevards in urban-growth areas and selected existing road corridors across Melbourne.

Provide spaces and facilities that encourage and support the growth and development of Melbourne's cultural precincts and creative industries.

### (iv) The Precinct Structure Plan

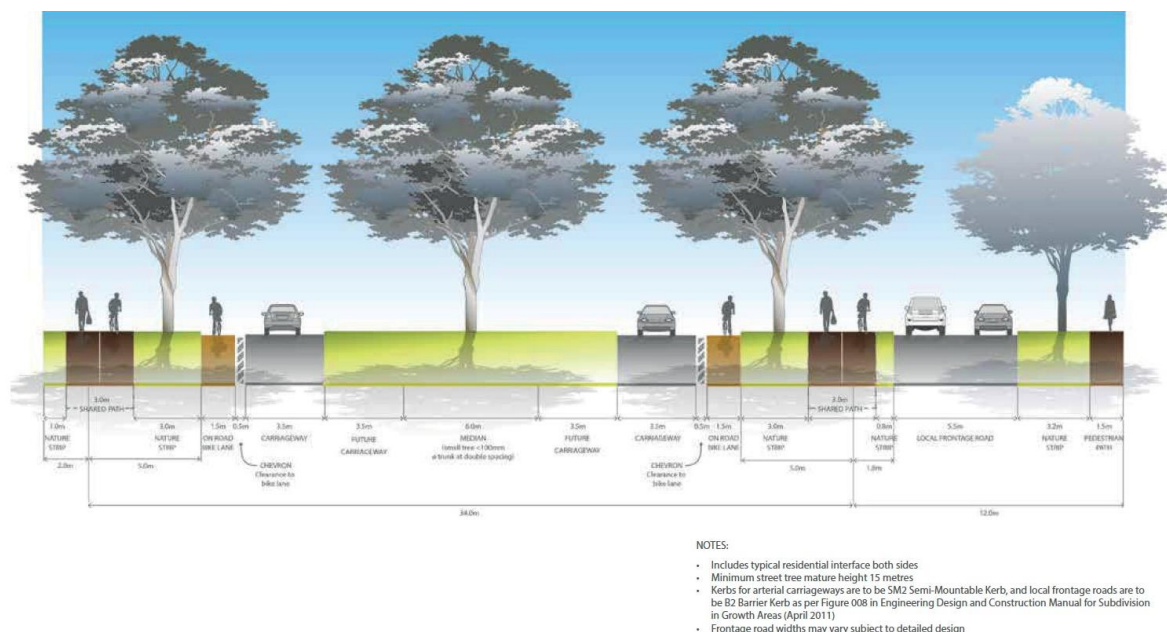
The PSP contains two cross sections for the interim configuration of secondary arterial roads, as shown in Figure 3 and Figure 4. Figure 3 (Option 1) shows an undivided single carriageway and is labelled the preferred outcome for Patterson Drive and Cameron Street.

Figure 4 (Option 2) shows a divided carriageway.



**Figure 3** Secondary Arterial Road 4 lane (34.0m)  
Interim Option 1 - Preferred outcome for Patterson Drive and Cameron Street

Source: PSP at page 96



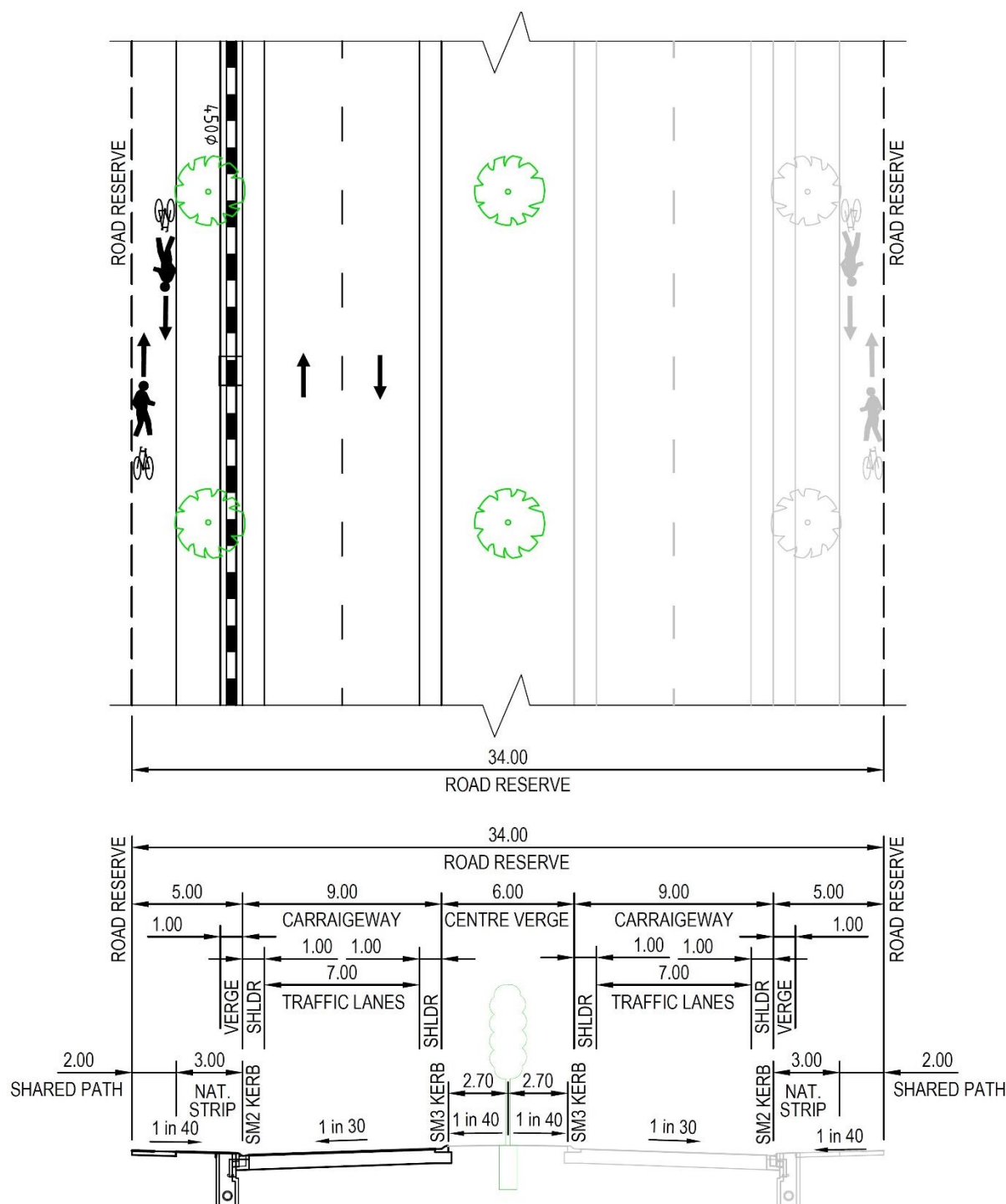
97 **Secondary Arterial Road 4 lane (34.0m)**  
**Interim Option 2**

vpa Victorian Planning Authority  
DONNYBROOK-WOODSTOCK PRECINCT STRUCTURE PLAN – October 2017

**Figure 4 Secondary arterial road interim Option 2 (divided)**  
Source: PSP at page 97

#### (v) The ICP

The ICP (exhibited and April versions) includes a benchmark functional layout for secondary arterial roads (interim treatment) which shows an undivided two-lane carriageway with a cross section of 14 metres within the 34 metre ultimate cross section. The costings for the road projects are based on this design.



**Figure 5** Functional layout plan for interim secondary arterial roads

Source: April ICP Appendix 4

## (vi) Evidence and submissions

### The VPA

The VPA noted that the PSP contains two options for the interim cross section of secondary arterial roads and submitted that although Option 1 (the undivided carriageway) is described

as the preferred outcome only for Patterson Drive and Cameron Street, it is also appropriate for Koukoura Drive.

The VPA submitted that the ICP should fund the ‘basic and essential’ delivery of the roads, that is, an undivided carriageway. It submitted that the undivided carriageway is ‘basic and essential’ as it:

- is fit for purpose, in that it provides two lanes of traffic and a two-way bike path, with the footpaths provided by the service roads
- does not involve any unnecessary additional costs, as it constructs the basic form of the necessary functional components of the road.

The VPA’s Part A (Part 2) submission stated:

It has been standard practice for many years that interim treatment of arterial roads consists of ultimate land and construction of an undivided two-lane carriageway and by precedence this has informed the baseline of what constitutes basic and essential.

The interim option that will actually be constructed can depend on the negotiations between Council, as the collecting agency, and the permit applicant. The VPA does not consider it necessary to determine which option should be applied to a planning permit area at the PSP/ICP stage. Rather, the VPA considers it appropriate that the ICP funds the basic and essential configuration, and that any other design that is negotiated between the Council and planning permit applicant be determined during the permit application stage ...

Mr Mentha’s evidence was that an undivided first carriageway is a “*typical*” interim approach which is cheaper than a divided carriageway and allows a relatively straightforward upgrade to the ultimate divided configuration with less disruption to traffic and less traffic management required. Relying on the evidence of Mr Mentha, the VPA submitted:

- the choice between the two interim treatments is not dependent upon functional considerations, as the capacity and functionality of the undivided and divided roads are similar
- the undivided carriageway would be more cost effective to construct as an interim treatment
- any cost savings to the ultimate scenario by constructing an interim divided carriageway would likely be offset by higher traffic management costs during construction of the ultimate layout (a four lane divided road).

The VPA submitted that, in addition to considerations of what constitutes ‘basic and essential’, there are practical reasons for preferring an interim undivided carriageway. First, it would allow for a more straightforward upgrade to the ultimate four lane treatment, as the existing two-way carriageway could remain open while the second two-lane carriageway is constructed. Second, there are practical difficulties in delivering RD-01 (Cameron Street) and RD-03 (Patterson Drive south of Cameron Street) as interim divided carriageways, as the land ownership required for a divided interim construction varies:

- Cameron Street – Mirvac owns a portion of the land on the north side, and the Monteleone family owns the land on the south side
- Patterson Drive south of Cameron Street – Mirvac owns the land on the east side, and the Monteleone and Di Bella families own the land on the west side.

Mirvac has not been able to secure an agreement with the neighbouring landowners (Di Bella and Monteleone) to gain access to their land, and Council has not sought to acquire the land that would be required for the construction of divided interim carriageways.

### The Councils

The Councils submitted that the ICP should fund interim divided carriageways (Option 2 in the PSP) for all secondary arterial roads from the standard levy. The Councils submitted that the policy framework is strongly in favour of the creation of boulevards. They referenced Clause 15.01-1R of the planning schemes, noting that a key strategy in Clause 15.01-1R is to create new boulevards in urban growth areas.

In reference to the PSP, the Councils submitted:

That document clearly outlines two options for Patterson and Cameron Street. We note that Interim Option 1 is labelled the Preferred Outcome for Patterson Drive and Cameron Street. However, Interim Option 2 is provided as an alternative. We submit that notwithstanding that one of the two options is identified a preferred, the alternative is open for selection and indeed, it has been selected in permits issued to date. We respectfully submit that it is not tenable to suggest that Interim Option 2 is not generally in accordance with the PSP or that Interim Option 2 is not sanctioned by the PSP. So far as Koukoura Drive is concerned, the preferred outcome is identified on page 99 of the PSP as a divided carriageway and not a single carriageway.

The Councils submitted that the Panel should not support the VPA's position, which effectively represents an Option 3 that is not reflected in the PSP. This is because the VPA's costings for the interim undivided carriageways do not allow for landscaping the full road reserve, or providing shared user paths on both sides of the roads as shown in the Option 1 and Option 2 cross sections (these issues are discussed in detail in the following chapters).

Relying on the evidence of Mr Czarny, the Councils submitted that the divided carriageway (Option 2) is a far better urban design solution than the undivided carriageway (Option 1). Mr Czarny's evidence was (in summary):

- streetscapes are one of the primary public realm aspects that define the character and impact of urban places
- Objective 3 of the PSP calls for *"attractive and comfortable streets and public spaces as the centre for community life"*
- the ICP, in calling for undivided carriageways, *"waters down"* the role of arterial road corridors as important contributors to the character, image and sense of place of the new community
- undivided carriageways (Option 1) would create a *"no-man's land"* on the unused side of the road reservation, and *"lop-sided"* boulevard plantings as the trees on the unused side of the reservation would not be planted until the road was upgraded to its ultimate treatment
- the undivided carriageway would compromise pedestrian and cycle movement, as the Option 1 cross section does not include chevron marking for the on-road cycle lanes, and *"opportunities for convenient cross pedestrian movement and legible pedestrian address is seriously constrained"*
- undivided carriageways would necessitate a 'meandering' approach to intersections, as most of the intersection layouts on the secondary arterial roads

have divided intersection legs – this limits legibility and clear sightlines, which is a poor urban design outcome

- the divided carriageway provides a greater sense of address to residential properties on both sides of the road.

The Councils advised the Panel that a number of issued planning permits (including those for the Mirvac Olivine Estate and DFC Woodstock Peppercorn Estate) include conditions requiring the roads to be built as divided carriageways (as shown in Document 169). They submitted that if the Panel does not support the Councils' position, developers are likely to apply to amend permits to wind back the road cross section to Option 1 which in their view would be most undesirable:

We submit that the ICP should at least provide for the circumstances that have been created that are consistent with the PSP. It is rather disingenuous to suggest that it is up to Council to fund what it [the VPA] describes unfairly as extravagant requirement. The PSP is a VPA document and the option adopted [by the Councils] is one of the outlined interim options. If it was never intended to be an option, it should never have been included in the PSP. Council should not be penalised for adopting one of those options.

Both Mirvac and DFC Woodstock confirmed that they would seek to amend the relevant permit conditions to require single carriageways if the Panel were to support single carriageways.

Ms McKenna's comparative cost sheets (Document 133) showed the difference in cost of constructing the interim roads as divided or undivided carriageways. The divided carriageways are, on average, in the order of 33 percent more expensive than undivided carriageways. However, the Councils submitted that this is a cost brought forward, rather than an additional cost, as the ultimate cross section is a divided carriageway. They submitted that there was no evidence to support the contention that the cost of duplicating the road to its ultimate configuration would be higher for an interim divided carriageway than an interim single carriageway.

### **The developers**

Mirvac submitted that the only reasonable interpretation of the PSP is that Option 1 (the undivided carriageway) should be applied to Patterson Drive and Cameron Street, and that Option 2 should only be preferred for secondary arterial roads other than Patterson Drive and Cameron Street. Mirvac contended that the evidence of Mr Czarny is irrelevant to the task of the Panel in that it does not matter what Mr Czarny or the Councils would now prefer as the interim design. What matters is what the PSP has identified as the preferred interim design.

Mirvac noted that, based on Ms McKenna's costings, the cost of Option 2 significantly exceeds the cost of option 1. Further, and more importantly, the delivery of the divided carriageway is considerably more challenging (if not impossible) because it would require Mirvac to negotiate access to and construct on land it does not own. Mirvac submitted that to deliver the Councils' preferred outcome, Mirvac will be "*at the mercy*" of the owners or developers of the adjoining land, and there is no guarantee that it could ever secure an agreement from those owners to enable Mirvac to deliver the divided option. It added that

the Council has not been able to identify any practical way access to the land could be achieved, nor is it proposing to compulsorily acquire the land.

Mirvac submitted:

In the absence of evidence to the contrary, it should be assumed that these were both factors which influenced the decision embodied in the PSP to nominate the undivided carriageway as the preferred option for these specific roads.

...

There is no evidence that this urban design outcome was advocated for by the Councils during the preparation of the PSP, at the Panel hearing, or at any time prior to approval of the PSP.

...

The Councils' position is apparently that the additional costs can be met by the standard levy fund, with the consequence that either more items (and/or a greater proportion of certain items) will need to be funded by the supplementary levy.

DFC Woodstock submitted that the Ministerial Direction does not permit the striking of a supplementary levy for the purposes of providing an interim boulevard treatment for secondary arterial roads, and that this would have to be funded from the standard levy (which the Councils conceded). It submitted that an ICP should seek to maximise the efficient use of the standard levy and minimise the need for a supplementary levy. It submitted:

In practical terms, this means that if there is a choice between delivering more infrastructure using the standard levy and delivering less, the former ought to be preferred.

Here, the delivery of an interim divided carriageway is not an efficient use of the standard levy. It will consume more of the standard levy – forcing greater reliance on a supplementary levy to deliver other necessary infrastructure – whilst delivering no better traffic performance than an undivided carriageway.

DFC Woodstock submitted that the PSP does not provide any express support for Koukoura Drive to be constructed as a divided carriageway. It submitted that the burden is on the Councils to justify the adoption of a more expensive option of delivering the same level of traffic performance as the undivided carriageway option. DFC Woodstock was “*unconvinced*” that the urban design benefits and avoided redundancy benefits of providing an interim divided carriageway outweigh the additional financial costs of providing that interim option.

DFC Woodstock pointed out that its existing permit includes a condition requiring Koukoura Drive to be constructed as an interim boulevard and confirmed that if the ICP only funds the less expensive undivided interim option, it would seek to vary that condition to require an undivided carriageway. It submitted that any failure to fund a boulevard treatment through the ICP risks exposing DFC Woodstock to additional unfunded liability if it is unable to amend its permit. It submitted:

Ultimately, DFC supports a pragmatic approach which ensures that whatever final design is adopted should be fully funded, whether that is a single carriageway or a dual carriageway.

## The Councils' response

In their reply submissions, the Councils submitted that the practical difficulties of delivering divided carriageways highlighted by the VPA and Mirvac, due to different land ownership, were not as significant as had been made out.

The Councils tabled an article from the Australian Financial Review dated 25 October 2019 (Document 164) that reported a deal in which Di Bella has agreed to sell their property to Stockland. The Councils submitted that Stockland is a rational developer and would likely agree to whatever arrangements were necessary to deliver Patterson Drive south of Cameron Street as an interim divided carriageway. That left only a small portion of Patterson Drive, to the immediate south of Cameron Street, in the ownership of the Monteleone family. Council submitted that this section of the road was a lower priority and would not be needed until much later than the southern section of Patterson Drive.

The Councils noted that DFC Woodstock owns all of the land required to construct Koukoura Drive as a divided carriageway, so there are no complications arising from land in different ownership.

The Councils submitted that the more likely way of getting the land required for the divided carriageways would be by the imposition of permit conditions under section 46GV of the Act (which effectively requires a permit to include conditions requiring public purpose land to be set aside on a plan of subdivision to vest in the relevant development agency). They submitted that, even if the land had to be compulsorily acquired:

... the Panel should be mindful of the new public land system which makes acquisition of land considerably easier than under the old system. With that in mind the Panel should be loath to require all relevant land to be in public ownership before a project is funded if that is what Mirvac is espousing.

The Councils submitted that a Public Acquisition Overlay would be unlikely to be required to facilitate the compulsory acquisition of the land, as the regulations under the *Land Acquisition and Compensation Act 1986* state that no overlay is required where land is to be acquired for a minor road widening or deviation if the land is only part of an allotment, the area to be acquired is less than 10 percent of the total of the allotment and its value is less than 10 percent of total value of the allotment. The Councils noted that the value of the portion of the Di Bella land required is not significant (it is valued at about \$1.7 million in the Public Land Budget in the ICP, much less than 10 percent of the total land value), and the compensation payable to Monteleone in the Public Land Budget is zero.

In short, the Councils argued that there are no insurmountable hurdles to deliver a divided carriageway, either from a cost perspective or in terms of obtaining the land.

In closing oral submissions, Mirvac stated that the reported Stockland purchase of the Di Bella land was not necessarily helpful to Mirvac, as (even if the deal proceeds) Stockland may sit on the land for some time before seeking to develop. It also argued that recourse to the regulations under the *Land Acquisition and Compensation Act 1986* to avoid the application of a Public Acquisition Overlay was “a nonsense”, as Patterson Drive is not an existing road to be widened (rather, it is a new road to be constructed), and in any event acquisition of 17 metres was not a minor road widening. A Public Acquisition Overlay would therefore be required, which would take time.



## **The VPA's response**

The VPA's final position was that it is unnecessary and inappropriate to fund interim divided carriageways through the ICP. An interim divided carriageway would increase the supplementary levy effectively for urban design reasons, which is contrary to the principle that ICPs should fund infrastructure items that are essential to the development of future communities. It submitted that Mr Czarny and the Councils had not demonstrated that the undivided carriageways are not fit for purpose in terms of road capacity, safety and other key objectives of the PSP. The VPA submitted that if the Councils wish to pursue interim divided carriageways, it should be prepared to fund the additional costs of doing so.

### **(vii) Discussion**

It is likely that the secondary arterial roads will be delivered by developers as works in kind – Mirvac intends to deliver Patterson Drive and Cameron Street, and DFC Woodstock intends to deliver Koukoura Drive.

In determining whether the interim secondary arterial roads should be constructed (and funded) as divided or undivided carriageways, the Panel is required to balance the advantages and disadvantages of each approach in the context of the requirements of the Act, the Ministerial Direction, and the planning schemes including the policy framework. The PSP and the ICP Guidelines are also relevant, as are the practicalities of being able to deliver each option.

The Panel agrees that the Ministerial Direction requires that the secondary arterial roads be funded from the standard levy, whether they are constructed as divided or undivided carriageways. This has implications for the supplementary levy. If the overall cost of the standard levy items increases, more qualifying projects will need to be funded from the supplementary levy which would then increase.

The costings evidence of Ms McKenna confirms that the divided carriageway option is more expensive than the undivided option. There was insufficient evidence before the Panel for it to make a finding on whether this would be a cost brought forward rather than an additional cost, as the Councils submitted. No definitive evidence was presented to the Panel on the relative costs of upgrading to the ultimate configuration from a divided or an undivided interim treatment, or the relative redundancies involved in each option. In any event, the Panel notes that any potential cost savings (or additional cost burden) in upgrading an interim divided carriageway as opposed to an undivided carriageway would be realised by DoT when the road is ultimately duplicated.

There was no dispute among the traffic experts over the relative merits of the two options from a safety or road functionality perspective. One is not preferred over the other, although the Panel acknowledges Mr Mentha's evidence that opportunities for right hand turns and u-turns would need further consideration if a divided carriageway is pursued.

It appears to be common sense that upgrading an undivided interim treatment would be less disruptive from a traffic management perspective, as the second carriageway could likely be constructed without disturbing the first (interim) carriageway. This may have implications in terms of both redundancy and cost, although the Panel has insufficient evidence before it to make definitive findings on these issues.

The Panel is not persuaded that, as a matter of principle, an undivided carriageway represents a 'basic and essential' approach and a divided carriageway represents something more than 'basic and essential', as the VPA suggested. The Panel does not agree that a higher cost option that is driven by urban design considerations but has the same level of functionality is necessarily no longer 'basic and essential'.

The Panel accepts that the divided carriageway (Option 2) delivers urban design advantages. It accepts that there is policy support for boulevard treatments in growth areas and accepts that the interim treatment may be in place for a considerable period of time – possibly even a generation – before the roads are ultimately duplicated. The Councils provided examples to the Panel in other now well-established estates (including Yan Yean Road in Mernda) where roads in the interim (undivided) configuration had not been duplicated after 15 to 20 years.

In the Panel's view, the road cross sections in the PSP indicate a preferred interim option for Patterson Drive and Cameron Street as single carriageway, and a preferred option for other secondary arterial roads (namely Koukoura Drive) as a divided carriageway.

It is not clear to the Panel why the PSP includes a different preferred interim cross section for Patterson Drive and Cameron Street. The PSP Panel report (Whittlesea and Mitchell PSA GC28 [2016] PPV) does not include any discussion on the issue. As suggested by Mirvac, one is left to surmise that the PSP may contain a preferred single carriageway for Patterson Drive and Cameron Street because the land along the proposed road alignment is owned by multiple parties, which could make delivery of an interim divided carriageway more difficult.

The Councils argued that the land required for an interim divided carriageway on Patterson Drive could be compulsorily acquired with relative ease and a minimal cost. While the Panel acknowledges that the public land contribution system is designed to simplify the process of acquiring public purpose land in a PSP area, the Panel is not persuaded that the required land could necessarily be acquired within timeframes consistent with when Mirvac plans (or is required) to deliver Patterson Drive. In particular, it was not persuaded that a Public Acquisition Overlay would not be required to enable the compulsory acquisition of the land required for Patterson Drive.

While section 46GV of the Act provides an alternative mechanism for the land to be vested in the development agency (in this case the Council) without the need to acquire the land, this mechanism can only be used where a permit is sought to develop the land. There is no guarantee that Monteleone or Di Bella (or, for that matter, any developer who acquires an interest in their land) will seek a permit within a suitable timeframe for the construction of Patterson Drive.

The Panel therefore has some real concerns about the practicality of being able to construct Patterson Drive (and Cameron Street) as interim divided carriageways. It does not have these concerns in relation to Koukoura Drive, as DFC Woodstock owns the land on both sides of Koukoura Drive.

Ultimately, the Panel places considerable weight on the fact that the PSP indicates a clear preference that in the interim, Patterson Drive and Cameron Street should be constructed as undivided carriageways, and (by exception) Koukoura Drive should be constructed as a

divided carriageway. ICPs should be consistent with the relevant PSP. This, combined with the practical difficulties of being able to deliver Patterson Drive and Cameron Street as divided carriageways, leads the Panel to conclude that in the interim Patterson Drive and Cameron Street should be constructed as undivided carriageways, even though a divided carriageway would, in the Panel's view, represent a better outcome that would still be consistent with 'basic and essential'. Koukoura Drive should be divided.

This will require RD-05 (Koukoura Drive) to be re-costed. The functional layout plan for Koukoura Drive will need to be revised. The plans for its associated intersections (IN-04, IN-07, IN-11 and IN-15) will also need to be revised (and possibly re-costed), so that the Koukoura Drive legs have a divided carriageway rather than tapering to a single carriageway.

#### **(viii) Conclusions and recommendations**

The Panel concludes:

- Cameron Street (RD-01) and Patterson Drive (RD-03 and RD-04) should be constructed as undivided carriageways.
- Koukoura Drive (RD-05) should be constructed as a divided carriageway. An amended functional layout plan will be required for this project, and the project will need to be re-costed accordingly.
- Amended functional layout plans will also be required for the intersections along Koukoura Drive showing the Koukoura Drive legs as a divided carriageway, rather than tapering to an undivided carriageway. These intersections may need to be re-costed.

The Panel recommends:

- 2. Amend the Infrastructure Contributions Plan (October 2019 version) to include:**
  - a) a revised functional layout plan for RD-05 (Koukoura Drive interim configuration), showing it as a divided carriageway consistent with the cross section on page 97 of the Donnybrook-Woodstock Precinct Structure Plan**
  - b) revised costings for RD-05 based on the revised functional layout plan**
  - c) revised functional layout plans for the intersections along Koukoura Drive (IN-04, IN-07, IN-11 and IN-15) showing the Koukoura Drive legs as a divided carriageway for the whole of the extent of works, rather than tapering to an undivided carriageway**
  - d) revised costings for IN-04, IN-07, IN-11 and IN-15 based on the revised functional layout (if required).**

### **5.3 Landscaping on interim arterial roads**

#### **(i) The issue**

The issue is whether the costings for road projects should include an allowance for landscaping of the whole road reserve, or whether only landscaping for the disturbed portion should be costed.

## (ii) Submissions

The VPA submitted that the costings for the road projects should only include landscaping the disturbed portion of the road reserve, with no allowance for landscaping the unconstructed portion which will remain as 'paddock'. The VPA submitted that this approach was consistent with the 'basic and essential' concept, and provided an example in Sayers Road, Tarneit (see Figure 6 below).



**Figure 6** Photographs of landscaping treatment in Sayers Road Tarneit

Source: VPA's Part A (Part 2) submission

The VPA submitted that the Sayers Road example represented “an acceptable streetscape”. It includes some landscaping, grassed areas and trees, while the unconstructed section of the road reservation is grassed and kerbed, providing a vegetated and delineated visual separation between the road and the service road.

The Councils submitted that an allowance should be made for additional landscaping of the unconstructed portion of the road reserve. By way of example, topsoiling and grassing the unconstructed portion would, on Ms McKenna's estimates, cost in the order of \$110,000 (which is for topsoil and grass only, and excludes any tree planting of any significance). The Councils submitted that these are not a significant cost impost in the context of the return on investment and the total quantum of the levies. They submitted:

It means roads being properly constructed providing for a much more satisfying urban design approach to interim road construction and one which is more consistent with many aspects of state policy.

In their closing submissions, the Councils submitted that there were no compelling submissions as to why the road reserve should not be properly landscaped:

Council completely rejects the approach of the VPA and its experts in relation to the so called "basic and essential" approach to landscaping as devoid of any logic or policy rational. We must admit to still being somewhat taken aback at the submissions made in this regard.

We further submit that if the Panel finds against Council on the divided interim carriageway, then, at the least it ought to require the ICP ... to properly fund Interim Option 1 as described in the PSP with the full landscaping (including trees) and paths shown in that option and not the lesser landscaping standard which has been assumed by each cost consultant. That will at least result in the proper landscaping being planted at the same time and then maturing at the same time.

Mirvac objected to the inclusion of landscaping costs for the whole road reserve, on the basis that it was unnecessary, and that it would be impractical to require the whole reserve to be landscaped for the reasons discussed in Chapter 5.2 relating to different sides of the road reserve being in different ownership.

The VPA responded in closing:

It should be appreciated that on the other side of the road reserve will be the landscaped condition of the service road for new dwellings rather than an infinite "no man's land" as apprehended by Mr Czarny.

### **(iii) Discussion**

The costings for the mid-block road projects in the exhibited ICP made no allowance for landscaping. The April ICP included an allowance of up to \$280,000. The VPA provided a memo from Mr Howe of Cardno (Document 170) that clarified that the landscaping costs had been limited to the 'interim works area' based on the undivided carriageway design, including:

- the three metre verge between the shared path and the shoulder on the shared path side
- the central verge to a width of 9 metres from the other shoulder.

No allowance was made for landscaping the unconstructed section of the road reservation. The Panel notes that this appears to be inconsistent with the Sayers Road example provided by the VPA, in which the unconstructed section is at least grassed, and (based on the images in Figure 6) appears to have some plantings.

The Panel considers that the costings should include an allowance for landscaping the whole road reserve, whether the roads are constructed as divided or undivided carriageways. It

agrees with the Councils (and Mr Czarny) that landscaping only half the road reserve represents an undesirable and unacceptable outcome. Not only is there the potential for an untreated 'no man's land' to develop in the unconstructed portion of the road reserve, it also has the potential to result in the lop-sided boulevard planting that Mr Czarny warned against. The road projects should therefore be re-costed on the basis that the whole road reserve will be landscaped. Allowance should be made for trees as well as topsoil and grass.

The Panel acknowledges the submissions of Mirvac in relation to the practical difficulties associated with landscaping the entire road reserve if it does not have access to the entire reserve due to land ownership arrangements. However, this is not necessarily a problem. The ICP collects the funds for the landscaping. If Mirvac (or any other landowner) does not have access to the entire reserve to be able to deliver the landscaping as part of delivering the road project through works in kind, the money can still be collected for the landscaping and the landscaping undertaken by the development agency (here, the Council) when the land does become available.

According to Mr Howe's memo (Document 170), no landscaping was allowed for on some portions of the non-developed edges of the intersections. In the Panel's view, the whole of the intersections should be landscaped, for the same reasons as the mid-block road sections. This will also ensure a consistent treatment of the roads and intersections.

#### **(iv) Conclusions and recommendations**

The Panel concludes:

- The road projects should be re-costed to include landscaping the whole road reserves, including topsoil, grass and trees.
- The relevant intersection projects should be re-costed to include landscaping the whole intersection (topsoil and grass), for consistency with the mid-block road sections.

The Panel recommends:

- 3. Amend the Infrastructure Contributions Plan (October 2019 version) to include revised costings for:**
  - a) RD-01 to RD-05 that include the costs of landscaping the whole road reserve (including topsoil, grass and trees)**
  - b) those intersections identified in Mr Howe's memo dated 7 November 2019 (Document 170) for which the costings did not include landscaping on the non-developed edges of the intersections, to include landscaping (topsoil and grass) on those edges.**

## **5.4 Shared user paths and footpaths**

### **(i) The issue**

The issue is whether shared user paths should be provided on both sides of the mid-block road sections and the relevant intersection legs in their interim configuration, or only on one side.

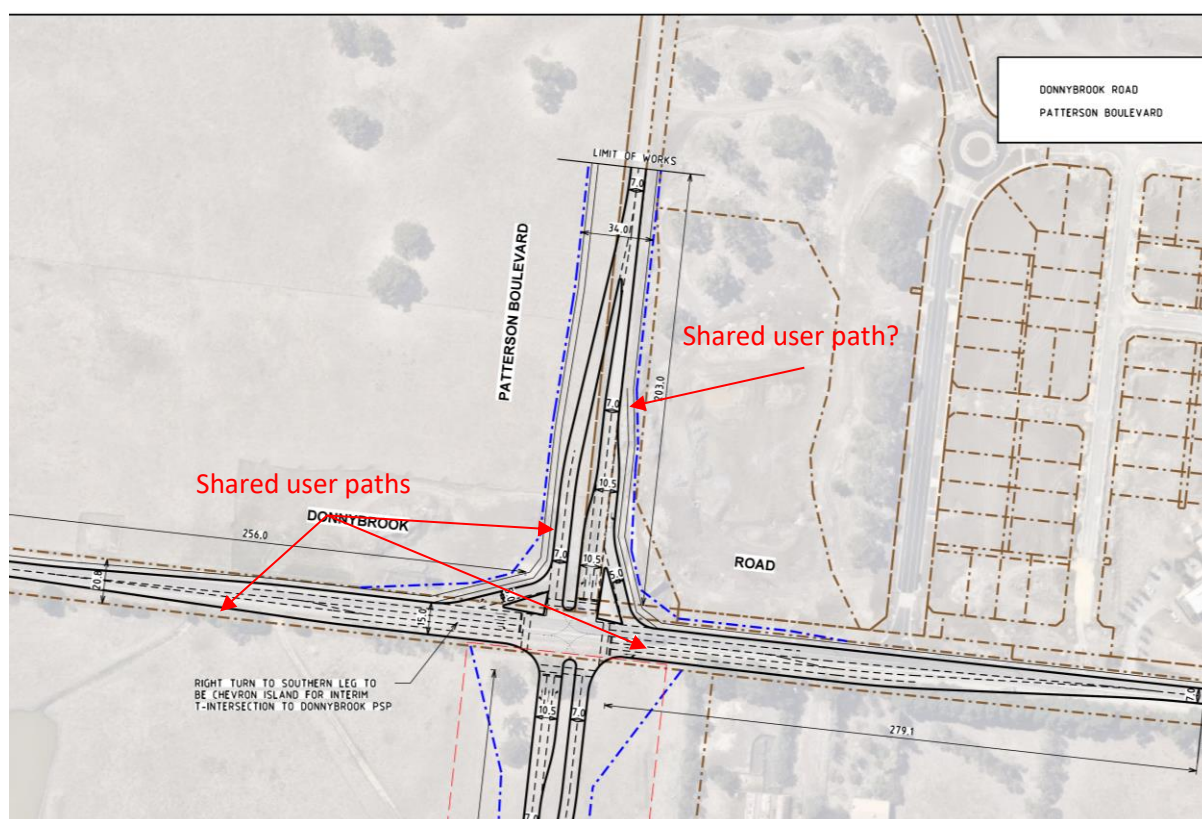


## (ii) Context

Figures 4 and Figure 5 are relevant to this issue.

Figures 3 and 4 (the interim secondary arterial road cross sections from the PSP) clearly show a shared user path on both sides of the mid-block road sections for both Option 1 (undivided carriageway) and Option 2 (divided carriageway). On the other hand, Figure 5 (the functional layout for the mid-block road sections attached to the ICP) shows a shared user path on only one side.

The intersection layouts attached to the ICP are somewhat ambiguous. Some clearly show a shared user path on both sides of each intersection leg, whereas others are less clear – see, for example, the extract from the functional layout plan for IN-03 in Figure 7 below.



**Figure 7** Extract of functional layout plan for IN-03

Source: Mr Mentha's expert witness statement Appendix D, with Panel's annotations

## (iii) Submissions

According to Mr Howe's memo (Document 170), the VPA's costings for RD-01 to RD-05 allow for a shared user path on one side of the road only, consistent with the benchmark cross sections for mid-block arterial roads. For intersections, the costings include:

- arterial road legs – a shared user path on one side, to connect to the shared path on one side of the mid-block sections
- connector boulevard and connector street legs – a shared user path on one side and a footpath on both sides.

The mid-block sections of connector boulevards and connector streets will be delivered as developer works and are not funded through the ICP. The intersections with arterial roads are funded through the ICP.

The Councils submitted that the ICP should fund shared user path on both sides of the arterial roads and relevant intersections, for consistency with the PSP. The cost comparison sheets prepared by Ms McKenna for the mid-block road sections for RD-01, RD-03 and RD-04 (contained in Document 133) show that Council's costings include roughly double the amount of shared user path to the VPA, representing a shared user path on both sides of the road. Ms McKenna's costings for RD-05 include an allowance for shared user paths of approximately 5 times the VPA's, which appears to be an anomaly.

Mirvac submitted that Table 5 of the ICP should include a notation to clarify where shared user paths are proposed, including on one side of the intersection, to assist in interpreting the diagrams in the functional layout plans. The VPA responded that this information should be included as notations on the functional layout plans.

Mr Howe's memo (Document 170) indicated that some footpath costs have been left out of the intersection costings, partly due to the ambiguity in the functional layout plans. These are set out in Table 4. The VPA confirmed in oral closing submissions that these costs should have been included.

**Table 4** Corrections required to intersection costings

Intersection	Corrections required
IN-06 (two secondary arterial legs and two connector road legs)	1.4m wide footpaths were costed, whereas 1.5m wide footpaths should have been costed. Additional cost - \$520
IN-09 (two secondary arterial legs and two connector road legs)	Footpaths were not included Additional cost - \$11,128
IN-11 (four secondary arterial legs)	Footpaths were not included Additional cost - \$28,808
IN-17 (one connector road leg and two secondary arterial road legs)	Footpaths on the connector road leg were not included Additional cost - \$43,577

#### **(iv) Discussion**

The Panel considers that a shared user path on one side of the road is justified. It is consistent with the PSP and constitutes 'basic and essential' infrastructure that should be funded through the ICP. This was not disputed. The issue in contention is whether a second shared user path on the other side of the road should be costed and provided.

The Panel was not presented with specific evidence, or particularly detailed submissions, which explained the reasons why the VPA considered that shared user paths should only be provided on one side of the interim arterial roads, or why the Councils considered that they should be provided on both sides. The PSP cross sections show a shared user path on both sides of the interim arterial roads (both Option 1 and Option 2), but the mid-block functional



road layouts in the ICP only show a shared user path on one side. This leaves the Panel in somewhat of a quandary.

The Panel is of the view that, consistent with its conclusions in Chapter 5.2, the ICP should include the cost of a shared user path on each side of Koukoura Drive (RD-05), but only on one side of Patterson Drive (RD-03 and RD-04) and Cameron Street (RD-01).

The rationale for distinguishing between the Koukoura Drive on the one hand and Patterson Drive and Cameron Street on the other is similar to the Panel's rationale with respect to the costings for interim treatments for these roads. One party owns (or is in effective control of) the land abutting both sides of Koukoura Drive. The Panel has recommended that Koukoura Drive should be constructed in the interim as a divided carriageway, effectively utilising the full width of the road reserve. It is reasonable to assume that development on both sides of Koukoura Drive will occur in the shorter term, and that development on both sides of the road will need access to a shared user path.

Conversely, the land along each side of Patterson Drive and Cameron Street is not in single ownership. The Panel has recommended that these roads be constructed in the interim as single carriageways, and it is likely that development will occur on the eastern side of Patterson Drive (to Cameron Street) some time before development on its western side. Land on the western side needed for the second shared user path may not become available for some time. Users on the eastern side of the road will need access to a shared user path when that land develops, whereas it may be some time before the western side develops.

The Panel agrees with Mirvac and the VPA that greater clarity is required as to exactly where shared user paths are to be provided in the intersections. This should be provided through notations on the relevant functional layout plans.

#### **(v) Conclusions and recommendations**

The Panel concludes:

- Consistent with its conclusions with respect to the interim treatments for the secondary arterial roads in Chapter 5.2, a shared user path should be constructed on both sides of Koukoura Drive but only on one side of Patterson Drive and Cameron Street.
- The costings for RD-05 and the associated intersections should be adjusted accordingly.
- The functional layout plans for all the intersections should be noted to clearly indicate where the shared user paths are to be provided.
- The costings for IN-06, IN-09, IN-11 and IN-17 should be adjusted to include the amounts in Table 4.

The Panel recommends:

- 4. Amend the Infrastructure Contributions Plan (October 2019 version) to include:**
  - a) revised costings for RD-05, IN-04, IN-07, IN-11 and IN-15 to include a shared user path on both sides of Koukoura Drive**
  - b) notations on the functional layout plans for all the intersections to clearly indicate where shared user paths are to be provided**

- c) **revised costings for IN-06, IN-09, IN-11 and IN-17 that include the amounts contained in Table 4 in this Report.**

## **5.5 Intersection project costs remaining in dispute**

### **(i) The issues**

The issue are:

- whether the costings for intersections IN-8 and IN-12 should be revised to include the relocation of existing powerline poles along Merriang Road
- whether the costings for intersection IN-17 should be revised to include full landscaping of the intersection and a shared user path on both sides of the intersection legs.

### **(ii) Context**

As outlined in Chapter 3, most of the intersection costings were resolved through the costings conclave and discussions following the conclave. By the commencement of the Hearing, costings for intersections IN-08, IN-12 and IN-17 remained unresolved as between the VPA and the Councils (although they were resolved as between the VPA and other parties).

### **(iii) Submissions and evidence**

#### **IN-08 and IN-12**

IN-08 and IN-12 are the two intersections located on Merriang Road (IN-08 is the intersection with Hayes Hill Boulevard, and IN-12 is the intersection with Cameron Street). Merriang Road currently has powerline poles running alongside the existing carriageway. The main issue in dispute is whether an allowance should be made for relocating the poles when the intersections are constructed.

The Councils submitted that the powerline poles along Merriang Road would likely need to be relocated as part of the construction of intersections IN-08 and IN-12. As a consequence, the costs of these intersections should be increased to take account of this additional cost. Ms McKenna's evidence was that the cost difference at both intersections was in excess of \$1 million. However, this amount was subsequently modified as a result of changes made through the costings conclave.

Mr Howe informed the Panel that it was expected that the Telstra conduits would need to be relocated with the construction of the intersection. However, the relocation of the electricity poles would be subject to a safety audit and he suggested that they may be able to be protected by wire barriers, rather than having to be relocated.

Mr Howe's evidence was that the total contingency for the ICP transport items was in excess of \$24 million which had a *"reasonable capacity to absorb these 'estimate disagreement' differences and still allow for other contingency items."*

The Councils submitted that this approach was *"wrong and unlawful"*. The Councils argued that there was no ability to move contingency funds from one project to another. They

referred the Panel to sections 46GI(w) and 46GZD of the Act and clause 18 of the Ministerial Direction in support of this view.

In response the VPA submitted that the Councils had contradicted their position in their submission with respect to the roles of Collecting and Development Agencies. This matter is discussed in Chapter 4.6 above.

#### **IN-17**

IN-17 is the intersection between Patterson Drive (an arterial road) and a connector street, toward the northern end of the PSP area. Ms McKenna's evidence was that the cost difference for IN-17 was in excess of \$1 million, and included different allowances for shared user paths and landscaping. However, this amount was subsequently reduced to \$440,000 as a result of changes made through the costings conclave. Mr Howe's evidence was that the difference in cost estimates remained due to the Councils' costings including:

- a higher rate for pavements and rock
- additional costs for conservation area protection
- shared user path on both sides.

Shared paths are discussed in Chapter 5.4 above.

#### **(iv) Discussion**

In the Panel's view the powerline poles at intersections IN-08 and IN-12 are an obvious and significant matter to be considered in the development of both intersections. The proximity of the poles to the road alignment make them a significant impediment to the development of these intersections. The Panel did not have the benefit of detailed engineering evidence on the need for the electricity poles to be relocated, however, on the basis of the information before it there is a reasonably strong likelihood that relocation will be required. This is a known condition, and the Panel accepts Ms McKenna's evidence that costing the removal or relocation of the poles should be included in the cost of the intersections.

In response to Mr Howe's evidence, the Panel was not persuaded that it would be appropriate to allocate that cost to the contingency for IN-08 and IN-12, or to assume that it could be covered by the contingency allowances on other projects. Contingencies are provided for unexpected or unknown cost items, not known conditions.

In relation to the costings for IN-17, the Panel did not have sufficiently detailed evidence before it in relation to the specific line items in dispute, or the likely accuracy of Mr Howe's costings or Ms McKenna's costings, to determine which of the two costings should be preferred. That said, the intersection should be re-costed to include landscaping of the whole intersection, as discussed in Chapter 5.3. The Panel is not persuaded that a shared user path should be provided on both sides of the Patterson Drive intersection legs, for the reasons set out in Chapter 5.4.

## **(v) Conclusions**

The Panel concludes:

- On the basis of the evidence and submissions before the Panel, the relocation or removal of the powerline poles from intersections IN-08 and IN-12 should be included in the costings for these intersections.
- The functional layout plans for the intersections should be noted to clearly indicate the poles may need to be moved or relocated.

The Panel recommends:

5. **Amend the Infrastructure Contributions Plan (October 2019 version) to include:**
  - a) **revised costings for intersections IN-08 and IN-12 that include the relocation of the existing powerline poles located along Merriang Road**
  - b) **notations on the functional layout plans for intersections IN-08 and IN-12 to clearly indicate that the powerline poles may need to be relocated.**

## **5.6 Financing costs for community facilities**

### **(i) The issue**

The issue is whether the supplementary levy should include financing costs to allow the early delivery of two community facilities.

### **(ii) Context**

The Councils argued that the supplementary levy should include an additional \$2,593 per NDHa to fund the cost of borrowing to facilitate the early delivery of two community facilities, CI-02 and one of either CI-01 or CI-03. All these facilities are Level 2 Community Activity Centres. Based on the benchmark design for Level 2 Community Activity Centres, they include:

- a 750 sqm kindergarten room, an additional 150 sqm kindergarten/multipurpose room and a 700 sqm kindergarten play area
- a maternal and child consulting space
- meeting rooms and multipurpose community space
- associated facilities including office space, toilets, a kitchen and carparking.

The Councils submitted that by 'early' delivery, they propose that the facilities would be delivered *"within the first five or six years of the life of the ICP"*.

### **(iii) The ICP Guidelines and the Ministerial Direction**

The ICP Guidelines state:

The Ministerial Direction may also provide that the costs associated with the provision of infrastructure may be funded by the monetary component, including:

- plan preparation costs (not exceeding 1 per cent of the standard levy)
- contingency amounts for constructing infrastructure
- financing costs associated with the early delivery of infrastructure projects
- infrastructure design costs
- establishment maintenance costs.

Recurrent costs, such as the costs of maintaining and operating facilities (beyond the establishment period), or costs associated with the administration of the ICP, cannot be funded through an ICP.

Table 5 in Annexure 1 of the Ministerial Direction (which lists supplementary levy allowable items) includes the following:

Supplementary levy allowable item	Criteria for applying a supplementary levy
Early delivery of works, services or facilities	<ul style="list-style-type: none"> <li>- The early delivery of the item is essential to the orderly development of the area; and</li> <li>- The financing costs are: <ul style="list-style-type: none"> <li>- incurred by the development agency responsible for providing the item; and</li> <li>- associated with the early delivery of the item which is listed as a standard levy allowable item or a supplementary levy allowable item; or</li> <li>- associated with the early acquisition of public purpose land referred to in section 46GV(8) of the Act which is required for the early delivery of the item.</li> </ul> </li> </ul>

#### (iv) Relevant policies

Clause 19.02-4S states (as relevant):

##### **19.02-4S Social and cultural infrastructure**

##### **Objective**

To provide fairer distribution of and access to, social and cultural infrastructure.

##### **Strategies**

Identify and address gaps and deficiencies in social and cultural infrastructure, including additional regionally significant cultural and sporting facilities.

Encourage the location of social and cultural infrastructure in activity centres.

Ensure social infrastructure is designed to be accessible.

Ensure social infrastructure in growth areas, is delivered early in the development process and in the right locations.

Plan and design community places and buildings so they can adapt as the population changes and different patterns of work and social life emerge.

#### (v) Submissions

The Councils submitted that the ability of local government to manage an ICP is constrained by the legislation and the Ministerial Direction, and that they face a number of challenges in the funding and delivery of community and recreation infrastructure, including the substantial shortfall in the funding of community infrastructure. These matters have been discussed in detail in Chapter 4.8 above. The Councils argued that it was “*fanciful*” to assume that the Councils would fund the shortfall, and that:

The alternatives are to wait until money comes from somewhere, perhaps a benevolent state or federal government. For our part, we submit that a smarter option

is to allow the councils (specifically Whittlesea) to tap into its ability to take out a modest loan where that is consistent with the principles of sound financial management at section 136 of the LGA so as to:

- bring forward infrastructure which is funded; or
- to fund infrastructure which is unfunded by tapping into future revenues by borrowing now and repaying later.

The Councils estimated that, based on anticipated levy cash flow, including borrowing costs for the two community centres would significantly bring forward their construction. CI-02, for example, could be brought forward from 2027 at the earliest to 2023. They concluded that not including borrowing costs in the supplementary levy:

... severely inhibits Council as the Collecting Agency to fund the delivery of the facilities at the time needed without resorting to borrowing or other funding sources.

The Councils submitted that the community centres are essential to the orderly development of the area, given the relative isolation of Donnybrook-Woodstock from existing urban areas. New residents would have to travel over 12 kilometres to the nearest community centre, without public transport.

The Councils produced a graph which modelled the projected growth of population in the Donnybrook-Woodstock PSP/ICP area, and the corresponding four-year old kindergarten population. The graph (which is at page 32 of the Councils' submission, Document 137) indicates that the first three Community Activity Centres will be required in 2023, 2026 and 2029, when the four-year old population reaches roughly 4,000, 9,000 and 18,000. The Councils submitted:

The [Community Activity Centre] trigger considers population from the broader Donnybrook precinct (including Lockerbie, English Street and Shenstone Park PSP's) where these facilities have not yet been delivered in these precincts.

The Councils also produced graphs which modelled the predicted cashflow and deficit of the community and recreation levy pool for the ICP should the facilities be delivered:

- at the time of anticipated need, compared to
- when sufficient levies were available to fund the construction of the centres.

These graphs suggested that if the Councils were to wait until sufficient funds had been collected, the first two centres would likely be delivered four years after the anticipated need arises for each centre.

The VPA submitted that the Councils had failed to provide sufficient information to justify the inclusion of a finance charge based on robust analysis and evidence. It argued that the Councils were seeking the early delivery to support areas that were not exclusively within the Donnybrook-Woodstock PSP/ICP area, and that this approach was inappropriate and inconsistent with the Ministerial Direction and ICP Guidelines. It submitted:

Simply put, developers within the ICP should not be paying the full cost of the early delivery of a facility that is required early so that it can service an area wider than the ICP area.

Mr Shipp's evidence was that financing costs for early works could be included as a supplementary item if essential for the orderly development of the area. He concluded that in the absence of an appropriate justification of the early delivery it was not appropriate to include financing in the ICP. He informed the Panel:

In my view, financing costs are most applicable where particular items of infrastructure are required to 'unlock' development areas (for example, a major intersection or road) and the item needs to be delivered by a Development Agency in advance of funds being available from development levies.

Mirvac submitted that the relevant criterion was not whether the works were essential, but that it was essential that the infrastructure be delivered early. In response to the Councils' submission, it noted the ICP system was not designed to recover the full cost of infrastructure provision. Mirvac submitted that the Councils had not provided any evidence or sufficient information to support the identification of the infrastructure the early delivery of which is said to be essential, why it must be delivered early, or when it is to be delivered.

#### **(vi) Discussion**

As discussed in Chapters 4.7 and 4.8, in the Panel's view the ICP system is meant to provide for a contribution to infrastructure by developers. It agrees with submissions from the VPA and Mirvac that the system is not intended to fully fund the delivery of infrastructure. A portion of the cost of infrastructure provision will be the responsibility of the municipality. This is not inconsistent with local government being responsible for the maintenance, renewal, upgrading and replacement of existing infrastructure in established areas which are functions of a council nominated in Part 1A of the *Local Government Act 1989*.

The Panel agrees that there is a pragmatic as well as a policy imperative that encourages the early provision of community and recreation infrastructure in growth areas. One of the strategies in Clause 19.02-4S specifically provides for the early deliver of social infrastructure:

Ensure social infrastructure in growth areas, is delivered early in the development process and in the right locations.

Consequently, borrowing to provide the infrastructure could be a sound course of action. The question for the Panel is whether the financing costs of borrowing the funds to deliver these particular two community centres early should be charged to the ICP. This requires consideration of whether the criteria in the Ministerial Direction are met, in particular whether the early delivery of the item "*is essential to the orderly development of the area*".

The Panel found the graphical financial analysis included in the Council's submission difficult to compare. Nevertheless, it understands that the message the Councils were attempting to convey was that borrowing to provide the community activity centres would allow them to be provided earlier (and at the time when the need is anticipated to arise) than if the Councils had to wait to collect sufficient ICP levies to fund the centres.

The Panel has not been presented with any evidence or much in the way of submission about the early need for the relevant community centres or the catchments they would serve. It agrees with the VPA that the Councils have not provided sufficient justification for the need for the two community centres to be delivered early.

On one view it appears obvious that a new relatively isolated community of the demographic profile expected in Donnybrook-Woodstock will require kindergartens, maternal and child health services and the other types of community facilities provided in a Level 2 Community Activity Centre. However, no evidence was presented to the Panel which clearly explained why it is essential that these particular facilities be delivered early, when

the critical need for these facilities will arise, why it is essential for only two of the seven community centres to be delivered early, or why it is essential that these particular community centres are required early, as opposed to all of the other infrastructure items funded under the ICP.

Further, the Panel notes that the indicative staging of these centres in the ICP (in Table 7) is short to medium term for CI-02, but medium to long term for CI-01 and CI-03. This appears to be at odds with the Councils' position that it is essential that these facilities be delivered early.

The Councils' submission suggested that the need for the early delivery of the community centres is at least partly based on demand from the population of the broader Donnybrook precinct, including the Lockerbie, English Street and Shenstone Park PSP areas where these facilities have not yet been delivered. The Panel has some reservations about justifying the inclusion of financing costs to fund the early delivery of infrastructure in one PSP area based on demands generated from other PSP areas.

For completeness, the Panel does not necessarily agree with Mr Shipp's view that financing costs are most applicable where particular items of infrastructure are required to 'unlock' development areas by providing access to the area. While Mr Shipp did not express a definitive view that the Ministerial Direction limits financing costs to the early delivery of this type of infrastructure, the Panel makes the observation that there is nothing in the Ministerial Direction or the ICP Guidelines which suggests that the early delivery of community infrastructure should not be regarded as essential in the same way that the early delivery of suitable access may be essential.

Finally, the Panel observes that the Ministerial Direction does not clearly explain what 'early' delivery of infrastructure actually means. The Councils assumed that 'early' means delivery when the need is anticipated to arise, where that need arises ahead of the point at which sufficient funds have been collected through levies to fund the particular item. This is a reasonable assumption to make, but the Panel considers that some clarification in the Ministerial Direction or the ICP Guidelines would assist.

#### **(vii) Conclusion**

The Panel concludes:

- Insufficient justification has been provided to demonstrate that the early delivery of two community centres as identified by the Councils is essential to the orderly development of the area.

### **5.7 Treatment of credits for works in kind**

#### **(i) The issue**

The issue is whether the ICP should explicitly state that credits for works in kind should be no less than the project cost recorded in the ICP where the cost of the works equals or exceeds the recorded cost.



## **(ii) Submissions**

Mirvac informed the Panel that it expected to deliver most of the ICP infrastructure on its land as works in kind. Mirvac submitted that this approach is of benefit to the Councils and itself but it wanted clear parameters around works in kind credits.

It acknowledged that flexibility was desirable but was looking for greater *“clarity and transparency”* in the reimbursement provisions. Mirvac submitted that the following wording be included in section 5.10 of the ICP:

The collecting agency must value works in kind that it accepts at the value identified for that item in the ICP unless the actual cost to construct the works was less than the value identified. Where the actual cost of the works is equal to, or more than, the value identified in the ICP the value of the works in kind must be no less than the identified amount.

The VPA did not oppose the addition of the text proposed by Mirvac. It added:

...it may be appropriate to specify that if the actual cost is less than the value identified, the value is no more than the actual cost. However, the VPA notes that it may not be appropriate to apply these words to all future ICPs. In the future, Councils and developers may be able to employ the benchmark costings to assist in the valuation of works in kind.

The Councils submitted that they did not oppose the methodology proposed by Mirvac but they did not support the inclusion of the text. They submitted that works in kind are agreements and argued that it was not the role of the ICP to dictate to the parties how an agreement should be reached. They concluded that the Panel should not facilitate that process.

## **(iii) Discussion**

In Chapter 5.6 the Panel makes the observation that councils are responsible for the maintenance, renewal, upgrading and replacement of existing infrastructure in their municipalities. As the Collecting and Development Agencies for an ICP it is important that a municipality has the ability to negotiate an agreement for the provision of that infrastructure by others.

The Panel’s report in relation to the Mt Atkinson and Tarneit Plains ICP (Melton PSA C201 [2019] PPV) considered the matter of works in kind in some detail and recommended some modifications to the ICP. Those modifications are reflected in the October version of the ICP tabled by the VPA on the final day of the Hearing (Document 174).

Section 5.9 of the ICP provides an enabling framework for those negotiations to take place and for the parties to reach an agreement. Ultimately, however, it is up to the parties to reach agreement and in the Panel’s view these negotiations should be subject to as few restrictions as possible to allow the parties to reach a mutually satisfactory outcome.

The Panel is satisfied the provisions of sections 5.9 and 5.10 of the ICP (October 2019 version) provide sufficient guidance and safeguards and that no further change is necessary.

#### **(iv) Conclusions and recommendations**

The Panel concludes:

- The matter of credits should be negotiated between the Collecting Agency and the developer proposing to deliver the works in kind.
- It is unnecessary to explicitly state that credits for works in kind should be no less than the project cost recorded in the ICP where the cost of the works exceeded the recorded cost.

### **5.8 Inclusion of Hayes Hill Reserve as public purpose land**

#### **(i) The issue**

The issue is whether Hayes Hill Reserve should be included (and therefore credited) as inner public purpose land in the ICP.

#### **(ii) Context**

Hayes Hill Reserve is an area of 14.6 Ha mostly located on Parcel 31 in the PSP and ICP (0.2 Ha is located on the adjacent Parcel 32). DFC Woodstock has development rights over Parcel 31.

Hayes Hill Reserve is currently zoned Rural Conservation Zone. It is listed as uncredited open space in Table 1 of the PSP and identified on Plan 8 of the PSP (open space) as a local reserve.

According to the PSP, Hayes Hill is a small remnant volcanic cone, and is “*the most prominent topographical feature of the precinct*”. Objective 35 in the PSP (part of the objectives for Open Space, Natural Systems and Community Facilities) is:

Retain a majority of Hayes Hill in a natural state as a key regional landscape feature.

Requirements 4 and 5 in the PSP are:

Subdivision for housing is not permitted on slopes of Hayes Hill with a gradient above 1:5 (20%).

Development must not encroach on Hayes Hill beyond the area identified for development as shown on Plan 3 and as reflected in the property specific land budget to the satisfaction of the responsible authority.

#### **(iii) Submissions**

DFC Woodstock submitted that Hayes Hill Reserve should be listed (and credited) as public purpose land in the ICP on the basis that it is intended to provide a significant area of open space for the local community.

The VPA did not consider the reclassification of Hayes Hill Reserve in the ICP is strategically justified or appropriate.

Whittlesea City Council supported DFC Woodstock’s position on this issue, submitting that if Hayes Hill Reserve was not identified as public purpose land in the ICP (and funded through the land contributions process), Council would have no way of funding its acquisition.

### **Should the classification of the land be revisited as part of the ICP process?**

The VPA submitted that the ICP Guidelines specifically state that the time to determine land needed for public purposes is at the PSP stage. It pointed the Panel to the ICP Guidelines, which state (at page 24):

From the precinct structure plan or strategic plan, the planning authority will:

- determine the land required for public purposes, both inside the ICP plan area and outside the ICP plan area
- identify the type, location, area (size) and use of public purpose land to be provided or funded through the ICP.

During the planning scheme amendment process for a precinct structure plan or strategic plan, affected landowners can review the plan and make submissions about the type, location, size and use and need for the identified public purpose land. If the planning authority does not accept a landowner's submission, the landowner has a right to be heard by an independent planning panel.

DFC Woodstock agreed that the PSP is ordinarily the appropriate time for determining whether land should be classified as public purpose land. However, it submitted that in this case, it had not had the opportunity to make submissions on the contents of the PSP and ICP in a context where it was fully informed of the legal consequences.

This is because the public land contribution system had not been introduced when the PSP hearing took place, and when the PSP was gazetted. DFC Woodstock pointed to the fact that the PSP Panel specifically recommended that the PSP should not be finalised until an ICP had been prepared for the PSP area. It submitted:

Accordingly, in the particular circumstances of this amendment, it is not appropriate to argue that these issues should have been, or were, determined at the PSP stage, given that the Panel specifically contemplated that the parties would have a further opportunity to ventilate these issues.

DFC Woodstock conceded that ICPs should generally be consistent with PSPs and submitted that it was within the Panel's powers to recommend that the PSP be retrospectively amended to list Hayes Hill Reserve as public purpose land, to ensure consistency between the PSP and the ICP.

The VPA responded in its closing submissions that it would be "*extraordinary*" to allow the classification of the land to be reopened in a subsequent ICP process simply because a land owner was dissatisfied with the outcome of the PSP process. The VPA submitted that, irrespective of the timing of the introduction of the public land contribution system, the PSP classified the land as uncredited open space due to its encumbered nature. It submitted:

The proper time to satisfy a decision maker about the classification of land as encumbered or unencumbered is at the PSP stage when the totality of information about the values and role of that land is known.

### **The substantive question – is Hayes Hill Reserve appropriately classified as public purpose land?**

On the substantive question, the VPA submitted that the PSP identifies Hayes Hill as a 'conservation area'. It submitted that the land is encumbered, and therefore should not be credited as public purpose land (open space). It pointed out that the PSP Guidelines state that encumbered land is constrained for development purposes, including conservation and

heritage areas, and that while it may be used for a range of activities (for example walking trails or sports fields), it is not provided as a credit against public open space requirements.

DFC Woodstock contested the notion that the PSP identifies Hayes Hill Reserve as a conservation area. It submitted that the PSP expressly distinguishes between conservation areas and the Reserve and designates the Reserve as open space by describing it as a 'local' or 'municipal' reserve. It submitted that the *Biodiversity Conservation Strategy* (which was prepared in connection with the changes to the Urban Growth Boundary through Amendment VC68) did not include Hayes Hill as a conservation area, the implication being that the land does not have higher biodiversity value. DFC Woodstock submitted:

The mere zoning of land as RCZ [Rural Conservation Zone] cannot be equated with its designation as a conservation area ... The RCZ potentially permits fairly intense development – for example, as a residential hotel, a broiler farm, or a rural industry (other than sawmills and abattoirs) – which would obviously be difficult to square with the preservation of conservation values.

...

The better view is that, if the Reserve is to be used for public open space, which is an allowable purpose under the ICP Directions, then the Reserve can be included in the ICP.

DFC Woodstock went on to submit that Hayes Hill should be included as creditable public open space in the ICP, as:

- the PSP Panel observed that it was an 'important part' of the open space network in the PSP
- it is larger than any other passive open space listed in the ICP, effectively supplying one quarter of the passive open space in the PSP/ICP area
- it would be unfair to exclude Hayes Hill, as DFC Woodstock would effectively be *"charged approximately \$8.36m for the privilege of providing 14.5ha of public open space which will be utilised by residents of the entire ICP area"*
- Council has already indicated that it will require Hayes Hill to be embellished as public open space, *"confirming its role as a significant piece of open space for the community"*
- if Hayes Hill is not funded through the ICP, there is a risk that it will not be provided, as the land would have to be acquired by Council, which *"will be a matter of negotiation, and probably litigation, between Council and DFC"*.

#### **(iv) Discussion**

##### **Is it appropriate to revisit the classification of the land as part of the ICP process?**

The Panel accepts the VPA's submission that the PSP process is the appropriate stage to determine what land is required for public purposes, and that it would generally not be appropriate for these issues to be revisited as part of an ICP process.

That said, the PSP Guidelines specifically contemplate that affected landowners will have the opportunity to make submissions on the identified public purpose land during the PSP process, and that if the planning authority does not accept a landowner's submission, the landowner has a right to be heard by an independent planning panel.

DFC Woodstock contests the proposition that it had a full opportunity to make submissions about the proper classification of the land through the PSP process, due to the introduction of the public land contribution legislation which did not come into force until after the PSP was gazetted.

The Panel is inclined to accept the VPA's submissions on this point. While it accepts that the introduction of the public land contribution system may have generated some uncertainty, the public land contribution system really relates to how public land is valued, acquired and funded through an ICP, rather than whether land should be classified as public land in the first place.

It is not clear from the PSP Panel report (Whittlesea and Mitchell PSA GC28 [2016] PPV) whether the status of Hayes Hill Reserve as encumbered or unencumbered, or credited or uncredited open space, was fully ventilated at the PSP hearing. There is no discussion of this issue in the report – Hayes Hill Reserve is simply recorded as part (an important part) of the network of open space and conservation areas.

Given the unusual circumstances, the Panel addresses below whether it considers Hayes Hill should be classified as public land in the ICP. This should not, however, be regarded as setting a precedent for parties to re-open the question of what land should be classified as public purpose land through an ICP process, where that question has been settled through the PSP process.

### **The substantive question**

Ultimately this question turns on whether Hayes Hill Reserve is properly characterised as encumbered land.

The PSP Guidelines provide some guidance on what constitutes 'encumbered land'. Standard S4 in the PSP Guidelines states (Panel's emphasis):

In meeting standards S2 and S3, encumbered land should be used productively for open space.

The network of local and district parks should be efficiently designed to maximise the integration and sharing of space with publicly accessible encumbered land.

Encumbered land usually includes land retained for drainage, electricity, biodiversity and cultural heritage purposes.

The parkland created by such sharing and integration should be suitable for the intended open space function/s, including maintenance.

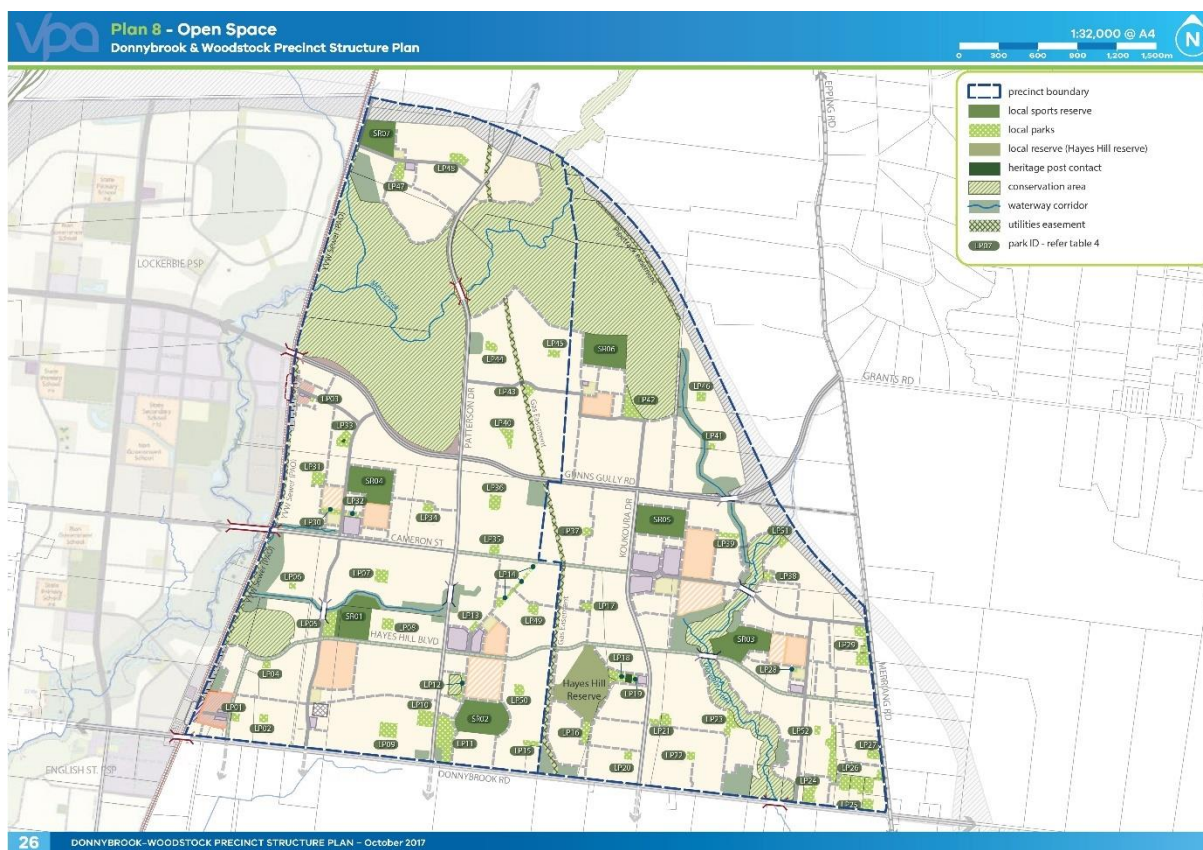
In this way, encumbered land will be well utilised, while the total amount of open space can be optimised without adversely impacting on the quality and functionality of the network.

The Panel does not consider that the PSP identifies Hayes Hill Reserve as a conservation area. The PSP identifies three conservation areas within the PSP on page 9:

- Conservation Area 22 in the north, a 181.3 Ha area containing significant remnant patches of native vegetation and scattered trees
- Conservation Area 25, classified as being for nature conservation in the Biodiversity Conservation Strategy for Melbourne's Growth Corridors and which protects Grassy Eucalypt Woodland

- Conservation Area 34 along the Darebin and Merri Creeks which protects Growing Grass Frog Category 1 habitat.

None of these extend to Hayes Hill Reserve. Various plans in the PSP (including Plan 8, extracted in Figure 8 below) identify Hayes Hill Reserve as a local reserve, entirely separate from the three conservation areas.



**Figure 8** Plan 8 (Open space) from the PSP

Source: Donnybrook-Woodstock PSP

However, the land is zoned Rural Conservation Zone, which suggests that the land has some conservation value (albeit not as high a conservation value as the conservation areas identified in the Biodiversity Conservation Strategy or the PSP). Further, development on its steeper slopes is not permitted pursuant to Requirements R4 and R5 in the PSP.

On balance, the Panel is not satisfied that the classification of Hayes Hill Reserve as encumbered (and therefore uncredited) open space in the PSP is necessarily incorrect or requires revisiting.

## (v) Conclusions and recommendations

The Panel concludes:

- It is not persuaded that Hayes Hill Reserve should be reclassified as public purpose land or creditable open space through the ICP process.

## 5.9 Removing permitted land from the ICP

### (i) The issue

The issue is whether land for which a permit has already issued should be removed from the ICP.

### (ii) Context

Parcel 16 is land at 875 Donnybrook Road. DFC Donnybrook (Submitter 3, who did not appear at the Hearing) has an agreement with the landowner to develop Parcel 16. Permit 717126 issued for the development of the land on 10 May 2018, and works have commenced pursuant to that permit.

Plan 8 in the PSP identifies two local parks (LP-02 and LP-04) on Parcel 16. A small part of the Donnybrook Road frontage of Parcel 16 (0.0125 Ha) is required to construct the western leg of intersection IN-02.

### (iii) Submissions

DFC Donnybrook submitted that Parcel 16 should be removed from the ICP given a permit had issued for the development of the land, and that as a consequence:

- the subject land (which part is unclear) should be removed from the total public purpose land, with the land credit and land equalisation amounts adjusted accordingly
- LP-02 and LP-04 should be removed from Table 8 (inner public purpose land), with the total public purpose land updated accordingly
- the area value of IN-02 within Table 8 should be modified to exclude the 0.0125 Ha portion within the subject land.

DFC Donnybrook submitted that all passive open space on the subject land (the Panel assumes it is referring to LP-02 and LP-04) could be levied through Clause 52.01 of the Planning Scheme, and that the remaining public land (the 0.0125 Ha associated with IN-02) will be set aside in favour of the acquiring authority under condition 14 of the permit, which states:

Prior to the certification of a plan of subdivision... the owner must enter into an agreement or agreements under section 173 of the Planning and Environment Act 1987 which provides for:

- a) The implementation of the Public Infrastructure Plan approved under this permit.
- b) The purchase and/or reimbursement by the Responsible Authority for any provision of public open space in excess of the amount specified in the schedule to Clause 52.01.
- c) The timing of any payments to be made to a person in respect of any infrastructure project having regard to the availability of funds in the ICP or the public open space account.

The VPA responded that it does not consider it appropriate to remove a property from the ICP if a permit has already been issued which imposes an infrastructure contribution, because:

- If an infrastructure contribution is not paid under the existing permit (because it is not acted on) and a new application for a permit is made, there would be no statutory mechanism in place to impose an infrastructure contribution on the new permit, compromising the delivery of essential community and transport infrastructure to this new community.
- The proposed change would be inconsistent with the land contribution model introduced by the public land contributions legislation, which is based on the principle that all landowners under an ICP should contribute equally to the provision of land for public purposes. If a new application is made, the applicant would not be required to make an equal contribution to the provision of public purpose land.

The Councils supported the VPA's submissions on this issue.

**(iv) Discussion**

The Panel supports the submissions of the VPA on this issue. While the Panel acknowledges DFC Donnybrook's submission that the permit has been acted on, the extent of works undertaken to date is unclear. There is no guarantee that the works under that permit will be completed, or that the permit will not expire. If another permit is sought for the land, then it is appropriate that the developer at that time is required to make infrastructure contributions in accordance with the ICP.

**(v) Conclusion**

The Panel concludes:

- It is not appropriate to remove land from the ICP where a permit has issued, even if works under that permit have commenced.



## 6 Resolved issues

### 6.1 Matters agreed between the experts and the parties

#### (i) Design and functional layout

Matters agreed between the experts and/or the parties in relation to the design or functional layout of the various projects in the ICP are summarised in Table 5.

**Table 5** Resolved design and functional layout issues

Issue	Details/Panel comment
<b>Intersections - general matters</b>	
<b>Design speeds</b>	<p>Agreed at the first conclave that:</p> <ul style="list-style-type: none"> <li>- Donnybrook Road should have a design speed of 80km/hr</li> <li>- connector roads should have a design speed of 50km/hr</li> <li>- all other intersections should have a design speed of 60km/hr</li> </ul> <p>and that all intersections (if not designed to these speeds) should be redesigned accordingly.</p> <p>Agreement recorded in Document 35 (first conclave statement), at item 2.1 and Points of Agreement (a) and (b).</p>
<b>Changes required</b>	<p>Document 90 (Whole of Government response to Document 35) confirmed that changes were included in the revised functional layouts attached to the April ICP for:</p> <ul style="list-style-type: none"> <li>- primary and secondary arterial legs at intersections IN-06 to IN-17 (except IN-16), to reflect the agreed reduced speed of 60km/hr (exhibited layouts assumed 80km/hr)</li> <li>- connector street legs (including Cameron Street), to reflect the agreed reduced speed of 50km/hr (exhibited layouts assumed 60km/hr).</li> </ul> <p>No further changes required.</p>
<b>Bus infrastructure</b>	<p>Strategic and connector bus routes are identified in the PSP.</p> <p>Interim intersection designs in the exhibited ICP did not provide for bus priority infrastructure such as jump lanes.</p> <p>VPA's position was that the ICP should not fund bus priority infrastructure in the interim intersection layouts, as there is uncertainty around the timing, location and nature of infrastructure required, and it is beyond 'basic and essential'.</p> <p>Agreed at the first conclave that provision for bus priority infrastructure in interim layouts is not required.</p> <p>Agreement recorded in Document 35 (item 2.2 and Point of Agreement (c)).</p>
<b>Changes required</b>	Nil
<b>Donnybrook Road intersections (IN-01 to IN-05)</b>	
<b>Alter from 'outside in' cross intersections</b>	<p>Donnybrook road is the southern boundary of the PSP land. Shenstone Park PSP is to the south of Donnybrook Road.</p>

Issue	Details/Panel comment
<b>(exhibited) to 'compact' T intersections</b>	<p>The exhibited ICP proposed four legged cross intersections on Donnybrook Road, with southern legs extending into Shenstone Park. The exhibited designs were 'outside in' designs which used the whole (ultimate) road reserve and incorporated a central median on the Donnybrook Road legs. These intersections were redesigned at some point after the first conclave (precisely when is unclear) to:</p> <ul style="list-style-type: none"> <li>- substitute four legged cross intersections with three legged T intersections (removing the southern leg)</li> <li>- substitute compact designs with no central median and reduced lane widths (3m), so that the intersections can be accommodated within the existing Donnybrook Road road reserve (avoiding the need to acquire land in Shenstone Park).</li> </ul> <p>Agreement recorded in Document 90 (item (g)).</p> <p>Note that Donnybrook JV does <u>not</u> agree to the compact design for IN-03 – refer to Chapter 5.4.</p>
Changes required	<p>The functional layout plans attached to the April ICP showed compact four legged designs, accommodating the Donnybrook Road legs within the existing road reserve, and noted that the fourth (southern) leg is 'outside the PSP'.</p> <p>Document 90 confirmed that the April ICP would be further updated to:</p> <ul style="list-style-type: none"> <li>- include updated functional layout plans showing compact T intersections for IN-01 to IN-05 (item (g))</li> <li>- fully fund the revised IN-03 T intersection from the Donnybrook-Woodstock ICP, rather than funding 25 percent from the future Shenstone Park ICP (item (i))</li> </ul> <p>The October ICP tabled by the VPA on the final day of the Hearing (Document 174) indicates that IN-03 will be fully funded from the Donnybrook-Woodstock ICP. The functional layout plans attached to the April ICP still show four legged intersections, but they are noted to make it clear that the southern leg is outside the PSP.</p> <p>No further changes required.</p>
<b>Shared path</b>	<p>Agreed at the second conclave that the shared path along the north side of Donnybrook Road should be relocated to the services corridor due to:</p> <ul style="list-style-type: none"> <li>- the inability to reasonably accommodate the shared path in the road reserve for the compact designs</li> <li>- the PSP cross-sections for the services corridor showing a shared path within the services corridor</li> <li>- the PSP primary arterial cross-section showing bicycle paths on both sides and pedestrian path on one side.</li> </ul> <p>Agreement recorded in Document 91 (second conclave statement) (item 1(a)).</p>
Changes required	<p>The VPA indicated in closing that the functional layout plans attached to Mr Howe's and Mr Mentha's evidence show that the shared user path will be</p>

Issue	Details/Panel comment
	relocated to the services corridor, although on reviewing those plans it is not clear that the shared user path has been relocated. The Panel considers it would be beneficial if the functional layout plan for IN-03 were noted to make this clear. See recommendation in Chapter 6.7 below.
<b>Design for IN-03</b>	<p>Agreed at the first functional layout conclave that services could be relocated to the services corridor on the northern side of Donnybrook Road, and that there is therefore no need to increase the width of the northern verge.</p> <p>Agreement recorded in Document 35 (Point of Agreement (f)).</p>
Changes required	The Panel considers it would be beneficial if the functional layout plan for IN-03 were noted to make this clear. See recommendation in Chapter 6.7 below.
<b>Designs for IN-04 and IN-05</b>	<p>Agreed at the second functional layout conclave that due to lower traffic volumes east of Patterson Drive, these two intersections could be reduced from 2 through lanes in each direction along Donnybrook Road to one through lane in each direction.</p> <p>Agreement recorded in Document 91 (items 2 and 3).</p>
Changes required	The functional layouts for IN-04 and IN-05, and those attached to Mr Mentha and Mr Howe's evidence, still show two through lanes in each direction on Donnybrook Road. These will need to be updated. See recommendation in Chapter 6.7 below.
<b>Other intersections</b>	
<b>IN-06, IN-08, IN-09 and IN-10</b>	In the exhibited ICP, the designs for these intersections were based on bespoke One Mile Grid designs prepared for the Donnybrook-Woodstock PSP. The designs were not specifically contested, other than in relation to general matters (namely design speeds).
Changes required	The April ICP included updated functional layout plans which made minor modifications to reflect the agreed design speeds. No further changes are required.
<b>IN-07 (Koukoura Drive and Hayes Hill Boulevard)</b>	Mr Woolcock raised concerns that the road reservation widths and associated splays/flaring should be updated at these intersections to reflect specific elements required in the PSP and VicRoads.
Changes required	A revised functional layout plan was included in the April ICP. Document 91 (item 4) records that the revised design addresses Mr Woolcock's concerns. No further changes are required.
<b>IN-11 (Koukoura Drive and Cameron Street)</b>	<p>Mr Woolcock raised concerns that the road reservation widths and associated splays/flaring should be updated at these intersections to reflect specific elements required in the PSP and VicRoads.</p> <p>Agreed at the first conclave that:</p> <ul style="list-style-type: none"> <li>- Cameron Street width be reduced to 31m</li> <li>- the western leg slip lane be removed</li> <li>- Koukoura Drive width be reduced to meet revised agreed design</li> </ul>

Issue	Details/Panel comment
	<p>speeds.</p> <p>Agreement recorded in Document 35 (Point of Agreement (l)).</p>
Changes required	<p>Document 90 confirmed that the April ICP included an updated functional layout plan for IN-11, and Document 91 (item 5) recorded that the revised design addresses Mr Woolcock's concerns. No further changes are required.</p>
<b>IN-12 (Cameron Street and Merriang Road)</b>	<p>Agreed at the first functional layout conclave that:</p> <ul style="list-style-type: none"> <li>- the width of the Merriang Road legs does not need to exceed the existing road reserve</li> <li>- intersection does not need to be 25.5m wide.</li> </ul> <p>Agreement recorded in Document 35 (Points of Agreement (m)(i) and (n)).</p>
Changes required	<p>Document 90 confirmed that the April ICP included an updated functional layout plan for IN-12. No further changes are required.</p>
<b>IN-13 and IN-14</b>	<p>In the exhibited ICP, the designs for these intersections were based on bespoke One Mile Grid designs prepared for the Donnybrook-Woodstock PSP. The designs were not specifically contested, other than in relation to general matters (namely design speeds).</p>
Changes required	<p>The April ICP included updated functional layout plans which made minor modifications to reflect the agreed design speeds. No further changes are required.</p>
<b>IN-15 (Gunns Gully Road and Koukoura Drive)</b>	<p>Mr Woolcock raised concerns that the road reservation widths and associated splays/flaring should be updated at these intersections to reflect specific elements required in the PSP and VicRoads.</p> <p>Agreed at the first functional layout conclave that VicRoads would revisit previous advice regarding the need for 2 right hand turn lanes from Koukoura into Gunns Gully (as Koukoura is a secondary arterial) (recorded in Document 35 at Point of Agreement (o)).</p> <p>Document 90 confirmed that VicRoads agreed that only one right hand turn lane was needed.</p>
Changes required	<p>The updated functional layout plan for IN-15 included in the April ICP only showed one right hand turn lane. Document 91 (item 6) records that the revised design addresses Mr Woolcock's concerns. No further changes are required.</p>
<b>IN-16 and IN-17</b>	<p>According to Plan 3 in the PSP, both these intersections are intersections between a secondary arterial road (namely Patterson Drive) and a connector street.</p> <p>In the exhibited ICP, the design for IN-16 was based on a bespoke One Mile Grid design prepared for the Donnybrook-Woodstock PSP, and the design for IN-17 was based on the benchmark secondary arterial to connector boulevard design (item 15 in the Benchmark Infrastructure Report).</p> <p>The designs were not specifically contested.</p>
Changes required	<p>The April ICP substituted the bespoke One Mile Grid design for IN-16 for the</p>

Issue	Details/Panel comment
	<p>secondary arterial to connector boulevard design. No change was made in respect of IN-17.</p> <p>The Panel queries whether the correct benchmark design has been selected for these intersections, given they are connector streets, not boulevard connector streets. See recommendation in Chapter 6.7 below.</p>
<b>Road projects</b>	
<b>Gunns Gully Road (RD-02)</b>	<p>Gunns Gully Road is the only primary arterial road project to be funded under the ICP. The other road projects are all secondary arterials.</p> <p>Table 9 in the PSP (the Precinct Infrastructure Plan) identifies Gunns Gully Road as requiring a 41m road reserve, an interim 2 lane carriageway and an ultimate 6 lane carriageway.</p> <p>Whittlesea City Council initially sought an interim divided carriageway for Gunns Gully Road. However, at the Hearing it indicated that it was no longer seeking an interim divided carriageway on Gunns Gully Road. The matter is therefore resolved.</p>
Changes required	The exhibited and April ICPs include a cross section for a primary arterial showing a non-divided carriageway. No further changes are required.
<b>Bridge projects</b>	
<b>BR-01 and BR-02</b>	The designs for BR-01 (bespoke design) and BR-02 (benchmark design) were not disputed.
Changes required	No changes are required.
<b>BR-03 and BR-04</b>	<p>BR-03 and BR-04 (both box culverts) cross Darebin Creek. Both are to be located within DFC Woodstock's Peppercorn Estate.</p> <p>The VPA prepared updated designs for these projects, which were attached to its Part B submission (Document 134). The culverts were redesigned to accord with DELWP's Growling Grass Frog Crossing Design Standards, as well as being based on more accurate average recurrence interval information from Melbourne Water. Documentation attached to the VPA's Part B submission confirmed that the revised designs met DELWP standards.</p> <p>DFC Woodstock had provided a Bebo Arch design for these culverts, which differs slightly in cost from the box culvert design of the VPA. DFC Woodstock indicated that it may wish to construct a Bebo Arch design for its own reasons, but it did not dispute the VPA's box culvert design or costings, or submit that the ICP should be based on a Bebo Arch design.</p>
Changes required	The updated box culvert designs (Document 134) will need to be included in the final approved ICP in place of the designs in the exhibited and April ICPs. See recommendation in Chapter 6.7 below.
<b>BR-05</b>	The Councils and DFC Woodstock queried whether the bespoke design for BR-05 complied with DELWP's Growling Grass Frog Standards. The VPA provided documentation (Document 116) confirming that the design met the standards.
Changes required	No changes are required.

The resolved issues require minor updates to the ICP (October 2019 version) before it is approved. Recommendations are provided in Chapter 6.7.

## **(ii) Costings**

A costings conclave took place on 15 October 2019, following which the VPA circulated a conclave statement along with updated detailed cost sheets for a number of items (Documents 114 and 115). The parties and experts agreed that where estimates varied by less than 5 percent, the VPA's costings would be accepted (agreement recorded at item 1(a) of Document 114).

Several items remained in dispute following the conclave, as between Mirvac and the VPA, and as between the Councils and the VPA. After the conclave, the VPA recommended adding 4.5 percent to the items remaining in dispute between it and Mirvac, which brought all estimates from Mirvac and the VPA to within 5 percent (and therefore resolved as between Mirvac and the VPA). The revised costs are set out in updated Tables 5 and 6 from the ICP tabled by the VPA just before the Hearing commenced (Document 125), and were further updated to include the 2019/20 indexed rates in the October version of the ICP tabled by the VPA on the final day of the Hearing (Document 174).

This resolved some, but not all, of the costs remaining in dispute between the Councils and the VPA. The Councils tabled documents on Day 1 of the Hearing that detailed the costings remaining in dispute as between the Councils and the VPA, before and after the addition of the 4.5 percent by the VPA (Documents 127 and 133). Council clarified in closing that the only costings remaining unresolved were:

- Costings for all road projects other than RD-02 (Gunns Gully Road). The differences in costs relate essentially to:
  - whether the interim roads should be constructed as a single or divided carriageway (refer to Chapter 5.2)
  - whether the whole of the road reserve should be landscaped (refer to Chapter 5.3).
- Costings for IN-12. The differences are primarily due to the Councils having made an allowance for the relocation of the powerline poles on Merriang Road. The Councils confirmed that the same issue applies to IN-08, although this is not reflected in Document 133 due to error. Refer to Chapter 5.5.
- Costings for IN-17. The differences are primarily due to the Councils allowing more for landscaping and shared user paths. Refer to Chapters 5.3, 5.4 and 5.5.

## **6.2 Apportionment of funding from the English Street DCP**

The English Street PSP area is located to the south west of the Donnybrook-Woodstock PSP area. An approved DCP is in place for the English Street PSP area.

Mr Shipp's evidence notes that a proportion of the funding required for SR-01 (6 percent) will be collected pursuant to the English Street DCP. The English Street DCP also lists an external apportionment for *"construction of additional space for a 0.8 of a kindergarten room (external)"* for a project referred to in the DCP as *"Donnybrook Kindergarten Space"*. The VPA's Part A (Part 2) submission indicates that this project is CI-01 listed in the ICP.

These cost apportionments are not reflected in the exhibited or the April ICP. The VPA's Part A (Part 2) submission notes this, and states in relation to SR-01:

Following the Panel Hearing, the VPA will seek confirmation from Council as to the DCP-indexed dollar value of this contribution and recommends that this value be identified as an external apportionment (expressed as a percentage) for a nominated sports reserve within the Donnybrook-Woodstock ICP.

After a discussion of the area required for CI-01 (refer to Chapter 6.3), the Part A (Part 2) submission notes that the cost changes for both projects will not affect the community and recreation facility, as it is capped by the Ministerial Direction, although the cost changes will reduce the amount of the shortfall on both projects.

The Panel considers that Table 7 in the ICP (Standard Levy Community and Recreation Construction Projects) should be updated to reflect the cost apportionment for these two projects from the English Street DCP. The Panel makes a recommendation to address this in Chapter 6.7 below.

### **6.3 Land allowance for CI-01**

The Councils initially queried whether the land allowance for CI-01 contains sufficient land to accommodate the additional kindergarten space consistent with the land allocation for other similar facilities. In its closing submission, the Councils confirmed that the additional information provided by the VPA satisfied them that the land allowance is sufficient. No further changes are required in relation 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 Donnybrook-Woodstock ICP because Project SR-05 is an indoor recreation facility.

The Mt Atkinson and Tarneit Plains ICP was also affected by this error, and the VPA proposed to address this issue by including a clause in the ICP, consistent with the Panel's recommendations in relation to the Mt Atkinson and Tarneit Plains ICP. The Panel notes that the October version of the ICP (Document 174) does not appear to include a suitable clause. The Panel makes a recommendation to address this in Chapter 6.7 below.

### **6.5 Additional information in relation to road projects**

Mirvac suggested the measured road lengths for each of the road projects be included in the ICP. The VPA agreed that this would provide additional clarity and included the road lengths in the October ICP (Document 174). The Panel supports the inclusion of the measured road lengths, as it did for the Mt Atkinson and Tarneit Plains ICP (refer to Chapter 6.6 in Melton

PSA C201 [2019] PPV). No further changes are required to the Amendment in response to this issue, beyond those contained in the October ICP.

## 6.6 Updated indexed rates

The VPA confirmed in its Part A (Part 2) submission and again in its Part B submission that it intends to apply the 2019/20 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 VPA indicated that this had been done in the October version of the ICP tabled on the final day of the Hearing (Document 174). The Infrastructure Contributions Overlay Schedules will need to be updated accordingly. The Panel's Recommendation 1.b) will ensure that this occurs.

## 6.7 Recommendations to implement resolved issues

The Panel recommends:

6. **Update the Infrastructure Contributions Plan (October 2019 version) as follows:**
  - a) **include a note on the functional layout plans for intersections IN-01 to IN-05 (the Donnybrook Road intersections) to indicate that:**
    - **the shared user path on the north side of Donnybrook Road will be located in the services corridor to the north of the Donnybrook Road reserve**
    - **existing services in the road reserve can be relocated to the services corridor to the north of Donnybrook Road**
  - b) **attach updated functional layout plans for IN-04 and IN-05 showing only one through lane in each direction on Donnybrook Road**
  - c) **attach the updated box culvert designs for BR-03 and BR-04 (Document 134)**
  - d) **amend Table 7 (Standard Levy Community and Recreation Construction Projects) to reflect the apportionment of funding for CI-01 and SR-01 to the English Street Development Contributions Plan**
  - e) **include the following paragraph in Section 4.1 (Inner and outer public purpose land):**

The Minister has exempted the Donnybrook-Woodstock ICP from complying with Table 7 of Annexure 1 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 in respect of the land required for project SR-05 (Koukoura Drive Sports Facility). 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*.



- 7. Before adopting the Amendment, check that the correct benchmark design for intersections IN-16 and IN-17 are attached to the Infrastructure Contributions Plan (October 2019 version), given that Plan 3 in the Precinct Structure Plan indicates these intersections are secondary arterial/connector street intersections, not secondary arterial/boulevard connector street intersections.**

## Appendix A Parties to the Panel Hearing

Submitter	Represented by
Victorian Planning Authority	<p>Susan Brennan SC and Carly Robertson of Counsel instructed by Rory O'Connor of Hall and Wilcox with Elizabeth McIntosh of VPA, who called expert evidence on:</p> <ul style="list-style-type: none"> <li>- planning from Paul Shipp of Urban Enterprise</li> <li>- functional layout from Ben Mentha of Cardno</li> <li>- infrastructure costings from Stephen Howe of Cardno</li> </ul>
Whittlesea City Council and Mitchell Shire Council	<p>Terry Montebello of Maddocks Lawyers, with Liam Wilkinson of Whittlesea Council and James Kirby of Mitchell Shire Council, who called expert evidence on:</p> <ul style="list-style-type: none"> <li>- costings from Sian McKenna of WT Partnership</li> <li>- urban design from Craig Czarny of Hansen Partnership</li> </ul>
Mirvac	<p>Nick Tweedie SC and Jennifer Trehwella of Counsel, instructed by Victoria Vilagosh and Jessica Kaczmarek of Norton Rose Fulbright, who called expert evidence on:</p> <ul style="list-style-type: none"> <li>- functional layout from Stephen Hunt of Ratio Consultants</li> <li>- costings from Alan Burrows of SMEC*</li> <li>- costings from Chris White of Beveridge Williams*</li> </ul>
DFC Woodstock	<p>Rupert Watters of Counsel, instructed by Joel Snyder of Best Hooper, who called evidence on:</p> <ul style="list-style-type: none"> <li>- functional layout from Nathan Woolcock of Traffix Group*</li> </ul>
Donnybrook JV	<p>Stuart Morris QC and Paul Chiappi of Counsel, instructed by Megan Schutz of Schutz Consulting, who called evidence on:</p> <ul style="list-style-type: none"> <li>- functional layout from Jason Walsh of Traffix Group</li> </ul>

\* Evidence was tabled from these witnesses, but they were not called at the Hearing

## Appendix B Procedural matters

### B1 Request for appointment of an Advisory Committee

Submissions from Melton, Whittlesea and Mitchell Councils on the exhibited Amendments GC102 and Melton C201 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).<sup>2</sup> 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.<sup>3</sup> The Minister did not support the request.<sup>4</sup>

### B2 Directions to provide further notice

The Panel directed the VPA to provide further notice of the April 2019 recommended changes. Following further notice, an additional submission was received from the Satterley Group and a revised submission was received from Mirvac. These submissions were referred to and have been considered by the Panel.

### B3 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 GC102 was then circulated on 7 and 8 October 2019
- a costings conclave was then conducted, with the agreed statement circulated on 21 October 2019.

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<sup>2</sup> Document 38a

<sup>3</sup> The Minister has such discretion under clause 29 of the Ministerial Direction

<sup>4</sup> Document 38b

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.

## **B4 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.<sup>5</sup>

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, 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 2019<sup>6</sup> that Whittlesea’s internal technical expert officers were permitted to attend the functional layout conclave, 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.

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<sup>5</sup> Document 5 Direction 16

<sup>6</sup> Document 22

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.<sup>7</sup> The Panel issued a ruling on 20 March 2019<sup>8</sup> that the VPA's Transport Planning Manager be permitted to attend on the same basis as the Whittlesea Council officers, as outlined in the Panel's ruling dated 18 March 2019.

## **B5 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. This required the May hearing dates to be vacated, and new dates were tentatively set in the first week of July 2019.<sup>9</sup> At this stage, the Hearings for Amendment C201 and Amendment GC102 were still linked.

On 30 April 2019, DFC Woodstock 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.<sup>10</sup>

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).<sup>11</sup>

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.<sup>12</sup>

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 Directions<sup>13</sup>

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<sup>7</sup> Document 23. Responses from other parties are Documents 24 and 25, and further correspondence from the VPA is Document 26

<sup>8</sup> Document 27

<sup>9</sup> Document 33

<sup>10</sup> Document 68

<sup>11</sup> Document 69

<sup>12</sup> Document 71

<sup>13</sup> Document 75

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. In setting the dates, the Panel sought to accommodate the greatest number of parties possible.

## Appendix C Document list

No.	Date	Description	Presented by
<b>Melton C201 and GC102 pre-hearing documents</b>			
1	4/12/18	Whittlesea City Council submission – GC102	VPA
2	6/12/18	Mirvac submission addenda – GC102	“
3	7/12/18	Email regarding matters to be addressed at the first Directions Hearing	PPV
4	13/12/18	Mitchell Shire Council submission – GC102	VPA
5	19/12/18	Panel Directions and Timetable (v1)	PPV
6	1/03/19	Referral of late submission from Donnybrook JV P/L – GC102	“
7	“	VPA’s Part A (Part 1) submission <ul style="list-style-type: none"> <li>a) Tabling letter</li> <li>b) Submission</li> <li>c) Appendix 1 – Final draft <i>Benchmark Infrastructure Report</i> (Cardno, 1 March 2019)</li> <li>d) Appendix 2 – <i>Stakeholder Comments Review, Benchmark Infrastructure Costings Project</i> (Cardno, 12 December 2018)</li> <li>e) Appendix 3 – table comparing July 2018 benchmark costs and March 2019 benchmark costs</li> </ul>	VPA
8	6/03/19	Confirmation of second Directions Hearing and revised Distribution List (v2)	PPV
9	7/03/19	Melton City Council – Response to Direction 1 (confirmation of expert witnesses)	Melton CC
10	“	DFC Woodstock Pty Ltd – Response to Direction 1	DFC Woodstock
11	8/03/19	Mirvac – Response to Direction 1	Mirvac
12	“	Whittlesea Council – Response to Direction 1	Whittlesea CC
13	“	Donnybrook JV Pty Ltd – Response to Direction 1	Donnybrook JV P/L and 960 Blueways P/L (Donnybrook JV)
14	“	Panel response to expert witness confirmation and clarification of Direction 9(a) (functional layout conclave)	PPV
15	12/03/19	Correspondence advising of circulation timeframe for revised ICP	VPA
16	“	Whittlesea request for clarification regarding participation of internal Council officers in the Panel process	Whittlesea CC
17	“	Panel response to Whittlesea request 12/03/19	PPV
18	13/03/19	Evidence of Stephen Howe on functional layout	VPA
19	“	Evidence of Nathan Woolcock on functional layout – GC102	DFC Woodstock
20	14/03/19	Evidence of Jason Walsh on functional layout – GC102	Donnybrook JV

No.	Date	Description	Presented by
21	"	Evidence of Stephen Hunt on functional layout – GC102	Mirvac
22	18/03/19	Further Panel Directions (VPA proposal for further notification)	PPV
23	19/03/19	Correspondence from VPA requesting urgent ruling on VPA Transport Manager's participation in functional layout conclave	VPA
24	"	Correspondence from Whittlesea City Council and Mitchell Shire Council supporting the VPA's 19/03/19 request	Whittlesea CC
25	"	Correspondence from DFC Woodstock Pty Ltd opposing the VPA's 19/03/19 request	DFC Woodstock
26	20/03/19	Correspondence from VPA responding to DFC Woodstock Pty Ltd opposition	VPA
27	"	Panel Ruling on VPA 19/03/19 request	PPV
28	"	Correspondence advising on VPA's delayed response to Panel Directions 28 and 29 (regarding VPA's proposal for further notice)	VPA
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 Whittlesea City Council and Mitchell Shire Council responding to VPA proposal for further notification	Whittlesea CC
32	22/03/19	VPA revised maps for further notification: a. Mt Atkinson and Tarneit Plains ICP map b. Donnybrook and Woodstock ICP map	VPA
33	"	Panel Further Directions (further notification)	PPV
34	"	Email from VPA advising functional layout expert agreed statement timing	VPA
35	29/03/19	Functional layout expert agreed statement	"
36	1/04/19	Email from VPA seeking clarification on Directions 9(b) and 20(b)	"
37	"	Panel Chair's clarification of Directions 9(b) and 20(b)	PPV
38	3/04/19	Letter from Minister for Planning to CEOs of Melton, Mitchell and Whittlesea responding to request to appoint Panel as an Advisory Committee	"
39	10/04/19	Email from Donnybrook JV Pty Ltd requesting updated functional layout plan for intersection IN-03 – GC102	Donnybrook JV
40	11/04/19	Email from Planning Panels Victoria advising that request in Document 39 will be addressed at fourth Directions Hearing	PPV
<b>Renotification Documentation – C201 and GC102 (the 'Recommended Changes' documents)</b>			
41	17/04/19	Email from VPA regarding renotification and updated documents	VPA
42	"	Example renotification letter	"
43	"	VPA summary of recommended changes	"



No.	Date	Description	Presented by
44	17/04/19	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	VPA
<b>Renotification Documentation – C201 (the 'Recommended Changes' documents)</b>			
46	17/04/19	<i>Mount Atkinson and Tarneit Plains ICP</i> (VPA Recommended changes to the Panel) April 2019	VPA
47	"	<i>Benchmark Infrastructure Costing – Result Application Mt Atkinson and 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, Mount Atkinson Holdings 13 September 2018	"
50	"	Consolidated C201 Submission 2, Melton City Council 19 October 2018	"
51	"	Consolidated C201 Submission 3, Transport for Victoria	"
<b>Renotification Documentation – GC102 (the 'Recommended Changes' documents)</b>			
52-55	17/04/19	NOT USED (repeats of Documents 42-45)	VPA
56	"	<i>Donnybrook-Woodstock ICP</i> (VPA Recommended changes to the Panel) April 2019	"
57	"	<i>Benchmark Infrastructure Costing – Result Application Donnybrook-Woodstock</i> (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	VPA

No.	Date	Description	Presented by
<b>Tabled pre-hearing documents continued – C201 and GC201</b>			
66	26/04/19	Whittlesea Council response to VPA Part A (Part 1) submission	Whittlesea CC
67	“	Melton City Council advising no response at this point to VPA Part A (Part 1) submission	Melton CC
68	30/04/19	DFC Woodstock Pty Ltd letter regarding evidence and Hearing dates	DFC Woodstock
69	3/05/19	Whittlesea & Mitchell Shire Councils letter regarding Hearing dates	Whittlesea and Mitchell Councils
70	7/05/19	Email from Panel Chair regarding matters to be considered at fourth Directions Hearing	PPV
71	13/05/19	Melton Shire letter outlining preferred Hearing arrangements	Melton CC
72	“	Email from VPA notifying of impending referral of new and revised submissions	VPA
73	“	Correspondence regarding VicRoads position	VicRoads
74	16/05/19	Circulation of new and revised submissions: a) Melton City Council revised submission – C201 b) T and E Meskos new submission – C201 c) Mirvac revised submission – GC102 d) Satterley new submission – GC102	VPA
<b>Tabled pre-hearing documents – GC102 (after C201 and GC102 hearings split)</b>			
75	17/05/19	Further Panel Directions, Revised Hearing Timetable (v2) and Distribution List (v3)	PPV
76	24/05/19	Confirmation of experts – Mitchell and Whittlesea Councils	Whittlesea CC
77	3/07/19	Mirvac request for Directions	Mirvac
78	5/07/19	Panel response to Mirvac request for direction	PPV
79	18/07/19	Further Panel Directions regarding urban design evidence	“
80	7/08/19	Mitchell and Whittlesea Councils confirmation of expert and response to Direction 2	Whittlesea CC
81	8/08/19	VPA request for extension of time to advise whether it will call an additional expert witness	VPA
82	9/08/19	Panel email to parties regarding further Directions Hearing	PPV
83	8/08/19	VPA email to Panel regarding expert witnesses	VPA
84	13/08/19	Revised Distribution list (v4) and Hearing Timetable (v3)	PPV
85	13/08/19	Mirvac request for Directions in relation to functional layout conclave	Mirvac
86	14/08/19	Whittlesea Council response to Mirvac request for Directions in relation to functional layout conclave	Whittlesea CC
87	15/08/19	PPV further Directions in response to Mirvac request of 13/08/19, including reasons	PPV

No.	Date	Description	Presented by
88	19/08/19	Craig Czarny expert witness statement (road cross-sections)	Whittlesea CC
89	11/09/19	Jason Walsh (Traffix Group) addendum dated 06/09/19	Donnybrook JV
90	18/09/19	Whole-of-State-Government position - functional layout conclave	VPA
91	20/09/19	Second Functional Layout conclave statement	"
92	23/09/19	Correspondence from VPA requesting Directions from the Panel regarding lodgement of functional layout evidence addenda from all parties and additional evidence from the VPA	"
93	25/09/19	Panel response to VPA's request of 23/09/19	PPV
94	"	Consolidated and Updated Panel Directions	"
95	"	Revised Distribution list (v5) and Hearing Timetable (v4)	"
96	"	Correspondence updating VPA's representation at the Hearing	VPA
97	2/10/19	Evidence of Sian McKenna on costings – GC102	Whittlesea CC
98	4/10/19	Correspondence from VPA advising of late circulation of evidence	VPA
99	"	Correspondence from Mirvac advising of late circulation of evidence	Mirvac
100	7/10/19	Correspondence from DFC Woodstock advising it no longer intends to call evidence and request for direction re conclave	DFC Woodstock
101	"	Panel response to DFC Woodstock	PPV
102	"	Evidence of Stephen Howe on Infrastructure Costing – GC102	VPA
103	8/10/19	Correspondence advising of withdrawal of expert	Donnybrook JV
104	"	Evidence of Chris White	Mirvac
105	"	Evidence of Alan Burrows	"
106	10/10/19	Request to Mirvac for clarification of experts	PPV
107	"	Response to Panel regarding experts	Mirvac
108	11/10/19	Background report prepared by Chris DeSilva of Mesh	VPA
109	"	Evidence of Paul Shipp	"
110	14/10/19	Evidence of Ben Mentha	"
111	"	Letter to VPA and DOT regarding delivery of IN-03 intersection	Donnybrook JV
112	21/10/19	Correspondence advising of late circulation of Part A (Part 2) submission and costings conclave statement	VPA
113	"	Part A (Part 2) submission	"
114	"	Costings conclave statement	"

No.	Date	Description	Presented by
115	22/10/19	Costings breakdown update following conclave statement: a) IN-01 to IN 17 b) Bridge-02 (BR-02) culvert at Patterson Drive c) BR-03 and BR-04 d) BR-01 e) RD-01 to RD-05.	VPA
116	23/10/19	a) Correspondence from DELWP Melbourne Strategic Assessment unit b) DELWP Growling Grass Frog Crossing Design Standards March 2017 c) Bridge Design BR-05 d) BR-05 DELWP Response e) SK002 -3 (Hayes Hill Boulevard Culvert Plan) f) SK001-2 (Cameron Street Culvert)	"
117	"	Revised Hearing Timetable (v5) and Distribution List (v6)	PPV
118	24/10/19	Costing breakdown updated Table 5 and 6	VPA
119	"	Correspondence to VPA requesting confirmation of agency approval of compact design similar to Hopkins Road intersection	Donnybrook JV
120	"	Request for copy of 'Advice provided by Hall and Wilcox (acting for VPA) on 6 February 2019', referenced in evidence statement of Mr Hunt	"
121	"	Request for response to correspondence sent to VPA dated 14 October 2019 regarding delivery of IN-03	"
122	25/10/19	Response to Donnybrook JV's request for approved intersection plans	VPA
123	"	Request to VPA for design approvals provided by DoT	Donnybrook JV
124	"	Response to Donnybrook JV regarding delivery of fourth leg of IN-03	Department of Transport
125	"	Updated ICP Tables 5 and 6, including resolved cost for BR-05 and agreement between VPA and Mirvac to increase costs of all unresolved items of 4.5%	VPA
126	"	Request for Hopkins Road intersection plans with laneway width details	Donnybrook JV
127	28/10/19	Summary – Councils unresolved costings	Mitchell and Whittlesea Councils
128	"	A3 diagrams from VPA Part A (Part 2) submission	VPA
129	"	Traffic Group plan of Hillview Drive Donnybrook intersection	DFC Woodstock
130	"	Extract from Austroads guide, p. 44-45	Donnybrook JV
131	"	Benjamin Mentha evidence PowerPoint presentation	VPA
132	"	Stephen Howe evidence PowerPoint presentation	"

No.	Date	Description	Presented by
133	"	WT Partnership revised ICP costing peer review	Whittlesea and Mitchell Councils
134	28/10/19	VPA Part B submission	VPA
135	29/10/19	Revised Tables 5 and 6 - Mitchell and Whittlesea Councils	Whittlesea and Mitchell Councils
136	"	Clause 19.03-1S from the Whittlesea Planning Scheme	VPA
137	"	Mitchell and Whittlesea Councils submission	Whittlesea and Mitchell Councils
138	30/10/19	Plan of land ownership Donnybrook-Woodstock PSP	Mirvac
139	"	Letter from Urban Enterprise to VPA	Whittlesea and Mitchell Councils
140	"	Plan of IN-03 by Jason Walsh	Donnybrook JV
141	"	Submission on behalf of Mirvac	Mirvac
142	"	Plan of development of Mirvac land	"
143	"	Email from Whittlesea Council to Mirvac	"
144	"	Part 3AB Planning and Environment Act 1987	"
145	"	Konann Pty Ltd vs Casey City Council [2018] VSC565	"
146	"	Stephen Hunt's evidence addendum	"
147	1/11/19	Submission on behalf DFC Woodstock	DFC Woodstock
148	"	Extract from Whittlesea and Mitchell Planning Schemes Amendment GC28 Panel Report (Section 4.2)	"
149	"	Plan of Conservation Areas - Northern Growth Corridor	"
150	"	Extract from Biodiversity Conservation Strategy for Melbourne's Growth Areas (Section 4.3)	"
151	"	Schedule 6 to Clause 43.03	"
152	"	Submission on behalf of Donnybrook JV P/L and 960 Blueways P/L	Donnybrook JV
153	"	One Mile Grid Donnybrook-Woodstock PSP Road Intersection and Culvert/Bridge Design	"
154	"	Letter from Schutz Consulting to VPA 14 October 2019	"
155	"	Letter from DOT to Schutz Consulting 25 October 2019	"
156	"	Email from VPA to Schutz Consulting 25 October 2019	"
157	"	Traffic concept design for IN-03	"
158	"	Photographs of Donnybrook to the west at IN-03	"
159	6/11/19	Letter from Best Hooper to PPV re zoning of Hayes Hill Reserve	DFC Woodstock
160	7/10/19	Revised finance cost and payment schedule for CI-01, CI-02 and CI-03	Whittlesea and Mitchell Councils

No.	Date	Description	Presented by
161	"	Revised Tables 5 and 6 to include costings for divided carriageways for RD-01 to RD-05, revised costings for IN-12 and finance cost for early delivery of two community facilities	"
162	7/11/19	Mitchell and Whittlesea Councils closing submission	"
163	"	English Street interim – 2 lane Secondary Arterial cross section	Whittlesea and Mitchell Councils
164	"	Article from Financial Review 27 October 2019	"
165	"	Plan from article from Financial Review 27 October 2019	"
166	"	Extract of Planning and Environment Act 1987	"
167	"	Extract of section 46GI Planning and Environment Act 1987	"
168	"	Extract of Ministerial Direction on ICPs	"
169	"	Plan showing roads which permit conditions require to be delivered as divided carriageways	"
170	"	Response to Panel questions by Stephen Howe for VPA	VPA
171	"	Response to Panel questions by Benjamin Mentha for VPA	"
172	"	Response to evidence of Walsh by Benjamin Mentha for VPA	"
173	"	Part C submission on behalf of the VPA	"
174	"	Extracts from Revised ICP (October 2019)	"
175	"	Infrastructure Contributions Plan Guidelines 2016	"
176	"	Extracts from Infrastructure Contributions Plan Guidelines 2019	"
177	"	Photos of interim road constructions in Wyndham	"
178	"	Extract from Whittlesea and Mitchell Planning Schemes Amendment GC28 Panel report	"
179	"	Extract from Northern Growth Corridor Plan	"
180	"	Whittlesea zoning map 4 (Amendment C183) – Hayes Hill	"
181	"	Whittlesea zoning map 1 (current) – Hayes Hill	"