

Mitchell Amendment C145 Beveridge Central ICP

Part A & B Panel Submission



October 2020

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1 INTRODUCTION

1.1 Purpose of this submission

This Part A and B submission is made by the Victorian Planning Authority (VPA) to Planning Panels Victoria in relation to Amendment C145 to the Mitchell Planning Scheme (the amendment).

The VPA is the planning authority for the amendment and has prepared it in consultation with Mitchell Shire Council, relevant authorities, stakeholders and landowners

In its Direction provided to the VPA on the 5th August 2020, Panel has directed the VPA to address the following in its Part A submission:

- a) the background to the amendment including chronology of events;
- b) the strategic context and assessment;
- c) issues identified in submissions;
- d) any suggested changes to the Amendment in response to submissions;
- e) an explanation of section 5.8 (payment of land credit amounts) of the ICP;
- f) a response to submissions and evidence; and
- g) the VPA's final position on the Amendment.

Sections 1-6 of this document contain the Part A component of VPA submission, which responds to the above directions and provide the Panel with the history, background, strategic context and response to submissions.

Section 7 of this document provides the Part B component of the VPA submission and responds to the CDH properties submission received on 21 September 2020.

1.2 Amendment C145 to the Mitchell Planning Scheme

The Amendment proposes changes to the Mitchell Planning Scheme to replace the interim Beveridge Central ICP with the final Beveridge Central ICP that applies to land affected by the Beveridge Central Precinct Structure Plan (the PSP).

Specifically, Mitchell Amendment C145 seeks to:

- Amend Schedule 2 to Clause 45.11 Infrastructure Contributions Overlay (ICO2) that applies to land within the Beveridge Central precinct.
- Amend the Schedule to Clause 72.04 to replace *Beveridge Central Infrastructure Contributions Plan, July 2019 (Amended November 2019)* with a new incorporated document titled *Beveridge Central Infrastructure Contribution Plan, April 2020*.

2 BACKGROUND TO THE AMENDMENT

2.1 Land to which the amendment applies

This Amendment applies to the land included in the below Beveridge Central Precinct Structure Plan area (gazetted January 2019) as shown in the figure below.

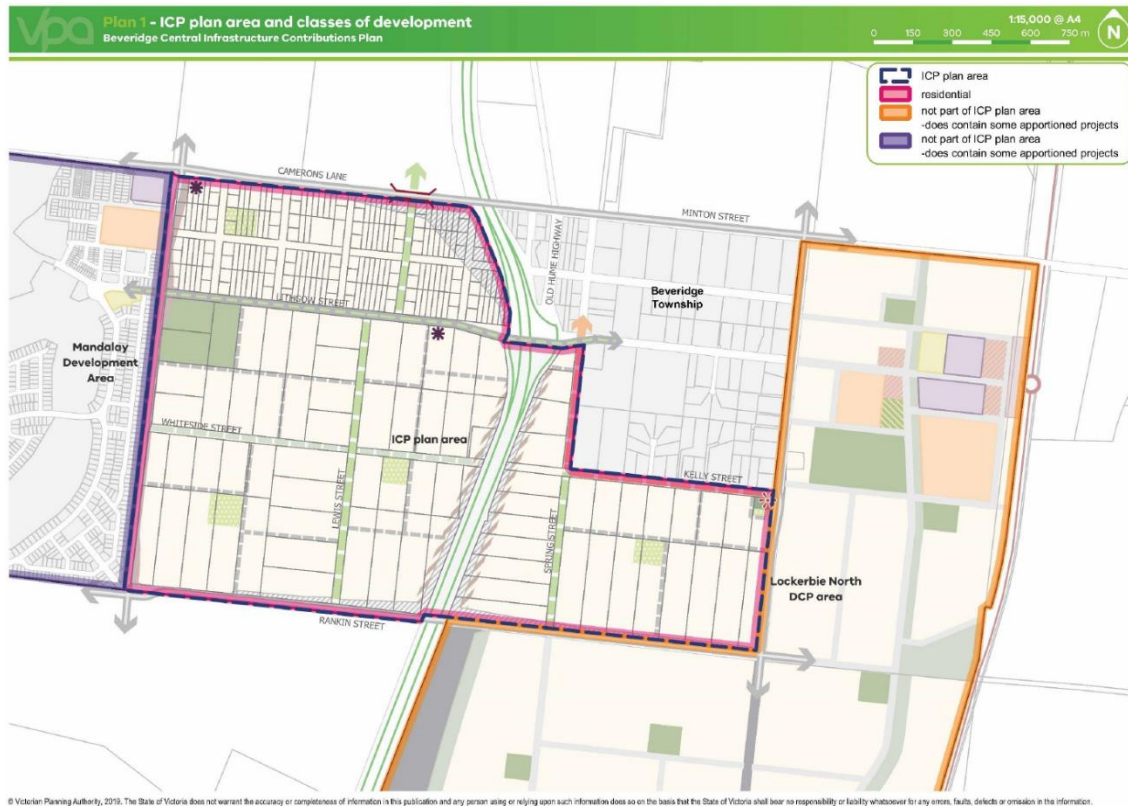


Figure 1: Land to which this Amendment applies

2.2 Summary of recent amendments relating to Beveridge Central PSP and ICP

There are four planning scheme amendments relevant to the development of the Beveridge Central ICP:

- **Amendment GC55** to the Mitchell and Whittlesea Planning scheme was gazetted on the 1st of January 2019 which incorporated the **Beveridge Central Precinct Structure Plan**. The Victorian Planning Authority was the planning authority for this amendment.
- **Amendment C147** to the Mitchell Planning Scheme was gazetted on the 4th of September 2019. It retitles the PSP document as **Beveridge Central Precinct Structure Plan May 2018 (Amended July 2019)** and amends the document in relation to identifying additional parcels of land within the precinct. The amendment also makes associated changes to the Urban Growth Zone Schedule 5 and to the schedule to clause 72.04
- **Amendment C143** to the Mitchell Planning Scheme was gazetted on the 5th of September and introduces the **interim Beveridge Central Infrastructure Contribution Plan** by applying the Infrastructure Contributions Overlay Schedule 2 (ICO2) to land within the Beveridge Central Precinct.
- **Amendment C148** to the Mitchell Planning Scheme was gazetted on the 5th of December and makes changes to update the incorporated 'interim' Infrastructure Contributions Plan (ICP) that applies to land affected by the Beveridge Central Precinct Structure Plan (PSP) to correct errors

affecting the total net developable area (NDA) of the precinct and the total ICP levy amount collected.

2.3 Interim Beveridge Central Infrastructure Contribution Plan

The ICP system came into effect in October 2016. The system was based on standard levies that are pre-set for particular cases of development in order to fund the construction of basic and essential infrastructure to service growing urban communities. If required, the system allows for a supplementary levy for transport construction costs in addition to the standard levy where relevant criteria are met.

The ICP system was updated on 2 July 2018 when the *Planning and Environment Act (Public Land Contributions Act) 2018 (PLC Act)* came into effect.

Fundamental changes incorporated within the PLC Act include:

- Improving the method of securing land for public purposes by introducing a land contribution model for the ICP system;
- Introduction of a separate process to determine public purpose land values via the Valuer General of Victoria (VGV)
- Prescribing the method by which the cost of providing all public land is equalised across all landowners with an ICP area; and
- No transitional provisions.

The key difference in the PLC Act from the 2016 ICP system is the removal of the monetary land component for public purpose land.

When the PLC Act came into effect, the unintended consequence of implementation without transition provisions was that all existing gazetted ICP's in the state Government's 100,000 lots (Homes for Victorians) program ceased to have effect. In addition, all draft ICPs for the remainder of the PSPs in the Program (including Beveridge Central) were no longer compliant with the Planning and Environment Act. This meant that all existing and draft ICPs, had to be significantly reworked to be translated into reflect the new systems provisions.

As permits were not able to be issued in regard to a PSP that did not also have an ICP, an immediate response was therefore required by the VPA to fast track 'interim' ICPs to enable development to proceed.

In terms of implementation of the new system, a change occurred towards the end of 2018, whereby, the Minister for Planning requested the VPA and Department of Environment, Land, Water and Planning (DELWP) to review all ICPs to ensure that they were consistent with the land contribution model in accordance with the PLC Act.

The review identified that:

- Inner public purpose land was incorrectly excluded from the contribution land for the purposes of calculating the ICP land contribution percentage and parcel contribution percentage; and
- Inner public purpose land for transport purposes was apportioned across the precinct.

It was subsequently confirmed in accordance with the PLC Act, that:

- inner public purpose land be included within the contribution land for the purposes of calculating the relevant percentages; and
- inner public purpose land for transport purposes to be directly apportioned based on the need generated by each class of development.

The outcome of this review was significant and required all ICP land contribution percentages to be recalculated i.e. public purpose land (inner public purpose land and outer public purpose land) divided by contribution land (Net Development Area and inner public purpose land) = ICP land contribution percentage.

The interim Beveridge Central ICP was finalised in September 2019 (following the review) and gazetted under Amendment C143 to the Mitchell Planning Scheme on the 5th of September 2019 under section 20(4) of the PE Act. The interim ICP was subsequently amended by C148, which made minor corrections to the total NDA of the precinct and the total ICP levy amount collected.

The interim Beveridge Central ICP therefore implemented the current Ministerial Direction and the ICP was prepared consistent with the land contribution model in accordance with the Act.

The interim Beveridge Central ICP enabled the issuing of permits to occur and aligns with the infrastructure items which were strategically justified through the PSP amendment processes and included in the Precinct Infrastructure Plan which forms part of the PSP.

Section 2.4 details the changes which have occurred from the interim Beveridge Central ICP to the exhibited ICP.

2.4 Purpose of the Mitchel Amendment C145 and ICP

This Amendment incorporates a supplementary Levy ICP following public exhibition, which will be applied to the Beveridge Central PSP area by amending schedules 2 to Clause 45.11 – Infrastructure Contributions Overlay (ICO2).

The ICP is necessary to deliver all the infrastructure items required within the Beveridge Central Precinct. Specifically, the supplementary levy component is included to cover costs of construction of supplementary ICP transport items.

The ICP provides timeframes (Short term: 0-5 years, medium term: 10-15 years and long term: 15 years onwards) for the delivery of ICP funded infrastructure projects.

2.4.1 Changes to the interim version of the ICP

This amendment and its proposed changes consists of the final ICP for Beveridge Central and makes the following changes to the gazetted Interim ICP:

- Standard Levy Rate updated to 2019/20 rate and associated changes to the Supplementary Levy Rate
- Amendment to the length of RD-05 (Murray Street)
- Correction to the transport related Inner Public Purpose Land requirements

Several consequential amendments to the ICP document result from the above proposed changes. These changes, including those in response to submissions received following exhibition are described in Section 5 of this submission.

2.5 Chronology of Mitchell Amendment C145

Table 1 provides a timeline for the preparation of the Beveridge Central PSP (Amendment GC55 and C147), the Beveridge Central 'Interim' ICP (Amendment C143 and C148) and the Beveridge Central 'Final' ICP (Amendment C145).

Table 1. Chronology of Relevant Amendments

Amendment	Date	Milestone
Amendment GC55 - Beveridge Central PSP	January 2013	Commencement of pre-planning for Beveridge Central PSP
	December 2015 - January 2016	Agency Consultation
	November – December 2016	Formal Public Exhibition
	May - June 2017	Planning Panel
	December 2017	Submitted to Department
	January 2019	Amendment Gazetted by Minister for Planning
Amendment C147- Beveridge Central Precinct Structure Plan May 2018 (Amended July 2019)	September 2019	Amendment Gazetted by Minister for Planning
Amendment C143 – 'Interim' Beveridge Central Infrastructure Contribution Plan	September 2019	Amendment Gazetted by Minister for Planning
Amendment C148 – 'Interim' Beveridge Central Infrastructure Contribution Plan (corrections)	December 2019	Beveridge Central 'interim' Infrastructure Contribution Plan Gazetted by Minister for Planning
Amendment C145 – 'Final' Beveridge Central Infrastructure Contribution Plan	April – June 2020	Formal Public Exhibition of Beveridge Central Final ICP
	June 2020 - Present	Meetings with submitters over Issues raised in exhibition
	31 st July 2020	Panel Directions Hearing
	28 th September 2020	VPA to circulate Part A submission
	5 th October	Planning Panel (via video conference)

2.6 Authorisation to exhibit Mitchell Amendment C145

The Minister for Planning has authorised the VPA under Section 9(1) of the PE Act to prepare an amendment to any part of the State standard provisions and local provisions of a Planning Scheme, subject to the following conditions:

- the land is within a growth area council and subject to a direction by the Minister for the VPA to undertake work in accordance with the VPA Act;
- the amendment gives effect to a PSP, ICP or DCP; and
- the VPA must consult with the Minister, the relevant Council, DELWP and any other public sector body which is likely to be significantly affected by the amendment.

The VPA is satisfied that it has met all the above criteria for authorisation of the Amendment and notes the following:

- The Beveridge Central ICP is within the municipality of Mitchell which has an area within the Urban Growth Boundary (as specified in the Planning and Environment act)
- The VPA has undertaken consultation with Mitchell Shire Council throughout the preparation of the amendment which included meeting with council
- DELWP and the minister have supported exhibition of the amendment
- The VPA has undertaken consultation with the Department of Transport in its role and function as the Roads corporation.

2.7 Background documents

The Beveridge Central ICP has been informed by the following background documents:

- Beveridge Central Precinct Structure Plan – VPA, May 2018
- VPA Benchmark Infrastructure Report – Cardno, 11 April 2019
- Beveridge Central ICP, Costing and Design – Cardno, July 2019.

3 STRATEGIC CONTEXT

Gazettal of the PSP in accordance with Amendment C145 forms the strategic justification for the infrastructure items included in the ICP, the subject of this amendment.

3.1 Mitchell Planning Scheme

3.1.1 State Planning Provisions

The amendment is consistent with Clause 19.03-1S – Development and Infrastructure Contribution Plans and it implemented mechanisms to collect developer contributions to fund infrastructure throughout the PSP.

3.1.2 Local Planning Provisions

The Local Planning Policy Framework of the Mitchell Planning Scheme was considered during the preparation of the PSP and this Amendment ensures developers financially contribute to infrastructure identified as necessary for the precinct by the PSP.

3.2 Ministerial Directions

Under section 46GJ of the PE Act, the Minister for Planning may issue written directions to planning authorities in relation to the preparation and content of ICPs.

3.2.1 Ministerial Direction 9 – Metropolitan Strategy

Direction 9 was considered in preparing the Amendment. In accordance with Direction 9, the Amendment will facilitate the collection of developer levies to fund the required infrastructure to service future urban land within the UGB.

3.2.2 Ministerial Direction 11 – Strategic Assessment of Amendments

Direction 11 seeks to ensure a comprehensive strategic evaluation of a planning scheme amendment. This submission addresses the requirements outlined in this direction.

3.2.3 Ministerial Direction on the Preparation and Content of Infrastructure Contribution Plans

The Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans (Ministerial Direction) contains general requirements that apply to all ICPs and annexures that specify requirements for individual development settings.

Clause 17 of the Ministerial Direction provides requirements for the implementation of a supplementary ICP levy. These requirements are:

- 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.

With respect to criteria b) and c), all items nominated under the ICP are included within the *Beveridge Central Precinct Structure Plan December 2019* (Incorporated Document) approved under Amendment GC55 and also reflected by the subsequent Amendment C147. The strategic justification and significance of each item, including its nexus to the orderly development of the area, were the subject of submissions and findings of the panel during the Amendment GC55 process; it was through this process that the strategic justification for each item was established.

The VPA submits that there is no scope for this panel to reconsider the strategic justification for inclusion of an infrastructure item within the PSP nor the accompanying ICP.

3.3 Beveridge Central PSP

The hearing for the Beveridge Central PSP ran between May - June 2017. The PSP was gazetted in January 2019. Matters deliberated during the PSP hearing relevant to submissions received on the ICP are discussed further below.

3.3.1 Active Open Space (SR-01)

The Panel received submissions relating to the location of active open space SR-01 relating to:

- strategic planning issues regarding claims that open space was not needed or would be better from a planning point of view in another location
- financial issues regarding to the personal hardship of landowners of land identified for open space.

The Panel noted that the location of the open space was likely to impact on the financial plans of the submitters, but that the issue was balancing the personal hardship with public policy. In considering the issues the Panel determined that:

“ultimately decisions about the location of different features in a growth area should be made on the basis of the long-term benefits for the people who ultimately live in the area, and the ability to create attractive and functional local areas.”

- *Beveridge Central PSP Panel Report, p20*

In their report, the Panel noted that it was clear that an area for active recreation was required, and that the issue is where the reserve should be sited.

As a result of submissions received, the VPA and Mitchell Shire Council reviewed the land area required for SR-01 as well as the proposed location. The effect was to reduce the land area to 6.7 hectares and to move the site to the southeast corner of Lithgow Street and Patterson Street. The Panel was persuaded by the merits of the revised location on the corner of Lithgow Street and Patterson Street and did not support relocating SR-01 to another location.

The location of SR-01 in the gazetted version of the final PSP and exhibited version of the ICP reflects the Panel's recommendations.

4 OVERVIEW OF THE ICP SYSTEM

An ICP is a statutory document incorporated in a planning scheme for the purposes of imposing infrastructure contributions to fund the provision of works, services or facilities (infrastructure) and securing land for public purposes.

The ICP system came into effect in October 2016 and was amended in July 2018 by the Planning & Environment Amendment (Public Land Contributions) Act 2018 (PLC Act). The matters that must be specified in an ICP are set out in Section 46GI(1) of the PE Act.

An infrastructure contribution may consist of either or both of the following two components:

- **Monetary component** – a monetary levy that may be used to fund the provision of works, services, facilities and plan preparation costs. The monetary construction component is based on standard levies that are pre-set for particular classes of development. If required, the system also allows for a supplementary levy in addition to the standard levy where certain criteria are met. The levy may consist of a standard levy, a supplementary levy or both.
- **Land component** – The land component of an ICP consists of inner public purpose land (IPPL), outer public purpose land (OPPL) and any land equalisation amount. Inner public purpose land is the land specified in the ICP as land to be set aside for public purposes (such as land for roads, parks and community facilities) and must be vested in, transferred to or acquired by the collecting agency and/or development agency.

4.1 Land Equalisation and Land Credit Amounts

Landowners who contribute a greater percentage of their land for public purposes are compensated by the landowners who contribute a lesser percentage of their land for public purposes. This is done by requiring each landowner who 'under provides' inner public purpose land to pay a land equalisation amount.

Land equalisation funds the payment of a land credit amounts to each landowner that 'over provides' inner public purpose land and the acquisition of any outer public purpose land.

The PLC Act prescribes the equalisation method. The planning authority calculates the **ICP land contribution percentage**, which is the average amount of land that landowners within an ICP area are required to provide for the provision of infrastructure. It is calculated by dividing the total amount of land required for infrastructure by the total 'contribution land area' as defined in Section 46GA of the Planning and Environment Act.

The **parcel contribution percentage** for each individual parcel within the ICP is then compared to the ICP land contribution percentage:

- Parcels providing under the average percentage pay a '**land equalisation amount**' (in recognition of their lower contribution). The land equalisation rate (across the ICP area) is calculated by the sum of the land credit amounts, divided by the number of hectares of underproviding land. The land equalisation amount (per parcel) is then calculated by the land equalisation rate multiplied by the number of hectares of underproviding land.
- Parcels providing above the average receive a '**land credit amount**' (in recognition of their greater contribution and greater loss of developable area). The land credit amount (per parcel) is calculated by establishing a per hectare rate for all public purpose land on that parcel, then multiplying the rate against the number of hectares that are being overprovided

Figure 6 below provides a diagrammatic summary of the equalisation method.

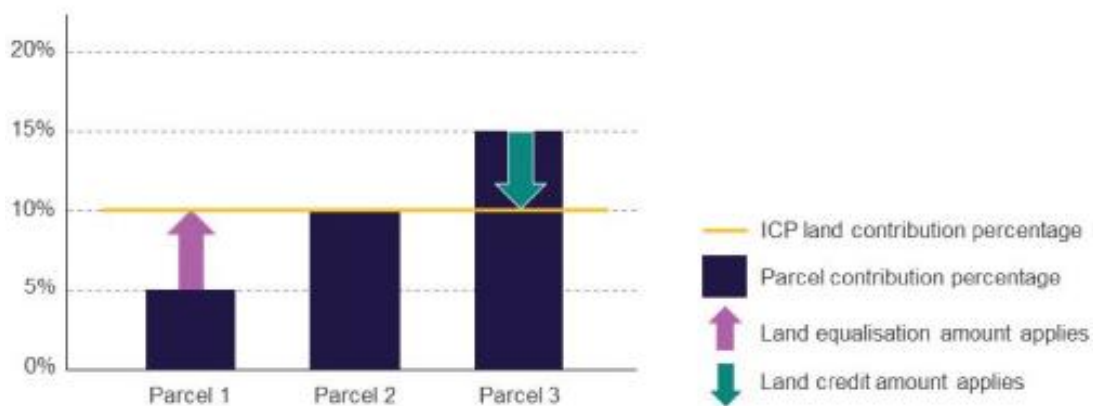


Figure 2. Calculation of Land Equalisation and Land Credit Amounts (Source: Infrastructure Contribution Plan Guidelines - DWELP, 2019)

4.2 Payment of Land Credit Amounts (Section 5.8 of the ICP)

Section 5.8 of the ICP states:

“A person is entitled to be paid the land credit amount specified in this ICP in relation to a parcel of if:

- *On development of that parcel the person must, in accordance with section 46GV(4) of the Act, provide inner public purpose land forming part of that parcel to the collecting agency or a development agency; and*
- *The parcel contribution percentage of the parcel of land to be developed is more than the ICP land contribution percentage for that class of development*

The land credit amount is to be paid by the Collecting Agency to the landowner at a time to be agreed, but not before lodgement of a subdivision plan. This may be formalised in a section 173 agreement if the Collecting Agency and landowner agree”

In this instance, the Collecting Agency is the Mitchell Shire Council.

The amount the landowner receives is based on the estimated value of the inner public purpose land in their parcel of land. The methods for calculating the land equalisation amounts and land credit amounts are specified in the Ministerial Direction, as are the methods for estimating the values of inner public purpose land and outer public purpose.

Under section 22(5)(a) of the PE Act, a planning authority must not consider a submission to a planning scheme amendment that requests a change to any land credit amount or land equalisation amount. However, the estimated value of inner public purpose land (on which the value of the land credit amount is based) can be disputed through a separate process.

The payment of land credit amounts is addressed under Section 46GW of the PE Act. The Act does not specify when a land credit amount must be paid after a permit is issued to develop land. The timing of the land credit amount can be negotiated between the collecting agency and the landowner. If there is no agreement, a land credit amount should be paid to the landowner at the time the landowner provides the inner public purpose land in accordance with the PE Act.

5 SUMMARY OF SUBMISSIONS

Five submissions were received, which have been analysed and coded into 14 individual submission points. A full list of all submission points, including the VPA's response and the status of the submission point is provided in **Appendix 1**.

The following sections provide a summary of the matters raised in each submission and the VPA's response.

5.1 Submission 1 - Mitchell Shire Council

Mitchell Shire Council (the Council) submitted their support for the Amendment as exhibited but requested that the road lengths specified in Table 5 – Standard Levy Transport Construction Projects Table 6 – Supplementary Levy Transport Construction Projects be deleted. The Council submitted that the specified road lengths were incorrect and were not required to be provided in the ICP.

In response to their submission, the VPA have advised the Council that the inclusion of the road lengths follows a recent Panel recommendation that they be detailed in the ICP (See Panel Report Melton Planning Scheme Amendment C201). The recommendation has been supported and the inclusion of road lengths now form part of the standard VPA template for ICP documents.

The VPA has also reviewed all of the road lengths specified in the ICP and no further errors have been identified. The VPA considers it likely that the discrepancy in road lengths referred to by the Council is a result of several intersections included in the ICP, particularly in the case of RD-02 (Pattersons Road). The legs of intersections are not included in the calculation of road lengths.

The Council have confirmed that all matters raised in their submission have been resolved (see **Appendix 1**).

5.2 Submitter 2 - CDH Properties

CDH Properties owns a parcel of land that has been identified as being required to make a 100% parcel contribution for IPPL. The IPPL requirement relates to the provision SR-01, an active reserve planned for the corner of Lithgow Street and Patterson Street. The strategic merits of SR-01 have been deliberated previously at the hearing for the Beveridge Central PSP and were confirmed by the Panel at that time. The positions detailed in the PSP Panel report regarding SR-01 are noted in Section 3.3 of this report.

CDH Properties submits that the payment of the land credit amount for the parcel should be expedited on the basis that, because it is required for IPPL in its entirety, it cannot be developed and is effectively unsalable.

The VPA notes that Table 7 of the ICP specifies that SR-01 is anticipated to be delivered in the short (0-5 years) to medium term (5-10 years).

As noted in section 4.2, in this case the collecting agency responsible for the payment of land credit amounts is the Council. In a letter dated 16 December 2019 (see **Appendix 4**) the Council advised CDH properties that there is no immediate need for SR-01 at this time given the early stage of development within Beveridge Central, and that the expected timing for delivery is short to medium term.

As an alternative to the payment of the required land credit amount, the CDH Properties submission requests a Public Acquisition Overlay (PAO) be applied to the affected parcel. The VPA notes that, if a PAO were to be applied, the acquiring authority would be the Council. The VPA understands that the Council do not support the use of a PAO in this instance and consider the ICP to be the appropriate mechanism for acquiring land within the precinct.

Given that the matters raised in CDH Properties submission relate to the timing of payment of land credit amounts or alternatives methods of acquisition, and that no aspect of the exhibited ICP or planning ordinance is in dispute, the VPA considers CDH Properties' submission to be outside the scope of the current Amendment.

5.3 Submitter 3 - Melbourne Water

Melbourne Water submitted that they have no concerns with the ICP and supporting documentation as exhibited.

The VPA considers Melbourne Water's submission to be resolved.

5.4 Submitter 4 - Private Submitter

Submitter 4 made a submission noting an apparent discrepancy between Table 11 – Public Purpose Land Credit and Equalisation Amounts, and Appendix 3 – Transport Designs. Specifically, the submitter noted that the exhibited version of Table 11 does not include any non-arterial transport related IPPL requirements, however, the transport designs indicate that a small amount of land will be required.

In response to the submission, the VPA has reviewed the ICP and confirms that a small amount IPPL will be required to facilitate the proposed road and intersection cross sections. The VPA proposes to amend the relevant tables to reflect the correct IPPL requirements and has advised the affected landowners by letter (described in full in Section 6.1.3.).

The VPA considers all matters raised in submission 4 to be resolved.

5.5 Submitter 5 - Department of Transport

The Department of Transport (DoT) submitted that they were generally supportive of the amendment as exhibited but sought additional clarification regarding several matters.

The VPA have since met with DoT to discuss their submission and provide the requested clarification. As a result of discussions, changes are proposed to the ICP to include funding for a section of RD-05 that is contained within the PAO for the Cameron's Lane interchange. The proposed changes are described further in Section 6.1.2 below.

DoT have confirmed that all the matters raised in their submission are now resolved (see **Appendix 1**).

6 PROPOSED CHANGES TO THE ICP

The following sections provide a summary of the proposed changes to the ICP in response to submissions received. A tracked changes version of all proposed changes to the ICP is provided in **Appendix 2**.

6.1.1 Updates to Indexation

The exhibited version ICP was based on the 2019/20 standard levy rate, which is now required to be updated.

The tracked change version of the document provided in **Appendix 2** includes adjustments to incorporate the 2020/21 standard levy.

6.1.2 Extension of RD-05

The exhibited version of the ICP indicates that construction project RD-05 (Murray Street) is to be funded for an extent of 364.63m spanning between Lithgow street and a Public Acquisition Overlay (PAO) that applies to the land to support the future Camerons Lane interchange. Ordinarily local roads would be constructed as developer works, however, in this instance RD-05 is included in the ICP due to the fragmented land ownership.

In response to submissions, the VPA proposes to amend RD-05 to include funding for the construction of the full length of the street to ensure contributions toward a complete connection to Beveridge North West. The proposed change will extend RD-05 to include 56m of road within the PAO boundary, requiring an additional levy of \$356,031.79.

The VPA considers that it is appropriate for the ICP to fund this section of road as the nexus for the work is development within the Beveridge Central PSP.

6.1.3 Corrections to Inner Public Purpose Land Requirements

The exhibited version of the ICP indicates that there is Public Purpose Land take requirements associated with non-arterial road and intersection widening.

In response to submissions, the VPA has reviewed the Public Purpose Land requirements indicated in Tables 11 and 17 of the ICP against the indicative transport designs provided in Appendix 3. The review found that an additional 0.49ha of Public Purpose Land across 30 parcels is required to implement the transport designs. The additional land take required for each parcel ranges from 0.0004ha (Parcel 29.58) to 0.1184 (Parcel 51). A full list of the affected parcels and additional land take is provided in Table 2 below.

The VPA proposes to update the relevant tables and make consequential amendments as required to reflect the additional IPPL requirements. The proposed amendments will not result in any new parcels providing a land contribution greater than the ICP land contribution percentage.

The VPA has contacted all of the affected landowners by letter to inform them of the proposed changes. No responses have been received to date.

No other parties have made submissions relating to this matter.

6.1.4 Consequential amendments

As a result of the proposed changes described above, consequential amendments are required throughout several of the tables contained in the ICP.

Table 2. Corrections to Non-Arterial Transport Inner Public Purpose Land Requirements.

Parcel ID	IPPL for Non-Arterial Road/Intersection Widening	
	Exhibited (ha)	Proposed (Ha)
1	0	0.0139
2	0	0.0142
3	0	0.0123
4	0	0.0131
5	0	0.0124
6	0	0.0125
7	0	0.0152
8	0	0.0180
9	0	0.0209
10	0	0.0238
11	0	0.0186
12	0	0.0067
29.58	0	0.0004
29.7	0	0.0005
38	0	0.0005
41	0	0.0012
46	0	0.0006
47	0	0.0039
48	0	0.0074
49	0	0.0109
50	0	0.0180
51	0	0.1184
56	0	0.0009
61	0	0.0005
71	0	0.0013
72	0	0.0586
73	0	0.0404
74	0	0.0265
75	0	0.0130
76	0	0.0016
30 Parcels	0ha	0.49ha

7 RESPONSE TO SUBMISSIONS (PART B)

7.1 CDH Properties submission

As discussed, CDH Properties owns a parcel of land (Parcel 34) that has been identified as being required to make a 100% contribution for IPPL in relation to SR-01, an active reserve planned for the corner of Lithgow Street and Patterson Street.

The CDH Properties submission is currently unresolved. CDH Properties submit to the Panel:

- a) there is no power under Part 3AB of the PE Act to include Parcel 34 as 'contribution land' in the ICP because the land cannot be developed; or
- b) if there is power to include the land as contribution land, that power should not be exercised; or
- c) if the land is to be included as contribution land in the ICP there should be no reference to the ICP land contribution percentage; and
- d) the ICP should specify that SR-01 must be acquired within 2 years of the approval date of C145.

At the outset the VPA notes the submission at Section 2.8 which provides:

"...Mr & Mrs Theodoulou requested the Victorian Planning Authority and/or the Council, to purchase parcel 34 on hardship grounds. The VGSO on behalf of the VPA said that it was nothing to do with them and they should approach Mitchell Shire Council".

The clear tenor of the submission made, which needless to say, did not quote directly from the letter sent on behalf of the VPA, is that the VPA has sought to 'pass the buck' with regard to the purchase of the land. The VPA rejects that submission.

The VPA is neither the collecting nor development agency with regard to the ICP. The VPA has no power to acquire the land or to own land. It is not within the scope of the VPA's functions to deliver land for a local sports reserve. The CDH Properties submission has failed to identify any power pursuant to which the VPA is capable of acceding to their request that the VPA purchase the land.

7.2 Matters outside the scope of the Panel's consideration

The VPA regards a number of aspects of the CDH Properties submission to the Amendment as outside the scope of the consideration of the Panel. This includes submissions which take issue with the operation of the ICP system more broadly and matters which were within the scope of the panel which considered and made recommendations about the PSP (the **PSP Panel**).

Section 21 of the Planning and Environment Act 1987, relevantly provides:

Section 21 – Who may make a submission?

- (1) *Any person may make a submission to the planning authority about an amendment of which notice has been given under section 19 or in accordance with a condition imposed under section 20(2)(b). [emphasis added]*

Accordingly, the role of a panel is to consider all submissions made about the amendment in question, or rather, submissions within scope.

Submissions that take issue with the ICP system more broadly

The VPA submits that any submission that seeks to take issue with the ICP system more broadly, including the operation of the relevant legislation or the Ministerial Direction is outside the scope of the Panel. It is not

the role of the Panel to inquire more broadly into the operation of the ICP system in the manner of an Advisory Committee.

To the extent that submission made are related to the operation of the relevant legislation or the Ministerial Direction, the VPA submits the scope of the consideration of the Panel is limited to whether the ICP has been developed in accordance with relevant requirements.

The VPA is committed to ongoing consultation and review of the operation of the ICP system, including through a current Ministerial review, however this is properly outside of the planning scheme amendment process.

In January 2019 an ICP Advisory Group was established, co-chaired by the VPA and DELWP and comprised of the CEOs of the growth area councils and key industry groups ((Urban Development Institute of Australia (UDIA), Property Council Australia (PCA), the Housing Industry of Australia (HIA) and Victorian Planning & Environmental Law Association (VPLEA)). The ICP Advisory Group identified a number of early implementation issues with the ICP system including the land valuation methodology, clarification of how a supplementary levy is applied, ambiguity in the wording of the Ministerial Direction, early acquisition of land by councils, cash flow between the monetary levy and the land equalisation and credits and the potential impact of changing government policy.

Submissions that were properly before the PSP Panel

The Panel is not empowered to reinterrogate matters about which findings were made by the PSP Panel (and have now been properly incorporated into the Planning Scheme).

The role of the PSP Panel was to identify infrastructure required by the precinct from a strategic or development facilitation point of view in the Precinct Infrastructure Plan (PIP). The role of the ICP is to cost those items.

With regard to SR-01, submissions to the PSP Panel by CDH Properties raised issues related to:

- the need for the open space and/or that it would be better sited in a different location; and
- financial issues with regard to the personal hardship of landowners.

The status of the land as 'contribution land' was explored through the PSP process. The land is located in a strategically significant position within the Beveridge Central PSP area. During the PSP Panel, it was clear that 100% of the land was intended to be acquired to facilitate the development and delivery of SR-01. As the PSP did not propose that the land be provided via a public acquisition overlay (PAO), the PSP Panel considered the designation of the land as a sports field as public purpose land under the ICP framework. Under the ICP framework, public purpose land is provided and compensated via the land equalisation methodology.

CDH Properties did not make submissions to the PSP Panel requesting a PAO be applied to the land or contesting the ICP as the appropriate mechanism for the future acquisition of IPPL.

The PSP Panel report provides, on page 20:

The Panel does not doubt the impact of the location of the open space on the financial plans of the submitters. The issue for the Panel is balancing the personal hardship with public policy.

On the one hand, it is tempting to support submissions based on the heart felt submissions of individuals, if not simply because it would seem to solve an immediate problem. On the other hand, shifting areas of open space in response to such submissions runs the risk of undermining orderly planning and reduce strategic planning decisions to favour those who seek a particular financial outcome in place of what is the best 'on the ground' outcome.

Ultimately decisions about the location of different features in a growth area should be made on the basis of the long term benefits for the people who ultimately live in the area, and the ability to create attractive and functional local areas

It is noted that these comments of the PSP Panel regarding balancing personal hardship with public policy was made in the context of considering the location of SR-01, not the mechanism for the future acquisition of the land.

The need for SR-01, its nexus to the precinct and the merits of its location were the subject of submissions at the PSP Panel. The PSP Panel recommended the inclusion of SR-01 in the PSP, noted the merits of the revised location of the SR-01 and did not support relocating SR-01 to another location.

7.3 The power to designate the land as contribution land

An ICP can only be applied to land in a specified development setting, per Clause 7 of the Ministerial Direction. The land subject to the Beveridge Central PSP and ICP is located within the Metropolitan Greenfield Growth Areas development setting specified in Annexure 1 of the Ministerial Direction. Accordingly, the land cannot be developed 'as of right'. The development potential of the land is derived directly from the PSP.

The submissions on behalf of CDH Properties proceed on the basis that:

- a) the land cannot be developed; and
- b) accordingly, the land cannot properly be designated as contribution land under the ICP.

The VPA does not accept those submissions to be correct.

The land will clearly and obviously be developed pursuant to the PSP and the ICP. It will be developed as a sports reserve accommodating a pavilion, three soccer pitches, eight tennis courts, car parking and landscaping. Neither the relevant legislation nor the Ministerial Direction prevent land being identified as contribution land simply because it has not been identified as being intended to be developed for residential, commercial or industrial purposes.

The submission made on behalf of CDH Properties at paragraph 6.16 provides:

"...the ICP identifies classes of development to which the ICP applies as residential and commercial and industrial. All of the land is classified as residential. Of course, this is incorrect. Parcel 34 cannot be developed for residential purposes.

The submission confuses the class of the development of land with the applied zoning. Parcel 34 is not zoned for residential purposes, however the need for SR-01 is generated entirely by residential development, therefore 100% of that inner public purpose land is attributed to the residential class of development (as with all local parks and community centres).

Pursuant to Section 46 GA of the PE Act, 'contribution land' is identified as:

contribution land means the land in the ICP plan area of an infrastructure contributions plan in respect of which an infrastructure contribution is to be imposed under the plan if any of that land is developed;

Section 3(1) of the PE Act provides:

development includes—

- (a) the construction or exterior alteration or exterior decoration of a building; and
- (b) the demolition or removal of a building or works; and

- (c) *the construction or carrying out of works; and*
 - (d) *the subdivision or consolidation of land, including buildings or airspace; and*
 - (e) *the placing or relocation of a building or works on land; and*
 - (f) *the construction or putting up for display of signs or hoardings;*
- [emphasis added]

...

works includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil;

Pursuant to the PSP and the proposed ICP, 100% of the land is proposed to be developed with SR-01.

The Ministerial Direction defines inner public purpose land as '*land in the ICP plan area of an infrastructure contributions plan that is specified in the plan as land to be set aside for public purposes*'. Table 7 of the Ministerial Direction provides public open space is an allowable public purpose item for inner public purpose land:

27. Table 7 lists the allowable public purposes for which public purpose land may be used or developed.

Table 7: Allowable Public purposes

Allowable Public Purpose	Permitted use or development of public purpose land
Public open space	Local open space including playgrounds, lighting, car parking, internal roads, bicycle paths, pedestrian paths, seating, landscaping, BBQ and picnic facilities.

The land will clearly be the subject of development pursuant to the PSP and accords with the definition of inner public purpose land pursuant to the Ministerial Direction. Accordingly, it is also capable of being classified as 'contribution land' pursuant to the ICP.

Section 46GC of the PE Act provides the following meaning of 'infrastructure contribution':

- (1) An **infrastructure contribution** is a contribution imposed under an infrastructure contributions plan in relation to the development of land in the ICP plan area of the plan.
- (2) An infrastructure contribution may consist of either or both of the following—
 - (a) a monetary component;
 - (b) a land component.

Accordingly, it is expressly contemplated by the PE Act that an infrastructure contribution may consist only of a land component.

Neither the relevant legislation nor the Ministerial Direction impose an upper limit on the parcel contribution percentage that may be imposed, or distinguish between circumstances where the totality of a parcel is required for inner public purpose land, as opposed to only a portion of the land parcel. Rather, that the contribution above the average ICP parcel contribution be 'equalised' through the payment of a land credit amount at the time of acquisition.

It must be borne in mind that the Beveridge Central ICP is tasked with facilitating the delivery of infrastructure in the context of a land area that has already been the subject of significant fragmentation in term of land ownership. To attempt to interpret the legislation as only facilitating the contribution of land in circumstances where only a portion of the land is required and the remainder may be developed as either residential, commercial or industrial land, is to result in a circumstance whereby PSP and ICP areas that are significantly fragmented are unable to deliver large areas of public open space.

Further, the nature of the submissions made suggest that any amount of land to be utilised for residential, industrial or commercial development would be sufficient to satisfy notions of fairness (no matter how small that area is) as that land would then be developable by the land owner for those purposes.

The VPA submits that neither the relevant legislation nor the Ministerial Direction support such an interpretation of the ICP system.

7.4 The land contribution percentage

The CDH Properties submission seeks that if the land is to be included as contribution land in the ICP there should be no reference to the land contribution percentage, and accordingly the land credit amount should be the full value of the land.

The ICP proposes that Landowners are compensated in the manner prescribed by the Ministerial Direction. Land is valued at a rate that assumes ‘the subject land is zoned for an urban purpose and valued at its unencumbered, highest-and-best-use within this context’.

Parcel 34 is required to contribute a land component that is above the ICP land contribution percentage and accordingly, CDH Properties will be paid a Land Credit amount by the collecting agency for that portion of the parcel that is above the ICP land contribution percentage.

The method for calculating land credit amounts is set out in Clause 34 of Schedule 1 of the Ministerial Direction:

Method for calculating land credit amounts

34. *For each parcel of land for which a land credit amount must be paid the amount is calculated by applying the \$/hectare rate for that parcel determined by clause 31 to the area (in hectares) of inner public purpose land within the parcel that is above the ICP land contribution percentage.*

The amount specified in the ICP is accurate in the context of the methodology outlined within the Ministerial Direction.

7.5 Timing of acquisition of the land

The submissions of CHD Properties seek that ICP specify that SR-01 must be acquired within 2 years of the approval date of C145. The timing of acquisition of land is subject to need and the Council’s works program. The ICP specifies that SR-01 is anticipated to be delivered in the short-medium term.

7.6 Conclusion

The VPA submits the Beveridge Central ICP has been appropriately developed in accordance with the relevant legislation and the Ministerial Direction, and is consistent with the outcomes sought by the PSP.

8 LIST OF APPENDICIES

- 8.1 Appendix 1 - Submission response table**
- 8.2 Appendix 2 - Tracked changes version of ICP**
- 8.3 Appendix 3 - Tracked changes version of ordinance**
- 8.4 Appendix 4 – Letter from Mitchell Shire Council to CDH Properties**