

Mitchell Amendment C145 Beveridge Central ICP

Addendum to Part B Submission



20 November 2020

Introduction

This addendum has been prepared to provide a response to Mitchell Shire Council's (**Council**) 'practical solution', as proposed in its submission to the Panel dated 2 October 2020 (**Proposal**).

1.1 Whether the Infrastructure Contributions Plan (ICP) can be applied to Parcel 34 and the site is contribution land

CDH Properties submits to the Panel that, inter alia:

- there is no power under Part 3AB of the *Planning and Environment Act 1987* (Vic) (**PE Act**) to include Parcel 34 as 'contribution land' in the ICP because the land cannot be developed;
- an infrastructure contribution cannot be imposed on the land by virtue of section 46GC of the PE Act; and
- Parcels 30, 31 and 34 must not be designated 'Inner Public Purpose Land' (**IPPL**).

Council's submissions provide:

- Parcel 34 is contribution land because it is IPPL; and
- therefore, Parcel 34 has been properly designated as contribution land under the ICP and no Public Acquisition Overlay (**PAO**) should be applied.

Council does not support the use of a PAO with regard to Parcel 34, and considers the ICP to be the appropriate mechanism for acquiring land within the precinct.

In response to those submissions, the Victorian Planning Authority (VPA) makes the following observations, consistent with its original Part A & B submission dated 29 September 2020:

- Section 46GA of the PE Act and the *Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans* (**Ministerial Direction**) defines IPPL as '*land in the ICP plan area of an infrastructure contributions plan that is specified in that plan as land to be set aside for public purposes*'.
- SR-01, an active reserve planned for the corner of Lithgow Street and Patterson Street, is an allowable item under the Ministerial Direction.
- Under section 46GE of the PE Act, the land component of an infrastructure contribution in relation to a parcel of land in an ICP plan area is '*any inner public purpose land that forms part of the parcel of land*'.
- An ICP can be applied to an area, therefore defined as an 'ICP plan area', and is the appropriate planning mechanism in this instance.
- Parcel 34 has been correctly identified as contribution land.

1.2 Whether the provisions of the PE Act allow a landowner to trigger the payment of a land credit amount

Statutory provisions concerning ICP land

Section 46GG of the PE Act relevantly provides:

... a planning scheme may incorporate one or more infrastructure contributions plans for the purposes of imposing infrastructure contributions to fund—

(a) the provision of works, services or facilities—

(i) in the ICP plan area; and

(ii) outside of the ICP plan area, if the works, services or facilities are essential to, and the need for which is generated by, the development of land in the ICP plan area; and

(b) the provision of land for public purposes—

(i) in the ICP plan area; and

(ii) outside of the ICP plan area that is essential to, and the need for which is generated by, the development of land in the ICP plan area;

....

Sections 46GA to 46GF of the PE Act sets out detailed definitions for many of the terms used in relation to ICPs. These definitions include:

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;

ICP plan area means the area specified in an infrastructure contributions plan as the area to which the plan applies;

inner public purpose land means land in the ICP plan area of an infrastructure contributions plan that is specified in that plan as land to be set aside for public purposes;

land credit amount, in relation to a parcel of land in an ICP plan area, means the amount specified in an approved infrastructure contributions plan as the land credit amount that relates to that parcel of land;

public purpose land means any inner public purpose land or any outer public purpose land specified in the infrastructure contributions plan, or both;

An **ICP land contribution percentage** is the total area of the public purpose land specified in an infrastructure contributions plan divided by the total area of the contribution land in the ICP plan area of the plan, expressed as a percentage, determined in respect of each class of development of land specified in the plan.

The **land component** of an infrastructure contribution in relation to a parcel of land in an ICP plan area is—

- (a) any inner public purpose land that forms part of the parcel of land; and
- (b) any land equalisation amount in relation to the parcel of land.

A **land equalisation amount** is an amount—

- (a) specified in an approved infrastructure contributions plan as the land equalisation amount in relation to a parcel of land in the ICP plan area;
- (b) that is payable to the collecting agency on the development of that parcel of land if the parcel contribution percentage of the land is less than the ICP land contribution percentage for that class of development.

Section 46GI of the PE Act provides for the content of an ICP. This includes that an infrastructure contributions plan must:

- (a) *specify the ICP plan area; and*
- (b) *specify the contribution land in the ICP plan area; and*
- (c) *specify any inner public purpose land to be provided under the plan (including any inner public purpose land forming part of each parcel of land in the ICP plan area);*
- (d) *specify any outer public purpose land to be funded through the plan and the development agency responsible for acquiring that land; and*
- (e) *specify the types of public purposes for which inner public purpose land and outer public purpose land may be used and developed; and*
- (f) *specify the classes of development of land in relation to which an infrastructure contribution is to be imposed under the plan; and*
- (g) *specify, for each class of development, the ICP land contribution percentage; and*
- (h) *specify the parcel contribution percentage for each parcel of land in the ICP plan area; and*
- (i) *specify the land credit amount or land equalisation amount in respect of each parcel of land in the ICP plan area; and*

- (j) *specify the timing and method of adjustment to be applied to the land credit amounts and land equalisation amounts specified in the plan, including by way of indexation or any other method of adjustment; and*
- (k) *specify the plan preparation costs, works, services or facilities to be funded through the plan; and*
- (l) *set out the staging of the provision of the works, services or facilities or public purpose land specified in the plan; and*
- (m) *relate the need for the plan preparation costs, works, services or facilities to be funded through the plan to the proposed development of land in the ICP plan area; and*
- (n) *relate the need for the provision of public purpose land under the plan to the proposed development of land in the ICP plan area; and*
- (o) *specify the plan preparation costs, works, services or facilities to be funded from a standard levy; and*
- (p) *specify a standard levy rate for each class of development of land according to the type of land to be developed; and*
- (q) *specify the method and timing of annual indexation to be applied to a standard levy rate; and*
- (r) *specify the following in relation to any supplementary levy imposed under the plan—*
 - (i) *the works, services or facilities to be funded from the supplementary levy;*
 - (ii) *the amount of the plan preparation costs and the estimated cost of each of the works, services or facilities to be funded from the supplementary levy;*
 - (iii) *the method and timing of annual indexation to be applied to the estimated cost of each of the works, services or facilities to be funded from the supplementary levy;*
 - (iv) *the proportion of the total of the costs referred to in subparagraph (ii) to be funded from the supplementary levy; and*
- (s) *specify the supplementary levy rate for each class of development of land according to each type of land to be developed; and*
- (t) *specify a Minister, public authority or municipal council as the entity that is the collecting agency for the purposes of this Part and the plan; and*
- (u) *specify a Minister, public authority or municipal council as an entity that is a development agency for the purposes of this Part and the plan and the works, services, facilities or public purpose land for which the development agency is responsible under the plan; and*
- (v) *provide for the procedures, including the timing, for the collection of an infrastructure contribution; and*
- (w) *include any other matter required to be included in the plan by a Minister's direction.*

Section 46GJ of the PE Act provides for the ministerial directions in relation to the preparation and content of ICPs. Section 46 GK notes:

A planning authority must comply with a Minister's direction that applies to the authority.

The Minister has made a direction under section 46GJ of the PE Act. The direction includes provision for the valuation of land and calculation of land credits. Clause 26 of the Ministerial Direction provides:

If an infrastructure contributions plan imposes an infrastructure contribution that includes a land component, the land credit amount or the land equalisation amount in respect of each parcel of land in the ICP plan area must be calculated in accordance with the method specified in the applicable Annexure to this Direction.

Clause 29 of the Ministerial Direction provides:

The Minister may grant an exemption from the need to comply with some or all of this Direction in relation to a particular infrastructure contributions plan. An exemption may be granted subject to conditions.

Annexure 1 to the Ministerial Direction applies to metropolitan greenfield growth areas.

Clause 31 of the Annexure to the Ministerial Direction makes provision for the method for calculating the estimated value of IPPL as follows:

For each parcel of land for which an estimate of inner public purpose land value report is to be prepared, the valuer engaged by the planning authority must:

- (a) *determine the estimate of value of all the inner public purpose land identified in the parcel using the following assumptions:*
 - (i) *the subject land is zoned for an urban purpose and valued at its unencumbered, highest-and-best use within this context;*
 - (ii) *land in and around town centres identified in the relevant Precinct Structure Plan or equivalent strategic plan will be assumed to be zoned for residential purposes;*
 - (iii) *the subject land is readily serviceable and accessible by road;*
 - (iv) *the subject land is regular in shape with two existing road frontages and any GAIC (if within the GAIC area) has been paid and any infrastructure contribution has been provided; and*
 - (v) *the subject land is at the development front and market demand exists.*
- (b) *calculate a \$/hectare rate for all the inner public purpose land identified in the parcel.*

Clause 34 of the annexure provides:

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.

Division 4 of Part 3AB of the of the PE Act sets out the valuation and dispute resolution process for IPPL. In substance, it creates a process for the consideration of land value that may ultimately involve a determination by the Valuer General.

Division 5 of Part 3AB of the of the PE Act, which deals with the imposition and collection of the infrastructure contribution, is central to the present issue.

46GV Imposition of infrastructure contribution

- (1) *This section applies if an approved infrastructure contributions plan provides that an infrastructure contribution is imposed in relation to the development of land in the ICP plan area of that plan.*
- (2) *An infrastructure contribution is imposed in relation to the development of any of the land at the earlier time at which a person (the applicant) makes an application for either of the following—*
 - (a) *a permit under this Act to develop the land;*
 - (b) *a building permit under the Building Act 1993 to carry out building work on the land.*
- (3) *The applicant must pay the monetary component and any land equalisation amount of the infrastructure contribution to the collecting agency in a manner specified by the collecting agency—*
 - (a) *before the earliest of the following—*
 - (i) *if the development of the land involves a plan under the Subdivision Act 1988—the issue of the statement of compliance in relation to that plan;*
 - (ii) *if the development of the land requires a building permit—the issue of the building permit;*
 - (iii) *a time specified in the approved infrastructure contributions plan; or*
 - (b) *before a time specified in an agreement entered into by the collecting agency and the applicant.*
- (4) *Subject to subsection (8), if any land component of the infrastructure contribution includes any inner public purpose land, the applicant must ensure that the inner public purpose land is provided in accordance with subsections (5) and (6) to—*
 - (a) *in the case of inner public purpose land required for a road— the development agency responsible for the use and development of the land;*

- (b) in any other case—the collecting agency.
- (5) The applicant must provide the inner public purpose land under subsection (4) by ensuring that—
 - (a) any inner public purpose land for a road is set aside on a plan under the Subdivision Act 1988 to vest in the development agency responsible for the use and development of that land; and
 - (b) any other inner public purpose land is set aside on a plan under the Subdivision Act 1988 to vest in the collecting agency.
- (6) The applicant must lodge any plan referred to in subsection (5) for registration under section 22 of the Subdivision Act 1988 within a time specified in a permit under this Act or an agreement entered into by the collecting agency and the applicant (as the case requires).
- (7) Without limiting section 62, if the applicant applies for a permit under this Act to develop the land in the ICP plan area, the responsible authority must impose the requirements set out in subsections (3) and (4) as conditions on that permit.
- (8) If any part of the inner public purpose land required to be provided to a development agency or the collecting agency under subsection (4) is acquired by that development agency or collecting agency before the time that it is required to be provided under this section, that part of the inner public purpose land is taken to have been provided under subsection (4) at the time of the acquisition of the land.
- (9) The collecting agency may require the payment of a monetary component or the provision of the land component of an infrastructure contribution under this section to be secured to its satisfaction.

46GW Payment of land credit amounts

- (1) This section applies if on development of a parcel of land in the ICP plan area of an approved infrastructure contributions plan—
 - (a) a person must, in accordance with section 46GV(4), provide inner public purpose land forming part of that parcel of land to the collecting agency or a development agency; and
 - (b) 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.
- (2) The person is entitled to be paid the land credit amount in relation to the parcel of land by the collecting agency.

Notes

- 1 The collecting agency must pay the land credit amount to the person under section 46GZ(7).
- 2 The method for calculating the land credit amount is specified in a Minister's direction applying to the approved infrastructure contributions plan.

46GY Responsibilities of the collecting agency to keep proper accounts and records

- (1) The collecting agency under an approved infrastructure contributions plan must keep proper and separate accounts and records of the following—
 - (a) in relation to any monetary component—
 - (i) any monetary component paid to the collecting agency; and
 - (ii) any monetary component, the whole or part of which is forwarded to a planning authority or to a development agency by the collecting agency;
 - (b) in relation to any land component—
 - (i) any land equalisation amount paid to the collecting agency; and
 - (ii) any land equalisation amount, the whole or part of which is—
 - (A) expended by the collecting agency; or
 - (B) forwarded to a development agency by the collecting agency; and
 - (iii) any inner public purpose land that is vested in the collecting agency under the Subdivision Act 1988; and

- (iv) *any inner public purpose land that is acquired by the collecting agency before the time it is required to be provided to the collecting agency under section 46GV(4); and*
- (v) *any inner public purpose land referred to in subparagraph (iii) or (iv) that is transferred to a development agency by the collecting agency;*
- (c) *any land credit amount paid to a person by the collecting agency.*

46GZ Other responsibilities of the collecting agency

- (1) *This section applies to the collecting agency under an approved infrastructure contributions plan, whether or not the collecting agency is also a development agency under that plan.*
- (2) *The collecting agency to which a monetary component is paid must forward any part of the monetary component that is imposed for—*
 - (a) *plan preparation costs—to the planning authority that incurred those costs, unless the agency is that planning authority; and*
 - (b) *the provision of works, services or facilities—to the development agency that is specified in the plan as responsible for those works, services or facilities.*
- (3) *If the collecting agency is not a municipal council, the collecting agency must pay into the Consolidated Fund any part of a monetary component that is not forwarded to a planning authority or a development agency under subsection (2).*
- (4) *The collecting agency must use any land equalisation amounts that are paid to the collecting agency to pay land credit amounts under subsection (7), except any part of those amounts that are to be forwarded to a development agency under subsection (5).*
- (5) *The collecting agency must forward any part of a land equalisation amount required for the acquisition of outer public purpose land by a development agency specified in the approved infrastructure contributions plan to that development agency.*
- (6) *Subsections (2)(b) and (5) do not apply to the collecting agency if the collecting agency is the relevant development agency.*
- (7) *The collecting agency must pay to each person who must provide an infrastructure contribution under the approved infrastructure contributions plan any land credit amount to which the person is entitled under section 46GW.*
- (8) *If the collecting agency is not a municipal council, the collecting agency must pay into the Consolidated Fund any land equalisation amounts that are not immediately used by the collecting agency to pay land credit amounts under subsection (7).*
- (9) *If any inner public purpose land is vested in the collecting agency under the **Subdivision Act 1988** or is acquired by the collecting agency before the time it is required to be provided to the collecting agency under section 46GV(4), the collecting agency must transfer the estate in fee simple in the land to the development agency specified in the approved infrastructure contributions plan as responsible for the use and development of that land, unless the collecting agency is that development agency.*

By reason of section 46GW(2), a person to whom section 46GW(1) applies, is entitled to be paid the land credit amount in relation to the parcel of land by the collecting agency. This obligation is reinforced by section 46GZ(7). Section 46GW(1) applies if, on development of a parcel of land in the ICP plan area,

a person must, in accordance with section 46GV(4), provide inner public purpose land forming part of that parcel of land 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.

For section 46GW(1) to apply, the land does not need to be developed as such. Rather, section 46GW(1) applies if the obligation to provide IPPL arises 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.

By reason of section 46GV(2), an infrastructure contribution is imposed in relation to the development (*meaning* proposed development) of any of the land at the earlier time at which a person makes an application for either a planning permit to develop the land or a building permit to carry out building work on the land.

By reason of section 46GV(3), any monetary component (and any land equalisation amount) of the infrastructure contribution must be paid to the collecting agency before the earliest of the following:

- i if the development of the land involves a plan subdivision, the issue of a statement of compliance;
- ii if the development requires a building permit, the issue of the building permit;
- iii any time specified in the approved infrastructure contributions plan. The time for payment may be varied by an agreement with the collecting agency.

By reason of section 46GV(4) and (5), if any land component of the infrastructure contribution includes any IPPL, the applicant must ensure that the IPPL is provided by ensuring that the land is set aside on a plan under the *Subdivision Act 1988* (Vic) (**Subdivision Act**) to vest in the development agency or the collecting agency (as the case may be). By reason of section 46GV(6), the applicant must lodge this plan for registration under section 22 of the Subdivision Act within a time specified in a planning permit or an agreement entered into by the collecting agency and the applicant (as the case requires).

Can a landowner trigger payment of a credit?

If an ICP specifies that 100% of a person's land is IPPL and the collecting agency has no present desire to acquire the land, the owner could make an application for either a planning permit to develop the land or a building permit to carry out building work on the land. The mere making of such an application would have the consequence that an infrastructure contribution would then be imposed in relation to the development the subject of the application.

Where an ICP specifies that 100% of a person's land is IPPL, there will be no monetary component of the infrastructure contribution. However, in this case, upon the imposition of the infrastructure contribution, the person must ensure that the IPPL is *provided to* the development agency or collecting agency. This must be done by *ensuring* that the land is set aside on a plan under the Subdivision Act to vest in the development agency or collecting agency.

It is true that, if there is no planning permit for subdivision, the obligation to *ensure* that the land is set aside on a plan under the Subdivision Act does not have any deadline. However, the absence of any deadline does not mean that such a plan cannot be lodged for registration under section 22 of the Subdivision Act. Upon the registration of the plan, the person providing the IPPL to the agency is then entitled to be paid the land credit amount in relation to land by the collecting agency.

This analysis applies if there is an application for a planning permit for development that does not involve subdivision. In such a case, the responsible authority must impose the requirements set out in sections 46GV(3) and (4) as conditions on that permit. Hence, in this circumstance, it would be possible for a condition to be imposed specifying the time within which the plan under the Subdivision Act must be lodged for registration. However, the plan could be lodged for registration before such a deadline. Therefore, the VPA does not consider the power to specify such a condition as a power to defer the time for the collecting agency to pay a land credit.

This analysis also applies if the development in question only requires a building permit, such as a farm shed. In such a case, it would not be possible for a condition to be imposed specifying the time within which the plan under the Subdivision Act must be lodged for registration. Hence, the notion that the responsible authority can control the time the land contribution obligation arises (and the payment of land credit arises) does not derive support from the Act.

It is also noted that a plan under the Subdivision Act includes a plan under section 24A of that Act; and that, by reason of section 24A(1AB) of that Act, any plan under the Act may vest land in a council.

In summary:

- Section 46GV(2) of the PE Act identifies the obligation of an applicant to make an infrastructure contribution. However, the timing of a land credit amount is addressed under sections 46GV(4)–(6) which require either a permit to be granted or an agreement entered into.
- The VPA acknowledges that the timing of payment of a land credit amount would typically be negotiated between a landowner and the council, and included as a condition of a permit at the time of development, in line with sections 46GV(5)–(6).

- The VPA considers that sections 46GV(2)–(6) of the PE Act provides a mechanism for the landowner to trigger payment of a land credit amount, by way of an application for either a planning permit to develop the land or a building permit to carry out building work on the land.

In circumstances where an ICP requires 100% of a landholding and the collecting agency has no present desire to acquire the land, provided the landowner is able to trigger payment, no unfairness results. The VPA submits that the terms of the PE Act make clear that a landowner is capable of triggering compensation payments in this circumstance.

For completeness, the VPA will also address the other issues raised in submissions.

1.3 Whether the sports reserve meets the criteria for early works

Council makes the following submission (at paragraph 8.10):

It is open to the Panel to find that early delivery of SR-01 is essential, given the important facilities that it provides to the adjoining Mandalay Estate, which is substantially progressed in development and to the lots that will be completed within Beveridge Central in the short term that presently have no open space facilities.

For the financing of early delivery of the land for SR-01 to properly accord with the requirements of the Ministerial Direction, it must meet the requirements of Table 5. Table 5 provides:

Table 5: Other supplementary levy allowable items

Supplementary levy allowable item	Criteria for applying a supplementary levy
Other local works, services or facilities	<ul style="list-style-type: none"> • The item is essential to the development of the area; • The item is not listed as a standard levy allowable item; and • The Minister agrees to the item being funded from a supplementary levy.
Early delivery of works, services or facilities	<ul style="list-style-type: none"> • The early delivery of the item is essential to the orderly development of the area; and • The financing costs are: <ul style="list-style-type: none"> • incurred by the development agency responsible for providing the item; and • associated with the early delivery of the item which is listed as a standard levy allowable item or a supplementary levy allowable item; or • 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.
Intersections with council local roads	The intersection is on or adjoins land in fragmented ownership.

Accordingly, the early delivery of the SR-01 land must be determined to be '*essential to the orderly development of the area*'.

Community facilities are clearly and obviously essential infrastructure. The VPA takes no issue that the infrastructure identified within the PSP will be required. The issue lies in whether the early delivery of that infrastructure is essential.

The Council has made a submission that it is open to the Panel to conclude that the early delivery of SR-01 is essential. However, no further information has been provided beyond that submission. No evidence or documentation establishes that the early delivery of SR-01 is so required.

Consistent with the Part C submissions made by the VPA to the Panel hearing the Donnybrook-Woodstock ICP, for a Panel to make an informed judgement regarding the necessity for early delivery of an item, the Panel would need to be in a position to appreciate:

- when the item would ordinarily be required;
- when Council is reasonably expected to be able to deliver the item (without additional funds);

- why early delivery is essential – supported by robust analysis and evidence; and
- detailed evidence regarding borrowing costs to enable those costs to be scrutinised and, if appropriate, supported.

Community infrastructure needs were assessed through the development of the PSP (ASR Research, Beveridge Central Precinct Structure Plan Community Infrastructure Assessment, January 2013). SR-01 is identified in the ICP as being delivered in the short to medium term.

The ASR report notes that the demand for SR-01 is entirely attributable to the anticipated future population of Beveridge Central. Accordingly, 100% of the cost for the delivery of SR-01 has been allocated to the Beveridge Central ICP. The report also notes that the Mandalay development has a shortfall in open space, which has informed the spatial distribution of open space in Beveridge Central (with the result that SR-01 is located at the western edge of the precinct, close to Mandalay).

If early delivery of SR-01 is essential due to the open space requirements of land outside the ICP area, this raises issues related to the potential for external apportionment of the ICP item, including any proposed early delivery costs. No submissions were made to the PSP Panel to the effect that SR-01 was required, or was required early, to meet the open space needs of the adjoining Mandalay Estate.

The VPA submits that appropriate rigour must be applied to the imposition of all costs to be included within an ICP levy. This level of evidence and analysis has not been provided to the Panel in this case.

1.4 Whether an exemption to Table 5 of the Ministerial Direction should be sought to allow the cost of financing to be included as a supplementary item

The VPA does not consider an exemption is justified in this instance. The ICP guidelines published by DELWP provide guidance about the preparation, implementation and administration of an ICP, including high-level principles that underpin the system.

In terms of the principle of equity, the ICP guidelines state the following:

“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.”

The principles of the ICP system are therefore based on a shared obligation between developers and the council to plan for, and deliver, allowable items in line with growth in a timely manner.

Notwithstanding the ICP guidelines, Section 29 of the Ministerial Direction provides:

Exemption from compliance with this Direction

The Minister may grant an exemption from the need to comply with some or all of this Direction in relation to a particular infrastructure contributions plan. An exemption may be granted subject to conditions.

If, in considering the totality of the submissions made regarding the appropriateness of financing to support the early delivery of SR-01 -including issues of fairness to individual landowners and previous panel recommendations - the Panel considers the ICP should include financing for early delivery, it is open to the Panel to make recommendations that an exemption to the requirements of the Ministerial Direction be sought to facilitate financing of Council's early delivery of SR-01 in this instance.

1.5 Whether the land credit amount should be calculated for the entirety of the site or the portion above the ICP contribution percentage

CDH Properties submission provides:

- 11.10 *In the event that the Panel does not accept any of the above submissions, it is submitted that the land credit amount for the purpose of Table 11 should be 2.4813 hectares - \$4,342,275. And the ICP should oblige the Council to acquire the land within 2 years.*

Council's submission provides:

- 9.1.2 *the land credit amount for Parcel 34 has been correctly calculated in accordance with the Direction.*
- 9.2 *If the Panel agrees that, in the interests of fairness:*
- 9.2.1 *CDH should be paid a higher land credit amount – that can be achieved by calculating it differently within the Minister's discretion...*

The VPA submits that, consistent with its original Part A & B submission, the land credit amount has been correctly calculated in accordance with Clause 34 of the Ministerial Direction and the requirements of the PE Act. Further, Division 4 of Part 3AB of the PE Act sets out the valuation and dispute resolution regarding IPPL.

Section 25(5) of the PE Act provides:

A panel must not make a recommendation that an amendment be adopted with a change to—

- (a) *any land credit amount or land equalisation amount specified in an infrastructure contributions plan that is to be incorporated into a planning scheme by the amendment; or*
- (b) *any estimate of the value of public purpose land (within the meaning of Part 3AB) on which the amounts referred to in paragraph (a) are based.*

Section 46GJ of the PE Act provides for ministerial directions in relation to the preparation and content of ICPs. The land credit amount to which an owner is entitled is the land credit amount specified in the ICP.

The Ministerial Direction is clear that, where an ICP specifies that 100% of a person's land is IPPL, that land will need to be valued in accordance with Clause 31 of the annexure to the Ministerial Direction. In accordance with Clause 34, the land credit amount will only be that amount above the ICP land contribution percentage.

Section 46GK of the PE Act notes that a planning authority must comply with a Minister's direction that applies to the authority.

Submissions have been made to the Panel that this results in unfairness or inequity between landowners. However, the development of PSPs and ICPs is accompanied by an uplift in land value by virtue of associated rezoning of land for further intensification of use. Accordingly, even in circumstances where an individual landowner is not able to develop their land, they have still benefited from the PSP and ICP process. Accordingly, while all landowners will not be affected by the process in the same way, no substantial unfairness is occasioned.

If the Panel considers CHD Properties should be paid a higher land credit amount, it is open to the Panel to make recommendations for the planning authority to request the Minister to grant an exemption pursuant to Clause 29 of the Ministerial Direction such that the ICP nominates a land credit amount that does not reduce the nominated value of the land by the ICP land contribution percentage.

