

**Darebin Planning Scheme Amendment C170dare
Development Contributions Scheme**

Panel Report

Planning and Environment Act 1987

29 July 2021

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Darebin Planning Scheme Amendment C170daredare

29 July 2021



Trevor McCullough, Chair



Nicola Ward, Member

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Glossary and abbreviations

CIL	Community Infrastructure Levy
Council	Darebin City Council
DCP	Development Contributions Plan
DCPO	Development Contributions Plan Overlay
DELWP	Department of Environment, Land, Water and Planning
DIL	Development Infrastructure Levy
Guidelines	DCP Guidelines 2007
HIA	Housing Industry Association
LTU	La Trobe University
MICLUP	Melbourne Industrial and Commercial Land Use Plan
MPS	Municipal Planning Strategy
MSS	Municipal Strategic Statement
NEIC	National Employment and Innovation Cluster
NURP	Northland Urban Renewal Precinct
PE Act	<i>Planning and Environment Act 1987</i>
PPF	Planning Policy Framework
PPN	Planning Practice Note
Section 173	Section 173 of the <i>Planning and Environment Act 1987</i>
VPA	Victorian Planning Authority
VPP	Victoria Planning Provisions

Overview

Amendment summary

The Amendment	Darebin Planning Scheme Amendment C170dare
Common name	Darebin Development Contributions Plan
Brief description	The purpose of the Amendment is to introduce an approved development contributions plan into the Planning Scheme to enable a development contribution levy to be imposed on new residential, commercial, retail and industrial development.
Subject land	All land in the City of Darebin, except Commonwealth Land
The Proponent	Darebin City Council
Planning Authority	Darebin City Council
Authorisation	Conditional authorisation dated 30 July 2020
Exhibition	12 November to 13 December 2020
Submissions	Number of Submissions: 12 Opposed: 8 A list of submitters is provided at Appendix A

Panel process

The Panel	Trevor McCullough, Chair Nicola Ward
Directions Hearing	By video conference, 16 April 2021
Panel Hearing	By video conference, 24, 25, 26 and 28 May 2021
Site inspections	No site inspections were carried out
Parties to the Hearing	<ul style="list-style-type: none"> Darebin City Council represented by Terry Montebello of Maddocks and calling expert evidence from Alex Hrelja of HillPDA Consulting Deal Corporation (Aust) Pty Ltd represented by Tania Cincotta of Best Hooper Preston Market Developments Pty Ltd represented by Chris Taylor of Planning and Property Partners La Trobe University represented by Nick Tweedie SC and Paul Chiappi of counsel, calling expert evidence from Jason Black of Insight Planning CEL Properties (Aust) Pty Ltd represented by Roger Wettenhall of Urbis Housing Industry of Australia represented by Roger Cooper Vicinity Centres represented by Laura Thomas of Urbis
Citation	Darebin PSA 170dare [2021] PPV
Date of this report	29 July 2021

Executive summary

Darebin Planning Scheme Amendment C170dare (the Amendment) seeks to implement the Darebin Development Contributions Plan (DCP) 2019 (revised October 2020) primarily through the introduction of a new schedule to the Development Contributions Plan Overlay and by incorporating the DCP into the planning scheme.

The Amendment applies a municipal wide DCP that affects new residential, commercial, retail and industrial developments within the municipality, with a number of exemptions.

Eight of the twelve submissions received in response to the exhibition of the Amendment opposed the Amendment. Key issues raised in submissions included:

- The DCP levy should not apply to all types of development
- Specific properties or developments should be exempt from the levy
- The proposed levy will negatively affect housing affordability
- The nexus to projects to be funded has not been demonstrated
- Levies should not be used to fund broader community projects not connected to a development
- The introduction of the levy is poorly timed in current economic conditions
- Lack of clarity around exemptions where a section 173 agreement is in place.

The Panel reviewed the strategic context of the proposed municipal wide DCP and concluded that the Amendment is strategically justified, well supported by the relevant sections of the Planning Policy Framework and is consistent with the relevant Ministerial Directions and Practice Notes.

The Housing Industry Association (HIA) submitted that, in principle, it objects to the Amendment as development levies are one of many costs that impact the end price of a new home and in effect act as a tax on home buyers. The HIA questioned whether, as a matter of principle, developers should contribute to community, social and regional infrastructure beyond the site boundaries of a development site. The issues raised by the HIA were more of a broad policy nature and beyond the scope of this Panel.

La Trobe University sought a general exemption from the DCP on the basis that it already provides a significant contribution to community infrastructure. The Panel concludes that there was no case for a general exemption but does endorse the Council's suggested compromise that the University could be given the opportunity to propose 'substitute' projects as an offset to the Development Infrastructure Levy (DIL) component of the DCP. The Panel supports the proposed changes to the DCPO schedule and the DCP that provide greater flexibility to provide exemption or deferral of DCP obligations on a case by case basis.

Deal Corporation raised issues about whether exemptions should apply to developments that have been approved but not yet constructed, and whether exemptions should be broadened to include all affordable or social housing projects.

The Panel concludes that:

- There should be an exemption to developments that have planning approval prior to gazettal of the Amendment but are not yet constructed.
- There should be an exemption where development has been completed 12 months before the gazettal date of the Amendment but subdivision or statement of compliance has not been obtained.

- The exemption for certain affordable and social housing is appropriate as exhibited.

Vicinity Centres (co-owners of Northland Shopping Centre) raised issues relating to whether the forecasts for dwellings, retail floorspace and commercial floor space were appropriate. Similar issues were raised by La Trobe University on dwelling forecasts as the University develops under its Master Plan and the broader La Trobe National Employment and Innovation Cluster.

The Panel concludes that the present forecasts used and the methodology of the DCP are the best currently available and appropriate for the purposes of the Amendment. The Panel however acknowledges that residential, retail and commercial projections will change over time as more strategic planning is completed. The Panel notes that future changes to the DCP will likely be required to adjust levies to account for revised projections.

The Panel notes the issues raised by Preston Market Developments and is satisfied that the Amendment does not overlap with the proposed site specific DCP being prepared for the Preston Market site as part of Amendment C182dare. The Panel notes that the section 173 exemption provisions in the C170dare amendment provide scope for a negotiated outcome.

CES Properties submitted that an exemption should apply to the development contributions levy for development that provides specified services or facilities beyond those necessary as a result of a planning permit. The Panel concludes that it is fair and reasonable for Council to require contributions via a DCP towards projects that have broader public benefit, even where a developer may be providing infrastructure that provides a benefit beyond the development site.

The Panel concludes that the proposed municipal wide DCP should be implemented as proposed subject to the changes proposed by Council and discussed in this report.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Darebin Planning Scheme Amendment C170dare be adopted as exhibited subject to the following:

- 1. Amend the Development Contributions Plan Overlay Schedule as shown in Appendix C.**
- 2. Amend the Development Contributions Plan exemption provisions as shown in Appendix D.**
- 3. Include explanatory information in the Development Contributions Plan on:**
 - **how the projects in the Development Contributions Plan have been attributed to charge areas**
 - **how the Development Contributions Plan is to be applied to strategic redevelopment sites (such as Northland and Preston Markets)**
 - **how the interrelationship with any site-specific Development Contributions Plans, social housing and other exemptions will be dealt with.**
- 4. Amend project costings in the Development Contributions Plan to take into account any external funding received prior to the adoption of the Amendment.**
- 5. Correct any minor or drafting errors identified in the Development Contributions Plan and Schedule to the Development Contributions Plan Overlay.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to implement the Darebin Development Contributions Plan (DCP) 2019 (October 2020).

Specifically, the Amendment proposes to:

- Introduce a new Schedule 2¹ to Clause 45.06 Development Contributions Plan Overlay (DCPO) to facilitate the collection of contributions.
- Amend Clause 21.02 of the Local Planning Policy Framework to update references to Darebin Development Contributions Plan 2019 (October 2020).
- Amend the Schedule to Clause 72.04 to incorporate the Darebin Development Contributions Plan 2019 (October 2020) into the Darebin Planning Scheme.
- Amend planning scheme maps 1DCPO, 2DCPO, 3DCPO, 4DCPO, 5DCPO, 6DCPO, 7DCPO, 8DCPO, 9DCPO, 10DCPO, 11DCPO, 12DCPO, 13DCPO, 14DCPO, 15DCPO, 16DCPO, 17DCPO, and 18 DCPO as a result of the new schedule being introduced.

(ii) The subject land

The Amendment applies to all land within the boundaries of the City of Darebin, except Commonwealth Land, and affects new residential, commercial, retail and industrial developments within the municipality, with a number of exemptions.

(iii) Why is the Amendment required?

The Amendment is required to implement a new municipal wide DCP to help fund social and physical infrastructure to service a growing population. Darebin's population is expected to grow from 165,000 in 2019 to more than 230,000 in 2041.

The implementation of a new municipal wide DCP enables part of the cost of the infrastructure to be funded, supporting Council's long-term financial sustainability and its ability to deliver necessary infrastructure.

The DCP applies two levies; a Development Infrastructure Levy (DIL) and a Community Infrastructure Levy (CIL) to fund a range of infrastructure projects within the municipality, including roads and paths, as well as community facilities and upgrades. Council submitted that the identified infrastructure projects are required to service Darebin's growing and changing population and the DCP enables Council to share the cost of providing this infrastructure between new development and the existing community on a fair and reasonable basis.

1.2 Background

Council introduced a DCP into the planning scheme in August 2004, one of the first municipal wide DCPs in Victoria. The original DCP expired in 2014, although the DCP was extended to 30 June

¹ Note that Amendment C182dare also proposes to introduce a different schedule also designated DCPO2. DELWP will need to allocate the appropriate number as and when the amendments are approved.

2020, and again to 30 June 2021, to allow expenditure of excess funds collected from the scheme. No contributions were collected after 30 June 2014.

Work commenced by HillPDA in 2017 on the current DCP. A peer review was carried out on a 'final draft DCP' in mid-2020 by SGS Economics.

The Amendment was authorised on 30 July 2020 subject to it being amended to²:

Remove any infrastructure project included in the project list that has already commenced construction or is already constructed as of 7 July 2020.

Council was also advised in the letter of authorisation to:

1. update Clause 45.06 Schedule 2, Sub-clause 4.0 to provide a general exemption for the construction of a building or carrying out of works or a subdivision that does not generate a net increase in additional demand units.
2. broaden the notice provided during exhibition to include major and regular developers and planning consultants for Darebin planning permits, applicants of current planning permit applications and peak development/housing industry organisations.

Council advised that the appropriate changes were made and included in the version of the Amendment exhibited between 12 November and 14 December 2020 and the notice requirements were complied with.

1.3 Procedural issues

On the final day of the Hearing the Panel requested Council and La Trobe University to have further discussions about whether a compromise position could be arrived at on specific exemptions to the DCP for La Trobe University. Council and La Trobe University each provided a response to the Panel on 11 June 2021. Other parties were not given an opportunity to provide further written comment as the positions of Council and La Trobe University did not differ from the positions they put at the Hearing.

1.4 Summary of issues raised in submissions

A total of 12 submissions were received. Eight submissions opposed the Amendment. Three were neutral and one supportive.

Of the eight submissions raising objections about the Amendment, seven were from landowners/developers and one was a submission on behalf of two community groups.

Key issues raised by landowners and developers in submissions included:

- The DCP levy should not apply to all types of development
- Specific properties or developments should be exempt from the levy
- The proposed levy will negatively affect housing affordability
- The nexus to projects to be funded has not been demonstrated
- Levies should not be used to fund broader community projects not connected to a development
- The introduction of the levy is poorly timed in current economic conditions
- Lack of clarity around exemptions where a section 173 agreement is in place.

² Letter of authorisation DELWP 30 July 2020

Issues raised in the community groups' submission included:

- Inequitable distribution of projects between the north and south of the municipality
- Lack of consultation on the list of projects in the DCP.

1.5 The Panel's approach

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

The Panel considered all written submissions made in response to the exhibition of the Amendment and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- La Trobe University
- Deal Corporation
- Vicinity Centres
- Issues raised by other submitters
- Form and content of the Amendment.

2 Planning context

2.1 Planning policy framework (PPF)

Council submitted that the Amendment is supported by various clauses in the PPF, as summarised below.

Victorian planning objectives

The Amendment will assist in implementing State policy objectives set out in section 4 of the Act by:

- Providing a formal, lawful and equitable method to collect contributions for the provision of essential social and physical infrastructure.
- Providing certainty as to the required development contributions for residential, retail, commercial and industrial development.
- Aiding the orderly and timely provision of necessary social and physical infrastructure throughout the municipality.

Clause 19 (Infrastructure)

The Amendment supports Clause 19 Infrastructure, by encouraging the provision of social and physical infrastructure in an efficient, equitable, accessible and timely manner and encourages authorities to consider the use of development contributions to fund the provision of infrastructure.

In particular the Amendment supports Clause 19.03-1S Development and infrastructure contributions plans which seeks to:

... facilitate the timely provision of planned infrastructure to communities through the preparation and implementation of development contributions plans...

Clause 21 (the Municipal Strategic Statement)

The Amendment supports and is consistent with the Municipal Strategic Statement as follows:

- Clause 21.02-3 Built Environment: promotes the role of the design and quality of the built environment, including buildings, public spaces, infrastructure and streetscapes, in enhancing civic pride, liveability and social connectedness, and identifies the role of development contributions in supporting streetscape upgrades.
- Clause 21.05-2 Integrated and Sustainable Transport: includes objectives to integrate transport and land use, and improve access, safety and quality of environment for walkers, cyclists and people with limited mobility.
- Clause 21.05-3 Physical and Community Infrastructure: has the objective of ensuring the provision and planning for physical and community infrastructure meets existing and future needs of the community and identifies the strategy to:

Require a Development Contribution from developers to fund the provision of physical and community infrastructure in accordance with an adopted Development Contributions Plan.

- Clause 21.03-2 Housing Development identifies the following:

Review and update the municipal Development Contributions Plan Overlay and Capital Works 10 year budget to ensure ongoing efficacy to address local infrastructure needs and public realm improvements in accordance with residential growth outcomes.

2.2 Other relevant planning strategies and policies

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Council submitted that the Amendment is consistent with, supports and gives effect to the relevant aspects of Plan Melbourne as follows:

- Direction 5.2: Create neighbourhoods that support safe communities and healthy lifestyles: This direction seeks to improve neighbourhoods to enable walking and cycling as part of everyday life and acknowledges a whole-of-population approach to health planning.
- Direction 5.3: Deliver social infrastructure to support strong communities: This direction seeks to ensure that future growth in Melbourne is supported with improvements and upgrades in local social infrastructure that meets the needs of this growing population and supports the health and wellbeing of communities.

2.3 Planning scheme provisions

The Amendment introduces a new schedule to the DCPO. The purposes of the Overlay are:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify areas which require the preparation of a development contributions plan for the purpose of levying contributions for the provision of works, services and facilities before development can commence.

2.4 Ministerial Directions and Practice Notes

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46). That discussion is not repeated here.

The Amendment process and associated timeframes set out in Ministerial Direction No 15 Planning Scheme Amendment Process have been complied with, although some extensions of time were sought and granted.

The Amendment is consistent with the Ministerial Direction on the Preparation and Content and Reporting Requirements for DCPs.

Council submitted that the Amendment is generally consistent with the Ministerial Direction on the Form and Content of Planning Schemes. With the endorsement of DELWP, the new schedule to the DCPO was prepared and exhibited in the form and content prescribed under a previous Ministerial Direction.

In particular, the Summary of Costs Table in Section 2 and the Summary of Contributions table in Section 3 were altered from the currently prescribed DCPO Schedule:

- The Summary of Costs table at Section 2.0 is altered so that the categories of infrastructure are arranged to correspond with the project types identified in the DCP.
- The Summary of Contributions table in Section 3.0 is altered to enable the levies to be displayed for each of the DCP Charge Areas.

- Notes are included below both of the tables to provide clarity on matters relevant to each.

2.5 Discussion and conclusion

The broader strategic justification for the Amendment was not challenged by any submitter. . Submissions were generally confined to details of the DCP or aspects of the DCPO.

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF, and is consistent with the relevant Ministerial Directions and Practice Notes.

The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 La Trobe University

3.1 The issues

The issues raised by La Trobe University are:

- Should the La Trobe University land be granted a general exemption from the DCP?
- Should the La Trobe University land be granted any form of exemption in the DCP or schedule to the DCPO?
- Has the DCP been fairly applied and is there a nexus between the infrastructure being funded and the development that is to contribute to that infrastructure?

3.2 Evidence and submissions

La Trobe University was represented at the Hearing by Mr Tweedie SC and Mr Chiappi of Counsel. It relied on evidence provided by Mr Black of Insight Planning.

Council was represented by Mr Montebello of Maddocks Lawyers and called evidence from Mr Hrelja of HillPDA.

3.2.1 The case for a broad exemption

(i) Existing University infrastructure

La Trobe University acknowledged that a municipal wide DCP is an appropriate means of collecting funds for community infrastructure but submitted that La Trobe University is a special case due to the very significant contribution to community infrastructure it already makes. It argued that this ought to be taken into account in applying any DCP in Darebin. This position was supported by the evidence of Mr Black who opined that it was inequitable to seek to impose development costs on the University without regard for the facilities currently provided and maintained by the University that benefit the broader Darebin community.

La Trobe University provided an overview of the extent of the University campus and facilities provided. The University campus covers approximately 235 hectares, employs 2,500 staff and has 28,000 students. Development of the University is guided by the 2014 Campus Master Plan which is due for review in the coming year. The Master Plan envisages substantial development of: research and development; university operations; residential built form; commercial; sporting and community facilities.

La Trobe University submitted that a key part of its strategy is to bring the community into the University through the development of sporting and community facilities and the extension of pathways through the site.

Mr Black provided an overview of the existing facilities provided on the University campus, including:

- an indoor sports centre (which includes pool, netball courts, climbing wall, gym, tennis courts)
- a sports stadium completed in 2020 including six indoor highball courts, and teaching and research facilities
- an AFL oval and a soccer pitch with club rooms, change rooms and a function room
- other sports fields

- a library
- a child care centre
- a walking/running track traversing the campus (with toilet facilities)
- a 30-hectare conservation reserve/wildlife sanctuary.

La Trobe University submitted³:

These are significant facilities and they play an important role in servicing the needs of the local and broader community – well beyond just those studying or working at the University.

The Darebin City Council has, to date, not made any significant financial contribution to the costs of providing (or maintaining) this infrastructure. Nor have any other private land developers within the municipality.

La Trobe University submitted that it is unfair to apply the DCP to La Trobe University without considering the contribution the University already makes to community infrastructure.

La Trobe University did not support the Council proposal to allow exemption (or deferral) of levies as proposed in clause 4 of the DCPO schedule. It submitted it is not an exemption at all but rather a mechanism that allows the Council to accept (at its sole discretion) an alternative form of contribution.

Council rejected the notion that existing community and sporting infrastructure should provide the basis for a broad exemption from the DCP. Council did however acknowledge that the nature and extent of facilities provided by the University provide considerable value to the wider community. It submitted that the obligation to pay levies on future development should be reviewed and *“considered not at the outset by the grant of a broad exemption to any land user in the DCP as sought by the university (and others) but rather by a more focussed mechanism that enables a closer consideration and a more nuanced approach to the issue”*⁴.

Council submitted that all new development on the university campus will generate additional usage and demand for the type of infrastructure provided by Council in the broader area and therefore a broad-based exemption is not considered appropriate.

Council submitted that it may contemplate an exemption or deferment of any DCP obligations but any request for waiver of any levy or a deferment must be based on a fully supported claim in respect of particular development and not an overall claim for exemption. It submitted that the tools to enable such a request to be dealt with are within the DCP document. A modified approach to exemptions was proposed in Council’s Part B submission to the Hearing, and a further option was raised in its Part C submission. This is discussed in section 3.2.3 below.

(ii) Exemption for universities

Council submitted that a full exemption was contrary to the established policy for contribution plans as established by relevant statutory documents.

It submitted that the Ministerial Direction on the preparation of Development Contribution Plans (and Infrastructure Contribution Plans) provides clear and specific overall exemptions for certain types of land uses. They include and are limited to non-government schools and housing provided

³ La Trobe University submission to the Panel Hearing (Document 10) paras 22, 23

⁴ Council Part A submission

by the Department of Health and Human Services. An exemption is not afforded to universities or many other institutional type facilities.

Council argued that an overall exemption for the University is therefore more of a policy matter and not for individual DCPs.

Council referred to Yarra Planning Scheme Amendment C238 in which Epworth Hospital submitted that large hospitals and medical centres should be exempt from the proposed levies. The Yarra C238 Panel dismissed that submission on the basis that *“The issue of other exemptions raised by Epworth are broader policy matters and as such are not commented on”*.

In response to Council’s submission that the University land should not be exempt because tertiary institutions are not exempt under the policy, La Trobe University submitted that this position:

... mis-construes the Ministerial Direction and the Act:

- a) The Ministerial direction, at clause 4, specifies two types of development that must not be levied under a DCP. It does not say these are the only exemptions. It says nothing as to whether a DCP may otherwise exempt land or development.
- b) Section 46K(2)(a) puts the issue beyond doubt. It provides that a DCP may exempt certain land, or certain types of development, from payment of a development infrastructure levy or a community infrastructure levy or both.
- c) This is consistent with s 46K(1)(f) which provides that a DCP must specify the land and development in respect of which a levy is payable. That allows for specific land, and types of development, to be excluded.⁵

Council submitted that it had conducted a survey and found no examples of universities being exempt from currently operating DCPs. It submitted that there are a number of university campuses which are subject to levies where DCPs are in place across metropolitan Melbourne.

La Trobe University submitted that the fact that the Ministerial Direction excludes one type of educational facility (non-government schools) does not imply that it is inappropriate to exempt another type in a particular case. The University did not argue that all tertiary institutions should be exempted from DCPs but rather that there is reason to exempt La Trobe University in this case.

La Trobe University submitted that the Council’s reference to other universities that had not been exempted from other DCPs was not helpful as there may be many reasons why those institutions did not seek exemptions or did not justify exemption.

(iii) Future planning

La Trobe University submitted that the extensive future development proposals for the University, particularly in the context of the La Trobe National Employment and Innovation Cluster Framework Plan, justified special consideration and exclusion of the University land from the DCP. It submitted that any redevelopment plans would, by design, include transport and community infrastructure and be integrated with the broader community. La Trobe University noted that local planning policy recognises the important role of the University and supports the master planning of the campus.

⁵ La Trobe University Hearing submission para 70

La Trobe University submitted that for the University to be included in the DCP would create inequity as the University would pay far more than any other developer. This position was supported in the evidence of Mr Black.

Council submitted that La Trobe's future development plans are not at this stage sufficiently progressed and the nature of any future community infrastructure provision, including the level of broader community benefit, is not yet known to warrant an exemption at the outset. It submitted that, in these circumstances an up-front exemption should not be contemplated.

Council acknowledged that the La Trobe University Masterplan document envisages a 'university town' based approach to development of the University. Council suggested that a more nuanced approach may need to be taken to the University and has proposed changes to the DCP to provide a mechanism for this.

3.2.2 Issues with the preparation of the DCP

La Trobe University submitted that Council had been inconsistent with its application of the DCP Guidelines. It submitted that on one hand Council and Mr Hrelja had claimed that the DCP was consistent with the Guidelines, and on the other hand had argued that aspects of the Guidelines were out of date or too onerous and should not be applied.

More specifically, La Trobe University submitted that the DCP had not properly considered equivalence ratios or external demand. La Trobe submitted that it was incorrect to apply a floorspace ratio to educational facilities as this mis-represents the relative load on community facilities. It submitted this is an incorrect application of the Guidelines.

Mr Black gave evidence that it was not clear how external costs had been apportioned for individual projects in the DCP and was critical of the 'standardised' approach taken to apportioning 5 per cent of all projects external to the DCP catchment. He characterised this approach as "*simplistic*" and "*lazy*" and opined that this approach overstates the cost of projects that ought to be charged to the DCP.

La Trobe University submitted that it was not appropriate to treat all types of accommodation the same. It submitted that student accommodation, for example, should not be treated as a standard dwelling as the potential draw on community infrastructure would be very different.

La Trobe University submitted that⁶:

Occupiers of, or visitors to, new development on the University land may make some use of the facilities proposed to be upgraded or developed under this DCP. New members of the University hockey club will likely use the Hardiman Reserve. It is less likely that new students will use the Reservoir leisure centre given the facilities available on the campus. This is the most expensive project relevant to the charges for area 3.

With the extensive facilities available on the campus, it is simply unlikely that staff, students and visitors to the University will use external facilities to a reasonably comparable extent to the rest of the community.

The DCP treats the demand generated by all forms of residential development as the same. A student room with a bed and a desk is regarded as generating the same demand as a four bedroom house with two cars. A student room is charged the same contribution as the house.

⁶ Document 10 paras 55-57

Similarly, the type of non-residential development likely to take place at the University is unlikely to generate the same demand or use as private development external to the University. Development of lecture theatres and other education facilities on campus is unlikely to generate any new demand. This can be contrasted to off-campus commercial activity.

La Trobe University submitted that the residential dwelling projections used in the DCP did not adequately allow for future residential development at the University and therefore would result in higher than necessary levies 'per dwelling' and the collection of more levies than required. Mr Black commented on this in his evidence, venturing an estimate that the population projections for Charge Area 3 might be underestimated by as much as 3,500 dwellings by not allowing for future development on the University land. Similar issues were raised by other submitters (particularly Vicinity Centres) and are discussed in more detail in Chapter 5.

Mr Black gave evidence that future community and sporting facilities planned by La Trobe University ought to be included in the DCP project list for part funding through the DCP. He provided a list of projects in the University Master Plan that he thought would qualify on the basis that they were utilised by the broader community. He noted a recent agreement by Banyule Council to include La Trobe University infrastructure in that Council's DCP.

In response Council noted that panels have typically taken a practical and pragmatic approach to many of the key issues raised by the University. It added that the Guidelines provide some assistance but are only guidance.

Mr Hrelja's evidence provided an overview of how the DCP had been prepared including the rationale for Charge Areas, how projects were selected and the approach to equivalence ratios.

Council noted that the Panel for Yarra C238 preferred the provision of a nominal 5 per cent external apportionment rather than zero external apportionment because that Panel regarded that as being more consistent with the Guidelines which recommended taking into account external usage.

Mr Hrelja gave evidence that it was no longer common practice to work out detailed external apportionment for each DCP project as it is not practical. He opined that applying a broad common apportionment is the norm in recent DCPs, citing examples of recent Yarra, Banyule and Moreland DCPs.

Council also submitted that⁷:

- the issue of nexus has been dealt with pragmatically by focusing on the correct sizing of charge areas rather than seeking that each project be the subject of surveys of land users to determine nexus.
- calculation of demand units is based on known information derived from sound base information in the form of ID forecasts and not speculation – and Council has done that with the caveat that as planning conditions change, the DCP should be reviewed to keep abreast of those changes.

Mr Hrelja gave evidence that detailed analysis of the nexus between each project in the DCP and individual properties is not required but rather that a strategic level connection is all that is required. He confirmed this under cross examination from Mr Tweedie saying that nexus is not generally specific but can be justified through strategic documents.

⁷ Council Part C submission paras 49, 50

On the issue of equivalence ratios, Council submitted that while it would be possible to apply a student-based equivalence ratio to the University land, it is questionable that it would be worth it on the basis that for retail, commercial and industrial development there are only 3 projects funded. For housing, which pays both the CIL and DIL, it submitted that the commonly applied dwelling demand unit is appropriate.

Mr Hrelja gave evidence that it is correct to apply a floor area ratio to university development. Whilst he acknowledged that the Guidelines say the student numbers should be used for say class rooms, he opined that development would typically involve several other uses and to separate out each of the different sub uses would be too complex. He opined that the Guidelines were a general guide in this instance and do not need to be followed to the level suggested by La Trobe University and Mr Black.

Council submitted that La Trobe University's criticism about different types of housing is unconvincing. It submitted that, at a minimum there will be one person per dwelling, and that is not unlike 1 bedroom dwellings in the rest of the municipality. Council noted that the University has quite a high reliance on vehicles to access the site rather than public transport.

Council submitted that to respond to all of the criticisms of the DCP made by La Trobe University would result in a highly detailed and expensive process and would be impractical to apply. Council argued that the modest proportion and modest list of infrastructure proposed to be included in the DCP should also be considered. It noted⁸:

The DCP is being used to fund a relatively small proportion of the cost of some of the infrastructure that is going to be required to service the growth in population in Darebin over the next 20 years. In fact it is seeking to fund 24 per cent of one quarter of the \$467M capital works identified in the 10 year Capital Works Program.

For charge area 3, the DIL is \$247 for the residential demand unit and \$584 for the CIL per residential demand unit.

However, retail, commercial and industrial development by the university does not pay for any infrastructure which is denoted "CI" or community infrastructure irrespective of whether that community infrastructure is charged as CIL or DIL. That means that if the LTU develops anything that is non-residential, it only contributes 24 per cent of the cost of three modest infrastructure projects, namely projects 97, 102 and 137. These are two road projects and one changing places building.

Council submitted, supported by the evidence of Mr Hrelja, that the DCP was very conservative in terms of the low number of infrastructure projects included and the contributions were therefore very low compared with other municipal wide DCPs.

3.2.3 Council proposed approach to exemptions

Council Part A and Part B submissions

In its Part A submission Council proposed in the DCP a mechanism whereby Council can agree, (by section 173 agreement), to defer all or part of a developer's CIL payment liability, if it is providing alternative community infrastructure that meets specified criteria.

Council submitted that a deferral is proposed rather than an exemption *"because it is essential to ensure that the non-payment of contributions is met by a continuing obligation to provide community infrastructure especially where it is not in public ownership"*.

⁸ Council Part C submission paras 56-58

Council submitted that there may well be some merit to a claim for a limited exemption in respect of certain development that would otherwise attract liability, but then that should only be in respect of the CIL and not the DIL.

Council proposed in its Part B submission to expand the deferral mechanism in the DCP to clearly explain the type of circumstances a deferral of liability may be contemplated and respond to the issues raised by La Trobe University. The proposed wording was provided in Attachment 3 to the Part A submission as shown in Figure 1.

Figure 1 Council proposed deferral of payment wording in DCP

Deferral of Payment

The Collecting Agency may, at its discretion, agree for payment of a levy to be deferred to a later date, subject to the applicant entering into an agreement under section 173 of the Planning and Environment Act 1987 to pay the levy at an alternative date.

Darebin City Council as collecting agency under the development contributions plan may enter into an agreement executed under section 173 of the Planning and Environment Act 1987 which is made between an owner and the responsible authority in which the Collecting Agency agrees to defer the owner's obligation to pay the either the whole or part of the community infrastructure levy in respect of the development of land which would otherwise be payable where, and for so long as:

- Darebin City Council is satisfied that the owner is providing community infrastructure for the benefit of residents in or around a relevant charge area and that community infrastructure is owned and managed either directly by or for and on behalf of the owner; and
- Darebin City Council is satisfied that the provision of that community infrastructure is of the same type and to the same standard that Darebin City Council would normally provide to service the community in and around the charge area in which the owner's land is located; and
- That community infrastructure is or will be and then will remain publicly accessible to residents of Darebin City Council in and around the charge area to the satisfaction of Darebin City Council

The Agreement must also provide that if that community infrastructure ceases to be maintained to a standard which is to the satisfaction of the Darebin City Council or ceases to be provided, or there is a breach of this Agreement, the payment of the deferred amount and any accrued interest becomes immediately payable.

Council submitted that its proposed rewording of the exemption provision in the DCPO was based on the following principles⁹:

- First, the discretion as to whether to enter into an agreement to defer payments is a matter for the collecting agency and not for others.
- The collecting agency must be satisfied that the type of community infrastructure in respect of which the deferral is being provided is infrastructure

⁹ Council Part B submission para 51

which is of the type and standard that Council would normally provide to service the relevant community.

- The Collecting Agency must be satisfied that that community infrastructure is and will then remain publicly accessible for the duration of the deferment period.
- Finally, the levy would become payable if the standard of the infrastructure fell below a standard which the Council regards as satisfactory or ceases to be provided.

Council noted that it is not necessary for these provisions to be included in the DCP for the Council to exercise discretion, but it does at least provide for a more transparent approach if they are included. Council noted that, on the other hand it does tend to limit the circumstances in which deferral would be contemplated.

Council also considered whether it was possible under the DCP framework to grant an exemption from paying levies on an ad hoc case by case approach. Council expressed some reservation about the ability of ad hoc decisions to cancel the statutory obligation to impose the levies once the plan is introduced by reliance on the section 173 mechanism. Council's preference was for there to be flexibility in the way the DCP is applied, but it submitted that it was not clear whether exemptions could only be applied to existing section 173 agreements or not. Council noted that *"in the Yarra DCP panel report, it is apparent that [Yarra] Council through its senior counsel (Mr Finanzio SC) submitted that the exemption for where there was a section 173 agreement in place was aimed at existing agreements. (page 28 of C238 Panel report)"*

Council Part C submission

In its Part C submission Council offered an alternative approach to exemptions in response to a request by the Panel to seek some 'middle ground'. (Council noted that this approach is not approved by Council. It is an approach that officers would be willing to recommend to Council.)

First, the exemption provision should have a minor change to also include a reference to a deed which is not a section 173 agreement so that the type of agreement within which an exemption may be provided for is expanded. The Banyule DCP adopts a similar (wider) approach.

Second, the deferral provisions should be removed so that they remain as exhibited. This increases flexibility by removing the criteria.

Third, the works in kind provisions which are at Part 7.2 under the heading Method of Payment could be amended so that Council has the ability to accept (from LTU only) a substituted project in place of projects 97, 102 and 137 where the development type is either residential, retail, commercial or industrial. Council and the LTU would need to agree on what comprised a substituted project however from Council's perspective it would have to be a project that provided a broader public benefit and not just serving an internal purpose or need. The extent of the offset would not be greater than the combined value of projects 97, 102 and 137.

Council submitted that these changes would result in:

- Council having the ability through agreements to provide an ad hoc exemption if a good case was made
- Council having the ability to defer contributions in an appropriate case
- Council having the ability to accept a substituted project from Latrobe University as an offset against its DCP DIL liability up to a maximum credit of the cost of the three DIL projects that Charge Area 3 funds.

The Panel notes that under this option the CIL would still apply to all residential development.

Council submitted that this suite of provisions would provide more flexibility in how the University could meet its DCP liability but would maintain the integrity of the DCP.

The final preferred wording of the Council in relation to exemptions and deferrals is as follows. The tracking shows changes from the exhibited version of the Amendment. The changes incorporated all changes proposed by Council in its Part A, B and C submissions.

Clause 7.5 of the DCP:

No land or development is exempt from this Development Contributions Plan unless exempt by Legislation or Ministerial Direction or Legal Agreement with Darebin City Council or stated below. The following development is exempt from the development contribution:

- Land developed for a non-government school, as defined in Ministerial Direction on the Preparation and Content of Development Contributions Plans of 11 October 2016.
- Land developed for housing by or for the ~~Department of Health and Human Services~~ Department of Families, Fairness and Housing,¹⁰ as defined in Ministerial Direction on the Preparation and Content of Development Contributions Plans dated 11 October 2016. This applies to social housing delivered by or for registered housing associations. This exemption does not apply to private dwellings developed by the Department of Health and Human Services or registered housing associations.
- Alterations and additions to an existing dwelling.
- Outbuildings normal to an existing dwelling and fences.
- Demolition of a dwelling followed by construction of a replacement dwelling on the same land. The exemption applies to the number of dwellings demolished and does not apply to any additional dwelling(s).
- Reinstatement of a dwelling which has been unintentionally damaged or destroyed.
- Servicing infrastructure constructed by a utility authority.
- ~~Darebin City Council delivered projects, building or works.~~¹¹
- Land with an agreement executed under section 173 of the Planning and Environment Act or other deed of agreement that requires either:
 - The payment of a development contribution levy; or
 - the provision of specified works services or facilities beyond those necessary on or to the land or other land as a result of the grant of any permit; or
 - the payment of any development contributions or the provision of specified works services or facilities required to be provided for public and/or community infrastructure by any other provision of this scheme; or
 - the provision of land for works services or facilities (other than land required to be provided as public open space pursuant to clause 53.01 or section 18 of the Subdivision Act 1988);

and explicitly excludes further development contributions to be made.

- ~~Land with an agreement executed under section 173 of the Planning and Environment Act that explicitly exempts the development from one or more DCP Overlay Schedules due to the development having met its DCP obligations.~~
- The construction of a building or carrying out of works or a subdivision that does not generate a net increase in demand units.

¹⁰ This is the updated name of the government department since 1 February 2021.

¹¹ This change was proposed by Council in its consolidated list of proposed changes at page 20 of the Council Part C submission.

The same wording is proposed for Clause 4.0 of the DCPO schedule.

The 'Deferral of Payment' clause in the DCP returns to the exhibited version as follows:

The Collecting Agency may, at its discretion, agree for payment of a levy to be deferred to a later date, subject to the applicant entering into an agreement under section 173 of the Planning and Environment Act 1987 to pay the levy at an alternative date.

Note that the reference to deferral of the CIL component of the levy as initially proposed is therefore deleted.

Finally, Council's advocate suggested the following La Trobe University specific change to the DCP 'Method of Payment' of development contributions as a possible compromise position:

7.3¹² Payment of Development Contributions

Method of Payment

Payment of development contributions is to be made in cash subject to the exceptions below.

Council may accept the provision of land, works, services or facilities by the applicant in part or full satisfaction of the amount of levy payable.

In respect of any of the land comprising La Trobe University, Council may enter into an agreement with La Trobe University to accept a substituted project as "works in kind" in part or full satisfaction of the liability to pay the Development Infrastructure Levy that is payable where the development type which triggers the liability to pay is residential, retail, commercial or industrial.

The value of the credit for the substituted project (works in kind) is to be determined by the Collecting Agency but must not exceed the combined value of the infrastructure projects in respect of which a Development Infrastructure levy was otherwise payable.

The substituted project is to be agreed by Development Agency.

In a post Hearing letter to the Panel¹³, La Trobe University confirmed that it did not support the wording put by Council in its Part C submissions, adding:

It does not provide suitable recognition of the University's current provision of infrastructure for public use and is unduly constrained in its allowance for the University's future provision.

3.3 Discussion

(i) General DCP exemption

The Panel agrees that the existing facilities provided by the University that are open to the public provide a clear benefit to the community. Conversely the facilities provided (and funded) by Council provide a benefit to the University. The Panel does not, however accept the La Trobe University proposition that a general DCP exemption should therefore be provided to the University land.

The Panel agrees with Council that there is nothing in the Guidelines or legislation that suggests a general exemption should apply to land if that landowner had previously provided facilities of

¹² Council's Part C submission erroneously referred to Part 7.2 when it should have referred to Part 7.3.

¹³ Document 29

benefit to the community. The Panel sees no convincing arguments in the submissions of La Trobe University or the evidence of Mr Black that support such a position.

In relation to what the Guidelines and legislation have to say about exemptions for universities, the Panel thinks it is clear that there is not a general exemption for tertiary institutions but agrees with La Trobe University that the Guidelines and legislation do not prevent a specific exemption to land being granted if there was good reason to do so. As stated above, however, the Panel is not convinced that a case has been made for the exemption of the whole La Trobe University site.

The Panel acknowledges that the future plans for the University's development, both in its own masterplan and as part of the broader La Trobe National Employment and Innovation Cluster Framework Plan, warrant special consideration in the future implementation of the DCP (and strategic planning of Darebin more generally). The Panel however agrees with Council that planning on both those fronts is not yet sufficiently advanced to be able to be applied to the Amendment.

(ii) Issues with the preparation of the DCP

The Panel accepts that Councils approach to allocating equivalence ratios is appropriate. Whilst the Guidelines do prescribe student numbers as the appropriate metric for tertiary education uses, the Panel agrees with the evidence of Mr Hrelja that development would typically involve several different uses and to split the DCP down to cover all likely uses would be unnecessarily complex. The Panel was not provided with any evidence that to use the equivalence ratios as proposed would result in a different levy contribution or create any unfairness.

The Panel accepts Mr Hrelja's evidence that it is now common practice to adopt a 'standard' approach to external apportionment in municipal wide DCPs. The Panel agrees with previous panels that have endorsed this approach for the sake of simplicity and expedience. The Panel was not provided with any evidence that the application of the standard 5 per cent external apportionment has caused an unfair outcome for La Trobe University.

The Panel agrees with La Trobe University that not all accommodation is equal. In an ideal DCP the difference in infrastructure demands between student accommodation and a four bedroom house would be recognised. The Panel agrees with Council that both create some demand for facilities and infrastructure. The question is whether it is worthwhile making the distinction in a DCP. In this case Council has chosen not to make the distinction and so the Panel must assess whether that is acceptable. The Panel was not provided with evidence or submission on any alternative so is not in a position to assess whether a more nuanced approach to residential levies would yield a significantly different result or whether it would make any difference to project viability. Given the submission of the Council that the levy (CIL plus DIL) for residential development would be a relatively modest to \$831 per demand unit in Area 3, the Panel thinks it unlikely that this will make any development unviable.

The Panel notes that there are several instances of inconsistency with the Guidelines in the way that the DCP has been developed. Mr Hrelja's evidence was that this is a reflection that current practice has moved on and that aspects of the Guidelines are now out of date. The Panel is concerned that in applying the DCP Council and HillPDA have 'cherry picked' which parts of the Guidelines to adopt and which to ignore when it doesn't suit. This is not a criticism but rather an observation that it is perhaps time to update the Guidelines to reflect a more pragmatic approach that reflects contemporary practice.

(iii) Case by case exemption and the Council's proposed approach

While the Panel is convinced that a general exemption is not appropriate for La Trobe University it is also convinced that some sort of specific exemption is appropriate given the significance of the presence of the University in the Darebin community.

The Part C alternative approach proposed by Council provides an opportunity for Latrobe University only to propose a 'substitute' project for which it could receive an offset against the DIL under the DCP up to the total value of the DIL. The Panel thinks this is a sensible approach and properly recognises the unique status of La Trobe University in the Darebin community.

The Panel notes that the CIL would still apply to residential development. The Panel accepts that this is appropriate on the basis that all residential units would contribute to the demand for the community facilities provided by Council.

This position was not agreed to by the University, which maintained its position of seeking a general exemption from the levies. The Panel does not support a general exemption but believes the alternative 'Part C' proposition represents a sensible compromise that recognises the somewhat unique situation with La Trobe University without creating a precedent for other landowners.

The Panel agrees that any 'substitute' projects should be at the discretion of Council.

The Panel agrees with the other changes suggested by Council in the Part C submission on the basis that it provides Council with a high degree of flexibility to provide exemptions if a good case is made, defer contributions where appropriate and (specific to La Trobe University) accept substitute projects as an offset against the DIL levy.

3.4 Conclusions

The Panel concludes:

- There is no case for a general exemption to the DCP for the La Trobe University land.
- The methodology for the preparation of the DCP is acceptable.
- There is a case for some level of case by case exemptions or deferral of DCP obligations for La Trobe University.
- The proposed Council approach to providing greater flexibility for exemption and/or deferral on a case by case basis is supported.
- The proposed approach to deferral of DIL obligations for La Trobe University as suggested in the Council Part C submission is supported.

The changes put forward in the Council Part C submission been included in the Panel preferred version of the DCP and DCPO Schedule as shown in Appendices C and D.

4 Deal Corporation

4.1 The issues

The issues raised by Deal Corporation are:

- Are the projects included in the DCP appropriately attributed?
- Should exemptions apply to developments that have been approved but not yet constructed?
- Should exemptions be broadened to include all affordable or social housing projects?

4.2 Submissions

4.2.1 Background

Deal Corporation (LG) Pty Ltd (Deal Corp) was represented at the Hearing by Ms Cincotta of Best Hooper Lawyers. Deal Corporation is the developer of the land known as Polaris Town Centre and Residential Precinct at 1056-1070 Plenty Road, Bundoora. The site is the former Larundel Psychiatric hospital and development has been underway for some years, with further development to occur. The site is in a Mixed Use Zone and a Development Plan Overlay (Schedule 1) applies. The site sits in Charge Area 3. Deal Corp's submission noted the development is being staged and that multiple stages of the Polaris Town Centre and Residential Precinct have been completed and occupied. There are three live planning permits and a further planning permit is expected to be lodged with Council in the coming months.

Figure 2 Extract of Approved Development Plan for the Polaris site¹⁴



¹⁴ Deal Corp submission (Document 6)

The position of Deal Corp, in summary was:

- The Polaris development should be exempt from the DCP on the basis it has provided benefits.
- There is an inadequate nexus between the works levied to Charge Area 3 so as to justify apportionment to Charge Area 3, as the works appear to benefit the municipality more broadly.
- Some items included as Open Space items are for existing public open space facilities and should not be covered as part of any development contribution levies, but should be paid for by Council or through the public open space levy.
- The exemptions at clause 4 to the DCPO should be amended to include specific exemptions so that no levy is triggered on approved developments that have not been constructed or subdivision of existing or approved developments.
- The exemptions contained at clause 4 to the DCPO ought be reworded to include all affordable and/or social housing projects that may not be facilitated by the Department of Families, Fairness and Housing (for example, those to be delivered by the private sector in partnership with a housing association or similar)¹⁵.

The issue of whether existing benefits provided by a development should provide a basis for an exemption from a DCP is also raised by La Trobe University, Vicinity and CES. The proposition of Deal Corp for its development most closely aligns with the CES development and the issue is discussed in Chapter 5.3.

4.2.2 Attribution of projects to Charge Area 3

Deal Corp submitted that the levy rates for Charge Area 3 are unjustified, and the area has been unfairly apportioned levies for projects which benefit the broader municipality, rather than residents of the relevant area. It noted that of the 137 projects set out in the DCP, nine are attributed to Charge Area 3, of which 3 are located within the Charge Area.

Deal Corp cited extracts of the Guidelines in support of its argument¹⁶ and submitted that the DCP identifies that *“the overarching objectives of the DCP is to ensure that there is a reasonable nexus between development and infrastructure”*, but *“neither the DCP nor Mr Hrelja’s evidence identifies the specific nexus between the projects and the charge areas and in particular charge area 3”*¹⁷.

Deal Corp submitted: *“Mr Hrelja has not undertaken a needs analysis or an assessment of the projected share of usage of projects intended to be funded by Charge Area 3”* and further *“it is inappropriate for Council to create a wishlist of items and facilitate the levying of funds from development for projects which have no nexus to the area and for projects which should be funded by Council itself”*¹⁸.

Council submitted in response that the issue of nexus in the context of a municipal wide DCP is to be determined by ensuring that the Charge Areas were appropriately defined, and that this was consistent with the approach adopted by the Moreland DCP Panel and the Yarra DCP Panel¹⁹.

On the point of nexus, Council observed:

¹⁵ Deal Corp submission page 4 (Document 6)

¹⁶ DCP page 8

¹⁷ Deal Corp para 14 (Document 6)

¹⁸ Deal Corp paras 14-16 (Document 6)

¹⁹ Moreland C133 and Yarra C238

- The Reservoir leisure centre (project 2) is a short distance from Polaris less than 2 kilometres away.
- The road upgrade at the circuit (project 102) is a park that is approximately 500 metres from Polaris’.
- The Preston Oval (project 8) is a municipal asset and the lighting of the oval enables more usage of that facility by all residents of the municipality.
- The KP Hardiman Reserve projects (3 projects) are located on Plenty Road in Kingsbury approximately 1.5 kilometres from Polaris (which is also on Plenty Road two tram stops away).²⁰

In reply to criticisms that Mr Hrelja did not undertake a needs analysis for every project, Council submitted having to undertake a needs analysis for every project in a municipal wide DCP (as distinct from a DCP for a strategic redevelopment area) is unnecessary. That approach would make the practical application of the DCP framework difficult and impractical, if not impossible. By way of example, Council highlighted the previous Darebin DCP, one of the first of the municipal wide DCPs, which had 227 Charge Areas and 879 projects. Council submitted the ‘practice’ of DCP preparation and management had evolved.

4.2.3 Inclusion of open space projects in the DCP

Deal Corp argued that, whilst it is accepted that a DCP can include public open space improvements, that does not mean that it is legitimate for particular public open space improvements to be included. It referred to Amendment C186dare to the Darebin Planning Scheme which proposes an increase of public open space contribution in the schedule to Clause 53.01 to 10 per cent.

Further, Deal Corp suggested that upgrades to public open space such as the lighting upgrade to ovals and sporting fields were more appropriately funded by public open space contributions. Deal Corp submitted that the Public Open Space improvement projects should not be funded by Charge Area 3 or alternatively should be removed from this DCP on the basis that those projects can and should be funded by Public Open Space contributions, particularly in light of the planning scheme amendment to increase mandatory Public Open Space contributions on subdivisions. In oral submission, Deal Corp raised concerns about Council potentially ‘double-dipping’ on funds to deliver projects in the DCP.

Council in response submitted there is no ‘double-dipping’, and that equating ‘double-dipping’ to sourcing funds for the one asset from two different levies is wrong. Council asserted the Ministerial Direction states that basic improvements to open space are permissible as DCP funded items for the DIL and the community facility category under a DCP is not limited to basic improvements. Council noted that Amendment C186dare concerning the open space levy was on hold.

4.2.4 Exemptions for existing subdivision

Deal Corporation submitted that the proposed clause 4.0 in DCPO “*the construction of a building or carrying out of works or a subdivision that does not generate a net increase in demand units*” does not go far enough. It argued that there was a lack of acknowledgement for the planning process and considerations that may have preceded introduction of the Amendment. Its view was

²⁰ Council’s Part C submission para 6 (Document 26)

that the exemptions as drafted did not reflect Council's intention to exclude existing development, which Deal Corporation supports.

The DCP and DCPO2 should make it clear that subdivisions should not trigger a DCP levy on subdivision of existing development or subdivision of a development already approved but not constructed or completed as at the approval date. To do so would be seeking to retrospectively apply the DCP and insofar as subdivision of existing development is concerned levy existing development which the DCP accepts should be funded by Council and should not be the subject of a DCP levy. This is a particular concern for the Deal Corp given the extensive development that has already been developed on the land to date, not all of which has been the subject of subdivision to date²¹.

Deal Corporation referenced Mr Hrelja's evidence in cross examination, that the DCP:

- Should not apply retrospectively
- Should not apply to existing development
- Should not apply to subdivisions of existing development
- Should not apply to existing planning permits and potentially amendments to existing permits.

Deal Corp provided several examples to illustrate its argument. These are not repeated in detail here and may be found in the Deal Corp submission²². In summary of its argument, Deal Corp submitted that Clause 4 of the exhibited schedule and the DCP itself should be amended to include the following exemptions:

- Use or development which was approved by a permit granted before the approval date of Amendment C170 (including an application for an amendment of an existing permit).
- Alterations or additions to a development constructed pursuant to a permit granted before the approval date of Amendment C170.
- Subdivision of building and works constructed or approved before the approval date of Amendment C170.

Deal Corp also made submission on the section 173 agreement proposed by Council. It argued that any mechanism for an exemption should be self-executing, and not require the future consent of the Council or the need for an agreement to be entered into (at Council's discretion).

In response to queries of the Panel on the permits as play in the Polaris development, Deal Corporation advised:

There has been no change of uses for buildings already completed on the Polaris site. However, there has been changes from the masterplan for different stages including Lots 8 was originally approved for student accommodation and is now dwellings, Lot S3 was originally to be student accommodation and is proposed for dwellings and Lot S9 was originally proposed as hotel/commercial uses but is now residential²³.

Council in response argued that exemptions that create significant differences between similar DCPs are undesirable. In general, the exemption should be drafted the same across DCPs.

Council submitted that the Darebin DCP should reflect the identical exemption in the Yarra DCP which ended up as:

Construction of a building or carrying out of works or a subdivision that do not generate a net increase in additional demand units, including:

²¹ Deal Corp para 40 (Document 6)

²² Deal Corp submission paras 32-39(Document 6)

²³ Email in response to Panel queries (Document 9)

- Replacement of a building;
- Renovations or alterations to an existing building;
- Construction of a fence; and
- Outbuildings normal to an existing dwelling.

Council noted that a 'self-executing exemption' is not something able to be considered under the Planning and Environment Act.

4.2.5 Broadening the exemption for social and affordable housing

Deal Corporation submitted that exemptions contained at clause 4 to the DCPO ought to be reworded to include all affordable and/or social housing projects that may not be facilitated by the Department of Families, Fairness and Housing such as those delivered by the private sector in partnership with a housing associate or similar.

In response to queries from the Panel, Deal Corp further advised:

In terms of affordable housing/social housing, at the Lunar development (known as Lot 10), 10 apartments were sold to Women's Property Initiative and 4 have been sold to the Director of Housing with settlement imminent. In the Nova development (known as Lot 8), 10 townhouses have been sold to Common Equity Housing Limited which are due for completion in late 2022 and Lot S3 is intended to be sold to the Women's Housing Association²⁴.

Council in reply submitted that the exemption in the proposed DCP does exempt all social housing as Deal has requested and cited definitions in the *Housing Act 1983*²⁵. These extracts are not repeated in this Report.

Council noted that, by definition, affordable housing is very broad and includes housing for the medium income bracket. Simply referencing affordable housing as exempt would potentially provide for a broad sweeping exemption. Council suggested that, for example, affordable housing would potentially include many of the apartments to be provided in the Preston Market Development simply because of their price point. Council's position was that, without an agreement to secure its longevity within the relevant income brackets as affordable housing, there is no guarantee a dwelling stays 'affordable housing'. It concluded that housing which should have contributed to levies, does not contribute. In summary, Council submitted that the exemption for certain affordable and social housing is appropriate in its current form and that any exemption for affordable housing more broadly should be by ministerial direction across the board, not just in the Darebin Planning Scheme.

4.3 Discussion

4.3.1 Attribution of projects to Charge Area 3

The Panel notes Mr Black's evidence (for La Trobe University) that there is some lack of transparency about how the projects have come to be in the DCP and the nexus of the projects to the Charge Areas. However, the Panel does not agree with Deal Corp's interpretation of nexus as requiring a) usage analysis of each project and detailed assessment of the projected share of usage of projects intended to be funded by Charge Area 3, and b) clear connection of that use to the Polaris development. The DCP Guidelines state:

²⁴ Email in response to Panel queries (Document 9)

²⁵ Council's Part C submission paras 15-17 (Document 26)

It must be demonstrated that the new development to be levied is likely to use the infrastructure to be provided. New development should not be considered on an individual basis, but as part of the wider community that will use an infrastructure project²⁶.

The Panel agrees with Council's submission that the projects that Charge Area 3 are contributing to are either proximate to Polaris, within Charge Area 3 or have broader municipal use, and on this basis are appropriately attributed to Charge Area 3.

4.3.2 Inclusion of open space projects in the DCP

The Panel agrees with Council that it is for Council to determine the source of the funds for investment in infrastructure within the parameters set by the funding sources. The total funding of any project in the DCP may be sourced from multiple funding pools within the parameters of those pools, whether the money is sourced from rates, grants, DCP levies or the Open Space levy. The mix of funding sources to fund Council's 10 year Capital Works Program is determined appropriately through Council's budget process, and approved by the Council. The accounting of those funds is a matter for the Council and its audit processes and not for this Panel.

4.3.3 Exemptions for existing permits and subdivision

The Panel considers the Polaris development is in a unique position because of its staging and in part agrees with the arguments of Deal Corporation regarding exemptions for already approved developments. The Panel has considered the examples of exemptions put forward by Deal Corp and notes that the circumstances of each are unique and not directly applicable to the situation with the Polaris development. The Panel does, however, consider the Port Phillip Planning Scheme example provided by Deal Corporation provides some guidance in the circumstance. DCPO1 in relation to the Port Melbourne Mixed Use Area includes the following exemption (modified extract):

4.0 Land or development excluded from development contributions plan

- any use or development which was approved before the date of gazettal of this Plan.

As a matter of principle, and consistent with the long held understanding that development contributions levies cannot be applied to existing development, the Panel agrees that there are aspects of the Polaris development that could be considered 'existing development'. In particular, where planning permission has been approved by a planning permit, and where development is complete, but subdivision has not occurred or statement of compliance issued, it would be unfair and unreasonable to apply development levies. In these circumstances costs are being imposed on a development that is approved or that 'exists' but may not have been subdivided or achieved a statement of compliance.

The Panel considers it is reasonable that an additional exemption for the payment of levies should be allowed for subdivision of any buildings or works completed in the preceding 12 months prior to the approval of the Amendment, as a transitional arrangement, to allow time for the administrative aspect of the completion of development to be executed, but not beyond that timeframe.

²⁶ DCP Guidelines 2003, as amended 2007 (Document 5)

The Panel agrees with the Council's suggested wording in line with the Yarra exemption, but with additional exemptions as follows:

- any use or development which was approved by a planning permit before the date of gazettal of this Plan
- subdivision of any buildings or works completed in the preceding 12 months before the approval date of Amendment C170dare for which statement of compliance is being sought.

4.3.4 Broadening the exemption for social and affordable housing

The Panel notes that there have been changes in department structures and the state agency for housing, Homes Victoria, sits within the portfolio of the new Department of Fairness, Families and Housing. Council has indicated it will make the appropriate changes in its final drafting.

The Panel supports Council's position on the exemption for delivery of social housing. If a developer delivers social housing that is vested or transferred to a housing association or Homes Victoria (by commercial arrangement or otherwise) then the exemption should apply. Without transfer of ownership there is no guarantee or mechanism to ensure the housing is not sold down in the general market and at market price. Developers may still be incentivised to deliver social housing through other mechanisms and funding, if an exemption from development contributions is not available. That remains a decision for the developer where the security of the status of the dwelling, through vesting in a social housing provider, is not guaranteed.

Similarly, it is encouraging that developers like Deal Corporation are seeking to deliver affordable housing as part of their development. However, the Panel is not familiar with any mechanism in Victoria that secures the ongoing availability of such affordable housing at a price below market value on an ongoing basis. The (ongoing) relative affordability of any house therefore cannot be guaranteed. There is no basis for any exemption of developer contributions in this circumstance.

The Panel notes that, whether or not a dwelling is social or affordable housing, it is the occupancy of a dwelling that triggers demand on infrastructure and therefore levying contributions towards provision of infrastructure on these categories of dwellings is justified, unless an exemption is granted.

4.4 Conclusions

The Panel concludes:

- The projects included in the DCP are appropriately attributed to Charge Area 3.
- The inclusion of open space project in the DCP is appropriate.
- There should be an exemption to developments that have planning approval prior to gazettal of the Amendment but are not yet constructed.
- There should be an exemption where development has been completed 12 months before the gazettal date of the Amendment but subdivision or statement of compliance has not been obtained.
- The exemption for certain affordable and social housing is appropriate as exhibited.

The recommended additional exemptions for previously approved development are included in the Panel preferred version of the DCPO schedule in Appendix C.

5 Vicinity Centres

5.1 The issues

The issues raised by Vicinity Centres are:

- Whether the residential dwelling, and retail and commercial floor space forecasts used in the DCP are appropriate.
- Whether the methodology underpinning the retail forecasts is sound.
- Whether draft strategic documents and documents not in the planning scheme, should be used to determine demand units in Charge Areas in the DCP.
- Whether a separate DCP should be considered for the Northland site.

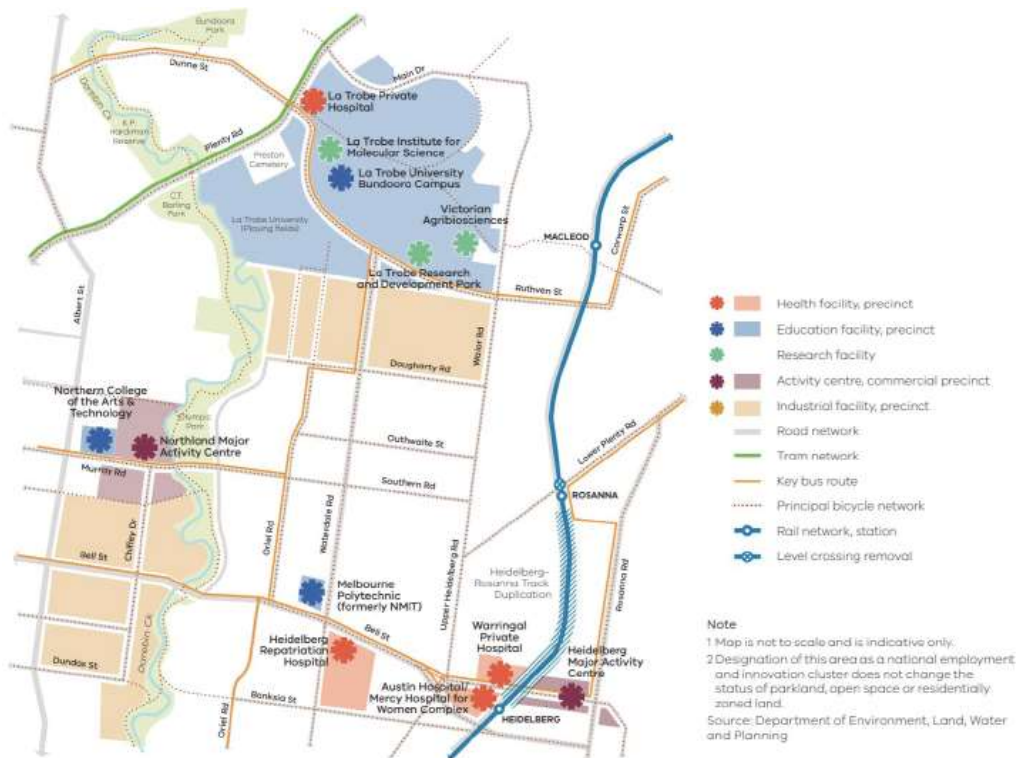
5.2 Submissions

Vicinity Centres was represented in the Hearing by Ms Laura Thomas of Urbis. Vicinity Centres are co-owners, with GPT, of the Northland Shopping Centre. Northland is a regional shopping centre and forms part of the Northland-Preston Major Activity Centre. The site is zoned Commercial 1 Zone. Northland sits in Charge Area 8 of the DCP.

5.2.1 Planning context

Plan Melbourne identifies Northland as a Major Activity Centre. The La Trobe National Employment and Innovation Cluster (NEIC) is one of seven NEICs identified in Plan Melbourne. Northland Shopping Centre is recognised in the NEIC as having “*significant capacity to accommodate new jobs and housing*”.

The Latrobe NEIC draft Framework Plan, prepared by the VPA, was released in 2017 (see Figure 3). The ‘Vision’ for the NEIC states that it is expected that Northland employment precinct will strengthen its current role as high-value retail, commercial and social spaces. It is also expected that higher density and diverse homes will be integrated in the cluster to enable more people to be able to live and work in the same area.

Figure 3 La Trobe National Employment Cluster Plan from Plan Melbourne²⁷

Vicinity's submission sets out the PPF relevant to Northland and the Amendment²⁸. Of note, Clause 21 (Municipal Strategic Statement) points to intensification of the Northland site for mixed-use and residential development. Clause 21.01-6 Strategic Framework Plan identifies Northland and surrounds as 'Areas of urban intensification' and 'Key urban renewal area'. In Clause 21.03 - Housing, the Northland site and surrounding land is identified as being within a Substantial Housing Change Area. Objective 1 in Clause 21.04 – Economic Development encourages strategies to "Promote Northland East Preston Activity Centre as regional centre and key node in the La Trobe National Employment Cluster for retail, commercial office, entertainment and related uses which supports consolidation of jobs and housing in proximity."

Council has been undertaking strategic planning for the Northland Urban Renewal Precinct (NURP) project for some time. Vicinity acknowledged that this work has not resulted in a formally adopted framework or structure plan to date.

The VPA has prepared the La Trobe NEIC Draft Framework Plan (March 2017). The Vision for the Northland Employment Precinct is for the Northland Area to be an important diverse mixed-use precinct including higher density housing. Council indicated it understood the lead agency is now the Department of Jobs, Precincts and Regions and there is no indication of any further progress towards finalising the draft Framework Plan.

The Department of Environment, Land, Water and Planning (DELWP) released the Melbourne Industrial and Commercial Land Use Plan (MICLUP) in 2020. The MICLUP nominates the NURP as having regionally significant industrial land that should be retained for employment uses.

²⁷ Submission for Vicinity Centres (Document 24)

²⁸ Vicinity paras 13-24 (Document 24)

5.2.2 Appropriateness of the forecasts used in the DCP

Vicinity submitted that the development projections in the proposed DCP (Charge Areas 8 and 11) do not reflect the high level of growth anticipated in Council's planning work on the NURP project. It queried why the NURP planning documents are not referenced in the proposed DCP. This concern was also raised by Tract for BWP Trust²⁹ in its submission on the Amendment.

La Trobe University made a similar argument, supported by the evidence of Mr Black, that the proposed DCP has not adequately considered the La Trobe NEIC draft and that residential projections for Charge Area 3 did not reflect the anticipated residential development identified in the Campus Master Plan.

Vicinity pointed to DCP Charge Areas 8 and 11 where, over the period of 2021-2041, a total increase of 3,236 dwellings is forecast. This forecast includes the NURP area and, according to Vicinity, the forecast also allows for infill development in the existing suburbs in these precincts. By way of contrast, Vicinity referenced a 2016 Council report that suggested that the NURP would result in 10,000 – 15,000 new residents by 2035-2050 (not including infill development). Further, Vicinity indicated the NURP Transport and Movement Strategy draft (2018) was based on an expectation of intensification up to a possible 12,000 to 19,000 residents and 10,000 to 24,000 jobs by 2050 under a 'high capacity' scenario.

Vicinity argued that if the NURP population projections were used in the preparation of the DCP, the number of demand units within the relevant Charge Areas would tend to be higher and therefore the levy per demand unit would be lower. Vicinity submitted:

If the number of dwellings projected for an area is substantially underdone, it results in an unfair situation for the owners as there will be a substantial amount of money collected from Area 8 that goes beyond what is required for that Area³⁰.

La Trobe University noted a similar issue:

Residential dwelling projections in the DCP, at section 4.3, have been made with dwelling distribution channelled towards structure plan areas – but not including the University. Given the support in policy for housing growth on the university land, this appears to understate the projections for area 3. An understatement will result in the actual collection of significantly more in levies than required³¹.

Mr Black's evidence was that:

Based on the strategic role the LTU campus plays in delivery the objectives and outcomes of the National Employment and Innovation Cluster planning, I believe the projections (demand units) for Charge Area 3 are significantly underestimated at 1,600 dwellings, 5,300sqm of retail floor space and 49,000 of commercial floor space. The resultant outcome of underestimating the growth is that the levy for Charge Area 3 is greater than it should be as the total cost of infrastructure is spread over less demand units³².

La Trobe University referenced the University Masterplan 2014 which envisages significant areas of the campus for residential development as part of the concept of a University Town. The BWP Trust submission showed a NURP Concept Masterplan (2017) prepared for its site.

²⁹ BWP Trust amendment submission 8

³⁰ Vicinity Centres submission para 51 (Document 24)

³¹ La Trobe University submission para 59 (Document 10)

³² Mr Black's evidence para 23 (Document 3)

The residential forecasts are found at Table 2 in the DCP³³. Vicinity noted that while Preston Activity Centre (Area 10) has been identified with significant growth (63 per cent), the two precincts that make up the NURP are forecast at 40 per cent and 43 per cent (Area 8 and Area 11).

Table 1 in Vicinity's submission (Figure 4 below) provided a useful 'Summary of the Residential Dwelling Projections' and the percentage changes.

Figure 4 Summary of Residential Dwelling Projections³⁴

Area	Area Name	2021	2041	Total Growth	% Change
Area 1	Reservoir (Merrilands)	4,038	4,952	914	23%
Area 2	Reservoir (Cheddar)	6,567	8,414	1,847	28%
Area 3	Bundoora - Macleod	3,217	4,815	1,598	50%
Area 4	Reservoir (Edwardes Lake)	3,256	4,281	1,025	31%
Area 5	Kingsbury	2,382	2,990	608	26%
Area 6	Reservoir (Edwardes Lake)	3,317	4,265	948	29%
Area 7	Reservoir (Oakhill)	3,000	3,926	926	31%
Area 8	Reservoir (Oakhill)	4,769	6,694	1,925	40%
Area 9	Preston West	4,307	5,715	1,408	33%
Area 10	Preston Activity Centre	4,962	8,082	3,120	63%
Area 11	Preston (East)	3,033	4,344	1,311	43%
Area 12	Thornbury (West) - Preston (West)	4,915	7,233	2,318	47%
Area 13	Thornbury (East)	5,673	7,261	1,588	28%
Area 14	Northcote (West)	6,404	8,995	2,591	40%
Area 15	Northcote (East)	7,109	9,022	1,913	27%
Area 16	Fairfield-Alphington	4,042	5,322	1,280	32%
Total		70,991	96,311	25,320	36%

Council in reply noted that considerable strategic work had been undertaken for the NURP with a view to enabling substantial land use change and diversification over a long-term planning horizon, including accommodation of residential development. Background and engagement documents have been prepared but a Structure Plan or Precinct Framework Plan for the NURP has not been finalised and adopted by Council.

Council indicated that it needs to review the NURP work in the context of the *Melbourne Industrial and Commercial Land Use Plan* (MICLUP) because the MICLUP substantially limits the potential for

³³ Council's Part A submission Attachment 3 Darebin Development Contributions Plan 2019 (version for Panel) p 19 (Document 1c)

³⁴ Submission of Vicinity Centres (Document 24)

residential mixed-use development. The extent of the NURP precinct will have to be reconsidered, and further work will be required to understand the appropriate scope of opportunity for the area. Council intends to review the potential for urban renewal in the NURP area, but further municipal wide economic work is needed first³⁵.

Vicinity maintained that the MICLUP nominates the NURP as regionally significant industrial land but that this applies to the land south of Murray Road and not the Northland site. It argued that there is still considerable potential for additional development at the Northland site. Vicinity submitted there is clear strategic State, VPA and local policy direction for significant residential and commercial growth, and that the forecasts in the DCP is not commensurate with the likely intensification of development for the Northland site. On this basis, Vicinity's position was that a site specific DCP would be appropriate for the Northland site to enable Northland to continue to develop without waiting for master planning of the rest of the NURP.

Council noted that much of the land in the NURP area is currently zoned in a way that prohibits residential development and that in respect of areas such as the NURP, if a strategy is incorporated into the Planning Scheme which proposes and clearly identifies significant additional demand units, then the DCP would be revisited at that time to ensure that the DCP reflects that strategic work. Council indicated in reply that planning for a mechanism for Northland's future development to be considered, additional to the municipal DCP, was supported.

With respect to the University Master Plan and the draft NEIC Framework Plan, Council argued that the Campus Master Plan is not adopted by Council, nor does it have a status in the planning scheme. Council's position with respect to submissions made by Vicinity, La Trobe University and BWP Trust is that it is not appropriate for the proposed DCP to factor in the scale of growth and change that may have been contemplated as part of the previous vision for the NURP, the Campus Master Plan or the draft NEIC Framework Plan.

5.2.3 The methodology underpinning the Commercial and Retail floor space area forecasts

Vicinity Centres also raised concerns that the accuracy of the Commercial and Retail Forecasts in the DCP do not take into consideration the retail hierarchy and there was no clear methodological basis for a universal 33 per cent increase across DCP Areas. It submitted that the forecasts do not take into consideration those precincts which are likely to achieve a higher proportion of commercial uses (such as Northland and Preston) compared to suburbs without an activity centre focus. It submitted that the effect of this "*simplistic application*" is that it is more likely that some areas will not achieve the floorspace projected and there will be reduced contributions, and some areas will 'overachieve', providing Council with more contributions than have been planned. It raised concerns with how this 'extra money' would be spent.

Council argued in response that Vicinity did not raise any methodology concerns with Mr Hrelja by way of cross examination so that he could respond to them. Council's position was that its expert has properly carried out the forecasts based on the ID population data to 2041 and based on the trend methodology.

Vicinity indicated it supported Council's exhibited position that Council, at its discretion, may consider accepting works and/or land in lieu of a cash contribution. Vicinity also supported

³⁵ Council's Part B Submission

Council's post-exhibition change of a clearer mechanism which excludes land that has a section 173 agreement in place.

5.2.4 Other matters raised

Vicinity queried the nexus between Charge Area 8 (in the east of the municipality) and contributions to the BT Connor Reserve which is located in the north-west of the municipality. It also suggested that monies from Charge Area 8 could potentially be used to upgrade a recreation reserve in neighbouring Banyule that would provide more immediate benefit to local residents, but noted it may be beyond the scope of options available to Council under the Ministerial Direction on Preparations and Content of DCPs.

Vicinity also made brief submissions on the contribution Northland has made to infrastructure beyond that directly associated with the land. This issue was raised by CES Properties and is addressed in Chapter 6.2 of this report.

Submissions from community groups made a point about lack of transparency and consultation on the projects included in the DCP.³⁶ They submitted that the DCP document needs to include explicitly how the DCP applies to a vacant strategic development site (such as Preston Market and others) where there may potentially be hundreds of dwellings in each residential tower with multiple towers. They also submitted it would be pertinent to clearly state how the inclusion of a section 173 Agreement or social housing will impact the total DCP amount payable.

5.3 Discussion

5.3.1 Appropriateness of the forecasts used in the DCP

The Panel acknowledges there could be some degree of uncertainty in residential, commercial and retail floor space projections at the present time, due a range of strategic planning factors raised by submitters. The documents referred to by Vicinity were however not tabled and therefore the data contained in the figures was not tested in the Hearing. The Panel notes that, in any case, the documents are drafts.

The Panel notes that there is clear direction in the Darebin Planning Scheme and Plan Melbourne that points to an intensification of residential, retail, commercial and other employment land use for Northland and surrounding areas. However, the Panel agrees with Council's position that documents underpinning work on the NURP and the NEIC, while confirming that direction, have not at this time led to a Structure or Framework Plan with anticipated growth figures that is adopted by Council or confirmed by the state government or its agencies.

The Panel agrees with Council that the release of strategic documents such as the MICLUP requires Council to revisit its assumptions and its regional planning work to date, notwithstanding that the strategic direction for Northland still appears to be supported.

Strategic planning work for precincts of this scale, and in a period of development uncertainty, will take time. That strategic work may or may not require a revision of the DCP in future. It is not for this Panel to speculate on what the likely outcome of the strategic work will be. The Panel is satisfied that Council has provided a mechanism by which it can engage with Vicinity on the future development of Northland and the appropriate contributions that might be made.

³⁶ Submission 3, paras 11, 17-18.

The Panel also agrees with Council's position that it cannot rely on the La Trobe University Campus Master Plan to set demand units in the DCP. Council and the University can confirm future residential, commercial and retail development at an appropriate time in the future as the campus develops.

5.3.2 The methodology underpinning the Commercial and Retail floor space area forecasts

The Panel was not presented with an alternate methodology that would provide different retail floor space projections in the DCP in general, or alternate floor space projections for Charge Area 8 where Northland is located.

On face value, the Panel is inclined to agree with Vicinity's observation that a blanket 33 per cent increase in retail floor space across all Charge Areas would seem a simplistic approach considering the dynamic nature of demand for retail floorspace. However, in absence of a more substantial challenge to the methodology and figures used in the DCP, the Panel considers the issue is not material enough to warrant further investigation.

The projections set out in the DCP are based on data sourced by Council from a reputable and experienced firm used by many Councils. The data has been reviewed by HillPDA and Mr Hrelja to prepare the DCP. Further, Council advised that the DCP had been reviewed by another reputable firm, although it acknowledged this review was not presented as expert evidence. Collectively this indicates a not insignificant effort by Council to ensure the strategic work underpinning the Amendment and the levy charges, including retail, commercial and employment floor space projections, was sound. The Panel is satisfied with the Council's assurances that the municipal DCP will need to be reviewed as the intensity and location of development across the municipality is confirmed through adopted strategies and future rezoning amendments.

5.3.3 Other matters raised

The Panel is unable to assess whether attribution of the BT Connor Reserve pavilion upgrade (Project 7) to Charge Area 8 is reasonable. The Panel acknowledges that there may be some validity in the criticism of Mr Black – that the DCP is not transparent enough nor does not have enough detail to test whether Council's allocation of projects to Charge Areas is reasonable.

Vicinity however did not call evidence or cross-examine Mr Hrelja and so the proposition that there is a misattribution to Charge Area 8 cannot be tested. The Panel relies on the strategic work underpinning the projects which can be found in the DCP Appendix. In the case of Project 7, the Darebin Outdoor Sports Infrastructure Framework 2020 is the supporting strategic document. The evident distance from Charge Area 8 to Project 7, a pavilion upgrade, marks this query as different in nature to those raised by Deal Corporation, where the proximity of the projects to the Charge Area are apparent. The Panel encourages the Council to undertake a thorough final cross-check of the attribution to Charge Areas of each project, particularly where some doubt has been raised by submitters.

The Panel considers that for the benefit of transparency the DCP should include explanatory information at a high level:

- how the projects in the DCP have been attributed to Charge Areas
- how the DCP is to be applied to strategic redevelopment sites (such as Northland and Preston Markets)

- how the interrelationship with any site specific DCPs, social housing and other exemptions will be dealt with.

Other matters raised by the community groups are briefly addressed in Chapter 6.4.

5.4 Conclusions

The Panel concludes:

- The residential, commercial and retail forecasts in the DCP are appropriate.
- The methodology in the DCP that underpins the retail projections used in the DCP is reasonable.
- The methodology for retail projections should be reviewed as part of a future review of the DCP when other strategic documents may be finalised, and the development intentions of Northland are known.
- Council should cross-check the attribution of each project to Charge Areas.
- The DCP should include explanatory information on:
 - how the projects in the DCP have been attributed to Charge Areas
 - how the DCP is to be applied to strategic redevelopment sites (such as Northland and Preston Markets
 - how the interrelationship with any site specific DCPs, social housing and other exemptions will be dealt with.

A Panel recommendation has been made covering this last dot point.

6 Issues raised by other submitters

6.1 Preston Market Developments

(i) The issues

The issues are:

- whether the Preston Market precinct should be exempted from the municipal DCP
- whether a site specific, high public open space levy is a consideration for an exemption from the municipal DCP.

(ii) Submissions

The Preston Market precinct is bound by Murray Road to the north, Cramer Street to the south, St Georges Road to the west, and an access road to the rear of shops fronting High Street to the east. It excludes Preston Rail Station and associated railway land as well as 104 St Georges Road, Preston.

The Victorian Planning Authority (VPA) is the planning authority for the redevelopment of Preston Market and Amendment C182dare, to facilitate development of the Preston Market precinct, was exhibited (18 May to 13 July 2021) at the time of the Amendment C170dare Hearing. Amendment C182dare proposes to, among other things:

- Insert a Schedule 2 to Clause 45.06 Development Contributions Plan Overlay (DCPO2) and apply the overlay to all land within the Preston Market Precinct
- Amend the Schedule to Clause 53.01 to require a 10 per cent contribution for public open space for the Preston Market precinct.

The VPA did not appear at the Hearing but its submission does not object to the proposed Amendment as it relates to the Preston Market Precinct.

The VPA submission noted that the draft DCP for the Preston Market Precinct only includes a DIL and that a Community Infrastructure Levy (CIL) is not proposed as part of the C182dare levy package. The VPA observed that, if a CIL was to be contemplated, no further levies could be collected by the Preston Market Precinct for a period of years because the CIL rates in Amendment C170dare consume 100 per cent of the maximum CIL permissible under the relevant Act³⁷.

The VPA further noted that Amendment C170dare focuses levying efforts on the municipal scale and does not differentiate beyond Charge Areas. It raised the potential to introduce additional Charge Areas/levies to the proposed DCPO Schedule for site specific development (such as the Preston Market Precinct) to potentially streamline the operation of DCPs in Darebin and the collection of funds, noting such a proposal would be subject to a separate planning scheme amendment process.

Preston Market Developments Pty Ltd is the owner of the Preston Market and 30 Cramer Street, Preston and was represented by Mr Chris Taylor of Planning and Property Partners. Preston Market Developments submitted that *“the requirement that all new residential, commercial, retail, and industrial developments within the municipality must be subject to a Development Infrastructure Levy ... is inappropriately broad in its application and inherently excessive in its*

³⁷ Part 3B of the Planning and Environment Amendment (Public Land Contributions) Act 2018

amount³⁸". Preston Market Developments opposed the Amendment and raised the following issues in its submission:

- the length of the DCP period
- the nexus between the levy and the land to be developed
- the unclear nature of the exhibited section 173 exemption, and
- broader planning and commercial concerns as a result of the imposition of the levies.

Preston Market Developments contained its oral submission to the issue of exemptions. It noted that the precinct will be subject to significant development contributions through the C182dare Amendment and a high open space levy. It submitted that, on this basis, an exemption for the site from development contributions under the C170dare Amendment was reasonable. In the event that the Panel did not agree with an outright exemption, it submitted that the section 173 exemption should be similar to an exemption in the Yarra Planning Scheme that gives scope to a negotiation with Council on what might be a reasonable development contribution of the Preston Market precinct, or works in lieu. It provided a marked-up version of the exhibited Schedule 2 to Clause 45.06 of the DCPO for the C170dare amendment. The extract of Part 4 is below:

Land with an agreement executed under section 173 of the Planning and Environment Act 1987 that exempts development from this Schedule due to the development having met its DCP obligations through a requirement for the payment of a development contributions levy or the provision of specific works, services or facilities beyond those necessary on or to the land or other land. This includes the value of any land on which the works, services or facilities are located.

The relevant extract from the Yarra Planning Scheme is:

4.0

01/02/2021
C238yara

Land or development excluded from development contributions plan

No land or development is exempt from this Development Contributions Plan unless exempt by Legislation or Ministerial Direction or Legal Agreement with Yarra City Council or stated below. The following development is exempt from a development contribution:

- Land developed for a non-government school, as defined in Ministerial Direction on the Preparation and Content of Development Contributions Plans of 11 October 2016;
- Land developed for housing by or for the Department of Health and Human Services, as defined in Ministerial Direction on the Preparation and Content of Development Contributions Plans of 11 October 2016. This applies to social housing development delivered by and for registered housing associations. This exemption does not apply to private dwellings developed by the Department of Health and Human Services or registered housing associations;
- Land which has a section 173 Agreement under the Planning and Environment Act 1987 and/or a Deed of Agreement which:
 - requires the payment of a development contributions levy; or
 - requires the provision of specified works services or facilities beyond those necessary on or to the land or other land as a result of the grant of any permit; or
 - requires the payment of any development contributions or the provision of specified works services or facilities required to be provided public and/or community infrastructure by any other provision of this scheme.
 - requires the provision of land for works services or facilities (other than land required to be provided as public open space pursuant to clause 53.01 or section 18 of the Subdivision Act 1988); or
 - explicitly excludes further development contributions to be made.

³⁸ Property and Partners submission on Amendment C170dare for Preston Market Development Pty Ltd

Preston Market Developments endorsed the submission made by Deal Corporation for a broader exemption for social and affordable housing provided by the private sector.

Council in reply noted that the Preston Market DCPO2 (draft) has no external apportionment to any project. All projects are 100 per cent charged to Preston Market precinct. Council suggested that this indicated that the infrastructure projects funded by the development contributions plan for Amendment C182dare are all internal to the development and bear no relationship to a municipal wide DCP. Council also noted that that the DCP on exhibition does not include the exemptions sought by Preston Market for the municipal wide DCP.

In response to the argument that the Preston Market precinct will be making a 10 per cent Public Open Space contribution, Council suggested that this was likely because the very high density of the development requires a higher level of amenity than the usual 5 to 8 per cent. Council submitted that the argument was not relevant to a municipal wide DCP and that even if it were relevant, the open space contribution should not be regarded as an 'over and above' contribution.

Council submitted that some of the changes in the marked-up draft sought by Preston Market Development are "*innocuous but not really required*". With respect to the alternate drafting of the section 173 exemption, Council preferred the drafting it proposed for consistency with other planning schemes. It noted that, were the drafting proposed by Preston Market Development to be supported, the reference to the 'responsible authority' should be changed to the 'collecting agency'.

(iii) Discussion

The development of the Preston Market precinct will significantly increase residential and commercial floor space in the precinct alongside the redevelopment of the market. With this development will come demand on municipal infrastructure. The Panel is of the view that it is reasonable for development in the Preston Market precinct to contribute to provision and improvement of municipal infrastructure through the Darebin C170dare DCP. The Panel agrees with the Council that the DCP contemplated by Amendment C182dare is directed towards infrastructure internal to the precinct, which is required to facilitate a more intensive built form. Should development in the precinct seek to provide infrastructure that is 'above and beyond' what is required, the proposed section 173 exemption provides scope for an outcome to be negotiated with the Council.

The Panel agrees with Council's submission on the Public Open Space levy. The open space levy and levies under a DCP are distinct. The Panel considers an exemption for a development or site from a development contributions levy because of obligations to pay a Public Open Space levy is not a relevant consideration.

The issue of a broader exemption for social and affordable housing provided by the private sector has been addressed in Chapter 4.

The Panel has considered the drafting changes to the Schedule to the DCPO and supports their inclusion to continue to improve consistency across planning schemes. The final Panel preferred version is shown in Appendix C.

(iv) Conclusions

The Panel concludes:

- The section 173 exemption provides scope for an outcome to be negotiated with Council where infrastructure is agreed to be delivered that is 'above and beyond' what is required for the precinct.
- The Public Open Space levy contemplated for the Preston Market precinct is not a relevant consideration for an exemption to development contributions under this Amendment.

6.2 Provision of services or facilities beyond those necessary**(i) The issues**

The issues are:

- whether an exemption should apply to the development contributions levy for development that provides specified services or facilities beyond those necessary as a result of a planning permit.

(ii) Submissions

CES Properties (AUS) Pty Ltd is the owner of land at 217-223 Separation Street, Northcote. The site, along with an adjoining site under different ownership, is the subject to a proposed Planning Scheme Amendment to rezone the land from Industrial 3 Zone to Residential Growth Zone and apply the Development Plan Overlay (DPO) and the Environmental Audit Overlay. The site is located in Charge Area 15. The site is identified in Clause 21.03 – Housing, of the Darebin Planning Scheme as a strategic site in Council's Strategic Housing Framework Plan³⁹.

CES Properties opposed the Amendment in its exhibited form on the basis that the DCPO would apply to all new development within the municipality (with the exception of the development exemptions) and the application of the exhibited version of the s173 exemption in the proposed Schedule to the DCPO was not clear.

CES indicated that, as part of its discussions with the Council, development proposed for the site may deliver the following community benefits (in summary):

- Affordable Housing
- A green corridor through the site linking McDonell Park to the north and Rubie Thomson Reserve to the south, including shared path infrastructure for pedestrian and bicycle riders
- Financial contributions towards the provision of a shared path through McDonnell Park
- Planning and maintenance period for trees in McDonell Park
- Further infrastructure contributions subject to Council requirements.

CES Properties submitted that a site specific exemption for its development site should therefore be considered. More generally, it argued that where a development site provides social and physical infrastructure that could be considered to deliver a public benefit, the part or full payment of the levy could be offset. In the absence of a site specific exemption in the DCPO2, CES submitted that the post-exhibition changes to the wording of the proposed exemptions (as

³⁹ Urbis on behalf of CES Panel submission p9 (document 25)

proposed by Council in its Part A submission) could be regarded as a fair and reasonable mechanism to provide social and physical infrastructure in Darebin.

Vicinity Centres raised similar issues, observing in its submission that through the process of planning scheme amendments and planning permit requirements, Northland has contributed infrastructure beyond what was directly associated with the use of the land such as an upgraded bus interchange on the Northland title.

Council in reply to CES noted that developers will often provide more infrastructure (especially amenity infrastructure) to attract purchasers to their development, but that councils need to plan for the orderly delivery of municipal wide infrastructure. Council argued that the site is adjacent to significant community facilities that will benefit the development and some of that infrastructure is being improved and funded via the DCP.

Council submitted that if infrastructure contributions are required as part of an amendment process affecting the CES land, and that obligation is secured by a section 173 agreement that fits within the exemption provision, then an exemption would apply.

(iii) Discussion

Panel agrees with Council that the planning and funding of municipal wide infrastructure cannot be conflated with the delivery of infrastructure on a site through a rezoning process. Where a council can be satisfied that the delivery of infrastructure by a developer materially contributes to its overall strategic planning for infrastructure delivery, then it is reasonable for credit to be given for that infrastructure delivery by way of partial or full exemption from a development contribution levy. However, it is not reasonable for developers to assume 'as-of-right' that a credit should be given, or that provision of infrastructure beyond that required from a planning permit, of itself, merits a full or partial exemption from payment of development contributions.

The Panel makes no comment on the merits of the infrastructure proposed on or near the CES site through its redevelopment and any proposed amendment for the rezoning of CES land is a matter for a future panel.

The Panel observes that the bus interchange upgrade example provided by Vicinity Centres is not unique to Northland and that proximate and safe public transport facilities within a large shopping centre provides a transport benefit to workers and customers as parking spaces do. It is a matter for another forum as to whether provision of public transport infrastructure constitutes an 'over and above' contribution by shopping centres in the context of the land use.

(iv) Conclusions

The Panel concludes:

- It is fair and reasonable for Council to require contributions via a DCP towards projects that have broader public benefit, even where a developer may be providing infrastructure that provides a benefit on or beyond the development site.
- The proposed Planning Scheme Amendment for the rezoning of land at 217-233 Separation Street, Northcote is not a consideration of this Panel.

6.3 Housing Industry Association

(i) The issues

The issues are

- whether development as a matter of principle, should contribute to community, social and regional infrastructure beyond the site boundaries of a development site
- whether a standardised approach to levies across municipalities should be supported.

(ii) Submissions

The Housing Industry Association (HIA) submitted that, in principle, it objects to the Amendment as development levies are one of many costs that impact the end price of a new home and in effect act as a tax on home buyers. Its position was that any levies that are passed onto the new home buyer are based on a fair and justified set of principles. It noted that notwithstanding its objection, were the Amendment to proceed, the proposed exemptions are considered appropriate.

HIA submitted that development-specific infrastructure, within the boundaries of a development, which provides essential access and service provisions and without which the development could not proceed, are considered to be core requirements for housing development and should be provided in a timely manner to facilitate development. HIA argued however, that the costs of broader community, social and regional infrastructure should be borne by the whole community and funded from general rate revenue, borrowings or alternative funding mechanisms.

HIA contended that the imposition of levy requirements for community, social and regional infrastructure through the Amendment will have a negative impact on housing affordability. HIA further suggested a risk of 'double-dipping' whereby such infrastructure items may already be provided for under existing levies/revenue avenues (i.e. rate collections).

The HIA also noted that Amendment C186dare (currently on hold) proposes all subdivision be required to provide a public open space contribution rate of 10 per cent. HIA's position is that, in pursuing Amendment C170dare and Amendment C186dare, Council is eroding housing affordability in Darebin.

Council responded that the development contribution levy proposed is covering 24 per cent of the total cost of the projects, with Council funding the remaining 76 per cent. Council is also funding other infrastructure not funded by the DCP. Council's position was that this supports the proposition that infrastructure funding is being borne by the whole community. Council noted that funding infrastructure from multiple sources does not equate to 'double-dipping' and confirmed, at any rate, that Amendment C186dare was on hold.

Council referenced Mr Hrelja's evidence that the levies proposed are similar to levies payable in other municipalities and are comparatively smaller per unit than other similar municipalities.

Council submitted that it is appropriate to pursue an amendment to levy development for the purposes of funding infrastructure projects required to service Darebin's growing population, and the DCP serves to share the cost of providing infrastructure between new development and the existing community on a fair and reasonable basis.

Council noted HIA's position about a standardised approach to levies and submitted this position supports the proposition that as far as it is possible to do so, the machinery provisions of the DCP document should be alike across different municipalities.

(iii) Discussion

The Panel notes the HIA's view on housing affordability and acknowledges its position and advocacy on development contribution levies.

The Panel agrees with Council that the *Planning and Environment Act 1987* and the Victoria Planning Provisions provide for the preparation and implementation of development contributions plans to contribute to planned infrastructure and that it is legitimate that development contributions contribute to community, social and regional infrastructure beyond the site boundaries of a development site.

The HIA's arguments are more of a broad policy nature and it is not appropriate for the Panel to comment on such matters.

(iv) Conclusions

The Panel concludes

- whether development as a matter of principle, should contribute to community, social and regional infrastructure beyond the site boundaries of a development site is not a matter for this Panel to comment on.
- whether a standardised approach to levies across municipalities should be supported is a policy matter beyond the scope of this Panel.

6.4 Community group submissions

Save the Preston Market and Darebin Appropriate Development Association made a joint submission to the Amendment. The submissions raised the following issues (in summary):

- Lack of transparency and consultation on the projects included in the DCP.
- The DCP document needs to include explicitly how the DCP applies to vacant strategic development sites.
- The DCP should state how the inclusion of a section 173 Agreement or social housing will impact the total DCP amount payable.
- The delay in introducing a new DCP after the previous DCP stopped collecting levies.
- Inequal distribution of projects between the north and south of the municipality.

The groups submitted that the Council needs to look at how the DCP and open space levy works in tandem in order that funds are directed to where they needed and on a more "*fair and equitable outcome basis*".

The first three issues are addressed by the Panel at Chapter 5.3.3.

Council in response to the remaining two Issues indicated that the matter of the time gap between the former DCP and the commencement of the new proposed DCP is not a relevant to the question of whether the new DCP should be approved. Council submitted that the various DCP infrastructure projects represent a relatively small number of capital works projects identified in Council's 10 year Capital Works Plan and the distribution of projects needs to be equitable to all

the Charge Areas, rather than have a focus on infrastructure in any one Charge Area⁴⁰. The Panel accepts Council's response.

⁴⁰ Council's Part B submission paras 19-21 (Document 4)

7 Form and content of the Amendment

7.1 Post-exhibition changes to the Amendment

In response to a submission raising concerns about exemptions where a section 173 agreement is in place, Council made changes to the wording of proposed exemption and deferral provisions in its Part A and B submissions.

Changes from the exhibited version of the Amendment included in the Council Part A and B submissions were as follows:

- Expanded deferral mechanism in the DCP (see Figure 1 of this report in Chapter 3).
- Changes to exemption provisions relating to section 173 agreements in the DCP to provide greater clarity on when the provisions would operate.
- Council advised that, since the preparation of the DCP, the KP Hardiman Hockey Pitch Redevelopment project had received state government funding. As the DCP cannot include costs to be met through external funding, Council noted that an adjustment will need to be made to reduce the project cost in the DCP. Council proposed that all project costing be reconciled prior to adoption of the Amendment to allow for any external funding that may be received. The Panel supports this approach.
- Council noted that a small number of minor errors had been identified in the DCP and Schedule to the DCPO and proposed that these errors also be corrected prior to adoption.

Council subsequently changed its position on deferral and exemption provisions in its Part C submission as discussed in Chapter 3. The Panel adopts Council's final version for the reasons set out in Chapter 3.

In its Part C submission, Council identified the following further minor changes to the DCP and DCPO Schedule in response to issues raised by submitters:

- Delete the exemption for Darebin City Council delivered projects.
- Amend the section 173 exemption to include the words "or other deed of agreement" after the reference to "Act".
- Amend the exemption for housing developed by the Department of Health to include the updated name of the department as at the date of the approval of the DCP.
- Make the same changes as set out above to the DCPO exemptions set out in Part 4.0 of the Schedule.
- In the DCPO Schedule:
 - amend the reference to gross floor space to gross floor area as per the Planning and Property Partners submission for Preston Market
 - amend the clause beginning with "Payment of the Development Infrastructure Levy" as per the Planning and Property Partners submission for Preston Market except that the reference to "Responsible Authority" should be a reference to "Collecting Agency"
 - insert "or" after the first and second bullet points.

The Panel accepts that each of these minor changes is appropriate and recommends that they be included in the final form of the Amendment.

7.2 Final form of Amendment

Appendix C shows the Panel preferred form of the DCPO Schedule which incorporates changes recommended throughout this report.

This includes two additional exemptions in clause 4 of the schedule to the DCPO as follows:

- Use or development which was approved by a permit granted before the approval date of Amendment C170dare
- Subdivision of any buildings or works completed in the preceding 12 months before the approval date of Amendment C170dare for which statement of compliance is being sought

The Panel preferred version of the DCP is shown in Appendix D.

7.3 Recommendations

The Panel recommends that Amendment C170dare to the Darebin Planning Scheme be adopted as exhibited, subject to the following:

1. **Amend the Development Contributions Plan Overlay Schedule as shown in Appendix C.**
2. **Amend the Development Contributions Plan exemption provisions as shown in Appendix D.**
3. **Include explanatory information in the Development Contributions Plan on:**
 - how the projects in the Development Contributions Plan have been attributed to Charge Areas
 - how the Development Contributions Plan is to be applied to strategic redevelopment sites (such as Northland and Preston Markets)
 - how the interrelationship with any site specific Development Contributions Plans, social housing and other exemptions will be dealt with.
4. **Amend project costings in the Development Contributions Plan to take into account any external funding received prior to the adoption of the Amendment.**
5. **Correct any minor or drafting errors identified in the Development Contributions Plan and Schedule to the Development Contributions Plan Overlay.**

Appendix A Submitters to the Amendment

No.	Submitter
1	Environment Protection Authority
2	Melbourne Water
3	Darebin Appropriate Development Association and Save Preston Market
4	Urbis on behalf of CES Properties
5	Planning and Property Partners on behalf of Preston Market Developments
6	Urbis on behalf of La Trobe University
7	Housing Institute of Australia
8	Tract for BWP Trust
9	Victorian Planning Authority
10	City of Yarra
11	Vicinity Centres
12	SJB on behalf of Deal Corporation

Appendix B Document list

No.	Date	Description	Presented by
1	17/5/21	Council's Part A submission including: <ul style="list-style-type: none"> a) Chronology of Events (Attachment 1) b) Explanatory Report (Attachment 2) c) Darebin Development Contributions Plan 2019 (Attachment 3) d) Schedule 2 to the Development Contributions Plan Overlay (Attachment 4) 	Maddocks
2	17/5/21	Expert Evidence of Alex Hrelja, HillPDA for City of Darebin	Maddocks
3	17/5/21	Expert evidence of Jason Black, Insight Planning for La Trobe University	Minter Ellison
4	23/5/21	Council's Part B Submission	City of Darebin
5	24/5/21	Development Contributions Guidelines 2003, as amended 2007	Mr Tweedie SC
6	25/5/21	Submission of Deal Corp (LG) Pty Ltd re. 1056-1140 Plenty Road, Bundoora: (Polaris Town Centre and Residential Precinct) including: <ul style="list-style-type: none"> a) Attachment 1 Master Plan of site b) Attachment 2 List of Planning Permits and status 	Best Hooper Lawyers
7	25/5/21	Documents tabled by Preston Market Developments Pty Ltd: <ul style="list-style-type: none"> a) Draft (amended) Schedule 2 to Clause 45.06 Development Plan Contributions Overlay, Darebin Development Contributions Plan (Preston Market marked-up version) b) Exhibited draft Schedule 2 to Clause 45.06 Development Contributions Plan Overlay, Preston Market Precinct Development Contributions Plan, April 2021 	Planning and Property Partners
8	25/5/21	Draft (amended) Schedule 2 to Clause 45.06 Development Plan Contributions Overlay, Darebin Development Contributions Plan (Deal Corporation marked-up version)	Best Hooper Lawyers
9	25/5/21	Two emails on behalf of Deal Corporation in response to Panel queries	Best Hooper Lawyers
10	25/5/21	Submission of La Trobe University	Minter Ellison
11	25/5/21	Copy of Section 19.03-15 VPP Development and Infrastructure Contribution Plans	Minter Ellison
12	25/5/21	Copy of Section 36.01 Public Use Zone and Schedule to Clause 36.01 (Darebin)	Minter Ellison
13	26/5/21	Part 3B Planning and Environment Act (corrected)	Minter Ellison

No.	Date	Description	Presented by
14	26/5/21	La Trobe University Master Plan 2014	Minter Ellison
15	26/5/21	La Trobe University Melbourne Campus Planned Path Network 2020	Minter Ellison
16	26/5/21	La Trobe University Melbourne Campus Map	Minter Ellison
17	26/5/21	La Trobe University Melbourne Campus Pedestrian-Vehicles Pathways - Masterplan	Minter Ellison
18	26/5/21	Moreland C133 Panel Report	Minter Ellison
19	26/5/21	Banyule Development Contributions Plan	Minter Ellison
20	26/5/21	La Trobe University Community Benefits Presentation	Minter Ellison
21	26/5/21	Submission of La Trobe University – Completed Works	Minter Ellison
22	27/5/21	Planning Panel email concerning lockdown and email responses Maddocks, Urbis and Best Hooper	Planning Panels
23	27/5/21	Submission of Housing Industry Association (HIA)	Housing Industry Association (HIA)
24	27/5/21	Submission of Vicinity Centres	Urbis
25	28/5/21	Submission of CEL Australia	Urbis
26	28/5/21	Council's Part C Submission	City of Darebin
27	2/6/21	Email providing suggested changes to proposed wording of exemptions in DCPO2	Urbis
28	7/6/21	Email advice regarding review of policy <i>Infrastructure Charges and Levies on Residential Development</i>	HIA
29	11/6/21	Letter in response to Panel verbal direction to provide advice on wording to be included in Amendment	Minter Ellison
30	11/6/21	Email responding to material provided by Minter Ellison in Document 29 on behalf of City of Darebin	Maddocks
31	23/07/21	Council final marked-up versions of the DCP and DCPO schedule	City of Darebin

Appendix C Panel preferred version of the DCPO schedule

The Panel recommends the following changes:

Clause 4.0 Land or development excluded from development contributions plan

No land or development is exempt from this Development Contributions Plan unless exempt by Legislation or Ministerial Direction or Legal Agreement with Darebin City Council or stated below. The following development is exempt from the development contribution:

- Land developed for a non-government school, as defined in Ministerial Direction on the Preparation and Content of Development Contributions Plans of 11 October 2016.
- Land developed for housing by or for the ~~Department of Health and Human Services~~ Department of Families, Fairness and Housing, as defined in Ministerial Direction on the Preparation and Content of Development Contributions Plans dated 11 October 2016. This applies to social housing delivered by or for registered housing associations. This exemption does not apply to private dwellings developed by the Department of Health and Human Services or registered housing associations.
- Alterations and additions to an existing dwelling.
- Outbuildings normal to an existing dwelling and fences.
- Demolition of a dwelling followed by construction of a replacement dwelling on the same land. The exemption applies to the number of dwellings demolished and does not apply to any additional dwelling(s).
- Reinstatement of a dwelling which has been unintentionally damaged or destroyed.
- Servicing infrastructure constructed by a utility authority.
- ~~Darebin City Council delivered projects, building or works.~~
- Land with an agreement executed under section 173 of the Planning and Environment Act or other deed of agreement that requires either:
 - The payment of a development contribution levy; or
 - the provision of specified works services or facilities beyond those necessary on or to the land or other land as a result of the grant of any permit; or
 - the payment of any development contributions or the provision of specified works services or facilities required to be provided for public and/or community infrastructure by any other provision of this scheme; or
 - the provision of land for works services or facilities (other than land required to be provided as public open space pursuant to clause 53.01 or section 18 of the Subdivision Act 1988);

and explicitly excludes further development contributions to be made.

- ~~Land with an agreement executed under section 173 of the Planning and Environment Act that explicitly exempts the development from one or more DCP Overlay Schedules due to the development having met its DCP obligations~~
- Use or development which was approved by a permit granted before the approval date of Amendment C170dare
- Subdivision of any buildings or works completed in the preceding 12 months before the approval date of Amendment C170dare for which statement of compliance is being sought
- The construction of a building or carrying out of works or a subdivision that does not generate a net increase in demand units.

Appendix D Panel preferred version of the DCP

Clause 7.3 Payment of Development Contributions

The Panel recommends the following change to the 'Method of Payment':

Method of Payment

Payment of development contributions is to be made in cash subject to the exceptions below.

Council may accept the provision of land, works, services or facilities by the applicant in part or full satisfaction of the amount of levy payable.

In respect of any of the land comprising La Trobe University, Council may enter into an agreement with La Trobe University to accept a substituted project as "works in kind" in part or full satisfaction of the liability to pay the Development Infrastructure Levy that is payable where the development type which triggers the liability to pay is residential, retail, commercial or industrial.

The value of the credit for the substituted project (works in kind) is to be determined by the Collecting Agency but must not exceed the combined value of the infrastructure projects in respect of which a Development Infrastructure levy was otherwise payable.

The substituted project is to be agreed by Development Agency.

The 'Deferral of Payment' sub-clause in the DCP remains as exhibited, as follows:

The Collecting Agency may, at its discretion, agree for payment of a levy to be deferred to a later date, subject to the applicant entering into an agreement under section 173 of the Planning and Environment Act 1987 to pay the levy at an alternative date.

Clause 7.5 Exemptions

The Panel recommends the following version as proposed by Council:

No land or development is exempt from this Development Contributions Plan unless exempt by Legislation or Ministerial Direction or Legal Agreement with Darebin City Council or stated below. The following development is exempt from the development contribution:

- Land developed for a non-government school, as defined in Ministerial Direction on the Preparation and Content of Development Contributions Plans of 11 October 2016.
- Land developed for housing by or for the ~~Department of Health and Human Services~~ Department of Families, Fairness and Housing, as defined in Ministerial Direction on the Preparation and Content of Development Contributions Plans dated 11 October 2016. This applies to social housing delivered by or for registered housing associations. This exemption does not apply to private dwellings developed by the Department of Health and Human Services or registered housing associations.
- Alterations and additions to an existing dwelling.
- Outbuildings normal to an existing dwelling and fences.
- Demolition of a dwelling followed by construction of a replacement dwelling on the same land. The exemption applies to the number of dwellings demolished and does not apply to any additional dwelling(s).
- Reinstatement of a dwelling which has been unintentionally damaged or destroyed.
- Servicing infrastructure constructed by a utility authority.
- ~~Darebin City Council delivered projects, building or works.~~

- Land with an agreement executed under section 173 of the Planning and Environment Act or other deed of agreement that requires either:
 - The payment of a development contribution levy; or
 - the provision of specified works services or facilities beyond those necessary on or to the land or other land as a result of the grant of any permit; or
 - the payment of any development contributions or the provision of specified works services or facilities required to be provided for public and/or community infrastructure by any other provision of this scheme; or
 - the provision of land for works services or facilities (other than land required to be provided as public open space pursuant to clause 53.01 or section 18 of the Subdivision Act 1988);

and explicitly excludes further development contributions to be made.

- ~~Land with an agreement executed under section 173 of the Planning and Environment Act that explicitly exempts the development from one or more DCP Overlay Schedules due to the development having met its DCP obligations~~
- Use or development which was approved by a permit granted before the approval date of Amendment C170dare
- Subdivision of any buildings or works completed in the preceding 12 months before the approval date of Amendment C170dare for which statement of compliance is being sought
- The construction of a building or carrying out of works or a subdivision that does not generate a net increase in demand units.