

Planning and Environment Act 1987

Panel Report

Banyule Planning Scheme Amendment C115

Banyule Development Contributions Plan 2016-2017

8 August 2018

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Banyule Planning Scheme Amendment C115

Banyule Development Contributions Plan 2017

8 August 2018

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David Merrett, Chair

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Gabby McMillan, Member

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List of Abbreviations

the Act	<i>Planning and Environment Act 1987</i>
Background report	<i>Strategic Framework for Contribution Schemes for Banyule City Council, 2016 (Hill PDA)</i>
the DCP	Banyule Development Contributions Plan 2016-2017
DCP Guidelines	<i>Development Contributions Guidelines</i> (Department of Sustainability and Environment, June 2003 - as amended March 2007)
DCPO1	Schedule 1 to the Development Contributions Plan Overlay
DELWP	Department of Environment, Land, Water and Planning
ICP	Infrastructure Contributions Plan
La Trobe Cluster	La Trobe National Employment Cluster
LPPF	Local Planning Policy Framework
Ministerial Directions	<i>Ministerial Direction on the Preparation and Content of Development Contributions Plans and Ministerial Reporting Requirements for Development Contributions Plans, 2016</i>
planning scheme	Banyule Planning Scheme
VPA	Victorian Planning Authority

Overview

Amendment summary

The Amendment	Banyule Planning Scheme Amendment C115
Common name	Banyule Development Contributions Plan
Brief description	Implement the Banyule Development Contributions Plan 2016-2017
Subject land	All of the municipality, with exemptions
Planning Authority	Banyule City Council
Authorisation	6 October 2017
Exhibition	15 February to 30 March 2018
Submissions	Number of Submissions: 19 Opposed: 13

Panel process

The Panel	David Merrett (Chair) and Gabby McMillan
Directions Hearing	Banyule City Council, 28 May 2018
Panel Hearing	Banyule City Council, 25 and 26 June 2018
Site inspections	Not required
Appearances	See Table 1
Date of this Report	8 August 2018

Executive summary

(i) Summary

Banyule Planning Scheme Amendment C115 (the Amendment) seeks to:

- apply Schedule 1 to the Development Contributions Plan Overlay to 24 charge areas across the municipality.
- incorporate the Banyule Development Contributions Plan 2017 into the Banyule Planning Scheme.

The key issues raised in submissions relate to:

- whether the Amendment was strategically justified and consistent with the legislative requirements, relevant Ministerial Directions and DCP Guidelines.
- the drafting and complexity in the Development Contributions Plan, including the number of charge areas and exemptions applying to AusNet Services, Development Victoria site and cohousing proposals.
- impact on affordable housing.
- transitional provisions.

The Panel has considered all of the issues raised in submissions and concludes that:

- the introduction of a municipal wide DCP in an established municipality such as Banyule, where there are comparatively low levels of urban renewal, is more marginal than applying a DCP in growth or urban regeneration areas. However the DCP can still be warranted if sufficient nexus can be demonstrated between the demand and the infrastructure to be funded. In this instance the Panel generally believes this has been achieved subject to a further review of the project items proposed to be funded through the DCP to ensure they are not recurrent or maintenance project items.
- the number of charge areas is acceptable and has been prepared in accordance with the DCP Guidelines.
- the drafting of the DCP and the DCPO1, including exemptions can be improved by the deletion of superfluous information and clarification of some of the exemptions.
- the DCP will not unreasonably impact on housing affordability. The cost of the DCP levy will be proportionate to the infrastructure, facilities and services that will be provided.
- transitional provisions are not warranted.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Banyule Planning Scheme Amendment C115 be adopted as exhibited subject to the following:

- 1 **Adopt the post exhibition version of the Banyule Development Contributions Plan 2017 and Schedule 1 to the Development Contributions Overlay (Document 3, Attachment 9) subject to the changes made by the Panel.**
- 2 **Delete Appendices 1 (Peer review) and 2 (DELWP review) from the Banyule Development Contributions Plan 2017.**

- 3 Amend Schedule 1 to the Development Contributions Plan Overlay (Clause 4.0) and the Banyule Development Contributions Plans 2016-2017 (Chapter 7):**

 - a) to include the following new exemption:**

Construction of and upgrades to existing servicing infrastructure.
 - b) to refer to the same set of exemptions.**
- 4 Prior to the adoption of the Amendment, Council review the list of project items proposed to be funded through the Development Contributions Plan to ensure that each project item is not a recurrent or maintenance project item.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The Amendment proposes to:

- apply Schedule 1 to the Development Contributions Plan Overlay (DCPO1) to 24 charge areas across the municipality
- incorporate the Banyule Development Contributions Plan 2017 (the DCP) into the Banyule Planning Scheme (the planning scheme).

The following exemptions apply:

- land developed for a non-government school or housing by or on behalf of the Department of Health and Human Services, as defined in Part 3 of the Ministerial Direction on Development Contributions Plans (11 October 2016)
- land which has an existing section 173 under the *Planning and Environment Act 1987* and/or Deed of Agreement, which requires the payment of a contributions levy and/or construction of community and/or physical infrastructure
- certain types of developments (renovations, alterations, demolition and construction of a replacement building, normal outbuildings, and reinstatement of a damaged building)
- minor changes to non-residential development of less than 50 square metres net change as well as cohousing developments that meet a minimum threshold defined by the Responsible Authority.

(ii) Purpose of the Amendment

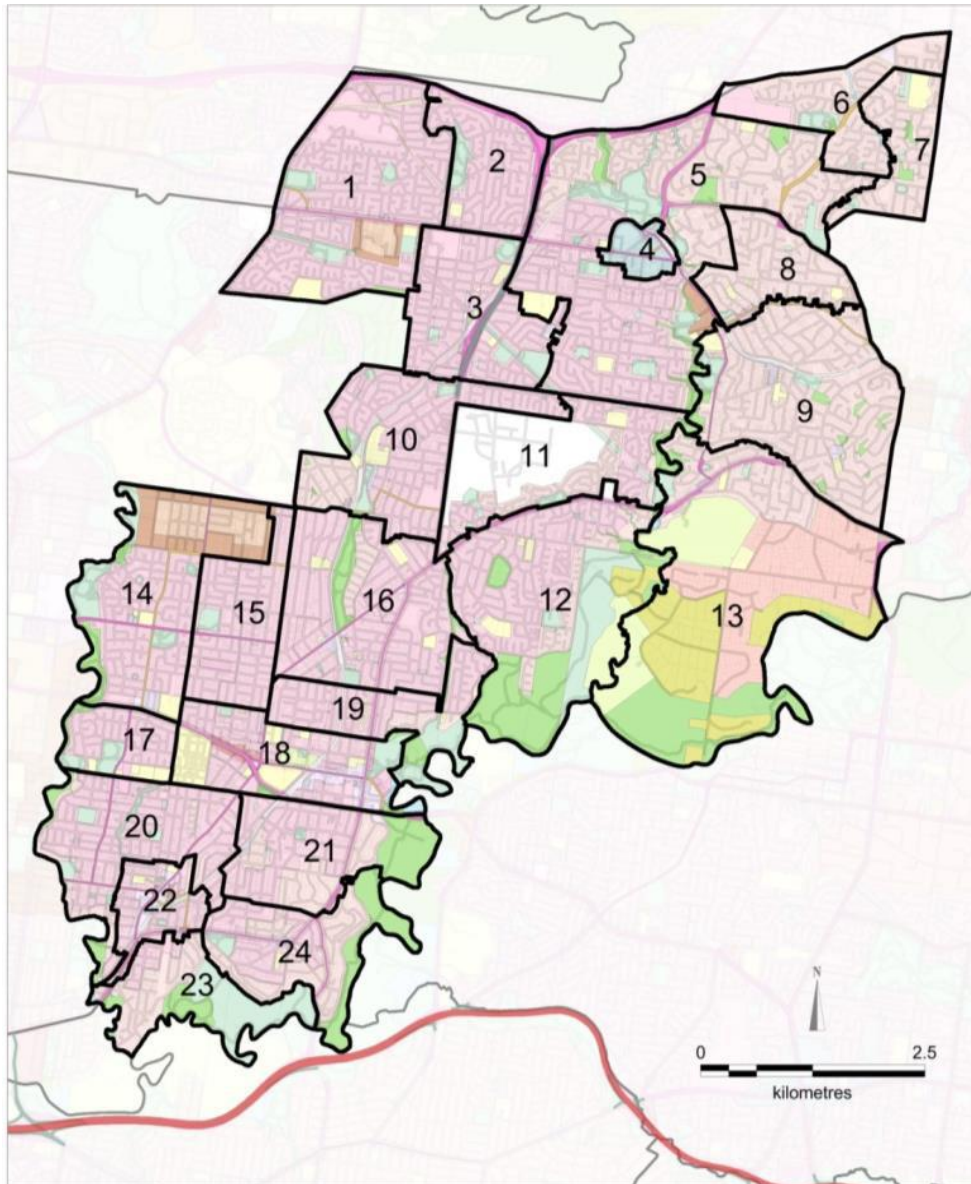
The explanatory report describes the purpose of the Amendment as:

This Development Contributions Plan (DCP) introduces a development infrastructure levy and/or a community infrastructure levy to help fund social and physical infrastructure throughout the municipality. The DCP includes capital infrastructure projects such as roads, footpath, streetscape works as well as community infrastructure projects such as community centres. The infrastructure is required to cater for Banyule's changing population and the consequential increased demand on infrastructure. The DCP will improve certainty for Council, developers and the broader community on how and to what extent new residential, commercial and industrial developments will be levied to ensure the necessary infrastructure is delivered in a timely manner. The DCP will further remove the uncertainty and resource intensity associated with the current case-by-case voluntary negotiations and agreements between Council and a developer.

(iii) The charge areas

The Amendment applies to 24 charge areas as shown in Figure 1. Generally the DCP charge areas are based upon suburbs and Council's adopted structure plan boundaries for the Heidelberg (Area 18), Greensborough (Area 4) and Ivanhoe (Area 22) activity centres.

Figure 1 The DCP charge areas



1.2 Panel process

At its meeting of 30 April 2018, Council resolved to refer the submissions to the Amendment to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 11 May 2018.

Those in attendance at the Panel Hearing are listed in Table 1.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Banyule City Council	David Cox who called the following expert witness: - Alex Hrelja, development contributions planner, Hill PDA
AusNet Services	David Passarella of the firm Mills Oakley lawyers
Development Victoria	Marita Foley, barrister
Stuart Morris	
Cold Fusion Capital	

Cold Fusion Capital did not attend the Hearing but requested its written submission be considered.

Appendix A contains a list of submitters. Appendix B contains a list of documents tabled during the Hearing.

1.3 Background to the proposal

The process to consider whether a DCP was appropriate for Banyule commenced in 2015 with the preparation of a strategic framework report¹ (the background report) that contained a cost/benefit analysis to test the viability of a DCP. A draft DCP and a draft DCPO1 were then prepared.

The background report considered several options and supported a 15-year DCP² using selected infrastructure projects with a focus on high growth areas. This was defined as Option 3 – all of municipality and selected infrastructure DCP or Option 4 – major centres and La Trobe National Employment Cluster (La Trobe Cluster). The DCP would be based on selected projects from Council's four-year capital works and selected longer-term projects coupled with a longer timeframe to provide flexibility. The background report estimated that:

- Council commits to build \$25 million in infrastructure over 15 years and recoups 21 per cent of that cost from development
- Council will net over \$3.5 million in nominal terms over 15 years from operating a DCP under these assumptions.

Council considered the background report in August 2017 and resolved to approve the DCP/DCPO1 and seek Ministerial authorisation. Hill PDA prepared the background report, the DCP and the DCPO1.

A peer review of the DCP was completed by Urban Enterprise. This did not include a detailed review of the projects included in the DCP. The review found:

- the DCP project list lacks strategic justification with respect to need and justification.
- the rationale for selecting project catchment areas should be more fully explained.
- the minimum 5 per cent external apportionment for each item needs more detailed analysis.

¹ Strategic Framework for Contribution Schemes for Banyule City Council, 2016 (Hill PDA)

² A 20 year DCP timeframe was ultimately supported by Council

- some projects may be considered as maintenance items that cannot be included in the DCP.
- local road projects should not be in the DCP as they do not serve a wide cross section of the community.
- the scope of some projects is not clear.
- the use of equivalence ratios for paths and drainage items is not defined, and they do not align with the standard equivalence ratios.
- there is no DCP timeframe.
- other indices may be better than the Consumer Price Index, such as the Building Price Index (Rawlinsons) or the Producer Price Index – Building Construction.

Table 2 documents a summary of the peer review and Hill PDA's response.

The Victorian Planning Authority (VPA) prepared a draft framework plan for the La Trobe Cluster in 2017. Two of the four clusters are located in Banyule, being the Heidelberg West Industrial Precinct and the Heidelberg Activity Centre. A final plan is due later in 2018. The two Banyule precincts may be removed from the DCP and translated into the new Infrastructure Contributions Plan framework.

Council advised the DCP takes this transition into account by:

- *linking C115 with Council's annual capital works commitments up to 20/21. This timeframe gives the VPA and other agencies (including Council) an opportunity to progress short-term actions to implement a final framework plan for the La Trobe Cluster. Further progress for transport, community facility and other infrastructure planning and public investment can then inform the scope of future ICP planning for precincts in the La Trobe Cluster.*
- *using the boundary of the Heidelberg Activity Centre Structure Plan to define Charge Area 18 in the Municipal DCP. This Charge Area is aligned with the boundary of a precinct in the La Trobe Cluster's draft Framework Plan.*
- *not using the boundary of the Heidelberg West Industrial Precinct to define a separate Charge Area in the Municipal DCP. Instead, the La Trobe Cluster's draft Framework Plan includes a short-term action to prepare a structure plan for this precinct. This future strategic planning will identify the precinct's final boundary that may be suitable for an ICP.*

Table 2 Peer review summary and response

Summary of Peer Review Comment in Relation to January 2017 Draft DCP	HillPDA Response			
Selected Indices / Year	2012-13	2013-14	2014-15	2015-16
Consumer Price Index, Melb. All Groups	2.70%	1.40%	1.90%	1.50%
Road And Bridge Construction	3.19%	0.56%	2.33%	(-5.29%)
Non Residential Building Construction	(-0.60%)	2.11%	0.20%	(-1.28%)
Source: ABS 6401.0 - Consumer Price Index, Melbourne, December 2016				
Source: ABS 6427.0 Producer Price Indexes, Victoria				
<p>DCP Overlay</p> <p>The DCP Overlay includes a wide range of detail as to how the DCP is to be administered. Some of this detail is considered more relevant to be included in a separate DCP Policy that is held by Council.</p>	<p>The DCP overlay should be a stand-alone document which explains effectively everything a Council and developer needs to know about the operation of the DCP without the need to search for other documents held by Council.</p> <p>The Overlay specifies all such information in a few pages. Removal of information is unnecessary and would be unhelpful to developers and Council staff.</p>			
<p>Standard Levies</p> <p>The standard levies review undertaken by a Ministerial Advisory Committee recommended levies in the order of \$3,000 per dwelling in established areas under a separate (to DCPs) Infrastructure Contributions Plan system. This is significantly higher than the levies in the Draft DCP.</p>	<p>The standard levies recommendation is not relevant to a full cost apportionment DCP.</p> <p>The standard levy recommendation cannot be used in the DCP.</p>			
<p>Strategic Redevelopment Areas</p> <p>The Draft DCP is silent on how areas within Banyule that may be identified as Strategic Development Areas would transition to an Infrastructure Contributions Plan under the ICP System.</p>	<p>The Draft DCP made statements regarding this matter and these are retained in the current document. In short, it is recommended that if the ICP system is implemented and parts of Banyule are declared as Strategic Redevelopment Areas, Council will be in a position to assess whether the ICP should be used and if so the relevant area would be excised from the DCP.</p>			

1.4 The Development Contributions Plan

The DCP is based upon the following projections:

- Dwellings are projected to grow from 50,706 in 2016 to 60,088 in 2036.
- Retail floorspace is projected to grow from 236,240 square metres in 2016 to 273,558 square metres in 2036.
- Commercial floorspace is projected to grow from 391,530 square metres in 2016 to 451,356 square metres in 2036.
- Industrial floorspace is projected to grow from 645,210 square metres in 2016 to 653,660 square metres in 2036.

Equivalence ratios were used where more than one land use is deemed to be a user of an infrastructure category. The common demand unit is a dwelling.

The DCP contains 321 project items with a value of \$64.1 million consisting of:

- Community facility (community infrastructure) – \$46,959,500
- Community facility (development infrastructure) - \$1,985,000
- Paths - \$4,150,00
- Road - \$9,708,626
- Drainage - \$1,290,000.

The DCP anticipates that Council will collect \$10 million over 20 years with a 16 per cent return.

Council advised there is no overlap between Council's public open space levy and the DCP project items. This ensures there is no "*double dipping*" as the projects on each list would be accounted for separately.

The contributions are current at 30 June 2017 and will be adjusted annually on 1 July each year in accordance with the Consumer Price Index for the life of the DCP.

1.5 Ministerial authorisation

In addition to the peer review, the Department of Environment, Land, Water and Planning (DELWP), on behalf of the Minister for Planning, granted authorisation subject to the following conditions:

- *Prior to formal exhibition of Amendment C115, council should consider the appropriateness of the project items listed in the DCP. DELWP officers consider that there may be insufficient strategic justification for some items such as wet decks and solar panels in terms of 'need' and 'nexus' as defined in the Development Contributions Guidelines.*
- *Council should take into consideration the Development Contributions Guidelines and the Ministerial Direction on the Preparation and Content of Development Contributions Plans in its review of the listed DCP items. Justification should be provided for items to support their inclusion, which is tied to the basic texts of the Development Contribution Guidelines, or they should be removed from the application of the DCPO1.*

- *The proposed DCPO1 should also highlight that where listed projects are not funded, that the council will determine the most appropriate method by which to reimburse the relevant financial contributors to the DCP.*

Council advised these matters were addressed by Hill PDA as part of its response to the peer review and the finalisation of the DCP.

1.6 Post exhibition changes

Council made the following post exhibition changes in response to the submissions:

(i) Development Contributions Plan

- Update document date and contents table.
- Revise Chapter 7 (Procedural Matters) to:
 - indicate that *"Additional information on demand unit and land development definitions is provided in Appendix 5."*
 - refine the list of exemptions consistently with the proposed DCPO1 changes at Chapter 4 (Land or development excluded from development contributions).
- Include a new Appendix 5 (Demand Unit and Land Use Definitions).
- Revise the heading of former Appendix 5 as *"Appendix 6 – Banyule City Council Guidelines for Assessing 'Cohousing Development' eligibility for DCP Exemption"* and updating the revised exemption guidelines to:
 - reduce the list of required shared spaces to exclude communal laundries, drying rooms and communal gardens for food production
 - introduce the need for at least one of these previously required spaces to be included in a proposed cohousing development before an exemption would apply
- Make minor changes to improve readability.

(ii) Schedule 1 to the Development Contributions Plan Overlay

- Revise the Notes under:
 - Clause 2.0 (Summary of costs) to describe the Municipal DCP as an "Incorporated Document".
 - Clause 3.0 (Summary of contributions) to indicate that:
 - a list of current contribution amounts will be held *"by Council"*.
 - payment of contributions is to be made in cash *"via an approved Council payment method."*
- Revise the Clause 4 (Land or development excluded from development contributions) for a reviewed list of exemptions to:
 - update the cohousing exemption to reference *"Appendix 6 of the Incorporated Document"*, which gives guidance for future application of this exemption.
 - refine the exemption for existing buildings, for *"alterations and additions"*.
 - include a new exemption for *"outbuildings and fences normal to an existing building."*
 - simplify wording for exempt dwellings.
 - simplify wording to exempt non-residential developments less than 50 square metres net *"floor area"*.

- update the exemption for existing Agreements to exempt those Agreements which require the payment of a contributions levy and/or construction of community and/or physical infrastructure *“and explicitly excludes further development contributions to be made.”*

1.7 Approach of the Panel

Council submitted an updated DCP and DCPO1 (Document 3 Attachment 9) that incorporated the post exhibition changes as part of its submission. Most of these changes are minor or uncontroversial. For the reasons set out in this report, the Panel adopts these documents as submitted by Council, subject to its further recommendations. This includes the strategic justification for the DCP.

Recommendation

The Panel recommends:

Adopt the post exhibition versions of the Banyule Development Contributions Plan 2017 and Schedule 1 to the Development Contributions Overlay (Document 3, Attachment 9) subject to the changes made by the Panel.

1.8 Summary of issues raised in submissions

The key issues raised in the submissions of the various parties are briefly summarised as follows:

(i) Banyule City Council

The key issues for the Council were to:

- support post exhibition changes to the Amendment
- clarify the exemptions, including site specific exemption requests.

(ii) Relevant agencies

The key issue for the AusNet Services was to seek an exemption for AusNet’s infrastructure assets.

(iii) Individual submitters or groups of submitters

The key issues by submitters were to:

- oppose the DCP as it is a new tax on development that will decrease housing affordability and is an attempt to get around municipal rate capping
- whether there is sufficient justification for the DCP and whether there was sufficient nexus between the DCP projects and the demand generated by infill development
- whether there were more appropriate and cost-effective mechanisms for collecting funds for the majority of the DCP projects listed as a question of public finance (e.g. via rate collection and / or public open space contribution)
- support the cohousing exemptions
- support the inclusion of transition provisions

- simplify and reduce the number of DCP charge areas to reduce complexity and variations of levy between areas
- consider direct expenditures by developers in the DCP
- confirm development that benefits from existing legal agreements are exempt from DCP contributions.

Most of these issues have not been resolved and are considered in the following chapters.

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.

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
- Strategic justification
- Exemptions and reducing complexity
 - Charge areas and unnecessary detail in the DCP
 - AusNet Services
 - Development Victoria
- Impact on housing affordability
- Transitional provisions.

2 Planning context

Council provided a response to the Strategic Assessment Guidelines (as set out in the Minister's Direction 11). The Panel has reviewed Council's response, the legislative and policy context for the Amendment, and has made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Legislative framework

(i) Planning and Environment Act 1987

Section 12(1) of the *Planning and Environment Act 1987* (the Act) provides that a planning authority must *"provide sound, strategic and coordinated planning of the use and development of land within the municipality."*

Section 12(2) of the Act requires Council to have regard to the Minister's Directions.

Part 3B of the Act contains the framework for the preparation and implementation of a Development Contributions Plan (DCP). Section 46K(1) of the Act sets out what must be included in the DCP:

A development contributions plan must:

- (a) specify the area to which it applies; and*
- (b) set out the works, services and facilities to be funded through the plan, including the staging of the provision of those works, services or facilities; and*
- (c) relate the need for the works, services and facilities to the proposed development of land in the area; and*
- (d) specify in respect of each of the works, services and facilities—*
 - (i) the estimated cost of the works, services or facilities; or*
 - (ii) the standard levy applicable to the works, services or facilities; and*
- (e) unless a standard levy is applied, specify the proportion of the total estimated cost of the works services and facilities which is to be funded by a development infrastructure levy or community infrastructure levy or both; and*
- (f) specify the land in the area and the types of development in respect of which a levy is payable and the method for determining the amount of levy payable in respect of any development of land; and*
- (fa) specify the Minister, public authority or municipal council to whom or to which the community infrastructure levy or development infrastructure levy is payable under this Part (the collecting agency); and*
- (fb) specify any Minister, public authority or municipal council that is to be responsible for the provision of the works, services or facilities for which the*

community infrastructure levy or development infrastructure levy or part of that levy is payable under this Part (the development agency); and

- (g) provide for the procedures for the collection of a development infrastructure levy in respect of any development for which a permit under this Act is not required.*

(ii) Other legislation

Council referred to its obligations under the *Local Government Act 1989* and how these have influenced its approach to the Amendment. Specifically, section 3C(1) provides that:

The primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.

2.2 Policy framework

(i) State Planning Policy Framework

Council submitted that the Amendment is supported by the following clauses in the State Planning Policy Framework in place at the time of exhibiting the Amendment and the Hearing:

- Clause 11 (Settlement)

Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.

- Clause 11.02(2) Structure planning

Ensure effective planning and management of the land use and development of an area through the preparation of strategic plans, statutory plans, development and conservation plans, development contribution plans and other relevant plans.

- Clause 11.06 (Metropolitan Melbourne)

In considering the policy objectives and strategies for metropolitan Melbourne, planning must consider as relevant: Plan Melbourne 2017-2050: Metropolitan Planning Strategy (Department of Environment, Land Water and Planning, 2017).

- Clause 19 (Infrastructure)

Planning for development of social and physical infrastructure should enable it to be provided in a way that is efficient, equitable, accessible and timely

...

Planning authorities are to consider the use of development contributions (levies) in the funding of infrastructure.

- Clause 19.03-1 (Development contributions) has the overarching objective:

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

It is strategy to:

Prepare Development Contributions Plans and Infrastructure Contributions Plans, under the Planning and Environment Act 1987, to manage contributions towards infrastructure.

Planning must consider as relevant:

- *Development Contributions Guidelines (Department of Sustainability and Environment, June 2003 - as amended March 2007).*
- ...
- *Ministerial Direction on the Preparation and Content of Development Contribution Plans and Reporting Requirements for Development Contributions Plans.*

Amendment VC148 was introduced into all Victorian planning scheme on 31 July 2018 and replaces the State Planning Policy Framework with a Planning Policy Framework, amongst other initiatives from the Smart Planning program. The assessment culminating in this report was completed prior to the introduction of Amendment VC148. Council should review the Amendment against Amendment VC148 prior to its adoption.

Any Planning Scheme clause numbers referred to in this report reflect clauses which existed before Amendment VC148 was introduced.

(ii) Local Planning Policy Framework

Council submitted that the Amendment will create a fair, equitable and transparent method for the delivery of infrastructure need. Council submitted that the Amendment is consistent with clause 21.06-3 of the planning scheme which foreshadows that a DCP is to form part of Council's future strategic work.

The Amendment does not make any changes to the Local Planning Policy Framework (LPPF).

(iii) Other planning strategies or policies used in formulating the Amendment

Plan Melbourne

Council submitted that Plan Melbourne 2017- 2050 (Plan Melbourne) recognises the critical function of municipal councils in meeting the vision for Melbourne. Council submitted that Direction 5.1, 5.2, 5.3 and 5.4 supported the Amendment.

La Trobe National Employment and Innovation Cluster

Council explained to the Panel that an Infrastructure Contribution Plan (ICP) may apply in the future to the La Trobe Cluster.

The VPA and Council have been working on a draft framework plan for the La Trobe Cluster, which includes land in the Heidelberg West Industrial Precinct and the Heidelberg Activity Centre. The draft framework plan is expected to be finalised by the VPA in 2018 and the introduction of an ICP over the La Trobe Cluster has been identified as a medium-term priority.

Council advised the Panel that the boundaries of the La Trobe Cluster were ill-defined and the timing of the ICP was uncertain. The Amendment proposes to apply a DCP over land which has been included in the La Trobe Cluster (to the extent that it is defined).

Banyule Council Plan 2017 – 2021

Council submitted that the Amendment was consistent with direction 5.2 in its Council Plan to ‘deliver best value services and facilities’.

2.3 Planning scheme provisions

Clause 45.06 - Development Contributions Plan Overlay

The purposes of the Development Contributions Plan Overlay are:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *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.*

The Amendment proposed to apply the DCPO1 to the entire municipality and incorporate the DCP to the schedule to Clause 81.01.

2.4 Ministerial Directions and DCP Guidelines

(i) Ministerial Directions

Clause 19.03-1 of the State Planning Policy Framework states that planning must consider the *Ministerial Direction on the Preparation and Content of Development Contributions Plans and Ministerial Reporting Requirements for Development Contributions Plans, 2016* (Ministerial Directions) as relevant.

The Ministerial Directions are made under section 46M and section 46QD of the Act.

Council submitted that the DCP had been prepared to comply with the Ministerial Directions.

The Ministerial Direction directs planning authorities in relation to the preparation and content of a DCP. The Ministerial Directions states that the following works, services or facilities may be funded from a development infrastructure levy:

- *Acquisition of land for:*
 - *Roads*
 - *public transport corridors*
 - *drainage*
 - *public open space, and*
 - *community facilities, including, but not limited to, those listed under clause 5(f).*
- *Construction of roads, including the construction of bicycle and foot paths, and traffic management and control devices.*

- *Construction of public transport infrastructure, including fixed rail infrastructure, railway stations, bus stops and tram stops.*
- *Basic improvements to public open space, including earthworks, landscaping, fencing, seating and playground equipment.*
- *Drainage works.*
- *Buildings and works for or associated with the construction of:*
 - *a maternal and child health care centre*
 - *a child care centre*
 - *a kindergarten, or*
 - *any centre which provides these facilities in combination*

The Ministerial Direction specifies that a DCP must not impose a development infrastructure levy or a community infrastructure levy in relation to non-government schools or housing provided by or on behalf of the Department of Health and Human Services.

Council relied on the evidence of Mr Hrelja on how the DCP complied with the Ministerial Directions.

(ii) DCP Guidelines

Clause 19.03-1 of the State Planning Policy Framework states that planning must consider, as relevant, the *Development Contributions Guidelines* (Department of Sustainability and Environment, June 2003 - as amended March 2007) (DCP Guidelines).

The DCP Guidelines establish the following nine principles for the preparation of a DCP:

- DCPs must have a strategic basis.
- Justification of infrastructure projects.
- Nexus between new development and the need for new infrastructure.
- DCPs must have a reasonable time horizon.
- Infrastructure costs must be apportioned on the basis of projected 'share of usage'.
- A commitment to provide the infrastructure
- Accountability.
- Transparency.
- DCP must be in the planning scheme.

Council submitted that the DCP had been prepared to comply with the DCP Guidelines, however relied on the evidence of Mr Hrelja in this respect.

2.5 Discussion

Several submitters questioned the justification for the DCP, with Submitter 10 (Morris) recommending the Panel abandon the Amendment.

In relation to the legislative and policy framework, Mr Morris submitted that less weight should be placed on the DCP Guidelines, in comparison with the requirements of the Act and the requirements in the Ministerial Directions. Mr Morris also submitted that the DCP Guidelines pre-dated the current Ministerial Directions by approximately 10 years and therefore could not be used to reinterpret the meaning of the Act or the Ministerial Directions.

The Panel agrees that the Act and the Ministerial Directions take precedence over the DCP Guidelines. However, Clause 19.03-1 of the State Planning Policy Framework requires planning to consider the DCP Guidelines where relevant. Accordingly, the DCP Guidelines are a relevant consideration. In order for the Amendment to be strategically justified the DCP needs to be consistent with the Act, Ministerial Directions and the relevant policy considerations, including the DCP Guidelines. This matter is considered further in Chapter 3.

2.6 Conclusion

The Panel concludes that broadly the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Frameworks as at the date of their exhibition.

The introduction of a municipal wide DCP in an established municipality such as Banyule is more marginal than other similar DCPs³ which were cited by Council in its submission, however the Panel considers on the matters before it can be supported, subject to further the consideration of its strategic justification.

³ Council referred to the Moreland, Darebin and Brimbank DCPs

3 Strategic justification

3.1 The issues

There are two interrelated issues:

- whether the DCP is warranted having regard to the requirements of the Act and relevant Ministerial Directions and the DCP Guidelines
- whether the list of projects proposed to be funded through the DCP is appropriate.

3.2 Evidence and submissions

Council submitted that the DCP had been prepared to comply with the Ministerial Directions and the DCP Guidelines. In its submission Council did not elaborate in any great detail about how the DCP responded to the requirements at section 46K(1) of the Act, Ministerial Directions or the DCP Guidelines. However, Council relied on the evidence of Mr Hrelja who had been involved in the preparation of the DCP. Council referred to other similar DCPs in Brimbank and Darebin in supporting the various project items and compliance with the DCP Guidelines and Ministerial Directions.

Council explained that it had adopted a thorough approach to the preparation of the DCP, including the engagement of a suitability experienced consultant to prepare the DCP, consultation with DELWP and the engagement of an independent peer review to provide further advice. More detail about the process involved in the preparation of the DCP is included at Chapter 1.

Council provided the Panel with a copy of email advice from DELWP (Document 3, Attachment 17) dated 10 October 2017. In that advice, the DELWP provided guidance regarding the categories of DCP items that would require further strategic justification having regard to the DCP Guidelines. Such items included:

- resurfacing of cul-de-sac roads
- flooring items, pool, mechanical plant air conditioning units, wet decks and change rooms from the Recreation Strategy
- solar panels from the Energy Plan.

Council submitted that the peer review report, prepared by Urban Enterprise (Document 3, Attachment 16), *“found the DCP is generally aligned with the requirements and intend[sic] of the statutory framework for DCP’s”*.

In his evidence in chief, Mr Hrelja explained that a long and iterative process had been undertaken to prepare the DCP. Mr Hrelja explained the population projections and data that underpinned the projected growth within Banyule (i.e. demand). Mr Hrelja explained that the DCP projects that have been identified from a long list in Council’s capital works program. Mr Hrelja submitted that the projections and DCP items should be reviewed every 3 – 5 years to confirm that the predictions were accurate.

In response to questions from the Panel, Mr Hrelja accepted that on the face of it some of the DCP items may not be consistent with the requirements of the DCP Guidelines. Mr Hrelja said that this was, in part, due to the fact that several of the DCP items were components of larger projects. For example, the renovation of a swimming pool would include many components -

roof, air conditioning, wet decks and change rooms and each of these components had been listed without reference to the main project. Mr Hrelja told the panel that the list of DCP items could be made clearer by grouping these individual items under the main project.

Mr Morris (10) submitted that the DCP appeared to be inconsistent with section 46K of the Act and Ministerial Directions. Mr Morris submitted that there was a legal requirement to relate the need for the works, services or facilities (to be funded through the DCP) to the proposed development of the land (i.e. the demand). Mr Morris submitted that the type of projects that could be funded through development infrastructure levies (as set out in the Ministerial Directions) was an exhaustive list and included capital works only and did not include maintenance or recurrent costs. Mr Morris considered the list of project items in the Ministerial Directions should be preferred over that of the DCP Guidelines.

Mr Morris identified several DCP projects that appeared to be duplicated and others that appeared to be maintenance works or recurrent works (e.g. re-sheeting of road surfaces).

In addition to the legal considerations, Mr Morris submitted that it would neither be fair or wise to introduce the DCP. Mr Morris submitted that it would not be fair in the sense that there were alternative funding sources which could be used to fund municipal infrastructure (e.g. the public open space contribution and municipal rate revenue). He submitted that it would not be wise to introduce the DCP, referring to principles of public finance which demand public revenue is raised in the most efficient manner possible. Mr Morris provided some case studies which estimated that Council could raise approximately \$300,000 per annum of development infrastructure levies through the DCP, but that it would cost \$100,000 per annum to administer the scheme (i.e. \$100,000 in 'dead costs'). Mr Morris submitted that the Amendment should be abandoned as it had not been strategically justified.

Council and Mr Hrelja cited a number DCPs which have also been introduced in established municipalities, including Moreland, Brimbank and Darebin. Council submitted that these DCPs demonstrated that DCPs could be justified in established areas and these other DCPs included DCP items such as road re-sheeting.

In its closing submission Council responded to some of the more specific concerns about DCP items referred to by Mr Morris. Council explained that the assumed 'duplicated' projects were in fact two stages of the same project.

3.3 Discussion

(i) Is a DCP justified or warranted in an established municipality

The Panel has reviewed the methodology used to prepare the DCP against the requirements of the Act, relevant Ministerial Directions and DCP Guidelines.

Section 46K(1) of the Act provides that a DCP must:

- (b) set out the works, services and facilities to be funded through the plan, including the staging of the provision of those works, services or facilities; and*
- (c) relate the need for the works, services and facilities to the proposed development of land in the area.*

Submitters raised concerns about the use of a DCP as a mechanism to fund new infrastructure in an established municipality which experiences relatively low levels of growth. The Panel has generally reviewed the 'equivalent' DCPs cited by Council that have been applied in established municipalities including, Moreland (Amendment C133), Brimbank (Amendment C187) and Darebin (extended via Amendment C148).

In particular, the Panel reviewed the more recently gazetted DCPs in Moreland and Brimbank to compare the predicted growth in those established municipalities with the demand predicted in Banyule. The following comparisons can be made:

- The Moreland DCP was prepared in 2014 and projected demand between 2013 and 2023. A residential population growth of 11,866 was predicted over that period. Industrial floor space was predicted to increase by 139,925 square metres and commercial floor space was predicted to increase by 214,711 square metres.
- The Brimbank DCP was prepared in 2016 and excluded the Sunshine Activity Centre. The residential population was predicted to increase by 10,150 between 2016 and 2036 (excluding Sunshine). Retail floorspace was expected to increase by 201,400 square metres and commercial floor space was predicted to increase by 357,100 square metres over that same time period and area.
- By comparison, in Banyule the residential population is predicted to increase by 9,382 between 2016 and 2036. Retail floor space is predicted to increase by 37,318 square metres and commercial floor space is predicted to increase by 59,826 square metres over that same period.

It is evident the predicted growth in residential, retail and commercial uses in Banyule is less than what was predicted to occur in Moreland and Brimbank. This is not surprising as there is more urban renewal and growth occurring in these municipalities. Accordingly, there will be less demand for DCP funded infrastructure in Banyule when compared with other established municipalities such as Moreland and Brimbank. Whilst this factor makes the introduction of a DCP more marginal in Banyule, it does not mean that a DCP cannot be strategically justified. If Council can relate the need for the works, services or facilities (to be funded through the DCP) to the proposed development of the land (i.e. the demand) the Amendment can be strategically justified. It is therefore critical that the DCP clearly demonstrate the nexus between the demand and the items proposed to be funded through the DCP.

The Panel notes that other submitters did not seek the abandonment of the Amendment.

The Panel considers that an appropriate strategic threshold has been met by Council and it may only be once the DCP is operating that the full impact is realised. The Panel does not agree with Mr Morris that it is so fundamentally flawed and marginal (and other funding source may be in place such as municipal rates) that the Amendment should be abandoned. The first review of the DCP will be important to establish whether the DCP is operating in a fashion expected by Council.

(ii) DCP funded project items

The Panel notes that throughout the preparation of the DCP, both DELWP and the peer reviewer raised concerns about the strategic justification for several of the items proposed to be funded through the DCP.

During its peer review, Urban Enterprise identified that there was a lack of certainty about the scope of several of the project items and therefore concluded that it was difficult to ascertain whether the items were capital works or maintenance or recurrent costs. Urban Enterprise [at 3.3] stated:

Although no fundamental flaws were identified in the Draft DCP, a number of areas requiring clarification or further information were identified, along with some specific recommendations to ensure that the Draft DCP aligns with the statutory framework.

The Panel has also reviewed the Moreland Amendment C133 Panel Report which addressed a DCP that was cited as a comparable DCP where similar projects (e.g. road re-sheeting) were funded through the DCP. The Panel notes that the criteria used in the Moreland DCP to identify DCP projects (as set out at Chapter 4.4 of the Panel Report) and the level of justification for each project (as set out in Appendix 3 of the DCP) is far more detailed than what is included in this Amendment. By way of example, the Moreland DCP excluded all open space projects on the basis that these projects could be funded through a different stream, being the public open space contribution.

The Panel has reviewed the list of DCP projects in some detail and identified a number of projects that do not appear (at least based on the information available) to meet the criteria in the Ministerial Directions. Some examples are:

- Item B108 (Ivanhoe Golf Club – fire services as identified in the ‘Recreation Strategy’) is described as upgrade works. The Panel found the Banyule Recreation Strategy 2017-2021 on Council’s website however this post-dates the drafting of the Amendment and does not contain detail on specific projects. The Panel could not find a recreation strategy that pre-dates this. Council did not provide further detail on this. It appears that the upgrade of fire services is a recurrent cost to bring the golf club in compliance with current fire standards.
- Item B106 (Petrie Park – fit out as identified in the ‘Recreation Strategy’). It is unclear from publicly available information what works are proposed and whether they are capital in nature, particularly given the works cost \$10,000. This also appears to be an example of a DCP item that could conceivably be funded through the public open space contribution which is already levied by Council.
- Item B12 (Ivanhoe Aquatic – energy efficiency works as identified in the ‘Energy Plan’). Likewise, the Panel could not find the ‘Energy Plan’ on Council’s website and the plan is not specifically referenced in the DCP. It appears that the upgrade to improve energy efficiency at an existing facility might be a recurrent cost or maintenance item.

This is not an exhaustive review of the 321 project items. The Panel cites these as examples of project items that may need to be reconsidered.

Prior to the approval of the Amendment, the Panel recommends that a more thorough review of the project items should be completed to ensure that all DCP items meet the relevant requirements in the Ministerial Directions and DCP Guidelines.

As with most projects it is only once the DCP has been in operation for some time that its true value (or otherwise) will be apparent. The Panel considers that the first review of the DCP will confirm the appropriateness of the DCP.

3.4 Conclusions

The Panel concludes:

- the introduction of a municipal wide DCP in an established municipality such as Banyule, where there are low levels of urban renewal, is more marginal than applying a DCP in growth or urban regeneration areas. However the DCP can still be warranted if sufficient nexus can be demonstrated between the demand and the infrastructure to be funded. In this instance the Panel generally considers this has been achieved subject to a further review of the project items proposed to be funded through the DCP to ensure they are not recurrent or maintenance project items
- the first review of the DCP operation will be important to ensure it is operating in the fashion expected by Council.

3.5 Recommendation

The Panel recommends:

Prior to the adoption of the Amendment, Council review the list of project items proposed to be funded through the DCP to ensure that each project item is not a recurrent or maintenance project item.

4 Exemptions and reducing complexity

4.1 Charge areas and unnecessary detail in the DCP

(i) The issue

The issue is whether the DCP could be simplified by reducing charge areas and deleting unnecessary detail in the DCPO1 and the DCP.

(ii) Evidence and submissions

In his written submissions Mr Morris (10) raised concerns regarding the number of charge areas, complexity in the DCP and imprecise drafting of exemptions. Mr Morris did not elaborate on these issues in detail in his verbal submissions.

In response to submissions regarding the number of charge areas, Council submitted that the number of charge areas was appropriate and comparable with other DCPs. Council relied on the evidence of Mr Hrelja and the process which have been undertaken to establish the charge areas.

Council submitted that it had refined the drafting of the Amendment following exhibition and considered the 'post exhibition' version of the Amendment reasonable. However, Council submitted that it was open to further refinements.

(iii) Discussion

The Panel has reviewed the charge areas and notes they are generally based upon suburbs. The Panel accepts that the process to determine the charge areas is broadly consistent with the DCP Guidelines.

There was discussion during the Hearing on whether it was appropriate to have a supportive policy position on cohousing contained at Appendix 6 in the DCP. The Banyule Housing Strategy was completed in 2009 and does not address cohousing. The Panel understands this issue arose more recently from a specific development in Banfield Road, Heidelberg Heights. The Local Planning Policy Framework does not address this type of housing. Appendix 6 to the DCP defines what constitutes cohousing and how an exemption request is managed by Council. Clauses 72 and 74 of the planning scheme do not define cohousing development either, so ideally the Panel considers a cohousing policy should be contained in the LPPF. This is a matter that should be considered by Council in the next review of the planning scheme. Until this occurs it should be retained in the DCP.

The Panel notes that there is detail in the DCP that does not directly assist in the operation of the DCP and should be deleted. This includes the peer review (Appendix 1) and the DELWP review (Appendix 2).

(iv) Conclusions

The Panel concludes:

- the peer review (Appendix 1) and the DELWP review (Appendix 2) in the DCP should be deleted

- that the number of charge areas is acceptable and has been prepared in accordance with the DCP Guidelines
- Council should consider a cohousing local planning policy at the next review of the planning scheme.

(v) Recommendation

The Panel recommends:

Delete Appendices 1 (Peer review) and 2 (DELWP review) from the Banyule Development Contributions Plan 2017.

4.2 AusNet Services

(i) The issue

The issue is whether AusNet Services infrastructure should be exempt from the DCP.

(ii) Evidence and submissions

Mr Passarella, on behalf of AusNet Services (6) made submissions in relation to the structure of the DCP. Mr Passarella submitted that the exemptions (as they relate to AusNet infrastructure) should sit within the DCPO1 rather than in the DCP. Mr Passarella referred to DELWPs *Guidelines for Preparing Planning Scheme Amendment Documentation* (September 2014) which calls for drafting to be 'clear and accurate'. Mr Passarella considered there should be a specific exemption for AusNet infrastructure.

Mr Passarella submitted that:

At present, it does not appear that Council's intentions are clearly and accurately reflected within the DCPO1 with respect to how it should apply to the development of AusNet's electricity infrastructure or upgrades to it. As the principal control and legal document prescribing the obligations and liability for development contributions attracted by development on land included AusNet's electricity sites, the DCPO1 should clearly articulate whether or not electricity infrastructure is intended to be exempt.

(iii) Discussion

The Panel agrees that the DCP needs to be drafted in a clear and transparent manner, particularly in relation to any exemptions which may apply. The Panel notes that there are several exemptions which sit in the DCPO1 and others (e.g. the cohousing exemption) which are embedded in the DCP.

The Panel does not consider there is a need to specifically exempt AusNet infrastructure from the DCP as what it provides (electricity infrastructure) would not be considered as a demand unit in the DCP, which are dwellings and commercial and industrial floor space. Mr Passarella's concern that a substation kiosk building might constitute industrial floorspace and be the subject of a contribution is unlikely (as confirmed by Council). However, in order to provide certainty on this matter, the Panel supports the following additional general exemption:

Construction of and upgrades to existing servicing infrastructure.

There is no need to specifically highlight AusNet infrastructure, as there are many other infrastructure providers.

The Panel acknowledges the DCP will be an incorporated document in the planning scheme, which carries significant statutory weight. Therefore the Panel partly agrees with Mr Passarella that if exemptions are referred to in each document then they should be the same exemptions with no variations. If the DCP was only a reference document then the Panel would only support the exemptions being cited in the DCPO1.

(iv) Conclusion

The Panel concludes:

- the same set of exemptions should be listed in the DCPO1 and the DCP to provide consistency and transparency
- an exemption for new and upgrades to existing infrastructure should be added to the DCPO1 and the DCP.

(v) Recommendation

The Panel recommends:

Amend Schedule 1 to the Development Contributions Plan Overlay (Clause 4.0) and the Banyule Development Contributions Plans 2016-2017 (Chapter 7):

a) to include the following new exemption:

Construction of and upgrades to existing servicing infrastructure.

b) to refer to the same set of exemptions.

4.3 Development Victoria

(i) The issue

The issue is whether a Development Victoria project should be exempt from DCP contributions.

(ii) Evidence and submissions

Ms Foley presented on behalf of Development Victoria which is facilitating the redevelopment (through Amendment C116) of a large site (421 Upper Heidelberg Road, Ivanhoe) that contains a decommissioned water tank for Yarra Valley Water and an adjacent park. Ms Foley advised the Panel that a submission had been made to the Government Land Standing Advisory Committee to rezone the land. A Heads of Agreement between Development Victoria and Council was signed on 17 October 2017 to facilitate a land swap that would provide a residential development site of 6,559 square metres (Lot A) and a local park of 2,000 square metres. A future section 173 agreement will link the development of the first stage of the Lot A land and the delivery of the design and construction of works for the delivery of the local park (Lot B). Ms Foley advised Development Victoria had sought confirmation from Council that a significant Yarra Valley Water contribution towards the construction of the

playground would exempt it from further contributions under the DCP, as provided in the agreement:

The owner of Lot A Land will not be liable for any additional development, public art or other contributions ...

Council informed Development Victoria that the agreement relates only to the public open space contribution and DCP contributions would apply. In response to the submission, Council amended the exemptions for existing agreements provided in the DCP to introduce the requirement that the agreement 'explicitly exclude' further development contributions to be made. Ms Foley submitted:

The 'refinements' included the introduction of the new words requiring that section 173 agreements regarding development contributions include express exemptions from development contributions under the plan. That is, the Council has sought to introduce a retrospective requirement requiring agreements entered into before the commencement of the DCP to expressly exclude obligations under a DCP which had not been gazetted (or indeed known about in the case of the site). This is a ridiculous situation. It would be one thing to apply that criterion to agreements entered into after the DCPO is gazetted – it is quite another to apply this to agreements entered into in good faith by developers of land with the Council.

Given the uncertainty, Ms Foley requested in order of preference:

- the site be excluded from the DCPO; or
- the site be provided with an express exemption under the DCP; or
- the original wording of the exemption in the DCP be retained and not sharpened to confine the exemption to items included in the DCP.

Mr Hrelja considered it would be unusual to have site specific exemptions in a DCP but conceded it may be appropriate if the proponent is providing land and/or works to deliver infrastructure and open space that is contained in the DCP itself.

Council encouraged further discussion to resolve this issue and finalise the section 173 agreement.

(iii) Discussion

The Panel understands the development of the land will provide a good public/private outcome with a large residential site and a larger and more appropriately located local park for the community. A significant contribution will be made to the development of the local park by Development Victoria. However it is not the Panel's role to mediate any potential dispute between Council and Development Victoria. It can only consider changes to the Amendment that are relevant.

The Panel agrees with Mr Hrelja and Council that it would be unusual to delete the land from the DCPO or to exempt a specific site from the DCP to avoid contributions. The Panel does not support either of these requests in the current circumstances.

The additional text proposed by Council to require the explicit exemption of further contributions was proposed directly in response to the submission from Development

Victoria. If the Panel supports this additional text it would be a matter between Council and Development Victoria as to what constitutes “explicit”.

The Panel supports the additional text as there may be other more relevant examples where this may become an issue. The Panel does note though that the preamble to the Heads of Agreement contains a reference that seems all encompassing⁴.

(iv) Conclusion

The Panel concludes:

- it is not appropriate to delete the site from the DCPO or specifically exempt it from further contributions
- the additional text proposed by Council to require a section 173 Agreement or Deed of Agreement to explicitly exclude the payment of further contributions is appropriate.

⁴ The Panel did not review the Heads of Agreement in totality and it relies on the preamble and explanations presented to it during the Hearing.

5 Impact on housing affordability

5.1 The issue

The issue is whether the DCP will impact housing affordability.

5.2 Evidence and submissions

Submissions 4, 10 and 17 raised concerns regarding the impact of the DCP on housing affordability.

In response to these concerns, Council submitted that the guiding principles for the preparation of DCPs were well established and included in the Ministerial Directions. Council submitted that DCPs were a tool that could be used to appropriately apportion the costs of new infrastructure. On the basis of these principles Council asserted that it had a “*right to pursue a Municipal DCP*”. However, Council also acknowledged that housing affordability was an important issue and submitted that the levies were reasonable and apportioned according to the demand generated (e.g. a user pays system).

In his evidence, Mr Hrelja acknowledged that the whilst the cost of the levy may be borne by developers, it was most likely that the levy would be passed onto the landowner.

Whilst not directly related to the issue of housing affordability, Mr Morris made submissions regarding the principles of good public finance and whether it was wise to raise funds through a DCP when other mechanisms such as municipal rates and public open space contributions were available.

5.3 Discussion

The Panel agrees that housing affordability is an important issue. This is reflected in the number of submitters who supported the cohousing exemptions as a means of encouraging more affordable forms of housing within Banyule.

Mr Morris’s submissions in relation to the overall financial efficacy of using a DCP as a tool to raise funds is indirectly related to the question of housing affordability. This is because other funding mechanisms may apply more evenly across the municipality and therefore have less of an impact on housing affordability (i.e. rate revenue is an impost on all property owners, not just new purchasers).

The Panel considers that the introduction of a DCP levy can be reasonably justified from a broader policy perspective, if there is sufficient nexus between the demand and the infrastructure to be funded (this will be contingent on the review of the DCP project items).

Council has committed to fund a significant portion of the DCP items through its existing capital works funding and only a small proportion of the infrastructure costs will be borne by the landowners. Furthermore, based on the evidence of Mr Hrelja it appears that the costs overall have been appropriately apportioned.

While the cost of the DCP levy may be transferred through to the land purchaser, the Panel considers it will result in a comparatively small decrease in housing affordability. This would

be outweighed by the benefit of generating more funds to provide services and facilities. No submitters were able to substantiate the impacts on housing affordability.

5.4 Conclusions

The Panel concludes that the:

- introduction of a new DCP levy will not unreasonably impact on housing affordability
- cost of the DCP levy will be proportionate to the infrastructure, facilities and services that will be provided.

6 Transitional provisions

6.1 The issue

The issue is whether the DCP should contain transitional provisions for planning applications lodged or approved before the introduction of the DCP into the planning scheme.

6.2 Evidence and submissions

Several submitters (7, 8, 9 and 12) have suggested that the DCP should include transitional provisions so that permit applications currently under consideration will not be liable to pay a contribution if the Amendment is gazetted.

In response to these concerns, Council submitted that it is not standard practice to include transitional provisions and it has taken the following steps to ensure property owners are aware of the DCP:

- Exhibition of the Amendment.
- Including information in property information statement.
- Including notes on recently issued planning permits to flag that a DCP obligation may apply at the building permit stage or in the future.

In his evidence in chief, Mr Hrelja explained that transitional provisions were quite unusual within DCPs. He cited an example in the Mildura South DCP but advised the Panel that this was a rare example.

6.3 Discussion

The Panel has reviewed other DCPs that have been cited by Council in its submissions, including Moreland and Brimbank which have been applied in established municipalities. Transitional provisions were not included in either of those DCPs.

Given the extent of publicly available information regarding the Amendment and its potential introduction, it is considered that affected persons have had sufficient notice of the DCP levy if the Amendment is gazetted.

6.4 Conclusions

The Panel concludes:

- that transitional provisions are not warranted.
- sufficient notice of the Amendment has been provided and Council has taken sufficient steps to ensure that proponents of potentially leviable development have been made aware of the Amendment.

Appendix A Submitters to the Amendment

No.	Submitter
1	Ibrahim Meskovic
2	Common Equity Housing Association
3	Professor Phillip Broadbridge
4	Mehran Khademollah
5	Heather Hero
6	AusNet Services
7	Cold Fusion Capital
8	Yves Abdurahman
9	Simon Goodison
10	Stuart Morris
11	Tract on behalf of Development Victoria
12	Walter Paz
13	Cohousing Australia
14	Cohousing Banyule
15	Brian Julius
16	Heidi Lee
19	Adam Knott

Appendix B Document list

No.	Date	Description	Presented by
1	25/6/18	Evidence statement of Mr Alex Hrelja	Banyule City Council
2	25/6/18	Email from Ausnet dated 18 June 2018 regarding post-exhibition version of planning scheme amendment	Banyule City Council
3	25/6/18	Council submission	Banyule City Council
4	25/6/18	Summary of Council response to submissions	Banyule City Council
5	25/6/18	Submission	Stuart Morris
6	25/6/18	Urban design parameter for example development site in Ivanhoe East	Stuart Morris
7	25/6/18	Rate calculations for example development site in Ivanhoe East	Stuart Morris
8	25/6/18	Photograph of drainage pits in Wilfred Road, Ivanhoe East	Stuart Morris
9	26/6/18	AusNet submission	David Passarella
10	26/6/18	Photographs of various Ausnet sites	David Passarella
11	26/6/18	Development Contribution Guidelines, March 2007 (v5.9)	Marita Foley
12	26/6/18	Development Victoria submission	Marita Foley