

Planning and Environment Act 1987

Panel Report

Maribyrnong Planning Scheme Amendment C145 Joseph Road Precinct Development Contributions Plan

21 May 2019

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Maribyrnong Planning Scheme Amendment C145

Joseph Road Precinct Development Contributions Plan

21 May 2019

A handwritten signature in black ink, appearing to read 'Tim Hellsten', is positioned above the name of the signatory.

Tim Hellsten, Chair

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
ACZ1	Activity Centre Zone Schedule 1 – Footscray Metropolitan Activity Centre
Benson	Benson Property Group Pty Ltd
CIL	Community Infrastructure Levy
Council	Maribyrnong City Council
DCP	Development Contributions Plan
DCP Costing 1	Joseph Road Public Realm Cost Estimate Report (WT Partnership), 26 July 2017
DCP Costing 2	Joseph Road Public Realm Cost Estimate Report (WT Partnership), 1 March 2019
DCPO1	Development Contributions Plan Overlay Schedule 1 - Joseph Road Precinct Development Contributions Plan
DCPO6	Development Contributions Plan Overlay Schedule 6 - Maribyrnong City (South of Ballarat Road) Community Infrastructure Development Contributions Plan
DIL	Development Infrastructure Levy
FJP	F.J.P Pty Ltd
FMAC	Footscray Metropolitan Activity Centre
Growland	Growland Group Pty Ltd
JRP DCP	Joseph Road Precinct Development Contributions Plan, August 2018
LPPF	Local Planning Policy Framework
MPS	Municipal Planning Strategy
MSS	Municipal Strategic Statement
OMNI	OMNI Property Group Pty Ltd
PPF	Planning Policy Framework
Public Realm Plan	Joseph Road Precinct Public Realm Plan, 2017
revised JRP DCP	Joseph Road Precinct Development Contributions Plan, March 2019
Structure Plan	Footscray CAA Structure Plan 2013
Temple	Temple of the Heavenly Queen
WIK	Works-in-kind

Overview

Amendment summary	
The Amendment	Maribyrnong Planning Scheme Amendment C145
Common name	Joseph Road Precinct Development Contributions Plan
Brief description	<p>Introduce Development Contributions Plan Overlay Schedule 1 - Joseph Road Precinct Development Contributions Plan and apply it to the subject land</p> <p>Include the Joseph Road Precinct Development Contributions Plan in the list of Incorporated documents in the Schedule to Clause 72.04</p>
Subject land	The Joseph Road Precinct, Footscray
Planning Authority	Maribyrnong City Council
Authorisation	14 June 2018
Exhibition	20 September– 24 October 2018
Submissions	<p>Number of submissions: 11</p> <p>Opposing or submissions seeking changes: 7</p> <p>A list of submitters is included in Appendix A</p>

Panel process	
The Panel	Tim Hellsten
Directions Hearing	Planning Panels Victoria, 6 February 2019
Panel Hearing	Planning Panels Victoria, 9, 10 and 11 April 2019
Site inspections	Unaccompanied, 8 February 2019
Appearances	Refer to Appendix B
Citation	Maribyrnong PSA C145 [2019] PPV
Date of this Report	21 May 2019

Executive summary

The Joseph Road Precinct, Footscray is part of the Footscray Major Activity Centre, targeted by Maribyrnong City Council (Council) for public realm upgrades identified in the *Joseph Road Precinct Public Realm Plan, 2017*.

Council is proposing to offset the costs of implementing the public realm upgrades including road upgrades, traffic signalisation, footpath and bike path construction, street tree planting, street furniture installation and drainage infrastructure through the application of a Development Contributions Plan to the Joseph Road Precinct.

Maribyrnong Planning Scheme Amendment C145 (the Amendment) seeks to introduce the Development Contributions Plan Overlay Schedule 1 – Joseph Road Precinct Development Contributions Plan (DCPO1) into the Planning Scheme and apply it to the Joseph Road Precinct, and to include the Joseph Road Precinct Development Contributions Plan (JRP DCP) in the list of Incorporated documents in the schedule to Clause 72.04.

The exhibited JRP DCP identified 16 road, traffic and drainage infrastructure projects to be delivered across the Joseph Road Precinct at a cost of \$27,097,000 with a 99.7 per cent apportionment to the precinct, over a 15-year period at a rate of \$5230.69 per dwelling, \$43.23 per square metres of commercial and \$275.30 per square metres of retail gross leasable floor space.

Key issues raised in submissions included:

- increasing the scope of the JRP DCP to include additional items
- issues of equity and fairness in relation to project nexus and cost apportionment
- the mechanics of the JRP DCP including costing and timing and the reconciliation of planning permit conditions requiring contributions through s173 Agreements
- capacity to deliver infrastructure
- other issues relating to development in the precinct.

During the Hearing process Council presented a revised DCPO1 schedule (Appendix E) and a revised JRP DCP (Appendix D) which:

- deleted one road project (RD07) and one traffic project (TR02)
- introduced a new traffic project (TR03) for a total of 15 projects
- amended the boundaries of specific projects
- increased the total infrastructure costs to \$27,830,000 (2.7 per cent increase) and increased the levy rates to \$5307.47 per dwelling, and \$43.86 per square metres of commercial and \$279.34 per square metres of retail gross leasable floor space.

The Panel required Council to provide further notification of this change. One additional submission was made although this was from an existing submitter. No additional issues were raised.

The focus of submissions and evidence provided during the Hearing related to the project nexus and apportionment and the degree to which the JRP DCP was fair and equitable. The lawfulness applying the DCP to the subdivision of existing development was also questioned.

The Panel considers that on balance the proposed JRP DCP is well considered and strategically sound. The Public Realm Plan and costings that underpin the DCP are also sound and

reasonable. The projects included in it are directly relevant to the level of development proposed in the Joseph Road Precinct which will accommodate a future community of up to 10,000 people who will live there. The project apportionment is generally considered reasonable based on the relatively enclosed nature of the precinct.

The Panel recommends that the Joseph Road North project (RD09) be reduced in scope and suggests Council review the apportionment of the shared bicycle path pavement costs in projects RD03, RD06 and RD12 in recognition of a likely component of external use.

The Panel acknowledges Council's efforts in preparing and introducing the JRP DCP, although it is not without some economic impact on current permit holders. The timing of the DCP is not ideal given the level of development activity and approved permits. Legal issues aside, Council has a major leadership and support role to play with developers and landowners to resolve a number of challenges in the precinct including infrastructure delivery coordination and completion of s173 Agreements. This will be critical to achieve its vision for the precinct.

The Panel concludes that the Amendment should be adopted with the changes identified in this Report.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Maribyrnong Planning Scheme Amendment C145 be adopted as exhibited subject to the following:

- 1. Apply the revised Joseph Road Precinct Development Contributions Plan included in Appendix D to this Report to the Joseph Road Precinct, subject to:**
 - a) Include the description of all precinct zoning in Part 2 Strategic Planning and Justification.**
 - b) Include details of the future realignment of the Joseph Road road reserve and VicTrack and Council land parcels and potential future rezoning of remnant parcels.**
 - c) Reduce the scope of the Joseph Road North project (RD09) so that it does not extend beyond the proposed south-eastern corner of the VicTrack site as identified in Plan 2: DCP Infrastructure project areas.**
 - d) Update the Cost Estimate Report Attachment 1 to reflect the reduced scope of project RD09.**
 - e) Adjust 'Table 3: Infrastructure Projects and calculation of costs', 'Table 4: Summary of total costs by project type' and 'Table 5: Estimated project staging and sequencing of projects' to reflect the updated Cost Estimate Report and reduced scope of project RD09.**
 - f) Include the exemptions in Part 4.0 of Schedule 1 to the Development Contributions Plan Overlay.**
- 2. Apply the revised Schedule 1 to the Development Contributions Plan Overlay included in Appendix E to this Report to the Joseph road Precinct, subject to:**
 - a) Amend the Summary of cost and Summary of contributions tables in Schedule 1 to the Development Contributions Plan Overlay to reflect costing and levy changes included in the Joseph Road Precinct Development Contributions Plan.**

- 3. Amend the Schedule to Clause 72.04 to update the reference to the revised Joseph Road Precinct Development Contributions Plan.**

Further recommendations

The Panel makes the following further recommendations:

Council is encouraged to consider reviewing the external apportionment of the shared bicycle path pavement component of projects RD03, RD06 and RD12 and amend the Joseph Road Precinct Development Contribution Plan the project costs and Development Contributions Plan Overlay Schedule 1 accordingly.

1 Introduction

1.1 The Amendment

(i) Amendment description

The Joseph Road Precinct, Footscray is part of the Footscray Major Activity Centre, targeted by Maribyrnong City Council (Council) for public realm upgrades identified in the *Joseph Road Precinct Public Realm Plan, 2017* (Public Realm Plan). The public realm upgrades are being undertaken in response to the precinct's planned transition to a higher-density housing and mixed use area, accommodating over 4,500 dwellings and a population of around 10,000. The proposed upgrades include road upgrades, traffic signalisation, footpath and bike path construction, street tree planting, street furniture installation and drainage infrastructure.

Council is proposing to offset the cost of implementing the public realm upgrades through the application of a Development Contributions Plan (DCP) to the Joseph Road Precinct to enable levies to be collected from new development.

Maribyrnong Planning Scheme Amendment C145 (the Amendment) proposes to:

- apply the Development Contributions Plan Overlay Schedule 1 (DCPO1) to the subject land (as shown in Figure 1)
- insert a new Schedule 1 - Joseph Road Precinct Development Contributions Plan to Clause 45.06 (Development Contributions Plan Overlay)
- amend the Schedule to Clause 72.04 (Documents incorporated in this Planning Scheme) to add the Joseph Road Precinct Development Contributions Plan, August 2018 (JRP DCP) into the list of Incorporated documents.

Figure 1 Extent of proposed application of DCPO1

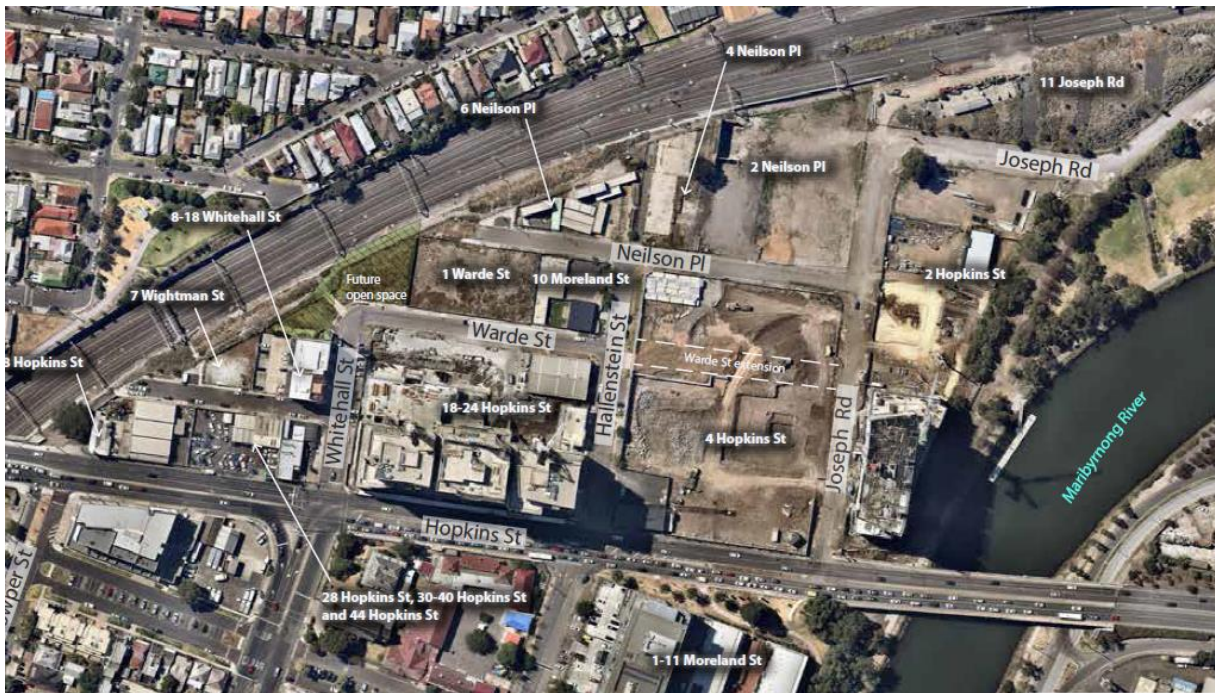


(ii) The subject land

The Amendment applies to the Joseph Road Precinct, Footscray, an area of approximately 15 hectares and generally located between the west bank of the Maribyrnong River, the railway reserve between Footscray and South Kensington stations to the north and Hopkins Street to the south.

The Joseph Road Precinct is a former industrial and warehousing area which has been identified for high density housing and mixed-use activity. Few buildings remain in the precinct which reflect its former use. These are clustered towards the western end of Hopkins Street adjoining Wightman Street, mostly comprising automotive and car sales uses (refer to Figure 2). A warehouse building is located on the corner of Hallenstein and Warde Street. Most other sites in the precinct are either vacant (other than sales offices), currently being excavated for new development or at an advanced stage of development. One apartment complex (8 Whitehall Street) has been completed and is occupied. The extent of recent development activity can be seen in the images in Figures 3, 4 and 5.

Figure 2 Aerial view of precinct (VicPlan)



Source: Council

Figure 3 Joseph Road Precinct development activity viewed from Maribyrnong River and river walkway reserve



Figure 4 Precinct development activity in Whitehall Street (viewed from Wightman Street)



Figure 5 Precinct development activity looking south-west from Joseph Street



The public realm within the precinct is largely comprised of constructed roads, other than extensive sections of Joseph Road which also provides access to the Temple of the Heavenly Queen (the Temple), limited footpaths and a few street trees. These are summarised in Table 1 along with the related JRP DCP project items. The public realm characteristics are indicated in Figures 6 to 10. Planning permits for recent development in the precinct include conditions for public realm upgrades relating to footpaths, kerbs and channel, street trees and street furniture (consistent with the Public Realm Plan) and traffic signals.

Table 1 Current road reserve treatments

Road	Condition	Exhibited DCP project items
Hopkins Street	Arterial road, footpaths both sides, no street trees Signalised intersection at Whitehall Street	TR01, TR02, RD03, RD06, RD07, RD12
Wightman Street	Narrow footpath both sides, no street trees	RD11
Whitehall Street	Narrow footpath both sides, 90 degree parking bay areas, no street trees	RD01
Warde Street	No footpaths or street trees	RD04

Road	Condition	Exhibited DCP project items
Hallenstein Street	Narrow footpath east side, part grassed nature strips, 90 degree parking bay areas, some street trees	RD02
Neilson Place	Narrow footpath (north side) only west of Hallenstein Street, no footpaths east of Hallenstein. No street trees	RD08, RD10
Joseph Street	No footpaths, gravel standard north of Neilson Place, limited kerb and channel, no footpaths or street trees	RD05, RD09

Figure 6 Hallenstein Street



Figure 7 Joseph Road - southern, northern and eastern views





Figure 8 Neilson Place - western and eastern views

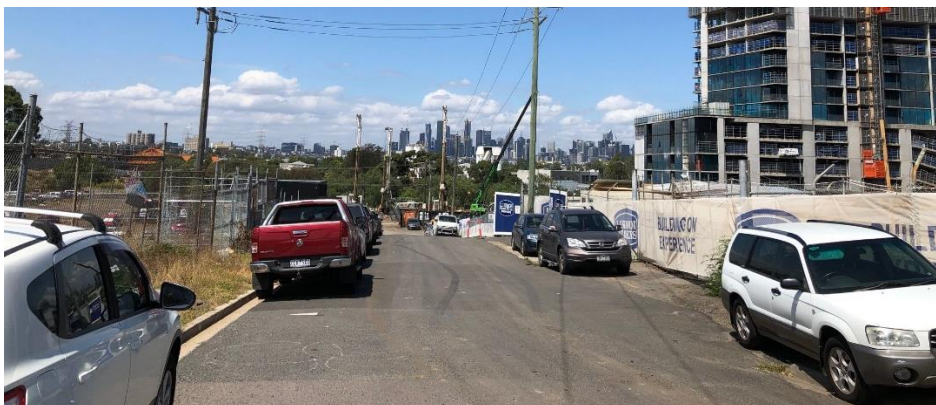


Figure 9 Warde Street



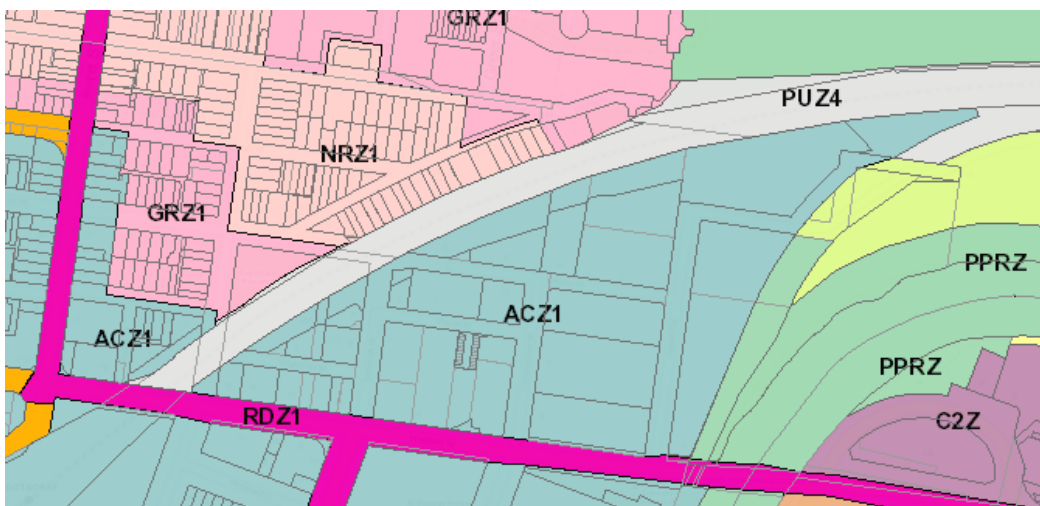
Figure 10 Hallenstein and Whitehall Street intersections with Hopkins Street



The eastern part of the precinct adjoins the Maribyrnong River and an open space area, part of which is proposed to contain a bio-retention system and gross pollutant trap (DCP project items BR01 and GPT01).

The Joseph Road Precinct is zoned Activity Centre Zone Schedule 1 - Footscray Major Activity Centre (ACZ1) which extends to the west and south of the precinct (Figure 11). Hopkins Street is within a Road Zone Category 1. The Parking Overlay Schedule 2 - Footscray Metropolitan Activity Centre: Outer Parking Precinct, Development Contributions Plan Overlay Schedule 6 - Maribyrnong City (South of Ballarat Road) Community Infrastructure Development Contributions Plan (DCPO6) and Environmental Audit Overlay extend across the precinct.

Figure 11 Zoning map



1.2 Background

(i) Joseph Road Precinct Public Realm Plan

Produced for Council in 2017 by ASPECT studios and exhibited with the Amendment as an attachment to the JRP DCP, the Public Realm Plan has as its design objectives:

- Provide connections through the precinct and to surrounding areas.
- Provide a seamless transition in activity levels and function between Footscray central and Melbourne's CBD.
- Have regard to the built form outcomes of the Precinct.
- Create a public realm that complements active ground floor uses, provides for safe and pleasant pedestrian circulation, and encourages wider public access and usage.
- Prioritise pedestrians, cyclists and encourage active transport modes.
- Provide an accessible and equitable public realm.
- Provide services and infrastructure required for the level of development in ways that do not limit opportunities for quality green infrastructure in the streetscape.
- Consider and manage grading of the site and stormwater drainage in a positive way to contribute towards a resilient city.

The Public Realm Plan includes:

- an overall Public Realm Plan (version without trees included in Figure 12)
- street concepts (example of Warde Street is included in Figure 13). Each concept drawing includes a street design overview and identification of street details including width, number of parking bays, street trees, light poles, furniture (bins, benches and bike hoops) and signage along with cross sections showing footpath, kerb, lighting, planting and services details
- planting and material palette based on Council's *Design Manual and Street Planting Strategy, 2013*
- strategic and site analysis including bus routes, circulation and street typology
- civil design detail including stormwater drainage.

Figure 12 Public Realm Plan

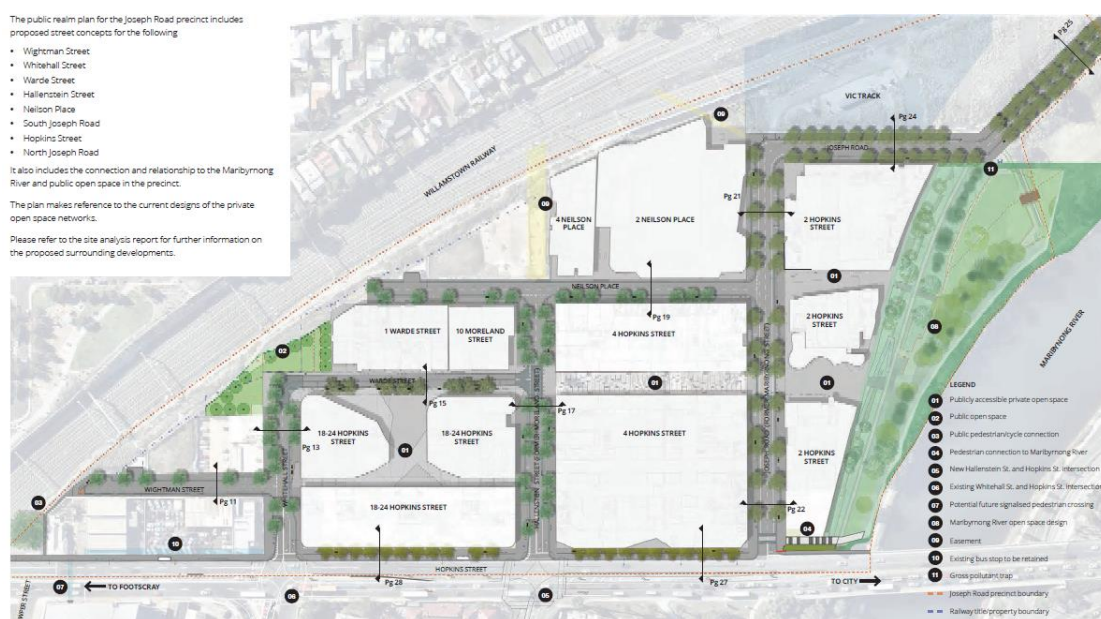


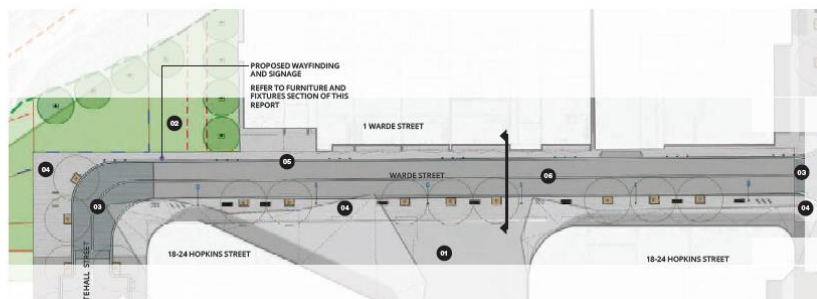
Figure 13 Warde Street Concept example

Proposed Street Details	
Carriageway width	3.1m
Parallel parking bays	0
Vehicle cross overs	1
Trees in footpath	
(Council details SF-602)	10
Trees in road reserve	
(Council details SF-605)	0
Benches	7
Bins (Waste & recycle unit)	2
Bike hoops	9
Wayfinding and signage	1

The location of street furniture is indicative and final locations are to be approved by Council.

LEGEND

- 01 Publicly accessible private open space
- 02 Public open space
- 03 Raised transition threshold into shared zone - Sawn bluestone pavers
- 04 Pavement - bluestone
- 05 Flush transition between pedestrian only footpath and shared zone - Sawn bluestone pavers
- 06 Shared zone - asphalt surfacing to carriageway

**(ii) Joseph Road Precinct Development Contributions Plan**

The JRP DCP was prepared by the Victorian Planning Authority to provide a basis for implementing the Public Realm Plan through a DCP mechanism. It contains:

- a purpose statement and identification of the area to which it is proposed to be applied
- its strategic planning justification
- details of the charge area and a development scenario with:
 - a single Main Charge Area (MCA) proposed
 - development projections to 2033 (anticipated year of full build out) which includes a development site area of 42,128 sqm, 4,496 dwellings, 9,034 sqm of commercial floor space and 11,319 sqm of retail floor space
 - 100 per cent apportionment, with a single demand unit equalling 1 dwelling or 19 sqm for retail floor space or 121sqm for office/commercial use
 - items not included such as items normal to the construction of a development (drainage, services, landscaping, reserve master plans, bus stops and plan checking)
 - recognition for contributions made under existing planning permits or s173 Agreements including arrangements for credits or additional top-up payments
- infrastructure projects and contribution calculations:
 - for 16 identified projects totalling \$27,097,000 (refer Figure 14 and Table 2) including 12 road projects (RD01 – RD12), 2 traffic improvement projects (TR01 and TR02), 2 drainage projects (GPT01 and BR01)
 - which are based on WT Partnership and Alluvium Consulting’s costings
 - including cost apportionment of projects, summary of costs, contributions and anticipated staging of projects (5 stages over 15 years)
- administration and implementation covering matters including payment, works-in-kind (WIK), annual indexation and DCP review (every 5 years)
- nominates Council as the Collecting and Development Agency. The DCP does not provide for the payment of a Community Infrastructure Levy (CIL) or include a plan preparation charge

- requires a development infrastructure levy (DIL) payment or contribution where land is developed or subdivided.

Figure 14 DCP project areas

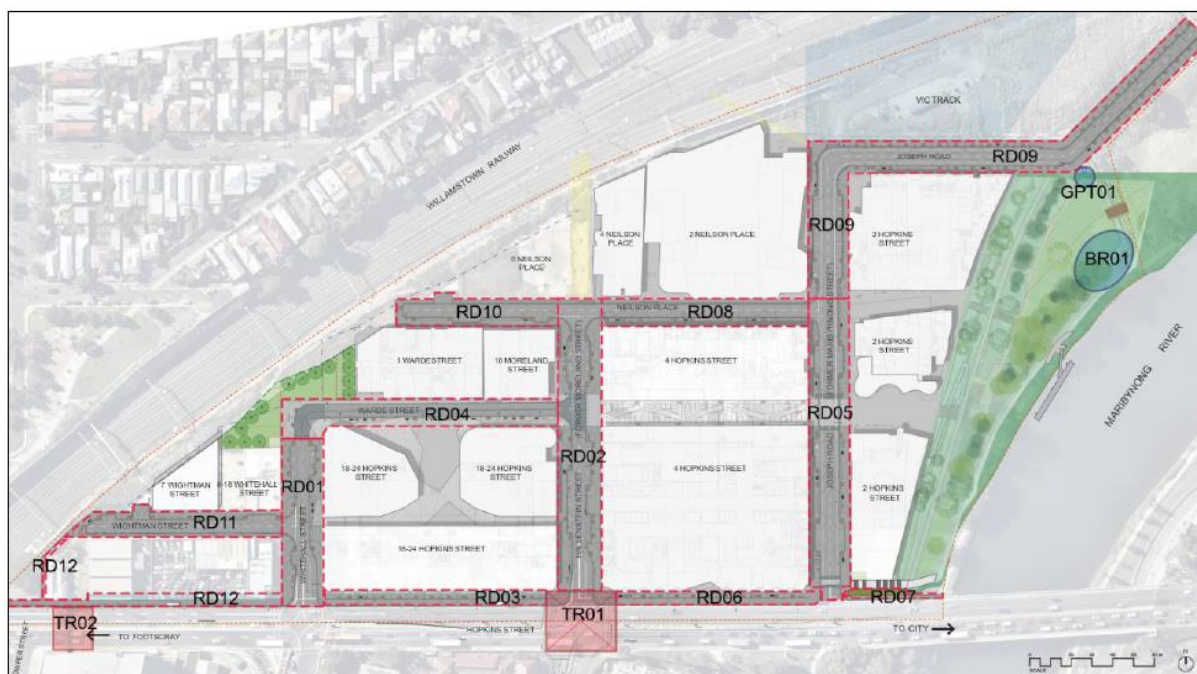


Table 2 Joseph Road Precinct DCP projects

DCP Project No.	Project	Estimated Project Cost: Construction	% Apportioned to DCP
Road Projects			
RD01	Whitehall Street	\$1,792,624	100.0%
RD02	Hallenstein Street	\$3,338,111	100.0%
RD03	Hopkins Street (Central West)	\$895,816	100.0%
RD04	Warde Street	\$2,515,929	100.0%
RD05	South Joseph Road	\$3,008,287	100.0%
RD06	Hopkins Street (Central East)	\$910,426	100.0%
RD07	Hopkins Street (East)	\$449,968	100.0%
RD08	Neilson Place (East)	\$3,034,501	100.0%
RD09	North Joseph Road	\$4,485,355	100.0%
RD10	Neilson Place (West)	\$1,262,101	100.0%
RD11	Wightman Street	\$1,483,981	100.0%
RD12	Hopkins Street (Far West)	\$995,009	100.0%

DCP Project No.	Project	Estimated Project Cost: Construction	% Apportioned to DCP
Sub-Total Road Projects		\$24,172,108	100.0%
Traffic Improvement Works			
TR01	Hopkins Street and Hallenstein Street - Traffic Lights Construction	\$1,929,482	96.2%
TR02	Hopkins Street – Pedestrian Crossing -	\$202,199	100.0%
Sub-Total Traffic Improvement Works		\$2,131,681	96.6%
Drainage Project			
GPT01	Gross Pollutant Trap	\$396,211	100.0%
BR01	Bio-Retention System	\$397,000	100.0%
Sub-Total Drainage Infrastructure Project		\$793,211	100.0%
Total cost all projects		\$27,097,000	99.7%

Table 3 identifies the DIL rates nominated for residential, commercial and retail use. This Table appears in the exhibited DCPO1 schedule.

The exhibited JRP DCP includes three attached documents, the Public Realm Plan and:

- the *Joseph Road Public Realm Cost Estimate (WT Partnership)*, 26 July 2017 (DCP Costing 1) which specifically costs all DCP projects other than project item BR01
- a costing in the form of a memo titled *Joseph Road Precinct Preferred WSUD Concepts*, dated 12 May 2017 and prepared by Alluvium Consulting for DCP project item BR01.

Table 3 Proposed DCP levies

Facility	Levies payable by the development (\$)		
	Development infrastructure MCA 1 (Residential) per dwelling	Development infrastructure MCA 1 (Commercial) per m2 gross leasable floor space	Development infrastructure MCA 1 (Retail) per m2 gross leasable floor space
Road projects	\$4,678.72	\$38.67	\$246.25
Traffic improvement works	\$398.44	\$3.29	\$20.97
Drainage	\$153.53	\$1.27	\$8.08
TOTAL	\$5,230.69	\$43.23	\$275.30

The DIL rates are based on the WT Partnership Cost Estimate (DCP Costing 1), which includes:

- an estimate of area of each project area and the total works area (21,058 sqm)

- identification of documents informing the costing estimate
- details of specific costing inclusions including design and construction contingencies, supervision, design and project management fees, removal and disposal of contaminated
- details of costing exclusions
- estimates of works and items for each project area including demolition, contamination, groundworks, roadworks, pavements, street furniture, street lighting, landscaping, power, stormwater.

The Alluvium Consulting report identified a series of stormwater treatment options for preliminary costing and a more detailed costing for Council's preferred option comprising a bioretention system on Council land.

2 Approach of the Panel and issues

2.1 Procedural issues

At the Directions Hearing, Council sought further submission details from F.J.P Pty Ltd (FJP). This was on the basis that the original submission (submission 11) indicated: a preliminary concern; a desire to be kept informed; reserved the right to engage in a panel hearing and to further review elements of the Amendment, but provided little for Council to respond to. The Panel agreed with this position and issued a Direction that a more detailed submission identifying the key issues be submitted by the 20 February 2019. A further submission was received on that date (Document 2).

At the Directions Hearing, Council identified a series of proposed changes (Document 1) to the exhibited JRP DCP which included:

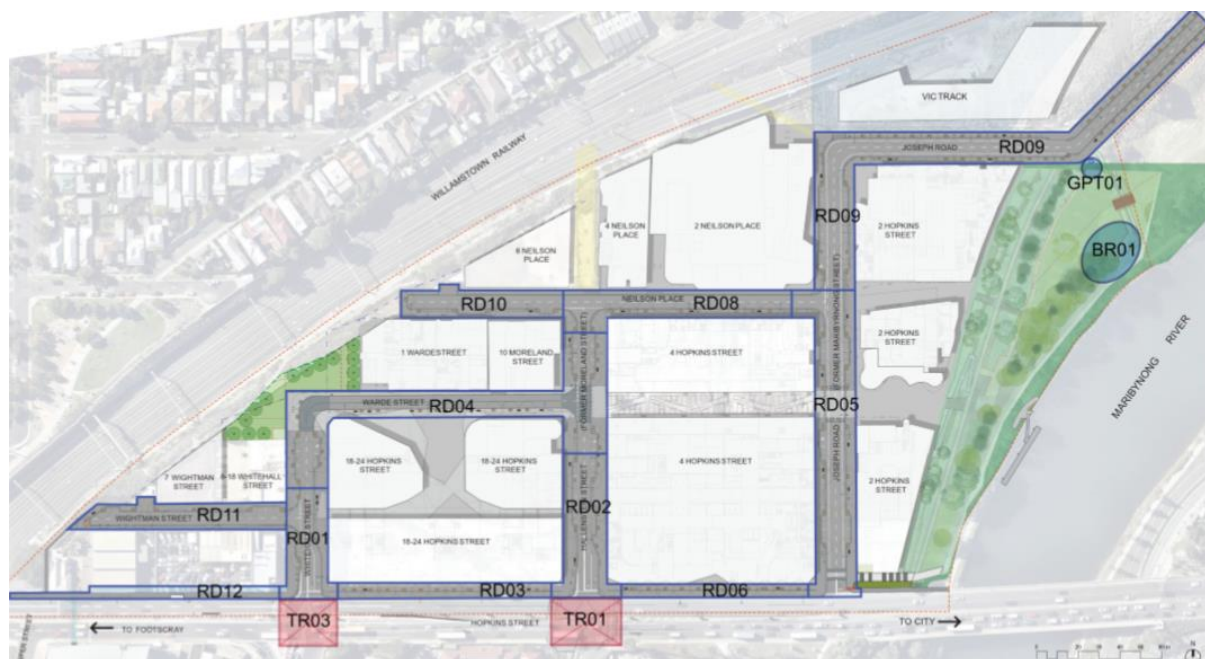
- amended project area boundaries as shown in Figure 15¹
- deletion of projects RD07 (footpath is part of VicRoads' bridge structure) and TR02 (signals no longer required by VicRoads)
- inclusion of a new project TR03 (upgrade to Whitehall Street-Hopkins Street traffic signals) in response to project RD01 public realm works and project TR01 traffic signals installation
- minor changes to the inclusions and exclusions in the DCP Costing 1 including costs associated with archaeological excavations and a Cultural Heritage Management Plan for project BR01
- likely additional costs (approximately \$1M.) for item TR01 associated with upgrading Telstra assets
- updating development projections including dwelling numbers and retail/commercial floorspace based on recent permit activity
- updating the staging table.

Other than a revised project area plan, Council was unable to provide the revised DCP details or a revised costing at the Directions Hearing. The Panel was advised by Council that a revised costing estimate would be prepared by WT Partnership and circulated to parties by early March to enable its review by expert witnesses. Council also advised that it was working to complete draft s173 Agreements for sites with planning permits and provide them to permit holders before the commencement of the Hearing. Council further advised that the dwelling development projections identified in Table 1 of the DCP required updating.

On the basis of changes identified by Council, Ms Gale (of Minter Ellison for Growland Group Pty Ltd) and Mr McKendrick (of Planning & Property Partners for FJP) sought deferral of the Hearing to a later date (in late May) to enable sufficient time to assess changes and prepare and file witness statements. The deferral request was also supported by Ms Schroor of Norton Rose Fulbright (for Benson Property Group).

¹ Potential changes to project area boundaries was referred to in the Council delegate report of 8 January 2019.

Figure 15 Amended DCP project areas



The Panel considered that while the identified changes potentially increased the overall costs to be recovered by the DCP, most projects remained the same (other than their spatial identification) and the primary content and costing methodology was largely unchanged from the exhibited version. Consequently, a Direction was issued by the Panel requiring the circulation of revised costings and the revised DCP by 8 March 2019 to enable enough opportunity for expert witnesses to consider the changes and respond to them in their evidence. The Direction also flagged that the Panel would consider whether the extent of any additional costs (when that information was provided) represented a material change to the Amendment and required further notification.

Council circulated the following revised documents to parties to the Hearing on 8 March 2019:

- revised *Joseph Road Public Realm Cost Estimate Report* (WT Partnership) dated 1 March 2019 (DCP Costing 2 and Document 5)
- JRP DCP dated March 2019 (JRP DCPv2 and Document 6)
- DCPO1 schedule (Document 7).

The revisions are described in detail in Chapter 2.2 below.

After reviewing the revised documents, the Panel considered that while the DCP project costs had only increased 2.7 per cent and the projects had not been altered from the advice provided at the Directions Hearing, notice of the changes should be provided to all other land owners in the precinct who had not made submissions to enable further submissions to be made to the Amendment and the proposed changes. This Direction was issued on 12 March 2019 requiring one week's notice. Council undertook this notification, notifying 64 land owners. Only one submission (Document 8) was received during this period from the OMNI Property Group (OMNI) who was already a submitter (Submission 6).

2.2 Amendment document changes

Development Contributions Plan

The revised JRP DCP (without appendices and changes accepted) is included in Appendix D. It is this version that the Panel adopts for the balance of this Report.

The changes to the costings in summary are:

- the total project costs increased by \$733,000 to 27,830,000 (a 2.7 per cent increase) with apportionment remaining at 99.7 per cent
- the total cost of road projects decreased by \$1,367,673 to \$22,804,435 with the removal of RD07 and cost refinement. Nine projects reduced in cost and three increased (RD04, RD05 and RD08)
- the total cost of traffic improvement work projects increased by \$2,092,991 to \$4,224,672 despite removal of project TR02, primarily as a result of the introduction of the Hopkins and Whitehall Streets signals upgrade project TR03 (\$1,092,752) and an increase in delivery costs of TR01. The apportionment for TR01 increased to 97.7 per cent
- the total cost of drainage projects increased by \$7,682 to \$800,893.

The other recommended changes identified by Council include:

- development projection changes
 - replacing references to '2033' with '15 years'
 - increasing development projections for dwellings by 38 dwellings, increasing retail floor space projections by 702 square metres and reducing commercial floor space projections by 1,402 square metres
- clarifying demand and equivalence ratios by further defining dwelling and referring to the *Development Contributions Guidelines (March 2007)*
- refining public open space provisions
- minor changes to 'calculation of costs' introduction
- changes to cost apportionment section clarifying the source of external contributions to project TR01
- updated 'summary of cost' and 'summary of contributions' tables (reflected in the updated DCPO1)
- updated 'project staging' table with most projects being brought forward
- confirmation that the various support documents are to form part of the incorporated document.

DCP costings

DCP Costing 2 document was revised to remove projects RD07 and TR02 and add project TR03, reduce contingencies and reflect the altered project boundaries.

DCPO1 schedule

The schedule was revised to update the 'Summary of costs' and 'Summary of contributions' tables to reflect the revised DCP costings and timing of provision periods. The costing revisions increase the total levies for dwellings by \$76.78 to \$5230.69 per dwelling. The commercial floor space levy increased by \$0.63 to \$43.23 per square metre of gross leasable floor space.

The retail floor space levy increased by \$4.04 to \$279.34 per square metre of gross leasable floor space. The proposed changes also provide for the simplification of the indexing arrangements included in the note under the summary of contributions Table by simply referring to the DCP methodology.

The revised (changes accepted) version of the DCPO1 schedule is included in Appendix E. It is this version that the Panel adopts for the balance of this Report.

2.3 Summary of issues raised in submissions

A total of 11 submissions were received to the Amendment. Two submissions (Heritage Victoria and City West Water) offered no objection to the Amendment. The remaining submissions sought changes or opposed the Amendment, identifying the following key issues:

- increasing the scope of the JRP DCP to include additional items
- issues of equity and fairness in relation to project nexus and cost apportionment
- the mechanics of the JRP DCP including costing and timing and the reconciliation of planning permit conditions requiring contributions through s173 Agreements
- capacity to deliver infrastructure
- other issues relating to development in the precinct.

The submitters seeking inclusion of additional JRP DCP items are located external to the precinct. Submissions relating primarily to the provisions and mechanics of the JRP DCP originate from land owners and developers within the precinct (refer Table 4) and represent well over 50 per cent of the precinct's total land area.

Table 4 Precinct based submission issues

Site (Submission No.)	Key issues
6-8 Neilsen Place OMNI Property Group (6)	Need for DCP and fairness of its application Impact on financial viability of projects Impact on housing affordability
10 Moreland and 1 Warde Street Norton Rose Fulbright on behalf of Benson Property Group (7)	Arrangements for reconciling existing contributions provided for in planning permit conditions for public realm works and related timing of DCP introduction Potential issues with costings
48A Hopkins Street Transport for Victoria (8)	Exclusion of site from DPO or provision of specified exclusions for transport network works
4 Hopkins Street Urbis on behalf of Growland (9)	Arrangements for reconciling existing contributions provided for in planning permit conditions for public realm works, road widening and open space provision Infrastructure coordination Justification for costings Contributions apportionment

2 Hopkins Street Fusion Project Management on behalf of Jubilee Apartments (10)	Substantial additional costs of DCP since purchasing the site with planning permit with \$450 contribution/dwelling is unfair and inequitable Works-in-kind arrangements Clarification of final costs Project staging and sequencing alignment to site development timelines Coordination of services installation with public realm works No detailed design against which to verify cost estimates
2 Neilson Place Planning & Property Partners on behalf of FJP Pty Ltd (11)	100% apportionment unfair and does not recognise external usage of funded infrastructure Need for a clear and fair mechanism for offset credits for contributions made under existing permits Project costings including potential additional costs Scope of projects are wide reaching and extend well beyond subject land

2.4 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, observations from site visits, 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
- Strategic basis and scope of the DCP
- Project costing and apportionment
- DCP implementation issues.

2.5 Limitations

Submission 5 (Ms Colebatch) makes reference to the development taking place in the Joseph Road Precinct and concerns relating to the proximity and height of buildings adjacent to the river and impact on views and overshadowing. The submission further identified the need to maintain open space and greenery in the precinct and support environmental sustainability in new building design. While these issues may be relevant considerations in the assessment of development applications, the strategic direction for this precinct as a major change area is

already well established with the application of the ACZ1 and local policy. These are not matters that relate to the application of a DCP to the precinct and accordingly this Report does not deal with them further.

3 Planning context

3.1 Legislative framework

Development Contributions Plans

Sections 46H to 46QD of the *Planning and Environment Act 1987* (the Act) enables the implementation of a DCP. This head of power supports the DCP related policy framework and provisions in each planning scheme. The sections relevant to this Amendment summarised as follows:

- s46I(1) - a planning scheme may include one or more DCPs to levy contributions to fund (a) the provision of works, services and facilities in relation to the development of land in the area to which the plan applies; and (b) the reasonable costs and expenses incurred by the planning authority (plan preparation costs) in preparing the plan and any strategic plan or precinct structure plan relating to, or required for, the preparation of the DCP
- s46J – a DCP may provide for either, or both, a DIL and CIL
- s46K(1) – the contents of a DCP must:
 - (a) specify the area to which it applies; and
 - (b) set out the plan preparation costs, works, services and facilities to be funded, including the staging
 - (c) relate the need for the plan preparation costs, works, services and facilities to the proposed development of land in the area; and
 - (d) specify the amount of the plan preparation costs and the estimated cost of the works, services or facilities, or the standard levy applicable
 - (e) unless a standard levy is applied, specify the proportion of the total estimated cost of the plan preparation costs, works, services and facilities to be funded by a DIL and, or a CIL
 - (f) specify the land in the area and the types of development for which a levy is payable and the method for determining the levy amount for the development of land; and
 - (fa) specify the Minister, public authority or municipal council to whom the levy is to be paid (the collecting agency) and (fb) is responsible for the provision of the identified works, services or facilities and plan preparation costs (the development agency)
 - (g) provide procedures for the collection of a DIL for of any development which does not require a permit
- s46K(2)(a) - a DCP may exempt certain land or certain types of development from payment of a DIL or CIL
- s46P(2) – the collecting agency may accept the provision of land, works, services or facilities by an applicant in part or full satisfaction of the amount of levy payable (allowing for WIK).

Victorian planning objectives

Council submitted that the Amendment supported the implementation of the objectives set out in section 4 of the Act by:

- providing for the fair, orderly, economic and sustainable use and development of land by using a transparent, orderly and equitable method to collect contributions for the provision of public realm and infrastructure projects to support the renewal of the Joseph Road Precinct
- securing a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors by enhancing the local streetscapes and environs through the collection of funds to provide a high amenity, upgraded street and pathway network with improved pedestrian and cyclist connections to areas beyond the precinct for the benefit of precinct residents, workers and visitors and the broader community
- protecting public utilities and other assets and enabling the orderly provision and coordination of public utilities and other facilities for the benefit of the community.

3.2 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Clause 11 (Settlement)

The Amendment supports Clause 11 by:

- ensuring the ongoing provision of land and supporting infrastructure to support sustainable urban development (Clause 11.02-1S Supply of urban land)
- requiring new development to make a financial contribution to the provision of infrastructure such as community facilities, public transport and roads, and improving the coordination and timing of infrastructure and service delivery in areas of growth and ensuring the timely provision of required infrastructure works to support future residents and workers in the Joseph Road Precinct (Clause 11.02-3S Sequencing of development)
- supporting the development and growth of Metropolitan Activity Centres by ensuring they are supported with appropriate infrastructure and provide high levels of amenity (Clause 11.03-1R Activity centres – Metropolitan Melbourne).

Clause 15 (Built environment and heritage)

The Amendment supports Clause 15 by:

- ensuring development supports public realm amenity and safe access to public transport, walking and cycling environments and provides landscaping that supports the amenity, attractiveness and safety of the public realm (Clause 15.01-1S Urban design).

Clause 18 (Transport)

The Amendment supports Clause 18 by:

- encouraging the use of walking and cycling by creating environments that are safe and attractive, developing high quality and accessible pedestrian environments and ensuring cycling routes and infrastructure are constructed early in new developments (Clause 18.02-1S Sustainable personal transport).

Clause 19 (Infrastructure)

The Amendment supports Clause 19 by:

- allowing Council to collect contributions from new development for the provision of essential public realm and infrastructure works in the Joseph Road Precinct in Footscray through a DCP mechanism (Clause 19.03-1S Development and infrastructure contributions plans).

Clause 21 (the Municipal Strategic Statement)

The Amendment supports the Municipal Strategic Statement (MSS) by:

- including as part of the application of overlays to larger substantial change sites, requirements for the appropriate provision of community infrastructure and open space and consideration of public realm improvements (Clause 21.07-1 Residential capacity and location)
- ensuring new development provides sustainable new infrastructure or improvements to existing infrastructure, creates new infrastructure to facilitate increased development in the city, and obtaining development contributions towards new infrastructure, responding to the identification that:

Much of the physical infrastructure (drainage, roads and paths) across the city is ageing and requires renewal. While there is capacity to support smaller infill developments, new infrastructure will be needed for larger developments and key strategic redevelopment sites. Developers will need to contribute towards the provision of new infrastructure to support their developments and ensure necessary infrastructure keeps pace with the anticipated growth. New infrastructure will need to achieve more sustainable design and operational standards such as Water Sensitive Urban Design (WSUD) (Clause 21.10-5 Development Infrastructure)

- ensuring new housing is adequately serviced by physical and community infrastructure and applying the DCPO to enable development contributions to be collected towards new public realm works including upgraded public spaces and pedestrian connections identified in the Footscray Metropolitan Activity Centre Framework Plan (Figure 16) (Clause 21.11-1 Footscray Metropolitan Activity Centre).

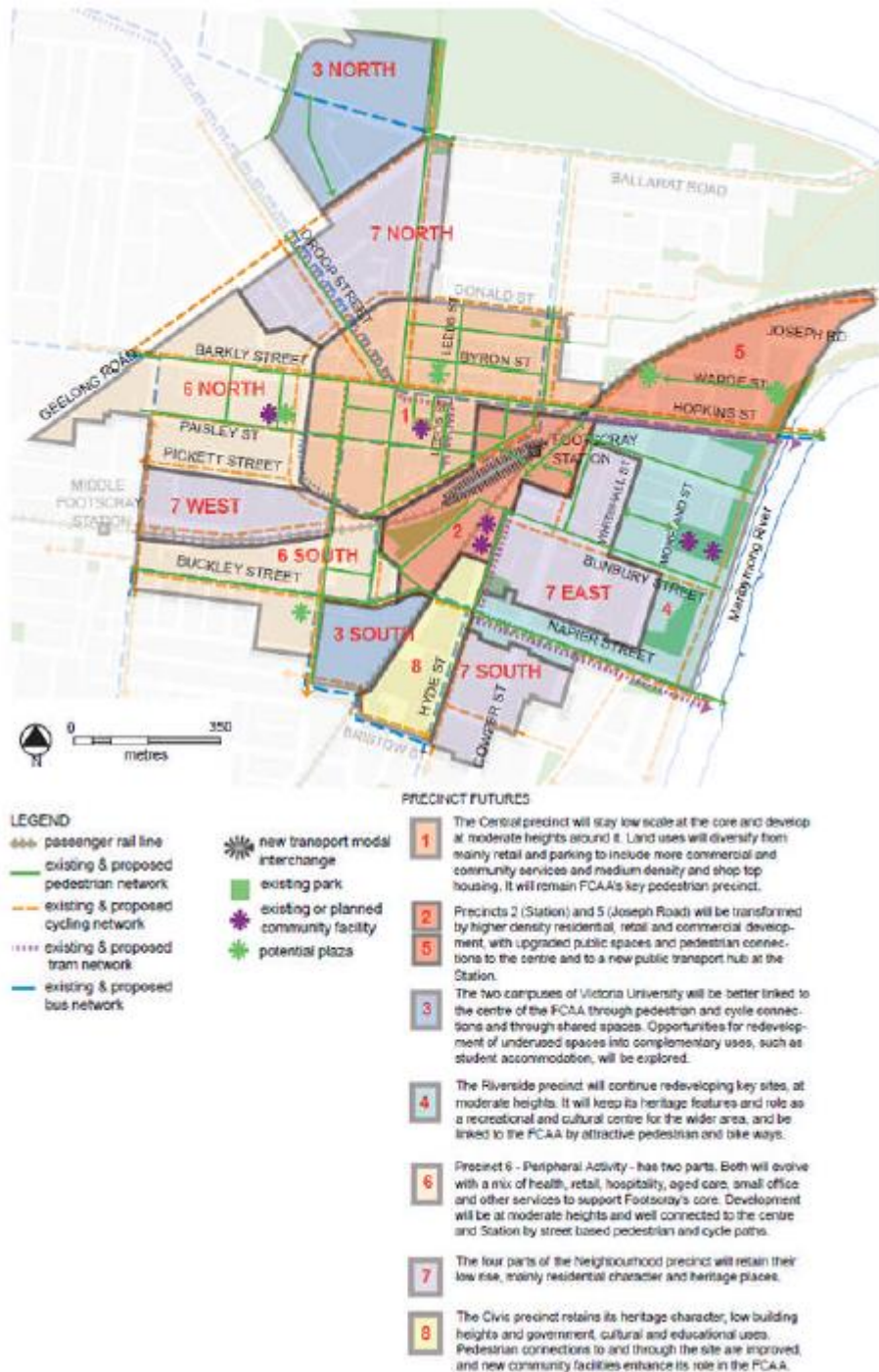
3.3 Other relevant planning strategies and policies**(i) Footscray CAA Structure Plan 2013**

The *Footscray CAA Structure Plan 2013* (Structure Plan) is a reference document in the Maribyrnong Planning Scheme at Clause 21.12 (reference documents) and the Schedule to the ACZ1.

The Structure Plan anticipates that the Joseph Road Precinct will comprise development of 4 to 25 storeys, with the following vision identified:

The Joseph Road Precinct has been transformed into a thriving vibrant mixed use precinct. The development is of high quality and provides an impressive entrance to the centre. The high quality public areas are inviting to residents, workers and visitors alike. The precinct is home to approximately 4,000 new households who enjoy the proximity and access to the Maribyrnong River, Footscray station and the central precinct.

Figure 16 Footscray Metropolitan Activity Centre Framework Plan



The Structure Plan includes the following objectives for the precinct:

- create a vibrant, mixed use precinct that complements the role and function of the Footscray Central Activities Area
- establish a robust urban character with high quality architecture and urban design that marks the precinct as a 'gateway' to Footscray
- provide a high amenity, upgraded street and pathway network with improved pedestrian and cyclist connections to areas beyond the precinct

- encourage sustainable development that incorporates best practice water management measures and promotes sustainable travel patterns through an integrated approach to transport planning.

Specific strategies include:

- a network of high amenity public places and pedestrian spaces should be provided as shown in the Joseph Road Precinct Urban Framework Plan
- visual and physical connections between the river and the precinct should be provided
- development proposals should respect planned pedestrian and cycling networks
- development should provide a high-quality street environment which incorporates footpaths, cycle paths, and on-street car parking, and maximises opportunities for street planting where appropriate
- opportunities should be provided to green the urban environment both in the public realm and as a part of new developments
- development should respond to the proposed changes to the existing road network through the construction of proposed new pedestrian and cycle links
- the primary vehicle access point to and from the precinct should be via a signalised intersection of Hopkins Street and Moreland Street (now Hallenstein), with associated intersection treatments. Secondary vehicle access points should be provided at the intersections of Whitehall and Maribyrnong streets (now Joseph Road), with Hopkins Street.

3.4 Planning scheme provisions

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the Planning Policy Framework.

(i) Zones

The land is in the Activity Centre Zone Schedule 1 - Footscray Metropolitan Activity Centre (ACZ1). The purposes of the Zone include:

- To encourage a mixture of uses and the intensive development of the activity centre:
 - As a focus for business, shopping, working, housing, leisure, transport and community facilities.
 - To support sustainable urban outcomes that maximise the use of infrastructure and public transport.
- To deliver a diversity of housing at higher densities to make optimum use of the facilities and services.
- To create through good urban design an attractive, pleasant, walkable, safe and stimulating environment.
- To facilitate use and development of land in accordance with the Development Framework for the activity centre.

Relevant land use and development objectives for ACZ1 include:

- To ensure housing is adequately serviced by physical and community infrastructure.
- To facilitate a balanced, sustainable, efficient and safe transport network within Footscray that encourages walking, cycling and public transport over motorised vehicles.

- To create a truly ‘walkable’ centre improving overall pedestrian safety, mobility and access.
- To complete missing links on significant cycle corridors to and through the MAC.
- To improve connectivity and access to regional walking and cycling trails, key open space, recreation and entertainment facilities.
- To provide improved capacity and safer access to public transport, including upgraded interchanges and stops.
- To increase the provision and range of community infrastructure to meet the present and future demands of the community.
- To provide for new community infrastructure projects.
- To ensure large developments provide some community infrastructure within the development.
- To ensure developers contribute to the provision of community infrastructure.
- To ensure new developments contribute to the creation and/or enhancement of public open spaces and the public realm.

The Joseph Road Precinct (Precinct 5) is one 8 precincts in the ACZ1 (Figure 17).

Figure 17 Joseph Road ACZ1 Precinct Map



LEGEND

- | | |
|-----------------------------------|--|
| Activity Centre Boundary | Potential Tram Line |
| Precinct Boundary | Active Frontage |
| Sites Subject to Heritage Overlay | Active Frontage With 3m Setback |
| Open Space | Proposed New Street |
| Potential Pedestrian Link | Potential Street Realignment |
| Left In/Left Out Access Only | Potential Signalled Access to Precinct |



The Precinct objectives and guidelines largely echo those of the Structure Plan including:

- To establish a robust urban character with:
 - high quality architecture and urban design
 - an active, attractive and accessible riverfront with improved public recreation opportunities and high amenity public spaces and places

- an active and improved frontage to Hopkins Street that marks the precinct as a 'gateway' to Footscray.
- To provide a high amenity, upgraded street and pathway network with improved pedestrian and cyclist connections to areas beyond the precinct.

(ii) Overlays

The land is subject to the:

- Parking Overlay Schedule 2 – Footscray Metropolitan Activity Centre: Outer Parking Precinct
- Development Contributions Plan Overlay Schedule 6 – Maribyrnong City (South of Ballarat Road) Community Infrastructure Development Contributions Plan (DCPO6)
- Environmental Audit Overlay.

The Parking Overlay applies to the outer areas of the ACZ1 zone and establishes minimum and maximum car parking rates for various uses.

DCPO6 applies to most of the municipality south of Ballarat Road, and requires payment of a levy of \$450 per dwelling towards provision of community infrastructure. This control expired in 2016. Council advised that it would not be seeking payment of this levy on active planning permits.

The Environmental Audit Overlay reflects the precinct's former industrial use and requires a certificate of environmental audit or statement from an environmental auditor before a sensitive use commences.

3.5 Amendment VC148

Amendment VC148 was gazetted on 31 July 2018 and made substantial changes to the structure and content of the planning policy framework, as well as other provisions in the Planning Scheme including identification of incorporated and background documents. Amendment C145 appropriately uses the schedule to Clause 72.04 to identify the DCP as an Incorporated document. Amendment VC148 has no other impacts on the Amendment.

3.6 Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) including the consideration of the *Development Contributions Guidelines* (Department of Sustainability and Environment, June 2003 – as amended March 2007) when preparing a DCP. The Guidelines are discussed in more detail in Chapter 3.7.

The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Planning and Environment Act 1987.

The Ministerial Direction on the Preparation, Content and Reporting Requirements for Development Contributions Plans specifies the items which may be funded through a DCP, including:

- (b) Construction of roads, including the construction of bicycle and foot paths, and traffic management and control devices.

- (c) Construction of public transport infrastructure, including fixed rail infrastructure, railway stations, bus stops and tram stops.
- (d) Basic improvements to public open space, including earthworks, landscaping, fencing, seating and playground equipment.
- (e) Drainage works.

The Amendment is consistent with the *Ministerial Direction No. 9 Metropolitan Planning Strategy*, which seeks to ensure that Amendments have regard to *Plan Melbourne 2017-2050*. The Amendment will deliver high quality public realm and infrastructure to serve future development and promote walking and cycling in accordance with directions and policies in *Plan Melbourne 2017-2050*, including:

- Direction 1.1 Create a city structure that strengthens Melbourne's competitiveness for jobs and investment.
- Direction 1.3 Create development opportunities at urban renewal precincts across Melbourne.
- Direction 2.1 Manage the supply of new housing in the right locations to meet population growth and create a sustainable city.
- Direction 2.2 Deliver more housing closer to jobs and public transport.
- Direction 3.3 Improve local travel options to support 20-minute neighbourhoods.
- Direction 5.1 Create a city of 20-minute neighbourhoods.
- Direction 5.2 Create neighbourhoods that support safe communities and healthy lifestyles.
- Direction 6.3 Integrate urban development and water cycle management to support a resilient and liveable city.

3.7 Development Contributions Guidelines

The Development Contributions Guidelines identify nine principles for the development of a DCP:

- it must have a strategic basis
- infrastructure projects can be justified:
 - where they will be used by a future community of an area, including existing and new development
 - where charging rates are based on the projected share of usage
 - a nexus can be demonstrated between new development and the likely use of the infrastructure to be provided
 - a reasonable time horizon is provided (should not exceed 20 – 25 years) to ensure contributions are equitable and reasonable. Timeframes should consider the time horizon for strategic planning, provision and funding, the expected rate of new development and degree of certainty in projecting growth
- costs must be apportioned on the basis of shared usage
- it must create a binding obligation or commitment on the infrastructure provider to provide the infrastructure by the identified date or criteria
- it must form part of the planning scheme
- it must provide accountability to ensure levies collected are used to provide for the nominated infrastructure

- it must transparently identify all the assumptions associated with levy calculation are clearly documented, justified and understandable.

Other elements of the Guidelines identify that a DCP:

- must be prepared by a planning authority
- may cover all or part of a municipality
- can only charge new development the levy
- cannot apply to specific development identified in the Act or other identified exempt development
- can include a new item of infrastructure, upgrades of existing infrastructure or replacement of properly maintained infrastructure which is at the end of its economic life
- includes infrastructure which must be used by a broad cross-section of the community and serves a neighbourhood sized catchment or larger area
- provides for a standard of infrastructure basic to the health, safety and well being of the community, or is consistent with community expectations of that standard
- a DIL can fund the construction of roads (including bicycle and foot paths) and traffic management and control devices, basic improvements to public open space (including earthworks, landscaping and seating) and drainage works, generally collected through planning permit conditions
- a CIL can fund community or social purpose buildings (other than child health and child care centres and kindergartens), generally collected through the building permit process
- levy is calculated based on the estimated cost of infrastructure based on clear documentation detailing project costs. Relevant costs include capital costs of provision, financing costs, design costs and costs associated with the preparation of the DCP.

The Guidelines also identify:

- when a DCP can be prepared (including following an infrastructure needs analysis, strategic plan or other strategic initiative leading to infrastructure commitments)
- that a DCP is most effective when applied to areas that will experience a high degree of change including large redevelopment sites within established urban areas
- that there is no maximum cost for development infrastructure.

The Panel notes that planning must consider the DCP Guidelines, but that they are a guide to one way a DCP can meet the relevant sections of the Act. This means that a DCP that aligns with these guidelines is likely to meet the relevant requirements of the Act. Different methodologies may be applied, however, the task of assessing whether the DCP meets the requirements of the Act will be more challenging where a different methodology is applied.

3.8 Conclusion

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 MSS, and is consistent with the relevant Ministerial Directions. 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.

4 Strategic basis and scope of the DCP

4.1 The issues

The issues are:

- Whether there is a strategic basis for the JRP DCP.
- Whether boundaries of the JRP DCP are appropriate.
- Whether the VicTrack site should be included.
- Whether the projects in the JRP DCP are appropriate.
- Whether the DCP scope accords with the Act and Guidelines.

4.2 Strategic basis for the Amendment

(i) Context

In addition to the provisions of the Maribyrnong Planning Scheme identified in Chapter 3 of this Report, relevant to the considerations of the JRP DCP's strategic basis, scope and content are:

- the Act including section 4(1) and Part 3B sections 46H – 46QD
- the Ministerial Direction on the Preparation, Content and Reporting Requirements for Development Contributions Plans
- the Development Contributions Guidelines.

(ii) Evidence and submissions

Beyond the strategies and policies identified in Chapter 3 of this Report, Council outlined in its Part A submission a chronology of strategic work and engagement that has led to the Amendment, which is summarised in Table 4. The chronology identified that Council has been working on strategies to improve the Joseph Road precinct public realm since 2005 and that the need for a method of capturing infrastructure contribution was anticipated in 2009.

Table 5 Chronology of Amendment background

Date	Activity
Late 2005 – December 2007	Council prepares Joseph Road Precinct Structure Plan and Urban Design Framework
27 November 2007 – October 2008	Minister becomes responsible Authority for development in the precinct over \$250,000 and refers the Structure Plan and Urban Design Framework to a Priority Development Panel for review
23 April 2009 – May 2009	Priority Development Panel report released recommending application of a Priority Development Zone and that an application of an Infrastructure Funding Strategy be prepared to capture the “windfall gain” from the rezoning (approved by Amendment C78)
Late 2009 – early 2012	Council and Department prepare a Public Realm Master Plan and Infrastructure Needs Assessment based on the Structure Plan and UDF development assumptions. Project abandoned based on planning permits being issued of greater yield than anticipated

29 July 2013	Amendment C105 approved increasing preferred maximum heights in precinct from 12-14 storeys to 25 storeys. No public realm master plan or infrastructure strategies were included with the zone changes
30 April 2013 – 19 March 2015	Footscray Metropolitan Activity Centre including Joseph Road Precinct rezoned to ACZ1 was exhibited, supported by a panel and approved by the Minister and subsequently gazetted (Amendment C125)
19 March 2015 – 13 October 2016	Amendments C125 removes Minister as Responsible Authority for sites with issued permit and remainder of sites through Amendment C142
March 2016 – February 2017	Council works with VPA to develop a public realm master plan and DCP that form the basis of the Amendment. This process included engagement with stakeholders including land owners in September 2016, June 2017 and October 2018 (associated with the Amendment exhibition)

Council submitted that there was a sound strategic basis for applying the JRP DCP. Mr De Silva's evidence supported this view. Mr Montebello for Council submitted that the Amendment is necessary to support the provision of essential public realm and infrastructure works in the precinct. This would ensure future residents, visitors and workers can be provided with timely access to infrastructure and services needed to support a growing population.

While acknowledging that it would have been preferable to have the DCP in place before permits were issued, Council considered that a DCP was urgently required and a preferable model to dealing with public realm improvements rather than an ad hoc basis through permit conditions. Council submitted that a DCP was the right tool to apply to ensure an equitable and fair funding mechanism that provides for vital infrastructure in a coordinated and consistent manner.

Mr Finanzio SC for Benson Property Group (Benson) submitted that the 'horse has already bolted' in this precinct with the issue of permits (some as early as 2011) and the advanced stage of construction. He submitted that the DCP was unlawful and would only compound uncertainty if implemented. He indicated that there were other means to achieve the infrastructure outcomes including through Council rate windfalls and state government stamp duty revenue as a result of the development occurring in the precinct.

(iii) Discussion and conclusion

There was general acceptance from the submitters that there is a significant need for infrastructure works to be undertaken within the precinct as it transitions to a mixed use, residential precinct.

Consistent with the Development Contributions Guidelines, the Panel considers the application of a DCP is an appropriate tool to apply to an existing urban area targeted for and undergoing a high degree of change and major development activity. The application of a DCP to achieve public realm outcomes for the precinct is consistent with local planning policy and

extensive strategic work undertaken to date. The Public Realm Plan itself was not generally disputed and provides sufficient detail for the development of a DCP.

The issues of project nexus, apportionment methodology and lawfulness and the related concerns of fairness and equity are matters associated with the operation of the DCP and are discussed further in Chapters 5 and 6.

The Panel concludes:

- A DCP is the appropriate tool to use to achieve the strategic outcomes for the Joseph Road Precinct
- The JRP DCP has a clear and sound strategic basis.

(iv) Recommendations

The Panel recommends:

Apply the revised Joseph Road Precinct Development Contributions Plan included in Appendix D to this Report to the Joseph Road Precinct.

Apply the revised Schedule 1 to the Development Contributions Plan Overlay included in Appendix E to this Report to the Joseph Road Precinct.

Amend the Schedule to Clause 72.04 to update the reference to the revised Joseph Road Precinct Development Contributions Plan.

4.3 VicTrack land

(i) Submissions

Transport for Victoria's submission (Submission 8) requested the removal of the DCPO1 from VicTrack land in Joseph Street as there were no identified intentions to develop the land for residential or commercial purposes.

Council did not support removal of the DCPO1 from the VicTrack land, submitting that this would be unfair and inequitable because:

- the land was zoned AC1Z and could be developed up to 12 storeys in height
- a levy contribution to public realm works could not be sought unless the site was redeveloped in the future for residential, retail or commercial purposes
- it would increase the contribution rates for other land owners.

(ii) Discussion and conclusions

The Panel considers that the VicTrack land should remain within the DCPO1. The site is located in a strategic part of the precinct linking the western part with the Temple and river and parklands to the east. The VicTrack land holding is extensive with two road frontages and with limited apparent constraints that would prevent its redevelopment in the 15 year DCP time horizon, consistent with the purpose and provisions of the ACZ1 and the Footscray Structure Plan. As identified by Council, the redevelopment of such sites where surplus to the transport network is not unusual. Opportunity sites like this should be fully utilised to leverage infrastructure capacity and investment, and to strategically support the delivery of the precinct vision. The Panel agrees with Council's position that it would be inequitable and

unfair to remove the site and increase the cost apportionment to the remaining land owners in the precinct.

The Panel concludes:

- That the VicTrack site should remain within the JRP DCP.

4.4 Precinct boundaries

(i) Evidence and submissions

Mr Morris QC for Growland Group Pty Ltd (Growland) identified that proposed DCP did not cover the same land as the ACZ1 and that this should be corrected.

Mr Morris called Mr Ainsaar to give development contributions and planning evidence in relation to the Amendment. Mr Ainsaar identified in his evidence that the north-eastern portion of the DCP area extends into land zoned Public Use (VicTrack land) and Special Use (the Temple land) and that it was not clear what the boundary of the VicTrack land was.

Council provided a series of plans and aerial images (Document 17) identifying the extent of VicTrack land and the Temple land, the titled Joseph Road road reserve at its north-eastern extent (partially located on VicTrack land) and the location of the current access road into the Temple site. Council advised that it is currently working with VicTrack to realign the access road and transfer ownership to Council. Council indicated this may involve the affected SUZ land being rezoned to ACZ1 in future. Council said that given that the land arrangements were of a transitional nature and nothing requires the DCP to correlate the ACZ, *“nothing turns on it”*.

(ii) Discussion and conclusions

The boundaries of the DCP are primarily derived from the Public Realm Plan. The Public Realm Plan establishes a broad vision for the precinct that ties the Joseph Road precinct to the river and the broader Footscray Metropolitan Activity Centre. The DCP area closely correlates to the ACZ1 and the various plans included in the ACZ1 Precinct Plan, Activity Centre Framework Plan and Structure Plan. The reason for the minor eastern boundary inconsistency lies with the arrangements of land titles and current alignment of the Joseph Road road reserve and its desired future alignment.

The Panel agrees with Council that there is nothing in the Act or Guidelines that requires the DCP to apply to a single zone. It does agree with Mr Morris, however, that the description in the DCP should reflect the current zoning arrangements. It may also be appropriate to refer to the land exchange and boundary realignment process as this may take some time to finalise.

The Panel acknowledges the efforts of Council to progress the road alignment and boundary realignment to implement the Public Realm Plan and facilitate a more readily developable VicTrack land parcel. It encourages Council to continue to pursue this arrangement.

The Panel does not consider that the DCP should be extended to include the Temple site as this site is not intended to be developed for the mixed use purposes intended in the Joseph Road precinct.

The Panel concludes:

- That the boundaries of the JRP DCP are appropriate.
- The description of the precinct zoning contained in Part 2 Strategic Planning and Justification of the JRP DCP (Appendix D version) be updated to reflect all zoning in the precinct and the future realignment of the Joseph Road road reserve, VicTrack and Council land parcels.

(iii) Recommendation

The Panel recommends:

Amend the revised Joseph Road Precinct Development Contributions Plan included in Appendix D to:

- a) Include the description of all precinct zoning in Part 2 Strategic Planning and Justification.**
- b) Include details of the future realignment of the Joseph Road road reserve, VicTrack and Council land parcels and potential future rezoning of remnant parcels.**

4.5 DCP identified projects

(i) Submissions and evidence

The submissions and evidence did not contend that the projects in the JRP DCP could not or should not be included in a DCP. Rather, the submissions and evidence opposed the Amendment largely due to the basis on which the project costs were apportioned and the associated issues of fairness and equity.

The evidence from Mr De Silva (called by Council to give development contributions and planning evidence) indicated that the proposed projects fell well within the definition of Development Infrastructure in the Act and Development Contributions Guidelines, and that there was a definitive nexus between the projects and development in the charge area. With an anticipated 4,500 dwellings in the precinct he pointed to a future resident population of between 9,068 and 11,335 which would utilise the proposed infrastructure.

Council identified that there was a clear and urgent need for public realm infrastructure in the precinct which at present *“is at best basic or non-existent. Where it does exist, it is in need of total replacement.”*

Council referred to the evidence of Ms Bauer (called by Council to give urban design evidence) including her visualisations of the high quality public realm that is to be created through the DCP. Mr Montebello considered that the DCP was applying standard works that did *“... not venture into the extravagant”* or seek gold plated outcomes, rather it was a simple plan and limited in scope.

Council indicated that there were Public Realm Plan implementation elements that were not included in the DCP including plan preparation charges, the land component for drainage outfall infrastructure and open space improvements. Nor did the Amendment seek to levy community infrastructure.

Council stressed the importance of the Amendment to deliver the necessary infrastructure to support current and approved development in a coordinated and holistic manner rather than relying on planning permit conditions.

(ii) Discussion and conclusions

The Panel notes that, in the main, the identified projects are not in question. The key issues in submissions relate to the way in which those projects are apportioned and collected and permit condition contributions acknowledged. Those issues are discussed in Chapters 5 and 6 of this report.

The 15 infrastructure projects identified in the revised JRP DCP are all projects that can be included in the DCP consistent with the Act, Development Contributions Guidelines and Ministerial Direction.

The Panel observed through its inspection of the precinct that much of the road and footpath infrastructure is inadequate or in poor condition and certainly not suitable for a large resident population. The streets are largely devoid of trees, there is no street furniture and limited formalised on-street parking arrangements.

The Panel considers that the nature of the infrastructure works are directly relatable to the level of development that is expected in this precinct. The proposed infrastructure will clearly be used by residents and workers in the precinct to move about the precinct safely and comfortably.

The Public Realm Plan and JRP DCP establish a level of design standard for projects that is commensurate with the policy objectives of the Maribyrnong Planning Scheme but are not excessive or overblown. Many of the proposed infrastructure works include projects that might normally be associated with large residential or mixed use development of this nature (footpaths, street trees and drainage). Consistent with the Development Contributions Guidelines, the Public Realm Plan and JRP DCP provide for a basic level of infrastructure at a standard appropriate to meet the health and safety, wellbeing and expectations of its future community.

Consistent with the Development Contributions Guidelines, the identified infrastructure will be used by a broad cross section of the community (residents in the precinct and visitors to it) and serve a neighbourhood or larger catchment.

The Panel concludes:

- That the JRP DCP projects are appropriate and reasonable for inclusion in the JRP DCP.

4.6 Other projects

(i) Submissions

Community projects

Two submissions sought to expand the scope of the DCP to cover other projects:

- an off-lead dog park (submission 2 from Ms Grima)
- a community centre (Ms Colebatch).

Council advised that space required for a community centre or off-lead dog park cannot be accommodated in the precinct. It identified that there already 12 designated off-lead dog facilities in the municipality including one in Footscray Park, that will be readily accessible by future residents via existing linkages. Council also flagged that it is currently reviewing community infrastructure needs for the municipality and has acquired land for open space near the intersection of Whitehall and Warde Streets.

Cycle corridor

The initial submission from Transport for Victoria (submission 8) sought a contribution towards the Highpoint to Yarraville Strategic Cycling Corridor path, as part of this path is located to the north of Hopkins Street adjoining the Joseph Road Precinct. This element of the submission was later withdrawn.

Council did not support Transport for Victoria's request as it lacked supporting information including detailed plans, costs, apportionment and timing.

Submission 3 (Mr Martinovic) supported the DCP but identified concerns with the ability to provide bike lane linkages to the Principle Bicycle Network routes given developments within the precinct are close to the road.

Council acknowledged the challenges of accommodating improved cycling connections, identifying that the Public Realm Plan provides for an off-road shared bicycle path along Hopkins Street (with appropriate building setbacks) and an on-road path along Joseph Road to the river trail.

Hopkins Street land

Mr Morris submitted that the land value of a 3.0 metre strip of land along the Hopkins frontage of 2 – 6 Hallenstein Street (formerly 4 Hopkins Street) required to be transferred to VicRoads as a condition of permit should be included in the DCP. This land would be required, he said, to accommodate both the proposed Hopkins Street bike path and footpath.

Council submitted that as this matter was not raised in submissions it should not now be heard. Mr Finanzio did not support the inclusion of the project indicating that the land had been voluntarily surrendered as the condition had not been appealed. He expressed concern about the validity of that condition but concluded that *"two wrongs don't make a right"* and that it would not be appropriate to pass on this cost to other landowners. The evidence from Mr Ainsaar did not extend to the inclusion of a land project.

(ii) Discussion and conclusions

Community projects

The Panel agrees with Council that it would be inappropriate for the scope of the DCP to be expanded to include additional community infrastructure and open space project items (off-lead dog park and a community centre). The strategic work to underpin the need for these additional items of infrastructure has not been prepared, and the projects are not identified in the Public Realm Plan or the Footscray Structure Plan.

The exhibited DCP only includes development infrastructure items. While there may well be a need for further community centres, this should be appropriately established through a

suburb or municipal wide needs analysis (as currently being undertaken by Council) and any potential DCP funding mechanism applied based on the basis of a wider community benefit. The application of the current DCPO6 is a good example of this approach.

Cycle corridor

The Panel agrees with the observations of Council that the Public Realm Plan and the DCP make appropriate provision for bicycle connections through the precinct, noting the constraints of narrow road reserves and existing development.

The Panel would not have supported the inclusion of a project that required a contribution towards the Highpoint to Yarraville Strategic Cycling Corridor path had this progressed as a DCP project. A project of this nature would have benefits at the municipal and wider level and would not be related to the Joseph Road Precinct in any particular way other than by virtue of the fact that it was close by.

The concerns of Mr Martinovic have been largely addressed in Council's submission.

Hopkins Street land

The Panel agrees that costs of acquiring land for infrastructure projects such as roads, drainage and open space can be accommodated within a DCP particularly if that land provided for a strategic transport link. In this instance the land provision identified by Growland was required by a planning permit. The appropriateness of that condition was not appealed. It is not appropriate for the Panel to comment on the merits of that condition other than to observe it remains attached to the permit.

While the Panel accepts that the condition allows Council to achieve the outcomes for Hopkins Street identified in the Public Realm Plan, it is not appropriate to introduce the land element as a new project at this stage of the Amendment process. The Panel was not provided with information that enables an understanding of the impacts on the DCP. Other land owners who may be affected have not had the opportunity to make comment on it. Nor has it been considered in concert with other potential land purchases that could be included (drainage land for example).

The Panel notes that Council may need to acquire land towards the western end of project RD12 to continue the shared path arrangement rather than rely on the setback provisions of the ACZ1.

The Panel concludes:

- No additional projects should be included within the revised JRP DCP.

4.7 Consistency with the Act, Ministerial Direction and Guidelines

(i) Evidence and submissions

The evidence of Mr Ainsaar focused on six components of the DCP methodology he considered were inconsistent with the Act and Guidelines: extent of DCP area (discussed at Chapter 4.3); project nexus (particularly for RD09 and the north-eastern extent of Joseph Road, the Hopkins Road bike path and TR01 Hallenstein-Hopkins intersection); apportionment levels excluding external demand; contingencies and the potential for double dipping. This position was

adopted by Growland, FJP Pty Ltd (FJP) and the OMNI Property Group (OMNI) and generally accepted by Benson although that submission challenged the overall validity of the DCP.

(ii) Discussion and conclusions

The Panel considers that the revised JRP DCP in its proposed changes format is generally clear and logical in its form and content and uses the appropriate terminology. It contains the essential elements of a DCP as identified in the Act, Ministerial Direction and Development Contributions Guidelines.

Contrary to Mr Ainsaar's evidence, the Panel does not consider that it is necessary for Part 2 of the JRP DCP (relating to the strategic basis of the DCP) to include additional commentary to establish the nexus between the plan preparation costs, works, services and facilities to the proposed development of land in the area. The Panel agrees that the development projects in Part 3.2 establish a clear link in themselves. Nonetheless, Council indicated that this could be 'cured' by an additional paragraph that states this explicitly. The Panel thinks this may be useful but not necessary.

A 15 year timeframe for the DCP is considered reasonable and consistent with the level of current development and permit activity. While the project delivery timeframes are spread over a number of years, the Panel is confident with Council's commitment to work with developers to coordinate infrastructure rollout to match development completion.

The challenges of applying a DCP some time after the enabling zoning (ACZ1) and substantial development has taken place are clear through submissions and evidence. They are at the heart of the concerns developers and landowners have about fairness. Council has an important facilitative role to play in such a situation. The Panel encourages Council to take a supportive leadership role to work with permit holders in finding practical resolutions to these challenges in order to fully achieve the precinct vision.

The Panel considers that on balance, the Amendment will deliver net community benefit and sustainable development outcomes as required by Clause 71.02-3 subject to addressing a number of issues associated with project extent, apportionment and operational aspects of the DCP. Economically the Amendment provides for the equitable collection of development contributions among the landowners and reduces the burden on the local municipality to deliver the associated infrastructure upgrades required to facilitate the precinct's comprehensive development. The Amendment can be expected to result in positive social and environmental outcomes including improved drainage, enhanced streetscapes and connectivity.

The Panel concludes:

- That the structure and content elements of the JRP DCP are consistent with the Act, the Ministerial Direction and the Development Contributions Guidelines.

The submission issues associated with the DCP methodology for establishing project nexus and apportionment are discussed in Chapter 5.

5 Project costing and apportionment

5.1 The issues

The issues are:

- Whether the projects are appropriately costed and reasonable.
- Whether the project costs are fairly apportioned.
- The appropriateness of the costs and apportionment for particular projects.

5.2 Relevant legislation and guidelines

Relevant to the considerations of project costing, apportionment and the concepts of fairness and equity or nexus in the development of DCPs are:

- the Act including section 4(1) and Part 3B sections 46H – 46QD
- the Ministerial Direction on the Preparation, Content and Reporting Requirements for Development Contributions Plans
- the Development Contributions Guidelines.

5.3 Project costings

(i) Evidence and submissions

The evidence of Mr Ainsaar identified that the DCP costings provided for two contingency items, one of 15 per cent for construction (other than for the drainage works which was 20 per cent) and another of 10 per cent for design development contingencies, adding \$4.93M to the project. His opinion was that while the Ministerial Direction does not specifically address the matter, it does provide guidance in relation to road construction contingencies, indicating they must not exceed 15 per cent. He indicated that a total levy of no more than 15 per cent for roads, intersections and public realm works was appropriate and aligned with the Ministerial Direction. He indicated that reducing contingency amounts as he suggested, would reduce total DCP infrastructure costs by \$1.7M. His evidence in this regard was adopted by Growland, Bensons, FJP and OMNI.

Council identified that the revised version of the JRP DCP had reduced construction contingencies to 15 per cent (other than for drainage works) from the 20 per cent contingency included for all construction works included in the exhibited version of the DCP. Council indicated that this was done to reflect the Ministerial Direction.

Mr Thomas, a Quantity Surveyor from WT Partnership, provided an explanation of the contingency approach adopted in the revised costings. He identified that public realm infrastructure projects by their nature tended to evolve and change and required more detailed planning than civil engineering in-ground works. He indicated that the level of detail in the Public Realm Plan required further design and construction drawings to ensure costs were fully understood and accounted for. An allowance for design development contingencies, he said, avoided project uncertainties and project variations at the construction stage. The evidence of Mr De Silva agreed with this approach.

Both Mr De Silva and Council identified that it was in developers' interests that the estimates were based on proper quantity surveying principles – if there is an overcollection then that must be returned to the landowners consistent with section 46Q(4) of the Act.

The evidence of Mr De Silva considered that the DCP costings provided a “*robust basis for identification and costing of the proposed DCP projects*”.

(ii) Discussion and conclusions

The Panel is satisfied that the methodology applied in the preparation of the DCP costings is appropriate and sufficiently thorough based on requirements of the Development Contributions Guidelines and the Act. The costings provide a good understanding of costing assumptions, rates and elements making up each project. In addition, the Panel considers that the Public Realm Plan includes sufficient detail to enable an appropriate level of costing.

The Development Contributions Guidelines allow the inclusion of design costs. The Panel is of the view that a contingency of 15 per cent for construction (other than the drainage works at 20 per cent) and a 10 per cent design contingency is appropriate. The level of more detailed work required for the public realm works is apparent and has the potential to reduce construction contingencies because of design refinement. A contingency allowance for contamination is also appropriate given the history of the precinct and surrounds.

The Panel concludes:

- That the basis for identifying the project costs is appropriate.
- The proposed contingency costs in DCP Costing 2 are appropriate and reasonable.

5.4 Apportionment and nexus

The DCP apportions 100 per cent of infrastructure costs for most projects to landowners within the Joseph Road Precinct, with no external apportionment.

(i) Evidence and submissions

Council submitted that the 100 per cent apportionment appropriately reflected the contained nature of the precinct, its transition from an industrial to a mixed use precinct and the existing poor standard of infrastructure.

Mr De Silva's evidence was that it was appropriate for the projects to be funded at 100 per cent (other than TR01) given the contained nature of the precinct “*with little to no through traffic or other beneficiaries of the proposed projects*”. His evidence compared the proposed DIL of \$5,230.69 per dwelling to other benchmark DCPs, including:

- the Fishermans Bend DCP (which had lower dwelling per hectare yields and a levy of \$16,000 per dwelling)
- the Altona North DCP with a levy of \$13,800 per dwelling (\$10,397 attributed to roads) and a 100 per cent apportionment of road and intersection infrastructure to the development precinct with no external apportionment.

The evidence of Mr Ainsaar was particularly critical of the approach used by Council in the apportionment of infrastructure costs to developers (100 per cent in most instances) and the failure to consider external demand factors or the nexus of particular projects. He considered

that a 100 per cent apportionment was unreasonable, lacked proper analysis and was inconsistent with the Development Contributions Guidelines that sought that infrastructure to be charged:

... in accordance with its projected share of usage;

...

New development should be considered as part of the wider community that will use an infrastructure project;

...

... the costs of infrastructure projects are shared amongst all likely users;

Mr Ainsaar considered that substantial demand for the DCP infrastructure would be generated as a result of:

- future residents and works in the Footscray MAC and Footscray generally using the road, cycle and pedestrian connections through the precinct to access the Maribyrnong River, trail and associated parklands
- visitors to the Temple
- the policy objectives of the ACZ1 and Public Realm Plan seeking to create a gateway and connections through the precinct to surrounding areas and encouraging wider public access and usage.

Mr Ainsaar's evidence included his own assessment of external demand which identified a 43 per cent external apportionment for the DCP based on housing projections in the Joseph Road precinct as a proportion of the Footscray MAC, and jobs created in the proposed retail and commercial floor space in the Joseph Road precinct. He referred to the structured approach used to apportion costs in the Doncaster Hill DCP (Manningham Planning Scheme) as an appropriate example of the level of analysis required. That DCP attributes external apportionment for traffic lights, road works and streetscape works of between 34 to 51 per cent.

The submissions of Growland, Benson and FJP were critical that Council had not examined external apportionment, had started with a premise of 100 per cent apportionment and had not related the need for the projects to the proposed development, as required in the Act. The submissions considered that a 100 per cent apportionment (or close to it) was not fair or equitable particularly where that infrastructure is also enjoyed by the wider community.

Mr Finanzio questioned Council's view that the DCP apportionment was fair because developers had enjoyed the benefit of value uplift, and had advanced notice of Council's intentions to apply a DCP and therefore should not be surprised. He said this position ignored the history of the last 10 years of development approvals and long lead times for the supporting strategic work to be undertaken and completed. He considered it a reasonable starting point to think the Minister, when approving permits as the responsible authority for certain development in the precinct, assumed Council and government would fund the public works off the back of rate revenue and stamp duty derived from the development.

(ii) Discussion and conclusions

The application of a DCP, particularly one that attributes 100 per cent of the costs to development within the DCP area, requires careful consideration to ensure a balance between the economic impacts and achieving other policy outcomes.

The submissions from Growland and FJP highlight the significant costs for developers associated with the DCP (\$3M and \$6M respectively, although this does not account for contributions required by existing permits that can be offset through DCP credits). Mr Amatruda for OMNI identified the potential impact on his project's viability. These impacts are particularly felt when they come late in the development approvals process. The potential negative impacts have reinforced submitters' concerns about the level of equity and fairness associated with the proposed DCP.

The Panel notes that the issue of fairness goes beyond the economic impact on a particular development, to the reasonableness of introducing new provisions which are introducing additional costs on all land owners in the precinct and what this might mean for achieving the planning objectives for the precinct. This in turn needs to be balanced against the broader economic, social and environmental considerations and the level of community benefit.

While the Panel agrees that the dwelling levy appears modest compared with the Fishermans Bend and Altona North examples, and the range discussed in the reports of the Standard Development Contributions Advisory Committee, it notes that the contextual circumstances of those DCPs (and the others the Panel was taken to by submitters) are all different. The same can be said in relation to the levels of apportionment applied in each particular case. What is important is not how the levies compare to those imposed under other DCPs, but that the DCP is consistent with the Act, Ministerial Direction and Development Contribution Guidelines with levels of nexus and apportionment that are appropriate and reasonable in the particular circumstances.

The Panel notes that while the Act requires a DCP to relate the need for infrastructure to the proposed development, it only has to "*specify*" the proportion to be funded. The Development Contributions Guidelines identify a number of ways external and future usage can be established, including through expert assistance, professional advice and local knowledge of development patterns. They do not, however, require such an analysis to be undertaken or external apportionment of project costs. There is no threshold test for external apportionment. The Panel observes that where an analysis of external demand has been undertaken, the method of apportionment is more transparent and preferable. That said, the lack of apparent analysis undertaken for the JRP DCP is not considered by the Panel to be fatal to the Amendment. This is not to say that Council has not undertaken some level of analysis in developing the DCP. Rather, it has not identified the analysis in the DCP.

The Panel concurs with the view of Mr Finanzio, that a 100 per cent apportionment should be a starting point and not an end point for preparing a DCP. It is reasonable to expect that a range of data and information is gathered, and factors considered to understand the infrastructure required to support a new neighbourhood and the appropriate apportionment of it.

Mr Ainsaar offered one approach to establishing external apportionment, but the Panel considered this was too rudimentary an approach in the absence of other information and considerations.

The Panel agrees with Council and Mr De Silva that the Joseph Road precinct is a contained area. While the precinct is linked with other precincts forming part of the Footscray MAC, there is little reason for the broader Footscray community to access the river or the Footscray central precinct, railway station or areas to the east through the precinct. Adequate access already exists along both sides of Hopkins Street including established links to the river corridor and more active parts of the river environs to the south of the precinct. The Panel notes that a new pedestrian access is being constructed as part of VicRoads' upgrade of Hopkins Bridge that was formerly included in the JRP DCP (RD07).

The internal road work will primarily serve the community of around 10,000 residents that will live and work in the precinct and those that access the commercial services located there. Other than providing a secondary, indirect access to the river environs, the internal road and path network lead nowhere and serve no other primary purpose than to provide access to the dwellings, shops and offices that will be accommodated in the precinct. The exception to this is the Temple land and the proposed bike path in Hopkins Street (these projects are discussed at Chapter 5.5). The general approach to road construction is also discussed in that chapter.

The Panel considers that it is more likely that the future population of up to 10,000 residents will seek to move from the precinct to the wider Footscray area and Footscray MAC than the other way around. The Panel considers the policy objectives for the precinct in the ACZ1 seek to ensure that the Joseph Road Precinct is effectively linked to other precincts. The Panel acknowledges, that improving the public realm may attract external workers and visitors, however these numbers are likely to be insubstantial compared to the future resident population to be accommodated in the precinct.

Given the lack of basic infrastructure in the precinct, there is a clear need for the DCP to coordinate its delivery and share its cost, to support the precinct's transition to an urban environment that is quite different to what the current infrastructure was required to support. The DCP has applied the principle of shared usage by attributing all the project costs equally across the entire DCP area. The Panel considers that, for the most part, the 100 per cent apportionment approach adopted by Council is reasonable and consistent with the Act and Development Contribution Guidelines.

Submissions did not identify concerns with the apportionment of the Drainage Projects (GPT01 and BR01). The Panel is comfortable with this apportionment which is directly related to the precinct's development and does not serve external catchments.

The Panel concludes:

- That a 100 per cent apportionment for JRP DCP road projects RD01, RD02, RD04, RD05, RD08, RD10, RD11 and drainage projects GPT01 and BR01 is appropriate and reasonable.

5.5 Particular project apportionment and nexus

A number of particular DCP project elements were the focus of more detailed examination through submissions and evidence.

(i) Evidence and submissions

Roads

Mr Ainsaar's evidence suggested a 43 per cent external apportionment was appropriate for infrastructure such as roads.

Growland suggested that it was not fair, orderly or sustainable to charge new development for infrastructure required by existing development that would otherwise be the responsibility of government. Mr Morris submitted that while it would be expected in a greenfields environment for developers to pay for new roads, it was not normal to require the private sector to reconstruct existing roads. He indicated that Council had a responsibility to maintain roads and not let them fall into disrepair and that this mechanism existed through rates.

Mr Finanzio expressed a similar sentiment, suggesting that Council has spent nothing on these roads despite collecting rates since the land was rezoned to the ACZ1. He doubted that the works would not be undertaken in the absence of the DCP. He expressed some doubt as to Council's ability to collect the contributions for development that has already been approved, and indicated other funding mechanisms existed to fund the works through Council's capital works program including through external funding, rates or separate rate schemes.

Council disagreed with the position of Growland in relation to the reconstruction of roads. Council indicated that these roads have reached the end of their life and in some parts of the precinct they don't exist. Council concluded that the *"precinct is being repurposed to a different use which requires roads and a public realm of a completely different specification"*. Mr Montebello submitted that it was not reasonable that the community (through Council rates) should be expected to meet the infrastructure requirements of new development. He pointed to other work and costs being borne in the precinct by Council including open space upgrades and provision of community services.

Joseph Road North (Project RD09)

Mr Morris submitted that the public realm works for north-east leg of Joseph Road (part of RD09) did not properly arise from the demand created by development in the precinct. This was due to that portion of the road primarily servicing the Temple of the Heavenly Queen or the river environs. He indicated that this portion of Joseph Street did not serve any other ACZ1 land, and at best would represent a secondary frontage for the VicTrack land. He recommended that the scope of the project be reduced. This view was supported by the evidence of Mr Ainsaar, who suggested the entire precinct road network would potentially be used to access the river and Temple, particularly from the signalised intersection of Hallenstein and Hopkins Street (TR01). FJP's submission expressed a similar position.

Council did not support the exclusion of the north-eastern leg of Joseph Road as it provide two important site abuttals to the VicTrack site.

Council questioned Mr Ainsaar's estimation of the length of the contested section of Joseph Road North. Mr Ainsaar suggested that the contested section was 110 metres in length (measured from the point where Joseph Road turns north at the nearest access point to the public open space along the river and then easterly to the point of access to the Temple land's carpark). Council measured this length at 70-75 metres.

Hopkins Street bicycle lane (Project RD03, RD06 and RD12)

Mr Ainsaar's evidence suggested that shared bicycle path on Hopkins Street provided for a strategic link between the Footscray MAC and the Melbourne CBD. He considered that the project was part of a VicRoads funded safer cycling program (Dyson Road cyclist improvement project) and constituted double dipping. As such he indicated that the shared bike path element should be removed from the relevant projects (including associated allowances for contingency, ground works and contamination).

FJP submitted that Hopkins Street was an arterial road link and fulfils a regional function, with the bike path extending an existing bike path providing wider community benefit. As a result the bike path element could not properly be described as being "*necessitated by the development or for the sole benefit of the development*". Growland expressed a similar view.

Council indicated that there was no current funding in place for the wider bicycle path link. Regardless, it considered that the project was required specifically for the needs of the new community in the precinct.

Hopkins Street traffic improvement works (Project TR01)

Mr Ainsaar's evidence was that 50 per cent of the cost of TR01 should be apportioned to external demand on the basis that the works will be used more broadly by the areas south of Hopkins Street and the Riverside Precinct.

Mr Morris supported Mr Ainsaar's evidence referring also to the additional costs associated with Telstra upgrades which will benefit the broader community.

In support of a 100 percent apportionment to the precinct of TR01, Council referred to a report of the Traffix Group (Document 14) prepared for 4 Hopkins Street (now 2 – 6 Hallenstein) which identified that the intersection was operating at close to capacity with the precinct accommodating 3013 dwellings. Council noted that with 4,534 dwellings this would effectively 'break the camel's back' in terms of capacity and service levels.

(ii) Discussion and conclusions

Roads

Road construction can be legitimately included in a DCP. The Development Contribution Guidelines identify that a DCP can include upgrades of existing infrastructure or replacement of properly maintained infrastructure which is at the end of its economic life.

As identified in this Report the Panel considers that the current road infrastructure is rudimentary. It was built and designed for a different time when the precinct was used for commercial and industrial purposes, where traffic activity (type, volume and hours) was much different. The transition of the precinct to a mix used higher density neighbourhood with a

resident community in the order of 10,000 people will generate significant traffic movement activity that requires road upgrades to support it.

The Panel considers that much of the road infrastructure is at the end of its economic life as it was originally purposed. It appears that much of the deterioration of the existing roads is due to new construction activity since the precinct was rezoned to ACZ1. In these circumstances, it is not reasonable to say that Council has not properly maintained the roads or allowed them to deteriorate, or that Council is in a position to reconstruct the roads through its capital works program and rate revenue.

The new development in the precinct will need good quality roads to support access and the movement of occupiers to and from these sites. It is typical for major developments to construct or reconstruct footpaths, kerb, crossings, signage and street tree planting abutting a site, or upgrade an existing road where the volume of additional usage is likely to require a different treatment. In this instance the roads are in poor condition or in some instances barely exist. The need to upgrade them is directly attributable to the new development in the precinct.

The Panel does not agree with the general proposition of Mr Ainsaar that an external apportionment of 43 per cent is appropriate or reasonable. The Panel does however acknowledge that for approved development, this potentially unplanned for financial burden late in a project's delivery could be considered to be unfair.

All parties to the Hearing acknowledged the current situation was unfortunate and not desirable. The Panel considers that in the circumstances the proposed 100 per cent apportionment is reasonable and justifiable even if there is a potential issue about its ability to be collected for approved development as suggested by Mr Finanzio.

The Panel concludes:

- That on balance it is reasonable that the internal road network of the precinct be 100 percent apportioned to new development in the precinct.

North Joseph Road (Project RD09)

The Panel has considered what the appropriate apportionment or extent of Project RD09 should be in the context of the potential future development of the VicTrack land and usage by the Temple and other casual users for river parkland access.

The Panel agrees with Council that any roadworks in the precinct need to be considered holistically to create a proper internal network.

The Panel does not support Council's argument that removal of the north-eastern leg of Joseph Road would create difficulty for Council to require an upgrade of the road as part of the development of the VicTrack land at a permit stage because that opportunity was afforded through this Amendment. The Panel is required to ensure that a balanced and reasonable outcome is achieved through the Amendment. At present there is no plan by VicTrack to develop the site. Given the size of the site and heights permissible in the ACZ1, and the scale of development on nearby parcels, any redevelopment of the VicTrack land is likely to be substantial. The Panel considers it reasonable that where an appropriate nexus exists, permit conditions could seek road and streetscape upgrades. Given the uncertainties of future site development it is considered that Joseph Street does not need to be extended beyond the

proposed south-eastern corner of the VicTrack site as identified in the JRP DCP Project Areas Map.

The Panel recognises that the only road access to the Temple land is through the Joseph Road Precinct's local road network and along the proposed north-eastern leg of Joseph Road. It is likely that overtime visitation to the centre will increase as the Temple and support buildings are completed consistent with the staged planning permit (Document 28). While submissions and evidence referred to the Temple of the Heavenly Queen's future site aspirations these do not have current planning approval. Council in any event will assess any future applications in the context of the zoning and the nature of the use and development for which permission is sought. This includes consideration of traffic volumes and potentially conditions requiring upgrade of parts of Hopkins Road or other streetscape upgrades consistent with the Public Realm Plan.

Users and visitors of the Temple will benefit from an improved road network. It is reasonable to reflect that in the DCP in some way. For reasons identified earlier in this Report the Panel does not consider that the Temple site should be included in the DCP. It is a very different use proposition to that sought in the precinct. Reducing the extent of the project is considered a reasonable and balanced approach to recognise an element of external usage by visitors to the Temple rather than including an external apportionment.

The Panel does not consider that the usage of road and footpaths by casual users to access the river parklands will be significant in the context of an immediate 10,000 residents accessing the river environment through Joseph Street. Other more formal access points exist to access the river parklands for residents outside the precinct.

The Panel concludes:

- That the Joseph Road North project (RD09) should be reduced in scope and not extend beyond the proposed south-eastern corner of the VicTrack site as identified in Plan 2: DCP Infrastructure project areas of the JRP DCP. The project costs should be revised accordingly in the JRP DCP and DCPO1.

Hopkins Street bicycle lane (Project RD03, RD06 and RD12)

A DCP can include a regional level infrastructure project. The Panel is not convinced, however, that the design as proposed in the Public Realm Plan and DCP accommodates a regional level bicycle path. While the proposed path links the precinct to the east, its western end of it does not extend fully (as a separate shared bike path and pedestrian path) to the precinct's western edge.

The objectives of the ACZ include:

To complete missing links on significant cycle corridors to and through the MAC.

The Panel considers that, in part, the proposed bike lane achieves this objective and consequently can be expected to be used by the broader community. Some external apportionment should therefore be acknowledged.

The Panel does not accept Mr Ainsaar's opinion that ancillary works and costs associated with the construction of the bicycle lane (including associated allowances for contingency, ground works and contamination) should be externally apportioned. It is not practical or reasonable

to expect that in constructing a street (footpath and shared path) that only one half of the ancillary costs of footpath/shared path construction should be included or apportioned. The reality is both the pedestrian path and shared bike path would be constructed at the same time. This infrastructure is likely to be used by pedestrians, that is, pedestrians will not necessarily confine themselves to the pedestrian path component of the street.

The Panel considers that a future community of 10,000 residents will be the primary users and beneficiaries of the bike lane to access the Footscray MAC, station and other external areas. However, it considers that a 100 percent apportionment is unreasonable and some external apportionment towards the bicycle path pavement component of projects RD03, RD06 and RD12 is appropriate. This could conceivably range from 25 to 50 per cent, but in the absence of a more sophisticated assessment the Panel is not in a position to recommend a proportion. The Panel considers that Council is best placed to undertake that exercise and strongly encourages it to do so. Its Bicycle Strategy should in part assist this process.

The Panel's analysis of the DCP Costing 2 for projects RD03, RD06 and RD12 identified \$121,760 of costs associated with bicycle path paving (assumed to be the asphalt material in the costings). The Panel did not factor in crossovers as these are equally required for pedestrian movement. As a portion of the total projects in Hopkins Street a reduction through external apportionment would deliver limited savings.

The Panel concludes:

- That there will be a reasonable level of usage of the bicycle paths included in Hopkins Street projects RD03, RD06 and RD12 that would support a portion of the pavement construction costs being externally apportioned.

The Panel strongly encourages Council to review the external apportionment of the shared bicycle path pavement component of projects RD03, RD06 and RD12 and amend the project costs in the JRP DCP and Development Contributions Plan Overlay Schedule 1 accordingly.

Hopkins Street traffic improvement works (Project TR01)

The Panel does not agree that with Mr Ainsaar that 50 per cent of the cost of TR01 should be apportioned to external demand for this project. While the intersection signalisation will enhance general traffic movements and pedestrian accessibility along Hopkins Street and potentially areas to the south of the precinct, the upgrade works are the direct result of the traffic being generated by the level of residential development in the precinct. The same can be said of the upgrades of the signals at the Whitehall Street intersection (TR03).

The Panel considers that the Telstra upgrade costs are a component of the signals upgrade. It is not unusual for any major works or infrastructure installation to have to incorporate the costs of upgrading existing utility infrastructure. Ultimately the upgrades will enhance safety for residents, workers and visitors to the precinct rather than the broader community.

The Panel concludes:

- That a 100 percent apportionment for traffic improvement works projects TR01 and TR03 is appropriate and reasonable.

(iii) Recommendations

The Panel recommends:

Reduce the scope of Project North Joseph Road project (RD09) so that it does not extend beyond the proposed south-eastern corner of the VicTrack site as identified in Plan 2: DCP Infrastructure project areas.

Update the Cost Estimate Report Attachment 1 to reflect the reduced scope of project RD09.

Adjust Table 3: Infrastructure Projects and calculation of costs, Table 4: Summary of total costs by project type and Table 5: Estimated project staging and sequencing of projects to reflect the updated Cost Estimate Report and reduced scope of project RD09.

Amend the Summary of cost and Summary of contributions tables in Schedule 1 to the Development Contributions Plan Overlay to reflect costing and levy changes included in the Joseph Road Precinct Development Contributions Plan.

The Panel further recommends:

Council is encouraged to review the external apportionment of the shared bicycle path pavement component of projects RD03, RD06 and RD12 and amend the Joseph Road Precinct Development Contribution Plan project costs and Development Contributions Plan Overlay Schedule 1 accordingly.

6 DCP implementation issues

6.1 The issues

The issues are:

- Whether the JRP DCP can be effectively implemented.
- Whether the JRP DCP includes appropriate mechanisms to recognise permit conditions for payment or works to be undertaken for projects that are identified in the DCP.
- Whether subdivision and other exemptions in the DCPO1 should be included in the JRP DCP.

6.2 Implementation of the JRP DCP

(i) Evidence and submissions

Mr Finanzio raised the possibility that the proposed DCP was unlawful because it sought to recover a development contribution upon the subdivision of buildings already approved. His submission (Document 24) sets out the reasoning for this position from paragraphs 19 to 35, including an analysis of the relevant provisions of the Act. Fundamentally the position put was that it is the development of land to create dwellings that are occupied (as well as retail and commercial floor space) that creates the demand units and payment of the levy, not the subsequent subdivision of the land or buildings. He submitted that whether *“the buildings are subdivided or not ... in the future, the occupation of the buildings by people - whether tenants or as owners”* generated the demand for the identified DCP works.

Council considered that the position put by Mr Finanzio was a limited appreciation of the nature of development which comprises dwellings. It submitted:

Dwellings are normally subdivided so they can be sold. The subdivision of the building is a quintessential element of the way that the building is designed in advance of the actual act of subdivision. Benson can avoid the levy if it does not subdivide the land but it will still be required to comply with the permit requirements. The creation of streets and roads is quintessential to the subdivision of land and the subdivision of buildings.

Council identified a remedy to reinforce the role of subdivision in the DCP which is discussed at Chapter 6.4.

(ii) Discussion and conclusions

The Panel accepts that there are arguments on both sides as to whether it is a development itself, or subdivision of the development, that creates the demand for infrastructure. However, the definition of development in the Act includes the subdivision of land and buildings. In that context the DCP’s inclusion of permit condition requirements for the subdivision of land at Part 5.3.1 of the DCP is reasonable.

The Benson submission foreshadows the possibility of a legal challenge to the validity of the Amendment. Ultimately this will be tested in another forum, and it is not the Panel’s role to determine the legality of the Amendment. Nonetheless the Panel notes that if the

Amendment is found to lack legal validity, this will have significant impacts on the DCP. Council should be cognisant of this issue if it proceeds with the Amendment.

6.3 Recognising permit contributions

(i) Planning Permit activity

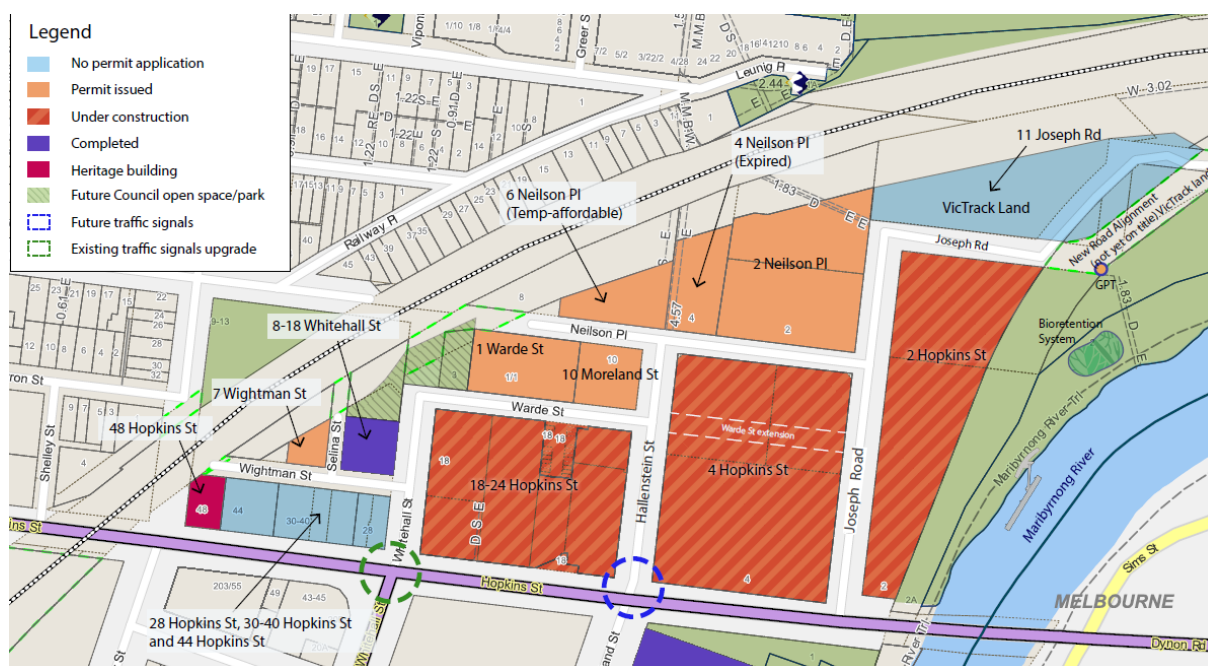
Council advised that eight sites have been issued with planning permits, as summarised in Table 2 and identified in Figure 18. Permits issued by the Minister for Planning when he was Responsible Authority for the precinct over 2011-16 did not cover all public realm infrastructure required to support the transformation of the precinct.

Table 6 Planning permit status

Site	Status	Works or contribution conditions
1 Warde Street	Permit 2012006036 – 350 dwellings and 929sqm retail Issued 2 August 2018 - Current	\$450/dwelling DCP \$321/dwelling - traffic signals and public works
10 Moreland Street	Permit 2012006036 – 198 dwellings and 425sqm retail Issued (amended) 25 May 2017 - Current	\$120,000 contribution to VicRoads for traffic signals \$20,000 for street furniture Warde, Moreland and Neilson Place abuttal street works including furniture, street trees and footpaths, kerb and channel
2 Neilson Place	Permit 2012006036 – 513 dwellings and 620sqm retail and childcare centre Issued 20 June 2017 - Current	\$321/dwelling - traffic signals and public works Maribyrnong (Joseph Road) and Neilson Place abuttal street works including furniture, street trees and footpaths, kerb and channel
4 Neilson Place	Permit 2012006036 – 147 dwellings and 151sqm retail Issued 4 February 2015 and 15 April 2016 - Expired	\$450/dwelling DCP \$321/dwelling - traffic signals and public works Neilson Street footpath construction
6 Neilson Place	Permit 2012006036 – 350 dwellings and 929sqm retail Issued 4 September 2017 - Current	DIL payment associated with any DCP
2 Hopkins Street	Permit 2012006036 – 723 dwellings and 642sqm retail and 197sqm office Issued (amended) 18 April 2018 – Current, under construction	\$321/dwelling - traffic signals and public works Hopkins and Joseph Road abuttal street works including furniture, street trees and footpaths, kerb and channel

Site	Status	Works or contribution conditions
4 Hopkins Street	Permit 2012006036 – 937 dwellings and 3421sqm shops Issued (amended) 18 January 2018 – Current, under construction	\$450/dwelling DCP \$321/dwelling - traffic signals and public works Public realm works including furniture, street trees and footpaths, kerb and channel
18-24 Hopkins Street	Issued (amended) 27 May 2015 – Current, under construction	\$450/dwelling DCP \$400,000 contribution to VicRoads for traffic signals \$40,000 plan for Hopkins, Whitehall, Warde and Moreland Street abutments staged street works including furniture, street trees and footpaths, kerb and channel
8 - 18 Whitehall Street	Issued 31 July 2017. Construction completed	-
7 Wightman Street	Issued 30 May 2018 - Current	\$321/dwelling - traffic signals and public works Public realm works including furniture, street trees and footpaths, kerb and channel

Figure 18 Joseph Street Precinct planning permits



Source: Council’s Part A submission

(ii) Evidence and submissions

The submissions from Fusion Project Management (Submission 10), FJP, Growland and Benson raised concerns about the uncertainty created in the wording of Part 3.5 of the JRP DCP, titled ‘Contributions made under existing Planning Permits or Infrastructure Agreements’. The concerns related to the use of the word ‘may’:

Where under such a permit condition, or an agreement entered into under such a permit condition, a monetary contribution is required to be made for public realm improvements or infrastructure works are to be provided in the public realm, those monetary contributions and infrastructure works may be recognised by the Collecting Agency and credited towards an owner's liability to pay any Development Infrastructure Levy that is imposed pursuant to this DCP provided that the infrastructure which is to be or has been provided is included as infrastructure which is funded by this DCP.

[Panel's emphasis]

Mr Ainsaar's evidence suggested that this language created the potential for double dipping if Council did not properly recognise permit conditions requiring a range of contributions or public realm works to be undertaken and also be paid for through the development levy.

Benson, Growland and FJP considered that this created a level of uncertainty that was undesirable and unfairly conferred the balance of power in negotiations on Council.

A number of remedies were suggested. Council in its Part A submission indicated that its intent was to properly recognise and credit projects that were identified as permit conditions and provided for in the DCP and suggested that its recent drafting of s173 agreements to recognise payment credits or works-in-kind construction demonstrated this. It was willing to replace the word 'may' with 'will'.

This position was supported by the evidence of Mr Ainsaar and Mr De Silva and the submissions of FJP and Growland. Growland further suggested that the DCP should provide unequivocally for a credit for works or monetary contribution or "*exclude developments from the levy to the extent they provide for works and/or contributions*". Mr Morris submitted the DCP should say how the credit is to be calculated.

Benson however, submitted that because a DCP is part of the planning scheme and effectively subordinate legislation it cannot fetter a discretion conferred in statute – in this case section 46P of the Act, which provides that a collection agency 'may' accept works in lieu of a contribution obligation. In other words, a "*DCP cannot say that the collecting agency is bound to accept certain works in lieu*". Benson submitted that the only appropriate mechanism was to exempt the works from the requirement to pay the contribution. It referred as an example, to the Yarra DCPO1 proposed through Amendment C238 (Document 20) which contains within the Part 4 exclusions, land which has an existing s173 Agreement which requires the payment of a levy or construction of infrastructure.

Council submitted that the proposed Yarra DCPO1 applied to a whole municipal area and was an entirely different context to one applying to a small precinct. It submitted that an "*exemption that may be reasonable and expedient in one DCP may act as a wrecking ball in another*".

(iii) Discussion and conclusions

The Panel understands the desire of submitters for greater certainty about how credits will be calculated and assessed. The current wording leaves open a discretion. However, the Panel is mindful, as identified by Benson, that swapping the word 'may' with 'will' in the JRP DCP may not be the appropriate course of action.

The inclusion of Part 3.5 in the JRP DCP is positive and appropriate. The Act provides for credits to be provided when developers construct or pay for works within a DCP (using a s173

Agreement), although it does not mandate that credits be provided. The Development Contributions Guidelines provide little direction on the application and assessment of potential credits.

The Panel is of the view that it would be useful for Council to outline a stepped process as to how Council will consider the application of credits for existing permit conditions covering DCP project contributions. This would provide a greater level of certainty. Council is also encouraged to continue to work with developers holding current permits to complete s173 agreements for DCP related credits as this will provide some comfort for development approaching completion.

The exemption approach identified by Mr Finanzio (adopting the Yarra DCPO1 model) is considered an appropriate approach for a municipal wide DCP. The Panel considers there are risks in including a similar provision in this Amendment, particularly where there are unlikely to be large numbers of s173 Agreements and the potential impacts are not clear. Ultimately the Panel does not consider that an exemption is necessary.

6.4 Exemptions and exclusions

(i) Evidence and submissions

Transitional provisions

Growland submitted that there was a strong case for existing permit holders to be exempt from the levy. Mr Morris indicated that when Growland's permit was issued there was no DCP in place and it was unrealistic to speculate that further obligations would be imposed beyond permit conditions normal to the development of land.

Growland identified that in the event of there being no substantial government contribution Council might soften the impact on developers several ways. These included facilitating development assessment (including further permit changes to restore project viability), coordinate infrastructure delivery and waive supervision fees.

Council did not support a position that included such a transitional provision. This, it submitted, would be an unfair burden on the remaining land in the precinct and would represent a markedly different DCP from that exhibited.

Subdivision

Benson referred to the proposed Yarra DCPO1 which included an exemption for subdivision that does not generate a net increase in demand units, as one way of addressing the potential lawfulness of the DCP collection arrangements.

Council submitted that a subdivision exemption of the nature suggested would have significant consequences on the DCP. Council suggested an alternative way forward was to make it clear within the DCP that development envisaged the creation of individually titled apartments providing permanent accommodation that will be subdivided. It was further advanced that payments could be delayed to the issue of statement of compliance rather than building permit stage.

Rail network works

Transport for Victoria's submission sought that the DCP be amended to clarify that any development associated with the maintenance and operation of the railway network would not require a DCP payment.

Council considered that while the DCP charges only applied to residential, retail and commercial development, it was not opposed to including an exemption in the schedule confirming that the DCP did not apply to the use of land and works for transport purposes if that was a Panel recommendation.

Inconsistency between the DCP and the DCPO1

Growland's submission identified that Part 4.0 of the DCPO1 included a number of land development types that were excluded from the JRP DCP but that had not been included in Part 3.4 'Items not included in this Development Contributions Plan'. In closing Council acknowledged that the two documents should contain the same content in this regard.

(ii) Discussion and conclusions

Transitional provisions

The Panel is sympathetic to the issues facing existing permit holders. However, on balance the Panel supports the Amendment and its application to sites with current or activated permits, given that the infrastructure proposed has a direct relationship to the development approved and taking place. To exempt these approvals would unfairly shift the burden to remaining land owners in the precinct.

Because of the number of permits issued, exemption of existing approvals would fundamentally change the exhibited DCP.

Given the nature of proposed DCP infrastructure it is not a reasonable expectation that Council or State Government would substantially fund the works. Even if they did the timeframes for delivery and the coordination of those works would likely be quite different and outside the DCP timeframes for delivery.

The Panel concludes:

- That existing approved development should not be exempt from the JRP DCP.

The Panel recognises that the timing of the JRP DCP and the extent of recent development is unfortunate. It supports Growland's proposition that there are opportunities for Council to support developers to assist in tempering the cost impacts of the DCP. This could include facilitating permit amendments that reconfigure proposals (within reason) to make them more viable. The Panel acknowledges that this does have the potential to change demand units and would need to be carefully considered in terms of overall impact on the DCP.

Subdivision

The Panel does not support the inclusion of an exemption provision for subdivision. While such a provision might be appropriate at a municipal wide level it will have a significant impact on the workability of the JRP DCP and the Amendment, potentially transforming it. The Panel does not consider this an appropriate answer to the lawfulness concerns identified by Benson.

Council's suggestion to clarify what is meant and envisaged by development in the DCP is not an answer to the particular concern and lawfulness argument raised by Benson (to exclude subdivision which doesn't create an additional demand unit). It does however provide a potential remedy to any concern that the DCP might not specifically contemplate or state that the subdivision of land or buildings is not development that would create demand for the proposed infrastructure projects.

While the suggested changes may add clarity, they are not considered necessary and potentially represent a significant change to the DCP that may have broader implications to other land owners. The Panel would however support a change to the DCP that allowed contributions to be made at the statement of compliance stage. While this would be of no benefit to Benson and others who have already acted on building permits, it would provide some relief to future developers that don't yet have building permits.

The Panel concludes:

- That the JRP DCP not be amended to exclude subdivision.

The Panel would support Council making changes to the JRP DCP to allow contributions to be made at the statement of compliance of a subdivision.

Rail network works

The Panel considers that the DCP does not apply to the undertaking railway works and as such including an exemption is unnecessary.

The Panel concludes:

- That the DCP not be amended to include exemptions for rail network works.

Inconsistency between the DCP and the DCPO1 The Panel agrees that the exemptions should be the same in the DCPO1 and the DCP for consistency, clarity and transparency.

The Panel concludes:

- That the exemptions included in the DCPO1 at Part 4.0 be included in the JRP DCP.

(iii) Recommendations

The Panel recommends the revised Joseph Road precinct Development Contributions Plan included in Appendix D of this report:

Include the exemptions in Part 4.0 of Schedule 1 to the Development Contributions Plan Overlay in the Joseph Road Precinct Development Contributions Plan.

Appendix A Submitters to the Amendment

No.	Submitter
1	Heritage Victoria
2	Ms Gina Grima
3	Mr Robert Martinovic
4	City West Water
5	Ms Peta Colbatch
6	OMNI Property Group ²
7	Bensons Property Group Pty Ltd
8	Transport for Victoria
9	Growland Pty Ltd
10	Fusion Project Management Pty Ltd
11	F.J.P Pty Ltd ³

² A second submission (Document 8) was received from the OMNI Property Group on the 27 March 2019

³ A further submission (Document 2) was received from Planning and Property Partners on behalf of FJP Pty Ltd on 20 February 2019

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Maribyrnong City Council	<p>Terry Montebello of Maddocks, who called expert evidence on:</p> <ul style="list-style-type: none"> - development contributions and planning from Chris DeSilva of Mesh - urban design from Kirsten Bauer of Aspect Design Studios <p>Evidence was also provided by Mr David Thomas of WT Partnership on the contingency allowances included in DCP Costing 2</p>
Growland Pty Ltd	<p>Stuart Morris QC assisted by Paul Chiappi of Counsel and instructed by Stephanie Gale of Minter Ellison, who called expert evidence on:</p> <ul style="list-style-type: none"> - development contributions and planning from Matt Ainsaar of Urban Enterprise <p>Mr Ainsaar was called jointly by Growland, Benson Property Group and FJP Pty Ltd</p>
Bensons Property Group Pty Ltd	<p>Adrian Finanzio SC assisted by Simona Gory of Counsel and instructed by Tamara Brezzi of Norton Rose Fulbright</p>
F.J.P Pty Ltd	<p>Carly Robertson of Counsel instructed by Planning and Property Partners. Tyrone Rath of Planning and Property Partners represented FJP on day 2 of the Hearing</p>
OMNI Property Group Pty Ltd	<p>Brian Amatruda</p>

Appendix C Document list

No.	Date	Description	Provided by
1	15/2/2019	Summary of proposed DCP changes	Mr Montebello
2	20/2/2019	Further submission for FJP Pty Ltd	Planning & Property Partners
3	8/3/2019	Copies of precinct Planning Permits	Mr Montebello
4	"	Ministerial Authorisation	"
5	"	Revised WT Partnership Cost Estimate Report	"
6	"	Proposed changes to DCP	"
7	"	Proposed changes to DCPO1 Schedule	"
8	27/3/2019	Further submission from Omni Property Group	"
7	2/4/2019	Council Part A submission	"
8	"	Development contributions and urban planning witness statement of Chis DeSilva of Mesh	"
9	"	Urban design witness statement of Kirsten Bauer of Aspect Studios	"
10	"	Development contributions and planning witness statement of Matt Ainsaar of Urban Enterprise for Planning and Property Partners	Planning & Property Partners
11	"	Development contributions and planning witness statement of Matt Ainsaar of Urban Enterprise for Norton Rose Fulbright	Norton Rose Fulbright
12	"	Development contributions and planning witness statement of Matt Ainsaar of Urban Enterprise for Minter Ellison	Minter Ellison
13	9/4/2019	Council Part B submission	Mr Montebello
14	"	Traffix Group Report February 2017, 8 Hopkins Street	"
15	"	Joseph Road Public Realm Plan A3 version	"
16	"	Footscray Wharf and Promenade Landscape – Design and Development Plans July 2017	"
17	"	Property information, aerial image, zoning and proposed land swap map for North East Joseph Road	"
18	"	Summary of De Silva evidence	"

No.	Date	Description	Provided by
19	“	Apportionment tables from Altona North Development Contributions Plan August 2017 (VPA)	“
20	“	Yarra Development Contribution Plan 2017 (DCPO1) Yarra Planning Scheme	Mr Finanzio
21	“	Chris de Silva of Mesh Witness Statement Amendment C238 Yarra Planning Scheme	”
22	10/4/2019	Growland submission	Mr Morris
23	“	Planning and Environment Act 1987 provisions (Part 3AB Infrastructure Contributions and Part 3B Development Contributions)	”
24	11/4/2019	Benson Property Group submission	Mr Finanzio
25	“	OMNI Property Group submission	Mr Amatruda
26	“	FJP P/L submission	Ms Robertson
27	“	Council closing submission	Mr Montebello
28	“	Planning Permit TP03/0166-A (V0) 20 Joseph Road, Footscray and endorsed plans (Temple of the Heavenly Queen site)	“

Appendix D Revised version of the Joseph Road Precinct Development Contribution Plan

Joseph Road Precinct



Development Contributions Plan

March 2019

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1. INTRODUCTION

1.1. Purpose

The Joseph Road Precinct Development Contributions Plan (the 'DCP') has been prepared by the Victorian Planning Authority (VPA) with the assistance of the City of Maribyrnong, service authorities, and other major stakeholders.

The DCP:

- Outlines public realm projects required to assist in meeting the Joseph Road Precinct Objectives and Guidelines;
- Outlines infrastructure projects required to ensure that future residents, visitors and workers in the area can be provided with timely access to infrastructure and services necessary to support a quality and affordable lifestyle;
- Establishes a framework for development proponents to make a financial contribution towards the cost the identified infrastructure projects in the public realm (principally on streets). It ensures that the cost of providing new infrastructure and services is shared equitably between various development proponents in accordance with the demand to be created by each development; and
- Provides the details of the calculation of financial contributions that must be made by future developments towards the nominated projects. In this way, it provides developers, investors and local communities with certainty about development contribution requirements and how these will be administered.

1.2. Report Structure

The DCP document comprises six parts:

Section 2 – Strategic Planning and Justification

Section 2 explains the strategic basis for the DCP, which includes information about the Joseph Road Precinct.

Section 3 – Charge Areas and Development Scenarios

Section 3 sets out the charge areas, development projections and project staging.

Section 4 – Infrastructure Projects and Calculation of Contributions

Section 4 outlines the projects to be funded by the DCP and sets out how the development contributions are calculated and costs apportioned.

Section 5 - Development Contributions Plan Administration and Implementation

Section 5 focuses on administration and implementation of the DCP

Section 6 - Other Information

Section 6 provides other supporting information.

1.3. Planning & Environment Act 1987

The DCP has been prepared in accordance with Part 3B of the *Planning and Environment Act 1987* (the Act) as well as other relevant legislation and has been developed in line with the State and Local Planning Policy Framework of the Maribyrnong Planning Scheme. It is consistent with the Minister for Planning's Direction on

Development Contributions made under section 46M(1) of the Act and has regard to the Victorian Government’s Development Contributions Guidelines (the ‘DCP Guidelines’).

The DCP provides for the charging of a Development Infrastructure Levy pursuant to section 46J(a) of the Act towards works, services and facilities. The DCP will not be providing for the charging of a Community Infrastructure Levy pursuant to section 46J(b) of the Act.

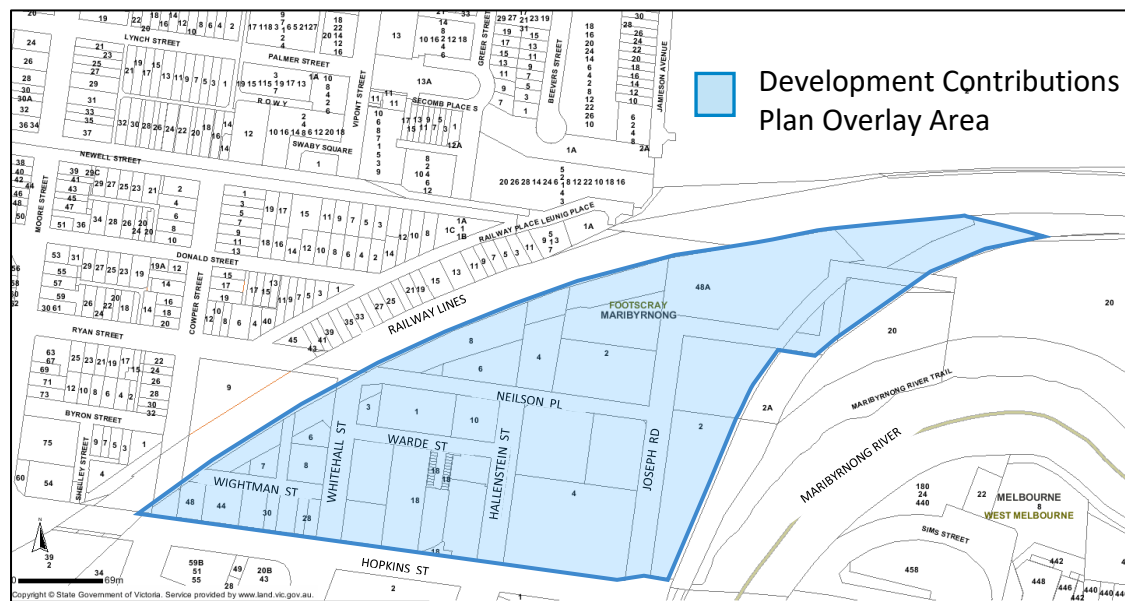
The DCP forms part of the Maribyrnong Planning Scheme pursuant to section 46I of the Act and is an incorporated document under Clause 72.04 of the Maribyrnong Planning Scheme.

1.4. Area to which this Development Contributions Plan applies

The Development Contributions Plan Overlay applies to the area comprising approximately 15 hectares shown in Plan 1.

The area is generally bounded by the public reserves on the west bank of the Maribyrnong River to the east, the railway reserve between Footscray and South Kensington stations to the north and west, and Hopkins Street to the south. In accordance with section 46K(1)(a) of the Act the DCP applies to land shown in Plan 1. The area is also shown on Development Contributions Plan Overlay Schedule 1 of the Maribyrnong Planning Scheme.

Plan 1 Joseph Road Precinct Development Contributions Plan Area



2. STRATEGIC PLANNING AND JUSTIFICATION

Maribyrnong Planning Scheme

The strategic basis for the DCP is established by the State and Local Planning Policy Framework of the Maribyrnong Planning Scheme. The key sections of the Maribyrnong Planning Scheme are Clause 21.11-1, which is the local areas policy for the Footscray Metropolitan Activity Centre, Clause 21.12, which references the Footscray CAA Structure Plan, and Clause 37.08, the Activity Centre Zone Schedule 1.

The local area policy explains that the Footscray Metropolitan Activity Centre (FMAC) is the most regionally significant activity centre of Melbourne's west.

Joseph Road is identified as Precinct 5 (Transformational Precinct) in the Activity Centre Zone Schedule 1. The Activity Centre Zone Schedule 1 identifies the following objectives for the Joseph Road Precinct:

- To create a vibrant, mixed use precinct that complements the role and function of the Footscray Central Activities Area through:
 - a diverse range of higher-density housing development accommodating
 - approximately 4,000 dwellings
 - a viable mix of commercial, retail, community, entertainment, and recreation land uses
 - a wide range of employment opportunities to complement the role of central Footscray.
- To encourage retail, entertainment and recreational uses along the existing and extended Warde Street, and along the riverfront.
- To encourage the provision of showroom, restricted retail and office along the Hopkins Street frontage.
- To establish a robust urban character with:
 - high quality architecture and urban design
 - an active, attractive and accessible riverfront with improved public recreation
 - opportunities and high amenity public spaces and places
 - an active and improved frontage to Hopkins Street that marks the precinct as a 'gateway' to Footscray.
- To provide a high amenity, upgraded street and pathway network with improved pedestrian and cyclist connections to areas beyond the precinct.
- To encourage sustainable development that:
 - incorporates best practice energy efficiency and water management measures
 - promotes sustainable travel patterns through an integrated approach to transport
 - planning
 - supports the inclusion of community facilities and housing affordability.
- To ensure that development responds to the site features and constraints including heritage values of the heritage listed features, potential contamination, flooding, and service infrastructure requirements.
- To provide built form that does not result in significant overshadowing of the St Monica's Primary School.

The Joseph Road precinct guidelines envisage the following:

- A network of high amenity public places and pedestrian spaces should be provided as shown in the Precinct Plan.
- Visual and physical connections between the river and the precinct should be provided.
- Active frontages created by retail, entertainment, and recreation uses at ground level are encouraged along the main connections to the river along Warde Street and along Hopkins Street.
- Development proposals should respect planned pedestrian and cycling network.

- Pedestrian/cycle bridges provided across the passenger rail line and crossing points of the freight rail line should be defined by robust landscaping and clear sight lines, and designed to the satisfaction of VicTrack, the Department of Economic Development, Jobs, Transport and Resources and Public Transport Victoria.
- Development proposals with river frontage should include opportunities for activation along the riverside.
- Development should provide a high quality street environment which incorporates, footpaths, cycle paths, and on-street car parking, and maximises opportunities for street planting where appropriate.
- Opportunities should be provided to green the urban environment both in the public realm and as a part of new developments.
- The primary vehicle access point to and from the precinct should be via a signalised intersection at the corner of Hopkins Street and Hallenstein Street, with associated intersection treatments. Secondary vehicle access points should be provided at the intersection of Whitehall Street and Joseph Road, with Hopkins Street.
- On-street car parking should be provided in streets whilst ensuring sufficient width to accommodate parallel car parking spaces as well as bicycle lanes, pedestrian footpaths, and landscaping treatments.

Footscray CAA Structure Plan (2014)

The Footscray CAA Structure Plan is the basis for the local area policy. It is a reference document in Clause 21.12 of the Scheme, under Economic Development.

The vision for the Joseph Road Precinct as stated in the Footscray CAA Structure Plan is for a thriving, vibrant, mixed use precinct, with high quality public areas that is inviting to residents, workers and visitors alike. The Joseph Road Precinct will be home to approximately 4,000 new households which will enjoy proximity and access to the Maribyrnong River, Footscray station and the central precinct.

The Footscray CAA Structure Plan is now reflected in and given effect by the Activity Centre Zone Schedule 1 that was introduced to the Planning Scheme in March 2015.

To realise the Footscray CAA Structure Plan vision for the Joseph Road Precinct, Council has prepared the Joseph Road Precinct Public Realm Plan (2017). This will become a reference document in the Planning Scheme. It forms an important strategic foundation for the DCP.

A number of other reports also provide insight into the likely future development trends for the area. These include:

- Forecast of retail commercial and Housing Activity in Footscray CAD (Tim Nott, 2012)
- 22 Hopkins St Footscray Retail Economic Assessment (Essential Economics, 2012)
- Footscray Retail Study (Collie, 2009)
- Review of Retail Development and Activity Centre Policy (Peter McNabb and Associates 2009)
- Priority Development Panel Report on Joseph Road Precinct Footscray (PDP 2009)

These reports have been taken into account in the preparation of the Joseph Road Precinct Public Realm Plan (2017).

Joseph Road Precinct Public Realm Plan (2017)

The Joseph Road Precinct Public Realm Plan provides guidance on the design of the public realm areas and identifies the locations where new roads, footpaths, bike routes, drainage, street lighting and furniture, traffic signals and street trees will be needed.

The design of the Plan has been guided by standards specified in the Maribyrnong City Design Manual and urban design objectives including:

- Providing connections through the precinct and to surrounding areas.

- Providing a seamless transition in activity levels and function between Footscray central and Melbourne's CBD.
- Having regard to the built form outcomes of the Precinct.
- Creating a public realm that complements active ground floor uses, provides for safe and pleasant pedestrian circulation, and encourages wider public access and usage.
- Prioritising pedestrians, cyclists and encourage active transport modes.
- Providing an accessible and equitable public realm.
- Providing services and infrastructure required for the level of development in ways that do not limit opportunities for quality green infrastructure in the streetscape.
- Considering and managing the grading of the site and stormwater drainage in a positive way to contribute towards a resilient city.

3. CHARGE AREAS & DEVELOPMENT SCENARIO

3.1. Main Charge Area

The Joseph Road Precinct DCP has a single Main Charge Area (MCA). Therefore, all demand units within the DCP area will be charged the same rate for all projects.

3.2. Development Projections

A projection of all development within the DCP area has been undertaken to understand:

- what infrastructure will be required to service the new development and calculate the rate per demand unit; and
- the likely duration of the life of the DCP.

The development projection for the DCP area over the next 15 years is for approximately 4,500 dwellings and for complementary retail and office activity. The development projections are based on approved planning permits for a number of sites within the Precinct.

Assumed yields for sites not currently subject of an approved planning permit have been prepared. The scenarios are based on the provisions of the Maribyrnong Planning Scheme.

It is expected that the area will develop over the next 15 years to full build at a rate of approximately 300 dwellings per year.

Table 1 Development Projections over the next 15 years

Parcel #	ADDRESS	SITE AREA (m2 Approx.)	DWELLINGS (Propd)	COMMERCIAL (m2 Propd)	RETAIL (m2 Propd)
Planning Permits					
1	1 Warde Street	2,149	350	-	916
2	10 Moreland Street	1,248	198	-	426
3	2 Neilson Place	6,303	513	3,418	620
4	2 Hopkins Street	9,393	723	197	581
5	4 Hopkins Street (2-6 Hallenstein Street)	12,866	937	1,417	3,421
6	18-24 Hopkins Street	9,459	966	-	4,687
7	7 Wightman Street	710	85	383	178
	SUB-TOTAL	42,128	3,772	5,415	10,829

Other					
a	30-40, 44 Hopkins Street	2,081	209	-	1,041
b	4 Neilson Place	1,742	147	-	151
c	6 Neilson Place	1,511	59	567	-
d	11 Joseph Road (VicTrack site)	4,400	347	1,650	-
	SUB-TOTAL	9,734	762	2,217	1,192
TOTALS		51,862	4,534	7,632	12,021

3.3. Equivalence Ratios and Demand Units

The purpose of this DCP is to ensure that the cost of providing new road and public realm infrastructure is shared between developers on a fair and reasonable basis. As all the new infrastructure demand will be created by the development within the Joseph Road Precinct, it is reasonable that development pays for the full cost of implementing the works identified in the *Joseph Road Precinct Public Realm Plan (2017)* and the *Joseph Road Precinct Preferred WSUD Concepts report (2017)*.

All residential, commercial and retail including mixed use development within the charge area is required to pay the Development Infrastructure Levy. One dwelling or one vacant single dwelling lot is equal to one demand unit. Dwelling is as defined in Part 3B of the Planning and Environment Act 1987 and also includes independent living units within a retirement village. For retail and commercial development, the equivalence ratios for all road, drainage and other public realm infrastructure are indicated in Table 2. The equivalence ratios for retail and office are in accordance with the standard ratios indicated in *Development Contributions Guidelines (March 2007)*.

Table 2 Proposed Development

Retail	19 sqm floor space = 1 demand unit
Office/Commercial	121 sqm floor space = 1 demand unit
Source: <i>Development Contributions Guidelines</i> (Department of Sustainability and the Environment, March 2007) pp.45-46, available for download from the DELWP website at https://www.planning.vic.gov.au/__data/assets/pdf_file/0022/102982/Preparing_a_Full_Cost_Apportionment_DCP.pdf	

For a mixed use development, the Development Infrastructure Levy is to be based on the total number of demand units comprising the development.

There is no exempt development other than development which is exempted under a Ministerial Direction applying at the time of the Approval Date of this DCP.

3.4. Items not included in this Development Contributions Plan

The following items are not included in the DCP. These items are considered to be normal to the construction of a development and do not warrant cost sharing arrangements.

Planning permits for development in the area covered by the DCP must contain conditions which require the provision of the infrastructure set out below:

- Waterway management works and drainage systems.
- Water, sewerage, underground power, gas and telecommunications services.
- Basic levelling, provision of biodiversity offsets, water tapping and landscaping of open space.

- Public open space reserve masterplans and any agreed associated works.
- Council's plan checking and supervision fees.
- Bus stops.

3.5. Contributions made under existing Planning Permits or Infrastructure Agreements

There are existing permit with conditions requiring some contributions to the public realm.

Where under such a permit condition, or an agreement entered into under such a permit condition, a monetary contribution is required to be made for public realm improvements or infrastructure works are to be provided in the public realm, those monetary contributions and infrastructure works may be recognised by the Collecting Agency and credited towards an owner's liability to pay any Development Infrastructure Levy that is imposed pursuant to this DCP provided that the infrastructure which is to be or has been provided is included as infrastructure which is funded by this DCP.

However, where the quantum of any such monetary contribution or the value of the infrastructure works in respect of the public realm are less than the Development Infrastructure Levy required to be paid under this DCP, the development must pay a top-up payment to make the Development Infrastructure Levy in respect of each Demand Unit equal to the amount of the Development Infrastructure Levy required under this DCP.

3.6. Public Open Space Contributions

This DCP does not provide funding towards the cost of public open space. A development that proposes to subdivide land must make a contribution to public open space in an amount specified in the schedule to Clause 53.01 of the Maribyrnong Planning Scheme.

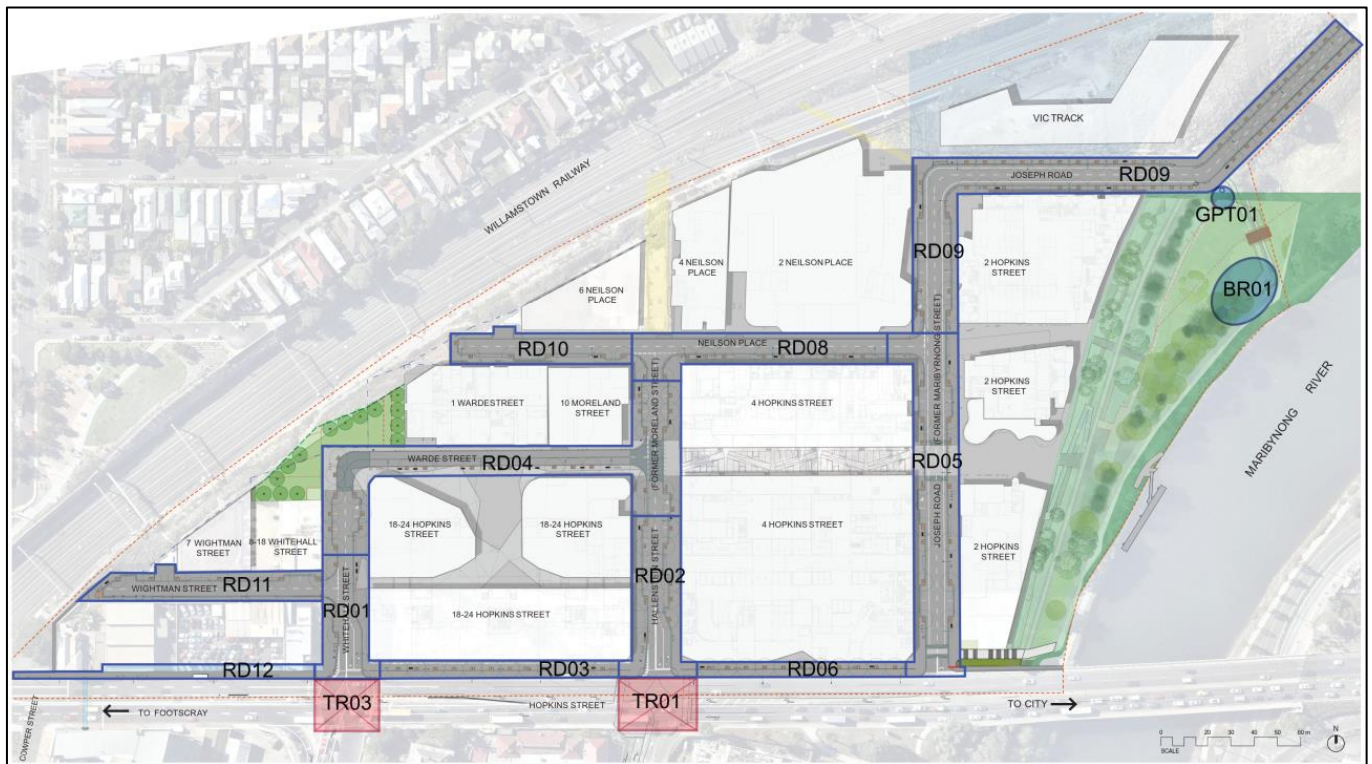
4. INFRASTRUCTURE PROJECTS & CALCULATION OF CONTRIBUTIONS

4.1. Infrastructure Projects

The DCP uses a project identification system of project category and sequential number in its tables and plans. The following types of projects are included in the DCP (refer to Plan 2):

- RD – Road Projects;
- TR – Traffic Improvement Works Projects;
- GPT01 – Gross Pollutant Trap;
- BR01 – Bio-Retention System

Plan 2: DCP infrastructure project areas



4.2. Calculation of costs

The costs of all projects were determined by a detailed costing advice provided by WT Partnership Quantity Surveyor. A copy of the cost estimates used to inform this DCP may be obtained from the City of Maribyrnong upon request.

Further information on the nature of the infrastructure projects which are funded is provided in Attachment 1.

Table 3: Infrastructure Projects and calculation of costs

DCP Project No.	Project	Infrastructure Category	Estimated Project Cost: Construction	% Apportioned to DCP	Total cost recovered by DCP
Road Projects					
RD01	Whitehall Street	Development	\$1,118,039	100.0%	\$1,118,039
RD02	Hallenstein Street	Development	\$1,664,503	100.0%	\$1,664,503
RD03	Hopkins Street (Central West)	Development	\$748,152	100.0%	\$748,152
RD04	Warde Street	Development	\$3,928,592	100.0%	\$3,928,592
RD05	South Joseph Road	Development	\$3,201,075	100.0%	\$3,201,075
RD06	Hopkins Street (Central East)	Development	\$696,967	100.0%	\$696,967
RD08	Neilson Place (East)	Development	\$3,647,787	100.0%	\$3,647,787
RD09	North Joseph Road	Development	\$4,297,853	100.0%	\$4,297,853
RD10	Neilson Place (West)	Development	\$1,208,902	100.0%	\$1,208,902
RD11	Wightman Street	Development	\$1,421,537	100.0%	\$1,421,537
RD12	Hopkins Street (Far West)	Development	\$871,028	100.0%	\$871,028
Sub-Total Road Projects			\$22,804,435	100.0%	\$22,804,435
Traffic Improvement Works					
TR01	Hopkins St & Hallenstein St - Traffic Lights - Construction	Development	\$3,131,920	97.7%*	\$3,058,732*
TR03	Hopkins St & Whitehall St signals upgrade	Development	\$1,092,752	100%	\$1,092,752
Sub-Total Traffic Improvement Works			\$4,224,672	98.3%	\$4,151,484
Drainage Project					
GPT01	Gross Pollutant Trap	Development	\$396,211	100.0%	\$396,211
BR01	Bio-Retention System	Development	\$404,682	100.0%	\$404,682
Sub-Total Infrastructure Project			\$800,893	100.0%	\$800,893
Plan Preparation Charge					
PP01	Plan Preparation Charge	Development	\$0	-	\$0
Sub-Total Plan Preparation Charges			\$0	-	\$0
TOTALS					
Total cost all projects			\$27,830,000	99.7%	\$27,756,812

*Note: TR01's percentage apportioned to the DCP is 97.7% because \$73,188 was received from the development at 1-11 Moreland Street towards the cost of the traffic signals.

4.3. Cost apportionment

This DCP apportions a charge to all new development within the MCA according to each site’s projected shared use of an identified infrastructure item. Costs must be shared in accordance with the projected development outcomes and estimated shared use of each infrastructure project.

This DCP calculates what each new development should pay towards the provision of each identified infrastructure project. This is the total cost of the item (after deducting other funding sources and making allowance for any external demand) divided by the total demand units (dwellings, or non-residential floor space) for the main charge area.

A contribution of \$73,188 has been received from 1-11 Moreland Street towards the cost of Traffic-Improvement Works at the intersection of Hopkins Street and Hallenstein Street (TR01). The site is located adjacent to the precinct and was required to contribute towards the cost of the traffic improvement works when their planning permit was amended in 2016. As such, the cost of TR01 apportioned to the DCP is its estimated project cost minus \$73,188.

For all other projects except TR01, the full cost the projects are apportioned to new developments within the precinct as the demand for them are created by these developments.

4.4. Summary of costs

Table Four sets out a summary of costs payable for each infrastructure category.

Table 4: Summary of total costs by project type

SUMMARY - TOTAL COSTS BY PROJECT TYPE	
Project Type	Total Costs of Projects
Road Projects	\$22,804,435
Traffic Improvement Works	\$4,224,672
Traffic Improvement Works Previously Recovered	\$73,188
Drainage Project	\$800,893
Total	\$27,830,000
Total Cost Recovered by DCP	\$27,756,812
SUMMARY - TOTAL COSTS BY INFRASTRUCTURE CATEGORY	
Project Type	Total Costs of Projects
Total - Development Infrastructure Levy (DIL)	\$27,830,000
Total - Community Infrastructure Levy (CIL)	\$0
Total	\$27,830,000
Total Cost Recovered by DCP	\$27,756,812

4.5 Summary of contributions

The table below sets out charges payable for each main charge area.

Table 5: Summary of contributions rates for development outcomes

SUMMARY - DEVELOPMENT INFRASTRUCTURE LEVY (DIL) BY MAIN CHARGE AREA		
Main Charge Area	Rate	
MCA1 (Residential)	\$5,307.47	per lot/dwelling
MCA1 (Commercial)	\$43.86	per m2 leasable floorspace
MCA1 (Retail)	\$279.34	per m2 leasable floorspace
SUMMARY - COMMUNITY INFRASTRUCTURE LEVY (CIL) BY MAIN CHARGE AREA		
Main Charge Area	Rate	
MCA1 (Residential)	\$0.00	per lot/dwelling

4.6 Project Staging

For the purpose of preparation of the DCP, each item to be funded by the DCP has an assumed indicative provision date specified (Table 6). The indicative timing of the provision of the items is consistent with the information available at the time that this DCP was prepared. The Collecting Agency will monitor and will determine when items should be provided after having regard to funding available through capital works programs, the staging and progression of development and the availability of development contribution funds to undertake the items.

The Collecting Agency may re-order the timing of the delivery of infrastructure works or land where:

- Infrastructure is to be constructed / provided by development proponents as works in kind, as agreed by the Collecting Agency;
- Network priorities require the delivery of works or land in a different order to facilitate broader road network connections.

Every endeavour will be made to provide all items in this DCP as soon as is practicable provided sufficient contributions are available and also having regard to the Development Agency's capacity to source any balance of funds not recovered under this DCP.

All items included in the DCP will be provided before the expiry date of this DCP which is 15 years from when this DCP is incorporated into the Maribyrnong Planning Scheme. If development projections vary as against what is anticipated in this DCP, an application will be made to the Minister pursuant to the Act to extend the life of the DCP.

Table 6: Estimated project staging and sequencing of projects

DCP Project No.	Project	Project Staging	Estimate year of construction works
	Road Projects		
RD01	Whitehall Street	1	2019-2021
RD02	Hallenstein Street	1	2019-2021
RD03	Hopkins Street (Central West)	1	2019-2021
RD04	Warde Street	2	2020-2022
RD05	South Joseph Road	1	2019-2021
RD06	Hopkins Street (Central East)	1	2019-2021
RD08	Neilson Place (East)	2	2020-2022
RD09	North Joseph Road	2	2020-2022
RD10	Neilson Place (West)	3	2021-2024
RD11	Wightman Street	5	2025 or later
RD12	Hopkins Street (Far West)	3	2021-2024
	Traffic Improvement Works		
TR01	Hopkins St & Hallenstein St - Traffic Lights - Construction	1	2019-2021
TR03	Hopkins St & Whitehall St signals upgrade	1	2019-2021
	Drainage Project		
GPT01	Gross Pollutant Trap	2	2020-2022
BR01	Bio-Retention System	4	2023 or later

5. DEVELOPMENT CONTRIBUTIONS PLAN ADMINISTRATION & IMPLEMENTATION

This section sets out how this DCP will be administered and covers the timing of payment, provision of works-in-kind and how funds generated by this DCP will be managed in terms of reporting, indexation and review periods.

The DCP applies to the subdivision and / or development of land.

5.1. Collecting Agency

Maribyrnong City Council is the Collecting Agency pursuant to section 46K(1)(fa) of the *Planning and Environment Act 1987* which means that it is the public authority to whom all levies are payable. As the Collecting Agency, Maribyrnong City Council is also responsible for the administration of the DCP and its enforcement pursuant to Section 46QC of the Act.

5.2. Development Agency

Maribyrnong City Council is the Development Agency pursuant to section 46K(1)(fb) of the *Planning and Environment Act 1987* and is responsible for the provision of all the infrastructure projects identified in this DCP.

5.3. Payment of Contribution Levies and Payment Timing

Where a planning permit is issued, the following conditions must be included on the planning permit:

5.3.1. Planning Permit for subdivision of land

A Development Infrastructure Levy in accordance with the approved Development Contributions Plan which applies to the land must be paid to the Collecting Agency for the land in respect of each demand unit within the following specified time, namely after the certification of the relevant plan of subdivision but no earlier than up to 21 days prior to the issue of a Statement of Compliance for that plan of subdivision.

Where the subdivision is to be developed in stages, the Development Infrastructure Levy for the stage to be developed may only be paid to the Collecting Agency no earlier than up to 21 days prior to the issue of a Statement of Compliance for that stage.

The Collecting Agency may agree to a different time for payment.

A Schedule of Development Contributions must be submitted with each stage of a plan of subdivision. The Schedule of Development Contributions must show the amount of the Development Infrastructure Levy payable for each stage to the satisfaction of the Collecting Agency.

If the Collecting agency agrees to works-in-kind in lieu of the payment of the Development Infrastructure Levy, the owner must enter into an agreement under Section 173 of the *Planning and Environment Act 1987* in respect of the proposed work in kind arrangements.

5.3.2. Planning Permit for development of land

A Development Infrastructure Levy in accordance with the approved Development Contributions Plan which applies to the land must be paid to the Collecting Agency for each demand unit proposed to be developed. The Development Infrastructure Levy must be paid prior to the issue of any Building Approval under the *Building Act 1993* unless the Collecting Agency agrees to a different time for payment.

If the Collecting agency agrees to works-in-kind in lieu of the payment of the Development Infrastructure Levy, the owner must enter into an agreement under Section 173 of the *Planning and Environment Act 1987* in respect of the proposed works-in-kind arrangements.

5.3.3. Where no planning permit is required

Where no planning permit is required to use or develop land, the land may only be used and developed when a Development Infrastructure Levy in accordance with the approved Development Contributions Plan that applies to the land is paid to the Collecting Agency prior to the issue of a Building Approval under the *Building Act 1993* unless the Collecting Agency agrees to any other time for payment.

If the Collecting Agency agrees to works-in-kind in lieu of the payment of the Development Infrastructure Levy, the owner must enter into an agreement under Section 173 of the *Planning and Environment Act 1987* in respect of the proposed work-in-kind arrangement.

5.4. Works-In-Kind

The Collecting Agency may allow a development proponent to satisfy its obligations under this DCP by undertaking building or works provided that:

- The building or works constitute infrastructure funded by this DCP.
- The Collecting Agency agrees that the timing of the building or works would be consistent with the priorities as determined by the Collecting Agency to relevant matters including to this DCP.
- The building or works are defined and agreed in an agreement made under Section 173 of the Act.
- The building or works are to be provided to a standard that accords with this DCP to the satisfaction of the Development Agency, unless an alternative is agreed by both the Development and Collecting Agencies.
- Detailed design are approved by the Development and Collecting Agencies which generally accord with the design upon which this DCP is based unless an alternative is agreed by both the Development and Collecting Agencies.
- The construction of the buildings and works are completed to the satisfaction of the Development and Collecting Agencies.
- There is no negative financial impact on this DCP to the satisfaction of the Collecting Agency.
- Buildings and works will only be accepted in lieu of a financial contribution required by this DCP to the extent that they constitute part or all of the design of an infrastructure funded by this DCP or otherwise reduce the cost to complete that design, to the Collecting Agency's satisfaction. Temporary works will not be accepted as works-in-kind unless they can be incorporated into the final design at no additional cost to the DCP.

5.5. Funds Administration

The administration of the development contributions made under the DCP will be held until required for provision of the items in that class of development (transport, community buildings or sporting reserves). Details of funds received and expenditures will be held by the Collecting Agency in accordance with the provisions of the *Local Government Act 1993* and the Act.

The administration of contributions made under the DCP will be transparent and demonstrate the:

- Amount and timing of funds collected;
- Source of the funds collected;
- Amount and timing of expenditure on specific projects;
- Project on which the expenditure was made;

- Account balances for individual project classes;
- Details of works-in-kind arrangements for project provision;
- Pooling or quarantining of funds to deliver specific projects where applicable.

The Collecting Agency will provide for regular monitoring, reporting and review of the monies received and expended in accordance with this DCP.

The Collecting Agency will establish interest bearing accounts and all monies held in these accounts will be used solely for the provision of infrastructure as itemised in this DCP, as required under Section 46Q of the Act.

Should the Collecting Agency resolve to not proceed with any of the infrastructure projects listed in this DCP, the funds collected for these items will be used for the provision of alternative works in the same infrastructure class as specified in this DCP. Such funds may also be used for the provision of additional works, services or facilities where approved by the Minister responsible for the Act, or will be refunded to owners of land subject to these infrastructure charges.

5.6. Project Indexation

The Development Contributions Levy must be indexed on 1 July 2017 for the 2017/2018 financial year and on 1 July for each subsequent financial year in accordance with the following requirement. The amount of the Development Infrastructure Levy must be indexed using the Producer Price Index Numbers for Road and Bridge construction – Victoria published by the Australian Bureau of Statistics (catalogue 6427.0, Table 17, Output of the Construction of Industries, subdivision and class index numbers) for the June, September, December and March quarters occurring immediately before the beginning of the financial year in respect of which the indexed rate is being determined.

5.7. Development Contributions Plan review period

This DCP adopts a long term outlook for development. It takes into account planned future development in the Joseph Road Precinct. For the purposes of the preparation of this DCP, a 'full development' horizon of fifteen years after gazettal of the DCP has been adopted.

This DCP commences on the Approval Date of the amendment introducing the DCP into the Maribyrnong Planning Scheme. This DCP will end on the 15th anniversary from the Approval Date unless it is extended in accordance with the provision of the Act.

The DCP should be reviewed and if necessary updated every five years (or more frequently if required). This may require an amendment to the Maribyrnong Planning Scheme to amend, review, or replace this document. Any review should have regard to any arrangements (for example an agreement under s173 of the Act) for the implementation of this DCP and the rate that development is occurring including the rate of collection of funds.

The projected development outcome in Table 1 is based on the proposed yield of new developments with planning permits and the expected yield of sites that are likely to be developed but not currently in receipt of a planning permit. In determining the expected yield, preferred maximum height provisions in the Maribyrnong Planning Scheme were used to estimate the number of dwellings that may be developed. If there is evidence to suggest that a site is not likely to be developed within the 15 year time frame of the DCP, it is excluded from DCP calculations.

In the event that the excluded sites are proposed to be developed within the time frame of the DCP, they will be required to pay the relevant contribution and the DCP will be amended (through a planning scheme amendment) accordingly.

6. OTHER INFORMATION

6.1. Supporting Documentation

The DCP is supported by the following documents and reports which together form part of the incorporated document:

- Joseph Road Public Realm Cost Estimate Report by WT Partnership, 1 March 2019 (Attachment 1)
- Joseph Road Precinct Public Realm Plan by Aspect Studios, 7 July 2017 (Attachment 2)
- Joseph Road Precinct Preferred WSUD Concepts Report by Alluvium Consulting, 12 May 2017 (Attachment 3)

Appendix E Revised version of DPO1 Schedule

--/2018
Proposed
C145

SCHEDULE 1 TO CLAUSE 45.06 DEVELOPMENT CONTRIBUTIONS PLAN OVERLAY

Shown on the planning scheme map as **DCPO1**.

JOSEPH ROAD PRECINCT DEVELOPMENT CONTRIBUTIONS PLAN

1.0 Area covered by this development contributions plan

Land generally bounded by the public reserves on the west bank of the Maribyrnong River to the east, the railway reserve between Footscray and South Kensington stations to the north and west, and Hopkins Street to the south and shown as DCPO1 on the planning scheme maps.

--/2018
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2.0 Summary of costs

--/2018
Proposed
C145

Facility	Total cost \$	Time of provision	Actual cost contribution attributable to development \$	Proportion of cost attributable to development %
Road projects	\$22,804,435	2019-2034	\$22,804,435	100.0%
Traffic improvement works	\$4,224,672	2019-2021	\$4,151,484	98.3%
Drainage	\$800,893	2020-2034	\$800,893	100.0%
TOTAL	\$27,830,000	-	\$27,756,812	99.7%

3.0 Summary of contributions

--/2018
Proposed
C145

Facility	Levies payable by the development (\$)		
	Development infrastructure	Development infrastructure	Development infrastructure
	MCA 1 (Residential) per dwelling	MCA 1 (Commercial) per m ² gross leasable floor space	MCA 1 (Retail) per m ² gross leasable floor space
Road projects	\$4,360.51	\$36.04	\$229.50
Traffic improvement works	\$793.82	\$6.56	\$41.78
Drainage	\$153.14	\$1.27	\$8.06
TOTAL	\$5,307.47	\$43.86	\$279.34

Note: The above listed contribution amounts are current as at 1 July 2017. All capital costs of infrastructure items and land projects will be adjusted in accordance with the methodology set out in the Joseph Road Precinct Development Contributions Plan.

4.0 Land or development excluded from development contributions plan

--/2018
Proposed
C145

The extension of a building or extension of works associated with an established use in the area at the date of approval, providing the extension results in no more than a 50% increase in the floor area of the building or works as compared to the floor space at the date of approval.

Development of land for housing by or for the Department of Health and Human Services, as defined in *Ministerial Direction on Development Contributions Plans* of 11 October 2016.

Development of land for a non-government school. In this provision, “non-government school” has the same meaning as in section 1.1.3 of the *Education and Training Reform Act 2006*.

Development of land by the municipal council for the area.

Note: This schedule sets out a summary of the costs and contributions prescribed in the development contributions plan. Refer to the incorporated development contributions plan for full details.