

**FISHERMANS BEND PLANNING REVIEW PANEL: DRAFT AMENDMENT
GC81**

SUPPLEMENTARY INFORMATION NOTE

SIN NUMBER:	16
DATE:	14 May 2018
PRECINCT:	All CCZ precincts
FRAMEWORK REFERENCE:	N/A
SUBJECT:	Information regarding Infrastructure Contributions Plans
PURPOSE:	To provide the Panel with further information regarding recent legislation regarding Infrastructure Contribution Plans in Victoria

Background – the existing Infrastructure Contributions Plan system

1. The Infrastructure Contributions Plan (ICP) system in Victoria commenced on 27 October 2016. The new ICP system was facilitated by amendments to the *Planning and Environment Act 1987 (P & E Act)* which commenced operation on 1 June 2016.
2. The ICP system is based on standard levies that are preset for particular development settings and land uses, in order to fund the provision of essential infrastructure to support new or growing communities. To date, the ICP system has been applied to metropolitan greenfield growth areas.
3. An Information Note prepared by DELWP ‘*Overview of the Infrastructure Contributions Plan System*’ outlines the operation of the existing system and is **Attachment 1** to this SIN.
4. On 20 October 2016, the Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans was issued by the Minister for Planning. The Ministerial Direction specifies the development settings and the details of the new system, such as levy rates, indexation methodologies and allowable items. A copy of the Ministerial Direction is **Attachment 2**. An infrastructure levy may only be imposed in respect of the development of land that is within a development setting specified in an Annexure to that Direction (clause 3). The Ministerial Direction includes Annexure A, ‘Metropolitan Greenfield Areas’.
5. The Information Notes prepared by DELWP (Attachment 1) foreshadows the intention to extend ICPs to Strategic Development Areas (at 2):

Strategic development areas refers to locations within existing urban areas that are planned or become available for significant growth and change. Generally, these areas will be identified in a strategic plan such as Plan Melbourne (for example National Employment Clusters and Urban Renewal Areas), a Municipal Strategic Statement or a regional growth plan.

The criteria for these development settings will be set out in the Ministerial Direction.

Currently, only one development setting has been defined, which is the metropolitan greenfield growth area. As other development settings are defined, additional annexures will be included in the Ministerial Direction.

6. DELWP has also published Infrastructure Contributions Plan Guidelines (October 2016), which set out the purpose and operation of ICPs including the allowable items ICPs and the different types of levies that may be applied.¹
7. Under the existing statutory provisions, an ICP can fund:
 - a. community and recreation facilities such as local community centres, sports facilities and parks;
 - b. transport infrastructure such as arterial roads, intersections, traffic signals, pedestrian and cyclist facilities;
 - c. land for community and recreation facilities and transport infrastructure (land for public purposes);
 - d. State infrastructure and land for State infrastructure in areas outside of the Growth Areas Infrastructure Contribution area;² and
 - e. the costs associated with preparing the ICP.
8. The list of allowable items for standard levies is set out in Tables 2 and 3 of the Ministerial Guideline. Table 4 specifies allowable items under a supplementary levy. Table 5 specifies allowable items for public land for standard levies. Table 6 sets out supplementary levy allowable items for public land and the criteria to be applied when determining a supplementary levy.
9. Currently, land which has been identified for particular uses such as public open space, roads and community and recreational facilities, must be paid for through a monetary levy based on the standard rates.
10. The existing provisions allow for a supplementary levy to be imposed to acquire land, however those circumstances are presently constrained (see clauses 11 to 14 of the Ministerial Direction).

¹

https://www.planning.vic.gov.au/_data/assets/pdf_file/0025/95281/Infrastructure-Contributions-Plan-Guidelines.pdf

²

Note that the Growth Area Infrastructure Contribution (**GAIC**) is separate from the ICP system, and helps fund state infrastructure in Melbourne's greenfield growth areas. Funds obtained from the GAIC are paid into a state fund.

11. A supplementary levy may only fund specified allowable items, being works, services of facilities listed as a supplementary allowable item in the Ministerial Direction.
12. Before imposing a supplementary levy, a planning authority must consider specified matters in the Ministerial Direction including whether the works services of facilities can be wholly or partially funded from a standard levy and whether the works, services and facilities are essential to the proper and orderly development of the area.

Infrastructure Contributions Plan Overlay

13. Amendment V9 gazetted 27 October 2016 introduced Clause 45.10 - Infrastructure Contributions Plan Overlay (**ICPO**), into the Victoria Planning Provisions.
14. The ICPO allows a planning authority to incorporate an Infrastructure Contributions Plan and impose an infrastructure levy. **Attachment 3** is a copy of the ICPO from the Victorian Planning Provisions.
15. The ICPO provides for exemptions to any infrastructure levy to be specified in the schedule.
16. The ICPO includes a provision that a permit must not be granted to subdivide land, construct a building or carry out works until an ICP has been incorporated into the planning scheme (Clause 45.10-2).
17. The ICPO allows for specific categories of land use and permits to be exempt from the requirement to pay infrastructure contributions if specified in the schedule.
18. An example of an ICP is the Mt Atkinson and Tarneit Plains Metropolitan Greenfield Growth Area Standard levy Infrastructure Contributions Plan, July 2017 which was incorporated into the Melton Planning Scheme by Amendment C183. A copy of ICPO1 in the Melton Planning Scheme is **Attachment 4** to this SIN.

Current ICP levy rates – Growth Areas

19. The current standard levy rates for Melbourne’s greenfield growth areas are set out below.
20. The standard levy rate for ‘public land’ is identified as being different in the South-East Growth Area and the North and West Growth Areas because these areas have different land values.

Metropolitan Growth Area	Class of development	Community & recreation construction	Transport construction	Public land	Total levy rate
<i>All amounts in \$ per developable hectare (NDHa)</i>					
South-East Growth Area	Residential development	\$86,800	\$108,700	\$158,500	\$354,000
	Commercial and industrial development	\$0	\$108,700	\$52,500	\$161,200
North and West Growth Areas	Residential development	\$86,800	\$108,700	\$138,800	\$334,300
	Commercial and industrial development	\$0	\$108,700	\$45,900	\$154,600

Recent legislation addressing Infrastructure Contributions

21. Recently enacted legislation will facilitate the extension of the ICP system to regional growth areas and also to identified strategic development areas.
22. The *Planning and Environment Amendment (Public Land Contributions) Act 2018 (PLC Act)* will amend *the Planning and Environment Act 1987 (P & E Act)* to introduce a land contribution for the infrastructure contributions plan scheme. The PLC Act³ received Royal Assent on 27 February 2018, but has not yet commenced operation. The PLC Act will commence operation on 1 September 2018, unless proclaimed earlier (s 2 PLC Act). Present indications are that the PLC Act may come into effect as early as July 2018.
23. The Property Council issued a media release indicating its support for the PLC Bill when it was passed. **Annexure 5** this SIN is a copy of the Property Council's media release regarding the Bill.
24. The key change to be introduced by the amendments to the P & E Act are the introduction of a land contribution model for infrastructure contributions plans.
25. The PLC Act will replace the existing infrastructure contributions provisions of Part 3AB of the P & E Act with a regime directed to spreading the cost of securing public land across an ICP area.
26. The PLC Act will do so by introducing a mechanism for the direct allocation and equalisation of the cost of securing public land in an ICP. The effect of these provisions is that they will enable land, or funding for land required for 'public purposes', to be provided as part of an infrastructure contribution,

³http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/57ebcd3faa3c483fca2582410010cf64!OpenDocument

when land is developed or subdivided. This contribution would replace the monetary public land component of the standard levy.

27. *'Public purposes'* is defined as any of the following purposes: public open space; community and recreation facilities; transport infrastructure; and 'other infrastructure that is essential to the development of the ICP plan area' (s 46GA).

Infrastructure Contributions Overlay

28. To implement the new ICP system, an Infrastructure Contributions Overlay (**ICO**) will be included in the Victorian Planning Provisions by Amendment VC146 which will be gazetted on 15 May 2018.
29. The ICO will provide the tool for identifying 'public purpose land' and also the relevant levies for any area designated under the Ministerial Direction as land to which the ICO may be imposed to fund infrastructure. A copy of the ICO and Schedule to be gazetted on 15 May 2018 is **Attachments 5A** and **5B** to this SIN.
30. The ICO allows a planning authority to incorporate an ICP into the relevant scheme.
31. The ICO provides for exemptions to any infrastructure levy to be specified in the schedule. The ICO includes a provision that a permit must not be granted to subdivide land, construct a building or carry out works until an ICP has been incorporated into the planning scheme.
32. The ICO allows for specific categories of land use and permits to be exempt from the requirement to pay infrastructure contributions if specified in the schedule.

Key features of the new regime

33. Key features of the new ICP regime are as follows (references in bracket are to the section in the P&E Act that will contain the relevant provision which will be introduced when the PLC Act commences operation).
34. Land within the ICP for which an infrastructure contribution is payable if it is developed will be described as '*contribution land*' (s 46GA) (new definition).
35. Land identified in the ICP as being required for public open space, community and recreation facilities, transport or other infrastructure will be described as '*public purpose land*' (this may include land both inside and outside the ICP area) (s 46GA new definition).
36. The ICP will specify the type, amount and location of *public purpose land*. The existing plans for Fishermans Bend forming part of the draft controls could be used to form a suitable plan for identifying the 'public purpose' land in Fishermans Bend for the purpose of an ICP;
37. An equalisation mechanism will operate within the ICP. In summary, this will involve the following steps:

- a. The combined area of the public purpose land relative to the overall contribution land within the ICP for a particular class of development (eg residential) will be used to calculate the *ICP land contribution percentage*. The land contribution percentage is the total area of the public purpose land specified in an infrastructure contributions plan divided by the total area of the contribution land in the ICP plan area of the plan, expressed as a percentage, determined in respect of each class of development of land specified in the plan (s 46GB);
- b. The extent to which public purpose land is located within each parcel of land of that class within the ICP will then be calculated as a percentage being the '*parcel contribution percentage*' (s 46GA);
- c. The equalisation mechanism will work by reconciling whether the parcel contribution percentage is above or below the ICP land contribution percentage or the average across the ICP:
 - i. If the parcel contribution percentage is greater than the ICP land contribution percentage, (i.e. if a particular parcel of land contains *more* public purpose land than the average across the ICP), the landowner will be compensated with a *land credit amount*. The land credit amount, in relation to a parcel of land in an ICP plan area, means the amount specified in an approved infrastructure contributions plan as the land credit amount that relates to that parcel of land (s 46GA).
 - ii. If the parcel contribution percentage is less than the ICP land contribution percentage, i.e. if a particular parcel of land contains *less* public purpose land than the average across the ICP, the landowner will pay a *land equalisation amount*. The land equalisation amount is the figure specified in an approved infrastructure contributions plan as the land equalisation amount in relation to a parcel of land in the ICP plan area and will be payable to the collecting agency on the development of that parcel of land (s 46GF).

Time for satisfying contribution obligation

38. An applicant will be required to pay the monetary component and any land equalisation amount of the infrastructure contribution to the collecting agency (see below for explanation of land equalisation amounts) before the earliest of the following:
 - a. The issue of a statement of compliance under the *Subdivision Act* 1988;
 - b. The issue of a building permit;
 - c. A time specified in the approved ICP; or
 - d. Before a time specified in an agreement entered into by the collecting agency and the applicant (s 46GV(3)).
39. Under the land contribution model provisions, landowners will be required to directly transfer all land on their parcel that has been identified for 'public

purposes' as part of their infrastructure contribution and by ensuring the inner public purpose land is set aside on a plan of subdivision to vest in the development agency (s 46GV(4) and (5)).

40. The responsible authority under the P & E Act must impose conditions requiring the payment of the monetary levy and any transfer of public land as conditions in any planning permit that may issue in respect of land in the ICP plan area (s 46GV(7)).
41. Section 11 of the PLC Act will amend s 62(5) (a) of the P& E Act to provide responsible authorities with the power to include conditions on a planning permit:
 - 'to implement an approved development contributions plan or an approved infrastructure contributions plan;'

Submissions to a planning authority in respect of the land equalisation amount or land credit

42. Section 5 of the PLC Act will amend section 21 of the P & E Act which sets out the circumstances in which a submission may be made to the planning authority in respect of an amendment to a planning scheme prepared under Part 3 of the P & E Act.
43. The Act will insert a new subsection (5) which provides that, if an amendment is to incorporate an infrastructure contributions plan into a planning scheme, a person is not entitled to make a submission that requests a change to any land credit amount or land equalisation amount specified in the plan, or any estimate of value of public purpose land on which those amounts are based.

Exclusion of compensation provisions

44. The PLC Act will also introduce amendments to the P & E Act to exclude land required to be provided to a development agency or collecting agency under an approved ICP from the compensation provisions in s 98 of the P & E Act.
45. A new provision will be added to s 98 as follows:
 - "(5) In this section, *land being reserved for a public purpose under a planning scheme* does not include land referred to in subsection (3)(c) or (d)."
46. The land referred to in subsection 3(c) or (d) will be land which has been or is required to be provided to a development agency or collecting agency under s 46GV(4) or land which has been or is to be acquired by an approved ICP.

Worked example of operation of the new ICP provisions

47. The following worked example illustrates the mechanism that will be adopted.
48. In this example, the following assumptions apply:
 - a. The ICP identifies, for residential development, 100 hectares of net developable land.
 - b. The ICP identifies a total of 10 hectares of 'public purpose land'.

- c. The ICP land contribution percentage is therefore 10%.

Parcel ID	Total net developable area (ha)	Total public purpose land within the parcel (ha)	Parcel contribution percentage	Public land contribution reconciliation	Outcome
Parcel 1	10	2	20%	10% (1ha) <i>more</i> than the ICP land contribution %	<i>Land credit amount payable</i> to the landowner for the 1 ha that the parcel contribution exceeds the ICP land contribution percentage.
Parcel 2	20	1.2	6%	4% (0.8ha) <i>less</i> than the ICP land contribution %	<i>Land equalisation amount is payable by the landowner</i> to the collecting agency for the 0.8ha shortfall
Parcel 3	30	5	16.66%	6.66% <i>more</i> than the ICP land contribution	<i>A land credit amount will be payable</i> to the landowner because the parcel contribution exceeds the ICP land contribution percentage (2 ha).

Requirements for an ICP

49. The new provisions set out in detail the requirements for an infrastructure contributions plan. The key requirements for an ICP are as follows (s 46GI(1)):
- specify the ICP plan area; and
 - specify the *contribution land* in the ICP plan area; and
 - specify any inner public purpose land to be provided under the plan (*inner public purpose land* is defined as ‘land in the ICP plan area of an infrastructure contributions plan that is specified in that plan as land to be set aside for public purposes’ (s 46GA)); and
 - specify any *outer public purpose land* to be funded through the plan and the development agency responsible for acquiring that land (*outer public purpose land* is defined as ‘land outside of the ICP plan area of an infrastructure contributions plan that is specified in that plan as land to be acquired for public purposes’ (s 46GA)); and
 - specify the types of public purposes for which inner public purpose land and outer public purpose land may be used and developed; and

- f. specify the classes of development of land in relation to which an infrastructure contribution is to be imposed under the plan; and, for class of development, the ICP land contribution percentage; and
- g. specify the *parcel contribution percentage* for each parcel of land in the ICP plan area and the land credit amount or land equalisation amount in respect of each parcel of land in the ICP plan area; and
- h. specify the timing and method of adjustment to be applied to the land credit amounts and land equalisation amounts specified in the plan, (including by way of indexation or any other method of adjustment); and
- i. specify the plan preparation costs, works, services or facilities to be funded through the plan; and
- j. set out the staging of the provision of the works, services or facilities or public purpose land specified in the plan; and
- k. relate the need for the plan preparation costs, works, services or facilities to be funded through the plan to the proposed development of land in the ICP plan area; and
- l. relate the need for the provision of public purpose land under the plan to the proposed development of land in the ICP plan area; and
- m. specify a standard levy rate for each class of development of land according to the type of land to be developed and specify the method and timing of annual indexation to be applied to a standard levy rate; and
- n. For any supplementary levy imposed under the plan, specify:
 - (i) the works, services or facilities to be funded from the supplementary levy;
 - (ii) the amount of the plan preparation costs and the estimated cost of each of the works, services or facilities to be funded from the supplementary levy;
 - (iii) the method and timing of annual indexation to be applied to the estimated cost of each of the works, services or facilities to be funded from the supplementary levy;
 - (iv) the proportion of the total of the costs referred to in subparagraph (ii) to be funded from the supplementary levy.
- o. specify the supplementary levy rate for each class of development of land according to each type of land to be developed; and
- p. specify a Minister, public authority or municipal council as the entity that is the collecting agency;
- q. specify a Minister, public authority or municipal council as an entity that is a development agency for the purposes of this Part 3AB and the plan and the works, services, facilities or public purpose land for which the development agency is responsible under the plan; and

- r. provide for the procedures, including the timing, for the collection of an infrastructure contribution; and
- s. include any other matter required to be included in the plan by a Minister's direction.

Different classes of development and rates

- 50. In addition to the matters specified in 46GI(1) (set out above), an ICP may also provide for the following (s 46GI(2)):
 - a. different rates for the monetary component of an infrastructure contribution to be provided in respect of different classes of development for a type of land in the ICP plan area; and
 - b. a lower rate of standard levy for a class of development of a particular type of land than the rate specified in a Minister's direction if the planning authority, the affected landowners, the municipal council of the municipal district in which the land is located and the development agency or agencies specified in the plan agree; or the Minister consents.

Minister's directions in relation to the preparation and content of infrastructure contributions plans

- 51. Section 46GJ(2) provides that the Minister may issue written directions to planning authorities in relation to the preparation and content of infrastructure contributions plans.
- 52. The matters upon which the Minister may issue written directions are broad and can include specifying or exempting land to which an ICP applies, specifying the method for calculating the value of any public purpose land for the purpose of the ICP, the timing, procedure and method of adjustment of the levy.

Land credit and land equalisation amounts

- 53. Land credit amounts and land equalisation amounts will be required to be specified in the ICP. This will ensure that all landowners will have advance notice of these costs and potential credits before they develop their land.
- 54. The PLC Act provides for the setting of an applicable valuation methodology for the valuation exercise including specific assumptions to be applied when undertaking a valuation.
- 55. The method for calculating the land credit amounts and land equalisation amounts is a matter which a Ministerial Direction will address.⁴

⁴ The method used for existing ICPs is the Public Land Estimate of Value method. That method applies a broad hectare land valuation for land where a land equalisation amount is payable, and a site-specific valuation where a land credit amount is payable. The method applied is explained in the Infrastructure Contributions Plan Guidelines (pages 52-55). An extract from the Guidelines is **Attachment 6** to this SIN.

- Attachment 1:** Information Sheet: '*Overview of the Infrastructure Contributions Plan System*' October 2016
- Attachment 2:** Ministerial Direction on the Preparation and Content of Infrastructure Contributions Plans, dated 20 October 2016
- Attachment 3:** ICPO
- Attachment 4:** ICPO1 Melton Planning Scheme
- Attachment 5:** Announcement from the Property Council of Australia
- Attachment 5A:** Infrastructure Contributions Overlay to be gazetted 15 May 2018.
- Attachment 5B:** Schedule to the Infrastructure Contributions Overlay to be gazetted 15 May 2018.
- Attachment 6:** Extract from the Infrastructure Contributions Plan Guidelines, October 2016 (pages 52-55).