IN THE MATTER OF
AMENDMENT GC81 TO THE
MELBOURNE AND PORT PHILLIP
PLANNING SCHEMES

SUBMISSIONS IN RELATION TO INFRASTRUCTURE CONTRIBUTIONS PLAN
(PUBLIC LAND CONTRIBUTIONS)
ON BEHALF OF
THE MINISTER FOR PLANNING

EXISTING INFRASTRUCTURE CONTRIBUTION 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 existing ICP system has been applied in the growth corridors and has been implemented by standard levies that are pre-set for particular development settings and land uses (in order to fund the provision of essential infrastructure to support new or growing communities).

3. Under the existing ICP provisions, 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.

4. The standard levy is also used to fund the construction of community and recreation facilities and transport infrastructure.

5. The existing provisions allow for a supplementary levy to be imposed to acquire land, however those circumstances are presently constrained. A supplementary levy may only fund specified allowable items, being works, services or facilities listed as a supplementary allowable item in the Ministerial Direction, October 2016.

6. Before imposing a supplementary levy, a planning authority must consider specified matters in the Ministerial Direction including whether the works, services or 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.

RECENT LEGISLATION ADDRESSING INFRASTRUCTURE CONTRIBUTIONS

7. Recently enacted legislation will facilitate the intended extension of the ICP system to regional growth areas and also to identified strategic development areas.

8. The *Planning and Environment Amendment (Public Land Contributions) Act 2018 (PLC Act)* will amend the P & E Act to introduce a land contribution for the infrastructure contributions plan scheme.

9. The purposes of the PLC Act are to amend the P & E Act:
   a. to introduce a land contribution model for the infrastructure contributions plan scheme; and
   b. to increase, and provide for the indexation of the community infrastructure levy; and
   c. to make other related amendments.

10. The PLC Act 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.

11. 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.

12. The PLC Act will do so by introducing for the first time 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, when land is developed or subdivided.

13. ‘Public purposes’ is defined as any of the following purposes: public open space; community and recreation facilities; transport infrastructure; other infrastructure that is essential to the development of the ICP plan area (s 46GA).
14. The land contribution model will enable land identified ‘for public purposes’ to be provided as part of an infrastructure contribution when land is developed. This contribution would replace the monetary public land component of the standard levy.

15. Land identified as required for public open space and other purposes may be required to be provided as a land contribution, rather than by the landowner making a monetary contribution.

**IMPLEMENTATION MECHANISM**

16. Amendment VC146, which will be gazetted on 15 May 2018 will insert an Incorporated Contributions Overlay (ICO) into the Victorian Planning Provisions.

17. The ICO will allow a planning authority to incorporate an Infrastructure Contributions Plan and impose an infrastructure contribution.

18. The ICO is similar to the existing Infrastructure Contributions Plan Overlay (ICPO) in the Victorian Planning Provisions which has been in place since October 2016, save that it will provide for a mechanism for the identification and transfer to the relevant agency of land required for ‘public purposes.’

19. The ICO allows exemptions to any infrastructure levy to be specified in a Schedule. The ICO also includes a provision that a permit must not be granted to subdivide land, construct a building or construct or carry out works until an infrastructure contributions plan has been incorporated into the scheme.

**KEY FEATURES OF THE NEW INFRASTRUCTURE CONTRIBUTIONS SYSTEM**

20. Key features of the new ICP system 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):

   a. 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).
b. 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).

c. 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 the ICP;

d. The ICP process enables the imposition of a standard levy, a supplementary levy or both;

e. An equalisation mechanism will operate within the ICP. In summary, this will involve the following steps:

(1) 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. This will require determining the average public land contribution across all parcels that can be developed in the ICP for a particular class of development. 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);

(2) 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);

(3) The equalisation mechanism will work by reconciling whether the parcel contribution percentage is above or below the ICP land contribution percentage:
(a) 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 receive 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).

(b) 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. The land equalisation amount is payable to the collecting agency on the development of that parcel of land if the parcel contribution percentage of the land is less than the ICP land contribution percentage for that class of development (s 46GF).

**WHAT MUST AN ICP CONTAIN?**

21. The new provisions set out in detail the requirements for an infrastructure contributions plan. An ICP must include the following (s 46GI(1)):

   a. specify the ICP plan area and the contribution land in the ICP plan area;

   b. 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));

   c. specify the types of public purposes for which inner public purpose land and outer public purpose land may be used and developed;
d. specify the classes of development of land in relation to which an infrastructure contribution is to be imposed under the plan;

e. specify, for each class of development, the ICP land contribution percentage; and

f. specify the parcel contribution percentage for each parcel of land in the ICP plan area;

g. specify the land credit amount or land equalisation amount in respect of each parcel of land in the ICP plan area;

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;

i. specify the plan preparation costs, works, services or facilities to be funded through the plan and the standard levy;

j. set out the staging of the provision of the works, services or facilities or public purpose land specified in the plan;

k. specify a standard levy rate for each class of development of land according to the type of land to be developed;

l. specify the method and timing of annual indexation to be applied to a standard levy rate;

m. specify the following in relation to any supplementary levy imposed under the plan—

(I) the works, services or facilities to be funded from the supplementary levy;

(ii) the amount of the plan preparation costs and the estimated cost of each of the works, services or facilities to be funded from the supplementary levy;

(iii) the method and timing of annual indexation to be applied to the estimated cost of each of the works, services or facilities to be funded from the supplementary levy;
(iv) the proportion of the total of the costs referred to in subparagraph (ii) to be funded from the supplementary levy and the supplementary levy rate for each class of development of land according to each type of land to be developed; and

n. specify a Minister, public authority or municipal council as the entity that is the collecting agency and the development agency for the purposes of the plan;

o. provide for the procedures, including the timing, for the collection of an infrastructure contribution; and

p. include any other matter required to be included in the plan by a Minister’s direction.

22. In addition to the matters specified in 46GI(1), an ICP may 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.

PAYMENT OF INFRASTRUCTURE CONTRIBUTIONS AND TRANSFER OF LAND

23. An infrastructure contribution is imposed in relation to the development of any land in the ICO plan area, at the earlier time at which an applicant makes an application for either of the following:

a. A permit under the P & E Act to develop the land;

b. A building permit under the Building Act 1993 to carry out building work on the land (s 46GV(2)).
24. An applicant will be required to pay the monetary component and any land equalisation amount of the infrastructure contribution to the collecting agency 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)).

25. 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)).

26. 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)).

27. Section 11 of the PLC Act will amend s 62(5) (a) of the P& E Act to provide that a planning permit may:

   'include a condition to implement an approved development contributions plan or an approved infrastructure contributions plan."

**FURTHER AMENDMENTS TO THE P & E ACT**

28. 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. 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)."
29. 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.

30. 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.

31. 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.

**STEPS TO IMPLEMENT AN ICP FOR FISHERMANS BEND**

32. Upon the commencement of the amendments to the P & E Act introduced by the PLAC Act on (or before) 2 September 2018, the following steps will be required to implement an ICP for Fishermans Bend:

(a) The ICO would need to be applied to all contribution land.

(b) A Ministerial direction would need to be given under new s 46GJ of the P & E Act. The direction would:

(i) Enable an ICP to be applied to Fishermans Bend as a Strategic Development Area;

(ii) Specify a standard levy to be applied to all contribution land in Fishermans Bend; and

(iii) Specify the method for valuing land to be acquired for public purposes within the plan area.

(c) An infrastructure contributions plan would need to be prepared for Fishermans Bend, identifying, *inter alia*:

(i) All public purpose land;
(ii) The land contribution percentage;
(iii) The land credit amount;
(iv) The infrastructure to be provided and funded by the ICP;
(v) The standard levy to be charged;
(vi) The development agency and the collecting agency for the ICP.

33. It will need to be determined whether a standard levy, or a supplementary levy (or both) will be imposed in Fishermans Bend.

34. Adoption of the standard levy will enable the operation of the land transfer provisions which are necessary to deliver the required public open space and roads identified in the Framework for Fishermans Bend.

35. In the longer term, it may be desirable to explore the possibility of imposing a supplementary levy for Fishermans Bend which could address the costs of delivering the required infrastructure for Fishermans Bend.

ROADS AND LANES

36. Typically, delivery of local roads and lanes would be the responsibility of the developer. There is no reason for Fishermans Bend to be any different.

37. The ICP can be drafted to exclude land required for local roads and lanes from its operation. That is, such land would not be identified as ‘public purpose land’ under the ICP.

38. The draft CCZ has been amended to include a mandatory permit condition requiring the delivery of roads and lanes not funded by the ICP to the responsible authority at no cost. This is the method adopted in recent Precinct Structure Plans and associated DCPs.

KEY BENEFITS ASSOCIATED WITH USE OF THE PUBLIC LAND CONTRIBUTIONS MODEL

39. The adoption of the ICP model for Fishermans Bend will:
a. secure the direct transfer of land identified as 'public purpose land' so that it may be used for the identified purpose;

b. address the concerns raised by the Councils as to the financial risks to the Councils posed by escalating land prices over time and the potential for underfunding of infrastructure and public open space;

c. overcome the alleged unlawfulness contended by the landowners (which is not accepted by the Minister);

d. ensure that the land credit amounts and land equalisation amounts will be specified in the ICP, enabling landowners to have advance notice of these costs and potential credits before they develop their land.

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14 May 2018