

Glen Eira City Council

# COMMUNITY BENEFITS

Discussion Paper



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PLANNING & DESIGN

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## ACKNOWLEDGEMENTS

It is acknowledged that the City of Glen Eira is on traditional lands of the Wurundjeri people. We offer our respect to the Elders of these traditional lands, and through them to all Aboriginal and Torres Strait Islander People.

### PROJECT CONTROL

NAME	NO.	PM APPROVED	PD APPROVED	DATE
Community Benefits Discussion Paper	1	TN	LR	15.6.2017
Community Benefits Discussion Paper	2	TN	LR	23.6.2017

# COMMUNITY BENEFITS DISCUSSION PAPER

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## EXECUTIVE SUMMARY

This paper has been prepared to provide an understanding of the concept of 'community benefits' and how they can be negotiated by Council through the development process.

We would note that as some of the information contained in this Paper is of a legal nature, review of the information by a legal practitioner is advisable.

### EXISTING MECHANISMS TO ACHIEVE COMMUNITY BENEFITS

The following mechanisms could be applied within Glen Eira:

- Development Contributions Plans (DCPs)
- Voluntary agreements ('Section 173 Agreements') made through the planning and building permit processes or Planning Scheme Amendments.
- Public open space contributions collected through the Planning Scheme, under Clause 52.01
- Special rates schemes levied by Council
- Cash-in-lieu contribution towards the provision of public car parking.

Section 3 provides an overview of the advantages and disadvantages for each, along with the methods of implementation. Some of the mechanisms are more suited to greenfield and urban renewal areas, and are less often used in existing urban areas given the greater complexity in these areas and specifically difficulty in demonstrating need and nexus.

### EXAMPLES OF COMMUNITY BENEFIT SCHEMES

Examples of community benefit schemes, within Victoria and beyond, have been considered in order to more broadly explore the types of funding mechanisms that exist. These examples include inclusionary zoning schemes, levies, and built form controls requiring demonstrated community benefit.

Of particular relevance to the study is the approach outlined in the Arden Macaulay and Central City Floor Area Uplift draft amendments reviewed in section 4, where development above a preferred maximum height must demonstrate that it provides community benefit. The review makes note of the Planning Panel recommendations with respect to each of the draft amendments, in particular that public benefits required must be strategically justified and economically tested, and that proposals above a preferred maximum height must be assessed in terms of more stringent built form outcomes as well as the community benefit provided.

### RECOMMENDATIONS FOR GLEN EIRA

The case studies highlight two potential methods of achieving community benefit in the context of infill development in Glen Eira – cash-in lieu contributions and provision of benefit on-site. Both can be achieved through existing mechanisms of DCP, DCPO and Local Policy.

The case studies also reveal that a number of steps are critical to the success and legitimacy of a community benefits scheme:

- Development of a Community Benefit Strategy that provides strategic justification for contributions or provision agreements,
- Detailed economic and property analysis to understand the market and capacity, and
- Legal and statutory assessment to ensure legitimacy of mechanisms and translation into statute.

The study identifies that with the identification of different development typologies to be applied within Council's activity centres, community benefits could be tailored for each type of development. The study identifies the *Apartments – Mixed Use* typology as suitable to include height or floor area bonuses for provision of community benefits, either on-site or through a contributions fund. The recommended mechanism is the setting of multiple thresholds of development (e.g building height / floor area) at which different levels of community benefit provision or contribution is required.

We recommend the following process to develop these thresholds:

- Set podium, discretionary and upper mandatory height limits
- Develop a community benefit strategy that explicitly states the type of amenity that is to be provided by developers and relate this to development typologies and the value of these amenities
- Concurrently undertake market research to identify the market thresholds at which it is attractive to enter into the bonus scheme, at which point a community benefit may discourage development in the area, and what the proportionate rate of community benefit is to be applied (to either the levy or the bonus scheme),
- Amend the planning scheme to include the development limit thresholds and DCP.

The other residential typologies of *Shop-Top, Apartment – Residential* and *Garden Townhouse/Apartment* would attract Council's existing open space contribution requirement. Council may also consider introducing a DCP across activity centres to contribute to a general fund which provides community or development infrastructure to serve a growing population.

# 1 OVERVIEW

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'Community benefits' as defined for the purpose of this Discussion Paper are contributions that a developer makes towards the provision of essential community infrastructure by a local Council or State Government, as a part of negotiating a development approval. Community benefits are also commonly referred to as 'public benefits' or 'developer contributions'.

Community benefits can be levied to fund identified infrastructure projects as a part of a development site, or taken as contributions to a community infrastructure fund for other projects within the municipality. They can also be provided in the form of agreements for use of a designated part of the proponent's land, for example, as public open space or pedestrian links.

The type of community infrastructure that might be funded by community benefits (and either provided on- or off-site) can be broadly categorised as:

- General infrastructure, such as roads, carparks, footpaths, drainage, streetscape improvements or open spaces
- Community amenities, such as community hubs, libraries, sports facilities or health centres
- Identified shortfalls in specific uses, such as office space or affordable housing.

In some instances, the provision of community benefits is a statutory requirement, such as the open space contribution which is levied with every subdivision approval. In other circumstances, community benefits are negotiated between the responsible authority (most often a local Council) and the developer, sometimes to allow a developer to achieve greater development yield or return.

This paper outlines the current statutory mechanisms within the Victorian planning system to determine or negotiate community benefits. This relates to infill development in existing activity centres or residential areas, as well as greenfield development.

While there are other types of indirect community benefit that may be considered in the development approval process, such as the creation of jobs, it is only infrastructure provision that is considered in this paper.

We would note that as some of the information contained in this Paper is of a legal nature, review of the information by a legal practitioner is advisable.

## 2 PRINCIPLES OF COMMUNITY BENEFITS

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The Standard Development Contributions Advisory Committee *Report 1 'Setting the Framework'* (2012) provides background on the principles of community benefits.

In the Victorian context, a planning appeal outcome known as the "*Eddie Barron decision*" was a landmark case for the understanding of the legal principles which underpin development contributions within the framework of the Victorian Planning System [*Administrative Appeals Tribunal, Eddie Barron Constructions Pty Ltd v Shire of Pakenham & Anor [1990] 6 AATR 10*].

The decision provided a definition of a 'development levy' as follows:

*A development levy is a monetary contribution, or a contribution in kind through undertaking works, to the public sector by an individual involved in the land development conversion process. Such contributions are for the purpose of funding infrastructure, the need for which has arisen as a direct result of development taking place.*

*In this context infrastructure refers to all physical facilities and services required to create a workable community with an acceptable standard of health, safety and amenity for all residents.*

The Eddie Barron decision laid out the 'first principles' for implementation of development contributions in Victoria, which comprise the following criteria that must be met before a levy could be validly imposed as a planning permit condition:

1) *Need*

*The need created by the development and the measures to satisfy the need must be adequately identified.*

2) *Equity*

*The payment or levy must be a fair and reasonable apportionment of the cost of implementing the need satisfaction measures.*

3) *Accountability*

*The responsible authority should implement procedures to ensure that the money collected cannot be used for any purpose other than that for which it was levied and which clearly show how, when and where the money collected is spent.*

4) *Nexus*

*There must be a reasonable nexus between the development and the need satisfaction measures.*

Regarding the fourth point, 'nexus' the Tribunal found that a distinction needs to be drawn between community facilities needed by the larger planning unit and local facilities which will be needed by the development itself.

[Standard Development Contributions Advisory Committee *Report 1 'Setting the Framework'* (2012)]

### 3 EXISTING MECHANISMS TO ACHIEVE COMMUNITY BENEFITS

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Within the Victoria planning system, a range of mechanisms are available for Councils or the State Government to collect community benefits. These mechanisms are governed through four different Acts of Parliament - the *Planning and Environment Act 1987*, the *Subdivision Act 1988*, the *Building Act 1993*, and the *Local Government Act 1989*.

The following mechanisms could be applied within Glen Eira:

- Development Contributions Plans (DCPs)
- Voluntary agreements ('Section 173 Agreements') made through the planning and building permit processes or Planning Scheme Amendments.
- Public open space contributions collected through the Planning Scheme, under Clause 52.01
- Special rates schemes levied by Council
- Cash-in-lieu contribution towards the provision of public car parking.

An outline of these relevant mechanisms is provided in this chapter, with an overview of the advantages and disadvantages of each.

Other existing mechanisms available in Victoria apply only to greenfield areas – the Growth Area Infrastructure Contribution and Infrastructure Contributions Plans.

#### DEVELOPMENT CONTRIBUTIONS PLANS (DCP)

Under the *Planning & Environment Act 1987*, Development Contributions Plans are used (mostly by local Councils) to fund new or upgraded infrastructure, either through payments or works-in-kind by the proponent.

A DCP sets out the works that will be undertaken for a defined area, the timeframe in which they will be completed or the levies that are required to be paid.

Once approved, a DCP is implemented through Clause 45.06 of the Planning Scheme with the application of a Development Contributions Plan Overlay (DCPO). The DCPO indicates the area covered by the DCP, and schedules to the overlay specify the levies that apply to each area. Under the DCPO, the DCP is an Incorporated Document.

The *Development Contributions Guidelines* (DSE, 2007) outlines the following principles for DCPs:

- They must have a strategic basis
- The infrastructure to be provided through a DCP must serve a wider catchment than an individual development site and be used by a broad section of the community
- 'Need' must be demonstrated by projected future share of usage of infrastructure
- Nexus between new development and the need for new infrastructure must be demonstrated

- DCPs must have a reasonable time horizon (up to 20-25yrs)
- Infrastructure costs must be apportioned on the basis of projected 'share of usage'
- The DCP imposes a binding obligation upon the infrastructure provider to provide the infrastructure
- Proper financial accounts must be kept to demonstrate levies collected are used to provide the infrastructure specified in the DCP
- Calculation of levies within the DCP must be documented and justified, and
- The DCP must be in the planning scheme.

The *Development Contributions Guidelines* nominate DCPs as suitable mechanisms to fund community infrastructure within established urban areas experiencing dispersed new development, however, state that in this situation the council can collect a proportion of the cost of providing the infrastructure but is unlikely to recover the whole cost.

A DCP allows collection of infrastructure costs as part of either the planning scheme amendment, planning permit or building permit processes.

The advantages of DCPs are that they:

- Require the integration of the provision of infrastructure with the strategic planning framework for the municipality
- Enable infrastructure costs to be shared amongst multiple contributors, and in an equitable way
- Can enable the earlier delivery of infrastructure than if its provision is dependent upon general taxes or rates
- Provide certainty about the delivery of infrastructure for the community and developers
- Provide developers with certainty that the money that they contribute will be accounted for separately and spent on the infrastructure it was collected to provide, and
- Require a planning scheme amendment involving public consultation through the exhibition process.

The Standard Development Contributions Advisory Committee *Report 1 'Setting the Framework'* (2012) provides an overview of issues in relation to the use of DCPs in metropolitan infill areas. The report notes that while DCPs are used extensively in greenfield areas, they are less often used in existing urban areas for the following reasons:

- DCPs are highly complex and therefore costly to prepare
- They require a planning scheme amendment to change
- It can be difficult to satisfying the relevant tests to demonstrate need and nexus
- Difficulty in identifying projects with clarity for inclusion in a DCP
- Concern that any identified unfunded liability will become the responsibility of the council

- A lack of specific awareness of the incremental impact of infill development
- Challenges associated with introduction of a contribution that may affect the timing and rate of development
- A general view that the DCP system is not suited to infill locations
- A preference for more flexible Section 173 Agreements as a mechanism for infrastructure provision on key redevelopment sites.

### INFRASTRUCTURE CONTRIBUTIONS PLAN

Ultimately, the DCP may be replaced with the Infrastructure Contributions Plan (ICP) mechanism.

The Victorian Development Contributions system is currently under review, and a new Infrastructure Contributions Plan (ICP) system has been established to replace the existing DCP system in areas that are expected to undergo significant housing and employment growth, primarily greenfield growth areas and urban renewal areas (known as Strategic Development Areas). The existing DCP system will continue to operate in other areas.

Legislation to implement the new system has been introduced into the *Planning and Environment Act 1987* through the Planning and Environment Amendment (Infrastructure Contributions) Act 2015.

The Act "introduces a new simple, standardised and transparent infrastructure contributions system for levying development contributions towards the provision of infrastructure in growth and strategic development areas across Victoria" (DTPLI 'improving-the-system/ infrastructure-contributions-reform').

### VOLUNTARY AGREEMENTS: 'SECTION 173 AGREEMENTS'

Voluntary agreements, known as 'Section 173 Agreements' are made under Section 173 of the *Planning and Environment Act 1987*. They provide an opportunity for landowners, the council and other parties to freely negotiate agreements for the provision of infrastructure, at the time a development proposal or planning scheme amendment is being considered by Council.

An agreement can be used to place an obligation on the parties to provide infrastructure and/or pay for infrastructure. They can also be used to secure public open space or access rights through a development site as part of the approval.

The *Planning and Environment Act 1987* sets out that a Section 173 Agreement can provide for the following:

- the prohibition, restriction or regulation of the use or development of land
- conditions subject to which the land may be used or developed for specified purposes
- any matter intended to achieve or advance the objectives for planning in Victoria under the planning scheme or an amendment.

The advantages of Section 173 Agreements for Providing Community Benefit are that they:

- Run with the title to the land and is binding on future owners
- Can be specific to a certain site, a level of detail or site-specific information
- Can expressly require something to be done/provided
- Can include positive covenants and performance criteria or more innovative arrangements for the use or development of land.

The disadvantages of Section 173 Agreements are that they:

- Can be complex and costly to administer
- Are difficult to amend or end, particularly after the affected land is subdivided
- Do not have to be linked with strategic infrastructure provision.

### **PLANNING SCHEME CLAUSE 52.01 - PUBLIC OPEN SPACE CONTRIBUTION AND SUBDIVISION**

Clause 52.01 of the *Victorian Planning Provisions*, 'Public open space contribution and subdivision', specifies mandatory public open space contributions to be provided to Council in applications to subdivide land.

Open space contributions can be satisfied in either land provision or monetary payment (or a combination of both) in accordance with any local policy guidance on where land and cash contributions are preferred. Cash contributions can be used by a Council to acquire land or undertake capital works anywhere in the municipality in which they are collected and can be accumulated over time to fund major projects. There is no statutory requirement for cash contributions to be applied to the local area in which they are collected.

The open space contribution for subdivision in Glen Eira is 5.7%. This excludes the area known as the Caulfield Village as delineated in the Caulfield Mixed Use Area Incorporated Plan February 2014.

The advantage of this mechanism is that it is a well-established means by which new public open space can be funded. The disadvantage is that money collected is usually allocated to a general open space fund and there is no clear nexus between the development project and the open space improvement.

### **SPECIAL RATES SCHEMES**

Under the *Local Government Act 1989*, a council can declare a 'special' rate or charge or a combination of both on rateable land. This is to pay specific council expenses or repay an advance, a debt or a loan, for performing a function or exercising a power the council considers of special benefit to the people required to pay the rate or charge. Councils may declare a special rate or charge for street construction on any land, including non-rateable land (except Crown land).

Before a council levies a special rate or charge to recover more than two thirds of the total cost of a service or works it must allow affected ratepayers to object and may not proceed if a majority of those ratepayers object.

This mechanism is also a well-established means by which new capital works can be funded, and has a number of advantages:

- It provides for flexibility in terms of the works funded.
- Individual funds can be set up to collect money for specific projects, thereby creating a clear link between the funding and the output.

### **CAR PARKING CONTRIBUTION SCHEMES**

Where car parking cannot be provided on a development site, Council may elect under the *Local Government Act* to collect a cash-in-lieu contribution or apply an ongoing special rate which provides public car parking elsewhere.

The monetary value of car parking spaces to be compensated can be set out in a Parking Overlay in the Planning Scheme, which applies to a specific geographic area such as an Activity Centre.

This mechanism is also a well-established means by which new infrastructure can be funded, and can have a clear connection between funds and infrastructure provided.

### **OVERARCHING ISSUES IN APPLYING COMMUNITY BENEFITS SCHEMES**

A number of key issues have been identified in relation to the operation of existing funding mechanisms.

- Unless Council has an adopted Community Benefit Strategy, each proposal is negotiated in isolation, on a case by case basis. The nexus between contributions collected by Council and how funds are divested is therefore often unclear.
- Public space or access provided on-site can have issues around the ongoing management of the space; whether it is managed by the body corporate or by council.
- Within established urban areas, developer contributions will most likely only fund a proportion of infrastructure requirements.
- Land contributions are generally only practical where sites are of sufficient size to accommodate open space of suitable size and quality without compromising development opportunities for the balance of the land.
- Large parcels identified in their entirety as 'future open space' may give rise to compensation claims from landowners if the sites are compulsorily acquired (for example, using a Public Acquisition Overlay and funded through open space contributions).
- There is often a time lag between collection and expenditure, resulting in delayed provision of required local infrastructure and the risk of cost escalation (especially land value appreciation) reducing the ultimate scale and value of open space that can be delivered.

## 4 EXAMPLES OF COMMUNITY BENEFIT SCHEMES

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Examples of community benefit schemes, within Victoria and beyond, have been considered in order to more broadly explore the types of funding mechanisms that exist.

### CITY OF MELBOURNE FLOOR AREA UPLIFT SCHEME

Amendment C270 to the Melbourne Planning Scheme introduced greater controls for development in the Central City, in particular in terms of overall building height, podium height and setbacks.

The amendment also introduced a system of floor area ratio and uplift requirements, with delivery of associated public benefits for buildings above a nominated development threshold, implemented through the schedules to the Capital City Zone.

A new local policy at Clause 22.03 (Floor Area Ratio and Delivery of Public Benefits) was introduced to guide the delivery of the associated public benefits sought in the schedules to the Capital City Zone.

Under this system, a public benefit provided must be listed in and valued in accordance with the Public Benefits Schedule, and of equal or greater value than the value of the Floor Area Uplift that forms part of the proposed development.

The Floor Area Uplift comprises the additional floor area achieved above the base floor area ratio of 18:1 and calculates the extra commercial value of this extra floor area. A 10% public share of this value is required which translates to the value of the benefit to be provided by the development.

The public benefit is to be agreed on prior to further appraisal of the development, and through a Section 173 Agreement provided through the development in one of the following five public benefit categories set out in the Guidelines, namely:

- Competitive design process to promote design excellence in the proposal
- Commercial office use on site for minimum 10 years
- Social housing on site
- Publicly accessible enclosed areas on site
- Publicly accessible open space on the site (additional to any public open space contribution under Clause 52.01 of the Planning Scheme)

The public benefits are to be delivered on-site through the development and cash in-lieu is not an option.

[<http://www.melbourne.vic.gov.au/building-and-development/urban-planning/melbourne-planning-scheme/planning-scheme-amendments/Pages/amendment-c270-central-city-built-form-review.aspx>]

## CITY OF MELBOURNE ARDEN-MACAULEY

Amendment C190 rezones land and applies built form controls to facilitate urban renewal in the Arden Macaulay area. The amendment is currently before the Minister for assessment, after recommended changes from the Panel hearing process were adopted by the City of Melbourne.

Through DDO60 the amendment sets a Preferred Maximum Height and an Absolute Maximum Height, with a permit only to be granted to exceed the Preferred Maximum Height if the development clearly demonstrates each of the following:

- *Provides a demonstrable benefit to the broader community beyond the requirements in this scheme.*
- *Displays exceptional quality of design.*
- *Makes a positive contribution to the quality of the public realm*
- *Achieves the Design objectives of this clause and built form outcomes for the area.*
- *Provides high quality pedestrian links where needed*
- *Maintains good solar access to the public realm.*

The version of DDO60 considered by the Panel included the first criteria point and two additional criteria considering overshadowing of the public realm, and the visual bulk of upper floors as seen from adjoining public and private open space of adjoining low scale residential development. However, the Panel expressed concern regarding the use of the DDO to extract 'de facto' development contributions or as a 'de facto' method of inclusionary zoning. It stated that whether or not buildings should exceed the preferred maximum height should be assessed on built form issues, and accordingly added additional points to the criteria whilst allowing for greater flexibility in achieving positive urban design outcomes.

The DDO also allows for buildings to exceed the Absolute Maximum Height in a particular area if a school or more than 10% public open space is provided.

## MORELAND DEVELOPMENT CONTRIBUTIONS PLAN

In 2015 the City of Moreland introduced a DCP to the entire municipality, implemented through DCPO Schedule 1 (Amendment C133).

The DCP was introduced as a levy for new developments that are proposing to increase the number of dwellings on a site or increase leasable commercial or industrial floor area. Council introduced the DCP as a formal, lawful and equitable way to collect development contributions to provide essential infrastructure to cope with the growing population as a result of new development.

The levy is paid to Council, who is responsible for providing the new infrastructure, and is used to partly fund identified infrastructure needs, with Council funding the balance of the cost.

There are two parts to the DCP levy:

- The 'Development Infrastructure Levy' applies to all leviable developments and contributes to funding development infrastructure such as roads, footpaths, draining and streetscape works.

- The Community Infrastructure Levy applies to residential development only and contributes to funding community infrastructure such as neighbourhood houses, child care centres and maternal and child health centres.

[<http://www.moreland.vic.gov.au/planning-building/moreland-development-contributions-plan-dcp/>]

### **CITY OF PORT PHILLIP: PERCENTAGE FOR ART**

The City of Port Phillip have pioneered an innovative scheme to fund additional public art through development contributions, by way of its '*Percentage for art*' scheme.

Adopted in 2002 through its Urban Art Strategy, the scheme is applicable to commercial developments with a project cost in excess of \$2,000,000 and requires a percentage of the total project cost to be contributed towards public art.

Proposals must address principles of the Urban Art Strategy to reflect the identity of place, community values and innovation and creativity, and to demonstrate appropriate aesthetic appeal, functionality and utility in design development.

[<http://www.portphillip.vic.gov.au/information-for-developers.htm>]

### **CITY OF HOBART: HEIGHT LIMITS IN THE CBD ZONE**

Clause 22.4.1 *Building Height* of the Hobart Interim Planning Scheme 2015 provides a discretionary Amenity Building Envelope, with development outside of the Amenity Building Envelope only to be approved if it '*provides significant benefits in terms of civic amenities*', and will not have a negative impact on the streetscape and townscape through siting bulk, design, wind and overshadowing.

The wording of the requirement for public benefit is untested and does not include quantifiable targets, with discretion provided where:

- (i) *it provides significant benefits in terms of civic amenities such as public space, pedestrian links, public art or public toilets, unless an extension to an existing building that already exceeds the Amenity Building Envelope; and*

The requirement is not guided by specific strategy or policy guiding what civic amenities are to be provided and where.

[Hobart Interim Planning Scheme 2015 – Clause 2.4.1]

### **CITY OF GOSNELLS, WESTERN AUSTRALIA – RESIDENTIAL DENSITY BONUSES POLICY**

The City of Gosnells in Western Australia has adopted a Local Housing Strategy that promotes density bonuses on certain lots to facilitate enhanced residential environments. Overall, the aim of this policy is to encourage greater consolidation of, and better urban design outcomes for, residential areas.

The lots identified as eligible for density bonuses include those with particular design considerations such as lots on a corner, abutting public open space or near to pedestrian access ways.

To implement part of this policy, the City adopted an amendment to the planning scheme that provides for multiple dwellings and subdivision at a density of up to 30 dwellings/ha where the subject lot is located on a corner.

While this example scheme is not set up to generate community benefits, it is an example of identifying strategic conditions for residential infill that can deliver urban design benefits. A scheme such as this could be coupled with a developer contributions scheme when the density bonus is triggered.

## **INCLUSIONARY ZONING**

Inclusionary Zoning requires the incorporation of a certain proportion of permanently affordable housing in all development projects within an area. This approach to provision of affordable housing has been long discussed in Victoria, but not yet implemented.

Inclusionary Zoning requires a developer to make a cash-in lieu payment if the housing cannot physically provided on-site, so that the required number of units can be supplied elsewhere in the neighbourhood.

The affordable housing generated by Inclusionary Zoning would be transferred to a not for profit, Government registered, Housing Association. The housing would be retained in perpetuity for rental to lower income households, including key workers.

[<https://www.sgsep.com.au/publications/economic-merits-inclusionary-zoning-affordable-housing-sgs-occasional-paper>]

The Victorian State Government has announced it will commence a pilot program to deliver 100 new social housing dwellings on government land as part of developments in established suburbs. This pilot is part of a program so private developers can innovate to provide inclusionary housing in new developments.

[<http://www.premier.vic.gov.au/unlocking-new-communities-and-affordable-housing/>]

## 5 RECOMMENDATIONS FOR GLEN EIRA

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The case studies highlight two potential methods of achieving community benefit in the context of infill development in Glen Eira – cash-in lieu contributions and provision of benefit on-site. Both can be achieved through existing mechanisms of DCP, DCPO and Local Policy.

The case studies also reveal that a number of steps are critical to the success and legitimacy of a community benefits scheme:

- Development of a Community Benefit Strategy that provides strategic justification for contributions or provision agreements,
- Detailed economic and property analysis to understand the market and capacity, and
- Legal and statutory assessment to ensure legitimacy of mechanisms and translation into statute.

### COMMUNITY BENEFIT STRATEGY – STRATEGIC APPROACH

A Community Benefit Strategy would explicitly state what community infrastructure is needed, where it should be located, how much it can be expected to cost, and what mechanisms can be used to capture contribution or provision. The strategy could be part of a broader strategic plan for an area (ie structure plan).

The primary outcome of this strategy would be a defined schedule of projects to be funded and shortfalls to be addressed through developer provision. Council could set up a special fund to provide transparency in where contributions come from and what they contribute to.

### ECONOMIC & PROPERTY ANALYSIS

Economic and property analysis should be undertaken to understand the infill development market, and the capacity of this market to contribute to community needs. This analysis could also identify the potential economic return of different community benefits.

However, the primary outcome of the analysis would be to identify the appropriate rate of developer contributions. Additionally, the analysis could identify the value of additional development allowable through increased floor area or building height bonuses and in turn the proportionate rate of community benefit provision or contribution.

### LEGAL & STATUTORY CONSIDERATIONS

Consideration of the legal and statutory implications of any contributions plan or bonus scheme is integral to its successful implementation.

The principles of equality, consistency, accountability and transparency must be seen to be clearly applied to the securing of benefits and implementation of any contributions plan or bonus scheme.

## COMMUNITY BENEFITS FOR DEVELOPMENT TYPOLOGIES

Community benefits could be tailored for each of the development typologies currently under development to be applied within Council's activity centres.

The *Apartment - Mixed Use* typology has the potential to attract height or floor area bonuses for provision of community benefits, either on-site or through a contributions fund. This approach is similar to that outlined in the Arden Macaulay and Central City Floor Area Uplift draft amendments reviewed in section 4, however takes note of the recommendations and criticism from the panel in each of the amendments.

Proposals above the nominated discretionary height limit (or floor area ratio) would trigger a requirement to enter into an agreement with Council to provide community benefit through the development. This agreement would need to be informed by a CBS that details what community benefit is needed, where it would be appropriate, how much it would cost, and when cash-in-lieu is appropriate.

In the example of the *Apartment - Mixed Use* typology, it may be possible to set multiple thresholds of development at which different levels of community benefit provision / contribution is required (on-site or through cash-in-lieu, in accordance with the CBS). This could be based upon height, floor area ratio or density:

- A standard developer contributions levy may be charged for all development up to an as of right height that is the podium height of the typology (hypothetically 3 floors)
- Development beyond podium height up to the 'discretionary maximum height' would be approved subject to the second tier community benefit provision (and meeting built form controls)
- Development beyond 'discretionary maximum height' and up to 'overall mandatory height' is subject to third tier community benefit provision (and meeting built form controls).

The other residential typologies of *Shop-Top*, *Apartment – Residential* and *Garden Townhouse/Apartment* would attract Council's existing open space contribution requirement. Council may also consider introducing a DCP across activity centres to contribute to a general fund which provides community or development infrastructure to serve a growing population.

## RECOMMENDATIONS

We recommend the following process to develop these thresholds:

- Set podium, discretionary and upper mandatory height limits
- Develop community benefit strategy that explicitly states the type of amenity that is to be provided by developers and relate this to development typologies and the value of these amenities
- Concurrently undertake market research to identify the market thresholds at which it is attractive to enter into the bonus scheme, at which point a community benefit may discourage development in the area, and what the proportionate rate of community benefit is to be applied (to either the levy or the bonus scheme),
- Amend the planning scheme to include the development limit thresholds and DCP.

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