Submissions in Reply for the Planning Authority

The *in-between* step

1. We agree with Mr McPherson and Mr Sheppard that some form of in-between step should be provided for in the planning controls so that there is a better management of the development of the precinct between the urban structure plan level as set out in the CDP and the planning permit. This would provide for better co-ordination of the development of precincts and sub precincts identified in the CDP.

2. There are no doubt a number of different forms of drafting that could be employed. The name of the relevant in between plan could also take various forms. For example "masterplan" "urban framework plan" "precinct plans" or "sub-precinct plans". Whatever they are called is not relevant. It is what they do which is relevant.

3. With that in mind, a possible (but not the only) form of drafting to be inserted into the Panel Version CDZ2 Schedule is similar to the following.

> A masterplan must be prepared for each of the sub- precincts shown in red, green and blue in the diagram below and the first masterplan to be approved must also include Central Park:
>
> 
>
>
> Other than for the redevelopment of an existing building for its existing use, a permit for buildings and works or subdivision within a sub-precinct set out below cannot be granted until a masterplan has been prepared.

The masterplan must be to the satisfaction of the responsible authority.

A planning permit must be generally in accordance with the approved masterplan.

A masterplan must show or include the following:

- The proposed pattern of subdivision of the land other than the subdivision of buildings.
- The location of roads, lanes and accessways;
- How buildings will address roads, lanes and accessways;
- The proposed building envelope for each lot indicating:
    - height of the building envelope; and
    - setbacks from boundaries.
- location of all vehicle and pedestrian ways.
- location of car parking areas.
- location of all public open space and any areas available to the public.
- a materials pallet
- a schedule of streetscape furniture and way finding signage schedule
- how development in that masterplan will provide for integration with development and roads or lanes on adjoining land including land which is yet to be developed
- location and details of development contribution projects
- location and details of affordable housing projects

The masterplan may be amended with the consent of the responsible authority.

4. We submit that the above formulation will address the matters raised by a number of experts. As for the town centre concept plan, we think that it is always better that a plan like a CDP or a structure plan provide both **plan and text** based guidance not just text based guidance. We think that the current Town Centre Concept Plan is inadequate and in view of the fact that it transpires that it was prepared on the basis of Document 40 it is inappropriate. We propose that Council and the landowners should agree on a revised plan and that that plan be inserted into the place of the existing plan. We also submit that whatever plan is adopted, it should be identified as an indicative plan which illustrates one way that the Design Guidelines may transpire.

Infrastructure Triggers and responsibility

5. While the DCP contains timing for delivery of infrastructure, the DCP does not act as a statutory requirement for the delivery of the infrastructure. To provide for appropriate triggers, the triggers need to be drafted into a binding document such as the CDP (as requirements) or directly into the CDZ Schedule. Furthermore, the triggers should be designed so that the obligations fall on the developers south of Griffiths Ave given that the area north of Griffith Ave does not contain a substantial landowner and may not be developed for some considerable time.

6. The provisions should include:

Clause 3.0 of CDZ2 should be amended to include a specific application requirement for a Traffic Impact Assessment Report that specifically addresses the capacity of intersections in the area and the timing of the provision of the intersection projects identified in the Development Contributions Plan.

7. Then the following should be included as a new requirement (R13) in the place of existing R13 of the CDP under the heading Integrated Transport (after Plan 3).

- Before the occupation of any new building within the precinct Intersection 5C [South Drive/East Boundary Road] **must** be constructed and completed.
- Intersection IN-1 (East Boundary Road/North Road/Murrumbeena Road) **must** be constructed and completed:
    - before the commencement of the use of any building where a traffic impact assessment forming part of a permit application that includes that building identifies any movement at the intersection increasing by 0% or more and also shows that the proposal under consideration generates more than 200 vehicles movement in a peak hour; and in an event –
    - before the construction of the North Drive intersection.
- The intersection of North Drive and East Boundary Road must be constructed and completed prior to the commencement of use of any supermarket floorspace within the Retail Sub-Precinct.
- Intersection IN-3 (Cobar Street, North Road and Crosbie Street) **must** be constructed and completed:
    - once the traffic generated by the precinct exceeds 2000 vehicle movements in a peak hour unless it can be demonstrated that the local traffic network can continue to operate effectively for all modes including pedestrians and cyclists including the East Boundary Road/North Road/Murrumbeena Road intersection, to the satisfaction of the responsible authority and Department of Transport; and in any event,
    - before the issue of a Statement of Compliance, or the commencement of development of, the final substantial stage of the development of the precinct located south of Griffith Avenue.
- The milestones referred to in Requirements ##, ## and ## may only be varied if
    - the Responsible Authority agrees; **and**
    - there is a legal agreement made under section 173 of the Planning and Environment Act 1987 which contains a legally enforceable obligation requiring the construction of the intersection/roadworks at a specified time and for there to be no further development of further traffic generating activities unless the relevant project is completed.

Overshadowing

8. The Council's overshadowing standards were developed having regard to a Central Open Space layout that is similar to that shown in document #29. We further refer to Requirement R7 (which has not been disputed) that requires:

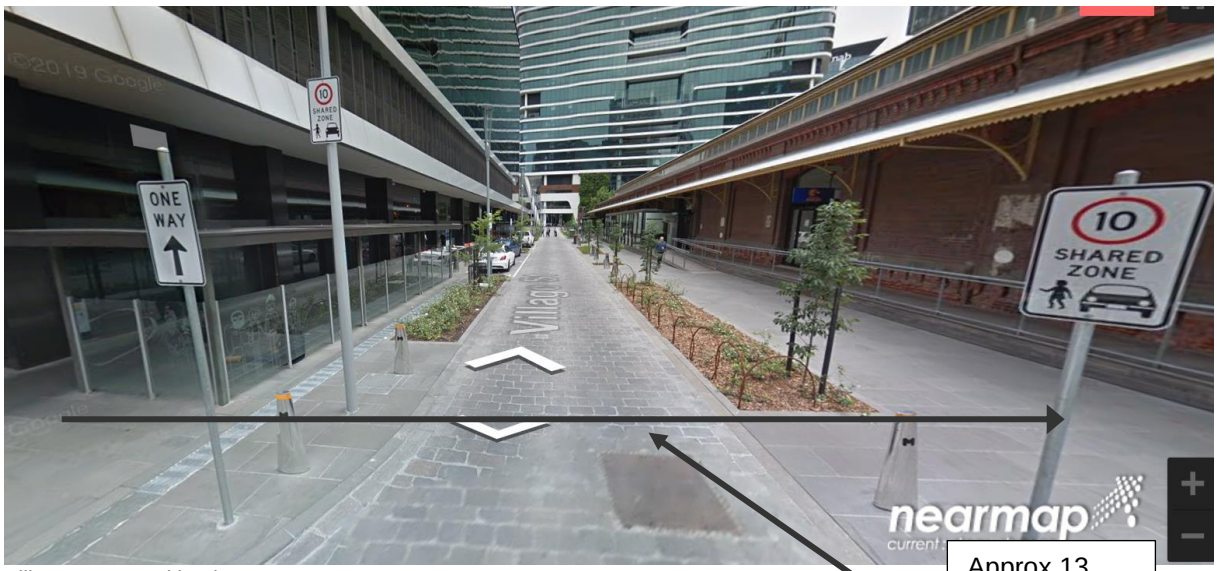
> A shared road must be constructed to the north hand west of the central park prior to or concurrent with the development of the Central Park.

9. In our response to Mr McPherson's recommendations we have provided an alternate form of this recommendation which is more specific.

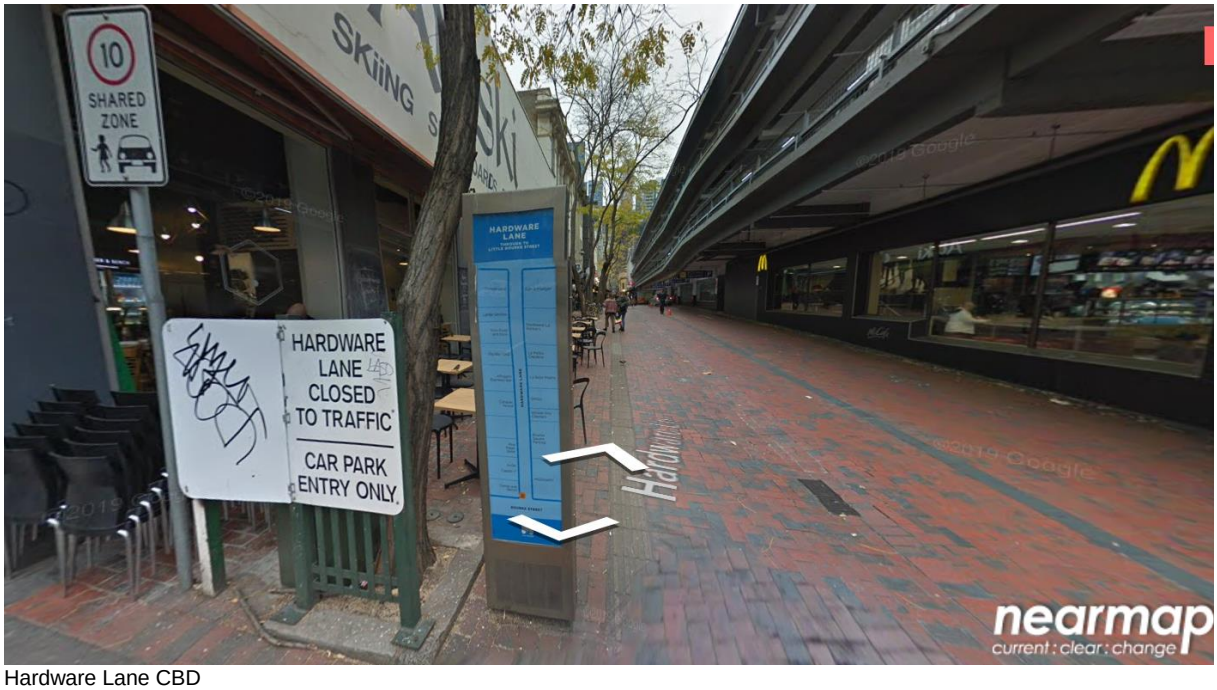
10. The concept plan clearly shows a shared road as did the Structure Plan. This was somewhat blurred in the CDP at Figure 1.

11. Notwithstanding, Mr McGauran's shadow analysis adopted a footpath of 2.5 metres wide. Thus he was able to show very unusual impacts on built form which he, quite reasonably stated were impractical. But, they were only impractical because they were developed on the basis of a misrepresented model. The shadow impacts shown for the area with the local access road show a more reasonable and practical built form. These are also more consistent with MGS's Urban Design Report.

12. Shared roads are not uncommon in Melbourne. Some examples of shared roads are shown below.

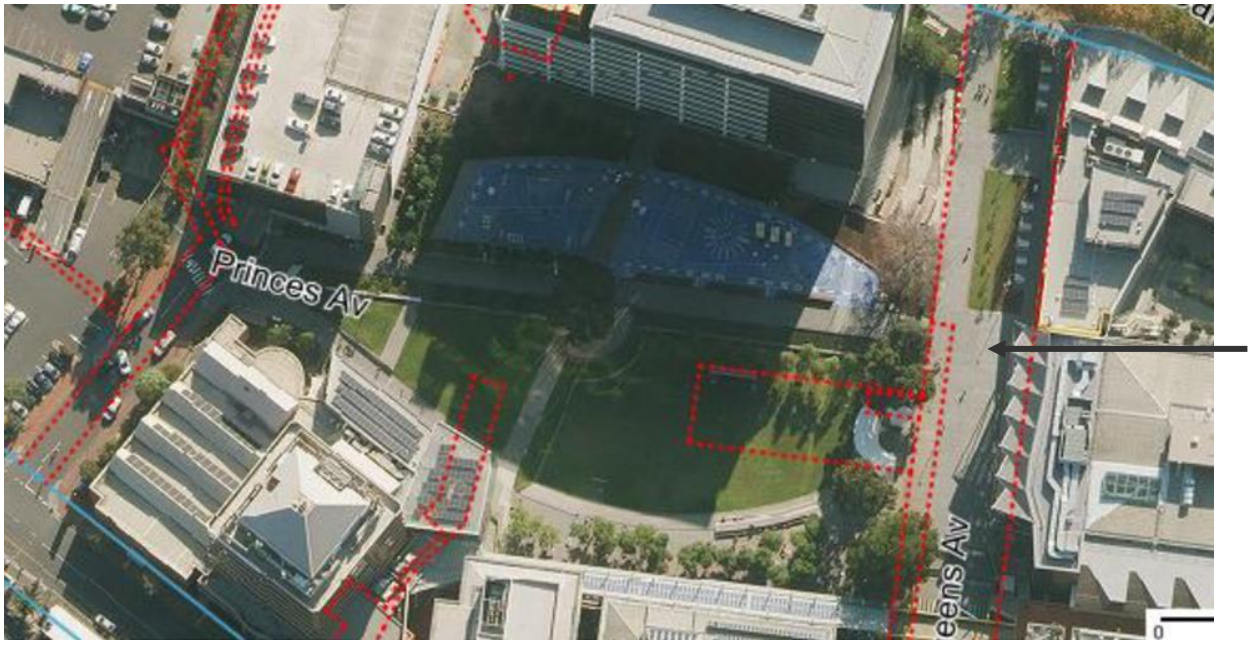


Village Way, Docklands



Hardware Lane CBD

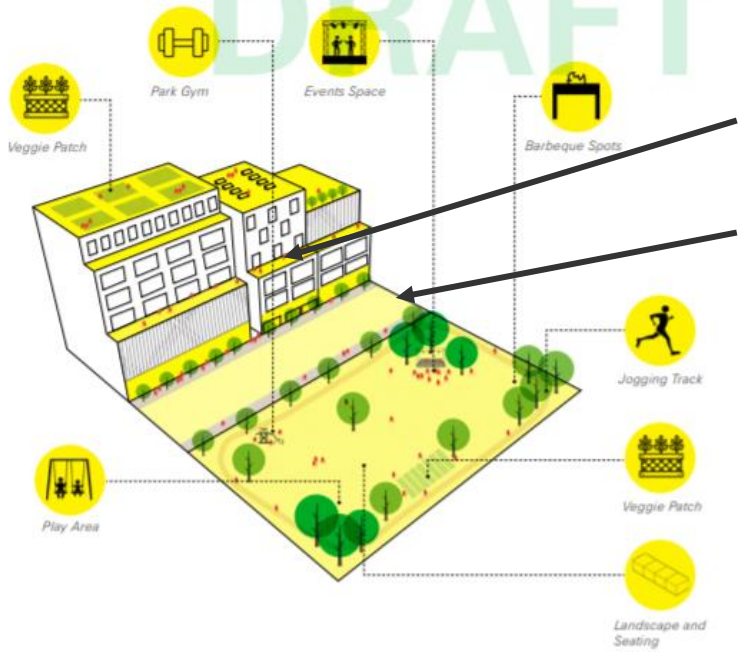
McKillop Street CBD



Queens Ave Shared Road at Caulfield Monash University Campus

13. The 2.5 metre width shown by Mr McGauran is not only not what Council proposed but neither is it practical or realistic. This dimension impacts significantly on the shadow analysis. Thus with a 2.5 metre width, it is easy to be critical of the Council's shadow provisions. But that is not what was proposed when the standards were devised. The standards were devised based upon what the landowners had proposed in their Central Park concept plan which importantly, showed either a road or a shared road around the perimeter of the Central Park. The design shows how these area were to be effectively incorporated into the park design.

14. Council is sceptical about the concerns expressed by Mr McGauran. Essentially, his evidence is predicated on his opinion that a 3 storey podium with upper forms set back above the podium is not an effective perimeter to the large park. The panel should note that the MGS urban design report does not seem to share that opinion. For example, the following diagrams and text from the MGS urban design report seem to approach the design as quite appropriate.



Note the 3 storey podium and set back upper levels including a setback 7th level in the far left building form.

Note also the road width.

(Source - page 36 of MGS Urban Design Report).

15. The MGS Urban Design Report was one of the pieces of analysis upon which subsequent overshadowing standards were devised.

16. Accordingly, Council is still of the view that the adopted approach to the Central Park is appropriate. However, Council submits that the podium around the park being able to be built to 15 metres with 4 stories rather than 3 stories as elsewhere. This would require a change to what is currently a 3 storey podium limit in Table 1. Furthermore, the shared road is to be reduced to 9 metres on the west side noting the Landowners proposal to extend the local road across the northern abuttal of the Central Park for its full length.

17. This then leads to a change in the overshadowing provisions.

18. Council submits that the overshadowing requirements should be deleted from the CDZ2 (schedule) and left in the CDP as a Requirement (R8) but the Requirement should be amended to read as set out below. We concede that the shadow avoidance provisions on the south side of South Drive are probably not required as is the case with the impact on Virginia Park by the limited extent of built form (in Commercial West only) that is not required to be setback by the width of a street.

19. Accordingly, we suggest the following approach:

Delete the opening paragraph from Requirement R8 and then substitute the following for the entire Requirement R8:

Central Park and Town Square.

- At the **equinox**, no shadow is to be cast over ~~any part of~~ **Central Park** between 10am and 3pm.
- At the **equinox**, no more than 20% of the **Town Square** is to be in shadow between 10am and 3pm.
- At the **solstice** no shadow is to be cast by any built form above a hypothetical 15 m built form at the north and west boundaries of any shared road and local access road abutting Central Park and Town Square between 11am and 2pm.
- ~~At the **solstice** no shadow above may be cast over more than 25% of the Central Park public open space between 11 am and 2 pm.~~

20. The overshadowing provisions below (for all other precincts) then get moved to become Guidelines

North and South Drives.

- At the **equinox** no shadow should be cast beyond the southern kerb line of North Drive ~~and South Drive~~ between 10am and 3pm.
- At the **equinox** no unreasonable overshadowing should be cast over the southern kerb line of South Drive between 10am and 3pm.

Virginia Park and Marlborough Street Reserve

- At the **equinox**, other than from the Commercial West sub-precinct, no shadow on any part of Virginia Park and Marlborough Street Reserve for at least 5 hours.
- ~~At the **solstice** no shadow may be cast over more than 25% of any other public open space between 11am and 2pm.~~

~~***Public Open Spaces Overall***~~

- ~~At the **solstice** no shadow above may be cast over more than 25% of any other public open space between 11 am and 2 pm of the area of any public open space described in Plan 2 of the CDP.~~
- ~~No unreasonable shadows over other public parks and gardens, pedestrian routes including streets and lanes and privately owned but publicly accessible spaces.~~

Building Heights and setbacks

21. The landowners position was submitted as being that for the Residential East and South sub precincts, the building heights can reasonably be set as Requirements which must be met (mandatory). This was on the basis that the east sub precinct is 3 storey maximum and the

south sub precinct being 4 storey maximum. For the south sub precinct, we submit that the height should be 3 storeys. However, if the landowner approach were adopted, the 4th storey should be required to be setback consistent with the AECOM review which identified a potential for a 4th storey at this interface

Council's position

22. We agree with Mr Gobbo that ordinarily:

- Requirements are fixed and mandatory and the schedule should say so.
- Guidelines are where the "generally in accordance with" has scope to allow other proposals to be considered.

23. The panel must therefore determine what approach is to be applied to the Mixed Use, Retail and Commercial North and West sub-precincts should be. If the panel does not agree with the Council formulation of *in accordance with* in the Council Preferred version (tab 4) then we submit that it should refer to *generally in accordance with*.

24. We submit that all setbacks can be drafted as Guidelines.

Dwelling cap

25. We note that the landowners seek the cap to be soft but have offered that if the dwelling numbers exceed 3000, they will make an additional contribution of affordable dwellings of 10%. Council's position remains that the cap should be a firm cap and it should not be compromised by the prospect of more affordable housing. The purpose of the cap is to encourage commercial development. It is a tool not unlike what Government has legislated in the C3 zone where maximum dwelling numbers are mandatory to preserve the primarily employment nature of an area. See below extract from the C3 zone:

> **Operation**
>
> The schedule to this zone may specify:
>
> - Objectives to be achieved for the area.
> - A maximum allowable percentage (**not exceeding 50%)** of the combined gross floor area of all buildings on a lot for dwelling and residential building uses.

Road cross-sections

26. We submit that the road-cross sections should be generally as proposed by Council in the exhibited CDP. All width reductions have had their impact on the public realm rather than the road pavement. We think inadequate attention has been given to the use of the space between the kerb and the street wall and too much emphasis has been on narrowing the cross-sections.

Submission of the VPA

27. The submission of the VPA identifies the differences in the approach between the VPA and Council. The table at clause 3.1 of their submission identifies the relevant points of difference and the approach that the VPA seeks to take.

28. It is unclear from the table what is to be made of Requirement R3, but it is clear that the VPA does not support a firm approach to height. We join issue with the VPA on that aspect.

29. The same applies to overshadowing. The VPA document would relegate the overshadowing provisions to guidelines. The analysis of the VPA did not identify reasons save to say that the various practice notes had not been met.

30. While we accept that we have the obligation to persuade the panel why mandatory provisions should apply, our submission did address these issues in some detail as did the evidence of Mr Reid in particular. Our submissions referred to the Fishermans Bend Panel on the very issue of overshadowing where in similar circumstances, the panel recommended the use of mandatory overshadowing controls (as well as mandatory height controls)

31. We did not address the question addressed by the VPA, namely what evidence is there of development exceeding the proposed control. This is because it is not practical or feasible to lead such evidence when the precinct amendment has not yet been adopted. But to the extent that this refers to urban areas generally where discretionary provisions operate, there is ample evidence of development exceeding existing controls.

32. The normal approach is to require a permit to be generally in accordance with the incorporated document. The incorporated document then identifies requirements (which must be met) and guidelines which should be met. If we understand the VPA's submission correctly, then they advocate for the use of those words – generally in accordance with – and the adoption of requirements which must be met and guidelines which should be met.

33. We note the VPA's observations regarding the 3000 limit being soft rather than hard. We note that they do not support the removal of the soft cap.

34. As for the first floor area and dwellings being permit required rather than as of right (as per the C1 zone), we again have a different view to the VPA but for a specific purpose. The

approach of the VPA equates the CDZ drafting on this element with a C1 zone. Our approach likens it more to a C3 zone. Most development on first floors in C1 zones is residential not commercial. That is why it is proposed to have the so called vertical zoning provisions in the zone. Coupled with guidelines such as G2 and G5, it is intended to try and encourage a mix of commercial uses at the lower levels of buildings not just at ground floor. Standard development generally provides all residential above ground floor. Some intervention is therefore required. We also think that this justifies the approach to require the vertical zoning.

35. While we do not agree with Mr McPherson that a council can exercise too much influence here in relation to land uses, consideration should be given to the following changes to the land use guidelines:

- Amending **G2** to read: Development fronting the central park should support the vision for an innovation precinct with commercial and complimentary uses within the podium levels of buildings
- Amending **G5** to read: Commercial uses are encouraged at ground level within the Mixed Use sub precincts, with high exposure uses fronting Collector Roads and Central Park, such as office lobbies, shops and cafes. Productive commercial uses are encouraged to front local access streets, pedestrian laneways and services lanes, including office, studios and workshops.
- Additional guideline after **G5** - Development within the town centre, including that fronting North Drive and the Town Square, should incorporate a mix of commercial, retail and community uses within the podium levels of buildings.

36. We note that G34 also touches on the issue from a building design perspective.

Drafting of the CDZ2

37. We have prepared a revised Draft of the CDP2 with our suggested changes as discussed through this and the Part B submission.

Drafting of the CDP

38. VPA's position seems to be that the whole of the CDP is to be drafted as Guidelines with no requirements (no mandatory requirements). We fail to understand how the CDP can deliver over time if this is the case. Putting aside the debate over height and shadows, other built form elements such as road cross-sections need to be firm.

39. In 2018, the VPA provided Council with a copy of the CDP after the DELWP required that it be converted into the current format. In the version that the VPA provided the implementation actions were converted into a combination of Requirements and Guidelines not just guidelines.

40. We note that we have made other recommendations for modifications throughout this closing submission.

Drafting of clause 53.01 schedule.

41. We propose modifications to the schedule. This is to delete all references to a contribution in respect of the land south of Griffith Ave and the substation noting that it is not required to make any further public open space contribution.

Drafting of the DCP

42. As noted in the Part B submission, and confirmed by Mr Shipp, the DCP needs to be re-run. To re-run the plan, the costings of project need to be finalised. There is no dispute about the costing methodology, only what should be costed. Even then, the dispute seems relatively confined to:

- The Cobar Street intersection and whether it requires a deceleration lane; and
- How the Community Facility is costed although Mr Gobbo noted that this matter is not pursued by the landowners.

43. The first bullet point requires the panel to make a recommendation and then the Planning Authority can the proceed with that recommendation in hand.

44. As for the classification of the community centre, we make submissions below.

The cost of the community facility.

45. The reclassification of some part of this project to Community Infrastructure Levy will likely lead to a shortfall in funds for this project bringing into question the timing of its delivery. There are two line items which are questioned in the evidence namely the line items *Innovation Hub* and *Ancillary Activities*. As can be seen from the attachment to the Prowse Cost Estimate, the Innovation Hub is actually multipurpose meeting space. Frankly, it is not clear what an innovation hub actually comprises. But whatever it is, presumably it requires some meeting space. The *Ancillary Activities* are toilets, kitchen facilities, verandahs, store rooms and the like. All of these ancillary activities may well be traced back to being ancillary to the MCH facility component. It may be that the extent to which it relates back to the Innovation Hub is so trivial such that it should be ignored.

46. Without further calculations being made and the adoption of some assumptions, it is not possible to say whether the cost allegedly not recoverable as DIL can be recovered as CIL. The cap on the CIL is somewhere in the order of $1150 per dwelling plus indexation to 2020 by the time this amendment starts. The current quantum of the CIL is $831. If it was thought necessary to do so, there is some capacity to make a further call on the CIL but only up to the current cap.

Other matters

47. In so far as Mr Shipp seeking changes which are acceptable and others which are not. Our response below is to the key changes and recommendations of Mr Shipp.

- **Providing for an automatic entitlement to a credit equal to the amount set out in the DCP for any project irrespective of the actual cost of construction. (eg page 38)**

48. If the DCP were drafted in this way, it would likely lead to:

- Windfall gains for developers who construct infrastructure which costs less to deliver than the DCP cost estimate; and
- Underfunding of other infrastructure which cost more than what is estimated.

49. All projects include a contingency amount. The contingency amount is a "just in case" amount. There should be no automatic entitlement to it unless it is necessary to call on the amount.

- **Equivalence Ratios.**

50. Council cannot comment on the redistribution of costs before understanding what that redistribution would be. Mr Shipp was prepared to say that the levy for Retail component was high but the Dwelling component is not but did not undertake the calculations. Accordingly, we are unable to comment directly. Council does not wish to discourage commercial development with an unduly high levy.

51. Finally, and as an aside, we make the observation that it is easy to see how the DCP is affected by changes in land use designation. Precinct Commercial North has no levy for development of a residential nature. It would accordingly escape a levy if the land use tables were changed to make provision for any form of accommodation.

- **Open Space equalisation Scheme**

52. The Owners are not pursuing the equalisation of open space so we do not comment further on that aspect. To the extent that the landowners seek to have Council commit to the expenditure of the 5.7% contribution from the Commercial North Precinct on specified open spaces, we submit that Council is not required to do so. This is because open space is generally provided as a network with different parks in different areas serving different purposes. In the immediately locality, the full range of those parks is apparent to illustrate. That said, there is a large active public open space facility on the north side of North Road which has recently had and will continue to require significant upgrades and the open space

fund into which the northern precinct's 5.7% contributions are paid into will go some way to assist in the funding of those upgrades. There is a redevelopment plan for that park has recently been and continues to be implemented and involves the expenditure of significant funds. For example recently significant pavilion upgrade was completed and is available to the community. The same applies to the active facilities adjacent to the precinct and the school. These types of facilities are continually upgraded by councils through expenditure of the public open space fund. In the future the open spaces will continue to attract significant expenditures to be funded by POS contributions made, including by the commercial North Precinct albeit their contributions are not likely to be realised in the short or medium term. Accordingly, without intending to create legal obligations, Council will use its best endeavours to provide for the expenditure of the public open space contribution from the Commercial North precinct in respect of public open space in the vicinity of East Village that most directly services the East Village Precinct.

- **Other DCP matters**

53. Where an amendment is proposed in Document 34 and we do not comment, then it should be regarded as acceptable.

54. Page 13 refers to Public Open Space contributions. In the first sentence, it should be explained that the Local Parks are provided through an agreement made under section 173 and for the Commercial North area via clause 53.01 of the Planning Scheme.

55. As for Table 4 and the various permit triggers, as proposed these are not agreed. We submit that these should be amended to reflect the permit triggers we have proposed earlier in this submission.

56. In Table 4, (and other places) the deletion of project IN2C is agreed.

57. In Table 5, the revision to the provision trigger for the community facility, this is not agreed. It should be left to be vague as originally drafted consistent with current practice for DCPs. The provision of the land will be a key determinant in the timing for delivery of the actual facility. The parties have not yet had discussions on the land component. However, we suggest that the DCP record that the owner of the land south of North Drive has agreed in principle (as we understand it) to provide sufficient land in a location with locational characteristics to be agreed and in sufficient area to house the extent of facility contemplated in the Prowse Quantity Surveyor Project Sheets. The parties have agreed in principle that the facility is not to be a stand-alone facility.

58. In table 6, the timing for the provision of the reserve should be consistent with the timing set out in the relevant section 173 agreement. The drafting as proposed reflects the section 173

agreement so is agreed. However, the reference should simply point to the section 173 agreement and not repeat what the agreement requires.

59. The timing points in Table 7 for delivery of open space infrastructure OS02 should simply refer to the timing points set out in the section 173 agreement. OS01 timing point is acceptable.

60. In table 8 the timing point for the drainage works should refer to the timing set out in the section 173 agreement (clause 5.2.3 of S 173 agreement).

61. In table 9 the timing for the pavilion should be left as it was without change.

62. In paragraph 2 on page 25 the reference to "(in 2018/209 values)" should be deleted and in its place insert the words "subject to indexation in accordance with the Act". The relevant section in the Act states:

> (3) The "maximum dwelling amount" is—
>
> (a) for the financial year beginning on 1 July 2018, $1150; and
>
> (b) for the financial year beginning on 1 July 2019 and each subsequent financial year, the adjusted maximum dwelling amount determined in accordance with section 46LA for that financial year.
>
> (4) The Secretary must cause to be published on the Department's Internet site the maximum dwelling amount for a financial year on or before 1 July of each financial year for which the amount is adjusted in accordance with section 46LA.

63. At page 30 regarding drainage costs, new drainage costs are now available. They should be fed into the calculations.

64. At page 33 under Land Valuation, it is true that the parties agreed not to specify an amount for land acquisition on the basis that the freehold for a location (most likely strata type) would be provided for the facility free of charge. This should be reflected in the DCP.

65. The changes at clause 4.1 for timing of payments is not agreed. The drafting is standard drafting for most DCPs and should be retained to prevent excessive prepayment of contributions.

66. At page 38, under Community Infrastructure Levy, the first sentence added should simply stop at (1987). The other parts of the text as added are unnecessary and go to predetermine any negotiation that has to take place.

67. The change at clause 4.3 (land values) is agreed. The reference to every second year is not common.

68. At clause 4.5 the changes are not agreed. These issues must be left to the parties to negotiate and not be predetermined. The Council must manage the finances of the DCP according to law. It cannot be dictated to by provisions in a DCP about the extension of higher credits than upon which the DCP is calculated. The text that was to be deleted is standard DCP text and should be retained. The changes in the last paragraph of this section should not be made quite apart from the fact that they are ineffective in a legal sense.

Drainage

69. No change should be made to either the width or the identification of the eastern road at this stage. The capacity for that area to carry and provide for the overland flow of a certain quantity of stormwater is a pivotal item in the drainage infrastructure which guarantees that the open space upstream is not flooded to a greater extent (and for a longer duration) in the large storm events.

70. The section 173 agreement between the owners and Council obliges and binds the owners to certain matters in relation to drainage. Clause 5.2 provides of the Section 173 Agreement states that:

71. Marlborough Street Reserve and the Extension will be land for a designated water storage solution for flood water in a 1.100 year flood event. But this is provided that:

- The Drainage System does not have a water storage capacity of greater than 13,000 cubic metres (unless agreed by the parties)
- The reserves must be useable for their primary purpose as a public park.

72. Furthermore, the owner is required to complete the Drainage Works in accordance with the Drainage Plans approved by Council.

73. The Drainage Works are the works required to construct the Drainage System. The Drainage System is defined as the flood Mitigation Option 3 in the Stormwater Assessment Report – East Village prepared by Cardon Victoria dated 287 September 2018 (unless agreed by Council)

74. Option 3 in that report requires the local access road on the east boundary to be 16 metres wide to carry a specified amount of stormwater in the 1.100 year event. If the road is reduced n dimension or capacity, then the Marlborough Street Reserve will be required to store more than 13,000 m3 of flood water in breach of the agreement. Option 3 from the report is set out below.

Option 3: Partial storage of floodwaters within the Marlborough Street Reserve and on the new open space area and Overland Flow Paths using using a 16m wide laneway at the back of Dromana Avenue townhouses and the internal EV road network. This option allows for a senior sized soccer field within the existing reserve with an elevation above 1% AEP flood levels for water associated with the Crosbie Street Main Drain.

75. As to the relevance of the agreement, section 60(1A) of the Act provides

> (1A) Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider—
>
> (i) any agreement made pursuant to section 173 affecting the land the subject of the application; and

76. The Act does not contain a list of things that a panel must consider. However, we submit that the agreement binds the owner and also requires a decision maker in a permit application to consider the agreement. It would be curious if the planning panel were not required at least to consider, as appropriate, an agreement. Given that that the agreement is binding on the owners, the panel should recommend that the amendment puts in place provisions that will ensure that the owners are not in breach of the agreement. In any event, and perhaps more importantly, the panel should recommend that the local road should be provided unless the council agrees to an alternative design.

DOT submission

77. The Council preferred version of the CDP did not include the various changes set out in the submission from DOT as the submission was a (very late) submission. The changes will be included in the panel version documents.

78. The DOT submission highlights the need to provide clear triggers (and responsibility) for the provision of the intersection projects. We have attended to that earlier in this final submission.

Resident submissions

79. The resident submissions illustrate the strength of the opinions held in relation to the height of buildings. The comments are reasonable comments. They align with the initial views of MGS as well as the views of AECOM.

Mr Yaron Matityahu

80. Mr Matituyahu, understandably, is concerned about the impact the Amendment will have on his property. His property at 962 North Road, Bentleigh East is proposed to be situated within metres of the roadworks necessary for the Cobar Street/North Road/Crosbie Street intersection.

81. Importantly, the Amendment does not rely on Mr Matituyahu's property itself to facilitate the intersection. Nevertheless, Council understands to deliver the works will result in a significant impact to Mr Matituyahu and his family.

82. We also understand there are many ways to deliver the design of the intersection. One option has been canvassed by Traffix Group. There are likely to be others.

83. The key we think is to ensure that whatever intersection is constructed is a safe and efficient intersection, not larger than it needs to be and one which decreases the prospect of an accident at the intersection.

Ms Marlene Laurent

84. Ms Laurent raised a number of matters for the Panel's consideration, including a reduction in the number of dwellings for the precinct to 2000 dwellings.

85. While Council doesn't share Ms Laurent's opinion on the number of dwellings for East Village, we do agree that the number of dwellings permissible should not be left wide open.

86. In relation to the provision of public open space, we submit that the quantum of open space that is being delivered in and around the precinct is appropriate in the circumstances and we rely on the evidence of Mr Panozzo in this regard. However, it is important that the quality of the open space be maintained and not left to be too heavily impinged on by overshadowing or by flooding.

87. Ms Laurent also expressed an idea that the northern corner of the precinct, where it floods, could be used as a wetland. We respectfully submit there is no strategic rationale for this approach.

Mrs Rosetta Manaszewicz

88. Mrs Manaszewicz made detailed submissions on a range of matters concerning the Amendment and raises a number of valid points several of which are consistent with Council's position on the Amendment.

89. Indeed, as part of its consideration of the submissions to the Amendment, Council has sought to address Mrs Manaszewicz's concerns by strengthening the nature of the planning controls in its preferred version presented to the Panel.

90. On traffic issues, Mrs Manaszewicz criticises the GTA figure of 0.38 peak car movements per dwelling referring to the Amendment C88 to the Hobsons Bay Planning Scheme where the traffic movements were assessed as 0.5 per dwelling. Matters of car parking provision are also criticised. The Panel has the benefit of three expert traffic witnesses in this

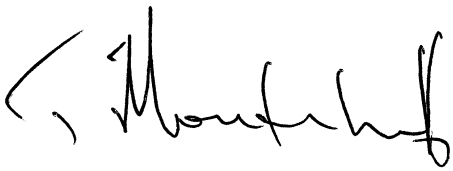
Amendment whose evidence has been considered and tested throughout the course of the proceedings. We respectfully submit traffic and car parking issues are now matters for the Panel.

91. Council accepts that Mrs Manaszewicz is critical of the low rate she perceives of open space that is being sought by the Amendment. Mrs Manaszewicz identifies work undertaken by other municipalities, including Monash and Darebin, who presently have 'on foot' amendments that seek a flat 10% open space for their municipalities by an amendment to the scheduled at clause 53.01. In that regard, we note that here, Council has secured Agreements with the 3 major landowners to achieve a 10% (NDA) open space contribution. Council has also secured contributions to the cost of improving the open space which effectively provides for a higher percentage contribution. Council has sought to negotiate as much open space and infrastructure as possible to deliver to the future East Village community recalling that the strategic work underpinning this Amendment commenced in 2017 (and much of the Amendment documentation was drafted in 2018).

92. We note that there seemed to be some confusion around the relationship between the Section 173 Agreement and the Schedule to Clause 53.01. We have said elsewhere that we propose to amend the Schedule to clause 53.01 to remove the obligation on the land south of Griffith Ave and the electricity substation and only retain the obligation for a POS contribution under clause 53.01 for all of the land north of Griffith Ave and the substation.

93. There are some criticisms and ambiguities identified in Mrs Manaszewicz's submission to the Panel regarding the relationship of the CDZ and CDP. Council has sought to rectify a number of these issues through its Panel version of the CDZ2 and CDP.

94. This completes the submissions for the Planning Authority.



.....

Terry Montebello and Ann-Maree Drakos

Maddocks: Lawyers for the Planning authority