

INDEPENDENT PLANNING PANEL
APPOINTED BY THE MINISTER FOR PLANNING
PLANNING PANELS VICTORIA

IN THE MATTER of Amendment GC102 to the Whittlesea & Mitchell Planning Scheme

BETWEEN:

VICTORIAN PLANNING AUTHORITY

Planning Authority

-and-

VARIOUS SUBMITTERS

AFFECTED LAND: All land within the boundaries of the Donnybrook-Woodstock (Whittlesea City and Mitchell Shire) Precinct Structure Plan.

**PART C SUBMISSIONS OF THE PLANNING AUTHORITY
RESPONSE TO SUBMITTERS**

I. INTRODUCTION

1. The Victorian Planning Authority (**VPA**) is the Planning Authority for Amendment GC102 (the **Amendment**) to the Whittlesea and Mitchell Planning Schemes (the **Schemes**).
2. This Part C submission addresses the submissions made and evidence called before the Panel in relation to the substantive content of the Amendment that the VPA has not yet addressed in the Part A (Part 1) Submission dated 1 March 2019, the Part A (Part 2) Submission dated 18 October 2019, the Part B Submission dated 28 October 2019 and through the expert evidence provided to the Panel by Mr Paul Shipp, Mr Ben Mentha and Mr Stephen Howe and the report of Mr Chris De Silva (not required to appear in person).
3. Appendix A to this submission is a marked change version of the ICP, incorporating all changes proposed by the VPA from the April ICP, as requested by the Panel during the course of the panel hearing.

II. THE AMENDMENT

4. The Amendment seeks to incorporate the final Donnybrook-Woodstock Infrastructure Contributions Plan (the **ICP**) to allow funding of infrastructure identified in the Donnybrook-Woodstock Precinct Structure Plan (the **PSP**).
5. The Amendment has been prepared and updated in accordance with the *Planning and Environment Act 1987* (the **Act**), including the *Planning and Environment Amendment (Public Land Contribution) Act 2018* (the **Public Land Act**) and the *Ministerial Direction on the Preparation and Content of Infrastructure Contribution Plans* (the **Ministerial Direction**).

III. THE CONDUCT OF THE VPA

6. At the outset, the VPA seeks to address comments made by Whittlesea City Council and Mitchell Shire Council (the **Councils**) in their written submission regarding the preparation of the ICP.
7. The VPA rejects the unnecessary and unhelpful commentary contained within the written submission of the Councils to the effect that the preparation of the ICP has been ‘*unfortunate, tortuous, convoluted and entirely avoidable*’¹. It also specifically and categorically rejects the implications from this language regarding the past conduct of the VPA in developing the ICP.
8. The preparation of the ICP was clearly iterative. This was due to a number of factors including:
 - (a) the introduction of the Public Land Act in the absence of transitional provisions;
 - (b) the necessity for the first interim ICP to be prepared to ensure permits could continue to issue, and funds be lawfully collected from development proponents;
 - (c) the inability for the first interim ICP to include the land credit and land equalisation amounts as there was insufficient time to notify affected landowners and allow for the required dispute resolution process;

¹ Submissions for Whittlesea City Council and Mirvac Shire Council, Panel Document 135, page 2.

- (d) changes to the Public Land Act that resulted in the removal of the ability to reallocate unspent funds between infrastructure categories;
 - (e) the refinement of the Benchmark Report; and
 - (f) direction from the Minister for Planning regarding the calculation of land contributions.
9. The VPA has a long practice of seeking to negotiate and resolve issues with submitters, which reflects a desire to bring to the Panel and the parties the most up-to-date information to ensure the ICP is a robust and supportable document. It should be borne in mind that the preparation of the ICP included significant and ongoing consultation with submitters to the Amendment, and at times, clarification of expectations and scope regarding the proposed content of the ICP. Notably, *all* parties to the process have revised their respective positions since making their initial submissions to regarding the Amendment.
10. The VPA relies specifically on the opinion of Mr De Silva in his report that:
- Upon review of the iterative and involved process to prepare, approve and implement the Donnybrook Woodstock final ICP it is reasonable to conclude that the process has not been ideal. It is important to acknowledge however that there are a number of important reasons why this has been the case. In my opinion the VPA has acted responsibly and sought to address and incorporate the implications of an evolving system whilst at the same time trying to respond to landowners and the Councils by keeping the process moving in a manner that would allow for the collection agency to gather contributions and administer the system.²*
11. While the process has been iterative, and accordingly has not been as straightforward as the VPA expects for future ICPs, the process has enabled the VPA and the submitters to reach agreement on most outstanding issues.
12. In the context of a period of transition, the process for preparation of the ICP has been thorough, inclusive and demonstrably rigorous. The VPA submits this could not reasonably be regarded as unacceptable.
13. Notwithstanding the Councils' criticisms, the VPA remains committed to its constructive, open and professional relationship with them, as for all its stakeholders.

² Expert Evidence Statement of Mr Chris De Silva, page 3.

IV. RESPONSE TO ISSUES RAISED BY SUBMITTERS

14. This Part C submission responds to issues raised by submitters before the Panel, and through expert evidence.
15. The VPA has identified the following issues that this submission specifically seeks to address:

a) City of Whittlesea and Mitchell Shire Council:

- i. the role and obligations of Councils in administering ICPs;
- ii. the proposed interim boulevard design of roads within the ICP;
- iii. the proper extent of landscaping applicable in determining the cost of roads; and
- iv. early funding for Community and Recreation infrastructure.

b) Mirvac (Victoria) Pty Ltd:

- i. the appropriate interpretation of Section 17 of the Ministerial Direction;
- ii. works in kind reimbursement;
- iii. specification of shared user paths at intersections; and
- iv. specification of the extent of works for RD-02.

c) DFC (Woodstock) Pty Ltd:

- i. Hayes Hill Reserve as credited Public Purpose Land.

d) Donnybrook JV Pty Ltd & 960 Blueways Development Pty Ltd:

- i. the VPA proposed design of IN-03;
- ii. the proposed Donnybrook JV Pty Ltd & 960 Blueways Development Pty Ltd resolution of the intersection design.

16. The VPA position regarding each of these submissions to the Panel will be addressed throughout this submission.

V. CITY OF WHITTLESEA AND MITCHELL SHIRE COUNCIL

A. THE ROLE AND OBLIGATION OF COUNCILS

17. As a preliminary issue, the VPA considers it is important to address the submissions made by the Councils to the effect that:
- (a) they are under no obligation to provide the infrastructure identified in the PSP at all should there be a funding shortfall in the future, and may simply elect not to undertake the project identified in a PSP and allocated funding in an ICP; and
 - (b) in circumstances where funds may be limited, Councils are not obliged to make any contribution to the funding of the infrastructure items.
18. The VPA submits that each of these propositions is inappropriate, unreasonable and demonstrably incorrect.

Must a Council deliver the infrastructure items identified in a PSP and funded through an ICP?

19. The Councils' submission at paragraph 18 provides:

...If any item of infrastructure is or becomes underfunded to the extent that it is unaffordable for the councils, they will at an appropriate point in time determine not to deliver that infrastructure and then seek to comply with section 46GZD of the Planning Act in terms of dealing with the funds which have been collected.

20. In other words, they appear to say that a Council simply has no responsibility for providing the essential infrastructure identified in a PSP or funded through an ICP process. No legal analysis was provided to the Panel to make good this proposition.
21. The Councils similarly did not provide any analysis or discussion regarding the effect this position would undoubtedly have on the future residents in an area, should their Council simply elect not to provide them with infrastructure that has been determined by a rigorous panel process to be essential to the development of their community.
22. The VPA categorically does not agree with the Councils' position.
23. In *Dennis Family Corporation v Casey CC* [2006] VCAT 2372, in relation to a Council's obligations in relation to a DCP, the Tribunal found at paragraph 63:

The responsibility for the provision of infrastructure remains with the council in its local government role, and once an approved development contributions plan is included in the planning

scheme the council is committed to the provision of the infrastructure included in it and for which levies are payable.

24. Acknowledging the Panel is not obliged to make recommendations regarding the validity of the Councils' submission in this regard, the VPA considers it is important to state there is simply no analysis before the Panel analysing why this obligation is not equally applicable to the ICP system.
25. Consistent with the text of the Ministerial Direction, ICP items are essential to the development of new communities. Councils have a responsibility to future communities to provide them with the infrastructure they need. The ICP system is intended to contribute towards the funding of this infrastructure; it is neither intended nor obliged to fully fund infrastructure, or indeed to fund a specific proportion of infrastructure required.
26. The requirements and obligations contained within the Act and the Ministerial Direction provide no support for the Councils' position that they may elect not to provide items if they are not fully funded, or become underfunded to an extent that the Council determines unacceptable.

Is it a reasonable and appropriate expectation that a Council contribute to the funding of ICP projects?

27. The Councils' submission appears to proceed on the basis that:
 - (a) as a starting point, items should be fully funded by the ICP (in other words, completely funded by developers of land within the ICP area); and
 - (b) Councils cannot reasonably be expected to make any contribution towards the funding of infrastructure identified in the ICP.
28. The VPA submits that the text of the Act and the Ministerial Direction are clear and unambiguous in their intent that the ICP system provide a contribution towards the funding of essential infrastructure rather than a full cost recovery.
29. There is simply no text within any of the statutory documentation that supports the Councils' submission that they are, and ought be, immune from making any contribution whatsoever.

B. BOULEVARDS

30. The Councils' submission, asserts that the following projects should be provided as divided interim carriageways, having regard to urban design considerations:
- a) RD-01: Cameron Street (Secondary Arterial);
 - b) RD-03: Patterson Drive South of Merri Creek (Secondary Arterial);
 - c) RD-04: Patterson Drive north of Merri Creek (Secondary Arterial); and
 - d) RD-05: Koukoura Drive (Secondary Arterial).
31. The VPA submits that there are several considerations that are required to be addressed in considering the Councils' preference for divided carriageways, namely:
- (a) Are interim boulevard treatments consistent with the requirements of the Ministerial Direction and the principles underpinning the ICP system?
 - (b) Would a divided carriageway result in additional costs to the ICP, and if so, whether these additional costs are appropriate?
 - (c) Does the divided carriageway impact upon functionality?
 - (d) Are there functional implications for when the roads are duplicated in the future?
 - (e) Are there any practical difficulties with delivering the roads as interim divided boulevards?

Is the interim boulevard treatment consistent with the requirements of the Ministerial Direction and the principles underpinning the ICP system?

32. In its submission to the Panel, the Councils say that use of a "basic and essential" test to determine the inclusion of infrastructure in the ICP is inappropriate because it does not appear in the Ministerial Direction.
33. Paragraph 45 of the Councils' submission provides:

The reference to infrastructure that is basic and essential is not a test relevant to identification of infrastructure that can be funded. It is we submit a confusing new reference that quite clearly has been espoused by the VPA but one that should not be adopted early in the life of ICPs so that

the system at least starts off on the right footing. We submit it is unhelpful to make reference to this term. It is not a term that is referenced in the Ministerial Direction. It is to be noted in particular that the word basic does not appear at all in the Ministerial Direction less so the term basic and essential. While the word essential appears, it appears in an entirely different context.

34. The Councils' submission goes on to state at paragraph 49:

The only qualifier in the Ministerial Direction about the allowable items for Arterial Roads is that it is one lane that is to be constructed each way not that the one lane must be on a single carriageway. The Interim Divided cross-section that Council submits is to be funded as an Allowable Item is Interim Option 2, and a single running lane on a divided carriageway for Koukoura Drive. It is submitted that the Ministerial Direction does not get involved in dictating to the relevant authorities, and not to the Development Agency, what form that design should take.

35. The necessary implication of the Councils' submission appears to be that, so long as an item is listed as an allowable item within the Ministerial Direction, it is appropriate.
36. The term 'basic and essential' has been associated with the development of the ICP system since its early inception. Section 6.3 of the Standard Development Contributions Advisory Committee Report 'Setting the Framework' (17 December 2012) (the **SDCAC Report**) is entitled 'Basic and Essential Infrastructure'. The section includes the following comments:

The Committee notes that what is considered basic and essential will to some extent, be in the eye of the beholder. Some developers will try to narrow the definition to keep costs that they have to pass on to a minimum, and at the other end of the spectrum some councils will expand the definition in order to minimise the infrastructure that they have to provide from future rate revenue

...

The Committee considers that the rationale for defining Allowable Items of infrastructure can be guided by the following broad description:

- *In the case of new growth area communities, Allowable Items would include infrastructure that is essential to enable the basic functioning of a new community. This would include infrastructure designed to meet the initial needs of a community in the first 5 to 10 years of its development. It would not generally include higher order or regional infrastructure, but may include a proportionate contribution to infrastructure in neighbouring precincts if a clear justification can be demonstrated. Land acquisition to ensure appropriate provision can be made for the long term development of higher order infrastructure should be encouraged; ...³*

³ Standard Development Contributions Advisory Committee 'Report 1 – Setting the Framework', 17 December 2012, page 57.

37. It is accepted that the list of allowable items included within the Ministerial Direction was intended to provide a level of certainty regarding what items could reasonably be regarded as basic and essential to the functioning of a new community.

38. The SDCAC Report also provides:

A number of submissions commented on the extent of items that have come to be regarded as 'basic and essential' in more recent DCPs. They referred to it as 'scope creep'. Submitters representing the development industry, including UDIA and the Property Council, submitted that the extent of basic and essential items has ballooned out in growth areas during boom times. During the property boom years, it was submitted developers were inclined to agree to more and more items being included in order to get their property to the market quickly. With land being in relatively short supply, and profit margins on land healthy, developers had scope to pay higher contributions. The GAA agreed with this contention, acknowledging that they may have contributed to this artificially high expectation of what should comprise basic and essential infrastructure through their efforts to the increase supply of land in growth areas⁴.

39. In the second reading speech the Minister for Planning provided:

The rates will be set so they provide an appropriate contribution for basic and essential infrastructure.⁵

40. The Minister continued

Securing contributions from developers for land for basic and essential infrastructure, such as roads, parks and community facilities, is a vital part of this.⁶

41. Both the 2016 Guidelines referenced in clause 19.03-1S and the 2019 Guidelines released by the Department in September 2019 use the expression “basic and essential” to describe the infrastructure that may be funded through an ICP. The VPA does not accept that the 2016 Guidelines have no statutory force⁷ or that the 2019 Guidelines are irrelevant to the Panel’s consideration of the issues in dispute before it.

42. All submitters on the divided carriageway issue appear to agree that there is some limit on the standard to which items should be funded under an ICP:

⁴ *ibid*, page 54.

⁵ Victoria, Parliamentary Debates, Legislative Assembly, 10 June 2015.

⁶ Victoria, Parliamentary Debates, Legislative Assembly, 25 September 2015.

⁷ s12(2)(ab) of the Planning and Environment Act 1987.

- (a) The Councils accept that it is necessary to show that costs are not unreasonable and not “gold plated”, notably a term that is found in the 2016 and 2019 Guidelines;⁸
 - (b) Mirvac advances its case against the divided carriageway on the basis that it is not essential;⁹
 - (c) DFC identifies a broad range of matters relevant to the exercise of discretion to fund an item to a standard beyond that to fulfil its essential function, including whether the standard is excessive in all the circumstances.¹⁰
43. While the VPA acknowledges that the term ‘basic and essential’ does not appear within the Ministerial Direction, it is submitted that limiting the infrastructure which can be funded through an ICP to that which is essential (and hence not funding more than is essential) is a necessary and appropriate qualification.
44. It would be inappropriate to use the allowable lists of items as permitting any standard at all contemplated by councils, as long as the category of infrastructure fell within an allowable item. Such an approach would be to invite the addition of extravagant or frivolous features for infrastructure items (colloquially referred to as “gold plating”). There are two problems with this approach: first, it risks Councils using the ICP system to avoid or minimise their own contribution to the provision of infrastructure in new suburbs; and second, it encourages the very real problem of scope creep that the ICP reforms were directed to curing. On the approach advocated by the Councils, they could fill the standard levy with items that, while technically ‘allowable’ are to a quality or level entirely unnecessary for the community either at all or at the relevant time, resulting in the striking of a supplementary levy for an artificially high amount. On the approach supported by the VPA, if developers wish to pay for a higher quality of infrastructure for particular subdivisions, that higher quality should be at their additional cost; similarly, if Councils want a higher standard of public infrastructure in their new suburbs, they should be willing to resource the additional cost of such measures.

⁸ Councils’ submission, para [67].

⁹ Mirvac submission, para [63].

¹⁰ DFC submission para [30-31].

45. The VPA submits that allowing the Councils to unnecessarily increase the cost of items in the standard levy resulting in the need for a higher supplementary levy is fundamentally at odds with the clear intent of the ICP system, namely to provide a contribution towards essential infrastructure.
46. The VPA submits that, in order to avoid scope creep and gold plating, it is necessary to assess whether the proposed design of an allowable item is to a reasonable and not excessive standard, and this assessment is assisted by considering whether the design can reasonably be regarded as essential.
47. The Councils are clear in their submission that their proposed divided carriageway is required with regard to urban design considerations. Notably, the Minister Direction does not contemplate the striking of a supplementary levy for the purpose of providing a particular urban design outcome. The inclusion of the additional costs of the divided carriageway in the standard levy to achieve a “better urban design outcome” has the effect of increasing the supplementary levy, effectively for urban design reasons. Such a position is contrary to the requirement that infrastructure items are ‘essential’ to the development of future communities. A better urban design outcome is neither indispensable nor absolutely necessary.
48. While Mr Czarny is qualified to express opinions about urban design outcomes, he has neither qualifications nor recognised expertise in the functional layout of roads, pedestrian safety, arrangements for duplication of roads, and the costs of interim and ultimate road construction; to the extent he expressed an opinion about these matters, such opinions cannot be regarded as expert.
49. While Mr Czarny and the Councils plainly consider an interim divided carriageway is a better urban design outcome, they have not shown that the undivided carriageway is not fit for purpose in terms of road capacity, safety and other key objectives of the PSP.
50. In general terms, a PSP will give guidance about the items which are regarded as essential infrastructure for a PSP area but it will not necessarily specify the standard to which infrastructure should be constructed on an interim basis and funded under an ICP, bearing in mind that it is uncommon for an interim cross section to be included

in a PSP. In this case, where the PSP has specifically identified a preferred interim treatment for Cameron Street and Paterson Drive, it is submitted that the guidance provided by the PSP should inform the standard to which the interim condition should be constructed and funded by the ICP. In terms of other secondary arterial roads such as Koukoura Drive, there are two options shown and it is open to treat Koukoura Drive in the same way as Cameron Street and Paterson Road.

51. In relation to the classification of Koukoura Drive, the Department of Transport has confirmed with the VPA that the ultimate road will be delivered in a 34 m road reservation, as per a secondary arterial road.
52. There are two options for the interim cross section of secondary arterial roads in the PSP and, whilst “Option 1” is noted as the “preferred outcome” for Patterson Drive and Cameron Street, either option is available for any secondary arterial road, subject to what can be practically delivered.

Would a divided carriageway result in additional costs to the ICP, and if so, are these additional costs appropriate?

53. The VPA submits that, consistent with the evidence of Mr Mentha, the undivided carriageway would be more cost effective to construct than a divided ‘boulevard’ interim cross section. This is confirmed by the costings of Ms McKenna in relation to her Option 2. Further, Ms McKenna had no basis on which to dispute Mr Mentha’s evidence that any cost savings to the ultimate scenario by constructing the divided carriageway in the interim is likely to be offset by the high traffic management costs.

Does the divided carriageway impact upon functionality?

54. The VPA relies upon the evidence of Mr Mentha that in terms of capacity and functionality, the undivided and divided carriageways are similar. Accordingly, the choice between the two proposed interim treatments is not dependent upon functional considerations.

Are there functional implications for when the roads are duplicated in the future?

55. The choice between an undivided or divided carriageway will have implications regarding the future upgrading of the roads with regard to traffic management.
56. Developing the roads with an interim undivided carriageway will allow for a straightforward upgrade, with the two new lanes built with traffic interruptions limited to tying into upgraded intersections. An interim boulevard treatment will require a more complicated traffic management solution during duplication works. This will impact upon the future community living in the area using during those works.

Are there practical difficulties associated with delivering the roads as interim divided boulevards?

57. The VPA acknowledges the practical difficulties in delivering the boulevard treatment identified by Mirvac, namely that Mirvac does not own or have access to the land upon which the boulevard is required to be constructed for RD-01 and RD-03, has not been able to secure agreement from the owners of the land and Council has not yet seen fit to acquire the land.
58. An ICP is required to specify the cost of individual items to be funded from the ICP. The cost of specific items should consider any known issues for practical delivery. A landowner not having legal access to land to construct the specified item is a known issue for practical delivery that should be addressed through the ICP.

Summary in relation to divided carriageway

59. In circumstances where:
 - (a) each interim road design proposed will have the same functionality;
 - (b) the Councils' argument for the divided carriageway is entirely based on urban design considerations which, the VPA submits, do not meet the requirement that the infrastructure proposed is essential;
 - (c) the divided carriageway will increase the cost of the supplementary levy;
 - (d) the divided carriageway will have road and traffic management implications when it is duplicated in the future,

the VPA submits that Council's proposed interim divided carriageway is unnecessary and inappropriate to be included in the ICP.

60. It must be borne in mind that Donnybrook Woodstock will be characterised by boulevard roads as encouraged by clause 15.01-1R and by the PSP when its arterial roads are delivered in their ultimate configuration and as boulevard connector streets (including Hayes Hill Boulevard and Cameron Street between Paterson Drive and Koukoura Drive) are constructed from the outset.

C. LANDSCAPING

61. The Councils have made submissions to the Panel to the effect that, if the carriageways are developed in the interim condition as undivided, it is appropriate that the remaining area be landscaped and the road costings to be included in the ICP allow funding for this purpose.
62. Mirvac submitted that it is both unnecessary and impractical to require the additional landscaping proposed. This is due to the fact that the land in question won't be ignored, but will remain in its current condition, which is acceptable, and it is impractical to require landscaping of the entire road reservation, unless the Council first acquires the land in question to enable those works to be undertaken.
63. Mr Howe's memorandum explains that the costing for mid-block sections of road has included site preparation (clearing and grubbing) for the entire width of the road reserve, all road pavement areas, and 9 metres of landscaping. The 9 metres of landscaping allows for the area adjacent to the interim carriageway to be tidied, ideally to match the balance of the reserve at interim construction. He expects the site preparation works for the whole of the road reserve to be required only for foreseeable but unlikely nuisance, construction risks or minor works.
64. The VPA submits that the amounts allowed are appropriate and that any further unforeseen additional works will be adequately accommodated by contingency amounts.

65. It should be appreciated that on the other side of the road reserve will be the landscaped condition of the service road for new dwellings rather than an infinite “no man’s land” as apprehended by Mr Czarny.

D. EARLY FUNDING OF COMMUNITY AND RECREATION FACILITIES

66. Community facilities are obviously essential infrastructure. The VPA agrees that the infrastructure identified within the PSP will be required. The issue lies in whether the early delivery of that infrastructure is essential.

67. The Councils have made submissions regarding the necessity of the early delivery of this infrastructure and are seeking not insubstantial funds from the ICP in order that they can borrow money to deliver some community centres early, noting that the Councils are unable to specify which of the second community centres will be needed early.

68. In the VPA’s submission, the material relied upon by the Councils to support their case is insufficient to justify the inclusion of these costs in the ICP.

69. The Councils have elected not to call evidence and not to provide appropriate documentation to establish with certainty or precision that early delivery is so required. When the consequence of the inclusion of borrowing costs results in levying substantial additional funds on landowners, the VPA submits this is entirely unacceptable.

70. Many submitters have observed during the hearing that GC102 has been prepared and is being considered in the “early days” of the ICP system; in this context, it is important to establish appropriate expectations about how the system should work and what information is required to support a supplementary levy. It is appropriate to make clear that if Councils seek to include substantial funds in an ICP, they must be in a position to demonstrate first that those funds are required and second to quantify them by way of a rigorous and transparent process.

71. The Ministerial Direction provides the following criteria for applying a supplementary levy for early delivery for an item:

- *The early delivery of the item is essential to the orderly development of the area; and*

- *The financing costs are:*
 - *incurred by the development agency responsible for providing the item; and*
 - *associated with the early delivery of the item which is listed as a standard levy allowable item or a supplementary levy allowable item; or*
 - *associated with the early acquisition of public purpose land referred to in section 46GV(8) of the Act which is required for the early delivery of the item.*

72. The Councils' submission asserts that the need for the community facility is based on the population from the broader Donnybrook precinct (including Lockerbie, English Street and Shenstone Park PSP's) where such facilities have not yet been delivered in these precincts. As provided above, the terms of the Ministerial Direction dictate that early delivery be essential to the orderly development of the area, namely the area the subject of the ICP.

73. The Guidelines, under the heading Need and Nexus, provide:

The need for the infrastructure to be funded through, and the public purpose land to be provided under, the ICP must be related to the proposed development of land in the ICP plan area.¹¹

74. It is inappropriate that the Councils are, by their own admission, seeking financing costs for early delivery to support areas that are not within this ICP, without any specification of the proportion of the early delivery that is rightly attributable to those areas – or any proposed actual apportionment that will take place. Accordingly, the landowners within the Donnybrook-Woodstock ICP area are being required to carry the full burden of early delivery when they do not receive the full benefit. Indeed, there is no evidence to show that the landowners within the ICP area are those who require the early delivery at all.

75. Simply put, developers within the ICP should not be paying the full cost of the early delivery of a facility that is required early so that it can service an area wider than the ICP area.

76. For the timing of the community facility (and therefore the financing) to be linked to the lack of facilities in the broader region does not meet the test of nexus to the

¹¹ *Infrastructure Contributions Plan Guidelines*, page 9.

Donnybrook-Woodstock precinct. The infrastructure included in the Donnybrook-Woodstock ICP must be related to the demand created from within the precinct. It is not the role of the ICP to fulfil shortfalls in other precincts.

77. The Councils' proposed inclusion of early delivery of infrastructure to support development outside the ICP area is contrary to the Act, the Ministerial Direction and the Guidelines.
78. The Councils' submission provides that financing is required for two out of three proposed community facilities. The Councils are unable, however, to specify which two.
79. This is demonstrative of the lack of rigour with which the Council have approached their submissions in regard to financing. If the Councils are unable to definitively say *which* facilities they need early, surely they cannot definitively say that these facilities must be provided early.
80. In oral submissions to the Panel, Mr Montebello referred to the Wyndham West DCP and the Minta Farm ICP, both of which included financing costs. Taking the Minta Farm ICP as an example, the VPA notes the following features supporting inclusion of financing costs:
 - (a) first the need for early delivery of the works was demonstrated and then the amount to be included in the ICP was calculated;
 - (b) extensive traffic modelling for the precinct identified that the north-south arterial road would be needed to be constructed very early in the development of the precinct;
 - (c) this was confirmed by the lot cap applied to the precinct, as permits for only 1,000 lots could be issued before the road had to be constructed. This created an insurmountable obstacle to development, because development of the precinct required the construction of the road, however the Council needed lot construction to occur to receive the levies to fund the road;

- (d) the VPA then engaged an independent consultant to undertake financial modelling to calculate the dollar value that should be placed in the ICP. The financial modelling involved a number of factors including:
 - (i) The expected development of the precinct (and therefore the expected levy collection);
 - (ii) The expected expenditure of the levies (of all items including community and recreation infrastructure);
 - (iii) The expected shortfall for the nominated projects; and
 - (iv) The expected timeframe for repaying the financings;
 - (e) As noted by the Councils, this information was available on the VPA website, to provide any interested submitters to the Minta Farm ICP process the opportunity to analyse the strategic work undertaken and, if they so choose, prepare a written submission contesting any of that work.
81. Prior to their submission to the Panel, the Councils have provided none of this information, and to date have still not provided some of the information.
82. In their written submission to the Panel, the Councils included a number of charts and a table. These were not prepared by an independent consultant and none of the assumptions that underpin the information have been provided. Indeed, upon cursory analysis the information generates more questions than answers. For example, the charts project cashflow out to 2047, however section 2.4 states that the ICP has a 20-year timeframe and therefore levies should be completed by 2040. The Councils have also undertaken one calculation and merely doubled the amount required for the two facilities. However, by their own admission the two facilities would be constructed at different times. In the intervening years, further development will have occurred with the Councils collecting more levies and undoubtedly altering Councils' financial position.
83. Given the paucity of information provided, the VPA is unable to comment on the accuracy of any of the information provided.

84. In order to make an informed judgment regarding the necessity for early delivery of an item, the Panel would need to be in a position to appreciate, based on robust analysis and evidence:
- (a) when the item would ordinarily be required;
 - (b) when the Council is reasonably expected to be able to deliver the item (without additional funds);
 - (c) why delivery earlier than otherwise required or expected is essential; and
 - (d) detail of the actual borrowing costs to enable them to be scrutinised and, if appropriate, supported.
85. The VPA submits that appropriate rigor must be applied to the imposition of all costs to be included within an ICP levy. There can be little argument that the appropriate level of evidence and analysis has simply not been provided to the Panel in this case.

E. THE ADMINISTRATION OF ICP LEVIES

86. The Councils' written submission makes a number of claims regarding the ongoing administration of the ICP levies. These claims are inconsistent with the statutory framework, and in some cases directly contradictory.
87. The Councils' written submission at paragraph 21 provides:

Assuming for the moment that these last two provisions in the ICP Guidelines are correct, the way that a council is able to manage an ICP is significantly constrained. It is constrained as follows:

- *First, the Standard + Supplementary Levy for Transport Projects is fixed in this case at \$X + \$Y respectively.*
- *Second, the Standard Levy for Recreation and Community Projects is fixed and is not subject to the Supplementary Levy. This is in the context of the facts set out in our Response to the Part A submission at paragraph 45 which noted that the estimated costs of providing that infrastructure is significantly in excess of the estimated cost even based on the VPA's we submit low estimates.*
- *Third, the shortfall referenced at paragraph 45 of our Response to the Part A submissions is in the context of the funding limitations on a local government authority as set out earlier.*

- *Fourth, there is no finance cost line item proposed in the ICP which might otherwise provide an alternative way of funding essential community and recreation infrastructure.*
- *Fifth, from the ICP Guidelines it would appear that the cash portion of the levy which is the monetary component (which would comprise the Standard + Supp for Transport and the Standard for Community and Rec) is not available for making any payments for Land Credit amounts and the monetary component of the Land Contribution is not available for funding anything other than Land Credit Amounts even from a cash management perspective.*

88. It is important to note a few matters in relation to these submissions.

89. First, the first three dot points of paragraph 21 are no different to the management of DCPs.

90. In paragraphs 20 and 21, the Councils identify the Guidelines as the source of the requirement to keep the monetary component and the land equalisation payments separate. However, it is clear that the separation of the levy types is dictated by the requirements of the Act, including Section 46GD(2) and Section 46GZB(3).

91. In response to expert evidence given in relation to contingency, the Councils submitted to the Panel that if there was any excess capacity in the contingency in one item, it could not be used to fill a shortfall in another project. This position is seemingly contradicted at paragraph 65 of the Councils' submission:

Collecting Agencies and Development Agencies are no longer dictated to by a set of specific projects with a set of specific costings... It is up to the Collecting Agency and Development Agency to determine how to deliver the infrastructure within the context of the available capped budget.

92. With regards to works in kind and credit offsets, the Councils submit that there are no early levies available to the Councils as the early roadworks are constructed by developers as works in kind. However, it is important to note that part of the reason for this is, as identified by the Councils, "*because the timing that would be adopted by councils does not generally sit comfortably with the timing requirements of developers whose subdivisions rely on intersections and bridges to gain access to new estates*".

93. The Councils do have options when it comes to crediting works in kind and collecting levies.

94. Other growth area councils have developed transparent policies where they publish a multi-year capital works program that identifies the anticipated timing of DCP/ICP works. If a developer approaches these councils with a works in kind proposal for an item that has been identified further in the future, these councils link the timing of any credit offsets to the timing in the capital works program. In the meantime, the developer is also expected to pay levies.
95. This process provides these councils with greater control over their cash flow and a greater ability to deal with 'out of sequence' development. It is entirely open to the Councils to develop a similar process to assist with the management of their responsibilities.

VI. MIRVAC (VICTORIA) PTY LTD

96. Mirvac (Victoria) Pty Ltd (**Mirvac**) raised the following matters within their submissions to the Panel;
- a) the proper interpretation of Clause 17 of the Ministerial Direction;
 - b) works in kind reimbursement;
 - c) specification of shared user paths at intersections; and
 - d) specification of the extent of works for RD-02.

97. The VPA's response to each of these matters will be discussed in turn.

A. THE PROPER INTERPRETATION OF CLAUSE 17 OF THE MINISTERIAL DIRECTION

98. Clause 17 of the Ministerial Direction provides:

17. *When deciding whether to impose a supplementary levy, the planning authority must consider:*
- (a) *whether the plan preparation costs, works, services or facilities can be wholly or partially funded from a standard levy, unless the applicable Annexure to this Direction specifies those supplementary levy allowable items must not be funded from a standard levy;*
 - (b) *whether the works, services or facilities are essential to the orderly development of the area;*

- (c) *whether the works, services or facilities are identified in a precinct structure plan or equivalent strategic plan applying to the land;*
- (d) *whether the land has particular topographical, geographical, environmental or other physical constraints or conditions that significantly affect the estimated cost of allowable items to be funded through the infrastructure contributions plan; and*
- (e) *any other criteria specified in the applicable Annexure to this Direction.*

99. Mirvac's submissions regarding the proper interpretation of Clause 17(d) are to the effect that Clause 17(d) does not provide mandatory preconditions regarding allowable items from a supplementary levy, as:

- a) incorporation of an ICP is itself a discretionary act; and
- b) a planning authority is not required to fund infrastructure (or to fully fund that infrastructure) through an ICP, even if it lawfully could.

100. In that context, Mirvac submits Clause 17 merely identifies factors that must be considered when deciding to impose a supplementary levy, not preconditions to the lawful exercise of power. Consequently, Mirvac submits that Clause 17 does not prevent a planning authority deciding to impose a supplementary levy in circumstances where the estimated cost of an allowable items is not 'significantly' affected by a constraint or condition of the land; this is merely an additional consideration.

101. The VPA accepts that Table 4 of Annexure 1 defines the items which are allowable for a supplementary levy and that Clause 17 identifies considerations which must be taken into account in determining whether to impose a supplementary levy. In the VPA's submission, these considerations represent important factors which would be necessary to demonstrate in most circumstances; in particular, the need for works, services or facilities to be identified in a PSP and the need to demonstrate that the works, services or facilities are essential are very important protections against excessive and unjustified infrastructure provision. The expression "wholly or partially funded from the standard levy" used in both Table 4 and Clause 17 is difficult to interpret. On one view, it would prevent the imposition of a supplementary levy if *any* funds (even insufficient funds) were available in the standard levy to partially fund the item. On another view, if either criterion is satisfied in relation to an item, namely it cannot be wholly funded from the standard levy *or* it cannot be partially funded from the standard levy, then an item will be an allowable item which may be funded by a supplementary levy. The latter

approach has been taken for the purposes of this ICP. This question of interpretation does not arise for determination in this case because no submitters have disputed which items are proposed to be funded through the supplementary levy.

B. WORKS IN KIND REIMBURSEMENT

102. To provide certainty and clarity regarding the parameters of works in kind reimbursement, Mirvac has suggested that the following wording be included in the ICP:

The collecting agency must value works in kind that it accepts at the value identified for that item in the ICP unless the actual cost to construct the works was less than the value identified. Where the actual cost of the works is equal to, or more than, the value identified in the ICP the value of the works in kind must be no less than the identified amount.

103. For the purposes of this ICP, the VPA does not oppose the inclusion of text of this kind, subject to agreement by Council, noting that it may be appropriate to specify that if the actual cost is less than the value identified, the value is no more than the actual cost. However, the VPA notes that it may not be appropriate to apply these words to all future ICPs. In the future, Councils and developers may be able to employ the benchmark costings to assist in the valuation of works in kind.

C. SPECIFICATION OF SHARED USER PATHS AT INTERSECTIONS

104. Mirvac seeks that where shared user paths are proposed, including on one side of the intersection, this information should be contained within Table 5 to assist in interpreting intersection diagrams.
105. The VPA recommends including this information as a notation on the intersection diagrams that are contained within Appendix 4 of the ICP.

D. SPECIFICATION OF THE EXTENT OF WORKS FOR RD-02

106. Mirvac has proposed the additional underlined words be included within Table 5 for RD-02 to clarify the extent of works proposed:

200m from eastern edge of the Sydney-Melbourne railway overpass to waterway west of E6/OMR reservation – Construction of a primary arterial road (2 lane carriageway), excluding intersections (interim treatment)

107. The VPA recommends updating the description of RD-05 in Table 5. The VPA also recommends that the road lengths for each road item be listed on the cost sheets contained within Appendix 5 of the ICP.

VII. DFC (WOODSTOCK) PTY LTD

108. DFC (Woodstock) Pty Ltd (**DFC Woodstock**) made the following submissions to the Panel:

- (a) the roads should be delivered in the interim as an undivided carriageway, but if it is required in the interim as a divided carriageway it should be fully funded by the ICP;
- (b) Hayes Hill Reserve should be identified within the PSP and ICP as Public Purpose Land and DFC Woodstock should be credited accordingly.

109. The substance of the VPA's response to submissions regarding the interim carriageway have been discussed above.

A. HAYES HILL RESERVE AS PUBLIC PURPOSE LAND

110. DFC Woodstock made submissions to the Panel to the effect that:

- (a) Hayes Hill Reserve is not encumbered land, as that concept is understood, and is not identified within the PSP as conservation land;
- (b) Hayes Hill Reserve does not possess any qualities that would make its identification as conservation land appropriate;
- (c) Hayes Hill Reserve does not have any cultural heritage significance;
- (d) the Panel is empowered to make a recommendation that the PSP be amended pursuant to Section 25 of the *Planning and Environment Act 1987*; and
- (e) it is inappropriate and unfair for DFC Woodstock to be required to provide Hayes Hill Reserve to the Council for no compensation in circumstances where it is also required to pay a substantial public open space contribution and is required to embellish the land at a significant cost.

111. In the VPA's submission, it is inappropriate to revisit the characterisation of Hayes Hill as encumbered land for which no public open space credit is available:

- (a) Pursuant to clause 26 of Annexure 1 of the Ministerial Direction, public purpose land under the ICP must be in accordance with the relevant PSP. DFC accepts that the treatment of Hayes Hill as public purpose land under the ICP is not in accordance with the PSP and seek to retrospectively adjust the PSP through the ICP process to change its classification. It would be extraordinary to allow a reopening of the classification of land as uncredited open space under a PSP in a subsequent ICP process simply because a land owner was dissatisfied with the outcome of the PSP process;
- (b) It is no answer to this complaint to say that DFC could not know the implications of that classification due to the timing of the PSP process prior to the introduction of the Public Land Act. Irrespective of the operation of the Public Land Act, Hayes Hill was classified in the PSP process as uncredited open space, encumbered in a comparable way to the other land listed as uncredited open space. The debate about whether encumbered land should be credited or uncredited as open space is not new, and certainly predates the Public Land Act; it is well established that land which serves a principal purpose for drainage, conservation, waterway, landscape or other purposes may be identified for open space but not credited. The proper time to satisfy a decision maker about the classification of land as encumbered or unencumbered is at the PSP stage when the totality of information about the values and role of that land is known;¹²
- (c) The identification of Hayes Hill as a landscape feature unsuitable for residential development or for credited public open space purposes was determined in the course of the PSP process and there is no proper basis on which to reopen this question at the ICP stage, particularly in circumstances where this panel is not armed with the totality of information, evidence and submissions before the PSP panel;¹³

¹² See PSP pages 8, 9, 11, 13, 17, 18.

¹³ See GC28 panel report, pages 15, 28-29.

- (d) What is known to this Panel is that Hayes Hill is a natural feature of the surrounding landscape, identified in the Northern Growth Corridor Plan and the Biodiversity Conservation Strategy (**BCS**) and zoned for Rural Conservation since 2010. This status and zoning presumably informed the purchase price of the land parcels within which Hayes Hill is located, such that DFC cannot claim to be unfairly out of pocket for not obtaining a credit for not being able to develop this land, noting also that the land will not be subject to GAIC obligations given its Rural Conservation zoning;
- (e) Notably, the extent of land zoned for Rural Conservation was reduced as part of the PSP process, consistent with the intent of the North Growth Corridor Plan (and the BCS) which states (at note 1 on the plan) “Potential for review of RCZ through Precinct Structure Plan process”;
- (f) The gazetted PSP clearly classifies the land as ‘uncredited open space’ and therefore conveys that the Hayes Hill reserve is not intended to be included in the ICP as public purpose land;
- (g) The treatment of the Hayes Hill reserve within the Donnybrook Woodstock PSP is consistent with other approved PSPs such as the Mt Atkinson Tarneit Plains PSP which has an area set aside for the Mt Atkinson reserve and the Lockerbie PSP which sets aside land for Bald Hill – both of which are not credited. The intended determination of public purpose land in an ICP is to identify land which has been nominated for infrastructure that would otherwise be developable. In this instance, Hayes Hill Reserve would not be developable as it is zoned RCZ.

112. Any development or works within Hayes Hill must be consistent with the objectives and decision guidelines of the RCZ, Incorporated Plan Overlay Schedule 6 (IPO6) Donnybrook-Woodstock Precinct Structure Plan – Biodiversity Conservation Strategy Areas and Environmental Significance Overlay Schedule 6 – Urban Conversation Area (ESO6). The IPO6 includes a decision guideline that before deciding on an application to remove, destroy or lop vegetation, the responsible authority must consider any endorsed program report applying to the land under Part 10 of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), namely the Biodiversity Conservation Areas and the Donnybrook-Woodstock PSP. Similarly, the ESO6 includes a Statement of

Environment Significance and lists the Secretary of the Department of Environment, Land, Water and Planning as a determining referral authority for applications.

113. Given existing encumbrances on the land (particularly IPO06 and ESO6 referring to the BCS), it is unreasonable and inappropriate for this land to be credited as public purpose land through the ICP. The proper time at which to seek removal of these encumbrances and to persuade a fully informed panel about the inclusion of the land as credited public open space was through GC28.

VIII. DONNYBROOK JV P/L & 960 BLUEWAYS DEVELOPMENT P/L

114. During the hearing Donnybrook JV Pty Ltd & 960 Blueways Development Pty Ltd (**Shenstone**) made submissions to the Panel that:

- (a) the proposed configuration of IN-03 is inappropriate and unsupportable; and
- (b) the Shenstone 'solution' presents a better planning outcome.

115. Each of these submissions is considered in turn.

A. THE DESIGN OF IN-03

116. The proposed configuration of IN-03 (the **Compact Design**), is as a three legged intersection, contained entirely within the existing road reservation, and entirely within the boundaries of the ICP area.

117. The VPA submits that, in accordance with the evidence provided to the Panel by Mr Mentha and Mr Hunt, the Compact Design is:

- (a) informed by expert traffic engineer opinion and appropriate in the circumstances;
- (b) meets the requirements for the intersection as identified in the first conclave of experts regarding functional design (including with regard to capacity, the length of lanes and design speed); and
- (c) the narrowing of lanes in Donnybrook Road from 3.5 metres to 3 metres and the deletion of the central medial is a pragmatic and appropriate response to the existing road reserve.

118. While standards generally require the provision of 3.5 metre lane widths at mid-block and where possible at intersections, variations may be considered where suitable to narrow the width of lanes to 3 metres or more.
119. The 3 metre lanes will provide functionally for the movement of traffic along the road. Whilst ideally truck traffic would be provided with wider lanes, in the consideration of the overall treatment, including 3.5 metre lanes at mid-block, the proposed intersection will enable traffic to pass effectively.
120. Cardno has provided the VPA with a list of existing intersections that operate with a lane width narrower than 3.5 m. These intersections are arterial roads and most have speed limits of 60 km/hr. These intersections carry traffic volumes of up to 34,000 vehicle movements per day and truck volumes ranging from 4 to 7 percent, including in some instances truck volumes in greater absolute numbers than for Donnybrook Road.
121. The speed limit currently sign-posted along Donnybrook Road is 80 km/hr. It is likely that as the surrounding land is developed, DoT will reclassify Donnybrook Road from rural to urban and reduce the sign-posted speed to 60 km/hr.

B. THE SHENSTONE 'SOLUTION'

122. On the penultimate day of the Panel hearing, almost immediately prior to their oral submissions before the Panel, Shenstone raised with the VPA and Mirvac their proposal for an alternative 'solution' for IN-03.
123. This solution comprises Shenstone offering their land (identified as approximately 3,346 square metres)¹⁴ immediately to the south of IN-03 (outside the ICP area and contained within an area that will be the subject of the Shenstone Park PSP and ICP), for licence to Mirvac for consideration of \$1. Shenstone suggested in oral submissions to the Panel that the Shenstone Park ICP may provide a credit for the land at a future date. Shenstone also undertook to pay any applicable GAIC on the land, and 50% of any additional intersection cost.

¹⁴ Submissions for Donnybrook JV Pty Ltd and 960 Blueways Pty Ltd, Panel Document 152, paragraph 53.

124. This 'solution' was recommended to the Panel to enable the construction of a new concept design prepared by Mr Walsh (the previous day) that provides for 3.5 metre lane widths, but otherwise maintains the capacity and functionality of the Compact Design. Once the land has been developed it would then be transferred to Council.
125. Simply put, the 'solution' proposed is not a solution, nor is it appropriate, capable of being adequately understood or supportable in the circumstances of this panel process.
126. What is absent from the Shenstone submission regarding their purported solution is any analysis of:
- (a) how this solution would be incorporated within the Donnybrook-Woodstock ICP;
 - (b) any flow on effects this would have for the calculation of the obligations of other parties;
 - (c) a costing of the proposed intersection;
 - (d) a precise identification of the land-take required, given the diagram is clearly identified as preliminary and the land area as approximate;
 - (e) whether the cost of any of the works would need to be apportioned to the Shenstone Park ICP, as the proposed intersection would clearly be provided at a higher cost than the Compact Design;
 - (f) how Mirvac would be empowered to develop the land holding pursuant to only a Licence agreement (which would not provide exclusive possession of the land);
and
 - (g) perhaps most importantly, any certainty that this purported 'solution' would be adopted in practice.
127. The VPA submits that the submissions made by Shenstone were ultimately unhelpful.
128. For a submitter to wait until the penultimate day of a panel hearing (which has clearly had a protracted preparation, exhibition, consultation and conclave phase) to raise a complex and convoluted proposal is simply unconstructive. Both the VPA and Mirvac

would clearly need significant time to take steps to determine whether what was proposed was firstly possible, then preferable.

129. The fact that the 'solution' was not put to the expert witnesses for the VPA or Mirvac is unjustifiable.
130. The VPA requires time to ascertain whether the design prepared is appropriate having regard to its functional layout, to cost the design, to consider whether it would be appropriate to apportion any of the cost of the intersection to Shenstone Park, given it will be partly constructed outside the ICP area, and will undoubtedly cost more to construct than the Compact Design proposed, and to appreciate the flow on effects this would have throughout the ICP document.
131. The VPA has simply not had time to undertake this work.
132. Accordingly, the way in which this solution would play out in practice is unknown.
133. For this solution to be seriously entertained, the VPA submits that the Panel should rightly require:
 - (a) some certainty not only that the intersection design relying on Shenstone land could possibly happen, but that if the Panel provided a positive recommendation, it would happen;
 - (b) a completed functional design, not preliminary;
 - (c) full costings on the proposed intersection;
 - (d) a new and complete draft of the ICP, demonstrating how it would necessarily be altered to accommodate the solution to understand its full implications;
 - (e) the response of all submitters to the panel process to the solution and the response of all expert witnesses who have already given evidence;
 - (f) a complete and comprehensive understanding of how the solution would impact upon the Shenstone Park ICP.

134. None of this information is available or is able to be provided to this Panel. The proposed 'solution' is untimely and ill-considered. In the circumstances, the VPA submits that it must be regarded as unsupportable.

C. THE REAL CONCERN OF SHENSTONE

135. It is clear that the real concerns of Shenstone regarding IN-03 are not the safety of the intersection proposed or even the extent of redundancy. The clearly expressed concerns of Shenstone are that at some point in the future when the Shenstone Park ICP is finalised, the Department of Transport (incorporating VicRoads) will change its mind regarding the appropriateness of 3 metre lane widths and they will be required to contribute to the cost of an upgraded intersection.

136. Panel Document 154 makes this DoT position abundantly clear.

137. While the VPA makes absolutely no allegation or suggestion that the opinions of Mr Walsh are not genuine or honestly held, they are clearly and obviously not the concerns of Shenstone.

138. They are also not consistent with the views of the other experts called to give evidence before the Panel, or indeed other directors within TraffixGroup, as became clear during the cross-examination of Mr Walsh.

139. The VPA submits that the proposed Compact Design has been expertly designed for the specific context and is appropriate, and will ensure that the intersection operates with necessary capacity and with proper regard for the safety of motorists and pedestrians. It also meets the requirements of all applicable standards.

IX. CONCLUSION

140. The remaining issues in dispute between the VPA and the submitters are limited. For the reasons advanced by the VPA throughout the Panel process, the VPA submits that the remaining issues have been adequately answered either through explanation and evidence provided during the hearing or by proposed adjustments to the ICP. The VPA commends the Amendment, with the minor adjustments advanced by the VPA through the hearing, to the Panel.

141. The VPA submits that the Amendment has strategic justification and respectfully requests that the Panel recommend adoption of the Amendment.

Susan Brennan

Carly Robertson

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7 November 2019