

**Ballarat Planning Scheme Amendment C234ball
Ballarat West Precinct Structure Plan and Development
Contributions Plan Review**

Panel Report

Planning and Environment Act 1987

29 January 2026

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue, you should seek independent advice.

The planning authority must consider this report before deciding whether to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Ballarat Planning Scheme Amendment C234ball

Ballarat West Precinct Structure Plan and Development Contributions Plan Review

29 January 2026



Con Tsotsoros, Chair



Peter Bettess, Member

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Glossary and abbreviations

the CMP	Ballarat West Conservation Management Plan
Community and Recreation Infrastructure Report	Ballarat West Precinct Structure Plan Review: Community and Recreation Infrastructure Report (ASR Research, 29 May 2024)
Council	Ballarat City Council
the DCP	Ballarat West Development Contributions Plan
DCP Guidelines	Development Contributions Guidelines (Department of Sustainability and Environment, 2003, amended 2007)
DEECA	Department of Energy, Environment and Climate Action
Delacombe MAC	Delacombe Major Activity Centre
DIL	Development Infrastructure Levy
DTP	Department of Transport and Planning
EPBC Act	<i>Environmental Protection and Biodiversity Conservation Act 1999 (Cth)</i>
Head TfV	Head, Transport for Victoria
ICP Guidelines	Infrastructure Contributions Plan Guidelines (State Government, March 2021)
LoS	Level of service
the NVPP	Ballarat West Native Vegetation Precinct Plan
PE Act	<i>Planning and Environment Act 1987</i>
the PSP	Ballarat West Precinct Structure Plan
SIDRA	Signalised Intersection Design and Research Aid
VPA	Victorian Planning Authority

Overview

Amendment summary

The Amendment	Ballarat Planning Scheme Amendment C234ball
Brief description	Review of the Ballarat West Precinct Structure Plan and Development Contributions Plan
Subject land	Ballarat West PSP area
Planning Authority	Ballarat City Council
Authorisation	30 May 2025, with conditions
Exhibition	3 July to 4 August 2025
Submissions	Number of Submissions: 22

Panel process

The Panel	Con Tsotsoros (Chair) and Peter Bettess
Supported by	Gabrielle Trowse, Project Officer, Planning Panels Victoria
Directions Hearing	Planning Panels Victoria and online, 6 November 2025
Panel Hearing	2, 3, 4 and 5 December 2025: Planning Panels Victoria and online 10 December 2025: Ballarat Town Hall and online
Site inspections	Unaccompanied, 10 December 2025
Parties to the Hearing	Ballarat City Council represented by Mimi Marcus of Marcus Lane Group, calling expert evidence on: - traffic from Tim De Young of Eukai - development contributions from Paul Shipp of Urban Enterprise - drainage from Rob Swan of HARC Services Head, Transport for Victoria represented by Jozef Vass Landmack Property Group Pty Ltd represented by Mark Bartley of Russell Kennedy, calling expert evidence on traffic from Aaron Walley of Ratio Nordic Pty Ltd and Miles Farms Pty Ltd (Mondous Property Group) represented by Geoff Lake of Counsel, instructed by Best Hooper, calling expert evidence on ecology from Aaron Organ of Ecology and Heritage Partners Abiwood Creekside Pty Ltd (written submission only)
Citation	Ballarat PSA C234ball 2026
Date of this report	29 January 2026

Executive summary

Ballarat West (otherwise referred to as the PSP area in this report) spans 1,290 hectares and is bound by Cuthberts Road to the north; part of Midland Highway and MR Power Park to the east; Winter Creek to the south; and properties along Dyson Drive and the proposed Western Link Road to the west.

The PSP area has been significantly developed since the Ballarat West Precinct Structure Plan and Development Contributions Plan were first implemented, with about 40 per cent subdivided and titled and 13 per cent under construction.

The PSP and the DCP were introduced into the Ballarat Planning Scheme in November 2012 and October 2014 respectively. As part of its five-year review process, Council reviewed the PSP and implemented changes in 2017. For the next five year review, Council started reviewing the existing PSP and DCP in 2021 before adopting the updated versions in September 2024.

Ballarat Planning Scheme Amendment C234ball (the Amendment) seeks to implement the recommendations of the updated PSP and DCP by amending, among other changes:

- Urban Growth Zone Schedule 2
- Development Contributions Plan Overlay Schedule 1 to revise the Development Infrastructure Levy (DIL) and Community Infrastructure Levy (CIL) rates
- the Clause 53.01 Schedule to increase the public open space contribution rate for the PSP area
- the Clause 72.04 Schedule to incorporate the updated PSP and DCP and the Small Lot Housing Code (Victorian Planning Authority, November 2024).

Council exhibited the Amendment from 3 July to 4 August 2025 and received 22 submissions. Key issues raised in submissions relate to:

- the DCP levy and administration
- DCP project details including scope, costs and land allocation
- requests for additional DCP infrastructure projects
- active open space provision and the public open space contribution rate
- drainage strategy and infrastructure
- flora and fauna
- PSP housing density and yield.

Strategic justification

No submission requested the Amendment be abandoned due to insufficient strategic justification. Council has applied good practice in its approach to reviewing the PSP and DCP.

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- is based on a review of the Ballarat West Precinct Structure Plan and Development Contributions Plan that applied a good practice approach
- should proceed subject to addressing the more specific issues discussed in this report.

DCP levy administration

The approach to the proposed Development Infrastructure Levy amounts including open space contributions and project apportionment is appropriate and justified.

The proposed Development Infrastructure Levy amounts are comparable with those in other regional Victorian locations and there is no evidence they will unreasonably impact development feasibility and housing affordability over the life of the Development Contributions Plan.

The methodology for indexing all DCP project costs is appropriate.

DCP projects*Land allocation for community infrastructure at Delacombe Major Activity Centre*

It is appropriate and justified to reduce land allocated for projects DI_LA_1 and DI_LA_2 in the Delacombe Major Activity Centre from 2.6 hectares to 1.9 hectares.

Ballarat–Carngham Road/Presentation Boulevard intersection (JNC_02) design

It is not appropriate to signalise the Ballarat-Carngham Road/Presentation Boulevard intersection (JNC_02) because:

- it would result in greater and unreasonable delays compared to a roundabout
- the responsible road manager does not support signalisation.

The intersection was not exhibited as a roundabout, however its cost as a roundabout is included in the current Development Contributions Plan and can be translated into the revised Plan.

Community facility construction costs

It is reasonable for the developer to pay the increased projected costs resulting from revised scopes because paying for the indexed specified amount will result in a serious funding shortfall within the Development Contributions Plan.

The Development Contributions Plan should not be revised to limit contributions to indexation.

Bridge Project – Schreenans Road Creek Crossing (DI_RD_31c)

The Schreenans Road Creek Crossing (DI_RD_31c) bridge length, width and cross-section should be reviewed before the Development Contributions Plan is finalised to ensure it has been accurately costed. The crossing project performs an important strategic east-west connector function and should remain as a project in the Development Contributions Plan.

Other DCP projects

The following are appropriate and justified:

- the increased costs for Intersection Projects DI_JNC_05 and DI_JNC_08
- the revised costing and apportionment for the Indoor recreation centre (DI_OS_6)
- the revised costing and apportionment for MR Power Park – Active Open Space (DI_OS_1).

Requests for additional DCP infrastructure projects

It is not appropriate or justified for the Development Contributions Plan to be revised to include the:

- Webb Road/Schreenans Road roundabout
- Ballarat-Carngham Road and Mirelle Drive traffic signals

- Ballarat-Carngham Road and Presentation Boulevard (DI_JNC_02) land acquisition.

Active and public open space contributions

The proposed reduced active open space and increased public open space contribution amounts are justified and appropriate through a sound methodology.

It is not appropriate or justified to increase the public open space contribution rate from 5.31 to 5.91 per cent of gross developable area for land covered by the Ballarat West Precinct Structure Plan in the Clause 53.01 Schedule.

Drainage strategy and infrastructure

The updated drainage strategy provides a sound basis for the Precinct Structure Plan and Development Contributions Plan.

No change should be made to the Precinct Structure Plan and Development Contributions Plan for DCP-funded pipes, as they are already installed under the existing strategy for drainage infrastructure design in the P and T sub-catchments. It is not appropriate to revise pipe sizes in the Ballarat West Development Contributions Plan to match specifications of pipes that have been already installed.

The Development Contributions Plan has accurately estimated and reflected:

- the cost of gross pollutant traps
- the sizing, location and costing of drainage infrastructure.

The drainage design standards are sufficiently clear, and further clarification will be provided by explicitly stating in the Precinct Structure Plan that the trunk drainage system has been and will be designed and constructed for a 10 per cent annual exceedance probability storm event.

Other issues

Ballarat West Native Vegetation Precinct Plan sunset clause

There should be a sunset clause in the Ballarat West Native Vegetation Precinct Plan to recognise the precinct's urban context and changes since 2012.

Growling Grass Frog conservation and offset management

There should be provisions in the Precinct Structure Plan and the Planning Scheme to protect the Growling Grass Frog because they were recently detected within the accepted dispersal range of the Miles Farms Pty Ltd land.

Growling Grass Frog matters cannot be solely managed through the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) because this legislation does not extend to interrelated planning issues in the Precinct Structure Plan area.

The 2011 Conservation Management Plan for the Growling Grass Frog should continue to be referenced in the Ballarat West Precinct Structure Plan and the Planning Scheme until the draft 2023 plan is finalised.

PSP housing density and yield

It is appropriate and justified to specify a target of 20 dwellings per net developable hectare in the Ballarat West Precinct Structure Plan to align with policy objectives and guidelines.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Council:

1. **Adopt Ballarat Planning Scheme Amendment C234ball as exhibited with the changes recommended in this report.**
2. **Before finalising the Ballarat West Development Contributions Plan, the Schreenans Road Creek Crossing (DI_RD_31c) should be reviewed so that:**
 - a) **its bridge design including its length, width and cross-section is the minimum necessary for Schreenans Road to perform its function in the transport hierarchy**
 - b) **its cost reflects the outcome of this review.**
3. **Amend the Ballarat West Development Contributions Plan to replace Project DI_JNC_02 (Carngam Rd / New N-S Rd (North) Signalised Intersection) with Project DI_JNC_02 (Carngam Rd / New N-S Rd (North) Roundabout) from the current Ballarat West Development Contributions Plan.**
4. **Amend the Clause 53.01 Schedule to no longer revise the existing public open space rate for land covered by the Ballarat West Precinct Structure Plan from 5.31 to 5.91 per cent.**
5. **Amend the Ballarat West Precinct Structure Plan to:**
 - a) **expressly identify at page 77 that the trunk drainage system has been and will be designed and constructed for a 10 per cent annual exceedance probability storm event**
 - b) **revise section 1.2 regarding the Ballarat West Native Vegetation Precinct Plan as shown in Appendix B**
 - c) **revise section 5.2 (Housing) to replace the relevant housing objective with:**
To achieve a density of 20 dwellings per Net Developable Hectare (NDHa) throughout the Ballarat West PSP area.
6. **Amend the Ballarat West Native Vegetation Precinct Plan to include the following:**
This NVPP expires 30 December 2026.
Upon expiry:
 - *Any proposed removal, destruction or lopping of native vegetation within the precinct will require a new planning permit application under Clause 52.17, supported by current site assessments and offset calculations in accordance with the Guidelines for the removal, destruction or lopping of native vegetation, or its successor.*
 - *Offset obligations identified within this NVPP will no longer be applicable unless secured before the sunset date.*
 - *Landowners and developers must provide offset evidence to the responsible authority for all offsets secured under this NVPP.*

1 Introduction

1.1 The Amendment

(i) Amendment description

The Amendment seeks to update the Ballarat West Precinct Structure Plan (PSP) and Development Contributions Plan (DCP). The PSP and DCP were first implemented in 2012 and 2014 respectively and reviewed in 2024 to respond to changes and ensure future development delivers acceptable planning outcomes. Proposed updates to the PSP and DCP include changes to the future urban structure plan, housing standards, environmental protections, zoning, and development and public open space contributions.

Specifically, the Amendment proposes to amend:

- Urban Growth Zone Schedule 2
- Development Contributions Plan Overlay Schedule 1 to revise the Development Infrastructure Levy (DIL) and Community Infrastructure Levy (CIL) rates
- the Clause 53.01 Schedule to increase the public open space contribution rate for land covered by the Ballarat West Precinct Structure Plan from 5.31 to 5.91 per cent of gross developable area
- the Clause 72.04 Schedule to incorporate the updated PSP and DCP and the *Small Lot Housing Code* (Victorian Planning Authority, November 2024).

(ii) The subject land

The Amendment applies to the PSP area as shown in Figure 1 (the subject land). The PSP area contains the three sub-precincts:

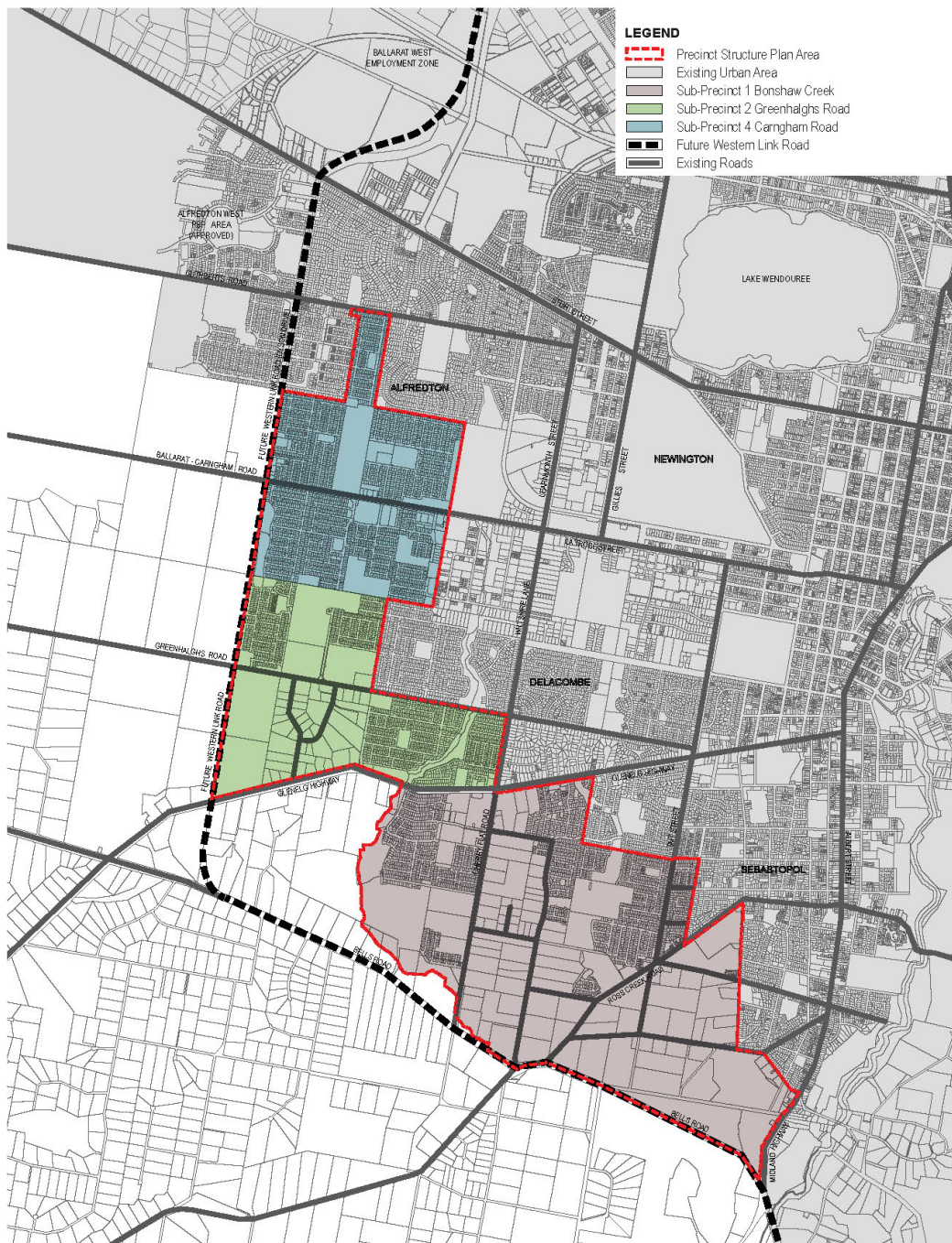
- Bonshaw Creek (Sub-Precinct 1)
- Greenhalghs Road (Sub-Precinct 2)
- Carngham Road (Sub-Precinct 4).

The PSP area:

- spans 1,290 hectares
- is bound by Cuthberts Road to the north, part of Midland Highway and M R Power Park to the east, Winter Creek to the south, and properties along Dyson Drive and the proposed Western Link Road to the west
- is located on Wadawurrung country and managed by the Wadawurrung Traditional Owners Aboriginal Corporation as the Registered Aboriginal Party for the region
- has been significantly developed since the PSP and DCP were first implemented, with about:
 - 40 per cent subdivided and titled
 - 13 per cent under construction
 - 47 per cent yet to be developed
- varies from relatively flat terrain in the Carngham Road and northern Bonshaw Creek precincts to steep slopes in the Greenhalghs Road precinct
- is within the Victorian Volcanic Plains bioregion where:
 - much of the native flora has been cleared

- some trees associated with the Plains Grassy Woodland and Creekline Herb-rich Woodland Ecological Vegetation Classes (EVCs) remain.

Figure 1 PSP area (red outline) with sub-precincts (shaded)



Source: Exhibited draft PSP (February 2025)

(iii) Supporting documents

The Amendment was informed by the following supporting documents:

- Ballarat West Precinct Structure Plan Review: Community and Recreation Infrastructure Report (ASR Research, 29 May 2024)
- Conservation Management Plan for the Growling Grass Frog (SMEC, 20 December 2011)
- Ballarat West PSP: Review Drainage Strategy Update (Engeny, 19 December 2024)

- Flora and Fauna Assessment of the area (Ecology and Heritage Partners, 2010)
- Indoor Recreation Centre Estimate Peer Review (WT Partnership, 14 July 2025)
- Land Valuation Assessments for the Ballarat West Development Contributions Plan Review (Opteon Property Group, June 2024)
- Transport Projects Review: Ballarat West Precinct Structure Plan (Milward Engineering Management, 14 February 2024).

1.2 Background

Table 1 Chronology of events

Background summary	
1 Nov 2012	Ballarat West PSP originally incorporated into the Planning Scheme [Ballarat Amendment C158]
30 Oct 2014	Ballarat West DCP originally incorporated into the Planning Scheme [Ballarat Amendment C167]
10 Aug 2017	The Ballarat West Precinct Structure Plan Review (2012) recommended changes were introduced into the Planning Scheme [Ballarat Amendment C203]
2021	Council started reviewing the existing Ballarat West PSP and DCP
2024	
13 Feb	Transport Projects Review Report was completed
11 Apr	Drainage Strategy Update Report completed
29 May	Community and Recreation Infrastructure Report completed
11 Sep	Council resolved to adopt the updated Ballarat West PSP (revised August 2024) and DCP (revised July 2024) and apply to the Minister for Planning to authorise the Amendment
15 Sep	DTP, on behalf of the Minister for Planning, requested further information
2025	
Feb	Council completed the PSP and DCP review process with updated versions
12 Mar	Council resolved to adopt the PSP (revised February 2025) and DCP (revised February 2025)
3 Jul to 4 Aug	Council formally exhibited the Amendment and received submissions
8 Oct	Council considered the submissions and resolved to request the Minister for Planning appoint a planning panel to consider unresolve submissions

1.3 The Panel's approach

Key issues raised in submissions related to:

- whether the increased development infrastructure levy is appropriate and justified
- funding and cost apportionment of DCP projects
- design of the transport network
- active open space
- ecology and conservation.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- DCP levy and administration
- DCP projects
- Active and public open space contributions
- Drainage strategy and infrastructure
- Other issues.

1.4 Experts called by parties

This report refers to the following experts called by parties at the Hearing.

Council called:

- Tim De Young of Eukai on traffic
- Paul Shipp of Urban Enterprise on development contributions
- Rob Swan of HARC Services on drainage.

Landmack Property Group Pty Ltd called:

- Aaron Walley of Ratio on traffic

Nordic Pty Ltd and Miles Farms Pty Ltd (Mondous Property Group) called:

- Aaron Organ of Ecology and Heritage Partners on ecology.

1.5 Planning context

This chapter identifies planning context relevant to the Amendment.

Table 2 Planning context

	Relevant references
Victorian planning objectives	- section 4 of the PE Act
Planning Policy Framework	- Clauses 11.02-3S Sequencing of development, 11.03 Planning for places, and 11.03-2S Growth areas - Clause 12.01 Biodiversity, 12.01-1S Protection of biodiversity, 12.01-1L Protection of biodiversity, and 12.01-2S Native vegetation - Clauses 13.02-1S Bushfire planning management, 13.04 Soil degradation, 13.04-1S Contaminated and potentially contaminated land, 13.07 Amenity, human health and safety, and 13.07-1S Land use compatibility - Clauses 16.01-1S Housing supply, 16.01-1L Location of residential development, and 16.01-2S Housing affordability

	- Clauses 17.01-1S Diversified economy and 17.01-1R Diversified economy – Central Highlands - Clauses 18.01 Land Use and Transport, 18.01-1S Land use and transport integration, 18.01-2S Transport system, 18.02-1S Walking, 18.02-2S Cycling, and 18.02-4S Roads - Clauses 19.02-2S Education facilities, 19.02-4S Social and cultural infrastructure, 19.02-6S Open space, 19.03-1S Development and infrastructure contribution plans, and 19.03-3S Integrated water management
Other planning strategies and policies	- <i>Plan for Victoria</i> (Department of Transport and Planning, 2025) - <i>Precinct Structure Planning Guidelines: New Communities in Victoria</i> (Victorian Planning Authority, 2021) - <i>Development Contribution Guidelines: Version 5.9 16 June 2003</i> (as amended March 2007) - <i>Ballarat West Growth Area Plan</i> (Tract Consultants Pty Ltd, March 2009)
Planning scheme provisions	- Urban Growth Zone - Development Contributions Plan Overlay (DCPO)
Planning scheme amendments	- Ballarat Planning Scheme Amendment C117 and C133 – Ballarat West Growth Area Plan - Ballarat Planning Scheme Amendments C122 and C150 – Alfredton West Precinct Structure Plan - Ballarat Planning Scheme Amendment C158 – Ballarat West Precinct Structure Plan and Native Vegetation Precinct Plan - Ballarat Planning Scheme Amendment C167 – Ballarat West Development Contributions Plan - Ballarat Planning Scheme Amendment C203 – Ballarat West Precinct Structure Plan 5-year review (2012) - Amendment GC75 – Community Infrastructure Levy update (2017) - Amendment VC249 – Small second dwellings (2024)
Ministerial directions	- Ministerial Direction No. 1 – Potentially contaminated land - Ministerial Direction No. 11 – Strategic assessment of amendments - Ministerial Direction No. 12 – Urban growth areas - Ministerial Direction on the Preparation and Content of Development Contributions Plans made under s46M(1) of the P&E Act.
Planning practice notes	- Planning Practice Note 46: Strategic Assessment Guidelines

1.6 Strategic justification

No submission requested the Amendment be abandoned due to insufficient strategic justification. Council outlined in its submission how the Amendment aligns with planning policies (see summary in Chapter 1.5). The Amendment seeks to implement the outcomes of a five-year review of the PSP and DCP, as sought by relevant guidelines.

The review process was supported by the technical reports set out in sub-chapter 1.1(iii) that helped inform its recommendations. The Panel considers that Council has applied good practice in its approach to reviewing the PSP and DCP. It is appropriate and common for a DCP review process to review project costs based on evolving scope details, standards and escalating construction costs that exceed the specified DCP indexation.

The DCP review process has demonstrated that indexation is not always sufficient to keep pace with actual construction costs of community infrastructure over time. Indexation helps to minimise the extent of this misalignment between DCP reviews – it is not a substitute for re-costing projects where required.

The approach to specific aspects of these documents is explored further in this report.

(i) Conclusions and recommendation

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- is based on a review of the Ballarat West Precinct Structure Plan and Development Contributions Plan that applied a good practice approach
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

The Panel recommends Council:

Adopt Ballarat Planning Scheme Amendment C234ball as exhibited with the changes recommended in this report.

2 DCP levy and administration

2.1 Approach to levy amount and project apportionment

(i) The issues

The issues are:

- whether the approach to the proposed DIL amount including open space contribution and project apportionment is appropriate and justified
- whether the proposed DIL will unreasonably impact development feasibility and housing affordability.

(ii) Background

Section 4.2 of the exhibited DCP sets out the method for calculating levies.

The existing DIL for the 2025/26 financial year is:

- \$354,802 per net developable hectare for residential development
- \$242,086 per net developable hectare for commercial development.

The Amendment proposes to increase the DIL to:

- \$421,701 per net developable hectare for residential development
- \$277,301 per net developable hectare for commercial development.

The above figures are expressed in 2024/25 financial year dollars.

(iii) Evidence and submissions

There were individual submissions which objected to the increasing the DIL. Reasons included:

- increasing the DIL by more than 30 per cent will make future housing more unaffordable in the greenfield areas
- Ballarat is currently experiencing a *“dramatic economic downturn”* due to stress in the property development sector with weak demand and rising construction costs
- developers with stagnant sales are selling lots at reduced prices to stay afloat
- the increased amount will make many projects unviable.

One submitter considered it inexplicable to increase the total DCP cost from \$257 million to \$511 million. Another submitter considered that increasing the residential DIL by about \$80,000 per hectare generally resulted from:

- unjustifiable changes to the scope and costing of DCP projects
- indexing DCP project costs that ultimately increases the DIL collected
- reducing the funding gap payable by Council attributed to the external catchment.

Council explained the DIL has remained unchanged for 11 years, and that development has benefitted from unusually low DIL rates during strong market activity and government incentives. It submitted the proposed DIL changes result from the first substantive review of the DCP since 2014. It compared the proposed DIL of \$421,701 per net developable hectare with other DILs in regional Victoria and found it is well within the range of:

- Shepparton South-East (\$442,737) incorporated into the Greater Shepparton Planning Scheme in 2024

- Bannockburn South East (\$974,156) exhibited in 2025
- Marshall (\$1,213,325) following a panel hearing in 2025
- Ballarat North (\$672,901) exhibited in 2025.

Council submitted that assertions regarding economic impacts, development viability and housing affordability are unsupported by expert evidence including any feasibility modelling. It added that freezing DCP levies conflicts with the review's objective to ensure infrastructure delivery meets community needs in a financially responsible manner.

Regarding construction costs, Mr Shipp stated the proposed DIL rates were due to increased construction costs and an increased cost apportionment to development. He explained that costs include:

- 34 per cent increase in construction
- about 60-70 per cent increase in active open space improvement items
- \$27.4 million increase in drainage infrastructure (pipe infrastructure delivery and retarding basins).

Mr Shipp added that higher construction costs were identified through the review of all infrastructure items. He considered the materially higher construction costs compared to indexed costs confirms:

- the importance of the DCP review
- infrastructure would be underfunded through the existing DCP.

Regarding apportionment, Mr Shipp stated project costs were apportioned based on:

- the DCP principles of need, nexus and equity
- the extent to which Ballarat PSP residents are expected to generate the need for each item based on technical assessments.

Mr Shipp compared the proposed DIL amounts with DILs in other precincts. He stated:

- the comparison shows that the exhibited DILs are within the range of levies in other regional growth areas
- the proposed DIL will bring the Ballarat West precinct more in line with equivalent large regional centre growth areas in Geelong (Armstrong Creek) and Wodonga (Leneva)
- based on the comparison, the exhibited DILs are not of concern.

(iv) Discussion

The DCP has applied a methodology that is consistent with the DCP Guidelines. By doing so, it has appropriately calculated the extent of demand generated by future residents in the PSP area so that it can apportion it from external demand. The latter will be funded through other sources.

The DCP review included reassessing catchments for individual projects due to changing circumstances over that past 11 years. While this will help reduce the DCP project funding gap, there is no evidence that Council readjusted the external demand apportionment with that intention.

There are two perspectives regarding the increased DILs. One perspective is they will unreasonably impact development viability and housing affordability during challenging economic times and a housing shortage. On the other hand, not applying the DIL to appropriately fund future infrastructure may result in:

- a shortfall in infrastructure if Council is unable to fund certain DCP items which may discourage potential purchasers, thereby further affecting lot sales
- increased Council rates to fund the shortfall which would be passed on to new home owners.

The Panel was not presented with information to support submissions regarding the impact of the increased DIL. Mr Shipp's evidence demonstrated the proposed DILs are comparable with other areas in regional Victoria. Of note, the DCP has a 30-year horizon and current economic conditions are generally cyclical and represent a relatively small point in the overall timeframe. Current economic conditions should therefore not be considered when determining the approach to the levy amount.

(v) Conclusions

The Panel concludes:

- The approach to the proposed Development Infrastructure Levy amounts including open space contributions and project apportionment is appropriate and justified.
- The proposed Development Infrastructure Levy amounts are comparable with those in other regional Victorian locations and there is no evidence they will unreasonably impact development feasibility and housing affordability over the life of the Development Contributions Plan.

2.2 Approach to project cost indexation

(i) The issue

The issue is whether the methodology for indexing costs for all DCP projects is appropriate.

(ii) Background

Section 5.1 of the exhibited DCP sets out the method for adjusting values and indexing DILs:

- development infrastructure project costs other than land: adjusted (and then the contribution amounts recalculated) by reference to the Producer Price Indexes Australia, Victoria Table 17
- roads, bridges, trails, drainage and open space items: Output of the Construction industries, subdivision and class index numbers - Road and Bridge Construction Victoria
- buildings: the Building Construction Victoria (Australian Bureau of Statistics: Series 6427.0 or similar index)
- other items: the Consumer Price Index, Australia Tables 1 and 2. CPI: All Groups Melbourne (Australian Bureau of Statistics: Series 6401.0 or similar).

(iii) Evidence and submissions

There were submissions which raised concern regarding the approach to project cost indexation. They requested:

- the cost of completed DCP projects are not revised or indexed if the cost of completed DCP projects where fixed credits/payments have already been made should
- the part of the project that has been completed are not be indexed as part of the DIL calculation if a project cost is increased.

One submission considered the approach in the Infrastructure Contributions Plan Guidelines (State Government, March 2021) (ICP Guidelines) should be used as a guide for the Ballarat West DCP:

Indexation and adjustment of levies, values and amounts

The following levies, values and amounts must be annually indexed or adjusted in accordance with the applicable timing and methods specified in the Ministerial Direction:

- standard levies
- the estimated cost of each of the works, services or facilities to be funded from a supplementary levy that have not yet been constructed

...

Do land credit amounts that have been paid need to be adjusted?

No. If a land credit amount has been paid, its value remains fixed for the remainder of the life of the ICP and is not subsequently adjusted. The value of any outstanding land equalisation amounts is based on the land credit amount's value at the time it was paid.¹

Mr Shipp considered indexation to be essential for development contributions and for ensuring sufficient funds to deliver infrastructure over long periods of time involving changes in construction costs and land values. He explained it is standard practice and essential for all DCP items to be indexed annually, including completed and credited items. He said Council would have to fund the additional costs generated from not indexing completed projects.

Mr Shipp referred to the Development Contributions Guidelines (Department of Sustainability and Environment, 2003, amended 2007) (DCP Guidelines) which state:

The infrastructure levies in the DCPO schedule should be adjusted according to the specified index on an annual basis at the beginning of each new financial year within the timeframe of the DCP.

...

To calculate the indexed levy for any year after the first financial year the DCP is approved use the following formula:
(Original levy calculated in the DCP x by the index figure for the year you are calculating) divided by the index figure for year 1 of the DCP = Indexed DCP levy for year n of the DCP

Respond to the submissions, he stated the ICP Guidelines do not apply to DCPs, though not indexing completed projects would:

- be inconsistent with the principles of both the DCP and ICP systems
- unreasonably financially penalise Councils when implementing the plans.

Council submitted that indexation must continue to apply to all DCP items including completed and credited projects so that levy revenue keeps pace with growth in construction costs and land values over the life of a long-term infrastructure program. It was concerned that deviating from this principle will:

- undermine the financial sustainability of the DCP
- introduce inequity between contributors
- expose Council to avoidable cost burdens.

Council it is standard practice for indexation to apply to all DCP items irrespective of whether they have been delivered or credits have been issued. It explained that across a DCP's 20-plus year life,

¹ Emphasis by submitter

infrastructure is delivered at different stages, sometimes well in advance of levy collection and sometimes long after.

Council considered a financially sound DCP relies on all item costs being indexed annually so revenue and expenditure remain aligned over time. If completed items were excluded from indexation, Council would bear the full impact of escalation on those works, creating an unfunded shortfall and shifting costs away from developers and onto ratepayers. This outcome, as Mr Shipp notes, would be *“unreasonably... financially punitive for Councils tasked with implementing the plans”*.

Council submitted that the DCP expressly requires annual indexation of the levies throughout the life of the DCP, and they do not distinguish between completed and uncompleted items. It considered the ICP Guidelines and related Ministerial Direction are irrelevant, as they do not apply to DCPs.

Council noted the Melton Amendment C232melt (Toolern DCP) Panel accepted that indexing completed projects is a ‘sound approach’ consistent with established DCP practice.

(iv) Discussion

One of the purposes of the DCP review is to ensure the DCP continues to be relatively accurate and implementable. This includes aligning project costs as closely as possible with the ultimate actual project cost. Accordingly, the Panel accepts Mr Shipp’s evidence and agrees with Council’s submission. Indexation does not always align with escalating construction costs such as what Victoria has experienced in recent years. However, it helps to minimise the difference until the next DCP review. All projects need to be indexed to avoid serious funding shortfalls that the broader City of Ballarat community would need to subsidise. This includes completed and credited projects because they form part of the overall DIL and should be indexed to current value consistent with incomplete projects. As noted by Mr Shipp, this is standard practice and essential for a DCP.

The Infrastructure Contributions Plan Guidelines are not relevant to DCPs and should not be used as a guide for the Ballarat West DCP.

(v) Conclusion

The Panel concludes the methodology for indexing all DCP project costs is appropriate.

3 DCP projects

3.1 Land allocation for community infrastructure at Delacombe Major Activity Centre

(i) The issue

The issue is whether it is appropriate and justified to reduce land allocated for projects DI_LA_1 and DI_LA_2 in the Delacombe Major Activity Centre from 2.6 hectares to 1.9 hectares.

(ii) Background

The Delacombe Major Activity Centre (Delacombe MAC) contains community infrastructure projects, comprising a library, multipurpose community centre, and Early Years Hub.

These projects are identified in and partially funded by the existing DCP as follows:

- DI_LA_1: Land for branch library within MAC (sub-precinct 1) – Property 3
Total land area: 1 hectare | Cost: \$400,000
- DI_LA_2: Land for Early Years Hub – MAC (sub-precinct 1) – Property 3
Land acquisition: 0.5 hectares | Cost: \$200,000
- DI_LA_3: Land for Level 3 Multi-purpose Community Centre – MAC (sub-precinct 1) – Property 4
Land acquisition: 1 hectare | Cost: \$400,000.

An Urban Design Framework for the Delacombe MAC dated March 2017 was prepared. The Urban Design Framework:

- provided a new layout of development in the centre with the community facility/early years hub to the west on property 3 and the library to the east on property 4
- was revised in April 2023 with the library relocated to the west of the community facility/early years hub, consolidating the community facilities on property 3.

Council has acquired 1.06 hectares of land for community facilities (0.06 hectares and 1.0 hectares at 10 and 26 Valiant Road, Smythes Creek respectively). The land at 10 Valiant Road is remote from where the community facilities are now to be located so Council is considering disposing of this land.

There are section 173 agreements (Delacombe and Magee) and related planning approvals providing for land transfers to the Council and developer contributions for the community facilities.

The PSP and DCP propose reducing the land requirement from 2.6 hectares to 1.9 hectares, reflecting the updated assessment of the amount of land needed to accommodate these facilities.

(iii) Evidence and submissions

The previous developer of PSP properties 3 and 4, where the community facility projects are located, submitted that enough land has already been provided for the facilities. It added:

- any additional land should be acquired through compulsory acquisition rather than through the Ballarat West PSP/DCP process

- the area allocated for projects DI_LA_1 and DI_LA_2 should be confined to the 1.06 hectares of land already provided rather than the current DCP requirement of 2.6 hectares.

The submitter considered that Council is effectively seeking a 'second bite of the cherry' by requiring additional land, which will increase both land acquisition costs and construction costs, thereby impacting the DIL.

Council considered the acquired 1.06 hectares of land for community facilities to be insufficient to accommodate the community facilities and that the shortfall would need to be addressed through DCP and Council funds. It explained there continues to be a need to provide the early years hub, library and multi-purpose community centre in the Delacombe MAC. The facilities in the Delacombe MAC are co-located with schools and on a connector street network in an activity centre, maximising community access by walking, cycling and public transport.

Council referred to the Community and Recreation Infrastructure Report which demonstrates both the need for the facilities and the area of land to accommodate the facilities. It submitted:

- under the current DCP and the section 173 agreements and associated planning approvals there is a reduced amount of land available to deliver the PSP community facilities
- it disagrees that the relevant permit, section 173 agreements and the Urban Design Framework somehow override Council's obligations as the collecting agency under the PE Act to deliver the land required for the community facilities in this location
- it is reasonable and meritorious for the DCP to identify and fund the extent, location and cost of land now planned to most efficiently and practically meet community needs.

(iv) Discussion

The Community and Recreation Infrastructure Report supports the need for the facilities and the land required. The proposed update of the DCP provides for the land now required to deliver these facilities considering land or funding already provided under the existing DCP, section 173 agreements and associated planning approvals. The Panel is satisfied:

- the updated DCP appropriately accounts for the land already provided
- it is appropriate for Council to reduce the land allocated for projects DI_LA_1 and DI_LA_2 in the Delacombe Major Activity from 2.6 hectares to 1.9 hectares to reflect changes justified by the Community and Recreation Infrastructure Report.

(v) Conclusion

The Panel concludes it is appropriate and justified to reduce land allocated for projects DI_LA_1 and DI_LA_2 in the Delacombe Major Activity from 2.6 hectares to 1.9 hectares.

3.2 Ballarat–Carngham Road/Presentation Boulevard intersection (JNC_02) design

(i) The issue

The issue is whether it is appropriate and justified to signalise the Ballarat-Carngham Road/Presentation Boulevard intersection (DCP Project JNC_02).

(ii) Background

The exhibited DCP proposes to change DCP Project JNC_02 from a roundabout to a signalised intersection.

(iii) Evidence and submissions**Intersection design**

Mr De Young modelled the performance of the intersection for a roundabout and traffic signals using SIDRA INTERSECTION, traffic software that defines the Level of Service (LoS) as a qualitative, letter-based ranking (A through F) representing the operational performance of traffic at intersections, roundabouts, and networks. LoS A represents the best/free flow conditions while LoS F represents the worst/stop-start conditions based on performance measures such as average delay per vehicle, degree of saturation, and queue lengths.

Abiwood opposed the change to a signalised intersection from the roundabout in the existing DCP.

Council preferred the alternative signalised intersection treatment for DCP Project JNC_02. It explained that its preference is based on a comprehensive technical review, including consideration of a concept layout design and SIDRA modelling of ultimate traffic volumes.

Council relied on Mr De Young's evidence and submitted:

- Mr De Young's SIDRA modelling demonstrated a signalised layout with two through-lanes in each direction (and, preferably, a shared through/left lane on the east approach) will deliver a safer, more efficient and more flexible intersection
- Mr De Young's robust analysis confirms the signalised layout provides safe, efficient and reliable performance for all movements and is the most robust option for the long-term operation of Ballarat-Carngham Road.

Head, Transport for Victoria (Head TfV) disagreed with Mr De Young's conclusion that a signalised intersection with two through lanes in each direction can be expected to operate with an acceptable level of performance in peak periods. Head TfV said it would require a minimum level of service (LoS) of C for this intersection. It submitted that Mr De Young's SIDRA modelling demonstrates:

- a roundabout layout can operate at a LoS A
- the signalised intersection layout (with two through lanes) will only perform at a LoS D.

Council acknowledged that Ballarat-Carngham Road is a declared arterial road controlled by Head TfV, and the final decision on the intersection treatment ultimately rests with that authority.

Council added that if Head TfV determines the roundabout treatment in the current DCP should be retained, it will respect that decision and implement it accordingly.

Intersection costing

Head TfV submitted that it will require Council to revisit the DCP estimated cost of works and land for this intersection, based on contemporary build cost for urban 4-lane 2-way roundabout treatments similar to what is required at this location.

Council submitted the current DCP includes a 4-lane 2-way roundabout for the Ballarat-Carngham Road/Presentation Boulevard intersection. It said the Amendment process cannot be used to revisit those DCP cost and land assumptions for this intersection because no change is now proposed to the roundabout specified in the current DCP.

(iv) Discussion**Intersection design**

As Ballarat-Carngham Road is a declared arterial road managed by Head TfV, the intersection treatment is determined by Head TfV, and not by Council. Mr De Young agreed that, based on the SIDRA analysis, a roundabout will provide a more efficient LoS as submitted by the Head TfV. The view of the Council supported by Mr De Young is a signalised intersection remains the most appropriate and future-ready treatment for the Ballarat-Carngham Road and Presentation Boulevard intersection.

However, when considering Mr De Young's SIDRA analysis that a roundabout will provide an efficient LoS and that Head TfV is the responsible road manager that will make the ultimate decision, the Panel considers the proposed intersection should be the 4-lane 2-way roundabout provided for in the current DCP rather than the proposed signalised intersection.

Intersection costing

The costing of a 4-lane 2-way roundabout at this intersection is specified in the current DCP. As no change is now proposed to the treatment of this intersection, the Panel does not support revisiting the DCP cost and land assumptions through the Amendment.

(v) Conclusions and recommendation

The Panel concludes:

- It is not appropriate to signalise the Ballarat-Carngham Road/Presentation Boulevard intersection (DI_JNC_02) because:
 - it would result in greater and unreasonable traffic delays compared to a roundabout
 - the responsible road manager does not support signalisation.
- The intersection was not exhibited as a roundabout, however its cost as a roundabout is included in the current Development Contributions Plan 2017 and can be translated into the revised Plan.

The Panel recommends:

Amend the Ballarat West Development Contributions Plan to replace Project DI_JNC_02 (Carngham Rd / New N-S Rd (North) Signalised Intersection) with Project DI_JNC_02 (Carngham Rd / New N-S Rd (North) Roundabout) from the current Ballarat West Development Contributions Plan.

3.3 Community facility construction costs**(i) The issue**

The issue is whether the developer should pay specified community facility construction costs subject to indexation rather than the increased projected costs resulting from revised scopes.

(ii) Background

The exhibited DCP includes nine development infrastructure items for community facilities and associated land with a total project cost of \$23,918,266.83. This cost differs to the Community Infrastructure Levy which is capped at \$1,450 per dwelling.

(iii) Evidence and submissions

A submission requested the revised community facility construction costs be limited to indexation rather than rely on rescope projects that will further inflate their costs.

In response, Council submitted:

- these revisions are reasonable, necessary and properly reflect the cost of delivering high-quality community infrastructure
- the original 2013 surveyor estimates do not reflect current construction costs or modern standards for community infrastructure
- the Community and Recreation Infrastructure Report supports this position
- the Amendment adopts VPA benchmark costings for all outstanding community facility projects, which is standard in modern growth area PSPs.

In his expert report, Mr Shipp stated that while the rationale for the project scope and cost changes were beyond his expertise:

- the higher construction costs were calculated after reviewing and updating each infrastructure item scope and cost to reflect current standards and costs
- the fact that construction costs are materially higher than indexed costs confirms:
 - the importance of the review exercise
 - infrastructure would be underfunded if costs are not updated.

(iv) Discussion

The Panel agrees with Mr Shipp and Council on this matter. The DCP review process has demonstrated that indexation is not always sufficient to keep pace with actual construction costs of community infrastructure beyond a five-year period. Indexation helps to minimise the extent of this misalignment between DCP reviews – it is not a substitute for re-costing projects where required. Consistent with Mr Shipp’s view, the notably higher revised construction costs (compared to the indexed costs) justify the review exercise and confirm the indexed costs cannot be relied on to appropriately fund community infrastructure.

(v) Conclusions

The Panel concludes:

- The analysis demonstrates that relying on indexation alone of the costs of community infrastructure will result in a significant funding shortfall within the Development Contributions Plan.
- It is reasonable for the Development Infrastructure Levy to be increased to fund the increased projected costs resulting from revised scopes.

3.4 Intersection Projects (DI_JNC_05 and DI_JNC_08)**(i) The issue**

The issue is whether the increased costs for Intersection Projects (DI_JNC_05 and DI_JNC_08) are appropriate and justified.

(ii) Background

The exhibited DCP proposes to increase the cost of Project:

- DI_JNC_05 (Greenhalghs Rd / New N-S Rd (South) Roundabout) from \$1,015,654 to \$1,901,261.17
- DI_JNC_08 (Glenelg Hwy / New N-S Rd (South) Roundabout) from \$1,021,963 to \$1,813,170.75.

(iii) Evidence and submissions

One submitter raised issues regarding Intersection Projects (DI_JNC_05 and DI_JNC_08).

DI_JNC_05 (Greenhalghs Road/Innsbruck Road)

The submitter stated the cost increase associated with converting a roundabout to signals is unnecessary and that Council should negotiate alternative land acquisition.

Council responded that this misunderstands the physical constraints at this location. It submitted a roundabout will require land from multiple existing dwellings to the north.

Mr De Young stated:

- the proposed treatment (from a roundabout to a signalised intersection) is consistent with both contemporary PSP/DCP practice and accepted engineering principles
- his concept design for the intersection demonstrates that a roundabout's footprint will extend into established residential properties immediately north of the intersection
- a roundabout will require acquiring land from properties already developed, with dwellings and garages located within the area needed
- even if a roundabout was theoretically desirable, it cannot be constructed in this location without unacceptable impacts on existing development.

Council relied on Mr De Young's evidence and concluded that a signalised intersection is not only consistent with contemporary design standards but is the most feasible and technically justified outcome for this location.

DI_JNC_08 (Glenelg Highway)

The submitter was concerned the cost increase for DI_JNC_08 resulted from cost overruns or mismanagement, asserting the intersection should be delivered within the current DCP estimate.

Council considered the submitter's position misunderstands the nature of the update. It explained:

- the revised cost for DI_JNC_08 does not reflect project escalation, design change, or an expanded scope
- rather, the increase directly arises from correcting an error in the original DCP, where the road pavement requirement was incorrectly specified as a local road standard instead of an arterial pavement standard
- the revised DI_JNC_08 is appropriate, corrects a technical error and ensures the DCP is sufficiently funded to deliver the required works to the standard mandated for an arterial road intersection.

(iv) Discussion

As discussed earlier in this report, the Panel considers the DCP was reviewed through a good practice approach. It is appropriate and common for a DCP review process to review project costs based on evolving scope details, standards and escalating construction costs that exceed the specified DCP indexation. The submitter did not explain how the increased project costs fail to

meet the principles of need, nexus and equity – the ultimate test for justifying the project and its associated cost.

The Panel accepts that the land required to provide for a roundabout at the Greenhalghs Road/Innsbruck Road intersection will impact existing dwellings and that a signalised intersection provides a more acceptable intersection treatment given the development constraints.

Regarding Project DI_JNC_08 (Glenelg Highway), it is appropriate for the works to be specified to a standard mandated for an arterial road intersection. The DCP appropriately appropriates 55 per cent of the cost increase externally to recognise the Glenelg Highway serves a broader regional catchment beyond the PSP area.

(v) Conclusion

The Panel concludes the increased costs for Intersection Projects DI_JNC_05 and DI_JNC_08 are appropriate and justified.

3.5 Indoor recreation centre (DI_OS_6)

(i) The issue

The issue is whether the revised costing and apportionment for the Indoor Recreation Centre (DI_OS_6) are appropriate and justified.

(ii) Background

The exhibited DCP includes Project DI_OS_6 (Indoor Recreation Centre (8 courts) adjacent to LAC (sub-precinct 2)) to construct an indoor recreation centre with eight courts next to the Greenhalghs Active Open Space Reserve. The total cost is \$58,004,362.39, of which \$29,002,181.20 is apportioned to the PSP area.

(iii) Evidence and submissions

In his expert report, Mr Shipp explained the existing DCP:

- includes a contribution to two indoor recreation centres totalling 12 courts
- apportions 20 per cent (2.4 courts) of the cost to developers in the Ballarat West PSP area
- includes a subsidy from Council to encourage early development of the PSP area.

He added that the exhibited DCP:

- includes a contribution to one indoor recreation centre (DI_OS_6) totalling eight courts
- excludes OS_7 (indoor sports, four courts) consistent with the Community and Recreation Infrastructure Report recommendation
- apportions 50 per cent of the eight courts for DI_OS_6 based on the Community and Recreation Infrastructure Report which identifies the PSP area generates the need for four courts.

Mr Shipp found the apportionment changes to be appropriate and consistent with:

- principles of need, nexus and equity
- current practice in preparing DCPs.

Two submissions objected to:

- the cost of Indoor Recreation Centre (DI_OS_6) increasing from \$19.2 million to \$58 million (201 per cent increase)
- increasing the DI_OS_6 apportionment from 20 per cent to 50 per cent.

The submissions:

- questioned the revised demand assessment which reduced the number of courts
- were concerned this increase would significantly increase the DIL amount.

Council submitted:

- the revised costing and apportionment for Project DI_OS_6 is justified and necessary
- the two submissions rely on outdated assumptions and overlook the comprehensive technical re-assessment undertaken for the Amendment
- the original cost estimate prepared more than a decade ago no longer reflects current construction market conditions or modern standards for indoor recreation facilities
- the Community and Recreation Infrastructure Report confirmed there is no VPA Benchmark costing for an indoor recreation centre so the original estimate cannot be simply indexed – in its absence the Report sourced costs from a comparable facility in Maribyrnong
- a peer review found the increased cost to be on the lower end of expected benchmark ranges it is not inflated or excessive
- consolidating indoor demand into Project DI_OS_6 by deleting Project DI_OS_07 avoids duplication, improves operational efficiency and reflects best practice in community infrastructure planning
- Council would be unreasonably and disproportionately financially burdened if the cost was artificially apportioned to a lower amount.

(iv) Discussion

The cost of the Indoor Recreation Centre (DI_OS_6) has been appropriately scoped and costed based on modern standards for such a facility. The centre has been appropriately apportioned based on the Community and Recreation Infrastructure Report findings. Information provided through the Hearing process did not persuade the Panel otherwise. While the change in circumstances will result in an increased DIL, it agrees with Council that consolidating the courts to the Indoor Recreation Centre (DI_OS_6) will improve efficiency and represents a better outcome for the community.

(v) Conclusion

The Panel concludes the revised costing and apportionment for Indoor Recreation Centre (DI_OS_6) are appropriate and justified.

3.6 Active Open Space Reserve at MR Power Park (DI_OS_1)

(i) The issue

The issue is whether the proposed costing and apportionment for Project DI_OS_1 (Active Open Space Reserve at MR Power Park) are appropriate and justified.

(ii) Background

The PSP states:

An existing regional park, MR Power Park, is located in the east of Sub-Precinct 1. This park is currently underutilised and offers excellent potential to improve the quality of the recreational provision and landscape character.

PSP Table 6 categorises MR Power Park as a 'District Park'.

For Project DI_OS_1 (Active Open Space Reserve at MR Power Park), the exhibited DCP specifies:

- a total area of 4 hectares including a football/cricket oval, regional play space, site establishment, water supply and car parking
- a cost estimate of \$8,434,635.35
- 100 per cent of its cost attributed to the PSP area (Main Catchment Area).

The current DCP specifies Project DI_OS_1 as:

- a total area of 18 hectares for a regional-scale active open space reserve comprising two football/cricket ovals, one turf athletics track with rectangular field, one netball court and regional play space
- a total cost of \$12,066,250, of which 41 per cent (\$4,902,843) is apportioned to the PSP area.

(iii) Evidence and submissions

Council explained that when the original DCP was prepared, the cost apportionments of several major community and open space projects including Project DI_OS_1 were deliberately suppressed after exhibition. This occurred through Council making voluntary contributions to reduce the DIL during the early stages of development in Ballarat West. It submitted that consequently, the DCP apportionment for active open space was set artificially low, reflecting policy choices made to stimulate development rather than accurately representing need, nexus or demand generated by the PSP.

Council added that as the PSP has matured and construction cost escalated, these historical discounts have shifted a disproportionate share of the project cost onto Council and increased the unfunded DCP shortfall.

Two submissions objected to the apportionment for Project DI_OS_1 (Active Open Space Reserve at MR Power Park) increasing from 41 per cent to 100 per cent. They noted the apportionment increase even though the project area reduced by about 78 per cent (18 hectares to 4 hectares).

Council submitted:

- the revised scope now reflects a much smaller 4-hectare active open space reserve, comprising one football/cricket oval, regional play space, site establishment, water supply and car parking
- the revised costing and apportionment are appropriate, evidence-based and needed for the DCP to accurately reflect contemporary construction realities and the equitable distribution of costs between developers in the PSP area and Council
- the Community and Recreation Infrastructure Report confirms that PSP residents will need all open space planned in the PSP area so a 100 per cent apportionment is appropriate
- Project DI_OS_1 remains predominantly growth-driven, and its revised cost and apportionment correctly reflect its role in the PSP.

Consistent with his view on Project DI_OS_6, Mr Shipp found the apportionment changes to be appropriate and consistent with principles of need, nexus and equity and current practice in preparing DCPs.

(iv) Discussion

The Panel had some concern when reviewing Project DI_OS_1. As categorised by the PSP, a regional or district park would generally attract people from a catchment beyond the PSP area. It would not be strategically justified to apportion the entire project cost of a regional or district facility to the PSP area, given development outside the PSP contributes to the need for the facility.

The Panel understands Council's explanation as to why Project DI_OS_1 was not originally fully costed to the PSP area to help reduce the DIL amount. However, whether the project should be fully apportioned to all developers in the PSP area depends on the degree to which it will attract demand beyond this area.

However, having reviewed the indicative concept plan for MR Power Park in the PSP, the Panel considers this downscaled version is not of the scale and nature of a typical regional park that would attract a notable proportion of demand beyond the PSP area.

Accordingly, the Panel agrees with Mr Shipp that the proposed 100 percent apportionment to the PSP area is appropriate and consistent with principles of need, nexus and equity and current practice in preparing DCPs.

(v) Conclusion

The Panel concludes the revised costing and apportionment for MR Power Park – Active Open Space (DI_OS_1) are appropriate and justified.

3.7 Bridge Project – Schreenans Road Creek Crossing (DI_RD_31c)

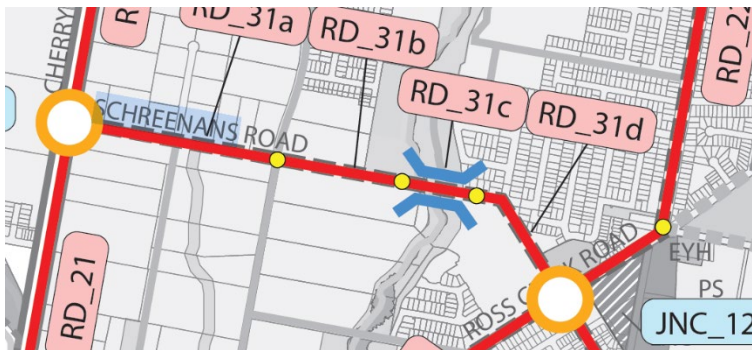
(i) The issues

The issues are whether:

- the Schreenans Road Creek Crossing (DI_RD_31c) costing is based on sufficient information
- the crossing is needed if alternative network treatments are implemented.

(ii) Background

The exhibited DCP includes Project DI_RD_31c (Schreenans Lane Creek Crossing) with cost of \$13,031,298.76 and 89 per cent apportionment to the Ballarat West PSP area. The project is shown in Figure 2.

Figure 2 Project DI_RD_31c (Schreenans Lane Creek Crossing)**(iii) Evidence and submissions**

Council considered the crossing is necessary for enabling Schreenans Road to operate as planned within the PSP hierarchy for the strategic transport network originally envisaged for the Ballarat West PSP. It explained without a vehicular crossing at this location, the network lacks an important east–west connector, causing traffic to be redistributed onto less suitable routes and reducing overall network resilience.

Council submitted:

- the existing DCP anticipated that Schreenans Road would perform this east-west connector function and nothing in the development or transport context has changed to undermine the original justification for the crossing
- removing or downsizing the bridge would not be appropriate, as it will shift pressure (and resultant costs) onto other parts of the network, ultimately undermining the integrated transport outcomes the PSP and DCP are seeking to achieve.

Council relied on the evidence of Mr De Young that the crossing should be delivered to a ‘basic and essential’ standard including ‘a single traffic lane in each direction and a shared path on one side’.

Council committed to undertake further work to ensure the bridge design is basic and essential, consistent with Mr De Young’s recommendation to construct the bridge efficiently and proportionately, meeting minimum design needs without unnecessary embellishment.

(iv) Discussion

The Panel accepts that Schreenans Road needs to perform an east-west connector function as planned within the PSP hierarchy for the strategic transport network originally envisaged for the Ballarat West PSP. Council’s commitment to ensure that the bridge design is the minimum necessary for Schreenans Road to perform its function in the transport hierarchy addresses the submitter’s concerns regarding the project costing.

(v) Conclusions and recommendations

The Panel concludes:

- The Schreenans Road Creek Crossing (DI_RD_31c) performs an important strategic east-west connector function and should remain as a project in the Development Contributions Plan.
- The bridge length, width and cross-section should be reviewed before the Development Contributions Plan is finalised to ensure it has been designed to a ‘basic and essential’ standard, and accurately costed.

The Panel recommends:

Review the Schreenans Road Creek Crossing (DI_RD_31c) design and costings before finalising the Ballarat West Development Contributions Plan, to ensure:

- a) the bridge design including its length, width and cross-section is the minimum necessary for Schreenans Road to perform its intended function in the transport hierarchy
- b) the cost reflects the outcome of this review.

3.8 Requests for additional DCP infrastructure projects

3.8.1 The issues

The issues are whether it is appropriate and justified for the Development Contributions Plan to be revised to include:

- a roundabout at the Webb Road/Schreenans Road intersection
- traffic signals at the Ballarat-Carngham Road and Mirelle Drive intersection
- land acquisition for the Ballarat-Carngham Road and Presentation Boulevard intersection (DI_JNC_02).

3.8.2 Webb Road/Schreenans Road roundabout

(i) Evidence and submissions

One submission requested the Webb Road/Schreenans Road roundabout be included as a DCP item because it serves the wider Bonshaw and Ballarat community and forms part of the Schreenans Road upgrade.

Council opposed including the Webb Road/Schreenans Road roundabout as a DCP item as there is no technical material or evidence supporting this change. It relied on a review of transport projects by Milward Engineering (the Transport Projects Review) including the potential need for a new roundabout at the Schreenans Road/Webb Road intersection.

Council accepted a conclusion of the Transport Projects Review that because a funding and delivery mechanism already exists, the roundabout should be shown in the PSP but not included as a DCP item. It submitted:

- the roundabout should be delivered through the condition on planning permit PLP/2022/3 which requires construction of the roundabout as part of subdivision works
- where a permit condition secures the necessary infrastructure, it is unnecessary and unequitable to duplicate that cost in the DCP.

Mr De Young found no exceptional circumstances arising that warrant including the intersection in the DCP. He considered the roundabout should not be included as a new transport infrastructure item in the updated DCP as it is an intersection of a link road and a key access street.

Similarly, Mr Shipp stated the Webb Road/Schreenans Road roundabout does not satisfy the criteria for inclusion in the DCP because the proposed roundabout is located *“between a Link Road and a key access street”* and this functional relationship *“does not meet the criteria applied to include in the DCP”*.

Council relied on evidence of Mr De Young and Mr Shipp to support its submission that the roundabout should continue to be delivered through developer works rather than the DCP. It

explained there is an established funding pathway and no basis for treating this intersection as an exceptional case.

(ii) Discussion

A roundabout at the Webb Road/Schreenans Road intersection is shown in the PSP and is to be delivered as developer works rather than being funded through the DCP. The Panel is satisfied based on the expert evidence that the intersection is between a link road (typically a connector road or arterial road) and a key access street and does not meet the criteria for funding through the DCP. The DCP funds higher order road projects that serve a broader catchment. There is no other exceptional circumstance to justify changing the existing developer funding of the intersection to a DCP funded item.

3.8.3 Ballarat-Carngham Road and Mirelle Drive traffic signals

(i) Background

On 11 February 2014, Council issued Planning Permit PLP/2013/347 for:

- a staged multi lot subdivision of the PSP area (known as the Carringum Estate)
- access to a Road Zone Category 1 (Ballarat-Carngham Road).

The permit has been amended numerous times.

The need for signalised Mirelle Intersection treatment was not identified in 2014 when:

- the current DCP was incorporated into the Planning Scheme (which identifies Mirelle Drive as a Key Access Street)
- the Planning Permit was initially issued for the Carringum Estate.

The current permit (PLP/2013/347/F):

- outlines DTP's intersection requirements
- requires submission of concept plans for the intersection upgrade for approval by Head TfV without specifying the type of intersection control to be delivered, other than stating the treatment needs to consider the long-term planning of Ballarat-Carngham Road.

The Traffic Impact Assessment (Driscoll Engineering, 3 December 2019) prepared for the Carringum Estate development:

- recommended a signalised intersection upgrade of the Mirelle Intersection, having regard to:
 - existing traffic through the intersection
 - traffic generation from the proposed development of Carringum Estate
- traffic generated by other uses within the PSP area that also use the Mirelle Intersection
- annual traffic growth for the Ballarat-Carngham Road
- identified completion of Stage 5 as the trigger for signalling the intersection
- found completion of subsequent stages of the development will result in poor levels of performance for the existing intersection arrangement
- concluded the existing unsignalised intersection would fail at completion of the Carringum Estate, having regard to:
 - future land uses and connections as per the 2016 PSP Future Urban Structure
 - the future connection to the existing industrial estate to the east through Paddys Lane (as included in the current PSP).

The Planning Permit requires the ultimate intersection works be (whichever is first):

- before the statement of compliance is issued for Stage 3 of the subdivision (being the final stage of subdivision), or
- when permanent traffic signals are installed – DTP requires a specific sequence of development.

(ii) Evidence and submissions

Landmack Property Group (Landmack) submitted:

- traffic signals at the Ballarat–Carngham Road/Mirelle Drive intersection should be included as a new DCP item
- the PSP growth generates the need for upgraded intersection control and equity principles require the cost to be shared across the PSP area
- the signalised Mirelle Intersection should:
 - not be imposed as a full developer-funded requirement
 - be apportioned 70 percent to the DCP area and 30 percent externally.

Landmack based its submission on the traffic expert evidence it called from Mr Walley. Mr Walley, stated:

- the signalisation of the Mirelle Drive/Ballarat–Carngham Road intersection meets the criteria in the DCP Guidelines and the VPA’s Regional DCP Toolkit for inclusion as a DCP item
- the intersection needs to be signalised:
 - to support on-going access to the emergency service precinct
 - in response to traffic that is generated by the wider PSP area.

Landmack further submitted:

- the relocation of the emergency services precinct in the revised PSP is an exceptional circumstance which should have been considered as part of any assessment
- the intersection is located about 730 metres east of Presentation Boulevard (described as a link road) which almost meets the normal 800 metre separation for mid-block signalised connections of link roads to arterial roads in growth area PSPs
- the intersection will serve a larger catchment than the estate, including areas to the west, the industrial area and to a limited extent the area to the south.

Council submitted:

- the traffic signals at Ballarat-Carngham Road/Mirelle Drive should not be included as a new DCP item because Landmack has not established need, nexus, or consistency with road hierarchy and DCP practice
- to the extent upgrade works are required in the future, they should continue to be addressed through the existing permit framework/agency requirements and detailed design (including consideration of alternatives such as restricted movements and/or a roundabout), consistent with the staged approach contemplated in the Driscoll report and the independent expert evidence of Mr De Young
- if that process does not lead to a satisfactory outcome, the permit holder can apply to the Victorian Civil and Administrative Tribunal under section 149(1)(a) of the PE Act to challenge the intersection treatment.

(iii) Discussion

Landmack purchased the property with a permit condition requiring an upgrade of the Ballarat-Carngham Road/Mirelle Drive intersection before Stage 5. It has acted on the permit to develop and subdivide the land.

The Panel considers the intersection upgrade should not be included as a DCP item because:

- unlike north-south link roads in the PSP, such as Presentation Boulevard and Dyson Road, Mirelle Drive does not connect to an arterial road to the south, and therefore does not serve the wider PSP area
- Mirelle Drive provides a connection east-west to the industrial area, but this does not change the function of the road in the hierarchy
- the relocated emergency precinct does not justify the intersection signalisation being a DCP item as:
 - the fire station has its own signalised access to Ballarat-Carngham Road
 - the police station is about 100 metres south of the intersection
 - police operations are unlikely to generate significant increased traffic from the site as unlike the fire service, police often respond while on patrol rather than from the station
- existing planning permit conditions require the developer to upgrade the intersection to meet Head TfV requirements
- PE Act section 149(1)(a) enables the developer to request a review of the intersection treatment.

3.8.4 Ballarat-Carngham Road and Presentation Boulevard (DI_JNC_02) land acquisition

(i) Background

The exhibited DCP includes Project (DI_JNC_02) (Carngham Rd / New N-S Rd (North) Signalised Intersection), which the Panel has concluded should be a roundabout, consistent with the current DCP. The exhibited DCP does not include land required to deliver the intersection.

(ii) Evidence and submissions

Nordic Pty Ltd (Nordic) which is part of the Mondous Property Group, advised it is developing nearby land as a Neighbourhood Activity Centre and the intersection will provide the primary access to the centre. Nordic requested:

- the roundabout treatment at the Ballarat-Carngham Road / Presentation Boulevard intersection be reinstated (discussed in Chapter 3.2)
- a detailed Functional Layout Plan be completed before finalising the Amendment, and the Amendment apply a Public Acquisition Overlay to the land required to deliver the intersection upgrade as per the Functional Layout Plan
- the land acquisition at 163 Ballarat-Carngham Road be added as a DCP item to enable delivery of Project DI_JNC_02.

Functional Layout Plan

Mr De Young stated:

- any roundabout design will require land to be acquired from 163 Ballarat-Carngham Road in the southeastern corner of the roundabout

- there will need to be a detailed design to determine how much land will be required.

Nordic advised it intends to start developing the Neighbourhood Activity Centre in July 2026. It submitted that Council and DTP should cooperate to undertake the design work as soon as possible and as part of finalising this Amendment.

Council supported the Panel providing guidance that further design work should be progressed with DTP (and completed when properly able to be undertaken), but did not support making a detailed Functional Layout Plan a condition precedent to finalising the Amendment. It submitted it is unrealistic and impractical to require a detailed Functional Layout Plan to be completed as a precondition to finalising the Amendment. Council explained that resolving this through the Amendment is unnecessary and would:

- introduce a further body of technical work not currently available
- improperly expand the Amendment beyond the scope that was exhibited and consulted on.

Council added that any delay will materially impact the ability for Council to resolve substantive terms in draft section 173 agreements in respect of ongoing negotiated works-in-kind and drainage for active developments in the precinct. It considered that such delays may impact the timing of delivery of infrastructure items.

Public Acquisition Overlay

In response to questions at the Hearing, Mr De Young stated that applying the Public Acquisition Overlay to the southeast land:

- has 'potential merit'
- would enable the acquisition of the land required to deliver the intersection if the owner of 163 Ballarat-Carngham Road does not agree to transfer the land.

In its submission, Head TfV generally agreed the Public Acquisition Overlay should be applied to the part of 163 Ballarat-Carngham Road required to facilitate the roundabout. In response to a question from the Panel, Head TfV confirmed that it would be the acquiring authority for the Public Acquisition Overlay.

Council opposed applying the Public Acquisition Overlay through the Amendment. It explained:

- Council and the acquiring authority have not undertaken an assessment that applies the established principles for determining if the Public Acquisition Overlay is justified (and these are not matters before the Panel as part of the Amendment)
- an assessment will need to be done having regard to the detailed design to determine how much land will be required to deliver the roundabout
- the owner of the land to be acquired may challenge either the curtilage or application of the Public Acquisition Overlay
- that landowner did not participate in the Hearing to ventilate their position on a future unknown amendment and has not commented to date given this subject did not form part of the Amendment
- it would be a substantial denial of procedural fairness to make recommendations about this matter in this circumstance.

Adding land acquisition as a DCP item

Nordic requested the PSP and DCP be amended to include the cost of acquiring the land required to facilitate the construction of the roundabout as a DCP funded item.

In response to questions at the Hearing, Mr De Young stated there is merit in including the land necessary to deliver the intersection as an item in the DCP. This is because a small part of 163 Ballarat-Carngham Road in the southeast corner of the intersection is not in the Neighbourhood Activity Centre and is needed to complete the future intersection.

Council submitted:

- adding land acquisition as a DCP item cannot be supported at this stage because it depends on the outcome of the detailed design / Functional Layout Plan work (which is not yet prepared)
- without a settled design, the amount and configuration of any land requirement is not precise and cannot responsibly be translated into a DCP item through the Amendment
- after the completed Functional Layout Plan /design work is confirms the land requirement, the question of whether (and to what extent) acquisition should be included as a DCP item can be addressed at that later stage, consistent with the approach outlined by DTP – after the detailed design work is prepared and the requirement is properly defined).

(iii) Discussion

As recognised by parties, further detailed design work is needed to define the extent of land required for an urban 4-lane 2-way roundabout at Ballarat-Carngham Road and Presentation Boulevard. The Panel agrees with Council that it is unrealistic and impractical to require a detailed Functional Layout Plan to be completed as a precondition to finalising the Amendment. Without this work, it is not possible to strategically justify applying the Public Acquisition Overlay or including the item in the DCP.

The detailed work needed to justify such changes would result in significant delay that would negatively impact:

- other landowners and the community
- the ability for Council to fund necessary infrastructure in the PSP growth area.

Including such changes through the Amendment would also result in serious procedural issues. The Panel agrees with Council that seeking to apply the Public Acquisition Overlay would not be appropriate, as this did not form part of the exhibited Amendment and the affected landowner has not been consulted. Such a change would require the Amendment to be re-exhibited to fairly give the affected landowner an opportunity to respond.

3.8.5 Conclusions

The Panel concludes it is not appropriate or justified for the Ballarat West Development Contributions Plan to be revised to include:

- a roundabout at Webb Road/Schreenans Road
- traffic signals at Ballarat-Carngham Road and Mirelle Drive
- land acquisition for the upgrade of the Ballarat-Carngham Road and Presentation Boulevard intersection (DI_JNC_02).

4 Active and public open space contributions

4.1 Active Open Space provision

(i) The issue

The issue is whether the proposed reduced active open space and increased public open space contribution amounts are justified and appropriate.

(ii) Background

The exhibited DCP includes:

- an active open space land budget of 36.64 hectares, which is less than the 57.61 hectares specified in the current DCP
- a passive open space land budget of 65.11 hectares, which is more than the 58.15 hectares specified in the current DCP.

(iii) Evidence and submissions

A local resident considered the Amendment proposes to reduce active open space from 57.61 hectares (5.26 per cent of gross developable area) to 36.64 hectares (3.35 per cent), and further down to 18.63 hectares. They submitted:

- this falls short of the VPA benchmark of 6 per cent, even when calculated by the net developable area
- this systematically removes land:
 - allocated for structured sport and community recreation
 - critical to the wellbeing of a growing population.
- increasing passive open space to 47.92 hectares and referencing encumbered land:
 - do not make up for the loss of usable, structured, active recreation space
 - cannot support organised sport, large-scale community events, or structured physical activity.

Council submitted:

- the primary reason for increasing the public open space contribution is to partially compensate for the reduced active open space across the PSP area
- land use changes that occurred since the planning permit and subdivision process have resulted in the loss of about 22 hectares of land available for active open space
- reasons for the exhibited DCP reducing active open space (compared with the current DCP) include MR Power Park no longer being proposed for major active recreation and unsuitable topography
- the extent of active open space shown in the PSP remains unchanged in the exhibited version and Version 1 of the PSP.

Council acknowledged changes to the open space network mean there is now an undersupply of active open space in Ballarat West, however the Community and Recreation Infrastructure Report:

- found it was not practical to address the shortfall within the PSP area
- identifies measures such as enhancing existing open spaces and investigating options for active open space in adjoining future growth area.

Council accepted that passive open space is not a like-for-like replacement for formal active recreation. It said the VPA benchmark of 6 per cent of net developable area is a useful starting point but is not mandatory.

Mr Shipp's instructions from Council included primary reasons for the changes to active open space. To consider whether the reduced amount of active open space will continue to meet the needs of the community, Mr Shipp:

- compared the open space contribution rate with other regional growth areas that have been approved
- reviewed the per-capita provision of sporting reserves.

Having reviewed the figures, Mr Shipp stated:

- there is a risk the planned active open space facilities will not meet community requirements
- Council will need to seek other opportunities to meet these needs at its cost
- he agreed with the Community and Recreation Infrastructure Report recommendations to offset the active open space shortfall
- changes are not needed to the PSP or DCP.

(iv) Discussion

The Panel notes Council's submission that the VPA benchmark of active open space equivalent to 6 per cent of net developable area is a starting point but is not mandatory. It should be what developments strive to achieve where possible, noting that not all precincts are equal or capable of achieving this target.

While there may be challenges in achieving 6 per cent active open space in the PSP area, Council seeks to offset this by seeking further active open space outside the PSP area that will be accessible to the PSP community.

The Panel accepts Mr Shipp's evidence on this matter, noting that he did not recommend any change to the PSP or DCP.

(v) Conclusion

The Panel concludes the proposed reduced active open space and increased public open space contribution amounts are justified and appropriate through a sound methodology.

4.2 Public Open Space contribution rate

(i) The issue

The issue is whether it is appropriate and justified to increase the public open space contribution rate from 5.31 to 5.91 per cent of gross developable area for land covered by the Ballarat West Precinct Structure Plan in the Clause 53.01 Schedule.

(ii) Background

The Amendment proposes to increase the public open space contribution rate from 5.31 to 5.91 per cent of gross developable area for land covered by the Ballarat West Precinct Structure Plan in Clause 53.01 Schedule.

(iii) Evidence and submissions

There were several submissions that:

- asked why the public open space contribution is being increased from 5.31 to 5.91 per cent of gross developable area
- asked why the public open space contribution is calculated on gross developable area rather than net developable area
- stated the proposed public open space contribution increase was not justified
- considered the increase will result in increased project costs, reduced land and housing affordability and reduced project viability.

In explaining the approach to calculating the 5.91 per cent public open space contribution, Mr Shipp stated:

- the exhibited DCP shows a land area allocation of 36.64 hectares of active open space and 65.11 hectares of passive open space
- the consultants preparing the DCP were provided with the PSP land budget which was subsequently confirmed by the Community and Recreation Infrastructure Report
- the DCP scope excluded a critical review of open space land provision
- the DCP excludes funding or delivering passive open space because this is enabled through the Clause 53.01 Schedule.

Mr Shipp considered the Clause 53.01 Schedule should not be revised as exhibited because - the proposed increase in public open space contributions to 5.91 per cent is not justified in quantitative terms. He stated:

- there is merit in retaining the gross developable area-based approach for the PSP area given the advanced stage of development and the need for consistency and equity among landowners over time
- the method used to derive the exhibited 5.91 per cent contribution improperly includes pre-existing government-owned open space at MR Power Park – which is already set aside and should not form part of the developable land contribution calculation
- when the MR Power Park land is removed, the actual passive open space land requirement equates to 5.03 per cent of contribution area (or 4.75 per cent of gross developable area)
- the MR Power Park improvements are to benefit the PSP community
- therefore, it is suitable and equitable to retain the public open space contribution rate of 5.31 per cent of gross developable area specified in the current Clause 53.01 Schedule rather than increasing it to 5.91 per cent as proposed by the Amendment
- the difference between the land requirement (4.75 per cent) and the 5.31 per cent contribution should be collected as a monetary amount and directed to improvements at MR Power Park.

Council accepted and adopted Mr Shipp's recommendation.

(iv) Discussion

Mr Shipp clearly articulates why the Amendment should not revise the public open space contribution for land covered by the Ballarat West Precinct Structure Plan in Clause 53.01 Schedule. Like Council, the Panel accepts Mr Shipp's evidence. This resolves the issue raised in submissions.

(v) Conclusion and recommendation

The Panel concludes it is not appropriate or justified to increase the public open space contribution rate from 5.31 to 5.91 per cent of gross developable area for land covered by the Ballarat West Precinct Structure Plan in the Clause 53.01 Schedule.

The Panel recommends:

Amend the Clause 53.01 Schedule to no longer revise the existing public open space rate for land covered by the Ballarat West Precinct Structure Plan from 5.31 to 5.91 per cent.

5 Drainage strategy and infrastructure

5.1 The issues

The issues are whether:

- it is appropriate to revise drainage infrastructure design in the P and T sub-catchments if DCP-funded pipes are already installed under the existing strategy
- it is appropriate to reduce pipe sizes in the DCP
- the cost of gross pollutant traps has been accurately estimated
- the sizing, location and costing of drainage infrastructure are accurate
- drainage design standards are sufficiently clear.

5.2 Background

The current PSP and DCP are based on a 2011 drainage strategy. Since 2011, there have been major changes to the methods of assessing design drainage flows in Australian Engineering Practice. These changes include updated design rainfalls by the Bureau of Meteorology that impact the expected runoff volume and the release of the Australian Rainfall and Runoff 2019 that significantly changed the best practice analysis methods for the estimation of design rainfalls.

The proposed PSP and DCP are based on an updated drainage strategy that includes a detailed analysis of the drainage works completed to date in the PSP area and updates the drainage design for works not yet completed. The underlying hydrological and hydraulic analysis for the strategy has also been updated to reflect changes based on updates to Australian Rainfall and Runoff, 2019.

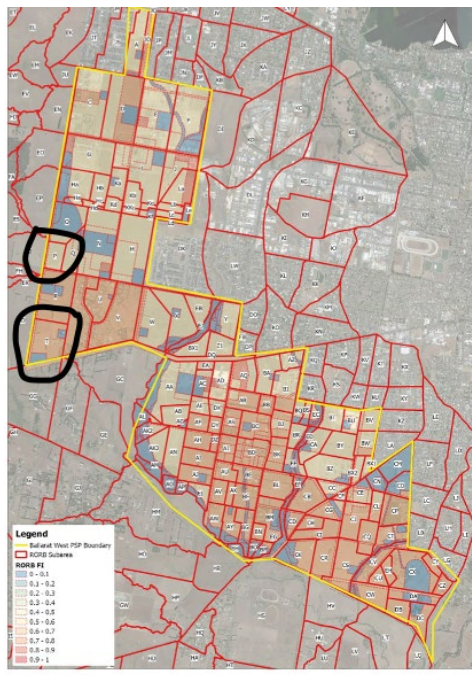
5.3 Installed pipes in the P and T sub-catchments and reduced pipe sizes

(i) Background

The installed pipes in the P and T sub-catchments were based on the 2011 drainage strategy. The updated drainage strategy using Australian Rainfall and Runoff 2019 produces lower peak flows compared to the 2011 strategy, therefore requires smaller pipes.

The updated drainage strategy has raised concerns relating to sub-catchments P and T affecting PSP properties 208 and 209, where DCP-funded pipes were installed compliant with the existing strategy. The reduced pipe sizes in the revised DCP will result in a reduced credit payable for Project DI_DR_P/T despite pipes already being designed, approved and installed to the previous standard.

The location of the P and T sub-catchments is shown in Figure 3.

Figure 3 Sub-catchments P and T

Source: Ballarat West PSP Review Drainage Strategy Update (Engeny, 19 December 2024)
 Appendix A, Figure A.2: RORB Impervious Fractions, Annotated by the Panel

(ii) Evidence and submissions

Integra Group, a landowner in the P and T sub-catchments:

- was concerned the revised drainage infrastructure design in the P and T sub-catchments affects PSP properties 208 and 209, where DCP-funded pipes were already installed under the existing strategy
- objected to reduced pipe sizes in the revised DCP, as this would reduce the credit payable for Project DI_DR_P/T despite pipes already being designed, approved and installed to the previous standard.

Mr Swan gave drainage evidence for Council. He stated the revised PSP pipe sizes, the hydrological basis used to derive them, and the DCP costings remain sound and should not be amended. He conducted a pipe-by-pipe analysis which found developers had designed drainage with oversized of pipes, using different inputs and methodologies, different hydrology and different alignments and routes, and different local design decisions. Mr Swan considered the drainage strategy, PSP and DCP should not be revised based on these variations.

Council relied on the evidence of Mr Swan and submitted:

- revisions to drainage infrastructure sizing are not only justified but necessary, given the fundamental shift in Australian engineering practice since the original 2011 drainage strategy was prepared
- the methodology used in 2011 relied on design rainfalls dating from before 1987
- the Bureau of Meteorology has since undertaken a comprehensive national update, drawing on vastly improved rainfall records and expressly accounting for climate-change effects
- the drainage elements originally conceived in 2011 can no longer be relied on to deliver an efficient or resilient network in accordance with current design standards

- the updated drainage strategy underpinning the Amendment is fully compliant with Australian Rainfall and Runoff 2019, represents contemporary 'good hydrological practice', and provides an appropriate level of strategic concept design for DCP costing purposes
- the DCP should not be recalibrated to reflect developer design decisions exceeding the strategic requirements
- Integra Group did not identify any flaw or deficiency in the updated drainage strategy
- the updated drainage strategy is technically robust and equitable for all developers in the Ballarat West precinct
- no change is warranted in response to this issue.

(iii) Discussion

The updated PSP and DCP should reflect the relevant design standards that apply when the preparing the update. This is particularly important where more contemporary data on rainfall and climate change impact is available. The Panel accepts that it is appropriate to use Australian Rainfall and Runoff 2019 for the updated drainage strategy underpinning the Amendment.

The pipe sizes already installed took account of standards, design decisions based on local conditions applicable at the time. It is appropriate for the updated drainage strategy to apply the standards applicable now and for the PSP and DCP to reflect those standards. There is no basis to revise the PSP or DCP to account for drainage infrastructure already installed.

5.4 Gross Pollutant Trap costing

(i) Evidence and submissions

Integra Group submitted:

- the cost of gross pollutant traps to be significantly underestimated
- some reductions in land area requirements have not been properly reflected in the updated costings.

Mr Swan stated it was difficult to express an opinion on this matter because Integra Group did not provide any information on why the gross pollutant traps are significantly understated.

The Council relied on the evidence of Mr Swan and submitted:

- the Integra Group submission did not provide technical basis to support its claim that the costing is significantly incorrect
- the adopted costings reflect the level of detail necessary to ensure the DCP provides a realistic and defensible allowance for future delivery
- without substantiating evidence, there are no grounds for revising the drainage strategy or the DCP.

(ii) Discussion

In the absence of alternate costing, the Panel accepts the evidence of Mr Swan and sees no grounds for amending the drainage strategy or the DCP.

5.5 Land area reductions and RB7

(i) Evidence and submissions

Integra Group submitted that *“some of the costs associated with reducing the land area requirement have not been included”*. The submission did not provide any context or reasons to explain this issue.

Council responded that the submission:

- appears to relate not to land-take, but to the structural components of the retarding basin (such as gabion walls and associated works) which were required because a deeper basin was constructed
- did not provide evidence to support its claim.

Mr Swan explained he was instructed:

- the developer has completed an alternative design that reduces the area of RB7 using Gabion Walls and a deeper wetland
- the costs associated with the reduced land area refers to RB7.

Mr Swan considered it appropriate to reduce the expected land area to the original area in the DCP if Council accepts the design.

Council relied on the evidence of Mr Swan that there is no basis for Integra Group’s claim as the revised areas in the drainage strategy are adopted in the DCP costings and the structural elements associated with the basin design were also addressed through that costing process.

Council concluded there is no need to change the revised drainage strategy or the DCP.

(ii) Discussion

The Panel accepts the uncontested evidence of Mr Swan. It agrees there is no basis for claims raised by Integra Group because the revised areas in the drainage strategy are adopted in the DCP costings and the structural elements associated with the basin design were also addressed through that costing process.

5.6 Drainage design standards and the 1-in-10 year issue

(i) Evidence and submissions

Submitters who collectively referred to themselves as ‘Stakeholder Reference Group’ queried a statement in the DCP that the local drainage system will have capacity to process a 1-in-10-year storm event and sought clarification about how this relates to the trunk drainage standard.

Mr Swan stated:

- the local drainage system will be designed and constructed for a 20 per cent annual exceedance probability storm event
- the trunk drainage system will be designed and constructed for a 10 per cent annual exceedance probability storm event
- the adopted standards (above) are consistent with the original PSP and good practice
- it is necessary to maintain the design standards from the original PSP as a reduction in drainage capacity may cause adverse impacts to existing land.

In its submission, Council:

- relied on the evidence of Mr Swan
- sought to amend the PSP to expressly identify the trunk drainage system has been and will be designed and constructed for a 10 per cent annual exceedance probability storm event
- considered the 10 per cent annual exceedance probability standard to be appropriate, necessary, and consistent with engineering practice
- disagreed the DCP or PSP contains unresolved inconsistencies.

(ii) Discussion

The Panel considers that Mr Swan has fully responded to the submitter's queries when he confirmed:

- the local drainage system will be designed and constructed for a 20 per cent annual exceedance probability storm event
- the trunk drainage system will be designed and constructed for a 10 per cent annual exceedance probability storm event.

This does not represent a change to the drainage system. The local drainage system is (and always was) to be designed to cater for a different intensity storm event to the trunk infrastructure. The Panel agrees with Council's proposal to revise the PSP to make this clear and expressly identify the trunk drainage system has been and will be designed and constructed for a 10 per cent annual exceedance probability storm event.

5.7 Broader issues about drainage asset sizing, location and costing

(i) Evidence and submissions

Stakeholder Reference Group was concerned about the sizing, location and costing of drainage infrastructure across the PSP, including examples of pipe discrepancies provided after exhibition.

Mr Swan stated:

- he could not find a specific, demonstrated error in sizing, location or costing across the PSP
- the submission did not identify any specific error
- discrepancies between what has been constructed to date and what has been designed and costed in the revised drainage strategy arise from developer choices, older hydrological methods, routing changes or corrected errors
- the submission relied on examples (such as Pipes 106, 95 and 95A) that reflect developer-level design choices, including changes to pipe alignment, the use of older hydrology, and including local catchment flows
- these choices naturally produce different pipe sizes, but they do not indicate any inaccuracy in the PSP.

Council relied on the evidence of Mr Swan and submitted:

- the submission did not:
 - identify any flaw in the revised drainage strategy
 - provide evidence of missing items regarding cost

- Mr Swan’s evidence confirms *“the drainage strategy is appropriate for the area”* and is essentially *“a refinement of the original strategy”* rather than a departure from it
- after reviewing each example cited in the submission, Mr Swan concluded *“there is no underlying conflict between the drainage strategy and the PSP”*
- Mr Swan confirmed *“the revised areas in the drainage strategy are adopted in the DCP costings”*
- considering this uncontested expert evidence, claims in the submission are not substantiated and no changes to the drainage strategy or the DCP are required.

(ii) Discussion

Having regard to Mr Swan’s uncontested evidence on this matter and insufficient information in the submission, the Panel considers the drainage strategy proves a sound rationale for the PSP and the DCP.

5.8 Conclusions and recommendation

The Panel concludes:

- The updated drainage strategy provides a sound basis for the proposed revisions to the Ballarat West Precinct Structure Plan and Development Contributions Plan.
- No change should be made to the exhibited Ballarat West Precinct Structure Plan and Development Contributions Plan for DCP-funded pipes that are already installed under the existing strategy for drainage infrastructure design in the P and T sub-catchments.
- It is not appropriate to revise pipe sizes in the Ballarat West Development Contributions Plan to match specifications of pipes that have been already installed.
- The cost of gross pollutant traps has been accurately estimated.
- The sizing, location and costing of drainage infrastructure are accurate.
- The drainage design standards are sufficiently clear, and further clarification will be provided by explicitly stating in the Ballarat West Precinct Structure Plan that the trunk drainage system has been and will be designed and constructed for a 10 per cent annual exceedance probability storm event.

The Panel recommends:

Amend the Ballarat West Precinct Structure Plan to expressly identify at page 77 that the trunk drainage system has been and will be designed and constructed for a 10 per cent annual exceedance probability storm event.

6 Other issues

6.1 Ballarat West Native Vegetation Precinct Plan sunset clause

(i) The issue

The issue is whether the Ballarat West Native Vegetation Precinct Plan (the NVPP) should include a sunset clause to recognise the precinct's urban context and changes since 2012.

(ii) Background

The NVPP was prepared in 2012 and incorporated into the Planning Scheme with the original PSP. It established offset requirements based on the 'net gain' framework, identified 25 hectares of first-party offsets and 22.7 hectares of potential offsets to compensate for scattered tree loss.

The PSP states it should be read with the NVPP and includes Section 1.2 (The Ballarat West Native Vegetation Precinct Plan).

(iii) Evidence and submissions

Council explained:

- its audit for the Amendment found:
 - many trees earmarked for retention have since been removed or have died
 - several identified offset areas are developed for housing, roads, drainage or incorporated into open space
- this has resulted in development instead relying on third-party offsets rather than securing first-party offsets
- earlier changes to the Urban Growth Zone Schedule 2 through Amendment C203 (2007 Ballarat West PSP review) revised potential offset areas but did not update the PSP text or land budget, creating further inconsistencies.

Council added:

- first-party offsets are unachievable now the area is substantially urbanised so most offset areas are proposed to be removed from the PSP
- only offset areas in properties 101 and 102 will be retained
- properties 101 and 102 are within the existing Growling Grass Frog offset trigger area where they may contribute to future Growling Grass Frog habitat.

DEECA submitted:

- it supported the general direction of the Amendment
- the proposed changes to the Urban Growth Zone Schedule 2 and the PSP render the NVPP largely outdated
- if the NVPP is to be retained, it must be updated to meet current native vegetation removal regulations
- alternatively, Council could abandon the NVPP and revert to applying Clause 52.17 for future development.

Following further discussion with the Council, DEECA supported the inclusion of a sunset clause and recommended the following wording (or similar) is inserted into the NVPP:

This NVPP expires 30 December 2026. Upon expiry:

- Any proposed removal, destruction or lopping of native vegetation within the precinct will require a new planning permit application under Clause 52.17, supported by current site assessments and offset calculations in accordance with the Guidelines for the removal, destruction or lopping of native vegetation, or its successor.
- Offset obligations identified within this NVPP will no longer be applicable unless secured prior to the sunset date.
- Landowners and developers must provide offset evidence to the responsible authority for all offsets secured under this NVPP.

DEECA requested PSP section 1.2 be revised to replace:

- *“the NVPP is therefore redundant,”* with, *“As all vegetation identified for protection in the NVPP has been assessed through permit processes, and in light of legislative changes since its preparation, the NVPP no longer provides a reliable statutory basis for managing native vegetation in the precinct.”*
- *“there is a need to review how native vegetation protection... will be managed”* with: *“A strategic review is required to determine how native vegetation protection will be managed in the precinct under current legislative frameworks and planning scheme provisions.”*
- *“taking into account current legislation”* with: *“in accordance with the current native vegetation regulations under Clause 52.16 and relevant DELWP/DEECA guidelines.”*

Council submitted that given DEECA’s agreement, it is appropriate to:

- include a sunset clause in the NVPP
- clarify the transition to Clauses 52.16 and 52.17
- update the PSP accordingly.

(iv) Discussion

The NVPP is incorporated into the Ballarat Planning Scheme through Clause 52.16 which exempts the removal, destruction or lopping of native vegetation that is in accordance with the NVPP.

Given that is recognised by both Council and DEECA that the current NVPP no longer provides a reliable statutory basis for managing native vegetation in the precinct, it is appropriate to sunset the current NVPP. The effect of sunseting the current NVPP is that a permit will be required for native vegetation removal through Clause 52.17. This is an appropriate approach for managing native vegetation in the PSP, given the extent of urbanisation and historic loss of native vegetation.

(v) Conclusion and recommendation

The Panel concludes there should be a sunset clause in the Ballarat West Native Vegetation Precinct Plan to recognise the precinct’s urban context and changes since 2012.

The Panel recommends:

Amend the Ballarat West Native Vegetation Precinct Plan to include the following:

This NVPP expires 30 December 2026.

Upon expiry:

- ***Any proposed removal, destruction or lopping of native vegetation within the precinct will require a new planning permit application under Clause 52.17, supported by current site assessments and offset calculations in accordance with the Guidelines for the removal, destruction or lopping of native vegetation, or its successor.***

- ***Offset obligations identified within this NVPP will no longer be applicable unless secured before the sunset date.***
- ***Landowners and developers must provide offset evidence to the responsible authority for all offsets secured under this NVPP.***

Amend the Ballarat West Precinct Structure Plan to revise section 1.2 regarding the Ballarat West Native Vegetation Precinct Plan as shown in Appendix B.

6.2 Growling Grass Frog conservation and offset management

(i) The issues

The issues are:

- whether the Growling Grass Frog is likely to be present on Miles Farms Pty Ltd (part of the Mondous Property Group) land, the majority landowner within the Growling Grass Frog offset trigger area
- whether the 2012 management plan continues to apply or whether relying solely on the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) is appropriate.

(ii) Background

The Growling Grass Frog is an endangered species protected under the EPBC Act. Any impact on the species is a 'Matter of National Environmental Significance'. This means that any actions, including development activities, which might impact the Growling Grass Frog are:

- carefully regulated and controlled by the EPBC Act
- subject to strict approval processes.

The Growling Grass Frog habitat is current managed under the 2011 Ballarat West Conservation Management Plan (2011 CMP). Council prepared an updated draft CMP in 2023 and explained it has deferred further work, as agreed by DTP and DEECA, to a subsequent process, to ensure the need for detailed ecological and strategic review does not delay the timely implementation of the Amendment or affect the funding and delivery of critical DCP items.

The Amendment proposes to retain the 2011 CPM.

(iii) Evidence and submissions

Miles Farms requested the PSP be revised to:

- remove content that seeks to protect the Growling Grass Frog through a separate parallel process that duplicates EPBC Act processes
- remove the CMP requirement for the Growling Grass Frog
- add a standard advisory note such as:
Development proponents are responsible for ensuring compliance with the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), including referral requirements for actions that may have a significant impact on the Growling Grass Frog (being a Matter of National Environmental Significance).
- as an alternative to referencing the CMP, add a general note:
Subject to the production of evidence to the satisfaction of the responsible authority in respect of any application for the development of land which includes land identified on Plan 8 as potential Growling Grass Frog habitat, that approval exists under the

Environmental Protection and Biodiversity Conservation Act 1999 (Cth) for the proposed development or that the proposed development is not a controlled action, none of the requirements or guidelines in the PSP relating to the Growling Grass Frog applies.

- delete references to the Growling Grass Frog Offset Trigger Area because:
 - any area of impact regarding the Growling Grass Frog is to be determined in accordance with the provisions of the EPBC Act
 - any guidelines that have been prepared by the Commonwealth to assist in the assessment of whether or not an action is a controlled action for the purposes of the EPBC Act
- remove the 'Growling Grass Frog Offset Site Trigger Area' on Plan 8 of Version 1 of the PSP
- revise Plan 8 to reflect the most recent work carried out by Practical Ecology which more accurately and relevantly identifies potential Growling Grass Frog habitat as it relates to the PSP area
- add a qualification that if any provisions relating to the Growling Grass Frog are inconsistent with any requirements of an approval obtained under the EPBC Act, then the requirements of the approval granted under the EPBC approval prevails.

Miles Farms also request that Urban Growth Zone Schedule 2 be revised so that:

- references to the Growling Grass Frog in Clauses 3.0 and 4.0 are deleted
- the reference in Clause 3.0 is replaced with:

An application for development must provide evidence to the satisfaction of the Responsible Authority that any approvals have been obtained where necessary under the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

Miles Farms Pty Ltd submitted that the 2011 CMP is no longer appropriate to form part of the PSP. It called Mr Organ (an expert on ecology) who stated the 2011 CMP is no longer fit-for-purpose and is outdated because:

- it includes 'Growling Grass Frog Trigger Areas' in locations which are no longer occupied by Growling Grass Frog
- its recommendation for the 'Growling Grass Frog Offset Trigger Area' is not valid or supported because it was based on survey results undertaken by Ecology Partners (2010, 2011) over 10 years ago
- its proposed dedicated Growling Grass Frog wetlands were not designed in accordance with, and therefore do not adequately meet the requirements of, the Growling Grass Frog Habitat Design Standards (DELWP 2017a) (the current industry best practice) and the Growling Grass Frog Crossing Design Standards (DELWP 2017b)
- the updated draft 2023 CMP is considered more suitable for implementation because:
 - it incorporates recent Growling Grass Frog survey results from 2021 to 2023
 - effectively draws upon the Growling Grass Frog Habitat Design Standards (DELWP 2017a) and Growling Grass Frog Crossing Design Standards (DELWP 2017b) for the proposed creation of compensatory habitat and frog crossings while considering local, on-ground constraints within the Project Area
- in light of Growling Grass Frog confirmed as absent during recent surveys in 2022/23, the draft 2023 CMP has removed references to 'Growling Grass Frog Trigger Areas' to reflect the most recent ecological conditions of the precinct.

In response to questions at the Hearing, Mr Organ:

- conceded a strategic approach for conserving the Growling Grass Frog is not new and is encouraged and hypothetically the right approach is a CMP
- expressed the view that Council has a role in protecting the Growling Grass Frog, and that it is appropriate for the PSP and the Planning Scheme to conserve the Growling Grass Frog.

At the Hearing, Miles Farms explained that Council provided it with a copy of the draft 2023 CMP which was forwarded to Mr Organ with his brief.

Miles Farms submitted:

- it is not sound strategic planning to require compliance with a document that no longer reflects contemporary science or practice
- the 2011 CMP is not needed to protect the Growling Grass Frog because this is already secured through the safeguards provided by the EPBC Act
- it is not orderly for the Planning Scheme to maintain superfluous planning provisions or outdated policies
- the 2011 CMP was recently reviewed in 2023, resulting in a new and more contemporary draft has been prepared
- the outdated 2011 CMP should not remain in the interim if Council is not ready to proceed with the 2023 draft CMP through this process.

Miles Farms added:

- it is unnecessary for the PSP and Urban Growth Zone Schedule 2 to also regulate how development may occur in respect of the Growling Grass Frog, as the EPBC Act already comprehensively secures this objective
- it is not appropriate to duplicate parallel obligations in the PSP in respect of protecting the Growling Grass Frog
- maintaining old and potentially incorrect requirements in a refreshed PSP duplicates the Commonwealth process, undermines statutory clarity, and embeds outdated science in the planning scheme
- the PSP should instead rely on the contemporary EPBC regime for Matter of National Environmental Significance matters and restrict its content to current Victorian biodiversity policy.

Council acknowledged the 2011 CMP does not meet contemporary standards. It submitted:

- Council officers met with DEECA and DTP when preparing the Amendment
- DTP requested the existing 2011 CMP be retained on an interim basis while a long-term funding solution for Growling Grass Frog habitat is explored
- DTP recommended that in the meantime, several PSP objectives and guidelines should be strengthened to better protect the Growling Grass Frog and give developers clearer guidance on their obligations.

Council considered the Amendment's purpose is to update and strengthen the existing planning framework, not to rewrite it wholesale. Accordingly, Council has committed to treating the Growling Grass Frog review as a priority project over this coming year, to be undertaken collaboratively with DEECA, DTP and specialist consultants. That commitment ensures continuity of protection and certainty for proponents while the detailed technical work proceeds in a structured and properly resourced way.

Council disagreed the 2011 CMP is not fit-for-purpose. It explained:

- Mr Organ does not support the sweeping planning response sought by Miles Farms
- Mr Organ's own evidence does not demonstrate the absence of the species with sufficient scientific certainty to warrant such a step
- Mr Organ's surveys did not achieve the 0.95 cumulative probability of detection required under the Guidelines for Managing the Endangered Growling Grass Frog in Urbanising Landscapes (Heard et al., 2010)
- several sites were not surveyed because of access constraints while others were dry during the inspection
- in ecological terms, those are incomplete surveys that cannot underpin a finding of absence
- the guidelines clarify that when suitable habitat exists in the recognised dispersal range of known populations, it must be treated as potentially occupied until adequate survey evidence establishes otherwise
- Mr Organ's own desktop review confirms the existence of recent Growling Grass Frog records within 25 metres of Winter Creek and within 200 metres south of the precinct (well within accepted dispersal range)
- to treat those detections as irrelevant is to invert the precautionary principle governing threatened-species management
- the proper inference from such proximity is ongoing potential occupancy, warranting continued habitat protection until the evidence clearly shows otherwise.

Council disagreed that the Growling Grass Frog matter could be entirely managed through the EPBC Act. It explained:

- the Urban Growth Zone Schedule 2 provisions ensure biodiversity considerations are addressed holistically rather than by a species-by-species assessment
- the EPBC Act:
 - does not perform that function
 - is a project-based assessment regime that operates when an individual development proposal is likely to have a significant impact on a matter of national environmental significance
 - does not plan or design – it assesses and approves
 - does not guide the configuration of precinct infrastructure, the alignment of waterways or open space, or the integration of biodiversity corridors into urban form.
- the PSP and Urban Growth Zone Schedule 2 provisions must remain because they fall within responsibilities of the Victorian planning system
- removing these provisions would create a regulatory vacuum and sideline planning considerations.

Council invited the Panel to:

- not support the Miles Farms requested changes
- recommend Council's approach to reinstate consistent CMP references, clarify offset terminology, correct mapping and legend references, and make minor textual updates
- acknowledge and endorse the substantive review of the Growling Grass Frog framework as a priority project through a separate process without delaying the Amendment.

(iv) Discussion

The PE Act requires Council as the planning authority to implement the objectives of planning in Victoria.² Section 4(1)(b) sets out the objectives of planning in Victoria, including:

To provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity.

The Growling Grass Frog has been recently recorded within 25 metres of Winter Creek and within 200 metres south of the PSP area, which are well within the accepted dispersal range. The Panel agrees with Council that the proper inference from such proximity is ongoing potential occupancy, warranting continued habitat protection.

The Panel considers that it is appropriate for the Council in meeting its obligations under the PE Act to include protection measures for the Growling Grass Frog in the PSP and the Planning Scheme. Council provided compelling reasons why the EPBC Act cannot be solely relied on to protect the Growling Grass Frog. Provisions in the PSP and the Planning Scheme would provide an integrated approach to consider this species within the context of other planning issues.

It would have been ideal for Council to have completed its review of the draft 2023 CMP to better inform the PSP review process. Nonetheless, Council is committed to finalising the updated CMP, and DEECA and DTP support retention of the current CMP until the new CMP is finalised. The updated CMP should be finalised and implemented through a separate process to avoid delaying the Amendment. The 2011 CMP should remain in the interim.

(v) Conclusions

The Panel concludes:

- There should be provisions in the Ballarat West Precinct Structure Plan and the Planning Scheme to protect the Growling Grass Frog because they were recently detected within the accepted dispersal range of the PSP area (including the Miles Farms Pty Ltd land).
- It is consistent with Council's obligations as a planning authority under the *Planning and Environment Act 1987* to ensure Growling Grass Frog matters are managed through the Precinct Structure Plan and the Planning Scheme.
- The 2011 Conservation Management Plan for the Growling Grass Frog should continue to be referenced in the Ballarat West Precinct Structure Plan and the Planning Scheme until the draft 2023 plan is finalised.

6.3 PSP housing density and yield

(i) Background

One of the housing objectives of the current PSP is to achieve a density of 15 dwellings per net developable hectare throughout the Ballarat West PSP area. The Amendment proposes to revise the PSP to replace this objective with:

To achieve a minimum density of 16 dwellings per Net Developable Hectare (NDHa) throughout the Ballarat West PSP area and encourage a minimum density of 20 dwellings per NDHa for subdivisions on undeveloped sites to reflect the updated targets in the PSP Guidelines 2.0.

The VPA PSP Guidelines (October 2011) state:

² *Planning and Environment Act 1987*, section 12(1)(a)

The PSP should facilitate increased densities with an average of 20 dwellings or more per NHDA across the entire PSP area.
Relevant VPP: Clause 11.03-2S.

Planning Scheme Clause 11.03-2S (Growth areas) seeks to:

To locate urban growth close to transport corridors and services and provide efficient and effective infrastructure to create sustainability benefits while protecting primary production, major sources of raw materials and valued environmental areas.

To help achieve this objective, it includes a strategy to:

Deliver residential densities in the growth areas of Melbourne and Major regional cities of an average of at least:

- 30 dwellings per net developable hectare in locations within walkable distance of existing and proposed activity centres, train stations, major transport routes and public open spaces.
- 20 dwellings per net developable hectare in other growth area locations.

(ii) The issue

The issue is whether the target of 20 dwellings per net developable hectare specified in the PSP is appropriate and justified.

(iii) Submissions

There were submissions that considered a target of 20 dwellings per net developable hectare may not result in what future generations will value or that is appropriate for Ballarat's fringe context.

They objected to applying the target across the entire PSP and requested:

- to lower the minimum density to 16 dwellings per net developable hectare and to revise the PSP glossary to define medium-density housing as 21–30 dwellings
- greater flexibility in applying density provisions, allowing development above 20 dwellings per net developable hectare where consistent with the PSP Guidelines' amenity model.

In response, Council submitted:

- the proposed density change is strategically justified and needed to align the precinct with contemporary planning policy, market trends, and the strategic objectives for growth areas in major regional cities
- since the Amendment was exhibited, Clause 11.03-2S of the Victoria Planning Provisions was amended to require that growth areas in Melbourne and major regional cities of 'an average of at least':
 - 30 dwellings per net developable hectare within walkable distance of existing and proposed activity centres, train stations, major transport routes and public open spaces
 - 20 dwellings per net developable hectare in other growth area locations
- the State Government's PSP Guidelines (2021) seek a minimum density of 20 dwellings per hectare and up to 30 in high-amenity areas
- retaining a density target of 15–16 dwellings per net developable hectare would not meet contemporary planning requirements and represents underused serviced, strategically located urban land
- while the existing/approved PSP anticipated an average density of 15.7 dwellings per net developable hectare, early subdivisions have underperformed

- in recent years, yields have increased, and the development industry is now routinely delivering densities in the order of 17–18 dwellings per net developable hectare
- this shift reflects changing market expectations, increasing acceptance of smaller lot sizes, and a general trend toward more efficient urban forms
- the PSP review seeks to facilitate and respond to this trend rather than constrain it
- increasing the average density on remaining undeveloped land to 20 dwellings per net developable hectare will generate approximately 1,397 additional dwellings beyond what was originally forecast for the precinct
- this uplift accords with the aspirations of Clause 11.03-2S
- higher densities, when properly designed and supported by quality infrastructure, are consistent with best-practice planning and recognised as essential to ensuring sustainable, liveable long-term urban form.

(iv) Discussion

The Panel agrees with Council’s submission on this matter. State planning policy, which has increased the target to an average of 20 dwellings per developable hectare in urban areas, reflects current and future expectations. While this target is sought by policy and guidelines, not through a mandatory provision, it should be achieved unless there is an exceptional reason not to. Specifying a lower target would send the wrong message about sustainable development and result in underperforming subdivisions. This would not align with what future generations would value.

(v) Conclusion and recommendation

It is appropriate and justified to specify a target of 20 dwellings per net developable hectare in the Ballarat West Precinct Structure Plan to align with policy objectives and guidelines.

The Panel recommends:

Amend the Ballarat West Precinct Structure Plan to revise section 5.2 (Housing) to replace the relevant housing objective with:

To achieve a density of 20 dwellings per Net Developable Hectare (NDHa) throughout the Ballarat West PSP area.

Appendix A Document list

No.	Date	Description	Provided by
2025			
1	10 Nov	Panel Directions and Hearing Timetable (Version 1)	Planning Panels Victoria (PPV)
2	13 Nov	Ballarat West Growth Area Growling Grass Frog Conservation Management Plan (December 2011)	Council
3	19 Nov	Submitter map (confidential – provided to the Panel only)	Council
4	24 Nov	Expert witness statement of Aaron Walley (traffic)	Landmack Property Group
5	24 Nov	Part A submission, with attachments: a) Minister's authorisation - 30 May 2025 b) Summary of submissions and 'Version 1' changes - 24 Nov 2025 c) Indoor Recreation Centre Estimate Peer Review (WT, 14 July 2025) d) DEECA's correspondence dated 23 October 2025 e) DEECA's correspondence dated 13 November 2025	Council
6	24 Nov	Expert statement – Paul Shipp (development contributions)	Council
7	24 Nov	Expert statement – Rob Swan (drainage and stormwater)	Council
8	24 Nov	Expert statement – Tim De Young (transport engineering)	Council
9	24 Nov	Expert statement – Aaron Organ (ecology)	Mondous Property Group
10	26 Nov	Panel Directions and Hearing Timetable (Version 2)	PPV
11	1 Dec	Written submission	Abiwood Creekside Pty Ltd
12	1 Dec	Email including key to amendment documentation tracked changes	Council
13	1 Dec	Part B submission with attachments: a) Correspondence from Minister's delegate - 15 October 2024 b) DEECA's advice - 15 November 2024 c) DTP's correspondence - 16 December 2024 d) DTP's correspondence - 16 December 2024 - attachment - marked up PSP e) Delacombe agreement f) Magee agreement	Council
14	1 Dec	Version 1 – Explanatory report	Council

No.	Date	Description	Provided by
15	1 Dec	Version 1 – Ballarat West PSP: a) Ballarat West PSP (consolidated, tracked changes) b) S1 to S2.2.5 - track changes c) S3 - track changes d) S4 - track changes e) S5.3-S5.4.4 - track changes f) S5.5-S5.8 - track changes g) S5.9-S5.10 - track changes h) S5-S5.2.4 - track changes i) S6-S7 - track changes j) Figure 3 - Noise Emissions k) Plan 3 - Local Context l) Plan 5 - Environmental Features m) Plan 7 - Environmental Issues n) Plan 8 – Future Urban Structure o) Plan 9 - Land Use Budget p) Plan 10 - Image and Character q) Plan 12 - Employment & Activity Centres r) Plan 14 - Open Space s) Plan 17 - Road Network t) Plan 19 - Walking and Trails u) Plan 23 - Utilities - Natural Gas Network	Council
16	1 Dec	Version 1 – Ballarat West DCP (clean)	Council
17	1 Dec	Version 1 – Ballarat West DCP (tracked changes)	Council
18	1 Dec	Version 1 ordinances: a) Development Contributions Plan Overlay Schedule 1 b) Urban Growth Zone Schedule 2 c) Clause 53.01 Schedule	Council
19	1 Dec	Tim De Young's transport engineering evidence in reply	Council
20	2 Dec	Submission	Head, Transport for Victoria
21	3 Dec	Submission with attachments: a) Email from DTP (1 April 2022) b) Email from DTP (13 August 2024) c) Development Plan d) May 2020 RRV concept design e) Planning Permit PLP-2013-347-F f) Development Contributions Guidelines	Landmack Property Group

No.	Date	Description	Provided by
22	4 Dec	Revised Traffic Impact Assessment for original permit	Landmack Property Group
23	4 Dec	Submission	Mondous Property Group
24	4 Dec	Ballarat West Precinct Structure Plans Future Traffic Estimates and Road Infrastructure Requirements (SMEC, 20 December 2011)	Council
25	4 Dec	Planning Permit PLP-2024-313 (155 Carngham Road, Winter Valley)	Council
26	4 Dec	Draft costing – Mirelle Drive - Ballarat-Carngham Road intersection	Landmack Property Group
27	5 Dec	Response to Panel questions, with attachments: a) Carrington Estate title documents b) Letter to Council regarding contributions c) Reply from Council regarding contributions d) Development cost estimate	Landmack Property Group
28	9 Dec	Part C submission	Council
29	9 Dec	Site inspection map	Council
30	10 Dec	Mirelle Drive and Ballarat-Carngham Road intersection costing master schedule	Landmack Property Group
31	10 Dec	CV – Andrew Siemek of BildGroup	Landmack Property Group
32	10 Dec	Beveridge Williams letter advising it is a highly qualified civil engineering consultancy	Landmack Property Group
33	16 Dec	Email regarding Landmack costings and corrections to Version 1 Amendment documentation	Council

Appendix B Panel recommended PSP section 1.2

1.2 The Ballarat West Native Vegetation Precinct Plan

The Ballarat West NVPP has been prepared to enable native vegetation issues to be considered in a co-ordinated way across the Ballarat West PSP area. The Ballarat West NVPP has been prepared in a manner consistent with the requirements of Clause 52.16 of the Ballarat Planning Scheme. It identifies:

- Native vegetation which may be removed without a planning permit;
- Native vegetation which cannot be removed without a planning permit;
- The offset that must be provided to remove affected native vegetation; and
- Conditions that must be met in relation to vegetation that is to be protected.

The Ballarat West NVPP ~~has been~~~~is one of the planning tools~~ used to facilitate development and is a separate incorporated document within the Ballarat Planning Scheme (Schedule to Clause [72.04](#)).

Native vegetation surveys undertaken for the NVPP in 2011 recorded 57 remnant trees scattered widely over the precinct area. A total of 20 trees were shown to be retained with the other 37 being removed.

The Ballarat West NVPP proposed the creation of conservation area that can provide habitat and be sustained for the long term. A 13ha area of Plains Grassy Woodland in the west of sub-precincts of 2 and 4 was adopted to conserve the precinct's most intact native vegetation. In addition, two other small areas of Plains Grassy Woodland and Creekline Herb-rich Woodland areas were also recommended as offset areas in sub-precinct 2 and 4.

The Ballarat West NVPP required first party offsets to be established in the identified offset areas as well as some other potential offset areas. The offsets were to be secured through an on-title legal agreement before subdivision and include commitment to manage the offset in perpetuity.

Through permits that have been issued for subdivision and development in Ballarat West, the majority of offsets have actually been provided as third party offsets rather than the anticipated first party offsets.

Acknowledging the age of the Ballarat West NVPP and the changes in legislation since its drafting there is a need to review how native vegetation protection in the precinct will be managed in the future. All vegetation shown as being protected in the NVPP has been assessed through permit applications and the current NVPP as an effective planning tool is therefore redundant.

Reviewing the planning controls for removing and protecting native vegetation is outside the scope of this review but future strategic planning work will review the options for assessing native vegetation on undeveloped sites taking into account current legislation. This strategic planning work will also consider an update to the Ballarat West Conservation Management Plan for the Growling Grass Frog which is discussed further in section 5.6.