

## 7.6 AMENDMENT C221MORE - DEVELOPER CONTRIBUTIONS PLAN - PROJECT SUBSTITUTION - DECISION GATEWAY 1

Director Place and Environment Joseph Tabacco

City Strategy and Economy

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### Officer Recommendation

That Council:

1. Using its powers as a planning authority under section 8A of the *Planning and Environment* 1987, seeks authorisation from the Minister for Planning to prepare Moreland Planning Scheme Amendment C221more, for the revised infrastructure project list to be included in an updated version of the Moreland Development Contributions Plan (amended 2021) incorporated document.
2. Following receipt of the Minister's authorisation exhibits the Amendment in accordance with Section 19 of the *Planning and Environment Act* 1987 and as outlined in Section 4 of this report.
3. Authorises the Director Planning and Environment to make changes to the Amendment based on expert advice or to ensure that the infrastructure project list reflects the adopted 2022-26 Council budget or in response to conditions imposed in any authorisation granted by the Minister for Planning.

## REPORT

### Executive Summary

In 2015 Council adopted the *Moreland Development Contributions Plan (January 2015)* as a formal, lawful, and equitable way to collect contributions from new development toward the necessary infrastructure for a changing population.

The Moreland Development Contributions Plan (Moreland DCP) established an obligation on Council to collect levies in line with specified rates in the Moreland Planning Scheme, deliver the infrastructure projects listed in the DCP's incorporated document, and spend the collected levies on these projects.

The *Planning and Environment Act* 1987 sets out the legislative requirements to guide the operation of DCPs, whilst Victorian Government guidelines inform their preparation and review, and Ministerial Directions inform Council's annual reporting for the Moreland DCP.

In April 2022, the Minister for Planning approved an extension to the delivery date for completing the DCP's infrastructure projects to 30 June 2026. The expiry date for collecting DCP levies/contributions remains at 30 June 2023.

Ongoing monitoring and review has found some of the Moreland DCP's infrastructure projects will not be done before the 30 June 2026 deadline. This is due to changes to the capital works program over time, associated with updated Council policy and strategic priorities. Changing infrastructure standards and the Covid-19 pandemic have also influenced the timing and scope of some projects.

Amendment C221more proposes to update the Moreland DCP's infrastructure project list by:

- Removing those projects no longer scheduled for delivery by the deadline.
- Including replacement projects for delivery.
- Redefining other projects where there has been a change in scope for their delivery.

This report recommends that Amendment C221more be prepared so the existing Moreland DCP (last amended May 2021) incorporated document can include an updated infrastructure projects list for delivery by the 30 June 2026 deadline.

## Previous Council Decisions

Date and Reference	Council Report Title	Relevant excerpt from Council Resolution
10 Nov 2021 Item 7.6	Amendment C215more – Development Contributions Plan Extension to Project Delivery Dates – Decision Gateway 3 – Adoption	<ol style="list-style-type: none"> <li>1. Adopts Amendment C215more to the Moreland Planning Scheme pursuant to Section 29(1) of the <i>Planning and Environment Act 1987</i>.</li> <li>2. Submits Amendment C215more to the Moreland Planning Scheme to the Minister for Planning for approval, pursuant to section 31 of the <i>Planning and Environment Act 1987</i>.</li> </ol>
12 May 2021 Item 7.9	Amendment C215 – Development Contributions Plan (DCP) – Extension of Project Delivery Dates – Decision Gateways 1 and 2.	<ol style="list-style-type: none"> <li>1. Using its powers as a planning authority under section 8A of the <i>Planning and Environment Act 1987</i>, seeks authorisation from the Minister for Planning to prepare Moreland Planning Scheme Amendment C215 to extend the expiry date for infrastructure delivery of the Development Contributions Plan to 30 June 2026.</li> <li>...</li> </ol>
11 Feb 2015 DED7/15	Moreland Planning Scheme C133 – Development Contributions Plan	<ol style="list-style-type: none"> <li>...</li> <li>2. Adopt Amendment C133 pursuant to section 29(1) of the <i>Planning and Environment Act 1987</i>, with changes recommended in the Amendment C133 Panel Report (Attachment 1) as follows: ...</li> <li>...</li> <li>4. Submit Amendment C133 with changes to the Minister for Planning for approval, pursuant to section 31(1) of the <i>Planning and Environment Act 1987</i>.</li> </ol>
10 July 2013 DED63/13	Moreland Planning Scheme C133 – Development Contributions Plan, Request for an independent panel	<ol style="list-style-type: none"> <li>...</li> <li>4. To request the Minister for Planning appoint a Panel under Part 8 of the <i>Planning and Environment Act 1987</i> to consider submission to Amendment C133.</li> <li>...</li> </ol>
13 March 2013 DED16/13	Amendment C133 – Development Contributions Plan Overlay – Updated Council Project List	<ol style="list-style-type: none"> <li>1. To note and adopt the changes to the Moreland Development Contributions Plan (SGS, December 2012) including changes to the list of projects and charges payable for residential, commercial, and industrial development.</li> <li>2. To commence exhibition of Amendment C133 in accordance with the requirements of Section 19 of the <i>Planning and Environment Act 1987</i>.</li> </ol>

Date and Reference	Council Report Title	Relevant excerpt from Council Resolution
		...
9 May 2012 DED35/12	Amendment C133 – Moreland Development Contributions Plan Overlay	1. To seek authorisation from the Minister for Planning to prepare Amendment C133 to the Moreland Planning Scheme in accordance with Section 9 of the <i>Planning and Environment Act 1987</i> .  ...

## 1. Policy Context

### ***Planning and Environment Act 1987 and Guidelines***

The *Planning and Environment Act 1987* (the Act) enables the use of DCPs. The Act sets out legislative requirements to guide a DCP's operation. Having a DCP means Council can collect levies from those land developments which enable local population growth and economic development.

The Moreland DCP sets out rates that are used to calculate levies payable for each land development. The collected levies are used to partly fund the cost of the drainage, roads, and community infrastructure projects listed in the DCP. Council has included these projects in the DCP because this is the infrastructure required to meet the demand being generated by land development across the City.

The DCP's levy rates are informed by dwelling and floorspace growth projections over the life of the DCP. The portion of total infrastructure cost which can be reasonably assigned to land development is informed by the City of Moreland's projected growth.

Having a DCP requires Council to deliver the infrastructure projects set out in the DCP's project list. During the DCP's operation, funds are collected by administering the DCP to land developers. This collection obliges Council to deliver the infrastructure list before the DCP reaches its expiry date.

The Moreland DCP was introduced by Planning Scheme Amendment C133more and was gazetted on 10 September 2015. Development contributions have been collected since this time.

The amendment process for introducing the Moreland DCP into the Moreland Planning Scheme (the Scheme) took over two years to complete. Because of this, in 2021 Council sought a time extension for delivering the DCP's infrastructure projects. The Minister for Planning (the Minister) approved Amendment C215more, for the DCP's projects to be delivered by 30 June 2026.

A further planning scheme amendment is needed for changes to the infrastructure project list in the Moreland DCP's incorporated document.

### **Moreland Planning Scheme**

#### *Clause 19.03-1S – Development and infrastructure contributions plans*

State Planning Policy encourages the timely provision of planned infrastructure to communities, this includes the preparation and implementation of DCPs.

The proposed amendment will give effect to this objective by updating the infrastructure project list in the DCP's incorporated document for the Scheme.

#### *Schedule 1 to the Development Contributions Plan Overlay*

Amendment C133 introduced [Schedule 1 to the DCP Overlay \(DCP01\)](#) in the Scheme, to give effect to the *Moreland Development Contributions Plan (January 2015)*, as an incorporated document in the Scheme. The DCP01 applies to all land in the City of Moreland, requiring a DCP levy to be charged for new residential, commercial, and industrial development. The DCP's incorporated document currently has a list of 842 infrastructure projects. Amendment C221 is proposing to revise this list to ensure all projects are delivered.

## 2. Background

DCP levies are charged to new residential, commercial, and industrial development, to ensure the capital works cost of infrastructure provision for a growing population is shared between current and future communities.

Moreland was the second metropolitan council to introduce a municipal-wide DCP, preceded only by Darebin in 2004. Municipal-wide DCPs have been adopted by an increasing number of metropolitan councils in the past 5 years, including Banyule, Brimbank, Maribyrnong, Moonee Valley, Stonnington, and Yarra.

### Moreland's DCP

Moreland has a 10-year DCP, originally intended to start in 2013/14 and finish in 2022/23, with levies collected and infrastructure delivered in this timeframe.

The existing DCP provides for collecting contributions to partly fund 842 infrastructure projects. These projects are in two main categories:

- Development Infrastructure for roads, paths, drainage, public realm/streetscape projects
- Community Infrastructure for early years, community space, recreation, and aquatic facilities.

The DCP's project list was developed through Council's long-term asset planning, at the time the DCP was developed in 2011/12. The DCP was prepared with experts involved, to meet the principal tests for project inclusion as per the [Victorian Government's DCP Guidelines](#).

The DCP's levy rates are applied per dwelling for residential development, or per 100 square metres of leasable floor space for industrial/commercial development. The levy rates vary across pricing areas to account for varying infrastructure costs, land uses, and local population growth in these areas.

Collected DCP levies fund on average 10 to 11 per cent of DCP infrastructure project costs across the City of Moreland. The DCP commits Council to fund the balance of project costs through its asset planning and budgeting. By 30 June 2022, the estimated total levies collected will be \$10.8 million.

### Amendment C133more

[Amendment C133more](#) gave effect to the DCP by introducing DCP01 to the Scheme. The DCP01 applies to the entire City of Moreland and gives effect to the [Moreland Development Contributions Plan \(January 2015\)](#) as an incorporated document in the Scheme. This requires a planning scheme amendment to be changed.

Broadly speaking, the DCP01 triggers the geographic application of DCP levy rates to all land in Moreland and is enabled when land developers make their planning or building permit applications. The DCP's incorporated document sets out infrastructure funding principles, levy calculations, charge areas, procedural and administrative matters. Importantly, the document includes the list of infrastructure projects the contributions are being collected for.

## Amendment C215more

The Amendment C133more process, to introduce the Moreland DCP into the Scheme, took over two years and was completed in September 2015. This outcome reduced Council's ability to complete the DCP's listed projects before the 30 June 2023 end date. To address this, in 2021 Council pursued [Amendment C215more](#) for an extended deadline to 30 June 2026. This proposal was approved by the Minister and a revised version of the Moreland DCP incorporated document, with the new deadline date, came into effect on 14 April 2022. The expiry date for collecting DCP levies/contributions remains at 30 June 2023.

### 3. Issues

Council's long-term capital works planning is dynamic and is revisited each year to refresh the capital works planning horizon. In recent years, this planning has also been influenced by the introduction of the new *Local Government Act 2020* which obliges the creation of a 10 Year Asset Plan and 4 Year Budget.

#### The need for an updated project list

A review of the DCP's 2015 capital works projects list in the incorporated document has found some projects have been rescoped and others need to be replaced. The key drivers for these variations are:

- Changes to Council policy and strategic direction.
- Evidence-based change for infrastructure investment. For example, road condition data varies over time and new evidence for changing conditions can influence the scope of a project or warrant a replacement being done, where a greater priority has emerged.
- Increasing infrastructure delivery costs. The real costs for infrastructure delivery change over time. Increasing project costs influence the number of projects that can be delivered each year, within a limited capital works program and a rate capped budget.
- Increasing infrastructure project costs. Changing expectations and industry standards forces an increase in project costs. For example, changing standards for environmental design can increase project costs to mitigate environmental impacts.
- Re-prioritising projects because of external funding opportunities, such as the Victorian Government's Female Friendly Facilities Fund or funding from Melbourne Water for drainage projects.
- Unanticipated need to re-prioritise some projects in response to the Covid-19 pandemic.

Consequently, Council must establish an updated capital works project list for the Moreland DCP. The updated list is in **Attachment 1**. Projects on the list have been sourced from Council's capital works plan and community infrastructure plan. There are 626 projects on the updated list.

Ongoing work may reveal the need to refine the list. In addition, ministerial authorisation and feedback from a Planning Panel may lead to further refinements before Council receives a final DCP project list in a final incorporated document for Amendment C221more. This would happen at the end of the amendment process for C221more when Council would consider adopting the final changes to the Moreland DCP. Despite changes that may occur during the amendment process, all of the projects included on the list will align with Council's adopted budget.

## **Legal and risk considerations**

The Moreland DCP is a legal instrument that obliges Council to deliver the infrastructure projects that are included on the DCP project list.

With the knowledge that there are projects in the current DCP list that won't be delivered or have changed in scope if no action was taken to update the DCP list, there is a risk Council would be required to return unspent DCP levies, associated with the unfulfilled obligations, to affected landowners.

## **Human rights consideration**

Implications for this report have been assessed against the requirements of the Charter of Human Rights and Responsibilities. Future notice for Amendment C221more will be done and the proposed changes to the DCP's project list will not limit or interfere with any Human Rights, in particular, 'Section 13: The right to privacy and reputation', 'Section 18: The right to take part in public life', and 'Section 20: Property rights'. The following is also noted:

- Any person may elect to take part in the process by providing a submission to the Responsible Authority and/or speaking at a Planning Panel Hearing.
- No parties are deprived of any legal or proprietary interest in land, or the ability to use and develop that land by the planning and building regulatory framework.
- A person is deprived of their property rights if a regulation has the effect of substantially depriving a property owner of the ability to use his or her property or part of that property. C221more is implementing the existing planning scheme policy.

## **Gender impact considerations**

The project is making changes to an existing provision in the Moreland Planning Scheme and will not have a direct negative or significant impact on gender equality.

## **4. Community consultation and engagement**

Exhibition of Amendment C221more will be done after the Minister has given authorisation and any conditions imposed by the Minister's authorisation have been fulfilled.

Section 19 (1A) of the Act applies when Council considers giving individual notice of an amendment is not practical. This is the case for Amendment C221more because it is impractical to give direct notice to every property owner and occupier in the City of Moreland.

For Amendment C221more a page will be prepared for Council's website, with an invitation to contact Council officers for assistance or documents to be electronically provided upon request. Social media posts will also be released. If timing permits, information will be included in the Inside Moreland newsletter which is distributed to householders every quarter.

It is also worth noting:

- Approved or proposed development will not be affected because DCP levy rates in the Scheme will not be changed.
- No approved or proposed development will be dependent on the timing of any DCP infrastructure project.
- The proposal is not changing the DCP Overlay Schedule already in the Scheme, other than to reference an updated incorporated document.

- The changes to the DCP's incorporated document are associated with an updated project list and are technical, to underpin the existing DCP levy rates in the Scheme and enable the DCP's acquittal.
- Council's creation of a [10 Year Asset Plan and 4 Year Budget](#) has already enabled public consultation for Council's capital works funding commitments.

To comply with other notice requirements in section 19 of the Act, the amendment will be exhibited by providing notice of its preparation:

- In the Government Gazette.
- To prescribed Ministers and adjoining municipal councils
- To those industry professionals and development consultants who work on behalf of regular permit applicants.

## 5. Officer Declaration of Conflict of Interest

Council officers involved in the preparation of this report have no conflict of interest in this matter.

## 6. Financial and Resources Implications

The funds required to administer this amendment can be met within the Strategic Planning Unit's operating budget.

Council will be responsible for paying the statutory fees to the Department of Environment, Land, Water, and Planning (DELWP) to process the amendment.

Amendment C221more does not propose any change to the levy collection period, past the original DCP end date of 30 June 2023. Also, Amendment C221more does not introduce new projects to be attributed to additional income. Instead, C221more is only revising the infrastructure project list for planned income projections.

The DCP's project list has been informed from Council's draft 2022-26 budget and will be updated for any changes in Council's adopted budget.

## 7. Implementation

The Planning Scheme Amendment process has the following three decision gateways for making progress.

- Council seeks authorisation to prepare Amendment C221more from the Minister for Planning (Minister). Following authorisation, the proposal is exhibited for at least four weeks. It is common practice for the Minister to give conditions for DCP amendments. The conditions must be fulfilled before the exhibition can begin.
- After the exhibition is done, Council considers submissions and requests the appointment of a Planning Panel by the Minister for unresolved submissions.
- A Council decision to consider adopting Amendment C221more happens after the Panel's report has been released and considered, or if there are no unresolved submissions, after the exhibition is complete. Then, only after adopting the final proposal can Council pursue the Minister's approval to include C221more into the Scheme.

DELWP oversees the planning scheme amendment process on behalf of the Minister. This means DELWP must be satisfied if Moreland's C221more is to be supported by the Minister at the above gateways. Given the technical complexity to create and review city-wide DCPs, it will be important for Council's DCP consulting experts to participate in the amendment process. This includes acting as Council's expert witness if a Planning Panel is required and representing Council's interests through the process.

The following timeline is for the above decision gateways. It is approximate and subject to DELWP's input and ministerial approval timelines. The upcoming Victorian state election's caretaker period is likely to affect the final timing.

- Gateway 1: Authorisation and exhibition (current report).
- Gateway 2: Consider submissions and request a Panel (early 2023).
- Gateway 3: Review Panel report and request approval from the Minister (mid-2023).

### **Attachment/s**

- 1 DCP capital works project list D22/202759