

Creswell Street East Crib Point

Review of April 2018 Development Contributions Plan

Mornington Peninsula Shire Council

November 2022



mesh

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Review of Draft Development Contributions Plan, November 2021

Mornington Peninsula Shire Council

November 2022

Client	Mornington Peninsula Shire Council
Project	Creswell Street East Crib Point
Version	2.0
Prepared By	Jo Fisher
Reviewed By	Chris De Silva
Date	November 2022

Acknowledgement

Mesh acknowledges the Traditional Owners of the lands on which we work, and pay our respects to Elders past, present and emerging.

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mesh

Level 2, 299 Clarendon Street South Melbourne VIC 3205
office. +61 3 9070 1166 | meshplanning.com.au

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1. REPORT PURPOSE

Mesh Planning (Mesh) was engaged by Mornington Peninsula Shire Council (Council) to complete a peer review the Creswell Street East Crib Point Development Contributions Plan, April 2018 (DCP).

As per the fee proposal the tasks and outputs required as part of this project are as follows:

- > Complete a peer review of the Creswell Street East Crib Point DCP, dated April 2018, DCPO1 and have regard to the legal advice provided by Jackson Lane Legal and issues identified by Council officers. In particular, the peer review will focus on the implementation, identify any matters that pose a financial risk to Council and outline the potential options available to council moving forward; and
- > Prepare a report outlining the key findings and recommendations which will set out how any matters of concern, raised through the peer review, can be addressed through changes to the DCP document.

The DCP has been reviewed along with: -

- > Development Contribution Plan Overlay Schedule 1; and
- > Jackson Lane Legal Advice, dated 19.04.2022.

Mesh has reviewed these documents to ensure they align with the statutory framework for development contributions, in particular the Planning and Environment Act 1987, the DCP Guidelines (2007), the Ministerial Direction on the Preparation and Content of Development Contributions Plans (2016) and recent Planning Panel recommendations.

1.1 Background

Given the DCP includes a timing trigger to deliver the DCP project within 5 years from the date upon which the DCP was gazetted, Council officers recently completed a detailed costing for the DCP project. This recent design work results in a project cost of approximately \$3.7M which is \$1.1M more than the current DCP project cost.

In addition, Section 15 of the DCP includes the provision that the DCP be removed from the Planning Scheme once the DCP project is delivered. Given the requirements included in the DCP, Council sought legal advice from Jackson Lane Legal on whether: -

1. The current provisions of Schedule 1 to the Development Contributions Plan Overlay (DCPO1) allow Council to capture financial contributions from landowners after Council has undertaken the infrastructure works that are the subject of the Creswell Street East Crib Point Development Contributions Plan 2018 (Incorporated DCP).

2. Assuming the answer is 'no' (or if there is doubt), whether a planning scheme amendment is required for a new, or amended DCP, to allow the recovery of funds paid by Council once Council has undertaken the infrastructure works.

A summary of the Jackson Lane Legal Advice (19 April 2022:page 2) is provided below: -

After careful consideration of all relevant material (most importantly including the Incorporated DCP), we do not regard there to be sufficient certainty that Council will be lawfully entitled to collect contributions into the future, after a time when the works have been undertaken by Council. While it may be possible to capture contributions from landowners after the delivery of development infrastructure that is the subject of the Incorporated DCP, there is genuine risk to Council. We consider it is likely that there may be legal challenge to conditions Council might impose seeking to collect funds after the works have been undertaken. The outcome of a challenge to VCAT is not certain. There will inevitably be costs associated with such proceedings, even if the proceedings are resolved in Council's favour.

Bearing the above in mind, we recommend Council review the DCP in the light of current circumstances. There will be a need to pursue a planning scheme amendment if, after the review, a need to amend the Incorporated DCP is identified. While there will be costs associated with such processes, the outcome will result in greater certainty to current and future landowners as well as to Council. The costs may be no greater than defending conditions imposed on permits seeking 'retrospective' contributions under the DCP.

As recommended by Jackson Lane Legal, Mesh have completed a peer review of the DCP having regard to the legal advice provided, the revised detail project costs and slower than anticipated development rate.

2. OVERVIEW OF THE CRESWELL STREET EAST CRIB POINT DEVELOPMENT CONTRIBUTIONS PLAN, APRIL 2018

2.1 Introduction

Watsons Pty Ltd prepared the DCP in consultation with Council and service authorities. The key components of the DCP include: -

- > It came into operation in June 2019 when the DCP was gazetted as part of Planning Scheme Amendment C210morn;
- > It applies to approximately 10.2 hectares of land, comprising 64 lots;
- > It applies a Development Infrastructure Levy (DIL) of approximately \$25,190 (Sept 2022 \$) per 20.12m of frontage across the single charge area;
- > New residential development within the precinct will be required to pay the respective DIL charge;
- > The DIL charge is payable per 20.12m of frontage, i.e. the existing 64 lots are equivalent to 72 lots based on a frontage of 20.12m; and
- > It is to operate until the works are completed.

2.2 Development Context

The eastern section of Creswell Street, Crib Point (subject land) was formally zoned for industrial use but experienced little industrial development due to the lack of exposure and poor access. Amendment C210morn rezoned the 10.2 hectares to Neighbourhood Residential Zone 1 and introduced Development Contributions Plan Overlay 1 and an Environmental Audit Overlay 1.

The subject land currently comprises 64 lots, the majority of the lots are approximately 1,600m² in area, with a 20m frontage, although there are several larger lots dispersed across the area. Since the gazettal of Amendment C210morn there have been several planning permits issued, however the rate of development has been slower than anticipated.

2.3 Overview of the DCP

The DCP funds the upgrade of Creswell Street and Cooma Street within the C210morn Amendment area, as illustrated in Figure 1. This project includes road and drainage infrastructure construction only and does not include any land costs. Accordingly, the DCP requires a development infrastructure levy (DIL) of \$25,190 (Sept 2022 \$) per 20.12m of frontage.

The total value of the DCP project is \$2.6M, however the DCP will only collect 70% of this which equates to approximately \$1.8M, leaving a funding gap of \$0.78M (30% of the total cost) which will be met by Council via other funding sources.

A copy of the summary of costs table included in Appendix A of the DCP is provided in Table 1.

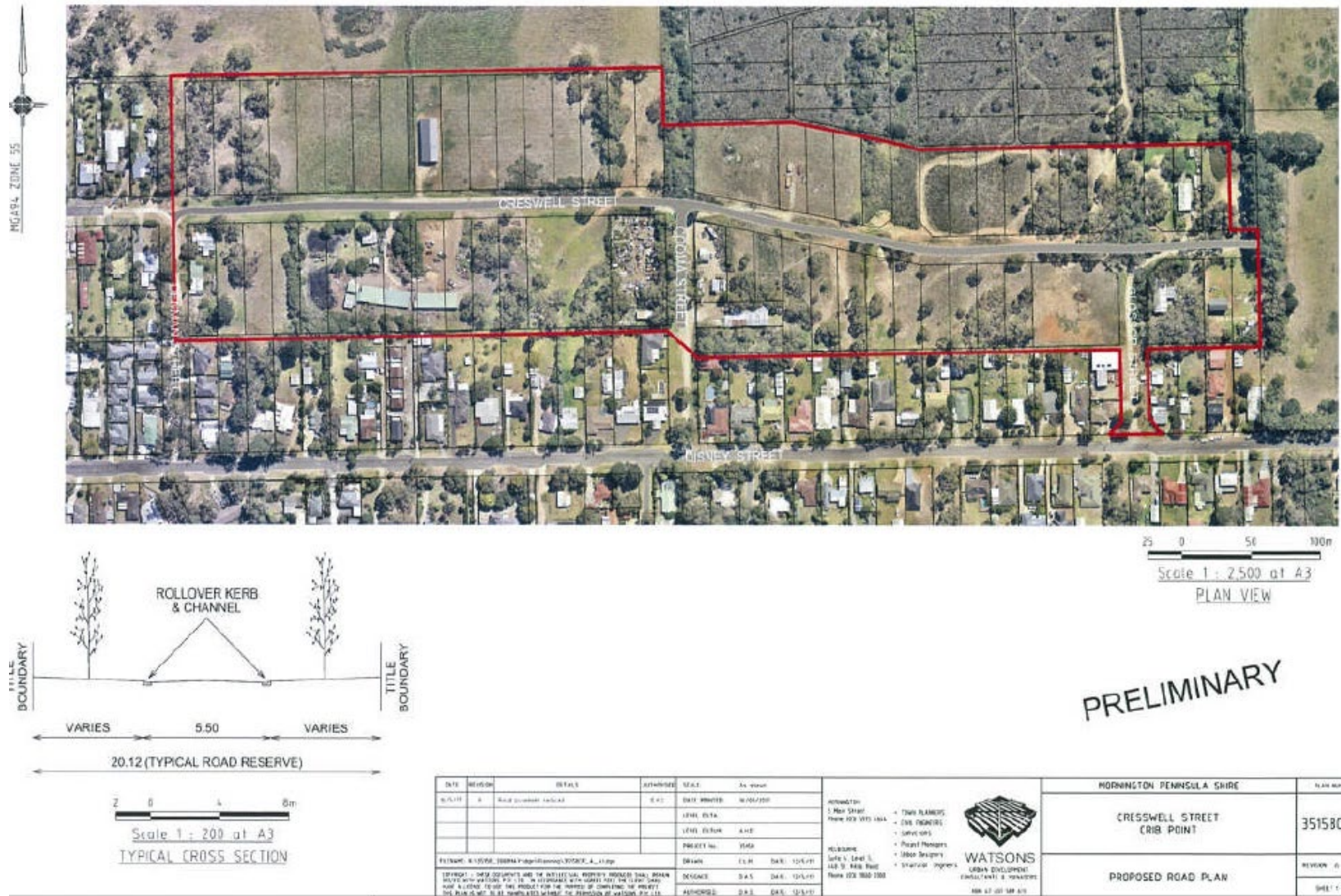
Table 1: DCP Summary of Costs and Charge Rate (October, 2017)

April 2018 (Amended October 2017)

CRESWELL STREET EAST/ COOMA STREET - PROJECT COSTINGS, CRIB POINT					
SCHEDULE OF PRELIMINARY ESTIMATED COSTS OF CONSTRUCTION					
SUMMARY SHEET					
PROJECT No. 35158					
OCTOBER 2017 (AMENDED)					
ITEM No.	ITEM DESCRIPTION	QUANTITY	UNIT	RATE	COST
1	Creswell Street - 5.5m wide back of kerb to back of kerb, asphalt pavement, stormwater drainage, (no footpath)	770	m	1,700	1,309,000
2	Cooma Street - 5.5m wide back of kerb to back of kerb, asphalt pavement, stormwater drainage, (no footpath)	90	m	1,700	153,000
3	Site clearing and vegetation removal (allow)	1	item	25,000	25,000
4	Local Area Traffic Management (LATM) traffic control devices	4	no	10,000	40,000
5	Localised WSUD drainage treatment facilities	9	no	10,000	90,000
6	Public Street Lighting (Intersections & 40m spacing allowed)	15	no	3,800	57,000
7	Service relocation (water, sewerage, overhead power) (allowance)	1	item	70,000	70,000
8	Council Plan Checking & Supervision Fee (3.25% of Items 1 to 5)	1	no		52,553
9	Electrical Authority project fees (allow)	1	no	8,000	8,000
10	South East Water Development deed application fee, (allow)	1	no	1,000	1,000
11	Engineering Design & Project Management (allow 10.0% of Items 1 to 8)	1	no		174,400
12	Engineering Supervision & Contract Admin. (allow 2.5% of Items 1 to 8)	1	no		43,600
13	Engineering feature and level survey (allow)	1	no	15,000	15,000
14	Street lighting and cabling design (allow)	1	no	12,500	12,500
15	Geotechnical assessment for roads and drainage (allow)	1	no	20,000	20,000
16	Vegetation assessment report (allow)	1	no	10,000	10,000
17	WSUD drainage assessment (allow)	1	no	10,000	10,000
TOTAL COST (excluding GST)					2,091,053
Total Lots in Amendment C210 area					64
Total Equivalent Lots in Amendment C210 area based on approximate 20.12m frontage					72
Landowner Contribution to total cost at 70%					1,463,737
Residual Cost based on Council Contribution to total cost at 30%					627,316
Land Owner Contribution per equivalent Lot frontage (based on approximate 20.12m frontage)					20,330

Source: Creswell Street, Crib Point DCP (2018)

Figure 1: DCP Project



Source: Creswell Street, Crib Point DCP (2018)

3. KEY FINDINGS

3.1 Strategic Justification

Section 5 of the DCP sets out the strategic basis for the DCP.

It is recommended that this section includes further explanation setting out that the upgrade of Creswell Street/ Cooma Street is required to facilitate the development of the area. Ideally this section would list any key strategies and technical reports that have been used to determine the infrastructure project scope.

3.2 Identification of Projects

The DCP funds the upgrade of Creswell Street/ Cooma Street which is a road and drainage project as illustrated in Figure 1.

Upon review of the DCP project, Mesh notes the following: -

- > The DCP project relates to the upgrade of the existing Creswell Street/ Cooma Street to a sealed road with drainage. This project is considered a local infrastructure item that is required to facilitate the development of the adjoining lots.
- > Section 6 of the DCP states that the project includes 'road and, drainage, water supply, public street lighting and optic fibre ready pit and pipe infrastructure construction within the existing unmade Council road reserves'. The C210morn Panel Report recommends that the water supply costs were incorrectly included and are to be removed. It appears this cost has been removed from the project cost sheet in Appendix 1, but the project description has not been updated to remove the words 'water supply'.
- > Council officers have questioned the extent of the road upgrades included in the DCP and suggested that additional side streets could potentially also be included. Creswell Street and Cooma Street are the spine roads and therefore the priority, however the addition of several connections to key side roads should be explored further.
- > The DCP is based on Council delivering the project upfront and recouping funds over time as the land develops and therefore Council carries this cost including finance for some time. It is recommended that the DCP include the cost of finance to deliver the project ahead of when Council will receive the funds.

3.3 Open Space Contributions

The DCP does not include any open space projects however Clause 53.01 of the Mornington Peninsula Planning Scheme requires an open space contribution of 5% of site value, an excerpt from Clause 53.01 is provided in Table 2. This requirement is in addition to the DCP charge.

Table 2: Mornington Peninsula Planning Scheme, excerpt from Clause 53.01 Subdivision and Public Open Space Contribution

Type or location of subdivision	Amount of contribution for public open space
Other Residential subdivision.	Five percent (5%)

3.4 Charge Area Catchments

The DCP applies a single charge area to the subject land. This approach is considered appropriate given the size and location of the growth area.

3.5 Equivalence Ratios and Demand Units

The development projections for the DCP are based on an average lot frontage of 20.12m. In summary, the existing 64 lots is equivalent to a total of 72 lots based on a lot frontage of 20.12m.

In summary: -

- > The DIL charge is payable per 20.12m of frontage, i.e. the existing 64 lots are equivalent to 72 lots based on a frontage of 20.12m;
- > The demand units are based on a 770m frontage to Creswell Street and a 90m frontage to Cooma Street;
- > Whilst the application of a DCP charge based on lot frontage is unusual it does ensure that council does not miss out on any development of land;
- > Given only residential development is proposed there is no need for the use of equivalence ratios to convert the residential charge rate for other development types i.e. retail, commercial etc; and
- > There is no detailed land budget that shows the current area and frontage of the existing 64 lots.
- > The DCP does not mention that each lot has the potential to re-subdivide and therefore the actual cost per lot is affordable.

It is recommended that: -

- > A detailed land budget that includes the land area as well as the frontage of each of the existing 64 lots is included in the DCP;
- > Section 9 of the report include a simple table detailing the demand unit calculations, an example is provided in Table 3.
- > Section 9 include commentary that the existing lots can be subdivided under the current planning controls and whilst the DCP is charged per frontage there will ultimately be more than 72 lots delivered within the DCP area.
- > The DCP defines the 'frontage' used to calculate the demand units.

Table 3: DCP Total Demand Units (2018)

No. of existing lots	Total lot frontage	Average lot frontage	Total demand units (equivalent lots)
64	TBC	20.12	72

3.6 External Apportionment

The DCP attributes 30% of the DCP project to Council. The DCP states that this approach reflects the standard council contribution rates for similar current projects funded by Special Charge Schemes. As a result, the total value of the DCP project is \$2.6M, however the DCP will only collect 70% of this which equates to approximately \$1.8M, leaving a funding gap of \$0.78M.

The C210morn Panel Report (2018) notes that the apportionment approach is not based on a detailed assessment, the Panel noted that given the small, localised nature of the DCP project that the apportionment approach is "a pragmatic and reasonable solution" (2018:30).

External demand in a DCP is typically attributed to existing demand for the infrastructure or the benefitting catchment extending beyond the charge area. It is unusual that the DCP apportions project costs based on a Special Charge Scheme approach.

It is recommended that the apportionment approach be reviewed and 100% of the project costs are attributed to new development.

3.7 Calculation of Charges

Appendix A of the DCP includes a copy of the concept plan of the project, the preliminary cost estimate and calculation of the development infrastructure levy charge. Sections 10 and 11 of the DCP explain how the charges set out in Appendix A were calculated. Table 4 provides a summary of the current project costs and charges and it is recommended that if the DCP is updated that such a table is included in the revised document.

Table 4: Total DCP charges within Creswell Street, Crib Point DCP (in Sept 2022 \$)

Project Description	Total Project Cost	Internal Demand	Total Attributed to DCP	Demand Units	Development Infrastructure Levy per demand unit
Creswell Street (700m) and Cooma Street (90m) upgrade to sealed 5.5m road including drainage, public street lighting and optic fibre ready pit and pipe construction.	\$2,590,922	70%	\$1,813,645	72	\$25,190

Council officers have recently completed the detailed design and costing of the DCP project. This recent design work results in a project cost of approximately \$3.7M which is \$1.1M more than the current DCP project cost. Therefore, if Council were to construct the project, Council would be required to contribute \$0.78M (30% of DCP project cost) plus the additional \$1.1M (difference between DCP project cost and recent detailed project cost) if the balance of \$1.8M is recouped over time as development progresses.

Therefore, based on the detailed costing work Council is required to fund approximately \$1.9M of the total \$3.7M worth of works. This is a significant financial contribution required from Council and Council officers are currently considering their options in terms of implementation of the DCP.

Potential DCP implementation options more broadly are discussed in Section 4.

It is recommended that: -

- > The DCP is updated to include the revised project cost.
- > Section 10 of the DCP be updated to include a simple table that sets out the calculation of the DCP charge.
- > Section 10, 3rd paragraph states that the project includes 'water supply', as per the note earlier this needs to be removed from the project description as per Panel recommendation.
- > A table be included in the Appendix that sets out the total contribution payable for each property based on the attributed lot frontage and charge rate. This adds a layer of transparency and will assist landowners, building surveyors and council planners in understanding the respective DCP DIL liability for each existing lot.

3.8 Administration and Implementation

3.8.1 Exemptions

DCP01 notes that there are no exemptions. It is recommended that if the DCP is to be reviewed that the DCP and DCP01 are updated to include the respective exemptions to ensure consistency with the current Ministerial Direction and include the following wording: -

Development of the following is exempt from the provisions of this DCP/overlay:

- > existing or approved dwelling.
- > non-government school.
- > housing provided by or on behalf of the Department of Health and Human Services.

3.8.2 Payment of Contributions

Section 12 of the DCP sets out the payment timing of contributions and notes the requirement to pay the DIL prior to commencement of development of land. Given most of the development will not require a planning permit the wording included in Section 12 is appropriate, however, this requires private building surveyors to ensure the DIL is paid.

Council officers have advised that there is an internal process whereby the Building Department advises private building surveyors of the obligation to pay the DCP DIL when council receives a notice of a Building Permit. This project does not extend to reviewing council's internal processes.

3.8.3 Monies Collected to Date

Council officers confirmed that \$45,018.09 in development contribution DIL payments have been received for the development of two lots (31 and 70 Creswell Street) to date.

Council officers have advised that seven planning applications have been issued which include a condition on permit to pay the DIL and there is 1 planning application currently under consideration.

Given the planning controls, it is anticipated that most levies will be collected via building permits in the future.

It is understood that the development rates envisaged when the DCP was prepared have not been met and as a result Council has received very few payments to date.

3.8.4 Funding Gap

Based on the development data provided the DCP is estimated to fund \$1.8M which is 70% of the total project cost \$2.6M. The funding gap of \$0.78M is attributed to Council. By way of background, the 30% apportionment to Council was not based on detailed analysis but rather reflected the apportionment used in Special Charges Schemes within the Shire. The Panel supported the 30% apportionment to Council which is reflected in the DCP.

Council as the Development Agency will use other funding sources such as rates and grants to meet this funding gap.

As noted earlier, the actual funding gap to council is approximately \$1.9M due to the difference between the project cost included in the DCP and the current project costs Council have completed based off a detail project design. This funding gap is significant; and together with the uncertainty regarding Council's ability to collect contributions following completion of the DCP project it is timely to review the DCP and consider the implementation options.

3.8.5 Indexation

All levies are in October 2017 dollars. As per the DCP and DCPO1 all construction projects are to be indexed quarterly using Australian Bureau of Statistics Producer Price Indexes, Road and Bridge Construction Index, Victoria.

Mesh have indexed the DCP project cost and DIL charge rate and calculate that the current DIL charge should be \$25,190 per 20.12m frontage (Sept 2022 \$), as per the figures in Table 5.

It is recommended that Council maintain a central index table like that illustrated in Table 9 to ensure that the correct DIL charge rate is being collected and noted on the respective invoices.

It is also recommended that the DCP be updated to include a detailed project cost in 2022 \$ and Section 14 is updated to include the following wording: -

Capital infrastructure costs are reflected in [insert month, year] dollars. These will be indexed [quarterly or annually on 1 July of the first year] after the gazettal of the DCP into the Mornington Peninsula Planning Schemes with the first indexation to cover the time elapsed since the date of the estimates and that point in time. The Australia Bureau of Statistics Producer Price Indexes Road & Bridge Construction Index, Victoria (Catalogue 6427.0, Table 17 Output of the Construction Industries) index is to be applied.

Table 5: Indexation of DCP Project Cost and DIL Charge Rate

ABS Producer Price Indices					
Road and Bridge Construction Index, Victoria					
Financial Year	Index Number; 3101 Road and bridge construction Victoria ;	% Change by corresponding quarter of year previous	DCP Project Cost (from October 2017)	DCP Project Cost (70% attributed to landowners)	DIL Charge per 20.12m frontage
Dec-2017	109.6		\$2,091,053.00	\$1,463,737.10	\$20,330.00
Mar-2018	113.7	1.0374088	\$2,169,276.70	\$1,518,493.69	\$21,090.52
Jun-2018	117.1	1.0299033	\$2,234,145.13	\$1,563,901.59	\$21,721.20
Sep-2018	119	1.0162254	\$2,270,395.14	\$1,589,276.60	\$22,073.63
Dec-2018	121	1.0168067	\$2,308,553.04	\$1,615,987.13	\$22,444.62
Mar-2019	120.6	0.9966942	\$2,300,921.46	\$1,610,645.02	\$22,370.42
Jun-2019	120.7	1.0008292	\$2,302,829.35	\$1,611,980.55	\$22,388.97
Sep-2019	122	1.0107705	\$2,327,631.99	\$1,629,342.39	\$22,630.11
Dec-2019	122.6	1.0049180	\$2,339,079.36	\$1,637,355.55	\$22,741.41
Mar-2020	121.5	0.9910277	\$2,318,092.51	\$1,622,664.76	\$22,537.36
Jun-2020	120	0.9876543	\$2,289,474.09	\$1,602,631.86	\$22,259.12
Sep-2020	118.7	0.9891667	\$2,264,671.45	\$1,585,270.02	\$22,017.98
Dec-2020	119.3	1.0050548	\$2,276,118.82	\$1,593,283.18	\$22,129.28
Mar-2021	119.8	1.0041911	\$2,285,658.30	\$1,599,960.81	\$22,222.03
Jun-2021	122.2	1.0200334	\$2,331,447.78	\$1,632,013.45	\$22,667.21
Sep-2021	123.5	1.0106383	\$2,356,250.42	\$1,649,375.29	\$22,908.35

ABS Producer Price Indices					
Dec-2021	124.9	1.0113360	\$2,382,960.95	\$1,668,072.66	\$23,168.04
Mar-2022	128.3	1.0272218	\$2,447,829.38	\$1,713,480.57	\$23,798.71
Jun-2022	132.3	1.0311769	\$2,524,145.18	\$1,766,901.63	\$24,540.68
Sep-2022	135.8	1.0264550	\$2,590,921.51	\$1,813,645.06	\$25,189.91

3.8.6 Project Timing and Delivery

Section 7 of the DCP includes the following very specific timing triggers.

The DCP project will be delivered as soon as practicable. The trigger for delivery is the first of either of the following events to occur:

- (a) 50% of the landowner contributions necessary to deliver the project have been collected by Council; or
- (b) Within five years from the date upon which this DCP is first incorporated in to the Mornington Peninsula Planning Scheme.

This acknowledges the Development Agency's capacity to provide the balance of funds not recovered by this DCP in the short term.

Given the DCP was gazetted in 2019, Section 7 requires that the DCP project be delivered by the year 2024 or when Council has received 50% of the landowner contributions. Given the slow development rate Council has not collected the 50% of contributions however is required as the Development Agency to deliver the DCP project by 2024.

In addition, to this delivery requirement Section 15 of the DCP states that the DCP is to be removed from the Planning Scheme if the works are completed.

Having regard to the current wording included in the DCP, the Jackson Lane Legal Advice and the understanding that Council have programmed the works in their capital works program for the 2023/24 financial year it is recommended that Council review the DCP and make the following changes: -

- > Revise Section 7 to replace the last sentence with the following wording recommended by Jackson Lane Legal

This acknowledges the Development Agency's capacity to provide the balance of funds not recovered by this DCP in the short term, on the basis the landowners pay Council the development contribution when they develop their land.
- > If, however Council does not wish to construct the works in the 2023/24 financial year then it is recommended that Section 7 (b) be replaced with wording along the lines of "as soon as practicable and acknowledging the Development Agency's capacity to provide the balance of funds not recovered by the DCP".

3.8.7 Interim Works and Change in Project Scope

The DCP does not include a section outlining how interim works (if any) or a change in project scope will be addressed. It is recommended that the DCP be updated to include the following: -

- > **Temporary or staged works (interim works)**

Temporary works are not considered as eligible for works in kind credits against this DCP.

It may be appropriate to deliver some of the DCP project in a staged manner based on the needs of the development or the functionality of the asset, however any eligibility for these works to be credited as works in kind must be agreed to by the Collecting Agency and the Development Agency.

> **Adjustment to the Scope of Projects**

The infrastructure project in the DCP has been costed to a sufficient level of detail, however all the projects will require a detailed design process prior to construction. As part of detailed design, the Development Agency, or a development proponent with the consent of the Development Agency may amend or modify some aspects of project, so long as they are still generally in accordance with the scope outlined in the DCP.

Where the Development Agency or another agency seeks to change the scope of a DCP infrastructure item to meet changing standards imposed by adopted policy or a public regulatory agency, such changes of standards and the resulting cost changes should normally be made through a change to the DCP at the time of a regular review of the DCP.

3.8.8 Review Period

Section 15 of the DCP states that the DCP is reviewed every 5 years or more often if necessary. However, it also states that the DCP is to be removed from the Planning Scheme if the works are completed. As discussed in the previous section this requirement is unusual and creates uncertainty as to whether Council will be able to seek contributions following delivery of the infrastructure item. Given Council will need to construct the infrastructure item prior to the full build out of the area it is recommended that Section 15 be revised to include the following wording.

- > This DCP commences on the date it is gazetted into the Mornington Peninsula Planning Scheme.

This DCP is expected to be reviewed and updated every five years (or more frequently if required). This review may result in no changes at all. Alternatively, this may require an amendment to the Mornington Peninsula Planning Scheme to replace the DCP with an alternative, revised DCP.

4. SUMMARY AND RECOMMENDATIONS

The revised detail project costs estimate that Council will be responsible to fund approximately \$1.9M. This is a significant amount and is \$1.1M more than the current project costs. Given the size of the funding gap and the current wording included in the DCP that requires Council as the Development Agency to deliver the project by the year 2024 and to remove the DCP from the Planning Scheme following completion of the project it is timely that Council review the DCP and consider the options going forward.

Table 6 summarises the options for Council to consider, it is recommended that Council pursue Option 2.

Table 6: Summary of Options

	Option	Description	Pros	Cons
1	Continue with status quo (do nothing)	Retain the DCP in its current form and make no changes to it.	<ul style="list-style-type: none"> – There is nothing to do. 	<ul style="list-style-type: none"> – Council is required to meet the \$1.9M funding shortfall. – Council can be challenged regarding whether it can legally seek contributions after the DCP project is delivered.
2	Pursue changes via a Planning Scheme Amendment	Identify the changes required to the DCP and pursue a revised DCP via a Planning Scheme Amendment. This will likely require a Panel Hearing.	<ul style="list-style-type: none"> – The DCP is updated to include the revised project cost and therefore reduce the funding gap to council. – This option will provide certainty in terms of funding going forward. 	<ul style="list-style-type: none"> – This will require the DCP to be revised and a Planning Scheme Amendment to replace the current DCP with the revised DCP. – A Planning Scheme Amendment will most likely involve a Panel Hearing. – There will be costs associated with this option although these will be significantly less than the costs attributed to Council through potential VCAT challenges under Option 1.
3	Remove DCPO1 from the Planning Scheme	Pursue a Planning Scheme Amendment to remove DCPO1 from the Planning Scheme. This will require Council to refund the monies collected to date.	<ul style="list-style-type: none"> – Council will no longer be required legally to deliver the infrastructure under the DCP. 	<ul style="list-style-type: none"> – Given the fragmentation (64 lots currently owned by 42 individual landowners) of the development area the delivery of the road and drainage will require Council to only issue approvals that include an access requirement. – It is possible that the delivery of the project may inevitably fall back to Council.

In light of the key findings outlined above, the following recommendations/observations have been prepared for consideration by Council officers: -

Strategic Justification

1. That this section includes further explanation setting out that the upgrade of Creswell Street/ Cooma Street is required to facilitate the development of the area. Ideally this section would list any key strategies and technical reports that have been used to determine the infrastructure project scope.

Identification of Projects

2. Section 6 of the DCP states that the project includes 'road and, drainage, water supply, public street lighting and optic fibre ready pit and pipe infrastructure construction within the existing unmade Council road reserves'. The C210morn Panel Report recommends that the water supply costs were incorrectly included and are to be removed. It appears this cost has been removed from the project cost sheet in Appendix 1, but the project description has not been updated to remove the words 'water supply'.
3. Creswell Street and Cooma Street are the key roads and therefore the priority, however the addition of several connections to key side roads should be explored.
4. The DCP is based on Council delivering the project upfront and recouping funds over time as the land develops and therefore Council carries this cost including finance for some time. It is recommended that the DCP include the cost of finance to deliver the project ahead of when Council will receive the funds.

Equivalence Ratios and Demand Units

5. A detailed land budget that includes the land area as well as the frontage of each of the existing 64 lots is included in the DCP;
6. Section 9 of the report include a simple table detailing the demand unit calculations, an example is provided in Table 3.
7. Section 9 include commentary that the existing lots are able to be subdivided under the current planning controls and whilst the DCP is charged per frontage there will ultimately be more than 72 lots delivered within the DCP area.
8. The DCP defines the 'frontage' used to calculate the demand units.

External Apportionment

9. That the apportionment approach be reviewed and 100% of the project costs is attributed to new development.

Calculation of Charges

10. The DCP is updated to include the revised project cost.
11. Section 10 of the DCP be updated to include a simple table that sets out the calculation of the DCP charge.
12. Section 10, 3rd paragraph states that the project includes 'water supply', as per note earlier this needs to be removed from the project description as per Panel recommendation.
13. A table be included in the Appendix that sets out the total contribution payable for each property based on the attributed lot frontage and charge rate. This adds a layer of transparency and will assist both local landowners, building surveyors and council planners in understanding the respective DCP DIL liability for each existing lot.
14. Correct typographical error: - Section 11 includes "HECTARES" at the end of the sentence, this should be removed.

Exemptions

15. The DCP include a section outlining the exemptions to ensure consistency with the current Ministerial Direction: -

Development of the following is exempt from the provisions of this DCP/overlay:

- > existing or approved dwelling.
- > non-government school.
- > housing provided by or on behalf of the Department of Health and Human Services.

Funding Gap

16. Council carefully considers the estimated \$1.9M funding gap that will need to be funded via the capital works plan and whether Council has the ability to fund this amount.

Indexation

17. That Council maintain a central index table like that illustrated in Table 9 to ensure that the correct DIL charge rate is being collected and noted on the respective invoices.

18. The DCP be updated to include a detailed project cost in 2022 \$ and Section 14 is updated to include the following wording: -

Capital infrastructure costs are reflected in [insert month, year] dollars. These will be indexed [quarterly or annually on 1 July of the first year] after the gazettal of the DCP into the Mornington Peninsula Planning Schemes with the first indexation to cover the time elapsed the date of the estimates and that point in time. The Australia Bureau of Statistics Producer Price Indexes Road & Bridge Construction Index, Victoria (Catalogue 6427.0, Table 17 Output of the Construction Industries) index is to be applied.

Project Timing & Delivery

19. Revise Section 7 to replace the last sentence with the following wording recommended by Jackson Lane Legal

This acknowledges the Development Agency's capacity to provide the balance of funds not recovered by this DCP in the short term, on the basis the landowners pay Council the development contribution when they develop their land.

20. If, however Council does not wish to construct the works in the 2023/24 financial year then it is recommended that Section 7 (b) be replaced with wording along the lines of "as soon as practicable and acknowledging the Development Agency's capacity to provide the balance of funds not recovered by the DCP".

Interim Works and Change in Project Scope

21. Temporary or staged works (interim works)

Temporary works are not considered as eligible for works in kind credits against this DCP.

It may be appropriate to deliver some of the DCP project in a staged manner based on the needs of the development or the functionality of the asset, however any eligibility for these works to be credited as works in kind must be agreed to by the Collecting Agency and the Development Agency.

22. Adjustment to the Scope of Projects

The infrastructure project in the DCP has been costed to a sufficient level of detail, however all the projects will require a detailed design process prior to construction. As part of detailed design, the Development Agency, or a development proponent with the consent of the Development Agency may amend or modify some aspects of project, so long as they are still generally in accordance with the scope outlined in the DCP.

Where the Development Agency or another agency seeks to change the scope of a DCP infrastructure item to meet changing standards imposed by adopted policy or a public regulatory agency, such changes of standards and the resulting cost changes should normally be made through a change to the DCP at the time of a regular review of the DCP.

Review Period

23. Section 15 be revised to include the following wording.

- > This DCP commences on the date it is gazetted into the Mornington Peninsula Planning Scheme.

This DCP is expected to be reviewed and updated every five years (or more frequently if required). This review may result in no changes at all. Alternatively, this may require an amendment to the Mornington Peninsula Planning Scheme to replace the DCP with an alternative, revised DCP.

Appendix A

24. Update the project concept plan with the revised detailed drawing

25. Replace the table with eh revised detailed project costing table and calculation of costs

26. Page 11 – remove this as it appears to be a duplication of the explanatory notes included in Page 10