7.1.5 TALBOT QUARRY REZONING - UPDATE

Responsible Manager:	Sherry Hopkins, Acting Manager Strategic Planning
Responsible Director:	Peter Panagakos, Director City Development

RECOMMENDATION

That Council

1. Notes officers concerns with the appropriateness and thoroughness of Department of Transport and Planning - Development Facilitation Programs assessment process for consideration of the rezoning and residential development of the former Talbot Quarry and Landfill (draft amendment C178mona) particularly given:

a) geotechnical complexity and ongoing contamination risks present on the site.

b) the restrictions the Ministers Letter of Referral placed on submitters and the Standing Advisory Committee (SAC) to comprehensively review all aspects of the draft amendment proposal.

c) the Development Facilitation Program team did not provide any response to issues arising from the community consultation, including Council's submission of May 2025 and did not make a submission to the SAC hearing.

d) the Development Facilitation Program team did not attend the SAC hearings, resulting in the SAC effectively considering Council the planning authority for the proposal, which is not Councils role.

e) as issues arose during the SAC hearing it appeared that there had been little if any review of the technical or practical aspects of draft amendment documentation by the Development Facilitation Program team.

f) despite the contamination issues and a current Environmental Action Notice applying to the site, the Environment Protection Authority did not attend nor make a submission to the SAC hearing.

g) the Head of the Transport for Victoria, despite being part of the Department of Transport and Planning, needed to make a public submission to the SAC to raise their concerns about arterial road and traffic issues arising from the proposal, and

h) the continuing presumption that Council (and our community) will agree to or can be compelled to take ongoing responsibility for contaminated and geotechnically unstable land and infrastructure to facilitate the proposed redevelopment.

i) The serious concerns that remain with a potential development of the site given its significant contamination issues and how they may be dealt with and addressed into the future.

2. Writes to the Minister for Planning to advise of the concerns outlined above, detailed within the report as well as reaffirm that Council:

a) will not assume responsibility, solely or jointly, through a Section 173 agreement or other mechanism, for the management, monitoring, oversight, maintenance, repair or compliance with any requirements to address contamination, gas emissions,

groundwater or other environmental hazards present or arising from the site or any redevelopment of the site.

b) will not agree to the transfer to, or vesting with, Council of any land from the site, including, but not limited to, internal roads, paths, tree reserves, green spaces, retarding basins or other utility spaces and will not certify any plan of subdivision that proposes those parcels as public land vesting in Monash City Council.

3. Writes to the landowner, their representatives and the EPA to advise of Councils position as set out in 2 (a) & (b) above.

INTRODUCTION

The purpose of this report is to:

- update Council on the proposal to rezone and redevelop the former Talbot Quarry and Landfill at 1221-1249 Centre Road, Oakleigh South for residential and mixed use purposes through the State Government's Development Facilitation Program (DFP); and
- reaffirm Councils position that it will not accept, transfer or vesting land from the site and will not take on responsibilities or obligations relating to management, compliance or review of environmental contamination, geotechnical or other issues on the site.

The draft package of planning controls was available for community comment from 30 April 2025 to 4 June 2025.

As part of the consideration of issues raised during the community comment stage, the Minister for Planning referred some specific issues to a Standing Advisory Committee (SAC) for advice.

The SAC hearing commenced on 24 November 2025 and concluded on 1 December 2025.

COUNCIL PLAN STRATEGIC OBJECTIVES

A well-planned and future ready city
An attractive and well-designed city with connected neighbourhoods, active transport, open spaces, facilities and infrastructure that meets the current and future needs of our community.

A city that promotes environmental sustainability
Where neighbourhoods are designed and developed along environmentally sustainable development and urban design principles, in sympathy with the natural environment.

A council with good governance, strong leadership and community involvement in decision making
A Council that provides governance and leadership for the benefit of our community through community engagement, advocacy, decision making and action.

BACKGROUND

Site History

The site at 1221-1249 Centre Road Oakleigh South was used as a sand quarry from the early 1950s until the early 1990s. The site was then used as a landfill between the 1970s and 1990s. The type of fill varies across the site, with part of the site forming a municipal tip, and other parts being filled with waste products from the sand mining. The fill is generally up to 15 metres deep, with a range of materials across the site including:

- Solid inert waste.
- Putrescible waste.
- Remnant slimes from the site (waste product of sand mining).
- Foundry waste.
- Building materials waste.

Previous rezoning and residential development requests

The current landowner has been seeking to rezone and redevelop the former Talbot Quarry and Landfill through several separate processes since 2014.

A summary of each request is set out below.

2014-2016 – Sec 96A request

The landowner submitted a combined rezoning request and planning permit application under Section 96a of the Planning & Environment Act 1987. Whilst this request identified that the site was contaminated, no environmental audit or similar investigations had been undertaken by the landowner to determine whether residential development was feasible.

The landowner was advised in June 2014, that:

> *"Given the historical challenges and difficulty in redeveloping former quarries and landfills, such as the Brooklands Greens Estate in the City of Casey, Council is not prepared to facilitate the redevelopment of the land until we are satisfied that the site if fit for purpose and there is no risk to future communities. In order to progress this matter site contamination and remediation needs to be resolved prior to considering a rezoning or redevelopment of the site."*
>
> *(Note: Brooklands Greens Estate was adjacent to a former landfill, not on the landfill itself.)*

The landowner continued investigations into the contamination and gas emission issues on the site following that advice. Discussions with Council officers continued during this time on both contamination and development issues.

This request did not proceed and was superseded by a separate planning scheme amendment request lodged by the landowner with Council in 2016.

2016-2018 - Monash Amendment request - Amendment C129

In August 2016 the landowner lodged a formal planning scheme amendment request with Council.

This request included information from EPA endorsed environmental specialists that indicated that it was feasible to remediate and manage contamination and landfill gas on the site to a standard that would allow for urban uses. The amendment request also included more detailed planning provisions.

Council considered this request in August 2016 and resolved to exhibit the proposed rezoning request as Amendment C129.

Following the community consultation in 2017, the Amendment was referred to an independent panel for consideration of contamination issues and submissions.

The 2018 panel report did not support the rezoning and redevelopment of the site and recommended that due:

> "*principally the extent of contamination, incomplete and ongoing environmental information, inadequate planning for ongoing management, geotechnical uncertainties, and statutory drafting difficulties, the Panel recommends that, except for the proposed extension to the Environmental Audit Overlay which should proceed, the Monash Planning Scheme Amendment C129 be abandoned*."

Council formally abandoned Amendment C129 at the meeting of 25 September 2018.

2021 – Rezoning request lodged with State government

The landowner lodged a rezoning request with the State government through the Development Facilitation Program (DFP) in 2021.

DFP declined to accept the rezoning and redevelopment request as the proposal did not meet the programs "fast track" (shovel ready) criteria and advised the landowner to lodge the request with Council.

2021-2023 – New rezoning request with Council

The landowner submitted a revised rezoning and redevelopment request to Council on 24 December 2021.

After lengthy and detailed discussions on contamination, geotechnical issues and planning provisions with the proponent a report recommending that Council seek Ministerial authorisation to exhibit the proposed amendment was presented to the 29 August 2023 Council meeting.

The amendment request did not proceed.

DISCUSSION

2023-2025 – State government – Development Facilitation Program

Following the Council Meeting on 29 August 2023, the proponent applied to Development Facilitation Program (DFP) to rezone and redevelop the land.

The DFP is designed to "streamline" and coordinate development proposals through the State government.

Given the contamination and geotechnical issues of the site, the Minister for Planning has taken a nominal two stage approach of feasibility and practicality, to assist in the consideration of the amendment request:

- Stage 1 – Feasibility - Contamination/geotechnical "roadblocks"
- Stage 2 – Practicality - Merits of technical solutions and site development

Stage 1 – Feasibility - SAC 41 – Contamination and geotechnical "roadblocks"

In June 2024, the Minister for Planning "*noting the potential soil degradation, contamination and geotechnical risks associated with the lands historical uses as a sand quarry and landfill*," referred the amendment request to the Priority Projects Standing Advisory Committee (SAC) "*for advice as to whether there is sufficient technical information for the draft amendment to proceed to public exhibition."*

In its report the SAC41, noting its limited scope, stated that:

> *"The Committee understood its task was to identify any 'roadblock' issues that might prevent the draft Amendment being progressed to exhibition. The Committee was not tasked with undertaking a full merits review of the draft Amendment or the technical solutions proposed in the EMS and GDS."*

The SAC41 found that, based on the proposed geotechnical and contamination solutions being appropriate, there was no impediment to the draft amendment proposal proceeding to the public exhibition stage of the process.

In coming to this conclusion, the SAC also stated that:

> *"The Committee wishes to emphasise that it has not undertaken a detailed review of the merits of the technical solutions proposed in the EMS and GDS, nor the merits of the draft Amendment documentation and proposed planning controls. This should form part of the next stage in the process."*

This is a critically important qualification of the SAC41 report. In essence, the SAC found that the documents that had been prepared proposed actions which, on the face of it, could address the contamination and geo-technical issues, and that the draft amendment could therefore proceed to the next step of formal and more detailed consideration.

It was not a "green light" for the proposal, merely an indication that the SAC 41 did not identify any "*roadblocks*" to progressing to the exhibition stage.

It means that the next stage of the Minister's consideration of the amendment request needs a comprehensive and thorough review of the environmental mitigation measures, planning controls and built form outcomes.

Stage 2 – Practicality - Merits of technical solutions and site development

This stage of the consideration of the proposal requires the Minister and the DFP team, in accordance with SAC41 advice, to assess in detail the practicality, efficacy, and the implementation of the environmental management requirements set out in the Statement of Environmental Audits and related documents to ensure the land can be brought to, and kept in a state fit for residential development in a way that is easily manageable by potential residents now and into the future.

To progress this stage the draft Amendment C178 was released for community consultation for five weeks in May and June 2025.

Council considered a report on 27 May 2025 and resolved to lodge a submission objecting to the draft Amendment C178.

Key issues objections included:

- The practical implication of all the mitigation measures and their relationship to each other.
- Allocating Council responsibility for ongoing contamination management and compliance.
- The poor design and drafting of planning controls.
- Exempting the development from the public open space contribution requirement.

This report can be found here: https://www.monash.vic.gov.au/files/assets/public/v/1/about-us/council/agendas/2025/27-may/7.1.3-rezoning-of-former-talbot-quarry-submission-to-minister-for-planning.pdf

Hearing on proposal - SAC51

On 28 August 2025, the Minister for Planning wrote to all submitters advising that she had referred the draft amendment to a Standing Advisory Committee (SAC51).

Unlike a conventional planning scheme amendment panel hearing process, which reviews the proposed amendment and submission in their totality, the Ministers referral to a SAC can limit the topics of review.

While all submissions were referred (regardless of issues raised), the Minister requested the committee's advice be confined to the matters of:

- Environmental risks (including landfill gas migration and geotechnical risks, excluding matters previously addressed in SAC Referral 41).
- Open space provision.
- Traffic and access.
- Flora and fauna impacts.
- Social and physical infrastructure.
- Any matters relating to the designation of the land being in the SRLA Planning Areas Declaration for Clayton.

Five parties made submissions at the hearing, being the Proponent, Council, Department of Transport and Planning (Head of Transport for Victoria) and two residents.

A copy of Council's submission to the committee is attached to this report as **Attachment 1**.

State agencies – DTP and EPA

Although the amendment proposal is being considered by the Department of Transport and Planning, via the Development Facilitation Program (DFP) team, the DFP did not attend or make a presentation to the SAC.

The absence of DFP impacted on the conduct of the hearing, particularly where discussions on planning controls arose. This often resulted in the SAC looking to Council to fulfill the role and responsibility of the planning authority for the proposal, as is the case in panel hearings.

Despite the environmental and contamination issues on the site and the current Environmental Action Notice EAN-00007907 over the site, the EPA declined to participate in the SAC51 hearing.

The EPA relied on their brief written submission made to the community engagement process. This letter reiterated their general confidence in the audit system and satisfaction with the proposal requiring a S173 agreement between land owners and Council to address site contamination and gas mitigation management, monitoring and compliance.

New information

Throughout the SAC hearing new information was provided by the proponent. This included:

- That the conditions of the current Statement of Environmental Audit issued for the site, that shaped the Development Plan, are non-binding and an auditor can sign off on any other alternative interventions that they consider complies with the Environmental Protection Act. This means that the gas interception trenching, venting and other interventions, the subject of review as part of the SAC hearing and the DFP process may not be the interventions ultimately applied to the site, and if this was to occur, the interventions required would be determined by the appointed auditor.
- The landowner now proposes three levels of Owners Corporation, with an overall body corporate for whole site to address environmental requirements. (Although this is not a requirement set out in any of the proposed documentation).
- That the land owner proposes to create superlots, which would allow the potential for sale of these lots to other developers. It is unclear if or when this may be undertaken and the planning controls do not provide any guidance on staging or relationship to contamination zones and mitigation infrastructure. (*It is noted that this would likely require Council to accept the vesting of "roads' on the site to the creation of these lots. A position that Council does not support.*)
- It appears that some mitigation works may not have been undertaken as the proponents environmental auditor noted in their expert statement that although they advised in 2020 that "*venting measures proposed along the boundary should be implemented as soon as possible to mitigate any current potential gas risk to those properties*." these measures have not been implemented.
- There is a current Environmental Action Notice applied to the site by the EPA requiring on going gas monitor around the site and boundaries.

Vesting of roads or other land with Council

Council has consistently had the position that it will not accept the vesting or transfer of any land in the development due to the contamination and geotechnical issues. The proponent has accepted this position, advancing the development as a "common property" body corporate managed development.

In August 2025 the proponent wrote to Council requesting that Council accept vesting of the main connector roads through the site when subdivision occurs, and that Council provide rubbish collection service to residents on the site once developed. This was accompanied by supporting letter from their traffic engineer.

As noted earlier in this report it may be that this request for the vesting of land for roads is linked to the desire to create superlots, capable of individual disposal.

The creation of superlots, in individual ownership, or even only the roads vested in Council, fragments the ownership of the site and increases the complexity and risks when dealing with geotechnical and contamination mitigation works.

As the site requires mitigation works that are integrated and interdependent across the site, the site should remain in one parcel.

This is an outcome that Council continues to not support, and it is considered more than reasonable that the development and associated owners corporations remain responsible these matters.

Development Facilitation Process

The Development Facilitation Program (DFP) has been established by the State Government to fast track planning proposals. It primarily considers planning applications, but in some instances (as in this case) can consider planning scheme amendments. It promotes a whole of government approach to development approvals and rezonings.

As this project has progressed a number of issues have arisen that give officers cause for concern with the appropriateness and thoroughness of the DFP process.

- DFP have not shared any information in relation to their assessment of the proposal with Council.
- There has been no feedback on Councils submission or our earlier discussions with the DFP team.
- As the SAC hearing progressed it appeared unlikely that DFP had even conducted a preliminary assessment of the amendment documentation prior to community consultation and referral to the SAC.
- The draft amendment documentation was incorrect and incomplete.
- The proposed schedule to the Mixed Use Zone was the blank standard schedule template, only containing the instructions for completing each section, rather than the proposed controls to the land.
- The documentation does not appear to have included changes requested by the EPA in early 2024.
- Although the DFP “streamlines” approvals, the Head of Transport Victoria (part of the Department of Transport and Planning) had to pursue their concerns with the implications of the rezoning on the arterial road network through the SAC hearing process just like any other submitter.
- The proposed Development Plan Overlay schedule includes a requirement for a Section 173 agreement to ensure ongoing compliance measures with environmental requirements once the development was complete. However, the provision is worded so that the Section 173 agreement ends once the final subdivision had occurred. This means that once the last dwelling was subdivided, the Section 173 agreement requiring owners to comply with environmental management and contamination requirements will cease to exist, rendering the whole agreement pointless.
- The fact DFP had this request and amendment package for 18 months prior to community consultation and the proposal contained basic errors and inconsistencies does not provide officers with confidence that contamination, geotechnical and other issues will be adequately addressed.

- These concerns are compounded by the restrictions placed on the SAC for review of the proposal.

These may seem like minor issues, however they point to a lack of due diligence on the part of the DFP. This is particularly concerning to officers as the Minister is considering not only the proposed rezoning but also approving the Development Plan at the same time.

FINANCIAL IMPLICATIONS

Expenditure to date has been contained within current budget allocations.

If approved in its current form, the amendment is likely to have financial impacts on Council into the future.

Council will have responsibilities for compliance and is likely to be the Responsible Authority for approving permits. The complexity of the site means that each permit will need an extremely detailed assessment, and it is likely that external expertise will be required to assist in assessment.

POLICY IMPLICATIONS

There are no policy implications to this report.

CONSULTATION

This is a State Government run process. Development Facilitation undertook an informal notification process for a period of five weeks and invited submissions.

There are no further opportunities for consultation.

SOCIAL IMPLICATIONS

There are no social implications to this report.

HUMAN RIGHTS CONSIDERATIONS

There are no human rights implications to this report.

GENDER IMPACT ASSESSMENT

A Gender Impact Assessment was not undertaken as this topic of this report does not have a direct and significant impact on the Monash community.

CONCLUSION

The proposed rezoning of former Talbot Quarry and Landfill has been an ongoing for over ten years.

DFP are now considering the rezoning due to potential of the site to provide housing.

Officers are concerned that the DFP process has not as comprehensive or thorough as the complexity and risks of the site require. The proposal continues with an expectation that Council will take on responsibility for management of contamination mitigation obligations and has now expanded to include requesting that Council take on responsibility for roads within the site.

Given the shortcomings of the DFP and SAC process and the significant risks associated with contamination and geotechnical issues on the site it is recommended that Council convey these concerns directly to the Minister for Planning.

ATTACHMENT LIST

1. Monash City Council Submission to SAC51 [**7.1.5.1** - 57 pages]

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Submissions for Monash City Council
Talbot Village.
Standing Advisory Committee - Referral 51
27 November 2025

Overview

1. Draft Amendment C178 (**Draft Amendment**) and the associated approval of the Draft Development Plan proposes to

   - rezone the former quarry and landfill land to a combination of the Mixed Use Zone and the Residential Growth Zone to facilitate a mixed use but mostly residential development of the site; and.
   - Identify in broad terms the form and conditions of the use of the land in relation to which subsequent planning permits will need to be *generally* in accordance with.

2. By a submission dated 27 May 2025 the City of Monash, objected to the Draft Amendment and the associated Draft Development Plan. It's submission raised a number of issues with the Draft Amendment and the Draft Development Plan that have still not been resolved. The revised Development Plan Overlay Schedule 6 received on Friday continues to fail to grasp some of the key issues.

3. While a number of issues were raised by Council's submission, a key matter is the concern about the risks associated with the environmental and geotechnical conditions of the site particularly around the practicalities of managing these. Council submits the Department of Transport and Planning through its Development Facilitation Program (**DFP**) and the proponent have both failed to grasp both the legal and practical implications of what they are proposing. Important issues of detail have either not been properly addressed by the Draft Amendment and the Draft Development Plan or not even been addressed at all especially by a planning control that is woefully inadequate given the complexities of the site. The planning control is drafted in terms which are too general and could be applied to any redevelopment site.

4. In relation to the key environmental and geotechnical risks as raised in the Terms of Reference associated with the site, Council contends that:

   - The planning controls proposed are wholly inadequate to diligently manage the environmental and geotechnical risks and will not work as intended. Consequently, approval of the Draft Amendment will give rise to significant implementation issues virtually from the early stages of the life of the development which will then ultimately become matters that home owners will be stuck with;
   - The expectation in the planning control and in the expert evidence for the Proponent that an Owner Corporation will be able to diligently manage the environmental and

geotechnical risks associated with the site is misconceived and has not been established;

- The dual "responsible authority" set up in the Draft Amendment is inappropriate given the complexity of the site and the need for coordination and oversight. The Minister should make herself the responsible authority for both the approval of a development plan and the issuing of planning permits because it is desirable that there be co-ordinated decision making and a clear line of responsibility for this very complex site;

- If a section 173 agreement is proposed to manage the environmental and geotechnical issues associated with the site, the Minister will need to enter into that agreement as Council has always maintained that it will not as that it has no confidence that one will be able to be drafted to manage the site as expected;

- The EPA will need to take on a much greater role and responsibility if the site is rezoned to ensure the proper management of the site rather than its current relatively hands off approach merely relying on certification by others especially if not only Council but also the Minister propose to not enter into a section 173 agreement.

5. There are also other important considerations too if the Draft Amendment does go ahead. For instance, Council submits that the Proponent should not be given a free kick by allowing it to avoid making the statutory public open space contribution as all other developers are required to do by switching off the mandatory provisions in the Monash Planning Scheme. (**Scheme**)

6. Stormwater planning for the site is unresolved.

7. Traffic and access issues are properly dealt with from a statutory planning perspective but the analysis behind the transport strategy is not sufficiently robust.

8. Community Infrastructure is not resolved and there is no Community Infrastructure Report as required by DPO6.

9. The Draft Amendment should not be reccomended for approval in its current form and therefore, neither should the Draft Development Plan.

Council concerns about the process

10. The Proponent is proceeding via a "fast track" mechanism through the Department's "Development Facilitation Program" (**DFP**). Council records that notwithstanding that the DFP has been managing this "draft" planning scheme amendment since a time before Referral 41 (which had a referral date of 28 May 2024), Council has not sighted a single report or assessment prepared by the DFP, nor a single page of any document that goes to the DFP's consideration of the risks associated with this major project. There are no public documents that explains the DFP's thinking or the way that it has turned its mind to the various issues raised by this proposal.

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11. Council records that the only public documents that Council has seen as part of this and the former referral process are:

- The report and associated background and technical documentation of the Referral 41 SAC (which was limited in its ability to assess the proposal by limited terms of reference and which did not consider the matter on the merits);
- The Minister's Letter of Referral dated 30 April 2025; and
- The Departmental response to the SAC's request for clarification dated 15 October 2025 which confusingly, seemed to suggest that a consideration of the Draft Amendment and the Development Plan were "off limits".
- The documents for Referral 51 which for the most part are the Referral 41 documents.

12. Council notes that the correspondence from the Department dated 15 October 2025 stated in response to a letter from the chair of the Standing Advisory Committee:

> Advice sought from the Committee is to be confined to the matters referred in the Minister for Planning's referral letter of 28 August 2025. Advice is not sought on any aspect of the draft amendment and draft development plan, only the referred issues.
>
> The key findings 1. – 9., as summarised on page 8 of the Priority Projects Standing Advisory Committee Referral 41 Report, do not need to be re-interrogated under Referral 51, nor is further advice sought.

13. Council records its concern at the letter from an officer of the Department which was issued on the same date that the letter from the SAC to the Department was issued. The Department's letter does not state it is written on behalf of the Minister and neither does the author purport to be acting as the delegate of the Minister. The letter cannot override the Minister's letter (which is itself an informal process) containing the so called referred matters.

14. On that basis, Council does propose to address the Draft Amendment and Draft Development Plan at least in so far as they each contains matters relevant to the issues specifically identified in the Terms of Reference. There is no other sensible way to treat the Departmental letter of 15 October 2025 on the one hand and the Minister's Letter of Referral on the other.

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ENVIRONMENTAL AND GEOTECHNICAL RISKS

15. Council urges the SAC to approach the matter thoroughly and to persist and even prod deeper with the enquiries that it made in Direction 21 of its directions dated 15 October 2025 namely:

> **Geotechnical and environmental issues**
>
> 21. Through submissions, expert reports and/or the joint expert report, the Committee would be particularly interested in:
>
> a) how much further work and monitoring would be required to ensure that any landfill gas from the subject land does not migrate beyond its boundary
>
> b) the extent of geotechnical and environmental issues that need to be understood at this stage of the process versus the degree to which the Development Plan Overlay Schedule 6 provisions should be relied on to consider these issues at a later stage
>
> c) whether the geotechnical and environmental risk planning provisions in Development Plan Overlay Schedule 6 set an appropriate assessment framework to help guide future decisions
>
> d) the appropriate body to enforce geotechnical and environmental matters, and whether this can be identified in the Planning Scheme.

16. It is necessary to do so for the sake of those that will eventually become owners of the dwellings (and to a lesser extent commercial facilities) at the site. The lengthy and phased nature of the development introduces complexity into the way the sight can be managed particular in relation to the diligent execution of the responsibilities set out in the Post Closure EMP.

17. Council notes that the Referral 41 AC said that it had not considered the merits of the proposal. It's task was to identify whether there were was sufficient technical information for the proposal to proceed as a draft amendment to exhibition. It was essentially concerned with threshold issues. The Referral 41 AC was asked to consider a very limited range of issues namely whether:

- the draft Amendment and proposed geotechnical development strategy (GDS) and environmental management strategy (EMS) will effectively mitigate risks to human health, amenity, and the development;
- the ongoing measures required within the draft Amendment and EMS and GDS will place unreasonable burden on future residents and landowners;
- the proposed geotechnical solutions within the GDS, and the subsequent settlement predictions, represent an acceptable response to the geotechnical challenges for the development;
- the proposed environmental management measures required under the EMS represent an acceptable response to the environmental challenges for the use and development;
- the potential for conflicts between measures required under the EMS and GDS have been adequately considered and addressed; and
- if and/or how the measures required under the EMS and GDS can be adequately enforced using available planning tools.

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18. Consequently, in providing its Referral 41 AC report, the Committee heavily qualified its findings and noted the following:

> On that basis, the Committee considers the EMS and GDS can be relied upon to inform the next stage of the planning process. The technical solutions proposed in both the EMS and GDS are complex, but not novel. Provided they are appropriately designed, implemented, monitored (where required) and maintained, they should provide solutions to managing the environmental and geotechnical challenges to allow the site to be redeveloped for residential purposes.
>
> In reaching this conclusion (and in addressing the technical questions listed in the following section), the Committee wishes to emphasise that it has not undertaken a detailed review of the merits of the technical solutions proposed in the EMS and the GDS. Rather, it has sought to identify any 'roadblock' issues that might prevent the draft Amendment being progressed to exhibition.
>
> A more detailed review of the merits of the technical solutions should form part of the next stage of the process, once the draft Amendment is exhibited. The Committee considers the questions raised by Mr Green in Council's technical material (Document 18) will usefully inform that more detailed consideration, and it encourages the Proponent to address those questions in any further material it prepares in support of the next stage of the planning process.

19. It is also noted that the Referral 41 AC made a number of other conclusions as follows:

> 1. **There is sufficient technical information for the draft Amendment to proceed to public exhibition.**
> 2. **The EMS should effectively mitigate risks to human health and amenity provided the measures outlined in the EMS are properly designed, constructed and maintained.**
> 3. **The GDS and EMS should effectively mitigate risks to development provided the measures outlined in those documents are properly designed, constructed and maintained.**
> 4. **The ongoing environmental management measures and geotechnical solutions do not place an unreasonable burden on future landowners.**
> 5. **The proposed environmental management measures are acceptable.**
> 6. **The proposed geotechnical solutions are acceptable.**
> 7. **There is no obvious conflict between the EMS and the GDS.**
> 8. **The requirements of the EMS can be effectively enforced through the Development Plan Overlay Schedule 6 and the requirement for a section 173 agreement. This will cover both the developer's construction obligations and the Owner's Corporation's ongoing monitoring (if applicable) and maintenance obligations.**
> 9. **The requirements of the GDS can effectively be enforced through the Development Plan Overlay Schedule 6 and the requirements for:**
>   a) **development to be generally in accordance with the approved development plan**
>   b) **permit applications to be accompanied by a verified geotechnical report.**

20. In the submission to the Referral 41 AC process, Urbis which then represented the proponent, led the Committee to believe that the GDS would be implemented through the DPO6 by submitting as follows:

(i) the GDS has been prepared based on comprehensive investigations, carried out over two decades, and modelling;
(ii) the GDS has drawn appropriately on relevant 'real world' development utilising comparable techniques;
(iii) the GDS has specifically accounted for the environmental conditions of the site, as managed through the EMS;
(iv) the GDS prescribes a detailed, adaptive response to the complex geotechnical characteristics of the site, including in particular settlement criteria and foundation requirements;
(v) the implementation of the GDS response is expected to limit the extent of differential settlement across the structures and infrastructure such as to ensure that acceptable construction standards are met and geotechnical risk to the development of Talbot Village is appropriately mitigated; and
(vi) proposed DPO schedule 6 will ensure the appropriate implementation of the GDS as Talbot Village is developed, noting that any permit granted must be generally in accordance with the development plan (Clause 43.04-2) and therefore the GDS, which will form part of the development plan;

21. Similarly, in relation to the EMS, the Urbis submission led the Committee to believe that the EMS would be implemented through DPO6 by submitting as follows:

(i) the EMS sets out a summary of the conditions of the Statements of Environmental Audit, for the environmental audit completed under the Environment Protection Act 1970 (and carried forward under the Environment Protection Act 2017);
(ii) a comprehensive environmental audit has been undertaken by a statutory auditor;
(iii) the statutory environmental audit system provides the highest level of assurance in relation to the assessment and management of site contamination and potential risks to human health, amenity and development (the built environment);
(iv) the site conditions and the conditions of the Statements of Environmental Audit are, while complex, well within the realm of what is typically covered in environmental audits and manageable with the implementation of standard mitigation measures;
(v) the EMS (SoE) includes multiple redundancies in mitigation measures to ensure confidence in the achievement of outcomes;
(vi) the EMS (SoE) has specifically accounted for the geotechnical conditions of the site, as managed through the GDS; and
(vii) proposed DPO schedule 6, planning permits and a section 173 agreement will ensure the appropriate implementation of the EMS (SoE) as Talbot Village is developed and post-development;

22. However, in the Part A submission of the Proponent, the Proponent states:

> 15. The intent of the Amendment, and DPO6 more specifically, is to provide a level of flexibility to ensure that the approach to development design and construction is tailored to applicable ground conditions across the Site.
>
> 16. Too rigid a framework would not be fit for purpose. The key is to ensure that geotechnical conditions and environmental risk are properly considered and planned for by the right experts at the right time in the design process.
>
> 17. DPO6 achieves this and incorporates opportunities for independent peer review and scrutiny by an environmental auditor at specific stages (amongst other safeguards). Flexibility is both a positive and necessary feature of the DPO6 and planning for the Site more generally.

23. Consequently, what transpired is that while the Committee thought it was dealing with a proposition or a range of options as set out in *the* EMS and *the* GDS for the site, neither *the* EMS or *the* GDS considered by the Committee have been referenced in the DPO6. What is proposed for the site is not necessarily what the Committee considered or the range of options set out in the EMS and GDS as considered by the Committee, but rather whatever

may be put forward for approval in the context of the overly broad drafting of the DPO6. This may comprise a future (different) EMS (one or more) and a future (different) GDS (one or more) to be approved by the Minister in the context of DPO6.

24. Then in the context of a planning permit application by one or more developers of one or more lots carved out of the current site, noting that the current Draft Development Plan states that the site is to be developed in stages, potentially by different owners of different stages, consideration will likely be given to planning permits on a site by site basis for the not staged, but rather the independently developed different parts of the site.

25. Consequently, without seeking to rehash submissions that have already been made, and with respect to the Referral 41 Committee, Council records that it has reservations with a number of the conclusions the Committee was led to make. In expressing these views, Council means no disrespect to the prior Advisory Committee. However, we think that the way that the case was put forward at that time for the Proponent may have lulled the Committee into a false sense of security.

26. In particular Council has concerns with

- conclusions 2 and 3 in so far as the environmental auditor has expressed the opinion that only if all conditions included in the statements of environmental audit attached to the Environmental Report are diligently applied and are verified by an environmental audit, is the risk to future occupants at the site low and acceptable. The EMS itself is not an approved document and the final form of the EMS to be approved is not yet clear given the drafting of the DPO6. It could be in very different form. Accordingly the drafting of the DPO6 is not an appropriate form of drafting;

- in relation to conclusion 5, the *proposed* environmental measures are not *proposed*; they suggestions of types of options that *may* be put forward. The drafting of the DPO6 is such that there is so much flexibility within the DPO6 that different environmental measures that the Committee has not even considered may be adopted which may or may not raise their own issues;

- the same applies in relation to conclusion 6 in respect of the geotechnical considerations; none are proposed. There are only a number of different options which are identified;

- in respect of conclusion 4, respectfully, there was no evidence available to the Committee to reasonably arrive at that conclusion;

- in respect of conclusion 8, this is not correct because in the drafting proposed in the DPO6, the section 173 agreement is not proposed to be applied to residential and commercial lots, only to common property, and in respect of common property, there are statutory constraints on the ability of an Owners Corporation to manage complex environmental matters even in respect of common property let alone the fact that an Owners Corporation is not able control the manner in which private land is dealt with;

- in respect of conclusion 9, Council agrees in principle with the Committee but is not convinced that the current drafting is fit for purpose.

27. Council will demonstrate in the course of this submission, the planning controls do not adequately address the environmental and geotechnical risks for the site.

28. In so far as the Referral 41 AC expressly stated that a more detailed review of the merits of the technical solutions should form part of the next stage of the process, it is apparent that in the Part A submissions of the Proponent, the key objective is flexibility. This is not surprising. However, what this means is that everything that the Committee will hear and read in the Proponents expert reports are regarded by the Proponent only as indicative of the range of solutions which are available to develop the site.

29. In that context, Council does not really see the purpose of a *hypothetical* exercise comprising a "detailed review of the merits of the technical solutions". Given that there are apparently a number of technical solutions, (which Council does not doubt) it would seem inefficient to examine the merits of each of them.

30. A more useful focus for the Committee would be on how the development of the site is likely to play out over a decade or so in practice and what the practical implications of that are on how the environmental and geotechnical risks are managed over that period of time. This is what the C129 Panel identified as a key issue that was simply not dealt with; and still hasn't been.

31. For its part, given the special characteristics of this site, in so far as a detailed review of the merits of the technical solutions is concerned, Council would have expected to see:

- Further technical material put forward between the date of the Referral 41 AC report and the date of Referral 51. In particular, one would have expected to see the legal strategy that is proposed to be put in place to properly set up a sound legal framework to ensure the impacts on the environment and the health and safety of residents and neighbours are managed consistent with the General Environmental Duty of the land owners. None has been put forward.
- An assessment of the anticipated cost implications of the various construction techniques required under the EMS and GDS and whether, once the works commence, security should be provided to ensure the costs of completing (and we would say checking and maintaining) the works are covered if the developer fails to do so.[1] Nothing has been proposed.
- A working draft of the proposed section 173 agreement upon which the DPO6 seems to hinge upon. None has been put forward.
- A response to the concerns expressed by the C129 Panel concerning the lack of an overall legal structure and strategy for the site.
- Absent an agreement mechanism, an alternative strategy that would ensure compliance by the current and future landowners with conditions of the Statement of Environmental Audit. None has been put forward and the EPA is not participating.

[1] See for example page 41 of the Referral 41 Committee report.

- An amended Draft Development Plan that is consistent with the DPO6 and the recommendations of the experts. There is no amended Draft Development Plan.
- A peer review of the material that has been advanced. There is no peer review save for what Council has been able to provide in the very limited time that has been made available.[2]

32. To be clear in relation to the issue of the cost of development, while the Referral 41 AC considered that issue relevant, Council does not think that the cost of the development per se is a relevant consideration. That is ultimately a matter for the developer. However, the costs of maintenance and remedial works if they become necessary and the capacity to undertaken them are relevant considerations because they go to the heart of whether there can be a reasonable level of confidence that what the experts expect is practical. So is the legal and practical capacity of the Owners Corporation to undertake the works relevant. No details have been provided in relation to this.

33. On 3 November 2025 in accordance with directions, Council received the expert reports of the environmental expert and the geotechnical expert. We note that attached to the expert report of Mr Mival was an Annual LFG Monitoring Report dated **7 July 2025** as well as the Auditor Verification of LFG dated **9 July 2025**. We also note that within the expert report of Mr Pedler, there is a reference to further technical work at paragraph 30 of the expert report. Effectively all Part 4.0 of his report deals with new material, important material, which was available back in July this year where it could have been but was not made available for review either by DFP, Council or the EPA.

34. Council questions why this material was not disclosed earlier, when Council had obviously being seeking additional material from the Proponent, and more recently at the Directions Hearing noting that it is material of a technical nature.

35. We assume that neither the DFP nor the EPA have seen those reports and additional technical material and that neither of those agencies who are (in the case of the DFP) primarily responsible for managing the draft Amendment has undertaken any consideration or review of those reports and the implications of them. It is ultimately for the SAC to assess this highly technical material.

Concern as to two threshold issues

36. In coming to its conclusions the Referral 41 SAC made a number of important assumptions.

- The first key assumption was that the Proponent will be responsible for putting in place the environmental management measures and the geotechnical solutions that need to be installed; and.

[2] Council records that it had a period from between 3 November to 21 November in which to have its expert review the technical material provided by the Proponent noting that the report of the geotechnical expert contained new monitoring data that was available to the Proponent in July this year.

- The second was that a section 173 agreement is an available and appropriate mechanism to carry the various obligations concerning the environmental systems via an Owner Corporation.

37. Yet the Draft Amendment does not deliver on these key assumptions. The planning provisions proposed for the site are relatively straight forward but too simplistic. Land is being rezoned to an enabling zone and a Development Plan Overlay is applied to the site as the primary mechanism for dealing with the complexities of the site. Once approved, a planning permit must be generally in accordance with the approved Development Plan.

38. The draft controls do not deliver on what was assumed would be the case, namely that the site was be developed as a co-ordinated whole albeit in stages. Council will explain how it is that key assumptions to manage the environmental and geotechnical risks do not hold in the way that the DPO6 has been drafted.

The First Assumption

39. The first of the above assumptions appears to have provided the Referral 41 Committee with a level of comfort that in view of the complexity of the measures set out in the GDS and the EMS the work would be carried out by a single entity – the Proponent . That is to say, the Committee seemed to be reassured that the Proponent would be doing all of the works envisaged by the GDS and the EMS. We note that there is a very close interrelationship between how the environmental and geotechnical issues need to be carefully coordinated between the design and execution of the works and those works must be done "diligently" particularly in Zone 1 and 2A / Domain 1, but also in other areas.

40. For example, in the Referral 41 SAC report at page PDF 36, the Committee noted Mr Pedlar's evidence about the interaction between the LFG risks and the geotechnical risks, noting that geotechnical and LFG requirements are complimentary in each stage of development. For example:

- Stage 1 construction (site rehabilitation) incorporates LFG mitigation as part of the preload works (through the Zone 1 Workplan and Stage 1 LFG monitoring plan which form part of the CEMP), including:
  - the temporary boundary venting system design must include a stability analysis
  - the design and staging of the Zone 4 backfilling must consider dewatering requirements, excavation, treatment and re- use of slimes, and re-use of concrete
- Stage 2 (detailed design) must consider structural and geotechnical limitations when selecting the final gas protection measures to be employed in buildings, in conjunction with pathway intervention measures and measures to protect underground services
- Stage 3 (civil construction) includes the landfill cap, and piling and other structures that may penetrate the cap must be installed before the cap to allow appropriate sealing to ensure no preferential pathways are created for LFG migration through any gaps
- Stage 4 (house building) includes requirements in relation to foundation design and the installation of gas protection systems in buildings.

41. The above summary of the interaction between the LFG risks came from a document that Mr Pedlar presented to the Referral 41 AC.

42. In relation to the geotechnical issues, however, clause 4.0 of DPO6 provides that a development plan must include the following general requirement:

> - A Geotechnical Development Strategy outlining the proposed design response for site preparation works associated with the geotechnical ground improvement works required for the land and geotechnical design solutions for future development.

43. In the drafting, although changes in a minor way in the Day 1 version, there is no hint of *interrelationship* between the GDS and the EMS in the DPO6 requirement.

44. Secondly, the Committee should note that this drafting does not tie the development of the site to the GDS that the Referral 41 Committee and this Referral 51 Committee had/have before them. Whether this commentary that Mr Pedlar referred to or the interrelationship translates into whatever it is the DFP will approve both as part of the Draft Development Plan and the we assume many planning permits that will be issued in respect of the site remains to be seen.

45. All the DPO6 requires for the approval of a Development Plan is that *a* Geotechnical Development Strategy (a document the nature of which is unspecified in the planning control) is to be prepared as part of a Development Plan.

46. It is also to be noted that in so far as the Referral 41 AC assumed that the Proponent (or even a single other entity) would be responsible for putting the environmental and geotechnical measures in place, that assumption is not reflected at all in the Draft Amendment. It may be a single entity (perhaps the Proponent) but it may also be 2 or more different developers of different parts of the site each doing their own thing potentially with little co-ordination between them. One can readily envisage scenarios where an issue relating to LFG arises and each developer points to the other for responsibility or they seek to pass it on to one or more Owner Corporations.

47. Notwithstanding the issues that must considered, the planning controls are remarkably light on. In that context, the Referral 51 questions at Direction 21 (b) and (c) are correctly aimed and framed namely:,

> b) the extent of geotechnical and environmental issues that need to be understood at this stage of the process versus the degree to which the Development Plan Overlay Schedule 6 provisions should be relied on to consider these issues at a later stage

c) whether the geotechnical and environmental risk planning provisions in Development Plan Overlay Schedule 6 set an appropriate assessment framework to help guide future decisions

48. In reference to the question at paragraph (b) Council submits that the DPO6 kicks the can too far down the road namely to the permit application stage. This is unsatisfactory because it is likely that the site will develop in a number of stages given its size and potentially via different developers. Therefore, the DPO6 in not requiring the GDS and the EMS to be finalised in clear terms at the Development Plan stage so that then planning permits are generally in accordance with that specific GDS and that specific EMS is unsatisfactory. While a GDS identifying future options is appropriate for the last few years and at this point, at the point of the approval of the Development Plan, the GDS and the EMS it should at least be crystalised or if not crystalised not left so broadly open.

49. Because everything that has been put forward so far in the GDS and EMS is merely *conceptual* not what is actually proposed, the DPO6 should have been drafted in a manner which required the approved documents to in more specific terms set out what is needed to meet the Statement of Environmental Audit conditions rather than maintain the very generalised nature of different methodologies that are available generally. And again, to emphasise the point, there is no reference to the critical interrelationship between the EMS and the GDS in DPO6. It is nowhere to be seen.

50. Council regards these issues as a fundamental flaw in the Draft Amendment which will lead to significant practical and potentially enforcement issues down the track for whoever is the responsible authority.

51. Because of the broad nature of the GDS, in no way and in no sense, does the requirement for a GDS (nor the conditions of the Statements of Environmental Audit) do what the Referral 41 SAC assumed, namely that the Proponent will be responsible for putting in place the environmental management measure and the geotechnical solutions that need to be installed. Essentially the Committee relied on the submissions of the Proponent rather than on the text of the planning control that it had before.

52. If the above points are not made clear enough yet, then we also make the following observations by reference to DPO6:

- There is no prohibition on subdivision of the site prior to putting in place the geotechnical and environmental measures. Thus, there *might* be a single owner to carry out the works but it is conceivable that there could be several owners. Who is responsible for what in that event and how is co-ordination between them achieved?
- There is no limit on the number of development plans that may be approved for the site. It could be one or it could be several. An owner of one superlot, may determine that they wish to do something different and propose a different development plan for their part of the site;

- The provisions relating to environmental and geotechnical strategies both in clause 3.0 and in clause 4.0 are drafted without any reference back to the work that has already been undertaken and examined by the Referral 41 process and this Referral 51 process;
- There does not seem to be any clear correlation between planning zone boundaries and either environmental zones or geographical domains let alone then trying to make sense of the staging plan that sits on top of all of that;
- The staging plan (which is now very different to the staging that was put to the C129 Panel where what is now Stage 4 was going to be Stage 1), does not appear to bear any relationship to the order in which works relevant to environmental and or geotechnical issues should be carried out. It is unclear to Council how the staging descriptions at PDF 57 of the Draft Development Plan relate (if in any way) to the various environmental and geotechnical works that are required. And what if staging proceeds differently does that matter?
- The extensive reliance in the DPO6 on the section 173 agreement mechanism should have been bolstered by at the least, a draft of an agreement for the Committee to be able to consider so as to provide a level of confidence and assurance that this methodology is sound and safe to rely upon;
- The Committee should (like the C129 Panel did) seek a detailed explanation of the structure of the Owner Corporation set up and an explanation of what remit the Owner Corporation would have particularly because the experts place much reliance upon its future role
- The Committee should consider both the legality and practicality of what is proposed for the Owners Corporation's responsibilities given the context of the Owners Corporation Act.

53. What is most surprising is that these issues and concerns were all raised by the C129 Panel which considered the matter in detail and there has been no effort at all to address these issues not in evidence and not through the written submissions.

54. The Panel had significant reservations which go to the very heart of the extent to which the Committee can rely on what is being submitted.

55. We will take the Committee to relevant extracts of the Panel's report commencing at 9.3 after the context being set out in the pages prior to Part 9.3. The Committee should take particular note of this in depth analysis of the prior Panel.

The Second Assumption

56. In so far as it is proposed that much of the regulation of the site per the conditions of the Statement of Environmental Audit, after its subdivision into smaller lots, will be achieved via a section 173 agreement, we note that under DPO6 seems to frustrate this rather than enable it. Clause 3.0 relates to conditions and requirements for permits. One of the conditions provides that a planning permit for the development of the land should (*not must*) contain the following conditions *as appropriate* –

57. This form of drafting which mixes (and confuses) a "should" with a "must" weakens the provision and makes it necessary for the responsible authority to justify why the agreement is required in circumstances where the agreement seems to be the lynch pin in the minds of the environmental expert.

58. Putting that not unimportant issue to one side, we now turn to the provisions dealing with how the agreement operates.. The DPO6 provision states that the agreement should contain the following conditions *as appropriate*.

> ▪ Before the permitted use and/or development commences, unless the EPA has served a Notice or Order that provides for these matters to the satisfaction of the responsible authority, the owner of the land must enter into and execute a Section 173 Agreement with the responsible authority that provides for:
>
> - responsibilities for, and the implementation of conditions, ongoing monitoring requirements and ongoing management of the site, in accordance with the requirements of the statements of Environmental Audit issued for the site;
>
> - the funding for the management and implementation of the conditions of a statement of audit requiring ongoing monitoring and management, including the costings of management and implementation and a reasonable allowance for contingent liabilities to the satisfaction of the responsible authority, if required;
>
> - the costs of the preparation of the Agreement and registration on title to be met by the developer
>
> - the ending of the Agreement when either:
>
> - a Site Management Order is issued by the Environment Protection Authority Victoria that manages the ongoing implementation of the above matters to the satisfaction of the responsible authority; or
>
> - an Environmental Auditor provides a report in writing confirming the ongoing management and monitoring is no longer required;
>
> - the ending of the Agreement with respect to individual residential/commercial lots when that lot has achieved Statement of Compliance and no further subdivision is likely to occur.

59. Concerningly, the ending provision, even allowing for the formatting errors in the drafting, provides that the agreement ends in relation to residential lots and commercial lots.

60. This means that in respect of individual residential or commercial lots, whereas the expert auditor and the EMS *assumes* that the conditions in the environmental audit will be binding on lot owners, those lots will in fact <u>not</u> be subject to the section 173 agreement and the various obligations within them as relevant to each lot. One can understand why the proponent does not want the agreement on individual lots. Purchasers would be concerned to read the content of the agreement and potentially confused if they do not have appropriate advice. However, Council submits that ending the agreement against these lots defeats the clear intent of the auditor and the statements of audit.

61. The second issue that arises in the drafting is the content of the agreement.

62. The first bullet envisages that the EPA may control the site management process. That is appropriate. If that occurs the agreement is not required. Better drafting would require the agreement but then have the agreement turned off if the EPA issues the specified notice.

63. Putting that to one side, the two key requirements are:

> - responsibilities for, and the implementation of conditions, ongoing monitoring requirements and ongoing management of the site, in accordance with the requirements of the statements of Environmental Audit issued for the site;
>
> - the funding for the management and implementation of the conditions of a statement of audit requiring ongoing monitoring and management, including the costings of management and implementation and a reasonable allowance for contingent liabilities to the satisfaction of the responsible authority, if required;

64. In relation to the first item, this relates to the obligations imposed on the Owners Corporation as set out in the Post Construction Environmental Management Plan. That document places the obligation to undertake certain tasks upon an Owner Corporation. However, no real thought has gone into how this would work. The lack of a draft section 173 agreement does not assist.

65. The PCEMP identifies the responsibilities of the Owners Corporation at Part 2.1 (pdf 487 of the Audit pack). They are broadly:

- To implement the requirements of the PCEMP
- Engage an environmental auditor and a contractor to undertake an annual inspection of the common landfill gas protection measures along the boundaries and in individual buildings to assess they are not blocked or damaged.
- Update the PCEMP upon the completion of the construction phase of the development;
- Maintain and repair the gas protection measures as required including obtaining auditor verification of any proposed repairs
- Obtain an auditor verification of the repairs once carried out.
- Maintain all records for 10 years
- Enforce Owner Corporation rules.

66. The site is likely to be developed and subdivided in stages as it is a large site. This means that there will likely be multiple (indeed potentially many) Owner Corporations over the site. For instance, each apartment building (and there are many proposed) will have its own owner corporation; basement parking areas may have their own owner corporation, various commercial buildings may have their own and different subdivision stages may have their own noting that an owner corporation is created upon a subdivision. No legal strategy has

been prepared to plan or be able to assess what is proposed or whether it is practical and sensible. It is not clear if liabilities will be linked to one or many owner corporations. It has just been assumed that an owner corporation can be made responsible for the task of enforcing the conditions of the statement of environmental audit and undertaking the monitoring and maintenance of the environmental systems which is going to be an important task and responsibility.

67. Given the PCEMP's reliance on the "Owner Corporation model" to achieve the *diligent* application of the conditions of the statement of environmental audit post construction, one might have expected at the very least a description of the model of owner corporation(s) and common property anticipated over the site and a basic assessment such as whether environmental systems are going to be contained in an area of common property or in somebody's backyard. No consideration appears to have been given to what an agreement should include what its objectives need to be and how the staged development of the site will be handled in the drafting of the agreement. It is a matter that is unwisely just being left to the permit process. This is a matter that was of significant concern to the C129 Panel.

68. The second bullet point requirement refers to funding for the management and implementation of the conditions. There is no understanding and has been no explanation in the written submissions of what this should or may entail. For example, if those important responsibilities are passed on to an Owner Corporation, its balance sheet usually starts at or close to zero and it takes many years for it to build up a sinking fund for capital and maintenance works. Yet, under the PCEMP, the Owners Corporation is required to immediately enter into an agreement with an auditor and contractors to undertake the tasks set out in the PCEMP. While in a previous hearing (C129) there was reference to $50,000 of seed funding, there is no indication of what the cost of the functions set out in the PCEMP would be. In any event, there is no requirement for the any seed funding to be provided to ensure that the Owner Corporation has funding to do what is expected of it from the outset.

69. Below, we also outline the inherent limits in relying upon Owner Corporations to manage matters that need to be managed diligently.

70. As a starting point we note that an owners Corporation is not created until (and upon) land being subdivided. The extent of the area in the proposed subdivision determines the area to which the Owners Corporation common property applies (at least before creation of private lots which are also excluded). At the time a planning permit for development is issued (that is construction of buildings) there will be no Owners Corporation in place. As noted earlier, neither do we have a model of what is proposed. So, to that extent, it is not really possible to understand who is responsible for the PCEMP obligations.

Maddocks

71. Another difficulty is that an Owner corporation only has "jurisdiction" in relation to common property not private property. Section 4 of the Owners Corporation Act states:

> **4 Functions of owners corporation**
>
> An owners corporation has the following functions—
>
> (a) to manage and administer the common property;
>
> (b) to repair and maintain—
>
> (i) the common property;
>
> (ii) the chattels, fixtures, fittings and services related to the common property or its enjoyment;
>
> (iii) equipment and services for which an easement or right exists for the benefit of the land affected by the owners corporation or which are otherwise for the benefit of all or some of the land affected by the owners corporation;

72. Owner corporations do not have power over private land unless proper easements are in place. In circumstances where the environmental measures are not within common property but, for example, within the rear yards of dwellings, this immediately brings into question the "model" proposed particularly noting that DPO6 provides that the section 173 agreement ends in respect of residential and commercial lots.

73. Easements can be used ***if*** they are for the benefit of the land affected by the owners corporation. Given the anticipated multiple owners corporations, it is not readily possible to understand how the easements would work or who they would be in favour of. Specifically , it is not clear how the easements would be for the benefit of land affected by the Owners Corporation in circumstances where there are likely to be multiple owner corporations.

74. It should also be noted that under section 18(1) of the *Owners Corporation Act*, an owners corporation can only commence legal proceedings if it is authorised to do so by a special resolution. A special resolution is where at least 75% of the lot entitlements or lot owners agree. It is notoriously difficult for a special resolution to be passed especially in larger Owners corporations with absentee landowners. Even though there is a process which allows interim special resolutions to eventually become a special resolution, that process takes at least 1 month and can be disallowed by a vote of 25% of the lot members.

75. The type of things which a special resolution is required for includes commencing legal proceedings; for example forcing a lot owner to refrain from doing something or forcing them

to do something in relation to Owner corporation property or an easement – but not in relation to private property.

76. Even raising funds for urgent works is difficult. There are limits on the amount of funds that can be raised (section 24(4) and section 25 of the Owners Corporation Act) and drawing funds from the maintenance fund is limited to amounts prescribed by the Lot Owners. (section 44).

77. Council submits that because there is a significant reliance on an owners corporation to manage a system which must be managed diligently, it begs the question whether a legal entity that has limited capacity to respond quickly is appropriate.

78. By way of example, In *Owners Corporation 1 PS723350Q v Owners Corporation 2 PS723350Q* [2025] VCAT 592, the Victorian Civil and Administrative Tribunal (**Tribunal**) considered the procedural requirements for owners corporations seeking to commence legal proceedings, particularly where non-monetary relief is sought. The dispute arose between Owners Corporation 1 (**OC1**), an unlimited owners corporation, and three limited owners corporations (**OC2**, **OC3**, and **OC4**) in relation to a subdivision at 888 Collins Street, Docklands. OC1 sought an order from the Tribunal concerning the amendment of information statements associated with the plan of subdivision, specifically regarding the scope of obligations for management and administration of common property under the *Owners Corporation Act 2006* (**OC Act**).

79. The main issue was whether OC1 had complied with section 18 of the OC Act, which governs the power of an owners corporation to commence legal proceedings and the type of resolution required (special or ordinary). OC1 argued that, because it was not seeking monetary relief, the matter fell within the "civil jurisdiction limit" of the Magistrates' Court and could therefore proceed on the basis of an ordinary resolution under s 18(2) of the OC Act. In contrast, OC3 contended that a special resolution (requiring a 75% majority) was necessary for any non-monetary claim, and that only monetary claims under $100,000 could proceed with an ordinary resolution.

80. Deputy President Bisucci agreed with OC3, holding that section 18(2) of the OC Act applies exclusively to monetary claims within the $100,000 jurisdictional limit of the Magistrates' Court. For all other proceedings, which involve non-monetary relief, a special resolution is required under section 18(1). In that case, as OC1 had not obtained such a resolution, the Tribunal found that it had not met the statutory requirements to bring the proceeding.

81. This decision confirms that owners corporations must obtain a special resolution to commence non-monetary legal proceedings. The "civil jurisdiction limit" exception is strictly limited to monetary claims. As a result, owners corporations with complex or ongoing

obligations are likely to face difficulties when securing the necessary level of support from lot owners to take timely legal action.

82. Owners corporations have a very limited ability and utility in being able to manage matters that require "diligence" and acting in a timely manner in cases that do not involve the recovery of money but rather seeking an order for example that an owner of a private lot take or refraining from taking any particular action in respect of common property.

83. So, coming back to the DPO6, Council submits that there cannot be a high or even a reasonable level of confidence that what is proposed will provide for the diligent management of the site and its various EMS and GDS regimes or the conditions of the statement of environmental audit.

84. It is the Departments role as Planning Authority, not Council's role as a submittor, to dissect the Draft Amendment clause by clause but Council does raise significant concerns that the scheme by which the conditions of the Statement of the Environmental Audit are to be "diligently" enforced via the agreement mechanism under DPO6 is deeply flawed and unreliable especially given the complexities of the site not only in its current state but particularly given it is proposed to be subdivided into 1000 or more lots over time, in various stages, through various subdivision and with no coherent legal strategy in place.

85. Council submits that the caveat applied to Mr Mival's expert opinion, namely:

> 10. Based on my original audit report and my subsequent reviews of ongoing monitoring at the site, and my experience from application of similar measures at other landfill and development sites, it is my opinion that, provided all the conditions included in the Statements attached to the Environmental Report are diligently applied and are verified by an environmental auditor, then the risks to future occupants at the site would be low and acceptable.

is too fickle. The diligent application of conditions of Statements of Environmental Audit is necessary but should not be left to some vague or unclear "section 173 agreement" where there may be multiple entitles with no clear lines of responsibility between them let alone potentially no upfront funding to execute those actions.

86. Regrettably, but not surprisingly, many of the examples that Mr Mival refers to in his expert report where Owner Corporations or audits have been undertaken are sites which are characteristically very different to what is proposed here. To be clear, Council takes no issue with Mr Mival's qualification and experience. We do however, take issue with his expertise to comment on the appropriateness of the drafting of planning controls as he has done. He is not qualified to express those opinions. At best, he can outline what is required and then others more expert can then examine what is proposed and whether that achieves those objectives.

87. Furthermore, the list of example sites that he sets out in his evidence, do not bear any similarity to Talbot Village which is a site that:

- is built on a former putrescible (not inert waste) landfill
- has both environmental and geotechnical challenges
- may be developed in stages
- may be developed by different developers of different stages
- will likely include multiple Owner Corporations;
- includes residential and commercial typology including single dwellings;

88. This difference and lack of precedent was noted by the C129 Panel when it observed that normally putrescible landfills are developed for activities such as private open space not residential communities. They raise a range of different and more complex issues.

89. The evidence of the Proponent's experts identifies a range of ways that things are able to be done to address the environmental and geotechnical issues. The evidence of Council however, addresses the practical issues that arise. These have not been considered properly so far.

90. Council submits that the Committee does not have sufficient material before it to be confident that the merits of what is proposed stacks up and certainly, does not have an appropriate set of planning controls that are tailored to the sites particular requirements.

Notification of risks

91. Having regard to each of the above environmental and geotechnical risks, Council submits that one of the key prongs in the management of risk should be that those that are put at risk, should be made aware of the potential issues that could arise. Lawyers call this "caveat *emptor*." Or buyer beware. But some notice of the risks and the site characteristics is reasonable so that an informed decision can be made.

92. In that respect, if Council is maintained as the responsible authority, and it did transpire that it is required to enter into an agreement under section 173 of the Act (which we submit is not the case), Council will satisfy that moral obligation by inclusion of a "Note to Owners" in the Agreement which:

- clearly identifies the history of the site, and the nature of the environmental and geotechnical risks;
- notes that parts of the site is contaminated and dwellings particularly in Zone 1 and adjacent areas require ongoing ventilation for LFG;
- notes that different parts of the site may continue to settle to different levels over the next 100 years and some buildings may tilt;
- explains the likely ongoing need for maintenance of all of the grounds of the estate and the roads either by owners or by the Owner Corporation(s)
- makes it clear that the financial costs of maintaining and repairing all the grounds and the roads, services, communal areas and stormwater facilities and the like are all to be met by the owners through their Owner Corporation(s).

93. Council submits that if it is not the responsible authority, it would be prudent and reasonable for any other responsible authority to include a similar note so that purchasers are made aware of the potential risks ahead of their purchase rather than after their purchase.

Roads and other normally public spaces and assets

94. The proposal is to have all roads (and open spaces) other than Talbot Avenue Parts A, B C and Main Street, as common property to be managed by an Owner Corporation.

95. Council submits that the same may need to be applied to Talbot Ave through the site. This will depend on what is eventually put forward for Talbot Ave in terms of how it is constructed and what Council thinks is appropriate after considering all relevant issues.

96. Mr Pedlar's report at PDF 76 notes:

150. I was requested to comment on the suitability (from a geotechnical point of view) of the road potentially being vested in Council as a public road once constructed.

151. I understand that the proposed Talbot Avenue could be up to 22m wide and runs north south on the eastern side of Domain 1 and Domain 4. The existing natural ground zone between the former pits on either side of the road alignment is less than the proposed width of the road easement and as a result part of the road would be located with the former quarry pit as shown on Plate 37.

152. The geotechnical design strategy has identified that particular attention should be paid to transition zones passing from the natural ground to filled areas. In the case of the road alignment, the engineered fill placed in Domain 4 is predicted to exhibit some settlement over time relative to the natural ground. The slimes

153. To address these conditions, I would recommend that DSM be used to support the road located within the Domain 5, 2b and 6 quarry pits. Section 4 of my statement shows that the DSM equivalent block method predicts settlement of about 27mm at the edge of the road during construction with no long term settlement while the axisymmetric method indicates long term settlement of 30mm to 60mm depending on the wet or dry method of construction for the model that was analysed. The DSM field trials during detailed design will inform the design process to develop a ground treatment layout that could meet Council standards. In addition to the main ground support method, I would also recommend that:

- a heavy-duty geogrid also be used below the proposed road pavement and across the cut fill line and over the DSM
- flexible drainage pipes are used along this section of the road
- careful attention be given to connections of pipes and pits
- steeper grades be adopted to allow for some settlement
- the wearing road surface be delayed as long as possible or until the development is completed.

154. In my opinion, I consider that with suitable design and construction to address the ground conditions in this area, a road pavement meeting Council standard could be constructed along the proposed Talbot Avenue. CMC piles could potentially be used at the northern end of the site in the Domain 1 area.

97. And in another place (PDF65)

surrounding areas will be accommodated by garden beds or architectural screens. Over time, paths or surrounding areas may need to be re-laid. Flexible pipes and connections to building will accommodate settlement. Some profiling of roads and road reserves may be required recognising that the design life of typical roads is in the order of 20 years. The funding of private roads is the responsibility of the Owner's Corporation. In the case of Talbot Avenue in the event of being potentially vested in Council as a public road once constructed, I consider that ground treatment using DSM in the Domain 5, 2b and 6 quarry pits could be used to construct a road pavement meeting Council standard. CMC piles could potentially be used at the northern end of the site in the Domain 1 area.

98. It should not be surprising that Council does not accept responsibility for contaminated land that is developed for urban purposes. Council will not agree to become the owner of contaminated land or land that is propped up by a complex system of piles through contaminated land or land susceptible to LFG. The comparison with the Talbot Park to the south is not on point. The park is not developed for urban purposes. Whether the land is level or suffers from some differential settlement is irrelevant given its usage and the use to which the former landfill is being put is consistent with a broadly recognised post closure regime for a landfill.

99. Neither does Council have the appetite to take on a large network of roads and ownership of underground utility services on ground which is subject to differential settlement and *potentially* higher maintenance costs or repair costs. We note from Mr Pedlar's expert report that depending on methodology of construction and the appropriateness of supervision, roads can be subject to differential settlement. See for example part 4.2.3 of the expert report where a Controlled Modulus Columns design (**CMC**) is considered. While in this example, the traffic surcharge has been rated at 5kPa it is not clear to Council whether this anticipates that during construction and from time to time, heavy vehicles such as garbage trucks, construction vehicles, delivery trucks and the like may use the road system. We note that in the DSM modelling a traffic surcharge of 10kPa was used which seems more appropriate.

100. According to an "AI" based enquiry through CoPilot[3] it would seem that this assessment has been based on lightweight domestic vehicles.

- **Traffic Application:** A 5 kPa surcharge is a common value used to represent the live load from domestic vehicles, light traffic, or general public pedestrian access areas, such as in residential developments, car parks, or light-use access roads.
- **Design Consideration:** This value ensures that the structure can safely withstand the dynamic and static forces exerted by nearby moving or parked vehicles. For heavier vehicle access, such as major highways or areas with heavy construction equipment, higher surcharge values (e.g., 10 kPa or more, up to 250 psf which is ~12 kPa) would be specified by a geotechnical engineer.

101. At paragraph 109 of Mr Pedlar's report he notes

> 109. The Case 2 results in Table 7 show similar settlement of the CMC pile and soil at the time of construction of about 12mm. After 75 years, the settlement of the road surface increases to 240mm while the top of the CMC has settled 37mm. Like Case 1, the settlement of the ground between the CMC piles increases to 344mm which results in a differential settlement of about 104mm between the road above the pile and the area between the piles. The differential settlement increases to 122mm after 100 years following construction which would not meet the differential settlement criteria. The results indicate that much closer CMC spacing and/or thicker LTP would be required to achieve tolerable surface profiles for the Domain 6 slimes.

[3] The relevant input was "Traffic surcharge = 5kPa".

Maddocks

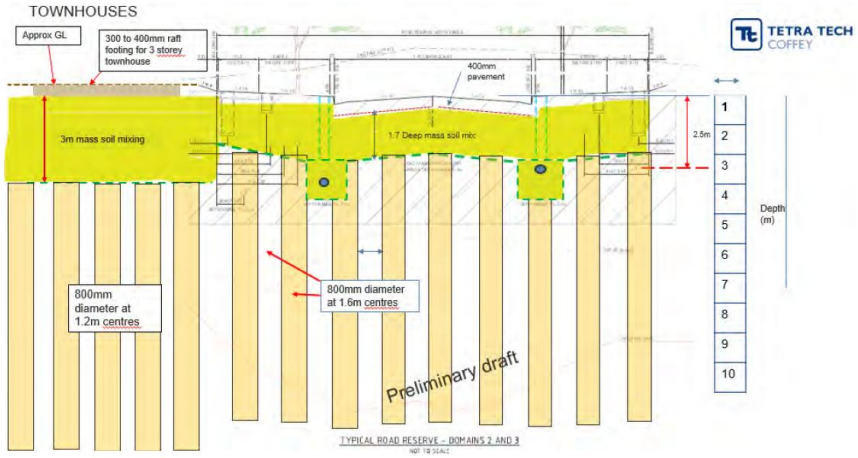
Table 7 Summary of predicted settlement of CMC at various stages for road reserve zone (Table 3 in Appendix C)

Stage	Location of settlement	Assessed Settlement (mm)	
		At CMC	Between CMC
7	Top of CMC at RL 62.0 m	10	12
	Geotextile (RL 62.1 m)	10	12
	Road surface (RL 63 m)	12	12
8	Top of CMC at RL 62.0 m	37	344
	Geotextile (RL 62.1 m)	38	344
	Road surface (RL 63 m)	240	344
9	Top of CMC at RL 62.0 m	41	388
	Geotextile (RL 62.1 m)	41	388
	Road surface (RL 63 m)	266	388

102. Based on the above table, for CMC methodology, this would result in a road profile that resembles a series waves. This is not acceptable for public roads. The conclusions at para 110 of the report simply reiterate the concerns of Council.

103. An alternative methodology (Deep Soil Mixing or DSM) is considered at part 4.3 of the expert report. For Townhouses, the settlement is limited to around 35mm for 75 years of consolidation while for roads the settlement is in the order of 122mm (adopting a hybrid of wet and dry soil mixing). Table 10 at PDF 52 of the report of Mr Pedlar shows that the two options of dry or wet mixing of the DSM requires column spacing at approximately 1.8m.

104. Finally a further model labelled Equivalent Soil Mixed Block Method is displayed at Plate 28 this time with columns at 1.2 m centres rather than 1.8m centres, with 1.6m centres under roads and other areas. The cross section below indicates both the columns beneath the housing and beneath the roads.



105. It is unclear from the material how the land fill gas membrane is dealt with in the above scenario. The conclusions of Mr Pedlar at 4.3.4 is as follows:

> 4.3.4 Conclusions from the DSM Preliminary Design
>
> 125. The preliminary DSM analyses produced the following predicted settlements.
> - Buildings: 30mm to 60 mm across the building during construction, 30 to 60 mm post construction depending on mixing method.
> - Roads: 40mm to 60 mm during construction (no final asphalt layer until buildings are completed), 30mm to 60 mm post construction depending on mixing method
>
> 126. Based on these predictions I conclude that:
> - The use of DSM could significantly reduce the post construction total and differential settlement under building to within the tolerable limits of movement set out in Section 2.9.
> - For the road reserves, subject to monitoring, settlement of the treated area may need to be accelerated before the asphalt wearing surface is laid by preloading or the column spacing closed up. The arching "egg effects" is eliminated compared to the CMC option.

106. The conclusions indicate settlement of approximately 120mm for buildings between commencement and post construction and up to 120mm for roads provided the technical work is properly undertaken.

107. No evidence has been given as to the economics of this type of construction and whether it is economically feasible given the size of the site area proposed for housing, open spaces and the extent of roads required (that is thousands of columns) or the economics and cost of rectification in the event of failure. As noted earlier, while the cost of initial development is generally not a consideration, shortcuts to find more cost efficient building techniques but which result in a higher level of settlement or sinking and tilting of buildings over time would be concerning.

108. We note that the subsequent costs to landowners was considered in the Referral 41 AC and regarded as acceptable but apparently without any evidence or estimate of costs being put forward or comparable examples.

109. In terms of this DMS approach and what appears to be closely spaced columns under structures and roads, we are not clear as to how the LFG membrane would be put in place or whether it sits on top of the columns. Nor is there an explanation of how maintenance to the membrane, if required, can be undertaken noting that we assume these columns will be sitting under buildings and roads not open space.

110. Pipes for services such as gas, water etc sometimes leak and sometimes they break. Furthermore, it is the case that from time to time, utility services need to be dug up, exposed and repaired or replaced. Doing that in earth that is intended to be a landfill cap and subject to bespoke geotechnical designs would be a more complex task with associated higher costs and risks. These are practical issues but they are also important issues for Council.

111. Putting to one side Talbot Ave, in relation to which Council has not yet determined its position, if this site is to be developed, the risks and potentially costs that will need to be worn by the site owner(s) (properly informed) and not by the broader Monash Community.

Geotechnical and Environmental Strategies too fluid.

112. As Council has already indicated, there are various statements contained in both the GDS and the EMS, the Part A submission of the Applicant, and the drafting of the DPO6 that clearly suggest that the geotechnical and environmental solutions that have been identified are not actually what are proposed to be carried out. They may be, but may not be. This suggests that the purpose of this process is to satisfy the DFP and the Committee that there is at least one way that the site may be managed, but that is not the way that it needs be managed if other methods are or become available. That approach tends to place a great deal of importance on later processes such as the planning permit stage of the process which after approval of the Draft Amendment and the Draft Development Plan as proposed by the Minister, leaves the planning permit process as the “fall back” or the “safety net” mechanism. As these will be done on a stage by stage basis (or potentially for lesser areas) this is potentially unsafe because one loses sight of the whole site and the need for very careful co-ordination.

113. Council has already expressed concerns that it is unclear if the site is to be developed by one owner or several developers. It is a large site which may lend itself to development by different entities. For example, there are dwellings, apartments and commercial tenancies. Nothing in the planning control limits the range of options so it should conservatively be assumed at this stage that the site may be developed by several developers.

114. It is unclear to Council whether different developers may have different geotechnical management plans for different parts of the site; and the same with the EMSs. Different parts of the site seem to have different needs so there may be different EMS's involved. If that is the case, the interrelationship between those is not clear to Council.

115. The Draft Development Plan as exhibited contains a section dealing with Environmental Management Strategy (Part 4.11) and another dealing with the Geotechnical Strategy (Part 4.12).

116. Noting that the Draft Development Plan is a document which should fairly closely relate to what is built on site (in line with the generally in accordance principle), it is concerning that the Draft Development Plan is, for the second time after the DPO6, setting up a further framework which is intended to broaden the range of measures and approaches which may be taken. Council submits that because the Draft Development Plan should relate to the whole of the site, rather than describe what has been prepared by the experts to date as conceptual, it should if it is to be approved, describe the proposed environmental measures for the whole of the site.

117. Concerningly, the EMS at Part 4.11 states the following at pdf 59:

> The SoEA and associated supporting site management documentation incorporate a degree of flexibility in recognition that the future site management measures to be implemented (particularly with regards to LFG) are subject to detailed development design, due to the environmental audit being completed in advance of any rezoning or planning application for redevelopment. The SoEA and supporting documentation establish the key land use constraints, environmental management measures and framework for the detailed design, implementation, and verification of the implementation of these management measures as part of the site redevelopment by an Environmental Auditor appointed under the Victorian Environment Protection Act 2017.

118. This essentially throws all of the cards up in the air again and the task for the responsible authority is then very complex and difficult because it will be trying to deal with an environmental management strategy potentially only for the particular permit application that it is faced with which may be for part or the whole of a stage.

119. To give a practical illustration of Council's concerns, in the Draft Development Plan there is reference to basement construction at pdf 59 being permitted <u>in all zones</u> at the site. The statement in the Draft Development Plan seems directly inconsistent condition 1 of the Statement of Environmental Audit for Zone 1 and 2A as extracted below: (from page PDF 10 of the Audit for Zone 1 and 2A)

Subject to the following conditions attached thereto:

1. This Statement is directly referable to and based upon the layout and types of construction proposed for the development as shown and described in Appendix A (Figures 1 to 4), and Appendix B (Figures 1 to 6) of the Conceptual Design of Site Management Measures (CDSMM) (Document Reference ENAUABTF00751AB_R14 dated 1 May 2020) and the Construction and Environmental Management Plan (CEMP) (Ref: 754-ENAUABTF00751AB_R17 - dated 1 May 2020) reports, both prepared by Coffey Services Australia and attached to this Statement of Environmental Audit, that indicate that the site will be substantially covered by a landfill cap and associated vapour protection measures; and by medium or high-density residential developments and associated pavements and driveways, and will have no single or multi-level below ground basements. Any development plan issued subsequent to, or as part of a permit application to Council, showing proposed land-uses and building styles, and any subsequent substantive changes to that layout and general pattern of land use, must be subject to review and verification by an environmental auditor appointed under Part IXD of the Environment Protection Act 1970 (or its successor), with this verification advised in writing to EPA and the planning authority, to ensure that it conforms with the intent of this Statement of Environmental Audit.

However, if one then goes to the same Statement of Environmental Audit for Zone 1 and 2A while we note that condition 1 prohibits basements, condition 13 seems to envisage them again. It provides:

13. No basements are to be incorporated in any proposed future development of this area of the site (Zones 1 and 2A) unless appropriately designed with vapour protection barriers; full time ventilation of basement areas; and all other provisions of the protection measures as defined in BS4845 relevant to characteristic situation CS4 and as verified by an environmental auditor appointed under the Environment Protection Act 1970 (or its successor). The vapour barrier provided as part of any such basement area must also be sealed into (e.g. if feasible - located above) the LFG gas protection layer within the surrounding landfill cap to maintain integrity of the vapour barrier portion of the cap.

120. The two conditions cannot sit logically in the same document and it is not clear what the Draft Development Plan then allows.

121. The Audit Report (which is different to the Statement of Environmental Audit) appears to confirm that basements are not permitted everywhere. It states at the bottom of PDF 13:

Final building types and groupings are understood will be finalised in stages in the future to suit market requirements, however, it has been assumed that below ground construction required (e.g. basements) will be restricted to certain areas of the site based upon landfill gas risk as part of the redevelopment. Given that some low- and medium-density residential use is proposed, some limited access to the underlying soils is feasible, however, the majority of the site is likely to be covered by the concrete floor slabs of the individual buildings along with asphalt roadways and concrete pathways. It is understood from the owner that the intention is to place the lower density lots adjacent to the eastern and northern boundaries to match with existing adjacent low-density housing.

122. If we go to the Statement of Environmental Audit for zones 2, 3 and 5, condition 1 (at pdf 361 of the audit) and the Statement of Environmental Audit for zone 4 and 4A (at pdf 712) identifies the potential for a single basement car parking level for residential and commercial lots in some areas of the site. These are quite different to condition 1 of the Statement of Environmental Audit for zones 1 and 2A. Condition 13 of the audit for zones 2, 3 and 5 and the audit for zone 4 and 4A is then consistent with condition 1. Accordingly, it seems that the

auditor has potentially made an error in the drafting of the Statement of Environmental Audit for zone 1 and 2A by including condition 13 contrary to condition 1.

123. In that context, it is surprising that the Draft Development Plan which contains text referencing basements in all zones has been given the all clear by Mr Mival. In this regard we note that Mr Mival's 3 November 2023 certification states[4]:

> I refer to the documents provided as follows:
> - Document titled "Talbot Village Development Plan" prepared for Sterling Global by Hatch Roberts Day Reference - STE TAL_DES_REP_018_revision A - dated 30 October 2023; and
> - Document titled: "Talbot Village Development Plan – Environmental Management Strategy" prepared for Sterling Global by Tetra Tech Coffey Reference 754-ENAUBTF00751AB dated 30 October 2023.
>
> As the Environmental Auditor for the site appointed by the Owner on 31 July 2013, as notified to EPA (EPA Audit References SO No. 8004092 & Carms No. 70403) and having completed the Environmental Audit for the site issued on 14 May 2020, I have reviewed the above documentation for consistency and compliance with the conditions included in the relevant Statements of Environmental Audit for Zones 1 to 5 of the site and, where relevant - the closed landfill guidelines and policies.

124. The now "certified" Draft Development Plan gives developers the (we think incorrect) impression that basements are permitted anywhere on the site when in fact, the Audit Report and the Statement of Environmental Audit say that they are not permitted in zone 1 and 2A.

125. Furthermore acknowledging their statutory role, we refer to condition 2 of the Statement of Environmental Audit for Zone 1 and 2 at page pdf 10. Respectfully, we submit that it is hard to make sense of that condition.

> 2. The shallow landfill waste material and any potentially contaminated shallow fills, must remain covered by the proposed landfill cap and/or a minimum 2.0 m thickness of validated fill material (or other suitable capping layer as determined by an environmental auditor) of the proposed medium and high density residential housing and commercial developments, any open space recreation areas, or should be capped with a minimum of 0.5m of acceptable fill material, so that casual access to any underlying soils or wastes at the site is not permitted. The acceptable coverage of shallow fill material at the site is to be verified as suitable for that use by an environmental auditor appointed under Part IXD of the Environment Protection Act 1970 or its successor. Once re-zoning to sensitive uses including residential is permitted by the responsible authority, and if the proposed development does not proceed, then the site must be left in an acceptable condition as approved by an environmental auditor.

126. What capping is required? Is it 2.0m or is it .5m? An explanation of what condition 2 requires would be helpful. Although it is a matter for the EPA, the Minister has asked this Committee to provide advice on the risks.

[4] PDF 1 from Environmental Auditor Verification of 2023 dated 3 November 2023.

127. Condition 3 of the Statement of Environmental Audit then refers to condition 2 which is, as noted above, is unclear in terms of what it actually requires so condition 3 then becomes unworkable.

128. We also note that in clause 3.0 of the DPO6, there is the following information requirement for a permit application:

> - Verification prepared by an Environmental Auditor, confirming that the proposed development is in accordance with the requirements of the Statements of Environmental Audit.

129. The requirement that the auditor verify that the development is in accordance with the requirements of the Statement of Environmental Audit seems appropriate at first blush. But, when you go to the conditions of the Statement of Environmental Audit at page pdf 10 of the Zone 1 and 2A audit report it states in condition 1:

> will have no single or multi-level below ground basements. Any development plan issued subsequent to, or as part of a permit application to Council, showing proposed land-uses and building styles, and any subsequent substantive changes to that layout and general pattern of land use, must be subject to review and verification by an environmental auditor appointed under Part IXD of the Environment Protection Act 1970 (or its successor), with this verification advised in writing to EPA and the planning authority, to ensure that it conforms with the intent of this Statement of Environmental Audit.

130. This means that under DPO6, the requirement is that an auditor has to verify that the changes and departures from what was envisaged in the audit, is verified. That seems nonsensical drafting. It would be far more preferable if the DPO6 was drafted in the same way as the conditions in the audit statement to avoid confusion so that the verification provided under the audit comprises part of the information required by the responsible authority.

131. We note that at pdf 62 of the Draft Development Plan, there is a table with a list of documents. The status of these documents is still unclear to Council. We note elsewhere in this submission that there is no Community Infrastructure Report. In addition, apart from the EMP and the CEMP, there is no reference to any of the other documents as documents requiring approval referenced in DPO6. Furthermore, it is unclear to Council if each of the documents referenced in the table are current documents, or documents that must still be drafted and approved, and if so, whether they will relate to the whole of the site or whether one may expect that different owners of the site may have their own set of plans for their part of the site.

132. Before it approved the Draft Development Plan, the DTP would do well to review the decision of the Tribunal in Parklea Berwick Pty Ltd v Casey CC 2024 VCAT 287 where the lack of clarity as to the status of documents required by a DPO schedule and only referred to

in an approved development plan was one of the reasons that led the Tribunal to declaring the development plan to be invalid.

133. The Geotechnical Development Strategy November 2023 is one of the key documents upon which the proposal to rehabilitate the site is founded (along with the EMS). It was prepared by Tetra Tech Coffee. The GDS contains options for rehabilitation and foundation systems. It does not propose any one solution but rather identifies a possible number of solutions. In a nutshell as set out in Mr Pedlar's report, which is merely a restatement from section 2 of his Referral 41 evidence report:

> 42. The GDS informs stakeholders, including builders and homeowners, that the site conditions vary from conditions that could normally be expected around Melbourne, and the performance to expect from structures on this development. The development will require the adoption of appropriate mitigation design measures to limit the extent of differential settlement across the structures and infrastructure.

134. Council notes paragraph 82 of the expert report (which we understand is also taken from the GDS) that explains:

> 82. The geotechnical solutions are subject to detailed design and settlement monitoring and in the case of insitu ground improvement, quality assurance testing of the strength and placement of the stabilizing materials together with settlement monitoring of the treated ground. The design would be revised and continually reviewed as the site is developed to adjust the ground improvement works to meet the design tolerable total and differential settlements across the site.

135. The DPO6 has two elements so far as geotechnical issues are concerned.

136. First, it has provisions in clause 4.0 that relate to the "Requirements for a Development Plan". The requirement is straight forward namely that a Geotechnical Development Strategy must be included in the Development Plan outlining the proposed design response for site preparation. We note again that as drafted, there is no requirement or tie back of the required GDS with the document that has been produced and upon which the Referral 41 and 51 committees are being asked to comment on.

137. Second, in clause 3, as part of permit requirements and conditions, a permit application must be accompanied by a report that confirms that, as per the GDS (which we can only assume is the one that is to form part of the Development Plan as per clause 4 (although this is not clear) certain parameters are met and that foundations are as per the GDS. The responsible authority can ask for a peer review of the report.

138. Council does not doubt that it is technically possible to engineer the site so as to provide a suitable platform for construction of buildings. But this will be very complex having regard to the environmental issues. The DPO6 makes no reference to this inter-relationship.

Geotechnical Matters – The Draft Development Plan

139. Above we noted that clause 4.0 requires the Development Plan to include *a Geotechnical Development Strategy*. It is not clear from the drafting of DPO6 whether the draft Development Plan is to be accompanied by a report comprising a GDS or whether the approved Development Plan is merely to include a chapter that comprises a geotechnical development strategy (or options). It would seem from what has been consulted, that it is the latter. It seems that the GDS (document) that Referral 41 had and Referral 51 has before them, is to have no particular status going forward and that it is simply an illustration of the form that a geotechnical development strategy may take. We doubt that this is lawful under the current drafting of the DPO6.

140. Part 4.12 of the Draft Development Plan seems to comprise what clause 4 is calling for as a "requirement". It is headed "Geotechnical Strategy" not "Geotechnical Development Strategy" as per the DPO6 schedule. We question therefore, whether the Draft Development Plan fulfills the requirements of DPO6.

141. Table 15 in the Draft Development Plan sets out for each Domain, the key consideration and the propose solutions. Council has not compared the proposed solutions in Table 15 with what is set out in the GDS in all cases. Table 15 seems to be derived from Table 4 of the expert report of Mr Pedlar which in turn is Table 9 from the GDS. We have set out table 9 from the GDS and then Table 15 from the Draft Development Plan Below for comparison (only Domain 1 due to space)

Table 4: Summary of zone properties and possible geotechnical solutions (Copy of GDS Table 9) [18]

	Domain 1	Domain 2a and 2b	Domain 3a and 3b	Domain 4	Domain 5	Domain 6
Geotechnical Issues Identified	Surface capping 1-6m (Uncontrolled Fill)	Overlying fill 3-6m (Uncontrolled fill + Preload)	Overlying fill 3-8m (Uncontrolled fill + Preload)	Deep Excavation	Overlying fill 3-10m (Uncontrolled fill + Preload)	Overlying fill 2-4m (Uncontrolled fill + Preload)
	Subsurface: uncontrolled fill and landfill up to 20m thick.	The thickness of fill and silmes varies across the site between 5m and 16m.	The thickness of fill and silmes varies across the site between 3m and 15m.	Silmes approximately 6m thick in the north west part of the Zone. Groundwater collecting at base of excavation. Uncontrolled fill in the north east part of the Zone. Concrete Rubble has been placed in some parts of the Zone.	The thickness of fill and silmes varies across the site between 2m and 15m.	The thickness of fill and silmes varies across the Zone between 5m and 16m.
		The silmes are very soft to soft silmes, but the compressibility properties are less than Domain 6. The measured pore water pressures are much higher than the hydrostatic pressure, suggesting that the underlying silmes have not experienced any significant consolidation.	The silmes are very soft to soft, but more consolidated than Domain 2. The measured pore water pressures are close the hydrostatic pressure, suggesting that the primary consolidation due to the preload is close to completion in this zone.		Interbedded layers sand and coarse materials encountered within the clay silmes which are soft in some areas. The measured pore water pressures are close the hydrostatic pressure, suggesting that the primary consolidation due to the preload is close to completion in this zone.	The silmes are very soft and highly compressible silmes which is associated with the most recently placed silmes displaced as part of the reclamation of Talbot park The measured pore water pressures are much higher than the hydrostatic pressure, suggesting that the underlying silmes have not experienced any significant consolidation.
	Natural ground at 20-25m bgl	Natural ground at 6-20m	Natural ground at 6-19m		Natural ground at 3-18m	Natural ground at 6-20m
	Land likely to be subject to variable ongoing settlements due to the uncontrolled fill.	Land likely to be subject to variable ongoing settlements due to the variation in thickness of the fill and silmes.	Land likely to be subject to variable ongoing settlements due to the variation in thickness of the fill and silmes.		Land likely to be subject to variable ongoing settlements due to the variation in thickness of the fill and silmes.	Land likely to be subject to variable ongoing settlements due to the variation in thickness of the fill and silmes.
	Landfill gas seepage.				Possible landfill gas from known landfill toward the Zone	
Conceptual Geotechnical Solutions	Primary option: Preloading, Construction of Engineered Fill Platform incorporating capping layer for roads and services, Shallow Rigid Raft Foundation Systems for 2-3 storey lightweight dwellings. Piled Foundation Systems for 4-6 storey buildings and transition zone adjacent to quarry boundary	Primary option: Preloading over parts of former quarry with other ground improvemnt methods including CMC and wick drains. Shallow Rigid Raft Foundation Systems for 2-3 storey lightweight dwellings or other ground improvement methods to support dwellings and for roads and services. Pled Foundation Systems for 4-6 storey buildings.	Primary option: Preloading, Construction of Engineered Fill Platform for roads and services or other ground improvement if predicted settlemnt likely to exceed tolerable levels. Shallow Rigid Raft Foundation Systems for 2-3 storey lightweight dwellings and Pled Foundation Systems for 4-6 storey buildings and transition zone adjacent to quarry boundary.	Primary option: Engineered Fill Platform requiring dewatering, excavation, treatment and re-use of silmes, re-use of concrete. Shallow Rigid Raft Foundation Systems for 2-3 storey lightweight dwellings and Pled Foundation Systems for 4-6 storey buildings.	Primary option: Preloading, Construction of Engineered Fill Platform for roads and services, Shallow Rigid Raft Foundation Systems for 2-3 storey lightweight dwellings and Pled Foundation Systems for 4-6 storey buildings.	Primary option: Preloading over parts of the former quarry hole and supplemented by other grund improvement methods such as deep soi mixing or CMC. Shallow Rigid Raft Foundation Systems for 2-3 storey lightweight dwellings over ground improved areas and piled foundation systems elsewhere and roads and services. Pled Foundation Systems for 4-6 storey buildings.
	Supplementary option 1: Engineered Fill Platform (excavation and off-site removal of uncontrolled fill / landfill).	Supplementary option 1: Engineered Fill Platform (excavation and off-site removal/ re-use of silmes).	Supplementary option 1: Engineered Fill Platform (excavation and off-site removal/ re-use of silmes).		Supplementary option 1: Engineered Fill Platform (excavation and off-site removal of uncontrolled fill / silmes / landfill).	Supplementary option 1: Engineered Fill Platform (excavation and off-site removal/ re-use of silmes).
Predicted Total Settlement 30 years after dwelling construction	10 to 100 mm	20 to 50 mm	10 to 100 mm	10 to 60 mm	10 to 100 mm	20 to 170 mm
Predicted Total Settlement 100 years after dwelling construction (ground tilt)	10 to 145 mm (<200 mm - acceptable - see Note 5)	40 to 100 mm (<200 mm - acceptable)	15 to 200 mm (<200 mm- acceptable)	10 to 100 mm (<200 mm - acceptable)	15 to 180 mm (<200 mm - acceptable)	40 to 100 mm (<200 mm - acceptable)

Notes:
1- Predicted settlement of rigid inclusions such as driven piles is less than 15mm.
2- The suitability of the proposed geotechnical solutions and footing systems depends on a number of factors, such as: size of the building – number of floors, and basement levels; length and width of the building; differential settlement considerations etc. Particular attention is required at transition across edge of the
3- Piled footings may be required for 2 to 3 storey dwellings in Domain 1 depending on the preload results
4- Based on the current settlement predication, CMC ground improvement or piled footing will be required for Domains 2b and 6 to meet the tolerable total and differential settlements.
5- Subject to the results of the proposed preloading in Domain 1
6- "Supplementary option 1" may be required in areas not currently subject to preload or piling.

142. From the above table and the below extract from the Draft Development Plan, it is not clear how the text in the Draft Development Plan was derived. It also appears that the text in the Draft Development Plan has been edited for reasons which are unclear. For instance, the GDS notes the predicted settlement after 30 years and 100 years while the Draft Development Plan does not.

DOMAIN 1	QUARRY + LANDFILL
Former quarry hole backfilled as a former Council municipal landfill that is producing methane gas. The subsurface soils generally comprise uncontrolled fill and landfill materials extending to depths of up to 20m.	
Key consideration	**Proposed solutions**
Landfill likely to be subject to variable ongoing settlement due to the uncontrolled fill and waste	Preloading over entire former quarry hole. Temporary landfill gas venting trench to be installed prior to preloading. Landfill gas monitoring in accordance with the requirements of the Statement of Environmental Audit. Monitoring of settlement performance through a combination of settlement monitoring plates installed within the fill platform and surface settlement monitoring points installed on the fill surface once the design final level has been reached. Engineered filled land is only released for development once the results of settlement monitoring achieve the specified performance criteria.
Ground support conditions for buildings or other structures	Removal of preload and upper area of old fill and construction of a structural fill platform Shallow rigid raft foundation systems for 2-3 storey lightweight dwellings. Piled foundation systems for 4-6 storey buildings.
Differential settlement at the fill/natural ground interface	Buildings to be supported by piles at transition areas around the quarry pit perimeter.
Impact of ongoing settlement on pathway intervention measures (landfill cap and boundary venting)	The Statement of Environmental Audit issued for the site, includes a requirement for construction of a pathway intervention for landfill gas in Domain 1 prior to site redevelopment. The design for the pathway intervention incorporates an engineered landfill cap and associated boundary venting system. Preloading across all of Domain 1 is proposed to improve the engineering properties of the fill materials by applying a preload to remove a significant proportion of the settlement that would be expected to occur due to applied loads. The preload will also allow the collection of settlement data to inform the detailed development design (including the landfill cap). Expected settlement rates are unlikely to have a detrimental impact on the function of the landfill cap and associated boundary venting system.
Ongoing/long term settlement	Structures and infrastructures to be designed to account for longer term settlement within tolerable settlement criteria. Some long-term differential settlement is expected to occur at the interface between the piled structure and non-piled surrounding areas and transition components such as run-on slabs should be adopted. Landscape zones should also be considered along the sides of buildings in these transition zones.

Table 15 | **Geotechnical Strategy - Domain 1**

143. In any event, in the expert report of Mr Pedlar, at para 96, having considered the results of the latest round of testing which became available in July 2025, which has seen the site continue to settle (now at up to 590mm) he has opined that the site is displaying accelerated consolidation due to the wick drains. Based on the analysis he concludes:

- preloading combined with wick drains is a feasible ground improvement option but would likely require 2 to 4 years to dissipate the excess pore pressures in the most compressible slimes areas such as Domain 6 depending on the height of the applied preload.
- This ground treatment option would be applicable in some areas of the site with less compressible slimes if the available preloading duration fits within the construction/development time frames.
- Where shorter development time frames are required, more robust methods including CMC or deep soil mixing (DSM) have been proposed. The results of the further preliminary design assessment of these methods conducted following the 2024 PPSAC hearing are presented in the following Sections 4.2 and 4.3.

144. These results and opinions do not appear to be reflected in a revised Draft Development Plan at Table 15. In fact, noting that the Draft Development Plan is a June 2024 document, it has not apparently taken on board the implications of any of the additional testing results.

145. Ordinarily matters concerning the structural stability of buildings is a matter that is dealt with under the Building Act and the associated regulations and construction codes. This is an area of very high level of technical detail and is beyond the realm of planning. However the Draft Development Plan makes geotechnical matters a matter relevant to the approval of the Draft Development Plan and the Planning Permits.

146. The rational is likely the inter-relationship between the manner in which the environmental aspects of the site are dealt with and the fact that the site has geotechnical challenges that interplay with the environmental matters. We saw that in the Referral 41 SAC report and also see that in the evidence of Mr Mival.

147. However, notwithstanding that interplay, apart from references in Table 15 to general statements referencing the requirements of the environmental audit, there is no clear text within the Draft Development Plan that highlights for the responsible authority and a developer that both the timing of piling for instance, where it is required, and the way in which it is conducted by specialised environmental techniques are related.

148. Neither does the "Geotechnical Strategy" (that is the component in the Draft Development Plan) provide any advice on implications in the event that the site is subdivided and split off. For instance, in each Domain differential settlement is a key consideration. Presumably, it is essential for each transition area as referenced in the proposed solutions column of the tables at PDF 65 onwards, are located entirely within a single allotment. If this were not the case, then significant co-ordination issues may arise in relation to the construction of buildings at the areas of transition. Zones 1 and 2A seem ripe for issues in this regard.

Development Plan Physical Layout.

149. In the expert report of Mr Mival, in responding to questions posed by Mr Green for Council in Referral 41, Mr Mival states:

> 189. It is therefore necessary to include sufficient space to allow equipment to pass along an easement to undertake these works if they are required. An absolute minimum of 3 metres should be considered and for the individual property land ownership not to extend over the easement, or to allow the construction of fences that would limit access for equipment. There is no particular advantage in providing a 20-metre buffer for this purpose.

150. It is to be noted that the venting trench is to be offset 5 metres from the boundary. We are not sure how this will be achieved in the context of the layout of the Draft Development Plan.

151. This will require a reconsideration of that part of the Draft Development Plan within the Davies Quarter (Stage 1) and along the northern and eastern boundary too. We assume that these will be dwellings with relatively small open space areas. However these areas must be able to accommodate access by construction vehicles and the offset of the ventilation system.

152. Mr Mival states at para 191 as follows:

> 190. ***Questions LCM 3 to 10:*** *Prohibition on digging and excavation, communication and enforcement*
>
> 191. This can be included in body corporation rules and made clear to all residents firstly by the developers then by the Section 173 agreement on the titles. This would limit the excavation of areas for plants or trees and any protection measures should also be clearly indicated on protective layers above the membranes. This is a matter for the final designs compared to the location of the proposed structures.

153. As we have submitted earlier, Owner Corporation corporate rules cannot regulate private allotments.

154. In any event, none of this is captured within the Draft Development Plan and we also note that under DPO6, it is proposed to not have the section 173 agreement registered against all residential and commercial lots – contrary to what Mr Mival thinks is to be the case – notwithstanding that he has given the thumbs up as it were to the drafting of the DPO6.

155. Council retains significant concerns with the Environmental and Geotechnical risks.

STORMWATER MANAGEMENT

156. There are a number of issues which arise in relation to stormwater management. They comprise the drafting of the DPO schedule and the drafting of the Draft Development Plan. Both go to the management of the environmental and human risks potentially caused by stormwater if not properly managed.

157. Clause 4.0 of DPO6 contains various requirements for a development plan. One of those relates to stormwater management.

> - A Stormwater Management Strategy that:
>
> - Details the catchment area, drainage outfall locations, existing drainage infrastructure, new drainage works, and details of flow levels and flood levels for the 100-Year Average Recurrence Interval storm event as a result of development.
>
> - Incorporates Water Sensitive Urban Design principles.

158. One of the background reports which was consulted comprises the Part 4.10 of the Draft Development Plan is the Stormwater Management Plan prepared by Afflux Consulting October 2023. (**SWMS**) The SWMS is referenced in the table to clause 4.10 particularly volume 2 section H. We are unsure what Volume 2 section H refers to. The SWMS as consulted is a single volume document and does not label itself as either Volume 1 or Volume 2. The Development Plan labels itself as volume 1 but no volume 2 was consulted as far as we are aware.

159. The SWMS does two things; it presents a stormwater strategy for the site and also presents at Table 2 an options analysis for Integrated water management. While it does so and noting that a Stormwater Management Strategy must yet be approved for the site, the chapter dealing with stormwater management in the Draft Development Plan is extremely light on. It provides:

Identify of opportunities for integrated water management (IWM)	An options analysis of possible IWM opportunities for the site has been conducted. Based on this analysis a range of options for further exploration have been nominated for further consideration of the need and feasibility to integrate into the design of the development. Options include passive irrigation of Street trees and/or stormwater harvesting. Water harvesting storage (of circa 900m3) has been allowed for the purpose of supply the neigbouring Golf Course.

160. The identification of opportunities will likely result in no serios measures being undertaken to provide for integrated water management on such a large site. AN options analysis is one thing; it is what the SWMS undertook at Table 2[5]. The Development Plan should identify actually what is required to be done not simply point to the analysis of options in the SWMS. More to the point however, it is submitted that DPO6 should be revised to specifically make reference to the need to explore what integrated water management measures may be undertaken as part of the development of the site.

161. It is also submitted that DPO6 should make reference to the need to achieve volume reduction in accordance with EPA publication 2017; which would be consistent with the General Environmental Duty. [6]

162. Accordingly, Council submits that the drafting of DPO6 is lacking in this regard

163. In relation to stormwater more generally, the stormwater concept is at PDF 39 of the SWMS. The Draft Development Plan does not contain any reference to the stormwater concept.

164. It is clear from the diagram (Figure 40 of the SWMS at PDF39) that stormwater is to be directed to the stormwater basin in the southern portion of the site. It will then outflow into a drain via Talbot Road and then towards the south.

[5] At page PDF 27 of the SWMS.
[6] The SWMS refers to volume reduction at PDF 28 and 29 but the DPO6 is silent on the issue.

165. In its submission Council noted the following:

> **3.3.4 Stormwater**
>
> We object to the design of stormwater, necessitating higher ground levels at the property boundaries.
>
> The stormwater has been designed in such a way that all water drains to the wetland. As a result, the further away from the wetland, the higher the ground levels need to be. Cross sections in the DP that do stipulate height differences show the new ground levels of subject site being between 1.5 metres lower, and 1.8 metres higher than the ground level at the property boundary. This necessitates a combination of retaining walls, and window screening to prevent overlooking of adjoining land.
>
> In some of these instances, the rear yards are lower than the level required to provide stormwater drainage from the house. It is unclear whether there will be stormwater drainage to these lower rear yards, or if the water is intended just to permeate the surface, potentially causing run-off to adjoining properties. If there is intended to be stormwater drainage provided to the rear yards, it is unclear why all stormwater cannot utilise this infrastructure at lower ground level.

166. From the SWMS at Part 9.3 it is noted that the normal water level for the wetland is set at 56.5 AHD and the top water level is 58.5 AHD. Minimum floor levels of dwellings need to be 59.9 which is 300mm above the spillway which is 59.6 AHD. Although not set out in the SMWS, the invert (bottom part) of the drain out falling (via a 1.5m diameter pipe[7]) into the wetland needs to be able to feed into a wetland with a top water level of 58.5 AHD. Drains need to be underground and there must be a fall to the drain from the furthest part of the site This all determines the minimum ground levels at the furthest location from the basin.

167. The survey plan at pdf 9 of the SWMS indicates that current site levels at the boundary are approximately 56 in the south eastern part of the site, then 60 in the mid-section and then 62.24 in the northern section. It is unclear how the very significant level differences that need to be achieved on site are going to be dealt with considering the ground levels of the land immediately to the east. The SWMS appears to be relatively silent on the issue of site levels. While some plans indicate a finished ground level of 63 AHD, it is not clear how the drainage pipes up to 1.5 metres diameter will be managed within this range of 58.5 AHD and 63 AHD noting that pipes must be buried some distance. There is therefore, a prospect of materially higher surface levels than what is shown on the plans.

168. Accordingly, Council submits that there is insufficient material to provide the Committee with any assurance as to the interface between the land to the east and the site given the implications of the drainage system.

169. It is submitted that the Draft Development Plan is not sufficiently resolved in relation to stormwater drainage.

[7] PDF 19 of SWMS

TRANSPORT

170. Traffic and access is one of the referred matters.

171. The DPO6 contains the following requirement:

> - Integrated Transport Report that:
>
> - Identifies the existing road network hierarchy, intersections, public transport, cycling and pedestrian infrastructure and traffic volumes surrounding the site.
>
> - Identifies the indicative road network within the site and the proposed connections within and external to the site.
>
> - Assesses vehicle movements, access to public transport and the provision of walking and cycling infrastructure within the site.
>
> - Identifies proposed intersection upgrades, to the satisfaction of Department of Transport and Planning, for the signalised intersection of the main entry to the site from Huntingdale Road and the intersection of the internal road and Centre Road.
>
> - Identifies any further work that may be required to the surrounding road network.

172. The Traffix expert report of One Mile Grid explains as follows:

> In support of the rezoning and development of the site, an Integrated Transport Plan was prepared by Quantum Traffic (Project Traffic Engineer) dated September 2021. This was later amended for a Development Facilitation Program (DFP) submission in November 2023. As part of my assessment, I have undertaken a critical review of the Quantum traffic report and identified some deficiencies with the analysis, in relation to the base traffic data utilised, traffic generation rates adopted and some aspects of the assessment methodology. Where I have formed a different view to Quantum, I have expressed this within my report.

173. The report then explains and outlines the concerns raised by DTP (none of which were ever provided to Council as the Relevant Road Authority for local roads under the *Road Management Act 2004*.) DTP is the Relevant Road Manager for Centre Road, Clarinda Road and Huntingdale Road. Council is the Relevant Road Manager for Talbot Road and other local roads.

174. One of the documents is an email dated June 2025 from the DTP which outlines various concerns with the proposal. See page 9 of Expert Traffic Report. It is not yet clear to Council what the position is in relation to the remaining matters of concern to DTP but primarily these are matters between the Proponent and DTP.

175. The Draft Development Plan contains a chapter dealing with Access and Movement at Part 4.8 which commences on PDF 48. The Draft Development Plan is dated January 2024 and is the same document that was considered by the Referral 41 Committee.

176. Notably, in so far as the Proponent's traffic expert considers that sustainable transport initiatives are important, neither the DPO6 nor the Draft Development Plan make any

reference to any initiatives. There is no Parking Overlay to reduce rates (which is the proper way of changing rates for development) there is no Green Travel Plan requirement, there is no consideration to linkages to the east to future proof the development to the initiatives outlined in the Draft SRL Structure Plan. Instead there is a reliance on buses, on site commercial facilities (which may or may not eventuate) and green streets within the development. This will not bring about mode shift to supplement the mode shift that the SRL station will bring about.

177. The modifications indicated to the intersection of Huntingdale Road and Centre Road should be captured in the same way as other infrastructure is captured in the Draft Development Plan and there should be a requirement for an agreement to ensure the provision of the works at a point in time. Reliance alone on the development plan for these off site works will lead to the failure of the provision of the works because of how section 62(5) of the Act operates where a permit can only trigger such a requirement if the works are necessary as a result of the grant of the permit. The reality is that the works are required as a result of the grant of the entire area and not just the permit. Absent a section 173 agreement requirement, there will be no mitigation works. (This applies also to pedestrian signals on Centre Road if DTP require them to be provided).

178. In relation to pedestrian signals, we note that while the traffic engineer indicated that there needed to be 100 children crossing Centre Road to justify pedestrian signals, Mr Panozzo's work (so far) indicates in the order of 172 school aged children between 5 and 11 years old that will attend a govt primary school out of a total of 232 total primary enrolment. (pdf 71 Panozzo).

Govt Primary Enrolment	70%	% of 5-11 year old population	Population and Housing, based on data for City of Monash	172	551
Catholic Primary Enrolment	15%	% of 5-11 year old population	As above	36	115
Non Govt Primary Enrolment	9%	% of 5-11 year old population	As above	23	73
Total Primary Enrolment	94%	% of 5-11 year old population	As above	232	740
4.2 Secondary Schools					
Govt Secondary Enrolment	53%	% of 12-17 year old population	Australian Bureau of Statistics, 2021 Census of Population and Housing, based on data for City of Monash	93	298
Catholic Secondary Enrolment	22%	% of 12-17 year old population	As above	39	125
Non Gov Secondary Enrolment	21%	% of 12-17 year old population	As above	37	117
Total Secondary Enrolment	96%	% of 12-17 year old population	As above	169	541

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PUBLIC OPEN SPACE

179. Open space provision is one of the referred matters.

180. Under the Planning Scheme, clause 53.01 provides for a mandatory public open space contribution of 7.61% but on the strategic development site comprising the PMP site, the contribution is 10%.

Type or location of subdivision	Amount of contribution for public open space
Land shown as CDZ2 on the planning scheme maps (PMP Printing Precinct Comprehensive Development Plan, June 2021)	10%
All other land	7.61%

181. The draft amendment proposes to change the schedule to clause 53.01 as follows:

Type or location of subdivision	Amount of contribution for public open space
Land shown as CDZ2 on the planning scheme maps (PMP Printing Precinct Comprehensive Development Plan, June 2021)	10%
1221-1249 Centre Road, Oakleigh South (Talbot Village Development Plan Area)	0%
All other land	7.61%

182. As can be seen from the above schedule, the Draft Amendment would give the site a privilege that no other site in Monash attracts. Indeed, if one did a survey of a number of planning schemes, the Draft Amendment would be unique, special and unprecedented even compared to those other planning schemes.

183. While the proponent obviously supports such a modification, indeed, as far as we understand, they got to write their own planning provision, there is no material provided by the DFP which explains the basis of the DFP proposing such a change or allowing it to get this far. As far as Council is able to ascertain the extent of the argument for reducing the contribution to zero arises because of the 15.3% area of land that is being provided for what is loosely referred to as “open space” in the Draft Development Plan.

184. This is comprised as follows:

Site	Area (ha) 18.79	% Site
Open Space - Total	**2.87**	**15.3%**
Open Space - Wetland	**0.90**	**4.8%**
Open Space - Local	**1.27**	**6.8%**
Open Space - Local Park	1.18	6.30%
Open Space - Civic Square	0.09	0.46%
Open Space - Linking	**0.70**	**3.7%**
Open Space: Widened Verge/ Reserve	0.24	1.26%
Green Streets	0.47	2.49%
Net Developable Area	**15.92**	**84.7%**

Table 9 | Land Budget Table

185. Of the 15.3% of land that is described as open space 6.8% (of the site) is communal open space (which includes the civic plaza) 4.8% (of the site) is the drainage basin/wetland and 3.7% is what is described as "linking"; that is so called green streets (which are streets with street trees) and widened verges and reserves.

186. The small communal open space areas being provided which is 6.30% of the site is a provision which the Committee should find is simply localised amenity to cater for a mixed use development of higher density.

187. It is notable that the Draft Amendment is not supported by any planning evidence. That is unusual. Neither is it supported by evidence from a landscape architect or a person who's profession it is to prepare open space plans and strategies.

188. Monash City Council has an open space strategy. It is called the Monash Open Space Strategy 2021. (**Strategy**) The Strategy is detailed and recently supported the implementation by Monash City Council of the current statutory rate set out in the schedule to clause 53.01 in the Planning Scheme. The same rate that the Proponent proposes to reduce to zero for its own site. This will prevent Council from being able to implement the provision of the open space network for the municipality set out in the Monash Open Space Strategy 2021.

189. At page 22 of the Strategy, noting that Council must find a fair, equal and reasonable way to provide for the open space needs of its large municipality, the Strategy identifies a proximity based standard. It states:

Proximity-based standards

A large open space or spaces (i.e. Jells Park) that are concentrated in a specific part of a precinct can skew the amount of open space that is available in the precinct overall, and the benefits to the local population. Therefore it is necessary to determine the areas where there are localised shortfalls, or gaps, of open space provision. To analyse such gaps there are other standards are used and recognised in the planning of open space. The VEAC report and PSP Guide provide guidance for the distribution of open space provision. Both these reports set out a recognised standard of local parks within 400m of 95% of all dwellings and active space within one kilometre of 95% all dwellings. This has been replicated in the Planning Scheme for subdivisions at *Clause 56.05-2: Public open space provision objectives.* The benchmark provides a reasonable consideration for how open space should be provided across a municipality and not just new subdivision development.

190. The Strategy then sets out areas where there is a gap for a lot within 400m of community open space. The Strategy notes:

> Map 2 sets out the areas where there is a gap for a lot within 400m of community open space. It uses the existing road network to determine how far each property parcel is from open space and considers the impact of crossing major roads. Importantly, this analysis excluded some open spaces based on access constraints, encumbrances and use constraints due to small size. The exclusions were:
>
> - All private land (e.g. golf courses owned by golf clubs)
> - All restricted public land (e.g. golf courses owned by council)
> - Visual amenity spaces, accessways and trails smaller than 0.1 hectare
> - Relaxation/contemplation spaces smaller than 500 square metres
> - Small to medium utility/buffer/environmentally constrained sites.
>
> Currently, 85 per cent of Monash residents have access to open space within 400 metres.
> Map 2, showing gaps of open space provision, is an additional tool that can be used to prioritise areas of need of open space. These gaps will be considered in more detail in regards to the discussion provided for each of the twelve precincts in Section 9.

191. Map 2 shows that in the vicinity of the subject land, there are two community open spaces. One is Talbot Park immediately adjoining the site to the south and the other is Davies Reserve to the north.

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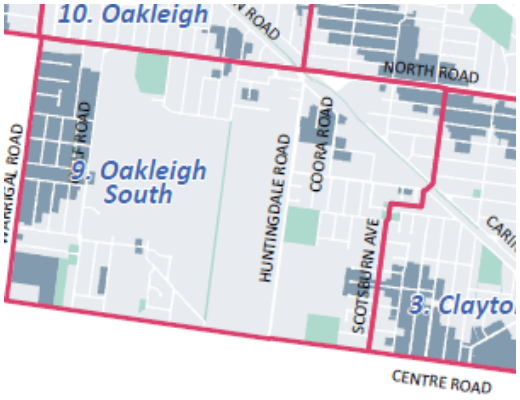

192. There are similar provisions in relation to proximity standards to active sports facilities with the objective being 95% of dwellings within 1 km of active sports facilities.

193. The site will be well served by the way that Council has stewarded the open space fund and provided public open space both passive and active in this Oakleigh South Precinct even recently providing new and improved children's play equipment at Talbot Reserve. The standard of this open space was possible by adopting a proper strategic management of the public open space fund over many years and decades. This provides great benefits to Talbot Village.

194. However, there are some significant gaps in the municipality. Some do not have access to passive open space and others do not have access to sports fields as per the set standards. So, the challenge for Council is how to provide those facilities. The answer was of course via the Monash Open Space Strategy 2023, which went through the Panel Process, received a favourable reccomended and found its way into the scheme with an appropriate contribution of 7.61% to enable Council to fund the open space acquisitions to address the gaps in the network.

195. The lack of a gap in the open space network serving the subject land is fortuitous for the subject land and can be seen in the aerial map below to which we have applied two ~350m radius circles. The circles show that only a very small part of the site is more than 350m of public open space. Furthermore, there are no main roads to cross to access these parks. The two parks are very accessible.

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196. As a further indicator that the site is well served, the SRLA Precinct Planning Process was accompanied by a series of technical background reports – some were line wide and some were precinct specific. The Open Space technical report February 2025 is a line wide report. The report was prepared by Urbis and Jacobs for the SRLA. The Clayton Structure Plan Area assessment is found within the first Volume at page PDF 98 (Chapter 7 – Clayton Structure Plan Area. The area of assessment can be found at PDF 100 as per the extract below.

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197. The report applies a number of principles to the assessment of public open space needs in the context of the proposed intensification of the SRL precincts with residential and employment populations. Noting that the report is primarily focussed on the structure plan area, it nevertheless identifies a number of criteria which are used to assess the amount acceptability of open space for the structure plan area. The prime consideration is access to open space being with 400m. The type of assessment that Mr Panozzo has undertaken is not identified or used in the SRLA's assessment nor is it referenced in the Council's strategy, and as set out later it is not in accordance with the policy in the Scheme.

198. The SRLA technical background report explains at PDF 20 as follows:

> **2.4.1 ESTABLISHMENT OF OPEN SPACE METRICS**
>
> Metrics and performance indicators were adopted to shape the provision of future open space in each SRL East Structure Plan Area. These were developed with reference to state and local government policies and strategies (see Section 4), relevant case studies of international cities and national and local urban renewal projects that anticipated high growth (see Section 5). The following metrics and performance indicators are considered a best practice approach for the context of Melbourne and SRL East Structure Plan Areas, where a shift from suburban to high density urban environments will occur.
>
> A layered approach is applied:
>
> - Primary metrics – access and quality of open space
> - Secondary metrics – provision of open space per capita
> - Performance indicators – diversity of open space (hierarchy and function).
>
> Further information on metrics and performance indicators is provided below.

199. The Technical Background Report then notes at PDF 20:

Access

The review of state, national and international case studies of comparable urban renewal contexts demonstrated that 'access' is a useful proximity-based metric to apply to public open space in higher density urban environments. In the case studies reviewed, walkable access to all types of public open space is typically measured at 400 metres which equates to a 5-minute walk for the average person. As it is assumed that higher density areas generally have less private open space, walkable access to public open space is particularly important (for both residents and workers). A local pocket park in a higher density area may be expected to serve a 200-metre walkable catchment, and a local neighbourhood park would be expected to serve a 400-metre walkable catchment. Community, district and regional parks would serve much larger catchments.

Accessibility metrics are often combined with a coverage percentage. For the SRL East project context, 400-metre walkable access for 95 per cent of all residents and workers is deemed an appropriate and comparable metric, with greater access in the higher density areas (200 metres walkable access) to be achieved where possible. This aligns with guidance from the Victorian Planning Authority (VPA) and within Victorian planning schemes which use the target of a 400-metre safe walking distance to at least 95 per cent of all dwellings for subdivision. Similar walkable targets are applied for local public open spaces access across local government policy. Measuring walkable distances to open space provides spatial interpretation of gaps in the public open space networks, identifying areas that can be prioritised for more equitable access.

200. At Talbot Village, the site has existing very good access to public open space; which is better than the 400m accessibility standard that both the Monash Open Space Strategy 2021 and the SRLA Open Space Technical Background Report apply to the assessment of open space provision. That is not to say that communal spaces should not be provided as part of the development. However, that is part and parcel of the responsibility of higher density development. The Alvina Street former school site is but one localised example where it has very good access to Davies Reserve but appropriately provided communal amenity space for the residents.

201. The Committee should be guided by the local policy in the Scheme which is found at clause 19.02-6L. The policy does the following (in a nutshell):

- It seeks to enhance and expand the open space network;
- It identifies the circumstances where a land contribution will be required in preference to a cash contribution;
- It identifies cash contributions as preferred in most circumstances;
- It seeks to avoid land contributions unless the land is located in a gap identified in the map contained in the planning scheme policy and sets out further criteria which must also be met in terms of the size of the parks or features of them.
- It identifies criteria for parks to be provided to Council; and
- Identifies the circumstances where parks may comprise encumbered land.

202. Mr Panozzo's assessment did not really engage with the policy. The reason he gave was because this site as a medium density site did not fit well within the policy framework. Council does not agree with Mr Panozzo. The site is very well served by public open space. It is better served than many other areas in that it is not only close to Talbot Park but it is also very close to Davies Sports Reserve. Providing additional open space here with public funds would be essentially over providing public open space here at the cost of providing it in

areas where there are gaps in the network. This is what the policy seeks to avoid based on the analysis in the Monash Open Space Strategy 2023 which was accepted as a sound policy and underscores the policy at clause 19.02-6L. It is not to the point that the Strategy is only a background document. Its substance is now within the policy in the scheme.

203. It is noted that Mr Panozzo's assessment provides different way of assessing open space – by looking at the percentage provision as per the Draft Development Plan land budget (which is NDA) in comparison to the percentage set out in the Schemes Clause 53.01 schedule.

204. However, this analysis is not consistent with the planning policy nor is it consistent with open space planning practice in urban areas as distinct from in growth areas. The result of adopting Mr Panozzo's analysis is that a development which is providing more open space than is required in an area that is not identified as having gaps in the network (that is all proposed dwellings are already well within 400m of public open space) is able to escape from contribution to the development and upgrade of the public open space network by making the percentage contribution set out in the schedule to clause 53.01.

205. Where there is a winner, there is a loser. The losers are those that are in the gap areas that have to wait longer for funding to become available. With the shift to higher density development, if this approach that Mr Panozzo and the Proponent are advocating for prevails, it potentially undermines the sound strategy evident in the open space planning of the municipality.

206. The amount set out in the schedule to clause 53.01 is **not** the amount of open space land that each developer should provide; it is a contribution that each developer should make to the public open space so that Council is able to provide the open space network. As noted in the policy, it explains when land is appropriate and when funding is preferred based on a strategic basis.

207. By reducing the schedule entry for this site to zero, three things are occurring which are the opposite of what was strategically planned:

- First, the site is being provided with significantly more open space than is required in order to ensure that at least 95% of dwellings are within 400 m of public open space; and
- The public purse is being made to pay for that higher standard of public open space by reducing the contribution to zero through crediting the communal open space being provided; and

- Other areas that are within the gap areas are being denied funding while Talbot Village takes advantage of open space expenditures and improvements at Talbot Reserve and Davies Reserve.

208. The result is unfair on the community.

209. By taking away funding from a council by providing an open space credit to a development for "drainage areas", for "civic plazas", for so called "green streets" and for providing small communal open space areas within a high density environment, it takes away the ability of a municipality to provide a sound open space network comprising passive and active open spaces for the whole of the municipality.

210. This proposition and problem can be put another way. As the municipality intensifies as proposed by Plan for Victoria, it can be assumed that more and more higher density developments will seek to provide more communal areas; and obviously will have to provide more drainage area for higher impervious surfaces. If it is supposed that they can then escape making the public open space contribution by claiming credits for these additional areas of communal space and drainage areas, then there is a very significant funding issue for Monash and indeed Melbourne as it seeks to both grow and provide the open space network that is required.

211. A third reference point is the Panel report to Amendment C169 which implemented the Monash Open Space Strategy 2021. The executive summary to the Panel Report, explains at pdf 7:

> The MOSS21 demonstrates that there will be increasing residential development in the municipality which will place additional demand on open space. In addition, given the more intensive nature of that development the demand for and usage of open space by new residents may be greater than that of existing residents.
>
> Consequently, it is a reasonable proposition that projected new residential development should contribute to that open space and a review of the open space levy rate is appropriate. For this reason and those set out in this and the following chapter, the Panel concludes that the MOSS21 provides the strategic justification for a review and potentially an increase in the open space contributions levy.

> The Panel found that the calculation of the open space levy rate over states the contribution required by new development and the Panel does not agree that a 10 per cent rate is justified.
>
> A rate of 7.61 per cent is supported by the Panel and given this rate is below the proposed 10 per cent the Panel agrees that it can be applied to residential and non-residential subdivisions. The Panel acknowledges that this rate is lower than exhibited, however, it provides Council with a starting point to commence its acquisition program.
>
> Policy in Clause 22.15 should be amended to recognise an open space contribution where a developer can demonstrate to Council's satisfaction that the land proposed would make an important contribution to the overall public open space network as identified in the MOSS21, including land for trails that would meet Council's Core Service Levels.

212. The Panel also noted (at pdf 51):

> The Panel notes the 400 metre walkable catchment to open space is a standard that is becoming more universally accepted as reasonable. Ongoing work by councils and open space consultants to better define a hierarchy of open space and service levels is also contributing to a more universal approach.

213. Importantly, the Panel also noted the following (at pdf 53):

> The Panel notes that the examples provided by Huntingdale of small children's play areas, BBQs and gym equipment provide a very localised benefit to residents of a dense strategic redevelopment site. This type of open space is materially different to public open space planned for and delivered at a municipal level and for which development is being asked to make a contribution.

214. The C169 Panel hit the nail on the head.

215. The communal areas which are proposed in this development are unnecessary to the open space network albeit they serve a valuable purpose for a dense strategic site as proposed. But the spaces are very different areas with very localised benefits. While the communal areas would make an important contribution to the proposed development, it does not provide much value so far as the municipal open space network as identified in the Monash Open Space Strategy 2021 is concerned. The areas are not accessible from the broader area to the east and the site is bounded by arterial roads to the west and the south. To the, residents from further afield would prefer Davies Reserve to the small communal areas in Talbot Village.

216. Acknowledging that higher density developments may need additional open space, the current open space strategy has not factored funding in for these areas. If these areas are to be factored in with further work (as envisaged by the Strategy), it would likely require a materially higher public open space contribution rate to help provide the credits for these areas in addition to addressing the gaps identified in the Strategy.

217. Finally, we note that in Referral 31 to the Priority Projects Standing Advisory Committee report for the Box Hill Central development by Scentre Group, the Proponent there also sought to turn off the public open space (and development) contribution requirements because it said that it was providing open space areas (a civic plaza) and infrastructure (land for a connecting cyclist bridge link over a railway line) that were to be available to and benefit the community at large. The Committee declined to switch off the clause 53.01 open space requirement fully. In that case the proponent called an expert (Mr Shipp) and argued:

> Mr Shipp said *"the proposed open space contribution is substantial and compares favourably with the requirements of the Whitehorse Planning Scheme and other contribution rates applicable in activity centres and high growth areas of established area municipalities of Melbourne"* [68]. He said the provision of open space proposed by the Amendment was sufficient and appropriate and no further public open space contributions would be appropriate in this context.
>
> The Proponent submitted:
>
> - the offer of public spaces, land for the bicycle path connection, works and ongoing maintenance was generous and would result in significant community benefit
> - this offer cannot be said to be development works required primarily to provide necessary amenity and infrastructure to enable the buildings to function
> - there is no basis in the planning scheme *"for such an excessive demand"*, that is, a ten per cent contribution (as sought by Council) on top of what is already being delivered to the community
> - it should not contribute anything further for public open space beyond that proposed in the Master Plan.

218. The Committee did not accept the recommendation. It reccomended instead:

> ### 8.4 Findings and recommendations
>
> The Committee finds:
>
> - The subject land should not be exempt from the provision of a public open space contribution as required under Clause 53.01 of the Planning Scheme.
> - The land designated as open space in the Master Plan should be provided in addition to the public open space contribution required by Clause 53.01 of the Planning Scheme.
> - The land to be transferred to Council for the proposed rail link should be considered as a form of credit towards the fulfillment of the public open space contribution liability.
> - A contribution rate of six per cent for public open space is appropriate for the subject land as it is a significant strategic site and six per cent is generally consistent with the rates applicable in other activity centres or strategic redevelopment sites.

219. Finally, the Committee will be aware that Monash has a housing target in Plan for Melbourne that requires a significant increase in the number of dwellings in the municipality. The target figure for Monash is 69,500 dwellings. That increase in the number of dwellings is expected to result in approximately 146,000 additional residents mostly by higher density development in any around activity centres. Those additional residents will create a substantial new demand particularly for active open space facilities.

220. Council is unable to meet and cater for that demand unless there is an equitable contributions scheme in place which is not turned off by developers who provide small communal areas to service those higher density developments. In processes such as these where proponents seem to be permitted to essentially able to write their own planning

approval, it is especially important for the Committee process to act as a door keeper of standards necessary to make the planning system function fairly.

221. The Committee should recommend to the Minister that it the Public Open Space Contribution should not be reduced to zero.

SOCIAL INFRASTRUCTURE

222. Clause 4.0 of the DPO6 requires a development plan to include the following requirement namely:

- Community Infrastructure Report

  - Provides an analysis of existing community and recreation infrastructure in the surrounding area.

  - Provides an assessment of new community and recreation infrastructure required to support the new community.

223. Evidently this report has not been prepared. Further, the Table of Contents to the Draft Development Plan shows no chapter dealing with social infrastructure (other than passing references which do not comprise a community infrastructure report)

224. In its current form the Draft Development Plan does not comply with the requirements of the schedule so the document cannot be approved.

225. The proposal by Mr Panozzo to have a stage 2 report prepared down the track is ineffective for two reasons.

226. First, it cannot comprise compliance with the DPO6. The report must be part of the development plan.

227. Second, and equally fundamental, the approach would not comply with section 62(5) of the Act.

228. If the report is prepared as part of the application for a stage 1 permit (which is for only a part of the site and potentially a part of a stage, any condition whether that be an outright provision condition or a condition requiring a section 173 agreement can necessarily be only be in respect of the land in the permit that is currently before that decision maker. That is basic statutory planning 101. The requirement cannot bind land outside of the permit application noting that the whole of the Talbot Village site may or may not be in the one ownership at that stage.

229. Consequently, it will be impossible to establish that the type of works that Mr Panozzo is dealing with (open space contribution for the whole of the site) will be *necessary as a result of the grant of* ***the*** *permit*. Rather, the facilities are likely to be *desirable* rather than *necessary* and they will be only referenced to the land in the permit not the whole of the site.

230. The current drafting of DPO6 requires the Community Infrastructure Report to be prepared as part of the development plan for good reason. The Proponent has had years to do this but has still not done this.

231. Quite apart from the ineffective nature of the requirement, kicking the can down the road also raises issues associated with SRLA's planning program for the SRLA planning district discussed next.

SRLA DECLARED AREA

232. Direction 22 sought submissions on the subject land's designation within the Suburban Rail Loop Authority Planning Areas Declaration.

233. The figure below is taken from Mr Panozzo's report showing the structure plan area under the current SRLA precinct planning process and the declared area and the site being at the edge but most inside the declared area.

Figure 4 - Talbot Village in Relation to SRL Clayton Structure Plan Area

234. Council submits that the SRLA precinct planning process has so far only related to the SRLA structure plan areas which is the shaded area in the diagram above. These areas have been in planning for the last 2 to 2.5 years and only recently have been the subject of a public hearing process which, for Clayton was completed only a matter of 2 weeks prior.

235. The areas outside of the structure planning area, being the area in white, is not yet the subject of any planning or assessment. Not only is it evident from reading the techncila background report for SRLA's various precincts but the SRLA put out a Position Paper on Community Infrastructure which it tendered in the course of the Clayton Structure Plan (and each of the other 5 SRLA precincts) making it clear that the planning which has been undertaken is for the area inside of the structure plan area. So the Committee should not expect further planning (as anticipated by Mr Panozzo) any time soon.

236. The other aspect to note of course is that the manner in which the site is being developed does not provide for logical connectivity to the east with all access and egress to the site being from the north, the west and the south in a relatively convoluted manner so far as pedestrians and cyclists. While the eastern part of the site is only a 1.5 km walk to the Clayton Train Station, the proposed access and lack of any eastern connectivity means that the site is more realistically approximately 2.2km by car or bike from the south and 1.9km to the north and longer if access is via the western entry.

237. Accordingly, the notion as put forward by Mr Panozzo, that there should be a Stage 2 Community Infrastructure Assessment done when the community assessment for the declared area is undertaken is impractical and the timing is unlikely to align with the stage 1 permit for Talbot Village. There is nothing that is planned, scheduled or publicised about any assessment by the SRLA in relation to the outer part of its declared area.

238. In relation to the issue of linkages to the east, Council submits that the east west road should be allowed to have an interface with the eastern boundary. There is no acquiring authority for land to the east. The SRLA is a very long term program that anticipates that over an extended period of time the nature of development in the declared area will change. When it changes (and not before then) actions to provide for linkage to the site can be addressed by the SRLA or some other relevant authority (noting that SRLA is the planning authority for that area).

Closing comments

239. Council submits that the site is has many complicating factors that renders it in a practical sense, not an engineering sense, unwise to be developed for the form of residential development as proposed in the Draft Development Plan. The proposal as currently devised is logistically complex and there are too many moving parts and opportunities for things to go wrong.

240. This all has the potential to saddle future owners and occupiers with significant costs far beyond what is normal or reasonable for any homeowner. The site is not being developed for sophisticated investors but rather for apartments and townhouses.

241. The expectations placed on the ability of one or more Owner Corporations (who's members are the mums and dads) is impractical at best, not legally possible at worst and potentially cruel in that it is likely to require financial resources that will impose very significant burdens on those homeowners.

242. A worst case scenario is that the costs of the future monitoring, renewal, remediation, repair and maintenance becomes so prohibitive that one or more of the Owner Corporation(s) entities fail leaving the burden on others to shoulder.

243. Now that the Committee has been furnished with the material in this Referral 51, and it understands the planning control in more detail, Council submits that the Committee should recommend that the planning controls as currently framed are not fit for purpose and that the development of the land for residential as proposed in the Draft Development Plan is likely to be complex. An examination of the detail of the proposal shows that there are just too many opportunities for things to go wrong with this site. Each of the experts have qualified their evidence such that the conditions of the environmental audit must be adhered to diligently.

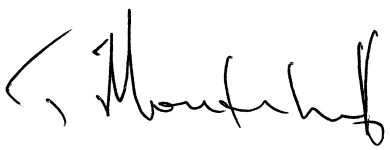
With all the best of intentions in the world, for a site like this which may be developed by a number of developers and then owned by over a thousand different entities coupled with a web of owner corporations, one can only hope that things do not go wrong. That is not enough. There should be a high degree of certainty that things will go right.

244. The Committee should advise the Minister that the Draft Amendment has the potential to put some resident homeowners to economic and financial hardship which is not consistent with the policy to provide affordable housing. This issue of the legal structure and how it would operate is a concern that also occupied the mind of the C129 Panel.

245. If the site is to be developed, some other scheme of development should be considered which can better coordinate, accommodate and absorb the likely costs associated with the management maintenance and repair of the various environmental and geotechnical measures of the land if necessary. The structure of the land use should ensure that the site is not divided into 1000 - 1100 individual lots with a complex spider web of Owners Corporations to manage individual elements of what should be treated as far as it is reasonably practical to do so, as a single site.

246. It is also the case that the Draft Development Plan is not ready for approval given it does not comply with the DPO6 at last in relation to a Community Infrastructure Report, but also other reports.

247. This completes the submissions of Council.



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Maddocks
Lawyers for Monash City Council

Dated 27 November 2025

(5) In deciding to grant a permit, the responsible authority may—

S. 62(5)(a) substituted by Nos 35/2015 s. 14(1), 7/2018 s. 11(1).

(a) include a condition to implement an approved development contributions plan or an approved infrastructure contributions plan; or

(b) include a condition requiring specified works, services or facilities to be provided or paid for in accordance with an agreement under section 173; or

(c) include a condition that specified works, services or facilities that the responsible authority considers necessary to be provided on or to the land or other land as a result of the grant of the permit be—

(i) provided by the applicant; or

(ii) paid for wholly by the applicant; or

(iii) provided or paid for partly by the applicant where the remaining cost

is to be met by any Minister, public authority or municipal council providing the works, services or facilities.

S. 62(6) inserted by No. 50/1995 s. 4(2), substituted by No. 101/2004 s. 10.

(6) The responsible authority must not include in a permit a condition requiring a person to pay an amount for or provide works, services or facilities except—

S. 62(6)(a) amended by Nos 35/2015 s. 14(2), 7/2018 s. 11(2).

(a) in accordance with subsection (5), section 46N(1) or 46GV(7); or

(b) a condition that a planning scheme requires to be included as referred to in subsection (1)(a); or

S. 62(6)(c) amended by No. 3/2013 s. 22(3).

(c) a condition that a determining referral authority requires to be included as referred to in subsection (1)(a).