



**Merri-bek**  
City Council

# DCP Administration Policy

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**Responsible Department:** Transformation Chief

**Responsible Officer** Financial Officer

This updated policy has been authorised

A handwritten signature in black ink, appearing to read 'Cathy Henderson'.

**Cathy Henderson**  
**Chief Executive Officer**

12.02.2023

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# 1 INTRODUCTION

This Policy has been prepared by the Merri-bek City Council Development Contributions Working Group in order to set out the administrative processes which should be followed, and matters considered in implementing the Merri-bek Development Contributions Plan (January 2015 Merri-bek DCP).

Further revisions may be made to the policy during the operating timeframe of the Merri-bek DCP under delegation of Directors of Place and Environment and/or Business Transformation

The policy sets out the roles and responsibility of various stakeholders, brings together information from various sources and provides a comprehensive list of reference documents which should be read in conjunction with the Merri-bek DCP.

## 1.1 Why does Merri-bek City Council have a DCP Administration Policy?

The Development Contributions Plan Administration Policy sets out Council's interpretation of the Merri-bek DCP. It details Council policy regarding ongoing administration and sets out the roles and responsibility of various stakeholders. The Policy brings together information from various sources and provides a comprehensive list of reference documents which should be read in conjunction with the Merri-bek DCP.

# 2 CONTEXT

## 2.1 Why does Merri-bek City Council have a Development Contributions Plan (DCP)?

*To assist in the funding and provision of infrastructure in a timely fashion to meet the needs generated by new development.*

The City of Merri-bek is an inner to middle ring municipality in the Melbourne metropolitan area. The municipality is largely established but is undergoing a process of development intensification via infill in residential areas and redevelopment of activity centres and residual industrial sites.

Because of this process of densification, the population of the municipality was expected to increase significantly over time. This growing and changing population and employment base will demand and make use of many infrastructure items over time. This will include road, drainage and community facility projects. The cost of providing the infrastructure will be significant and result in increased financial pressures on Council to deliver infrastructure in a coordinated manner.

A formal DCP implemented into the Merri-bek Planning Scheme is considered to be a key statutory instrument to assist in funding and delivering required infrastructure throughout the municipality. Merri-bek City Council has resolved that new development in the Local Government Area will meet 100% of its share of the capital cost of scheduled infrastructure. The infrastructure will be funded in part through the Merri-bek DCP

The Merri-bek DCP has been prepared to:

- List infrastructure items Merri-bek City Council expects to provide over time to service the DCP Area, which is the whole of the municipality;
- Calculate development contribution charges for all development types, based on anticipated share of usage; and
- Explain and justify all information inputs and the method of calculating charges.

The Merri-bek DCP is an incorporated document and forms part of the Merri-bek Planning Scheme.

As development in the City of Merri-bek progresses, each developer will be required to build on-site infrastructure to service the development site to specifications approved by Merri-bek City Council. For these developments to fit properly as an extension of the urban community, certain off-site or shared works will also need to be constructed. These infrastructure projects include a series of road, drainage and community facility projects that will be shared by a number of developments.

The purpose of the Merri-bek is to ensure that the cost of providing new infrastructure is shared between developers and the wider community on a fair and reasonable basis. Fairness requires that costs be apportioned according to share of usage of the required infrastructure.

The cost apportionment methodology adopted in the Merri-bek DCP relies on the nexus principle. A use or development is deemed to have a nexus with an infrastructure item if the occupants of, or visitors to, the site in question are likely to make use of the infrastructure in question. Costs in the Merri-bek DCP are apportioned according to projected share of infrastructure usage.

The Merri-bek DCP calculates what each development based on a "demand unit" should pay towards provision of an infrastructure item. This is determined by taking the total cost of the infrastructure item and dividing it by the total demand units within its usage catchment. This provides a rate per demand unit. Where necessary, an allowance **for** external usage of the infrastructure (from outside the main catchment area) is factored into the calculation to ensure users are charged fairly based on share of usage.

The Merri-bek DCP in practice is used to charge new development for its share of infrastructure cost. On this basis, existing development is not charged through this funding tool, but is considered in the calculation of charges. The proportion of infrastructure cost attributable to past or existing development is funded by means other than development contributions.

The Merri-bek DCP will provide certainty for Council, developers and the broader community on how new developments will be levied to ensure that the necessary infrastructure is delivered.

## 2.2 The Merri-bek DCP

Broadly speaking the calculation is based on the nexus principle, where new development is charged for the provision of new infrastructure it will ultimately use and benefit from. Costs are apportioned to new development according to its projected future usage of that infrastructure.

The general cost apportionment method is to:

- Define and schedule the infrastructure items required to service the area (excluding development specific on-site work);
- Identify the main catchment area for each infrastructure item;
- Project the growth in demand units (forecast development) in each catchment area over the life of the funding plan;
- Adjust the cost of each infrastructure item downwards in line with the estimated share of usage coming from outside each project's main catchment area and/or outside the time frame of the DCP;
- Divide the infrastructure cost by the number of demand units to arrive at a charge per demand unit; and
- Aggregate all charges that apply to a particular charging area to arrive at a total charge.

There are two categories of infrastructure items that can be funded through a DCP:

- **Development infrastructure:** roads, bicycle and foot paths, and traffic management and control devices, drainage, and some community facilities including maternal and child health centres, childcare centres, kindergartens. The development infrastructure contribution is collected through the planning permit process.

- **Community infrastructure:** projects involving the construction of all other buildings or facilities used for community or social purposes. Levies for community infrastructure projects are collected through the building permit process.

### Criteria for inclusion of projects in DCP

The Ministerial Direction *Development Contributions Plans* (May 2003) and the State Government *Development Contributions Guidelines* (March 2007) set out strict criteria regarding the type of projects that can be included in a DCP.

The following criteria were used by Merri-bek City Council to determine whether a project was included in the DCP or not:

- The project represents an upgrade of or new item of infrastructure, general maintenance projects cannot be included.
- Open space projects are not included, as they will be funded through the existing Public Open Space Contribution (POSC). Some streetscape work has been included (Coburg Streetscape Master Plan), as streetscape upgrades cannot be funded from the POSC.
- Projects with a value of less than \$10,000 are not included (they are mostly maintenance).
- The project has to be delivered within the time period of the Merri-bek DCP.

The list of projects included in the DCP is based on the Merri-bek City Council 10-year Capital Works Program, as this demonstrates Council's commitment to delivering the projects.

### 2.3 Amendment C133 to the Merri-bek Planning Scheme

The Merri-bek DCP was implemented into the Merri-bek Planning Scheme via Amendment C133. The Amendment made the following changes to the scheme:

- Inserted Clause 45.06 Development Contributions Plan Overlay into the Merri-bek Planning Scheme.
- Inserted a new Schedule 1 to the Clause 45.06 Development Contributions Plan Overlay into the Merri-bek Planning Scheme.
- Amended the Schedule to Clause 61.03 to include new Planning Scheme Maps: 1DCPO, 2DCPO, 3DCPO, 4DCPO, 5DCPO, 6DCPO, 7DCPO, 8DCPO, 9DCPO, 10DCPO, 11DCPO, 12DCPO, 13DCPO, 14DCPO, 15DCPO into the Merri-bek Planning Scheme.
- Amended the Schedule to Clause 72.04 to incorporate the *Merri-bek Development Contributions Plan* (January 2015) into the Merri-bek Planning Scheme.

As an incorporated document the Merri-bek DCP carries the same weight as other parts of the Merri-bek Planning Scheme. Incorporated documents are essential to the proper functioning of the planning scheme and must be taken into consideration in decision-making. As an Incorporated Document the Merri-bek DCP cannot be altered without a planning scheme amendment (Internal document reference D16/18355).

The Amendment was progressed as follows:

- Authorisation received from the Minister for Planning: 16 July 2012
- First public exhibition and consultation: 11 April 2013 to 16 May 2013
- First Panel Hearing: 27 November 2013
- Re-exhibition and further public consultation: 6 May to 6 June 2014
- Second Panel Hearing: 14 October 2014
- Panel Report received with recommendation for adoption of the Amendment: 25 November 2014

- Adoption by Council: 11 February 2015
- Approval by the Minister for Planning: Submitted to the Minister for Planning: 10 April 2015

The Merri-bek DCP has been through an extensive public consultation process, has been adopted by Merri-bek City Council and approved by the Minister for Planning. Its requirements are therefore compulsory and must be adhered to.

## **2.4 Amendment C215 to the Merri-bek Planning Scheme**

On 12 May 2021, Council resolved to commence a planning scheme amendment process that amends the Incorporated Document: *Merri-bek Development Contribution Plan, January 2015* listed in the Schedule to Clause 72.04 - *Documents Incorporated in this Planning Scheme*.

Specifically, the amendment proposes to amend text at section 7.3 *Funds Administration* (page 20) to extend the date by which projects funded via this DCP will be delivered, from 30 June 2023 to 30 June 2026.

Merri-bek's ten-year DCP is set to 'expire' on 30 June 2023, meaning DCP levies will cease to be charged and projects set out in the adopted DCP project list must be delivered by that date.

Many DCP projects have not been delivered within the time frame expected when the DCP was developed in 2012-13 based on long term asset planning at the time. This is mainly due to:

- The more than two-year gap between the DCP being developed in 2012-13 and it coming into effect (when Amendment C133 to introduce the DCP into the Merri-bek Planning Scheme was gazetted) in September 2015 due to the time frames of the planning scheme amendment process.
- Changes to the Capital Works Program over time resulting from changes in Council policy and strategic priorities as well as changes in standard of infrastructure required for DCP projects.

Council must meet project delivery commitments to fulfil its obligations under the Planning and Environment Act to expend DCP levies on DCP projects. With just over two years remaining of the DCP, a three year-extension on the delivery date for DCP projects will contribute to ensuring Council can proactively manage the risk of reaching the end of the DCP with significant obligations unresolved.

The amendment does not extend the date on which development contributions are charged. The application of development contributions under Schedule 1 to the Development Contributions Plan Overlay (DCPO1) will cease on 30 June 2023.

## **2.5 Amendment C221more to the Merri-bek Planning Scheme**

On 9 December 2022, Council resolved to approve a planning scheme amendment process that amends the Incorporated Document: *Merri-bek Development Contribution Plan, January 2015* listed in the Schedule to Clause 72.04 - *Documents Incorporated in this Planning Scheme*. Primarily, this amendment aimed to reforecast project delivery by removing projects superfluous to the DCP delivery requirements and substituting prioritised projects with increased acquittal potential.

The amendment identified 456 projects with a total cost of \$44,043,271 in 2012 dollars or \$57,302,003 in 2022 dollars to be removed from the 2015 DCP. Most of these projects are local road works in Brunswick West, Coburg, Pascoe Vale and Pascoe Vale South. The amendment also identified 291 new projects with a total cost of \$126,980,713 in 2022 dollars that are substituted into the revised 2022 DCP.

In summary, the 2022 DCP includes 678 projects with a total cost of \$203,116,488 in 2022 dollars. Of this total, 386 projects with a total cost of \$76,135,775 are original projects from the 2015 DCP and 291 projects with a total cost of \$127,144,978 are new projects.

Overall, the 2022 DCP represents a decrease of 165 projects in number but an increase in cost of almost \$70 million (2022 dollars) when compared to the 2015 DCP. Importantly, the cost of projects (2022 dollars) for all charge areas is higher under the 2022 DCP than the 2015 DCP.

The amendment also expressed that the imposition of permit conditions requiring the payment of levies under this DCP will cease as of 1 July 2023. For planning permits issued on or before 30 June 2023:

- If the permit includes a condition which requires the payment of a development infrastructure levy, the development infrastructure levy is payable irrespective of when the development is carried out; and
- If a community infrastructure levy is required to be paid, the community infrastructure levy is payable if a building permit application for the approved development is made under the Building Act 1993 before 1 July 2023.

### **3 OBJECTIVES**

The objectives of this Policy are:

- To provide administrative guidance regarding the fair, equitable and consistent basis for calculating development contributions as established by the Merri-bek DCP. Ensure that items expected to be provided by developers as a matter of course are not included as development contributions.
- Ensure contributions that are due under the Merri-bek DCP are secured appropriately.
- Ensure legislative and best practice requirements are met.
- Encourage payment to be provided at the first available opportunity by way of cash contribution.
- Provide a high level of certainty to all stakeholders and users of the Merri-bek DCP.

Users of the Policy include:

- Merri-bek City Council
- Developers and property owners within the City of Merri-bek
- The General Public
- The Department of Environment, Land, Water, Infrastructure and Planning along with other Government departments and service providers.



## 4 POLICY DETAILS

The following section sets out Council policy relating to:

### 4.1 Works in-kind

Council, at its discretion, may consider accepting any works comprising all or part of an infrastructure project listed in the Merri-bek DCP in lieu of the payment of a cash contribution (section 7.2 Merri-bek DCP). This is referred to as 'works in-kind'. It is Council policy however, that preference is given to the payment of cash contributions rather than the payment of contributions via provision of works in-kind.

In determining whether to accept works in-kind, it must be clearly demonstrated by the developer that the works in-kind provision will:

- Result in some form of additional benefit to the Merri-bek Community.
- Be provided in a manner and at a time most appropriate to the needs of Council and the Merri-bek community.

This is to be recommended by Council's Group Manager City Development and Manager Capital Works Planning and Delivery in consultation with the developer during the assessment of planning permit applications. The decision as to whether Council will accept works in-kind in lieu of a cash contribution will be at the discretion/via delegation of Director City Infrastructure except within Activity Centres where this is at the discretion/via delegation of Director Place and Environment. Where Council agrees to accept works in-kind, it is Council policy to ensure that the infrastructure complies with all Council requirements, specifications, design standards and the minimum scope as listed within the Merri-bek DCP project list.

It is Council policy that contributions provided as works in-kind are secured via the registration of an agreement to the satisfaction of Council under section 173 of the *Planning and Environment Act 1987* on the title of the subject land. A condition will be included on the relevant planning permit requiring the preparation of the agreement. All costs associated with the preparation of the agreement (including Council's legal costs) are to be paid by the permit holder/developer.

Credit for the provision of works in-kind will only be provided by Council once the works have been completed to the satisfaction of Council. Credit for contributions provided as works in-kind will only be released after a Statement of Practical Completion is issued for that specific DCP project item. Where the total value of the works in-kind provided by the developer exceeds the total DCP liability associated with the development, Council will not provide credit above the value of the works listed in the Merri-bek DCP unless otherwise agreed to.

Note that the provision of works-in-kind as part of a development in lieu of making a cash contribution does not exempt development from the need to pay any fees (such as plan checking fees) or complying with further requirements, such as obtaining Works Within Road Reserve permits, fees and bonds. Please contact the DCP Officer for further information regarding fees.

### 4.2 Calculation of Floor Space Areas

For industrial and commercial development, the charges set out in Table 4 of the Merri-bek DCP (rates expressed as per demand unit) are converted and expressed as a rate per 100 square metres of leasable floor area to assist in usability (section 6.2 Merri-bek DCP). For the calculation of contributions under the Merri-bek DCP 'leasable floor area' as defined in the Merri-bek Planning Scheme should be used as follows:

*That part of the net floor area able to be leased. It does not include public or common tenancy areas, such as malls, verandahs, or public conveniences.*



The leasable floor area should be shown on all plans submitted as part of the planning permit application for the proposed development. The leasable floor area used for the calculation of contributions under the Merri-bek DCP will be based on the final endorsed plans approved under the planning permit. The leasable floor area used for the calculation of contributions should be exact amount and not rounded to the nearest 100sqm.

**Example Development:**            **556 sqm of leasable commercial floor area in Fawkner**

**(sqm of leasable floor area / 100) x Total infrastructure charge for suburb = DCP contribution**

**Total infrastructure charge for Fawkner = \$2,424.07 per 100 sqm**

**(556 sqm of leasable floor area / 100 = 5.56) x \$2,424.07 = \$13,477.86**

**Total Contributions = \$13,477.86 (2022/23 Charge Rates)**

Where a site contains an existing industrial or commercial building(s), or where there were pre-existing industrial or commercial building(s) the contributions are only payable on the additional leasable floor area created by the approved development, in line with the above methodology.

**Example Development:**            **Site contains existing building of 300sqm of commercial floor space**

**The approved new development results in a building with 600 sqm of leasable commercial floor area in Fawkner**

**(The increase in Sqm of leasable floor area / 100) x Total infrastructure charge for suburb = DCP contribution**

**Total infrastructure charge for Fawkner = \$2,424.07 per 100 sqm**

**(300 sqm of leasable floor area / 100 = 3.00) x \$2,424.07 = \$7,272.22**

**Total Contributions = \$7,272.22 (2022/23 Charge Rates)**

### **4.3 Calculation of Contributions for Mixed Use Developments**

Some development proposals will include more than one development type. Where more than one development type is proposed the contributions associated with each component should be combined.

**Example Development:**            **55 dwellings in and 2500 of leasable commercial floor area in Coburg**

**Residential component**

**Number of dwellings x Total infrastructure charge for suburb = Residential contribution**

**55 dwellings x \$1,902.82 = \$104,654.97**

**Commercial component**

**(sqm of leasable floor area / 100) x Total infrastructure charge for suburb = Commercial contribution**

**(2500 sqm of leasable floor area / 100 = 25) x \$5,525.05 = \$138,126.31**

**Total DCP contribution**

**Residential contribution + commercial  
contribution = Total contribution**

**\$104,654.97+ \$138,126.31 =\$242,781.28**

**Total Contributions = \$242,781.28 (2022/23 Charge Rates)**

#### **4.4 Subdivision**

##### **Calculation of contributions for Subdivision**

##### **4.4.1 Subdivision of land containing existing buildings & subdivision of land that relates to an approved development with a planning permit that has no DCP condition**

Unless contributions have already been paid, where a permit is granted for the subdivision of land:

- a) Into lots containing existing buildings, development contributions must be paid in accordance with the Merri-bek DCP. This is despite the development of those existing buildings occurring prior to the commencement of the Merri-bek DCP,  
or
- b) That relates to an approved development with a planning permit that has no DCP condition, development contributions must be paid in accordance with the Merri-bek DCP. This is despite the planning permit for the development being issued with no DCP condition

This is because subdivision is included within the definition of development as defined at section 3 of the *Planning and Environment Act 1987* as follows:

*"Development" includes - the subdivision or consolidation of land, including buildings or airspace;*

and as such the Development Contributions Plan provisions do not provide any exemptions from the DCP contributions for the subdivision of existing development.

Once the Merri-bek DCP is gazetted all forms of development including subdivision are required to pay contributions in accordance with the Merri-bek DCP. For the purposes of calculating contributions for the subdivisions as described above the following demand unit rates will be adopted:

- Residential: One demand unit is applied for each lot that is created containing an existing dwelling and any common property will be excluded.
- Commercial: One demand unit is applied to each 100sqm of commercial leasable floor area contained within each lot that is created.
- Industrial: One demand unit is applied to each 100sqm of industrial leasable floor area within each lot that is created.

##### **Example Development Scenario A:**

##### **Development of:**

- **Supermarket = 3200sqm**
- **10 specialty shops = 3000sqm**
- **Total leasable floor area = 6200sqm.**

- The appropriate approvals were granted under the relevant planning provisions at the time and prior to approval of the Merri-bek DCP
- The site was not subdivided into individual tenancies as the developer wished to retain ownership of the full site.
- Approval of Amendment C133 and Merri-bek DCP incorporated into the Merri-bek Planning Scheme

- From this date proponents of all development types anywhere in the DCP Area were required to pay development contributions in accordance with the Merri-bek DCP.
- Planning application submitted to Council seeking approval to subdivide the land consistent with the layout of the existing development on site.
- Planning permit for subdivision granted including a condition requiring the payment of contributions in accordance with the Merri-bek DCP and outlining the timing of payment.
- Permit holder required to pay development contributions based on the creation of an additional 62 (6200sqm/100sqm) demand units.

**Example Development Scenario B:                      Development of 3 dwellings constructed on a vacant single lot prior to approval of the DCP**

- The appropriate approvals were granted under the relevant planning provisions at the time and prior to approval of the Merri-bek DCP
- The site was not subdivided into individual lots as the developer wished to retain ownership of the full site.
- Approval of Amendment C133 and Merri-bek DCP incorporated into the Merri-bek Planning Scheme
- From this date proponents of all development types anywhere in the DCP Area were required to pay development contributions in accordance with the Merri-bek DCP.
- Planning application submitted to Council seeking approval to subdivide the land consistent with the layout of the existing development on site.
- Planning permit for subdivision granted including a condition requiring the payment of contributions in accordance with the Merri-bek DCP and outlining the timing of payment.
- Permit holder required to pay **development infrastructure levy contributions** based on the creation of 3 additional demand units.

**Subdivision of vacant land in a residential uses & subdivision of land for commercial and industrial purposes**

For subdivision of vacant land for residential purposes, the demand unit rate is applied to each new lot created, however any common property is excluded. Where a lot is subsequently further subdivided, at a later date, and a contribution has already been paid the demand unit rate is applied to each net new additional lot created. Where a planning permit is issued for development of a lot for more than 1 dwelling where a contribution has already been paid, the number of demand units (net new dwellings) calculated for the development will take into account the number of existing demand units calculated at the time of the creation of the lot. For subdivision of residential land where no building permit is required (i.e. vacant lot subdivisions), developers/permit holders are encouraged to pay the community infrastructure levy prior to the issue of a statement of compliance for the approved subdivision.

**Example Development Scenario C:                      Subdivision of vacant residential land (1500sqm) post approval of Amendment C133**

- Approval of Amendment C133 and Merri-bek DCP incorporated into the Merri-bek Planning Scheme.
- From this date proponents of all development types anywhere in the DCP Area were required to pay development contributions in accordance with the Merri-bek DCP.
- Planning application submitted to Council seeking approval to subdivide the land into 3 lots.

- Planning permit for subdivision granted including a condition requiring the payment of contributions in accordance with the Merri-bek DCP and outlining the timing of payment.
- Permit holder required to pay development contributions based on the creation of 3 additional demand units.
- Permit holder pays both the Development Infrastructure Levy (secured via a condition on permit) and voluntarily pays the Communitate Infrastructure Levy.
- 1 lot sold and developed for a single dwelling on the lot – No further contributions required under the DCP.
- The remaining two lots sold to a developer seek planning approval to develop the two lots for 10 townhouses (dwellings).
- Permit granted for development of the site for 10 dwellings including a condition requiring the payment of contributions in accordance with the Merri-bek DCP and outlining the timing of payment.
- Permit holder pays contributions based on the creation of 8 additional demand units because they were given a discount for the payment of the contributions in relation to the original creation of two lots.

**Example Development Scenario D:**

**Subdivision of industrial land containing no existing development into 3 lots post approval of Amendment C133**

- One demand unit is applied to each 100sqm of leasable floor area contained within each lot.
- For the purposes of calculating the leasable floor area a 'development concept plan' must be submitted to the satisfaction of Council with the subdivision application, if not via an **RFI** (request for further information).
- The development concept plan must demonstrate the "maximum development outcome" for the site allowed under the current applicable planning controls.
- Therefore, payment for contributions will be made based on the "maximum development outcome" for these sites; thereafter no further payment of contributions will be sort.

**Note:** A development contribution is payable on the proposed subdivision in accordance with Clause 45.06. To enable the calculation of the DCP DIL amount payable, you are required to submit a 'development concept plan'. This plan must show the maximum development outcome along with the estimated leasable floor area of the maximum development outcome on the site. Other factors such as car parking, access ways, easements etc. must be considered when preparing the maximum development outcome and leasable area.

**Example Development Scenario E:**

***"Application of demolition credit"* in relation to the subdivision of land (Where no DCP condition included on the related planning permit)**

- **For example:** 3 Lot subdivision in Oak Park charge area.
- Development proposal includes the demolition of an existing dwelling. Also refer to 4.5 Exempt Development.
- Therefore, DIL calculation as follows: 3 new lots – 1 lot demolition credit = 2 DIL charge units.
- Therefore, DIL levy payable  $2 \times \$321.02 = \$642.04$  (2022/23 Charge Rates).
- **Note:** Where the subdivision permit is not related to a planning permit for residential development, a demolition credit is not relevant to the calculation of the DCP DIL charge. In

this scenario the DIL charge for the above example would be calculated based on 3 DIL charge units.

**Example Development Scenario F: Consolidation and re-subdivision of multi-unit developments – entitlement to more than 1 demolition credit.**

**Example:** 2 lots are being consolidated and then subdivided into 6 new lots (Glenroy Suburb).

- A current planning permit exists for the development of 6 new dwellings.
- The residential development includes the demolition of 1 pre-existing dwelling on each of the original lots.
- Therefore, calculation of the DCP (DIL component) at subdivision (where pre-DCP and no condition on the planning permit for the residential development) is as follows:
- 6 new lots – 2 demolition credits (1 per each prior lot) = 4 DIL charge units.
- Therefore, DIL levy payable  $4 \times \$416.17 = \$1,664.68$  (2022/23 Charge Rates).
- **Note:** If this proposed development had not included demolition of the pre-existing dwellings then the subdivision permit would result in the following DCP DIL charge calculation: 6 DIL charge units  $\times \$416.17 = \$2,497.02$  (2022/23 Charge Rates).
- Where the current planning permit includes a DCP condition, the above example would trigger the following DCP levies:
- *At the time the residential planning permit was issued:*
- 6 new dwellings – 2 demolition credits (1 per each prior lot) = 4 (Both CIL & DIL) DCP charge units. (as per *Planning & Environment Act 1987*)
- Therefore  $4 \times \$947.24 = \$3,788.96$  (2022/23 Charge Rates).
- *At the time the subdivision planning permit is issued:*
- 6 new lots – 4 new lots (DIL previously levied and paid) - 2 demolition credits (1 per each prior lot) = 0 (DIL) DCP charge units.
- **Note:** If this proposed development had not included demolition of the pre-existing dwellings, then the subdivision permit would result in the following DCP DIL charge calculation: 6 DIL charge units – 4 DIL charges units (previously levied and paid) = 2 DIL charge units  $\times \$416.17 = \$832.34$  (2022/23 Charge Rates).

**Example Development Scenario G: Subdivision of a lot where dwellings constructed prior to DCP commencement, and prior to 1/7/2012 (The date from which a demolition credit may be available).**

**For example:** 2 lot subdivision permit issued. (Oak Park Suburb).

- Therefore calculation of the DCP (DIL component) is as follows:
- 2 new lots = 2 DIL charge units =  $2 \times \$321.02 = \$642.04$  (2022/23 Charge Rates).

**Example Development Scenario H: Subdivision of a lot where a residential planning permit issued previously for 2 new dwelling to the rear of existing. No demolition of the front dwelling.**

**Example:** 3-lot subdivision permit issued. (Oak Park Suburb). Where residential planning permit issued before DCP.

- 3 new lots – 0 demolition credit =  $3 \times \$321.02 = \$963.06$  (2022/23 Charge Rates).

- **However, where the above example** involves a residential planning permit issued after adoption of the DCP the following DCP levies would be triggered:
- *At the time the residential planning permit was issued:*
- 2 new dwelling to the rear of existing = 2 (Both CIL & DIL) DCP charge units. (as per *Planning & Environment Act 1987*)
- Therefore  $2 \times \$831.21 = \$1,662.42$  (2022/23 Charge Rates).
- *At the time the subdivision planning permit is issued:*
- 3 new lots – 2 DIL previously levied and paid - 0 demolition credit = 1 (DIL) DCP charge unit therefore  $1 \times \$321.02 = \$321.02$  (2022/23 Charge Rates).

**Example Development Scenario I: 3-lot subdivision where a residential planning permit approval previously granted for 3 new dwellings.**

Example: Post DCP (condition on permit & pre-existing building to be demolished) the following DCP levies would be triggered. (Oak Park Suburb).

- *At the time the residential planning permit was issued:*
- 3 new dwellings – 1 demolition credit = 2 (Both CIL & DIL) DCP charge units. (as per *Planning & Environment Act 1987*).
- Therefore  $2 \times \$831.21 = \$1,662.42$  (2022/23 Charge Rates).
- *At the time the subdivision planning permit was issued:*
- 3 new lots – 2 DIL previously levied and paid - 1 demolition credit = 0 (DIL) DCP charge units
- Further Example: A 3-lot subdivision, where a residential planning permit previously approved 2 new dwellings to the rear of existing (post DCP).
- The following DCP levies would be triggered. (Oak Park Suburb)
- *At the time the residential planning permit was issued:*
- 2 new dwellings – 0 demolition credit = 2 (Both CIL & DIL) DCP charge units. (as per *Planning & Environment Act 1987*).
- Therefore  $2 \times \$831.21 = \$1,662.42$  (2022/23 Charge Rates).
- *At the time the subdivision planning permit was issued:*
- 3 new lots – 2 DIL previously levied and paid - 0 demolition credit = 1 (DIL) DCP charge units
- Therefore  $1 \times \$321.02 = \$321.02$  (2022/23 Charge Rates).

**Example Development Scenario J: Subdivision of a lot where planning approval increased the number of dwellings on a site from 15 to 33.**

- **Example (1):** Planning Permit approved prior to C133 Amendment i.e., no DCP condition on the planning permit. (Glenroy Suburb). 15 existing dwellings on one lot.
- 33 lot subdivision where no demolition credit available i.e., 15 existing dwellings and 18 new dwellings = 33 new lots created.
- Therefore, calculation of the DCP (DIL component) is as follows:
- 33 new lots = 33 DIL charge units =  $33 \times \$416.17 = \$13,733.61$  (2022/23 Charge Rates).



- **Example (2):** Planning Permit issued for increase in dwellings from 15 to 33 post gazettal of C133 Amendment. (Glenroy Suburb) i.e., DCP condition on Planning Permit and no demolition of existing development.
- *At the time the Planning Permit is issued DCP levy to be raised as follows:*
- $33 - 15 = 18$  new dwellings x both (CIL and DIL).
- Therefore 18 new lots x \$947.24 (DIL \$416.17 & CIL \$531.07) = \$17,050.32 (2022/23 Charge Rates).
- *Assuming at a later date a subdivision permit is issued for 33 new lots with a DCP condition, the DCP calculation would then be required as follows:*
- 33 DIL charge units – 18 DIL charge units previously levied = 15 DIL charge units
- Therefore 15 x DIL \$416.17 = \$6,242.55
- As such these are new lots created, post DCP.

#### 4.5 Exempt Development

The following types of development are not subject to the requirements of planning schemes and are therefore not subject to the requirements of the Merri-bek DCP:

- Development on Commonwealth Land
- Development that is being undertaken by the Commonwealth Government
- Development that is being undertaken by or on behalf of the Ministers for Conservation, Forests and Lands, Health and Education or their current equivalents (refer to Page 266, *Victoria Government Gazette*, 10 February 1988). This means that public schools **and** public hospitals are exempt.

The following types of development that are subject to the requirements of planning schemes may be partially exempt from the requirements of the Merri-bek DCP to the extent eligible:

- Development and use undertaken in accordance with 52.20 (Victoria's Big Housing Building). This means use or development of land that is:
  - Funded wholly or partly, under Victoria's Big Housing Build program; and
  - Carried out by or on behalf of the Director of Housing.

The following development is exempt from the requirement to pay development contributions under the Merri-bek DCP (section 7.1 Merri-bek DCP):

- A non-government school as defined in Part 3 of the Ministerial Direction on Development Contributions Plans of 25 January 2012.
- Land located at 173 – 199 Elizabeth Street, Coburg being the land more particularly described as Lot D and LL on PS 646672U being the whole of the land contained in Certificates of Title Volume 11309 Folio 031 and Volume 11309 Folio 032. (the former Kodak site)
- A development that comprises:
  1. Renovations or alterations to an existing dwelling.
  2. Demolition of a dwelling followed by construction of a replacement dwelling on the same land. The exemption applies to a single dwelling but not to a second or subsequent dwelling or dwellings on the same land; or to each separately Council rated dwelling demolished on the same land. Note: There is no entitlement to a demolition exemption where the development approves a change of land use from Commercial / Industrial use to Residential use or vice-a-versa. Permits approved for works which fall outside the development types Commercial, Industrial and Residential are not subject to the DCP levy.



Where demolition exemption is available it will be taken up at the earliest point in the development.

**Example to demonstrate:**

- Planning Permit issued prior to the adoption of Amendment C133.
  - Proposed development is to be completed by a number of staged building permits. (Glenroy Suburb)
  - The proposed development creates 3 new dwellings and includes the demolition of a pre-existing building. 1 credit is allowed after the demolition of the pre-existing building occurs.
  - Therefore, where the proposed development is covered by 2 stage building permits for 2 new dwellings and 1 dwelling respectively, and the demolition occurs prior to the commencement of stage one, the calculation will be as follows:
    - Stage 1. Building Permit - 2 CIL charge units – 1 CIL charge unit = 1 CIL X \$531.07 = \$531.07 and,
    - Stage 2. Building Permit - 1 CIL charge unit X \$531.07 = \$531.07 (2022/23 Charge Rates), overall CIL payable = \$531.07 + \$531.07 = \$1,062.14
    - Alternatively, where the building permit is issued for the entire project the DCP CIL calculation will be:  
$$3 \text{ CIL charge units} - 1 \text{ CIL charge unit} = 2 \text{ CIL charge units} = 2 \times \$531.07 = \$1,062.14$$
  
(2022/23 Charge Rates)
3. Outbuildings normal to an existing dwelling and fences.
4. Reinstatement of a building which has been unintentionally damaged or destroyed provided that for a building other than a dwelling, the exemption relates only to the extent that the floor area of the new building is not greater than the damaged or destroyed building.

#### **4.6 Deferral and staged payments**

With regard to 4.5.2 and 4.5.4 above, the demolition and replacement or reinstatement of an unintentionally damaged or destroyed building must have occurred within the period of 1 July 2012 to 30 June 2023.

Council does not allow the deferral or staged payment of contributions beyond the triggers listed for payment in the Merri-bek DCP.

#### **4.7 Waiver of Charges**

Council does not allow **the waiver or reduction of contribution amounts or charges under the Merri-bek DCP.**

#### **4.8 Section 173 Agreements**

Section 62 (5) (a) of the *Planning and Environment Act 1987* provides the opportunity for the Responsible Authority to include conditions required to implement an approved DCP. In addition, section 46N and section 46O provide the option of securing development contributions via a section 173 agreement. Further, the Merri-bek DCP anticipates that contributions may be secured via a section 173.

It is Council policy that a section 173 agreement should be used where:

- Contributions are provided via any form of works in-kind by the developer; or
- There are any unusual circumstances that Council considers warrant the use of an agreement.

All costs associated with the preparation and lodging of the agreement (including Council's legal costs) are to be paid by the landowner or developer and this must be agreed to in writing prior drafting of the agreement. Details of any caveats or mortgages registered on the title of the subject land should be provided.

If a Planning Permit requires a section 173 Agreement, there are two possible options available:

#### **4.8.1 Agreement Prepared by Council**

The applicant can request that Council prepare the agreement (an administrative charge applies). If Council prepares the agreement, a draft copy is sent to the applicant for checking. If there are no changes required, three copies will be sent to the applicant for signing. These must then be returned to Council for counter signing and sealing.

#### **4.8.2 Agreement Prepared by Council's Solicitors**

Where more complex issues are dealt with, Council's solicitor should be used. Where Council's solicitors are used the applicant pays for this service and Council sends the documentation to a solicitor for checking. If there are no changes required, three copies will be sent to the applicant for signing. These must then be returned to Council for counter signing and sealing.

The preparation of agreements by applicants or their legal representatives is discouraged as it is likely that this will lead to increased costs and delays.

A section 173 agreement should not be used if Council's planning objectives can be adequately met and secured through the addition of conditions to the planning permit.

Developers should refer to chapter 8 of [Using Victoria's Planning System \(28 May 2015\)](#) for further information regarding section 173 agreements.

### **4.9 Indexation**

Indexation of development contributions is used primarily for the purposes of ensuring that the charges reflect, at best estimate, ongoing price changes and conditions over the lifetime of the Merri-bek DCP. These price changes over time could include increases in construction costs, materials and land values, and as such, these changes need to be reflected in the development contributions charges on an annual basis.

The Merri-bek DCP has an inbuilt indexation mechanism (Building Price Index), which is applied on an annual basis at the beginning of the financial year to the charges set out in the planning scheme and removes the need to amend the planning scheme should construction costs vary over the lifetime of the DCP (section 6.2 Merri-bek DCP).

### **4.10 Timing of Payment**

The Merri-bek DCP sets out the triggers for payment of contributions for various forms of development (section 7.2 Merri-bek DCP). It is Council policy that contributions due under the Merri-bek DCP are paid at the first available opportunity. Deferment of payments of contributions to later stages is strongly discouraged.

In most cases the planning permit will specify the relevant timing of payment of contributions due under the Merri-bek DCP, however the following additional guidance is provided.

	Form of Development	Timing of Payment Specified Under the Merri-bek DCP	Additional Guidance Provided by DCP Administration Policy
Development Infrastructure Levy	<p><b>For development of land where no subdivision is proposed.</b></p> <p><b>Examples:</b></p> <p>More than 1 dwelling on a lot (without subdivision)</p> <p>Use applications such as Medical Centres, restaurants and office.</p>	<p><i>Provided a Development Infrastructure Levy has not already been paid in respect of the land, a Development Infrastructure Levy must be paid to the Collecting Agency (Council) in accordance with the provisions of the Development Contributions Plan for each Demand Unit proposed to be developed prior to the commencement of any development.</i></p> <p><i>The Collecting Agency may agree to the deferral of the payment of the portion of the Development Infrastructure Levy payable to it.</i></p>	<p>Deferral of the payment of a portion of the Development Infrastructure Levy will only be agreed to by Council where it can be demonstrated by the developer/permit holder that the approved development will be subdivided at a later date.</p> <p>If an application for subdivision of the land in accordance with the development approved by this permit is submitted to Council, payment of the Development Infrastructure Levy can be delayed to a date being whichever is the sooner of the following:</p> <ul style="list-style-type: none"> <li>• For a maximum of 12 months from the date of issue of the Building Permit for the development hereby approved; or</li> <li>• Prior to the issue of a Statement of Compliance for the subdivision;</li> </ul> <p>When a staged subdivision is sought, the Development Infrastructure Levy must be paid prior to the issue of a Statement of Compliance for each stage of subdivision in accordance with a Schedule of Development Contributions approved as part of the subdivision</p> <p>Developments that will not be subdivided at a later date cannot defer payment of the Development Infrastructure Levy.</p>
	<p><b>For subdivision of land</b></p> <p><b>Examples:</b></p> <p>Residential, commercial and industrial subdivisions (both where there is an existing development approval and vacant lot subdivision.</p>	<p><i>A Development Infrastructure Levy must be paid to the Collecting Agency after certification of the relevant plan of subdivision but not more than 21 days prior to the issue of a Statement of Compliance in respect of that plan under the Subdivision Act.</i></p> <p><i>Where the subdivision is to proceed in stages the Development Infrastructure Levy for the stage to be developed must be paid to the Collecting Agency within 21 days prior to the issue of a Statement of Compliance in respect of that stage provided that a Schedule of Development Contributions is submitted with each stage of the plan of subdivision. This Schedule must show the amount of the development contributions payable for each stage and value of the contributions in respect of prior stages to the satisfaction of the Collecting Agency.</i></p>	<p>The Schedule of Development Contributions for staged subdivision must be submitted with the permit application, first stage and every subsequent stage after that and should show the number of dwellings capable of being built under each stage. It should be updated each time a payment is made associated with each stage. The Schedule should be endorsed as part of the subdivision permit. If the staging changes a new Schedule should be submitted and endorsed under the original permit.</p>

	Form of Development	Timing of Payment Specified Under the Merri-bek DCP	Additional Guidance Provided by DCP Administration Policy
	Where no planning permit is required	<i>Unless some other arrangement has been agreed to by the Collecting Agency in a section 173 agreement made under the Act, prior to the commencement of any development, a Development Infrastructure Levy calculated in accordance with the provisions of the Development Contribution Plan must be paid to the Collecting Agency prior to the issuance of a Building Permit, or if no Building Permit is required, prior to the commencement of construction works.</i>	
<b>Community Infrastructure Levy</b>	All forms of residential development	<p><i>Payment of the Community Infrastructure levy is to be made prior to the issuance of a Building Permit under the Building Act 1993 and the relevant Building Regulations or at any other time which is set out in an agreement with the Collecting Agency.</i></p> <p><i>If no building permit is required, the Community Infrastructure Levy must be paid prior to the commencement of building works or at any other time which is set out in an agreement with the Collecting Agency.</i></p>	For subdivision of residential land where no building permit is required (i.e. vacant lot subdivisions), developers/permit holders are encouraged to pay the community infrastructure levy prior to the issue of a statement of compliance for the approved subdivision.

#### 4.11 Treatment of Staged Building Permits

Section 20 of the Building Act 1993 (the Act) allows that where building work is proposed to be carried out in stages, a building permit may be issued specific to each stage of building work. A permit issued for a particular stage is a permit in its own right as per *Victorian Building Authority Practice Note 2015-36* (issued March 2014),

Section 20 clearly states that a building permit may be:

- a) a permit for the whole of the proposed building work; or
- b) a permit for a stage of the proposed building work.

Therefore, any part of a development which requires the issue of a building permit for a stage of works after the commencement of the Merri-bek DCP (10 September 2015) will be required to pay the Community Infrastructure Levy.

This applies to development that has received planning approval prior to the commencement of the Merri-bek DCP.

#### Example Development:

- Multi-storey mixed-use development.
- 100 dwellings and 1000 sqm of commercial floor space in Coburg.
- Planning approval granted prior to commencement of the DCP. No condition on planning permit requiring payment of contributions

- Building permit for stage 1 of work issued for “foundations footing and in ground services only” issued prior to the commencement of the Merri-bek DCP.
- Building permits issued for subsequent stages of work issued after the commencement of the Merri-bek DCP.
- The CIL is payable on building permits for works issued after the commencement of the Merri-bek DCP.

#### **Residential component**

Number of dwellings x community infrastructure levy rate for suburb

100 dwellings x \$230.86 = \$23,085.73

#### **Commercial component**

No CIL levy component payable on commercial floor space.

### **4.12 Demand Unit Equivalence Ratios**

In the Merri-bek DCP:

- **Residential** includes those uses nested as Accommodation at Clause 75 of the Merri-bek Planning Scheme. The following guidelines are provided for estimating the number of demand units based on uses listed under Accommodation at Clause 75.

<b>Land Use</b>	<b>Equivalence Ratio: 1 Demand Unit =</b>
Camping and Caravan Park	1 per camp site
Corrective Institution	10 beds
Dependent person's unit	3 bedrooms
Bed and breakfast	3 bedrooms
Caretaker's house	3 bedrooms
Group accommodation	10 beds
Backpackers' lodge	10 beds
Boarding house	3 rooms
Hostel	10 beds
Motel	2 units
Residential Aged Care facility	10 beds

As with the floor space areas these equivalence ratios should be applied on a pro rata basis

- **Industrial** includes those uses nested as Industry or Warehouse at Clause 75 of the Merri-bek Planning Scheme.

- **Commercial** includes those uses nested and not nested as Retail Premises, Office, Leisure and Recreation, Education Centre or Place of Assembly, Art and craft centre, Brothel, car park, Cinema based entertainment facility, Funeral parlour, Display home, Hospital, Research Centre, Saleyard, Service Station and Veterinary centre at Clause 75 of the Merri-bek Planning Scheme.

If a development proposal does not fall readily into the definitions of residential, commercial or industry set out in the Merri-bek DCP, Merri-bek City Council will determine the most appropriate development type or types as the basis for the levying of a charge upon that development proposal.

#### 4.13 Refunds

While refunds are unlikely, in accordance with section 46 QB (5) of the *Planning and Environment Act 1987*, Merri-bek City Council may refund any amount of levy paid to it under the Merri-bek DCP with respect to a particular development if it is fully satisfied that the development is not to proceed. The refund of any amount will only be made if:

- (a) The levy has been fully paid to Council under the Merri-bek DCP for the provision by it of works, services or facilities in an area; and
- (b) That amount has not been expended within the period required by the Merri-bek DCP.

Applications for refunds must be made in writing to the DCP Officer. It must be proven to the satisfaction Council that the development is no longer going to proceed. Refunds for partially completed developments will not be provided.

#### 4.14 Amendments to Planning Permits

Often amendments to existing **planning** permits will result in an increase in the number of demand units proposed as part of a development. Should this occur, permit holders will be required to pay additional development contributions in accordance with the Merri-bek DCP based on the number of additional demand units proposed. This is regardless of whether the planning permit was issued prior to or after the gazettal of the Merri-bek DCP.

Should the amendment to the existing planning permit result in a reduction in the number of demand units a partial refund of the contribution paid to Merri-bek City Council will be provided **if**:

- (a) The levy has been fully paid to Council under the Merri-bek DCP for the provision by it of works, services or facilities in an area; and
- (b) That amount has not been expended within the period required by the Merri-bek DCP.

Applications for refunds must be made in writing to the DCP Officer.

#### 4.15 Existing Permits Issued Prior to the Commencement of the Merri-bek DCP

The Merri-bek DCP requires residential development to pay both a Development Infrastructure Levy and a Community Infrastructure Levy.

The Development Infrastructure Levy is payable prior to the issue of a Statement of Compliance and in accordance with the requirements of the *Planning and Environment Act 1987*, must be secured via a condition on a planning permit.

The Community Infrastructure Levy is payable prior to the issue of a Building Permit however it does not have the same requirement that it must be secured through a condition on a planning permit in the way the Development Infrastructure Levy does. Existing planning permits issued prior to the commencement of the Merri-bek DCP that have not yet sought a building permit are therefore still required to pay the Community Infrastructure Levy component of the Merri-bek DCP. If a building permit has already been issued, then neither the Development Infrastructure Levy nor Community Infrastructure Levy must be paid.



#### **4.16 Permits Issued Prior to, and after, the cessation of the Merri-bek DCP**

The Merri-bek DCP imposes permit conditions requiring the payment of levies, collection under this DCP will cease as of 1 July 2023. For planning permits issued on or before 30 June 2023, if the permit includes a condition which requires the payment of a Development Infrastructure Levy, the Development Infrastructure Levy is payable irrespective of when the development is carried out. If a Community Infrastructure Levy is required to be paid, the community infrastructure levy is payable if a building permit application for the approved planning permit is made on or before 30 June 2023.

#### **4.17 The Merri-bek DCP and Other Avenues of Obtaining Contributions**

The Victorian planning system allows for the collection of contributions or provision of infrastructure via other avenues outside of an approved DCP in the planning scheme. While this policy is not intended to provide guidance on these avenues, it is acknowledged that they are related and that the potential exists for confusion regarding their operation and applicability where an approved DCP also exists in the planning scheme. It is Council Policy that:

- The payment of contributions (both cash and works in kind) under the Merri-bek DCP does not preclude the collection of additional contributions via voluntary agreements (during the planning permit application process or as part of a planning scheme amendment).
- Both onsite and offsite infrastructure items which are expected to be provided by developers as a matter of course or are required as a direct result of an approved development will continue to be required by Council where necessary. These requirements will continue to be secured through planning permit conditions or to be shown on endorsed plans and will not be credited as contributions under the Merri-bek DCP.

Please refer to *Development Contributions Guidelines*, March 2007 for further guidance.

#### **4.18 Compliance**

Merri-bek City Council may use the following avenues to seek compliance with the Merri-bek DCP. Council may also pursue payment of its legal costs associated with pursuing avenues to seek compliance with the DCP.

#### **4.19 Merri-bek DCP Debt Recovery Procedure**

Refer to Merri-bek Debtor Management Policy.

#### **Writing off Debts**

Under this Policy the Director Place and Environment and/or the Director Business Transformation will have the authority to write off any DCP debts based on the joint recommendation of the Chief Finance Officer and the Group Manager City Development.

Further to the aforementioned debt recovery procedure outlined above, Council reserves the right to implement the following actions below.

Further information regarding debt collection can be found at:

- [The Office of the Victorian Small Business Commissioner External link \(opens in same window\)](#) for mediation and investigation assistance for disputes over the debt.
- [Victorian Civil and Administrative Tribunal VCAT - Civil Disputes External link \(opens in same window\)](#)
- [Consumer Affairs Victoria External link \(opens in same window\)](#) for fair debt collection practices.



#### **4.19.1 Charging interest on any unpaid contributions due under the Merri-bek DCP in accordance with section 227A of the Local Government Act 1989.**

If a development contributions debt account remains outstanding for greater than 60 days, interest may be applied in accordance with section 227 of the *Local Government Act*, 1989.

The interest is to be calculated at the rate set from time to time for the purposes of this section of the *Local Government Act 1989* by the Council and becomes payable on and from the date on which the money became due or in the case of a court order requiring payment of the money, on and from the date of the court order; and continues to be payable until the payment or recovery of the money.

The interest rate set by the Council will not be more than the rate fixed under section 2 of the *Penalty Interest Rates Act 1983*. If the Council sets a new interest rate, the new rate takes effect on the date set by the Council and applies from that date to all money (other than interest) owing to the Council on that date.

#### **4.19.2 Withholding the issue of a Statement of Compliance for subdivisions until all contributions have been paid in accordance with the Merri-bek DCP.**

A statement of compliance for a plan of subdivision must be issued by Council as soon as possible after the applicant has given it the prescribed information and it is satisfied that:

- All requirements of and under Part 3 of the *Subdivision Act 1988* and the *Planning and Environment Act 1987* that relate to public works have been met; or
- There is an agreement to secure compliance with those requirements.

Section 21 sets out what is to be done in respect to the issue of a statement of compliance. This includes the matters raised above but also includes additional considerations that should be taken into account before the issue of the statement of compliance including the payment of any required levies. Agreements made under section 173 of the *Planning and Environment Act 1987* or section 17(2) (c) of the *Subdivision Act 1988* are often used to secure compliance with requirements for public works.

Public works is defined in section 3 of the *Subdivision Act 1988* as:

- The provision of roads, reserves, open spaces or services within a subdivision or fencing, landscaping, and road works outside the subdivision for roads, reserves or public open space related to the subdivision; or
- Works for sewerage, drainage, water supply, power, gas or telephone to connect the subdivision to the system serving properties outside it, excluding works to connect any particular property to the system for the subdivision; or
- Prescribed works.

Should any requirement for the payment of a levy or **construction** of works required under the Merri-bek DCP remain outstanding at the time a statement of compliance is sought, Council will withhold the issue of a statement of compliance until all outstanding contributions are met.

For further details refer to the Department of Environment, Land, Water and Planning [Subdivision Act 1988 User Guide](#).

#### **4.19.3 Registered Building Surveyors to withhold the issue of a building permit until all contributions have been paid in accordance with the Merri-bek DCP.**

Section 24 (5) of the *Building Act 1993* requires that before issuing a building permit, building surveyors must satisfy themselves that if a Community Infrastructure Levy is payable, it has either been paid, or an agreement has been entered into with the Council to pay the levy at a later stage.

In determining whether the levy has been paid or an agreement entered into, the relevant building surveyor should obtain copies of the following:

- A receipt issued by the council for payment of the community infrastructure levy; or
- A properly executed agreement between the landowner and the council to pay the community infrastructure levy, at a later stage, in respect of the proposed building work.

The building surveyor will also need to:

- Check the amount specified in the receipt, or in the agreement; and
- Confirm that the amount specified in the receipt or agreement equals the amount specified in the planning scheme.

If the Community Infrastructure Levy has not been paid section 24 requires a building surveyor to refuse to issue a building permit.

For further information please refer to the Victorian Building Authority practice notes:

- [Building Permits and Community Infrastructure Levies.](#)
- [Responses from Municipal Councils.](#)

Please refer to the Department of Environment, Land, Water and Planning [Guide to lodging a Caveat under the Transfer of Land Act 1958](#) for further details on how to lodge a Caveat.

Please refer to the Department of Environment, Land, Water and Planning [Guide to acceptable grounds of claim for caveats lodged in Victoria](#) for further information on what are appropriate grounds for lodging a Caveat.

#### **4.19.4 Issuing Planning Infringement Notices (PIN) to permit holders who do not pay contributions in accordance with the Merri-bek DCP.**

A planning infringement notice offers an alternate, straightforward and expeditious method for dealing with certain minor offences relating to a contravention of a planning scheme, permit or agreement under the *Planning and Environment Act 1987*.

In addition to requiring the payment of an infringement penalty additional steps that may be required under a planning infringement notice to expiate an offence. These may include, but are not limited to:

- stopping the development or use of land that constituted the offence
- modifying the development or use of land that constituted the offence
- removing the development that constituted the offence
- preventing or minimising any adverse impacts of the use or development of land that constitutes the offence
- entering into an agreement under section 173 of the *Planning and Environment Act 1987*
- doing or omitting to do anything else in order to remedy the contravention

A person served with an infringement notice has the following options:

- choose to pay the penalty in full by the due date and take the additional steps required by the notice
- apply for any extension of time to pay the penalty
- apply to pay by instalments
- elect to have the matter of the infringement notice offence heard and determined in the Magistrates' Court (refer s.16 Infringements Act)

- apply to have the decision to serve the infringement notice internally reviewed by the responsible authority (refer s.22 Infringements Act and r.8 (m) Infringements (Reporting and Prescribed Details and Forms) Regulations).

If the planning infringement notice requires additional steps to be taken to expiate the offence and, before the end of the remedy period set out in the notice the person served with the notice informs the responsible authority that those steps have been taken, an authorised officer of the responsible authority must, without delay, find out whether those additional steps have been taken. That officer is then required to serve on the offender a further notice indicating whether or not the required steps have been taken.

The failure to pay the infringement penalty by the date specified in the infringement notice may result in further enforcement action being taken and the incurring of further costs.

Please refer to the Department of Environment, Land, Water and Planning, [Planning Infringement Notices website](#) for further details.

#### **4.19.5 Applying for enforcement orders in relation to planning permit conditions and section 173 agreements through proceedings at the Victorian Civil and Administrative Tribunal (VCAT).**

A Council or any person may apply to VCAT under section 114 of the *Planning and Environment Act 1987* for an enforcement order if a use or development of land has or will contravene:

- the *Planning and Environment Act 1987*
- a planning scheme
- a planning permit
- a section 173 agreement.

An enforcement order can be made against:

- the owner or occupier of land
- any other person who has an interest in the land
- any person by whom or on whose behalf use or development was, is or will be carried out.

Merri-bek City Council may apply for an enforcement order if development contributions due under the Merri-bek DCP remain outstanding.

Please refer to the Victorian Civil and Administrative Tribunal Practice Note [PNPE4 Enforcement Orders and Interim Enforcement Orders](#) for further details. **Greater penalties apply for any failure to comply with an enforcement order.**

#### **4.19.6 Commencing Civil Proceedings in the Magistrates Court of Victoria against permit holders who refuse to pay development contributions in accordance with the Merri-bek DCP.**

Section 46 QC of the *Planning and Environment Act 1987* allows Council to recover any amount of levy payable to it under the Merri-bek DCP in any court of competent jurisdiction. A court of competent jurisdiction "means a court having jurisdiction to hear and determine the legal proceeding mentioned in the Act in which the expression occurs". The Magistrates' Court of Victoria has jurisdiction to deal with debt recovery claims and damages claims up to the value of \$100,000.

Going to court should be a last resort. Before issuing a complaint in the Magistrates' Court Council will attempt to resolve the dispute directly. A settlement will save considerable cost and time.

For further information please refer to the Magistrates Court of Victoria, [Commencing Civil Proceedings](#) website.

## 5 ROLES AND RESPONSIBILITIES

The roles and responsibilities for the ongoing administration of the DCP are outlined below. Process flowcharts are also provided to assist applicants and permit holders in understanding the process for assessment of planning permit applications and payment of invoices in relation to contributions under the Merri-bek DCP.

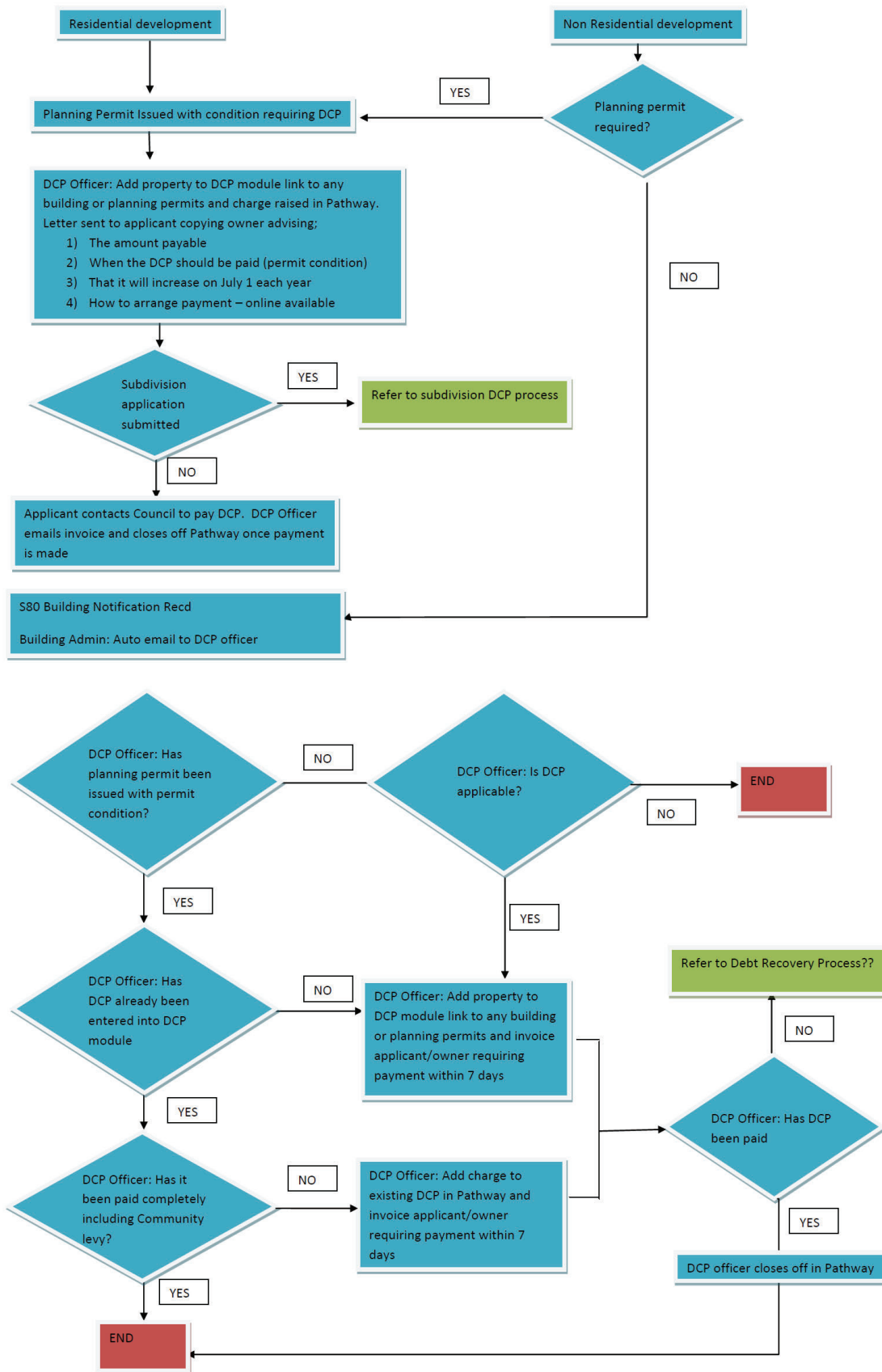
Party/parties	Roles and responsibilities	Timelines
DCP Officer & Graduate Accountant *	<ul style="list-style-type: none"> <li>Day to day administration (including invoicing) and reporting.</li> </ul>	Daily
DCP Officer & Graduate Accountant	<ul style="list-style-type: none"> <li>Reporting</li> <li>Reconciliations of Reserves</li> </ul>	Monthly
DCP Officer & Graduate Accountant	<ul style="list-style-type: none"> <li>Annual reporting</li> </ul>	Yearly
City Infrastructure City Strategy and Economy City Development Finance Information Technology	<ul style="list-style-type: none"> <li>Ongoing Technical support</li> </ul>	As required
Merri-bek Executive Group Director Business Transformation and/or Place and Environment	<ul style="list-style-type: none"> <li>Future policy changes</li> <li>Minor administrative policy changes</li> </ul>	As required
DCP Working Group	<p>The DCP Working Group is accountable for ensuring that the following items are completed on time and are accurate:</p> <ul style="list-style-type: none"> <li>DCP Reporting for Annual Report</li> <li>DCP Plan (Annual)</li> <li>DCP Planning Scheme Amendments (if necessary)</li> <li>DCP Bi-Annual Reporting (Annual Plan Progress)</li> <li>DCP Policy and Procedure amendments</li> <li>DCP Internal Audit Actions</li> <li>Reporting to the DCP Oversight Committee; Executive; Council; ARC</li> </ul>	Meeting frequency and composition is set as per the Terms of Reference outlined in D21/257999

Party/parties	Roles and responsibilities	Timelines
Development Contributions Plan Oversight Committee	<p>The DCP Oversight Committee is accountable for ensuring that:</p> <ul style="list-style-type: none"> <li>• Development Contribution Charge collections are on target and ensure that Infrastructure Projects are delivered on</li> <li>• Input and oversight of the administration of the current and any future schemes</li> <li>• Review / provide oversight on DCP Reporting for Annual Report</li> <li>• Review / provide oversight on DCP Plan (Annual)</li> <li>• Review / provide oversight on DCP Planning Scheme Amendments</li> <li>• Review / provide oversight on DCP Bi-Annual Reporting (Annual Plan Progress)</li> <li>• Review and provide oversight on DCP Policy and Procedure</li> <li>• Monitor completion of DCP Audit Actions</li> <li>• Monitor completion of DCP Working Group Actions</li> </ul> <p>Note: Executive and / or Council reports will be required to provide decision making on key DCP outputs as listed above.</p>	Meeting frequency and composition is set as per the Terms of Reference outlined in D21/257999
Capital Works Planning and Delivery	<ul style="list-style-type: none"> <li>• DCP Project Planning and Delivery as identified in the Capital Plan</li> </ul>	Quarterly
Director Place and Environment and Director City Infrastructure	<ul style="list-style-type: none"> <li>• Approval of all works in-kind within Activity Centres</li> <li>• Approval of all works in-kind elsewhere</li> </ul>	As required
Chief Finance Officer	<ul style="list-style-type: none"> <li>• Annual Review of Policy Document</li> <li>• Write off of bad and doubtful debts</li> </ul>	As required

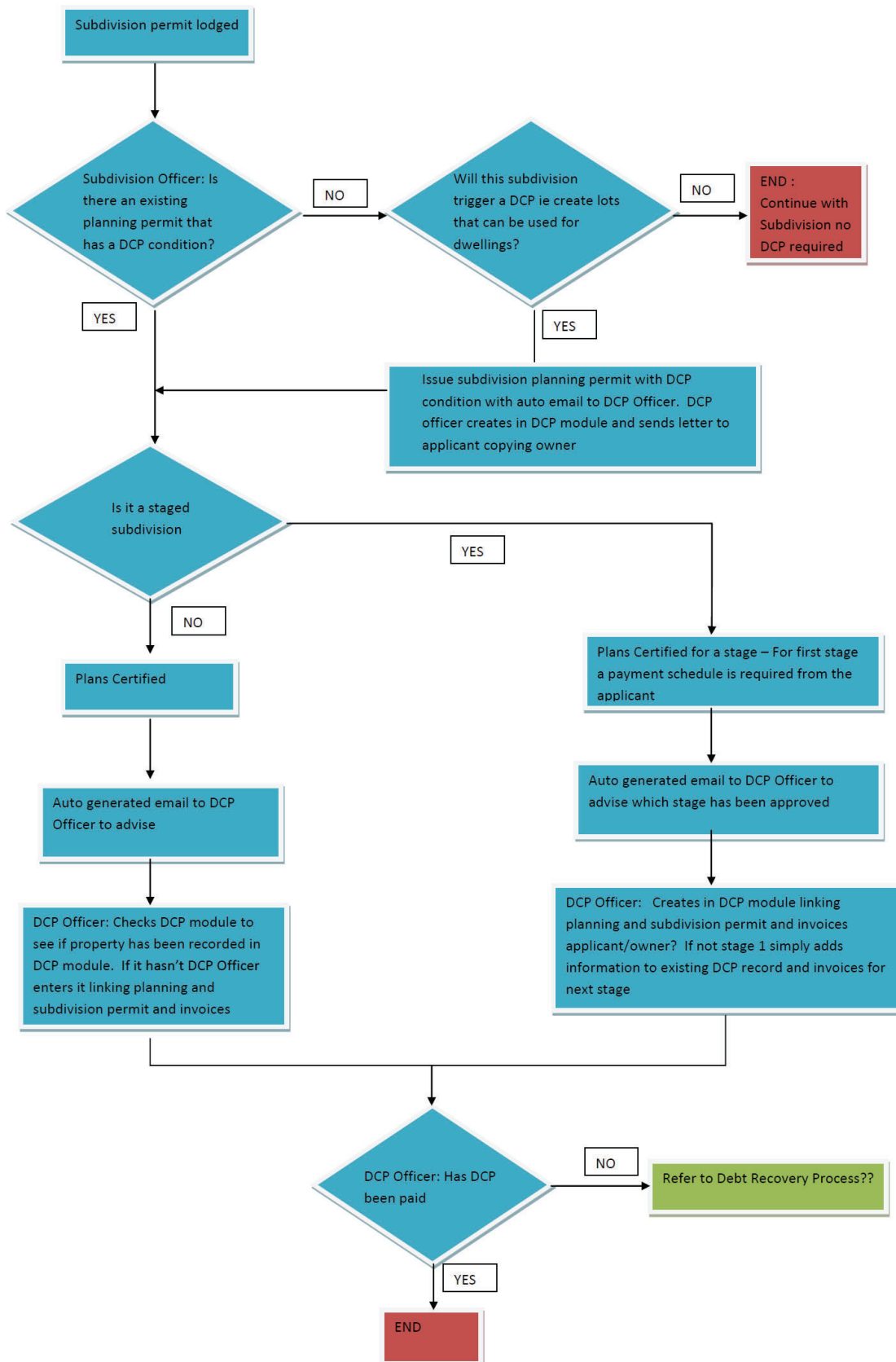
\* Separation of Duties – Invoicing (DCP Officer & Graduate Accountant) \*: One officer will complete the lodgement template in excel, and lodge the DCP application in pathway. A secondary officer will then review DCP applications on a weekly basis and make a comment in pathway. Before an invoice can be generated, the officer needs to ensure that the secondary review has been complete by reviewing the comment section in pathway.

\* Any conflicts of interest (actual or perceived) must be declared to the CFO and additional controls implemented over the transaction to ensure process transparency. Additional controls may include, removing the staff member from the transaction and/or implementing additional review or authorisation.

## DCP Process Flowchart

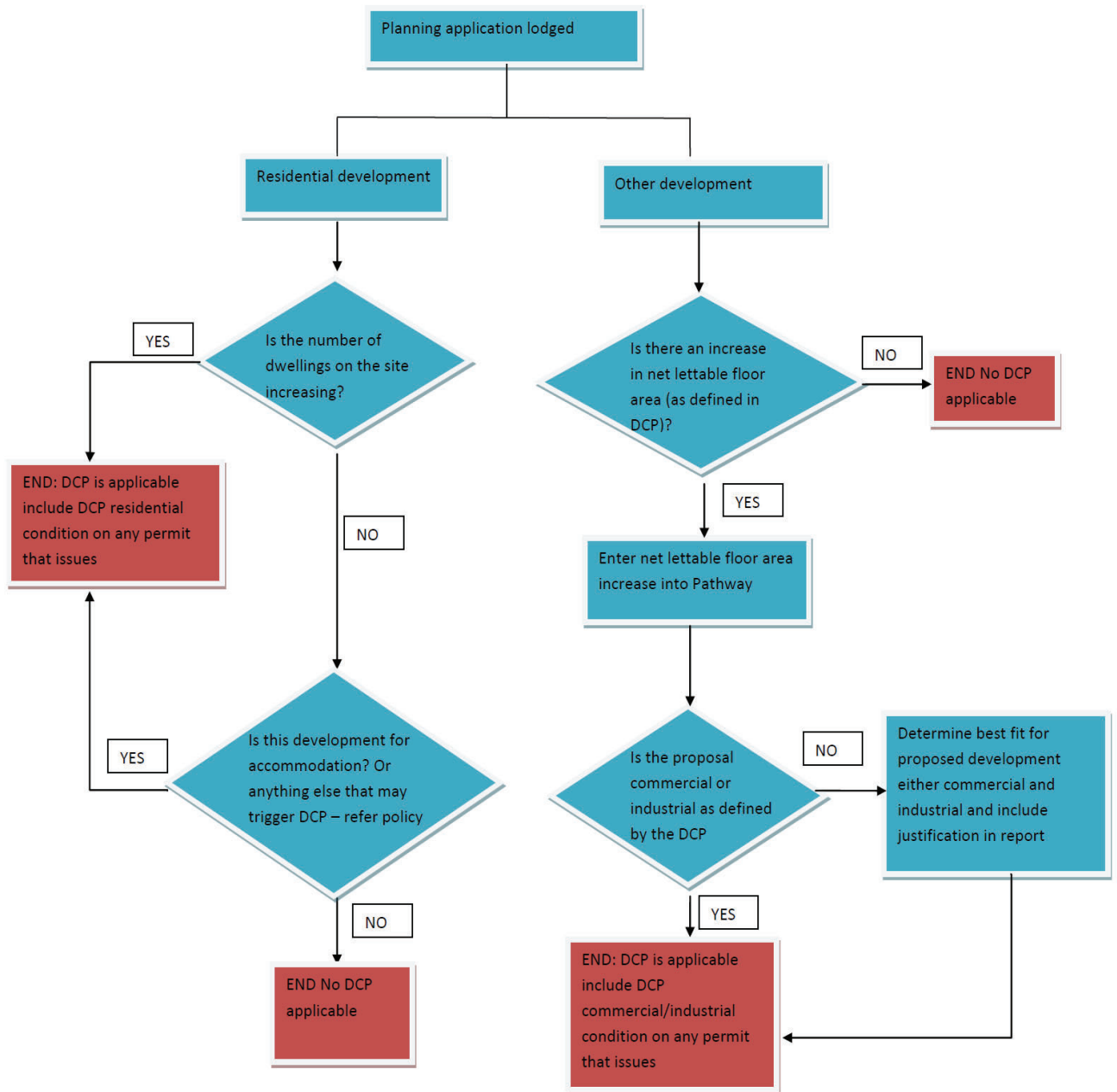


## 5.1 Subdivision Process Flowchart





## 5.2 Planning Process Flowchart



## 6 MONITORING, EVALUATION AND REVIEW

Council must provide for regular annual monitoring, reporting and review of the monies received and expended in accordance with the Merri-bek DCP through an annual report and a separate set of audited financial statements.

The recommendations of the Auditor-General's review emphasise the need for better financial administration of local government development contributions systems. The recommendations highlight the need for local councils to improve financial and reporting systems, while fulfilling their obligations in accordance with the *Local Government Act 1989* and the *Planning and Environment Act 1987*.

The following reports and reviews will be undertaken as part of the ongoing monitoring, evaluation and review of the Merri-bek DCP and DCP Administration Policy

Report/Review	Form/Content	Timelines
Quarterly Report	Quarterly summary report of administrative activities and operation of the DCP	Within 10 business days of the last day of the calendar quarter
Annual Report (Statutory)	Funds collected Funds expended Number of net new dwellings approved in the financial year Square metres of net new leasable floor area for commercial and industrial development approved in the financial year Projects scheduled for delivery in the previous financial year Projects delivered in the previous financial year Projects scheduled for delivery in the next financial year  Report Provided to the Minister every three years.	Within 60 days of the end of each financial year
Board Review	Meeting	Quarterly
Strategic Review	Meeting	Yearly
Financial Review	Audited Financial Statements	Yearly (October)

## 7 DEFINITIONS

Term	Definition
<b>Certification of a Plan of Subdivision</b>	A plan certified by a Council for lodging in the Office of Titles for registration
<b>Collection Agency</b>	Means a person specified in a development contributions plan as a person to whom a community infrastructure levy or development infrastructure levy is payable under the Act. In this case the collection agency is Merri-bek City Council.
<b>Community Infrastructure Levy (CIL)</b>	The DCP requires that new development pay a levy to fund community infrastructure (CIL) identified in the relevant DCP.
<b>Development</b>	Development as defined in the <i>Planning and Environment Act 1987</i> includes: <ul style="list-style-type: none"> <li>(a) the construction or exterior alteration or exterior decoration of a building; and</li> <li>(b) the demolition or removal of a building or works; and s. 3</li> <li>(c) the construction or carrying out of works;</li> <li>(d) the subdivision or consolidation of land, including buildings or airspace; and</li> <li>(e) the placing or relocation of a building or works on land; and</li> <li>(f) the construction or putting up for display of signs or hoardings</li> </ul>
<b>Development Contributions Administration Policy</b>	A document that sets out Council's administration process for the implementation of the Merri-bek Development Contributions Plan
<b>Demand Unit</b>	The DCP calculates what each development based on a "demand unit" should pay towards provision of an infrastructure item. This is determined by taking the total cost of the infrastructure item and dividing it by the total demand units within its usage catchment. This provides a rate per demand unit. Where necessary, an allowance external usage of the infrastructure (from outside the main catchment area) is factored into the calculation to ensure users are charged fairly based on usage.
<b>Development Contributions Plan Overlay (DCPO)</b>	An approved DCP should be implemented through the Development Contributions Plan Overlay (DCPO) and schedule, as provided for in the Victoria Planning Provisions. The Development Contributions Plan Overlay indicates the area covered by the DCP. The schedule indicates the infrastructure levies that apply in a particular area.
<b>Development Agency</b>	Means a person specified in a development contributions plan as a person responsible for the provision of works, services or facilities for which a community infrastructure levy or development infrastructure levy or part of a levy is payable under the Act. In this case the development agency is Merri-bek City Council.
<b>Development Infrastructure Levy (DIL)</b>	The DCP requires that new development pay a levy to fund development infrastructure (DIL) identified in the relevant DCP.
<b>Dwelling</b>	A building used as a self-contained residence which must include a kitchen sink, food preparation facilities, a bath or shower and a closet

<b>Term</b>	<b>Definition</b>
	pan and wash basin. It includes out-buildings and works normal to a dwelling.
<b>Leasable Floor Area</b>	That part of the net floor area able to be leased. It does not include public or common tenancy areas, such as malls, verandahs, or public conveniences.
<b>Maximum Development Outcome</b>	The leasable floor area as determined by the application of the current applicable planning controls to each development lot.
<b>Merri-bek Development Contributions Plan</b>	The Merri-bek DCP is a mechanism used to levy different forms of development for contributions to fund planned infrastructure that will be needed by the future community of the City of Merri-bek.
<b>Net Floor Area</b>	The total floor area of all floors of all buildings on a site. It includes half the width of any party wall and the full width of all other walls. It does not include the area of stairs, loading bays, accessways, or car parking areas, or any area occupied by machinery required for air conditioning, heating, power supply, or lifts.
<b>Not-for-Profit Organisation</b>	Not-for-profit (NFP) organisations are organisations that provide services to the community and do not operate to make a profit for its members or shareholders. All of the money earned by or donated to a not-for-profit organisation is used in pursuing its objectives. Typically, not for profit organisations are charities or other types of community organisations including sporting clubs, childcare providers and medical centres.
<b>Section 173 Agreement</b>	A legal agreement registered on the title in accordance with s.173 of the Planning and Environment Act 1987 that binds the current and future owners of the land.
<b>Social Housing (not-for-profit)</b>	Social housing is short and long-term rental housing that is owned and run by the government or not-for-profit agencies. Social housing is made up of two types of housing, public housing and community housing. It is for people on low incomes who need housing, especially those who have recently experienced homelessness, family violence or have other special needs.
<b>Affordable Housing</b>	Affordable housing is an umbrella term describing housing suitable for the needs of a range of low to moderate income households and priced (whether bought or rented) so these households can meet their other essential living costs. Under the Planning and Environment Act 1987, income ranges for households to define moderate, low and very low incomes are set annually. Affordable Housing that is not delivered as social housing is usually set at a discount from market rent (often 75-80% of market rent) and is more likely to be accessed by moderate income rather than very low and low-income households.
<b>Statement of Compliance</b>	Under section 21(1) of the Subdivision Act, a developer receives a statement of compliance from Council once all public works, open space requirements and conditions placed on a planning permit have been satisfied or adequate arrangements have been made to secure compliance with those requirements.

Term	Definition
<b>Statement of Practical Completion</b>	Issued by Council once all works have been satisfied or adequate arrangements have been made to secure compliance with those requirements
<b>Works in-kind (WIK)</b>	Where the developer delivers all or part of an infrastructure project listed in the DCP instead of paying cash and a credit is given against their Development Infrastructure Levy (DIL) obligation.

## **8 ASSOCIATED DOCUMENTS**

*Planning and Environment Act 1987*

*Local Government Act 1989*

*Transfer of Land Act 1958*

*Subdivisions Act 1987*

*Building Act 1993*

*Planning and Environment Amendment (Infrastructure Contributions) Bill 2015*

Rawlinson's Construction Cost Guide 2015 - Building Price Index

Development Contributions Guidelines March 2007 v5.9

Ministerial Direction - Development Contributions Plans 5 May 2003

Ministerial Direction - Development Contributions Plans 25 January 2012

The Use of Development Contributions by Local Government - Victorian Auditor-General's Report  
December 2009

Merri-bek Planning Scheme

Development Contributions Scoping Paper - SGS Economics and Planning June 2010

Options for a New Local Development Contribution Proposal for Victoria September 2011

Standard Development Contributions Advisory Committee Report 1 - Setting the Framework'  
December 2012

Standard Development Contributions Advisory Committee Report 2 - Setting the Levies' May 2013

Using Victoria's Planning System 28 May 2015