

Amendment C177 to the Wyndham Planning Scheme

Wyndham North Development Contributions Plan

Expert Evidence Report, Jason Black

830 Leakes Road, Tarneit North

18 November 2013

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SIGNED:

A handwritten signature in black ink, appearing to read "J. Black", is shown within a light grey rectangular box.

Date: 18 November 2013

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1 INTRODUCTION

1. My name is Jason Robert Black of 48 Gala Supreme Close, Mordialloc and I am the Managing Director of Insight Planning Consultants Pty Ltd.
2. I hold a Bachelor in Applied Science (Planning) from the Royal Melbourne Institute of Technology (RMIT). I have fourteen years planning practice experience in local government and private consultancy.
3. I am a member of the Planning Institute of Australia and Victorian Planning & Environmental Law Association and I am a Certified Practising Planner (CPP) as recognised by the Planning Institute of Australia.
4. My experience as project director of the Toolern Precinct Structure Plan and Cardinia Road Employment Precinct Structure Plan and as a planning consultant providing advice to both local government and private sector clients on strategic planning matters provides me with the necessary background to carry out a review of a range of planning documents including Development Contributions Plans, Precinct Structure Plans, Open Space Strategies, Planning Scheme Controls and relevant Implementation and Funding Mechanisms.
5. I have been instructed by Norton Rose Fulbright Lawyers to review the Wyndham North Development Contributions Plan, provide an expert evidence report and appear at the Panel hearing of this matter.
6. In undertaking my review I have assessed:
 - The impact of the Wyndham DCP on the planning and delivery of urban development within the Wyndham North growth area and specifically the land at 830 Leakes Road, Tarneit.
7. In forming my opinion I have made the necessary enquiries and reviewed the exhibited and supporting documents, including:
 - *Wyndham North Development Contributions Plan, June 2013;*
 - *Wyndham North Precinct Structure Plans Background Report, June 2013;*
 - *Proposed Wyndham Planning Provisions;*
 - *City of Wyndham's Strategy for Managing Growth in Wyndham, June 2013;*
 - *City of Wyndham Council Meeting Minutes, 22 July 2013; and*
 - *Wyndham North specialist background reports.*

2 SUMMARY OF OPINIONS

8. I understand that the proposed Amendment C177 introduces a “global DCP” for the Wyndham North Area.
9. In a rapidly growing location like Wyndham North covering an area totaling some 4,000 ha with a planning and development horizon of 30 plus years, and with an extensive list of known built form and natural environmental issues to manage; the concept of a global DCP is appropriate and to some extent necessary. In my opinion this is because a global DCP has the ability to coordinate the delivery of infrastructure across a large area in such a way that it has a broader benefit to the existing and future community in a timely and orderly manner.
10. When equipped with appropriate governance settings, global DCP’s can facilitate development of an area on multiple fronts and see the delivery of critical transport, recreation and community infrastructure where it is most needed.
11. Global DCPs also have the capacity to ensure that critical infrastructure can be developed where it is needed irrespective of whether the land to be developed for an infrastructure item is within an active development front.
12. It is recognised that because of the scale of the planning area and concerns regarding funding availability, the Wyndham North DCP gives less weight to the principle of external apportionment than is typically the case. Whilst this approach to apportionment is somewhat accepted the DCP cannot be expected to fully fund the total cost of infrastructure and as such other sources of funding will be required to support the implementation process.
13. The strategic importance of Wyndham North in the future growth of metropolitan Melbourne should not be understated and in this corridor alone the four (4) PSP’s making up Wyndham North is expected to be home to around 114,000 people by 2043. The Wyndham North growth area also makes a significant contribution to employment land with some 302 hectares located along the entire length of Boundary Road from Forsyth Road to the Outer Metropolitan Ring Road.
14. The draft Metropolitan Planning Strategy (*Plan Melbourne*) establishes the Western sub-region and outlines the substantial amount of development to occur and it is noted that *Plan Melbourne* on page 155 suggests that the *Western Growth Corridor Plan* (June 2012) will eventually accommodate growth of around 377,000 people.
15. In the 38 year planning horizon it is anticipated that the Western sub-region will have developed the Outer Metropolitan Ring Road and Rail Corridor, the Western Interstate Freight Terminal, and Regional Rail Link. Major employment land supplies at East Werribee and the Western Industrial Precinct are expected to be substantially developed along with major residential precincts both north and south of Werribee River.

16. The scale of planned development in this region will require an equally substantial amount of infrastructure necessary to support the urbanisation of the area which will need to come from multiple sources including Federal and State government funding, private sector investment, development contribution and municipal capital works program.
17. The context stated above serves the purpose of highlighting the importance of getting the infrastructure funding plan right and in my opinion the DCP forms just one part, albeit an \$768m+ important part of the overall infrastructure delivery program.
18. The use of development contributions as a funding contributor is well accepted, as they are an effective means of ensuring that new communities are provided with what they need without further straining the capacity of existing infrastructure in established areas.
19. However, it is also well-established that the delivery of infrastructure via DCPs can take time as they often require population demand targets to be met and are not always capable of meeting all the needs of the growing community until sufficient funds are collected.
20. In the context of the Wyndham North DCP, I am of the opinion that the planning authorities have lost sight of this principle and have sought to structure the DCP to pay for more than it should and as such on a number of DCP projects, it fails the tests of need, nexus and equity.
21. Furthermore, rather than encouraging growth in line with the directions of *Plan Melbourne* and the *Western Growth Corridor Plan* as a strategy to respond to the infrastructure delivery challenge, the DCP has sought to restrict development by including Table 10 – Infrastructure Delivery Priorities and restrictive works-in-kind provisions.
22. Table 10 of the DCP is directly linked to the development sequencing outlined in Council's *Strategy for Managing Growth in Wyndham, June 2013* document. The Strategy does not form part of the Wyndham Planning Scheme and did not undergo any appropriate level of community and stakeholder consultation. Furthermore, it is understood that Council are wanting to include an 'Infrastructure and Land Delivery Strategy' that would further restrict development and require greater levels of upfront development contributions, assuming their plan follows a similar form to that of Wyndham West.
23. In relation to my assessment of the Wyndham North DCP, the areas of most concern are summarised below:
 - a. Section 5.2 and Table 10 – Infrastructure Delivery Priorities, and its failure to prioritise land in the Tarneit North PSP area for development when it is adjacent the existing community and has access to an existing school, local activity centre and community facilities.
 - b. Section 3.2 and 4.4 in relation to achieving certainty regarding the scope of works of projects.
 - c. Section 4.1.3 – Works or land in Kind in relation to the defined processes.

- d. Plan 5 lacks detail with respect to the location and configuration of open space, active recreation spaces and community facilities.
- e. The approach to project apportionment and the 'full cost recovery' rather than a 'contribution' approach to funding infrastructure.
- f. The potential for 'scope creep' to have an unplanned cost impact on development.
- g. The land valuation methodology.
- h. The impact of increasing the scope of infrastructure item works and increasing the provision ratio of active open space.

3 DEVELOPMENT CONTRIBUTIONS PLAN GUIDELINES

24. This section summarises the State Government's current Development Contributions Guidelines.
25. On 16 June 2003 (later amended March 2007) the Victorian State Government published the Development Contributions Guidelines ("the Guidelines") as a guide for the appropriate and practical use of the development contributions system.
26. Whilst the Guidelines are likely to be replaced if Victoria moves to a standardised development contributions system, the following sections provide key background information from the Guidelines that is relevant to the review of the Wyndham North DCP. This information provides the purpose for preparing a DCP, the relevant principles that must be considered in doing so to ensure a fair and equitable outcome is achieved, what infrastructure items the DCP can fund and the level of justification required before an infrastructure item is included in the DCP.

3.1 PURPOSE

27. The purpose of the guidelines is to:
 - *Provide councils, developers and infrastructure agencies with a clear explanation of the development contributions system;*
 - *Offer practical advice to councils wishing to prepare and implement a DCP for the purpose of levying development contributions;*
 - *Cover development contributions for a range of land use and infrastructure types; and*
 - *Provide a context for the legislative provisions in the Planning and Environment Act 1987.*

3.1.1 What is a Development Contributions plan?

28. The guidelines explain that a DCP is a mechanism used to levy new development for contributions to planned infrastructure needed by the future community (emphasis added).
29. The guidelines state that the infrastructure:
 - *must serve a neighbourhood or larger area*
 - *must be used by a broad section of the community, and*
 - *will in most cases serve a wider catchment than an individual development.*

3.1.2 What are the principles of a DCP?

30. The following table provides the basis for understanding the planning and development context for the application of the DCP principles in a global (i.e. multiple development front) setting.

Table 1: DCP Principles

DCP must be in the planning scheme
Development contributions to fund planned infrastructure for the wider community, neighbourhood or region can only be levied through an approved DCP that forms part of a planning scheme.
DCPs must have a strategic basis
The DCP must be strategically justified and linked to the State Planning Policy Framework or the Local Planning Policy Framework in the planning scheme. The DCP will only be approved if a clear, sound strategic basis can be demonstrated.
Justification of infrastructure projects
Infrastructure projects can be included in a DCP if they will be used by the future community of an area, including existing and new development. This means that new development does not have to trigger the need for new infrastructure in its own right. It can only be charged in accordance with its projected share of usage. This is all that is required to demonstrate 'need'.
Nexus between new development and the need for new infrastructure
It must be demonstrated that the new development to be levied is likely to use the infrastructure to be provided. New development should not be considered on an individual basis, but as part of the wider community that will use an infrastructure project. The wider community may also include existing development. This is all that is required to demonstrate 'nexus' to justify the application of the charge.
DCPs must have a reasonable time horizon
A DCP must include a time horizon. This time horizon should not exceed 20 to 25 years. If the time horizon is not reasonable, new development in the early years will be paying for infrastructure that will not be delivered until many years later. This is inequitable and unreasonable.
Infrastructure costs must be apportioned on the basis of projected 'share of usage'
For the purposes of calculating levies in a DCP, the costs of infrastructure projects are shared amongst all the likely users. The likely users will include existing and future development. In this way, new development will not be charged for the whole cost of an infrastructure project that others will use and costs are distributed on a fair and equitable basis. However, while the levy is calculated on the basis that all the users pay for the cost of the infrastructure, only new development can actually be charged the levy. Therefore, a DCP will rarely cover the full cost of providing the infrastructure.
A commitment to provide the infrastructure
A DCP imposes a binding obligation on the infrastructure provider to provide the infrastructure by the date or criteria specified in the DCP.
Accountability
This means the levies collected must be used to provide the infrastructure specified in the DCP. Proper financial accounts must be kept to demonstrate this.
Transparency
All assumptions relating to the calculation of levies within the DCP must be documented and justified and expressed in non-technical language so they can be clearly understood.

3.1.3 What infrastructure projects can be included in a DCP?

31. The guidelines state that a 'DCP may include infrastructure to be provided by a council or State Government agency. Basic utilities, such as water supply and sewerage, provided by servicing authorities under their own legislation cannot be included in a DCP.

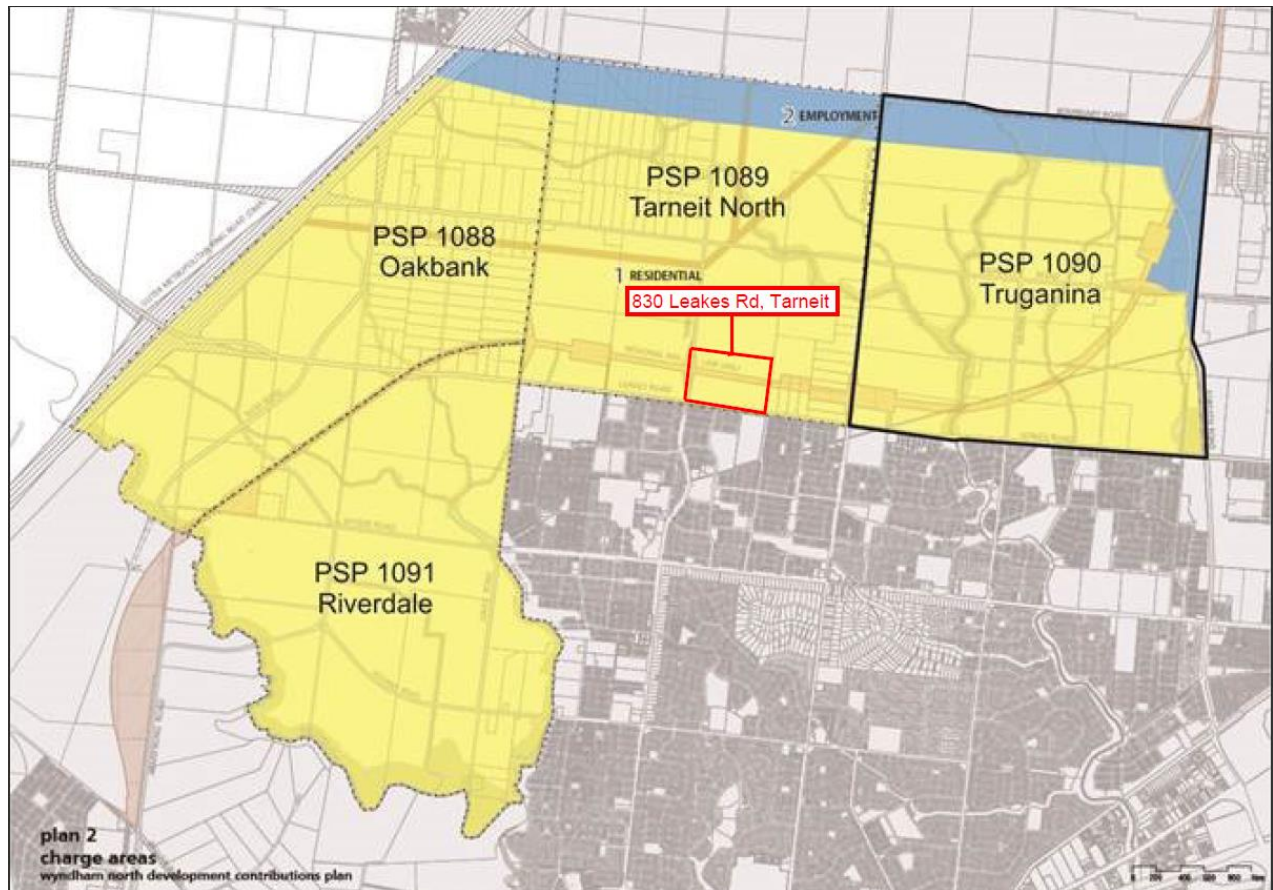
32. The types of projects in a DCP can include the following:
- *a new item of infrastructure*
 - *an upgrade in the standard of provision of an existing infrastructure item*
 - *an extension to an existing facility, or*
 - *the total replacement of an infrastructure item after it has reached the end of its economic life.*
33. A DCP cannot be used to fund the total replacement of an infrastructure item, if the replacement is necessary as a result of poor maintenance.
34. It is not appropriate to include existing infrastructure in a DCP that was funded through general taxes or rates. However, where an infrastructure project has been provided as part of a DCP calculated on a projected share of usage basis, and the intention is to recover all or part of the cost of the facility from contributions from development beyond the timeframe of the DCP, it would be fair to include such a project in a subsequent DCP.

3.1.4 What justification is required for infrastructure projects to be included in a DCP?

35. The selected infrastructure and the standard of provision must be justified in the DCP.
36. To qualify for inclusion in a DCP, all infrastructure:
- *must be used by a broad cross-section of the community, and*
 - *must serve a neighbourhood-sized catchment or larger area.*
37. This means that the infrastructure provided is likely to be used by a broad range of people, given the likely profile of the expected community (age, ethnicity, sex) which justifies the selection of the infrastructure.
38. To justify the infrastructure projects to be included in a DCP, the type and standard of infrastructure must be either:
- *basic to the health, safety or well-being of the community, or*
 - *consistent with current community expectations of what is required to meet its health, safety or well-being.*
39. The definition of basic infrastructure will be linked to the expected demographic profile of the neighbourhood. For example, in a family-oriented area the list of infrastructure projects considered to be basic could include roads, drainage, public transport, neighbourhood park with playground equipment, a child care centre, a maternal and child health centre and a community meeting facilities.
40. The information outlined above provides a useful introduction to the key issues associated with the Wyndham North DCP.

4 WYNDHAM NORTH DCP

41. The Wyndham North DCP covers an area of approximately 4,000 gross hectares and is set to provide the infrastructure funding instrument for four PSP areas being PSP 1090 – Truganina, PSP 1089 – Tarneit North, PSP 1088 – Oakbank and PSP 1091 – Riverdale. Combined the 4 PSP's are expected to provide homes for approximately 114,000 people.



42. According to the DCP the charge areas covered comprise 2,689 net developable hectares of residential land and 302 net developable hectares of employment land.
43. The Wyndham North DCP outlines the infrastructure requirements for the four PSP's areas which amount to a total of \$768,679,120. The DCP will function as a "global DCP" meaning that rather than having separate DCPs or charge areas for each of the four PSP's, the money collected from development anywhere in the DCP area will contribute to the provision of infrastructure across the DCP area regardless of where it is located.
44. The proposed Wyndham North DCP will collect funds for a total of:
- 25 road projects (\$118,228,976)
 - 21 bridge projects (\$104,977,042)
 - 63 intersection projects (\$300,447,181)

- 3 active recreation projects (\$177,418,269)
 - 15 community facility projects (\$67,607,658)
45. The global DCP approach works on the basis that while the DCP identifies a large number of projects requiring transport, recreation and community infrastructure, it is not possible nor is it necessary to commence all of the projects at once. Rather the theory is that projects are prioritised through the strategic assessment of community need and safety and alignment with development activity.
 46. Section 5.3 and specifically Table 10 of the DCP outlines the infrastructure delivery priorities and “...a clear understanding of which projects should be prioritized for works-in-kind agreements”.
 47. It is understood that the infrastructure delivery priorities are in line with Council's *Strategy for Managing Growth in Wyndham, July 2013* and their desire to include an Infrastructure and Land Delivery Strategy.
 48. If applied literally, the staging priorities outlined in Table 10 effectively restricts development from occurring in the Tarneit North and Oakbank PSP areas in the short to medium term.
 49. The land at 830 Leakes Road, Tarneit is adjacent the existing residential community and is in the walkable catchment for a local primary school, community facility and neighbourhood activity centre.

5 WYNDHAM NORTH DCP ASSESSMENT

50. The following section outlines my assessment of the DCP in relation to where it could be improved to achieve a more balanced outcome in terms of infrastructure contributions from development.
51. Importantly this assessment is undertaken in recognition that there is a general willingness to support a global DCP, which (amongst other things) appears to be driven by the likelihood of Victoria moving to a standardised development contributions system, and provided new development is only required to make a 'contribution' toward new infrastructure.

5.1 INFRASTRUCTURE DELIVERY PRIORITIES

52. There are three main concerns regarding Section 5.0 – Implementation Strategy, of the DCP, including:
 1. The list of priority infrastructure items being restricted to the Truganina and Riverdale PSP areas only;
 2. The restricted nature of the works-in-kind provisions in relation to the projects that are not included on the priority list; and
 3. The impacts on the delivery of infrastructure if works-in-kind are restricted to the priority list and development activity is constrained.

5.1.1 Prioritised Infrastructure Items

53. Section 5.0 states that *“this section provides further details regarding how the Collecting Agency intends to implement this DCP”* and Section 5.3 states that *“The following table (Table 10) provides an indication of DCP project priority over an initial 10 year period, to assist in supporting development across the Wyndham North area”*.
54. Table 10 outlines the priority projects for two time periods being 0-5 years and 5-10 years. These projects are all associated with the Truganina and Riverdale PSP areas only and it is understood to align with Council’s *Strategy for Managing Growth in Wyndham* and their request for an Infrastructure and Land Release Strategy to be included in the DCP.
55. A spatial review of the location of the priority projects suggests that if all these projects are to be delivered before any other projects within the Tarneit North and Oakbank PSP areas there will be an obvious disconnect in the staging of development across the Wyndham North area. Most importantly, Leakes Road and Davis Road will not be completed and connected to form the backbone of the development across the broader Wyndham North DCP area.
56. Given the regional importance of Leakes Road as a connection to the broader metropolitan freeway network and the existence of residential development to south along the length of

Leakes Road, it would seem appropriate that development would progressively grow to the north from Leakes Road.

57. Whilst it is understood that there is a desire to prioritise the delivery of projects it is inappropriate for a DCP to be so prescriptive that it does not encourage development to continue along the one road (Leakes Road) that traverses the entire Wyndham North DCP area. Furthermore, given the planning area covers approximately 4,000 hectares and spans a time period of 30+ years it seems unreasonable to think that infrastructure priorities or timing of infrastructure delivery may not change.
58. As it stands, the DCP discourages development along Leakes Road to the west of Derrimut Road, which I believe is a significant short coming of the infrastructure delivery priorities list as this area could support a number of active development projects, which collectively would see the earlier delivery of a greater length of Leakes Road, which would support the existing and new communities.

5.1.2 Works In Kind Priorities

59. Section 5.3 – Infrastructure Delivery Priorities, of the DCP states that *“The purpose of the table (Table 10) is to provide Council and development proponents with a clear understanding of which projects should be prioritised for works-in-kind agreements”*. The existence of the priorities table and the works-in-kind directions outlined in Section 5.3 not only prioritises the delivery of projects but restricts development in other areas within the Wyndham North area as the works-in-kind provisions are limited to focusing on the priority projects only. The limitation on projects where works-in-kind provisions can be applied effectively makes it unattractive and / or unviable to develop in locations other than those that have priority projects.
60. Due to the global nature of the DCP, any project not shown in Table 10 (remembering that there is some 127 individual projects) cannot be developed as works in-kind.
61. By limiting the projects that can be delivered under the works-in-kind provisions, it is expected that for development to occur at 830 Leakes Road, Tarneit there will be a requirement to pay a cash contribution towards the priority projects outlined in Table 10 as well as fund road upgrades and intersections on Leakes Road that may be deemed necessary to support development (i.e. Infrastructure Projects RD89-02 and IN89-14 & IN89-15 or approx. \$17m in costs above the cash contribution).
62. This example demonstrates that the DCP’s implementation strategy and restriction on the works-in-kind provisions is unfair as well serviced and located land cannot develop without being significantly disadvantaged by prohibitive early stage costs and / or potentially the opportunity to even undertake the works-in-kind along Leakes Road.

5.1.3 Implication of Restricting Works-in-Kind

63. Regardless of a site's location the process of restricting development to specific areas can have a major impact on the collection of development contributions and ultimately the continued delivery of infrastructure in an area.
64. This layer of restriction effectively strangles the fundamental driver of any development contributions scheme, development, by requiring the developer to pay for twice the amount of infrastructure upfront (i.e. cash towards the Table 10 projects and works to support their own development). The most effective development contribution schemes are those that collect funds quickly and at a rate that allows significant funds to be at the disposal of the Collection Agency or the delivery of significant works-in-kind.
65. Furthermore, the active participation in providing works-in-kind sees a range of upgrades and infrastructure provided across a development area, rather than it being limited to one or two sites.
66. The constraints on works in-kind projects which occur as a result of Table 10 may well be an unintended consequence, however the impact of not being able to develop across a number of PSP areas to effectively bring forward infrastructure will have a noticeable impact on the development of the region in terms of delays, opportunity cost, competition, housing diversity and housing affordability and as such it does not represent a practical balanced outcome for the region.
67. Section 5.1 suggests that the rationale to the implementation strategy is to minimise risk to all parties, however my opinion is that by constraining works-in-kind activity, restricting development in areas that can be readily connected to existing communities and prolonging the life of the DCP by slowing the rate of development, the risks associated with delivering the DCP is magnified.
68. Further, given the prioritised projects are all road related projects there is a great risk that any other 'community building' projects will need to be provided by developers without any initial works-in-kind credits being attributed until later in the Wyndham North development cycle. Therefore, I suggest that whilst there may be some direction as to the infrastructure that is most needed this should be done outside the DCP by utilising other management processes so as to allow infrastructure delivery to be aligned with development activity, demand levels and the general principles of need, nexus and equity.
69. Alternatively, if it is determined that a list is required, I would suggest that an indicative staging plan that encourages development in areas along the identified future arterial roads adjacent to existing residential development and in proximity to existing services and facilities would be more appropriate. This would see the land at 830 Leakes Road, Tarneit included in the short term timeframe for development.

70. As it stands, Section 5 – Implementation Strategy of the DCP fails to deliver a fair and equitable funding strategy to all parties and as such Section 5.3 and Table 10 should be deleted.

5.2 ACCOUNTABILITY – MANAGING SCOPE CREEP

71. State government departments and agencies, local government and developers, must collectively be held to account for the delivery of a development contributions system. Government authorities must be bound by the parameters of the development contributions plan. Too often government authorities:
- Disregard what has been agreed to in structure plans and equivalent documents, development contributions plans and rely directly on development proponents to fund scope increases or budget shortfalls;
 - Change and/or increase scope of works required leading to time delay and cost increases borne by developer;
 - Make changes late in the approval process when a developer has limited recourse to appeal due to condition wording or financial exposure; and
 - Prolong timeframes adding months to development commencement and consequently adding holding/interest costs, the effect of inflation, legal costs and further consultants fees to deliver an item. In many cases, the item may have already met statutory requirements. Throughout this process, the government authority is not subject to any tangible means of accountability.
72. Given the scale of the Wyndham North DCP and the potential for changing circumstances resulting in different requirements over time, a clear statement regarding ‘scope creep’ accountability should be included in the administration section of the DCP.
73. It is therefore suggested that Section 4.4 is amended to state that when the DCP is revised, assumingly in line with a review of development activity and a needs assessment, that:
- “There will be no increase to the scope of works or any increase in cost associated with a change in the scope of works will be borne by the party requesting the change”.*
74. In my opinion the fairest way to deal with the funding of additional works beyond the scope agreed to through the preparation of the DCP is to require that these be funded by the party who has requested the additional works.
75. For example, if a DCP specifies the works required for a road and those specifications formed the basis of the costs included in an approved DCP then there should be a reasonable expectation that the scope of works will not change.
76. However, as it happens quite regularly a council or other authority may require additional works to be completed at construction stage due to changing policy or standards.

Furthermore, the developer is more often than not forced to cover the costs of the additional scope of works via conditions on the planning permit. Because the planning permits needed to get works underway can effectively be withheld until the developer agrees to the additional scope of works, the developer is left with little choice.

77. In this example, the additional scope of works can add significant unknown and unbudgeted costs to the development levy of the DCP. Additional works should be funded by the agency insisting on the additional scope of works, as the purpose of the DCP is to, following a consultative process to establish the appropriate scope of works, clearly define the works that will be required.
78. To this end, Section 3.2 should also include a statement that:
- “There will be no increase in the scope of works for projects funded by the DCP”.

5.3 STRATEGIC PROJECT JUSTIFICATION

79. The DCP seeks to fund approximately \$245,000,000 of active recreation projects (approx. \$177m) and community facilities (approx. \$67m) and it is understood that council is seeking to include further significant cost associated with these items.
80. Whilst the Truganina and Riverdale PSPs provide detail in relation to those areas, Plan 5 provides no spatial information regarding these projects and there is no information relating to the Tarneit North and Oakbank PSP areas.
81. Therefore, it is impossible to assess whether the spatial allocation of these projects makes ‘good planning sense’ and more importantly whether the cost of the projects, and therefore the development infrastructure levy is accurate.
82. Given these projects represent one third of the total DCP funding allocation more detail regarding the following should be provided:
- Amend Plan 5 to show the location of proposed community and recreation facilities;
 - Details of the facilities to be provided and at which locations;
 - The cost associated with each project or facility at each location; and
 - To the extent these matters are not covered, how and when will they be covered.
83. Once again, it is essential that the lack of current detail does not ‘blow out’ the scope of works that is determined later and the DCP levy increases without warning. This would have an impact on developer’s ability to develop and housing affordability as the price increases are naturally passed onto the future home buyer.

5.4 LEVEL OF DEVELOPMENT CONTRIBUTION

84. In my opinion, it is important in considering the Amendment to emphasise the fact that development contributions are and always have been intended to serve as a contribution from development to the infrastructure needed to support the existing and future community. In my opinion the proposed DCP has gone too far down the path to being a full funding scheme (i.e. total cost recovery) rather than a contribution scheme and has paid too little attention to considering other sources of funding which would contribute to the development of infrastructure over time.
85. It is noted that the Ministerial Advisory Committee appointed to consider the proposed reforms to the development contributions system concluded that development contributions are only a 'contribution' to the cost of developing new communities. In my opinion the State Government has a stronger role to play in determining a regular distribution of grants / funds to councils and securing longer term infrastructure funding streams.
86. The cause of this in my opinion is the irregular and ad hoc application of State Government funding, which leaves Councils in a position where they must rely heavily on the Commonwealth grants process and development contributions. Over reliance on development contributions, has the inevitable consequence of driving up the cost of development which in turn flows through to the cost of land to the home buyer.
87. Furthermore, there is a distinct reluctance by councils to rely on obtaining funds from other sources outside of DCPs as they can't be assured of external funding sources until they are received. However, councils can be assured that their rates base and therefore capital works budget (amongst other things) will increase with development and can rely on being able to 'cover' some of the costs that are not derived from a fair and reasonable DCP.
88. In practice this issue usually manifests itself in the form of infrastructure with over specified design requirements or excessive land take for arterial road intersections, road reserves and bridges. In addition there are occasions where the list of infrastructure items or their scope is expanded to include works that would be ordinarily funded through future capital works programs derived from a combination of property rates and State or Federal grants schemes.
89. While it is recognised that in a global DCP the issue of external apportionment can to a certain extent be set aside, it is nonetheless important to ensure that items included in the DCP are subject to design specifications that reflect interim need in order to ensure that a fair, balanced and practical outcome is achieved.
90. I consider that a starting point for establishing a more even level of development contribution is to review the nominated primary and secondary arterial road reserves and intersections in order to ensure that there is not excessive land take and design specification associated with the projects. These projects are often over scoped as they attempt to accommodate for the future.

91. To ensure the development levy does not continue to escalate through the planning phase, an overall scope of works review should occur for each infrastructure item that is included in the DCP and further reviewed if additional items or design specifications are proposed. This process would manage the administration in a way that balances the wins and losses associated with the actual construction process.

5.5 LAND TAKE AND CONSTRUCTION COSTS

92. The DCP contains a large number of items, which are funded beyond what would ordinarily be deemed an interim standard. This generally includes the extent of land taken for arterial roads and intersection and the works required to satisfy the 'interim works to suit ultimate duplication' guideline that is outlined in the 'draft' Arterial Roads Protocol (ARP).
93. The draft ARP has been developed to ensure that land for arterial roads and the construction of carriageways and intersections (usually arterial-arterial) occurs when it is required and that the reasonable costs of road acquisition and construction are met. However, although at face value the protocol seems to be reasonable the challenges and impact of meeting the protocol becomes most apparent in the design of intersections.
94. While it is acknowledged that this document is in 'draft' form, not generally available to the public nor does it hold any statutory status; it has been established and is being used to assist planning authorities, road managers and developers negotiate the terms and conditions under which road and intersection infrastructure can be delivered.
95. Where an arterial road is identified through the strategic planning process, the draft ARP establishes the following parameters:
- Where no road currently exists the ARP provides for delivery of a constructed carriageway plus land for the ultimate reserve,
 - For future duplicated arterial roads, Council will take the necessary steps to secure the reservation required for ultimate development, build at least one carriageway and ensure that the initial carriageway is constructed to suit ultimate duplication (emphasis added).
96. While the above points are generally acceptable, the last part of the second guideline dot point (underlined) is generally considered by industry to be an unnecessary embellishment or 'gold plating' of works, which go beyond meeting the need of the new community.
97. The land acquisition and additional works required to construct these gold plated intersections has seen their price rise to in excess of \$9,000,000 (Leakes Rd / Ison Rd) at an average of approximately \$4,700,000 each across the development front. Currently the DCP is required to contribute over \$300,000,000 towards intersections alone.
98. It is noted that only a few years ago some intersections were being designed to cost less than \$1,000,000 and the largest intersections were nowhere near in the vicinity of

\$9,000,000. Further these new interim designs have total disregard for other urban design objectives, such as community connectivity and walkability

99. However, as this is a global DCP and it does not rely on external apportionment to disperse the costs between existing communities and the new development area, there is a need to ensure that infrastructure is not over specified or designed. In my opinion over specification of infrastructure works is an area where this DCP's balance between practical implementation and the test of fairness has become unstuck (i.e. an inequitable outcome).
100. The following intersection and bridge projects are examples of DCP projects that I believe fail the test of need, nexus and equity and appear to require a level of works that is above and beyond what would be expected under the draft ARP.

- Intersection Projects – IN88-06, IN88-08, IN88-12, IN89-04, IN89-14, IN89-16, IN90-10, IN90-12, IN90-16 and IN91-07.

The proposed intersection designs accommodate four or six through lanes at a number of intersections on Dohertys Rd, Davis Rd, Ison Rd, Sayers Rd, Boundary Rd, Leakes Rd, Tarneit Rd, Derrimut Rd, Morris Rd and Forsyth Rd.

- Bridge projects - BR88-C1 (Ison Road crossing of waterway), BR89-C2 (Boundary Road crossing of waterway), BR90-C3 (Leakes Road crossing of waterway) and BR89-03 (Dohertys Road 4 lane-bridge over Dry Creek).

The size of the proposed waterway crossings / bridge is four lanes and beyond the need generated by the new development.

101. Any attempt to change the spirit of contribution in the 'draft' ARP should be avoided because it will only have an impact on the timing and delivery of basic infrastructure with little net community benefit and greater need to divert funds away from other important community building projects (i.e. recreation and community facilities). There is also an increasing risk that the 'up scoping' of infrastructure is becoming accepted without properly considering the significant cost on development that it has.
102. At a site specific level, the uncertainty surrounding land take and construction costs can have a significant impact. For example, at 830 Leakes Road there are two intersections and a major road upgrade required to support development and decisions relating to final design of the infrastructure projects could greatly impact the future urban design and cost of development.

5.6 LAND VALUATION

103. The acquisition of land to accommodate road, recreation and community infrastructure accounts for a substantial percentage of the funds required to be provided by the DCP. The requirement of all to contribute towards the pool of funds necessary to accommodate

infrastructure and effectively reimburse those who are to surrender a development opportunity is a key fairness attribute of the DCP process.

104. However, ensuring the appropriate level of compensation is attributed is critical in maintaining the integrity of the development contributions system. If land is undervalued then those surrendering their land to accommodate infrastructure that benefits others are disadvantaged and conversely if land is overvalued then the cost of the development levy increases substantially.
105. In the case of land in the Tarneit North and Oakbank PSP areas, there is no way of telling what land will be affected by acquisition requirements other than road related projects.
106. The current land valuation process for the Wyndham North DCP is very different to that of other DCPs and it seems to be principally driven by two factors. Firstly, the number and diversity of properties was adding complexity to the valuation process and task; and secondly, the actual location of all the land to be acquired across the DCP area is not fully known.
107. Given these factors the valuation process did not to carry out site specific assessments nor accurately assess the character and timing associated with the land to be acquired. As such it is critical that the land valuation process is reviewed to ensure that it compensates parties for their lost opportunity at the time that the loss is experienced.
108. It is suggested that Plan 5 – open space, active recreation projects & community facilities, be amended to show the preferred location for the relevant infrastructure items and valuations of the actual properties that are to be affected is undertaken.

5.7 WORKS IN KIND

109. The works-in-kind process greatly assists the Collection Agency administering the DCP. It allows for a natural form of 'wins and losses' to be derived through the delivery of infrastructure stage by providing the opportunity for developers to construct DCP items whilst undertaking their own site works.
110. This allows for efficiencies in contract management, project site costs and actual contract price.
111. However, bullet point 3 of Section 4.1.3 of the DCP requires that:
'The development proponent complies with appropriate tendering, documentation, supervision and related provisions'
112. Whilst the documentation and supervision processes are generally consistent between developers and government, the tendering process is dramatically different. Developers often have the opportunity to achieve better value outcomes by not pursuing arduous tendering processes.

113. In order to allow parts of the development industry to operate without unnecessary paper work constraint, the word ‘tendering’ should be removed from bullet point 3 of Section 4.1.3.
114. Furthermore, Section 4.1.3 provides that a developer who undertakes works in lieu of making a cash payment as a development contribution will get a credit under the DCP for the less of the DCP value of the project or the cost of the project.
115. Therefore, if the actual cost of a project is above the value attributed in the DCP, then the developer will only gain credit for the published value of the item.
116. Whilst this ensures that the DCP costs are managed, it is unfair that developers bear the risk of cost escalations but do not benefit if a project can be delivered for less than the published value of the item in the DCP.
117. However the provisions of Section 4.1.3 appear in conflict with the credit for over provision directions outlined in Section 4.1.4. Under Section 4.1.4 it is stated that a developer may be ‘...entitled to credits against other projects in the DCP to the extent of the excess in contribution’. As a minimum this allows for the developer to manage the ‘swings and roundabouts’ process of making development contributions but with the existence of Section 4.1.3 it is unclear exactly how the works-in-kind practices will be managed
118. Notwithstanding the above administrative confusion, the fact that Section 5.3 of the DCP states that “*the purpose of the table (Table 10) is to provide Council and development proponents with a clear understanding of which projects should be prioritised for works-in-kind agreements*” places a significant limitation on development and potentially restricts the implementation of the two proposed and two future precinct structure plans that apply to the Wyndham North DCP area.
119. In my opinion these provisions should be reviewed to ensure a fair and equitable approach to managing and encouraging the works in lieu of cash contributions process.

5.8 INCREASING PROJECT REQUIREMENTS

120. In finalising the DCP there is often a number of changes that are made as a result of submissions from the council, developers and land owners. Whilst accepting some of these changes may be appropriate and justified, close attention must be paid to ensuring that the development levy does not simply blow out in an attempt to accommodate the wishes of all parties.
121. For example, in the Council meeting minutes from 22 July 2013 the Council agreed to pursuing a greater level of active open space across Wyndham North and has requested that the provision ratio be increased to ‘two hectares of active open space per one thousand people’. Subject to dwelling yields being confirmed, the council report suggests that this could result in a requirement of 8-10% of net developable area be provided.

122. Based on a review of the current costs associated with 7% of active open space being provided it is estimated that for every additional 1% of active open space (land and improvements) that is provided there will be an approximate \$24.7m or \$9,185 per net developable hectare increase in the development levy.
123. Given the location of active open space in the Tarneit North PSP area remains unknown, the impact of any additional open space on the land at 830 Leakes Road is difficult to assess. As mentioned above, it is recommended that Plan 5 be amended to show the actual location and size of all open space and community facilities should be provided.
124. Furthermore, in the DCP submission made by the City of Wyndham they identify a number of other matters which they believe need addressing in the DCP, including the increased apportionment of intersection projects, increased cost of bridge projects, duplication of council controlled arterial roads, increased design specifications, potential re-location of services and inclusion of checking fees.
125. Whilst it is difficult to accurately calculate the cost of these requested changes they can be estimated to be in the order of \$32,000,000 or \$12,000 per net developable hectare. Combined with the increase in active open space the development levy would increase by approx. \$21,200 per net developable hectare to a total in the order of \$288,000 per net developable hectare.
126. This level of development levy increase is unlikely to be sustained on top of what is already a relatively high development levy by western Melbourne standards and residential land prices.
127. With the council also seeking to include an 'Infrastructure and Land Delivery Strategy' in the DCP it is difficult to determine exactly which projects will be deemed 'priorities' or to what extent upfront levies will be required. It is noted that the proposed upfront levies proposed under the Infrastructure Delivery Strategy were substantial in Wyndham West.

6 CONCLUSION

128. Having reviewed the range of documents associated with the Wyndham North DCP, I am of the opinion that there are a number of changes that could be made to the DCP that would enhance its deliverability and ensure that the system is fair for all parties across the DCP area.
129. The following changes would assist in ensuring a greater level of development activity to occur across the DCP area in a fair and equitable way:
- Remove Section 5.3 and Table 10 – Infrastructure Delivery Priorities, from the DCP;
 - Amend Plan 5 to show the actual location of the proposed open space, active recreation projects and community facilities;
 - Revise the land valuation methodology to ensure that the actual properties to be acquired are assessed;
 - Amend Section 3.2 of the DCP to state that:
“The DCP will not fund any increase in the scope of works that may be requested at a later stage by any party”.
 - Amend Section 4.4 of the DCP to state that:
*“When the DCP is reviewed, there will be no increase in the scope of works to be funded by the DCP; and

Any increase to the scope of works determined during a review of the DCP must be funded by the party requesting the additional scope of works”.*
 - Amend Section 4.1.3 to delete “tendering” from bullet point 3.
 - Review the scope of works, including land take and design specifications associated with the following projects to ensure excessive costs are avoided and amend the DCP tables accordingly:
 - Intersection Projects – IN88-06, IN88-08, IN88-12, IN89-04, IN89-14, IN89-16, IN90-10, IN90-12, IN90-16 and IN91-07.
 - Bridge projects - BR88-C1 (Ison Road crossing of waterway), BR89-C2 (Boundary Road crossing of waterway), BR90-C3 (Leakes Road crossing of waterway) and BR89-03 (Dohertys Road 4 lane-bridge over Dry Creek).