



*Planning and Environment Act 1987*

# Panel Report

Wyndham Planning Scheme

Amendments C171 and C172

‘Ballan Road Precinct Structure Plan’ and

‘Westbrook Precinct Structure Plan’

Interim Report

**22 November 2013**



*Planning and Environment Act 1987*

Interim Panel Report pursuant to Section 25 of the Act

Amendments C171 and C172 to the Wyndham Planning Scheme

‘Ballan Road Precinct Structure Plan’ and ‘Westbrook Precinct Structure Plan’

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Michael Kirsch, Chair

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Mandy Elliott, Member

A handwritten signature in dark ink, appearing to be 'T. McCullough', with a long, sweeping horizontal line extending to the right.

Trevor McCullough, Member

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## List of Abbreviations

B2Z	Business 2 Zone
BCS	Biodiversity Conservation Strategy
CAD	Central Activities District
DBPM	Demand Based Planning Model
DCP	Development Contributions Plan
DCPO	Development Contributions Plan Overlay
DEPI	Department of Environment and Primary Industry
DSE	Department of Sustainability and Environment
DTPLI	Department of Transport, Planning and Local Infrastructure
EPA	Environment Protection Authority
EPBC Act	Environment and Biodiversity Conservation Act
ESO	Environmental Significance Overlay
EVC	Ecological Vegetation Class
FZ	Farming Zone
GAA	Growth Areas Authority (now Metropolitan Planning Authority)
GGF	Growling Grass Frog
GRZ	General Residential Zone
GSM	Golden Sun Moth
GWMP	Green Wedge Management Plan
IPO	Incorporated Plan Overlay
LPPF	Local Planning Policy Framework
MAC	Major Activity Centre
MITM	Melbourne Integrated Transport Model
MMBW	Melbourne and Metropolitan Board of Works
MPA	Metropolitan Planning Authority (formerly Growth Areas Authority)
MSS	Municipal Strategic Statement
MUZ	Mixed Use Zone
NAC	Neighbourhood Activity Centre
NDA-R	Net Developable Area - Residential
NDHa	Net Developable Hectare
PAO	Public Acquisition Overlay
PPRZ	Public Park and Recreation Zone

PSP	Precinct Structure Plan
RCZ	Rural Conservation Zone
SPPF	State Planning Policy Framework
SRV	Sport and Recreation Victoria
TLRS	Transport and Land Release Strategy
UGB	Urban Growth Boundary
UGZ	Urban Growth Zone
VITM	Victorian Integrated Transport Model
VPP	Victoria Planning Provisions
WPS	Wyndham Planning Scheme
WTRP	Werribee Township Regional Park
WVP	Wyndham Vale Project

# Executive Summary

## Summary

Amendments C171 and C172 to the Wyndham Planning Scheme seek to implement the Ballan Road and Westbrook Precinct Structure Plans. The amendments were prepared by the Metropolitan Planning Authority (MPA) in conjunction with Wyndham City Council and various agencies and authorities.

The amendments were exhibited between 18 April and 20 May 2013. Amendment C171 attracted 34 written submissions as well as 2 late submissions, while Amendment C172 attracted 20 written submissions as well as 1 late submission.

Although the MPA proposed a number of changes to the amendments to address issues raised in submissions, not all of the issues were able to be resolved and it requested that a Panel be appointed.

The Panel was appointed on 23 August 2013 and hearings were held between 21 October and Friday 1 November, 2013.

Following the exhibition of the amendments, VicRoads sought the inclusion of the Public Acquisition Overlay to provide for the future widening of Ballan Road. In order to provide opportunities for this proposal to be refined and for affected parties to respond, it was agreed that the Panel would be reconvened in early 2014 to consider the PAO proposal. The Panel also agreed to release an interim report (this report) in response to all other issues and to release a final report in response to the PAO following the reconvened hearing in 2014.

The main issues raised by submitters related to:

- The Wyndham Transport and Land Release Strategy;
- Open space;
- Housing;
- Road cross sections;
- The bicycle network;
- The Biodiversity Conservation Strategy; and
- Land encumbered by flooding.

Submitters also raised various site specific issues.

The MPA proposed a range of revisions to the amendments before and during the hearings, resulting in many issues being resolved. Consequently, the scope and number of matters before the Panel were significantly reduced.

The Panel generally supports the amendments and the revisions proposed by the MPA, but has recommended some relatively minor additional changes.

In addition, the Panel has recommended that the MPA and Council continue their discussions to address issues associated with the staging and funding of infrastructure to service the Wyndham West growth front.

The Panel has also recommended that the MPA review the open space standard S2 in the Precinct Structure Planning Guidelines to assess whether a revised standard should be introduced in response to increasing dwelling densities in growth areas.

Finally, the Panel wishes to record its appreciation of the assistance and submissions provided by the MPA, Council and submitters.

## **Recommendations**

### **Amendment C171**

**For the reasons set out in this Report, the Panel recommends that Amendment C171 to the Wyndham Planning Scheme be modified to:**

- A1 Include the changes described by the Metropolitan Planning Authority in its written submissions to the Panel, unless otherwise recommended by the Panel.**
- A2 Include the changes proposed by the Metropolitan Planning Authority in the List of Document Changes for Planning Panels Victoria, V6, 1 November 2013 (Document 71 at the Hearing), unless otherwise recommended by the Panel.**
- A3 Include (in the Ballan Road Precinct Structure Plan) revised legends in Plan 8 (Street Network and Inter-Parcel Connections), Plan 9 (Integrated Water Management) and Plan 10 (Utilities) that insert: *'Alternative alignments are possible, subject to approval by Melbourne Water and the Responsible Authority'* following *'General alignment of key access level streets for stormwater conveyance'*.**
- A4 Add the following Requirement (in the Ballan Road Precinct Structure Plan) in Section 3.3.2 Community Facilities:**

*The local road fronting the school site on property 23 must be provided to at least 50% of the shared boundary with the school site.*
- A5 Add the following Requirement (in the Ballan Road Precinct Structure Plan) in Section 3.5.3 Street Network and Inter Parcel Connections:**

*Where the connector road abuts Werribee Township Regional Park, and subject to utility services being adequately accommodated, the road reserve may be reduced to 20m, by incorporating the verge and required shared path at this interface as part of the adjoining park, subject to the approval of the Responsible Authority.*
- A6 Add the following additional requirement in Clause 3.2 of the Urban Growth Zone Schedule 8:**

*The width of the waterway corridor to the satisfaction of Melbourne Water and the Responsible Authority.*
- A7 Include a provision in the Urban Growth Zone Schedule 8 (to be drafted by the Metropolitan Planning Authority) that provides for variation to the extent of native vegetation or threatened species habitat to be offset where approved by the Secretary of the Department of Environment and Primary Industries or the Minister responsible for the administration of the *Environment Protection and Biodiversity Conservation Act 1999* or delegate.**
- A8 Reflect the approved Biodiversity Conservation Strategy (where required).**



### **Amendment C172**

For the reasons set out in this Report, the Panel recommends that Amendment C172 to the Wyndham Planning Scheme be modified to:

- B1** Include the changes described by the Metropolitan Planning Authority in its written submissions to the Panel, unless otherwise recommended by the Panel.
- B2** Include the changes proposed by the Metropolitan Planning Authority in the List of Document Changes for Planning Panels Victoria, V6, 1 November 2013 (Document 70 at the Hearing), unless otherwise recommended by the Panel.
- B3** Include a provision in the Urban Growth Zone Schedule 9 (to be drafted by the Metropolitan Planning Authority) that provides for variation to the extent of native vegetation or threatened species habitat to be offset where approved by the Secretary of the Department of Environment and Primary Industries or the Minister responsible for the administration of the *Environment Protection and Biodiversity Conservation Act 1999* or delegate.
- B4** Reflect the approved Biodiversity Conservation Strategy (where required).

### **Other amendment recommendations**

- C1** The Panel recommends that any further changes to the configuration of the cross sections of arterial roads agreed between the Metropolitan Planning Authority, VicRoads and Wyndham Council (to vary the treatment of bike lanes, for example) should be permitted provided that they do not increase the overall width of the road cross section. In any case, cross sections should be finalised before the final gazettal of the PSPs.
- C1** The Panel recommends that there be a thorough final review of the amendments to correct any errors or inconsistencies, to include the relevant revisions agreed to by the Metropolitan Planning Authority in response to submissions and to ensure that any necessary consequential changes are identified and included.

### **Other recommendations**

- D1** The Panel recommends that the Metropolitan Planning Authority continue its discussions with Wyndham City Council to address issues associated with the staging and funding of infrastructure to service the Wyndham West growth front, including the further refinement and possible implementation of the Wyndham Transport and Land Release Strategy.
- D2** The Panel recommends that the Metropolitan Planning Authority review the open space standard S2 in the Precinct Structure Planning Guidelines to assess whether a revised standard should be introduced in response to increasing dwelling densities in growth areas. The review should assess whether a 'population' or 'developable area' based approach would be more suitable.

# 1 Introduction

## 1.1 The Amendments

Amendments C171 and C172 to the Wyndham Planning Scheme were prepared by the Metropolitan Planning Authority (MPA) (formerly the Growth Areas Authority) as Planning Authority.

### (i) Amendment C171

As exhibited, Amendment C171 proposes to implement the Westbrook Precinct Structure Plan (April 2013) and the Westbrook Native Vegetation Plan (April 2003).

The Amendment applies to the area shown below on Figure 1, below.

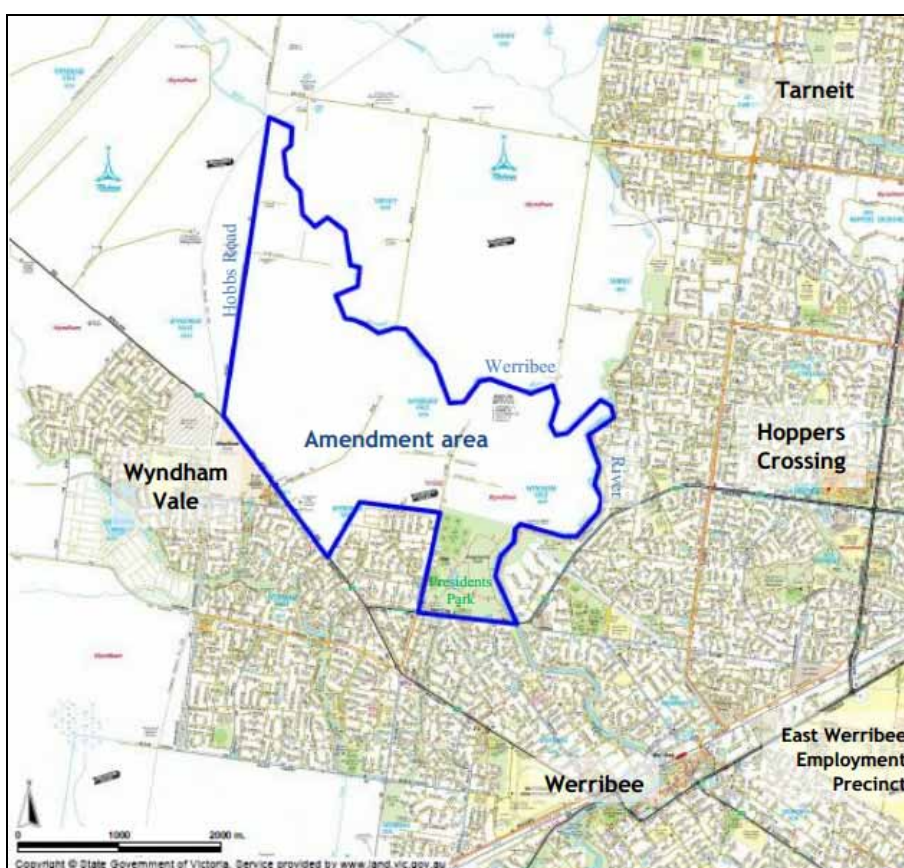


Figure 1 Ballan Road PSP area (as exhibited)

The Amendment includes:

- Introducing Schedule 8 to the Urban Growth Zone (UGZ8) and applying it part of the land currently zoned UGZ;
- Rezoning land from Rural Conservation Zone (RCZ) to UGZ8;
- Rezoning land from UGZ (generally along the Werribee River) to RCZ;
- Rezoning land from RCZ (generally east of McGraths Road) to Public Park and Recreation Zone (PPRZ) and Farming Zone (FZ);

- Rezoning land from RCZ and Residential 1 Zone (R1Z) to RCZ and R1Z (zoning corrections along the easternmost reaches of the Werribee River);
- Incorporating the Ballan Road Precinct Structure Plan (April 2013) and the Ballan Road Native Vegetation Plan (April 2013);
- Applying the Development Contributions Plan Overlay (DCPO) to land within the precinct;
- Applying the Incorporated Plan Overlay (IPO) to land that is both within the precinct boundary and within the RCZ;
- Deleting the Environmental Significance Overlays (ESO) Schedules 1 and 2 from land in the growth area and from land zoned RCZ to the east of McGraths Road; and
- Making consequential changes to the schedules to Clauses 52.01, 52.16, 61.03 and 81.01.

The Amendment was placed on public exhibition between 18 April and 20 May 2013. It attracted 34 written submissions as well as 2 late submissions.

## (ii) Amendment C172

As exhibited, Amendment C172 proposes to implement the Westbrook Precinct Structure Plan (April 2013) and the Westbrook Native Vegetation Plan (April 2003).

The Amendment applies to the area shown below on Figure 2, below.



Figure 2 Westbrook PSP area

The amendment includes:

- Introducing Schedule 9 to the Urban Growth Zone (UGZ9) and applying it to part of the land currently zoned UGZ;
- Rezoning land from Rural Conservation Zone (RCZ) to UGZ9;
- Incorporating the Westbrook Precinct Structure Plan (April 2013) and the Westbrook Native Vegetation Plan (April 2013);
- Applying the Development Contributions Plan Overlay (DCPO) to land within the precinct;
- Applying the Incorporated Plan Overlay (IPO) to land that is both within the precinct boundary and within the RCZ;
- Deleting the Environmental Significance Overlays (ESO) Schedules 1 and 2 from land in the precinct; and
- Making consequential changes to the schedules to Clauses 52.01, 52.16, 61.03 and 81.01.

The Amendment was placed on public exhibition between 18 April and 20 May 2013. It attracted 20 written submissions as well as 1 late submission.

## 1.2 The Panel Process

The Panel was appointed under delegation from the Minister for Planning on 23 August 2013 and comprised Mr Trevor McCullough (Chair), Ms Mandy Elliott and Mr Michael Kirsch. For health reasons Mr McCullough was unable to attend the Panel Hearing, except for the final day and the Panel was re-appointed on 21 October 2013 with Mr Kirsch as Chair and Mr McCullough and Ms Elliot as members.

A joint Directions Hearing was held on 16 September 2013 in the Planning Panels Victoria office.

A joint Panel Hearing was held between Monday 21 October and Friday 1 November 2013 in the Planning Panels Victoria office.

The Panel undertook unaccompanied inspections of the areas affected by the amendments and the surrounding areas prior to the Hearing.

The Panel heard the parties listed in Table 1.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Growth Areas Authority	Ms Adele Patterson (Counsel) and Mr Paul Cassidy (MPA)
Wyndham City Council	Mr Terry Montebello (Maddocks Lawyers) who called the following expert witnesses: <ul style="list-style-type: none"> <li>- Ms Kate Partenio (GTA Consultants) on transport and traffic</li> <li>- Mr Benjamin Bunting (Policy Officer at Sport and Recreation Services QLD Government) on open space</li> </ul>

	<ul style="list-style-type: none"> <li>- Ms Sue Hawes (Wyndham Open Space Planner) on open space</li> </ul> <p>Mr Montebello was assisted by Council officers including Mr John Moore (Manager Strategic Planning) and Mr Steven Lambert (Director Corporate Services).</p>
Manor Commercial Company Pty Ltd	Mr Chris Townshend (Counsel) and Mr Nick Tweedie (Counsel)
Yourland Development	Ms Heidi Wilson
Owners of 504-530 Ballan Road	Mr Wes Gault
ISIS Primary Care Ltd	Mr Andrew Clarke (Matrix Planning)
Mr Andrew Booth	
Lotus Oakes Pty Ltd Mr John Fitzpatrick	<p>Mr Ian Pitt (SC Best Hooper Solicitors) who called the following expert witnesses:</p> <ul style="list-style-type: none"> <li>- Aaron Organ (Ecology and Heritage Partners) on flora and fauna</li> <li>- Brett Lane (Brett Lane and Associates) on flora and fauna</li> </ul>
Mr Neil Anderson	<p>Mr John Cicero (Best Hooper Solicitors) who called the following expert witnesses:</p> <ul style="list-style-type: none"> <li>- Mr Aaron Organ (Ecology and Heritage Partners) on flora and fauna</li> </ul>
Mrs Josie and Mr Paul Casaccio	<p>Mr John Cicero (Best Hooper Solicitors) who called the following expert witnesses:</p> <ul style="list-style-type: none"> <li>- Mr Jason Black (Insight Planning Consultants) on planning</li> <li>- Mr Paul Kelly (Kelly and Associates) on flora and fauna</li> <li>- Mr John De Frutos (Jannand Environmental Planning) on ground disturbance</li> </ul>
The Corcoris Group	Ms Brooke Templeton (Taylors)
Wyndham Vale Christian Centre	Mr Dan Parker
Mr Tino Ballan	Mr Greg Wood (Tract Consultants)
Wyndham Vale Project Pty Ltd	Mr Jonathan Fetterplace (Dacland)
Bicycle Network Victoria	<p>Mr Chris Norlen-Holmes (Corrs Chambers Westgarth Lawyers) who called the following expert witnesses:</p> <ul style="list-style-type: none"> <li>- Mr John McInerney (Spatial Planning Pty Ltd) on planning</li> <li>- Mr Fotios Spiridonos (Innovative Transport Strategies) on transport modelling</li> </ul>



In reaching its conclusions and recommendations, the Panel has read and considered the submissions and a range of other material referred to it. This includes written submissions, evidence and verbal presentations.

### **1.3 Procedural matters**

#### **(i) Submissions**

Initially the MPA only supplied the Panel with copies of what is described as ‘unresolved’ submissions. The Panel sought (and was provided with) copies of all submissions, including those that the MPA considered to have been resolved. The Panel advised the authors of the resolved submissions of the scheduled Panel Hearing (in a letter dated 16 September 2013) and noted the MPA advice that their submissions had been resolved.

The Panel subsequently received correspondence from Mr Wes Gault and Mr Andrew Clarke in relation to Amendment C171 seeking the opportunity to make presentations at the Panel Hearing. After consulting with the MPA, the Panel agreed to these requests.

Following the Directions Hearing (in a letter dated 18 September 2013), the Panel directed that the MPA’s submission to the Panel include a formal response to all submissions, including those that had been resolved, clearly setting out any changes to the exhibited documents.

#### **(ii) Ballan Road Public Acquisition Overlay**

VicRoads lodged submissions to the MPA on both amendments (in correspondence dated 18 and 19 July 2013), requesting that they each include the application of a Public Acquisition Overlay (PAO). The proposed PAO was intended to provide for the acquisition of land to enable the future widening and construction of Ballan Road. As part of its submission, VicRoads provided the MPA with proposed PAO amendment maps based on ‘concept functional layout plans’.

The MPA advised the Panel (in a letter dated 23 September 2013) that it intended to modify the amendments to include the Ballan Road PAO. The MPA also proposed a process and timetable for seeking comments that included circulating the proposed PAO maps and inviting submissions to be lodged with the MPA by 4 October 2013. It was initially intended that any submitters would be heard during the Hearing scheduled for October/November 2013.

The MPA subsequently advised the Panel that a design review of the proposed Ballan Road widening affecting the proposed PAO was required and that this could not be done before the scheduled Hearing dates. Instead, the MPA proposed that the Panel reconvene the Hearing in 2014, and schedule 2 days for considering submissions on the PAO. The MPA also proposed that the Panel release an ‘interim’ report (this Report) following the scheduled October/November Hearing that would deal with all other matters.

The Panel agreed with this approach and directed that the MPA write to all affected parties and all submitters to the C171 and C172 Hearings advising of the proposed PAO and seeking submissions. Planning Panels Victoria will seek any requests to be heard for the PAO part of the Hearings early in 2014 and any Hearings, as and if required, will be held in February or March 2014.

### **(iii) Changes to the amendments**

The MPA has proposed various revisions to the amendments reflecting further investigations and changes, particularly in relation to the other elements of the regulatory framework. These revisions include:

- the deletion of various ‘tidy up’ rezonings that will be pursued through a separate future amendment;
- revisions to the UGZ8 to take account of recent zone reforms (applying the Mixed Use Zone and the General Residential Zone);
- the removal of the ‘bushfire’ provisions given that they would have duplicated the building regulations; and
- the removal of the Native Vegetation Precinct Plans (NVPPs) and related documents, and the inclusion of replacement provisions to take account of revised State/Commonwealth environmental approval processes.

These revisions were not contentious and the Panel has made general recommendations that these matters be included in modified amendments, unless otherwise recommended by the Panel.

The MPA also continued to negotiate changes with submitters and other stakeholders following the exhibition of the amendments and in response to submissions. These changes were outlined in the MPA’s written submissions to the Panel, while changes to PSPs and UGZ schedules were also recorded in a series of ‘tables’ prepared by the MPA. These tables included:

- a table of proposed changes (dated 8 October 2013, V2) circulated by the MPA to all parties two weeks prior to the Hearing in accordance with a direction from the Panel;
- a revised table of proposed changes (14 October 2013, V3);
- a further revised table of proposed changes (21 October 2013, V4) submitted at the commencement of the Hearing;
- a further revised table of proposed changes (25 October 2013, V5); and
- a final table (1 November 2013, V6) submitted on the last day of the Hearing (Documents 70 and 71).

The Panel has made general recommendations that the revisions outlined in the MPA’s final tables (Documents 70 and 71) be included in modified amendments, unless otherwise recommended by the Panel.

The Panel was also supplied with track changes versions of the PSPs following the Hearing.

## **1.4 Wyndham West Development Contributions Plan**

The MPA advised that the Wyndham West Development Contributions Plan (DCP) is being prepared as a separate amendment (Wyndham C173) from the PSPs. The MPA also advised that *‘it is not the position that it be formally exhibited’*.

The draft Wyndham West DCP has been prepared as a ‘global’ DCP that will apply to the following PSPs:

- PSP 40 Ballan Road – subject to this Panel hearing;

- PSP 42.1 Black Forest Road North – currently in pre-planning;
- PSP 42.2 Black Forest Road South – previously approved;
- PSP 43 Alfred Road – previously approved;
- PSP 92 Westbrook – subject to this Panel hearing;
- PSP 92.1 Quandong – not yet prepared; and
- PSP 93.1 Bayview – not yet prepared.

Amendments C171 and C172 make provision for the future DCP by introducing the DCPO, which will be updated when Amendment C173 is implemented. The exhibited Schedule 11, included as part of Amendments C171 and C172, includes provision for development to occur prior to the approval of the DCP, subject to a Section 173 agreement.

Some submissions raised issues associated with the proposed DCP, either directly or indirectly. As discussed at the Hearing, the DCP does not form part of the exhibited amendments and is not before the Panel for consideration. Consequently, the Panel has not reviewed the DCP or formed any views about its merits.

### **1.5 The Panel's approach to issues and submissions**

Consistent with other PSP Panels, this Panel has not reviewed the amendments from first principles; rather, it has reviewed the amendments with a view to resolving outstanding issues between the MPA, Council and other submitters.

In this context, the Panel relied on the MPA to identify the submissions and issues that had not been resolved and to refer those to the Panel. During the Hearing, many of these unresolved matters were resolved and the number and scope of outstanding issues were considerably reduced. Some submissions were also withdrawn on the basis that the MPA had agreed to revise the amendments.

Importantly, this report is focussed on those matters that remained unresolved at the end of the Hearing and does not detail the submissions or issues that were resolved before or during the Hearing.

For this reason, the Panel relies on the MPA's final table of proposed changes (Version 6, Documents 70 and 71) as the basis for its recommendations.

### **1.6 Issues covered in this report**

The panel process raised a number of 'general' issues, many of which apply to both amendments. These are discussed in Section 4 of this report and include:

- The Wyndham Transport and Land Release Strategy;
- Open space;
- Housing;
- Road cross sections;
- The bicycle network;
- The Biodiversity Conservation Strategy; and
- Land encumbered by flooding.



Site specific and other issues are discussed in Section 5 and of this report.

The Panel's recommendations are included at the end of each section or sub-section of the report. For ease of reading however, these have been consolidated in the executive summary, and grouped for both amendments. The numbering system for the recommendations does not relate to the order in which they appear throughout the body of this report.

## 2 The Precincts

### 2.1 The Wyndham West growth front

#### (i) Overview

The Ballan Road and Westbrook precincts are within Melbourne's Western Growth Corridor which incorporates the City of Wyndham and the Shire of Melton, and includes land from the Princes Freeway in the south to the Melton Highway in the north.

The MPA advised that the area covered by the West Growth Corridor Plan will eventually accommodate a population of 377,000 or more people and have the capacity to accommodate at least 164,000 jobs. Within the Corridor, the Wyndham West growth front (refer to Figure 3 below) consists of 3,300 hectares of future urban land within Wyndham Vale, Werribee and Mambourin.

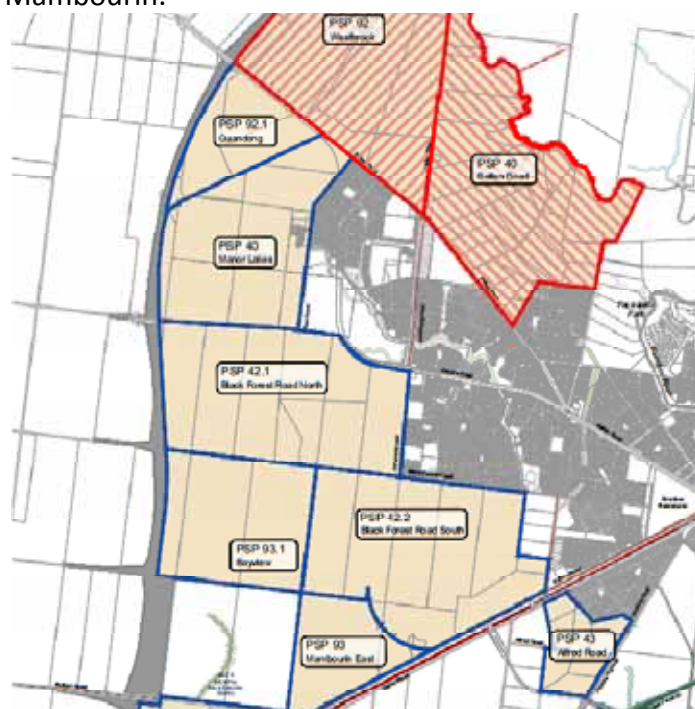


Figure 3 Wyndham West PSP areas

The growth front has the capacity to deliver approximately 31,000 new dwellings accommodating around 87,000 persons and providing approximately 16,000 jobs. The Wyndham West growth front consists of nine separate PSP areas, including the Ballan Road and Westbrook precincts. The MPA advised that the western growth front is intended to become (along with the Wyndham northern growth front) the core area for urban expansion in the City of Wyndham for at least the next 30 years.

## 2.2 Ballan Road Precinct

### (i) Description

The Ballan Road precinct includes approximately 540 hectares of predominantly cleared farming land. It is bounded by Hobbs/Armstrong Road to the west, the Werribee River to the north, McGrath Road and the existing residential area to the east, and Ballan Road to the south. The majority of the precinct has been subdivided into smaller 12 hectare parcels and currently provides rural lifestyle lots and agricultural uses. There are many landowners within the precinct.

### (ii) The Ballan Road Precinct Structure Plan

#### Overview

The Ballan Road PSP was prepared by the MPA in association with the City of Wyndham and the relevant government agencies, service authorities and major stakeholders.

The PSP is a long-term strategic framework document that describes how the Ballan Road precinct will be developed, including future infrastructure and service provision. The PSP was informed by Council's LPPF and prepared in the context of a range of key strategic documents.

Plan 2 of the exhibited PSP (Future Urban Structure Plan) is provided in Figure 4, overleaf.

#### The vision for the Precinct

The exhibited PSP provides the following 'vision' for the precinct:

*Ballan Road will be a diverse urban residential community that will integrate cohesively with existing development and provide future residents with opportunities to live, work, shop and recreate locally. The structure of the precinct will be broadly based around four key civic elements:*

- *a local town centre,*
- *a northern community hub,*
- *a southern community hub; and*
- *the Werribee River.*

*The Precinct will provide a transition of development from more intensive urban forms on Ballan Road, within the walking catchment of Wyndham Vale train station and around the local town centre to more conventional and some lower densities in proximity to the Werribee River. Multi-unit and small-lot housing will also be located at places of high amenity.*

*Neighbourhood design will build upon the landscape amenity provided by the Werribee River corridor and ensure the protection of cultural and biodiversity assets retained within this area while providing for passive recreation uses. The Werribee Township Regional Park will ultimately be created from those areas abutting the Werribee River that are south of the Hobbs /Armstrong Road extension.*

*The Werribee River and the creek corridors that traverse the PSP will underpin the landscape values and character of the Precinct and be reinforced by landscape outcomes created along the arterial and connector road networks. Public open space in the Precinct will provide a range of both passive and active recreation opportunities and encourage an active and healthy living environment.*

*Neighbourhood movement networks will facilitate safe, permeable and convenient local transport options for vehicles, bicycles and pedestrians while facilitating the extension and expansion of Ballan and Hobbs / Armstrong Roads.*

*Local business and employment opportunities will be located in the Local Town Centre (LTC) servicing local needs, as well as the Ballan Road Commercial Area that will integrate with residential development and complement and build on the Manor Lakes Major Town Centre (MTC).*

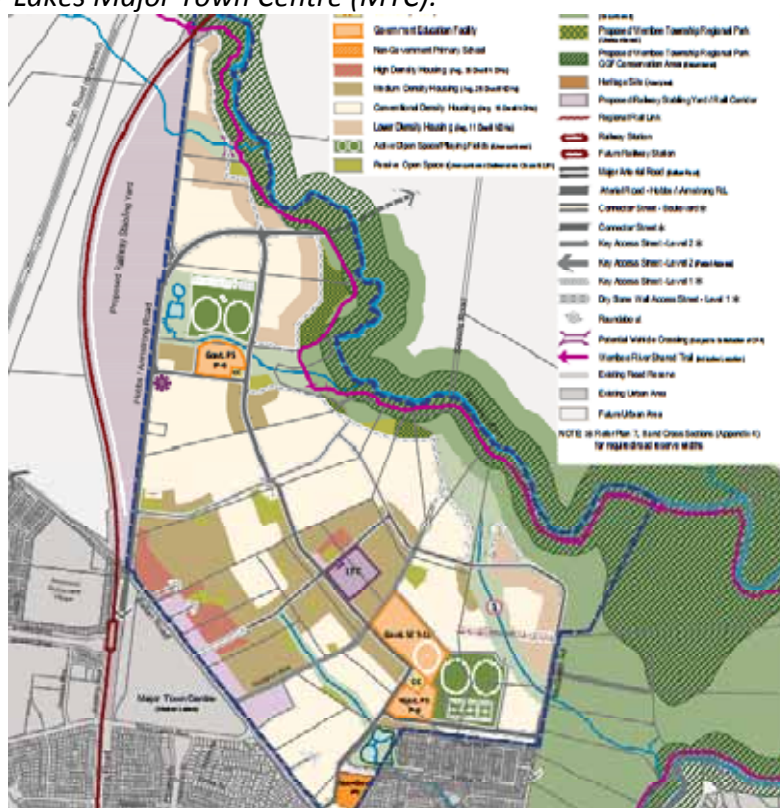


Figure 4 Exhibited Future Urban Structure Plan Ballan Road PSP

### (iii) The Ballan Road Native Vegetation Precinct Plan

#### Overview

The Ballan Road Native Vegetation Precinct Plan (NVPP) was prepared concurrently with the PSP. The NVPP identifies:

- native vegetation which may be removed without a planning permit;
- native vegetation that is to remain; and
- the offsets that must be provided by development proponents wishing to commence works prior to removing the native vegetation that can be removed.

The NVPP is a separate document that was intended to be incorporated in the Wyndham Planning Scheme, however the need for the NVPP was removed once the Biodiversity Conservation Strategy (BCS) was approved as part of Melbourne's Strategic Assessment under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act 1999) (refer to Section 3.6 of this report).

### **Environmental values**

The precinct is characterised by flat to undulating plains with vast areas of open grasslands, small patches of open woodland and stony rises. A number of minor, ephemeral creek lines bisect the area, with the Werribee River forming the northern boundary.

Apart from the areas abutting the Werribee River and the Werribee River itself, the precinct generally has low levels of significance for biodiversity with the majority of the area being highly modified.

There are numerous patches of native vegetation throughout the precinct, with patches located along the Werribee River and the Breakaway Creek corridor being retained and the remaining patches offset. The Werribee River includes important habitat for the Growling Grass Frog.

In addition, a number of large old trees were identified along the Werribee River and the Breakaway Creek corridor that will also be retained. Furthermore, several Spiny Rice Flowers were found adjacent to the Breakaway Creek corridor, and where possible these will be retained, otherwise the Spiny Rice Flower will undergo salvage and translocation. No other significant flora was identified.

## **2.3 Westbrook Precinct**

### **(i) Description**

The Westbrook precinct includes approximately 597 hectares of predominantly cleared farming land. It is bounded by the Outer Metropolitan Transit Corridor reservation in the west, the Werribee River in the north, Armstrong Road/Regional Rail Link in the east and Ballan Road in the south.

There are two landholdings in the Westbrook precinct and it is predominantly used for agricultural purposes.



## (ii) The Westbrook Precinct Structure Plan

### Overview

The Westbrook PSP was prepared by the MPA in association with the City of Wyndham and the relevant government agencies, service authorities and major stakeholders.

The PSP is a long-term strategic framework document that describes how the Westbrook precinct will be developed, including future infrastructure and service provision. The PSP was informed by Council's LPPF and prepared in the context of a range of key strategic documents.

Plan 2 of the exhibited PSP (Future Urban Structure Plan) is provided in Figure 5 below.

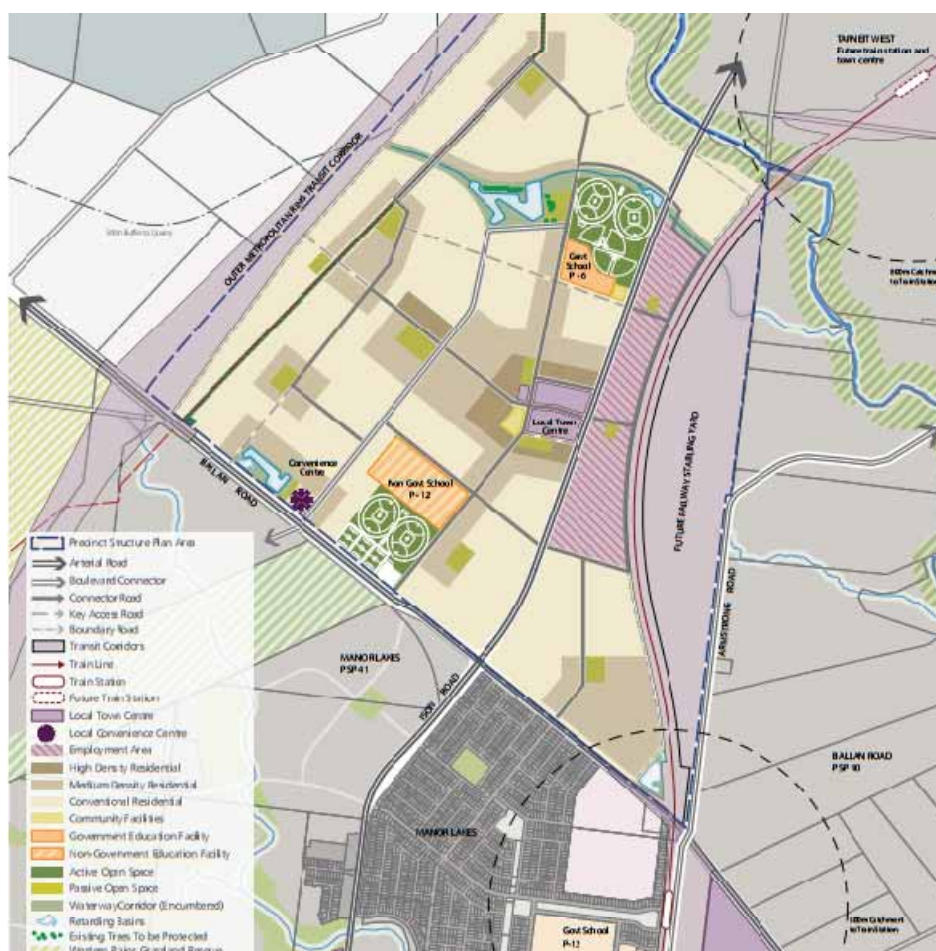


Figure 5 Exhibited Future Urban Structure Plan Westbrook PSP

### The vision for the Westbrook Precinct

The exhibited PSP provides the following 'vision' for the precinct:

*The vision for the Westbrook Precinct is to promote an urban form that contributes to a healthy, prosperous, well connected and adaptable neighbourhood.*

*The Precinct will be a locally self contained urban community characterised by an attractive and vibrant public realm that has strong links to metropolitan and*

*regional networks, services and facilities including the Manor Lakes and Tarneit West Major Town Centres (MTC).*

*The Precinct will be a permeable and connected suburb with an extensive pedestrian and shared trail network providing future residents with a range of transport options. Development of the future community will create a neighbourhood street network of local roads, streets and paths that link communities within the Precinct with direct, continuous routes that benefit from consistent, high quality landscaping.*

*The Precinct will be a new suburb that is characterised by a broad range of household types attracted by housing that offers truly distinct choices of dwelling size and type.*

*Neighbourhood design will embrace the Werribee River corridor, the creek and wetland corridor and the amenity derived by these assets. Management of the Werribee River corridor and other areas with biodiversity value will ensure the protection of biodiversity and cultural assets retained within this area. The retention and restoration of existing dry stone walls in whole or part will provide a reminder of the previous use of the land.*

*The Westbrook Precinct will provide a Local Town Centre (LTC) that services local needs and provides users with a safe, cohesive and street-based shopping, business, community and recreation environment.*

*The employment precinct will complement the town centre with a mix of highway-orientated retailing, local service industries, office, entertainment, warehousing, small scale industrial, training and research uses.*

*The Precinct will provide land use, subdivision and building design that responds to the Regional Rail Link (RRL).*

### **(iii) The Westbrook Native Vegetation Precinct Plan**

#### **Overview**

The Westbrook Road Native Vegetation Precinct Plan (NVPP) was prepared concurrently with the PSP.

The NVPP identifies:

- native vegetation which may be removed without a planning permit; and
- the offsets that must be provided by development proponents wishing to commence works prior to removing the native vegetation which can be removed.

The NVPP is a separate document that was intended to be incorporated in the Wyndham Planning Scheme, however the need for the NVPP was removed once the Biodiversity Conservation Strategy (BCS) was approved as part of Melbourne's Strategic Assessment under the EPBC Act 1999 (refer to Section 3.6 of this report).

## **Environmental values**

The precinct is characterised by flat to undulating plains with vast areas of open grasslands, small patches of open woodland and stony rises. A number of minor, ephemeral creek lines bisect the area, with the Werribee River forming the northern boundary.

The precinct generally has low levels of significance for biodiversity with the majority of the area being highly modified.

There are numerous patches of native vegetation throughout the precinct and patches located along the Werribee River will be retained and the remaining patches offset. Some of these patches of grassland have been identified as having suitable habitat for the Golden Sun Moth. Where these grasslands and habitat are to be removed, compensation and offsets under the *Habitat Compensation Strategy* (August 2013) are to be implemented.

In addition, a number of large old trees were identified along the Werribee River and adjacent to the ephemeral wetland which will also be retained. No other significant flora was identified.



### 3 Strategic Planning Context

This section of the report briefly sets out key elements of State Planning Policy Framework (SPPF), the Municipal Strategic Statement (MSS), Local Planning Policies, zones and overlays, and other provisions and strategies relevant to the Amendments. The MPA provided a response to the Strategic Assessment Guidelines as part of the Explanatory Reports.

#### 3.1 Policy framework

##### (i) State Planning Policy Framework

The MPA submitted that the following key elements of the SPPF were taken into account in the consideration of the Amendments and that they represent an integrated decision making process that balances the conflicting objectives of the relevant State planning policies as follows.

*Clauses 11.01 Activity centres, 11.02 Urban growth, 11.03 Open space* – The Amendments incorporate precinct structure plans and native vegetation precinct plans. These plans set out an orderly structure for development of the precinct including the location and function of activity centres taking into account the existing and planned network of centres in the region, bringing zoned land supply to the market, providing land with good proximity to existing and planned amenities and services, and infrastructure.

*Clause 12.01 Biodiversity* - Offsets for vegetation removal and habitat areas for nationally and state significant species will be provided in accordance with the prescriptions of the Strategic Impact Assessment Report and Victoria's Native Vegetation Framework.

*Clause 16.01 Integrated housing* - Housing in the precincts will be fully serviced. New residents will have access to existing services and employment opportunities in the community in adjacent developed neighbourhoods and through provision of new infrastructure in the precinct. The precinct structure plans set out a range of housing densities that can be accommodated in the precinct.

*Clause 17.01 Commercial* - The Amendments provide for a local town centre, local convenience centre and mixed commercial uses. The Ballan Road precinct is located adjacent Wyndham Vale major activity centre.

*Clause 18.01 Land use and transport planning, 18.02 Movement networks* – The precincts are strongly integrated with the existing and planned arterial road network and Principal Public Transport Network. The proposed road network provides a robust structure for traffic and transport movement within and through the precincts.

*Clause 19.02 Community infrastructure, 19.03 Development infrastructure* – A comprehensive development contributions plan is under preparation for the precincts. The Amendments provide the strategic basis for that plan including major roads, intersections, bicycle paths, sports facilities and open space. Water, sewer and drainage services are readily connectable from adjacent development into the precinct.

## **(ii) Local Planning Policy Framework**

The following key elements of the LPPF were taken into account in the consideration of the Amendments.

### **Municipal Strategic Statement**

*Clause 21.04 - Wyndham's Vision.* This policy provides a strategic framework and vision for Wyndham. The MPA submitted that the PSPs aim to meet the Land Use Planning Objectives as follows:

- *The cost-effective and orderly management of urban growth, balancing the city and country aspects of the municipality.*
  - *Provide for new development to occur in areas that are not isolated from the core urban area and which integrate well with existing communities and physical infrastructure.*
  - *Provide for urban development that does not adversely affect the water quality, flows, environmental values, landscape feature and cultural heritage sites of rivers and watercourses, their waterway corridors and adjoining land.*
- *Access to a range and quality of housing opportunities which meet the needs of the population.*
  - *Encourage diversity in subdivisions and housing in terms of lot size and housing form.*
  - *Encourage the integration of housing with compatible activities such as open space, community facilities and shopping centres.*
- *Access to a range of leisure and recreational opportunities which meet the needs of the population and which can be provided cost-effectively.*
  - *Maximise open space opportunities along the creeks, waterways and coastal areas of the municipality, including trails and other links.*
  - *Maximise the recreation links and opportunities for development within and near housing areas.*

### **Local Planning Policy**

#### *22.01 Werribee West, Wyndham North and Point Cook Growth Area Planning Policy*

Approximately half of the Ballan Road precinct (the southern half) is addressed by this policy. Amendment C171 delivers on the policy which describes that part of the precinct as residential with one each of a primary school, sports ground, community centre and local commercial (sic. local town centre). The policy does not apply to the northern half of the precinct.

#### *22.03 Infrastructure Financing Policy*

A comprehensive development contributions plan is under preparation for the precincts. The Amendments provide the strategic basis for that plan including major roads, intersections, bicycle paths, sports facilities and open space. Water, sewer and drainage services are readily connectable from adjacent development into the precinct.

### 22.07 Open Space Policy

The Ballan Road and Westbrook PSPs set aside land for two multi-use sports fields, a range of local parks, conservation and recreation space along the length of the Werribee River, allows for land use for drainage to have complementary recreation facilities and is located adjacent the future Werribee Township Regional Park.

## 3.2 Planning scheme provisions

### (i) Zones

The land subject to these Amendments is proposed to be included within a PSP and as such Part B of the UGZ is also proposed to apply. The UGZ includes zone provisions which seek to provide certainty about the nature of future development, streamline the approval process and ensure that permit for development accord with the incorporated PSP.

The UGZ applies to land that has been identified for future urban development within the Urban Growth Boundary (UGB). It has been specifically designed to implement an incorporated PSP and ensure that future development accords with the approved PSP. The UGZ includes two parts: Part A applies to land when no PSP applies; and Part B applies to land included in a PSP.

A schedule to the Urban Growth Zone is proposed for each PSP area and includes requirements for land use, buildings and works, application/advertising requirements, decision guidelines and any other conditions/requirements.

The MPA submitted that the:

*'...UGZ and Schedule for Amendment C171 and 172 to the Wyndham Planning Scheme has been designed to ascribe a suite of Victoria Planning Provision zones to guide future use and development of the site through the specification of conditions and requirements for permits. The design of the zone promotes consistency in the manner which planning authorities deal with land use issues and ensures that the zone implements the state planning policy framework.'*

The UGZ Schedules 8 and 9 have been prepared for Ballan Road and Westbrook respectively.

### (ii) Overlays

The Amendment proposes to apply the Development Contributions Plan Overlay (DCPO) to all land in Wyndham West, including the Ballan Road and Westbrook precincts. The details of the DCP schedule to apply to these areas will be determined via a separate amendment.

The Amendments propose to delete Environmental Significance Overlay (ESO) Schedules 1 and 2 from land in the Ballan Road and Westbrook precincts.

A Public Acquisition Overlay (PAO) is proposed to be included in the Amendments at the request of VicRoads in order to reserve land for the future widening of Ballan Road. The Panel will report separately on this matter.

Amendment C191 to the Wyndham Planning Scheme came into effect from 14 November 2013. The Amendment applies to land within and adjacent to Section 2 of the Regional Rail Link to manage noise impacts on bedrooms from the operation of the Regional Rail Link.

The Amendment applies Design and Development Overlay – Schedule 10 (DDO10) to the land to require new buildings with a bedroom (including a room likely to accommodate sleeping persons on a regular basis) to be constructed in such a way as to ensure internal bedroom noise levels do not exceed 65dB<sub>L<sub>Amax</sub></sub> and 40db<sub>L<sub>Aeq,8h</sub></sub> for the night period from 10pm to 6am. The overlay affects land within the Ballan Road and Westbrook PSPs in close proximity to the rail line.

### (iii) Other planning strategies

Wyndham Council referred extensively to the *Wyndham West Transport and Land Release Strategy*. This is an internal Council document, not currently incorporated into the Planning Scheme. Other local policies and strategies, and various ‘policy’ documents are mentioned later in the report in the context as raised in submissions.

## 3.3 Issues arising out of zone reforms

The MPA advised that the Urban Growth Zone Schedule 8 (UGZ8) for Ballan Road PSP was exhibited prior to the formal introduction of the ‘reformed zones’ to the Victoria Planning Provisions. In anticipation of the changeover the MPA identified the existing zone and the reformed zone for each relevant land use in the precinct at exhibition (see extract from UGZ8 below).

### 2.2 Applied zone provisions

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C171

The provisions of the following zones in this scheme apply to the use and subdivision of land, the construction of a building, and the construction or carrying out of works as set out in Table 1.

**Table 1: Applied zone provisions**

Land use or development (carried out or proposed) generally in accordance with the precinct structure plan applying to the land	Applied zone provisions (Applied reformed zone provisions)
Local town centre	Clause 34.01 – Business 1 Zone
Local convenience centre	(Clause 34.01 – Commercial 1 Zone)
Mixed use employment/commercial	Clause 34.05 – Business 2 Zone (Clause 32.04s1 – Mixed Use Zone 1)
Ballan Road widening	Clause 36.04 – Road Zone Category 1
All other land	Clause 32.01 – Residential 1 Zone (Clause 32.08s1 – General Residential Zone 1)

Figure 6 Extract from Schedule 8 to the UGZ

The exhibited UGZ8 provided for the proposed ‘Mixed use employment/commercial’ to be Business 2 Zone (B2Z) or the reformed zone Mixed Use Zone 1 (MUZ). A direct translation of the B2Z under the reformed zones would result in Commercial 1 Zone (C1Z). The MPA advised it has chosen the reformed MUZ above the C1Z for the mixed use employment /commercial area for the following reasons:

- *The MUZ's use and development provisions are more suited to the Ballan Road PSPs objectives for the mixed use/commercial area as a transitional area between the Wyndham Vale major town centre and the residential neighbourhoods of the Ballan Road precinct.*
- *By applying a more managed approach to retailing, the MUZ provisions allows for a mix of uses that is complementary to the strategic desire to focus significant retailing within the existing major town centre and the planned adjoining residential neighbourhood.*
- *There is a significant supply of C1Z land in the immediate area for the Wyndham Vale major town centre the local town centre in the Manor Lakes growth area precinct and the planned local town centres in Ballan Road and Westbrook growth area precincts; and*
- *The permit triggers provided by the MUZ for land use are necessary to trigger consideration of the PSP.*

The MPA has chosen the use and development provisions of the General Residential Zone (GRZ) in combination with the PSP in the Ballan Road and Westbrook precincts. Use of the GRZ provisions within the PSPs would not preclude future use of the RGZ.

### **3.4 Ministerial Directions and Practice Notes**

The MPA submitted that the Amendments comply with the applicable Ministerial Directions including:

#### ***Ministerial Direction 11, Strategic Assessment of Amendments***

*The Amendment has been strategically assessed in accordance with the assessment criteria set out in Ministerial Direction 11.*

*The Amendment will implement the objectives of planning in Victoria by providing for the fair, orderly, economic and sustainable use of land identified for urban purposes.*

*The Amendment has addressed environmental effects, as the pattern of land use and development was guided by studies of the area relating to flora and fauna, flooding and drainage.*

*The Amendment has addressed social and economic effects. It is expected to have a positive social and economic effect through the provision of additional housing and community facilities, as well as the creation of local employment opportunities.*

#### ***Ministerial Direction 12, Urban Growth Areas***

*This Direction applies to the preparation of any planning scheme amendment that provides for the incorporation of a PSP in the scheme or the introduction of, or changes to, provisions in a schedule to the UGZ. Therefore, the Direction applies to the Amendment.*

*The Direction provides that the Amendment must implement the Growth Area Corridor Plan relevant to the land, and must be in accordance with applicable Precinct Structure Plan guidelines.*

*The MPA considers that the Amendment implements the West Growth Corridor Plan. Furthermore, the provisions of the UGZ and accompanying provisions will give effect to the intended outcomes of the PSP.*

**Ministerial Direction No. 9 Metropolitan Strategy**

*The amendment implements the growth area elements of the metropolitan strategy. The amendment provides for fully serviced new urban neighbourhoods in a designated growth area.*

### **3.5 Precinct Structure Plan Guidelines**

The Precinct Structure Plan Guidelines (the PSP Guidelines) were launched by the Minister for Planning on 7 October 2009, replacing an earlier draft version released by the GAA in 2006.

The PSP Guidelines apply to the preparation of precinct structure plans for new residential communities and new employment areas.

There are two parts to the Guidelines:

- Part One describes the objectives and the process for planning new communities in the growth areas.
- Part Two sets out the content, form and process for preparing and implementing a PSP.

The key elements of the PSP Guidelines are:

- To establish a sense of place and community;
- To create greater housing choice diversity and affordable places to live;
- To create highly accessible and vibrant activity centres;
- To provide local employment and business activity;
- To provide better transport choices;
- To respond to climate change and increase environmental sustainability; and
- To deliver accessible, integrated and adaptable community infrastructure.

### **3.6 The Melbourne Strategic Assessment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)**

#### **(i) Overview**

The Victorian and Commonwealth governments agreed to undertake a strategic assessment under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in March 2009 for the expansion of Melbourne's urban growth boundary. A number of reports were prepared, public comment followed and in February 2010, the Commonwealth Minister for Environment endorsed the program document *Delivering Melbourne's Newest Sustainable Communities: Program report* (Dec 2009). Classes of actions can be approved under the endorsed program. To date, this has included the



regional rail project, Melbourne 28 precincts and Melbourne's Northern, North Western and Western Growth Corridors<sup>1</sup>.

The Melbourne Strategic Assessment allows 41,000 ha of developable land which does not require further referral under the *EPBC Act*, and for approvals of the Regional Rail Link and Outer Metropolitan Ring/E6 Transport Corridor, rather than the need to refer various individual project proposals/precinct plans under the *EPBC Act* (because of the potential impact to listed species and communities under this Act) for the four growth corridors.

The endorsed program under the *EPBC Act* includes actions associated with urban development in four growth corridors in the 2010 Melbourne Urban Growth Boundary, including the Western growth corridor, of which the Ballan Road and Westbrook PSPs are components. The endorsed program included a commitment by the Victorian Government to prepare a Biodiversity Conservation Strategy for the four corridors as well as regional strategies for the Growling Grass Frog, Golden Sun Moth and the Southern Brown Bandicoot.

The Commonwealth Minister for Environment has recently approved (5 September 2013) the following strategies:

- Biodiversity Conservation Strategy for Melbourne's Growth Corridors (DEPI, June 2013);
- Sub-regional Species Strategy for the Golden Sun Moth (DEPI, May 2013);
- Sub-regional Species Strategy for the Growling Grass Frog (DEPI, May 2013).

The *Biodiversity Conservation Strategy (BCS)* identifies areas of conservation to be protected. The Ballan Road and Westbrook PSPs are identified as being within Area 14 – Growling Grass Frog Corridor associated with the Werribee River. Conservation Area 14 also contains matters of national environmental significance listed under the *EPBC Act* and matters of state significance listed under the *Flora and Fauna Guarantee Act 1988* and/or DEPI's advisory lists for rare or threatened species. The *BCS* requires a Conservation Management Plan to be prepared for each conservation area in the growth corridors.

The Growling Grass Frog Conservation Area (Area 14) comprises terrestrial habitat for the Growling Grass Frog (GGF), existing water bodies suitable for GGF, the Werribee River and Davis Creek. A Conservation Management Plan (CMP) was prepared for this conservation area and approved by DEPI and the Commonwealth Department of the Environment in October 2013.

All of the above summarised background and approved documents are relevant to consideration of the Ballan Road and Westbrook PSPs, especially when the Panel considers the implications of any potential changes to the boundaries of these conservation areas and in the discussion about submissions that question the validity of DEPI's 'time-stamping' native vegetation data. The time-stamping process occurred as part the Victorian government's commitment under the Melbourne Strategic Assessment.

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<sup>1</sup> Cth Department of the Environment  
<http://www.environment.gov.au/epbc/notices/assessments/melbourne.html>

## **(ii) Native Vegetation Time-Stamping**

The time-stamping project captured and ‘time stamped’ native vegetation information to establish a native vegetation dataset and maps showing the type, extent and condition of all native vegetation in Melbourne’s growth corridors.

As DEPI suggests:

*‘...this information was used together with information on threatened species habitat mapped for the Biodiversity Conservation Strategy and sub-regional species strategies to calculate habitat compensation requirements for the removal of native vegetation and threatened species habitat associated with urban development in the growth corridors’.*

*Under the time-stamping approach, if land in the growth corridors is to be subdivided and developed, habitat compensation will be calculated on the basis of the 2012 “time-stamped” maps regardless of the extent and condition of the vegetation on the land at the time it is developed. This approach will simplify the current system and increase certainty for landowners, planners and developers regarding habitat compensation requirements<sup>2</sup>.*

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<sup>2</sup> Time-stamping native vegetation data Public Consultation 2010–12 Final Report, (DEPI, 2012) p2



## 4 General Issues

### 4.1 Wyndham Transport and Land Release Strategy

#### (i) The issues

The issues are:

- whether the *Wyndham Transport and Land Release Strategy* (the *TLRS*) should be implemented through the amendments; and if not
- whether the amendments should proceed.

Council also raised issues about the Development Contributions Overlay Schedule 11 (DCPO11) and references to the 'Wyndham City Strategy' in the exhibited PSPs.

The amendments apply the DCPO11 to the two precincts. The DCPO11 provides for permits to be issued before a Development Contributions Plan (DCP) has been prepared, if an agreement under Section 173 of the Act has been entered into with the responsible authority that makes provision for development contributions.

As discussed in Section 1.4 of this report, a draft DCP has been prepared by the MPA for the Wyndham West growth area (including the Ballan Road and Westbrook precincts), but it had not been finalised or approved at the time of the Hearing.

#### (ii) Evidence and submissions

Council resolved at its 17 May 2013 meeting to oppose the amendments unless:

*A formal agreement is reached between Council and the GAA on a 'cap and trigger regime' which is reflected in the Transport and Land Release Strategy that Council is developing. This will limit the release of additional lots for housing to reflect the already constrained network in Wyndham West, until the provision of critical infrastructure.*

Mr Montebello advised that Council had adopted the *TLRS* at its 23 September 2013 meeting. In doing so, it also adopted:

- a. Its proposed roll out of transport infrastructure;*
- b. Its provision of regular reviews;*
- c. Restrictions on dwelling releases to the capacity of infrastructure improvements;*
- d. Its dependence on a loan of approximately \$17-18 million through Council in 2016–18, potentially increasing to \$25-30 million at two stages in the 2020's; backed by future development contributions; and*
- e. Its inclusion of measures to moderate Council's debt requirements, including:-*
  - (i) prescribed payment dates for early releases;*
  - (ii) advanced payments of 25% of road related developer contributions with capacity on large, long term projects to split advances where the developer*

*commits to measures that offer certainty on the scale and duration of advances; and*

*(iii) a strategy to share Council's interest costs between all developers;*

*all subject to confirmed Government and developer support through their assessed shares of the strategy.*

Mr Montebello described the TLRS as '*a Council position statement which explains that Council is willing to facilitate the delivery of the road infrastructure required for the two PSPs (and other PSPs in Wyndham West)*'.

He added that the TLRS '*essentially involves:*

- defining which increments of infrastructure will improve access capacity and the number of dwellings that each would support; and*
- releasing only that number of dwellings with each transport gain.'*

Mr Montebello outlined a number of challenges that Council seeks to address through the TLRS, including:

- imbalance in cash flows;
- the need to manage major spikes in funding needs;
- continuity of development;
- prioritisation of land releases;
- allowances for increasing traffic retention; and
- allowances for lead-times in residential and transport development.

He drew particular attention to the GTA traffic analysis report relied upon during the preparation of the PSPs that outlined the road infrastructure required to service development within the Wyndham West growth front. He also relied on the evidence of Ms Partenio who concluded that '*the proposed infrastructure works providing additional road capacity across the Werribee River and the Geelong Rail line is generally matched*' to the proposed land release strategy in the TLRS.

Mr Montebello explained:

*Having regard to the existing road capacities, based on the GTA analysis, in order for this growth area to proceed road infrastructure must be delivered early to create capacity on the road system so as to create a route other than through existing central Werribee. The need for road capacity early in the life of development means that a large outlay of expenditure is required before DCP funds are collected. To make this possible, it is not only necessary to have a DCP to raise funds over a long period of time, it is necessary to have a financing strategy to support the implementation of the DCP.*

Mr Lambert outlined some of the funding issues faced by Council in the provision of infrastructure, including current debt and rate revenue, planned borrowings and projects, and prudential limits on borrowings.

To highlight the issues associated with providing road infrastructure in growth areas, Mr Montebello referred the Panel to the Victorian Auditor-General's Report *Developing*

*Transport Infrastructure and Services for Population Growth Areas* (August 2013) which found that there is a 'significant and growing backlog of required transport infrastructure' and which recommended that the GAA and state transport agencies 'finalise development of effective arrangements for transparently acquitting the Precinct Structure Planning guidelines and related transport requirements.'

Mr Montebello also referred to the Panel report on Amendment C129 to the Casey Planning Scheme (October 2010) as a precedent for 'limiting lot release based on infrastructure provision' as proposed in the *TLRS*. That Panel recommended that development within the Clyde North Precinct be capped at '50% of its proposed residential capacity, until the required road network or funding to achieve the required road network is in place to service the development of the remainder of the precinct'.

Mr Montebello concluded that the PSPs should not proceed at this time given that there is:

- *A lack of any capacity in the existing road system to absorb any material increase in the daily vehicle traffic....*
- *A lack of any infrastructure financing strategy so that the infrastructure that is funded over the life of the DCP has no competent implementation programme set out in the PSP...*

Mr Montebello added that the amendments should only proceed if the *TLRS* is given effect through:

- additional provisions in the PSPs that would require development staging to be consistent with the *TLRS*; and
- requirements in the DCPO11 and DCP (when approved) relating to the funding arrangements proposed in the *TLRS*.

Ms Patterson advised that the MPA does not disagree with Council regarding the need for the early delivery of infrastructure but that it did not support Council's position in relation to the *TLRS*. Ms Patterson raised a number of practical and unresolved issues associated with the *TLRS* and also submitted that:

*Based on the current draft, the Strategy proposes unique and unprecedented measures, i.e., payment of a significant portion of developer contributions in advance of development.*

*For such an unprecedented Strategy to be enforceable, it will need to be incorporated into the Wyndham Planning Scheme, after having undergone a complete and rigorous public consultation process.*

*The Strategy has not yet gone through any formal public consultation process with affected landowners/developers, other agencies or the broader community.*

*To date the only public acknowledgement of the Strategy has been its inclusion in Council meeting minutes, most recently at the September Council meeting where the draft Strategy was adopted.*

In relation to the potential 'transformation' of the amendment, Ms Patterson submitted:

*As noted by Manor Commercial, however genuine the Council's concerns may be, this does not overcome the procedural limitations facing the Council and this*

*Panel. The Panel must give due consideration to the Amendment in the context of submissions. But the Panel should not misconstrue the Amendment, or the submissions, to achieve an outcome that would transform the Amendment itself.*

*The policies are not part of this Amendment. At best the MPA submit that the most this Panel could achieve in recommendations, is recommend to Council that the Strategies be finalised and placed on Public Exhibition, and in the future if Council wish to pursue the Strategies, then they exhibit the documents as a Planning Scheme Amendment. A proper process needs to be followed, not arriving before Panel as an attachment to a witness statement, as is the case of the Lot Release document. We echo the findings of the Panel in Clyde North regarding the use of un-exhibited documents.*

Ms Patterson concluded:

*....the strategy put forward by Council is neither transparent nor equitable and for these reasons has been unable to support it in its current form. The MPA has been, and continues to remain open to discussion with Council to develop a proposal that is practical, equitable and transparent.*

Messers Pitt, Townshend, Cicero and Fetterplace all opposed implementing the TLRS through the amendments and raised a number of concerns, including:

- the transformation of the amendment;
- the need to make consequential changes to the DCP – which is not before the Panel;
- the lack of opportunity for parties to consider and review the implications of the TLRS;
- the lack of support for the TLRS by the planning authority; and
- the failure to ‘test’ the TLRS given that it was only introduced to the Panel process by being appended to a witness statement and was only described in submissions.

In relation to Council’s proposition that the amendments should not proceed unless they implement the TLRS, Mr Fetterplace submitted:

*‘...we believe that the progress and approval of the PSP, and subsequent permit applications, should not be stagnated by Council’s financing issues and/or yet to be resolved strategy. These matters are considered to be independent of the strategic planning and are untested to warrant the consideration of any proposed ‘cap and trigger’ approach to the release of developable land in the PSP area.’*

Mr Cicero also submitted that the PSPs ‘are about land use and can be dealt with on that basis’. He added that the DCP is an ‘implementation element’ of the PSP and that ‘planning shouldn’t stop because there are challenges in the provision of infrastructure’.

Mr Pitt concluded:

*4.28 The Panel is bound by the Rules of natural justice pursuant to section 161 of the Act and that requirement could not be complied with by giving effect to the Council's submissions regarding its Strategy in the absence of proper notice of such a fundamental change being given to all those affected.*

4.29 *For the foregoing reasons Lotus Oaks and Kilpatrick contend that deferral of development across West Wyndham as proposed by the Strategy or inclusion of the Strategy in the PSPs would need to be embodied in a new amendment relating to a DCP and notified to all persons likely to be affected.*

### **(iii) Discussion**

#### **Implementing the Wyndham Transport and Land Release Strategy**

The Panel agrees with Council that the timing and funding of key infrastructure are critical to the effective planning and development of growth areas and that PSPs and DCPs should provide appropriate mechanisms to address these issues. The Panel also accepts that a transport and land release strategy (such as the *TLRS*) can inform the preparation of PSPs and DCPs, and that including 'cap and trigger' provisions might be a legitimate mechanism to address staging and funding issues. As noted in Council's submission, the Panel report for Amendment C129 to the Casey Planning Scheme recommended this type of approach, although the circumstances of that amendment were quite different. Notably, it included a DCP and there were comprehensive submissions and evidence in relation to the funding, timing and need for various road infrastructure.

Setting aside the possible merits of the *TLRS*, Council's proposal that it be implemented through Amendments C171 and 172 raises some fundamental issues about whether this is possible given the potential transformation of the amendments, and if not, whether the amendments should proceed in the absence of the *TLRS*.

The Panel agrees with the MPA and various submitters that including provisions in the PSPs to trigger the application of the *TLRS* would, without any doubt, be a transformation of the amendment and could not proceed as part of the current amendment process. The implications of implementing the *TLRS* would be significant and all affected parties should have an opportunity to consider and respond to such a proposal. As Ms Patterson noted, the *TLRS* should be the subject of a separate public exhibition process if it is to be implemented in the Planning Scheme.

A further complication is that implementing the *TLRS* would also involve changes to the Wyndham West DCP, which does not form part of the current amendment process and is not something that the Panel has reviewed, can usefully comment on or make recommendations about.

For these reasons, the Panel does not believe that the *TLRS* can or should be implemented as part of the current C171 and C172 amendment processes. Nevertheless, the Panel recommends that the MPA continue its discussions with Council about staging and funding issues and explore mechanisms (such as the *TLRS*) to ensure the timely provision of road infrastructure. In making this recommendation, the Panel agrees with Ms Patterson who noted that any funding arrangements should be '*practical, equitable and transparent*'.

### **Whether the amendments should proceed**

Council submitted that the amendments should not proceed unless they gave effect to the *TLRS*. This raises broader issues about the relationship between the PSPs and the DCP and whether decisions about ‘planning’ should precede decisions about ‘costs and funding arrangements’.

While the Panel agrees with submitters, such as Mr Fetterplace, who argued that the strategic land use planning of a growth area precinct can be resolved prior to a DCP being prepared or approved, it does not believe that this is the ideal approach. A more transparent process is to exhibit PSPs and DCPs together, particularly where there are broader timing and funding issues, such as those often associated with the arterial road network. This is because funding decisions can not only affect the staging and timing of development, but also the specification and location of infrastructure and potentially the arrangement of land uses. However, in the case of amendments such as C171 and C172, adopting this process is complicated by having a ‘global’ DCP that will apply to a range of precincts at different stages in the approvals process.

In any event, it is not up to the Panel to determine the approvals process for the Wyndham West DCP and it can only deal with what is before it. There is no compelling reason to delay the two amendments pending the approval of the DCP and it is reasonable that the amendments proceed in anticipation that a suitable DCP will be implemented through Amendment C173.

Finally, while the Panel understands the issues that the *TLRS* is intended to address and the mechanisms that it proposes to apply, it has not formed any specific views about its merits. To do so would have required it to consider the proposed DCP (something that is not before it) and have the benefit of more detailed submissions and evidence about it from affected parties (material that was not available to it).

### **The DCPO11 and references to the Wyndham City Strategy in the PSPs**

The exhibited DCPO11 replaces the existing schedule that limits the number of lots that can be developed within the Black Forest Road South and Alfred Road South PSP areas prior to a DCP being prepared. The exhibited schedule removes these restrictions and applies the following provision:

*A permit may be granted to subdivide or use land, construct a building or construct and carry out works before a development contributions plan has been prepared to the satisfaction of the responsible authority if an agreement under Section 173 of the Planning and Environment Act 1987 has been entered into with the responsible authority that makes provision for development contributions.*

In addition, the MPA has proposed that the exhibited PSPs be modified to delete the following provision:

*Development proponents must comply with the Wyndham City Strategy included in the Wyndham West DCP.*



The Panel understands that the reference to the 'Wyndham City Strategy' would now apply to the *TLRS*.

In response to Mr Montebello's submission that these provisions should be retained, Ms Patterson advised:

*Originally, the lot caps included in the DCPO for the Alfred Road and Black Forest Road South precincts, as well as the requirement included in these PSPs were included on the understanding that Council would have prepared a strategy that the MPA could support. However, this has subsequently failed to occur.*

*The requirements were removed following the MPA receiving numerous submissions that questioned how developers could be held to a strategy that they had never seen or had an opportunity to comment on. A view the MPA supports.*

The Panel supports the proposed deletion of the requirements relating to the Black Forest Road South and Alfred Road South PSP areas on the basis that the Wyndham West DCP is likely to be in place before the development triggers are activated within these precincts. For this reason they will serve no purpose.

In relation to the references to the 'Wyndham City Strategy' and the DCP in the PSPs, it is not possible to 'require' compliance with the Strategy and the DCP given that neither has been available for review as part of the exhibited amendments and they do not have an existing 'approval'. In any event, the references to the 'Wyndham City Strategy' (or the *TLRS*) in the exhibited PSPs should be deleted given the Panel's views about the status of the *TLRS* and the fact that the Wyndham West DCP will be considered through a separate process.

#### **(iv) Conclusions**

The Panel understand Council's concerns about the timing and funding of road infrastructure and agrees that a cap and release strategy might be a suitable mechanism to address these issues. However, the Panel does not support the implementation of the *TLRS* as part of the C171 and C172 processes and recommends that the MPA to continue its discussions with Council about these issues.

The Panel is satisfied that the amendments should proceed even though the Wyndham West DCP will be approved through a separate process. Whether that DCP includes a land release strategy supported by Council or some mechanism to address Council's concerns is a matter for other parties, not this Panel.

Finally, the Panel supports the changes to the DCPO and PSPs proposed by the MPA in relation to the 'Wyndham City Strategy' and the Wyndham West DCP.

#### **(v) Recommendation**

**The Panel recommends that the Metropolitan Planning Authority continue its discussions with Wyndham City Council to address issues associated with the staging and funding of infrastructure to service the Wyndham West growth front, including the further refinement and possible implementation of the Wyndham Transport and Land Release Strategy.**

## 4.2 Open space

### (i) The issues

The submission from Council raised two key issues:

- whether the PSPs should provide more active open space; and
- whether the proposed active open space areas should be redesigned and enlarged to address various design issues.

Council's submission also raised a broader issue about whether the PSP Guidelines make adequate provision for active open space in growth areas where higher population densities are being sought.

Open space within the precincts is provided within:

- four active open space areas (two within each precinct);
- fifteen passive open space areas within the Ballan Road precinct and fourteen passive open space areas within the Westbrook precinct (these include town square, neighbourhood and district parks); and
- areas of encumbered and unencumbered open space associated with the Werribee Township Regional Park, waterways and habitat conservation areas.

Ms Patterson noted that:

*The Werribee River Corridor forms a major spine of open space throughout the PSPs. This corridor will generally be 200m wide along most of its length and wider again (generally at least 400m wide) where embedded within the future Werribee Township Regional Park located to the south eastern boundary of the Ballan Road PSP. The corridor also incorporates land set aside for Growling Grass Frog Habitat in accordance with requirements of the Biodiversity Conservation Strategy for Melbourne's Growth Corridors.*

*Overall, 22% (248Ha) of the total combined area (1138Ha) of the PSPs is made up of open space. This equates to a combined average of around 37% of the residential net developable Area (NDA-R) being provided as open space in the PSPs.*

Ms Patterson provided the following table that summarises the percentages of NDA-R allocated to open space within the precincts<sup>3</sup>.

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<sup>3</sup> MPA Submission (Document 14)



	Ballan Rd	Westbrook	Combined
Open Space Type	% NDA-R	% NDA-R	% NDA-R
Local active (unencumbered)	7%	7%	7%
Local passive (unencumbered)	3%	3%	3%
<b>Subtotal Local (unencumbered)</b>	<b>10%</b>	<b>10%</b>	<b>10%</b>
Regional passive (unencumbered)	2.1%	0%	1%
<b>Subtotal Unencumbered</b>	<b>12.1%</b>	<b>10%</b>	<b>11%</b>
<b>Other Open Space</b> (primarily encumbered waterways and conservation)	<b>37.7%</b>	<b>13.7%</b>	<b>25.6%</b>
<b>All Open Space</b>	<b>49.8%</b>	<b>23.7%</b>	<b>37.8%</b>
Note: 1. figures rounded. 2. Calculations based on Ballan Road NDA-R of 334.08Ha, Westbrook 340.33Ha for a combined total of 674.41Ha			

Table 2 The provision of open space within NDA-R

## (ii) Evidence and submissions

### The quantum of active open space

Mr Montebello submitted that:

*...the quantum of unencumbered land being set aside for active open space is deficient and this deficiency will ultimately manifest itself in many ways and ultimately to the extent that open space provision and the health of a community are related, in the declining health of the community.*

In support of Council's position, Mr Montebello referred to:

- State policies in the WPS that support an adequate provision of open space;
- the PSP Guidelines, including principles relating to the function, design and size of open space areas;
- local policy in the WPS that requires, amongst other things, that 'Open space provision be based on the objectives of Clause 56'; and
- the 'vision' statements in the PSPs that support active and healthy communities.

Mr Montebello also noted that the draft Metropolitan Planning Strategy includes the proposed initiative<sup>4</sup>:

*Amend the Precinct Structure Planning Guidelines to require the delivery of an average of 18 dwellings per hectare in new growth areas. This can be achieved by providing a variety of lot sizes and housing types across a precinct, including lower density, standard lots and higher density housing in areas of high amenity.*

He submitted that increased residential densities necessitated an increased provision of active open space.

To provide context for Council's contention that active open space was under-provided, Mr Montebello referred to a range of open space 'literature', including the:

- Inquiry into Environmental Design and Public Health in Victoria (May 2012);
- Victorian Environmental Assessment Council Metropolitan Melbourne Investigation Report (August 2011); and the
- Guide to Social Infrastructure Planning (October 2009).

These reports highlight the importance of providing adequate open space and include various principles and factors associated with determining appropriate open space provision.

Mr Montebello also relied on the evidence of Mr Bunting and Ms Hawes.

Mr Bunting advocated a Demand Based Planning Model (DBPM) and relied on an 'internal working paper' titled *Demand Based Planning for Active Open Space* (2009) that he authored for Sport and Recreation Victoria (SRV). He indicated that the paper had informed the development of the first iteration of the PSP Guidelines in 2009.

Mr Bunting gave evidence that applying the DBPM would require 1.75 hectares of active open space per 1,000 population to provide for adult participation rates in AFL football, soccer, netball and tennis. He added that a further 0.25ha would be required for other sports that have lower participation rates and to compensate for new education facilities no longer including any open space provision. He concluded *'that an active open space provision of 2 hectares per 1,000 population was reasonable to meet current and future sports participation demands at the precinct level'*.

Mr Bunting submitted that the standard in the PSP Guidelines that sought 6% of the net developable residential area as active open space did not adequately provide for increasing residential densities. He submitted that the 6% standard had been based on an expected 10-12 dwellings per hectare (in the development of the 2009 iteration of the PSP Guidelines), equating to approximately 1.79 hectares per 1,000 population (the increase from 1.75 to 1.79 hectares reflects greater participation in soccer).

He noted that the PSP Guidelines now sought 15 dwellings per hectare and that the draft Metropolitan Planning Strategy included an initiative to amend the Guidelines to require the delivery of an average of 18 dwellings per hectare in new growth areas. He advised that *'At 15 lots per hectare 7.5% would meet the demand calculated using the DBPM of 1.79 hectares per 1,000 population'*. 8.5% would provide 2 hectares per 1,000 population.

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<sup>4</sup> Plan Melbourne Initiative 2.1.3

Mr Bunting noted that: *'Quantifying the amount of active open space that a future community will require is not and cannot be an exact science'*. Nevertheless, he reached the following conclusions:

- a) *The active open space target of 6% specified in Standard 2 of the Precinct Structure Planning Guidelines results in an undersupply of active open space at densities above 12 lots per hectare.*
- b) *That active open space targets should be specified as an amount per 1,000 population to reflect participation rates and demand.*
- c) *That, for Ballan Road and Westbrook precincts, with densities exceeding 17 lots per hectare, 1.75 hectares of active open space per 1,000 resident population becomes the standard specified in the respective Precinct Structure Plans to meet demands at the precinct level.*
- d) *That, for Ballan Road and Westbrook precincts, an additional 0.25 hectares of active open space becomes the standard specified in the respective Precinct Structure Plans to meet demands at the broader district and sub-regional level.*
- e) *That the active open space targets specified in c) and d) above be applied to the overall active open space provision for Wyndham West and reflected in the Wyndham West Development Contributions Plan.*

In response to a question from Mr Townshend, Mr Bunting agreed that the 'cost' of providing additional land had not been a factor in his assessment.

Ms Hawes provided an overview of various 'open space/recreation planning' related documents and reports and concluded that *'the provision standard for open space needs to be linked to a population based provision rate, rather than to a percentage of net developable area, which is the current planning standard'*. She noted that residential densities within Wyndham had increased in recent years and that this trend was expected to continue. In addition, she submitted that smaller lot sizes, larger dwellings and smaller areas of associated private open space increased the need for public open space. Ms Hawes conceded that her assessment did not assess or consider residential affordability issues.

Ms Patterson advised that the MPA opposed Council's submission and was satisfied that the open space areas in the exhibited PSPs were appropriate and consistent with the PSP Guidelines. She calculated that the additional land sought by Council across the two PSPs (15.14 hectares) would reduce the dwelling yield by 277 and the resident population by 721, as well as increase the DCP cost by approximately \$18 million.

Ms Patterson provided an outline of the PSP Guidelines relating to open space, noting that they provide for 10% of NDA-R to be allocated as open space (6% for active and 4% for passive). She also highlighted that the percentage of active open space had been increased to 7% within the two precincts and the percentage of passive open space had been reduced to 3%. This increase in active open space had been made in response to Council's desire for more active open space and in recognition of the extensive areas of additional passive open space associated with Werribee Township Regional Park, waterways and habitat conservation areas (25% of the NDA-R within the combined precincts). Ms Patterson

described this as *'an appropriate and balanced response to the PSP Guidelines, local physical context and local Council concerns'*.

Ms Patterson also advised that an additional 6.5 hectares will be provided for indoor recreation within the western growth area (the Black Forest Road North PSP area).

Ms Patterson spoke in support of the PSP Guidelines, submitting that they were the *'published state guidance on PSPs'* and that their standards have *'taken into account and balanced the many complementary and competing issues associated with planning for new communities.'* In relation to the SRV 'standard' of providing 2 hectares per 1,000 population relied upon by Council and Mr Bunting, Ms Patterson advised that this was not the State Government's policy position and it was not a published document. She submitted that it should not be afforded any 'weight' by the Panel. Ms Patterson also noted that SRV had been invited to make a submission to the two PSPs but had chosen not to.

Ms Patterson submitted that:

*The provision standards contained within the PSP Guidelines represent a significant step change on previous ad-hoc and in many instances insufficient open space provision in growth areas. This is particularly so in the City of Wyndham where historically Council managed growth planning resulted in under provision of sports-fields.*

Ms Patterson also noted that Council's open space strategies such as the *Wyndham Open Space Strategy* (2004) and its *2040 Social Infrastructure Planning Framework* had not been implemented through the planning scheme and had not been through a panel process. Consequently they had not been tested and should not be relied upon in preference to the PSP Guidelines. In any event, Ms Patterson noted that *the Wyndham Open Space Strategy* included as a key recommendation:

*Direct the provision of open space in developing urban areas through prescribing a developer contribution of 7.5% of developable land and identifying open space development standards.*

Ms Patterson also noted that:

*'...if Wyndham Council wishes for more land above and beyond the local provision provided within PSPs (or outlined by the PSP Guidelines), then it should be willing to commit to purchasing this land out of its own resources'.*

Ms Patterson concluded:

*It is submitted that Council has not made a compelling case, or provided sufficient and weighted strategic justification (such as incorporated documents that have been through a public process) for additional active (sports-field) land within the Ballan Road and Westbrook PSPs.*

*Council has not signalled its intent to carry out a public consultation/planning scheme amendment process for any of the standards it is advocating.*

*The Wyndham Council proposals regarding active open space would not result in a sufficiently measured or balanced plan with a view to net community benefit.*

*The MPA also submits that in delivering a fair and balanced open space plan, the equitable apportionment of private and community resources to delivery of sports-fields needs also to be considered. Council has not adequately considered this.*

*Discipline is required when building an open space network, this includes balancing qualitative outcomes with appropriate open space distribution, integration with suitable encumbered and other land, considering potential synergies with co-located facilities such as schools, consideration of impacts on other PSP elements and affordability, as well as providing a fair and reasonable quantum of space for a precinct.*

*The Ballan Road and Westbrook PSPs, as planned by the MPA, provide this balance and integration, including a provision of active (sports-field) open space that is more than appropriate to meet the recreation needs of the future populations.*

*The MPA therefore requests that Panel disregard Council's submission regarding active sports-field open space.*

Mr Pitt supported the MPA:

*It is submitted that the approach of the MPA to use the PSP guidelines as a guide and in particular circumstances to increase the percentage of active open space having regard to the availability of regional open space in the locality suitable for passive recreation should be endorsed.*

Mr Pitt also referred to the Casey Amendment C129 Panel report, noting that:

*In that case the Council argued that a ratio of 1.58ha per 1,000 people was inadequate and should be 2ha per 1,000 people and had evidence advocating 2.4ha per 1,000 people. The conclusion of the Panel was:*

*This level of provision is simply not a realistic proposition within the broader context of providing affordable residential land, and for this reason, the Panel has not found Council's submissions on this issue to be particularly helpful. The Panel would have been assisted by a more pragmatic and reasoned analysis of active open space requirements and priorities.*

Mr Pitt's submissions were supported by Mr Cicero.

Mr Townshend also supported the MPA's position and noted that the 'objective' in Clause 22.07 of the *Wyndham Planning Scheme (WPS)* supports open space '*which is affordable in the short and longer term*'. He questioned whether increasing the area of active open space as proposed by Council would be consistent with this objective. Mr Townshend also noted that the SRV 'internal working paper' *Demand Based Planning for Active Open Space* (2009) authored by Mr Bunting was only intended for 'discussion purposes'.

## The design of the active open space areas

Mr Montebello submitted that the active open space areas were not ‘fit for purpose’ and needed to be redesigned. He relied on the evidence of Ms Hawes (a Wyndham Council open space planner) who provided a ‘desktop’ analysis of the four active space areas against various factors including size, shape, topography, aspect/orientation, dimensions, adaptability, co-location, environment, infrastructure and heritage. On the basis of that analysis she recommended a number of revisions, with the key changes summarised below.

### AOS P16 (Ballan Road)

- Increase the area from 12.63 to 15.6 hectares (approximately 3 hectares).
- Various design changes, including extending the reserve to the east.
- Increase/provide passive open space (1 hectare).

### AOS P17 (Ballan Road)

- Increase the area from 10.70 to 12.2 hectares (approximately 1.5 hectares).
- Various design changes, including extending the reserve to the north.
- Increase/provide passive open space in the south.

### AOS A1 (Westbrook)

- Increase the area from 11.45 to 14.5 hectares (approximately 3 hectares).
- Various design changes, including extending the reserve to the north and west.
- Increase/provide passive open space in the south east corner.
- Possible implications arising from widening of Ballan Road.

### AOS A2 (Westbrook)

- Increase the area from 12.42 to 16.3 hectares (approximately 4 hectares).
- Various design changes, including extending the reserve to the south over the proposed Government school site (P6).
- Increase/provide passive open space in the south.

Ms Hawes assessed that 3 of the active open space areas were deficient in providing ‘passive open space’ and gave evidence that:

*A proportion of active open space (1-2ha, Wyndham Interim Open Space Policy) must be suitable for passive open space to cater for passive/social recreation opportunities, except when a passive open space reserve is co-located with active open space reserve. These embellishments should include, but not limited to a playground, seating, picnic tables and facilities to ensure greater use and appreciation of the AOS by the broader local community.*

Ms Hawes also identified a range of potential ‘threats’ to each area, many of which related to environmental, heritage and detailed design issues.

Based on the evidence of Mr Bunting and Ms Hawes, Mr Montebello concluded that the areas of active open space should be increased by 4.47 hectares in Ballan Road (to 27.8 hectares) and 6.65 hectares in Westbrook (to 30.8 hectares).

Ms Patterson expressed disappointment that the matters raised in Ms Hawes' evidence had not been raised by Council during the preparation of the PSPs or in its submission on the amendments. She submitted that if they had been, they could have been easily explained or addressed. Ms Patterson advised that many of the issues and 'threats' raised by Ms Hawes had been considered and addressed during the design of the open space areas, while others were simply not relevant.

For example, Ms Paterson noted that:

- Flood modelling has been completed by Melbourne Water and the active open space areas have been located outside of the flood prone areas.
- Desktop assessments of cultural heritage have been conducted and the active open space areas have been located outside the areas of cultural heritage sensitivity.
- Based on the current information, a Cultural Heritage Management Plan is not required for these sites.
- Desktop soil contamination assessments have been completed and they did not identify any significant constraints.
- Local roads will be provided around the active open space areas (as sought by Ms Hawes), even if they are not currently shown in the PSPs.

Ms Patterson also noted that Council's submission that more land was required to reduce its insurance risk was a new argument that had not previously been raised in the various discussions between Council and the MPA.

In relation to the proposed provision of a 1 hectare passive open space area within the four active open space areas, Ms Patterson submitted:

*'...this is entirely unnecessary and counter to the concept of efficient and integrated design. In the active reserves, (as Ms Hawes outlined in her evidence), the grounds are not used at the same time; one ground is used for practice and one for competition. Therefore one ground would always be available for casual 'kick about' use, why then is it necessary to provide more land in contrast to the principles of multi-use and sharing?*

*It is the MPA's view that Council is not having enough regard for the incidental space within the reserves in between and around the playing fields as well as the recreational facilities such as playgrounds in the adjoining collocated schools. The space between and around fields can be designed for different, and discrete functions which would contribute to the creation of a diverse and integrated asset for the local community. Playgrounds and fields within school grounds also provide recreation opportunities, as discussed later in these submissions.*



### (iii) Discussion

#### The quantum of active open space

The Panel agrees that the provision of adequate active open space is a key ingredient in the success of growth area planning. As clearly demonstrated by Council, there are numerous studies that confirm the broader and significant benefits of an active and healthy community. The PSP Guidelines recognise this and seek to ensure that open space is of high quality, well-distributed and multi-functional, but also cost effective.

In this context, the Panel accepts Ms Patterson's submission that the standard in the PSP Guidelines to allocate 6% of Nihau for active open space represents a balanced and considered approach to open space planning – and also a response to the broader objective that open space be 'cost effective'. However, as the Casey Amendment C129 Panel noted, the open space standards are capable of being varied, although they are not a 'starting point' which will inevitably or necessarily be varied. That Panel noted that the standards *'are a considered basis on which open space planning within PSPs must be undertaken, and there needs to be compelling reasons to vary from them'*. In light of this, it is legitimate that Councils or other parties review the quantum and adequacy of active open space proposed in individual PSPs.

Having reviewed the submissions and evidence on this issue, the Panel is not satisfied that Council has adequately demonstrated that the PSPs are deficient in active open space and that the additional land needs to be provided. In reaching this conclusion, the Panel has had regard to the factors discussed below.

Firstly, the PSPs provide an increase of active open space from 6% to 7% of net developable area (albeit at the cost of reducing passive open space from 4% to 3% of net developable area), representing an increase of approximately 3.3ha in Ballan Road and 3.5ha in Westbrook. The Panel supports this approach and is satisfied that 'trading' passive open space for active open space is a sensible outcome in these precincts given that they have extensive areas of encumbered open space (predominantly associated with the Werribee Township Regional Park, waterways and conservation areas) that will have some utility as passive open space. In fact, Ms Patterson advised that the total percentage of open space in Ballan Road is approximately 49.8% and approximately 23.7%, in Westbrook while the 'growth area' average over 23 approved PSPs is 28.84%.

Secondly, Council's proposed 2ha per 1000 population as advanced by Mr Bunting and Ms Hawes has not been adequately justified. It has been drawn from what Mr Bunting agreed was an internal SRV working document and represents what the Panel would describe as an 'ideal' level of open space provision, rather than a balanced assessment that takes into account factors such as cost effectiveness and affordability. As Mr Bunting and Ms Hawes both conceded, their evidence and recommendations did not take into account the cost of providing the additional land. Ms Patterson calculated that the increased provision of active open space would *'increase the Wyndham West DCP by at least \$18 million'*, equating to an increase of *'at least \$660 per household'*. As noted by Mr Tweedie, it is difficult to reconcile the increased cost with Council's Open Space Policy (Clause 22.07) that supports public open space, which amongst other things, *'is affordable in the short and longer term'*. Council

challenged the accuracy of this assessment and argued that this was this was not a significant impost given the broader long term benefits. However, the Panel believes that whether the cost is significant depends largely on the extent to which the additional land is justified.

Thirdly, Council relied on various documents such as the *Wyndham Open Space Strategy* (2004) and the *Wyndham Interim Open Space Transitional Policy* in support of its contention that additional active open space should be provided. Similar arguments were put to the Casey Amendment C129 Panel which noted that the *Casey Open Space Strategy* had not been implemented through a planning scheme amendment and that this limited the 'weight' that the Panel could attribute to it. It concluded that if a Council sought to rely on these types of documents in the development of PSPs then this would be assisted if the relevant elements had been included in the planning scheme. This observation also applies to the *Wyndham Open Space Strategy* and other policy documents relied upon by Council.

Fourthly, Council has made no allowance for the shared use of school facilities for active open space purposes. Although Council does not have any 'joint use agreements' currently in place, the MPA advised that *'there are several positive initiatives underway (that Council has not mentioned) that could lead to joint use agreements'*. Joint use agreements are in place in other municipalities and they provide a potential mechanism for Council to at least partly address its concerns. They are also consistent with the broader objective to provide cost effective open space.

Finally, as Ms Patterson noted, it is open to Council to make up the perceived shortage in active open space by purchasing and developing additional land itself.

Mr Montebello argued in support of a DBPM and that the provision of open space should be based on a 'needs assessment'. He submitted that a needs assessment was essential, and had not been undertaken by the MPA. While the Panel acknowledges that there are potential benefits in assessing the open space needs on a precinct by precinct basis, these are outweighed by the benefits of applying 'standards' to growth area planning, such as those in the PSP Guidelines. Applying standards provides certainty and an informed basis on which PSPs can be developed, while also having a degree of flexibility to respond to local circumstances as discussed earlier. In the case of the Ballan Road and Westbrook PSPs, local circumstances led to the percentage of active open space being increased from 6 to 7%, an approach that the Panel supports. On balance, the Panel is satisfied that applying uniform (but flexible) open space standards is an appropriate approach.

### **Open space provision in future PSPs**

Although the Panel does not support the provision of additional active open space in the Ballan Road and Westbrook precincts, Council's submission raises broader issues about how open space should be provided in future growth area planning in the context of increasing housing and population densities. As Mr Montebello noted, growth area housing densities have been progressively increasing (from 12 to 15 dwellings per hectare), while the draft Metropolitan Planning Strategy recommends that they be further increased to an average of

18 dwellings per hectare in new growth areas<sup>5</sup>. Notably, the Ballan Road and Westbrook PSPs seek an average of 17 dwellings per hectare.

The Panel also expects that the demand for open space and community expectations about access to open space will continue to increase. This is reflected in the draft Metropolitan Planning Strategy which supports additional open space on metropolitan-wide and local area bases<sup>6</sup>.

In light of these trends it is timely to question whether the open space standards in the PSP Guidelines remain appropriate or whether they should be adjusted to accommodate higher dwelling and population densities in growth areas. Of particular relevance would be whether the provision of open space should be linked to population, rather than to a percentage of net developable area. The Panel notes, for example, that the PSP Guidelines apply a 'hectare per population' measure for active indoor sports<sup>7</sup>.

The open space standards in the PSP Guidelines require a percentage of NDHa to be provided as open space, regardless of the housing density that is being sought or the population that will be achieved. It is conceivable that this standard could lead to an under provision of open space in areas identified for higher dwelling densities (and where there is a commensurate increase in population density), particularly if the growth area average is increased to 17 or 18 dwellings per hectare. This is potentially more of an issue for active open space than passive open space, given that most PSP areas include large areas of encumbered open space that are not calculated as part of the passive open space contribution, yet have some degree of utility for passive recreation use.

For these reasons the Panel acknowledges that there is merit in Council's view that open space provision should be based on population rather than the area of developable land. It recognises, however, that adopting this approach would raise a range of issues, particularly what the rates should be. Although the Panel has not formed any definitive conclusions about these issues, it believes that the MPA should review the adequacy of the open space standards in the PSP Guidelines, specifically in the context of increasing housing and population densities. The need to do this will potentially become more pressing if the growth area average is increased to 18 dwellings per hectare as proposed in the draft Metropolitan Planning Strategy.

### **The design of the active open space areas**

The Panel notes that Ms Hawes' review of the four active open space areas was a desk top review and that the issues and 'threats' she identified had not been discussed with the MPA prior to the Hearing. Ms Patterson responded to these issues in some detail and it is clear that many of them were addressed during the design of the areas, while others had been investigated and were unlikely to eventuate (particularly the environmental and heritage issues). Given that Ms Hawes' evidence did not confirm any fundamental constraints on developing the four areas, the Panel accepts that their siting and design in the exhibited PSPs are generally appropriate.

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<sup>5</sup> Plan Melbourne Initiative 2.1.3

<sup>6</sup> Plan Melbourne Initiatives 4.5.1 and 4.5.2

<sup>7</sup> PSP Guidelines Element 5 Standard S2

Nevertheless, the Panel notes that Ms Hawes has proposed a number of detailed design revisions (such as the siting and orientation of various ovals and other facilities) intended to improve the functioning and performance of the four areas. To the extent that these revisions can be accommodated within the general boundary and area arrangements in the exhibited PSPs, the Panel encourages the MPA to review Ms Hawes' relevant recommendations. In forming this view, the Panel notes that the MPA had not had the opportunity to review Ms Hawes' evidence in detail before the Hearing and that some of the detailed design recommendations might have merit.

Ms Hawes also recommended that three of the active open space areas be enlarged so that they each provided 1 hectare of passive open space. Ms Hawes indicated that this had been drawn from the *'Wyndham Interim Open Space Policy'*. The Panel notes this is not a 'standard' within the PSP Guidelines (although they suggest that active open space areas *'generally require at least eight hectares'*).

The Panel does not believe that Council has adequately demonstrated why these additional areas are required and why the exhibited arrangements are unsatisfactory. Simply applying a standard from an 'interim' Council policy is inadequate justification and is not an approach that the Panel can support. The Panel has reviewed each of the four active open space areas in terms of their passive open space components and notes that:

- P16 (Ballan Road) abuts a secondary school site, a primary school site and a waterway corridor.
- P17 (Ballan Road) abuts a significant waterway corridor area and is in close proximity to a primary school site.
- A1 (Westbrook) abuts a large primary/secondary school site.
- A2 (Westbrook) abuts a primary school site and waterway corridor area, and is opposite a 'district passive recreation park'.

Co-locating the open space areas with school sites and waterway corridor areas provides significant scope to ensure that they can provide for passive recreation needs. The Panel is satisfied that careful design of these areas will be able to achieve the functional outcomes sought by Council without having to increase the size of these areas, certainly not to the extent recommended by Ms Hawes.

#### **(iv) Conclusions**

The Panel notes that the proposed provision of active open space is consistent with the PSP Guidelines and is satisfied that the PSPs provide an adequate quantum of active open space. It also notes that the area of active open space has been increased from 6% of NDHa in the PSPs (the PSP standard) to 7% and is satisfied that this is an appropriate response to the circumstances of the two precincts.

The Panel is also satisfied that the siting, arrangement and layout of the four active open space areas are generally appropriate, while noting that there is scope for refinement as part of the detailed design of the areas.

Finally, the Panel believes that Council's submissions and evidence have raised legitimate concerns about the adequacy of calculating the provision of open space based on a percentage of net developable area rather than projected population. The Panel has

recommended that the MPA review this element of the PSP Guidelines, particularly in the context of the draft Metropolitan Planning Strategy and increasing dwelling densities in growth areas.

#### **(v) Recommendation**

**The Panel recommends that the Metropolitan Planning Authority review the open space standard S2 in the Precinct Structure Planning Guidelines to assess whether a revised standard should be introduced in response to increasing dwelling densities in growth areas. The review should assess whether a ‘population’ or ‘developable area’ based approach would be more suitable.**

### **4.3 Housing**

#### **(i) The issues**

The submission from Council raised two key issues:

- whether the amendments should require more ‘smaller dwellings’ (studio apartments and one and two bedroom dwellings) to be provided; and
- whether the exhibited housing density provisions in the Ballan Road PSP should be changed.

The exhibited PSPs included housing objectives that encourage housing choice through lot sizes that can accommodate different dwelling typologies, and the provision of medium and higher density residential development around public transport, community facilities, town centres and open space. They also included requirements that an average dwelling density of 17 dwellings per Net Developable Hectare (NDHa) be achieved, and that applications demonstrate how proposals will contribute to the delivery of housing diversity, including higher densities.

Following its consideration of submissions, the MPA proposed a number of changes to these provisions that are described later in this section of the report. In summary, the MPA proposed that achieving 17 dwellings per NDHa should become an objective rather than a requirement and that some of the more prescriptive references to where particular densities should be achieved be replaced with more general guidance.

#### **(ii) Evidence and submissions**

##### **Smaller dwellings**

Mr Moore submitted that the amendments should make more explicit provision for ‘multi-unit housing’, particularly studio apartments and one and two bedroom dwellings. He provided an assessment of dwelling and household types in growth areas and established residential areas (including Wyndham), including a comparison of the proportions of small dwellings against the size of households. He also relied on feedback and anecdotal evidence from Council employees, estate agents and housing workers that suggested there was a shortage of ‘smaller dwellings’.

Mr Moore referred to a number of indicators including:

- 17% of total households in Wyndham are one person households<sup>8</sup>; and
- 7.9% of dwellings within Wyndham are 'small dwellings' (consisting of bedsitters, one and two bedrooms)<sup>9</sup>.

He also noted that significant residential areas within Wyndham (including new growth areas) are subject to restrictive covenants that limit development to one dwelling per lot. Mr Moore submitted that although Council did not seek to prevent the use of covenants, PSPs need to provide opportunities for smaller and multi-unit residential development.

He conceded that the demand for 'small dwellings' is likely to be below the proportion of small households, but concluded that the supply of smaller dwellings in Wyndham is disproportionately low.

To address this concern, Mr Moore proposed that the PSPs include the following requirements:

*Subdivision applications must identify and nominate on the plans to be endorsed under a permit, lots which may be developed for small, medium and large multi-unit developments throughout the subdivision. The quantity and location of the lots must be to the satisfaction of the responsible authority.*

*Lots identified on a plan pursuant to R13 must not be subject to (private) restrictions (on titles or plans of subdivision) which prevent the development of the land for multi-unit dwellings.*

*Applications for multi-unit dwellings must provide a substantial component of dwellings that are studio type or contain 1 or 2 bedrooms (to the satisfaction of the responsible authority).*

The words in brackets were added by Mr Montebello.

Mr Moore also expressed concerns about the MPA's proposed changes to the exhibited lot diversity objectives and implementation measures in the PSPs.

Mr Montebello concluded:

*It is submitted that the material presented in Council's submission by Mr Moore is compelling. Again, while SPPF calls for housing diversity, what is being delivered is lot diversity and while that will provide some small measure of diversity in the housing type, it is most unlikely based on the analysis presented to deliver a diverse range of housing in terms of smaller dwellings as needed in this municipality.*

Ms Patterson submitted that while the MPA 'agrees with the objective to encourage housing diversity within new communities', it 'strongly disagrees with the prescriptive approach recommended by Council to achieve their desired outcomes'. Ms Patterson submitted that further analysis of these issues was needed and that Council's preliminary work on a

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<sup>8</sup> ABS 2011

<sup>9</sup> ABS 2011



‘Housing Diversity Statement’ was not adequately advanced to support Council’s conclusions.

She noted that the MPA and Council have agreed to work together on various ‘housing’ initiatives including a multi-unit housing code, a workshop with key developers and builders to discuss constraints and opportunities to achieving housing diversity, and a review of Council standards/processes that might be inadvertently preventing improved housing diversity outcomes. She submitted that these initiatives should be pursued in preference to ‘mandating bedroom numbers’.

Ms Patterson concluded:

*The MPA is committed to exploring ways in which greater housing diversity can be provided in the growth areas and working with Council and the development industry to achieve this. However, the MPA firmly believes that mandating the number of bedrooms in a dwelling, and other methods proposed by Council are not appropriate.*

Mr Fetterplace advised that Wyndham Vale Project Pty Ltd (WVP) opposed Council’s submission that lots should be nominated for ‘multi units and studio/1 or 2 bed units’. He submitted that this should be subject to market demand at the time of development approval.

### **Housing density**

The MPA proposed various changes to the exhibited ‘housing density’ provisions in PSPs following its consideration of submissions. Both exhibited PSPs included requirements that development must achieve a minimum average density of 17 dwellings per NDHa, whereas the MPA now proposes this be an ‘objective’ rather than a ‘requirement’. In relation to the Ballan Road PSP, the exhibited Plan 2 Future Urban Structure also identified targeted dwelling yields for specific sites, ranging from 11 dwellings to 35 dwellings per NDHa. Ms Patterson advised that while submitters were mostly satisfied with the overall housing density and diversity objectives, they raised concerns about the level of prescription and lack of flexibility, prompting a concern that the PSP was ‘more in the nature of a site development plan than a broader PSP’.

Ms Patterson described the proposed changes as follows:

*The revised provisions aim to find a balance between the need to deliver on housing density and housing diversity policy while providing some flexibility in the location and manner in which it is provided at a site level. In particular the aim was not to prescriptively burden any particular landowner with a particular density outcome while allowing Council some management tools for ensuring the precinct as a whole delivers on housing policy.*

*The PSP plans now show no specified locations for density nor does it describe dwelling yields for each property. Objectives, requirements and guidelines have been adjusted to focus on delivering the overall density target of the PSP, meeting diversity outcomes and describing preferred locations for particular density types in words rather than on the plans.*



*The plan now provides for a minimum residential density to be met across the precinct while diversity and alternative density types (e.g., high, medium, low) are required within what the PSP calls 'neighbourhoods'. These areas were arrived at as they each contain multiple properties, contain various 'density attractors' open space, town centre etc. and are a more understandable scale with regard to housing than the precinct scale. The neighbourhood approach seeks to allow for trade-offs between properties (e.g. some will seek more density while others may seek less) and includes elements likely to attract higher density within each neighbourhood.*

Ms Patterson advised that this revised approach was generally supported by submitters, although concerns were raised by Council and Mr Fetterplace.

Mr Fetterplace advised that WVP opposed the inclusion of '*mandatory minimum density requirements being included in the PSP at a rate of 17 lots per hectare of Net Developable Area*'. Mr Fetterplace noted that the SPPF supports a rate of 15 lots per hectare across the metropolitan area (including growth areas) and submitted that Ballan Road should be consistent with this. Mr Fetterplace also advised that WVP supports the housing density changes to the exhibited amendment proposed by the MPA '*but does not support the specific use of lot/ha rates within the PSP or specific lot yield tables in these locations*'. Mr Fetterplace submitted that '*a salt and pepper*' approach to distribute lot sizes/yields across the PSP area will create greater opportunities for housing diversity and achievement of overall density aspirations'.

He concluded that:

*WVP has no issue with the PSP aspiring to achieve an overall higher density target, however it is considered the application of such a mandatory minimum requirement is contrary to existing State policy and inconsistent with the approach applied to other approved and planned PSP areas (including Wyndham North) across metropolitan Melbourne.*

Ms Patterson opposed the WVP submission on the basis that:

*The MPA believe that the revised approach to housing density in the precinct provides for increased flexibility for all landowners. It will allow landowners/developers such as Dacland or Parklane Garden Developments to the south, to provide for a range of housing densities across their site. For example, the proposal by Parklane to the south for 35 dwellings per hectare will balance the proposal by Dacland for a lower density of around 15 dwellings per hectare in this location.*

Ms Patterson also noted that achieving 17 lots per hectare was now intended to be an objective rather than a requirement.

Mr Montebello opposed the WVP submission describing it as '*the complete emancipation of the PSP of its density provisions*'. He submitted that this approach would be inconsistent with the '*thrust of the SPPF and a large part of the guidance given in the PSP Guidelines*'. In addition, Mr Moore expressed concerns about the changes to the density provisions

proposed by the MPA, particularly the lack of direction and certainty about where higher densities were sought and what those densities should be.

Mr Gault advised that Parklane Developments intends to develop a range of housing products on 504-530 Ballan Road, including 3 to 4 bedroom townhouses (at 35 dwellings per hectare) to 1 to 3 bedroom apartments (at up to 120 dwellings per hectare). He advised that this was in response to market research into current needs and demographic trends. Consequently, he proposed that the amendment designate this land for a '*minimum 35 dwellings per NDHa*'.

### **(iii) Discussion**

#### **Smaller dwellings**

On the basis of the detailed material presented by Mr Moore, the Panel accepts the prima facie argument that the proportion of smaller dwellings in Wyndham's growth areas is not matching the demographic profile of the community and potentially market demand. However, it does not agree that the amendments should include the type of detailed requirements proposed by Council.

Firstly, while the Panel acknowledges Council's analysis, it agrees with Ms Patterson that further work would be necessary in order to clearly demonstrate the extent of the issue, its implications and the most appropriate mechanism to address it. Ideally, this type of analysis would be part of a broader housing strategy that considered all residential areas, not just growth areas.

Secondly, the PSPs (including the MPA's proposed changes) provide adequate scope and support for higher density residential development, based around the 17 dwellings per hectare objective.

Thirdly, the Parkland Development proposal (development at up to 120 dwellings per hectare including smaller dwellings) suggests that developers will respond to the perceived shortage of smaller dwellings. Although Mr Moore commented that this proposal is likely to be an exception rather than the rule, the Panel notes Mr Gault's advice that it was based on market and demographic research. The Panel is satisfied that the PSPs provide adequate scope for other developers to form similar views and to respond to that section of the market without the need for prescriptive requirements.

Finally, the Panel notes Ms Patterson's advice that the MPA and Council are exploring various initiatives to address housing issues in the Wyndham growth areas and it supports this process.

#### **Housing density**

Panel generally supports the 'housing density' revisions proposed by the MPA, noting that they provide more flexibility and less prescription. The exhibited provisions were notably detailed about the densities that should be achieved on certain sites whereas the MPA now prefers to take a more 'policy' based approach through the application of general principles such as 'walkable catchments', represented on the new Map 4a (Housing). These changes addressed concerns raised in many written submissions.

Mr Fetterplace opposed the exhibited provision in the Ballan Road PSP that mandated an average density of 17 dwellings per NDHa, submitting that the PSPs should only seek to provide for 15 dwellings per hectare on the basis that this is State policy. As Ms Patterson advised, the MPA now proposes that this be an objective rather than a requirement. The Panel also notes that Clause 11.02-2 (Planning for growth areas) of the SPPF encourages *'average overall residential densities in the growth areas of a minimum of 15 dwellings per net developable hectare'*. Clearly this provides for densities higher than 15 dwellings per hectare and, as Ms Patterson explained, these precincts have characteristics that warrant and will support higher densities.

#### **(iv) Conclusions**

The Panel is satisfied that the PSPs (including the changes proposed by the MPA) provide appropriate scope and guidance to achieve suitable residential densities and a mix of dwelling types within the precincts. While the Panel notes Council's concerns about a potential lack of 'smaller dwellings', it agrees with the MPA that the case has not been made to support more prescriptive requirements to address this possible issue. The Panel also believes that the Parkland Development proposal is an indication that developers can respond to this segment of market demand and provide higher residential densities and smaller dwellings. Finally, the Panel notes that the MPA and Council are exploring a number of initiatives to address housing issues and encourages them to continue this process.

### **4.4 Road cross sections**

#### **(i) The issue**

The PSPs incorporate a series of cross sections for various road types that have been adopted by the MPA following consultation with VicRoads, Councils and other stakeholders.

The issue is whether the proposed cross sections are appropriate or, as suggested by some submitters, should be varied in certain circumstances.

The Panel has addressed specific issues relating to the bicycle network in Section 4.5 of this report and cross section issues as they affect specific properties in Section 5.

The Ballan Road PAO will be addressed in a separate report once submissions have been heard on any outstanding issues.

#### **(ii) Evidence and submissions**

Council raised the following issues regarding road cross sections:

*On the cross sections in both PSPS Wyndham does not support some of the cross-sections shown in Appendix 4 in both PSPs:*

- *Adjacent to the Arterial Roads is a 12m wide road reserve for service roads with a verge width of 4.7m adjacent to residential subdivisions. In Council's experience a minimum of 5.5m is necessary to accommodate all services on one side, including recycled water and the sewer. The GAA Engineering Design & Construction Manual suggests that a min of 4.5m is provided where electrical supply and streetlighting is provided on the opposite verge. In this*

*instance, street lighting is likely to be provided on the residential frontage, not within the outer separator.*

- *Some Connector and Local Access Street cross sections show a central median of width less than 3m. The GAA Engineering Design & Construction Manual suggests that a minimum of 3.0m is necessary to accommodate tree planting.*
- *The laneway cross section is only 6 metres in width. The GAA Engineering Design & Construction Manual suggests that the minimum road reserve width for Access Lanes is 7.0m with a driveable carriageway width of 6.0 metres.*

The MPA responded as follows:

*The 12m cross section as proposed in the PSP is consistent with the demonstration road cross sections outlined in the PSP Road Note. The Note was adopted following extensive stakeholder consultation that included the growth area Councils.*

*The Engineering Design and Construction Manual for subdivision in growth areas indicates how utility services can be placed within a typical urban street environment but it is silent on the matter of local access roads that have properties only on the one side. Section 10.13 of the Manual states that 'consideration must be given to minimising road reserve widths in order to assist with the cost of providing new developments while ensuring housing affordability'.*

*The 13m road width requested by Council is only necessary if all services are to be located on a wider (dwelling side) verge, however this is not necessary if services such as electricity are placed in the outer separator part of the road reserve (arterial road side).*

*Further, there is also potential for services such as drainage and sewerage to be placed under the road pavement. Therefore a 12m reservation is considered sufficient.*

*Increasing the road reserve width demands more land for a worst case scenario when there are feasible alternatives for the placement of services to limit the ultimate road reserve width and maximise community and amenity benefits.*

*The MPA submits that the current road reserve width is more than sufficient to allow room for all services.*

Regarding the two other cross section matters raised by Council in its submission, the MPA has agreed to make revisions so that they accord with the *Engineering Design and Construction Manual* as follows:

*Connector and local access street cross sections showing central median:*

*The dimension of lower-end median width will be changed to 3m, with a note added to give Council discretion to assess and approve variations below this as follows:*

*Subject to approval by Council and pending demonstration of design / construction measures to ensure trees can be viably accommodated, potential exists for central median to be reduced to 2m.*

*Laneway cross section:*

*The overall dimension will be revised to 7m, with two notes added to give Council discretion to assess and approve variations below this as follows:*

*Pending demonstration that function can be maintained and subject to the approval of Council, overall laneway width of less than 7m may be possible.*

*Planting of small / medium trees encouraged where space permits.*

**(iii) Discussion**

The Panel accepts the MPA's reasoning for a 12m cross section for service roads as shown in the PSPs and agrees that the option of locating services in the outer separator should be pursued in the circumstances described by Council.

**(iv) Conclusions**

The Panel concludes that the road cross sections as exhibited are appropriate, subject to the minor modifications to cross sections made by the MPA in the final form of the PSPs presented to the Panel i.e. incorporating the List of Document Changes Version 6.

## **4.5 Bicycle network**

**(i) The issue**

The issue is whether cycling and walking infrastructure have been appropriately allowed for in the PSPs.

There is general agreement between the parties that there is considerable value in encouraging walking and cycling in new communities and providing both on road and off road cycle and shared facilities that encourage cycling.

There was also agreement that the SPPF provides a strong strategic base for encouraging cycling and walking and that this has been reinforced in the draft Metropolitan Planning Strategy and other key strategic plans over recent years.

There was also agreement between MPA and Bicycle Network Victoria that the proposed road cross sections are a significant improvement over earlier PSPs in the way in which bicycles are catered for.

Bicycle Network Victoria, however, challenged two aspects of the PSPs:

- the overall planning and design of the transport system in the PSPs; and
- the specific walking and cycling infrastructure provided in the PSPs, in particular the most appropriate road cross sections.

## **(ii) Evidence and submissions**

The MPA submitted that cycling and walking are well provided for in the PSPs and are designed to contemporary standards. Ms Patterson submitted that, in preparing the PSPs, the MPA had to balance the needs of cyclists with those of other road users and other competing outcomes to deliver an overall design that considers costs and benefits. In particular, the Ms Patterson pointed to the need to respond to the requirements and current standards adopted by the relevant road authorities, i.e. Council and VicRoads.

Mr Norlen-Holmes, representing Bicycle Network Victoria, submitted that the design focuses on coping with growth in vehicle traffic and fails to place sufficient emphasis on actively encouraging walking and cycling and integrating the needs of these modes of transport into transport system planning.

In relation to the overall planning and design of the transport system, Mr Norlen-Holmes called two expert witnesses. Mr McInerney gave evidence that the precinct design would benefit from reducing the relative speeds between vehicles and cyclists/pedestrians. He gave evidence that at lower speeds all modes can share space and there would be considerable value in reducing speeds to below 30km/hr in local streets to encourage safe cycling use. He suggested that this is best achieved by reducing road widths and encouraging the sharing of space.

Bicycle Network Victoria supported this view, but added that it acknowledged that a wholesale redesign may not be possible at this stage. Mr Norlen-Holmes submitted that local road widths should be reduced in width where possible and, where such reductions are not possible, separation between cyclists and other modes should be provided where practicable.

In response, Ms Patterson submitted that these matters have not previously been raised, and any substantial changes to design standards would need to be reviewed over a period of time in consultation with the road authorities.

Mr Norlen-Holmes submitted that the traffic modelling undertaken by the MPA was conservative, overestimated vehicle numbers and does not take into account growth in walking and cycling mode share. He relied on the evidence of Mr Spiridonos, who gave expert evidence that the Melbourne Integrated Transport Model (MITM) used by the MPA's consultants to plan the road and intersection network was out of date and potentially underestimated walking and cycling volumes. He gave evidence that the MITM relied on out of date assumptions regarding trip preferences to use one mode over another. Mr Spiridonos gave evidence that the traffic assessment should be reworked based on the contemporary Victorian standard, the Victorian Integrated Transport Model (VITM), and if this is done the number of motorised trips may be less and the proportion of cycle trips may be higher. Mr Norlen-Holmes submitted that the GTA traffic assessment took a conservative approach to estimating traffic volumes, adopting worst case scenarios and therefore over designing roads. He asked that the Panel recommend that the MPA revisit the demand modelling to see whether it is possible to reduce the speed and or scale of arterial roads and connector streets.



Bicycle Network Victoria further requested that the Panel recommend that the road cross section requirements in the PSPs be amended to allow flexibility in the design where agreed by the Responsible Authority.

In response, the Ms Patterson acknowledged that the VITM is the current standard and advised that the MPA now uses the VITM for all new precincts. Ms Patterson submitted that the transport assessment is rightly focussed on private vehicle outputs of the model, as these will be the primary form of transport in the precincts. She further submitted:

*Changing the emphasis of the modelling to increase cycle trips assumptions, even to an aspirational level not currently seen in inner Melbourne, would not materially impact on the local street network layout or cross sections. Connector Roads need to have certain carriageway dimensions to cater for buses. Similarly local access level 1 and 2 streets are already low speed low traffic roads, which are not picked up in traffic modelling anyway.*

*Assumptions of bicycle use on Arterial Roads would need to be massive to warrant any material impact on their sizing / frequency. ...*

*In conclusion, walking and cycling trips have been considered as part of the modelling for this precinct (as outlined above) consistent with the planned land use in the precincts, reasonable assumptions of various trip generation modes and in within the limits of what such a model is capable of. The model represents the Victorian Government standard, and is successfully being used across growth areas.*

*The PSPs provide for a high standard of walking and cycling within their respective urban structures.*

In relation to the specific walking and cycling infrastructure included in the PSPs, Mr Norlen-Holmes submitted that the proposed cross sections should be amended generally to favour separated off road bicycle paths and delete on road lanes on arterial roads and connector streets. In particular, it was proposed that the cross sections be amended so as:

- (a) *on-road cycling paths are not provided at all on either Connector Streets or Arterial Roads;*
- (b) *separated pedestrian paths and off-road cycling-only paths are provided:*
  - (i) *on Arterial Roads (e.g. as per the cross sections identified a table at paragraph 104 of these submissions) ; and*
  - (ii) *on Connector Streets where higher volumes of cyclists and pedestrians may be expected (e.g. as per Cross Section 3f in the Westbrook PSP); and*
- (c) *in other areas where lower volumes of cyclists/pedestrians are expected, off-road shared pedestrian/cycling paths of at least 3.0m wide are provided (e.g. as per Cross Section 8 in the Clyde North PSP, but modified to remove on-road cycling lanes and increase the shared path width to 3.0m).*

In support of this position, Mr Norlen-Holmes submitted that on-road bicycle lanes should not be supported on the bases that they:



- (a) *are more costly than off-road cycling-only paths or shared paths, as they increase the width of the road construction and potentially widen the road reserve;*
- (b) *are perceived as, and are in fact, significantly less safe than separated bicycle facilities;*
- (c) *increase the speed of vehicles on the Arterial Road by providing an apparently wider lane for motorists (i.e. the cycling lane); and*
- (d) *cater only for a minority of confident and experienced cyclists, who are not those who 'encouragement should be aimed at'.*

In response to the proposal to have only off road bicycle paths on Ballan Road and Ison Road, Ms Patterson submitted that:

*MPA agree with this sentiment in principle for primary arterial roads with a proposed speed limit of 80 km/hr, in that it would be preferable to accommodate cycle paths off road, where possible.*

*The cross sections proposed within the PSP for Ballan Road and Ison Road provides, however, for exclusive on road bicycle lanes as well as shared off road paths on both sides of the arterial. The infrastructure matches the current requirements of VicRoads standards (who will most likely have carriage of these roads in future) and also the current AustRoads guidelines. While not off road, these cross sections and standards provide a good level of provision for cyclists, offer facilities for all levels of cycling ability and are significant improvement on historical arterial road designs, which did not factor in cyclists needs at all.*

*While on road bicycle lanes have typically been provided (and still are in established areas of Melbourne), recent analysis has highlighted the safety benefits derived from separating cyclists from higher speed traffic. The provision of off road bicycle paths improves the level of separation provided by on road bicycle lanes.*

*However, there are design complexities and issues in designing and implementing off road cycle paths on arterial roads such as crossing side streets, at service roads and at larger intersections, where the level of service for cyclists on an off road system could actually be significantly reduced. Of particular concern are multi lane roundabouts. There are also cyclists who will want to continue to ride on the road even if an off road path is provided, and this likelihood would need consideration in any changes standards.*

*While several concepts have been developed for dedicated off road cycle lanes on arterial roads (e.g. Figure 2), there is no alternative cross section currently yet agreed amongst relevant authorities for implementation in growth areas.*

*MPA has consequently chosen to include the current standard agreed cross section within the Ballan Road and Westbrook PSPs. As authorities progressively implement / update the arterial road infrastructure, there is the ability for the relevant (possibly inclusive of off road paths) standards at the time to be used for*

*construction purposes and also as part of a 'generally in accordance' design response to the PSPs.*

Ms Patterson concluded that the proposed cross sections represent the current standards negotiated over a long period of time with the relevant road authorities and should not be altered in the Ballan Road and Westbrook PSPs. There was acknowledgment, however, that discussions are continuing with VicRoads and others regarding the most appropriate approach to bicycle lanes on arterial roads, and they suggested that the Panel may wish to make a recommendation that cross sections be finalised prior to the gazettal of the PSP.

### **(iii) Discussion**

The Panel notes that there is agreement that walking and cycling should be encouraged and that the proposed road network better provides for bicycles in comparison to earlier precinct designs. The submission of Bicycle Network Victoria effectively seeks to take the level of provision one step further by incorporating more low speed, shared space local roads where possible, separation of bicycle traffic from cars where appropriate and designing for higher levels of bicycle usage in the future.

The Panel accepts the MPA's submission that it must balance the needs of bicycle users with those of other road users and agrees that, in determining road cross sections and intersection treatments, catering for predicted vehicle volumes is the primary consideration. The Panel agrees that the MPA should use the standards that are current and agreed by the relevant authorities at the time of creating the design for a PSP.

The Panel notes that the contemporary standard for designing roads for bicycles has changed over time. It is expected that further changes will occur in the future and Bicycle Network Victoria should play an active role in reviewing the most appropriate design for bicycle facilities in conjunction with VicRoads, PTV and local road authorities.

The Panel has not been presented with compelling evidence that, in its view, justifies modified standards being applied to the Ballan Road or Westbrook PSPs. The Panel notes, however, that discussions are continuing regarding the best approach to bicycle facilities on arterial roads. The Panel supports any further improvements that may arise from this provided that the overall cross section width is not increased. Any increase in road width would impact on net developable area and impact on the DCP and hence should be avoided.

The Panel is not persuaded by the evidence of Mr Spiridonos that reviewing the traffic assessment based on VITM rather than MITM would have any material effect on the design of roads. Given the low proportion of other mode trips (walking, cycle, public transport), the Panel does not believe that (despite the acknowledged flaws of the now outdated MITM) any re-assessment would change predicted traffic volumes so that any arterial roads could be downgraded to connector roads or connector roads to local streets. At a PSP planning level therefore, the Panel concludes that this argument is inconsequential.

It is acknowledged that there seems to be some level of agreement on off road paths on primary arterials (with no on road lanes), but at this stage the revised cross section has not been signed off by the relevant road authorities as the 'standard' and the Panel is concerned that not all the safety issues, particularly with respect to bicycles at intersections, have yet been thought through. Likewise, the Panel believes the concepts introduced by Mr

McInerney on reduced road widths and shared space may warrant further investigation, but that they should be thoroughly tested and adopted by the relevant authority before implementation. The Panel believes that there is scope within the wording of the PSP for local variations to include shared space roadways within the local road cross sections proposed, with the approval of the Responsible Authority.

#### **(iv) Conclusion**

The Panel concludes that the provisions for bicycles as exhibited in the PSPs are adequate, subject to the minor modifications to cross sections made by the MPA in the final form of the PSPs presented to the Panel i.e. incorporating the List of Document Changes Version 6.

The Panel also concludes that any further changes to the configuration of the cross sections of arterial roads agreed between MPA, VicRoads and Council (to vary the treatment of bike lanes, for example) should be permitted provided that there is no increase in the overall width of the road cross section. In any case, cross sections should be finalised before the final gazettal of the PSP.

#### **(v) Recommendation**

**The Panel recommends that any further changes to the configuration of the cross sections of arterial roads agreed between MPA, VicRoads and Council (to vary the treatment of bike lanes, for example) should be permitted provided that they do not increase the overall width of the road cross section. In any case, cross sections should be finalised before the final gazettal of the PSP.**

### **4.6 Biodiversity Conservation Strategy**

#### **(i) The issues**

The issues are:

- whether the amendments (specifically the UGZ schedules) should make provision for accommodating possible future revisions to the approved *Biodiversity Conservation Strategy (BCS)*; and
- the accuracy of the time stamped native vegetation assessments across the precincts.

The process for approving the BCS was described in Section 3.6 of this report.

#### **(ii) Evidence and submissions**

##### **Accommodating changes to the approved Biodiversity Conservation Strategy**

Ms Patterson submitted that issues associated with the *BCS* (and native vegetation time stamping) are not matters that this Panel can resolve.

Although DEPI did not appear before the Panel or make a submission on the amendments, the Panel understands that the MPA represents a 'whole of government' approach and position on the amendments, including DEPI. Ms Patterson advised that DEPI supports the amendments, subject to ensuring they are updated in line with the approved BCS and other relevant approved documents, such as the *Sub-regional Species Strategy for the Growling Grass Frog*.

Mr Pitt, on behalf of Lotus Oaks and Mr Fitzpatrick, argued that the current approvals under the *BCS* should be able to be changed and that the UGZ schedule should provide a mechanism to accommodate changes to the *BCS* approval.

Mr Pitt submitted that there is a need for flexibility so that if the extent of native vegetation to be removed and offset is revised (to the satisfaction of DEPI and/or the Commonwealth Minister for the Environment or delegate), that revision is not precluded by the provisions to be inserted into the *WPS* by these amendments. Mr Pitt proposed that within clause 4.4 (Nationally threatened species and communities conditions) of the UGZ schedule the words below should be added after the words, *'compensatory habitat fee document'*:

*'...subject to any variation to the extent of native vegetation (or threatened species habitat) to be offset approved by the Secretary of the Department of Environment and Primary Industries or the Minister responsible for the administration of the Environment Protection and Biodiversity Conservation Act 1999 or his delegate'.*

This was supported by Mr Cicero on behalf of Mr and Mrs Casaccio and Mr Anderson, however, Mr Cicero suggested the addition of *'or threatened species habitat'* as included in brackets above.

The basis of Mr Pitt's (and Mr Cicero's) position is that the amendments should not preclude landowners from the *'benefits'* of any revisions under the *BCS* that are approved by DEPI and the Commonwealth.

Ms Patterson advised the Panel that DEPI and the Commonwealth Department of the Environment did not support amending these provisions as proposed.

### **Time stamping**

Mr Pitt and Mr Cicero submitted that DEPI had made errors in the collection and assessment of time stamping native vegetation data and that this would have financial ramifications for their clients when calculating offsets required for native vegetation, Golden Sun Moth habitat and Growling Grass Frog habitat, amongst others. This issue was raised for both amendments.

They also submitted that the previous assessments undertaken as part of the time stamping program were over calculated and undertaken at a time of drought when native grasses may have been more prominent within the subject land than they are now.

Mr Kelly (Paul Kelly & Associates) in his expert witness statement for Mr and Mrs Casaccio gave evidence that *'it is considered that the time stamping assessment of vegetation quality has not been appropriately assessed'* and that:

*'...the time stamping assessment was carried out at a time when the vegetation quality was not representative of a mature and apparently long-undisturbed stand of native vegetation (DSE EVC Benchmark definition). A drought in excess of 10 years duration had just ceased when the time stamping assessment was completed for the site. The vegetation which survived the drought on the site consisted principally of drought tolerant species mostly indigenous grasses. During the drought, the cover of bare ground would have been very high'.*

These statements were supported by evidence given by Mr Organ and Mr Lane regarding the assessment of native vegetation over the two precincts, not just the Casaccio property.

In contrast, Mr Booth raised concerns that not enough native vegetation was being retained through the PSP process when comparing the native vegetation plans and figures shown in the time stamping assessments. Mr Booth's concerns are that high quality native grasslands and GSM populations that were identified in the native vegetation time stamping assessments have been overlooked in the development of the PSPs (both Westbrook and Ballan Road).

### **Other issues**

Mr Cicero submitted that there is a need for an adjustment to the Growling Grass Frog conservation area boundary on Mr Anderson's property. Since exhibition of the PSPs, an adjustment to this boundary has been negotiated between DEPI and the MPA (and included in the revised amendment documentation). Mr Cicero's client welcomed the negotiated adjustment but sought further adjustments, which have not been supported by DEPI or the MPA.

### **(iii) Discussion**

#### **Accommodating changes to the approved Biodiversity Conservation Strategy**

It is clear to the Panel that any changes to the GGF Conservation Areas (or more specifically the net loss of area of the conservation area) cannot occur without the agreement of DEPI and the Commonwealth Minister responsible for administering the *EPBC Act*. This is stated in the Commonwealth approval decision under the Melbourne Urban Growth Program Strategic Assessment on the 5 September 2013. The Panel also notes (as put forward by Mr Pitt) that under the *BCS*, *'DEPI may approve minor amendments to the quantum of a habitat compensation obligation resulting from changes to the retention and clearing of habitat from the precinct structure plan process'*.

Ms Patterson advised that the proposed changes to the wording of Clause 4.4 in the UGZ Schedule put forward by Mr Pitt (and supported by Mr Cicero with additional word inclusions) were not supported by the MPA, DEPI or the Commonwealth Department of the Environment. The proposed revisions to the wording of Clause 4.4 in the UGZ schedules are intended to accommodate changes to the approvals under the *BCS* that Mr Pitt and Mr Cicero argued were necessary in light of the issues associated with the time stamping process discussed elsewhere. This is different to the minor boundary adjustments that are already allowed under the *BCS*.

Ms Patterson advised that the MPA had drafted revised provisions to provide the flexibility sought by landowners, but the proposed changes were not supported by DEPI or the Commonwealth Department of the Environment. The Panel agrees that there should be flexibility to accommodate changes, and is satisfied that appropriate revisions should be made to the amendments. This does not mean that the Panel is inviting or anticipating changes, it simply reflects the Panel's view that it makes sense administratively to provide for them if they are required in the future. Given that the *BCS* provisions within the UGZ schedules will require further revision before the amendments are adopted, the Panel is

satisfied that the MPA is best placed to draft an appropriate UGZ provision that will provide the flexibility sought by Mr Pitt and Mr Cicero and supported by the Panel. The Panel also notes with the approval of the BCS, DEPI, MPA and the DTPLI are in the process of finalising the mechanisms to address the BCS obligations within the UGZ.

In adopting this position, the Panel has not formed any views about the current BCS, the time stamping data, or any proposals to review or change them.

### **Time stamping**

Four expert ecologists (three of whom appeared before Panel during the hearings) gave evidence that the native vegetation time stamping data is inaccurate for a number of reasons. The Panel notes the MPA advice that there was *'extensive consultation for the time stamping project, including providing opportunities for landowners to review DEPI's understanding of the native vegetation on their property and submit changes for consideration'*. DEPI have stated that the data is final and will not change.

### **Other issues**

Melbourne Water and DEPI agreed to a revised development line on Mr Anderson's property based on biodiversity conservation area considerations and Melbourne Water waterway corridor requirements. The Panel supports the inclusion of this amended plan and notes the MPA advice that this boundary change would not cause a net loss of GGF conservation area. The change is reflected in the revised amendment documentation provided by the MPA. Further GGF Conservation Area boundary changes as proposed by Mr Cicero on behalf of Mr Anderson are not supported by the MPA or DEPI.

Council's initial submission raised issues associated with the proposed deletion of the Environmental Significance Overlays (ESO1 and ESO2) along the Werribee River and its environs. The Panel was advised that following discussions and correspondence between the MPA and Council these issues have been resolved and Council's concerns addressed.

The Panel understands Mr Booth's issues regarding the amount of native vegetation that has been assessed and presented on DEPI's time stamping data maps versus the amount of native vegetation to actually be retained as part of the urban growth development proposed under the PSPs. The PSPs indicate that there will be various forms of development across the sites and that much of the vegetation (with the exception of the Werribee River environs) will be removed. The Panel notes that the native vegetation that was time stamped during this process can be removed, however the compensation and offsets apply to its removal. Native vegetation associated with the GGF Conservation Area cannot be removed.

#### **(iv) Conclusions**

The need for NVPPs was removed once the *BCS* was approved given that it provides the mechanism to identify areas of native vegetation that are to be retained and can be removed. The Panel accepts that this is satisfactory.

The Panel is also satisfied that the UGZ schedules adequately provide for the protection of native vegetation, management of the Growling Grass Frog habitat areas, including the Werribee River corridor, and for the management of nationally threatened species.

The Panel concludes that, although there is differing opinion about the amount of native vegetation cover and its condition, there has been a process available for review under the Melbourne Strategic Assessment (an assessment process under the Commonwealth *EPBC Act* 1999 between the DEPI and the Commonwealth).

The Panel concludes that for administrative purposes, the MPA, DEPI and the DTPLI need to finalise the mechanisms to address the *BCS* obligations within the UGZ to ensure consistency across the PSPs.

#### **(v) Recommendation**

**The Panel recommends that Amendments C171 and C172 be amended to:**

- **reflect the approved Biodiversity Conservation Strategy (where required); and to**
- **include a provision in the Urban Growth Zone schedules (to be drafted by the Metropolitan Planning Authority) that provides for variation to the extent of native vegetation or threatened species habitat to be offset, where approved by the Secretary of the Department of Environment and Primary Industries or the Minister responsible for the administration of the *Environment Protection and Biodiversity Conservation Act* 1999 or delegate.**

### **4.7 Land encumbered by flooding**

#### **(i) The issue**

The issue is whether the Ballan Road PSP should provide an opportunity for reviewing the extent of flood prone land associated with the Werribee River and potentially increasing the area of developable land.

#### **(ii) Evidence and submissions**

Mr Wood, on behalf of Mr Tino Ballan, advised that recent flood modelling of property numbers 21 and 22 indicated that the developable (unencumbered) area of these properties could be increased by 3.25 hectares. He also advised that Melbourne Water had reviewed the flood modelling and that it had no objection, in principle, to the methodology and outcomes. However, he indicated that Melbourne Water might 'test' the modelling assumptions and that a full modelling review was underway at the land owner's expense.

He submitted that Amendment C171 should be modified to accommodate revisions to the developable area of the property in accordance with the recent flood modelling. He suggested two alternatives:



- Revise the relevant elements of the amendment to reflect an additional 3.25 hectares of residential land in the event that the Melbourne Water confirms the recent flood modelling prior to the adoption of the amendment.
- Include the following wording at R87 in the PSP:

*Further refinement of the boundary between the designated residential land and “Waterway (encumbered)” may occur outside of the 200m setback to the Werribee River subject to the completion of more detailed drainage analysis and with the consent of Melbourne Water and the responsible planning authority.*

Mr Cicero, on behalf of Mr Anderson, sought the inclusion of the following additional permit application requirement under Clause 3.2 (Development applications on land containing or abutting the Werribee River, its tributaries and environs) in the UGZ schedule:

- The width of the waterway corridor to the satisfaction of Melbourne Water.

Mr Cicero submitted that this would provide an opportunity for a landowner to ‘test’ the corridor width proposed by Melbourne Water, rather than simply accept a development line.

Mr Cicero, on behalf of Mr and Mrs Casaccio, submitted that the extent of the developable area on 575 McGrath Road could be increased ‘*with some minor additional fill*’. He highlighted the extent to which the property is encumbered and sought greater flexibility in the PSP to increase the extent of the developable area.

The MPA agreed to include the additional requirement sought by Mr Cicero under Clause 3.2 of the UGZ schedule to ‘*provide landowners with the flexibility to seek adjustments at detailed design, where possible and subject to the approval of Melbourne Water and the Responsible Authority*’.

The MPA also agreed to amend R87 of the PSP to provide greater flexibility in potentially allowing adjustments to flood boundaries and increasing developable areas:

*The final design, depth of fill and extent of developable area related to the land currently within the 1:100 ARI flood line and associated with the Werribee River breakaway creek corridor and the Werribee River corridor (refer Plan 2) must be approved to the satisfaction of Melbourne Water (underlined text is to be added to THE exhibited requirement).*

Ms Patterson highlighted that any adjustments would need to be approved by Melbourne Water.

### **(iii) Discussion and conclusions**

The Panel supports the additional requirement under the UGZ and the revised R87 proposed by the MPA, and is satisfied there should be flexibility to enable flood boundaries to be reviewed and for developable areas to be revised.

Whether or not the PSP should be amended before adoption to accommodate any changes agreed to by Melbourne Water (as sought by Mr Wood) is a matter for the MPA depending on whether additional modelling and any modifications are approved by Melbourne Water

and occur in a timely. If they do not, then the revised R87 would provide the flexibility to accommodate changes in the future.

The revised R87 is included in the MPA's table of revisions (Document 71), however the additional UGZ requirement is not and requires a separate recommendation.

**(iv) Recommendation**

**The Panel recommends that the following additional requirement be added to Clause 3.2 of the Urban Growth Zone Schedule 8:**

- **The width of the waterway corridor to the satisfaction of Melbourne Water and the Responsible Authority.**

## 5 Site specific and other issues

### 5.1 Property 14 (Parklane Garden Developments, Ballan Road PSP)

#### (i) The issues

Various issues were raised in relation to this property (number 14 on Figure 7 below), with most being resolved by changes agreed to by the MPA, including increasing the depth of the Mixed Use/Commercial Zone from 80 to 120 metres. The Panel notes that the MPA's opening submission recommended a 100 metre depth, whereas its closing submission supported a 120 metre depth. The Panel supports 120 metres.

The remaining unresolved issues raised by Mr Gault on behalf of Parklane Garden Developments are:

- whether the main stormwater drain and sewerage routes across the property should be relocated to *'within the 'interface' road directly behind the Mixed Use/Commercial Zone'*; and
- possible *'dimensional inaccuracies'* in how the property is described in the PSP.

Mr Clarke also made submissions on behalf of Isis Primary Care Pty Ltd in support of increasing the depth of the Mixed Use/Commercial Zone to 120 metres.

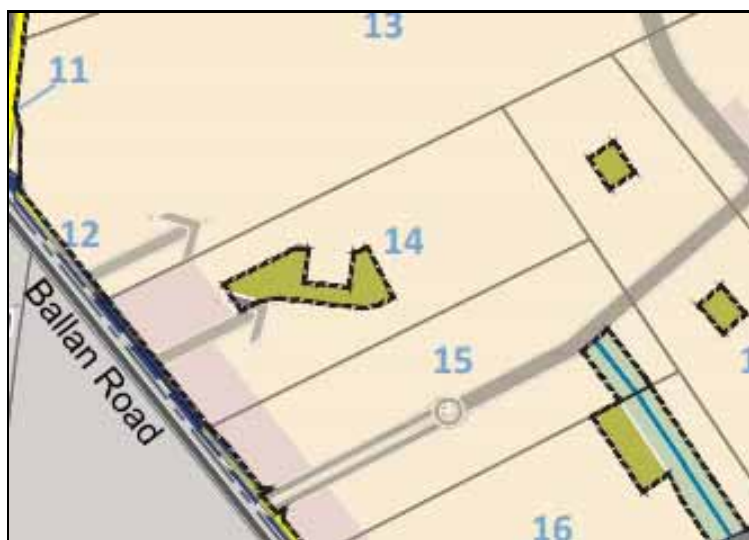


Figure 7 Property 14 - Extract from exhibited Ballan Road PSP Plan 3

#### (ii) Submissions

##### Stormwater drainage and sewerage

Mr Gault advised that preliminary design concepts for the property provided for the main stormwater drain and sewerage to be aligned along the rear of the Mixed Use/Commercial Zone. The alignment of the 'proposed sewer' and 'stormwater conveyance' in the exhibited PSP is close to, but does not exactly follow the Mixed Use/Commercial Zone boundary. He sought revisions to Plans 9 (Integrated Water Management) and 10 (Utilities) that would reflect the concept designs that had been prepared.

Ms Patterson advised that the MPA did not agree to the change and submitted that:

*As per correspondence from the MPA to Wes Gault on 28 August 2013, the MPA submits that the PSP plans do not need to be adjusted given that the alignment of drainage and sewerage easements across 504-530 Ballan Road will be subject to detailed design and furthermore the requested alignment may affect adjoining landowners.*

*MPA will add notation to plans 8, 9 & 10 following “general alignment of key access level streets for stormwater conveyance” that “alternative alignments are possible subject to approval by Melbourne Water and the Responsible Authority.”*

*This will provide the flexibility to enable alternative alignments while allowing appropriate consultation and co-ordination with surrounding landowners.*

### **Dimensional inaccuracies**

Mr Gault submitted that the area of the property should read 12.14 hectares and that the dimensions of the proposed Ballan Road PAO needed to be checked. Mr Clarke also raised concerns about the area of the property and noted that the land use budget in the PSP cannot be finalised until the PAO and dimensions of the Ballan Road widening.

Ms Patterson advised that the Ballan Road PSP would be amended if necessary to reflect the land area specified on the Certificate of Title.

### **(iii) Discussion and conclusions**

#### **Stormwater drainage and sewerage**

The Panel agrees with Ms Patterson that the precise route of the stormwater drain and sewerage are matters of detailed design that can be resolved during the preparation of development and subdivision plans. The variations sought by Mr Gault are relatively minor and do not need to be resolved as part of the PSP process. The Panel also notes Ms Patterson’s advice that changing these elements of the PSP might affect adjoining landowners who have not had the opportunity to comment.

The Panel supports the additions to the legends of Plans 8, 9 and 10 proposed by the MPA to more explicitly provide for alternative design solutions. These changes were not included in the final table of changes (V6, Document 71) so the Panel has made a separate recommendation relating to them.

### **Dimensional inaccuracies**

The Panel notes that the MPA will confirm the area of the property and, if necessary, adjust the relevant references in the PSP. In relation to the PAO, issues associated with its alignment and dimensions will be considered in the next part of the Hearing process.

### **(iv) Recommendation**

**The Panel recommends that Amendment C171 be modified to include revised legends in Plan 8 (Street Network and Inter-Parcel Connections), Plan 9 (Integrated Water Management) and Plan 10 (Utilities) that insert: ‘Alternative alignments are possible,**

***subject to approval by Melbourne Water and the Responsible Authority' following 'General alignment of key access level streets for stormwater conveyance'.***

## **5.2 Property 23 (YourLand Developments, Ballan Road PSP)**

### **(i) The issue**

The issue is what is the appropriate length of the road frontage along the YourLand land abutting the proposed school site?

The property (number 23 on Figure 8 below) shares its southern boundary with the proposed site of a government secondary college (approximately 400 metres). The exhibited PSP also provides for a 'Key Access Street – Level 2' along this boundary.

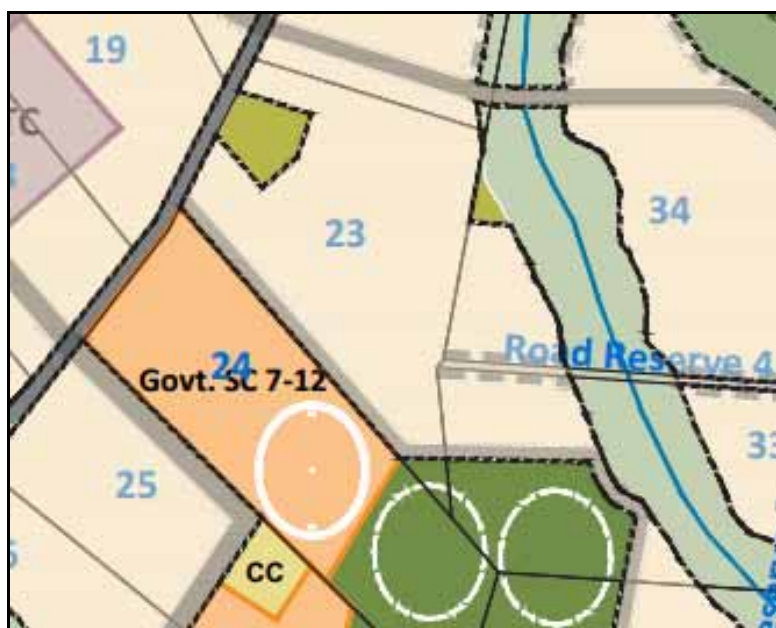


Figure 8 Property 23 - Extract from exhibited Ballan Road PSP Plan 3

### **(ii) Evidence and submissions**

Ms Wilson (representing YourLand Developments) sought a revised road alignment along the boundary with the school site and submitted that the exhibited alignment:

*...has been specifically aligned to benefit the adjoining landholding yet it is required to be constructed all at the cost of YourLand'. She noted that 'In this particular situation, the proposed school site requires three road frontages, yet none of the roads are located within the school site or are deliverable by the school (or current landowner).*

Ms Wilson also submitted that:

*...in other locations in growth areas where a road is required to provide access or frontage to a school, the road either has significantly less road frontage to provide than 400m, forms part of a DCP funded road to the road forms part of a larger land holding where the developer or landowner has full control over delivery of the road ensuring the timely, controlled and efficient delivery of the road.*

After negotiation, YourLand agreed to pay the full cost of a road on its land provided that the road frontage is reduced to 35% of the boundary length. Ms Wilson submitted that this would provide sufficient surveillance to the school and a greater incentive for the adjoining landowner to construct the road frontage required. A possible alternative alignment was provided by Ms Wilson as shown in Figure 9 below.



Figure 9 Alternative road layout proposed by YourLand

Ms Patterson submitted:

*As a rule development around these hubs is planned to maximise accessibility to the hub, minimise possible traffic bottlenecks in the surrounding neighbourhood at high use times and provide a pleasant and safe environment for residents, workers and visitors. Consistent with Crime Prevention through Environment Design principles, road frontages to these public uses enable incidental surveillance by passers-by and minimises the creation of unsafe spaces adjacent residential properties. Designing interfaces with significant lengths of private space adjoining, such as the rear of residential properties increases ongoing community costs such as increased crime risk and potential disputes regarding boundary maintenance and security. Hence the provision for a road frontage to all sides of the hub is planned to provide a positive long term community outcome.*



The MPA maintains that a frontage road should, ideally be provided along the entire boundary, but that reducing the road frontage to 50% is an adequate compromise provided that the road continues to provide a connection through to the sports fields.

Ms Templeton, representing the Corcoris Group, owner of Lot 19 Wollahra Rise (the school site) submitted that her client has no objection to either the YourLand or the MPA position.

### **(iii) Discussion and conclusions**

The Panel accepts that it is desirable to have a high level of accessibility to schools and community facilities for the reasons set out by the MPA, and agrees that it is therefore desirable to have a reasonable proportion of the perimeter of school sites fronting a road. In this case all of the north-western (disputed) edge of the site and about 75% of the south-western edge of the site front a road. If the entire boundary of the north-eastern boundary also fronted a road, approximately 75% of the entire site would have road frontage, with the balance (25%) sharing a boundary with the primary school and the active reserve. From a safety/surveillance viewpoint, the entire perimeter of the school, as proposed, would be publicly owned land. The Panel agrees that there appears to be a case for some level of compromise to allow some residential lots to border the school and still achieve a high level of surveillance of the site.

If the north-western edge had a perimeter road for 50% of its length, the total road frontage for the site would be reduced to approximately 60% with the total public land perimeter approximately 85%. If the north-western edge had a perimeter road for 35% of the north-western edge (as proposed by YourLand), the total road frontage for the school site would be around 55% and the total public land perimeter approximately 80%.

Whilst this seems to achieve the objective of a high level of surveillance overall, the Panel does not think it is good practice to limit the surveillance along one edge to such an extent, particularly if the section in dispute borders an area which is likely to contain school buildings (as seems to be the case in the draft plans). On balance, the Panel therefore prefers the MPA's position that the perimeter road on the boundary between the school and property 23 must be at least 50% of the shared boundary.

The Panel notes that, based on the indicative plan shown in Figure 9, it is likely that this would have the impact of the loss of one lot from the YourLand proposal, or with the reconfiguration of boundaries perhaps the same number of lots of a slightly smaller size. The Panel does not believe this is an unreasonable impost on the developer.

The Panel concludes that the compromise proposed by the MPA that the local road fronting the school site on property 23 must be provided to at least 50% of the shared boundary with the school site.

### **(iv) Recommendation**

**The Panel recommends that Amendment C171 be modified to add the following Requirement in Section 3.3.2 Community Facilities in the Ballan Road Precinct Structure Plan:**

***The local road fronting the school site on property 23 must be provided to at least 50% of the shared boundary with the school site.***



### 5.3 Property 27 (Wyndham Vale Christian Centre, Ballan Road PSP)

#### (i) The issue

The issue is whether the Wyndham Vale Christian Centre (WVCC) (property 27 on Figure 10 below) should have to fund/construct the proposed connection between Manor Lakes Boulevard and Wollahra Rise that extends through its property.

The Ballan Road PSP provides for a 'Key Access Street Level 2' within the Wyndham Vale Christian Centre that will link Manor Lakes Boulevard to Wollahra Rise. This link will align with a proposed signalised intersection over Ballan Road to Manor Lakes Boulevard.

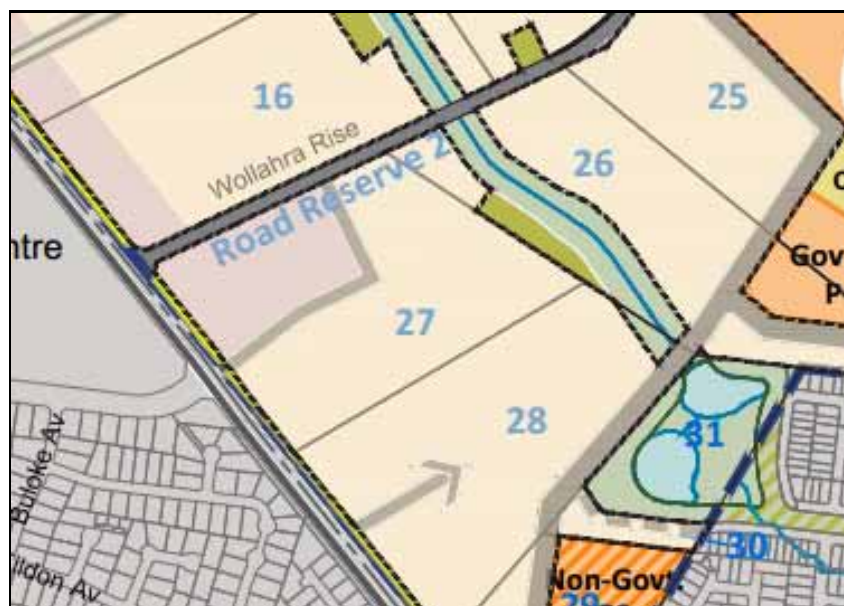


Figure 10 Property 27 – Extract from exhibited Ballan Road PSP Plan 3

#### (ii) Submissions

Mr Parker, on behalf of the WVCC, expressed concern about the possible obligation on the Centre to fund the road. He outlined the possible impacts of such a significant financial impost on the Centre and indicated that:

*'...it is not the desire of the church to sell the land, but to build community assets such as a school, retirement home and commercial development that will provide funds for community services for children and youth into the future'.*

Ms Patterson advised that:

*...local access streets are part of developer funded works for all landowners to service their land and future lots at the time of development. Usually, not all local roads are shown on the PSP urban structure plans. This local access street was shown, given initial discussions held between the landowner and potential commercial interest for the corner of the site and in particular to show a street intersecting with Ballan Road on the alignment of Manor Lakes Boulevard.*

*In this case, the realignment and upgrade of Wollahra Rise are both fully apportioned within the Wyndham West DCP as RD14 and RD15. The intersection to Ballan Road is fully funded within the DCP.*

Ms Patterson explained that this approach was consistent with how such roads are treated in PSPs and DCPs and noted that the road would not be required to be constructed unless the land was developed.

### **(iii) Discussion and conclusions**

#### **The proposed connection between Manor Lakes Boulevard and Wollahra Rise**

The Panel notes the Centre's concerns as well as Ms Patterson's observations about the possible construction and funding of the road.

The Panel agrees with the general approach that has been adopted by the MPA and notes that it is consistent with how these matters are typically dealt with in PSPs.

#### **Other issues**

The MPA's opening submission noted that the WVCC had concerns about the Ballan Road PAO and the reconfiguration of the local park (P14). These concerns were not raised in the initial written submission or in Mr Parker's submission at the Hearing, and the Panel assumes that they were raised in discussions with the MPA. As discussed earlier, the Ballan Road PAO will be the subject of a further Panel Hearing in 2014 and the WVCC will have the opportunity to make further submissions on this matter. In relation to P14, Ms Patterson explained that the boundary had been realigned and the area increased to provide a more functional neighbourhood park. Ms Patterson also explained the equalisation provisions as they would apply to this site. The Panel supports the MPA's position on this issue.

## **5.4 Property 4 (T Javanovski, Ballan Road PSP)**

### **(i) The issues**

The issues are:

- the proportion of public open space identified within the site; and
- the proportion of 'Lower Density Residential' allocated to the site.

The property (number 4 on Figure 11 below) is intended to include a 'neighbourhood passive recreation park' that adjoins the proposed Werribee Township Regional Park and the Werribee River. The exhibited PSP designates most of the property as 'Lower Density Housing' with a smaller area designated as 'Conventional Density Housing'.

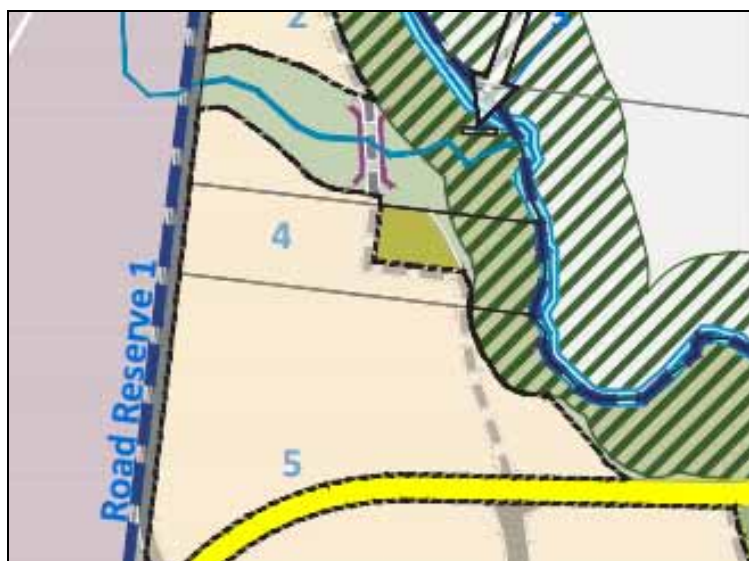


Figure 11 Property 4 - Extract from exhibited Ballan Road PSP Plan 3

## (ii) Submissions

A brief written submission from Mr McKenzie (Melbourne Planning Solutions) on behalf of the owner (T Javanovski) raised two concerns:

- 1 *The seemingly disproportionate allocation of POS taken from this site. The +16% take stands out against every other site in PSP40.*
- 2 *The seemingly high proportion of Lower Density allocated to this site, where other sites with new open space parks and/or waterways have a greater mix of densities.*

Mr McKenzie was scheduled to attend the Hearing but did not appear.

Ms Patterson advised that the MPA has agreed to modify the shape of the park to avoid the existing dwelling and to better integrate the park with the adjoining drainage land. This has resulted in the size of the park being reduced by 0.12ha (19% to 15.47% of NDHa), however the owner has sought a further reduction.

Ms Patterson further advised that the MPA did not support any additional reduction and submitted that:

- the updated land budget provides for 65.89% of the site being available for development, compared to the precinct average of 61.83%;
- further reductions would begin to undermine the role and function of the park; and
- the West Wyndham DCP will include equalisation provisions (consistent with standard practice) so that landowners such as Mr Javanovski who provide more than the standard 10% contribution will be reimbursed for the difference.

In relation to nominating dwelling densities, the MPA has agreed to remove the dwelling density allocations as discussed in Section 4.3 of this report. This will remove the 'Lower Density Housing (Avg. 11 dwell NDHa)' designation from the property.

### (iii) Discussion and conclusions

The Panel was not presented with any reasons to support a further reduction in the size of the park beyond what has already been agreed to by the MPA. Ms Patterson's response satisfactorily addresses this issue.

The concern about the extent of the area designated 'Lower Density Housing' is addressed by the MPA's proposal to delete these designations from the PSP.

## 5.5 Properties 18, 19, 25 and 26 (Ballan Road PSP)

### (i) The issue

The issue is whether the width of the proposed drainage corridor that traverses part of this property is excessive.

Plan 9 (Integrated Water Management) in the exhibited Ballan Road PSP includes a constructed waterway 'CW2'. Table 5 provides for corridor widths of 40m (section 1), 50m (section 2) and 60m (section 3), subject to detailed design.

The properties are shown on Figure 12 below. The affected property is number 26.

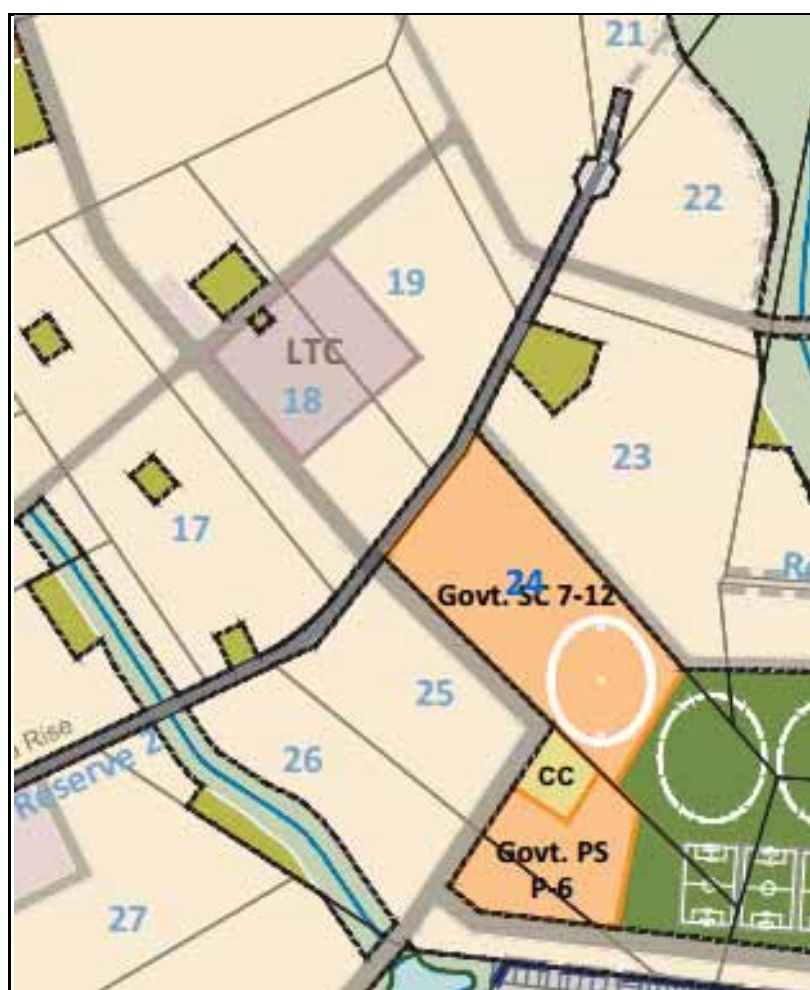


Figure 12 Properties 18, 19, 25 and 26 - Extract from exhibited Ballan Road PSP Plan 3

## **(ii) Submissions**

Mr Joiner, on behalf of the owner, lodged a written submission that raised concerns about the proposed drainage corridor:

*The constructed waterway designated CW2 appears to vary in width but is indicated as being 45m and greater. We advise that our client is willing to accept an encumbrance of no more than 30m in total, with any additional width required to be reimbursed under the DCP.*

Mr Joiner also raised concerns about the designation of much of the property for Medium Density Housing (Average of 25 dwellings per NDHa) and sought greater flexibility. This has been addressed by the changes to the PSP proposed by the MPA.

In relation to the drainage corridor, Ms Patterson advised that the minimum corridor width had been determined following significant work from Melbourne Water and that the required widths are a combination of the hydraulic width and required setbacks as outlined in the Melbourne Water Waterway Corridor Guidelines. She advised that the Section 2 hydraulic width of CW2 is 43m (total corridor width of 50m) and the Section 3 hydraulic width is 51m (total corridor width of 60m).

She also advised that although Melbourne Water's Waterway Corridor Guidelines require a minimum waterway corridor width of 60 metres for both sections 2 and 3, Melbourne Water has offered some flexibility by reducing the minimum corridor width to 50m for Section 2.

Ms Patterson indicated that the MPA did not support the submission and noted that:

*While additional engineering undertaken at the detailed design phase may result in slight adjustments to the alignment of this constructed waterway reserve, the minimum corridor width for this corridor has been agreed to by Melbourne Water and any changes to this width or alignment will be minor.*

## **(iii) Discussion and conclusions**

The Panel notes that Mr Joiner did not make a submission at the Hearing and that the brief written submission lodged during the exhibition of the amendment was not supported by detailed commentary on the issues it raised or by expert or technical assessments.

The Panel accepts the MPA position on this issue and is satisfied that the proposed drainage corridor widths are consistent with Melbourne Water requirements. In relation to the proposal that any width greater than 30m be '*reimbursed under the DCP*', the DCP is not before the Panel and it declines to comment on DCP issues.



## 5.6 Property 34 (P and J Casaccio, Ballan Road PSP)

### (i) The issues

The issues are:

- proposed modifications to the road cross section on the Connector Road where it abuts the regional park; and
- the extent of land encumbered by conservation areas and open space.

This property (number 34 on figure 13 overleaf) comprises approximately 59.39 hectares of land in the north-eastern corner of the Ballan Road PSP area.

Mr Cicero, on behalf of Mr and Mrs Casaccio, raised a number of other issues in relation to this property that have either been addressed by changes to the amendment agreed to by the MPA or are discussed elsewhere in this report, such as sections 4.6 and 4.7.

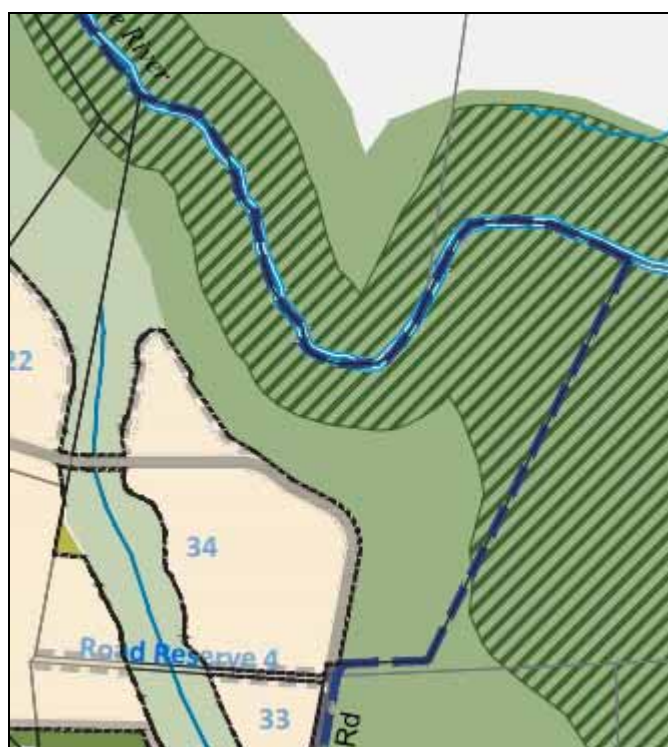


Figure 13 Property 34 - Extract from exhibited Ballan Road PSP Plan 3

### (ii) Evidence and submissions

#### Connector Road (McGrath Road)

Mr Cicero questioned the need for a 31m wide cross section for the connector road through the property where it adjoins the regional park. He questioned the need for parking on both sides of the road given that one side is the park and the other side has is proposed for lower density housing. He submitted that if the parking is required for the future park, it should be included in the DCP.

Mr Cicero called Mr Black who gave evidence that, in his opinion, the connector road was wider than normally required where residential development fronts only one side of the

street. He submitted that, in his experience, *'such streets are very rarely considered to be nothing more than a local access street.'*

Mr Black questioned the status of the McGrath Road extension on the basis that it did not provide access to higher order facilities such as schools, active open space or the local town centre. Mr Black also gave evidence that he thought it *'unlikely that PTV would ever introduce a bus route along McGrath Road and therefore this should not be a factor in determining the road cross section width.'*

Ms Patterson submitted that McGrath Road has been nominated as a connector street for the following reasons:

- *McGrath Road is an existing road south of the PSP with connections to Heaths Road and Ballan Road, which are both key arterial roads. While it is acknowledged that, with a 22m road reserve width, the design of McGrath Road south of the precinct is different to a current standard Connector Road reserve width, with the future linkages and connectivity that the new precinct creates, it will be performing a connector Road function. Therefore it makes good planning sense to extend this road north into the PSP as a connector road.*
- *McGrath Road is about 2.2km east of Hobbs Road, the closest arterial road. Arterial roads are typically spaced at 1,600m however; the PSP provides a series of connector roads to provide connections to the arterial network (Ballan Road). This is appropriate given the relatively short length (about 1,600m) between Ballan Road and Werribee River (the northern and southern bounds of the PSP).*
- *GTA traffic modelling indicates traffic demand of approximately 12,000 vehicles per day to/from the transport zone in the north east of the PSP.*
- *The MPA have taken a common sense approach and consider that around 7,000 – 8,000 vpd are likely to use the central (north to south east)connector, with around 4,000 – 5,000 vpd likely to use the more connector that extends from McGrath Road, abuts the WTRP and turns to link through to the town centre. Both volume ranges put both roads into the connector category.*
- *The extension of McGrath Road north to the northerly east-west connector completes the connector road network in this part of the PSP.*
- *Further, the PTV standard is for 95% of households to be within 400m of a bus route (or bus capable route in the absence of known designated services). The northerly east-west connector through the Cassacio property ensures this coverage standard is met in this segment of the PSP. Neither interim or ultimate bus routes have yet been determined for the Ballan Road precinct and the responsibility of MPA planning (in accordance with the PSP Guidelines) is to create a permeable and bus capable connector road network in PSPs as best as is practicable. Provision of the connector road in question, provides for this permeable network.*
- *It is possible that the first bus services to be provided in the early days of the Ballan Road community may be more rudimentary than ultimately provided or desirable, and therefore may not initially utilise McGrath Road. However*



*PSPs are also planning for long term scenarios, such as enabling ultimate full service bus networks to be delivered. The Ballan Road PSP does this by providing the connector road in question. The submitter has indicated that the connector road in question is proposed to be 31m. This is not correct and a misinterpretation of the plans (which will be adjusted to improve clarity).*

- The connector road in this location can be 23.5m (1.5m less than the standard 25m). (This is due to the road primarily abutting the future Werribee Township Regional Park (WTRP), therefore the usually provided 1.5 metre pedestrian path can be deleted in favour of the shared path provided by developer works that will be within the bounds WTRP, but proximate to the road reserve.*
- The 23.5m required width for this connector road through the submitters land is therefore only 1.5m greater than the existing McGraths Road 22m width.*

MPA did not agree to remove the status as a connector road or as a bus capable route.

The MPA did, however, agree that the standard Connector Road cross section can be varied where it abuts the Werribee Township Regional Park, with the verge elements (trees and shared path) incorporated within the parkland.

An additional note is proposed to be included in the PSP as follows:

*Where street abuts Werribee Township Regional Park and pending utilities services being adequately accommodated, the road reserve may be reduced to 20m, by incorporating the verge and required shared path at this interface as part of the adjoining park, subject to the approval of Council.*

### **Extent of encumbered land**

Mr Cicero relied on the evidence of Mr Black who raised a number of issues related to the extent of encumbered land identified on the property. He concluded that the various conservation, drainage and open space functions could be better integrated to increase the developable area of the site. He drew particular attention to the extent of the Werribee Township Regional Park and the land encumbered by drainage functions.

Ms Patterson provided detailed background information relating to the encumbrances affecting the property and advised that:

*The development line between the Casaccio property and the Werribee River was determined through discussions held between Melbourne Water, the MPA and DEPI and consideration of the following:*

- Melbourne Water's requirements with respect to appropriate setbacks from the Werribee River;*
- Requirements for the boundary of the Werribee Township Regional Park (defined by DEPI principles); and*
- Melbourne Water's required setbacks from the Werribee River have given consideration to environmental, management and Growling Grass Frog requirements.*

*Significant work was undertaken with the landowners and the MPA to increase the amount of developable area on the property through filling, as originally the entire site east of the breakaway channel had been identified as encumbered for drainage.*

Ms Patterson also noted that most of the property is currently subject to the RCZ, ESO 1 and ESO2, and has very little development potential, while Amendment C171 will enable approximately 21% of the site to be developed.

### **(iii) Discussion and conclusions**

#### **Connector Road (McGrath Road)**

The Panel agrees with the MPA's reasons for designating the section of McGrath Road through the Casaccio property as a connector road and as a bus capable route. The Panel believes that the road plays an important role in linking development to the south and east to the new development in the west and, based on projected traffic volumes is correctly identified as a connector road.

The Panel is not convinced by the expert evidence of Mr Black that it should be a local access street simply because it abuts parkland, although it does agree that parking on both sides of the road may not be necessary. The Panel is similarly not persuaded by Mr Black's evidence in relation to the road not being a bus capable route. For the reasons stated by the MPA, the Panel believes that the road is an ideal future bus route.

The Panel notes that the submitter appears to have misread the plans and assumed that the required cross section was to be 31m. It is in fact 23.5m, reduced further to 20m in MPA's final version of the PSP. The Panel believes that this is appropriate for this type of road in this location. The Panel notes that the MPA will adjust the plans to avoid confusion in reading the appropriate cross sections.

#### **Extent of encumbered land**

The Panel agrees that PSPs should seek to maximise the area of developable land – but subject to addressing relevant matters such as development constraints, conservation requirements, and recreation and open space needs. Clearly this property is affected by a number of development issues and a range of 'encumbrances' need to be addressed.

The key encumbrances are the extent of the Werribee Township Regional Park (the WTRP), the Growling Grass Frog (GGF) Conservation Area and the area subject to inundation.

The creation of the WTRP is a longstanding Victorian Government commitment that is referenced in *Melbourne 2030*, the SPPF and the draft Metropolitan Planning Strategy. As discussed by Ms Patterson and referenced in DEPI's written advice to the Panel, the process of defining the park's boundaries was thorough and involved a range of stakeholders. In the Panel's view there would need to be compelling reasons to support a variation to the park's boundary and it was not presented with any material or evidence to warrant this.

As discussed earlier, the various conservation areas (such as the GGF Conservation Area referred to by Mr Black) were approved under the BCS are not matters that the Panel can usefully review or comment on.

In relation to land encumbered by flooding, the MPA agreed to amend R87 of the PSP to provide greater flexibility in potentially allowing adjustments to flood boundaries and increasing developable areas. As discussed in Section 4.7 of this report, the Panel supports this change and believes that will provide some of the flexibility sought by Mr Black.

#### **(iv) Recommendation**

**The Panel recommends that Amendment C171 be modified by adding the following Requirement in Section 3.5.3 Street Network and Inter Parcel Connections in the Ballan Road Precinct Structure Plan:**

*Where the connector road abuts Werribee Township Regional Park, and subject to utility services being adequately accommodated, the road reserve may be reduced to 20m, by incorporating the verge and required shared path at this interface as part of the adjoining park, subject to the approval of the Responsible Authority.*

### **5.7 Werribee Township Regional Park**

#### **(i) The issue**

Some submissions raised concerns about land being included the Werribee Township Regional Park (WTRP) and the process for acquiring the Park.

#### **(ii) Evidence and submissions**

Mr and Mrs Graham's written submission advised that their property, located along McGrath Road, is to be entirely included in the WTRP. They raised issues about how the WTRP came about and what the timeframe and process for its implementation will be.

Other submitters noted that the PSP did not provide any guidance on the land acquisition process. Mr Cicero sought a recommendation from the Panel that a PAO should be applied to the land or the landowners should have the opportunity to develop.

Prior to the Panel Hearing commencing, a letter from the Executive Director Land Management Policy of DEPI to the Chief Panel Member was provided to the Panel that outlined the process of providing for the WTRP and the land acquisition process.

#### **(iii) Discussion**

The WTRP is part of a wider policy context for the Victorian government providing metropolitan parks to redress the current imbalance in regional open space and to provide for new communities. In 2009, DEPI commenced a process to determine the appropriate boundary for the proposed metropolitan parks around Melbourne. The WTRP has been identified within a number of State Government policy documents, including the Growth Corridor Plans. The boundaries of the WTRP have been developed by DEPI in consultation with Parks Victoria and the MPA.

The boundary of the proposed WTRP as shown in the exhibited Ballan Road PSP has been identified largely in response to the drainage and conservation encumbrances specific to the precinct. The letter from DEPI identifies a number of criteria that determined this boundary in detail.

In relation to the mechanisms and timing for acquiring land to establish the WTRP, the DEPI letter advised:

*The State Government has not yet determined the approach to acquire land to establish the Park. It is currently considering options to provide the most efficient means for staging and development of the park to ensure that open space is developed as new communities also become established within these precincts. It is anticipated that the government's approach to establishing the proposed park will be finalised in early 2014, and that the affected landowners will be informed at that time.*

*There are a number of mechanisms used for acquiring land for regional metropolitan parks. In general, DEPI acquires land for addition to existing metropolitan parks through voluntary negotiations with the landowner - rather than compulsory acquisition. Parkland must be acquired by the government in accordance with the 'Government of Victoria Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land'.*

#### **(iv) Discussion and conclusions**

The Panel notes that the planning for the WTRP has been occurring for some time and that there will be a process of acquisition (and therefore a form of compensation) established by the State Government in 2014. Although the Panel understands the concerns held by landowners and other affected parties, creating the WTRP is State Government policy and not a matter that is within the Panel's purview.

In relation to Mr Cicero's suggestion that the PAO be applied to the land, the preferred acquisition process is a matter for the Government.

## 5.8 Site of the Non-Government Primary School (Ballan Road PSP)

### (i) The issue

The issue is whether the proposed non-Government primary school in the southern area of the Ballan Road precinct will have unacceptable impacts on adjoining residential areas. The site is shown on Figure 14 below.



Figure 14 Non-government primary school site - Extract from exhibited Ballan Road PSP Plan 3

### (ii) Submissions

Mr Farnes objected to the siting of the proposed non-Government primary school in the south of the precinct and raised a number of amenity impacts associated with privacy, noise, property values and traffic congestion. The rear of Mr Farnes' residential property on Charlotte Crescent abuts the school site while the side boundary is located on a constructed section of road that provides access to the school site.

Ms Patterson submitted:

*The MPA believes the location of the primary school is appropriate and will not necessarily result in adverse amenity impacts on the landowner...*

*Such schools are typical community infrastructure located in residential areas.*

*As a permit will be required for buildings and works related to a Primary School or Secondary School on land shown as a non-government school, the future planning permit process can address issues related to privacy, noise, traffic arrangements and separation between the school and residential properties to the rear.*

### **(iii) Discussion and conclusion**

The Panel agrees with Ms Patterson that locating schools within residential areas is appropriate and there is no apparent reason why this site is unsuitable.

While the Panel understands Mr Farnes' concerns, it believes that the potential impacts have been overstated and that the design and planning permit processes will provide mechanisms to address possible amenity impacts, including impacts on residential properties such as Mr Farnes', along Charlotte Crescent.

## **5.9 Other issues**

### **(i) Bushfire provisions**

#### **Discussion and conclusions**

The MPA advised that all references to bushfire protection measures in the exhibited PSPs duplicate the requirements of the *Building Regulations 2006* and have therefore been removed.

As both precincts are within designated Bushfire Prone Areas under the *Building Regulations 2006*, buildings must be constructed to at least a Bushfire Attack Level (BAL) 12.5 standard as described in *AS 3959 Construction of buildings in bushfire-prone areas*. BAL 12.5 requires some additional fire-resisting construction techniques when compared to conventional house construction.

The Panel supports the deletion of the previous references to bushfire protection measures in the PSPs and notes that this addresses the issues raised in submissions from Wyndham City Council and Investa.

### **(ii) Proposed zoning changes and 'tidy up' (Amendment C171)**

#### **Discussion and conclusions**

A number of minor 'tidy up' actions were proposed in the Amendment C171. Wyndham City Council made submissions on the rationale for the small zoning changes proposed along the eastern reaches of the Werribee River.

The proposed changes arose from the Department of Transport Planning and Local Infrastructure's (DTPLI's) mapping unit which suggested that the zone boundaries needed slight adjustment to accord with property boundaries in this area. The MPA believed it would have been efficient to incorporate these changes within the amendment.

In response to the Councils' submissions and the fact Council has the ability to manage such 'tidy-ups' through their own planning authority role, the MPA has abandoned these changes for the purposes of Wyndham C171.

The Panel notes that the zone 'tidy up' part of Amendment C171 relating to the eastern most reaches of the Werribee River is abandoned.

### **(iii) Final review of documentation**

#### **Discussion and conclusions**

As discussed in Section 1.3 of this report, the changes to the amendments were documented in the MPA's written submissions and in a series of tables, with track changes versions of the PSPs being provided to the Panel following the Hearing. The tables were not always easy to follow and although the revised PSPs assisted the Panel, revised versions of other elements of the amendments such as the UGZ schedules were not provided.

The Panel believes that the MPA should undertake a thorough final review of all of the amendment documentation prior to adopting the amendments. The review should seek to identify any errors or inconsistencies, ensure that all of the matters agreed to by the MPA have been included and ensure that all necessary consequential changes are identified and included.

#### **Recommendation**

**The Panel recommends that there be a thorough final review of the amendments to correct any errors or inconsistencies, to include the relevant revisions agreed to by the Metropolitan Planning Authority in response to submissions and to ensure that any necessary consequential changes are identified and included.**



## **Appendix A   Lists of Submitters**

## List of Submitters – Wyndham C171 – Ballan Road

No.	Submitter	Represented by
1	Country Fire Authority	
2	Jacqueline Way	
3	John and Melinda Graham	
4	The Casaccio Family	Best Hooper
5	Mr N Farnes	
6	Parkland Garden Developments	
7 and 7A	Bosco Johnson – Lots 13, 14, 20 and 21 Wollahra Rise	
8	Department of Education and Early Childhood Development	
9	Office of Living Victoria	
10 and 10A	Melbourne Water	
11	Bicycle Network Victoria	Corrs Chambers Westgarth Lawyers
12	CAM and CEOM 340 Ballan Road – Catholic School	SMEC Urban
13	Walsh Building Services Pty Ltd	Best Hooper
14	Tino Ballan 481-423 Ballan Road	Tract
15	Tino Ballan Lot 16 Wollahra Rise	Tract
16	YourLand Lots 12 and 18 Wollahra Rise	
17	Aust China Group Pty Ltd Lot 11, 440 Ballan Road	Taylors
18	Angelina Velinos	Breese Pitt Dixon
19	Breese Pitt Dixon 468-502 Ballan Road	
20	Dennis Family Corporation – Manor Lakes (Werribee) Pty Ltd	
21 and 21A	Manor Commercial Company Pty Ltd	Minter Ellison
22	Neil Anderson Lot 1, 290 Hobbs Road	Best Hooper
23	Transurban Developments Pty Ltd	Fratello Projects

	Lot 15 Wollahra Rise	
24 and 24A	Investa Property Group 16 and 40 Hobbs Road	Tract and Mr Fetterplace of Dacland
25	Corcoris Group Lot 19 Wollahra Rise	Taylors
26	City West Water	
27	EPA Victoria	
28 and 28A	VicRoads	
29	Wyndham City Council	Maddocks Lawyers
30	Public Transport Victoria	
31 and 31	Department of Environment and Primary Industries	
32	Paul Ballan 378-416 Ballan Road	Tract
33 and 33A	Tony Javanovski	Mr Chris Mackenzie
34	Isis Primary Care	Mr Andrew Clarke
35	Wyndham Vale Christian Centre	

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## List of Submitters – Wyndham C172 - Westbrook

No.	Submitter	Represented by
1	Country Fire Authority	
2	Craig Gordon	
3	APA Group	
4	Department of Education and Early Childhood Development	
5	Catholic Education Office	
6	Office of Living Victoria	
7 and 7A	Melbourne Water	
8	Public Transport Victoria	
9	Bicycle Network Victoria	Corrs Chambers Westgarth Lawyers
10	Dennis Family Corporation	
11	Manor Commercial company Pty Ltd	Minter Ellison
12	City West Water	
13	Barro Group	
14	John Kilpatrick	Watsons
15	Lotus Oaks Pty Ltd	Best Hooper
16	Department of Primary Industries	
17	Environment Protection Authority	
18	VicRoads	
19	Wyndham City Council	Maddocks Lawyers
20	Department of Environment and Primary Industries	
21	Andrew Booth	

## Appendix B Document list

Document No.	Date	Description	Presented by
1	21/10	Wyndham C172 Westbrook Summary and Response Table 21 October 2013	Ms Patterson of Counsel (representing MPA)
2	21/10	Submissions Table	Ms Patterson of Counsel (representing MPA)
3	21/10	PSP Urban Structure Revisions Ballan Road	Ms Patterson of Counsel (representing MPA)
4	21/10	PSP Urban Structure Revisions Westbrook	Ms Patterson of Counsel (representing MPA)
5	21/10	Plan 4a Housing Ballan Rd PSP	Ms Patterson of Counsel (representing MPA)
6	21/10	Wyndham City Council Opening Submission	Mr Montebello (Maddocks lawyers, representing WCC)
7	21/10	The Relevant Components of the Transport Network	Mr Montebello (Maddocks lawyers, representing WCC)
8	21/10	Lotus Oaks Opening Submission	Mr Pitt (Best Hooper Solicitors)
9	21/10	P & J Casaccio Opening Submission	Mr Cicero (Best Hooper Solicitors)
10	21/10	N Anderson Opening Submission	Mr Cicero (Best Hooper Solicitors)
11	21/10	Walsh Building Services Pty Ltd Opening Submission	Mr Cicero (Best Hooper Solicitors)
12	21/10	Bicycle Network Victoria Opening Submission	Mr Norlen-Holmes (Corrs Chambers Westgarth Lawyers)
13	22/10	MPA Presentation to Panel	Mr Cassidy, MPA
14	22/10	MPA Submission	Ms Patterson of Counsel (representing MPA)
15	22/10	C171 Ballan Rd PSP – List of Document Changes for PPV version 4	Ms Patterson of Counsel (representing MPA)
16	22/10	C172 Westbrook PSP – List of Document Changes for PPV version 4	Ms Patterson of Counsel (representing MPA)
17	22/10	Conservation Management Plan for Conservation Area 14 – Growling Grass Frog Corridors (south) MSA (Oct 2013)	Ms Patterson of Counsel (representing MPA)

Document No.	Date	Description	Presented by
18	22/10	Wyndham Council Submission	Mr Montebello (Maddocks lawyers, representing WCC)
19	22/10	Wyndham Strategy for Managing Growth in Wyndham	Mr Montebello (Maddocks lawyers, representing WCC)
20	22/10	Schedule 11 to the DCP Overlay Wyndham Planning Scheme	Mr Montebello (Maddocks lawyers, representing WCC)
21	22/10	Mr Lambert presentation	Mr Lambert, Director of Finance WCC
22	22/10	Ms Partenio presentation	Ms Partenio, GTA Consultants
23	23/10	Proposed Boundary changes - GGF Conservation Area	Ms Patterson of Counsel (representing MPA)
24	23/10	Letter to Panel Chair from MPA re Removal of ESO 1 and 2 along Werribee River	Ms Patterson of Counsel (representing MPA)
25	23/10	Casey C129 Clyde North PSP Panel Report	Mr Montebello (Maddocks lawyers, representing WCC)
26	23/10	Page 49, PSP Guidelines – Part 2	Mr Montebello (Maddocks lawyers, representing WCC)
27	23/10	Wyndham Social Infrastructure Planning Network 2012	Mr Montebello (Maddocks lawyers, representing WCC)
28	23/10	Ms Hawes Expert Witness Report Section 6 (page 12 A3)	Mr Montebello (Maddocks lawyers, representing WCC)
29	23/10	Proposed Active Space Provision across Wyndham West Growth Area	Mr Montebello (Maddocks lawyers, representing WCC)
30	24/10	Manor Commercial Company P/L Submission	Mr Townshend (Counsel representing Manor Commercial C. P/L)
31	24/10	Planning permit application WYP3093/09.02	Mr Townshend (Counsel representing Manor Commercial C. P/L)
32	24/10	Clause 22.07 Open Space Policy Wyndham Planning Scheme	Mr Townshend (Counsel representing Manor Commercial C. P/L)
33	24/10	Guide to Social Infrastructure Planning, ASRR P/L (Oct 2009)	Mr Montebello (Maddocks lawyers, representing WCC)
34	24/10	Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments - Sections of Cth Productivity Commission Research	Mr Montebello (Maddocks lawyers, representing WCC)

Document No.	Date	Description	Presented by
		Report (April 2011)	
35	24/10	WCC Hand written changes	Mr Montebello (Maddocks lawyers, representing WCC)
36	24/10	General Market Wrap, source Fruit Property	Mr Moore (WCC)
37	24/10	Mr Gault Submission (on behalf of Parklane Garden Developments 504-530 Ballan Rd)	Mr Gault
38	24/10	Isis Primary Care Ltd submission	Mr Clarke, Matrix
39	24/10	Mr Booth presentation	Mr Booth
40	24/10	Yourland Developments Submission	Ms Wilson
41	24/10	Infrastructure Plan (sewer and stormwater)	Mr Montebello (Maddocks lawyers, representing WCC)
42	25/10	Lotus Oaks Pty Ltd Submission	Mr Pitt (Best Hooper Solicitors)
43	25/10	Document D (Submissions Table) Replacement	Ms Patterson of Counsel (representing MPA)
44	25/10	Active Open Space Plans	Mr Montebello (Maddocks lawyers, representing WCC)
45	25/10	Wyndham City Council Ordinary Meeting Minutes 16 June 2008	Mr Montebello (Maddocks lawyers, representing WCC)
46	25/10	Developing Transport Infrastructure and Services for Population Growth Areas	Mr Montebello (Maddocks lawyers, representing WCC)
47	25/10	Wyndham City Council Ordinary Meeting Minutes 24 June 2013	Mr Montebello (Maddocks lawyers, representing WCC)
48	25/10	Letter from Mr Cahill, DCPD	Mr Montebello (Maddocks lawyers, representing WCC)
49	29/10	Mr Neil Anderson Submission	Mr Cicero (Best Hooper Solicitors)
50	29/10	Proposed GGF Conservation Area Boundary Changes (3 pages)	Mr Cicero (Best Hooper Solicitors)
51	29/10	Josie and Paul Casaccio Submission	Mr Cicero (Best Hooper Solicitors)
52	29/10	DEPI Ecological Vegetation Class Map over Casaccio's site	Mr Kelly, Paul Kelly & Associates



Document No.	Date	Description	Presented by
53	29/10	DEPI Time Stamping Native Vegetation Map	Mr Kelly, Paul Kelly & Associates
54	29/10	Sketches of proposed road cross sections	Mr Black, Insight Planning
55	29/10	Plans from Alluvium's report	Mr Black, Insight Planning
55A	30/10	The Corcoris Group Submission	Ms Templeton of Taylors
55B	30/10	The Corcoris Group Submission – table of resolved and unresolved matters	Ms Templeton of Taylors Consultants
55C	30/10	Mr T Ballan Submission	Mr Wood, Tract Consultants
55D	30/10	Wyndham Vale Christian Centre Submission	Mr Parker, Wyndham Vale Christian Centre
55E	30/10	CRG Nominees P/L and Wyndham Vale Project P/L	Mr Fetterplace of Dacland
56	1/11	Bicycle Network Victoria Submissions	Mr Norlen-Holmes, (Corrs Chambers Westgarth)
57	1/11	Extracts from <i>Melbourne 2030</i> – Direction 8, Policy 8.4	Mr Norlen-Holmes, (Corrs Chambers Westgarth)
58	1/11	Extracts from <i>Plan Melbourne</i> – Direction 3.4	Mr Norlen-Holmes, (Corrs Chambers Westgarth)
59	1/11	<i>Walking, Riding and Access to Public Transport – Supporting Active Travel in Australian Communities</i> Cth Dept Infrastructure and Transport, 2013	Mr Norlen-Holmes, (Corrs Chambers Westgarth)
60	1/11	Cycling into the Future 2013-23 - Victoria's Cycling Strategy (2012), Victorian Government	Mr Norlen-Holmes, (Corrs Chambers Westgarth)
61	1/11	Examples of other PSPs cross-sections (East Werribee and Black Forest Rd)	Mr Norlen-Holmes, (Corrs Chambers Westgarth)
62	1/11	Clyde North Demonstration Project	Mr Norlen-Holmes, (Corrs Chambers Westgarth)
63	1/11	Closing Submissions for Wyndham City Council	Mr Montebello (Maddocks lawyers, representing WCC)
64	1/11	Places Victoria submission to Wyndham City Council Infrastructure Planning and Delivery within Growth Areas (29 June 2012)	Mr Montebello (Maddocks lawyers, representing WCC)

Document No.	Date	Description	Presented by
65	1/11	Letter from DPCD to GAA (6 Sept 2011)	Mr Montebello (Maddocks lawyers, representing WCC)
66	1/11	Saltwater Reserve Costing Table	Mr Montebello (Maddocks lawyers, representing WCC)
67	1/11	MPA Closing Submission	Ms Patterson of Counsel (representing MPA)
68	1/11	RMIT article	Ms Patterson of Counsel (representing MPA)
69	1/11	Comparison of Approved PSP land Budgets and Open Space Provision Rates October 2013	Ms Patterson of Counsel (representing MPA)
70	1/11	List of Changes to PSP document V6 – Amendment C172	Ms Patterson of Counsel (representing MPA)
71	1/11	List of Changes to PSP document V6 – Amendment C171	Ms Patterson of Counsel (representing MPA)
72		Melbourne Water Submission (via email)	Ms Hirsh, Melbourne Water