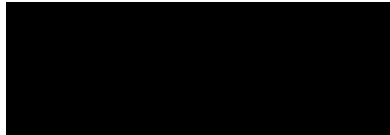


From: [REDACTED]
Subject: Wonthaggi North East PSP
Date: Monday, 30 November 2020 4:35:58 PM
Attachments: [scanner@parklea.com_20201130_115935.pdf](#)

Dear VPA,

Please find attached Parklea's submission to the draft Wonthaggi North East PSP.
We are happy to meet with the VPA to discuss the submission and relevant matters.
Please contact the undersigned if you wish to discuss or require further information.
Regards,



parklea.

Level 1, 4 Cardinia Road, Officer 3809
PO Box 388, Officer 3809
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Victorian Planning Authority
Level 25, 35 Collins Street
MELBOURNE VIC 3000
By email: amendments@vpa.vic.gov.au

30 November 2020

Dear Sir / Madam

**Wonthaggi North East – Proposed Amendment C152
Submission by Parklea Developments Pty Ltd**

Please accept this submission by Parklea Developments Pty Ltd (**Parklea**) on the proposed planning scheme amendment for the Wonthaggi North East precinct.

In summary, Parklea has real concerns with the proposed amendment and the materials provided for public consultation. It is Parklea's firm view that there is simply no reasonable basis, strategic justification or any circumstance which would warrant the proposed amendment progressing any further at this time. This is underpinned by, but not limited to, the following:

- a. The proposed amendment is **premature** and would lead to **inconsistent decision making**, having regard to the Bass Coast Distinctive Areas and Landscapes (**DAL**) process that is currently underway.
- b. There is **no strategic justification** for the proposed amendment, with there already being sufficient, existing and available supply of land for residential development in Bass Coast, with the majority of this in the Wonthaggi area.
- c. The proposed amendment boundaries, and in particular the proposed approach to the Development Contributions Plan (**DCP**) raises **complex legal issues** and, on the face of the proposed amendment document, **would not be able to be legally implemented**.
- d. The proposed process that this proposed amendment seeks to follow raises **serious questions of natural justice**, having regard to the matters above, and there is **simply no need to fast track** this proposed amendment.

1 The DAL process must be prioritised

- 1.1 There is no mention of the DAL anywhere in the consultation documentation.
- 1.2 The Statement of Planning Policy (**SPP**) for the Bass Coast DAL has not been released. One of the matters the SPP will outline is strategies for achieving the 50 year vision, including 'specifying long-term settlement boundaries for townships'.¹
- 1.3 As demonstrative evidence of this issue, despite planning scheme amendments being prepared and panel hearings being held to assess settlement boundaries in the Surf Coast DAL area, the Minister for Planning has determined not to approve those amendments until the DAL process has progressed. The recently released draft SPP for the Surf Coast, in particular at Spring Creek, demonstrates that settlement boundaries and matters including landscape values, are still unresolved.

¹ Summary – Bass Coast Phase 1 Engagement, page 2; and see Phase 2 Engagement Discussion Paper generally.

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- 1.4 A Precinct Structure Plan (**PSP**) proceeding in advance of resolution of the DAL process is putting the cart before the horse. It is inconsistent with strategic planning process. It is also contrary to clauses 11.02-2S and 11.03-5S of State Planning Policy and Direction 4.5, particularly Policy 4.5.2, of Plan Melbourne.
- 1.5 Further demonstrative evidence is found within Bass Coast itself. Proposed Amendment C136, which relates to the Cape Paterson settlement boundary, has been deferred to allow for public release of the draft SPP and to 'ensure that the findings of the DAL project are considered in conjunction with planning scheme amendment C136'.²
- 1.6 As well as informing settlement boundaries, the DAL process will inform planning and future development to consider matters such as areas (including within settlement boundaries) to be protected for cultural heritage sensitivity and landscape, biodiversity and environmental values.
- 1.7 There is no coherent reason as to why this proposed amendment should be considered to be different than others, and which would warrant such a departure from established practice.
- 1.8 Any recommendation by the VPA or Council to the Minister for Planning, or any determination by the Minister for Planning, to approve the proposed amendment before the DAL process is completed would be acutely inconsistent and unreasonable with established decision making. Parklea reserves all of its statutory and legal rights in this regard.

2 There is no strategic justification for the proposed amendment

- 2.1 One simply needs to refer to the vague and lacklustre answer under the draft Explanatory Report's question 'Why is the amendment required?' to see that there is simply no strategic justification for the proposed amendment at this point in time. The proposed amendment's compliance with Ministerial Direction 11 and Planning Practice Note 46 is dubious at best.
- 2.2 Had this proposed amendment followed the established process set out in Part 3 of the *Planning and Environment Act 1987*, it is expected that it would not have been able to receive Ministerial authorisation.
- 2.3 What can be ascertained, is that the strategic basis for the amendment is solely sought to be based on demand for future population growth in the Wonthaggi township. Logically, then, if it can be demonstrated that the proposed amendment is not needed to provide for growth up to a 15 year supply (per clause 11.02-1S of the State Planning Policy) the entire rationale for the proposed amendment collapses.
- 2.4 Based on the available information, this is easily demonstrated:
 - (a) The current findings of DELWP and Council of residential land supply across the Bass Coast Shire is that there is capacity across the Shire for about 7,900 new residential lots in zoned residential land. The township with the most existing zoned supply is Wonthaggi. Based on current estimates of land supply and projected dwelling requirements, zoned residential land has the capacity to accommodate dwelling demand for an estimated 14-15 years.³
 - (b) Just in the Wonthaggi North East area, the land supply analysis indicates that the existing vacant lots (zoned as GRZ or LDRZ) with the proposed PSP area will supply residential land for the next 30-50 years.⁴ That is more than double the minimum called for by State Planning Policy.

² Bass Coast Shire Council website:

<https://www.basscoast.vic.gov.au/building-planning/planning-scheme/planningscheme-amendments/amendment-c136>

³ Phase 2 Engagement Discussion Paper (March 2020), page 28.

⁴ Background Report, section 2.1.

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- (c) The 2020 population for the 'Wonthaggi District' (which includes Wonthaggi North, Wonthaggi, South Dudley and Cape Paterson) is 6,958 and is forecast to grow to 9,269 by 2036.⁵ This is an estimated increase of 2,311 people over 16 years, indicating an average population increase of 144 per year (or 48 households per year).
 - (d) The VPA suggests that a time/population trigger based approach be employed for this area 'if/when' the need for the identified facilities come online.⁶ Therefore, there is clearly not even a current demand, or even a demand in the short term, for identified facilities. The conclusion that there is a need to consider a staging strategy given the long rollout time of this area⁷ also demonstrates that there is no need for the proposed amendment to be progressing at this point in time.
 - (e) Parklea is a growth area developer 'on the ground' in Wonthaggi and is expected to deliver approximately 645 lots within the existing Parklands Estate. Precinct B of the Parklands Estate alone is delivering 305 lots which is expected to accommodate approximately 1,000 people (average 3 persons per household). Despite the DELWP and Council studies indicating a 14-15 year existing supply across the municipality, it is Parklea's experience that, given the rate of planning approvals (including secondary consents) and sales, Precinct B alone is only expected to be fully occupied over a 5-6 year period. It can accommodate all the population growth forecast in (c) above over that period.
- 2.5 Having regard to the fact that, without this proposed amendment there is already 14-15 years of available land supply in existing vacant lots zoned GRZ or LDRZ, combined with rates of actual population growth in the local area demonstrated by the release of residential lots, there is clearly no shortage of available land supply to accommodate population growth for Wonthaggi which is prompting this proposed amendment at this point in time. The focus of the Council needs to be on getting existing approved developments up and running and progressing planning permit applications for existing development sites, to ensure that annual growth can continue.

3 Fundamental issues and concerns with the proposed PSP and DCP

- 3.1 The proposed PSP and DCP seek to apply to land already residentially zoned, and with approved Development Plans in place (per the existing Development Plan Overlay) as well as planning permits place. This is fundamentally inconsistent with the intent of the structure of Planning Schemes and the approach of the VPA to structure planning throughout Victoria.
- 3.2 Section 1.2 of the proposed PSP tries to apply land to the PSP in circumstances where the horse has bolted. The drafting of the proposed DPO Schedule means that for land with approved Development Plans already in place – including the Parklands Estate – the PSP will never apply and is superfluous.
- 3.3 If the PSP won't actually be triggered for the existing zoned land ready for development, then it will only apply to more remote land within the identified precinct. However, that land would not typically be supported in the immediate future, as being out of sequence.⁸ This will result in a PSP sitting within the planning scheme but not being activated for some time – further demonstrating that there is no need for the PSP at this time.

⁵ Background Report, section 2.4; Community Infrastructure Need Assessment, section 3.1.

⁶ Community Infrastructure Need Assessment, section 6.2.

⁷ Statutory Strategy, section 6.3.1.

⁸ Statutory Strategy, section 6.3.1; proposed PSP, R59.

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- 3.4 The same can be said for the DCP. According to the provision triggers in the proposed DCP, the infrastructure projects identified will only be delivered when sufficient DCP funding is available. If levies are only able to be collected from land that does not already have subdivision approvals in place (being the more remote land within the precinct), then such funding will not be able to provide projects for the next 30-50 years. This cannot be an acceptable proposition.
- 3.5 Therefore, from what Parklea can ascertain in the public consultation documentation, the proposed amendment is largely focussed on applying a Development Contributions Plan Overlay (**DCPO**) to a larger area, for the purpose of obtaining funding for the delivery of identified infrastructure.
- 3.6 While collecting funding from land that will contribute to the demand for infrastructure is supported in principle, the issue in this case is that the Council has already entered into a number of section 173 agreements with landowners for the funding of identified infrastructure, based on the 2010 DCP prepared by Council for the Wonthaggi North East area.⁹ Moreover, any contribution received under the section 173 agreements is to be held by Council as though a contribution under a Development Contributions Overlay payment. In other words, there is already a DCP plan activated for the zoned land.
- 3.7 The proposed DCP contains projects which are the same as those set out in the 2010 DCP, and for which costings (subject to indexation) and apportionment across the affected properties has already occurred. It appears that the Council is seeking to address an identified underfunding of those projects by having another bite of the cherry. If this was an acceptable practice, then all growth Councils would simply introduce a new DCP retrospectively to deal with changed circumstances, as Bass Coast Shire is seeking to do. But this is not the case; all growth Councils treat prior DCPs/section 173 funding agreements as external funding and apportion costs appropriately.
- 3.8 Further, applying a PSP and DCP over land that is already zoned for development (and with approved Development Plans) has the sole effect of changing levies under the DCPO. This can be seen by the example provided at section 5.2.2 of the Statutory Strategy, where it is apparent that the only reason why the PSP and DCP would apply to the industrial zoned area south of Inverloch Road is to raise levies for the funding of the drainage channel project identified in the DCP.
- 3.9 The more appropriate mechanism to achieve this would be to recognise such areas as being external usage areas to the identified precinct, consistent with the Development Contributions Guidelines, and for funding from those areas to be achieved by some other source (ie, the section 173 agreements already in place). The land requirements for identified infrastructure projects outside of PSP/DCP boundaries are logically reserved for a public purpose under a Public Acquisition Overlay. Nowhere is this explored in the Statutory Strategy or elsewhere in the documentation.
- 3.10 If it is accepted that the existing zoned and approved properties are external usage areas / external beneficiaries to a PSP area, then clearly the PSP and DCP should not be applied to those areas. It would set a worrying precedent if the VPA was supportive of relying on the conventional residential zones and overlays with different purposes, to implement a PSP (or, in fact in this case, a DCP). The appropriate planning tool available to implement PSPs is the Urban Growth Zone.

⁹ Ethos Urban 2010 DCP, albeit this was not approved and incorporated into the planning scheme.

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3.11 The biggest and most expensive infrastructure project identified in the proposed DCP are the drainage channels and associated wetlands. Parklea says the following in relation to drainage, which has been a long-standing issue with Council:

- (a) The drainage strategy is based on the report dated October 2019 by Engeny Consultants. This report does not resolve the fundamental issues identified within the earlier version of this strategy (2017 version), one of the key issues being that implementation of the strategy as is would result in existing residential lots being flooded.
- (b) Given that the project is linear and crosses multiple titles and, according to the proposed DCP, is not proposed to be delivered by Council until enough DCP funds are collected, it is clear that the drainage channel and wetlands cannot be delivered at once and as a single workable project, unless Council accepts that to do so would require waiting 30-50 years until it is able to acquire all required land and construct such works. Given that all developed land requires appropriate drainage to a downstream source, this would sterilise all development in the area until such time as this project is able to be established.
- (c) The alternatives are therefore either to:
 - (1) Allow land to provide for some other permanent solution. Not including land within the DCP area would allow alternatives for such areas to be explored. An alternative, permanent solution for the Parklands Estate, which addressed the issues identified in the Engeny strategy, was proposed to Council by Parklea but ultimately withdrawn after almost 18 months of non-acceptance and non-progression by Council.
 - (2) Wait until the project is able to be delivered, but with appropriate interim arrangements in place. It is common for interim/temporary arrangements for infrastructure to be established while ultimates are not yet in place. The interim arrangement for the drainage of the Parklands Estate has been a long-standing matter between Parklea and Council which is still unresolved and which is the subject of current VCAT proceedings, with a hearing scheduled in 2021.
- (d) If Council wants to see residential lots released to accommodate for the growth which it has identified, it must focus on resolving these issues. The latest Engeny strategy, the proposed DCP and its proposed application to certain land does not assist.

3.12 The language in the various public consultation documents is unclear and unhelpful:

- (a) On the one hand it is stated that '*payment of the DCP levy will be considered to also meet the requirements of the Section 173 Agreement and no further payment will be required*'.¹⁰ This suggests that the obligations under the existing section 173 agreements will be cancelled and the whole DCP levy payable.
- (b) On the other hand it is stated that '*no additional payment as part of the DCP will be required from the contributing developer if the payment of the item is satisfied under the Section 173 agreement*'.¹¹ This suggests that the obligations under the existing section 173 agreements remain and the DCP levy is not payable (at least in part).
- (c) Further, while the Statutory Strategy recommends to '*Apply the DCPO across the precinct to levy contributions and provide exemptions from levies for those with*

¹⁰ Proposed DCP, section 4.4.

¹¹ Proposed PSP, section 1.3.

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appropriate existing contribution arrangements',¹² there are no appropriate exemptions regarding the existing section 173 agreements in the proposed DCPO Schedule.

3.13 Other real concerns regarding the proposed DCP are:

- (a) Appendix A does not state whether the identified projects are fully or partially funded by existing section 173 agreements, nor does it provide a total of the funds expected to be collected from the existing section 173 agreements. Without demonstrating that this total has been deducted from the costed projects, it appears that the DCP seeks to 'double dip'.
 - (b) The proposed DCP identifies projects which have not only been identified in existing section 173 agreements, but which have already been delivered through works in kind arrangements. Seeking to charge levies on s173 land for completed projects is a 'double dip'. There are current DCP credits under the s173 agreements for these works based upon indexed Council budgets (not actual cost).
 - (c) The proposed DCPO / DCP seeks to be applied to land already the subject of subdivision permits as well as lots already subdivided and sold. There is no available mechanism to obtain DCP levies for such land. This situation supports the treatment of these areas as external usage areas. Similarly, there are external usage areas that have not been recognised in the DCP but will discount the obligation of the DCP contributors.
 - (d) Should the documentation be interpreted to state that liability to pay levies under the DCP may be partly absolved by existing section 173 agreement liabilities, there is no clear legal basis established for how compliance with the DCPO, and the planning scheme, is to be achieved in that scenario.
 - (e) The proposed DCP is deficient in its prioritisation of project delivery, with no interim arrangements proposed nor a staging strategy provided (despite this being recommended in the Statutory Strategy). All projects are identified as to be provided at the time of subdivision or when demand requires, and all subject to availability of DCP funding.
- 3.14 The fact that the consultation documentation has included a unique 'Statutory Strategy' document for this proposed amendment is curious and suggests that the VPA and Council are seeking to justify what is questionable, both in a practical and legal sense.
- 3.15 These matters raise complex legal issues and concerns for delivery of residential development within the Wonthaggi North East area. Parklea reserves all of its rights in relation to these matters.

4 Concerns with the proposed process

4.1 Section 6.2 of the Community Infrastructure Needs Assessment states:

It is acknowledged that the 40 year residential land supply represents a significant timeframe for development and will require careful consideration as to the appropriate community infrastructure response within the PSP and DCP. To support this the VPA suggests that a time/population trigger based approach be employed if/when the need for the above identified facilities to come online. It is recommended that periodic monitoring and updating of the included population projections and demographic breakdown be undertaken to ensure that facilities are being rolled out in line with demand.

¹² Statutory Strategy, section 1.

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- 4.2 So why does this proposed amendment need to be fast tracked?
- 4.3 The progression of this proposed amendment at this point in time will not assist with the State's economic recovery from Covid-19. The existing and available land supply, rate of development, and take up of residential lots in this area (which will not change – unless to slow down in the short term), demonstrate that delivery of housing and associated land uses in Wonthaggi North East will continue as currently planned in the short and medium term. Approval of the proposed amendment will make no difference at this point in time.
- 4.4 The fact that this PSP was included in the VPA's existing work list is not a reasonable basis to continue progression with the proposed amendment.
- 4.5 Continued progression of the proposed amendment would undermine the DAL process which is in its critical phase for Bass Coast, and be an improper exercise in strategic planning and decision-making by Council, the VPA and the Minister for Planning.
- 4.6 The matters raised in this submission are not 'easy fixes'. It is not a matter of simply updating the documentation. A careful and well considered approach must be taken, and this could only properly occur once the relevant information from Bass Coast's DAL process is an available input.
- 4.7 The most prudent and sensible course of action for the VPA at this point in time would be to determine to defer continued preparation of the proposed amendment.
- 4.8 In the event that the proposed amendment progresses to the VPA Standing Advisory Committee, it is strongly submitted that a full hearing would be necessary, the Advisory Committee be made up of members with legal (particularly DCP) expertise and no hearing occur until further detailed discussions have been held with Parklea, VPA and Council. In light of the submissions made, it would be unfair to progress any referral to the VPA Standing Advisory Committee before mid-2021.
- 5 Other matters**
- 5.1 This submission has focussed on the critical issues identified with the proposed amendment.
- 5.2 There are many matters of detail in the various documents that Parklea objects to. Without prejudicing Parklea's primary submission that the proposed amendment should be deferred at this time, the matters of further detail may be raised as part of any future public hearing process which may occur.

Please contact the undersigned if you would like to discuss.

