

Planning and Environment Act 1987

Panel Report

Wyndham Planning Scheme Amendment C243

Public Acquisition Overlay – Tarneit and Sayers Road, Hoppers Crossing

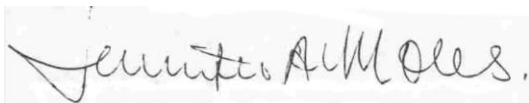
20 May 2020

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act
Wyndham Planning Scheme Amendment C243

Public

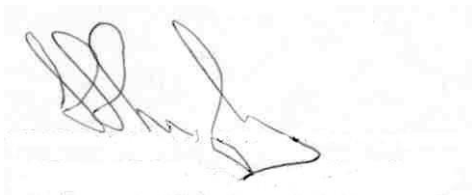
20 May 2020

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Jenny Moles, Chair

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Gabby McMillan, Member

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Greg Sharpley, Member

Contents

	Page
1 Introduction.....	1
1.1 The Amendment.....	1
1.2 Background to Amendment	5
1.3 Panel procedural issues.....	7
1.4 Summary of issues raised in submissions	9
1.5 The Panel’s approach	10
1.6 Limitations and assumptions.....	11
2 Policy and strategic justification	12
2.1 Planning and Environment Act 1987.....	12
2.2 Planning policy framework.....	13
2.3 Other primary legislation	17
2.4 Other strategic and policy documents.....	20
2.5 Other guidance documents.....	24
2.6 Ministerial Directions and Practice Notes.....	24
2.7 Panel discussion and conclusion	24
3 Traffic demands and road safety	27
3.1 Existing road layout	27
3.2 Traffic demand	29
3.3 Road design and safety	31
3.4 Conclusions on traffic demands, and road safety and design	39
4 Direct impacts for affected landowners	40
4.1 Evidence and submissions.....	40
4.1 Panel discussion	42
4.2 Conclusions and recommendations	44
5 Balancing costs and benefits	45
5.1 The context.....	45
5.2 The arguments to be weighed	46
5.3 Financial costs and impacts.....	46
5.4 Deferring the Amendment	48
5.5 Conclusions and recommendations	49

Appendix A Submitters to the Amendment and Submitters’ Group for Hearing

Appendix B Document list

List of Tables

	Page
Table 1	Addresses of properties affected by the PAO 2
Table 2	Predicted traffic flow by AECOM and current volumes in vpd 29
Table 3	Summary of objecting submissions and responses on design and road safety.... 32

List of Figures

	Page
Figure 1	Application of proposed Public Acquisition Overlay (Maps 11PAO and 12PAO)..... 1

Glossary and abbreviations

2012 Character Study	<i>Wyndham Neighbourhood Character Scoping Study 2012</i>
Act	<i>Planning and Environment Act 1987</i>
AECOM report	<i>Wyndham North Traffic Modelling and SIDRA Analysis, 31 May 2013, for Growth Areas Authority</i>
Austrroads – Part 5	<i>Austrroads Guide to Traffic Management (Part 5 – Road Management)</i>
Council	Wyndham City Council
CWW	City West Water
Cycling Strategy	Victorian Cycling Strategy 2018-2028
DCP	Development Contributions Plan
DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
DOT	Department of Transport
GRZ	General Residential Zone
Kph	Kilometres per hour
LAC Act	<i>Land Acquisition and Compensation Act 1986</i>
LDRZ	Low Density Residential Zone
LG Act	<i>Local Government Act 1989</i>
LPPF	Local Planning Policy Framework
MPS	Municipal Planning Strategy
MSS	Municipal Strategic Statement
NRZ	Neighbourhood Residential Zone
OMR	Outer Metropolitan Transport Corridor
PAO	Public Acquisition Overlay
PE Act	<i>Planning and Environment Act 1987</i>
planning scheme	Wyndham Planning Scheme
PPF	Planning Policy Framework
PPTN	Principal Public Transport Network
PSP	Precinct Structure Plan
PTV	Public Transport Victoria

Ratio 2014 report	<i>Traffic Engineering Assessment – Tarneit Road and Sayers Road, Tarneit Vehicle Access Review, Ratio Consultants, 2014</i>
RGZ	Residential Growth Zone
SCC	Strategic Cycling Corridor
TI Act	<i>Transport Integration Act 2010</i>
VPA	Victorian Planning Authority
Vpd	Vehicles per day
WITS	Wyndham Integrated Transport Strategy, June 2016

Overview

Amendment summary	
The Amendment	Wyndham Planning Scheme Amendment C243
Common name	Public Acquisition Overlay – Tarneit and Sayers Road, Hoppers Crossing
Brief description	The Amendment proposes to amend the Public Acquisition Overlay (PAO) maps 11PAO and 12PAO to include land required for the ‘Tarneit and Sayers Roads service road’
Subject land	The front 12 metres of: <ul style="list-style-type: none"> • 72 properties on the south side of Sayers Road, between Tarneit Road and Morris Road, Hoppers Crossing; and • 25 properties on the east side of Tarneit Road, between Sayers Road and Hogans Road, Hoppers Crossing
Planning Authority	Wyndham City Council
Authorisation	4 July 2019 subject to condition (Note: following an administrative update Amendment C162 was given the new Amendment number C243)
Exhibition	25 July to 23 September 2019
Submissions	Number of Submissions: 109 (87 from initial exhibition, further 22 late submissions) Number of referral responses: 4: Department of Transport, Powercor, Melbourne Water and City West Water Complete list included as Appendix A

Panel process	
The Panel	Jenny Moles (Chair), Gabby McMillan and Greg Sharpley
Directions Hearing	Planning Panels Victoria, 6 November 2019
Panel Hearing	Wyndham Civic Centre, Werribee, 11, 12 and 28 February 2020
Site inspections	Unaccompanied, 28 October 2019
Appearances	Mr Terry Montebello of Maddocks instructed by Ms Diana Rice, Principal Planner – Projects, Wyndham City Council, represented Wyndham City Council and called the following expert witnesses: <ul style="list-style-type: none"> • Mr Brett Young, Ratio on traffic engineering • Mr Henry Turnbull, Traffix Group on traffic engineering Mr Robert Forrester, barrister, instructed by Hall and Wilcox represented a large group of property owners (as shown in Appendix A) and called the following expert witness:

- Mr John-Paul Maina – Impact Traffic Engineering Pty Ltd on traffic engineering

Messrs Greg Johnson and Maurice Sims represented City West Water

Mr Andrew Rasulo represented the Department of Transport

Citation

Wyndham PSA C243 [2020] PPV

Date of this Report

20 May 2020

Executive summary

Wyndham Planning Scheme Amendment C243 seeks to apply the Public Acquisition Overlay (PAO) to the front 12 metres of 97 properties on Tarneit Road and Sayers Road in Hoppers Crossing. The affected properties are principally used for low density residential purposes but there are a few small scale commercial and community uses along the roadways.

The intended purpose of the PAO is to facilitate the future construction of service roads, although the proposed PAO schedule does not mandate that the acquired land be used for that purpose.

All but a few of the 109 submissions from affected landowners and related parties received in response to exhibition of the Amendment, opposed the Amendment. A further four submissions were received from government or servicing bodies - VicRoads (now Department of Transport), Powercor, Melbourne Water and City West Water.

Key issues raised in opposing submissions included:

- Lack of strategic (policy) or technical engineering (demand and road safety) justification for the Amendment, including a lack of analysis of alternative design responses.
- Concerns about the compulsory acquisition process and compensation.
- Concerns about the concept design for the road, including the implications for the extent of the PAO.
- Impacts on car parking, existing access arrangements, businesses, residential amenity, services, existing septic tanks.
- Concerns about the future rezoning of existing Low Density Residential Zone land, which might be facilitated by a service road.

The Panel appreciates the seriousness of this Amendment for the affected landowners who face the possible compulsory acquisition of part of their properties.

The Panel conducted a Hearing over three days at which many of the affected landowners were represented legally, as was the Council, and expert evidence was presented. The Panel also made a lengthy inspection of the subject roads, adjoining parts of the road network as well as the abutting properties and their hinterland.

In this Report, the Panel considers whether there is strategic policy support for the Amendment, and whether there is empirical evidence concerning traffic demand, and road safety and related issues, which would recommend that the service roads, which the Amendment is designed to facilitate, should be constructed.

The Panel found that there is a lack of specific strategic road policy support for the introduction of service roads along these stretches of arterial road. In particular, the upgrade of the roads is not identified in the Council's own policy documents nor does it accord with Department of Transport priorities. Further, the Council's adopted policy intents for continuation of low intensity housing along these roads do not support the argument of increasing local traffic demand. The empirical evidence about the need for the service roads in terms of current and expected traffic conditions was not strongly made out.

Nevertheless, the Panel concludes that:

- As a general matter of principle, it is appropriate to separate regional through traffic from slow moving vehicles accessing individual land holdings.
- It is desirable from an efficiency and safety perspective to have sections of arterial road treated in the same fashion as contiguous sections in terms of excluding direct access to properties.
- There would be real amenity and urban design benefits of housing, bicycles and pedestrians being separated from the through lanes of the arterial roadways by wide planted medians and fronting a local street environment created by the service road.

The Panel has weighed these benefits against asserted disbenefits to landowners and found that, subject to further financial analysis, there is a net balance in favour of the Amendment.

As set out in the final chapter of the Report, the Panel has serious reservations about the financial capacity of the Council to see through to implementation the service road project which the Amendment is designed to facilitate.

The Panel recommends that this issue warrants further investigation by the Council before a determination on whether to proceed with the Amendment is made.

Recommendation

The Panel recommends that:

- 1. Based on the reasons set out in this Report, the Wyndham Planning Scheme Amendment C243 be adopted as exhibited but only after the further financial analysis recommended in section 5.5 of this Panel Report is undertaken to demonstrate that both the acquisition of land and the construction works are able to be accommodated within the Council's budgetary constraints.**

Further recommendation

The Panel makes the following further recommendation:

- 2. The Council should consider committing to the implementation of the detailed design components set out in section 3.3.1 (v) of this Panel Report as part of the detailed design phase.**

1 Introduction

1.1 The Amendment

(i) Amendment description

Amendment C243 (the Amendment) to the Wyndham Planning Scheme (planning scheme) seeks to apply the Public Acquisition Overlay (PAO) to the front 12 metres of 97 properties on Tarneit and Sayers Roads in Hoppers Crossing. The Explanatory Report for the Amendment indicates that the purpose of the PAO is to facilitate the construction of a future service road, including pavement, verge, footpaths, nature strip and underground services.

The Amendment would apply PAO Schedule 1 (PAO1) to maps 11 and 12 in the planning scheme as shown in **Figure 1**. The purpose of PAO1 is ‘acquisition by Council for road purposes.’ The Council is the nominated acquiring authority.

Figure 1 Application of proposed Public Acquisition Overlay (Maps 11PAO and 12PAO)



Source: Wyndham Planning Scheme, Planning Scheme Maps 11PAO & 12PAO, exhibited

(ii) Subject land

The Amendment affects the land shown in **Table 1** being:

- 72 properties on the south side of Sayers Road, between Tarneit Road and Morris Road.
- 25 properties on the east side of Tarneit Road, between Sayers Road and Hogans Road.

Table 1 Addresses of properties affected by the PAO

Location	Land / Area Affected	Mapping Reference
Hoppers Crossing	387 – 423 Sayers Road	12PAO
Hoppers Crossing	423-471 Sayers Road	11PAO
	489 – 537 Sayers Road	
	547 Sayers Road	
	569-591 Sayers Road	
	404 Derrimut Road (where this has frontage to Sayers Road)	
	609 – 687 Sayers Road	
	693 – 743 Sayers Road	
	747 – 771 Sayers Road	
	785 – 797 Sayers Road	
	673 – 689 Tarneit Road	
	645 – 665 Tarneit Road	
	587 – 625 Tarneit Road	
	551 – 573 Tarneit Road	

Source: Wyndham Planning Scheme Amendment C243 – Explanatory Report, Attachment 1

(iii) Description of the subject land and surrounds

Most of the affected properties are large residential lots, each having an area of around 4,000 square metres. These properties form part of what was originally the outer western edge of the municipal urban area. The area now adjoins rapidly expanding urban areas further to the west.

The properties are predominantly developed with single-storey dwellings with substantial front setbacks. A small number of the affected properties have been developed for non-residential uses, such as places of worship, childcare centres and medical centres. A small number of others have been developed for medium-density residential purposes, such as townhouses.

The interface between the subject land and adjoining residential areas varies. The affected properties on the eastern part of Sayers Road, represent the northern extremity of a large precinct of low density lots which continue to use septic tanks for effluent disposal. The affected lots elsewhere, on Tarneit Road and the western section of Sayers Road, abut more traditional residential areas which have existing services.

A number of State and local planning documents highlight the high level of expected urban growth in Wyndham to the north and west of the Amendment area. These include *Plan Melbourne* which predicts that Melbourne’s west will be the fastest growing metropolitan

region into the middle of the 21st century.¹ Land has also been reserved to the north and west of the Amendment area for a key transport corridor, the Outer Metropolitan Transport corridor.

The *West Growth Corridor Plan* of 9 August 2012, which is a high level integrated land use and transport plan, identifies the Amendment area as an existing urban area and identifies future urban growth areas to the north and west of the Amendment area.

The Council submissions also referred to the high expected growth levels, referring for example to the Riverdale Precinct Structure Plan area 1.6km west of Tarneit Road and other developing Precinct Structure Plan (PSP) areas in Wyndham North - Oakbank, Tarneit North, and Truganina. The Council submission also referenced other PSPs with an associated Development Contributions Plan (DCP) in Wyndham West located west and south-west of the Riverdale PSP.

(iv) Description of the subject roads and surrounding road network

The affected properties currently have direct vehicular access from Sayers Road and Tarneit Road.

Sayers Road and Tarneit Road are main roads servicing the wider Tarneit area. Sayers Road runs in an east-west direction between Shanahans Road in Mount Cottrell and continues as the Old Geelong Road in Laverton North. Tarneit Road runs in a north-south direction between Boundary Road in Truganina and Railway Avenue in Werribee.

Both roads currently have 70km/h speed limits (except for Sayers Road east of Derrimut Road which has a speed limit of 60km/h) and form part of the local cycle network. Sayers Road is also on the Principal Public Transport Network (PPTN)².

A more detailed description of the roads and the wider network is set out in section 3.1 of this Report.

(v) Existing zoning and overlay controls

The subject land is mainly within two zones of the planning scheme. The properties located between 727 - 797 Sayers Road are in the General Residential Zone – Schedule 1 (GRZ1). The properties located between 381 - 723 Sayers Road are in the Low Density Residential Zone (LDRZ).

The purposes of GRZ1 include:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.

The purposes of the LDRZ are:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all waste water.

¹ Plan Melbourne, page 45

² Shown in West Corridor Growth Plan

One small part of the subject land, an existing reserve on Sayers Road to the east of Derrimut Road, is zoned Urban Floodway Zone (UFZ).

Small sections of the subject land are affected by existing overlay controls:

- PAO2 applies to the land on the corner of Sayers Road and Derrimut Road. The purpose of PAO2 is for ‘acquisition by Vic Roads for road purposes.’
- Special Building Overlay (SBO) applies to a couple of properties fronting Sayers Road (overlapping in part with land zoned UFZ).

For most of the subject land, therefore, the use or development of land as a road does not require a planning permit.³

In the residential zones, the use and development of a lot for a single dwelling, including works normal to a dwelling, generally does not require planning permission. Smaller medical centres also may not require planning permission. Childcare facilities require a permit.

The road reserve on Tarneit Road and Sayers Road west of Derrimut Road are both zoned Road Zone 2. The road reserve on Sayers Road east of Derrimut Road is zoned Road Zone 1. Clause 52.29 imposes the need for planning permission to create or alter access to a Road Zone 1.

(vi) Statutory effect of application of the PAO

Clause 45.01-1 of the planning scheme sets out the permissions required if a PAO is in place. Most relevantly the clause includes:

A permit is required to:

- Use land for any Section 1⁴ or Section 2 use in the zone.
- Construct a building or construct or carry out works, including:
 - A domestic swimming pool or spa and associated mechanical and safety equipment if associated with one dwelling on a lot
 - A pergola or verandah, including an open-sided pergola or verandah to a dwelling with a finished floor level and a maximum building height of 3 metres above ground level.
 - A deck to a dwelling with a finished floor level not more than 800mm above ground level.

...

- Subdivide land.

...

Clause 52.29 would continue to apply to the properties along Sayers Road east of Derrimut Road, as permission is required to alter access to PAO land where it is for the purpose of a Road Zone 1.⁵

With the PAO in place, the provisions of section 98 of the *Planning and Environment Act 1987* (PE Act) and the *Land Acquisition and Compensation Act 1986* (LAC Act) would be triggered.

³ Permission is not required under the GRZ1 or LDRZ given the provisions of clause 62.01. In the UFZ and SBO, a permit is required only if the water flow path is redirected or obstructed

⁴ A use not requiring a permit under the zone such as a single dwelling on a lot

⁵ It is unclear whether the PAO should be regarded as for the purpose of a Road Zone 1 but we have assumed that is the case

Clause 45.01-6 of the planning scheme provides that:

Any land included in a Public Acquisition Overlay is reserved for a public purpose within the meaning of the Planning and Environment Act 1987, the Land Acquisition and Compensation Act 1986 or any other Act.

Under section 98 of the PE Act an owner can claim compensation from the Council in the following circumstances:

- As the 'planning authority' for financial loss suffered as a natural, direct and reasonable consequence of the land being reserved for a public purpose.
- As the 'responsible authority' for financial loss suffered as a natural, direct and reasonable consequence of a refusal by the Council to grant a permit to use or develop land on the basis that the land is (or will be) needed for a public purpose.

The LAC Act sets out the procedure for the compulsory acquisition of land. Section 31 of the LAC Act sets out the matters which must be taken into account when assessing an offer of compensation:

- The market value of the land.
- Any special value due to the location of the land.
- Loss attributable to severance.
- Loss attributable to disturbance.
- Legal, valuation and professional expenses.
- Solatium (e.g. to compensate for intangible disadvantages).

1.2 Background to Amendment

This Amendment was preceded by earlier planning scheme amendments and other strategic work affecting the subject area. This previous work considered vehicle access arrangements from Sayers Road and Tarneit Road and the zoning of the area more generally.

The following is a chronology of relevant studies and decisions of the Council:

- 2012 – The Council adopted the *Wyndham Neighbourhood Character Scoping Study (2012)* (2012 Character Study). The 2012 Character Study recommended further investigation of the Amendment Area, on the basis that the spacious landscape character could be threatened by future subdivision and development. This study recommended further strategic work to integrate neighbourhood character studies with housing studies.
- 2013 – The Council adopted the *Tarneit and Sayers Road Neighbourhood Character Investigation Report (2013)* (2013 Precinct Study). The 2013 Precinct Study only related to part of the subject land, being the GRZ land on Tarneit Road and Sayers Road between Tarneit Road and the LDRZ. Notably, the 2012 Character Study recommended a municipal wide character study, however Council brought this precinct forward 'due to a rise in the number of applications for planning permits in the precinct proposing high density residential development'.⁶
- 2012-2013 – Amendments C185 and C204 were prepared for part of the subject land (the GRZ land on Tarneit and Sayers Road). The purpose of the amendments were as follows:

⁶ Explanatory report for Amendment C185 for the Wyndham Planning Scheme

- Amendment C185 was prepared to apply a Design and Development Overlay (DDO) Schedule 9 (DDO9) on a permanent basis.
- Amendment C204 was prepared to apply a Development Contributions Plan Overlay (DCPO) and Development Contributions Plan to collect financial contributions from development towards the construction of a service road.
- 2013 – Amendment C184 was approved in October 2013 via section 20(4) of the PE Act. It applied an interim DDO9 to the GRZ land on Tarneit Road and Sayers Road. DDO9 required a minimum building setback of 20 metres to ensure adequate space for a future service road.
- 2013-2015 – Amendments C185 and C204 were each exhibited⁷ and submissions were received. The Council resolved on 23 March 2015 to refer these amendments to a Panel concurrently for consideration. At the Directions Hearing in May 2015, the Council advised the Panel that late submissions had been received and Council decided to defer the Panel proceedings, to further exhibit the amendments in response to the late submissions. Subsequently, additional late submissions were received.
- 2014 – The Council commissioned Ratio to prepare *Traffic Engineering Assessment – Tarneit Road and Sayers Road, Tarneit Vehicle Access Review 2014* (Ratio 2014 report). The report concluded that the use of service roads to be the appropriate road access management strategy for the redevelopment expected along GRZ land on Tarneit Road (east side) and Sayers Road (south side).
- 2015 – The Council resolved to abandon Amendments C185 and C204 (contrary to officer recommendations) in August 2015.
- 2015 – The Council adopted its *Housing and Neighbourhood Character Strategy September 2015* in August 2015. When the Council adopted it, it also resolved that ‘should planning scheme Amendments C185 or C204 not proceed, instruct Council Officers to amend the adopted Housing and Neighbourhood Character Strategy to show the Tarneit and Sayers Road Precinct as Limited Incremental Change in recognition of the infrastructure constraints associated with the area.’⁸
- 2015 – The outcomes of the 2012 Character Study were incorporated into the planning scheme as part of the Municipal Strategic Statement (MSS) review (via Amendment C192). Clauses 21.07-3 and 22.04 of the planning scheme identify the preferred character the subject land as predominantly Garden Court or Bush Garden.
- 2016 – The interim DDO9 expired in June 2016.
- 2016 – The *Wyndham Integrated Transport Strategy* (WITS) and *Wyndham Integrated Transport Policy* (Wyndham Transport Policy) were adopted by Council at its meeting on 27 June 2016.
- 2017 – In February 2017, the Council resolved to seek authorisation from the Minister for Planning to prepare the present Amendment.
- 2018 – A revised *Wyndham Housing and Neighbourhood Character Strategy 2018* (2018 Housing Strategy) was adopted by Council on 7 August 2018. The land

⁷ Amendment C185 exhibited 29 August – 4 October 2013 and 8 submissions were received. Amendment C204 was exhibited 27 November 2014 – 12 January 2015 and 3 submissions were received

⁸ Wyndham City Council meeting minutes 24 August 2015

fronting Tarneit and Sayers Roads is identified in the strategy as an area of Limited Change.⁹ At that same meeting the Council resolved to seek authorisation and prepare Amendment C161 to implement the recommendations of the 2018 Housing Strategy. The Council sought authorisation in September 2018, however the amendment has not yet been authorised.

1.3 Panel procedural issues

1.3.1 Adjournment request

On 29 October 2019, Hall and Wilcox requested an adjournment of the Hearing on behalf of a submitters' group – principally owners of land affected by the proposed PAO. The reasons for the request were that Hall and Wilcox would not be available to appear at the expected time for the Hearing and the submitters required more time to prepare and raise the required funds to engage an expert witness.

On 4 November 2019, Maddocks on behalf of the Council opposed the request.

At the Directions Hearing, the Panel heard from the submitters' group and the Council with regard to the request. The Council raised concerns about timing. It wanted to ensure there was adequate time for the matter to be concluded before the caretaker period for local government elections in September 2020. It was also asserted that road safety issues dictated that the Amendment proceed promptly.

The Panel granted the adjournment request on the basis that the application of a PAO was a matter with serious consequences for the submitters and the adjournment would provide submitters with enough time to better prepare for the Hearing. The Panel considered that there was adequate time for the matter to be concluded by the Council before the caretaker period. No evidence of immediate or significant road safety issues, alleged by the Council, was provided to suggest that a more urgent Hearing was needed.

1.3.2 Additional submitters

At the Directions Hearing, Hall and Wilcox sought to add 10 late submitters to the list of persons already represented by that firm. The Council did not object to the late submissions, provided that the submitters did not raise substantial new grounds.

Copies of 12 late submissions received by Council were provided to the Panel on 28 November 2019.

On 9 December 2019 Council provided the Panel with an updated index and complete set of submissions (including the late submissions) for use during the Hearing.

1.3.3 Additional information sought by Panel prior to the Hearing

The Panel requested additional information from City West Water (CWW) and the Department of Transport (DOT) prior to the Hearing. The Panel asked both authorities to attend the Hearing.

⁹ Allows for minimal housing change due to the environmental, heritage and neighbourhood character of the area, or other significant development constraints. Future housing will predominantly comprise single dwellings with some dual occupancy development.

CWW was asked to respond to the following:

- Are there any potential timing issues relating to sewerage of affected lots?
- Would a wider sewerage scheme for the area be an outcome of the requirement to sewer some lots affected by the proposed service road?

DOT was asked to respond to the following:

- Sayers Road is a declared VicRoads arterial road east of Derrimut Road and a Council-managed main road west of Derrimut Road. Tarneit Road is a Council-managed main road. What will be the future designations of these roads?
- When will the single lane section of Sayers Road to the east be upgraded?
- Who will be paying for the service road works?
- Has VicRoads reviewed the service road designs that are the subject of the Amendment and approved them? The VicRoads referral response of 23 September 2019 suggests detailed design is yet to be considered.
- What is the VicRoads' response to the detailed traffic and risk issues raised in the submission by Mr Hood (attached)? Risks for all types of road users not just private vehicles should be addressed.
- Does the VicRoads' view in its letter of 23 September 2019 represent a DOT¹⁰ view, including Public Transport Victoria (PTV)? There is some reference to DOT in the referral response letter.
- The VicRoads' letter to the Council of 17 June 2019 and the VicRoads' referral response of 23 September 2019 are essentially the same except for the penultimate paragraph. Could the reason for the changed paragraph and the meaning of the revised version be clarified?
- Could PTV advise on the effects of the proposed service roads upon the safety and efficiency of bus operations?

These matters were addressed in the CWW and DOT submissions at the Hearing and where relevant are discussed in the Panel's assessment below.

1.3.4 Additional information sought after the Hearing

At the end of the Hearing, the Panel directed the Council to provide further advice on the road priorities identified in the WITS and any updated priority plans. Other parties were then given the opportunity to respond.

On 11 March 2020, the Council provided further information about road priorities and made some further comments in relation to budget priorities.

On 18 March 2020, Hall and Wilcox provided a further response to the Council's letter on behalf of the submitters' group. On 24 March 2020, DOT provided a response.

This matter is referred to in the Panel discussions later in this Report.

¹⁰ VicRoads and Public Transport Victoria were amalgamated into the Department of Transport (DOT) in mid-2019. From 1 January 2020, DOT superseded VicRoads as a referral authority under the planning scheme.

1.4 Summary of issues raised in submissions

The majority of the 109 submissions received by the Council from affected landowners and related parties opposed the Amendment. A further four submissions were received from government or private servicing bodies - VicRoads (now DOT), Powercor, Melbourne Water and CWW.

Many of the submissions from affected landowners and related parties were based on a proforma letter, with additional content added to address individual concerns.

(i) Landowner submissions

The issues raised in written submissions and at the Hearing by the submitters' group barrister can be summarised as follows:

- Lack of strategic (policy) or technical engineering (demand and road safety) justification for the Amendment, including a lack of analysis of alternative design responses.
- Oppose the application of the PAO on private land.
- Concerns about the compulsory acquisition process and compensation.
- Concerns about the concept design for the road, including the implications for the extent of the PAO.
- Impacts on car parking, existing access arrangements, businesses, residential amenity, services, existing septic tanks.
- Concerns about the future rezoning of existing LDRZ land, which might be facilitated by a service road.
- Applying the PAO would divert financial resources away from the Council's transport infrastructure priorities, as a result of inevitable compensation claims and the cost of installing the road and associated alterations to service infrastructure.

(ii) Planning Authority

The key issues for the Council were:

- Strategic justification for the Amendment.
- Public acquisition and compensation matters.
- Impacts on individual properties.
- Balancing costs and benefits of the Amendment.

(iii) Relevant agencies (DOT and CWW)

The key issues for DOT were:

- Integration of the service road with the wider transport network (including implications for private vehicles, cyclists and public transport).
- Demand and timing.

The key issues for CWW were:

- Effects on servicing arrangements, including sewer and water supply.

1.5 The Panel's approach

The Panel has considered all written submissions made in response to the exhibition of the Amendment, together with submissions, evidence and other material presented to it during the Hearing, and as forwarded afterwards in response to the Panel Direction. The Panel's consideration of the issues has been informed by its site visit. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report. Reference has been made in the Report only to the more relevant or determinative material.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the planning scheme.

The Panel is conscious that the acquisition of land is a significant matter for the landowners directly affected. The nature of the Amendment has influenced the Panel's approach. The Panel generally agrees with the sentiment of other Panels that have considered the introduction of a PAO.

In Amendment C56 to the Mildura Planning Scheme which related to acquisition of land for regional sporting facilities, the Panel said:

In considering this Amendment, the Panel has been conscious that it is a very significant matter for the landowners whose land is intended to be acquired. It is a serious matter for anyone to be told by government that their land is needed for some public purpose and that the government, whether it be Federal, State or local, intends to acquire it compulsorily and they must relinquish that land - whether or not they wish to do so.

The seriousness of the matter is reflected by the fact that land ownership and compulsory acquisition are matters addressed in this State as part of the human rights legislation. Section 20 of the Charter of Human Rights and Responsibilities Act 2006 requires that 'A person must not be deprived of his or her property other than in accordance with the law'.

The Panel's awareness of the seriousness of this matter was raised by the Panel Chair at the Directions Hearing. The nature of this issue means an independent Panel review is perhaps more critical than in the case of most other amendments.

In the Panel's view, it is generally the case that whenever a planning authority is proposing to acquire land compulsorily there needs to be a **high level of strategic justification and a significant public benefit must be demonstrated**.

[Emphasis added]

In considering Amendment C197 to the Stonnington Planning Scheme which proposed PAOs for the creation of public open space, the Panel said:

The Panel commends Council for actively pursuing these opportunities, particularly where, as in the present circumstances, difficult decisions are required to be made in pursuit of longer term planning goals. The Panel agrees with Council's submission that 'it is in the interests of good and proper planning that such proposals be identified as early as possible ...'

However in circumstances such as this Amendment, where the consequences are not just the partial acquisition of a property but the dislocation of residents from their homes, any alleged public benefits will inevitably be brought into much sharper focus, as they perhaps should be. In these circumstances it is incumbent upon a planning authority to clearly articulate these public benefits and submit them to public scrutiny.

On the other side of the equation the consequences for the landowners are perhaps much clearer and more stark. Irrespective of the final outcome of the Master Plan review, the landowners will live with the prospect that their homes may at any time be acquired. Even if compulsory acquisition does not occur immediately, as was suggested by Council, the PAO will still potentially affect their ability to improve (ie. develop) and fully enjoy their residences as other people are able to do. **The Panel notes that it is not the wish of Council or the sporting clubs for the properties to be compulsorily acquired and Council has acknowledged that it may be some time before a property is actually acquired.**

The Panel does not necessarily consider it to be in the public interest, nor consistent with the purpose of the PAO, to impose reservations on private land where the need for the land is uncertain and where its acquisition may not ultimately occur for a long period of time.

[Emphasis added]

Having regard to Clause 71.02-3 (Integrated decision making) of the planning scheme and the nature of the Amendment, the Panel considers that a high level of strategic justification and public benefit is required before a PAO is introduced onto private land. The Panel needs to weigh up the costs and benefits to determine whether there is a net community benefit. The private losses to individual landowners need to be offset against any public benefit.

This Report considers the Amendment and submissions under the following headings:

- Policy and strategic justification
- Traffic demands and road safety
- Direct impacts for affected landowners
- Balancing costs and benefits.

1.6 Limitations and assumptions

The Panel has assessed the Amendment on the basis that the PAO will facilitate a service road, which may be 20 years away. The Panel notes that the PAO in no way mandates this particular use of the acquired land, in fact the purpose of PAO1 is quite broad and allows ‘acquisition by Council for road purposes.’ In terms of the purpose of the PAO provided in the planning scheme, therefore, the PAO land might be used by the Council to acquire land for more through traffic lanes or for a dedicated bike lane.

The Panel’s balancing of costs and benefits has, however, assumed the use of the PAO area for service roads, given the content of the Explanatory Report and the Council’s submissions. The balance may have been different if the material had indicated that the PAO was designed to facilitate a different type of transport project.

The Panel has also assumed that the Council, as the acquiring authority, would meet the costs of acquisition and ultimately the costs of constructing the road (including the associated costs of relocating services and other associated costs). The Panel has assumed that a DCP, as was earlier proposed along these roads, will not be applied in the future to fund either the acquisition or construction costs.

The Panel has not specifically addressed the devaluation of properties affected by the Amendment. Property values is a consideration which is outside the scope of the PE Act. Such matters would be dealt with under the LAC Act if the PAO was applied to the Amendment area.

2 Policy and strategic justification

In this chapter, the Panel examines what strategic support can be found for the proposed Amendment in the broader policy context and strategic planning documents.

2.1 Planning and Environment Act 1987

2.1.1 Objectives

The objectives of planning in Victoria as set out in section 4 of the PE Act relevantly include:

- (a) to provide for the fair, orderly, economic and sustainable use, and development of land;
- ...
- (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
- ...
- (e) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;
- (f) to facilitate development in accordance with the objectives set out in paragraphs (a) ... (c), ... and (e);
- (g) to balance the present and future interests of all Victorians.

2.1.2 Submissions and background material

The exhibited Explanatory Report for the Amendment referred to the objectives of section 4 of the Act. It said that the Amendment implements these objectives by facilitating a service road which will allow safe access onto arterial roads, and will result in improved road connections and reduced congestion and improved road safety for all road users. The Explanatory Report also stated that the siting of the service road will avoid disruption to existing essential services for abutting properties, though the submissions at the Panel Hearing by CWW and the submitter's group cast some doubt on this claim. It was also said that the road would cater for future demand by the growing community.

The Council's Part A submission adopted the strategic assessment from the Explanatory Report. While a further outline of planning policy and other strategic documents was provided, the objectives of the Act were not re-addressed explicitly.

Mr Forrester's submissions for the submitters' group did not refer to the Explanatory Report and this commentary by the planning authority, but did comment adversely on the Council's Part A strategic assessment generally. Mr Forrester observed that it was really only a 'tick the box' exercise asserting consistency on the assumption that the Amendment would result in improvements to the transport network.

2.1.3 Panel comment

The broad objectives of the PE Act support the orderly provision of facilities for the community now and in the future, and the achievement of living environments which are, amongst other things, efficient and safe. Importantly the Act seeks to ensure that the use and development

of land is also achieved fairly. These broad planning objectives are unassailable and each planning decision should seek to optimise and achieve an appropriate balance of the objectives.

The broad considerations of the Act are given more explicit expression in some of the policies of the planning scheme which are set out below. These policies enable a better understanding of whether the objectives of the Act will be met by the proposal.

2.2 Planning policy framework

2.2.1 State planning objectives

Clause 11.02-1S (Supply of urban land) of the planning scheme includes the following strategies:

Ensure the ongoing provision of land and supporting infrastructure to support sustainable urban development.

Planning for urban growth should consider:

- Opportunities for the consolidation, redevelopment and intensification of existing urban areas.
- Neighbourhood character and landscape considerations.
- The limits of land capability and natural hazards and environmental quality.
- Service limitations and the costs of providing infrastructure.

Clause 15.01-1S (Urban design) includes the following strategies:

Ensure development supports public realm amenity and safe access to walking and cycling environments and public transport.

Ensure that development, including signs, minimises detrimental impacts on amenity, on the natural and built environment and on the safety and efficiency of roads.

Promote good urban design along and abutting transport corridors.

Clause 15.01-4S (Healthy neighbourhoods) includes the following strategy:

Design neighbourhoods that foster community interaction and make it easy for people of all ages and abilities to live healthy lifestyles and engage in regular physical activity

...

Clause 15.02-1S (Energy and resource efficiency) including the following strategy:

Promote consolidation of urban development and integration of land use and transport.

Support low energy forms of transport such as walking and cycling.

Clause 18 (Transport) provides:

Planning should ensure an integrated and sustainable transport system that provides access to social and economic opportunities, facilitates economic prosperity, contributes to environmental sustainability, coordinates reliable movements of people and goods, and is safe.

Clause 18.01-1S (Land use and transport planning) includes the strategy to:

Plan urban development to make jobs and services more accessible by:

- Ensuring equitable access is provided to developments in accordance with forecast demand, taking advantage of all available modes of transport and to minimise adverse impacts on existing transport networks and the amenity of surrounding areas.
- Coordinating improvements to public transport, walking and cycling networks with the ongoing development and redevelopment of urban areas ...

Clause 18.01-2S (Transport system) includes the following strategies:

Reserve land for strategic transport infrastructure.

Incorporate the provision of public transport, cycling and walking infrastructure in all major new state and local government road projects.

Locate transport routes to achieve the greatest overall benefit to the community to making the best use of existing social, cultural and economic infrastructure, minimising impacts on the environment and optimising accessibility, safety, emergency access, service and amenity.

Clause 18.02-3S (Road system) seeks:

To manage the road system to achieve integration, choice and balance by developing an efficient and safe network and making the most of existing infrastructure.

The strategies to achieve that objective include:

Plan and regulate the design of transport routes and nearby areas to achieve visual standards appropriate to the importance of the route with particular reference to landscaping, the control of outdoor advertising and, where appropriate, the provision of buffer zones and resting places.

...

Make better use of roads for all road users through the provision of wider footpaths, bicycle lanes, transit lanes (for buses and taxis) and specific freight routes.

Selectively expand and upgrade the road network to provide for:

- High-quality connections between Metropolitan Melbourne and regional cities, and between regional cities.
- Upgrading of key freight routes.
- Ongoing development in outer suburban areas.
- Higher standards of on-road public transport.
- Improved key cross-town arterial links in the outer suburbs including circumferential and radial movement.

Clause 19 (Infrastructure) seeks:

To provide timely, efficient and cost-effective development infrastructure that meets the needs of the community.

It is strategy to:

Provide an integrated approach to the planning and engineering design of new subdivision and development.

2.2.2 Local planning objectives

Clause 21 (Municipal Strategic Statement)

Clause 21.01-1 Municipal Profile identifies the demand for infrastructure as a key planning issue. Specifically, it includes that the Council will need to invest at least \$1.5 billion in infrastructure to keep up with projected growth. Transport is another key planning issue, the planning scheme recognising that road and rail transport infrastructure will face increasing capacity constraints as demand increases.

Clause 21.09-1 (Integrated transport networks) has several objectives, including:

- To improve and upgrade transport infrastructure to meet existing and future population.
- To provide safe walking and cycling routes to connect people to destinations.
- To provide for the safe, efficient and effective operation of public transport.

In that same clause, further strategic work is identified including:

- Develop a transport network strategy to achieve an integrated strategy that addresses short, medium and long-term transport needs.
- Investigate appropriate strategies for freight handling facilities and transport corridors.
- Develop local area traffic management schemes to reduce the impact of traffic speeds and volumes.
- Investigate the application of the Public Acquisition Overlay.

Clause 22.04 (Neighbourhood character) draws on work from the 2012 Character Study. It identifies the parts of the Amendment area zoned GRZ1 as 'Garden Court' character type and the parts zoned LDRZ as 'Bush Garden' or 'Bush Suburban Garden' character type.

In Garden Court areas, clause 22.04-3.1 requires proposals for residential development to be assessed against the following criteria:

- Protection of existing tree canopy where well established.
- Provision for new canopy trees where lacking.
- Pattern of dwelling spacing of 1 to 2m from side boundaries.
- Low front fencing or open frontage with no fencing.
- Interface with open spaces and creek or river corridors.

In the Bush Suburban Garden areas, clause 22.04-3.4 sets out the following criteria:

- Protection of existing tree canopy which includes many native trees.
- Provision for new canopy trees where lacking.
- Native landscaping theme.
- Pattern of dwelling spacing of 4 to 8m from side boundaries.
- Open frontage with no fencing or rural style front fences.
- Rural road treatment.
- Interface with open spaces and creek or river corridors.

2.2.3 Submissions on planning policy

The Council submitted that there was strategic support for the PAO primarily on the basis of increases in traffic demand (owing to intensification of development to the north and west) and predicted road safety and efficiency benefits. The Explanatory Report and the submissions for the Council also referred to the intensification of uses, particularly medium density housing, along Sayers and Tarneit Roads. This, in combination with the anticipated increases in regional traffic on those roads, was said to justify the construction of the service roads.

The Council relied on State and local policy which identified the existing high demand on infrastructure generally within the municipality. The Council also submitted that there would be design and amenity benefits for affected landowners if a service road were constructed, as they would experience a local road environment rather than have direct abuttal to an arterial road. The Council relied on State policy at clause 15 in support of the latter.

The DOT referred to the West Growth Corridor Plan of 2012, as well as the *Victorian Cycling Strategy 2018-2028* (Cycling Strategy), the *Austrroads Guide to Traffic Management* and the *VicRoads Guidance for Planning Road Networks in Growth Areas*. The DOT relied primarily on the general guidance that suggests that service roads are a preferable design response to managing access onto arterial roads. The DOT did not, however, make any submissions that suggested there was any immediate demand for a service road on Sayers Road or Tarneit Road. The DOT submitted that it had not yet been determined whether Sayers Road or Tarneit Road would be State arterial roads in the future (and therefore managed by DOT). DOT also submitted that there was no funding available at State level for the service road project.

The submitters' group was critical of the Council's strategic assessment of the Amendment. The group submitted that the Council was relying on generic policy objectives that call for infrastructure to meet demand, rather than any empirical evidence that such a demand existed for a service road in this location. The submitters' group also criticised the lack of empirical evidence about the stated road safety benefits. In this respect, the submissions were critical of the evidence presented for the Council on traffic matters purporting to support the Amendment. Further, the submissions were critical of the DOT submissions claiming that it inappropriately relied upon the base statements by the witnesses for the Council and generic material from Austrroads publications. It was said that the DOT submissions amounted to nothing more than in-principle support for service roads generally.

2.2.4 Panel comment

The broad policies relating to forward planning for regional infrastructure, enhanced amenity of areas along main roads, encouragement of sustainable forms of transport such as cycling, walking and public transport, and enhanced road safety, are broadly supportive of the Amendment. The Panel agrees with the submissions on behalf of the submitters' group, however, that a more detailed examination of local policy and an empirical analysis of the traffic arguments needs to be undertaken to establish whether the broad planning policy objectives would be met by the application of the PAO and construction of the service roads in this case, and whether the appropriate balance is struck against the disbenefits of the project.

The Panel would also comment that it remains less than certain that the Council's more detailed strategic policies concerning housing development along these roads support the need for the service roads as was asserted by the Council. This is discussed further below.

The Panel nevertheless records that it does not agree with the submitters' group that DOT have failed to discharge their responsibility under the TI Act. In this case, DOT is acting as a submitter under the PE Act and the form of comments provided are at its discretion (see the discussion in section 2.4.5 below).

2.3 Other primary legislation

2.3.1 Transport Integration Act 2010

The *Transport Integration Act 2010* (TI Act) was referred to in the exhibited Explanatory Report for the Amendment. The submitters' group and the DOT both referred to this Act at the Hearing.

The purpose of the TI Act is to create a framework for the provision of an integrated and sustainable transport system in Victoria.

Section 24 of the TI Act requires that a transport body (such as DOT) must have regard to the transport system objectives and decision making principles in the TI Act when it is making decisions under relevant transport legislation (e.g. such as the *Road Management Act 2004*).

Similarly, section 25 of the TI Act states that an interface body (such as a council acting as a planning authority) must have regard to the transport system decision making principles, when making decisions likely to have a significant impact on the transport system. It is appropriate that the Panel also consider relevant provisions of this TI Act.

(i) Transport system objectives

The objectives in the TI Act include:

- 8 Social and economic inclusion
- 9 Economic prosperity
- 10 Environmental sustainability
- 11 Integration of transport and land use
- 12 Efficiency, coordination and reliability
- 13 Safety and health and wellbeing.

Notably Objective 11 provides:

- (1) The transport system should provide for the effective integration of transport and land use and facilitate access to social and economic opportunities.
- (2) Without limiting the generality of subsection (1), transport and land use should be effectively integrated so as to improve accessibility and transport efficiency with a focus on—
 - (a) maximising access to residences, employment, markets, services and recreation;
 - (b) planning and developing the transport system more effectively;
 - (c) reducing the need for private motor vehicle transport and the extent of travel;

- (d) facilitating better access to, and greater mobility within, local communities.
- (3) Without limiting the generality of subsection (1), the transport system and land use should be aligned, complementary and supportive and ensure that—
 - (a) transport decisions are made having regard to the current and future impact on land use;
 - (b) land use decisions are made having regard for the current and future development and operation of the transport system;
 - (c) transport infrastructure and services are provided in a timely manner to support changing land use and associated transport demand.
- (4) Without limiting the generality of subsection (1), the transport system should improve the amenity of communities and minimise impacts of the transport system on adjacent land uses.

(ii) Decision making principles

The principles in the TI Act at sections 14-21 inclusive include (the most relevant of which are outlined in full):

15 Principle of integrated decision making

The principle of integrated decision making means seeking to achieve government policy objectives through coordination between all levels of government and government agencies and with the private sector.

16 Principle of triple bottom line assessment

The principle of triple bottom-line assessment means an assessment of all the economic, social and environmental costs and benefits taking into account externalities and value for money.

17 Principle of equity

18 Principle of the transport system user perspective

19 Precautionary principle

20 Principle of stakeholder engagement and community participation

21 Principle of transparency.

2.3.2 Local Government Act 1989

The Council referred the Panel to the requirement of the *Local Government Act 1989* (LG Act) for the Council to implement the principles of sound financial management.

These principles are set out at section 136 of the LG Act:

- (a) manage financial risks faced by the Council prudently, having regard to economic circumstances;
- (b) pursue spending and rating policies that are consistent with a reasonable degree of stability in the level of the rates burden;
- (c) ensure that decisions are made and actions are taken having regard to their financial effects on future generations;
- (d) ensure full, accurate and timely disclosure of financial information relating to the Council.

2.3.3 Submissions on other primary legislation

The submitter's group was critical of DOT's consideration of the TI Act. It was alleged that there was a failure by DOT to exercise responsible and independent judgement of what the Council proposes to do, having regard to the objectives in the TI Act. The group submitted that:

To the extent that its [DOT] position ultimately relies on base statements by Messrs Young and Turnbull and agrees with the proposition that sentences from Austroads publications can be relied on to justify this (or any) traffic treatment, it is acting with neither responsibility nor independence.

More importantly, it is also failing to have regard to the transport system objectives in the TIA ...

The Panel should view DOT's support for service roads in this location, then, as amounting to nothing more than a statement of in-principle support for service roads generally ...

The Council did not provide any specific analysis of how the Amendment responded to the objectives in the TI Act. In response to questions from the Panel during the hearing, the Council submitted that the TI Act, including the need for a triple bottom line assessment, was not relevant. The Council instead referred to its obligations under the LG Act, relating to the need for sound financial management.

2.3.4 Panel comment

The Panel disagrees with the Council's comment that the TI Act is not relevant here. Indeed, the Act is referred to in the Explanatory Report for the Amendment.

Section 25(2) of the TI Act provides that:

An interface body must have regard to the decision making principles in making decisions under any interface legislation which are likely to have a significant impact on the transport system.

It is a requirement of the TI Act therefore that a planning authority should take its decision making principles into account, in a case such as this Amendment, though the weight to be given to each of the principles is a matter of discretion¹¹.

Most relevantly, the Panel notes that the TI Act, in the same vein as does planning policy, provides that 'the transport system and land use should be aligned, complementary and supportive'; and it is policy that 'transport infrastructure and services are provided in a timely manner to support changing land use and associated transport demand'. The Panel has taken the principles in the TI Act into account, adopting a broader consideration of the costs and benefits of the project and value for money.

The Council, in response to concerns expressed at the Hearing about the cost of the project, referred to the provisions of the LG Act relating to responsible budgeting. It is not the role of this Panel to challenge a Council's decisions under that Act, but notes that 'value for money' is a matter to which the TI Act potentially directs attention.

¹¹ Section 27 of TI Act

The Panel notes that DOT acting as a submitter under the PE Act, as is the case here, is not acting under transport legislation as defined by the TI Act and therefore not obliged to consider the objectives of that Act or its decision making principles.¹² That the DOT submission did refer to that Act can be considered as appropriate assistance to the planning authority and it is at DOT's discretion as to the level of generality adopted in its submissions.

2.4 Other strategic and policy documents

2.4.1 Wyndham Integrated Transport Strategy

The WITS was heavily relied upon by the Council as a local policy providing strategic support for the service roads. The WITS is a Council adopted strategy document though it is not included in the planning scheme as either an incorporated document at clause 72.04 or as a background document at clause 72.08. The WITS is also not referenced in Council's current Council plan (2017 – 2021).

It has the following purpose:

The policy provides the overall vision of how we want the transport network in Wyndham to function in the future. The strategy outlines how we can achieve the overall vision and supports short, medium and long-term actions needed to get there.

It is expected that many of Wyndham's transport improvements will require support and/or funding commitment from all levels of Government, and potentially the private sector, in order to achieve the outcomes required in this important part of Melbourne.¹³

(i) Identification of roles and responsibilities

The WITS acknowledges that Council does not control key transport infrastructure and therefore advocacy and collaboration with other agencies is critical for roads outside of its control.

The WITS identifies the role of local government as:

Local government - Local Governments rely predominantly on rate revenue and are responsible for statutory planning functions and providing and maintaining transport infrastructure at the local level. This includes about 85 per cent of Victoria's road network and most bicycle and pedestrian paths. An important function for Local Government is to advocate local transport needs to other levels of Government and importantly, the private sector, for example, private bus and train operators – to help build business cases for enhanced service levels and assist in ushering these business cases through Government and ultimately deliver these enhanced services to the people of Wyndham.¹⁴

(ii) Decision making principles

The WITS states that the decision making principles in the TI Act are applicable:

The Transport Integration Act (TIA) 2010 is the main overarching State Government policy and legislative framework for transport decision making in Victoria. When Wyndham makes a decision that has a significant impact on the transport system; it must have regard to the objectives outlined in the TIA.¹⁵

¹² Section 24 of TI Act

¹³ page 6, WITS

¹⁴ page 36, WITS

¹⁵ page 11, WITS

(iii) Road upgrades and implementation

The WITS recognised that a holistic approach is needed to managing the congested road networks, with responsibility from different levels of government:

It is important to note that most of the currently congested roads in Wyndham are declared, arterial roads managed by VicRoads and therefore Wyndham will need to work with and advocate to State and Federal Governments for the funding required to upgrade these declared roads [being roads managed by VicRoads].

Building more road capacity alone is not a sustainable way to address traffic congestion nor does it represent the whole-of-system approach that is required to provide optimised and sustainable outcomes. A more holistic approach is needed.¹⁶

Program 11, as identified in the WITS, is the upgrade of the arterial road network:

As stated, it is important to note that most of the currently congested roads in Wyndham are managed by VicRoads and therefore Wyndham will need to work with and advocate to State and Commonwealth Governments for the funding required to upgrade these declared, arterial roads. Wyndham is partnering with VicRoads on road design, development and business cases. We will continue to strongly advocate for:

- Upgrading of roads, intersections and freeway interchanges that are suffering from heavy congestion, delaying bus services and have safety issues.
- Grade separating existing rail level crossings to increase safety and reduce congestion at these pinch points.
- The declaration of new arterial roads aligned with development growth.
- Building additional or duplicating existing rail grade separations and river bridges to accommodate transport growth.
- Prioritising road projects which benefit local job creation and economic growth.
- Improving access to/from Melbourne's CBD.

Figure 5 illustrates Wyndham City Council's current priority list for major road improvements; however, regular assessments are undertaken to maintain an up to date list.¹⁷

In relation to implementation of Program 11 the WITS identified the following actions and timelines¹⁸:

- A14: Collaborate directly with the State Government to increase funding towards declared roads in Wyndham, particularly Priority A roads identified in map (included in WITS).
 - Timeframe – 10 years+
- A15: Undertake yearly traffic volume counts on nominated roads across Wyndham to identify roads requiring upgrades or duplications.
 - Timeframe – up to 10 years.

(iv) Figure 5 - Road upgrade priorities and declared roads

Figure 5 in the WITS identifies:

- Future main roads – these are local infrastructure that would be Council responsibility. The map includes only the southern section (approximately 40 per

¹⁶ page 23, WITS

¹⁷ page 24, WITS

¹⁸ page 33, WITS

cent) of Tarneit Road in the Amendment area as a ‘future main road’. Most of the future main roads are identified in growth areas west of Tarneit Road such as the westerly extensions to Hogans and Sayers Roads.

- Priority A, B and C declared roads – Priority C declared roads are the lowest level priority declared roads - they would be a State government responsibility but where the Council may assist with building a business case. In the Amendment area, the section of Sayers Road between Derrimut and Morris Roads is shown as Priority C. No other parts of the roads in the Amendment area are shown as priority declared roads. Priority B applies to the part of Sayers Road east of Morris Road (outside the Amendment area) and Priority A roads outside the Amendment area include Leakes Road running east-west to the north of Sayers Road, and Derrimut Road north of its intersection with Sayers Road.

The WITS and the Wyndham Transport Policy were both adopted by the Council at its meeting on 27 June 2016. The Council report from that meeting indicates that further work on implementation and monitoring of the targets and actions in the WITS would commence at the end of 2016. The WITS itself refers to updating of priorities.

In response to a Panel direction, the Council indicated, in post-Hearing correspondence dated 11 March 2020, that no further implementation work has progressed to date. By way of response on priorities, however, the Council supplied a copy of its 2020-21 Victorian Pre-Budget Submission to the State government. This submission referred to Council’s road improvement priorities - which all lay outside the Amendment area except for a request to State government for duplication of Sayers Road between Derrimut Road and Palmers Road. The response also referred to Securing Wyndham's Future, Advocacy Strategy, 2020. It similarly mentions duplication of Sayers Road as a priority.

2.4.2 Wyndham 2040 Vision

This project collected information from groups in the community about their aspirations for Wyndham in the future. The outcome was endorsed by the Council on 22 February 2016. The 2040 vision recognised community concern about increasing congestion on the Wyndham road network and supported an efficient transport system into the future.

2.4.3 Wyndham City Plan 2017-2021

This plan was adopted by the Council on 27 June 2017. It refers to reducing commuter stress and improving public transport access.¹⁹ It also refers to creation of more appealing streetscapes.²⁰

2.4.4 Submissions on WITS and other strategic documents

The Council’s Part A submission referred to the Wyndham 2040 Vision and noted that the service roads proposal was an outcome of seeking to alleviate road congestion in the future as supported by the community.

Reference was also made in the Part A submission to the WITS as a strategy designed to respond in a timely fashion to the transport needs of the growth in more than 400,000

¹⁹ At paragraph 2.2.1

²⁰ At paragraph 2.2.2

residents by 2040. The Part A submission set out key policy statements in the WITS including the need for transport and land use integration; support for active transport, walking and cycling; support for safer and more integrated public transport; and improved road safety.

The Council's Part A submission included:

The policy statements in respect of the 'road network' and 'road safety' are at the centre of this Amendment. Council submits that the delivery of a service road in these locations will result in a safer and more efficient road system that meets the needs of the growing community. In addition to this, the service road will deliver on other outcomes sought, including in respect of encouraging a safer and more efficient road network for public transport, cyclists, pedestrians and freight.

Mr Montebello placed significant emphasis on the WITS in the Council submissions at the Hearing in justifying the proposed PAO.

The DOT did not make any specific submissions in relation to the WITS. In identifying relevant strategic considerations, the DOT referred to the Western Road upgrade project (which did not include specific funding for the upgrade of Sayers Road), the West Growth Corridor Plan (2012) and the Victorian Cycling Strategy. The submitters' group submitted that the Council's failure to have regard to its own adopted priorities in the WITS exemplified the lack of strategic rigour behind the Amendment.

2.4.5 Panel comment

The Panel accepts that there will be growing demands upon the surrounding road network (that is the regional transport network within which the Amendment area is situated) as a result of future development of the areas to the north and west of Hoppers Crossing, as illustrated by the AECOM modelling. This is further discussed in section 3.2.1.

However, a critical policy issue in terms of whether there is strategic support for the Amendment is how that demand will be distributed across the network and the subsequent prioritisation of any upgrades. The Panel considers that the heavy reliance by the Council on the WITS as providing strategic support for the Amendment in this respect is misplaced.

To begin, the WITS has no status in the planning scheme. Nor can it be viewed as a 'seriously entertained planning policy' as there is no plan to incorporate it in the planning scheme and the continual updating envisaged in 2016 does not appear to have been forthcoming.

Most significantly, the road upgrades proposed to be facilitated by the Amendment are not identified as a priority in Figure 5 of WITS. Only the southern part of Tarneit Road is identified as a future Council-managed main road and only the part of Sayers Road east of Derrimut Road is identified as a low-graded priority for a State main road improvement. Therefore, according to the WITS, that the majority of the roads in the Amendment area are:

- Not a current priority for local network upgrade (that is a Council responsibility)
- Not a current priority for declared road upgrade (a State responsibility).

The material supplied by the Council after the Hearing, in response to the Panel direction about roading priority updates, also does not support the upgrades of the Amendment area roads as proposed – rather the budget submission simply reinforces the duplication intents for Sayers Road east of Derrimut Road.

2.5 Other guidance documents

The Panel was provided with copies of other documents and guidance.

Austroads Guide to Traffic Management (Part 5 – Road Management)

The Austroads Guide to Traffic Management (Part 5 – Road Management) (Austroads – Part 5) was referred to during the hearing by various parties and expert witnesses.

Austroads – Part 5 is not incorporated into clause 72.04 of the planning scheme. Accordingly, while the Panel notes that road authorities rely on Austroads - Part 5 for the purpose of designing roads, this part of Austroads does not have a status in the planning system.

Notably there are other parts of the Austroads Guide (e.g. such as pavement standards) which are incorporated into the planning scheme.

2.6 Ministerial Directions and Practice Notes

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46). The Panel does not consider that these discussions add anything to the broad response to planning policy earlier set out.

2.7 Panel discussion and conclusion

While the broad strategic arguments put forward by the Council, in support of the creation of service roads in the Amendment area and the appropriateness of their design, require more detailed assessment as occurs in Chapter 3 of this Report, the Panel makes the following observations on strategic policy support for the Amendment.

In the main, the high level strategic policies referred to as supporting the need for the service roads were those which advocate forward planning to meet existing or future demand, and integrated land use and transport planning. These policies are generic statements of sound planning practice but the Panel considers that their translation into more detailed policy and municipal strategic work has been somewhat problematic.

The Council relied on two aspects of demand as providing strategic justification for the Amendment: one is the future increase in broad regional traffic demands arising from development to the north and west of the Amendment area; the second is increasing demand on these roads by abutting developments.

In terms of regional demand, as commented above, the Panel considers that the transport planning policy documents to which we were referred, including the WITS, are not directly supportive of improvements to these particular stretches of main road in the Amendment area. It is true that the additional growth of 400,000 people by 2040 will mean that there will be greater demand for transport infrastructure in the region, but the distribution of that demand is unclear and upgrade priorities are directed to other arterial roads. In particular, it is not clear how much demand will be directed to Sayers Road and Tarneit Road. In this respect, the Panel notes that the DOT submissions identified Leakes Road as its priority east-west link for upgrading.

In terms of the traffic generated by abutting properties, despite the reference in Council submissions to numbers of applications for multi-unit developments and community

developments along these roads, associated with the removal of covenants,²¹ the express character intent for the residential areas abutting the Amendment area remains for the retention of low intensity development. As outlined earlier in the chronology of strategic work and studies, the Council's has recently affirmed the Amendment area as an area for 'limited change'. The Council resolved in 2018 to seek authorisation for another planning scheme amendment to give effect to that outcome. The 2018 Housing Study refers,²² somewhat confusingly in light of the present Amendment, to the absence of service roads as a justification for the policy of low intensity which continues to be pursued. These low intensity residential intents are not consistent with the Council argument that increases in local access pressures on the roadways would conflict with the roadways' arterial function.

In response to a Panel enquiry as to whether the Council might have plans for more intensive housing policies or zoning in these areas, Mr Montebello referred in his closing to the future density intents as the 'elephant in the room'. It would seem that while the Council's formal position is clear and there is an endorsed policy for limited change, there appears to be some uncertainty concerning the future of these residential areas. In this respect, the Panel notes the substantial number of covenant removals, particularly along Tarneit Road in the GRZ1, associated with commercial and multi-dwelling developments in the last 10 to 15 years. The Panel also notes that these approvals have largely been granted by the Council.²³

The uncertainty about the future of these residential areas may also arise in so far as the current low density position adopted by the Council does not sit well with current State policy aspirations relating to residential intensification in areas with good service and infrastructure access in *Plan Melbourne*. Sayers Road is on the PPTN and both of these main roads are part of the local bicycle network. The Panel notes the considerable delay in State authorisation of the amendment giving effect to the 2018 Housing Study.

Thus, while both State planning policy and the TI Act objectives call for an integrated approach to land use and transport, in practical terms there appears to be a disconnect between these higher policy aspirations and the more specific strategic position in relation to housing within and close to the Amendment area.

The Panel further notes in this respect that the WITS, which identifies integrated transport as a priority and provides some finer detail in this respect, not only is not incorporated in the planning scheme but is not referenced in the more recent strategic work such as the 2018 Housing Strategy.

Moreover, the Panel notes the inconsistency of the Amendment with the policy at clause 22.04 of the planning scheme which suggests that the LDRZ land within the Amendment area should have a 'rural road treatment'. Contrary to this policy, though this Amendment, the Council is looking to direct significant funds to the introduction of a PAO in this location and create an urban standard of road.

²¹ Some 20 covenant removals are listed in Attachment 3 to Council Part B submission. All but five are in the GRZ1 and all but five are in Tarneit Road, most are single dwelling covenants

²² At page 40

²³ Attachment 3 to Council Part B submission

The result of the disconnect between higher level policy aspirations and the specific studies, is that there is no specific policy support for a road upgrade in the Amendment area in terms of planned response to demand. In some instances, there is direct conflict between the purpose of the Amendment and existing planning objectives for the subject land.

Accordingly, if strategic justification is to be found for the Amendment and the service roads, it must be found in a more detailed examination of the empirical evidence concerning the circumstances of this land, including the costs and benefits of a service road. As discussed in section 1.5 of this report, the Panel considers that a high bar applies to this Amendment, given the serious nature of a PAO.

3 Traffic demands and road safety

In this chapter the particular circumstances of the roads in question are examined to establish whether there is empirical support for the proposed service roads. This involves considering the forecast traffic volumes in more detail and road safety issues arising from multi-use of the roadways by private vehicular traffic, buses, cyclists and pedestrians. For the most part, the examination relies on the evidence given by the three transport engineers and the DOT submissions at the Hearing.

3.1 Existing road layout

3.1.1 Sayers Road (between Tarneit Road and Derrimut Road)

This section of Sayers Road is a Council-managed main road and is duplicated with a central median separating the lanes of traffic. The properties on the south side of the road currently have direct access to the road via single or double driveways. Residential subdivisions to the north (outside the Amendment area) are accessed by loop roads or service roads and do not have direct access to Sayers Road. There are turning lanes (left and right) at some of the more major intersections.

There is a dedicated bike lane on both sides of the road in this section. There is a bus route operating along this section of Sayers Road. Most bus stops do not have a dedicated pull-in bay.

3.1.2 Sayers Road (between Derrimut Road and Morris Road)

Sayers Road in this more easterly section is a VicRoads declared arterial road.

For most of its length, this section of Sayers Road is not duplicated, with one lane running in each direction. In some parts there is a painted median and dedicated turning lanes. This limits the opportunities for vehicles from properties in the Amendment area to exit their driveways in an easterly direction. There are other parts of this section of Sayers Road where vehicles from properties in the Amendment area can exit in an easterly direction, crossing both lanes as they do so.

On the northern side of Sayers Road (outside the Amendment area) there are service roads, preventing direct access onto Sayers Road.

The road is duplicated between Thomas Carr Drive and Morris Road, with the same configuration as for Sayers Road between Tarneit Road and Derrimut Road.

There is no bike lane along most of this section of Sayers Road, except for the small duplicated section between Thomas Carr Drive and Morris Road. There is a bus route operating in this section, with pull-in bays at bus stops.

3.1.3 Tarneit Road (between Hogans Road and Sayers Road)

This section of Tarneit Road is a Council-managed main road. It is duplicated with a centre median strip and turning lanes. The subject properties have direct access to the road via single or double driveways. On the western side (outside the Amendment area), there is a service

road between Caraleena Drive and Sayers Road. However, there is no service lane nor loop roads south of Caraleena Drive to Hogans Road.

There is a dedicated bike lane in the north- and south-bound carriageways. There is a bus route operating in this section of Tarneit Road. There are pull-in bays for some bus stops but not for all.

3.1.4 Surrounding network

To the west of the Amendment area, Sayers Road returns to a single lane in either direction. The road network resembles a residential road and there are no bike lanes in this section. There are loop roads and service roads to the north and south so properties do not have direct access onto Sayers Road. West of Davis Road, there are developing residential areas that form part of the Riverdale PSP area.

To the east of the Amendment area, Sayers Road comprises a single lane in each direction with dedicated turning lanes. Direct access is limited as there are service roads in place and the residential subdivisions are designed to have alternate vehicle access from roads other than Sayers Road. There is a footpath running along the southern side of Sayers Road.

To the north of the Amendment area, Tarneit Road returns to a single lane in either direction with dedicated turning lanes and median area. There are service roads and loop roads limiting direct property access.

To the south of the Amendment area, Tarneit Road is duplicated with service lanes and loop roads limiting direct property access.

3.1.5 Future arterial road management

Both the section of Sayers Road west of Derrimut Road and Tarneit Road are currently designated as major roads under the control of the Council. Sayers Road east of Derrimut Road is a designated arterial road under the control of VicRoads (or now DOT).

DOT advised that it has no plans to further upgrade either road in the next several years and was unable to advise when or if either or both roads would become DOT arterial roads or if they would instead remain as Council arterial roads.

This DOT advice accords with the low level priority shown for Sayers Road duplication east of Derrimut Road in the WITS Figure 5. However, as noted by Mr Turnbull and Mr Rasulo, the Victorian Planning Authority's West Growth Corridor Plan of 2012 assumes both Sayers and Tarneit Roads are future arterial roads, with Sayers Road continuing to be part of the Principal Public Transport Network.

DOT stated that the designation of an arterial road is nominally applied when traffic volumes reach 15000 vehicles per day (vpd). However, although the roads in the Amendment area already exceed that volume (see section 3.2.1), we were advised that there are many roads in the metropolitan area which exceed 15,000 vpd that are not designated as arterial under the control of DOT.

The DOT also advised²⁴ that it has not undertaken a corridor study of the requirements of Sayers Road as a key strategic link. However high level planning to date assumes a 4-lane divided road is required in the long term. It was further submitted that:

Furthermore, a future 6 lane cross section cannot be dismissed, depending on future modelling and prevailing conditions.²⁵

Both Sayers and Tarneit Roads are currently 70 kph designated roads, except for the section of Sayers Road east of Derrimut Road where a 60 kph limit applies. The Panel was advised that DOT is phasing out 70 kph roads in favour of either 60 kph or 80 kph.

In oral submissions, Mr Rasulo from DOT indicated that Sayers Road and Tarneit Road are likely to be 60 kph roads, regardless of any upgrades that may be made in the future. Mr Turnbull, who gave evidence for the Council, opined, however, that if they were upgraded to divided roads with a service road, then there is potential for the future speed limit to be 80 kph, thus increasing the through capacity of the roads.

Nevertheless, neither the DOT nor the experts were able to clearly nominate what future speed limits would be applied to these roads nor when the current 70 kph limit might be altered.

3.2 Traffic demand

3.2.1 Evidence and submissions

As earlier set out in section 2.2.3, the Council submitted that it anticipated increased traffic volumes on these sections of Sayers and Tarneit Roads will primarily result from the further development of new urban areas to the west and north of the Amendment area. These areas are the residential areas subject to new or proposed PSPs, plus additional development areas adjacent to the proposed Outer Metropolitan Transport Corridor (OMR).

The AECOM report of 2013, to which the Council experts referred, details the traffic modelling undertaken as input to the Wyndham North PSPs and Development Contributions Plans (DCPs). The modelling predicted the traffic volumes for 2021 and 2046 as shown in **Table 2**. The final column of Table 2 includes actual volumes for 2020 sourced from the DOT Open Data Portal which provides traffic volumes for freeways and arterial roads in Victoria.

Table 2 Predicted traffic flow by AECOM and current volumes in vpd

	Interim 2021 ²⁶	Ultimate 2046	2020 Actual ²⁷
Tarneit Road	42,300	30,500	19,950
Sayers Road	44,300	34,300	18,900

Source: Turnbull Traffic Engineering Evidence, February 2020 (Document 30)

The modelling assumed that the land to the west and north-west would be fully developed by 2046. It also assumed that Sayers Road would be duplicated and that other network changes would be implemented, including the completion of the OMR further to the west.

²⁴ Document 52. Letter from Department of Transport to Planning Panels Victoria dated 25 February 2020

²⁵ Ibid

²⁶ Document 30. DOT Traffic Volume Data Turnbull Traffic Engineering Evidence, February 2020, Pages 10, 11

²⁷ Ibid Page 7

As shown in Table 2, the AECOM report predicts that final traffic volumes will be reduced from an earlier peak in 2021 once construction of the OMR occurs. Mr Turnbull said that in his view²⁸ the modelled decrease in the ultimate traffic volume along Sayers Road is not realistic, as the parallel roads are shown in the modelling as at above capacity, and there is likely to be a balancing of volumes. However, the Panel was not provided with any indication of what the likely extent of the redistribution would be, and it can only be assumed that that volumes on Sayers Road post-construction of the OMR are expected by Mr Turnbull to be higher than modelled. Equally, Mr Turnbull said that he did not expect existing (2020) traffic volumes on Sayers Road and Tarneit Road to increase if the roads were not upgraded, referring to the effect of induced demand.

A factor raised as justification by the submitters' group for dismissing the accuracy of the traffic modelling was that the world is one of ever-changing vehicle safety standards and design, and public acceptance and use of alternative modes of transport. Examples given were: autonomous braking, automatic lane control, increased bicycle use, increased public transport, car-pooling, community transport, Uber, short term car hire, increased foot traffic, etc. It was submitters' contention that improvements in vehicle design and safety standards is making vehicular transport safer and therefore the need for traditional road safety infrastructure such as service roads is reducing. The submitters' group also contended that as public transport becomes more prevalent, the volume of traffic will decrease, thus further making current traffic modelling inaccurate.

This argument was dismissed by DOT and the expert witnesses for the Council who advised that the modelling approach used by AECOM is still the one used for all proposed road development in growth areas and gives the most accurate forecast of traffic volumes, despite these changing aspects of road usage. They also considered that while vehicle safety design standards are improving, it cannot be assumed that all vehicles will be replaced with higher safety standard vehicles in the foreseeable future.

The submitters' group, however, argued that the 'doubt' around traffic volumes (and lack of specific modelling to support a service road in this location) was a factor that undermined the justification for the Amendment. The group also raised concerns about the stated road safety improvements discussed below.

3.2.2 Panel discussion

The need for the service road is primarily driven by arguments relating to the predicted regional traffic volumes along the main roads and the desirability of separating access to individual properties from the increased through traffic movement.

While there may be some potential increase in the traffic generated from the immediate area due to increased development densities on the abutting properties, the vast majority of existing and projected future traffic along both Sayers and Tarneit Roads relates to external traffic passing through the area.

The Panel acknowledges that traffic modelling is a predictive tool that can be inaccurate and that actual traffic volumes will be impacted by changing technology and modes of transport. However, it is considered that until more definitive information becomes available about the

²⁸ Ibid Page 11

effect of the technological and modal changes on traffic predictions, it is appropriate to rely on modelling. For that reason, the Panel considers that the AECOM modelling provides an acceptable basis to identify predicted traffic volumes within the regional network.

The AECOM model makes a number of assumptions which have not been realised, including the pace of development and the completion of the OMR. Also, the current day (2020) volumes of 18,900 – 19,950 vpd are less than half of the modelled traffic volumes for 2021 shown above. This creates some doubt in relation to the accuracy of the modelling specifically for Sayers Road and Tarneit Road and therefore the potential need for the upgrade of the roads.

Accordingly, the Panel considers that while traffic volumes will inevitably increase within the regional network, the volume of traffic distributed to the subject roads and the timing of demand increases to those roads is less certain.

So far as increases in locally generated traffic are concerned, the Panel has noted the uncertainty around the planning of housing density along these roads and the mismatch between the Council's formally adopted position on this and what is eventuating here (as discussed in section 2.7). The Panel nevertheless considers that, even in the unlikely event that development densities did not increase on properties abutting these arterial roads and local access demands did not alter, given the increase in regional traffic volumes, separation of vehicles accessing properties and through traffic is appropriate, if for no other reason than facilitating arterial traffic flow.

3.3 Road design and safety

The Council advised that, if the PAO were applied to the Amendment land, it would purchase the land gradually and opportunistically from the affected properties. It would then utilise that land at some time in the future for a staged series of service roads which would assist in levelling the impact on the Council's infrastructure budget.

3.3.1 Evidence and submissions

(i) Rationale for service roads

In its submissions, the Council referred to the Ratio 2014 report, which was prepared to support Amendments C185 and C204. That report concluded that service roads, as already proposed by the Council at that time, were an appropriate road access management strategy for the redevelopment expected along the GRZ1 land on Tarneit Road (east side) and Sayers Road (south side).

Mr Young of Ratio gave expert evidence for the Council at the present Hearing. His evidence discussed the Austroads approach to network and road management which identifies that:

... roads meet two primary roles: one being to facilitate the movement of people and goods and the other being a place for people. Roads satisfy these needs to varying degrees, having a traffic carrying function as well as providing access to properties.

and later:

Arterial roads have few access points and high mobility while local streets have many access points and low mobility.

Mr Young noted that both Sayers and Tarneit Roads are nominated as having an arterial function, already carry through traffic volumes in excess of the designated volume for arterial roads, and have been predicted to carry significantly increased volumes in the future. He said that, as a result, the objective of the future development of these roads should be to better service the needs of through traffic, while better protecting the safety of the abutting properties. In his opinion this can best be achieved by the provision of a service road, which will reduce the interaction between residents and through traffic, while improving residential amenity by reducing the speed and volumes of traffic in front of the properties.

Mr Young noted that the DOT road access management policies align with the Austroads approach in that DOT also identifies the provision of a one-way service road connected to the through lanes as the most appropriate in this case.

(ii) Implementation issues

The submitters' group and individual written submissions presented a series of arguments against the construction of the service roads. The arguments presented from a design and safety perspective, together with a summarised response by both the Council and DOT, are presented in **Table 3** below:

Table 3 Summary of objecting submissions and responses on design and road safety

Submitters' group issues in relation to the service road	DOT and the Council response
Likely to be used as a 'rat run'	Service roads are not usually used as rat runs and if it occurs there are a variety of measures that can be put in place to stop it, including speed humps, and raised pavement.
Impact on residents during construction	Without the service road, construction disamenities would occur when the main road is duplicated. If the service road is constructed before duplication, then the impact from duplication will be reduced for both residents and through traffic.
Access for large vehicles turning into the properties from the proposed 5.5 metre wide service road	If necessary, wider property crossovers can be constructed to allow a wider turning circle. The amount of through traffic on the service roads will be much less than on the through lanes allowing the driver to enter the property more slowly. The lanes on the main road are typically 3.5 metres wide, so large vehicles are currently required to use the opposite side of the road or the adjacent lane to turn. This is a current safety issue which would be removed.
Pedestrian safety when crossing the service road to the median strip at the intersections	The traffic volumes on the service road would be very low and with a 50 kph limit. If there is a pedestrian safety issue, there are a variety of traffic controls which can be used, including speed humps, indented islands and pedestrian lights and crossings.
Concentrating entry and exit from properties to service road openings does not reduce the number of vehicles and therefore the number of potential	The difference in exit speeds from and entry speeds to a service road compared to a property entrance is significant, with consequential safety improvements. There would be a reduced number of entries to and exits from the through lanes, and they would be close to intersections, where traffic flow and speed is better controlled.

conflicts. Consequently, there is no safety improvement	
Current right in and right out turns between some submitters' properties and the through lanes would be eliminated by the inner and outer medians and they would be required to travel some considerable distance to undertake a U-turn.	Right turns would be eliminated by the new central median of Sayers Road east at time of duplication irrespective of the construction of the service roads. Right-in and right-out turns would in any case become increasingly dangerous as traffic volumes increase and would have a detrimental impact on traffic flow.

(iii) Road safety issues

The issue of whether there are safety issues already associated with the use of these sections of roadway sufficient to justify the provision of service roads or would be in future was an issue in dispute at the Hearing.

While Mr Maina accepted that road safety is improved by a service road in principle, he gave expert evidence for the submitters' group, that there was neither an existing safety problem nor would be one that justified the introduction of service roads in these locations.

Relying on a current paucity of accident records, Mr Maina said that as there is no evidence of actual safety problems along these roads at present, there is no need for a service road. Mr Maina presented alternative road treatment measures, which he considered would deliver equivalent safety benefits. He also noted that Heaths Road, which has similar traffic levels to those predicted for the subject roads, has two through lanes in each direction, and no service road, and operates efficiently with no noticeable safety issues.

Mr Maina further noted that Tarneit Road is likely to be reduced from 70 kph to 60 kph when upgraded. This, he said, would further assist in reducing the likelihood and severity of accidents.

The Council and the DOT submitted that service roads are widely recognised as improving safety and amenity along arterial roads, and just because there had been no serious accidents along the Amendment roads is not an argument for not proceeding with the construction of the service roads. The modelling predicts an increasing volume of through traffic which will likely increase hazards for residents, cyclists and traffic. In the Council's opinion, if it is reasonably practicable to provide the preferred cross section, then, in the interest of both road safety and traffic flow, it should be adopted.

So far as the comparison with Heaths Road is concerned, Mr Turnbull noted that the Heaths Road speed limit is restricted by the lack of a service road and the availability of direct access. Mr Turnbull also advised that, due to the higher density of development situated at the front of the lots along Heaths Road, the cost of purchase of land to develop service roads would be much more significant.

The Panel was taken by DOT and Council witnesses to various VicRoads and Austroads documents²⁹ in support of restricting direct access onto arterial roads and in support of the use of service roads.

The Council and DOT submitted that the safety benefits of the proposed service roads would include:

- Safety of people entering/leaving abutting houses as the traffic is travelling slowly.
- Safety of people using the footpaths as they are away from the higher volume and higher speed traffic.
- Slower speeds and greatly reduced traffic volumes adjacent to house entries allows large vehicles to turn in and out more slowly.
- Improved bicycle safety due to a reduced number of conflict points.
- Bikes are able to be accommodated in a dedicated bike path and not on the main road.
- Improved speed and reduced disruption (side friction) to through traffic flow.
- Through traffic has a consistent driving experience with adjacent sections of road.

With respect to the latter two points, Mr Montebello for the Council made oral submissions during his closing that the service roads were required in order to create a coherent and consistent road network. He referred to aerial photographs to show how the existing road design is inconsistent with that of contiguous sections of the roads where direct access is not available from abutting properties. It was said that this inconsistency potentially impacted on safety and the driving experience of the road.

The DOT did not make any particular submissions in relation to the issue of continuity of the design, except that it submitted that eventually it assumed that the road would be widened.

(iv) Cross section and extent of PAO

The Council's position was that, in order to allow for the construction of two lanes each way in the main carriageways plus the service road, a road corridor width of 52 metres would be required in Sayers Road and a 48 metre wide corridor in Tarneit Road.

Typical cross sections were provided by the Council which showed the concept design at various locations along the length of the roads.³⁰ The designs generally included kerbside parking in the service roads, and 6-10 metre wide outer medians separating the service roads from the through lanes. The variation in the width of the outer medians was partly due to the accommodation of off-road cycle lanes,³¹ partly to minimise the need to relocate the various existing services and to allow for the incorporation of increased vegetation in the medians. The cross sections also show the bus stops in the main carriageways, as is the arrangement at present, so that right of way for buses entering the through traffic stream is retained.

Mr Maina and many of the persons making written submissions queried what they considered to be the excessive width of the medians used in the Council cross sections given this is an established area, rather than a greenfield growth area. Mr Maina said that the typical cross

²⁹ Documents 44, 43, and 53 Tab 3 Austroads Guide to Traffic Management Part 5, Road Management 2.1.4; and Tab 8A Austroads Framework for Arterial Road Access Management 2.2

³⁰ Document 17 Service Road Concepts - Tarneit Road and Sayers Road. Concept cross sections and layout plans

³¹ Sayers Road is designated as a Strategic Cycling Corridor

section for an arterial road with a service road as presented by the Council (which drew upon VicRoads' designs³²) is fine in principle for greenfield development areas, but elsewhere, as here, it is necessary to consider the particular circumstances of the road in determining an appropriate design. He said that, in this location, due to the partial development of the abutting land, and the characteristics of the existing and proposed road network, the cost balance of the proposed service road option is not right.

In Mr Maina's opinion, an acceptable outcome could be achieved by instead undertaking minor adjustments to the existing roads, including by providing good lighting and widened driveway entries, and creating a widened bike lane to double as a slip lane into the driveways.

The Council experts and the DOT all considered that the provision of a widened on-road bike lane to be used as a deceleration lane for vehicles turning into abutting properties as proposed by Mr Maina would be unsafe and inconsistent with best practice design standards and Safe System Principles.³³

The Council noted also that Mr Maina did not consider the impact of the service roads on the traffic efficiency for through traffic in his proposal for minimal alterations to the current cross section.

In order to assist the Panel's consideration of the submitters' argument that the reservation width proposed by the Council was excessive, the Panel prepared a reworking of a typical Council cross section plan by 'cutting and pasting'.³⁴ This was achieved by reducing the width of the medians while maintaining the width of the service road and through lanes. This was referred to at the Hearing as the 'Panel Cross Section'.

The parties to the Hearing were invited to comment on the Panel Cross Section. The Panel Cross Section was not supported by any party to the Hearing.

While the DOT response³⁵ extended to amenity and urban design considerations, the following is a summary of the traffic and road safety grounds upon which the alternative cross section was rejected by DOT, and the Council cross section preferred:

- The reduced cross section results in significant traffic flow issues in relation to intersection designs, truncation of the service road and the integration of the road lanes back to the 'normal' cross section at both ends of the affected area.
- With a 52 metre corridor width, there is potential to convert the four lane Secondary Arterial road to a six lane Primary Arterial road in the event that traffic volumes increase more than currently predicted, but this potential is not available with a 40 metre cross section.
- On-road bicycle lanes are not in accordance with best practice and Safe System Principles of separating cyclists from vehicular and pedestrian traffic. The Council's typical cross sections also include on-road cycle lanes, but the proposed medians allow the provision of off-road bicycle lanes.
- Sayers Road is planned as a Strategic Cycling Corridor subject to a pending Ministerial direction. As a result, there is even greater impetus for the bicycle

³² Guidance for Planning Road Networks in Growth Areas. November 2015. VicRoads

³³ Safe System Assessment Guidelines July 2018. VicRoads. These were developed by Austroads and adopted by VicRoads

³⁴ Document 37

³⁵ Document 52

lanes to be off-road, which would require additional corridor width than would be available in the 'Panel Cross Section'.

- The service road could be constructed in stages prior to the duplication of the main road. This would provide greater flexibility during main road construction allowing minimal disruption to the road network.
- The narrower medians affect the ability of vehicles to execute U-turns. The objectors to the duplication and service road raised this as an ongoing requirement for residents.
- The narrower (3.25 metre) lanes proposed by the Council on the southbound lanes and adopted in the Panel Cross Section are less than the DOT standard width.
- The proposed outer median to the service road in the cross section exhibited with the Amendment encompasses all the existing services and would therefore minimise the need for their relocation, though there may be some services which will require relocation or duplication to service the adjacent and other properties.

The review of the 'Panel Cross Section' by the Council³⁶ contended:

- The cross section would not be possible in several locations due to the relative location of the existing lanes at the abutting sections and locations of existing carriageways.
- It is likely that more utility services and infrastructure would be required to be relocated thus considerably increasing the cost.
- There would be reduced space for future utility infrastructure installation in the proposed medians.
- The reduced medians would require protective guard rails/barriers which are less preferred to removing a hazard.
- The cost of construction would be greatly increased due to the requirement to construct under live traffic conditions.
- Closures and longer duration of impact on through traffic would occur due to the extended time required for construction.
- There would be an inability to stage the works over multiple years and creation of significant redundant works.
- Opportunities to create a landscaped boulevard along the arterial road, as preferred by DOT, would be reduced.

With respect to the issue of accommodation of services, the Panel was advised by Mr Johnson from CWW that, although the existing major water main is proposed to be situated under the outer median to the service roads, it may be necessary to relocate it or construct an additional water main adjacent to the proposed property boundaries in order to avoid a number of potential issues associated with providing property service connections across the service road.³⁷ He further advised that similar issues may arise with other service providers.

DOT acknowledged the desirability of reducing the extent of the PAO but stated:

Unfortunately, there are too many drawbacks in terms of geometrical considerations. Importantly in the context of uncertainty with the absence of a corridor study for either Sayers Road, or Tarneit Road for that matter, the constraints imposed by such a

³⁶ Document 55. Reply for the Planning Authority, 28 February 2020

³⁷ Document 36. Email from Greg Johnson to Diana Rice dated 4 February 2020

cross section on potential future infrastructure and impact on utility services (by narrowing the existing road side) is too high a risk for DOT to accept.³⁸

DOT was supportive of the provision of the 12 metre wide PAO for the construction of a service road:

Overall, there seems to be sufficient strategic and engineering basis to justify a service road for both Sayers Road and Tarneit Road, to ensure consistency of access; safety for road users; and compliance with access management policies.³⁹

and

Therefore, based on the aforementioned discussion and the fact that a 12.0 m service road is a VPA adopted standard, this is considered an adequate width for the PAO land take.⁴⁰

(v) Process for iterative review of service road design

At the Hearing, the Council's witnesses and DOT suggested potential solutions to several specific concerns raised in the written submissions about the future design of the service roads.

An overriding concern of the submitters, however, was that there would be no clear opportunity for neighbouring landowners to have input into the iterative design process that the Council noted would occur. The construction of the service road is likely to be several years in the future and undertaken in stages.

The Panel records the potential solutions to some of the particular concerns here and recommends that the Council commit to considering these matters when/if the detailed design and construction of the service roads proceed:

- Individual landowners be contacted to establish whether widened cross overs are required in order to allow the entry of large vehicles.
- Locate entries to the service roads from the through lanes opposite central median breaks to allow turning.
- Provide pedestrian crossings on service roads near schools and bus stops.
- Provide pram crossings at appropriate locations.
- Site a wider footpath near housing on the south side of Sayers Road where there is direct access to it.

3.3.2 Panel discussion

The submissions and evidence in relation to road design and safety were not presented to the Panel as separate issues as set out above but rather were treated in a more assimilated fashion. In the interests of clarity, we have endeavoured to address the issues separately though there is some consequent repetition.

(i) Safety of road users

In relation to road safety objectives, the Panel accepts that there may well be no significant existing road safety problems along these stretches of road given the low volume of recorded accidents, but considers it is prudent to plan now for future increases in traffic volume and to

³⁸ Document 52. Letter from Department of Transport to Planning Panels Victoria, 25 February 2020

³⁹ Document 39 Page 16. Submission to Planning Panels Victoria by DOT, February 2020

⁴⁰ Ibid Page 14

adopt a future development strategy to provide what is considered the most efficient and safe cross section for an arterial road.

The Panel considers that the forecast regional traffic volumes in the network, which will flow on to the subject arterial roads in some measure, as discussed in section 3.2, suggest that it will be beneficial from a safety perspective to separate through traffic from slow moving vehicles accessing individual land holdings.

In this respect the Panel notes that while Mr Maina argued that lesser speeds on the through lanes, as might be brought about by a speed limit drop from the existing 70 kph to 60 kph, would likely reduce traffic hazard, he did not address the same benefit in relation to the difference in speed between the through lanes (60 kph) and the service roads (50 kph). The Panel considers that the same benefits must flow.

The separation of through and local traffic would also have benefits in terms of moving arterial traffic efficiently (potentially allowing increased speed limits) and would offer improved residential amenity.

With respect to the submitters' argument that there would be no safety benefit of constructing service roads, as the number of vehicles leaving and entering the through lanes would remain the same as if properties were directly accessed, the Panel disagrees. The Panel instead agrees with the DOT and the Council view on this matter as set out in Table 3. In particular, the Panel considers that siting of the exits from service roads near existing intersections would be beneficial from a safety perspective given speeds on the through lanes are generally already low at these locations. The Panel also considers there would be safety benefits arising from turning movements associated with accessing properties occurring in the low speed environment of the service roads.

The Panel also agrees with the DOT and Council submissions and evidence concerning the resolution of the other safety problems potentially arising from service roads as set out in Table 3. In particular the Panel considers that rat running, which was a concern of many local residents, can be avoided by appropriate traffic management devices.

Importantly, the Panel further considers that the provision of service roads would enhance safety for other road users such as cyclists and pedestrians by distancing them from the higher speed through traffic lanes.

The Panel considers that a further key safety factor supporting the provision of service roads as proposed, is the matter of continuity of the driving experience along these arterial roadways. With respect to this matter, the Panel agrees with the submissions by the Council and DOT that a benefit of the service roads would be that 'through traffic has a consistent driving experience with adjacent sections of road'. The contiguous sections of these arterial roads (and indeed the opposite sides of these roads in the same sections) adopt designs which exclude direct access to properties. In some cases, there are service roads, such as are proposed here, but, in others, loop roads have been designed as part of abutting residential subdivisions.

The Panel considers that having a consistent treatment along the arterial roads in terms of precluding direct property access to be a key benefit of the project. Beneficially for the wider community, the PAO would allow the future development of arterial roads which have a traffic regime consistent with that of adjacent sections, improved traffic flow and improved safety.

The extent of the road cross section would also provide flexibility in the future for re-prioritisation of road upgrades as suggested by DOT.

(ii) Cross section and extent of PAO

In terms of the design of the service roads, the Panel considers that the alternative narrower cross section drawn up by the Panel itself, and the incorporation of only minor bike lane adjustments to the existing road cross section as proposed by Mr Maina, are both problematic in terms of safety, urban design and the accommodation of services and cycling facilities as set out by the Council experts and DOT. Neither do they possess the same range of traffic efficiency benefits. We note that Mr Maina acknowledged the suitability of service roads in greenfield developments and it was primarily the cost of the wider service road and its impact on the landowners, together with the absence of any compelling existing safety issue that had led him to suggest an alternative design approach. He did not identify any technical arguments against the use of service roads in this location.

3.4 Conclusions on traffic demands, and road safety and design

The Panel concludes:

- There will be an increase in regional traffic volumes, albeit not necessarily in the same time frame as had been suggested in the AECOM modelling.
- The distribution of future traffic volumes across the regional network, and consequential prioritisation of road upgrades is uncertain, and while the subject roads are expected to receive some of the increased regional traffic, the amount is also uncertain.
- The extent of the increase in locally generated traffic arising from higher density development on affected lots is even more indeterminate given inconsistency in the policy approach to development intensity along these roadways.
- Even if development densities did not increase on properties abutting these roads and local access demands did not alter, however, the separation of through traffic and vehicles accessing properties is appropriate at least from an efficiency perspective and would also have safety benefits.
- A consistent treatment in terms of precluding direct property access to through lanes along these and adjoining sections of the arterial roads would be a benefit of the construction of the service roads.

4 Direct impacts for affected landowners

In the previous chapters of this report we have set out the strategic policy context for the decision at a broad and more local level, and the empirical evidence relating to traffic demand and safety, both topics being the main focus of the Panel Hearing. The Panel has concluded that regional traffic demands and safety issues are supportive of the proposed service road proposal.

There were, however, a considerable number of disbenefits and costs for the affected landowners said to be associated with the application of the PAO and development of service roads as proposed. The submitters' group argued that these should be viewed as outweighing any benefits.

In this chapter we outline the nature and extent of those costs and disbenefits and provide a commentary on them.

4.1 Evidence and submissions

The written submissions lodged in response to the exhibition of the Amendment set out various impacts of the PAO and service roads on individual landowners. At the Hearing, some of these issues were also addressed by Mr Forrester for the submitters' group and the Council submissions replied on these matters by general topic area. The key issues can be summarised as follows.

4.1.1 Impost of needing planning permits, uncertainty

The application of the PAO would see some developments on the front 12 metres of the affected properties requiring planning permission for the first time, thus causing uncertainty for owners about development of their properties. Approvals would be required amongst other things for common domestic works such as swimming pools, garages, and landscaping.

The uncertainty of when land would be acquired by the Council and whether to improve the property in the meantime was a related matter of concern to submitters.

The Council acknowledged these imposts but described them as minor inconveniences. The Council argued that that these would be the only costs to be considered/weighed against the benefits of the project.

4.1.2 Reduced development potential

Some submitters were concerned that the reduction in lot size brought about by the acquisition of the land at the frontage would reduce the development potential of their property.

The Council submitted that, rather, the presence of a service road would assist in supporting a case for allowing increased development on the lots. If the land were proposed to be rezoned to allow more intensive development or a permit was sought for a more intensive development, the presence of a service road would improve the safety of entry and egress for the increased number of vehicles.

4.1.3 Impacts on car parking

The loss of onsite parking was raised by a number of objectors, particularly the operators of childcare and medical centres. There were concerns that permit requirements in terms of required on-site parking supply would not be met and there would be real parking shortages.

The Council supplied material indicated that the properties where car parking would be impacted are some 11 properties between 405 and 751 Sayers Road. Principally the reductions in parking numbers are in commercial use car parks such as a reception centre and restaurant, shop, vet clinic (permit only), place of worship, nursery, health clinic, medical centre and childcare centres. The material indicates that two recent permits have included a 12 metre setback to parking spaces, though, at least in one case, there may instead be a reduced landscaped front setback if the service road were to proceed. The Council said that in some cases, there is or may be space for additional parking to the rear of the sites. It is possible, however, that there would be a reduction of around 70 or more on-site spaces even after relocation of spaces to other parts of the sites.⁴¹

Mr Turnbull's report⁴² reviewed this matter and found that in the majority of cases the provision of service road on-road parking and re-alignment of on-site parking would meet or exceed the current parking space availability.

4.1.4 Impacts on septic tanks

Some submissions raised concern about the impact of the loss of their land to the service road on existing arrangements for effluent disposal for their property. Many affected lots are currently serviced by septic tanks. A minimum lot size applies for septic disposal (4000 square metres) and if the land in the PAO was acquired, some lots would be left with less than the required area and would then potentially have to be connected to sewer. In other cases, the septic system is located in the front setback and would be directly impacted. The Panel was advised by the Council that seven lots have the septic tank situated in the PAO area.

CWW advised that it is feasible to connect the properties to sewer but noted that the cost of sewerage the properties would not be borne by CWW. The Council acknowledged that any costs associated with required connection to sewer would be borne by the Council as part of the construction of the service road.

4.1.5 Impacts during construction of the service road

Written submissions questioned how construction impacts would be managed during the delivery of the service road. Confirmation was requested on the hours of construction work and how services and access would be maintained during construction.

The Council response on this issue was that this Amendment phase of the development of the service roads simply applies the PAO and the future detailed design and construction of the service roads will be dealt with separately. Issues such as construction concerns are more appropriately addressed at that time.

⁴¹ Calculated from Attachment 2 to Council Part B submission

⁴² Document 30 pages 21-48

4.1.6 Impacts on residential amenity

Submitters raised concerns that the service road would adversely affect the amenity of their property, due to the reduced setback / distance from their houses to a road. The Council material noted that in a few cases, existing buildings would be situated within six metres of the boundary of the proposed PAO. Owners of affected dwellings expressed concern about loss of established front gardens, gates, fences, and driveways; increased traffic noise; and a loss of privacy. It was generally said that their enjoyment of their property would be adversely impacted. Impacts on locally significant trees within properties on Sayers Road was another issue raised.

The Council disagreed with the assertions of adverse amenity impact. It submitted that the introduction of a service road would in fact provide amenity and urban design benefits. The Council submitted that in the majority of cases the proposed service roads would improve the amenity of dwellings along the PAO corridor by providing access to a local street environment, rather than a high volume arterial road and improve visual outlook due to the increased landscaping in the outer median.

The DOT concurred with these submissions, noting that the cross sections were designed to allow tree planting and landscaping within the median.

4.1 Panel discussion

Panel views on the disbenefits and costs are as follows.

4.1.1 Impost of needing planning permits

It is true that the application of the PAO would introduce a new requirement for planning permission on the affected properties. Specifically, uses which are currently section 1 (or as of right in terms of planning approvals) would require planning permission. Buildings and works on the affected PAO land would also require planning approval including some domestic works, such as driveways, now ordinarily subject to permit exemptions under the scheme. The Panel does note, however, in the case of the land facing Sayers Road east of Derrimut Road, planning permission is already triggered for new or altered access to the Road Zone 1.

A consideration which would apply to the permit applications for new uses and buildings and works would be:

The effect of the proposed use or development on the purpose for which the land is to be acquired as specified in the schedule to this overlay.

Also, a permit granted under clause 45.01-1 may be conditional on particular matters including:

- No compensation being payable for the demolition or removal of any buildings or works constructed under the permit.

Applications for planning permission would require payment of fees to the Council.

The Panel agrees with the submitters that a new regime of development uncertainty would be introduced by the application of the PAO in the circumstances that the timing of acquisition of their land would be uncertain, and there would a financial impost introduced - being planning application fees associated with minor domestic works previously permit exempt.

The Panel notes that this issue was also addressed by the 2016 Advisory Committee considering whether the reservation for the Punt Road widening should be removed⁴³. That Committee thought that improvement by VicRoads was required in dealing with the issue of uncertainty for affected landowners, but this was in circumstances where the reservation had been in place for in excess of 60 years. The Panel does not consider that the same level of uncertainty around road development is present in this case and the Council has indicated a time frame of 10 years to completion of the road upgrade.

The Panel does not consider these changes to the planning regime for affected property owners to be excessively onerous.

4.1.2 Reduced development potential

The Panel agrees with the Council submissions on this matter. The loss of land from these substantial lots would not be significant and a service road abuttal would be a positive factor in terms of potential for more intensive use of the lots along these roads.

4.1.3 Impacts on car parking and utility systems

The Panel again agrees with the Council submissions that these matters would not preclude the development of service roads.

The Panel is satisfied by the CWW advice that sewerage connections can be made at reasonable cost to the Council for those properties no longer able to rely on a septic system.

The Panel also notes the advice by CWW concerning the possible requirement for a costly relocation of a water main. However, the Panel would comment that in standard residential streets property service connections are carried across the road for half of the houses, as a water main is typically only constructed on one side of each road. Clearly there needs to be and is the opportunity for more detailed analysis and consideration of the most appropriate method of 're-servicing' the properties as part of the detailed design phase. The Panel also notes that the preferred separation distances between services is regularly not able to be achieved in already developed areas.

The Panel also considers that the service roads will provide additional on-street parking which is currently not available to the affected properties. This will assist in offsetting losses on-site. Further, as lots are very large compared to standard residential lots, residential on-site parking should generally not be an issue.

4.1.4 Impacts on residential amenity

The Panel considers that the submitters' fears of adverse amenity impacts arising from land acquisition and service road construction are ill-founded. The Panel instead considers that there would be real amenity and urban design benefits for the housing and other uses along these arterial roads being separated from the through lanes of traffic by wide planted medians and fronting a local street environment created by a service road.

The creation of a service road would provide safe on-street parking not now available in a local street environment with low traffic speeds.

⁴³ Punt Road Public Acquisition Overlay Advisory Committee (AC) [2016] PPV 61 (30 May 2016)

The Panel considers that the service road would also offer more pleasant and safer pedestrian and bicycling experiences away from the through traffic. It would also result in improved residential amenity due to reduced noise (being more distant from the high speed traffic), and an improved frontage outlook to a landscaped median.

Also as noted earlier, the service roads are proposed to be constructed in stages over a number of years. This would assist in reducing impacts on the residents as the through lanes would continue to operate while the service road is being constructed.

4.2 Conclusions and recommendations

In relation to these alleged disbenefits or costs to directly affected landowners, the Panel concludes that they are largely not significant. There would be changes which would have to be made to individuals' properties along these roads if the PAO proceeded and the service roads were constructed, but the financial responsibility for the changes would lie with the Council. The Panel considers that rather than a disbenefit to development potential and residential amenity, the service roads would be beneficial in these terms.

5 Balancing costs and benefits

5.1 The context

As stated in section 1.5 of this Report, the Panel is directed to undertake an assessment of this Amendment in the integrated manner recommended by clause 71.02-3 of the planning scheme. It provides so far as is relevant here:

Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

This description of the assessment task envisages that:

- There will be conflicting policies and objectives to be balanced in making a decision on an amendment.
- The interests of the community - however community is defined - are to be considered rather than only those of individuals.
- The interests of future communities as well those of the present community need to be considered.
- Sustainable development options are to be preferred.

In Chapter 2 of this Report, the Panel has also indicated that it considers that it and the Council are required to assess the service roads as a transport project in the manner recommended by the TI Act. The Panel specifically considers that the following decision making principle of the TI Act is pertinent:

Principle of triple bottom line assessment

The principle of triple bottom-line assessment means an assessment of all the economic, social and environmental costs and benefits taking into account externalities and value for money.

The Panel also said in section 1.5 that it generally agreed with the Panel considering application of a PAO under Mildura Planning Scheme Amendment C56 about the significance of the Panel task in dealing with proposed PAOs. Given the potential for compulsory acquisition of an individual's property if a PAO is applied, there should generally be a high level of strategic or other justification for the amendment and a significant public benefit must be demonstrated.

The Panel nevertheless observes here that the required level of justification will vary according to whether part or whole properties are being acquired; if it is part, what proportion it represents; the level of development on the land to be acquired; and whether the proposal is for a road linkage or widening which, as the Mildura Panel noted, arguably requires less rigorous justification given it is in the nature of roads to go from one point to another and there may be little scope for relocating the road elsewhere. In the present case, the land acquisition represents a small proportion of each lot and the frontage area proposed to be acquired is generally not developed with buildings.

The task of the Panel is nevertheless unquestionably a serious one.

5.2 The arguments to be weighed

The Panel has found the consideration of whether or not this Amendment should proceed a difficult task.

As discussed in Chapter 2, in terms of strategic policy justification, the case in favour of the Amendment and service roads is underwhelming and somewhat confused. While there is broad policy support for forward planning of infrastructure to meet demand, integration of land use and transport planning, and safe road design, more localised strategic policies interpreting or implementing these broader policies present inconsistent messages. The upgrading of these roads is certainly not specifically supported by the WITS, nor by DOT priorities, nor by formally adopted policies concerning retaining a low intensity of development along these roads. The formal Council position⁴⁴ for retention of low density housing along these roads also does not sit well with the current Council practice of approving increasing numbers of covenant removals and multi-unit approvals in the same area. The future for these housing areas appears to be in a state of flux.

As discussed in Chapter 3, service road upgrades for these roads are also not clearly supported by forecast traffic volumes for these particular roads.

There is nevertheless support to be found for service roads in the safety and efficiency benefits of separating local traffic from the increasing volumes of regional traffic on these arterial roads; having property access arrangements in these sections of Sayers and Tarneit Roads treated in the same manner as contiguous sections of the same road; and the amenity and safety benefits of development of a local road environment adjacent to the housing separated from the arterial through lanes.

As discussed in Chapter 4, so far as other types of adverse impacts upon the landowners in the PAO area are concerned, which might outweigh the benefits of the service roads, the Panel does not consider any of these to be especially unreasonable. They do not either singly or collectively outweigh the benefits which have been identified (albeit the benefits perhaps do not offer an overwhelming case for the road upgrade).

A major cost which also must be weighed against the benefits of the development of the service roads, is the huge financial outlay for the Council. The TI Act directs attention to the issue of value for money and prioritisation of resources.

5.3 Financial costs and impacts

There was no argument that there will be very significant Council costs associated with the acquisition of land and construction of service roads as proposed by the Amendment.

The costs will include those associated with the Amendment itself, technical advice, land acquisition and compensation, legal costs, and final design and construction costs. The Council confirmed that, despite the source of the demand for the service road being increased regional traffic, it, rather than DOT, would be funding both the costs of the compulsory acquisition of the land and the service road works. The Council also indicated that it would be responsible for the costs of relocating services both within the road reservation and on

⁴⁴ As per Amendment C161 which Council agreed to progress to authorisation.

individual properties. The Council did not suggest that a DCP would be used to recoup some of the costs, although this was a mechanism forming part of the earlier Amendment C204.

As an example of the latter costs, in accordance with a Panel Direction, the Council provided information on 9 December 2019 that the septic systems of seven properties will be directly impacted by the construction of the service roads. These properties may have to be connected to sewer with CWW indicating that this could be done.

Also with respect to relocation of services, the Panel was advised at the Hearing by Mr Johnson from CWW that, although the existing major water main is proposed to be situated under the outer median to the service roads, it may be necessary to relocate it or construct an additional water main adjacent to the proposed property boundaries in order to avoid a number of potential issues associated with providing property service connections across the service road.⁴⁵ He further advised that similar issues may arise with other service providers.

The Council advised that they have not yet prepared an estimate of the cost of service relocation. This would be undertaken at the detailed design stage once the precise location of medians and other road treatments had been finalised.

Concerning the required financial outlay, the submitters' group firstly argued that the information concerning financial outlay by the Council was scant and difficult or impossible to weigh in assessing net community benefit. It was submitted that the only hard information provided was with respect to the land acquisition costs – said by the Council to be in the order of \$50 million. By way of contrast, the construction costs, including service relocation, were not fully understood. In this respect, the submitters' group said that the service road design was not sufficiently detailed to allow proper costing. It was suggested that while the Council might have formed the view that the preliminary design for the service roads could accommodate the existing utility services in the wide outer median, and they would not have to be moved as part of the construction works, that view did not accord with the opinion of Powercor and CWW (as discussed above). It was also submitted that the Council would not likely have considered the cost of relocating gas mains nor NBN optical fibre. It was argued that the costs of relocating basic services for such a length would be huge and may result in changed demand for service road widths.

The submitters' group went on to say that the enormous acquisition cost, together with cost of moving services and road construction, appeared beyond the capacity of the Council's capital works budget. It was noted that the Council's 2019-20 annual road budget is \$20.5 million from an overall operating budget of \$360 million. It was said that this roads budget would presumably have to be applied to all locally managed roads in the municipality (excluding DCP projects) and be required to be applied to the priorities identified in the WITS. An associated cost to the wider community was therefore said to be the diversion of funds from existing priority road projects. It was argued that it is therefore exceedingly unlikely that the substantial costs associated with the service roads could be met within 10 years.

Individual submissions expressed concern that Council rates may increase to fund the Amendment and works.

⁴⁵ Document 36. Email from Greg Johnson to Diana Rice dated 4 February 2020

Both the Council and the DOT advised that the level of detailed design and estimated cost is adequate at this current concept design stage to support proceeding with the service roads and Amendment. They advised that the development of a service road would proceed through several iterations of design by the Council and review by the DOT prior to the commencement of construction. At each review, the detailed design and cost implications would be refined.

The Council responded to the issue of its ability to fund acquisition and works by advising that acquisition was expected to be staged and would be responsibly accommodated within its budgets over 10 years.

The Council indicated that the purpose of the PAO is to identify the land required to construct the service road but, if approved, the Council would not be required to either acquire the land or construct the service road in a specific time period. It was said that the timing of acquisition and construction could be managed by the Council in the capital works budget, so the costs and delivery would be managed efficiently while taking into account other priorities within the Council's budgeting processes. The Council's position was that, given the number of affected properties and length of the service roads, it is anticipated that both the acquisition and construction phases of the project could be staged over a number of years.

The Panel considers that the submissions for the Council concerning managing the costs of the Amendment, the land acquisition and service road construction may be lacking a sound foundation. As submitted, the Council's successful financial management depends on spreading the costs over a number of years, perhaps 10 years. Also, Mr Montebello's submissions for the Council referred only to the acquisition costs.

The Panel is not at all sure that the claims for compensation for permit refusals or land purchase will proceed at a genteel pace. It may be that there would be a short term rush by landowners to 'cash-in' on compensation payments. The Panel considers that there could well be a resultant required diversion of funds away from other road upgrade priorities in the municipality.

This issue of the significant and variable financial outlay for the service roads is a serious matter, as is the potential for diversion of funding from priority road projects. The issue should be considered carefully by the Council. If the Amendment is to proceed the Council needs to be satisfied that all phases of implementing the service roads can be successfully managed financially.

5.4 Deferring the Amendment

Given that the traffic demand increases which provide some of the justification for the upgrading of these roads are likely to be some time away, the Panel gave consideration to whether it would not be better to defer the Amendment. Specifically, the Panel considered whether the PAO should be introduced only once road volumes increase, there is contemporaneous evidence of safety problems and the intentions for any increases in housing density were clearer.

The Panel considers, however, that it would not be prudent to defer application of the PAO in this way due to the escalating costs of compensation and greater social impacts of required removal of developments which might place on land which later comes to be reserved.

With respect to this issue, the Panel was advised that while none of the affected properties currently have buildings constructed within the 12 metre setback,⁴⁶ there is generally no current planning requirement which would preclude a new single dwelling or an extension to such a dwelling within the setback.

Also relating to this issue of not deferring the reservation, was the Council argument that single dwelling covenant removals and more intensive developments are gathering pace, and pressures may be forthcoming for the land to be rezoned for even more intensive development.

The Panel agrees with the Council submission that to delay imposing the PAO could result in the situation where the construction of the service road would become impossible due to the potential amenity impacts and prohibitive compensation outlays for compulsory acquisition.

5.5 Conclusions and recommendation

It is the responsibility of this Panel to advise the Council on how to respond to objecting submissions and to advise whether or not it is appropriate to proceed with the Amendment as exhibited or in some modified form.

The case for the submitters' group included that the Panel could not fulfill its task of weighing the costs and benefits of the proposed Amendment to determine net community benefit or could only do so with difficulty, because the information presented on financial outlay consequent upon the Amendment was so scant. While the submissions for the Council asserted that only PAO compensation costs need be considered by the Panel, the Panel disagrees given the clear directions of the TI Act. This absence of more comprehensive costs information has indeed made the Panel task unusually difficult.

Leaving aside the issue of the financial outlay, the Panel considers that the balance of costs and benefits favours the Amendment proceeding. The Panel considers that the safety and efficiency benefits of separating local traffic from increasing volumes of regional traffic on these arterial roads by constructing service roads; the safety and efficiency benefits of having property access arrangements in these sections of Sayers and Tarneit Roads treated in the same manner as contiguous sections of the same roads; and the amenity and safety benefits of creating a local road environment adjacent to the housing which is separated from the arterial through lanes, are substantial benefits which outweigh the disbenefits. The Panel considers that in any case the disbenefits to individual land owners identified in written submissions and as presented at the Hearing can generally be resolved.

As a consequence, the Panel recommends to the Council that it proceeds with the Amendment, but only after it satisfies itself that to do so represents 'value for money' and it is within the financial capacity of the Council to see through to implementation the service road project which the Amendment is designed to facilitate.

The Panel recommends:

- 1. Based on the reasons set out in this Report, the Wyndham Planning Scheme Amendment C243 be adopted as exhibited but only after the further financial analysis recommended in section 5.5 of this Panel Report is undertaken.**

⁴⁶ With some exceptions such as parts of garages

Appendix A Submitters to the Amendment and submitters' group for Hearing

The submitters' group represented by Hall and Wilcox included all submitters below except those marked with an asterix

No.	Submitter
1	Sri Babu Sankuri*
2	DLTG Pty Ltd (DLTG)*
3	P Indukuri & K Katamreddy*
4	Michael Demeris
5	Megan Eganmay/ George and Meagan Eleftheriadis*
6	Hazel Ferlazzo*
7	Anthony and Hazel Ferlazzo*
8	Nima Tabrizi Director Lili's Early Learning*
9	Mr & Mrs Falzon
10	Christina Stephanou*
11	Edward & Frances Barber
12	Teresa & Martin Cassar
13	Dr Tian Khoo
14	Peter Coutsournas*
15	Brian Wallis*
16	Sam (Hussam Abdallah) *
17	Lucienne Ciappara on behalf of property owner*
18	Sam H Abdallah & L A Abdallah*
19	Catharine Bajada/ Catherine Cutajar*
20	Ray Bajada*
21	Charlie Buttigieg on behalf of parents
22	Stephen Rowlands
23	Carol Rowlands
24	Amie Albergo*
25	Helene and Tony Albergo
26	Jean Christian O'Rourke & Joseph O'Rourke
27	Darren and Jill Butty
28	Mary & Steven Fenech

29	Kathy Alderson
30	Stewart and Marise Moiler
31	Zac Fincher*
32	Chase Zanatta on behalf of property owner*
33	Lisa Zanatta on behalf of property owner
34	Michael Zanatta on behalf of property owner*
35	Josephine Zanatta
36	Rosemary Zanatta
37	Donna Hughes on behalf of property owner*
38	Tanya Ottrey on behalf of property owner*
39	Greg Hood
40	Alan & Kath Ward
41	Rakesh Waadhwa*
42	Theresa and Paul Cutajar
43	Emma Dearnaley*
44	Anand Shukla
45	Genowefa Cassar*
46	Helena Gomes
47	Alan Moana
48	Mary O'Rafferty
49	Ravinder Pal Singh Committee Member Shri Guru Nanak Satsang Sabha (SGNSS)*
50	Gurdev Singh Rattan
51	S Tonkin
52	Shane Tonkin
53	Rosanna Jacker*
54	Elie El Ossais*
55	John Pisano
56	Yvonne Buttigieg
57	Paul Buttigieg
58	Georgina Moana
59	Janice Thomas
60	David Thomas
61	Stephen O'Rafferty

62	Herculano Gomes
63	Jessica Gomes
64	Illegible Signature*
65	Illegible Signature*
66	Illegible Signature*
67	Illegible Signature*
68	John Daman*
69	Kerrie Damen
70	Joseph Iaria
71	Joseph Barry
72	Marguerite Cowling*
73	Antoinetta Sheridan*
74	Hussein Abdallah*
75	Dr Tian Khoo (also individual submission)
76	Hussam Abdullah*
77	Mancoor Ali*
78	Theodore Coutournas*
79	Eshwar Lakavath*
80	Phillip Riches
81	Emily Sanders*
82	Mark Riches
83	Leonie Riches
84	Jack Beardmore*
85	Carly Riches*
86	Peter Riches*
87	Illegible Signature*
88	Brayden Sinnamon*
89	Robert*
90	Illegible signature*
91	Signature only*
92	Illegible signature*
93	E Glassy*
94	Signature only*
95	Phillip Menzies*

96	Shelby Parish*
97	Simon Riches*
98	Illegible signature*
99	Shirley Lamb
100	Drake Petrovski
101	Svetlana Petrovski
102	Jovan (Jack) Petrovski
103	Brian Buttigieg
104	Marcus Johanson
105	Jenni Johanson
106	Tian Khoo
107	Tony Cassetta
108	Jason Sammut
109	Leanne Sammut
110	VicRoads/DOT*
111	Powercor*
112	Melbourne Water*
113	City West Water*

Appendix B Document list

No.	Date	Description	Presented by
1	29/10/2019	Request for an adjournment and list of submitters Hall and Wilcox are representing	Mr Rory O'Connor, Hall and Wilcox
2	4/11/2019	Council response to request for adjournment	Mr Terry Montebello, Maddocks for Wyndham City Council
3	6/11/2019	Index of documents provided to the Panel from Wyndham City Council prior to Directions Hearing	Panel Chair
4	27/11/2019	Consolidated list of submitters represented by Hall & Wilcox	Mr Rory O'Connor, Hall and Wilcox
5	28/11/2019	12 Late submissions	Ms Briana Eastaugh, Maddocks for Wyndham City Council
6	"	Updated Index of all submissions received – November 2019	"
7	10/12/2019	Direction 2 sewerage information from Wyndham City Council to City West Water	Ms Diana Rice for Wyndham City Council
8	9/12/2019	Wyndham C243 Index all Ssubmissions final - 9 12 19	"
9	"	Wyndham C243 submissions and Referral Responses complete set Dec 2019 - 9 12 19	"
10	4/02/2020	Submitters Group - John-Paul Maina - expert evidence – Traffic Engineering	Mr Luke Denham, Hall and Wilcox on behalf of Submitter Group
11	"	Department of Transport response to Direction 4 from Panel	Mr Andrew Rasulo, on behalf of Department of Transport
12	"	City West Water response to Panel Direction 3 from Panel	Mr Greg Johnson, on behalf of City West Water
13	"	Letter to Panel with Part A submission and evidence	Mr Terry Montebello, Maddocks on behalf of Wyndham City Council
14	"	0.0 - Index of documents	"
15	"	1.0 - Part A submission	"

No.	Date	Description	Presented by
16	“	1.1 - Chronology of events	“
17	“	1.2 - Updated Concept Plans for Service Road Design - C243 Panel Hearing	“
18	“	1.3 - Example covenants	“
19	“	1.4.1 - Forecast of Residential Growth - Map - Wyndham North DCP	“
20	“	1.4.2 - Forecast of Residential Growth - Map - Wyndham West DCP	“
21	“	1.5.1 - Amendment C185 Explanatory Report	“
22	“	1.5.2 - Exhibited DDO9	“
23	“	1.5.3 - Amendment C204 Explanatory Report	“
24	“	1.5.4 - Exhibited DCPO15	“
25	“	1.5.5 - Exhibited Amendment C204 DCP	“
26	“	1.6 - Ratio Traffic Engineering Assessment (September 2014)	“
27	“	1.7 - AECOM Wyndham North Traffic Modelling and SIDRA Analysis	“
28	“	1.8 - Wyndham Integrated Transport Strategy - June 2016	“
29	“	1.9 - Wyndham Housing and Neighbourhood Character Strategy 2018	“
30	“	2.0 - Henry Turnbull, Traffix, expert evidence statement	“
31	“	3.0 - Brett Young, Ratio, expert evidence statement	“
32	7/02/2020	Previous evidence by Henry Turnbull prepared for the Wyndham Amendment C177 matter	Ms Briana Eastaugh, Maddocks on behalf of Wyndham City Council
33	11/02/2020	Part B submission	Mr Terry Montebello, Maddocks on behalf of Wyndham City Council
34	“	Maps and aerial photographs of the amendment area	“
35	“	Addendum to evidence statement of Brett Young, Ratio	“
36	“	Email from City West Water dated 6 February 2020 tabled at Hearing	“

No.	Date	Description	Presented by
37	12/02/2020	Alternative design sketch for road reserve prepared by Panel Member Mr Greg Sharpley for discussion purposes only	Panel Chair
38	"	Plans showing sewer services for amendment area and surrounds	Mr Greg Johnson, City West Water
39	"	Department of Transport submission	Mr Andrew Rasulo, Department of Transport (Metro North West region)
40	"	VicRoads publication 'Guidance for Planning Road Networks in Growth Areas Working Document (not versioned) December 2015'	Mr Terry Montebello, Maddocks on behalf of Wyndham City Council
41	"	Article written by Yan et al 'Characteristics of rear-end accidents at signalized intersections using multiple logistic regression model' in Accident Analysis and Prevention, dated 4 May 2005	Mr Robert Forrester, barrister on behalf of submitters
42	"	Journal extract by Fitzpatrick and Parham 'The effects of access density on operating speed' in Institute of Transportation Engineers (ITE) Journal, dated November 1998	"
43	"	Extract from Austroads publication 'AGTM05-19 Traffic management Commentary 4'	Mr Terry Montebello, Maddocks on behalf of Wyndham City Council
44	"	Extract from Austroads publication 'Traffic management 2.1.2 Strategic Approach'	"
45	11/02/2020	Email of 4 February 2020 from City West Water to Wyndham City regarding sewerage and water issues for C243	Ms Diana Rice for Wyndham City Council
46	"	Plan from City West Water to Council showing existing water reticulation along the southern side of the Sayers Road	"
47	14/02/2020	Email from City West Water providing further information as discussed at the Hearing on 12 February 2020	Mr Greg Johnson, on behalf of City West Water
48	"	Required local sewer extensions (Sayers Road & Tarneit Road)	"
49	"	WSA 03-2011-3.1, Table 5.5	"

No.	Date	Description	Presented by
50	“	WSA 03-2011-3.1, Standard Drawing MRWA-W-202	“
51	17/02/2020	Letter from Panel to Parties – Hearing recommencing 28 February 2020 and request to Department of Transport	Panel Chair
52	19/02/2020	Request from DOT for time extension	Mr Andrew Rasulo, Department of Transport
53	20/02/2020	Response from Panel to Parties on Request for time extension from the Department of Transport to provide comment	PPV on behalf of the Panel
54	25/02/20	Response from Department of Transport in relation to alternative service road cross section, including the following attachments: <ul style="list-style-type: none"> - 54a – Alternative cross section - 54b – Figure 4.5 VicRoads Growth Handbook 	Mr Andrew Rasulo, Department of Transport
55	28/02/20	Submissions on behalf of group of submitters (see Appendix A) and folder with attachments	Mr Robert Forrester, barrister on behalf of submitters
56	“	Letter from NBN regarding location of services	“
57	“	Council reply	Mr Terry Montebello, Maddocks on behalf of Wyndham City Council
58	5/03/2020	Email from Panel to Parties - further request for further information updates to arterial road priorities	PPV on behalf of the Panel
59	11/03/20	Letter from Council in response to Panel directions at end of Hearing	Ms Briana Eastaugh, Maddocks on behalf of Wyndham City Council
60	“	Wyndham City 2020-21 Victorian Pre-Budget submission	“
61	“	Securing Wyndham’s Future Advocacy Strategy 2020	“
62a	“	Wyndham City 2016 - 2017 Budget and Integrated Plan	“
62b	“	Wyndham City 2017 - 2018 Integrated Plan and Budget Adopted	“

No.	Date	Description	Presented by
62c	“	Wyndham City 2018 - 2019 Integrated Plan and Budget	“
62d	“	Wyndham City 2019 - 2020 Annual Plan and Budget	“
