



Development Contributions Plan Implementation Policy

Baw Baw Shire Council

Version 1.6

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For implementation of:

**Warragul Development Contributions Plan (DCPO – Schedule 2)
& Drouin Development Contributions Plan (DCPO – Schedule 3)**

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1. Introduction

The Drouin and Warragul Development Contribution Plans (**DCP or DCPs**) were both developed in 2014. The DCPs were derived from the plans and infrastructure identified in the Warragul and Drouin Precinct Structure Plans (Amendment C108).

The DCPs were introduced in 2015 through Planning Scheme Amendment C112 by the application of the Development Contribution Plans Overlay Schedules 2 & 3 (DCPO2 & DCPO3) and the inclusion of the DCPs as incorporated documents in the Baw Baw Planning Scheme.

The DCPs are governed by Part 3B of the *Planning and Environment Act* 1987.

The DCPs estimate that development contributions payable under the DCPs will provide approximately 100% of the funds required to provide the specified infrastructure detailed in the DCPs. Between them the two DCPs provide for approximately \$246m (2014 AUD) of levies for civil and community infrastructure as well as land. Accordingly, the financial risks to Council need to be responsibly managed consistent with the principles of sound financial management which apply to Council under section 136 of the *Local Government Act* 1989.

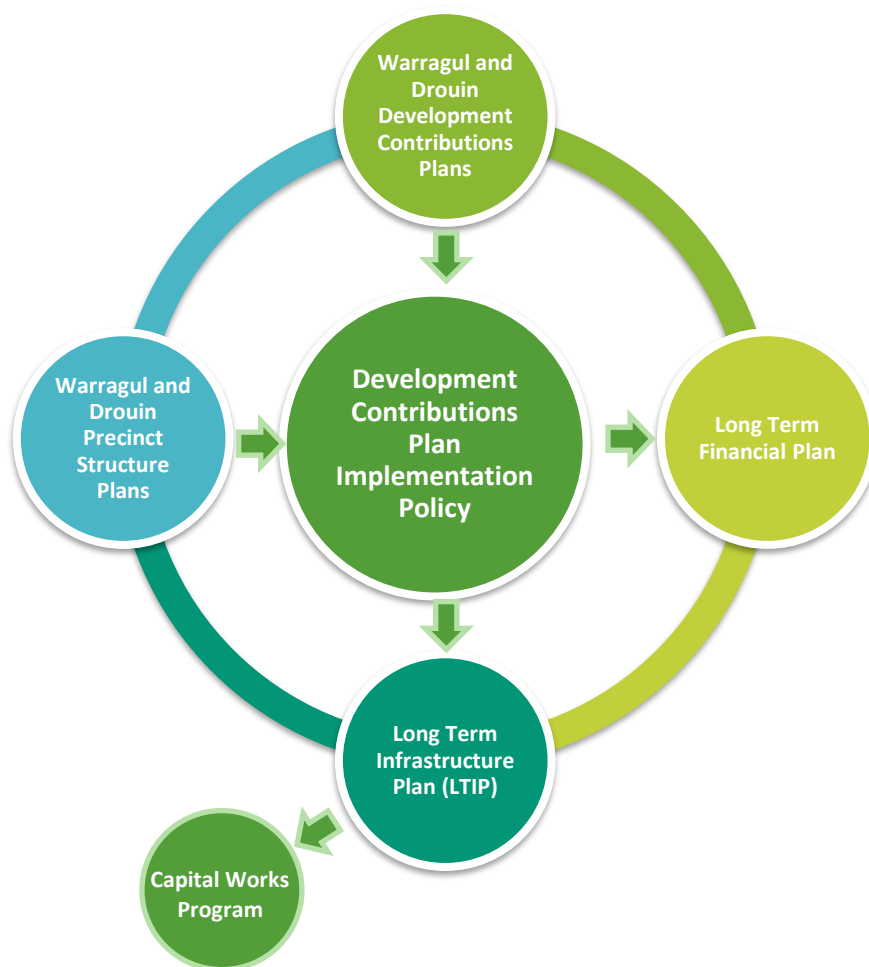
It is essential that the funds be managed in a manner so as to deliver all of the infrastructure projects that the DCPs raise levies towards and that DCP funds are only used to deliver DCP projects consistent with the requirements of the *Planning and Environment Act* 1987.

Baw Baw Shire Council is both the Collecting Agency and the Development Agency under both the DCPs for all infrastructure projects in respect of which development contributions are imposed.

This Development Contributions Plan Implementation Policy (**DCP Implementation Policy**) is an overarching policy that sets out the principles to guide decision making by Council in its capacity as the Collecting Agency and the Development Agency for implementation of the DCPs under DCP02 and DCP03.

Figure 1 shows how the Development Contributions Plan Implementation Policy fits with other Council strategies, plans and procedures which relate to the DCP.

Figure 1: Baw Baw Shire DCP Implementation Framework



2. Objectives

Key objectives for implementation of the DCPs include:

- Ensuring Council receives all appropriate development contributions for the provision of infrastructure payable under the provisions of the *Planning and Environment Act 1987*.
- Ensuring development and community infrastructure identified in the DCPs is delivered in a timely manner to service future communities.
- Ensuring the prioritisation of infrastructure delivery is equitable and promotes efficient and mutually beneficial outcomes for developers, Council and the community.
- Ensuring the delivery and servicing of out of sequence development does not have detrimental financial impacts on Council or on the long-term strategic planning and development of growth areas.
- Compliance with relevant statutory provisions.

3. Application

This DCP Implementation Policy applies to:

- All directorates, including Planning and Economic Development, Community Infrastructure and Corporate & Customer Service where decision making relates to a project which is identified as an infrastructure project in the DCPs or where a decision relates to the receipt or expenditure of monetary contributions under either of the DCPs;
- The Development Contributions Plan Steering Committee (DCPSC);
- The Development Contributions Plan Working Group (DCPWG)
- The Development Contributions Advisor; and
- Landowners/developers of land in the urban growth areas of Warragul and Drouin where the DCP02 and DCP03 apply.
- All Council employees and any contract, temporary and casual employees engaged by the Council.

All enquiries regarding this Policy should be directed to the DCP Advisor.

4. Procedure and Guidance Notes

4.1 Governance

The Development Contributions Plan Working Group (**DCPWG**) is a cross-directorate team responsible for overseeing the implementation of the DCP.

The DCP Working Group comprises of staff who work in relevant project areas, including:

- Assets and engineering staff dealing with traffic and road networks;
- Community services staff who are involved in the provision of kinder and maternal child health services;
- Urban operations and recreation staff managing the provision of active open space and passive open space; and
- The DCP Advisor, Priority Development Team and planners assessing and issuing development applications in the urban growth zone where the DCP02 and DCP03 apply.

The DCP Working Group is responsible for:

- Monitoring the development fronts occurring in the Urban Growth Zones;
- Determining priority DCP infrastructure projects and planning for delivery of selected DCP infrastructure projects by Council;
- Integrating DCP infrastructure projects in the Council's Long-term Infrastructure Plan; and
- Making decisions on requests by developers to enter into works in kind (**WIK**) arrangements with Council in return for offsets against their liabilities under the DCPs .

Growth areas can have numerous growth fronts and the timing of development in the growth area precincts can vary significantly. However, the ability of Council in its capacity as Development Agency to deliver infrastructure (either itself or through developers undertaking such projects) to multiple growth fronts is limited. Requests for WIK arrangements by developers needs to be carefully considered to ensure that the limited

flow of funds into the DCP accounts is allocated according to an appropriate prioritization of projects rather than be dictated to by the numerous development fronts and ad hoc WIK arrangements. This will be particularly relevant to how credits for offsets are dealt with in all WIK arrangements.

It is important that the DCP Working Group monitors development occurring on the ground and takes into account development infrastructure that is under construction, has been recently completed, or is provided for in any WIK arrangement with any other developer. This will assist in planning for timely delivery of DCP projects. The development fronts will be monitored by observing:

- Data collected through discussion with developers during permit processes, approved Public Infrastructure Plans (**PIPs**) and Section 173 agreements;
- Completed stages of development and completed DCP funded infrastructure projects;
- Discussions with servicing authorities about delivery timing, staging of works and forecast capacity issues;
- Data collected by Council, including development approval figures and building statistics, traffic volumes to determine if traffic volumes are approaching acceptable limits and statistics relating to community services and active open space usage.

The DCP Advisor is responsible for day-to-day management of DCP matters, including:

- Coordinating outcomes associated with the preparation, administration, review and delivery of Council's Development Contributions Program and infrastructure agreements with developers providing for WIK arrangements (commonly through a section 173 agreement);
- Assisting in infrastructure planning and delivery;
- Integrating the collection and allocation of DCP funds with Council's finance, capital works and asset management systems;
- Keeping a record of construction completion dates for approved WIK projects which helps to determine the sequencing of repayments to developers;

- Arranging for timely annual indexation of the DCPs and land values in accordance with the DCPs;
- Arranging for the publication on Council's website (as required by the DCPs) of the revised DCP levies following the annual indexation;¹
- Developing relationships across the organisation and with the development community, to ensure the outcomes of Council's Development Contributions program are achieved; and
- The ongoing review of the implementation of DCPs and the 5-yearly review of the DCPs in accordance with the Development Contributions Plan Review Period set out in the DCPs.²

Matters which arise that are not in accordance with this DCP Implementation Policy will be decided upon by the Development Contributions Plan Steering Committee (**DCPSC**), which is a cross-directorate team made up of Directors, Managers, Coordinators and the DCP Advisor. The DCPSC is also responsible for decision-making in relation to any alteration to this DCP Implementation Policy and the preparation of other policies, strategies and procedures relevant to the DCPs.

The DCPWG will present regular updates to the DCPSC regarding the progress of the implementation of the DCPs and projects to be embedded into Council's Long-Term Infrastructure Plan, Long-Term Financial Strategy and Capital Works Program to ensure timely delivery of DCP infrastructure projects.

4.2 Working with Landowners, the Development Industry and Authorities

Council will, through the DCP Advisor engage with the development industry regarding the timing for delivery of DCP infrastructure projects associated with development proposals.

Council will through the DCP Advisor inform the development industry of planned infrastructure projects including their prioritization and approximate timing as set out in the Long-term Infrastructure Plan and Capital Works Program.

¹ Refer Part 4.3 of the Warragul and Drouin DCPs.

² Refer Part 4.4 of the Warragul and Drouin DCPs.

5. Planning Permit Process

5.1 Pre-application

Developers within either of the growth areas affected by DCPO2 and DCPO3 are encouraged to contact Council's Priority Development team to organise a pre-application meeting to discuss their proposed planning permit application. This pre-application meeting should be used as an opportunity to identify and resolve issues prior to lodgement. In particular, the pre application meeting should be used to raise and discuss:

- Council's priority list for infrastructure projects (including land projects);
- What infrastructure projects (including land projects) that are part of the DCPs may be sought to be delivered as WIK by the developer;
- The likely timing of the payment of any amounts which might be owed by Council to a developer where the value of credits under a WIK Agreement exceeds the value of DCP liabilities in respect of any application;
- The process and costs for the negotiation and drafting of a WIK Agreement.

5.2 Public Infrastructure Plan (PIP)

As required by clause 3.1 of the relevant Urban Growth Zone Schedule, (**UGZ Schedule**) a planning permit application must be accompanied by a draft Public Infrastructure Plan (**PIP**) along with a staging plan. The PIP must comply with the requirements of clause 3.1 of the UGZ Schedule.

The purpose of the PIP is to provide Council with an over view of the delivery of infrastructure in the area affected by the permit application. In this way, Council is able to take into account the intended development of neighbouring land and ensure that there is consistency and co-ordination between developers that may be affected by each other's development plans. The PIP will normally include details how and when the proponent intends to deliver infrastructure items and services and how these are expected to be funded including through WIK Agreements. The PIP also includes an indicative programme for the delivery of planned infrastructure and services.*

*To clarify, the PIP also includes other DCP deliverables being delivered by others that the development is dependent on and or a beneficiary of. A PIP should also include other key pieces of infrastructure that are non DCP funded Developer Works

PIPs assist Council with coordinating development and cash flow forecasting of its DCP account(s) and also assists Council and servicing authorities with the development of strategic planning for growth areas. It also assists in providing the community with some certainty about delivery of future projects.

A draft PIP is to be submitted at the same time as planning permit application lodgement and will be assessed with other application documentation. It is important that the draft PIP is prepared and assessed alongside the consideration of a planning permit. The PIP will be given effect by a condition in the planning permit and the PIP will be one of the endorsed plans under the planning permit.

5.3 Planning Permit Conditions

Section 46N(1) of the *Planning and Environment Act* 1987 contains mandatory requirements for planning permit conditions. It is important that where a DCP applies, a planning permit includes the required conditions specifying the obligation to pay development contributions. The form of the condition imposed must accord with the form of the condition set out in the DCPs³, which may be satisfied by cash, WIK or DCP project land in lieu at Council's discretion.

It is also standard practice for Council to include conditions relating to Section 173 agreements and open space requirements in planning permit conditions.

5.4 WIK Agreements – Section 173 Agreements

A WIK Agreement in the form of a section 173 agreement will need to be entered into by the developer with Council to formalise any agreed position in relation to WIK arrangements, obligations to pay development contributions and the provision of any land which is funded under either of the DCPs.⁴

The drafting and terms of the WIK Agreement must provide certainty to the developer and to Council.

A template agreement has been prepared by Council's legal advisor to simplify and standardize the drafting of WIK Agreements. However, sometimes individual projects require specific variations to the template agreement. Council will consider each case on its merits. Council and its appointed legal advisor will work with the developer to populate

³ Refer Part 4.1 of the Warragul and Drouin DCPs

⁴ Refer Part 4.1.2 of the Warragul and Drouin DCPs.

the template in a manner which accurately reflects the agreed position. Council's preference is that Council's legal advisor undertake the drafting of the WIK agreements and the owner/developer's lawyers can review that document rather than the other way around.

The developer will be required to agree to be responsible for payment of Council's legal costs for preparation, execution and registration of the Agreement and any amendment to the Agreement. This must be put in place before drafting of the WIK will commence.

The Section 173 agreement for WIK must be entered into prior to certification of the first stage of subdivision unless an alternate timeframe has been agreed by Council. The section 173 agreement for WIK will be registered on the title of the subject land pursuant to Section 181 of the *Planning and Environment Act 1987* and will remain on title until all DCP obligations have been satisfied. However, the WIK Agreement will end in respect of residential lots to ensure final buyers are not burdened by unnecessary legal provisions.

Council, at its absolute discretion, may agree to waive the requirement for the Section 173 Agreement for WIK for small subdivisions upon the request of the developer. If this occurs, full details of the DCP project, including the applicable credit amount, must instead be addressed by planning permit conditions. A small sub-division is defined, for this purpose, as being a single stage subdivision, under 2 hectares in area, resulting in fewer than 20 lots and with a DCP project value not exceeding \$100,000 (2014 AUD).

5.5 Net Developable Area

In the Warragul and Drouin DCPs, the Net Developable Area (**NDA**) is defined as:

'the total amount of land within the precinct that is made available for development. It is the total precinct area minus community facilities, educational facilities, open space, arterial roads, and encumbered land. NDA includes any land for lots, housing and employment buildings, all local streets (including connector streets), and any small parks defined at subdivision stage that are in addition to those outlined in the PSP.'

Development infrastructure contributions are payable on the amount of NDA (expressed as net developable hectares) of any given development site. The NDA for the DCP has

been set by the DCPs and is to be found in the Summary Land Use Budget⁵. The NDA is fixed and will not be varied by Council.

Calculations of NDA for each individual property are outlined in the property-specific land budget included in the Warragul and Drouin PSPs⁶. These property specific land budgets must be used to determine the number of net developable hectares of each land parcel proposed for development.

In calculating development contributions, the DCPs state that *'per Net Developable Hectare' contributions will not and must not be amended to respond to minor changes to land budgets that may result from the subdivision process.'*

The DCPs are permanently linked to the calculation of the NDA set out in the summary land budgets of both DCPs and for the purposes of the DCP, and as per the Warragul and Drouin DCPs *'the number of developable hectares will only change if the Council agrees to an amendment to the Precinct and detailed land budget and associated tables.'*

This can only be done via a planning scheme amendment.

6. Works In Kind

6.1 Consideration of Works in Kind Requests

Payment of development contributions are generally in cash. However, in accordance with section 46P of the *Planning and Environment Act 1987*, Council, as the collecting agency has the discretion to *'...accept the provision of land, works, services or facilities by the applicant in part or full satisfaction of the amount of levy payable.'* This is called works in kind. When works in kind are undertaken by the developer they will only be entitled to a credit against the DCP liability if Council has first consented in a WIK Agreement to that WIK arrangement.

Agreed WIK arrangements can often provide a positive outcome for the developer, Council and the community. The Warragul and Drouin Precinct Structure Plans identify a number of road projects including intersections, waterway crossings and connector streets, which are DCP infrastructure projects that may be supported by the DCP Working Group as WIK

⁵ Table 8 of the Drouin DCP and Table 9 of the Warragul DCP.

⁶ Table 13 of the Drouin DCP and Table 14 of the Warragul DCP.

arrangements to be constructed by developers. However, the delivery of community infrastructure is not normally provided through WIK.

Council will consider WIK proposals for the construction of development infrastructure put forward by developers on a case-by-case basis. All requests by developers for WIK proposals are assessed by the DCP Working Group to determine their suitability for WIK using the following criteria:

- **Financial impact and risk for Council**
(ie. existing obligations to Council, such as the acquisition of land required for DCP projects;
- **Community need and benefit**
(ie. is there an existing need and when will the community benefit from the project)
- **Project readiness**
(Including design, external approvals, agreements in place, physical access to land, etc); and
- **Necessity to facilitate development of the area/precinct**

Where a developer/landowner proposes a WIK arrangement, Council will at a minimum insist that the arrangement complies with part 4.1.2 of the the Warragul and Drouin Development Contributions Plan, Part 4.1.2 states that:

The Council may permit development proponents to undertake works in lieu of cash payments, providing that:

- *The works constitute project(s) funded by this DCP.*
- *The Council agrees that the timing of the works would be consistent with or not prejudicial to the DCP project implementation programme.*
- *The works are defined and agreed in a Section 173 agreement.*
- *Works must be provided to a standard that accords with the DCP to the satisfaction of the Council, unless an alternative is agreed by the Council.*
- *Detailed design must be approved by the Council and must generally accord with the expectations outlined in this DCP unless an alternative is agreed by the Council.*
- *The construction of works must be completed to the satisfaction of the Council.*

- *There should be no negative financial impact on this DCP to the satisfaction of the Council.*
- *In particular, the works will only be accepted in lieu of a financial contribution required by this DCP to the extent that they constitute part or all of the design of the infrastructure item and reduce the cost to complete that design, to the Council's satisfaction. Temporary works will not be accepted as works in kind.'*

Section 4.1.2 also states that '*Where the Council agrees that works are to be provided by a development proponent in lieu of cash contributions (subject to the arrangements specified above):*

- *The credit for works associated with sporting reserves shall equal the cost agreed between the Council and the proponent based on the master plan approved for the relevant reserve.*
- *The credit for all other works (unless an alternative approach is agreed with the Council) provided shall equal the value identified in the Development Contributions Plan, taking into account the impact of indexation, or to an alternative figure approved by the Council.**
- *The value of the works provided in accordance with the principle outlined above, will be off-set against the development contributions liable to be paid by the development proponent.*
- *No further financial contributions will be required until the agreed value of any credits is used.*

As Council is acting in its capacity as Collecting Agency and Development Agency and implementing the DCPs Council does not have automatic access to any funds other than the funds set aside for each particular project as set out in the relevant DCP. Therefore, the maximum entitlement to a credit for any project delivered as works in kind by a developer is the amount set out in the relevant DCP for that specific project indexed up to the current year. A WIK Agreement will normally limit the maximum credit to the actual cost of the infrastructure project or the relevant DCP amount whichever amount is the lesser.

In the case where two or more developers complete a different portion of a project, the funding will be apportioned to the developers based on the proportion of works each has provided, and this will normally be set out in the WIK Agreement.

7. Financial

7.1 Payment of Development Infrastructure Levy

Development contributions are required to be paid on a stage by stage basis, normally prior to the issue of a Statement of Compliance where the permit application is for a subdivision. Permit conditions will normally provide for this. Where no subdivision is proposed then normally the milestone is prior to the commencement of development.

Because of the staged approach to payment of contributions, then prior to the issue of a statement of compliance the Developer is required to prepare DCP calculations following practical completion for each stage of the development. This will normally be done in the form of a spreadsheet.

The spreadsheet is provided to the DCP Advisor for checking.

In accordance with the Warragul and Drouin DCPs:

The timing of payment of the development infrastructure levy (DIL) for subdivisions 'must be paid to Council for the land within the following specified time, namely after certification of the relevant plan of subdivision but not more than 21 days prior to the issue of a Statement of Compliance with respect to that plan under the Subdivision Act 1988.'

The DCPs also states that:

'Where the subdivision is to be developed in stages, the infrastructure levy for the stage to be developed may only be paid to the Council within 21 days prior to the issue of a Statement of Compliance for that stage provided that a Schedule of Development Contributions is submitted with each stage of plan of subdivision. This Schedule must show the amount of the development contributions payable for each stage and the value of the contributions for prior stages to the satisfaction of the Council.'

7.2 Financial Reimbursements for Works in Kind

In a WIK arrangement a developer can be reimbursed cash or given "credits" for items of infrastructure delivered to the satisfaction of Council. However, cash or credits for WIK projects will only be provided where these have been approved by Council and a section 173 agreement is in place to record that agreement. Payments outside these parameters

is completely within the discretion of Council. Developers should not assume that Council will make any payment or grant any credit where there is no WIK Agreement in place.

If an infrastructure project is proposed to be brought forward by a developer in advance of funds being available, then the financing cost for that infrastructure project will have to be borne by the developer until Council is prepared to provide a credit for that infrastructure project or is able to provide cash for any credit which exceeds the developer's development contribution liability. There is no interest which accumulates on these outstanding amounts.

The amount to be repaid will be the indexed cost of the project at the time of delivery.

Cash amounts are paid to developers for excess credits over liabilities only when sufficient funds are available in the DCP account to make that payment. Payment will be based on the chronological order of project completion. Where Council delivers a DCP project via the capital works program, the applicable date for determining chronological order will be the date that Council adopts the budget containing the commitment to deliver a DCP project, additionally noting that reimbursement can't precede project completion. Payments will be generally made twice yearly with a minimum transaction amount of \$10,000.

Subject to the entry into a WIK Agreement, a developer can be given a financial credit for works in kind or land against their development contribution liability under the relevant DCP. The WIK Agreement will govern from when that credit applies and whether development contributions need to be paid from the commencement of a development or not.

A credit or a cash reimbursement for works in kind will only be made or paid after a Certificate of Practical Completion has been signed off by Council's Responsible Supervising Officer or when land is provided to Council, unless otherwise agreed with Council within a WIK Agreement.

7.3 Levy Rate Indexing

Council will only reimburse works in kind and/or land to a developer up to a maximum amount being the estimated value of the works as set out in the Warragul or Drouin DCPs indexed in accordance with part 4.3 of the Warragul and Drouin DCPs.

Construction Cost Indexation

In accordance with the Drouin and Warragul DCPs (part 4.3), capital costs of all infrastructure items (with the exception of land) are expressed in 2014 dollars and will be indexed by Council quarterly.

Indexation and adjustments for construction projects are done according to the following methods as outlined in the relevant DCPs:

- *Roads, intersections and bridges – in line with the Australian Bureau of Statistics Producer Price Indexes, Road and Bridge Construction Index, Victoria.*
- *All other infrastructure items – in line with the Australian Bureau of Statistics Producer Price Indexes, Non- Residential Building Construction Index, Victoria.*

Land Value Cost Indexation

In accordance with the Drouin and Warragul DCPs (part 4.3):

- *Land values will be adjusted on 1 July each year following valuations undertaken by a registered valuer. Land valuations must be undertaken utilising the same methodology used to derive the original gazetted DCP valuations.*
- *Within 14 days of the adjustments being made, the Council will publish the amended contributions for each infrastructure item on the Council's website.*

7.4 Funds Administration

Funds administration is an essential management function of the DCP implementation. The contributions made under the DCPs will be held in an account and amounts will be paid out of that account to meet obligations under WIK Agreements or the delivery of infrastructure by Council.

Proper accounts and records will be kept by Council in accordance with the provisions of the *Local Government Act 1989* and the *Planning and Environment Act 1987*.

Annually, Council must comply with its reporting requirements pursuant to the Ministerial Direction for Reporting Requirements for Development Contributions Plans – 11 October 2016 as amended.

8. Scope and Timing Changes for DCP Projects

8.1 Scope changes

The cost of infrastructure projects in the DCPs have been estimated based on a certain scope. The scope is as per the infrastructure project sheets which form part of the relevant DCPs. However, all projects require a detailed design to be prepared prior to construction. The detailed design of a DCP infrastructure project may reveal the need for a change that leads to variations to the costings included in the relevant DCP.

Ultimately, the construction of projects must be to the satisfaction of a relevant authority such as Council or VicRoads for example. A change to a project may arise due to any of the following:

- a) A development proponent may propose changes to the use and development of land from that contemplated in the relevant precinct structure plan⁷, leading to an increased requirement for infrastructure.

The Warragul and Drouin DCPs (at part 4.5) states that *'In these cases there should be no negative impact on the DCP by requirement for the developer to bear the additional costs associated with the provision of the infrastructure item over and above the standard required by the DCP.'*

In situations where a DCP infrastructure project is approved to be provided as works in kind, the maximum credit provided will normally be equal the indexed amount for that infrastructure project in the relevant DCP subject to a detailed claim of quantities against those detailed in the schedule of quantities for that infrastructure project as set out in the DCP project sheets.⁸ Any reduction in the scope of an infrastructure project will incur a corresponding reduction in the value of the credit based on the schedule of quantities.

- b) Council or another agency can seek to change the scope of a DCP infrastructure project to meet changing standards imposed by adopted policy or a public regulatory agency. Such changes of standards and the resulting cost changes should normally be made through a change to the relevant DCP at the time of a regular review of the DCP.

⁷ Even though it is generally in accordance with the precinct structure plan.

⁸ These are found in Appendix B to the relevant DCP.

The Warragul and Drouin DCPs (part 4.5) states that *'Where, after the DCP has been approved, a Council or other agency proposes changes to the scope of a DCP infrastructure item for reasons other than changes in standards imposed by policy or regulation the net cost increases resulting from the change should normally be met by the agency requesting the change.'*

It is necessary that the scope and cost/credit of any DCP infrastructure project which is proposed as WIK is agreed to prior to commencement of the delivery of that WIK infrastructure project.

8.2 Variation to area of land required for a DCP project

The area of project land required for any DCP infrastructure project whether that be for a road or for a park or a community centre should accord with the area set out in the relevant DCP. The provision of additional land is not funded by the DCP. In situations where less land is required to be provided than that indicated in the land use budget then the landowner will be entitled to only a value based on the land actually provided. All land credits and payments are based on and fixed to the estimated land value for that project as set out in the relevant DCP for that valuation year.

9. Cost Savings and Overruns

The inclusion of the various infrastructure projects in the DCPs indicates an intention to provide the infrastructure projects. However, Council is not obliged to deliver each project irrespective of the financial state of the DCP fund. Council is ultimately obliged to act in accordance with the principles of sound financial management. If the DCPs fails to collect the funds which are anticipated to be collected then Council may have to review the list of projects which are funded and seek ministerial consent to alter the list of infrastructure projects funded. This is why it is critical for the DCPs to be properly and actively managed within the confines of the funds raised by the DCPs.

Council will actively manage the implementation of the DCPs and minimise the financial risks to Council. In situations where savings are made in project delivery, either through a Council-delivered project or by works in kind undertaken by a developer, Council will put the processes in place to try and ensure that the savings are reinvested into the DCPs to assist with potential shortfalls for other infrastructure projects in the same infrastructure

class delivered at a later stage in the DCPs. However, ministerial consent is required in order to do this under section 46Q(4) of the *Planning and Environment Act* 1987.

In situations where a DCP over-collects then upon conclusion of the DCP, Council is required to refund or, with the Minister's consent, reallocate those funds. In some circumstances the Minister for Planning may approve reallocation of funds to other infrastructure projects which are underfunded.

10. Credit for Over Provision

As described in Section 4.1.3 of the Warragul and Drouin DCPs:

'Where the Collection Agency agrees that a development proponent can physically provide an infrastructure item (either works and/or land) the situation may arise where the developer makes a contribution with a value that exceeds that required by the DCP for the individual project.

In such a case the developer may be entitled to credits against other projects in the DCP to the extent of the excess contribution. Alternatively, the developer may seek an agreement with the Council to provide for a cash reimbursement where a significant over contribution has been made on a particular project.

The Council will not be bound to deliver a cash reimbursement until such times as sufficient funds have been collected contributions from other development.

The details of credits and reimbursements will need to be negotiated with, and agreed to by the Council.'

All matters in relation to credits must be set out in a WIK Agreement. Council will not pay for or otherwise be responsible for an over provision unless Council has specifically agreed to that over provision by the developer.

11. Public Open Space Collection

The DCP's provide funding for active public open space such as sporting ovals. It does not provide funding for passive open space. These passive public open space areas are

provided for under clause 53.01 of the Baw Baw Planning Scheme and are also outlined in the PSP. A permit must be generally in accordance with the PSP. The current rate contribution for passive open space in clause 53.01 of the Baw Baw Planning Scheme is 4.5%.

As for open space generally, as described in Part 2.1.3 of the DCP's "Sporting Reserves",

the Precinct Structure Planning Guidelines recommend the adoption of an average open space provision of 10% of NDA-R across PSP areas. The guidelines are a reference document in the Baw Baw Planning Scheme.

The 10% figure is based on the appropriate provision of both sporting reserves (active open space) and neighbourhood parks (passive open space) for new communities. It is intended to allow for the delivery of basic local facilities with higher-order regional facilities to be delivered by Council.

The reference to 10% is a combined quantity of **unencumbered** public open space for both passive (local parks) and active (sporting ovals) open space. For the land within the precinct structure plans this 10% overall provision of unencumbered open space is generally divided into two components being: :

- 4.5% of the Net Developable Area – Residential (**NDA-R**) for neighbourhood parks to be delivered through Clause 53.01 of the Baw Baw Planning Scheme and generally in accordance with the PSP; and
- 5.5% of NDA-R for new sporting reserves to be delivered as infrastructure projects (land) via the DCPs.

In relation to under provision of public open space for active open space, the DCP's provide that:

Where the 5.5% provision will not be fully achieved within the MCA, the balance will be provided as a cash contribution. This cash contribution will be directed toward projects that increase the carrying capacity of sports facilities external to the MCA and that in turn will assist in meeting the needs of the new community. Alternatively, should suitable land become available that is of a reasonable value, the Council may elect to use some of this contribution to make strategic purchases with the intent of delivering additional sporting reserves.

11.1 Equalization of local public open space

In some instances, a developer will have passive public open space identified for their site within the PSP which equates to an area being over and above the 4.5% provision required by clause 53.01. In these situations, the developer is to receive a cash payment or offset from Council for providing more than the 4.5% of site area of public open space that required. At other times, a developer will provide less passive public open space than the 4.5% of site area referred to in clause 53.01. In those cases, the developer will have to provide the land identified by the PSP and make a payment to top up the overall public open space contribution so that it equalizes to 4.5%. The timing of this payment will be negotiated as part of a Section 173 Agreement. Council will provide the calculation of the POS contribution after certification and prior to SOC of the relevant stage. Council's calculation is based on a per hectare valuation provided by Council's registered valuer in accordance with the *Subdivision Act 1988*.

Review Period

Development Contributions Plan Review Period

According to the Warragul and Drouin DCPs, the DCPs adopt a long-term outlook for development.

The DCPs state that:

'a 'full development' time horizon for each geographic growth area around the town (north west, north east, south west, south east) of 25 years from the date of commencement of development within that geographic area has been adopted for this DCP.

This DCP commences on the date of incorporation into the Baw Baw Planning Scheme. This DCP will end when development within the DCP area is complete or when the DCP is removed from the Planning Scheme.

The DCP is expected to be revised and updated every 5 years (or more frequently if required). This will require an amendment to the Baw Baw Planning Scheme to replace this document with an alternative, revised document. Any review will need to have regard to any arrangements (for example an agreement under s173 of the Act) for the implementation of this DCP.

This review is anticipated to include:

- *Updates to any aspect of the plan as required;*
- *Review of projects required, as well as their costs and scope (as relevant) and indicative provision trigger;*
- *Review of estimated net developable area (this will also be required if the Precinct Structure Plan is subject to a substantive amendment); and*
- *Review of land values for land to be purchased through the plan.*

The Precinct Structure Plans are also expected to be revised every five years. This review should incorporate any revisions required to standards and legislation. Changes to the PSPs should be incorporated into the DCPs, where applicable.

The DCP Advisor will be responsible for the review of the DCPs on an ongoing basis and making recommendations for the review every five years.

References and Related Policies

Warragul Precinct Structure Plan	http://www.bawbawshire.vic.gov.au/Building-and-Planning/Planning-Scheme-Amendments/Amendment-C108-Warragul-and-Drouin-Precinct-Structure-Plans
Drouin Precinct Structure Plan	http://www.bawbawshire.vic.gov.au/Building-and-Planning/Planning-Scheme-Amendments/Amendment-C108-Warragul-and-Drouin-Precinct-Structure-Plans
Warragul Development Contributions Plan	http://www.bawbawshire.vic.gov.au/Building-and-Planning/Planning-Scheme-Amendments/Amendment-C112-Warragul-and-Drouin-Development-Contributions-Plans
Drouin Development Contributions Plan	http://www.bawbawshire.vic.gov.au/Building-and-Planning/Planning-Scheme-Amendments/Amendment-C112-Warragul-and-Drouin-Development-Contributions-Plans
Baw Planning Scheme	http://planningschemes.dpcd.vic.gov.au/schemes/bawbaw
<i>Planning & Environment Act 1987</i> Part 3B	http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/paea1987254/
<i>Subdivision Act 1988</i>	http://classic.austlii.edu.au/au/legis/vic/consol_act/sa1988153/
Baw Shire Long Term Infrastructure Plan	http://www.bawbawshire.vic.gov.au/About-Council/Publications-and-Policies/Our-Performance/Council-Plan
Baw Shire Long Term Financial Strategy	http://www.bawbawshire.vic.gov.au/About-Council/Publications-and-Policies/Our-Performance/Council-Plan

Definitions

Term	Definition
Certificate of Practical Completion	'Completion' means a Council document certifying that a DCP infrastructure project has been completed to the satisfaction of Council..
Certification	<p>According to the VicSmart Guide (2018), <i>Certification of the Plan of Subdivision follows the issue of a planning permit. The plan of subdivision or consolidation must be prepared by a licensed surveyor and certified by council.</i></p> <p><i>Certification is carried out by councils, in a process separate from the planning permit, to ensure your plan complies with the technical aspects of subdividing land in Victoria.</i></p> <p><i>Certification is the key administrative step in enabling a subdivision proposal to proceed. It is undertaken by councils and ensures that any proposed plan of subdivision complies with the Subdivision Act, the regulations and any requirements of the planning scheme or planning permit and any matter required under section 6(1) of the Subdivision Act.</i></p>
Community Infrastructure	<p>This is works, services or facilities that may be funded by a Community Infrastructure Levy as defined in the <i>Planning and Environment Act 1987</i>, relevant Ministerial Directions on Development Contributions and referred to in the Development Contributions Guidelines. The Development Contributions Guidelines (2007) describe Community Infrastructure as:</p> <p><i>'The construction of a building or facility used for a community or social purpose, but does not include the land on which the facility or building is constructed. The land acquisition is classified as development infrastructure.'</i></p> <p>Community infrastructure does <u>not</u> include:</p> <ul style="list-style-type: none"> <i>'The acquisition of land for community facilities, or</i> <i>The construction of maternal and child health care centres, child care centres, preschools, and multi-purpose community meeting facilities.</i> <p><i>These are classified as development infrastructure.'</i></p>
Community Infrastructure Levy (CIL)	Community infrastructure levies are charged through an approved DCP for community infrastructure under section 46J(b) of the <i>Planning and Environment Act 1987</i> . The CIL contributes to the funding for Community Infrastructure items set out in the DCPs.
Consumer Price Index (CPI)	This is the weighted average cost of a basket of retail goods expressed in relation to a base period. This is usually expressed as a figure above a base of 100 percent. The figures for each quarter and each year are available in the Australian Bureau of Statistics

	publication 'Consumer Price Index Australia 6401.0'. The relevant index is the All Groups Melbourne Index.
Developer	The legal person that develops the land within the Warragul/Drouin Precinct Structure Plan areas. It will sometimes but not always be the same person that is the owner of the land.
Development Contribution	A contribution comprising a combination of the DIL and the CIL usually paid in cash, or through the provision of land or works in kind obtained from a developer for the purpose of funding infrastructure. Development contributions are levied in accordance with the DCP and the provisions of the <i>Planning and Environment Act 1987</i> , or in accordance with an approved agreement with Council (pursuant to Section 173 of the <i>Planning and Environment Act 1987</i>).
Development Contributions Plan (DCP)	According to the Development Contributions Guidelines (2007), 'A <i>development contributions plan (DCP)</i> is a mechanism used to levy new development for contributions to fund planned infrastructure that will be needed by the future community.' The Drouin and Warragul DCPs set out the development contributions (comprising the DIL and the CIL) expected from each individual landowner to fund infrastructure and services. Each DCP is an incorporated document in the Baw Baw Planning Scheme. The DCPs are governed by Part 3B of the <i>Planning and Environment Act 1987</i> . The DCP applies to land known as the Main Catchment Area (MCA).
Development Infrastructure	This is works or facilities that is funded by a Development Infrastructure Levy.
Development Infrastructure Levy (DIL)	The Development Contributions Guidelines (2007) describes the DIL as the ' <i>infrastructure levies calculated and charged for development infrastructure projects generally collected through the planning permit process.</i> ' The Warragul and Drouin DCPs requires that new development pay a per net developable hectare levy (DIL) to fund infrastructure identified in the relevant DCP. DIL is used for projects including items such as roads, drainage, open space, land acquisition and essential family and children's facilities. The DIL is normally collected from the developer at the subdivision stage.
Future Community	The Development Contributions Guidelines (2007) describes future community as ' <i>the total population or development that is expected to live or occur in an area within the timeframe of the DCP. It includes both existing and projected new development.</i> '
Summary Land Budget Table	A table in the DCPs setting out the total precinct area, the net developable area and land uses proposed within the precinct.
Main Charge Area (MCA)	The DCPs apply to land known as the Main Catchment Area (MCA). The MCA is the geographic area from which the items of infrastructure included in the DCP will draw most of their use and

	also the area in which most of the projects will be delivered. The MCA covers a total of 1,695 hectares in Warragul and 906 hectares in Drouin. The MCA is divided into three charge areas in Drouin – residential, low density residential and business and industry. In Warragul, the MCA is divided into four charge areas – residential, low density residential, business and industry and external drainage.
Net Developable Area (NDA)	The Net Developable Area (NDA) is established by deducting the land requirements for community facilities, public and private education facilities, arterial roads and open space (active and passive) from the total precinct area. It is calculated for each DCP in the Summary Land Budget Table.
Nexus	The Development Contributions Guidelines (2007) describe nexus as the <i>'reasonable connection between the development and infrastructure that will be provided. This connection is demonstrated by the likelihood that new development will use the infrastructure to be provided.'</i>
Out of Sequence Development	Pertains to development that is not in sequence with the stages indicated on a Staging Plan or requires significant bring-forward investment to facilitate its delivery.
Precinct Structure Plan (PSP)	A long-term strategic plan that describes how the precinct will be developed. The PSP is a detailed master plan which identifies housing, town centres, community facilities, open space and transport networks in new neighbourhoods, delivering effective and integrated future planning for new communities.
Public infrastructure plan (PIP)	A plan required by the Urban Growth Zone Schedule for an area which shows the timing and staging of works in kind and/or land that will be delivered by the developer that is to be approved by Council prior to certification of a subdivision. The PIP is to be submitted with the planning permit application.
Section 173 Agreement	This is a legal agreement made between Council and any other party or parties, under Section 173 of the <i>Planning and Environment Act 1987</i> . The agreement is registered on the title and binds the current and future owners of the land. In relation to this policy for the provision of DCP infrastructure projects, the agreement is usually between the landowner and Council. It will usually be the document that comprises the WIK agreement or arrangement between Council and the developer.
Statement of Compliance (SOC)	Under section 21(1) of the <i>Subdivision Act 1988</i> , a developer receives a Statement of Compliance from Council once all conditions placed on a planning permit have been satisfied or adequate arrangements have been made to secure compliance with those requirements.
Statutory Reserve	This is a financial reserve (a fund) established and administered in accordance with legislative requirements for the purpose of holding funds. Development contributions comprising cash

	payments are generally held within such reserves. The funds held in the statutory reserves are only be used for the purpose for which they were levied.
Works In Kind (WIK)	Where a developer delivers infrastructure projects instead of paying cash. It will usually be accompanied by an entitlement to a credit to offset the developer's liability to pay the Development Infrastructure Levy (DIL).