

Planning and Environment Act 1987

Interim Panel Report

Monash Planning Scheme Amendment C148

Open Space Contributions

7 April 2020

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment. [section 27(1) of the *Planning and Environment Act 1987* (the Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the Act]

Planning and Environment Act 1987

Interim Panel Report pursuant to section 25 of the Act

Monash Planning Scheme Amendment C148

Open Space Contributions

7 April 2020



Michael Ballock, Chair



Nicola Ward, Member

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
Council	Monash City Council
DELWP	Department of Environment, Land, Water and Planning
Discussion Paper	<i>Metropolitan Melbourne Investigation - Discussion Paper</i> , Victorian Environmental Assessment Council, October 2010
LPPF	Local Planning Policy Framework
MOSS	<i>Monash Open Space Strategy</i> October 2018
MSS	Municipal Strategic Statement
NEIC	National Employment and Innovation Cluster
PPF	Planning Policy Framework
RGZ	Residential Growth Zone
SGS Report	<i>City of Monash – Open Space Contribution Rate Planning</i> October 2018
VEAC	Victorian Environmental Assessment Council
VPA	Victorian Planning Authority
VPP	Victoria Planning Provisions

Overview

Amendment summary

The Amendment	Monash Planning Scheme Amendment C148
Common name	Open Space Contributions
Brief description	The Amendment proposes to update the public open space contribution rates for all subdivisions
Subject land	All of the City of Monash
The Proponent	Monash City Council
Planning Authority	Monash City Council
Authorisation	By letter dated 15 May 2019
Exhibition	17 June to 2 August 2019
Submissions	Number of Submissions: 44 (Refer to Appendix A) Opposed: 36

Panel process

The Panel	Michael Ballock (Chair), Nicola Ward
Directions Hearing	Monash City Council offices, 25 November 2019
Panel Hearing	Planning Panels Victoria, 17, 19, 20 and 21 February 2020
Site inspections	Unaccompanied, 13 February 2020
Parties to the Hearing	Refer to Appendix B
Citation	Monash PSA C148 [2020] PPV
Date of this Report	7 April 2020

Executive summary

Monash Planning Scheme Amendment C148 (the Amendment) seeks to change the open space contribution rates for all subdivisions from a maximum of 5 per cent to 10 per cent.

Key issues raised in submissions included:

- the justification for the 10 per cent contribution rate
- the justification for the requirement for 30 square metres of open space per person
- the application of a blanket rate across the municipality
- the impact of the rate on the Monash National Employment and Innovation Cluster
- the impact of the rate on future development in the municipality
- lack of detail regarding future budgeting or predicted spending on open space included in the calculation of the rate
- the methodology that supports the Amendment and its application
- consideration of transitional provisions to exempt subdivision proposals that are associated with an approved development.

The Amendment is supported by the *Monash Open Space Strategy 2018* (MOSS) which recognises the importance of open space in an urban setting. The MOSS defines open space in terms of its:

- access and ownership
- function
- catchment hierarchy
- landscape setting.

The strategy assesses the current provision of open space within the municipality based on what is effectively the most restrictive definition of open space, 'Monash Community Open Space' which is calculated at 2.7 hectares per 1,000 residents. This definition does not take into account open space in adjacent municipalities or regional open space to which the Monash population has access.

From 2016 to 2028 the population is expected to grow by a total of 14,057 residents, an increase of 7 per cent. Oakleigh and Clayton are expected to accommodate most of this growth.

The *City of Monash – Open Space Contribution Rate Planning October 2018* (SGS Report) was commissioned to provide advice on the open space contribution rate and is included as an Appendix in the MOSS. The MOSS accepted a benchmark provision of 3 hectares per 1,000 population based on the advice in the SGS Report and also adopted a proximity-based standard with 95 per cent of all dwellings within 400 metres of a local park. It calculated that currently, 85 per cent of all dwellings in Monash were within 400 metres of a local park.

The SGS Report recommended the adoption of an inclusionary provision approach in the determination of an open space levy. The inclusionary provision approach is based on the idea that each unit of development should meet a particular standard or rate of open space provision, irrespective of where within the municipality the development is located, and irrespective of the type of development (residential or non-residential). Using a standard of

3 hectares per 1,000 population (30 square metres per person) the open space levy calculated was 10 per cent for all development, residential and non-residential.

The Panel takes the view that a municipal wide benchmark of 30 square metres was something of an illusory target. In a built-up area like Monash the opportunity to acquire additional open space is severely constrained, a view supported by the evidence presented to the Panel. In addition, as population increases the ratio per person will, of necessity, decrease and so a per person provision has only limited value. The Panel concluded that it was a flawed metric for the calculation of an appropriate open space levy rate. In fact the MOSS said as much when it stated:

However, the 30m² per capita benchmark will not be considered as a blanket figure for determining open space as there are other factors that need to be considered, such as 'proximity-based' standards.

The absence of an implementation plan as part of the MOSS is a significant shortcoming in arriving at an appropriate open space levy rate.

The Panel accepts that, with a growing population there may be a need to increase the amount of the open space levy and the MOSS goes some way to justifying that need. However, the amount of the increase in the open space levy and the increase in its scope was not justified by the information presented to the Panel.

The Panel does not take the view that the Amendment is fatally flawed. With additional work, analysis and justification, it could be approved. The matters that need to be addressed are:

- An implementation plan should be developed to inform the change in the open space levy rate sufficient to meet the municipality's open space needs. The key actions for each precinct in the MOSS go some way to this, however more detail on each of the implementation tasks, responsibilities, cost estimates and priorities need to be included.
- More analysis and justification is needed to apply the same open space levy rate to residential and non-residential subdivisions.
- There is a lack of clarity and consistency in the use and meaning of community open space
- The identification of public open space gaps in Monash should be clarified. The Panel considers that the use of 'Monash community open space' as the primary measurable is too narrow and does not take into account open space in adjacent municipalities or regional open space. For example, this leads to an incongruous situation where dwellings abutting Jells Park are identified as being in an open space gap.

The Panel concludes:

- The lack of an implementation plan which nominates precincts in which land acquisition will be sought, in addition to open space projects and works with cost estimates, is a shortcoming in the MOSS. An implementation plan should be prepared, whether part of the MOSS or a separate document.
- The exclusion of regional open space and open space outside the municipality overstates the areas within the municipality that are not within 400 metres of open space.

- Map 1 of Clause 22.15 should be consistent with Map 2 of the MOSS, and terminology should be consistent within the MOSS and between the MOSS and the LPPF.
- Council's expenditure on open space is not a relevant consideration for the Panel.
- Changes to the Schedule to Clause 53.01 to exempt open space required by Amendment 156 are not appropriate.
- Council can amend the contribution rate in the Schedule to Clause 53.01.
- Whether a change in the rate is justified depends on the basis for calculating the new rate.
- The treatment of the whole municipality as a single planning unit is appropriate.
- An inclusionary requirements approach is reasonable.
- Applying the same rate to employment land is not justified.
- Council's standard of 30 metres square per person does not adequately support the calculation of a 10 per cent contribution rate.
- An implementation plan which nominates precincts in which land acquisition will be sought and projects and works in open spaces with cost estimates is a more appropriate basis for the calculation of a contribution rate

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Monash Planning Scheme Amendment C148 not proceed at this time. The Panel recommends:

- 1. Council should review the Amendment documents and undertake the following additional work:**
 - **Develop an implementation plan either as part of the Monash Open Space Strategy or as a separate document, which nominates precincts in which land acquisition will be sought and projects and works in open spaces with cost estimates.**
 - **Use the implementation plan as the basis for the calculation of an open space levy rate in place of the 30 square metre macro-provisioning standard.**
 - **Develop a detailed justification for the application of the same open space levy rate to residential and non-residential subdivisions.**
 - **Clarify the use and meaning of community open space in the Monash Open Space Strategy and Clause 22.15.**
 - **Review the areas designated as public open space gaps in Map 1 in Clause 22.15.**
- 2. Once this work is complete the Amendment should be re-exhibited.**
- 3. The Panel will then reconvene to consider any submissions.**
- 4. Alternatively, Council should abandon the Amendment.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to update the public open space contribution rates for all subdivisions in the municipality.

Specifically, the Amendment proposes to:

- amend the Schedule to Clause 53.01 to require that all subdivision provides a public open space contribution at a rate of 10 per cent
- introduce a new Local Planning Policy – Clause 22.15: Public Open Space Contributions Policy that sets out the guidance for the process on when, where and how a public open space contribution will be required, including whether in the form of cash in lieu, land or a combination of both
- replace Clause 21.10 in the Municipal Strategic Statement with a new Clause 21.10.

(ii) The subject land

The Amendment applies to all land within the City of Monash.

1.2 Background

The Amendment was informed by the following key documents:

- the MOSS
- the report titled *City of Monash – Open Space Contribution Rate Planning* October 2018 (SGS Report).

The MOSS provides a framework for an open space network of sports and leisure reserves, local parks and trails over the next 10 years. A key action identified by the MOSS is to make changes to the Scheme to update the public open space contribution rates.

The vision of the MOSS is that the City of Monash has quality, diverse and accessible open space to drive the liveability, health and wellbeing of its community by:

- meeting the current and future needs of the community – close to where people live, work and play
- having a diversity of functions for social, physical and environmental experiences for the whole community
- strengthening the ‘Garden City Character’ of residential, commercial and industrial areas.

The principles which underpin the MOSS include:

- Equitable access – ensure an appropriate level of open space is available for all residents regardless of where they live, their age, gender, income, ethnicity, education or ability.
- Diversity of opportunities and experiences to ensure all residents can use and benefit from open space.

- Quantity – the provision of open space across Monash will continue to be increased to ensure an appropriate level is available for all residents.
- Quality (fit for purpose) – ensuring that the function of an open space meets the requirements for that function.
- Sustainability – in design, development and management of open space.
- Dependency – some people, activities and assets are dependent on the inherent natural qualities of open space reserves. As a priority, open space should support activities and users who are more dependent upon it.
- Environmental protection, enhancement and appreciation including the protection of canopy trees, habitat, flora and fauna and waterways.

The MOSS outlines 12 precincts to provide a more detailed analysis of open space provision and relative need. A series of recommendations are set out for each of the precincts. These areas include Burwood/Ashwood, Chadstone, Clayton, Glen Waverley, Hughesdale, Mount Waverley, Mulgrave, Notting Hill, Oakleigh South, Oakleigh, Oakleigh East/Huntingdale, and Wheelers Hill.

The SGS Report concluded that the open space contribution rates in the Scheme at Clause 53.01, which range from 2 to 5 per cent, were inequitable and out of date and that the most appropriate mechanism for funding open space or open space improvements was to increase the open space contribution rate in the Scheme to 10 per cent. This rate was calculated using the following three key principles:

- The City of Monash is considered a single planning unit for open space planning purposes. Clause 53.01 allows for open space contributions collected to be spent anywhere within the municipality.
- All residents (existing and future) of the City of Monash are entitled to enjoy access to a reasonable standard of open space at a given horizon year, and planning for future open space acquisitions and upgrades should seek the most equitable distribution of open space services across the City.
- An inclusionary provisions approach means that all development should equip itself with sufficient open space to meet its needs as indicated by planning standards, and this can be through land or cash in kind contributions.

1.3 Summary of issues raised in submissions

(i) Planning Authority

The key issues for Council were:

- the provision and planning of open space should consider the changing demographics and growing population of the Monash community and help result in healthier, happier and more vibrant communities
- open space areas should provide for nature conservation, active and passive recreation, recreation trails, as well as infrastructure requirements.

(ii) Individual submitters or groups of submitters

The key issues by submitters were:

- the justification for the 10 per cent contribution rate
- the justification for the use of 30 square metres of open space per person

- the rate should not be applied as a blanket rate across the municipality
- the rate is too high and will impact on the success of the Monash National Employment and Innovation Cluster (NEIC)
- the rate is greater than other municipalities' rates
- the impact the rate will have on future development in the municipality
- lack of detail regarding future budgeting or predicted spending on open space included in the calculation of the rate
- Talbot Quarry residents object to Council not acquiring the former quarry for open space
- the methodology that supports the Amendment and its application
- consideration of transitional provisions to exempt subdivision proposals that are associated with an approved development.

These submissions remained outstanding.

1.4 The Panel's approach

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 considered all written submissions made in response to the exhibition of the Amendment, observations from site visits and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Strategic justification – Monash Open Space Strategy
- The SGS Report.

2 Planning context

2.1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The Amendment will assist in implementing State policy objectives set out in section 4 of the Act by:

- providing an equitable method to collect contributions for the provision of public open space, based on the need created by the new development and population
- providing certainty and consistency as to the required public open space contributions
- establishing an appropriate benchmark for the provision of public open space per person
- providing public open space to meet the needs of the future population.

Clause 12 (Environmental and Landscape Values)

The Amendment supports Clause 12 by:

- ensuring natural features are maintained, protected and enhanced.

Clause 15 (Built Environment)

The Amendment supports Clause 15 by:

- promoting a diversity of public open space to support future subdivision and development that fosters a healthy lifestyle and achieves community benefit from well-designed neighbourhoods.

Clause 19 (Community Infrastructure)

The Amendment supports Clause 19 by:

- seeking to protect, improve and expand the public open space network to address the current and future population needs.

Clause 21 (the Municipal Strategic Statement)

The Amendment supports the Local Planning Policy Framework (LPPF), in particular the existing Clause 21.10 Open Space by:

- addressing current and future provision of public open space and public open space infrastructure to help meet the needs of the current and future community
- ensuring that adequate public open space is provided for development, including sites that seek higher residential densities
- improving the diversity, functionality and inclusiveness of public open space facilities and landscape settings to meet the needs of the community.

The Amendment seeks to replace the existing Clause 21.10 with a new Clause 21.10, which accords with the policy direction of the MOSS and objectives regarding the provision of open space within the City of Monash.

The new Clause 21.10 proposes to implement the following strategies:

- protect public open space areas from inappropriate development on adjoining and nearby land
- ensure there is no net loss of open space through development, improve the diversity of public open space functions and landscape setting type and encourage the development of multiuse social/family recreation parks that improve social cohesiveness
- promote the development of parks that are safe, shaded, well located and accessible and vibrant and where appropriate incorporate universal design features and environmentally sustainable design principles
- increase the planting of canopy trees in public open space
- determine an appropriate amount of cash or land public open space contributions for residential, commercial, industrial or a mix of land uses.

Clause 22 (local planning policies)

The Amendment supports local planning policies by:

- the new Clause 22.15 mirroring the strategic outcomes and objectives which are identified in the MOSS.

2.2 Other relevant planning strategies and policies

(i) Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne’s development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. Outcomes that are particularly relevant to the Amendment are set out in Table 1.

Table 1: Relevant parts of Plan Melbourne

Outcome	Directions	Policies
5 Melbourne is a city of inclusive, vibrant and healthy neighbourhoods	Direction 5.1 – Create a city of 20-minute neighbourhoods	
	Direction 5.4 – Deliver local parks and green neighbourhoods in collaboration with communities	5.4.1
6 Melbourne is a sustainable and resilient city	Direction 6.4 – Make Melbourne cooler and greener	6.4.1 6.4.2
	Direction 6.5 – Protect and restore natural habitats	6.5.1

2.3 Planning scheme provisions

(i) Other provisions

The Schedule to Clause 53.01 is specifically provided in the Victoria Planning Provisions to allow councils to establish open space contribution rates appropriate for their local circumstances. Council submitted it is the most appropriate tool to guide decision-making in determining where land and financial contributions should be sought.

2.4 Ministerial Directions and Practice Notes

Ministerial Directions

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). That discussion is not repeated here.

Planning Practice Notes

Planning Practice Note 70 Open Space Strategies (PPN70) provides guidance to councils on preparing an open space strategy. It covers the reasons for preparing an open space strategy and the possible inputs and outputs of the process. An open space strategy is a strategic approach for planning the current and future uses of open space within a municipality.

3 Strategic justification – Monash Open Space Strategy

3.1 Relevant policies, strategies and studies

(i) Planning Practice Note 70

PPN70 provides guidance on the preparation of an open space strategy which is described as a strategic approach for planning current and future uses of open spaces within a municipality. The practice note states that an open space strategy should:

- provide an overview of existing open space resources and future needs
- provide a basis for decision-making about future open space provision and development
- assist financial and resource planning and asset management
- identify areas of under-provision of open space and articulate strategies for how land could be acquired or disposed of for the purpose of open space
- facilitate a coordinated approach to open space planning
- articulate community and local government aspirations in relation to open space provision and development.

PPN70 outlines the following process for the preparation of an open space strategy:

- project planning and establishment
- background research
- discussion paper
- draft open space strategy
- final open space strategy
- implementation program
- monitoring and review.

(ii) Metropolitan Melbourne Investigation - Discussion Paper

The Victorian Environmental Assessment Council (VEAC) *Metropolitan Melbourne Investigation - Discussion Paper*, October 2010 (Discussion Paper) was commissioned by the then Minister for Environment and Climate Change as an investigation into public land use, including use of public open space in metropolitan Melbourne.

(iii) Precinct Structure Plan Guidelines

The Precinct Structure Plan Guidelines (2009) prepared by the then Growth Areas Authority provide for standards for open space in Precinct Structure Plans. The following standards are relevant to arguments heard by the Panel:

Local parks within 400 metres safe walking distance of at least 95 per cent of all dwellings. (S1)

Active open space within 1 kilometre of 95 per cent of all dwellings. (S1)

Linear parks and trails, most often along waterways, but also linked to vegetation corridors and road reserves. (S1)

In residential areas, approximately 10 per cent of net developable areas as total public open space, of which 6 per cent is active open space. (S2)

In major employment areas, approximately 2 per cent of net developable areas as public open space, usually with a passive recreation function. (S3)

In meeting standards S2 and S3, encumbered land should be used productively for open space, usually with a passive recreation function. (S4)

The network of local and district parks should be efficiently designed to maximise the integration and sharing of space with publicly accessible encumbered land. (S4)

3.2 The MOSS

The MOSS, which was adopted by Council on 18 October 2018, states that it will:

... guide the future planning, provision, design and management of open space in Monash for the next decade. It is a high-level strategic document that seeks to identify the open space needs of existing and future residents of Monash, gaps in the provision of open space and opportunities to address those gaps.

The Amendment proposes to include the MOSS as a reference document in Clauses 22.10 and 22.15.

(i) The issues

The issue is whether the MOSS provides the strategic justification for the Amendment.

(ii) Evidence and submissions

Council

Council submitted that the VEAC Discussion Paper recognises the role of open space in maintaining Melbourne's liveability as well as the importance of open space in mitigating the effects of climate. It predicted that the per capita provision of open space in Monash would fall from 46 to 40 square metres per person from 2006 to 2026.

Council added that the need for open space is supported by both State and local policy and that:

...there is a clear strategic justification for requiring the provision of additional public open space to meet the demands of a growing and intensifying municipality.

Council submitted that the Discussion Paper sets out the value of public open space in the following way:

Public open space was the most common theme raised in submissions to the investigation and by the Community Reference Group. Many submissions commented on the mental and physical health benefits of recreating out of doors; the benefits to the environment from the conservation or re-planting of native vegetation, and the opportunities provided by linear open space for creating habitat links and corridors; and the benefits in counteracting the loss of private open space in a time of increased housing density. Many submissions also raised concerns about the loss of open space in particular municipalities, the need to protect open space from further loss and the need for additional open space to meet increasing population levels. Some submissions were concerned about the disposal of public land that is currently used or could be used for open space.

Public open space is a key contributor to Melbourne's liveability. It contributes to a range of liveability goals including healthy, safe and inclusive communities, dynamic resilient local economies, sustainable built and natural environments and culturally rich and vibrant communities.

Council argued that the Discussion Paper supports the strategic basis for the MOSS which identified an increasing population and limited opportunities to acquire new public spaces in a municipality with a low per capita provision compared to outer and growth municipalities.

Council submitted that:

The MOSS provides a framework and a plan for the future needs of the existing and growing community of Monash for an open space network of sports and leisure reserves, local parks and trails over the next 10 years. A key action identified by the MOSS is to make changes to the Scheme to update the public open space contribution rates for all subdivisions.

Council informed the Panel that the MOSS identifies 12 precincts that are subject to a detailed analysis in terms of open space provision and need and added that there is nothing in PPN70 that requires an open space strategy to include a costed infrastructure plan. Such a plan would be likely to *“underestimate and underprovide”* open space because it would be based on assumptions about future populations. In addition, a costed plan would lock Council into a program and prevent it from pursuing opportunities that might arise.

Council noted that the proposed Clause 21.01 identified implementation of actions in the MOSS which includes preparing an action plan for each precinct to identify land acquisition and capital works projects.

Council called Dr Spiller to give evidence in relation to the preparation of the SGS Report. His evidence was that Clause 53.01 provided the Council with the discretion to apply the contribution rate as a percentage of the site value, a developable area or a combination of both. This discretion also applied to where new open space is acquired. He added that the MOSS provides a clear strategic direction for open space investment and while not documented *“in a costed implementation they provide clear evidence of Council’s intent for expending funds.”*

Dr Spiller stated:

Council’s determination of how to expend funds collected under Clause 53.01 will be influenced by the quantum of funds collected. Funds collected under Clause 53.01 may be spent anywhere in the municipality. Through not tying contributions to a costed implementation plan, Council can be flexible and proactive when unexpected land purchase opportunities arise (for example a residential property is listed for sale adjacent to an existing reserve in an area of poor open space provision), and adapt open space planning to meet the evolving needs of the community, while also implementing projects that are as yet uncosted but identified in the Monash open space strategy.

Dr Spiller gave evidence that Council engaged his firm to *“prepare a report advising on the feasibility and appropriateness of revising open space contribution rates within the City of Monash”* during the preparation and finalisation of the MOSS. He added that the MOSS informed this work by identifying the open space needs of existing and future residents of the municipality, gaps in the network and approaches to deal with those gaps.

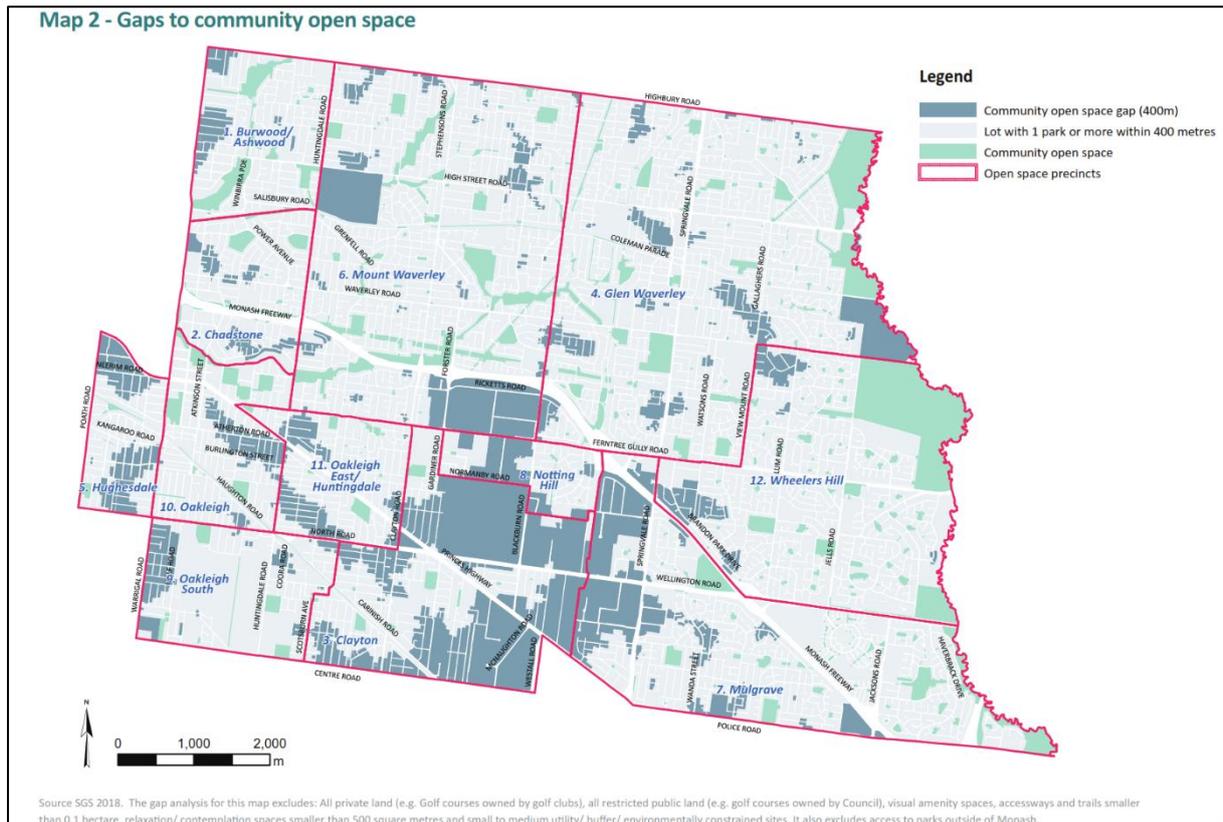
He stated that the proposed Clause 22.15 reflected the strategic outcomes and objectives in the MOSS by including the following objectives:

- To protect and expand the public open space network and address open space needs that is prioritised in the precincts with the greatest need
- To ensure that adequate public open space is provided for development, including strategic redevelopment sites that seek higher residential densities

- To identify the circumstances when and where land contributions for public open space will be sought in preference to a cash contribution
- To improve the diversity, functionality and inclusiveness of public open space facilities and landscape settings by meeting the needs of the community.

He observed that the proposed Clause 22.15 included a map from the MOSS, that identified areas of community open space and community open space gaps (locations that were not within 400 metres of public open space) see Figure 1.

Figure 1: Gaps in 'community' open space (source: MOSS)



Dr Spiller’s evidence was that the strategies in the amended Clause 21.10 (set out in Chapter 2.1) were consistent with the policy direction set by the MOSS.

Dr Spiller added:

I do not subscribe to a model of open space planning which gears the rate of provision to current demography and socio economic profile, so that parkland networks vary from precinct to precinct or suburb to suburb in line with observed differences in ‘need.’ Open space is a very long term infrastructure investment which frames urban development. This infrastructure will witness multiple generations of community over an indefinite period into the future. In this context, current demography is important in the programming of open space infrastructure but, in my view, ought not be a driver in determining the sufficiency of provision.

Council concluded:

... the underlying MOSS has also not been a focus of criticism. While the evidence of Mr Milner and Mr Ainsaar does contain some criticism of the MOSS, the Council does not read their evidence as being to the effect that the MOSS should be discarded. Rather, the Council reads their evidence as being that the MOSS, by itself, does not provide a sufficient justification for the adoption of a 10 per cent contribution rate.

Submitters

Salta Properties (West) Pty Ltd, Golf Road Project Development Pty Ltd and Talbot Road Finance Pty Ltd (Salta) submitted that the MOSS argued a new rate is required because of the *“growing population, increased housing density, increasing age and diversity of residents and the uneven provision of public open space in various areas of the municipality.”*

Salta stated:

It can be accepted that the Council needs money for open space purposes, that a growing population will place greater demands on existing open space, that higher density development will generate demand for open space, that climate change and changing demographics may impose a cost.

There will always be a need to spend money on open space. The question raised by this Amendment is whether the current rates need changing to raise an appropriate contribution. That question has not been answered.

Salta argued that the details of open space acquisition or capital works costs were necessary to understand the quantum of money that needed to be raised. This work had not been undertaken and this analysis was critical to the setting of an appropriate open space levy.

It added that the MOSS set out actions, plans for land acquisition and works to open space but did not cost them. Salta stated:

... the strategy is noted as aspirational with the prospect of recommendations not being implemented in the life of the strategy. There is no way of knowing what the cost of actioning the strategy will be. It is entirely possible that collections under the current contribution rates will readily meet the cost.

Salta called evidence from Mr Milner. His evidence was that the MOSS and Municipal Strategic Statement have identified precincts such as Oakleigh, Oakleigh South and Clayton that will experience substantial growth and other areas where *“growth will be more tempered by the housing strategies and policies.”* This provides a more responsive framework upon which to base levy contributions. He added:

The MOSS is imprecise about the need, scope and cost of quality improvement projects to open space and yet this attribute forms a principal component justifying the higher rates of contribution that are sought.

He noted that PPN70 makes the following observation:

As part of the strategy development process, gaps in the open space network will be identified, along with an understanding of the type of open space required. There is an opportunity to rectify gaps through open space contributions, but it is important to specify the location where land is sought and provide criteria that defines the type of land sought.

Mr Milner gave evidence that a more nuanced framework was needed to identify and target open space acquisitions and improvements in order to justify higher contribution rates. This approach would provide a clearer nexus between the collection of an increased levy and the location of any additional or improved facilities. He added that without the identification of open space acquisitions and works, a flat rate levy fails the test of fairness.

Mr Milner’s evidence was that the MOSS was founded on four principles:

- treating the municipality as one single planning unit
- an inclusionary obligation for both residential and non-residential development
- agreed standards

- open space service.

He stated that the inclusionary provision approach was “*conceptually flawed*” because residential and non-residential uses do not have the same need for and use of public open space. He added:

The quality and quantity of open spaces across the municipality and its ability to meet community needs is not uniform.

Mr Milner stated that the MOSS used a conservative definition of public open space which excluded:

- all private land
- all restricted public land
- visual amenity spaces, accessways and trails smaller than 0.1 hectares
- relaxation / contemplation spaces smaller than 500 square metres
- small to medium sized utility / buffer / environmentally constrained sites.

He added that the MOSS acknowledged that there were 1134 hectares of open space in Monash but 512 hectares of what it defined as community open space. He challenged the calculation based only on community open space and argued that it was at odds with the existing Clause 21.10 which identified 650 hectares including Jells Park. He added that open space on the other side of the municipal boundary should also be considered.

Mr Milner’s evidence was that the 400 metre proximity standard relied on the residential subdivision standard of Clause 56 which only applies to residential and not non-residential development.

He concluded:

... the MOSS and its recommendations for a greater contribution from subdivided land towards public open space relies upon a narrow, incomplete and unfair consideration of the spectrum of ‘public’ spaces that the community would perceive, use and value as open space available to them.

Salta called Mr Ainsaar to give evidence. His evidence was:

... that there is a fundamental misalignment between the Amendment, the MOSS and the SGS Report in relation to the calculation of open space contributions.

The MOSS follows a commonly adopted approach for open space strategies, whereby existing gaps are identified, the impact of future development and changing open space usage is considered, and actions are proposed to address issues identified. The findings of the strategy, however, are not translated into the calculation of open space contributions in any way other than through a highly simplistic open space land provision target of 30sqm per resident.

He stated that the majority of actions in the MOSS are designed to address existing under supply or improve existing open space. Mr Ainsaar gave evidence that the MOSS should include cost estimates, revenue analysis and actions needed by existing residents and new development if it is to be used as the basis for establishing a contributions rate.

Mr Ainsaar’s evidence was that the most important guidance on the preparation of a contribution rate is found in PPN70 and the principles of need, nexus, equity and accountability found in the development contributions system. He stated that there is no meaningful relationship between the MOSS and the contributions rate and that:

... the open space contributions rate should be calculated based on the expected cost of implementing the MOSS and the expected share of usage that new development will generate. This approach has not been applied in this case.

He added:

... the vast majority of actions in the MOSS are designed to either address existing under-provision/spatial gaps, or to make improvements to existing open space. This is directly at odds with the open space contributions rate which is calculated solely on the basis of increasing the quantity of open space land.

Ms Valente submitted on behalf of A & S Valente and Associates Pty Ltd that the recommendations of the MOSS related principally to improvements in existing open spaces and not the provision of additional open space:

There are a number of different funding opportunities for open space, as described in the MOSS report. However, collections under Clause 53.01 provide Council with a necessary ongoing funding stream to proactively plan for and deliver a quality open space network across the municipality.

Ms Valente submitted an increase in the levy could not be justified if Council could not provide an implementation plan with the MOSS *“to address the current and projected need and remove the inequities of current open space distribution.”* She added that priority land acquisitions to reach the target of 30 square metres were not included in any of the Amendment documents.

She argued that the need for additional open space in the southern suburbs of the municipality would not be addressed by the Amendment in its current form and without an implementation plan. She added that the current inclusionary provision approach had not *“ensured an accountable, satisfactory and equitable distribution of open space.”*

Mr Saisanas’ submission reiterated the concerns of other submitters about the lack of a *“detailed list of projects and no actual costings.”*

Council’s response

In closing, Council submitted:

Nothing in PPN70 or any other document identifies a costed infrastructure plan to be mandatory and the Council does not consider it to be a superior approach to the standards based approach adopted in this Amendment.

(iii) Discussion

The MOSS is essentially made up of two components, the open space strategy and the SGS Report which is a separate piece of work undertaken to justify and quantify a change to the open space levy and included as an Appendix in the MOSS.

The question for the Panel is whether the MOSS provides the strategic justification for a change to the open space levy detailed in the Schedule to Clause 53.01. The justification for the quantum of the change is included in the SGS Report which is discussed in the following chapter.

The Panel notes that the legend in Map 2 of the MOSS refers to a ‘Community open space gap’ and the legend of Map 1 of the proposed Clause 22.15 to a ‘Public open space gap.’ This is further exacerbated in Table 5 of the MOSS where it identifies 792.4 hectares of ‘All Council or Public Access Land’ and 512.1 hectares of ‘Monash Community Open Space’

which is land owned by Council. The difference in terminology is inconsistent, confusing and should be corrected.

Nevertheless, the Panel grappled with the concept of 'community open space' and what categories of public open space should be included and excluded in the gaps analysis which informs the provision standards. The MOSS adopted a proximity-based standard requiring 95 percent of all dwellings to be within 400 metres of a local park.

The MOSS adopts what is effectively the most restrictive definition of open space, 'Monash Community Open Space'. It calculated the current provision of Monash Community Open Space at 2.7 hectares per 1,000 residents. Using this definition it calculated that 85 per cent of all dwellings in Monash were within 400 metres of a local park.

In the Panel's view regional open space, while it has a greater catchment, still fulfils the role of open space, as does open space on the other side of a municipal boundary. The Panel notes that the 400 metre proximity standard based on community open space results in areas adjacent to regional open space and open space in adjoining municipalities being identified as under-provided.

The Panel does not consider this a significant issue to the Amendment but recommends that mapping in the MOSS be amended to correctly reflect where properties are proximate to public open space in neighbouring municipalities and regional open space, against the 400 metre walkable catchment standard. This should provide more accurate guidance for the allocation of resources by Council to increase public open space in 'shortfall' areas.

The basis for considering whether the MOSS provides the strategic justification for the Amendment is its consistency with the provisions of PPN70. In the Panel's view the MOSS is largely consistent with PPN70 because it addresses the six of the seven matters that the practice note identifies as components of an open space strategy. However, the Panel does not support the Council's view that the MOSS had not been the focus of criticism as submissions to the Amendment and Hearing as well as evidence criticised the MOSS for its lack of detail.

One of the criticisms of the MOSS by Mr Milner and Mr Ainsaar was that it lacked a detailed implementation strategy which would result in a more nuanced open space levy based on the provision in each precinct. However, the Panel notes that while the process of preparing an open space strategy outlined in PPN70 includes an implementation program, the practice note recognises that it can be part of the strategy or a separate document. PPN70 recommends that the implementation plan provide "*more detail on each of the implementation tasks, responsibilities, cost estimates and priorities*" as well as the statutory implementation of the strategy including the amendments or additions to the Municipal Strategic Statement, local policy and the Schedule to Clause 53.01.

In the Panel's view the individual analysis of each of the precincts in the MOSS goes some way to dealing with these matters, but it is not enough. The Panel notes that the precinct key actions do not include indicative costings or estimates of the funds needed to implement the key actions. In addition, some of the actions are generic in their description.

Council submitted that it allocates substantial funds to open space as part of its annual capital works program and that, over the past five years, the funds collected from the open space levy have made up approximately half of this expenditure. Council argued that the MOSS provides strategic direction for the capital works program, which is adopted and

published by the Council and is linked to its corporate plan and part of its budget. However, the budget and consequently the capital works program are constructed on an annual basis and can change rapidly as Council's priorities change.

The Panel accepts that the demand for and use of open space changes with the demographic characteristics of the population and as a consequence costs estimated in year 1 of a strategy may have little relevance in year 10. As a consequence, PPN70 recommends regular monitoring and review of an open space strategy.

The Panel agrees with Council that a detailed costed infrastructure plan is not a requirement of PPN70 for an open space strategy but PPN70 does draw a relationship between the implementation plan and the statutory implementation of the strategy in the planning scheme which includes the open space levy rate.

Instead of an implementation plan the MOSS uses a municipal wide benchmark of 30 square metres per head of population, which will likely never be achieved. In a built-up area like Monash the opportunity to acquire additional open space is severely constrained. This view was supported by the evidence presented to the Panel by Dr Spiller and Mr Milner. Further, the MOSS says as much when it states:

However, the 30m² per capita benchmark will not be considered as a blanket figure for determining open space as there are other factors that need to be considered, such as 'proximity-based' standards.

The Amendment seeks to effectively double the open space contribution rate for residential land, include the capacity to go above this rate for strategic redevelopment sites. It also seeks to include previously excluded non-residential subdivision. This is a significant change.

The Panel acknowledges that increasing residential development will place additional strain on existing open space which will require further expenditure by Council. The Panel accepts that it is a reasonable proposition that projected new residential development should contribute to that open space which may, in turn, be an argument for increasing the open space levy rate. However, in the absence of any estimate of the amount of open space required to service that projected population it is, in the Panel's view, difficult to arrive at a fair increase to the open space levy.

It is not the Panel's view that an implementation plan needs to nominate specific locations for open space acquisition or contain detailed project specifications and specific costings. What is needed is:

- the identification of precincts in which open space acquisitions are a priority with an indicative budget. In some instances, it may be possible to obtain open space as part of a rezoning process or in the development of a Development Plan
- the nomination of open space improvements and works required in each precinct with timing and indicative costs
- major maintenance and renewal timing and costs
- a process for indexing the cost estimates.

The lack of a program of works that supports the need for a change in the levy is, in the Panel's view, a significant flaw in the MOSS's strategic justification of the Amendment. The Panel acknowledges Council's argument that it has used an alternative method to an implementation plan to calculate an appropriate open space levy and this is dealt with in the following chapter.

Nevertheless, in the Panel's view, if the MOSS is to provide the strategic justification for a significant change in the contribution rate, and the introduction of a new contribution for non-residential development, it should include an implementation plan that estimates the costs of the acquisitions and works required.

(iv) Conclusions

The Panel concludes:

- The lack of an implementation plan which nominates precincts in which land acquisition will be sought, in addition to open space projects and works with cost estimates, is a shortcoming in the MOSS. An implementation plan should be prepared, whether part of the MOSS or a separate document.
- The exclusion of regional open space and open space outside the municipality overstates the areas within the municipality that are not within 400 metres of open space.
- Map 1 of Clause 22.15 should be consistent with Map 2 of the MOSS, and terminology should be consistent within the MOSS and between the MOSS and the LPPF.

3.3 Council expenditure on public open space

(i) The issues

The issues are:

- whether the Council expenditure on open space is a relevant consideration for the Panel
- whether changes to the Schedule to Clause 53.01 to exempt open space required by Amendment C156 are appropriate.

(ii) Evidence and submissions

Council submitted that it has spent the money collected through the open space levy in accordance with the Subdivision Act and it has used the funds to purchase or improve land used for public recreation purposes. Council stated:

Based on the information available over the past 5 years, the Council spends appreciably more on open space related projects than it raises through public open space contributions.

Salta submitted that while Council has provided details of how the money collected had been spent there was no detail of open space acquisition or capital works costs to guide the future and increased levy and consequently no analysis of what money needs to be raised.

Ms Valente submitted that the Council had failed to acquire property for open space, including former schools and the Talbot Road Quarry, when the opportunities arose. She also argued that the southern suburbs of the municipality have not received an equitable share of the open space funding but have contributed a higher proportion of the open space levy fees.

Mr Saisanas submitted that there was no indication how the funds collected would be expended in that precinct.

Council argued that it is not the role of the Panel to determine whether specific areas of open space should be purchased. Council added that the Panel appointed to Monash Planning Scheme Amendment C129 considered, among other things, that matter in relation to the Talbot Quarry site. The C129 Panel determined that it could consider whether additional open space was required in Oakleigh South, but not whether a specific site could be purchased by the Council.

Council informed the Panel that its position is that:

... it is not the role of this Panel to determine whether or not the Council ought to purchase the quarry site. The Council has already resolved not to purchase the land. To the extent the Panel is minded to consider the issue however, the MOSS confirms that there is no immediate need for significant areas of additional public open space in Oakleigh South.

Make CRC Pty Ltd and Bewise (Clayton) Developments Pty Ltd (Make and Bewise) informed the Panel that they owned land occupied by the PMP printing business which has been identified as a strategically significant urban renewal site within the Monash NEIC. They informed the Panel that current negotiations about the future development of that site included an area, around 10 per cent of the site, designated as a public area. Make and Bewise submitted that any open space required through the implementation of Amendment C156 to the Monash Planning Scheme should be recognised in the revised Schedule to Clause 53.01 proposed by the Amendment.

Make and Bewise added that their concern was that they may be required to contribute an area of land through the rezoning to a Comprehensive Development Zone, the preparation of a Comprehensive Development Plan or a Development Contributions Plan (DCP) implemented by Amendment C156 and also pay the open space levy if the land is subdivided. Make and Bewise submitted the Amendment lacks strategic underpinning but recommended that the following two options for changes to Clause 1.0 of the Schedule to Clause 53.01 would alleviate their concerns.

Option	Land affected	Metric
Option 1 Addition of this Additional column at Part 1.0 of Clause 53.01	Land subject of a Comprehensive Development Zone, Comprehensive Development Plan or DCP which makes specific requirements for provision of credited public open space.	The amount specified in the relevant planning scheme provision.
Option 2 Modified version of proposed Amendment.	All land Except land that has been credited under any other provision of this planning scheme.	a nominated per centage to be determined

(iii) Discussion

The Panel accepts Council's submission that the focus of the Amendment is on the provisions of the Schedule to Clause 53.01 which deals with the collection of open space levies. How the funds collected are spent is a matter for the Council and neither the existing or proposed Clause 53.01 place any obligation on how and where the funds are to be spent. Nevertheless, if, over an extended period, the Council was spending considerably less on

open space than it was collecting, in the Panel's view, it would be difficult to justify a considerable increase in the collection rate.

From the information provided by Council detailing its expenditure on open space for the financial years from 2014/2015 to 2018/2019, it is clear to the Panel that all of the funds were directed at improving and upgrading facilities on existing open spaces. The Panel notes that Council develops a capital works program as part of its annual budget and that this program identifies the open space works to be undertaken over the coming 12 months. In addition, Council has developed the *Active Monash's Capital Works Priorities Framework* to determine open space priorities over a ten-year period. Neither of these have been used in calculating the quantum of the levy.

The Panel is satisfied with the capital works expenditure information provided by Council (Documents 13, 29 and 30) that demonstrates that over the past five years the Council has spent almost twice as much on open space than it has collected from the levy. That said, this is not necessarily an indication that this trend will continue going forward, particularly with an increase in the contributions sought under the Amendment.

The Panel does not agree with Mr Milner and Mr Ainsaar that there is a requirement for the funds to be spent in the precinct in which they are collected.

The Panel agrees with Council and the C129 Panel that it is not its role to determine whether specific areas of open space should be purchased. As discussed above, the MOSS does identify a number of key actions for each of the 12 precincts identified in the strategy.

With respect to the PMP printing site, the Panel understands that Amendment C156 is yet to be finalised. It would be inappropriate for this Panel to make recommendations that attempt to direct or fetter the consideration of another amendment, especially one that has not been subject to exhibition or public comment. In addition, the options proposed by Make and Bewise could equally apply to a number of sites, not only the PMP printing land.

(iv) Conclusions

The Panel concludes:

- How Council chooses to spend open space contributions it has collected is not a relevant consideration for the Panel.
- Changes to the Schedule to Clause 53.01 to exempt open space required by Amendment 156 are not appropriate.

3.4 Conclusions and Recommendations

For the reasons set out in this and the following chapter, the Panel concludes that the MOSS provides the strategic justification for a review and potentially an increase in the open space contributions levy. However, the MOSS and the SGS Report do not provide adequate strategic justification for the rates and the extent of application of the levy proposed in the Amendment.

The Panel accepts that, with a growing population there may be a need to increase the amount of the open space levy. The MOSS goes some way to justifying that need. However, the amount of the increase in the open space levy and the increase in its scope was not justified by the information presented to the Panel.

The Panel does not take the view that the Amendment is fatally flawed, but that additional work, analysis and justification are required to provide adequate strategic justification. The matters that need to be addressed are:

- The lack of an implementation plan that could be used to inform the change in the open space levy rate sufficient to meet the Council’s open space needs. The key actions for each precinct in the MOSS go some way to this, however more detail on each of the implementation tasks, responsibilities, cost estimates and priorities need to be included.
- The lack of sufficient analysis and justification to apply the same open space levy rate to residential and non-residential subdivisions.
- The lack of clarity and consistency in the use and meaning of community open space.
- The identification of public open space gaps in Monash should be clarified because the use of ‘Monash community open space’ is too narrow and does not take into account open space in adjacent municipalities or regional open space. For example, this leads to that is an incongruous situation where dwellings abutting Jells Park are identified as being in an open space gap.

In the Panel’s view the changes specified above would transform the Amendment. On this basis, if Council wishes to continue with the Amendment the altered Amendment would need to be re-exhibited, submissions received and assessed and if necessary, the Panel reconvened.

Alternatively, Council could abandon the Amendment.

For the reasons set out in this report the Panel Recommends:

- 1. Council should review the Amendment documents and undertake the following additional work:**
 - **Develop an implementation plan either as part of the Monash Open Space Strategy or as a separate document, which nominates precincts in which land acquisition will be sought and projects and works in open spaces with cost estimates.**
 - **Use the implementation plan as the basis for the calculation of an open space levy rate in place of the 30 square metre macro-provisioning standard.**
 - **Develop a detailed justification for the application of the same open space levy rate to residential and non-residential subdivisions.**
 - **Clarify the use and meaning of community open space in the Monash Open Space Strategy and Clause 22.15.**
 - **Review the areas designated as public open space gaps in Map 1 in Clause 22.15.**
- 2. Once this work is complete the Amendment should be re-exhibited.**
- 3. The Panel will then reconvene to consider any submissions.**
- 4. Alternatively, Council should abandon the Amendment.**

4 The SGS Report

The SGS Report recommended the adoption of an inclusionary provision approach in the determination of an open space levy. The inclusionary provision approach is based on the idea that each unit of development should meet a particular standard or rate of open space provision. Using a measure of 3 hectares per 1,000 population (30 square metres per capita), the SGS Report calculated the open space levy at 10 per cent for all development, residential and non-residential.

The SGS Report concluded that the current open space contribution rates in the Scheme at Clause 53.01 were inequitable and out of date. It concluded that the most appropriate mechanism for funding open space or open space improvements required due to increased population was to increase the open space contribution rate in the Scheme to 10 per cent.

The SGS Report calculated the open space contribution requirements using three key principles:

- The municipality is considered a single planning unit for open space planning purposes. Clause 53.01 allows for open space contributions collected to be spent anywhere within the municipality.
- All Monash residents (existing and future) are entitled to enjoy access to a reasonable standard of open space at a given horizon year, and planning for future open space acquisitions and upgrades should seek the most equitable distribution of open space services across the municipality. The SGS Report adopted a standard of 30 square metres per head of population as a reasonable standard.
- An inclusionary provisions approach means that all development should equip itself with sufficient open space to meet its needs as indicated by planning standards, and this can be through land or cash in kind contributions.

The Amendment proposes to include the SGS Report as a separate reference document in Clause 22.15 although it is included in Appendix 4 of the MOSS which is also a reference document in Clause 22.15.

4.1 The municipal wide rate – 10 per cent

(i) The issue

The issue is whether the application of a 10 per cent open space levy is legitimate.

(ii) Evidence and submissions

Council submitted that the current open space levy, which is a sliding scale based on the number of lots produced, is inadequate. It added that there is no correlation between the size of a subdivision and the demand for open space created. Council advised the Panel that only one other municipality used a sliding scale for its open space contributions.

Council argued that it had adopted a “*transparent and readily comprehensible*” method for calculating the open space contribution rate as detailed in the MOSS. This approach involved:

- adopting 30 square metres per person as an appropriate level of provision of public open space

- estimating the likely population of Monash as being 206,907 in 2028
- calculating that 620.72 hectares of open space was required to service that population
- determining that the net developable area available within the municipality is 6,494 hectares
- calculating that a percentage figure of 9.56 per cent, rounded up to 10 per cent, of each developable hectare was required to meet the standard of 30 square metres of open space per person.

Council advised the Panel that 920 hectares of parkland had been mistakenly included in the calculation of net developable area (6,494 hectares). As a consequence, the net developable area should be reduced to 5,574 hectares which would have the effect of increasing the contribution rate to 11.11 per cent. Nevertheless, Council was pursuing a 10 per cent contribution rate.

Dr Spiller's evidence was that inadequate open space *"both in quantity and quality"* limits urban consolidation, which is required to develop a *"more climate resistant, efficient and inclusive city."* He added that the 10 per cent contribution rate would provide Council with funding sufficient to achieve an appropriate provision of open space, both in quantity and quality.

Dr Spiller provided the following explanation of how the new rate was calculated:

As the inclusionary development standards framework is tied to a macro-provisioning standard, it is not an open-ended 'tax' to fund open space provision. All funds collected must be deployed in land acquisition or open space embellishment within the envelope dictated by achievement of a 30 m per capita provision standard.

To arrive at the uniform 10 per cent contribution rate for Monash under the inclusionary development standards framework, the macro-provisioning standard has been applied to all developable land in the City; that is, including land that is already developed as well as land that is likely to be developed or redeveloped over the planning period. This approach aligns with the setting of an overall open space reservation ratio in PSPs.

Were the provisioning standard of 30 m per capita to be applied only to land likely to be developed or redeveloped over the planning period, the percentage contribution rate for open space would likely be much higher, because the density of new development will typically be higher than the average density for Monash.

Salta submitted that there has been no analysis of the amount of contributions needed to meet the open space needs of the projected population and that:

It is wrong to assume that an under supply is due to the current rates being too low. In an established municipality, there will have been countless decisions made over a long period of time resulting in the present supply of open space. Drawing a straight line between current contribution rates and that position has not been justified.

Salta argued that Council is using a levy based on site value to fund works that have no relationship to site value. In addition, given land values in Monash, a 10 per cent levy may raise considerably more than projected, depending on the density of development.

Mr Milner's evidence was that, depending on the definition of open space used, the analysis of open space in Monash can arrive at different totals. In discussing open space standards he added:

The MOSS appears to favour the 10 per cent standard applied in the Precinct Structure Planning Guidelines but fails to acknowledge that standard was to only apply to residential use and does not acknowledge 2 per cent as a standard for employment areas.

Mr Ainsaar's evidence was that that the MOSS used a "*commonly adopted approach*" for open space strategies but failed to translate its findings into the calculation of an appropriate levy. He stated:

In my view, it is entirely inequitable for employment land uses to be required to make a contribution to public open space equivalent to 10 per cent of the land area or site value when:

- a. The need for open space has not been demonstrated in the supporting material; and
- b. There is consistent evidence which demonstrates that the quantity of open space required to meet the needs of workers is considerably less than the quantity needed for residents.

Ms Valente submitted that the flat 10 per cent rate did not take account of which properties needed to be acquired to achieve Council's 30 square metres per person.

The Housing Industry of Australia submitted that the 10 per cent was a substantial increase which was "*inequitable, discriminatory and inflationary, which erodes housing affordability*" and without appropriate strategic justification.

Mr Saisanas submitted that the Amendment lacked strategic merit because the work to justify the 10 per cent increase in the levy had not been undertaken.

The Association of Consulting Surveyors Victoria submitted that the increase to 10 per cent was excessive and that any change should be guided by a needs assessment.

Make CRC and Bewise submitted that a 10 per cent levy was an onerous contribution, especially if provided in the form of land.

(iii) Discussion

The submission of Salta and the evidence of Mr Milner and Mr Ainsaar went to some lengths to detail the DCP approach to contributions. This discussion has not been reflected above because it is largely irrelevant to the matter at hand. The PPN70 makes it clear that a council has the following tools for obtaining open space contributions as part of the development process:

- Subdivision Act 1988, sections 18-20
- Schedule to Clause 53.01 of the Victoria Planning Provisions
- DCP Overlay
- negotiated legal agreements.

In this respect the Panel agrees with Council when it stated:

... the Panel should not be swayed by arguments which seek to evaluate the striking of a rate for a public open space contribution under Clause 53.01 by reference to criteria that are not, having regard to the relevant statutory framework, intended to apply to that method.

The Panel agrees that the decision of the most appropriate method to obtain open space contributions rests with the planning authority. In this Amendment the planning authority

has chosen to seek an increase to the levy in the Schedule to Clause 53.01 and consequently the discussion about the DCP principles did not assist the Panel.

However, Clause 53.01 and PPN70 do not provide the same level of guidance that can be found in Part 3B of the Act. Council summarised this position as:

... the State has not provided any policy guidance on how such a contribution rate should be set. While Planning Practice Note 70 articulates how an open space strategy should be prepared and what it should include, it merely identifies a range of options for delivering public open space without setting out a preferred approach to doing so.

Council took the view that this approach provided it with the freedom to decide how it would calculate a rate.

In the Panel's view the change from a sliding scale five per cent contribution to a flat 10 per cent is a substantial increase, particularly as the Amendment would also include previously excluded non-residential development.

The Panel accepts Council's argument that it is a legitimate approach for it to seek open space contributions through the Schedule to Clause 53.01 and for it to determine how that rate is set. Council's position, supported by Dr Spiller, was that the adoption of an inclusionary provision approach and setting a standard of 30 square metres per person arrived at a rate of 10 per cent. That said, the Panel notes that the original calculation was for a rate of 9.56 per cent and the amended version presented at the Hearing of 11.11 per cent.

In the absence of any other criteria the objectives of the Act, particularly section 4(1)(a) which deals with the fair, orderly, economic and sustainable use and development of land, become an important consideration. The following sections examine the two criteria Council has used to justify the proposed increase in the open space contribution rate.

The Panel notes that PPN70 references Clause 52.01 which should be updated to 53.01. There is an opportunity to review the practice note more broadly to ensure it reflects current thinking on open space strategies and contributions.

(iv) Conclusions

The Panel concludes:

- Council can amend the contribution rate in the Schedule to Clause 53.01.
- Whether a change in the rate is justified depends on the basis for calculating the new rate.

4.2 The inclusionary provision approach

(i) The issues

The issues associated with the inclusionary approach are whether:

- the treatment of the whole municipality as a single planning unit is appropriate
- a flat rate of 10 per cent across the entire municipality is reasonable
- applying the same rate to non-residential land is justified.

(ii) Evidence and submissions

Council submitted that the inclusionary provision approach meant that:

... the entire municipality be considered as a single planning unit for open space, across which an acceptable standard of public open space must be met to facilitate future works.

The MOSS identifies precincts where there is a shortfall in open space across different parts of the municipality and Council acknowledged there is a disparity in the provision of open space across the municipality. Council submitted that while there are areas of projected high population growth and density, growth is occurring across the municipality in all precincts and this supports the single planning unit approach. Council argued that an inclusionary provision approach was chosen to prevent development in under supplied areas being overburdened with additional costs.

Dr Spiller's evidence supported Council's position. Dr Spiller indicated that an alternate approach that targeted a higher contribution in under supplied areas would mean new development would need to contribute more to address the existing shortfall. Dr Spiller stated that this was unfair and would make the cost of future development in those areas prohibitive. He added that funds collected under Clause 53.01 can be deployed anywhere within the municipality and Council can act "*opportunistically and optimally.*"

Council submitted that it was appropriate to apply a uniform requirement to non-residential subdivision on multiple grounds. First, all development should contribute to community open space equally. Second, overall use of open space in a non-residential area is likely to be lower but there might be an intensity of use at lunchtimes and more intensive use means more expensive infrastructure such as seats and hard surfaces. Third, non-residential use might be converted to residential use over time and Council would not be able to levy for public open space. In summary:

Council does not support adopting a differential rate for industrial land because of the potential for the land use to change.

Dr Spiller's evidence was that all development in a municipality should contribute to community open space, whether a residential or non-residential use, because each unit of development then contributes to the overall planning outcome of a network of open space across the municipality.

Dr Spiller's evidence was that land use change from non-residential to residential will continue and it would not be equitable if non-residential land in these circumstances was excluded from contributing to open space. He added:

I do not accept that employment land has different demand than residential. While the employment areas may not use the open space in the same way, employment areas benefit from an appropriate network of open space.

Further, Dr Spiller stated:

Employment uses are increasingly of a mixed use nature and can translate to residential uses in future, with the exception of hazardous land.

Salta submitted that actual population or demand associated with a development is not a factor in the concept of inclusionary provision and that each developed lot will not be contributing 30 square metres of open space per person. In cross examination Dr Spiller acknowledged "*the greater the density the less per capita provision.*"

Salta added that the Victorian Planning Authority (VPA) Precinct Structure Plan Guidelines set different contribution rates for residential and non-residential development and this different rate has not been acknowledged or used in the SGS Report or by Council.

Salta submitted that there was no evidence base in the MOSS, the SGS Report or in Dr Spiller's evidence of the demand for public open space generated by employment uses. In addition, the inclusionary provision approach unfairly and inequitably burdened development scenarios (such as for Salta Properties), where a number of existing buildings have been developed on a site and are currently occupied but may be subdivided in future. It submitted that the future subdivision in these circumstances creates no additional demand.

Further, Salta submitted:

There is no planning scheme policy or planning principle that says development in an area with an abundant supply of open space should contribute to the supply of open space that is to be used by a different development on the other side of the municipality.

It argued that just because Council has a discretion under Clause 53.01 to spend funds raised anywhere in the municipality, it does not justify adopting a municipal wide approach or inclusionary provision approach.

Mr Milner's evidence was that treating the municipality as a single planning unit was simplistic. He noted Monash is not a greenfields situation where everyone develops over time, but rather a situation where subdivision is limited and there is a set framework of open space in place. Mr Milner added:

... the inclusionary requirements approach with a uniform rate is flawed and there is no sound reason why employment land should be required to contribute at the same rate as residential land.

Mr Milner noted student housing is being encouraged in the NEIC and that this generates demand for public open space. He added that student housing is "*exactly why the MOSS needs more sophistication.*"

Mr Milner's evidence was that proximity to open space, for example Jells Park, was a key consideration. He noted that a question of equity arises where areas that are already well provisioned have the same inclusionary requirement in absence of any analysis of a significant need in those areas.

Mr Milner stated that a precinct by precinct analysis of need is required and that precinct-specific levies should then be set accordingly. He added that the starting point should be the calculation of rates at a precinct level which would enable demand generated by redevelopment and urban renewal to be considered. Mr Milner cited the example of the approach by the City of Kingston where different rates were set based on a precinct level analysis.

Mr Ainsaar's evidence was that neither the MOSS nor the SGS Report included any analysis of the demand for open space generated by employment land and there was no forecast growth or reflection of intensification of growth of employment areas. Mr Ainsaar also noted that in Precinct Structure Plans, employment uses contribute to passive open space, not active.

Ms Valente submitted that the risk to the community in Council’s inclusionary provision approach is that the money raised will be spent by Council without any reference to areas of greatest need.

Ms Valente challenged Dr Spiller’s evidence that a flat rate was a better approach than increasing contributions based on shortfalls particularly in the southern part of the municipality.

Dr Spiller stated in response:

... historically some areas were the beneficiaries of previous open space contributions but this doesn’t privilege redevelopment in those areas from making contributions towards open space across the municipality.

Dr Spiller noted that collections from parts of the city that are well served can help pay for open space in areas with low provision.

(iii) Discussion

In the Panel’s view there are three elements to the inclusionary provision approach:

- the issue of public open space shortfalls and disparity of provision across the municipality
- the merit of a single planning unit in light of the localised shortfalls
- the merit of a uniform inclusionary requirement across non-residential and residential subdivisions.

A single planning unit, while ostensibly about the methodology being used for setting a contribution, inevitably leads to a discussion on allocation of funds raised.

The effect of a single planning unit is that future development in areas with adequate existing provision may subsidise expenditure in areas where provision is poor. Submitters held substantially different views as to whether this potential cross subsidy is fair and equitable.

The Panel notes that the concept of cross-subsidy is effectively built into the provisions of Clause 53.01 because it provides no direction on where the funds collected should be spent.

The Panel notes Council’s argument that a single planning unit has been chosen to avoid overburdening development in shortfall areas. If the inclusionary provision approach is about establishing a single municipal wide benchmark standard for future development, then the argument of ‘burdening new development’ equally applies to well provisioned areas, although the Panel accepts that the burden is equally shared among new development in areas that are underprovided and new development areas with adequate open space.

The Panel accepts that the Council can designate a single planning unit for the purposes of collection of a contribution. This is how the current provisions of Clause 53.01 operate. The Panel agrees that, notwithstanding higher growth is expected in some areas of the municipality over other areas, the allocation of funds raised through an open space contribution is a matter for the Council through its budget process.

Nevertheless, the Panel does not agree that Council has provided sufficient justification for the uniform inclusionary provision to be applied to non-residential land. The Panel agrees that non-residential land should contribute to open space but was not convinced that an

equal rate to residential land was fair or justified by the MOSS. The 30 square metre standard adopted by the MOSS applies only to residents. As the basis for the calculation of a 10 per cent levy, the Panel cannot see how the application of a standard based on provision per resident can be applied to non-residential land at the same rate.

The MOSS does not include analysis that could underpin an argument for an increase in the demand for new and improved open space generated by non-residential land. Given the anticipated growth within the NEIC, including demand for student housing, this is an omission.

Council argued that workers use open space differently and infrastructure in open space near or in employment land is more costly therefore an equal contribution is warranted. However, this argument was not supported by evidence.

The Panel was not convinced by Council's argument that non-residential use might convert to residential over time as a basis for justifying a uniform rate. Employment land in Monash is highly valued as evidenced by the designation of the NEIC in Plan Melbourne.

(iv) Conclusions

The Panel concludes:

- The treatment of the whole municipality as a single planning unit is appropriate.
- An inclusionary requirements approach is reasonable.
- Applying the same rate to employment land is not justified.

4.3 The 30 square metres per person standard

(i) The issues

The issues are:

- The merits of using an area/population-based provision (i.e. 30 square metres per resident) as a proxy metric of open space services, and an *equivalent* measure of open space quality which includes upgrades and embellishments and quantity including land acquisition/contribution
- whether 30 square metres per person is an appropriate standard.

(ii) Council's approach

The standard

The SGS Report recommends a provision standard of 30 square metres per capita, or 3 hectares per 1,000 people of community open space. The SGS Report indicates this standard is an *equivalent* measure of open space services, which is a combination of the quantity and quality of open space. The SGS Report provided the following explanation of open space services:

'Services' refers to a combination of the quantity and quality of open space. Better spaces deliver a greater amount of open space 'services' to the local community than poorer quality open spaces of the same size. Better quality open spaces can have a range of improvements, including: increased infrastructure, improved maintenance, etc.

The quality of open space is increasingly important, particularly in higher density areas where providing additional public open space is challenging. Increased investment in

open space can make it useable for a wider range of activities. Higher amenity parks include a broader suite of elements such as lighting, water features, increased planting, seating, shade trees and accessible pathways. This allows for the open space to be used by a wider range of people, for a broader range of activities. It also means the open space is more desirable for use throughout the day and into the evening.

Conceptually then, by improving the quality of open space via increased investment the intensity and diversity of uses that can occur there is also increased. It provides a higher level of 'service'.

The SGS Report points to various quantity based provision rates in the United Kingdom, the United States of America, across Australia and in the open space strategies of the Cities of Kingston (24 square metres per capita), Wyndham (30 square metres per capita) and Frankston (30.3 square metres per capita) as support for the 30 square metres per person.

Current open space provision

The MOSS calculates that there is 1,134 hectares of public open space in Monash, including *"all public, private and restricted public land and public land owned or managed by other authorities such as Parks Victoria, VicRoads and Melbourne Water."* This amounts to 14 per cent of the total area of the municipality.

The MOSS separates Monash community open space as a subset of community open space. Community open space includes all Council land fully available to the public (i.e. not restricted public access) and land that is owned by other agencies (for example Melbourne Water). The MOSS calculates community level open space to be 792 hectares, of which it identified Monash community open space as 512 hectares or 2.7ha of open space per 1000 residents.

The VEAC Discussion Paper concludes with respect to public open space for Monash:

Monash has 776 hectares of public open space on public land and local council owned land, and 4.6 hectares of public open space per thousand people. The median for the investigation area is seven hectares per thousand people.

and further:

Increasing population and limited opportunities for the creation of new public open space are likely to result in levels of public open space per thousand people within Monash remaining lower when compared to Melbourne's outer and growth municipalities.

The VPA published *Metropolitan Open Space Network – Provision and Distribution*, which provides an inventory of open space across Melbourne, in June 2017. It calculates 8.8 per cent of the Monash municipal area is public open space and a provision of 38.3 square metres of public open space per person. Council advised the Panel that the VPA used a definition of open space which included public open space, restricted public land and private open space.

The MOSS indicates that in general, residents in the north and east of the City of Monash are closer to Council's benchmark of 30 square metres of open space per person than residents in the southern and western parts of the municipality. The disparity can be broadly attributed to historic development patterns, with predominately industrial and commercial land use in the south and west, including the Monash University.

(iii) Evidence and submissions

Council submitted that the Discussion Paper sets out the benefits of public open space and the trajectory identified by VEAC would see a further decline in the provision of open space in Monash. Council added that one of the challenges for the municipality was climate change and the Discussion Paper presents the case for the role of open space in mitigating the urban heat island effect:

Parks and other treed areas and bodies of water can create cooler areas within a city by providing shading and evaporative cooling. In metropolitan Melbourne, public land containing treed nature strips and parks can reduce the impacts of urban heat islands and protect Melbourne's liveability.

Council also submitted that the Monash Urban Landscape and Canopy Vegetation Strategy identified the pressures of a decline in the permeability of open space, population growth, more hard surfaces and an increased urban heat island effect. It submitted that these pressures require a material change in the provision of open space. Council also relied on open space benchmarks set by the VPA for growth areas on the basis that:

... it is reasonable for residents in urban and infill areas to have access to the same provision standard as residents in growth areas.

Council informed the Panel that the 400 metres standard is in the VPA Precinct Structure Plan Guidelines and in common use by Councils in both growth areas and non-growth areas.

The 30 square metre provision standard was recommended in the SGS Report. It is derived from the conversion of the 10 per cent Net Developable Area for residential open space used in growth areas and tested against a review of national and international norms and similar standards used by some Melbourne Councils. Council informed the Panel that the 30 square metres per capita or 3 hectares per 1000 people is a provision standard to be applied to 'community open space'.

Council added that a number of panels, notably Moreland C122 and Melbourne C209, recognise the impact of increased development on the need and demand for public open space. Council submitted that objectives in Clause 19.02-6S and Clause 19.02-6R of the Planning Policy Framework, and supporting strategies, provide further strategic justification for improving open space provision, along with the current Clause 21.10.

Ms Valente also questioned the merit of a 30 square metre per person standard, in light of the disparity in existing open space provision across the municipality. She cited the example of Clayton which has 0.6 hectares per 1000 residents and Oakleigh East/Huntingdale with 1.2 hectares per 1000 residents.

Mr and Ms Valente submitted that most of the precincts in the southern suburbs of the municipality fall well short of a public open space provision of 30 square metres per capita and this is projected to continue to 2028 in absence of any strategy by Council to acquire land. Ms Valente added:

... this draws into question the value of a macro-provisioning standard and the Amendment documentation does not contain anything to direct Council to address the shortfall in the southern part of the municipality.

Dr Spiller's response was that historic open space allocations and land use patterns do not mean a per capita provision standard is flawed. Rather, the setting of a per capita provision standard provides direction for Council to allocate funds to address the inequity in open

space access across the municipality by applying a uniform requirement for all new development.

Salta tabled *Open Space Planning Standards in Australia: in Search of Origins* (Australian Planner 2013) by A.J. Veal of the University of Sydney (Document 15) that examines the obscure origins and lack of rigour underpinning provision rates for open space standards, and argued that there was no analysis or needs assessment underpinning 30 square metres. Dr Spiller in response suggested standards were practice based and ‘tried and tested’, rather than scientific.

Salta submitted that the 30 square metres per capita cannot be achieved in a developed municipality like Monash and that the VPA Precinct Structure Plan Guidelines do not deal with open space as an ‘equivalence’. It argued that it was a flawed approach to rely on a planning standard which could not be achieved, to derive a contribution rate.

Salta added that the exclusion of other open space in Monash such as Jells Park and smaller local open space limits the comparison to other municipalities and that if those areas were included the current provision in Monash would be closer to 4 hectares of open space per thousand residents.

Dr Spiller acknowledged that the metrics in the international and interstate references were not directly translatable to the 30 square metres standard for community open space but rather gave an indication of a range. He also acknowledged a lack of metrics on open space services that are derived from public open space contributions.

Mr Milner’s evidence cited the City of Monash Annual Report which describes the municipality as having “*an abundance of open space.*” Mr Milner’s evidence was that there will be a need for public open space due to an increase in density but that climate change considerations should encompass the entirety of public open space and private open space.

Mr Ainsaar’s evidence supported recognising the quality aspect of public open space, and the importance of embellishments and improvements, but noted that:

Dr Spiller did not present a measurement of quality, but rather turned a quality concept into a quantity measure.

(iv) Discussion

A key question for the Panel is what relationship, if any, should there be between the current municipal wide provision of Monash community open space of 27 square metres per capita, the significant shortfall in suburbs generally to the south and west (Notting Hill, Clayton, Oakleigh East, Hughesdale, Huntingdale) and Council’s proposed uniform inclusionary requirement of 30 square metres *equivalent* per capita.

In addition, a fundamental challenge for open space planning is:

- there are multiple methodologies to define open space
- there are multiple ways to classify open space
- there are multiple approaches to describe access to, provision of and distribution of open space.

The Panel appreciates the challenges of different methodologies but notes Council’s submission was not assisted by the MOSS and confusion in evidence and argument around the concepts of community level open space, Monash community open space and public

open space. The Panel was not assisted by the lack of an adopted definition of the basis for the 27 square metres existing provision, and the 30 square metres per capita standard.

The SGS Report states 30 square metres is a reasonable open space provision standard for Monash. However Table 7 in the SGS Report compares provision rates that are not calculated in the same way and there are no qualifiers to indicate the standards are not directly comparable.

At a municipal-wide level, Monash benchmarks are lower on public open space than many metropolitan councils. However, the difficulty with Council's submission is that there is a large disparity across the municipality. Seven of the 12 precincts in the city have a current provision rate above 30 square metres per capita, while the remaining five precincts have significant areas of former and existing non-residential land. To this end, the Panel recognises the issues raised by Mr and Ms Valente that neither the inclusionary provision approach, nor the 30 square metres standard, are likely to improve access to open space in parts of the municipality.

Nevertheless, the Panel accepts that Council has conceptualised the 30 square metres as a macro-provisioning standard that future development should meet, and not as a tool to allocate resources. As stated above, the Panel agrees that Council's annual budget process is the appropriate process by which resources are allocated.

An area per capita metric is a useful measure to compare open space provision across and within municipalities and over time. 'Quality' is an important aspect of open space and the Panel acknowledges the challenge of establishing metrics for measuring quality of open space services.

However, the Panel finds that in absence of metrics or detail on the 'quality' component, the conceptual framework underpinning the open space contribution rate lacks rigour. The Panel notes Council's submissions and evidence to support 30 square metres as a standard were all quantity measures.

In light of all of the above the Panel considers that a distinction needs to be drawn between setting a benchmark or aspiration of 30 square metres of community open space per capita, and such a metric evolving to:

- be applied conceptually or in practice, as a requirement to be met at the subdivision or development scale
- represent an equivalence of open space services, incorporating a measure of quality
- become a planning standard, which is then used as a variable in an equation to calculate a contribution rate.

The Panel does not dispute the importance of quality in open space provision and the idea of open space services. However, further work on metrics of quality and the conceptual framework of 'open space services' would better support arguments for investment in embellishment and improvements against contribution or purchase of land. This is important because in a built-up area like Monash the opportunity to acquire additional open space is severely constrained, a view supported by the evidence presented to the Panel. Consequently most, if not all of any levy collected will be spent on upgrades and improvements and not land acquisition.

This is additionally important where concepts like climate change impacts, health and wellbeing and proximity to nature are cited as benefits of increasing and improving access to public open space.

The idea of 30 square metres per capita as a benchmark or aspiration or a comparative metric has merit. However, the Panel does not support the metric being used as a planning standard from which to derive a contribution rate. Planning standards require testing, debate and contest before being generally accepted as a planning standard. They should be derived from the Victoria Planning Provisions, from a government authority or from other sources where they have been tested through a process of review, debate and consultation. The 30 square metres per capita concept as the basis for a contribution rate has not been subject to any such process.

The Panel was not convinced that the methodology to derive the contribution rate is sound. The application of Net Developable Area as it is used in a growth area context to a developed municipality requires further review.

As discussed above, the Panel took the view that a municipal wide benchmark of 30 square metres was something of an illusory target. In a built-up area like Monash the opportunity to acquire additional open space is severely constrained, a view supported by the evidence presented to the Panel. In addition, as population increases the ratio per capita will, of necessity, decrease and so a per capita standard has only limited value. The Panel concludes that it is a flawed metric for the calculation of an appropriate open space levy rate.

(v) Conclusions

The Panel concludes that:

- Council's standard of 30 metres square per person does not adequately support the calculation of a 10 per cent contribution rate.
- An implementation plan which nominates precincts in which land acquisition will be sought and projects and works in open spaces with cost estimates is a more appropriate basis for the calculation of a contribution rate

Appendix A Submitters to the Amendment

No.	Submitter
1	Knox City Council
2	Friends of Damper Creek Reserve Inc.
3	Ralph Pane
4	Whitehorse City Council
5	South East Water
6	STM Developments
7	Bello Designs Pty Ltd
8	Aldo DiNicolantonio
9	Yaohua Zheng
10	Anthea Hall
11	Di and Chris Carra
12	Environment Protection Authority
13	Richard Menegatti
14	Ratio Consultants on behalf of Minsmere Pty Ltd
15	Urbis on behalf of Huntingdale Estate Nominees
16	Martha Morrow
17	Colin Nicholls
18	Tract Consultants on behalf of Golf Road Project Development Pty Ltd
19	Urban Development Institute Australia (Victoria)
20	Rebecca Czajkowska
21	Lyell Schoknecht
22	Sue-Ellen Kerr
23	Julia Spina
24	Friends of Scotchmans Creek and Valley Reserve Inc.
25	Neighbours for Public Green Space, Oakleigh South, Inc.
26	Sharyn Gordon
27	Hollerich Town Planning
28	George Saisanas
29	Rebecca Hateley
30	Planning and Property Partners on behalf of Salta Properties Pty Ltd
31	Marisa Mowszowski
32	Matthew Ellis

33	A & S Valente & Associates Pty Ltd
34	Planning and Property Partners on behalf of Ferntree Hill Project Pty Ltd
35	Planning and Property Partners on behalf of Make CRC Pty Ltd and Bewise (Clayton) Developments Pty Ltd
36	Housing Industry Association Ltd
37	Association of Consulting Surveyors Victoria
38	Oksana Thompson
39	Kathie Toth
40	Ying Chan
41	Brooke Flanders
42	Collie Pty Ltd
43	Susan Chua
44	Peter Chua

Appendix B Parties to the Panel Hearing

Submitter	Represented by
City of Monash	Susan Brennan SC and Rupert Watters instructed by Kristin Richardson of Maddocks, who called expert evidence on: - open space contributions from Dr Marcus Spiller, SGS Economics & Planning
Salta Properties (West) Pty Ltd, Golf Road Project Development Pty Ltd and Talbot Road Finance Pty Ltd	Paul Chiappi of Counsel instructed by Mark Naughton and Andrew Iser of Planning Property Partners who called expert evidence on: - open space planning from Rob Milner of David Lock Associates - open space analysis from Matt Ainsaar of Urban Enterprise.
Make CRC Pty Ltd and Bewise (Clayton) Developments Pty Ltd	Paul Little of Planning Property Partners
A & S Valente and Associates Pty. Ltd	Angelo and Silvana Valente
Housing Industry Association	Teresa Davis and Mike Hermon
Association of Consulting Surveyors Victoria	Gerry Shone
George Saisanas	

Appendix C Document list

No.	Date	Description	Presented by
1	25/11/2019	Request for further information	A & S Valente and Associates Pty Ltd
2	2/12/2019	Council response to Silvana Valente request	Council
3	16/12/2019	Letter from Salta Properties Pty Ltd and Ferntree Hill Projects Pty Ltd - Expert Confirmation	Planning and Property Partners for Salta Properties Pty Ltd and Ferntree Hill Projects Pty
4	3/02/2020	Letter from Monash City Council to Panel - regarding Part A submission	Council
5	“	Monash City Council - Part A submission with attachments	“
6	7/02/2020	Letter from Salta Properties, Talbot Road Finance and Golf Road Project to Panel - Expert Witness Reports	Planning and Property Partners for Salta Properties Pty Ltd, Talbot Road Finance Pty Ltd and Golf Road Project Development Pty Ltd
7	“	Salta Properties and others - Expert Witness Statement - Matt Ainsaar - Open Space Contributions	“
8	“	Salta Properties and others - Expert Witness Statement - Rob Milner - Open Space Contributions	“
9	10/02/2020	Letter from Monash City Council to Panel - regarding evidence	Council
10	“	Monash City Council - Expert Witness Statement - Marcus Spiller - Open Space Contributions	“
11	12/02/2020	Monash City Council - Expert Witness Statement - Marcus Spiller - Appendix B and C – with correction	“
12	17/02/2020	Monash City Council – Part B submission	“
12(a)	“	VEAC Discussion Paper	“
12(b)	“	VEAC Final Report	“
12(c)	“	VPA Report 2017	“
12(d)	“	Moreland C122 Panel Report	“
12(e)	“	Little Lane Learning v Minister for Planning	“

No.	Date	Description	Presented by
12(f)	“	Stubbs Street Kensington v Melbourne CC	“
12(g)	“	Planning and Environment Act s 4	“
12(h)	“	Subdivision Act s 18	“
12(i)	“	Maribyrnong C137 Panel Report	“
12(j)	“	Melbourne C209 Panel Report	“
12(k)	“	Subdivision Act s 20	“
12(l)	“	Stupak v Hobsons Bay CC	“
12(m)	“	Yarra Ranges C148 Panel Report	“
12(n)	“	Planning and Environment Act s 46K	“
12(o)	“	PSP Guidelines	“
12(p)	“	Arden Macaulay Structure Plan	“
12(q)	“	Monash Planning Scheme Clause 21.01	“
12(r)	“	VPA Report 2017	“
12(s)	“	SGS 2018 report.	“
12(t)	“	Monash Open Space Strategy (MOSS) – October 2018	“
12(u)	“	Maribyrnong Clause 53.01 schedule.	“
12(v)	“	Subdivision Act s 18A	“
12(w)	“	Monash C129 Panel Report	“
12(x)	“	Eddie Barron Constructions v Pakenham	“
12(y)	“	Maroondah City Council v Fletcher - [2009] VSCA 250	“
13	“	Open Space Collection Documents – Summary of previous POS Expenditure	“
14	“	Update of Table 8 of SGS Open Space Contribution Framework – including updated population forecasts	“
15	“	Open Space Planning Standard in Australia	Salta Properties Pty Ltd, Golf Road Project Development Pty Ltd and Talbot Road Finance Pty Ltd
16	19/02/2020	Dr Spiller Slides - Calculating Open Space Contributions, SGS	Council
17	“	Revised Table 8 and Table 5, SGS	“
18a	“	Batch of Documents relating to Salta: Landscape Masterplan 14 12 02	Salta Properties Pty Ltd, Golf Road

No.	Date	Description	Presented by
			Project Development Pty Ltd and Talbot Road Finance Pty Ltd
18b	“	Extracted pages from 190528 DPO RFI	“
18c	“	Extracted pages from Landscape Concept Masterplan Rev3	“
18d	“	Nexus Aerial with annotations	“
18e	“	Nexus Corporate Park – Landscape Master Plan – April 2019	“
18f	“	633 Springvale Road – New office Development	“
19	“	Open Space Strategies Planning Practice Note 70	Council
20	20/02/2020	Submission for Salta Properties Pty Ltd, Golf Road Project Development Pty Ltd and Talbot Road Finance Pty Ltd	Salta Properties Pty Ltd, Golf Road Project Development Pty Ltd and Talbot Road Finance Pty Ltd
21	“	George Saisanas submission	Mr George Saisanas (by email)
22	“	Submission by Make CRC Pty Ltd and Bewise (Clayton) Developments Pty Ltd	Make CRC Pty Ltd and Bewise (Clayton) Developments Pty Ltd
23	“	PMP Printing site	“
24	”	Public Open Space Contributions	A & S Valente and Associates Pty Ltd
24	“	Angelo and Silvana Valente submission	“
24a	“	Monash C129 Panel Report dated 11 September 2018	“
24b	“	Work Plan (existing conditions) approved by ERR on 28 September 1998	“
24c	“	Work Plan (rehabilitation works) approved by ERR on 28 September 1998	“
24d	“	Reclamation Management Plan approved by ERR on 28 September 1998	“
24e	“	Section 173 Agreement 1221-1249 Centre Road, Oakleigh South	“
25	“	Housing Industry Association (HIA) Submission	Housing Industry Association
26	21/02/2020	VPA Metropolitan Open Space Network Provision and Distribution (June 2017)	Council

No.	Date	Description	Presented by
27	“	Explanatory Note – Figure 4 and Community Open Space	“
28	“	SGS Document - Exclusions in Figure 4: Access to Open Space	“
29	“	Public Open Space Contribution at the City of Monash	“
30	“	Summary of Council’s total Capital Expenditure (past 5 years)	“
31	“	Monash City Council Closing submission	“
32	“	Kingston and Maribyrnong Planning Scheme extracts	“
33	“	Consulting Surveyors of Victoria - presentation notes for Hearing	Mr Gerry Shone
34a	21/02/2020	Documents used in the cross examination of Mr Milner: - Taylors-Hill-West-Precinct-Structure-Plan-May-2010	Council
34b		Wyndham C141 Incorporated Document-Ballan Road Precinct Structure Plan December 2014 Approval Gazetted	“
34c		Point-Cook-West-Precinct-Structure-Plan-October-2012	“
34d		Metropolitan-Open-Space-Strategy-Open-Space-Category-Definitions	“
34e		Minta-Farm-Precinct-Structure-Plan-approved-and-gazetted-December-2018	“
34f		GC75-Incorporated-Documents-Botanic-Ridge-Development-Contributions-Plan	“
34g		Manor-Lakes-Precinct-Structure-Plan-March-2012	“
34h		Kingston Public Open Space Contributions Review final report-170608	“
34i		GC28 Incorporated Document -Donnybrook-Woodstock Precinct Structure Plan October 2017	“
34j		Casey-C125-Cranbourne-North-Stage-2-Precinct-Structure-Plan-June-2011-approved	“
34k		Epping North East Local Structure Plan	“
35	13/03/2020	Monash City Council - Final Proposed amended wording for Clause 22.15 and Schedule to Clause 53.01	“

