

**Monash Planning Scheme Amendment C169mona
Public Open Space Contributions Rate Change**

Panel Report

Planning and Environment Act 1987

10 January 2023

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 PE 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 may also recommend to the Minister that a permit that applies to the adopted Amendment be granted. The Minister may grant or refuse the permit subject to certain restrictions. [sections 96G and 96I of the PE Act]

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 PE 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 PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Monash Planning Scheme Amendment C169mona

Public Open Space Contributions Rate Change

10 January 2023



Michael Ballock, Chair



Nicola Ward, Member

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Glossary and abbreviations

C148 Panel	Monash Planning Scheme Amendment C148 Panel
Council	Monash City Council
CIV	Capital Improved Value
DELWP	Department of Environment, Land, Water and Planning
Implementation Plan	Monash Open Space Strategy Implementation Plan and Open Space Contribution Report 2021
Interim C148 Report	interim Panel Report on Amendment C148 to the Monash Planning Scheme
MNEIC	Monash National Employment and Innovation Cluster
MOSS18	Monash Open Space Strategy 2018
MOSS21	Monash Open Space Strategy 2021
MPS	Municipal Planning Strategy
NDV	Net Developable Value
NPGS	Neighbours for Public Green Space Oakleigh South
Open Space for Everyone	Open Space Strategy for Metropolitan Melbourne 2021 - Open Space for Everyone
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Monash Planning Scheme
PPN70	Planning Practice Note 70 – Open Space Strategies
PPP Group	ALH Group Property Holdings Pty Ltd, Endeavour Group Limited, Salta Properties (West) Pty Ltd, and Huntingdale Estate Nominees Pty Ltd
VCAT	Victorian Civil and Administrative Tribunal
VEAC	Victorian Environmental Assessment Council
VSA Report	Valuation Sensitivity Analysis, July 2021

Overview

Amendment summary

The Amendment	Monash Planning Scheme Amendment C169mona
Common name	Public Open Space Contributions Rate Change
Brief description	The Amendment proposes to amend the Schedule to Clause 53.01 of the Monash Planning Scheme to increase the public open space contribution rate to 10 per cent for all subdivisions where a contribution is payable. The Amendment will also make changes to Clause 21.10 and introduces a new Clause 22.15 – Public Open Space Contributions Policy
Subject land	All land in the City of Monash
Planning Authority	Monash City Council
Authorisation	By letter dated 14 April 2022
Exhibition	25 May to 12 July 2022
Submissions	Number of Submissions: 61 Opposed: 30

Panel process

The Panel	Michael Ballock (Chair), Nicola Ward
Directions Hearing	By Video conference 30 September 2022
Panel Hearing	By video conference 7 to 10 November 2022
Parties to the Hearing	Refer to Appendix B
Citation	Monash PSA C169mona [2022] PPV
Date of this report	10 January 2023

Executive summary

Monash Planning Scheme Amendment C169mona (the Amendment) seeks to update the public open space contribution rate for all eligible subdivisions to 10 per cent, amend Clause 21.10 and introduce a new Clause 22.15 into the Monash Planning Scheme.

The Amendment is based on the Monash Open Space Strategy 2021 (MOSS21).

Key issues raised in submissions included:

- the proposed public open space contribution rate will increase housing costs and reduce affordability
- the increase to the POS contribution rate is too great or the proposed rate of 10 per cent is too high and development may be discouraged and undermined
- the Amendment will lead to a net reduction in open space per resident
- subdivision is not a fit for purpose way of collecting open space contributions
- Council should purchase some or all of the Talbot Quarry land
- specific provisions should be included that enable sites to be exempt from contributions or offset them where circumstances justify it.

The MOSS21 demonstrates that there will be increasing residential development in the municipality which will place additional demand on open space. In addition, given the more intensive nature of that development the demand for and usage of open space by new residents may be greater than that of existing residents.

Consequently, it is a reasonable proposition that projected new residential development should contribute to that open space and a review of the open space levy rate is appropriate. For this reason and those set out in this and the following chapter, the Panel concludes that the MOSS21 provides the strategic justification for a review and potentially an increase in the open space contributions levy.

The Panel found that the calculation of the open space levy rate over states the contribution required by new development and the Panel does not agree that a 10 per cent rate is justified.

A rate of 7.61 per cent is supported by the Panel and given this rate is below the proposed 10 per cent the Panel agrees that it can be applied to residential and non-residential subdivisions. The Panel acknowledges that this rate is lower than exhibited, however, it provides Council with a starting point to commence its acquisition program.

Policy in Clause 22.15 should be amended to recognise an open space contribution where a developer can demonstrate to Council's satisfaction that the land proposed would make an important contribution to the overall public open space network as identified in the MOSS21, including land for trails that would meet Council's Core Service Levels.

The Panel concludes that Amendment C169mona is strategically justified. The single planning unit and inclusionary approach is appropriate. A single contribution rate should apply to residential and non-residential subdivisions.

The open space projects are appropriate but it is unclear whether they can be completed in the life of the strategy. The methodology used to calculate cost of land to be acquired should be amended to reduce the acquisition sensitivity to 13.88 per cent. The methodology used to apportion the cost of projects should be more nuanced and the overall apportionment reduced to 60 per cent from 71 per cent. The methodology used in the calculation of the open space levy rate

is appropriate, however, the numerator and denominator should be amended as shown in Table 10.

The provisions of Clause 53.01 are not fit for the purpose of calculating an open space levy.

The Panel cannot form a view on any impact of the open space contribution on housing affordability in Monash. It would be difficult to attribute an unviable development solely to an open space contribution. Council can determine how it seeks to source funds for open space.

Any displacement of residential and employment through a land acquisition program can be accommodated through the ongoing densification and redevelopment of residential and employment land. Council's position on the Talbot Quarry is not a matter for this Panel.

Land with constraints or encumbrances may be an acceptable public open space contribution in some circumstances.

The policy at Clause 22.15-3 should more strongly contemplate accepting land that doesn't meet minimum standards under certain circumstances and land for trails as a public open space contribution. Policy should not contemplate a higher rate for strategic redevelopment or urban renewal sites.

Recommendations

Based on the reasons set out in this report, the Panel recommends that Monash Planning Scheme Amendment C169mona be adopted as exhibited subject to the following:

- 1. Amend Schedule to Clause 53.01 to change the 10 per cent contribution rate to 7.61 per cent for all subdivision except for the former PMP Printing Precinct site.**
- 2. Amend Clause 21.10-2 and Clause 21.10-3 to make minor word changes as set out in Council's Part B submission**
- 3. Amend Clause 22.15 to:**
 - amend Policy to reflect that in general, encumbered land and smaller land contributions will not be recognised as an open space contribution unless a developer can demonstrate to Council's satisfaction that the land proposed would make an important contribution to the overall public open space network as identified in the MOSS, including land for trails that would meet Council's Core Service Levels'**
 - delete reference to minimum open space rates being sought for strategic redevelopment and urban renewal sites**
 - strengthen Policy to be clearer that an open space contribution is additional to site specific open space requirements on a strategic redevelopment or urban infill site where densities are higher**

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to update the public open space contribution rate for all eligible subdivisions.

Specifically, the Amendment proposes to:

- Amend the Schedule to Clause 53.01 to:
 - change the existing sliding scale of public open space contribution for “Dwellings” to a flat 10 per cent
 - change the existing 5 per cent contribution for other subdivision from 5 per cent to 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.
- Amend Clause 21.10 in the Municipal Strategic Statement to:
 - provide guidance on the development of an open space network that meets the needs of a growing and changing community
 - remove redundant content and content that duplicates other provisions of the scheme
 - update or delete nine reference documents.

(ii) The subject land

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

1.2 Background

Monash City Council (Council) commenced development of the Monash Open Space Strategy in April 2016 and in 2018, Council engaged SGS Planning and Economics to undertake additional work including to review the contribution rate currently in the Scheme.

In October 2018, Council adopted the Monash Open Space Strategy 2018 (MOSS18) and resolved to seek authorisation to prepare a planning scheme amendment (Amendment C148) to amend Clause 53.01 to increase the public open space contributions to 10 per cent for subdivision for all land in Monash.

Amendment C148 was exhibited from 17 June to 2 August 2019 and 44 submissions were received. A Panel Hearing was held in respect of Amendment C148 from 17 to 21 February 2020. On 7 April 2020, the Panel issued an interim Panel report on Amendment C148 (interim C148 Report). In summary, the Panel recommended that Council 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.

The Panel recommended that once this further work is complete Amendment C148 should be re-exhibited. Following the Panel’s interim report, Council commenced preparing the further strategic work recommended by the Panel. In September 2021, Amendment C148 lapsed and a new amendment would be required to progress any future proposed changes to the public open space contribution rates in the municipality.

In response to the interim C148 Report, Council submitted that it undertook the following work to prepare Amendment C168mona:

- development of an implementation plan as part of the updated MOSS21, which used the precincts nominated in the MOSS21 and costed land acquisition and works in open spaces
- using the implementation plan as the basis for the calculation of a public open space levy rate in place of the 30 square metre macro-provisioning standard
- development of a detailed justification for the application of the same open space levy rate to residential and non-residential subdivisions, which has been included in the Implementation Report
- clarification of the use and meaning of community open space in the MOSS21 and deleted its reference from proposed Clause 22.15
- review the areas designated as public open space gaps in Map 1 in proposed Clause 22.15.

Table 1 Chronology of events

Date	Event/Description
30 November 2021	Council resolves to request the Minister for Planning give authorisation to prepare the Amendment
24 January 2022	Council lodges authorisation request with DELWP
14 April 2022	Council receives authorisation to prepare the Amendment
Late April 2022	Explanatory Report updated to reflect condition 2 of authorisation
Late April - early May 2022	implementation plan update to reflect condition 3 of authorisation
11 May 2022	Council submits to DELWP prior to start of exhibition period
25 May 2022	notice (via post) sent to prescribed Ministers
26 May 2022	notice sent (via email) to Suburban Rail Loop (meeting authorisation condition 1)
30 May 2022	email alert sent to 429 subscribers who’d elected to be notified of any consultations regarding planning, the environment, or open space undertaken by Council, and directing them to the

	engagement web page
30 May 2022	notice (via post) sent to key stakeholders who were considered to have an interest, government agencies and submitters to Amendment C148
30 May 2022	notice published in the Public Notices of The Age
2 June 2022	notice published in the Victorian Government Gazette
20 June 2022	article published in Monash Bulletin (newsletter to all residents and businesses) directing to website for full amendment details
12 July 2022	Exhibition closed – 60 submissions received
13 July 2022	late submission received – 61 submissions in total
30 August 2022	Council resolved to request the Minister for Planning appoint an independent planning panel
2 September 2022	Planning Panel appointed
30 September 2022	Directions Hearing held

1.3 Summary of issues raised in submissions

(i) Planning Authority

The key issues for Council were:

- the strategic justification for the new rate
- whether worker populations should have the same provision of open space as resident populations
- whether the calculation of the rate is appropriate.

(ii) Individual submitters or groups of submitters

The key issues by submitters were:

- the proposed POS contribution rate will increase housing costs and reduce affordability
- the increase to the POS contribution rate is too great or the proposed rate of 10 per cent is too high and development may be discouraged and undermined
- a flat rate across all precincts, land uses and subdivision sizes is not supported
- lack of evidence/strategic justification for the proposed rate
- lack of specific detail on locations, upgrades and uses in the Implementation Plan
- changes to the provisions of Clauses 21.10 and 22.15 are required to better address biodiversity and environment, or better guide what Council will do with open space
- the Amendment will lead to a net reduction in open space per resident
- request for transitional arrangements
- the setting of open space rates through Clause 53.01 should be tested against the need and nexus principles at s 18(1A) of the Subdivision Act
- Council should use borrowing to fund open space
- subdivision is not a fit for purpose way of collecting open space contributions
- the panel for Yarra Amendment C286 only supported a 7.5 per cent rate

- the proposed POS contribution rate does not enable other costs associated with development to be considered
- negotiation of open space should consider encumbered land
- the Amendment will have an adverse impact on the development of the Monash Employment and Innovation Cluster
- the Implementation Plan contains too much 'wobble room' to take public open space from one area and provide it in other areas of the municipality
- Council should purchase some or all of the Talbot Quarry land
- the former City of Oakleigh suburbs are the only suburbs that need investment in open space and therefore there is no need to increase the POS contribution rate to purchase open space in former City of Waverley suburbs
- specific provisions should be included that enable sites to be exempt from contributions or offset them where circumstances justify it.

These submissions remain unresolved

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 2022
- Open space contribution rate
- Impacts of the public open space contributions rate
- Talbot Village
- Local Planning Policy Framework changes.

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 PE Act by providing for the fair, orderly, economic and sustainable use and development of land. The Amendment addresses this objective by:

- providing an equitable method to collect contributions for public open space based on the need created by subdivision of new development
- providing certainty and consistency as to the required POS contribution for subdivision of land in Monash
- securing a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- protecting public utilities and other assets and enable the orderly provision and coordination of public utilities and other facilities for the benefit of the community
- balancing the present and future interests of all Victorians.

Clause 12 (Environmental Values)

The Amendment supports Clause 12 protecting and enhancing significant landscapes and open spaces that contribute to character, identity and sustainable environments.

Clause 15 (Built Environment)

The objective in Clause 15.01-3S for Subdivision Design, which aims to ‘ensure the design of subdivisions achieves attractive, safe, accessible, diverse and sustainable neighbourhoods’ and Clause 15.01-04S for Healthy Neighbourhoods, which aims to ‘achieve neighbourhoods that foster healthy and active living and community wellbeing’. The Amendment supports these objectives by promoting a diversity of public open space to support future subdivision development that foster a healthy lifestyle and achieve community benefit from well-designed neighbourhoods.

Clause 19 (Community Infrastructure)

The Amendment supports Clause 19.02 (Community Infrastructure) by seeking to protect and expand the public open space network to address the current and future gaps of provision.

- Clause 19.02-6S (Open Space) which aims to ‘establish, manage and improve a diverse and integrated network of public open space that meets the needs of the community’
- Clause 19.02-6R (Open Space - Metropolitan Melbourne) which aims to strengthen the integrated metropolitan open space network. This is supported by the following strategies:
 - develop a network of local open spaces that are accessible and of high quality and include opportunities for new local open spaces through planning for urban redevelopment projects; and
 - ensure major open space corridors are protected and enhanced.

Clause 21 (the Municipal Strategic Statement)

The Amendment supports Clause 21.10 (Open Space) of the Municipal Strategic Statement by:

- identifying current and future gaps in the provision of public open space to support the needs of new residents and collecting a contribution to fill these gaps
- 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 introduces a new Clause 22.15 (Public Open Space Contributions Policy) which applies to all subdivision applications which are required to make a public open space contribution under Clause 53.01. Clause 22.15 seeks to mirror the strategic outcomes and objectives identified in the MOSS21.

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 2.

Table 2 Relevant parts of Plan Melbourne

Outcome	Directions
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
Melbourne is a sustainable and resilient city	Direction 6.4 – Make Melbourne cooler and greener Direction 6.5 – Protect and restore natural habitats

2.3 Open Space for Everyone

The State Government adopted *Open Space Strategy for Metropolitan Melbourne 2021 - Open Space for Everyone* (Open Space for Everyone), which is the open space strategy for Metropolitan Melbourne. It emphasises the need for high quality open space for all Melbourne residents and workers. Council submitted that the Amendment supports this through local planning policy changes including the introduction of the MOSS21 as a reference document and an appropriate funding mechanism to achieve the objectives of the MOSS21.

Open Space for Everyone also includes directions to grow and optimise the open space network. Specific actions to achieve this in Monash are set out in the Implementation Plan.

2.4 Planning scheme provisions

The Amendment makes proper use of the Victoria Planning Provisions.

In particular, 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. It is the most appropriate tool to guide decision-making in determining what quantum of contribution should be sought.

2.5 Amendment VC148

Amendment VC148 was gazetted on 31 July 2018, after the Amendment was exhibited. VC148 made substantial changes to the structure and content of the Planning Policy Framework, as well as other provisions in the Planning Scheme. Council should review the Amendment documentation carefully prior to adoption to ensure that they are consistent with the changes introduced by Amendment VC148.

2.6 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.

In addition, Council submitted that the Amendment has also been prepared in accordance with following relevant Ministerial directions:

- Ministerial Direction on the Form and Content of Planning Schemes
- Ministerial Direction No. 9 – Metropolitan Planning Strategy, in that the Amendment:
 - provides a greater understanding of public open space needs for the City of Monash
 - increases the availability, usability and access to public open space
 - provides opportunities for social interaction
 - provides increased opportunity for greening the urban environment; and
 - provides the opportunity for improving the community's mental and physical health.

Planning Practice Notes

The Amendment has been prepared in accordance with *PPN70 – Open Space Strategies* (PPN70), which provides guidance on preparing an open space strategy.

PPN70 provides guidance on the preparation of an open space strategy, including open space classifications and undertaking analysis in relation to existing supply, future demand and gaps in the existing open space network.

3 Strategic justification

3.1 Background

(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 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)

(iv) Open Space for Everyone

The need for an open space strategy was identified in Plan Melbourne Action 93. In 2021 the State government released Open Space for Everyone. The strategy is intended to put in place the strategic framework to guide the planning, acquisition, design, management, use and maintenance of the Melbourne metropolitan open space network. It also proposes how to put that framework into action.

The intent of the strategy is to:

- Protect and enhance existing open space, underpinned by improved and accessible spatial data.
- Plan for an increase in open space, particularly in areas identified as lacking access to open space, areas undergoing substantial population growth, and areas where the network of green spaces could be expanded or improved.
- Enhance the role, function and overall community value of currently underutilised public land assets (e.g. utility easements, school grounds) in contributing to the open space network.
- Better coordinate the delivery and management of open space across state and local government including identifying management objectives for different parts of the network and developing standard agreements to manage land.
- Provide improved network planning and provision guidance for both the state and local government.

(v) Monash Open Space Strategy 2021

The MOSS21 is intended to guide the future planning, provision, design and management of open space in Monash for the next 15 years. 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 MOSS21 contains the following vision:

- the City of Monash has quality, diverse and accessible open space to drive the liveability, health and wellbeing of our 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.

It outlines the following principles which underpin the Strategy:

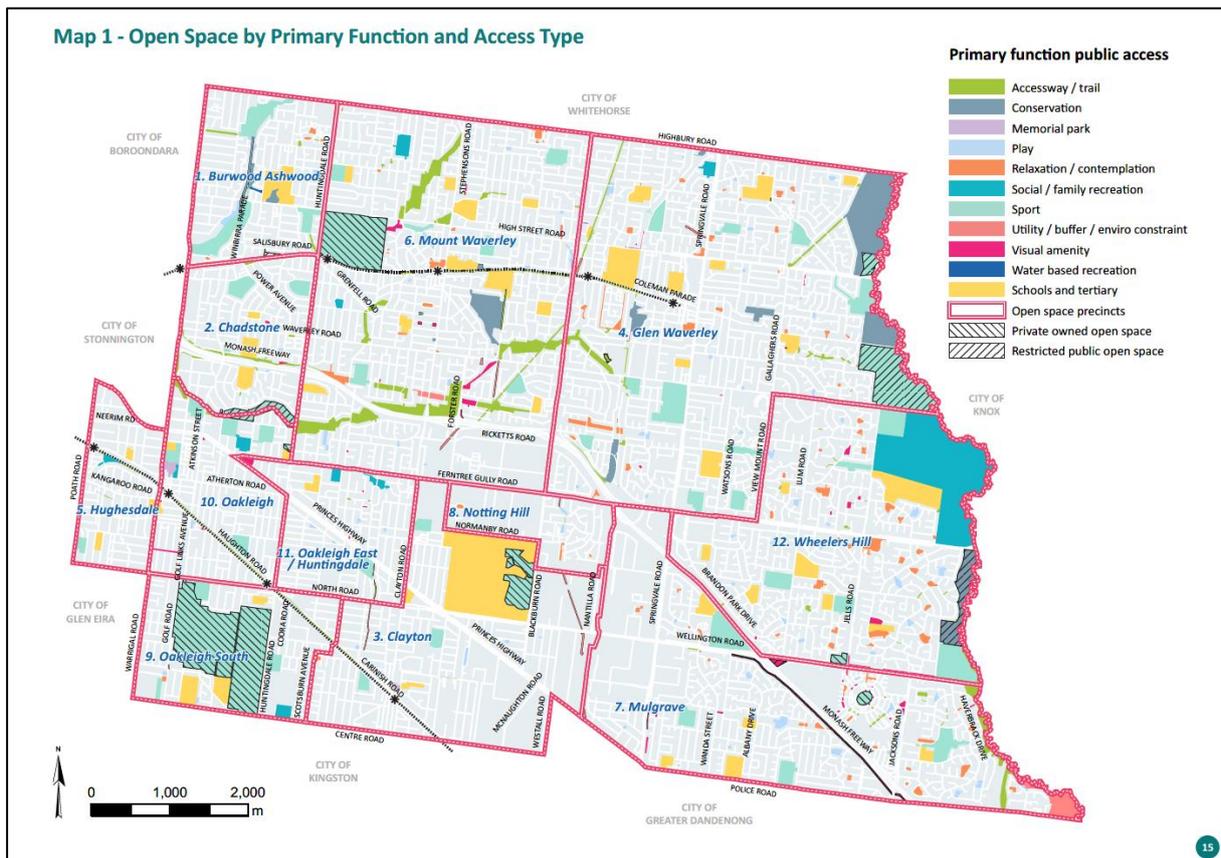
- Equitable access - ensure an appropriate level of open space is available for all residents regardless of where they live, their age, gender, income, ethnicity, education or ability.
- Diversity of opportunities and experiences to ensure all residents can use and benefit from open space.
- Quantity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

In total there is around 1,134 hectares of ‘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. Overall, this equates to around 14 per cent of open space as a proportion of land area (Figure 1).

The MOSS21 defines community open space as either Council owned land and fully available to the public or land that is owned by other agencies and is used by the local community for open space. It does not include regional land that is available to a broader catchment beyond Monash. MOSS21 concludes that there is around 510 hectares provision of community open space in Monash or around 2.5ha of open space per 1,000 residents.

Figure 1 MOSS21 open space in the City of Monash



Source: Monash Open Space Strategy 2021

The key directions identified by MOSS21 are:

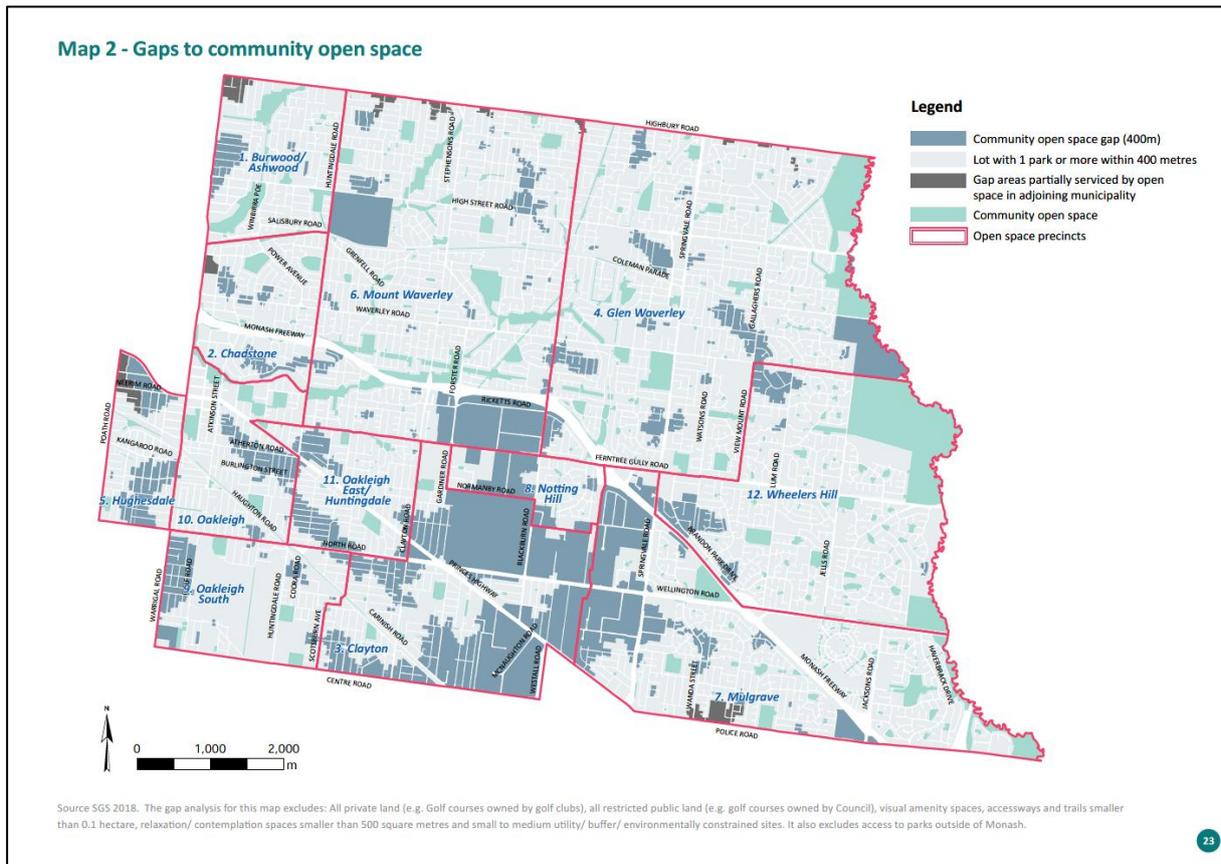
- Provide local parks within 400m of 95 per cent of all dwellings and active space within one kilometre of 95 per cent all dwellings.
- Acquire and improve open space to address population growth and gap areas.

- Require new subdivision to provide for 10 per cent open space to be either taken as a percentage of land area acquisition, or of the total land value.
A figure greater than 10 per cent may be sought by Council on a case-by-case basis for large rezone and redevelopment proposals that seek high residential densities.
- Provide for shortfalls of open space by maximising the capacity and diversity of existing open space by:
 - promoting the development of multi-use social family recreation and migrate selected spaces to social/family recreation sites
 - providing a range of open space function types and landscape setting types in each precinct
 - ensuring that a range of facilities are provided on parks. Examples of facilities may include playground, kick-about areas, small court areas (for example: basketball halfcourts), low level casual hard courts or sports provision, exercise equipment, skate, BMX, dog off-leash
 - Enhance the diversity, play value and inclusiveness of open space and play spaces.
- Utilise the core service level standards in Appendix 2 (of the MOSS21) to inform the planning, design, infrastructure provision and maintenance standards for open spaces to ensure viability and fit for purpose of the size, quality and diversity.
- Consider alternative ways to increase funding for open space projects such as grant programs.
- Ensure there is no net loss of open space through land disposal or development unless there is a clear net community benefit and open space is already over-provided in the surrounding area and of a high standard.

In addition, between 2021 and 2036, the population of Monash is forecast to grow to 249,930 residents (22 per cent) or an additional 45,768 which will generate additional demand for specific outdoor recreation activities, features and types of landscape settings, as well as new open spaces in proximity to where people will live.

The MOSS21 identified that the challenge is to work towards a better distribution and mix of spaces that provide the service needed by the growing community particularly in Clayton, Glen Waverley, Mount Waverley and Oakleigh. To identify gaps in the open space network (Figure 2) the MOSS21 applies the VEAC and PSP Guidelines standard of local parks within 400m of 95 per cent of all dwellings and active space within one kilometre of 95 per cent all dwellings.

Figure 2 MOSS21 gaps in community open space



Source: Monash Open Space Strategy 2021

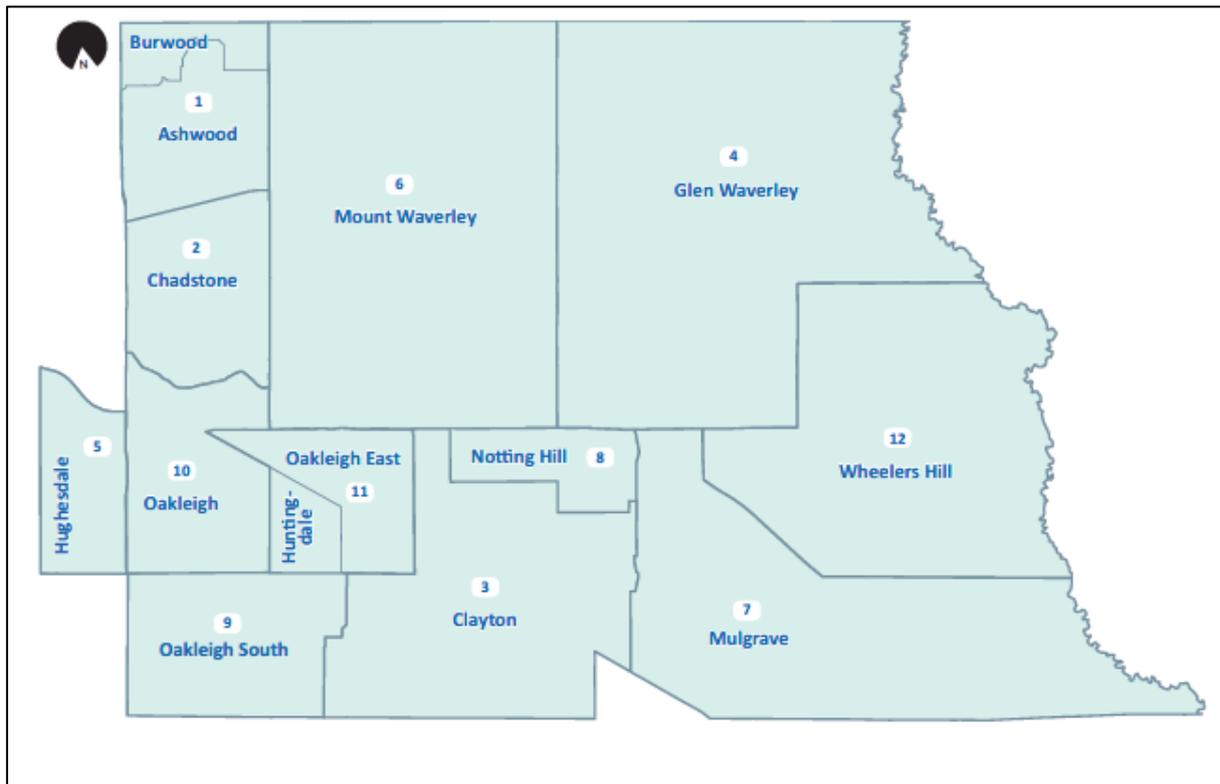
The MOSS21 devotes separate chapters to:

- improving the off-road trails network
- managing spaces for sustainable sport
- open space to suit increasing density.

The MOSS21 divides the municipality into 12 precincts (Figure 3) that have been identified to provide a more specific analysis of open space gaps and need. Each precinct analysis includes a series of actions grouped under the headings of:

- social/family recreation and local
- potential improvements
- off-road trail improvements.

Figure 3 MOSS21 precincts



Source: Monash Open Space Strategy 2021

3.2 Evidence and submissions

Council submitted that the Amendment implements a revised version of the MOSS18 which has been updated based on the recommendations of the interim C148 Report. The changes to the MOSS18 included:

- references to 30 square metres per person in the determination of open space services have been removed
- the timeframe for the delivery of the MOSS21 has been updated to 2021 to 2036 (15 years), reflecting recognised interval dates of population projection data, rather than 10 years to 2028 (which the MOSS18 had previously considered)
- population data has been updated to 2021 figures
- population forecasts have been extended to 2036 for residents and workers
- the definition of public open space has been updated
- updates have been made to address State initiatives affecting Monash such as the proposed Suburban Rail Loop, the Monash National Employment and Innovation Cluster, the draft Eastern Metropolitan Land Use Framework Plan, Open Space for Everyone, and increased population (resident and worker).

Council advised the Panel that the MOSS21 is supported by the *Monash Open Space Strategy Implementation Plan and Open Space Contribution Report 2021* (Implementation Plan) which identifies and costs improvements and additions to the open space network in response to projected population growth. The Implementation Plan is discussed in more detail in the following chapter.

Council stated that the MOSS21 met the requirements of PPN70 and it demonstrated this by undertaking an assessment of the MOSS21 against the principles of the practice note (Table 3).

Table 3 Council's assessment of the MOSS21 against the principles of PPN70

PPN 70 principle	Strategic response
Provide an overview of existing open space resources and future needs	<p>The MOSS21 provides a comprehensive overview of the existing open space in the City of Monash. It contains detailed analysis of the existing open space network for each precinct, the open space use hierarchy and character classification, the quantity and quality of existing open space and gaps in the open space network.</p> <p>This analysis is summarised in part 3 and shown on Map 1 of the MOSS21 and also includes a clear overview of the role, distribution, character and function of existing open space. Existing open space is also identified for each precinct in the municipality in Chapter 9 of the MOSS21, providing a more specific analysis of open space gaps and needs.</p> <p>The MOSS21 then considers anticipated population growth, and anticipated gaps in open space arising from that population growth. In addressing the future needs for open space, the Implementation Plan describes forecast changes to population and implications for open space planning.</p>
Provide a basis for decision-making about future open space provision and development	<p>The MOSS21 contains a detailed basis for decision-making about the provision and development of future open space.</p> <p>In particular, it provides overarching directions (e.g., on pages 32- 33) based on open space planning principles that will guide decision-making, including to:</p> <ul style="list-style-type: none"> - fill gaps in the open space network - improve the quality of existing open spaces to meet the needs of future population - ensure the open space network meets the needs of future residents living in more diverse housing. <p>The open space standards adopted in the MOSS21 are identified in Chapter 4 and include open space design and management guidelines. The application of these standards identifies what is required for an open space network to meet the needs of the Monash population into the future.</p> <p>Chapter 9 of the MOSS21 includes precinct based analysis and identifies specific open space improvements required to meet the future needs of each precinct.</p>
Assist financial and resource planning and asset management	<p>The Implementation Plan identifies a number of projects that are required to meet the needs of the future forecast population over the next 15 years, building on the actions for each precinct identified in the MOSS21.</p> <p>The Implementation Plan identifies total forecast cost for these projects, and how the benefit of these projects will be split between existing residents, and future additional residents. This will assist in the financial planning for Council over the next 15 years, factoring in both income and expenditure.</p>

PPN 70 principle	Strategic response
<p>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</p>	<p>The MOSS21 analyses the quantity and quality of existing open space at a municipal level and precinct specific level.</p> <p>Chapter 4 undertakes a gap analysis to assess the spatial distribution of existing open space across the Monash having regard to the open space hierarchy, to determine any locations where open space is not within a safe and easy walking distance of the community. The gap analysis identifies locations where the community lacks walkable access to open space and is illustrated in Map 2 of the MOSS21. This assessment has been used to inform the precinct summaries in the MOSS21 and the Implementation Plan.</p> <p>Due to the size of most development sites, it is acknowledged in the MOSS21 that land contributions will be rare and in most cases Council will need to assemble land through purchases rather than contributions.</p> <p>However, there are some strategic redevelopment sites (such as the former PMP printing precinct) where land contributions will be made and this has been recognised in the Implementation Plan.</p>
<p>Facilitate a coordinated approach to open space planning</p>	<p>The MOSS21 identifies open space owned or managed by third parties such as water authorities, and private access open space such as public golf courses.</p> <p>Both the MOSS21 and Implementation Plan identify opportunities for further improvements to these spaces to better facilitate public use for open space.</p>
<p>Articulate community and local government aspirations in relation to open space provision and development</p>	<p>The MOSS21 was informed by the results of an extensive community engagement process which involved two rounds of consultation and was adopted by Council in October 2018 and revised in November 2021. In light of this, the aspirations for open space in the provision and development of the MOSS21 are reflective of community and local government aspirations.</p> <p>These aspirations are clearly articulated in the overarching directions summarised in the Open Space Strategy and broadly seek to:</p> <ul style="list-style-type: none"> - provide open space within easy walking distance of every residential property - improve the capacity of existing open spaces, particularly sporting facilities - improve the quality of existing open spaces - ensure the network meets the needs of the future forecast population size.

ALH Group Property Holdings Pty Ltd, Endeavour Group Limited, Salta Properties (West) Pty Ltd, and Huntingdale Estate Nominees Pty Ltd (PPP Group) informed the Panel of the following:

- Salta is a developer and owner of commercial land and is potentially affected by the proposed non-residential rate.
- ALH owns a hotel site, and Endeavour is the tenant of a number of hotel sites, all with development prospects. They are potentially affected by the increased contribution rate.
- Huntingdale is the owner and developer of a strategic site for urban redevelopment. It will be affected by the increased rate. They are also concerned with the new policy focus on cash contributions rather than a measured approach that properly considers land contributions.

PPP Group submitted that the MOSS21 includes actions which are largely the same as earlier versions except that their characterisation as aspirational has been removed. In addition, the

MOSS21 still acknowledges that some of the recommendations may not be implemented in the life of the Strategy

Mr Millner gave evidence that, in his view, the MOSS21 had not addressed the interim C148 Report recommendation that applying the same open space levy rate to residential and non-residential subdivisions needed detailed justification. He added additional attention and commentary should have been given to that matter. He summarised his assessment as:

MOSS21 and the draft Implementation Plan are written almost entirely from the perspective of residential growth and forecasts of dwellings.

With respect to the gap analysis, Mr Millner stated that while the mapping was correct, there was a strong correlation between the location of non-residential land and poorer access to open space. His view was that more generous credit should be given to the contribution to open space made by:

...regional parks, over municipal boundaries and the private spaces available in employment areas which are to the benefit of residents and employees.

3.3 Discussion

The interim C148 Report concluded that the basis for considering whether the MOSS18 provided the strategic justification for the Amendment was its consistency with the provisions of PPN70. The Panel formed the view that the MOSS18 was 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. This Panel agrees with that conclusion.

The MOSS21 is largely an updated version of the MOSS18 and remains consistent with the provisions of PPN70. Nevertheless, the interim C148 Report also identified further work that was required including:

- an implementation plan
- justification for the application of the same open space levy rate to residential and non-residential subdivisions.

Both of these matters go to the calculation of an open space levy rate which is discussed in detail in the following chapter.

The Panel acknowledges that the MOSS21 demonstrates that there will be increasing residential development in the municipality which will place additional demand on open space. In addition, given the more intensive nature of that development the demand for and usage of open space by new residents may be greater than that of existing residents.

Consequently, it is a reasonable proposition that projected new residential development should contribute to that open space and a review of the open space levy rate is appropriate. For this reason and those 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. The discussion of the quantum of any increase and how it should be calculated is dealt with in the following chapters.

Nevertheless, the MOSS21 does contain some anomalies, some of which were identified by the Monash Planning Scheme Amendment C148 Panel (C148 Panel.) For example, the Riversdale Golf Course, a private course and the Glen Waverley Golf Course, a public facility, are identified as community open space gaps which appears counterintuitive to the Panel.

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is strategically justified and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3.4 Conclusion

The Panel concludes:

- Amendment C169mona is strategically justified.

4 Open space contribution rate

4.1 The issues

The issues are whether:

- the single planning unit and inclusionary approach is appropriate
- a single contribution rate should apply to residential and non-residential subdivisions
- whether the open space projects are appropriate and can be completed in the life of the strategy
- the methodology used to calculate cost of land to be acquired is appropriate
- the methodology used to apportion the cost of projects is appropriate
- the methodology used in the calculation of the open space levy rate is appropriate
- the provisions of Clause 53.01 are fit for purpose.

4.2 Relevant policies, strategies and studies

(i) Monash Open Space Strategy Implementation Plan and Open Space Contribution Report 2021

The Implementation Plan sets out the process for the calculation of a new public open space contribution rate for the Schedule to Clause 53.01 (Public Open Space Contribution and Subdivision) of the Monash Planning Scheme.

The Implementation Plan includes an analysis of open space contribution requirements for the City of Monash based on existing open space infrastructure, the location and forecast rates of growth and development density likely between 2021 and 2036. The document provides some justification for implementing a new open space contribution rate for developments that create three or more new lots in the City of Monash and an assessment of the most appropriate rate to apply.

On a precinct by precinct basis, the Implementation Plan details the anticipated residential population change, includes a map of existing open space by type and table listing the open space projects to be undertaken along with their cost. By way of example, the following information is taken from Precinct 1 Burwood/Ashwood.

Table 4 Ashwood/Burwood precinct population change

Population change forecast 2021 to 2036				
Precinct	2021	2036	Pop change	% increase
Ashwood Burwood	10,431	11,721	1,290	12.37%

Source: Monash Open Space Strategy Implementation Plan and Open Space Contribution Report 2021, p. 24

Figure 4 Ashwood/Burwood precinct existing open space provision by type



Source: Monash Open Space Strategy Implementation Plan and Open Space Contribution Report 2021, p. 24

Table 5 Ashwood/Burwood precinct open space project list

Description and Location	Project Type	Land acquisition area (m2)	New path length (m)	Total Cost
New Park - area of Edmonds Ave, George Street or Douglas Street.	Local Park - New	5000		\$20,575,000
Path connection from Elizabeth and Leopold Streets to Gardiners Creek.	Bridge and Path - New		815	\$760,000
Construct a bridge across the Melbourne Water drain to connect the Gardiners Reserve and Gardiners Creek Trail.	Bridge and Path - New			\$600,000
New path - Circuit path around Electra Reserve to extend existing path network.	Reserve path - New		450	\$225,000
Fill path gap - Connection Vannam Drive to Electra Reserve (via wetlands).	Path - New		200	\$100,000
New Toilet - Electra Reserve	Toilet - New			\$250,000
New Toilet - Holmesglen Reserve	Toilet - New			\$250,000
New Toilet - Gardiners Reserve	Toilet - New			\$250,000
New Toilet - Ashwood Reserve	Toilet - New			\$250,000
Total		5,000	1,465	\$23,260,000

Source: Monash Open Space Strategy Implementation Plan and Open Space Contribution Report 2021, p 25

(ii) Valuation Sensitivity Analysis

The purpose of the Valuation Sensitivity Analysis (VSA Report) is to review and validate the acquisition cost data used in the Implementation Plan. The VSA Report reviews the accuracy of the land valuation and the purchase costs. It uses the example of a \$100,000 property to outline the additional costs to be applied to land purchase:

The break up of this calculation is shown in Table 6 with additional costs applied to land with a new house or land that has been subdivided, which is identified as improved land, as well as an allowance for above market and off-market negotiations combined in the purchase cost.

Table 6 Valuation Sensitivity Analysis report list of land purchase additional costs

Factor	Rate	Cost per \$100,000 of property
Valuations	17.05%	\$117,050.
Improved land	3.37%	\$120,995
Newer house	2.02%	
Subdivision	1.35%	
Purchase costs	5%	\$127,044
Purchase price	18%	\$149,912
Above market negotiation	4.00%	
Off-market negotiation	14.00%	
Total	49.91%	\$149,912.

Source: Valuation Sensitivity Analysis 2021, p. 7

The table also contains a column detailing the impact per \$100,000 of a property cost and indicates that Council has calculated a 49.91 per cent increase as the cost of land acquisition.

4.3 Evidence and submissions

Council submitted that it prepared the Implementation Plan to identify and cost improvements and additions to the open space network in response to projected population growth. The Plan was prepared as recommended by the interim C148 Report and provides for the following:

- identification of a range of land acquisitions and open space improvements required to service open space needs of an additional 45,000 residents (primarily in higher density development) forecast for the municipality between 2021 and 2036
- details of the costing of these improvements on a precinct by precinct basis.

Council advised that the improvements identified in the Implementation Plan comprise approximately \$850 million in open space works to be undertaken by 2036, with \$606 million apportioned to new development and \$244 million to existing. Of the \$850 million:

- approximately \$805 million is for new open space acquisitions and works
- approximately \$45 million is for improvements to existing open space, including improvements intended to increase the carrying capacity.

The \$805 million is intended to finance the acquisition of 25.1 hectares of land with \$573 million (71.1 per cent) of this cost apportioned to new development and \$233 million (28.9 per cent) to

existing. Based on these figures, Council submitted that, depending on the density of new development the calculated open space contribution rate would be between 13.23 per cent and 15.57 per cent which:

...is calculated based on the 'basket' of improvements identified and apportioned to the future community and the value of land that is expected to be required to accommodate the growth forecasts and as shown in the Implementation Plan.

Nevertheless, Council proposed that the contribution rate be reduced to 10 per cent, based on what was proposed in Amendment C148 (Table 7). The Implementation Plan includes forecasts of population in 2036 to align with State population projections used in the Eastern Metro-Land Use Framework Plan and the Suburban Rail Loop business case documents.

Table 7 Implementation Plan calculation of open space levy rate

Item	Metric	Value
A	Cost of open space improvements and additions apportioned to forecast population growth to 2036	\$606,802,563
B	Value of net developable land to accommodate forecast growth	\$4,585,285,670
C	Open space contribution requirement from new development as a per centage of total site value (A divided by B = C)	10 per cent**

**The figure is actually 13.23 per cent but has been rounded down.

Source: Monash Open Space Strategy Implementation Plan and Open Space Contribution Report 2021, p 55

Council submitted that there is no defined methodology for apportioning open space costs between new and existing development and the principles it used to underpin the new rate were:

- the City of Monash is considered a single planning unit for open space planning purposes and that Clause 53.01 allows for POS 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 municipality
- an inclusionary requirements approach, which was endorsed by the Panel in Amendment C148 (when subject to appropriate justification), has been adopted. This means all development regardless of its location in the municipality and whether it be residential or commercial in nature should equip itself with sufficient space to meet its needs and this can be through land or cash in kind contributions.

Council added that these factors were similar but not identical to those accepted by the Amendment C286yara Panel.

Individual projects identified in the Implementation Plan were then ranked into the following four categories:

- category 1 apportioned 25 per cent to new and 75 per cent to existing development
- category 2 apportioned 50 per cent to new and 50 per cent to existing development
- category 3 apportioned 75 per cent to new and 25 per cent to existing development
- category 4 apportioned 100 per cent to new development.

Council explained that these individual project assessments were undertaken and reviewed internally and the apportionment of cost to new and existing involved “a degree of professional judgement” and this qualitative approach had been endorsed by the Yarra C286 and Melbourne C209 Panels. It added that these Panels also rejected an apportionment methodology based on the proportion of new to existing population which was advocated by some submitters. The

qualitative approach was fairer, in its view, because the demand for open space would be higher for new residents living in apartments and other multi unit buildings.

In the calculation of the open space levy rate, the denominator is the value of land or the net developable land value (NDV) to accommodate growth or \$4.585 billion as shown in Table 7. The numerator is the total cost of projects apportioned to new development or \$606 million. Council submitted that the NDV was based on historic subdivisions from July 2017 to September 2021 which were categorised by size and averaged. Valuations were indexed to September 2021 based on the Melbourne metropolitan house price index as published by the Real Estate Institute of Victoria. Council modelled five scenarios with different subdivision patterns and adopted the Eastern Metropolitan Land Use Framework Plan estimate of 17,700 new dwellings needed in the City of Monash between 2021 and 2036 which produced an open space contribution rate of 13.23 per cent.

It stated that the Implementation Plan, by adopting the proposed 10 per cent rate, resulted in residential development *“cross-subsidising the non-residential rate by a substantial margin.”* It added that the Yarra C286 Panel accepted the same rate for residential and non-residential development based on worker and resident ‘need’ for open space rather than any quantification of ‘use’ by workers and residents. Council acknowledged that Monash is a middle ring suburb while Yarra is an inner city suburb but submitted that there were a number of similarities. It stated:

In this context, there is no basis to assume that workers in Monash have less need of open space than workers in Yarra.

Council added that the Draft Framework Plan for the Monash National Employment and Innovation Cluster (MNEIC) included the following as one of its guiding principles:

Sustainable social infrastructure and open space that meets the needs of people living, working and visiting the Cluster.

It referenced select strategic objectives and actions of the Draft Framework Plan and concluded:

In this context, there is no warrant for concluding that the MNEIC will be adversely affected by the proposed provision rates. If anything, it tends to support the appropriateness of a uniform rate.

Council submitted that the matter of a uniform rate and a single planning unit had been assessed and accepted by the C148 Panel and there was no need to prosecute the arguments around these matters. It reminded the Panel that the interim C148 Report accepted that where the funds collected through the levy were expended was a matter for Council, provided that the expenditure was on open space. It added:

In this context, the Implementation Plan has an important role to play in identifying what the Council *expects* to do over the 15-year life of the MOSS 2021, but it is necessarily non-binding. Importantly, unlike a DCP, it is not a creature of statute and there are no statutory requirements which it must meet.

Dr Spiller gave evidence that the Amendment was strategically justified and this justification relied on an inclusionary provisions model. He added that open space contributions should be guided by the following principles:

- The City is one planning unit featuring one open space network.
- The City’s open space network should be adequate with reference to quantity, accessibility/distribution, quality/level of service and reliability of ongoing service provision.

- All development should contribute its fair share towards an adequate open space network for the City, regardless of stage in the development life-cycle of the City.
- All development that benefits directly or indirectly from the open space network should contribute regardless of land use type.

His evidence was that, in terms of quantity of open space, the 'gold standard' is 30 square metres per capita. However, he added that the provision of land alone was not enough and the standard of construction and embellishment related to the purpose of the open space also should be considered. Dr Spiller's evidence was:

This perspective allows for a degree of substitutability between quantity and quality; that is, a smaller area of open space provision, say, less than the gold standard of 30 sqm/capita, may deliver the same value of open space services as the gold standard if developed with better than average facilities. Taking this approach, a provisioning standard relating to area, such as 30 sqm/capita, may be adopted for the purposes estimating a contribution requirement from proponents, but the proceeds may be applied to embellishment of parkland rather than acquisition of additional land

His view was that new development in the municipality obtained a benefit from the existing mature open space network and therefore should make a fair contribution to its provision. He added that residents and workers alike benefited from the provision of open space and consequently as part of a single planning unit residential and non-residential uses should make the same contribution.

Dr Spiller provided the Panel with his model of four development typologies and he identified the user pays and inclusionary provisions were the most relevant to funding open space. He viewed Development Contributions Plans as an example of a user pays approach while:

...the inclusionary provision approach relies on the principle that each successive unit of development should equip itself with the POS infrastructure it requires, or pay for this requirement to be met off-site. It therefore relies on a 'planning standards' framework, as applied, for example, with car parking provisions.

The standards in question can be derived from a general provisioning metric, such as 30 sqm per capita. Alternatively, they can be derived from the proposed or envisaged POS network distributed over all anticipated units of development.

Dr Spiller acknowledged that Council has chosen a version of the inclusionary provision model that required the identification of the value of acquisitions and works needed to support the projected new development in the municipality as well as the estimated value of land to be developed. He thought this approach, while it has a "*practice record in Victoria*" suffered from two drawbacks:

- It requires a level of judgement to establish what future acquisitions and works are attributable to new and existing populations.
- Later development reaps a disproportionate benefit from the historic investment in open space in a suburb what he termed 'freeloading'.

He identified a further shortcoming of the method employed by Council which excluded two lot subdivisions from the assessment of the NDV of the denominator. He acknowledged that two lot subdivisions were exempt from open space contributions but nevertheless the occupants would be users of open space and consequently should be included in the calculation in an inclusionary provisions framework. As a consequence, he undertook his own calculation of the value of residential and non-residential land to be developed and arrived at a total of \$5.5 billion which resulted in a contribution rate of 11.1 per cent.

He concluded that the Amendment was appropriately justified and the apportionment process had been undertaken with "*due rigour*".

The Housing Industry Association Limited (HIA) submitted that the setting of a contributions rate should be tested against the principles of need and nexus and outlined in section 18(1A) of the Subdivision Act 1988 which states:

the Council may only make a public open space requirement if it considers that, as a result of the subdivision, there will be a need for more open space, having regard to:

- a) the existing and proposed use or development of the land
- b) any likelihood that existing open space will be more intensively used after than before the subdivision
- c) any existing or likely population density in the area of the subdivision and the effect of the subdivision on this
- d) whether there are existing places of public resort or recreation in the neighbourhood of the subdivision, and the adequacy of these
- e) how much of the land in the subdivision is likely to be used for places of resort and recreation for lot owners
- f) any policies of the Council concerning the provision of places of public resort and recreation.

It added that development contributions were increasingly being used to fund social infrastructure with no clear relationship to the development, unlike the provision of physical infrastructure. The HIA stated that the high contribution rate would make infill development less affordable and that borrowing is a platform that Council can use to fund the provision of open space above what HIA considers should be the maximum contribution rate of five per cent.

HIA agreed with the Yarra C286 Panel that Clause 53.01 was no longer fit for purpose because subdivision was an imperfect mechanism for identifying future populations and provided the Panel with a copy of its policy on *Infrastructure Charges and Levies on Residential Development* (Document 32) which, among other things, contained the following:

- The costs of broader community, social and regional infrastructure should be borne by the whole community and funded from general rate revenue, borrowings or alternative funding mechanisms.
- Up-front charges and levies against a new development are the least efficient manner in which infrastructure costs may be recovered.
- The imposition of up-front charges and levies on new homebuyers for community, social and regional infrastructure is inequitable, discriminatory, inflationary and erodes housing affordability.

PPP Group submitted that the Amendment “*overreaches*” because it takes a list of MOSS18 aspirational actions and treats them as MOSS21 necessary projects. It opposed the Amendment because:

- The justification for the new rate is flawed and misconceived.
- The new rate is unfair and unreasonable.
- The new policy requires amendment.

PPP Group added that there were a number of problems arising from the way in which the new rate has been calculated including:

- the potential that a large number of projects are unlikely to be carried out in the projected time frame
- the apportionment of the cost of the projects
- the application of the same rate for all land uses.

It submitted that a key change in the Amendment from C148 is that the actions are no longer described as aspirational and play a direct and critical role in the calculation of the open space levy

rate. In addition, the MOSS21 acknowledges the possibility that some of the actions may not be implemented in the life of the Strategy which should be recognised in the calculation of costs. It stated that much of the land to be acquired is in existing residential neighbourhoods and Council has committed not to use compulsory acquisition to assemble the land. PPP Group used the example of a 5,000 square metre park in Ashwood/Burwood which would require the acquisition of seven residential lots and explained:

The assembling of land for one park is a difficult task. The Plan proposes acquisition of land for 61 new parks (including the expansion of 5 existing parks). That is, 61 separate programs of acquisition of contiguous lots.

PPP Group challenged whether, what it described as an ambitious program could be achieved in the projected timeframe. It stated that 71 per cent of the cost of the actions is apportioned to new development yet most of the costs of the MOSS21 was allocated to new parks in existing gap areas. In total, 55 of the 56 parks are located in existing gap areas. It added:

It is clear that many of the projects primarily respond to existing need. There is nothing in the exhibited materials, or by way of evidence before the Panel, that properly justifies the apportionments.

Council supports the apportionments on the basis that they are the outcome of one officer's work which was then reviewed by two others. That is hardly a persuasive explanation when dealing with very significant costs.

It informed the Panel that the cost of the new parks ranges from \$3.45 million to \$38.5 million with most in the range of \$10 million to \$20 Million. In addition, it stated the 45 per cent adjustment to land acquisition costs detailed in the VSA Report should not be accepted because there is no evidence to support the conclusions of this document which was prepared by Council staff.

The need for open space for non-residential users was acknowledged by PPP Group however, it submitted that Council had not justified the same contribution rate for employment land. Council had not undertaken any research to understand the use or need for non-residential open space to justify the same rate for residential and non-residential uses.

Mr Shipp gave evidence that the proposed 10 per cent rate would be the highest municipal wide open contributions rate for residential and non-residential used in Metropolitan Melbourne. He thought that the rate should be supported by the following elements:

- How the Net Developable Area was estimated and which land uses and zones were included.
- What land values were applied to determine the value of land expected to be developed over the strategy period.
- How the cost estimates for improvements and land acquisition were determined.

Mr Shipp agreed that the method used to calculate the rate was appropriate but that there was a misalignment where 30 per cent of the costs were allocated to addressing existing open space gaps and the same contributions rate applied to non-residential use. His evidence was that the Implementation Plan adopts a 'user pays approach' to determine a suitable rate and that equitable cost apportionment should be informed by a quantitative measure of the demand generated for the open space works from existing development as distinct from new development and based on population. He thought the 18 per cent growth in the Monash population was a more relevant measure of the apportionment of costs to the new population.

Mr Shipp referenced the example of Kanooka Grove, Clayton referenced as a case study in the Implementation Plan. His evidence was that the proportion of new to existing population should be based on the final (2036) number and not expressed as a proportion of the commencement

(2021) population. This would mean that the proportion of new population would be 29 per cent of the 2036 total and not the 48 per cent referenced in the Implementation Plan. He stated:

The resulting apportionment to new development in this example is 75 per cent. By comparison, new development in the precinct will comprise only 29 per cent of the future population of the precinct. The way in which quantitative inputs have (or have not) been used to arrive at the apportionment of 75 per cent is not clear in the description of the example or the material elsewhere in the Implementation Plan. In the absence of any such quantities, it is my view that the most equitable and transparent metric available to apportion costs is the share of usage by existing and future residents (i.e. 29 per cent).

He also compared the high growth Clayton example to Wheelers Hill where the cost to new development is apportioned 75 per cent and 74 per cent respectively. His evidence was that Wheelers Hill was a low growth area, which he calculated at a 10 per cent population growth compared to Clayton's 29 per cent, yet both areas had a similar apportionment to new development. His evidence was that the actions in Wheelers Hill were intended to address existing gaps and that similar outcomes were proposed for other low growth areas including the low growth areas of Ashwood, Chadstone, Hughesdale, Mount Waverley and Mulgrave.

He concluded:

In my opinion based on the material exhibited in support of the Amendment, a residential open space levy rate of between 5.9 per cent and 6.9 per cent would represent a considerably more equitable rate than that proposed by the Amendment (if other inputs to the calculation can be verified).

Mr Shipp's evidence was that while some changes had been made to the MOSS21 and supporting documentation, no analysis had been included that justifies the application of the same rate to residential and non-residential subdivision. In particular, there is no new information which:

- justifies an increase in the demand for new and improved open space generated by non-residential land
- shows that workers use open space differently and open space near or in employment land is more costly.

He agreed that non-residential use should make a contribution to open space provision but thought this was a different level of demand from residential use and the contribution rate should reflect this "*substantially less*" difference. Based on his review of some DCPs, the PSP Guidelines and other scheme standards, he concluded that non-residential development should make a contribution of between 20 per cent and 30 per cent of the residential rate

Mr Shipp stated that the absence of specific guidance on the calculation of the open space levy rate was a substantial policy gap.

Mr Milner gave evidence that the Amendment was fundamentally flawed because it has:

- not appropriately or satisfactorily addressed the Panel's conclusion that the same rate of open space levy is not justified across residential, industrial and commercial land uses
- persisted in proceeding on an incorrect reading and interpretation of growth area performance targets for open space provision as justification that 10 per cent net developable land should be sought as an open space contribution for all development regardless of whether the subdivision is for residential, industrial or commercial use / development
- relied on an assumption that "public open space has the same implications for usage and need regardless of whether it is commercial, residential or industrial land use" without analysing or testing whether that should translate into the same quantity, accessibility or form.

He observed that, based on a 15 year life of the MOSS21 the Implementation Plan would require around \$40.5 million to be collected each year *“which is almost 3.5 times the amount collected in the best of the last 8 years.”*

Mr Milner’s evidence was that the MOSS21 and Implementation Plan contained little justification for applying the same contribution rate to residential and non-residential subdivision. He stated:

... apart from a reference to a growth of residents and employment in Monash, based upon a draft metropolitan regional land use framework, *MOSS21* and the draft Implementation Plan are written almost entirely from the perspective of residential growth and forecasts of dwellings.

He also observed that there was a strong correlation between the location of commercial and industrial land uses and poor access to public open space that did not meet the 400 metre threshold. He noted that subdivisions in these areas currently attracted the highest current rate of 5 per cent which had resulted in limited land being secured for public open space.

Mr Milner noted that the calculated rate of 13.23 per cent was rounded down to 10 per cent and thought that reducing the rate by almost a third to *“an arbitrary per centage warranted a full explanation.”* He added that part of the reason for this reduction might be that the calculated contribution rate may be perceived as unpalatable when compared with the maximum levy sought in some other middle/outer municipalities such as Monash where rates rarely exceed 5 per cent.

He concluded that the Amendment was based on an incorrect reading of planning policy and relevant guidelines, particularly as they apply to residential and employment land. As a consequence, the methodology employed in the calculation of the rate is inappropriate which compromises the strategic justification of the Amendment. He stated:

Since the per centage levy is on the site area or the site value, this has been a poor and imprecise barometer of dwelling yield and demand for open space, when high rise / high density development is the outcome and the number of dwellings, or lots is not a consideration.

4.4 Discussion

A number of issues were raised in submissions and in responding to these matters the Panel found it helpful to consider each matter separately under the following hearings:

- Yarra Planning Scheme Amendment C286
- the single planning unit and inclusionary approach
- a single rate for residential and non-residential subdivisions
- open space projects
- the cost of land to be acquired
- apportionment
- Calculation of the rate
- Clause 53.01.

Yarra Planning Scheme Amendment C286

During the Hearing, frequent reference was made to Amendment C286yara and the interim report of the Panel. In its Part C submission, Council made the following observation:

At the outset, Council notes and emphasises that much of the argument put before the Panel was in substance a rehash of arguments raised – and rejected – at the C286yara Panel (and in some cases rejected at earlier Panels) – typically without any acknowledgment

in the evidence of the fact that those arguments had been rejected or any explanation of why that rejection was inappropriate.

This raises a question of to what extent a planning authority should be required to readdress issues that have already been decided by other Panels, especially a Panel like C286yara where:

- the report was published approximately 6 months ago
- substantially the same evidence was given by the same witnesses.

In Council's submission, when it comes to matters of principle and law – as opposed to specific matters of fact – a Panel should generally follow the decisions of another Panel unless it is affirmatively satisfied that the earlier decision is demonstrably wrong.

Panel processes are a significant investment for planning authorities and while it is appropriate and proper for the Council's case to be properly tested, it is not appropriate for submitters to simply seek to repeatedly relitigate the same issues in the hope that a different comprised Panel will give them a different result.

The Panel found this observation unhelpful. The Panel notes that Amendment C286yara is the most recent Panel considering a change to the open space contribution rate preceding the Amendment and that evidence was provided by Mr Miller and Mr Shipp. However, evidence was provided also by Ms Thompson, Ms Kay, Dr Eggleston and Mr Mackintosh for Council and Mr Black for another party and Dr Spiller did not provide evidence for Amendment C286yara.

In addition, in the Panel's view, not only are Yarra and Monash significantly different municipalities in terms of their built form, but the Yarra Open Space Strategy and its associated technical report and the MOSS21, the Implementation Plan and the VSA Report are significantly different documents in their construction and recommendations. Furthermore, this Panel has not had the benefit of hearing the submissions, cross examination and evidence presented at the C286yara Hearing.

Finally, amendment hearings are based on an inquisitorial process which is reinforced by section 168 of the PE Act. If the Panel accepted Council's premise, then the first hearing to consider a change to the open space levy rate would in effect set the framework for all future hearings. In this Panel's view that is not the way the amendment process should work. Because of the subtle and significant differences that are reflected in different planning schemes, amendments to these schemes should be considered on their merits, whether or not the same arguments are raised against the changes by some of the same people. This is not to say that this Panel should disregard the decisions and conclusions of the C286yara Panel expressed in its interim report but it should not dictate what this Panel considers relevant and the conclusions reached.

For these reasons the Panel reject's Council submission on this matter.

The single planning unit and inclusionary approach

These matters were dealt with by the C148 Panel which concluded that:

- The treatment of the whole municipality as a single planning unit is appropriate.
- An inclusionary requirements approach is reasonable.

This Panel agrees with those conclusions and notes that Mr Milner, who presented an opposing view in Amendment C148 accepted those finding in his evidence to the Amendment.

A single rate for residential and non-residential subdivisions

The Amendment C148 Panel accepted that employment land should make a contribution to open space but it concluded that applying the same rate to residential and non-residential subdivisions was not justified and recommended that Council provide a detailed justification for the application

of the same open space levy rate. In other words, the C148 Panel, on the basis of the information presented to it, concluded that there was insufficient justification for a single rate. However, the Panel did not conclude that a single rate was inappropriate and consequently invited Council to provide further justification for a single rate.

The Panel notes that the letter of authorisation also required strengthening the justification for applying the same rate to residential and non-residential subdivisions in the Explanatory Report.

The Explanatory Report and Council's part B submission notes the increase in employment expected in Monash from 2020 to 2036 and goes on to state "*public open space has the same implications for usage and need regardless*" of use and that the same rate will apply to all subdivisions. The Panel notes that, other than acknowledging that open space sites in commercial and industrial areas will largely be provided by land contributions, the VSA Report focuses on residential land yet the same land acquisition oncosts are applied to all projects regardless of whether the use is residential or non-residential.

Council's Part B submission justified a uniform rate for all uses by reference to the publication of Open Space for Everyone and the interim report of the C286yara Panel which accepted a uniform rate.

Open Space for Everyone focuses on the "*planning, acquisition, design, management, use and maintenance of the Melbourne metropolitan open space network*" but does not provide a detailed justification for a uniform rate. In this respect the Panel accepts the submission of the PPP Group. The Panel notes that the C286yara Interim Panel report accepted that the needs of new residents and workers can be considered as equivalent. However, the built form of the Yarra employment areas is substantially different from Monash and in particular the MNEIC. In addition, the Yarra Open Space Strategy proposal was based on a survey of workers which Council dismissed as impractical in Monash.

The Panel recognises that the Schedule to Clause 53.01 of the Monash Planning Scheme currently applies a 5 per cent contribution rate to other subdivisions which matches the highest rate applied to dwellings of six or more lots. The Panel understands that residential subdivisions of six or more lots and non-residential subdivisions are required to make a 5 per cent contribution.

Nevertheless, the issue for the Panel remains that a detailed justification for the application of the same open space levy rate in the City of Monash has not been provided and a broad metropolitan open space strategy and the findings of another Panel, as discussed above, are not a substitute for that justification. Mr Shipp acknowledged that non-residential development used open space and should make a contribution. Dr Spiller made a similar observation although they disagreed on the quantum. The Panel agrees. The Panel concludes that there has not been sufficient justification to apply the rate of 10 per cent particularly since that rate has been effectively calculated on residential development. Nevertheless, the Panel accepts Council's submission that the conversion of non-residential use to residential use may increase demand for open space but not be captured by the subdivision provisions. For this reason and those detailed below the Panel accepts that an increase in the non-residential rate is appropriate.

Open space projects

The MOSS21 acknowledges that not all projects identified may be delivered within the life of the Strategy. In all, 64 new open spaces are proposed with a total of 25.1 hectares of which 16.9 hectares (67 per cent) is attributed to new development and a cost of \$573 million (71 per cent) of the \$806 million total estimated cost for land acquisition is apportioned to new development.

The VSA Report was based on 47 projects of new reserves or expansions of existing open spaces in residential areas and estimated a total of 361 properties would be required to provide complete the projects with an average of 7.68 properties per project acquisition. By any assessment, this is a significant and ambitious program and one unlikely to be completed in the remaining 13 years to 2036. PPP Group submitted that the project list was aspirational and should not form the basis for the calculation of the open space levy rate. Council responded that this approach reflected “DCP thinking” and there would be no harm if a project was delivered say in 2040 rather than 2035. It added that it has previous experience in acquiring land for the car parks in the Glen Waverley Activity Centre.

The Panel understands that the acquisition of land, particularly if compulsory acquisition is not used, can take some time. In these circumstances a better measure of the implementation of the program may be whether the project has commenced rather than been completed.

The issue for the Panel is that the cost of projects apportioned to new development makes up the numerator in the calculation of the open space levy rate. Some delays reasonably could be expected, given the size of the program and consequently it is likely that not all projects would be commenced or delivered by 2036. However, if a significant number of projects were not completed, or worse not commenced by 2036, it does throw considerable doubt on the accuracy of the calculation of the open space levy rate. For example, using the figures in Table 7, if projects amounting to half the total cost were not commenced and not included then the open space levy rate would be reduced to 6.62 per cent or 9.93 per cent if the three-quarters of the cost of projects were commenced and included.

The Panel notes that, based on the aerial photography included in Council’s Part C submission, the acquisition of land for car parking in the Glen Waverley Activity Centre occurred from 1972 to 2022, Oakleigh from 1982 to 1992 and Mount Waverley from 1992 to 2012. This demonstrates Council’s ability to undertake acquisitions over considerable periods of time. However, the doubt that remains in the Panel mind is whether Council can successfully undertake, in a reasonable time frame, 47 acquisition programs or an average of three to four acquisitions of seven to eight properties a year until 2036.

While this is an ambitious program the test for Council will be its ability to successfully deliver an outcome. As the planning authority and as part of the Amendment, Council has committed itself to deliver the program of acquisitions by 2036. The Panel does not find anything inherently inappropriate in a council committing to an ambitious program however, it will be judged and held to account by its ability to undertake and deliver that program, particularly if and when the MOSS21 is replaced by another strategy.

The cost of land to be acquired

The VSA Report concluded that for the following reasons a 49.91 per cent increase should be applied to the cost of acquiring land:

- Valuer General valuations based on capital improved value (CIV) are below the sales prices
- administrative costs should be included
- Council’s inability to acquire the lowest value properties
- additional costs for above market purchases to ensure contiguous land is secured.

In calculating the acquisition cost of property in the Implementation Plan Council used a 45 per cent increase rather than the 49.91 per cent increase calculated by the VSA Report. Nevertheless, this adds approximately around \$288.7 million to the estimated total cost of land acquisition.

Without the 45 per cent in the cost of acquisition, if nothing else is altered, the Panel calculates the total cost of projects apportioned to new development would be \$441.6 million and the open space levy rate would be reduced to approximately 9.63 per cent. Consequently, the additional oncosts added to the value of land to be acquired has a significant impact on the level of the open space levy rate. In addition, the Panel accepts the submission of the PPP Group that the acquisition sensitivity in the VSA Report is calculated on the basis of residential uses. The VSA Report acknowledges that it is expected that open space sites in industrial and commercial areas would be through land contributions but if a uniform rate applied to residential and non-residential subdivision the residential acquisition costs detailed in the VSA Report would apply to land contributions. Consequently, there is potentially an element of applying a cost that will not be incurred where land is provided.

The cost of acquiring land, according the VSA Report is made up of the following elements:

- the difference between CIV and market value
- a premium for acquiring subdivided land
- a premium for acquiring land with a new or recent building
- a premium for acquiring land off-market
- a premium for enticing an owner to sell.

The basis for calculating a 17 per cent differential between CIV and market value is an examination of 10 properties sold between October 2021 and May 2022. This is a very small sample over a narrow time frame where the impacts of the COVID-19 on market value is unknown. That aside, the Panel notes that the figure of 17.05 per cent has been obtained by averaging the individual property per centage difference between CIV and sale price. This method is inappropriate and, given Council's adopted approach has been one of a single planning unit, a more appropriate method is to sum the differences between CIV and sale price for all 10 properties and then express the total as a per centage of the sum of the 'Sale Amount' for all the properties to produce a weighted result. The result the Panel has calculated to be a 13.88 per cent difference between CIV and sale price based on the 10 properties.

The premium for new buildings was based on six properties assessed in 2022 and the subdivided lots on 30 assessments. In both cases the CIV of the new build property or combined subdivided lot was compared to the CIV of an adjoining property of the same size and the difference expressed as a per centage which was then averaged, in a similar way to the sale price/CIV difference. This averaged per centage was then distributed using the per centage of new build or subdivided properties in the 361 sample acquisitions.

The VSA Report estimated that, in 40 per cent of acquisitions, it would be necessary to pay an average premium of 10 per cent over market price which would add 4 per cent to total acquisition costs. In addition, it estimated that 35 per cent of land acquisitions would be off-market requiring a 40 per cent premium, adding a total of 14 per cent to all land acquisitions.

While the VSA Report provides a detailed explanation of the assumptions upon which its calculations are based, the Panel had not been presented with any review of these assumptions and Council did not provide any evidence to review or support their accuracy. The Panel understands that the VSA Report was prepared by Council staff and while individually each of

these estimates may or may not appear reasonable, in combination the result is a significant increase in the cost of land which in turn results in a significant increase in the open space levy rate. In the Panel’s view such an increase requires an equally rigorous justification. The Panel is not satisfied that there has been any appropriate justification of these assumptions or any explanation of the basis of the figures used.

The Panel notes that in the cases of the two Panels most frequently referenced in submissions, the interim report for Amendment C285yara recommended a 10 per cent allowance for acquisition costs and Melbourne C209 had no specific provision. Based on the information provided, the Panel is not satisfied that the costs identified in the VSA Report are reasonable and justified. However, the Panel accepts that some administrative costs will be incurred and, in these circumstances, the 13.88 per cent difference between CIV and market rates is adequate to provide for both the difference between CIV and market rates as well as the administrative costs in purchasing land. Using the figures provided by Council total land acquisition costs were estimated at \$518,238,600 with an additional \$226,707,370 added by the 45 per cent oncosts resulting in a total land acquisition cost of \$746 945,970. Council also estimated improvements costs at \$91,379,375 and Paths at \$12 570,000 giving a total cost of all projects at \$850,895,345 with 71 per cent apportioned to new development.

If the oncost proportion was reduced to 13.88 per cent, the cost of all projects would be reduced by \$156,775,852 resulting in a total cost of \$694,119,493. Using the overall 71.31 per cent apportionment to new development calculated in Table 10, the total cost apportioned to new development would be \$495,000,342.

Apportionment

The Implementation Plan detailed the ranking of projects from 1 to 4 based on Council’s assessment of demand driven by new development. Of the 131 projects identified in the Implementation Plan 84 or 64.12 per cent are apportioned to category 3 and above and 113 or 86 per cent were in category 2 or above (Table 8).

Table 8 Summary of all project list rankings

Rank	Per centage (new/existing)	Number	Per centage of total
1	25/75	18	13.74%
2	50/50	29	22.14%
3	75/25	57	43.51%
4	100/0	27	20.61%
Total		131	100.00%

The distribution of land acquisition projects alone is more heavily apportioned to new development with 61 or 96 per cent of acquisition projects ranked 2 or above (Table 9).

Table 9 Summary of land acquisition projects rankings

Rank	Per centage (new/existing)	Number	Per centage of total
1	25%	2	3.17%
2	50%	19	30.16%

Rank	Per centage (new/existing)	Number	Per centage of total
3	75%	31	49.21%
4	100%	11	17.46%
Total		63	100.00%

Dr Spiller thought the method reasonable but had not verified its application. PPP Group submitted that the nature and construction of the ranking inherently biased it to producing a higher apportionment to new development. The Panel agrees with Council that population alone is inadequate as the single basis for apportioning costs to new and existing development and consequently does not accept Mr Shipp’s evidence on this matter. Nevertheless, population does provide a useful starting point.

Table 10 displays the raw data and a comparison of the per centage residential population increase and the per centage apportionment of all open space projects for each of the 12 precincts.

In the Panel’s view there is a significant difference between the proportion of projected population and the proportion of open space projects costs apportioned to new development. Given the information in Table 8 and Table 9, it is likely that if land acquisition alone were considered, the difference would be more significant.

Council submitted that there were three considerations used for apportionment:

- population growth (using a 400 metre walking distance)
- development type
- existing levels of service.

While the population figures used in the apportionment are transparent, the Panel is unclear how development type and level of service assessments have been applied other than an initial assessment was undertaken by one Council officer and then reviewed by two other Council officers. The Implementation Plan provides further detail and explanation of these factors and case studies of a new park in Kanooka Grove Clayton and a public toilet in Electra Reserve Ashwood. The assessment of Kanooka Grove appears to be based on the anticipated population growth (43 per cent), most of the new development being apartments and the limited capacity of the existing Fregon Reserve, while Mr Shipp calculated that the new population would make up 29 per cent of the total 2036 population but contribute 80 per cent of the cost of projects in Clayton. In the Ashwood case study the need for a toilet appears to be an existing issue and while some growth, mainly in town houses, is expected, again the cost allocated to new development is, in this case 25 per cent which is twice the level of population growth at 12.37 per cent. In the Panel’s view the argument for a higher level of open space demand for town house development is not as compelling as it is for apartment living and does not justify a 25 per cent apportionment.

Table 10 Comparison of population increase and apportionment to new development

Precinct	Population change forecast 2021 to 2036				Total cost proportion new (\$000,000)	Total cost proportion existing (\$000,000)	Total (\$000,000)	Per cent to new
	2021	2036	Pop change	Per cent increase				

Ashwood Burwood	10,431	11,721	1,290	12.37%	\$11.38	\$11.88	\$23.26	48.93%
Chadstone	10,208	11,159	951	9.32%	\$11.16	\$11.28	\$22.44	49.72%
Clayton	22,689	33,521	9,723	42.85%	\$188.87	\$45.62	\$234.49	80.55%
Glen Waverley	44,530	55,885	11,355	25.50%	\$110.19	\$32.25	\$142.44	77.36%
Hughesdale	8,509	9,453	944	11.09%	\$42.05	\$42.18	\$84.23	49.93%
Mount Waverley	36,298	40,249	3,951	10.88%	\$37.70	\$25.69	\$63.39	59.47%
Mulgrave	20,425	21,905	1,480	7.24%	\$32.53	\$16.22	\$48.75	66.73%
Notting Hill	3,339	4,755	1,416	42.40%	\$16.28	\$3.58	\$19.86	81.96%
Oakleigh South	5,870	8,187	2,317	39.47%	\$23.76	\$12.39	\$36.16	65.72%
Oakleigh	9,921	15,845	7,033	59.71%	\$82.07	\$26.37	\$108.45	75.68%
Huntingdale Oakleigh East	8,930	11,306	2,376	26.61%	\$28.74	\$9.03	\$37.78	76.09%
Wheelers Hill	22,351	24,945	2,594	11.60%	\$18.77	\$6.49	\$25.26	74.31%
General upgrades					\$3.30	\$1.10	\$4.40	75.00%
Overall	203,501	248,930	45,429	22%	\$606.80	\$244.09	\$850.90	71.31%

The Panel agrees that the 400 metre walking distance and the level of service could equally be used as measures of existing deficiencies in the open space network and a cost attributable to the existing population.

The method adopted by Council to apportion costs to new and existing development is a useful approach but it is inherently weighted to allocate a higher proportion to new development on the basis that three of the four categories used allocate at least half of the cost to new development. Given the diversity of facilities and growth in the 12 precincts, the apportionment of costs should be more nuanced. The Ashwood case study provides a useful example. As established in the case study, the need for a toilet already exists and a new facility would improve the amenity and usability for all residents. The type of development anticipated is predominantly townhouse which in the Panel's view, will not generate a significantly higher demand for open space in Ashwood and consequently population would, in this case, provide a reasonable basis for apportionment. However, because of the limits of the ranking used the minimum apportionment attributable to new development, at the lowest level, is 25 per cent while on a population basis it would be 12 per cent.

The Panel agrees with Council that the need and use of open space by new residents, particularly those living in apartments, will be higher than existing residents in suburban garden properties. The Panel is less clear about the needs and use of open space by workers particularly with newer developments such as the Nexus Corporate Park becoming more common. This is the reason the C148 Panel sought further justification of a single open space levy rate.

Consequently, the Panel's view is that the apportionment method is reasonable but limited by the small number of categories which weights the apportionment costs outcome to new development. In the Panel's view this results in a disproportionate cost attributed to new development which attracts 71 per cent of the cost but represents 18 per cent of the 2036 population or an increase of 22 per cent. The Panel could recommend that Council undertake a

more nuanced apportionment and recalculate the apportionment but it agrees with Council’s submission that the amendment process represents a significant investment for Council. Consequently, in the absence of any evidence or submissions on a realistic alternative apportionment level the Panel has adopted a rate of 60 per cent as a fair and reasonable apportionment of the costs to new development which alters the total cost to \$416,471,696

Calculation of the rate

The Panel accepts the evidence of Dr Spiller that the calculation of developable land should include two lot subdivisions. This approach was supported by PPP Group but not by Council. The net impact of this approach is to increase the NDV required to support growth to \$5,474 billion, using Dr Spiller’s calculation. However, Dr Spiller used a different method from Council to calculate the NDV. Nevertheless, in Dr Spiller’s calculation the open space levy rate decreased from 13.23 per cent to 11.1 per cent which, given Council was seeking a 10 per cent rate, he concluded did not alter the Amendment. However, Dr Spiller’s calculation is the only one that includes two lot subdivisions and had been adopted by the Panel

As discussed above, the Panel does not accept that the 45 per cent cost of acquisition is justified. Any changes to either or both of these calculations have the effect of reducing the numerator in the calculation of the open space levy rate which in turn has the effect of reducing the rate. For example, if the costs of land acquisition were reduced to 13 per cent, as discussed above, the open space levy rate would in turn reduce to around 7.61 per cent. The recommended reduction in the apportionment of costs to new development will have a similar effect as will an increase in the NDV to accommodate growth if two lot subdivisions are included.

The Panel acknowledges that the projected population growth in the City of Monash will increase the demand for open space and that it is reasonable that new development contributes to the provision of that open space. However, for the reasons outlined above, the calculation of the open space levy rate over states the contribution required by new development and the Panel does not agree that a 10 per cent rate is justified.

In the Panel’s view the open space levy rate should be calculated as shown in Table 11.

Table 11 Calculation of the open space levy rate

Item	Metric	Value
A	Cost of open space improvements and additions apportioned to forecast population growth to 2036	\$416,471,696
B	Value of net developable land to accommodate forecast growth	\$5,474,506,642
C	Open space contribution requirement from new development as a per centage of total site value (A divided by B = C)	7.61 per cent**

A rate of 7.61 per cent is supported by the Panel and given this rate is below the proposed 10 per cent the Panel agrees that it can be applied to residential and non-residential subdivisions. The Panel acknowledges that this rate is lower than exhibited, however, it provides Council with a starting point to commence its acquisition program. If the acquisition program is successful, or residential and non-residential development and population pressures increase beyond projections, Council can use the evidence it acquires from implementing the MOSS 2021 strategy as a basis to seek a further change to the open space levy rate in the future.

Clause 53.01

Both Dr Spiller and Mr Millner gave evidence that Clause 53.01 is no longer fit for purpose as a means of providing contributions for open space from new development. Mr Shipp stated there was a significant policy gap in the absence of any guidance to calculate a rate. This view was also supported by the HIA and the PPP Group. The Panel notes that an action in Open Space for Everyone is to review funding and financing models for open space. The Panel supports this approach because there is a need for a consistent approach in established municipalities to the provision and funding of open space. The Panel also agrees with the interim report of the C286yara Panel that Clause 53.01 is no longer fit for purpose.

4.5 Conclusions and recommendation

The Panel concludes:

- The single planning unit and inclusionary approach is appropriate.
- A single contribution rate should apply to residential and non-residential subdivisions.
- The open space projects are appropriate but it is unclear whether they can be completed in the life of the strategy.
- The methodology used to calculate cost of land to be acquired should be amended to reduce the acquisition sensitivity to 13.88 per cent
- The methodology used to apportion the cost of projects should be more nuanced and the overall apportionment reduced to 60 per cent from 71 per cent.
- The methodology used in the calculation of the open space levy rate is appropriate, however, the numerator and denominator should be amended as shown in Table 10.
- The provisions of Clause 53.01 are not fit for the purpose of calculating an open space levy.
- The existing provisions of the Schedule to Clause 53.01 relating to the PMP printing site should be retained.

The Panel recommends:

- 1. Amend Schedule to Clause 53.01 to change the 10 per cent contribution rate to 7.61 per cent for all subdivision except for the former PMP Printing Precinct site.**

5 Impacts of the public open space contributions rate

5.1 The issues

The issues are:

- whether the increased rate will impact housing affordability
- whether the increased rate impacts on the viability of development
- whether different funding mechanisms should be use for raising funds for open space
- whether the implementation of the MOSS and purchase of land for open space will result in loss of residential and employment land

5.2 Submissions

Housing affordability

The HIA position is that an open space contribution is a form of development contribution. Its written submission (Document 12) referred to a report by the National Housing Finance and Investment Corporation that examined development contributions and their increasing use to fund local social infrastructure. The HIA submitted:

This type of excessive charge, which is passed on to the home buyer in the form of higher prices, is contributing to the cumulative impact of eroding housing affordability in Monash.

Dr Spiller was asked in cross examination whether he agreed with the HIA conclusion. His opinion was that charges on development put pressure on the price paid for land by a developer and do not directly contribute to housing affordability issues.

Council provided a document in its package of Amendment documentation that argues this position and submitted that no evidence was presented to the Panel that the rate would have a substantial effect on housing affordability

Impact on viability of development.

Mr Milner's evidence was that the imposition of the 10 per cent open space contribution may make some developments unviable because land would have been purchased by developers on the basis of the existing rate in the Planning Scheme. Dr Spiller was asked by the Panel his view on any impact on development viability and his opinion was there may be a possible marginal impact on some development in the short term but rising land values over time will negate the short term effect.

Council's position was no evidence was led by parties to support the view that the proposed increase in the rate would have any substantial effect on viability of development and that in any event, Council's proposal to increase the open space contribution has been well known for several years including through Amendment C148.

Different funding mechanisms

HIA's position was that Council should seek different funding mechanisms such as borrowing to fund open space rather than impose costs on development because open space including new open space investment, benefits the whole community.

Council in response submitted that it is a matter for Council what mechanism it chooses to use to fund open space and that this was recognised by the C148 Panel. Council indicated it would seek grants and other sources of funding to help deliver the MOSS.

Loss of residential and employment land

Mr Milner's evidence was that Council's strategy of acquisition of land inevitably will displace existing residential and employment uses. He was consequently critical of the Implementation Plan and the scale of land acquisition which, in his view, was *'without regard to the impact on other aspects of housing and economic development policy.'*

He noted that the Amendment documentation did not provide a discussion or evaluation on whether net community benefit would be best served by the approach taken by the MOSS21 and Implementation Plan.

Council observed in reply that Mr Shipp did not give evidence on the issue of net community benefit or economic impact, nor was social impact evidence provided to inform the Panel of any scale of impact, and:

...apart from the costs of acquisition, the costs of the Amendment are unlikely to be significant on a municipal scale

Council concluded that while the acquisition program is ambitious, the amount of land being acquired will be more than offset by new development and densification.

5.3 Discussion

Housing affordability

The issue of housing affordability is complex. The Panel notes the different opinions presented on where the impact of charges, such as an open space contribution, falls. This is a debate that is ongoing. The Panel acknowledges the issue is framed by broad community concern with the escalating cost of housing and equally developer concern with the escalating costs of development. The Panel did not hear evidence specifically on whether the proposed open space contribution rate will directly impact on housing affordability in Monash. The Panel is not placed to comment on whether an impact will occur.

Impact on viability of development.

As with the issue of housing affordability, there are many variables and considerations that determine whether a development may be 'viable' and these will be different for each development and developer. The Panel was not presented with evidence from any party that its future development will be rendered unviable by an increase in the open space contribution.

The Panel agrees with Council that the proposal to increase the open space contribution has been well known. The Panel's view is that any development that might become unviable due to an increase in the contribution would be at the margins and it would be difficult to attribute an unviable development solely to an open space contribution.

Different funding mechanisms

The Panel affirms its view in the interim C148 Report that Council can determine how it seeks to source funds for open space. Clause 53.01 exists, Council uses it currently to fund open space and it is Council's decision what mechanism or funding sources it seeks to deliver the MOSS21.

Loss of residential and employment land

The Panel acknowledges Mr Milner's observation that Council's intended program of acquisition will, by its nature, remove residential and employment land from the market and displace those existing uses. In a growing city this is an issue of note, but equally Council has demonstrated the need to increase open space across employment and residential land to respond to growth and address the existing shortfalls in parts of the city.

The Panel agrees with Council that residential and employment land and uses lost to a land acquisition program can be accommodated through the ongoing densification and redevelopment of residential and employment land in Monash.

5.4 Conclusions

The Panel concludes:

- The Panel cannot form a view on any impact of the open space contribution on housing affordability in Monash.
- It would be difficult to attribute an unviable development solely to an open space contribution.
- Council can determine how it seeks to source funds for open space.
- Any displacement of residential and employment through a land acquisition program can be accommodated through the ongoing densification and redevelopment of residential and employment land.

6 Talbot Village

6.1 The issues

The issues are:

- the future of the Talbot Quarry site.

6.2 Submissions

Huntingdale Estate Nominees Pty Ltd (Huntingdale) represented by Mr Chiappi is the proponent for a proposed planning scheme amendment to rezone the former Talbot Quarry and land site in Oakleigh South to a Comprehensive Development Zone. The proposal envisages the development of the site as an integrated residential and mixed use development with a new village centre.

Dr Curt Thompson is President of Neighbours for Public Green Space Oakleigh South, Incorporated (NPGS). The primary position of NPGS was that Council should purchase the former Talbot Quarry for open space as envisaged by a section 173 agreement on the title, and that the site is not suitable for residential development. Dr Thomson submitted that the opportunity presented by the former quarry for a wildlife refuge and public open space should not be lost. He was critical of Council for not seeking to acquire the site to address the open space shortfall in the southern part of the municipality, as documented in the MOSS21.

Council confirmed that its adopted position was not to acquire the Talbot Quarry land and submitted it is particularly reasonable for it to decline to accept contaminated land for public open space because of the duties and liabilities it might incur.

6.3 Discussion

The Panel appreciates the argument of the NPGS that, at face value, the opportunity for Council to acquire the former Talbot site for open space would have the potential to significantly address the shortfall of open space in the southern part of the city. Similar arguments were heard by the C148 Panel. Nevertheless, this Panel reiterates its position from the C148 Panel that this is not a matter for this Panel. Council has determined not to purchase the site and the Panel has no view on this decision.

6.4 Conclusions and recommendations

The Panel concludes:

- Council's position on the Talbot Quarry is not a matter for this Panel.

7 Local Planning Policy Framework changes

7.1 The issues

The issues are whether:

- encumbered land should be considered as a land contribution to public open space, and credited against an open space contribution amount
- Council's parameters for accepting land and its preference for cash over a land contribution is reasonable
- strategic development sites should be considered differently.

(i) Relevant policies, strategies and studies

The Amendment introduces a new Clause 22.15 (Public Open Space Contributions Policy) that sets guidance for the process on when, where and how a public open space contribution will be required, including whether a contribution is in the form of land, cash in lieu or a combination of both.

The proposed policy at Clause 22.15-3 seeks to avoid contributions of land that is encumbered and sets out the types of encumbrances that clearly constrain use:

Avoid contributions of land that is encumbered, including:

- Land affected by a servicing easement, including but not limited to, water, drainage and sewer easements, high voltage power line or gas easements.
- Land that is subject to flooding.
- Land that has a slope greater than 1:3 or is subject to landslip.
- Waterways, retarding basins or wetlands.
- Land that would ordinarily be excluded from development due to the need to conserve flora, fauna or heritage values.
- Land that may be contaminated.
- Roof tops, land above a basement, land that does not provide clear sky above and common areas managed by a body corporate.
- Land that has limited or constrained broad public access.

There may be opportunities to include encumbered land as part of the public open space network and Council may accept encumbered land as additional land that can complement or improve the unencumbered public open space and public open space network. This land will not be credited as an open space contribution

Clause 22.15-3 proposes policy *"To seek cash contributions for public open space in most circumstances."* The Clause also seeks to ensure public open space contributions meet minimum standards of between 0.5 and 1.0 hectares for a local level park unless it adjoins an existing park, 1.0 hectares or greater for a district level park and a minimum length and width of 70 metres.

For strategic redevelopment sites and urban renewal precincts that seek higher densities, the policy proposed is *"A minimum public open space contribution of 10 per cent"*.

7.2 Submissions

Huntingdale submitted the policy at Clause 22-15 should not preclude encumbered land forming a land contribution. It also considered it was inappropriate that the new Clause seeks to limit land contributions to parks of minimum size of 0.5 ha and ignore the contribution of land as trails or the

contribution to open space that can be made by well-equipped small areas. It sought additional flexibility to the wording of Clause 22.15. It submitted that a preference for cash contributions as policy should not be the default position for large sites that can provide substantial open space.

Encumbered land

Mr Milner in his evidence observed:

The fact that the open space might be 'encumbered' may be of little consequence to its practical utility and recuperative value to 'time poor' employees. Despite this the proposed new policies seek to avoid or accept land that might be 'encumbered' as part of an open space contribution.

This calls into question why the proposed local policies on open space would discount all encumbered land as a useful contribution to public open space.

Council in response to the issue of encumbered land noted:

...it was not aware of any policy that would support the acceptance of encumbered open space in satisfaction of the POS contribution. Rather, there is a recent State open space policy, expressed in 'Open Space for Everyone' that clearly draws a distinction between encumbered and unencumbered open space and identifies that encumbered open space is 'not open space.'

Council's submission referred to the PSP context noting encumbered open space is not considered acceptable and cited Mitchell and Whittlesea GC102 where an area of land zoned Rural Conservation Zone was acquired without credit because it was considered encumbered.

Council acknowledged that proponents of development have the opportunity of persuading it to depart from written policies during the permit application process, but noted:

...it is rational and Council would add, good policy to establish a base position.

It suggested the policy contemplates that encumbered land may be offered to satisfy open space requirements but that such land would not ordinarily be accepted. Council's final submission noted that in relation to the Talbot Quarry site, it has significant contamination issues and Council does not wish to take ownership of any public land on that site due to its historical use. It concluded that the issue of whether encumbered land on the Talbot site might be accepted was best left to a discussion between Council and the proponents of the Talbot Village redevelopment and suggested that these issues were a matter for any Panel established to consider a rezoning Amendment, rather than this Panel considering this Amendment.

The preference for a cash contribution and specifications of land Council will accept

Huntingdale referred to an indicative masterplan for Talbot Village (Document 36) and advised approximately 16 per cent of the site would be usable open space. It suggested:

The policy should not preclude smaller land contributions where it can be shown they will make a valued contribution to public open space. Spaces such as a village square, children's play areas, outdoor gym areas, areas for BBQs can make a positive contribution.

Huntingdale was concerned that Council would not allow land set aside in this way as a contribution. It conceded in oral submission that there may be practical reasons for not accepting smaller spaces but there were no good policy reasons.

Council reiterated its preference for cash contributions over land to enable it to implement the MOSS21 by accumulating funds to purchase land parcels to form larger parks or upgrade existing public open space. It referred to the Core Service Levels in the MOSS21 as the basis for the restrictions on land it would accept.

Strategic development sites

Huntingdale specifically objected to the proposed 10 per cent rate and the potential for Council to seek a higher contribution rate for strategic development sites:

The increased contribution rate for residential subdivision was excessive and strategic urban renewal sites should be considered separately with the contribution to be negotiated with Council to achieve an appropriate outcome.

PPP Group including Huntingdale, was concerned that the policy set an expectation that strategic development sites would be required to contribute more than the 10 per cent which was, in its submission, already excessive. It concluded that, whatever the Panel might determine as an appropriate rate, should be the rate, with no scope for Council to expect more contribution from a strategic development site.

HIA considered the proposal for a higher percentage for strategic redevelopment sites to be inappropriate.

A Clause 53.01 open space contribution must be a fixed percentage so that land owners/purchasers have certainty in terms of open space design and project costs. Proponents should not be forced to the negotiating table during the application process for an open space outcome greater than what is specified in the Planning Scheme.

Council responded that where strategic sites might be more intensely developed than would ordinarily be the case, it is appropriate to recognise the possibility a greater contribution will be required.

Council's proposed changes to the exhibited Ordinance

In response to submissions to the Amendment Council advised it had suggested minor changes to wording at Clause 21.10-2 and Clause 21.10-3 (Document 20) Council also sought to retain existing provisions at Clause 53.01 relating to the former PMP Printing Precinct site inserted in Amendment C156. Council advised no changes were required for the POS contribution rate for that site which is set at 10 per cent.

These changes were not challenged by any party. The Panel agrees with these changes.

7.3 Discussion

At the outset, the Panel makes a number of observations relevant to this Amendment and open space planning generally.

The Panel observes that Council's referencing of PSP and greenfield examples to support its positions both through this hearing and that of C148, for example the Rural Conservation Zone land provided 'for free' as encumbered land and open space 'standards' in PSP Guidelines is unhelpful. The open space context, the planning regime and the development settings of a PSP and greenfields land is fundamentally different to a developed middle ring suburb. Greenfields development, the spatial allocation of hectares of land, whether land is encumbered and for what reason, its zoning, and payments or credits attributed to land parcels for new open space delivered across a precinct bear no resemblance to the City of Monash or other developed municipalities, where open space already exists.

The Panel notes the 400 metre walkable catchment to open space is a standard that is becoming more universally accepted as reasonable. Ongoing work by councils and open space consultants to better define a hierarchy of open space and service levels is also contributing to a more universal approach.

The Panel reiterates observations made in the interim C148 Report that in the context of councils seeking to increase open space contributions, development standards or guidelines for open space

are required. These may vary depending on the development context, for example, greenfields/PSPs, infill densification via apartments and townhouses, contemporary industrial and commercial precincts including the NEICs, mixed use areas and the like. An additional complexity occurs when there are different planning authorities operating, trying to reconcile the interaction between strategy and policy at municipal scale and at precinct scale. In the case of Monash, the situation with Suburban Rail Loop and the policy and strategy direction which Council is seeking to set for open space including acquisition may well be challenged by planning for Suburban Rail Loop. Whether municipal, that is, Council owned open space is required when district or regional open space is within a walkable catchment should also be resolved.

To an extent, Dr Spiller's methodology advanced in C148 and reiterated in his evidence for C169mona for 30 square metres per person of open space and the application of the inclusionary principle and its requirements to employment land, is an attempt to respond to the absence of standards. Well understood and agreed standards tested through a broader public consultation process, rather than amendment by amendment, would have multiple benefits. It would improve transparency and set clear expectations for developers. Ultimately standards would reduce the costs incurred by councils trying to plan for and respond to future growth by improving open space and seeking to secure a reliable funding stream to do so through the planning system.

Encumbered land

In principle encumbered land is restricted in its development potential and therefore its highest and best use by virtue of the encumbrance, may well be open space. Encumbered land in a greenfields context is generally conceptually different to encumbrances Council has identified in its proposed policy. There are undoubtedly circumstances in a middle ring suburb where land constrained by some biodiversity or heritage values or occasional flooding can provide a valuable contribution to a network of diverse, public open spaces. This is especially true in Monash where alternate land opportunities are limited and will be costly to acquire. That is not to say that all encumbered land is suitable for all open space uses. Council's Part B submission (Document 43) states this well:

While some encumbered spaces may be suitable for some uses...not all encumbered space will be suitable for all purposes

Clause 22.15-3 seeks to avoid contributions of land that is encumbered and sets out the types of encumbrances that, in Council's view, constrains use. This is reasonable to an extent. The question is whether Council's strong preference to not accept any form of encumbered land as it has defined it, weights the policy too strongly towards Council's preference for cash, when a land contribution, even if under some encumbrance may be reasonable, suitable and even ideal to add to the open space network. An example that comes to mind is a critical link in a trail alongside a wetland or waterway that might be within the 1 in 100 flood level.

The proposed wording in the policy that Council may accept encumbered land for open space but the land will not be 'credited' as 'open space' is a second issue. The Panel understands the concept of a 'credit' used by Council in this way appears to be derived from a greenfields context. A 'credit' bears no relationship to an open space contribution in a middle ring municipality derived from the value of urban land to be subdivided. Land is either made available through the subdivision process and this is accepted by Council as a contribution or a payment is made because land cannot be made available or is entirely unsuitable. In limited circumstances there may be a combination of land and payment.

Council referred to the Open Space for Everyone document to support its position that it should not accept encumbered open space. The relevant table in Open Space for Everyone is below:

Figure 5: Categories of Open Space in Open Space for Everyone

CATEGORY	Accessible	Restricted	Encumbered or restricted
PRIMARY PURPOSE	Open space	Open space	Not open space
EXAMPLES	Parks Coastal foreshores, bays and waterways Pathways and promenades Community sports fields Off-road recreation trails Lakes and wetlands Gardens Civic squares Public forecourts Piers and jetties	Botanical and zoological gardens Conservation reserves Golf courses Racecourses Community farms	Government schools Retarding basins Pipe tracks Utility easements Reservoirs Cemeteries Boulevards Road reserves Airspace over and space under transport corridors Streets and transport corridors Publicly accessible rooftops Disused quarries in public ownership

The Panel notes the State defines encumbered land quite differently to Council, although the Panel acknowledges the scale is different.

The Panel notes that the examples provided by Huntingdale of small children’s play areas, BBQs and gym equipment provide a very localised benefit to residents of a dense strategic redevelopment site. This type of open space is materially different to public open space planned for and delivered at a municipal level and for which development is being asked to make a contribution.

The Panel makes the above points on encumbered land and localised open space as general observations in response to the arguments put by parties.

The Panel agrees with Council that the specific situation of the Talbot Quarry and risk associated with its former uses are a matter on which Council has determined its position. It is rightly a matter for Council and consideration of the proposed redevelopment of the Talbot Quarry is not a matter for this Panel.

The preference for a cash contribution and specifications of land Council will accept

The Panel agrees with the observations made by PPP Group that the wording in the policy strongly preferences a cash contribution over land. It is difficult to contemplate a development situation in Monash as envisaged in the land contributions policy of a developer contributing 1 hectare of land to form a district level park. Obtaining cash contributions is clearly Council’s intention as it is focused on acquiring funds to purchase land to expand the municipal open space network. Council is consistent in its translation of strategy in the MOSS21 into the policy in the Planning Scheme.

Council also agrees with the observation of PPP Group there is evidently a practical side to what type of land Council is inclined to accept. It is reasonable for Council to focus on usable parcels of

land of sufficient size to contribute to a network of Family and Social parks across the municipality. Again, this is clearly the direction of the MOSS and the Land Contributions policy reflects that direction.

The Panel observes that the policy does not consider land for trails and this appears to be an omission when an important part of the MOSS relates to connecting the trail network across the city. It is not unlikely that a development site in Monash may offer an opportunity to provide a critical link in a trail network. In the circumstances where the land vests with Council and could meet the Core Service Levels, the land for the trail should be considered an open space contribution.

Council conceded there may be exceptions to its policy but this would be negotiated between Council and a proponent through a permit application. Nevertheless, policy in the Planning Scheme should be encompassing enough to contemplate the broadest circumstances and invite innovative open space solutions from developers. The Panel considers the policy in Clause 22.15 should be amended to recognise an open space contribution where a developer can demonstrate to Council's satisfaction that the land proposed would make an important contribution to the overall public open space network as identified in the MOSS21, including land for trails that would meet Council's Core Service Levels.

Strategic development sites

The Panel acknowledges the submissions made by PPP Group opposing the policy that for strategic redevelopment sites and urban renewal precincts the 10 per cent proposed by Council should be a minimum.

The Panel is sympathetic to Council's argument that denser sites should contribute more because of the demand they generate but the Clause 53.01 mechanism and the methodology will support higher contributions in these circumstances. The Panel agrees with PPP Group that the higher potential of strategic and urban renewal sites for denser development outcomes will be reflected in the price paid for the land and therefore will transfer to a higher open space contribution compared to a development site of more average density. The Panel is not convinced that a higher open space contribution rate for strategic redevelopment sites has merit and no evidence was presented to justify a variation. This is not to say that the open space contribution should be made instead of open space provided on site. The Panel agrees with the policy at 22.15-3 that a public open space contribution is an additional consideration to 'the amount, quality and diversity of open space provided.'

7.4 Conclusions and recommendations

The Panel concludes:

- Land with constraints or encumbrances may be an acceptable public open space contribution in some circumstances.
- The policy at Clause 22.15-3 should more strongly contemplate accepting land that doesn't meet minimum standards under certain circumstances and land for trails as a public open space contribution.
- Policy should not contemplate a higher rate for strategic redevelopment or urban renewal sites.

The Panel recommends:

- 2. Amend Clause 21.10-2 and Clause 21.10-3 to make minor word changes as set out in Council's Part B submission**
- 3. Amend Clause 22.15 to:**
 - **amend Policy to reflect that in general, encumbered land and smaller land contributions will not be recognised as an open space contribution unless a developer can demonstrate to Council's satisfaction that the land proposed would make an important contribution to the overall public open space network as identified in the MOSS, including land for trails that would meet Council's Core Service Levels'**
 - **delete reference to minimum open space rates being sought for strategic redevelopment and urban renewal sites**
 - **strengthen Policy to be clearer that an open space contribution is additional to site specific open space requirements on a strategic redevelopment or urban infill site where densities are higher**

Appendix A Submitters to the Amendment

No	Submitter	No	Submitter
1	Andrew Robbins	32	Christine Trainor
2	Simon Taylor	33	Helen Clements
3	Nicholas Ball	34	Fiona Nield
4	Dianne and Christopher Carra	35	Ron Erzzmann
5	Vige Satkunarajah	36	Roger Rao
6	Marini Milonas	37	Claire Betteridge
7	Trisha Brice	38	Lyell Schoknecht
8	John Mu	39	Sarah Lai
9	Parker Jing	40	Richard Menegatti
10	Ming Xu	41	Rohan Cleary
11	Huan Wang	42	Jinfu Huo
12	Haixin Wang	43	Sharyn Gordon
13	Simon Wang	44	Mitchell Dixon
14	Andrew Shen	45	Sue Wang
15	Sam Sampanthar	46	Miriam Poon
16	Lisa Gleeson	47	Silvana Valente
17	Lorraine Poyner	48	Mark Crick
18	Frances Morrissey	49	Mark Crick
19	Martin Walker	50	Mark Crick
20	Karen Chittenden	51	Mark Crick
21	Frangellina Ferndale-Gawain	52	Barry Cloke
22	Dianne Howard	53	Chris Taylor
23	Barbara Williams	54	Ray White
24	Maria Papaly	55	William Thompson
25	Catherine M	56	Kallista Sears
26	Reynolds Hofheins	57	Paul Little
27	Robyn Fergeus	58	Rachel Benson
28	Vlad Fedorov	59	Marisa Mowszowski
29	David Hudspeth	60	Denise Giannakis
30	Peter Vadivelloo	61	Jonathan Li
31	Mary Jakovac		

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Monash City Council	Rupert Watters, barrister, instructed by Maddocks Lawyers, who called expert evidence on: - Economics from Dr Marcus Spiller of SGS Economics and Planning.
Neighbours for Public Green Space, Oakleigh South, Inc.	- Curt Thompson
ALH Group Property Holdings Pty Ltd, Endeavour Group Limited, Salta Properties (West) Pty Ltd, and Huntingdale Estate Nominees Pty Ltd	Paul Chiappi of counsel instructed by Planning and Property Partners Pty Ltd, who called evidence on: - Town Planning from Robert Milner of Milner Planning Advisory - Economic Planning from Paul Shipp of Urban Enterprise
Housing Industry Association	Roger Cooper

Appendix C Document list

No.	Date	Description	Provided by
001	8 Sep 2022	Directions Hearing Notification Letter	Planning Panels Victoria (PPV)
002	30 Sep 2022	Directions and Timetable	PPV
003	7 Oct 2022	Monash Open Space Strategy – November 2021	Monash City Council (Council)
004	7 Oct 2022	Monash Open Space Strategy Implementation Plan and Public Open Space Contribution Rate Report	Council
005	7 Oct 2022	Monash Environmental Sustainability Strategy 2016–2026 Exhibition Gazetted	Council
006	7 Oct 2022	Monash Health and Wellbeing Plan 2021–2025 Exhibition Gazetted	Council
007	7 Oct 2022	Monash Urban Biodiversity Strategy 2018–2028 Exhibition Gazetted	Council
008	21 Oct 2022	Council's Part A submission	Council
009	28 Oct 2022	Expert witness statement of Dr Marcus Spiller	Council
010	28 Oct 2022	Expert witness statement of Rob Milner	ALH Group Property Holdings Pty Ltd, Endeavour Group Limited, Salta Properties (West) Pty Ltd, and Huntingdale Estate Nominees Pty Ltd (Planning and Property Partners group of submitters)
011	28 Oct 2022	Expert witness statement of Paul Shipp	Planning and Property Partners group of submitters
012	2 Nov 2022	Submission of Housing Industry Association	HIA Ltd
013	2 Nov 2022	Letter from Council enclosing background documents	Council
014	2 Nov 2022	Open space rate detailed calculation methodology	Council
015	2 Nov 2022	Land acquisition costs valuation sensitivity analysis	Council
016	2 Nov 2022	Development scenarios and collections forecast	Council
017	2 Nov 2022	Historical contributions calculations spreadsheet (redacted)	Council

No.	Date	Description	Provided by
018	2 Nov 2022	Implementation Plan master spreadsheet (redacted)	Council
019	2 Nov 2022	Quarterly indexation calculations for historical valuations (redacted)	Council
020	4 Nov 2022	Council's Part B submission	Council
020a	4 Nov 2022	Attachment A – Council's Part B submission to Amendment C148	Council
020b	4 Nov 2022	Attachment B – Council's submission in reply to Amendment C148	Council
021	4 Nov 2022	Version 1 Document List	PPV
022	7 Nov 2022	Mr Milner's response to Dr Spiller's evidence	Planning and Property Partners group of submitters
023	7 Nov 2022	SGS Economics and Planning Pty Ltd peer review	Council
024	7 Nov 2022	Mr Shipp's response to Council's additional background documents	Planning and Property Partners group of submitters
025	7 Nov 2022	Table of Schedules to Clause 53.01	Council
026	8 Nov 2022	Memorandum on issues raised in evidence	Council
027	8 Nov 2022	Spreadsheet of property sales from sample	Council
028	8 Nov 2022	Spreadsheet of premiums for subdivided properties	Council
029	8 Nov 2022	Spreadsheet of premiums for new builds	Council
030	8 Nov 2022	Version 2 Document List	PPV
031	8 Nov 2022	Case studies on apportionment of park costs	Council
032	8 Nov 2022	HIA response to Panel's question	HIA Ltd
033	8 Nov 2022	Monash Planning Scheme Amendment C169mona Authorisation Letter	Council
034	9 Nov 2022	Version 3 Document List	PPV
035	9 Nov 2022	Submission of Endeavour Group Ltd, ALH Group Property Holdings Ltd, Salta Properties (West) Pty Ltd and Huntingdale Estate Nominees Pty Ltd	Planning and Property Partners group of submitters
036	9 Nov 2022	Indicative masterplan for Talbot Village	Planning and Property Partners group of submitters
037	9 Nov 2022	Submission of Neighbours for Public Green Space, Oakleigh South, Inc.	Neighbours for Public Green

No.	Date	Description	Provided by
			Space, Oakleigh South, Inc.
038	9 Nov 2022	Reclamation Management Plan Oakleigh Extraction Site EIL 44 and 1322	Neighbours for Public Green Space, Oakleigh South, Inc.
039	9 Nov 2022	Public open space and capital works expenditure table (updated)	Council
040	10 Nov 2022	Version 4 Document List	PPV
041	10 Nov 2022	Vicinity Centre PM Pty Ltd v Monash CC [2018] VCAT 443	Planning and Property Partners group of submitters
042	10 Nov 2022	Amended Implementation Plan Master Spreadsheet	Council
043	16 Nov 2022	Council's Part C submission	Council
044	21 Nov 2022	Planning and Property Partners group of submitters response to Council's Part C submission	Planning and Property Partners group of submitters
045	22 Nov 2022	HIA response to Council's Part C submission	HIA Ltd
046	22 Nov 2022	Version 5 Document List	PPV