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**AMENDMENT C148
MONASH PLANNING SCHEME
PUBLIC OPEN SPACE CONTRIBUTIONS
EXPERT EVIDENCE STATEMENT**

MATT AINSAAR, MANAGING DIRECTOR, URBAN ENTERPRISE

7 FEBRUARY 2020



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1. QUALIFICATIONS

1. My name is Matt Jacques Ainsaar and I am the Managing Director and founder of Urban Enterprise Pty Ltd, with offices situated at Level 1, 302-304 Barkly Street, Brunswick, Victoria.
2. Urban Enterprise is a firm of urban planners, land economists and tourism planners based in Melbourne. The firm has 30 years experience providing consultancy services to all levels of Government and a wide range of private sector organisations in Victoria and in other States of Australia.
3. I am a qualified planner and land economist with more than 40 years experience.
4. I have expertise in the preparation of Development Contributions Plans for Councils as well as negotiating development contributions arrangements and open space contributions with Councils on behalf of developers. I also have experience in providing advice regarding appropriate open space contributions and assisting Councils in formulating open space contributions arrangements.
5. I have appeared as an expert witness at numerous Planning Panel hearings and VCAT hearings in respect of open space contributions and development contributions.
6. My educational qualifications and memberships of professional associations include:
 - Bachelor of Town and Regional Planning, University of Melbourne
 - Graduate Diploma of Property, RMIT University
 - Member, Planning Institute of Australia
 - Member, Victorian Planning and Environmental Law Association
 - Fellow, Australian Property Institute (Certified Practising Professional).

2. ENGAGEMENT

2.1. INSTRUCTIONS

7. I was instructed by Planning Property Partners on behalf of Salta Properties (West) Pty Ltd, Golf Road Project Development Pty Ltd and Talbot Road Finance Pty Ltd to prepare an expert evidence statement to present at the Planning Panel hearing in relation to this matter.
8. My instructions are to provide expert evidence based on my area of expertise. As part of my evidence, I was instructed to:
 - Conduct an in-depth review of the material contained in my brief;
 - Consider and formulate my own opinions, within the limits of my expertise, with respect to the appropriateness of the Amendment; and
 - Prepare a report which sets out the conclusions which I have reached, and clearly state the basis upon which I have arrived at that conclusion, including any facts I have relied upon or assumptions which I have made which form part of the reasoning by which I reach my conclusions.
9. The focus of my evidence is to form a view as to whether or not the proposed approach to public open space contributions and resulting contributions rate is appropriate.

2.2. DOCUMENTS AND MATERIALS RELIED ON

10. I have reviewed the amendment documentation and other relevant documents and policies. Documentation reviewed includes:
 - The exhibited Amendment C148 documentation (the Amendment),
 - Monash Open Space Strategy (the **MOSS**), City of Monash, October 2018,
 - City of Monash – Open Space Contribution Rate Planning, SGS Economics & Planning, October 2018 (the **SGS Report**);
 - Monash Planning Scheme;
 - Planning & Environment Act 1987;
 - Subdivision Act 1988;
 - Development Contributions Guidelines, 2007
 - Planning Practice Note 70: Open Space Strategies;
 - Precinct Structure Planning Guidelines, Growth Areas Authority (undated); and
 - Various other open space strategies, open space contributions assessments and Planning Panel reports as quoted in this statement.
11. A copy of the relevant information that is required to accord with the Planning Panels Victoria – Expert Evidence is attached at Appendix B to this report.

3. STATUTORY AND POLICY CONTEXT

12. In this section, I outline the key elements of the statutory framework and planning policy provisions relevant to determining open space contributions.
13. Contributions by proponents of development or subdivision towards the provision or improvement of open space can be required by governments through a range of statutory mechanisms, including:
 - Open space contributions:
 - An open space contribution prescribed in a Schedule to Clause 53.01 of the Planning Scheme, collected under the Planning and Environment Act 1987; or
 - A site-specific open space contribution collected under the provisions of the Subdivision Act 1988;
 - Development contributions:
 - A development contribution levied through an approved Development Contributions Plan (DCP) which forms part of a Planning Scheme, collected under the Planning and Environment Act 1987; or
 - An infrastructure contribution levied through an approved Infrastructure Contributions Plan (ICP) which forms part of a Planning Scheme, collected under the Planning and Environment Act 1987.

Clause 53.01

14. Clause 53.01 (Public Open Space Contribution and Subdivision) allows Council to impose a public open space contribution as follows:

“A person who proposes to subdivide land must make a contribution to the council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both). If no amount is specified, a contribution for public open space may still be required under section 18 of the Subdivision Act 1988.”
15. I note that ‘subdivision’ is the trigger for a public open space contribution under Clause 53.01, not use and development.
16. The following types of development are exempt from public open space contributions under Clause 53.01:
 - “Class 1: The subdivision of a building used for residential purposes provided each lot contains part of the building. The building must have been constructed or used for residential purposes immediately before 30 October 1989 or a planning permit must have been issued for the building to be constructed or used for residential purposes immediately before that date.
 - Class 2: The subdivision of a commercial or industrial building provided each lot contains part of the building.
 - It is for the purpose of excising land to be transferred to a public authority, council or a Minister for a utility installation.
 - It subdivides land into two lots and the council considers it unlikely that each lot will be further subdivided.”

17. In the Monash Planning Scheme, a schedule to Clause 53.01 currently imposes public open space contribution rates for 'dwellings' on a sliding scale from 2% to 5% depending on the number of lots created by a subdivision, as shown in Table 1.

18. 'Other' subdivision is required to make a 5% contribution, however 'other' subdivision is not defined.

T1. CURRENT SCHEDULE TO CLAUSE 53.01 – MONASH PLANNING SCHEME

Type or Location of Subdivision	Amount of Contribution	
Dwellings:	3 lots	2%
	4 lots	3%
	5 lots	4%
	6 or more lots	5%
Other	5%	

Source: Monash Planning Scheme

Subdivision Act

19. Section 18 of the Subdivision Act 1988 (Subdivision Act) provides for the collection of public open space contributions if a requirement for public open space is not specified in the planning scheme.

20. The Act states that:

"If a requirement for public open space is not specified in the planning scheme, a Council, acting as a responsible authority or a referral authority under the Planning and Environment Act 1987 may require the applicant who proposes to create any additional separately disposable parcel of land by a plan of subdivision to

- *(a) set aside on the plan, for public open space, in a location satisfactory to the Council, a percentage of all of the land in the subdivision intended to be used for residential, industrial or commercial purposes, being a percentage set by the Council not exceeding 5 per cent; or*
- *(b) pay or agree to pay to the Council a percentage of the site value of all of the land in the subdivision intended to be used for residential, industrial or commercial purposes, being a percentage set by the Council not exceeding 5 per cent; or*
- *(c) do a combination of (a) and (b) so that the total of the percentages required under (a) and (b) does not exceed 5 per cent of the site value of all the land in the subdivision.*

21. Part 1A of Section 18 of the Subdivision Act states that:

"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.*

22. The Subdivision Act acts as a 'default' mechanism to collect public open space contributions if no contributions amount is specified in a schedule to Clause 53.01. Given that the Monash Planning Scheme includes a schedule to 53.01, Section 18 of the Subdivision Act does not currently apply to the collection of open space contributions in the municipality.
23. In my view, however, the principles that the Subdivision Act applies relating to open space contributions are relevant to any assessment of how an open space contribution should be arrived at. Specifically, an open space contribution should be struck having regard to the need for open space generated by proposed development and the capacity of existing open spaces to accommodate additional usage.

Development Contributions and Infrastructure Contributions

24. A Development Contributions Plan (DCP) can be used to fund the provision of open space. The Ministerial Direction on the Preparation and Content of Development Contributions Plans (2016) defines the types of infrastructure that can be funded from a development infrastructure levy, which includes the following in respect of public open space:
 - *"Acquisition of land for public open space*
 - *Basic improvements to public open space, including earthworks, landscaping, fencing, seating and playground equipment."*
25. In practice, many DCPs for urban growth precincts include acquisition of land and construction of sports fields and associated facilities for active open space reserves, while smaller passive open space reserves are most commonly provided through open space contributions under clause 53.01 of the Planning Scheme.
26. Some DCPs also fund passive open space land and improvements, however most of the recent DCPs focus on collecting levies for land and improvements relating to active open space reserves.
27. The Monash Planning Scheme does not currently include any Development Contributions Plans.
28. Infrastructure Contributions Plans (ICPs) also provide the opportunity for a Council to fund the delivery of open space land and improvements through the Planning Scheme, however this mechanism currently only applies to Melbourne's growth areas. At present, the ICP system does not apply to the City of Monash.
29. The principles which underpin the development contributions system in Victoria were largely established through an Administrative Appeals Tribunal decision known as the Eddie Barron decision¹. The Tribunal identified the following four principles that were to be met in order for a levy to be applied as a permit condition:
 - Need - The need created by the development and the measures to satisfy the need must be adequately identified;
 - Equity - The payment or levy must be a fair and reasonable apportionment of the cost of implementing the need satisfaction measures;
 - Accountability - The responsible authority should implement procedures to ensure that the money collected cannot be used for any purpose other than that for which it was levied and which clearly show how, when and where the money collected is spent;

¹Eddie Barron Constructions Pty Ltd v Shire of Pakenham & Anor (1990)

- Nexus - There must be a reasonable nexus between the development and the need satisfaction measures.
30. These principles have been translated into the DCP Guidelines which set out the way in which development contributions plans should be prepared by reference to the principles.
31. In my view, the principles underpinning development contributions are relevant to how an open space contributions rate should be derived.

Guidance on Introducing an Open Space Contributions Rate Under Clause 53.01

32. There is no specific guidance on how a new open space contributions rate is to be calculated for inclusion in a schedule to Clause 53.01.
33. Planning Practice Note 70 Open Space Strategy (PN70, June 2015) provides guidance on preparing an Open Space Strategy and references the use of open space contributions under the planning scheme as a means of implementation.
34. PN70 recommends a seven-step process to prepare an Open Space Strategy as summarised in Table 2.

T2. PLANNING PRACTICE NOTE 70

Stage	Main tasks and content
1. Project planning and establishment	Set up strategy.
2. Background research	<ul style="list-style-type: none"> • Evaluate the existing supply in respect to the current distribution, capability and suitability of open space to serve likely demand and specific functions. • An assessment of the current and likely future demand for open space, including analysis of possible changes in the population from projections, demographic and socioeconomic profile, cultural mix and review of dwelling densities/development pressure. • Identify gaps and opportunities for improvement based on an understanding of the existing supply and demand for open space, including analysis and mapping of distribution, diversity, quantity, quality and location of open space; and • Assessment of the implications on open space provision and design of participation projections, expressed/ latent demand and benefits sought as a result of demographic profiles, population growth and dwelling density (or subdivision yield).
3. Discussion paper	Present the open space issues and objectives and identify a mix of tools to address each issue.
4. Draft Open Space Strategy	Summarise key issues and identify specific objectives, actions and policies to address each issue. An OSS will need to specify the locations where a land contribution is sought (this could be shown as a map in the strategy); and provide criteria that define the types of land sought as land contributions.
5. Final Open Space Strategy	Finalise strategy
6. Implementation program	Prepare an implementation plan which provides more detail on each of the implementation tasks, responsibilities, cost estimates and priorities. Consider statutory implementation through the planning scheme. "This may include...preparation of a Clause 52.01 schedule for open space contributions."
7. Monitoring and review	Establishing processes for monitoring progress towards achieving the OSS vision and objectives and to regularly review documents.

Source: Planning Practice Note 70.

35. PN70 references open space contributions as a mechanism that can assist in the implementation of an open space strategy as follows:

“Open space contribution tools are designed to help councils provide new open space or improve existing open space in response to needs created by new residents or employees.

In Victoria, local government has a number of legal mechanisms (or tools) available for obtaining open space contributions as part of the development process. These are:

- *Subdivision Act 1988, sections 18-20*
- *Schedule to Clause 52.01 of the Victoria Planning Provisions (now known as Clause 53.01)*
- *Development Contributions Plan (DCP) Overlay*
- *Negotiated legal agreements.*

An OSS should consider which open space contribution tool is best for its municipality.”

36. The Practice Note identifies Clause 53.01 as a means of “statutory implementation” of an Open Space Strategy through the planning scheme and recommends that consideration of Clause 53.01 forms part of an implementation plan which details tasks, responsibilities, cost estimates and priorities of the strategy.
37. In my view, the Practice Note implies an expectation that a public open space contributions rate proposed to be included in a schedule to clause 53.01 would rely on an implementation plan which identifies the expected cost of projects to deliver a strategy and how and where future development is expected to contribute to the need for the projects.

Previous Planning Panels

38. Previous Planning Panels have commented on the lack of specific guidance on how a rate should be calculated.
39. The Panel for Amendment C30 and C37 to the Manningham Planning Scheme (2004) noted that:
- “The question of which contribution rate is appropriate is a vexed one. Unlike a Development Contributions Plan where a comprehensive planning framework and method has evolved over time, there is no clear guidance for calculating the rate for the schedule to Clause 52.01.” (p.67)*
40. The Panel for Glen Eira Amendment C20 found that the following principles should apply to determining open space contributions:
- *“Establish a framework for increasing and/or improving open space to satisfy the community’s expectations;*
 - *Develop a formula for improving/increasing open space based on increased densities or changing demography.*
 - *Understand the open space requirements of new dwellings in a more comprehensive and rigorous manner. For example, how much more demand for open space is likely to be generated by certain types of developments? Will a three-unit development on a 1000 square metre site place different demands on municipal open space than a ten-unit multi-storey apartment block? If so, what are these demands?*
 - *Develop an open space contribution based on the need to bring existing open space to a reasonable level based on an anticipated population density on a precinct by precinct basis.” (p.38)*
41. More recent Planning Panels have considered the merits of introducing new open space contributions rates in Stonnington, Melbourne and Kingston, while Banyule and Manningham have recently introduced new rates without a Panel hearing. I have summarised the key points from each case in Table 3.

T3. RECENT PUBLIC OPEN SPACE CONTRIBUTIONS APPLIED IN CLAUSE 53.01 IN MELBOURNE

Municipality	Details	Panel findings
Stonnington (C186, 2015)	Council proposed a new rate of 8% based on a detailed list of cost estimates for open space strategy projects against expected revenue under different rates. Ultimately, 8% was selected on the basis that it would represent close to full cost recovery in the Chapel Street area and would be "probably at the upper end of what is achievable in terms of amending Clause 52.01" based on established municipality benchmarks.	The Panel supported the approach in general, but recommended narrowing the application of the higher rate of 8% to areas expected to experience significant growth (Armadale, Prahran and Windsor) "largely because of the considerable variation in the open space shortfall, expected population growth and matching need." (p.1)
Melbourne (C209, 2016)	Council proposed a rate of 8% in Urban Renewal Areas and a rate of 5% in established areas based on detailed cost estimates and the rate needed to fund the open space projects.	The Panel agreed with submitters that the principles of need, nexus and equity should apply. The Panel supported a 5% rate for incremental growth areas and endorsed a higher rate for Urban Renewal Areas (although at a lower rate than exhibited of 7.06%).
Banyule (C111, 2017)	Council proposed a flat rate of 5% across all subdivisions on the basis that the cost of delivering the open space strategy would exceed revenue expected to be collected from a 5% flat rate.	No Panel Hearing conducted.
Kingston (C153, 2018)	Council proposed two rates of 5% (incremental growth areas) and 8% (areas projected to experience transformative change in population and development) based on an assessment which found that a rate of 18% would be required in high growth areas to create an average of 10sqm of new open space per resident. These areas were expected to have an average density of 125 dwellings per ha. The rate was then reduced to 8% in substantial change areas given that: other Councils apply this rate; the rate would have less impact on development feasibility; and the amount to be collected would be comparable to the expected cost of delivering the strategy in higher growth areas.	The Panel noted that "none of the submissions challenged the basis for calculating the contribution rates, only that the outcome was too high...". The Panel found that the process for developing the contributions for open space was transparent and equitable and provides certainty in specifying the contributions rates.
Manningham (C123, 2018)	Council proposed new rates of 5% (incremental change areas) and 8% (substantial change areas), noting that "the 8% provision requirement in substantial change areas is not determined by Council's currently planned program of open space acquisition and embellishment. Rather, it is derived from ideal provision ratios per capita." (SGS, p.32). The supporting report adopts a similar analysis to that for Kingston, whereby a rate of 18% is calculated for high growth areas, and then reduced to 8%. The analysis also takes into account the expected cost recovery under different rates.	No Panel Hearing conducted.

Source: Various Planning Panel Reports and open space contribution assessments, compiled by Urban Enterprise, 2020.

Discussion

42. In my view, the absence of specific direction on how open space contributions should be calculated is a significant gap in Victoria's planning system. As a result, a range of different approaches have been applied in recent years without definitive direction from government or any meaningful progress, improvement or convergence in methods to calculate the rates.
43. In my opinion, some of the recently introduced open space contributions rates have resulted from an approach that does not derive the open space contributions rate from an assessment of the estimated costs of implementing the open space strategy and who should pay those costs. This is the case with this Amendment.
44. In particular, recent approaches to introducing open space contributions rates in Kingston and Manningham have diverted from the previous guiding principles of need, nexus and equity to an approach which relies primarily on an open space provision target. This approach has not been thoroughly tested through a Planning Panel process.
45. In my view, the most relevant guidance in the Victoria Planning system to setting a public open space contributions rate is provided in the following three places:
 - Planning Practice Note 70, which indicates that clause 53.01 is a means of implementing a strategy and should form part of a detailed implementation plan;
 - The principles of Development Contributions, which are borne out of a landmark decision relating to planning permit conditions for off-site infrastructure contributions; and
 - The basis tests of the Subdivision Act regarding the need for additional open space generated by a development.
46. In my view, the close relationship between open space strategies, open space contributions, development contributions and subdivision warrant consideration of the above when seeking to determine or review the appropriateness of public open space contributions under clause 53.01.

4. AMENDMENT AND SUPPORTING DOCUMENTS

4.1. AMENDMENT

47. Amendment C148 seeks to implement the Monash Open Space Strategy (the **MOSS**) and proposes the following changes to the Monash Planning Scheme:

“Amends the Schedule to Clause 53.01 to require that all subdivision provides a public open space contribution at a rate of 10%.

Introduces 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.

Replaces Clause 21.10 in the Municipal Strategic Statement with a new Clause 21.10”.

Clause 53.01 Schedule

48. The proposed change to the Schedule to Clause 53.01 is to introduce a contribution for “all land” of 10%.
49. The proposed 10% open space contribution rate is proposed to be a flat rate that applies to all subdivision across the municipality. Although not explicitly stated, it is apparent that the proposed rate would apply to all land use types, including residential, retail, commercial, industrial and other purposes.

Local Policy

50. The introduction of a new “Public Open Space Contributions Policy” at Clause 22.15 references the findings of the Monash Open Space Strategy and would provide policy guidance for Council decisions regarding how and where open space contributions are to be made, including:
- Cash contributions to be “sought in most circumstances”;
 - Land contributions to be considered in existing open space gap areas and where minimum design standards can be achieved;
 - Land contributions to exclude encumbered land; and
 - The requirement for an “open space needs assessment” to be prepared for “large redevelopment proposals or a rezoning proposal for a strategic redevelopment site or urban renewal precinct that seek higher residential densities”, where a “A minimum public open space contribution of 10%” will be considered “in the context of providing 30 square metres public open space per person.”
51. Clause 21.10 (Open space) has been comprehensively re-written to reflect the findings of the Open Space Strategy. In respect of open space contributions, the proposed policy includes the following points:
- Strategy: “Ensure that all new development and redevelopment in the municipality addresses the current and future needs of the open space network based on future population growth, including expansion of the path and trail network”.

- Strategy: “Ensure that strategic redevelopment sites that seek high residential densities provide an appropriate level of open space to cater for the intended population, including for student and aged care accommodation.”
 - Strategy: “For development in employment and industrial areas encourage public open space to cater for the needs of workers.”
 - Strategy: “Determine an appropriate amount of cash or land public open space contributions for residential, commercial, industrial, or a mix of land uses.”
 - Further strategic work: “Establish a policy to determine the appropriate circumstances for an open space contribution resulting from the development of residential, commercial, industrial or a mix of land uses.”
52. Overall, the Amendment would significantly increase the open space contributions rate payable by new development to 10% (in most cases, this is double the existing rate of 5%) and would introduce policy support for higher density residential developments to have an open space contribution of greater than 10% subject to a needs assessment.

4.2. BASIS FOR THE AMENDMENT

53. The Amendment relies on two key documents:
- *Monash Open Space Strategy*, Monash City Council, adopted October 2018 (**MOSS**); and
 - *City of Monash – Open Space Contribution Rate Planning*, SGS Economics and Planning, October 2018 (the **SGS report**).
54. The MOSS summarises a range of research and analysis undertaken to review the existing provision of open space across the municipality and makes recommendations for each of 12 precincts to improve the open space network.
55. The following key findings and principles are adopted in the MOSS relevant to open space contributions:
- The timeframe for the Strategy is between 2016 and 2028, with all population growth projections and assessments of open space need relating to that period;
 - The Strategy states (p.22) that it “should generally adopt” a principle of no net loss of open space;
 - The Strategy found that “at a community level, there is around 510 hectares provision of community open space” which equates to 2.7ha of open space per 1,000 residents. (p.12) This excludes ‘regional’ open space such as Jells Park.
 - “The provision of open space across Monash will continue to be increased to ensure an appropriate level is available for all residents.” (p.3)
 - The Strategy found that “30sqm per capita or 3ha per 1,000 people is a reasonable benchmark to apply as an open space standard”, however this benchmark “will not be considered as a blanket figure for determining open space as there are other factors that need to be considered, such as ‘proximity-based standards’. It is relevant to note that... across Monash there is currently around 2.7ha provided per 1,000 people provision of community open space.” (p.21)
56. On the basis of these findings, the MOSS references and adopts the key findings of the SGS report paraphrased as follows based on the content of the SGS report and Table 11 of the MOSS (p.30):

- In 2028, the projected municipal resident population would require a total of 620.72 hectares of public open space in order to achieve the target provision benchmark of 30sqm per resident.
- This quantum of open space has then been divided by the total land area of all residential, commercial and industrial properties to calculate that the future desired open space land would represent approximately 10% of all developable land in the municipality.

57. I have reproduced Table 11 of the Strategy in my Table 4.

T4. OPEN SPACE CONTRIBUTION RATE CALCULATION

Step	Metric	Value
1	Planned population* (effective build out)	206,907 people
2	Total net developable urban area (total area of all developable lots in study area).	6,494 hectares
3	Open space required (@30m2/capita)	620.72 hectares
4	Open space requirement from all developable land (value at step 3 divided by value at step 2)	10 per cent**

Source: Monash Open Space Strategy, p.30.

58. The strategy goes on to include a range of commentary and recommendations regarding the improvements to the open space network that are required.

59. In relation to the impact of expected increases in residential and employment densities, the strategy notes that:

"these [density] differences require an alternative and innovative response [to] be taken to open space provision than in low density housing, or how it would be planned for a greenfield area like in Melbourne's growth areas. This is for both the planning of new open space and the retrofit and use of existing facilities." (p.44).

60. In respect of open space needs generated by employment and industrial areas, the Strategy notes that:

"there is expected to be a significant increase in the amount of employment and jobs to occur in the MNEIC area and in other mixed use redevelopment sites...the open space contribution recognises that there is a need for open space for workers within employment areas..

"In most instances, small local scale facilities would be sufficient in these areas, similar to or as communal open space." (p.46)

61. The MOSS concludes with a series of Precinct level analyses which identifies existing open space gap areas, priorities for the precinct and key actions. I have extracted and consolidated these key actions into a single list which is included in Appendix A of this statement.

4.3. GENERAL COMMENTS

62. I have reviewed the Amendment documentation and supporting information, with a particular focus on the MOSS and the SGS Report.

63. Overall, it is my opinion that there is a fundamental misalignment between the Amendment, the MOSS and the SGS report in relation to the calculation of open space contributions.

64. The MOSS follows a commonly adopted approach for open space strategies, whereby existing gaps are identified, the impact of future development and changing open space usage is considered, and actions are proposed to address issues identified. The findings of the strategy, however, are not

translated into the calculation of open space contributions in any way other than through a highly simplistic open space land provision target of 30sqm per resident.

65. In the following section, I provide details of the key issues that in my view should be addressed prior to the Amendment progressing.

5. ISSUES

66. In my view, there are three main issues with the Amendment relevant to open space contributions:
- The appropriateness of the method applied;
 - The suitability of the provision standard of 30sqm per person; and
 - The equity of applying a single rate to all land uses and areas within the municipality.
67. I now discuss each of these issues in turn.

5.1. METHOD

68. The SGS report adopts a method based on “inclusionary provisions”, which:
- “are premised on minimum acceptable standards of development with the proponent sometimes having the option to fulfil the required performance standard off-site through a cash or in-kind contribution.”*
69. The SGS report describes the method as “commonly used”, such as a cash or in-kind contribution for car parking requirements and the 5% open space requirement upon subdivision approval. If the open space requirement referred to in the SGS report relates to that which can be imposed under the Subdivision Act, I note that that requirement is a maximum of 5% and is to be based on the specific open space need generated by a development. In this way, the Subdivision Act requirement would in my opinion be better described as a ‘user pays’ or ‘impact mitigation’ method.
70. As discussed earlier in my statement, it is my view that the most important guidance on how to calculate a contributions rate is in Planning Practice Note 70 – Open Space Strategies, and the overarching principles of need, nexus, equity and accountability which underpin the development contributions system in Victoria and inform the Subdivision Act are also taken into account.
71. In this case, it is my view that the open space contributions rate should be calculated based on the expected cost of implementing the MOSS and the expected share of usage that new development will generate. **This approach has not been applied in this case.**
72. In my opinion, **the primary issue with the amendment is that there is no meaningful relationship between the MOSS and the proposed open space contributions rate.** The method used to arrive at the open space contribution rate relies solely on the objective of providing 30sqm of open space land per resident (both existing residents and new residents) in 2028 and does not have any regard to the wide variety of findings and actions in the MOSS.
73. By way of example, the MOSS includes the following comments, findings and recommendations which identify the diversity of open space needs and propose a wide range of responses, most of which do not relate to the provision of more open space land to meet the 30sqm provision target:
- The open space needs of different areas vary considerably:

“Due to historical development differences, and in some instances topography, the distribution, type and quantity of public open space across Monash varies.” (p.2)

“The provision of community open space is also not uniform across the Council. In certain areas there is a high level of open space per one thousand residents...At the other end of the scale, and mainly in the south western areas of the Monash, the level of open space provision per one thousand people is very low. ” (p.13)

- The MOSS includes numerous references and analysis of accessibility, quality of open space and other measures and acknowledges that quality becomes particularly important when densities increase, however recommends a provision standard which is based purely on POS land area.

"Monash is an established urban area and the majority of development is infill that does not involve subdivision or is subdivided post-development. To improve open space in established areas is expensive as the acquisition of land would predominantly be in areas where the market value of land is very high. Therefore, it is important that existing resources of open space is used and improved as much as possible and acquisition of land should occur where there is strong strategic support and appropriate funds are acquired through development." (p.26)

- Some areas have an existing open space gap or shortfall that the strategy seeks to address:

"Across Monash there is currently around 2.7ha provided per 1,000 people provision of community open space. Half of the twelve open space precincts either meet or exceed the 30m² per capacity benchmark; whereas half are below the benchmark. Five precincts have a significant shortfall and should be prioritised for improvements to open space provision." (p.21)

"Currently, 85 per cent of Monash residents have access to open space within 400 metres. Map 2, showing gaps of open space provision, is an additional tool that can be used to prioritise areas of need of open space." (p.22)

"It is important for Council to address the inequities in existing open space provision and at the same time provide for the convenient and functional provision of open space to serve the growing population." (P.20)

"A land contribution for public open space will be considered when...The development is located in a gap area." (C148 proposed Public Open Space Contributions Policy)

- The strategy seeks to improve the quality of existing open spaces, not just quantity:

"A more sophisticated approach to planning open space is required, taking into account the quality and use of open space Qualitative measures are also important to consider in cases where it may be too expensive for Councils to acquire new land (particularly in the inner suburbs). Such an approach provides an alternative measure for Council to improve the open space network by improving the quality of the open space assets they already have so they can perform at a higher function and support a broader range uses." (p.26)

74. The examples above demonstrate the complexity of the proposed strategy to manage and improve open space in the municipality, which is at odds with the simplified approach to the open space contributions which relates purely to a theoretical target of open space land provision.
75. In my view, the general principles and method applied to calculate the open space contributions rate for this amendment are inconsistent with Monash Open Space Strategy, Practice note 70 and the principles of development contributions in Victoria.

Detailed Method Issues – No Regard for Nexus and Equity

76. Even if the general principles applied to calculating the open space contributions rate for the Amendment were to be accepted, in my view there are considerable issues and inequities that warrant changes to the proposed contributions rate.
77. The rate is calculated on the basis of an open space target of 30sqm per resident which applies to all residents in the municipality in 2028, including both existing and projected new residents, yet the current open space provision in the municipality is 27sqm per resident (p.21). In other words, the methodology applied acknowledges that there is an existing shortfall or open space "gap" that

applies to the 192,850 existing residents. I calculate the figure to be actually 26.59 sqm per person. SGS have rounded this up to 27 sqm.

78. This means that the target quantum of open space requires an increase in the open space provision for all existing residents (of 3.5 sqm per existing resident) as well as a new provision of 30sqm per new resident. The effect of this is that, as a result of the Amendment, **new development** would be making both:

- A contribution of land to meet the needs of the development; **and**
- A contribution which would result in an increase in the overall open space provision for **all** existing residents.

79. I have depicted this issue in Table 5, showing that of the 108.62 additional hectares of open space that the SGS report identifies as needed to achieve the target provision of 30sqm per resident in 2028, 66.45 ha (61%) relates to the amount of additional land required to increase the provision of open space per existing resident.

T5. EFFECT OF THE PROPOSED INCREASE IN OVERALL OPEN SPACE PROVISION

	Population	Existing open space		Open space target (2028)		Increase (ha)
		ha	Sqm per resident	Sqm per resident	ha	
Existing residents	192,850	512.1	26.59	30	577.74	65.67
New / future residents to 2028	14,057	0	0	30	42.17	42.17
Total	206,907	512.1	26.59	30	620.72	108.62

Source: Urban Enterprise, based on MOSS. Figures adding across and down vary slightly due to rounding to 2 decimal places.

80. It is inequitable for new development to be required to make a contribution to open space which is calculated on the basis of increasing the provision of open space for existing residents.

81. If the method were to be recalculated to exclude the targeted increase in open space for existing residents, the outcome would be as shown in Table 6. In my view, the maximum contributions rate that could be applied under this method is 8.54%. This reduced figure of 8.54% only takes into account the issues of nexus and equity. However, there are other methodological issues which I will go to in my evidence in respect of the appropriateness of the open space provision target of 30 sqm per person, as well as the total lack of alignment between the MOSS and the proposed contributions rate and the appropriateness of applying a single rate for all types of development (ie residential and non-residential development). I will outline why these other methodological issues will contribute to a further reduction in the overall contributions rate.

T6. REVISED CONTRIBUTIONS TO EXCLUDE INCREASE IN PROVISION FOR EXISTING RESIDENTS

	Proposed (SGS Report)	Revised to exclude increase for existing residents
Existing open space	512.1	512.1
Additional open space required	108.62	42.17
Total open space in 2028 (excluding any desired increase for existing residents)	620.72	554.27ha
Developable Area	6,494ha	6,494ha
Total land % required	9.56%	8.54%

Source: Urban Enterprise.

82. I note that the exact result of the calculation of the contributions rate as part of the SGS report to two decimal places is 9.56% - this appears to have been rounded up to 10% for inclusion in Clause 53.01.
83. The issue of rounding was considered by the Planning Panel for the City of Melbourne Open Space Strategy in Amendment C209, which found that:
- "there appears to be no persuasive argument for rounding the contribution percentages and they should be used as calculated...to two decimal points." (C209 Panel Report, p.56)*
84. In my opinion, **any open space contributions rate included in the Planning Scheme should be expressed with at least one and preferably two decimal places.**

Detailed Method Issues – No alignment between MOSS and Contribution rate

85. The actions of the strategy relate primarily to improvements to existing open spaces, not the acquisition or provision of additional open space land.
86. In Appendix A of my statement I summarise the MOSS actions. I have also sought to categorise each action as either:
- Improvements to existing open space;
 - Actions to address an existing gap or shortfall;
 - Actions to improve access to existing open space; or
 - Actions to increase open space land.
87. In some cases, only limited information is available in the MOSS to describe the actions proposed and in these cases I have applied my judgement to determine the type of action that is being described based on the commentary in the strategy.
88. Based on my categorisation, it is apparent that **only nine (9) of the 44 actions in the MOSS may require additional open space land to be created. None of these explicitly state that new land is to be acquired.** Eight (8) actions specifically relate to addressing existing open space gaps, 22 relate to improvements to existing open spaces and five (5) relate to increasing access to open space that already exists (such as at schools).
89. Four (4) of the actions which could potentially require additional land appear to prioritise addressing existing open space accessibility gaps or existing low open space provision. For example, in Oakleigh South / Huntingdale, the MOSS notes that:
- "While there are a number of open space areas within the precinct a number of these are relatively small, which further enhances undersupply in the area." (p.96)*
- "Oakleigh East / Huntingdale is a priority precinct to undertake improvements or additions to open space provision, including within employment areas." (p.97)*
90. I note that four precincts (Clayton, Hughesdale, Notting Hill and Oakleigh East / Huntingdale) have the same action listed, which designates these areas as "priority precincts to undertake improvements or additions". These are the four precincts with the lowest existing open space provision per capita in the municipality (6sqm, 6sqm, 5sqm and 12sqm per resident respectively).
91. It appears, in my view, that the "priority precincts" action seeks to address an existing under-provision, as opposed to an increase in new open space provision to meet the needs of new residents.

92. Therefore, it is my opinion that the vast majority of actions in the MOSS are designed to either address existing under-provision/spatial gaps, or to make improvements to existing open space. This is directly at odds with the open space contributions rate which is calculated solely on the basis of increasing the quantity of open space land. In my view, this clear misalignment brings into question the appropriateness of the proposed changes to Clause 53.01 given that the approach is inconsistent with the well-established development contributions principles of nexus and equity.

5.2. SUITABILITY OF THE OVERALL OPEN SPACE PROVISION TARGET

93. The Amendment relies on an open space provision target of 30sqm per resident which the Explanatory Report notes is “consistent with the provision of open space required in the planning for new housing in Melbourne’s growth areas”.
94. In my opinion, the Amendment adopts an overall open space provision target that is high relative to recently approved strategies and Precinct Structure Plans and which has insufficient regard to the population density and accessibility.
95. The SGS report shows that the provision target has been derived from a range of local, national and international examples which generally range from 20sqm to 30sqm per capita. The SGS report also notes that “A number of Melbourne based local governments apply a per capita provision rate to determine open space standards, and typically range between 24 and 30.3 square metres per capita.” (p.iii)
96. I have reviewed the open space provision targets for four recent established area open space strategies in Melbourne, and four recently approved Precinct Structure Plans in Melbourne’s growth areas. The results are shown in Table 7.

T7. PROVISION STANDARDS IN RECENT MELBOURNE STRATEGIES AND POLICIES

Location	Open Space provision	Development Setting
Established Areas		
Stonnington	10sqm per resident	Established (Inner urban)
Manningham	10sqm per resident (activity centres)	Established (Middle suburban)
Kingston	10sqm per resident (activity centres)	Established (Middle suburban)
Frankston	30.3sqm per resident	Established (Outer suburban)
Growth Areas		
PSP Guidelines	10% of NDA in residential areas (includes both active and passive)	Growth Area
Planning for Community Infrastructure in Growth Areas	26.4sqm per resident	Growth Area
Tarneit North (Wyndham)	23.4sqm per resident ¹	Growth area
Rockbank	19.3sqm per resident ¹	Growth area
Donnybrook Woodstock	21.2sqm per resident ¹	Growth area
Cardinia Creek South	22.8sqm per resident ¹	Growth area

Source: Various PSPs and government policies, compiled by Urban Enterprise.

1. PSP provision rates derived by dividing credited (unencumbered) open space (active and passive) by the number of residents expected within the PSP area as published in the respective approved PSP documents.

97. I note that the provision standard adopted for Monash of 30sqm per resident is considerably higher than that recently adopted for activity centres in Kingston and Manningham (10sqm per resident) and is higher than the open space provision rate in recent growth areas (which ranges from 19sqm to 23sqm per resident).

98. In addition to these quantitative standards, the Victorian planning provisions include open space 'proximity standards' for residential subdivisions as follows (Clause 56.05-2 Public Open Space Provision Objective, Standard C13):

Local parks within 400 metres safe walking distance of at least 95 percent of all dwellings;

Where not designed to include active open space, local parks should be generally 1 hectare in area and suitably dimensioned and designed to provide for their intended use and to allow easy adaptation in response to changing community preferences.

Additional small local parks or public squares in activity centres and higher density residential areas.

Active open space of at least 8 hectares in area within 1 kilometre of 95 percent of all dwellings.

Linear parks and trails along waterways, vegetation corridors and road reserves within 1 kilometre of 95 percent of all dwellings.

99. I note that these standards are referenced in the SGS report (p.5).

100. Assessments prepared by SGS in support of recent open space strategies in Kingston and Stonnington have noted the importance of adopting a pragmatic approach to open space delivery which responds to the circumstances of established urban areas and the issue of increasing densities as follows:

"In greenfield areas, major brownfield sites and other areas slated for transformation, it is most likely reasonable to set the open space provision standard at 'ideal' or 'optimal' levels. Elsewhere, a more pragmatic approach can be taken where the expected rate of provision by successive units of development is derived not from optimal standards but what the Council in question can practically acquire and develop." (Public Open Space Contributions Review, Kingston City Council, SGS, p.6)

"Stonnington currently has a rate of 20 square metres of open space per person, which is less than the recommended ratio of 26.4 m2...Based on current provision of open space throughout the City, the Strategy identifies that acquisition of 53 hectares is required to meet the benchmark. When factoring in population growth acquisition of 108 hectares would be required to meet the benchmark. It is acknowledged that the acquisition of this much land is untenable both practically and from a cost perspective. As a minimum therefore, it is recommended that the City should aspire to provide the passive open space component of 10m2 per person on average." (Assessment of Mandatory Open Space Contributions, SGS, July 2013, p.16)

101. In this Amendment, however, **the open space contributions rate is struck on the basis of the need for an additional 106 hectares of open space land across the municipality over a 10 year period.** In my view, acquisition of this quantum of land is equally untenable in Monash.

102. It is important to consider that as population densities increase, the provision of a specified quantity of open space per resident becomes less practical. For example, in Fishermans Bend, the open space strategy "sets a target of nine square metres per resident and worker, based on recommendations of the World Health Organization" (Planning Review Panel report, p.104). The Planning Review Panel found that "The proposed quantity and distribution of open space in Fishermans Bend is broadly acceptable" (p.106), based on a range of considerations summarised as follows:

"Ultimately, the quantum of open space to be provided in Fishermans Bend must be assessed in a broader context. The open space provision must be balanced against factors such as the role Fishermans Bend has to play in accommodating growth in the inner metropolitan area, the likely costs associated with increasing the amount of open space, and the essential need for development in Fishermans Bend to be financially viable.

Another important factor is the accessibility of the open space." (p.105)

103. If a standard of 30sqm per resident were to be provided in Fishermans Bend, the 80,000 residents would require a total of 240 hectares of open space. This would take up more than 70% of the Net Developable Area in Fishermans Bend (340ha, Public Space Strategy, p.34) which is clearly not a feasible outcome.

104. This indicates the importance of adopting an approach to open space which combines open space quantity and quality, an approach adopted by the MOSS but not reflected in the calculation of open space contributions.

105. In my view, the selection of an open space provision target, if applied, should have regard to:

- The existing provision of open space;
- The existing and proposed population density; and
- A concurrent target relating to accessibility, so as not to solely rely on a quantitative target.

106. Notwithstanding the issue of the appropriateness of the 30sqm target, by proceeding with this target, Council is clearly arguing that there is an existing shortfall of open space to serve existing residents. The gap of 3sqm per resident equates to an existing shortfall of 66.45ha. As stated previously, it is inequitable to seek contributions from new residents to pay for part or all of this shortfall.

107. The principle of development contributions not being applied to address existing backlogs is described in the Development Contributions Guidelines as below – in my view, this equity principle is critical to the operation of any development contribution, including a public open space contribution.

"For the purposes of calculating levies in a DCP, the costs of infrastructure projects are shared amongst all the likely users. The likely users will include existing and future development. In this way, new development will not be charged for the whole cost of an infrastructure project that others will use and costs are distributed on a fair and equitable basis." (DCP Guidelines, p.13)

Consideration of existing open space

108. Notwithstanding my view that the overall provision rate is high, it is apparent that the approach to open space contributions has no regard to the extent to which existing open space in Monash may have capacity to accommodate additional usage.

109. While it may be appropriate in a greenfield development setting for overall provision standards to be applied without considering existing open space provision, an established area such as Monash already has a significant network of open space that can, to some extent, service the needs of new residents. The open space land does not need to be established 'from scratch' as it does in a greenfield environment.

110. In my experience, there are a variety of ways that the capacity of existing open space can be increased without the purchase / provision of additional land, such as:

- Lighting to increase potential hours of usage;
- Improvements or changes to surfaces to increase potential usage;
- Improved scheduling to increase potential usage;
- Construction of additional infrastructure within existing underutilised open space land;
- Agreements with other open space providers (eg. schools) to establish public access to non-Council owned open space; and so on.

111. Many of these actions are contemplated as part of the MOSS, and the benefits of this type of investment is recognised in the SGS report as follows:

"The quality of open space is increasingly important, particularly in higher density areas where providing additional public open space is challenging. Increased investment in open space can make it useable for a wider range of activities." (p. 14)

112. In my opinion, the material which informs the Amendment does not demonstrate that existing open spaces do not have capacity to accommodate demand from new residents. Therefore, it has not been demonstrated that new open space is needed in its entirety to serve new residents and workers.

Jells Park

113. Jells Park is one of the largest open spaces in the municipality, however this major park has been deducted from the calculation of open space provision per resident on the basis that it is classified as a regional open space (MOSS, page 100).

114. When Jells Park is included in the open space provision, the existing provision of open space per capita increases from 27sqm per resident to 41.25sqm per resident. This rate of provision comfortably exceeds Council's own planning benchmark of 30sqm per resident.

115. Despite not being a Council-owned open space, residents across the municipality, and especially in the eastern part of Monash, will clearly benefit from the availability of passive recreation opportunities in Jells Park and the broader Dandenong Valley Parklands. In my view, it is misleading to exclude Jells Park from the calculation of open space per resident.

5.3. EQUITY OF APPLYING A SINGLE RATE

116. The Amendment proposes to apply a single open space contributions rate to all precincts across the municipality and all land uses, including residential, retail, commercial and industrial.

117. This would mean that, for example, an industrial subdivision in Mount Waverley would make the same contribution (in percentage terms) as a residential subdivision in Clayton.

118. In my opinion, there are two main issues with this approach:

- The MOSS identifies that there are significant differences in the existing provision of open space across the municipality, with some Precincts well serviced and others under-supplied. **The application of a single rate brings into question the spatial nexus** between where the open space contributions are to be made and where they are to be expended by Council.
- Importantly, **the MOSS and SGS Report do not include any analysis or evidence regarding the need for open space generated by employment land uses** (such as offices or industrial land use). In my view, it is inequitable to seek to apply a single rate to all land uses in Monash in the absence of such analysis. I provide further information supporting this view as follows.

119. The open space target on which the contributions rate is calculated relates solely to open space per resident. Although it is common for open space strategies to express open space provision in terms of provision per resident, in practice the open space also services workers, albeit in a different way.

120. One section of the MOSS refers to the need for open space to support employment areas, with key points quoted below:

"The open space contribution recognises that there is a need for open space for workers within employment areas and the nature of how these areas are designed has changed. The types of open space function types that may be appropriate in employment and industrial areas:

- *Access/trail – as a circuit trail onsite and as a connection to the local trail to encourage circuit*
- *Relaxation/contemplation areas i.e. landscape areas with tables, seats and shade areas to offer respite, socialising and break areas for workers*
- *Conservation/tree reserves (on frontages as setbacks) that may accommodate shared trails*
- *Sport, such as hard court facilities or facilities for casual games with suitable shade /support facilities.*

In most instances, small local scale facilities would be sufficient in these areas, similar to or as communal open space." (p.46)

- 121.** Neither the MOSS nor the SGS report go on to quantify the need for open space generated by workers or how this compares with the needs generated by residents.
- 122.** In my view, it is entirely inequitable for employment land uses to be required to make a contribution to public open space equivalent to 10% of the land area or site value when:
- a.** The need for open space has not been demonstrated in the supporting material; and
 - b.** There is consistent evidence which demonstrates that the quantity of open space required to meet the needs of workers is considerably less than the quantity needed for residents.
- 123.** In most DCPs, employment uses are not required to contribute to active open space on the basis that there is unlikely to be any significant usage of those facilities by the workers. It is widely acknowledged and understood that workers will generate demand for passive open space, however this is generally only during relatively narrow time windows, most commonly over lunch breaks. It is also at times when a high proportion of residents are not using those open spaces because they are undertaking other activities such as work, school, shopping and so on.
- 124.** In Table 8 below, I have provided examples of public open space contributions rates that have been recently applied to precincts that are exclusively employment land or have a substantial employment land component.
- 125.** The PSP Guidelines (Precinct Structure Planning Guidelines, Growth Areas Authority) recommend an open space provision rate of 2% in employment precincts, considerably lower than the equivalent for residential land use of 10%. The open space standards are worded as follows:
- "S2: In residential areas, approximately 10% of the net developable area as total public open space, of which 6% is active open space.*
- S3: In major employment areas, approximately 2% of net developable area as public open space, usually with a passive recreation function." (p.34)*
- 126.** In the Growth Area examples I have reviewed across Wyndham and Casey, open space contributions in employment areas are generally between 1.6% and 3.1%. In cases where there are both employment and residential areas within a single precinct, the employment rate is generally considerably lower than the residential rate (such as Thompsons Road and Cranbourne East PSPs).
- 127.** In the municipalities of Brimbank and Greater Dandenong where there is considerable land for employment purposes, a lower contributions rate is applied to industrial (2% or 2.5%) than is applied to residential development (5%) as part of a municipal-wide approach to contributions.

T8. SELECTION OF EMPLOYMENT CONTRIBUTIONS RATES, MELBOURNE

Area	53.01 Contributions Rate
PSP Guidelines for Employment Precincts	2%
East Werribee Employment Precinct	3%
Fishermans Bend Employment Precinct	5%
Tarneit North Employment (Wyndham)	2%
Truganina Employment Precinct (Wyndham)	3.1%
Thompsons Road PSP (Casey)	1.85% employment; 4.25% res.
Cranbourne East PSP (Casey)	1.61% employment; 7.52% res.
Brimbank (municipal)	2.5% industrial; 5% commercial and res.
Greater Dandenong (municipal)	5% residential, 2% industrial and C2Z

Source: PSP Guidelines,

128. Other relevant factors in Monash are that:

- The Monash Technology Precinct has planning controls (Design and Development Overlay Schedule 1 of the Monash Planning Scheme) which require large setbacks and landscape buffers on private land (20 metres on main roads and between 7.6 and 13.7m on other roads). This creates an environment where some passive open space for workers is already provided within private land; and
- Other major employment areas provide open space facilities as part of the development offering. In the Nexus Business Park, for example, I am advised that the developer/precinct owner provides rooftop sports courts and passive open spaces within private land and is currently planning a running track around the Business Park for use by workers.

129. In my view, the MOSS does not provide sufficient justification to support the application of a very high rate of 10% to employment land in the municipality.

130. In my view, the additional open space needs associated with any major increase or change in employment as part of the Monash NEIC would best be delivered through a DCP or ICP so that a clear spatial nexus is established and the contributions made will be directly used to facilitate the transformative land use change and achieve positive local social and economic outcomes. The introduction of an ICP is contemplated in the Draft Monash NEIC Framework Plan (p.34).

5.4. AN ALTERNATIVE WAY FORWARD

131. As discussed in my statement, the approach that I consider should be used to establish a contributions rate has not been undertaken. This approach requires more detail than is available in the MOSS, including cost estimates, revenue analysis and a closer assessment of the extent to which each action is needed by existing residents or new development.

132. On the basis of the information available, it is not possible for submitters to specifically establish what an equitable open space contributions rate in Monash should be.

133. Given this, it is my view that the proposed rates should be set aside and replaced through a more robust, suitable and equitable method of calculating the contributions rate. However, if the Panel considers that this is not necessary, then the following should be considered:

- In my opinion, there is no justification in the material supporting the Amendment for a public open space contributions rate for residential development higher than 5%; and

- In my opinion, open space contributions for employment precincts should be lower than the rate for residential development - a contribution in the order of 2-3% is generally appropriate based on the analysis in my statement.

134. In my view, the introduction of any higher rates than these would require significantly greater analysis and justification than is provided in the supporting material for the Amendment, and there are a number of reasons why this justification is unlikely to be successfully established given the open space already available in the municipality and the focus of the MOSS on addressing existing gaps and improving existing spaces rather than responding to demand growth through additional provision.

6. CONCLUSIONS

135. My conclusions in respect of the Amendment are as follows:

- a. Planning Practice Note 70 should be used to guide the calculation of an open space contributions rate to be included in Clause 53.01. Any assessment should have regard to the well-established principles of development contributions in Victoria of need, nexus and equity.
- b. The principles and method applied to open space contributions for Amendment C148 are inconsistent with Monash Open Space Strategy, PN70 and the principles of development contributions in Victoria.
- c. There is a fundamental misalignment between the Amendment, the MOSS and the SGS report in relation to the calculation of open space contributions. The approach to open space contributions has no regard to the wide variety of findings and actions in the MOSS.
- d. The majority of actions in the MOSS are designed to address existing under-provision or to make improvements to existing open space. This is directly at odds with the open space contributions rate which is calculated solely on the basis of increasing the quantity of open space land.
- e. The proposed amendment would result in a highly inequitable outcome whereby contributions from new development are designed to address current under-provision for existing residents.
- f. The Amendment adopts an overall open space provision target of 30sqm which is high relative to recently approved strategies and Precinct Structure Plans - the target is higher than recent urban growth areas where open space land must be created 'from scratch'.
- g. The Amendment proposes a rate which is based on the stated need for an additional 106 hectares of open space land across the municipality over a 10 year period. The Strategy provides no indication that this land acquisition will be pursued and the acquisition of this quantum of land is unlikely to be feasible.
- h. The approach to contributions has no regard to the extent to which existing open space in Monash may have capacity to accommodate additional usage – the principle of need has not been fully addressed.
- i. There is insufficient justification to support the application of a very high rate of 10% to employment land in the municipality.

136. As a result of the above conclusions, it is my view that:

- The proposed rates should be set aside and replaced through a more robust, suitable and equitable method of calculating the contributions rate. However, if the Panel considers that this is not necessary, then the following should be considered:
 - There is no justification in the material supporting the Amendment for a public open space contributions rate for residential development higher than 5%; and
 - The contribution for employment land uses should be lower than the rate for residential development - a contribution in the order of 2-3% would be appropriate.

Declaration

I have made all the enquiries that I believe are desirable and appropriate and no matters of significance that I regard as relevant have to my knowledge been withheld from the Panel.

A handwritten signature in black ink, appearing to read 'M Ainsaar', is centered on a light gray rectangular background.

Matt J Ainsaar

Managing Director, Urban Enterprise Pty Ltd

BTRP, Grad Dip Prop, MAPI, FAPI, CDP

APPENDIX A CONSOLIDATED LIST OF MOSS ACTIONS

ID (UE)	ACTION (MOSS)	CATEGORY (UE)
Precinct 1 : Ashwood / Burwood		
1.1	Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 5.	Existing gap
1.2	Construct a bridge(s) across the Melbourne Water drain to connect the Gardiners Reserve and the Gardiners Creek Trail.	Improvements
1.3	Improve connections to the Gardiners Creek Trail.	Improvements (no mention of land required)
1.4	Construct a circuit path around Electra Reserve.	Improvements
Precinct 2 : Chadstone		
2.1	Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 6.	Existing gap
2.2	Develop a perimeter path around Batesford Reserve and connect to the Glen Waverley Rail Trail.	Improvements
Precinct 3 : Clayton		
3.1	Clayton is a priority precinct to undertake improvements or additions of open space provision, including within employment areas. Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 7.	New land and improvements, existing gap
3.2	Support and advocate for improvements to path and connections in the area and promote safe off road connections where possible.	Improvements
3.3	Construction of the new Westall Rd extension, including design and construction of an off-road trail along its length.	Improvements
3.4	Advocate for improvements to the North Road / Wellington Road trail to ensure this is a safe and off road trail.	Improvements
Precinct 4 : Glen Waverley		
4.1	Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 8.	Existing gap
4.2	Improve the range of facilities, connectivity and way finding of Bogong Reserve as social/family recreation with a connection to the Glen Waverley Town Centre.	Improvements
4.3	Maximise opportunities for the inclusion of urban green space in the redevelopment areas of the Glen Waverley Activity Centre.	New land and improvements
4.4	Construct a perimeter trail around and through Central Reserve.	Improvements
4.5	Extend and improve the Scotchmans Creek Trail. Improve signage in locations that currently have an on-road connection.	Improvements
4.6	Improve the range of facilities of Hinkler Reserve and develop as social/family recreation.	Improvements
4.7	Consider negotiating the use of Syndal South Primary School and Mount View Primary school and other schools in the precinct for joint school and community sport use.	Increase access
4.8	Address gaps in the Glen Waverley Rail Trail, construct the Ringwood Lake Connection and construct a connection to Bushey Park Wetlands from High Street Road.	New land and improvements?
Precinct 5 : Hughesdale		
5.1	Clayton is a priority precinct to undertake improvements or additions of open space provision, including within employment areas. Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 9.	New land and improvements, existing gap
5.2	Address the gap in the Glen Waverley rail trail.	New land and improvements?
Precinct 6 : Mount Waverley		
6.1	Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 10.	Existing gap
6.2	Consider negotiating the use of Mount Waverley Heights Primary School and Mount Waverley North Primary School for joint school and community use passive open space use.	Increase access
6.3	Consider a perimeter path around Essex Heights Reserve.	Improvements
6.4	Address gaps in the Glen Waverley Rail Trail.	New land and improvements?
6.5	Construct the Ringwood Lake Connection and consider the longer term connection along the Melbourne Water Easement from Highclere Avenue.	Improvements
6.6	Extend the Monash Freeway Trail to Pinewood Shopping Centre along the electricity easement.	Improvements
Precinct 7 : Mulgrave		
7.1	Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 11.	Existing gap
7.2	Retain Waverley Park for community use.	Improve access

ID (UE)	ACTION (MOSS)	CATEGORY (UE)
7.3	Consider integrating Gladeswood Reserve with Mulgrave Primary School.	Improvements
7.4	Create an off-road trail to connect Gladeswood Reserve to Dandenong Creek and Waverley Park and the proposed wetlands.	Improvements
Precinct 8 : Notting Hill		
8.1	Notting Hill is a priority precinct to undertake improvements or additions of open space provision, including within employment areas. Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 12.	New land and improvements, existing gap
8.2	Construction of the new Westall Rd extension has an off-road trail along its length.	Improvements
Precinct 9 : Oakleigh South		
9.1	Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 13.	Existing gap
9.2	Any future redevelopment of Talbot Quarry will need to consider the Open Space Development Contribution requirements in accordance with the relevant clauses of the Monash Planning Scheme and the provision of a shared pedestrian pathway through the site that connects adjacent open space reserves.	New land and improvements
9.3	Consider closing the road (Pitt Street) that separates Progress Park and the other open space adjoining Stan Riley Reserve.	Improve access
Precinct 10 : Oakleigh		
10.1	Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 14.	Existing gap
10.2	Preserve open space in the south of the precinct south of the railway line and improve the existing provision.	Improvements
10.3	Consider a bridge over the rail line to connect the area south of the trail line with Jack Edwards Reserve.	Improvements
Precinct 11 : Oakleigh East / Huntingdale		
11.1	Oakleigh East / Huntingdale is a priority precinct to undertake improvements or additions of open space provision, including within employment areas. Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 15.	New land and improvements, existing gap
11.2	Consider negotiating the use of Ashleigh Park for joint school and community use passive open space use.	Improve access
11.3	Consider embellishing social/family recreation functions in Reg Harris Reserve including a circuit path.	Improvements
Precinct 12 : Wheelers Hill		
12.1	Future development of social family recreation and parks should be prioritised in the areas identified as a gap in Map 16.	Existing gap
12.2	Extend and improve the Scotchmans Creek Trail. Improve signage in current locations with an on-road connection.	Improvements
12.3	Improve wayfinding and on the street presence of the Scotchmans Creek Trail through Wheelers Hill to connect to Jells Park / Dandenong Creek.	Improvements

APPENDIX B REQUIREMENTS OF PLANNING PANELS VICTORIA – EXPERT EVIDENCE

Name:

Matt Jacques Ainsaar, Managing Director, Urban Enterprise

Address:

Level 1, 302-304 Barkly Street, Brunswick, Victoria, 3056.

Qualifications:

- Bachelor of Town and Regional Planning, University of Melbourne
- Graduate Diploma of Property, RMIT University
- Professional Affiliations: Member, Planning Institute of Australia
- Member, Victorian Planning and Environmental Law Association
- Fellow, Australian Property Institute

Experience

I have more than 40 years' experience as a planner and land economist and have extensive expertise in the Development Contributions area.

Urban Enterprise has a track record of successfully preparing Development Contributions Plans and calculating open space contributions for Councils as well as negotiating development contributions and open space arrangements with Councils on behalf of developers.

I have provided advice to numerous developers, landowners, Councils as well as State government in respect of development contributions matters, including advice to the Standard Development Contributions Advisory Committee regarding the establishment of standard levies in Victoria and advice to the Victorian Planning Authority regarding the establishment of a standard levy for established areas of Melbourne.

I have appeared as an expert witness in numerous growth area and other DCP-related planning panel hearings and VCAT hearings in respect of development contributions and open space contributions.

Areas of Expertise

Areas of expertise include strategic urban planning, Development Contributions planning, land economics, property and tourism planning.

Expertise to Prepare this Report

I have given advice to the public and private sectors in regard to development contributions and open space contributions over many years. I have appeared as an expert witness in these matters over many years.

Instructions

My instructions were to:

- Conduct an in-depth review of the material contained in my brief;

- Consider and formulate my own opinions, within the limits of my expertise, with respect to the appropriateness of the Amendment; and
- Prepare a report which sets out the conclusions which I have reached, and clearly state the basis upon which I have arrived at that conclusion, including any facts I have relied upon or assumptions which I have made which form part of the reasoning by which I reach my conclusions.

Facts, Matters and Assumptions Relied Upon:

I have relied on the following for my assessment:

- The exhibited Amendment C148 documentation;
- Monash Open Space Strategy, City of Monash, October 2018;
- City of Monash – Open Space Contribution Rate Planning, SGS Economics & Planning, October 2018;
- Monash Planning Scheme;
- Planning & Environment Act 1987;
- Subdivision Act 1988;
- Development Contributions Guidelines, 2007;
- Planning Practice Note 70: Open Space Strategies; and
- Various other open space strategies, open space contributions assessments and Planning Panel reports as quoted in this statement.

Documents Taken into Account:

See above.

Identity of Persons Undertaking the Work:

Matt J Ainsaar

Summary of Opinions:

Refer Section 6: Conclusions.

