

1.6 AMENDMENT C169 OPEN SPACE – CONSIDERATION OF SUBMISSIONS (SMcN: W21-286)

Responsible Acting Director: Catherine Sherwin

RECOMMENDATION

That Council:

1. *Notes and considers all submissions received in response to Amendment C169.*
2. *Notes and considers the late submission received on 13 July 2022.*
3. *Notes and endorses the officer response to the issues raised by the submissions as outlined in the officer report and Attachment 1.*
4. *Requests the Minister for Planning appoint an independent Planning Panel under Part 8 of the Planning and Environment Act 1987 to consider the submissions to Amendment C169 to the Monash Planning Scheme.*
5. *Refers all submissions on Amendment C169 to the Panel appointed by the Minister for Planning.*
6. *Endorses the recommended changes to Amendment C169 as outlined in the officer report and Attachments 1 and 2 for the purposes of Council's advocacy position before the Panel.*
7. *Notifies all submitters of Council's resolution.*

INTRODUCTION

The purpose of this report is to:

- Consider the submissions received during the public exhibition of Amendment C169.
- Consider officer recommendations in response to submissions received.

As there are submissions, which are unable to be resolved, it is recommended that Council request the Minister for Planning appoint an independent Panel to review the Amendment and consider all submissions received.

BACKGROUND

Planning Scheme Amendment C169 proposes to implement the planning scheme recommendations of the Monash Open Space Strategy by making the following changes:

- Amending clause 21.10 – Open Space
- Introducing a new clause 22.15 – Public Open Space Contributions Policy
- Increasing the public open space contribution rate to 10% for all eligible subdivisions.

On 30 November 2021, Council resolved to seek authorisation from the Minister for Planning to prepare Planning Scheme Amendment C169, and following authorisation, to exhibit the amendment. Authorisation was received on 14 April 2022, and the amendment was exhibited from 30 May 2022 to 12 July 2022.

A total of 61 submissions were received to the amendment. A listing of submissions, the issues raised and officer recommendations in response to the submissions is provided at **Attachment 1**.

Revised draft amendment clauses showing recommended changes in response to submissions is provided at **Attachment 2**.

A full copy of all submissions received is provided at **Attachment 3**.

DISCUSSION

A total of 61 submissions were received, including one late submission. Of the submissions –

- 16 supported the amendment as exhibited
- 12 sought changes but did not object to the proposed contribution rate
- 30 objected to the amendment as exhibited
- 3 were neutral to the amendment.

One late submission was received the day after submissions closed and it is recommended to be accepted as a submission.

Key issues raised in submissions

The main issues raised in the submissions, along with an officer response to those issues are provided in this report. *(A more detailed response to each issue in submissions is provided in Attachment 1.)*

1. *The proposed public open space contribution rate is too high, or the increase is too significant*

Twenty-seven submissions objected to the proposed contribution rate on the basis that it was too high.

One of these suggested that Council borrowing additional funds to meet the need created by population growth. No other submissions provided other alternative funding suggestions or evidence to support their case that the rate was too high.

Officer response

Some submissions stated that the contribution rate was higher than surrounding municipalities and the increase was too high.

The current Monash Public Open Space contribution rate is one of the lowest in the State. As such, there is no spare open space capacity in the current open space network. The low contribution rate makes it difficult for Council to equitably and adequately fund improvements or increases in the open space network to meet the demand created by new residents and workers.

The analysis of open space needs has determined that a contribution rate of around 13% is required to meet the open space needs associated with future development.

The rate proposed in is response to the open space needs of the future population increase living in more dense development styles.

The rate has been determined to provide an appropriate level of open space for new development. While population is forecast to grow by approximately 22%, the quantity of open space is forecast to grow by 4.9%.

Further, many other Councils have specific precincts where similar or substantially higher contribution rates are required, particularly where higher density development is planned.

2. Lack of Strategic Justification

Eleven submissions submitted that the amendment was not strategically justified. While some submissions claimed that the application of the one Public Open Space Contribution rate across Monash was the reason for the lack of strategic justification, most did not provide any explanation as to why this was the case or why they considered that the amendment lacked strategic justification.

Officer response

The amendment is based on the “inclusionary principle” when calculating the proposed open space rate. This principle based on Monash being treated as one planning unit for public open space and therefore the one rate of Public Open Space Contribution will apply.

This approach is consistent with the earlier Amendment C148 and the finding of the interim planning panel for Amendment C148, which stated that the inclusionary principle was acceptable.

In addition, officers have now undertaken the further implementation work as suggested by the C148 panel that provides further justification and explanation of the Public Open Space standards and improvements required to be funded to meet additional population demand.

This methodology is consistent with the development of open space strategies in other Victorian municipalities.

3. Impact on housing affordability

An issue raised by some submitters was the potential impact on housing affordability, stating that developers are likely to pass the increased public open space contribution cost onto the final dwelling price. No evidence or modelling was submitted in support of this position.

Officer response

As part of the preparation of the amendment, SGS Economics and Planning have previously undertaken research on behalf of Council, which found that upfront land development infrastructure costs such as sewerage, electricity, water and public open space are factored into the purchase price of the land. That is, the price that a developer will pay for the land is reduced by the cost of the infrastructure need in developing that land.

The practical effect of this is that infrastructure charges, such as public open space or sewage connections, are “passed back” to the land vendor via the purchase price reflecting development costs.

4. Tree retention

Some that submissions supported the amendment as a means of increasing tree retention, indicating that this amendment will lead to a reduction in vegetation clearing, or an increase in tree planting.

Officer response

Whilst the supportive nature of these submissions is welcome, it is important to recognise that the function of the public open space contribution and the provision of public open space is to meet increased community need for “resort and recreation.”

The open space contribution is not for the protection of vegetation or biodiversity, there are other more appropriate planning mechanisms available to address these issues.

This amendment will not have any impact on vegetation clearing on private land. Existing controls apply in many parts of Monash, and Council has previously undertaken separate work on urban canopy coverage, resulting in proposed Planning Scheme Amendment C165 to introduce canopy tree controls. This amendment is currently with the Minister for Planning for authorisation.

5. Talbot Quarry

A number of submissions raised the issue of Council purchasing all or part of Talbot Quarry to fill the gap in public open space in that area, and meet the shortfall in Oakleigh South.

Officer response

In general, Oakleigh South is well serviced by public open space, with a higher provision than municipal average. While there are gaps in parts of Oakleigh South, these are not near Talbot Quarry. Talbot Quarry abuts two large public parks, each of approximately 3 ha and 4 ha in size. A further park is within 400 metres of the site, and an additional land parcel within 400 metres of Talbot Quarry has recently been bequeathed to Council to be set aside for public open space.

Council has previously considered the land at Talbot Quarry and on 25 September 2018, Council resolved not to purchase all or part of the former Talbot Quarry for Open Space.

Supported Changes

A number of submissions requested minor changes to the policy documents that will enhance or improve the amendment and officers recommend making these changes.

These changes are discussed below and are included in the revision of the amendment documentation at **Attachment 2** to this report.

- 1. Add the word connected into the first Key issue of clause 21.10 to state “...more vibrant connected communities.*

Officers support this change. The inclusion of the word connected recognises the connectivity (through paths, trails and multi-street frontage parks) that the open space network provides.

- 2. Reinstate the deleted objective about open space being within comfortable walking distance.*

This objective was removed following discussion with DELWP regarding the translation of local policy, as comfortable walking distance was too subjective and varied from person to person. Further discussion has determined that including a quantifiable measure would be appropriate, and because 400 metres is used in the Monash Open Space Strategy, it is recommended that this distance be used. It is proposed to insert the below strategy:

- *To provide accessible open space that is within 400 metres walking distance of the majority of residents and workers.*
3. *The third objective in clause 21.10 relates to protecting values from degradation as a result of community recreational demands. Inappropriate development should also be added.*

Officers support the intent, but it should be worded as 'development impacts' rather than inappropriate development. Inappropriate development is too subjective, whereas referring to development impacts is clearer that it relates to the effect arising from the proposed development.

4. *The last strategy point in 22.10 should refer to managed and maintained rather than just maintained.*

Officers have no objection to this as it relates to planning and operations.

5. *Retain existing provisions in the schedule to clause 53.01 relating to the land rezoned as part of Amendment C156 (former PMP site).*

This would retain the current wording and provisions for the site, with a contribution rate of 10%.

It was proposed to delete these provisions relating specifically to this site from the schedule, as the contribution rate was the same as proposed for all other land deeming unnecessary. However, the schedule also included other wording providing further clarity relating to the Comprehensive Development Plan. It is recommended to support the change to the schedule to clause 53.01 as requested.

POLICY IMPLICATIONS

The development of the Monash Open Space Implementation Plan is consistent with State policy including:

- Plan Melbourne
- The metropolitan open space strategy
- The draft Monash Cluster Framework Plan

The material is also consistent with Council policy and strategy including:

- The Monash Open Space Strategy
- Monash Community Vision and Council Plan

- Monash Health and Wellbeing Plan 2021-2025

Planning and Environment Act 1987

Under section 23 of the Planning and Environment Act 1987, as Council has received submissions requesting changes to the amendment, Council has three options in progressing this amendment. Council may -

1. Change the amendment in the manner requested; or
2. Refer the submissions to a planning panel; or
3. Abandon the amendment or part of the amendment.

As Council has received submissions opposing the proposed contribution rate, and supporting it as exhibited, option 1 is not available.

Abandoning the amendment will result in a decline in open space service levels for the community and a sharper decline in public open space per person than if Council continues with the amendment.

The most appropriate option is to request the Minister for Planning appoint an independent Planning Panel to consider all submissions, with **Attachment 1** forming the basis for Council's position on each submission to present to the planning panel.

CONSULTATION

Consultation has been undertaken in accordance with the requirements of the Planning and Environment Act 1987 and the authorisation of this amendment.

GENDER EQUITY ASSESSMENT

A gender impact assessment has not been undertaken for this amendment as it relates to a statutory process under the Planning and Environment Act 1987.

FINANCIAL IMPLICATIONS

The amendment process and any subsequent panel hearing can be accommodated within existing operating budget allocations.

The proposed change to the open space contribution is forecast to provide Council with open space funding to meet the public open space needs of the new population. The existing open space contribution rate is inadequate for the scale and density of development likely between now and 2036.

The retention of the current open space contribution rate would place a higher financial burden on existing ratepayers and rate funding to meet the public open space needs of new more intensive development. This would

manifest through the existing community experiencing an overall decline in open space provision, a decline in service quality and a lack of suitable and adequate open space in areas such as Clayton and Glen Waverley. It would also place increased competition in Councils budget process for existing funds to meet the additional need that is forecast to arise from significant urban population increases in apartment style development.

CONCLUSION

Having considered the submissions received regarding Amendment C169, Council has three potential options for the amendment. Council may:

1. Change the amendment in line with the submissions and adopt the amendment;
2. Abandon the amendment, or
3. Request the Minister for Planning to appoint an independent Panel to consider the amendment and submissions received.

As the submissions both support and object to the amendment, it is not possible to incorporate all changes into the amendment to address submissions.

The amendment seeks to update the public open space contribution rate in the Monash Planning Scheme to a reasonable rate to enable Council to provide for the future open space needs of the community.

Amendment C169 to the Monash Planning Scheme has completed the public exhibition process with 61 submissions received. The submissions are divided between supporting (with or without changes) and objecting to the amendment. The most common issue for objecting to the amendment was the proposed increase in the public open space contribution rate to 10%.

The most appropriate way to progress the amendment is for Council to request the Minister for Planning appoint an independent planning panel to consider submissions and make a recommendation to Council on the amendment.

Attachments:

Attachment 1: Officer Response to Submissions Received

Attachment 2: Recommended changes to amendment

Attachment 3: Copies of Submissions (redacted)