

**Yarra Planning Scheme Amendment C286yara
Open Space Contributions**

Interim Panel Report

Planning and Environment Act 1987

14 April 2022

How will this report be used?

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

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

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

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

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

Planning and Environment Act 1987

Interim Panel Report pursuant to section 25 of the PE Act


Yarra Planning Scheme Amendment C286yara286yara

Open Space Contributions

14 April 2022



Rodger Eade, Chair



Dr Meredith Gibbs, Member



John Hartigan, Member

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Glossary and abbreviations

CIV	Capital Improved Value
Contributions Report	<i>Yarra Open Space Strategy 2020: Public Open Space Contributions</i> , Environment & Land Management Pty Ltd in association with Thompson Berrill Landscape Design Pty Ltd, 10 December 2020
Council	Yarra City Council
DCP	Development Contribution Plan
DELWP	Department of Environment, Land, Water and Planning
HIA	Housing Industry Association
new population/s	The projected resident and worker populations forecast to move to or come to work in Yarra between 2016 and 2031
PAO	Public Acquisition Overlay
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Yarra Planning Scheme
POPC	Preliminary Opinion of Probable Costs
PPN	Planning Practice Note
SEES	Yarra Spatial Economic and Employment Strategy 2018 prepared by SGS Consulting
Technical Report	<i>Yarra Open Space Strategy 2020 Technical Report</i> , Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd
UDIA	Urban Development Institute of Australia
UHIE	Urban heat island effect
VCAT	Victorian Civil and Administrative Tribunal
YOSS	<i>Yarra Open Space Strategy 2020</i> , Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd

Overview

Amendment summary

The Amendment	Yarra Planning Scheme Amendment C286yara
Common name	Open Space Contributions
Brief description	Increase the contribution for open space at Clause 53.01 of the Yarra Planning Scheme from 4.5 per cent to 10.1 per cent of site value to support the implementation of the Yarra Open Space Strategy 2020.
Subject land	All residential, commercial and industrial land in the City of Yarra
The Proponent	Yarra City Council
Planning Authority	Yarra City Council
Authorisation	18 June 2021
Exhibition	7 September to 5 October 2021
Submissions	Number of Submissions: 72, including four late submissions. Of these 43 opposed and 27 supported the Amendment. The position of the remaining two is unknown.

Panel process

The Panel	Rodger Eade (Chair), Meredith Gibbs and John Hartigan
Directions Hearing	By video conference, 10 November 2021
Panel Hearing	By video conference, 6, 7, 8, 9, 13, 14 15 and 17 December 2021 and 9, 10 and 23 February 2022
Site inspections	No site inspection was required
Parties to the Hearing	See Appendix B
Citation	Yarra PSA C286yara [2022] PPV
Date of this report	14 April 2022

Executive summary

Yarra Planning Scheme Amendment C286yara (the Amendment) seeks to increase the public open space contribution rate in the Schedule to Clause 53.01 from 4.5 to 10.1 per cent. It proposes to do this by making the following changes to the Planning Scheme:

- amending the Schedule to Clause 53.01 to require that all subdivision provides a public open space contribution at a rate of 10.1 per cent
- replacing Clause 22.12 Public Open Space Contribution with a new Clause 22.12
- amending the Schedule to Clause 72.08 to insert the following documents into the table at Clause 1.0:
 - *Yarra Open Space Strategy 2020* Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd
 - *Yarra Open Space Strategy 2020 Technical Report* Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd.

There were 72 submissions to the exhibited Amendment, with 43 opposed to, and 27 supporting the Amendment. The position of the remaining two is unknown.

The key focus of those opposed to the Amendment was that the increase in the open space contribution rate from the current 4.5 per cent of land area or site value to 10.1 per cent is excessive. The increase was opposed because:

- some open space projects proposed were not needed
- the cost of both the land and capital components of the costs of open space projects was excessive
- the apportionment of total project costs between existing and new users of open space was inappropriate
- there were no transitional provisions for projects part way through their approval processes
- there would be a detrimental impact on housing affordability.

The key underpinning strategic document is the *Yarra Open Space Strategy 2020*, which is proposed to be introduced into the Yarra Planning Scheme. The current open space strategy was prepared in 2006 and is now significantly out of date because of the magnitude of development both residential and non-residential that has occurred in the intervening period. The strategy and its strategic underpinnings were not significantly challenged.

The proposed new strategy forecasts that between 2016 and 2031 there will be an additional 77,000 new residents and workers in Yarra, generating a need for a significant amount of new and upgraded open space. Much of the forecast growth will occur in areas that were traditionally developed for manufacturing industry much of which no longer exists. These areas are not well endowed with open space. To meet this identified need the *Yarra Open Space Strategy 2020* proposes 26 new open space projects and the upgrade or expansion of a number of existing open spaces.

The *Yarra Open Space Strategy 2020* proposes projects with a total cost \$564.9 million. The cost is very high because many of the new open space projects require Yarra City Council to acquire significant land, which in this and other inner municipalities has to be acquired at a very significant cost to Council.

Most submitters recognised that the current open space contribution rate of 4.5 per cent is inadequate but strongly opposed the magnitude of the increase proposed for the contribution rate.

At the Hearing, this opposition focussed mainly on two issues. The first of these was the addition by Council of 30 per cent to the Capital Improved Value of land to be acquired to cover the costs to Council of acquiring the required land. Secondly, the total costs of the open space projects was apportioned between existing users and the municipality's new residents and workers with approximately 67 per cent of the total costs being apportioned to the new users. This apportionment to new users was strongly opposed by a number of submitters.

Having considered submissions and evidence, the Panel broadly concludes:

- the *Yarra Open Space Strategy, 2020*, is strategically justified and is a sound and appropriate strategy
- there is a clearly established need for the existing open space contribution rate to be increased as a matter of some urgency
- the open space projects proposed to meet identified needs are with a minor exception, supported
- the proposal by Council to add 30 per cent (adjusted down to 20 per cent during the Hearing) to Capital Improved Value of land to be acquired for new open space is not supported by the Panel which regards 10 per cent as appropriate
- the amount of the total costs apportioned to new residents and workers has not been adequately justified and should be subject to peer review before the Amendment can be finalised
- the Hearing be adjourned pending the completion of this further work
- while this further work recommended by the Panel is being undertaken, Council should seek approval from the Minister for Planning for an interim increase in the open space contribution rate to 7.4 per cent. This would occur via the preparation of a new Planning Scheme Amendment.

For the reasons set out in Chapter 8, the Panel considers this to be an interim report pending the completion of the extra work recommended by the Panel. A final report will be prepared after that work has been undertaken.

Recommendations

Based on the reasons set out in this Report, the Panel recommends:

- 1 Prepare and seek Ministerial approval under the Planning and Environment Act 1987, for a new Planning Scheme Amendment which:**
 - a) includes an open space contribution rate of 7.4 per cent in the Schedule to Clause 53.01.
 - b) includes exemptions in the Schedule to Clause 53.01 as set out in the version of the Schedule at Appendix D.
 - c) amends the Schedule to Clause 72.08 to insert the following documents into the table at Clause 1.0:
 - *Yarra Open Space Strategy 2020* Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd

- ***Yarra Open Space Strategy 2020 Technical Report*** Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd (Technical Report).
 - d) deletes Action 7.5B-4 in Fairfield from the *Yarra Open Space Strategy 2020*, the *Yarra OpenSpace Strategy Technical Report 2020*, and from Preliminary Opinion of Probable Costs.
 - e) replaces the exhibited Clause 22.12 with the version at Appendix E.
2. Commission a peer review of the apportionment of total open space Action costs between existing and new resident and worker users of open space.
 3. Replace the 30 per cent allowance added to Capital Improved Value of land with 10 per cent, in calculating the cost of land to be acquired for future open space, in the calculation of the open space contribution rate.

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to increase the public open space contribution rate in the Schedule to Clause 53.01 from 4.5 per cent to 10.1 per cent to collect funds to support the implementation of the *Yarra Open Space Strategy 2020* (YOSS).

Specifically, the Amendment proposes to:

- amend the Clause 53.01 Schedule to require subdivisions to provide a public open space contribution at a rate of 10.1 per cent of the total land area
- replace Clause 22.12 Public Open Space Contribution with a new Clause 22.12
- amend the Schedule to Clause 72.08 to insert the following documents into the table at Clause 1.0:
 - *Yarra Open Space Strategy 2020* Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd
 - *Yarra Open Space Strategy 2020 Technical Report* Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd (Technical Report).

(ii) The subject land

The Amendment applies to all residential, industrial and commercial land in the municipality.

1.2 Background

Open space planning in Yarra is currently undertaken under the guidance of the *Yarra Open Space Strategy 2006*. Since the time of adoption of that strategy, Council has continued to develop and at a faster pace than was forecast. Growth is forecast to continue over the period to 2031, the planning horizon for the new open space strategy, the YOSS.

The forecast development over the next 15 years is significant with a 40 per cent increase in the resident population and a 47 per cent increase in the worker population visiting and using open space, thereby increasing demand on existing space and facilities. The extent of forecast growth changes across different parts of the municipality. Less than 10 per cent growth is forecast in Princes Hill-Carlton North, compared to 106 per cent in Cremorne-Richmond South-Burnley and 214 per cent in Fairfield-Alphington.

Over 85 per cent of Yarra's population lives in medium and high density dwellings compared to 33 per cent in Greater Melbourne. This means that residents have less private open space available to them which increases their reliance on public open space. Typically, this adds to the amount of people using public open space and increases the diversity of reasons why they use it.

Many of the areas in Yarra that are forecast to change are the former industrial and manufacturing areas which historically did not have public open space. These areas are being redeveloped to become mixed use precincts with a combination of residential, commercial and business use. This is introducing increased building heights and a change to a predominantly office-based professional workforce. Surveys undertaken as part of the development of YOSS found that 60 per

cent of workers visit public open space during the day at least once a week. With increased numbers of people working and living in the former industrial precincts there is a need to provide new areas of public open space in these areas.

The chronology for the preparation of this Amendment is set out in Table 1.

Table 1 Chronology of events

Date	Event / Description
April 2003	Council commissioned Thompson Berrill Landscape Design Pty Ltd and Environment & Land Management Pty Ltd to prepare the 2006 Strategy
19 December 2006	Council adopted 2006 Strategy
12 June 2008	Amendment C87 was gazetted, implementing the recommendations of the 2006 Strategy
February – March 2018	Consultation undertaken to inform the YOSS
20 January – 15 March 2020	Consultation undertaken on the Draft 2019 YOSS
July 2020	YOSS finalised
1 September 2020	Council adopted the YOSS
15 September 2020	Council resolved to request the Minister for Planning for authorisation to prepare the Amendment
December 2020	Council submitted a request for authorisation to prepare the Amendment to the Minister
18 June 2021	Council received authorisation to prepare the Amendment from the Minister subject to conditions
20 July 2021	Council resolved to make changes to the Amendment to satisfy the conditions of authorisation and give notice of the Amendment
7 September 2021	Public exhibition of the Amendment commenced
5 October 2021	Public exhibition of the Amendment ended
19 October 2021	Council resolved to refer all submissions to a Planning Panel
26 October 2021	Planning Panel convened in respect of the Amendment
10 November 2021	Directions Hearing held in respect of the Amendment
6 December 2021	Public Hearing commenced

Source: Council Part A submission, Attachment A

1.3 Yarra Open Space Strategy 2030

(i) Methodology

The YOSS and the proposed open space contribution rate were developed broadly as follows:

- assessment of current open space provision
- assessment of open space needs of the current and future forecast resident and worker populations based on both community surveys and expert input on open space provision requirements

- analysis of the gap between current provision and forecast future requirements on a precinct-by-precinct basis
- assessment of the needs gap in terms of open space hierarchy needs
- development of proposed projects to meet the future needs
- estimating a Preliminary Opinion of Probable Costs (POPC) of the proposed projects
- estimate of the proportion of project costs attributable to the new population on a project-by-project basis
- calculation of the open space levy required to raise the revenue required to meet the new population's contribution to the costs of proposed projects.

(ii) Precincts and sub-precincts

The analysis and proposed future provision of open space were precinct-based. Ten precincts were identified based on existing suburb boundaries. Each precinct was divided into sub-precincts. Precinct and sub-precinct boundaries are set out in Figure 1.

Figure 1 Open space planning precincts and sub precincts



Source: Yarra Open Space Strategy: Public Open Space Contributions, 2020, Figure 2

(iii) Existing open space

Based on research undertaken in preparing the YOSS, Yarra currently has 107 open space reserves occupying a total of 263.4 hectares. This equates to 13.5 per cent of the total land area of the municipality. If open space area which is only accessible by members or on a fee-paying basis is included, the total current open space increases to 348.66 hectares or 17.8 per cent of land area.

Existing open space as identified in the work undertaken for the YOSS is set out in Figure 2.

Figure 2 Existing open space in Yarra

Source: Yarra Open Space Strategy 2020, Technical Report, Appendix A

(iv) Open Space hierarchy

The open space hierarchy adopted by Yarra is summarised in Table 2. The future need for open space was assessed based on the projected growth in both residents and workers.

Table 2 Yarra open space hierarchy

Size	Catchment	Purpose
Regional open space		
Unlimited	No specific distance for Melbourne wide population	Primarily caters for regional population including residents of Yarra
City-wide open space		
Generally 3 to 7 hectares	Located within 1 kilometre of 95 per cent of dwellings	Primarily caters for residents and workers of Yarra
Neighbourhood open space		
Minimum of 1 hectare	Located within 400 metres walking distance of dwellings and workplaces	For neighbourhood use within walking distance of home or workplace and provides a multiple range of facilities
Small neighbourhood open space		
0.5 to 0.99 hectares	Located within 300 metres walking distance of homes and workplaces	Large enough to provide for at least three activities. For example, multi-use half court, play area and picnic facility

Size	Catchment	Purpose
Local open space		
0.1 to 0.49 hectares	Located within 200 metres walking distance of homes and workplaces	Large enough to provide for two activities. For example, a play area and grassed area with seating
Small local open space		
0.1 to 0.3 hectares	Located within 150 metres walking distance of homes and workplaces	Generally able to provide for a single use

Source: Yarra Open Space Strategy 2020, Technical Report, Table 3-1

(v) Projected growth

For the period between 2016 and 2031, which is the period for the data used in preparing the YOSS, the population is forecast to increase by over 77,000 people, which represents a 41 per cent increase in the number of residents and a 47 per cent increase in the number of workers.

(vi) Gap analysis

Based on the existing provision and the estimated future need for open space, analysis was done to identify the gaps in current provision, as illustrated in Figure 3. The areas without any colour are areas where a gap in provision has been identified. Figure 3 shows significant gaps in Collingwood-Cremorne and parts of Richmond in particular.

Figure 3 Yarra open space gap analysis

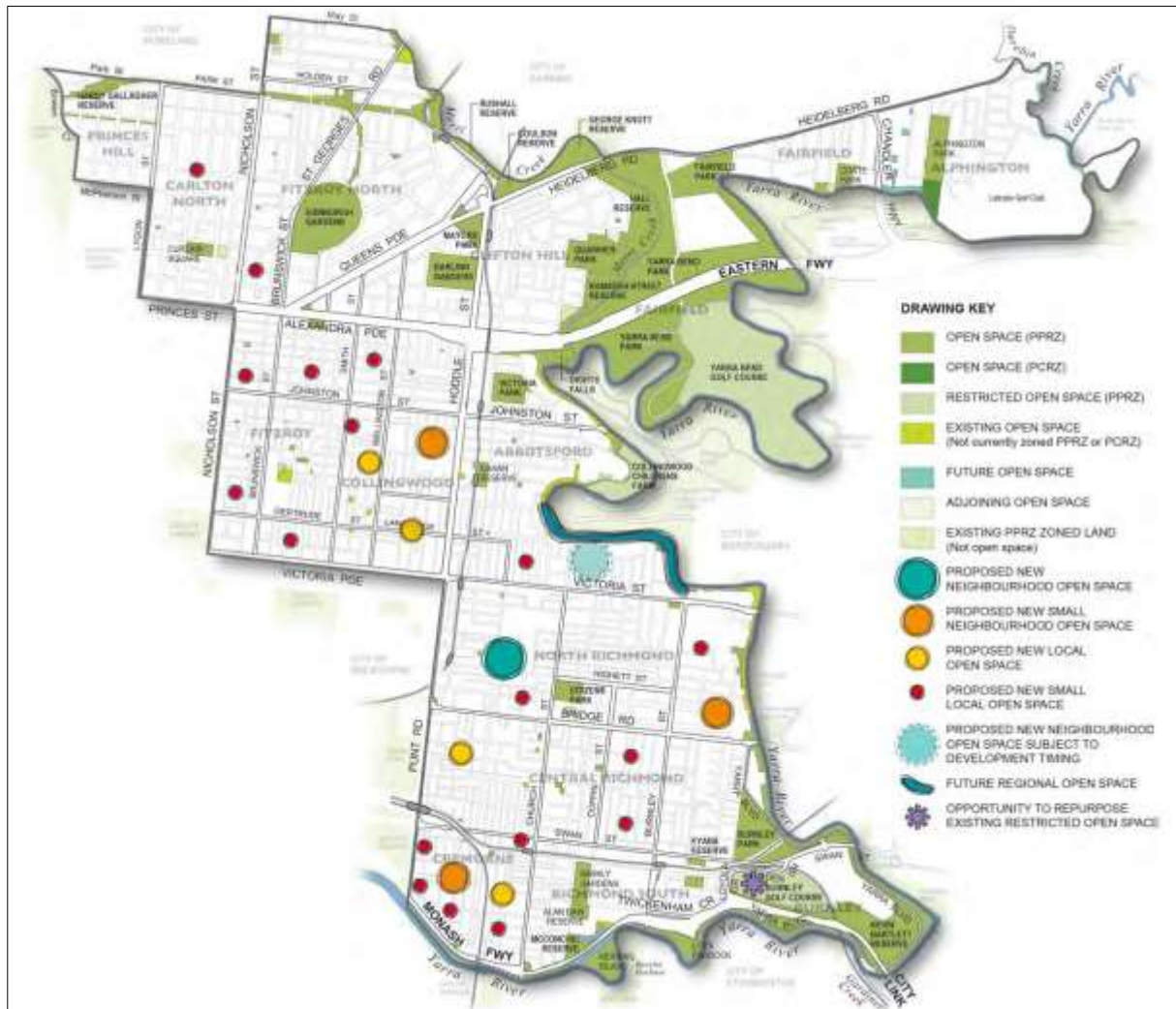


Source: Yarra Open Space Strategy 2020, Technical Report, Appendix A

(vii) Proposed new open space

A schematic plan of the proposed 26 open space projects identified in the YOSS, showing the various levels in the open space hierarchy and indicative locations is set out in Figure 4.

Figure 4 Indicative provision of new open space



Source: Yarra Open Space Strategy 2020, Public Open Space Contributions, Figure 1

(viii) Open space contribution rate

The open space contribution rate is calculated using the following formula:

$$\text{Contribution rate} = \frac{\text{Total allocation of open space project costs to the new population}}{\text{Total site value of the estimated land to accommodate the new population}} \text{ multiplied by } 100$$

Detailed consideration of the various factors which contribute to the numerator and denominator in this equation is set out in Chapter 4. The following section provides an overview of the basic data used in the rate calculation.

Numerator

The starting point is calculating the total cost of open space projects to be funded by the contribution. An allocation of the total cost as between the existing and forecast (or new) population is then made.

Preliminary Opinion of Probable Costs (POPC) is an approach used by open space planners to make a provisional estimate of the likely future cost of providing open space. The YOSS POPC only includes proposed projects that would be fully or partially funded by an open space contribution under Clause 53.01 of the Yarra Planning Scheme (Planning Scheme). These projects (called 'Actions' in the YOSS) include the provision and establishment or upgrade of neighborhood, small neighborhood, local and small local open space. The YOSS POPC also includes the costs of providing facilities for the local community in higher order open space including the Regional and City-wide open space. The (revised) POPC summary by precinct is set out in Table 3.

Table 3 Open space project cost allocation

Precinct	Total value of included projects	Allocation to existing population	Allocation to forecast population
Abbotsford	\$15,910,482	\$8,055,284	\$7,855,198
Carlton North – Princes Hill	\$10,461,318	\$9,938,252	\$523,066
Central Richmond	\$53,299,684	\$24,851,251	\$28,448,433
Clifton Hill	\$5,120,000	\$4,096,000	\$1,024,000
Collingwood	\$147,856,471	\$49,118,463	\$98,738,008
Cremorne, Richmond South and Burnley	\$157,614,101	\$40,369,225	\$117,244,876
Fairfield – Alphington	\$6,266,108	\$2,880,814	\$3,385,294
Fitzroy	\$78,681,285	\$29,640,209	\$49,041,076
Fitzroy North	\$17,926,385	\$6,802,405	\$11,123,980
North Richmond	\$76,252,211	\$11,100,373	\$65,151,838
Municipal total	\$569,388,045	\$186,852,276	\$382,535,769

Source: Yarra Open Space Strategy, Public Open Space Contributions, Appendix A.

Denominator

Based on Council valuation records, Council estimated that total value of land forecast to be developed to 2031 at \$3.789 billion.

Calculation

Council arrived at the proposed open space contribution by calculating the per centage of the total costs allocated to the new population, being \$379,973,479, as a per centage of \$3,789,238,260, resulting in a rate of 10.0 per cent. The exhibited rate of 10.1 per cent was calculated using an earlier version of the POPC which accounts for the difference. It is noted that if this calculation is applied on a precinct-by-precinct basis, contribution rates much higher than this would apply in some precincts. Further discussion of municipal-wide versus precinct-based contribution rates is in Chapter 5.2. It is also noted that the Council's final proposed contribution rate was lower again, 9.35 per cent, based on adjustments to the value of land to be developed for open space as discussed further in Chapter 4.1.

(ix) Underpinning principles

This section sets out the principles underpinning the assessment undertaken by the Panel. Their application in particular aspects of the Panel's consideration is included in following Chapters as relevant.

It was generally accepted that the principles set out in the Eddie Barron case¹, while applied in that instance to development contributions, are relevant here. However, in this context they can be interpreted differently. The interpretations applied by the Panel in this instance are as follows:

Need

In this case the relevant need is the need for new or upgraded open space infrastructure. This is broadly consistent with the interpretation that flows from Eddie Barron, as applied with respect to development contributions.

Nexus

The interpretation of nexus commonly applied with respect to development contributions is that the contributions made should be spent in the area in which they are raised. Council submitted that for funds raised under Clause 53.01 there is no requirement in the *Subdivision Act 1988* or in Clause 53.01 itself that contributions be spent in the exact area in which they are raised. In the context of open space, Council submitted that the requirement is that, rather than a *spatial* nexus there must be a *causal* nexus, that is a link between the subdivision and the need to provide more or upgraded open space. In his evidence, Mr Shipp (for the Planning and Property Partners (PPP) group of clients) gave a slightly different interpretation but he did not argue for the spatial nexus interpretation which underpins development contributions. The Panel accepts Council's submissions in this respect.

Equity

In its Supplementary Part B submission, Council submitted that there are three equity considerations relevant in this instance:

- first, there is a need to do equity [sic] as between existing and new residents, to ensure that contributions are collected in an appropriate proportion from the new population only ...
- second, there is the need for equity between residential and worker populations, to reflect any differential needs for open space arising as between those two populations ...
- third, there is a need for equity between different parts of the municipality, which are differentially served by open space. Some parts of the municipality, by reasons of location or accident of history are far better served than other parts ...²

In his evidence, Mr Shipp agreed that the first two of these are relevant but did not address the third. The Panel accepts that each of the three interpretations of the equity principle are relevant, and they form the basis of a significant part of the Panel's assessment in Chapters 3, 4 and 5.

Accountability

Council submitted that the strict accountability requirements that apply to development contributions and which are set out in Part 3AB of the *Planning and Environment Act (1987)* (PE Act) do not apply here. Rather, the *Subdivision Act 1988* merely requires that funds raised be

¹ *Eddie Barron Constructions v Shire of Pakenham* 6 AATR 10.

² Document 76, [8].

spent on the provision of open space within the municipality. Mr Shipp's interpretation did not differ materially from this. The Panel accepts this position.

1.4 Council's approach

To deliver the required open space needs of the municipality, Council's approach is to use Clause 53.01 of the Planning Scheme to generate contributions of land or a cash contribution equal to a percentage of site value at the time of subdivision. The Panel considers that it has used this provision appropriately.

In his expert evidence for the PPP group of clients, Mr Milner criticised this approach, stating:

The strategic work, with its focus on resident and worker populations and not on subdivision, draws attention to the fundamental weakness of being dependent upon subdivision and a categorisation of land use and subdivision between residential, industrial or commercial purposes as a basis of levying open space contributions.³

The Panel understands the concern raised by Mr Milner. It considers that the primary driver of the need for new open space infrastructure is population, both residents and workers. Subdivision is a useful but imperfect indicator of likely future populations; imperfect because not all larger developments will be subdivided. For example, many commercial developments are not subdivided and an increasing number of residential developments, such as build to rent and student accommodation, are not subdivided. This gives rise to a fundamental inequity between development which is subdivided and therefore contributes to the provision of open space, and development which is not subdivided and creates an increased need for open space but does not contribute under this mechanism.

The Melbourne metropolitan open space strategy, *Open Space for Everyone*, which was introduced into the Planning Scheme during the Hearing through Amendment VC199, has as one of its enabling actions an update to funding and financing models. The Panel considers that it would be appropriate to review the use of the basis of, and trigger for, Clause 53.01 open space contributions as part of any future review of open space funding mechanisms.

It is not the Panel's role to discuss this issue in detail or to suggest alternative models. However, the Panel has a responsibility to identify fundamental weaknesses where it sees them. It considers that given the nature of much commercial development, particularly in inner areas, the Clause 53.01 methodology used is no longer fit for purpose. This is not a criticism of Council. It has used an appropriate mechanism available to it.

Mr Balding submitted that he supported YOSS but did not support the proposed levy. He submitted that on-street car parking spaces used by residents were significantly under-priced and he suggested an annual fee of approximately \$2,000, the revenue for which could be used to provide open space. The Panel offers no comment on this approach.

Consulting Surveyors Victoria (CSV), a body that represents Victorian firms of surveyors, submitted that the lack of discretion in the application of Clause 53.01 can lead to inequity in some cases (Document 51). CSV's concerns focussed on the blanket application of Clause 53.01 to subdivisions necessary for land tenure matters such as realignment of boundaries or a reduction in the number of lots, rather than 'development' as such, and which do not result in an increase in the need for open space.

³ Document 29, [63].

In oral submissions, after acknowledging the existing exemption in Clause 53.01-1 for two-lot subdivisions where the relevant council considers it unlikely that each lot will be further subdivided, Mr Shone for CSV explained that, in practice, CSV members were reporting that councils are deeming two-lot subdivision as being able to be re-subdivided more and more often. Mr Shone explained that as a result, landowners were turning to 'sub-optimal' alternatives such as 99-year leases to avoid having to pay open space contributions for basic boundary realignments which do not create any additional need for open space.

The Panel acknowledges the concerns of CSV and its members and notes that they are not specific to the Yarra provisions. The Panel considers that there may be a case for exemption of purely administrative subdivisions but is concerned how this would be defined and the administrative burden on councils in applying any appropriately worded exemption. For example, how would a council officer determine that a subdivision was purely administrative and would not result in an increase in open space needs. Further, it seems to the Panel that the current issues being experienced result from the *application* of the current exemption, rather than the provision itself.

The Panel considers that it is outside the scope of its role to comment further on the suitability of the existing exemptions to Clause 53.01 but wishes to place CSV's concerns on the record. It is an issue that could be taken up in any future review.

1.5 Procedural issues

Translation of local policy

Initially, Council had not proposed changes to Clause 22.12 as part of the draft Amendment documents. This was because Council had proposed to translate the current Clause 22.12 into Clause 19.02-6L (Public Open Space Contribution) as part of Council's translation of local policy into the Municipal Planning Statement and Planning Policy Framework via Amendment C269yara. To avoid confusion, Council considered that Clause 22.12 should not form part of the Amendment at that stage. Amendment C269yara is proceeding in parallel with this Amendment.

As a condition of authorisation of this Amendment, the delegate of the Minister required an updated Clause 22.12 Open Space Policy to be exhibited. A revised Clause 22.12 was prepared and exhibited. The subsequent translation of Clause 22.12 will depend on the timing of the approval of Amendment C269yara and of this Amendment.

Exhibition period

In its Part A submission, Council advised the Amendment had been exhibited for slightly less than the statutory minimum exhibition period of one month. Notice of the Amendment was sent by post and email on 6 September 2021 and published in the Government Gazette on 9 September 2021. The exhibition period closed on 5 October 2021. Council acknowledged this shortcoming at the Hearing and no submitter raised an issue in response. The Panel determined that there was no evidence that any submitter or potential submitter was detrimentally impacted by the defect and, as provided for under section 166(1) of the PE Act, it would continue to hear and report on the Amendment.

Request for further information

At the Hearing, Mr Gobbo made a submission for a group of clients represented by Planning and Property Partners Pty Ltd⁴ on the appropriateness of the approach used by Council to apportion open space project costs between existing and new populations. As a result, the Panel issued a Direction dated 20 December 2021 (Document 102) seeking further information from Council on the approach used. This followed a pre-Hearing Direction seeking information on the same issue. The Panel made the Direction on the basis that under section 161 (1)(d) of the PE Act it may inform itself in any way it sees fit. Mr Gobbo objected strongly to this proposed request by the Panel on the grounds that he had completed his cross examination of Council's witness, Ms Joanna Thompson, on this matter and that at the time he had almost completed his submission. In subsequent correspondence, Rigby Cooke on behalf of Porta Investments Pty Ltd (Porta), submitted that:

... any such explanation must be limited to an explanation of what was considered in the apportionment that was actually made for the Amendment as exhibited not an ex post facto explanation of the details so provided.⁵

The Panel did not accept the submission by Mr Gobbo. To ensure that all parties were afforded natural justice, the Panel allowed submitters further opportunity to submit on the information provided by Council, both orally at the Hearing on 9 February 2022 and in writing.

The information requested by the Panel was provided (Documents 116 to 121) and was presented to the Panel on 9 February 2022. Further written submissions in response to the further information provided by Council were accepted until 12 noon on 16 February 2022 and the Panel reconvened on 23 February 2022 to allow Council to respond to these. Written submissions on the further information provided to the Panel were received from Piedimonte Properties Pty Ltd (Piedimonte), Porta, and the PPP group of clients (Documents 131 to 133).

With respect to the claimed unfairness of this process in response to the further information provided by Council, Ms Peppler for the PPP group of clients submitted:

The material has also been allowed following Council being able to hear the full case against it. It provides Council with an opportunity to create new substantive technical material to respond to the case put against it, but without the opportunity for proper challenge or response. This process does not allow for procedural fairness.⁶

Norton Rose Fulbright on behalf Piedimonte also submitted that the process was unfair.

The Panel responds that it has afforded parties an opportunity to respond to the further information it requested. The Panel notes that Table 1 in Document 121 is new information prepared specifically for the response to the Panel's request, a matter which was raised on the submissions on the new information and acknowledged by Ms Thompson. It is weighted accordingly by the Panel. This is discussed further in Chapter 4.3 which addresses apportionment between existing and new populations.

⁴ At the Hearing, Mr Gobbo QC and Ms Peppler represented a group of 13 clients of Planning and Property Partners Pty Ltd. Refer to Appendix B of this Report for a full list of submitters.

⁵ Document 104.

⁶ Document 133, [3].

1.6 Summary of issues raised in submissions

The key issues raised were:

- the magnitude of the proposed increase in the open space contribution rate
- the strategic justification for the increased contribution rate
- lack of transitional provisions
- inconsistency of proposed rate as compared to that imposed in other municipalities
- the appropriateness of a single rate for the whole municipality
- apportionment of costs between existing and new users of open space
- the total costs of open space, both land and capital components
- impact on housing affordability
- justification for imposing the contribution on non-residential uses
- lack of bespoke arrangements for strategic redevelopment sites
- the adequacy of open space in Yarra currently
- impact of the contribution rate on the economic viability of projects
- need for greater flexibility in the way in which an increased contribution is implemented
- the consideration of the principles of need, nexus, accountability and equity
- the currency of the data on which the YOSS is based
- the timing of the Amendment in relation to the economic impact of COVID19.

1.7 The Panel's approach

The Panel has assessed the Amendment against State and local policy. Further, it has assessed the YOSS and its proposed implementation. It has not undertaken a formal 'net community benefit' analysis. This is because the need for more and enhanced open space in Yarra is clear and was not disputed. The Panel considers that the implementation of the Amendment will generate significant benefits for existing and new populations in Yarra.

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

This Report deals with the issues under the following headings:

- Planning context
- Yarra Open Space Strategy (YOSS)
- Open space contribution rate
- Issues arising in calculating and applying the open space contribution
- Impacts of the proposed open space contribution rate
- Statutory planning issues
- Interim open space contribution rate.

2 Planning context

2.1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework. These are summarised below.

Victorian planning objectives

The Amendment will assist in implementing State policy objectives set out in section 4 of the PE Act by facilitating the fair, orderly economic and sustainable use and development of land. Council submitted that this objective is addressed by providing:

- an equitable method to collect contributions for public open space based on the need created by subdivision of new development
- certainty and consistency as to the required public open space contribution for subdivision of land in Yarra.

Further, Council submitted that the Amendment addresses the following objectives in section 4 of the PE Act:

- to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community
- to balance the present and future interests of all Victorians.

Clause 11 - Settlement

The Amendment supports Clause 11 by:

- building on strengths and capabilities of each region across Victoria to respond sustainably to population growth and changing environments
- developing settlements that will support resilient communities and their ability to adapt and change
- balancing strategic objectives to achieve improved land use and development outcomes at a regional, catchment and local level.

Clause 12 - Environmental and landscape values

The Amendment supports Clause 12 by ensuring that natural features are protected and enhanced.

Clause 15 - Built Environment

The Amendment supports Clause 15 by promoting a diversity of public open space to support future subdivision development that foster a healthy lifestyle and achieve community benefit from well-designed neighbourhoods.

Clause 19 - Community Infrastructure

The Amendment supports Clause 19 by seeking to protect and expand the public open space network to address the current and future gaps of provision.

Clause 21.02 – Municipal Strategic Statement

With respect to open space this Clause recognises:

There is an inherent discrepancy in open space distribution across the municipality due to historical settlement patterns and types of land use. The majority of Yarra's open space is located in the north-eastern area of the municipality with just over 70% located in North Fitzroy, Clifton Hill, Alphington and Fairfield, where 25% of the population lives. By contrast, Collingwood has just 0.12 hectares of open space with 7.4% of the population in residence there. 13% of Yarra's population lives in Fitzroy where there is a total of 2.2 hectares of open space. Other areas with almost no open space include Cremorne and North Richmond. There are important open space resources adjacent to Yarra's boundary, one of which is Princes Park.⁷

Clause 22.12 - Public Open Space Contributions)

The Amendment supports the following objectives of Clause 22.12 which are common to both the existing and amended Clause 22.12:

- to fund a fair proportion of the open space projects contained in the YOSS that will meet the needs of the forecast residential commercial and business population
- to contribute to improvements to existing public open space and provide new public open space on behalf of the forecast population
- to expand the public open space network to accommodate the growth in population predominantly in medium to high density urban development located across the municipality.

The Amendment meets these objectives by:

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

2.2 Other relevant planning strategies and policies

State and regional plans and strategies

(i) Plan Melbourne

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

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. Outcomes that are particularly relevant to the Amendment are set out in Table 4.

⁷ Document 22, [122].

Table 4 Relevant parts of Plan Melbourne

Outcome	Directions	Policies
5. A city of inclusive, vibrant and healthy neighbourhoods	5.1 Create a city of 20 minute neighbourhoods 5.3 Deliver social infrastructure to support strong communities 5.4 Local parks and green neighbourhoods	5.4.1 Network of accessible high quality local open spaces
6. Sustainable and resilient city	6.4 Cooler and greener Melbourne	6.4.1 Support a cooler and greener Melbourne by greening urban areas, buildings, transport corridors and open spaces to create an urban forest. 6.4.2 Strengthen the integrated metropolitan open space network

(ii) Protecting Victoria's Biodiversity 2037

The strategy recognises that the natural environment is fundamental to the health and wellbeing of every Victorian.

(iii) Lower Yarra River Corridor Study, 2016

This Department of Environment, Land, Water and Planning (DELWP) commissioned study was aimed to ensure that development does not further encroach on the river and impact its value for recreational purposes.

(iv) Yarra River Action Plan 2017

A Victorian Government prepared plan which supports the importance of the Yarra River corridor as an open space corridor that adjoins the City of Yarra.

(v) Yarra River Protection (Willip-gin Birrarung Murrumbidgee) Act 2017

This Act enshrines the protection of the Yarra River. The Act includes a number of guiding principles which affect how the Council protects and manages the river and associated parklands.

(vi) Draft Yarra Strategic Plan

This integrated corridor plan was developed collaboratively by the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation and all 15 state and local agencies involved in managing the river.

(vii) Active Victoria – A strategic framework for sport and recreation in Victoria 2017-2021

This framework highlights the benefits of sport and active recreation in developing a healthier community, economic growth and jobs, community cohesion and liveability.

(viii) Inner Melbourne Action Plan – regional sport and recreation strategy

Prepared for inner metropolitan councils, this plan recognises that historic approaches will not be enough to meet current and future sport and recreation needs due to the high cost of land.

(ix) Open Space for Everyone

Open Space for Everyone: Open Space Strategy for Metropolitan Melbourne, 2021 (Open Space for Everyone) is a broad strategic policy prepared by the State government with a vision of Melbourne being a city in nature with a flourishing and valued network of public open space that is shared and accessible to everyone. Based around the following four goals, it sets out actions to deliver on its vision for future open space in metropolitan Melbourne:

- improved community health and well being
- healthier biodiversity
- enhanced climate change resilience
- maximised economic and social benefits.

During the Hearing, this adopted State strategy was introduced into the Planning Scheme at Clause 19.02-6R through Amendment VC199, therefore giving it greater weight.

Relevant Council Plans and Strategies**(x) Council Plan 2017 – 2021**

The community consultation undertaken in the preparation of this plan identified open space as the second most important characteristic that residents like about Yarra and the third most important issue for Council to address. The Plan is based around seven objectives which open space has a role in contributing towards.

(xi) Yarra Housing Strategy 2018

This strategy addresses housing trends in Yarra and the challenges arising from the continuing trend of higher density housing projects. This has provided input into the open space strategy.

(xii) Yarra Spatial Economic and Employment Strategy 2018

This strategy provides a detailed assessment of land use and floorspace demand in six retail (mixed use) and seven commercial/ industrial precincts in Yarra. The YOSS uses the non-residential forecasts prepared as part of this strategy as input.

(xiii) Urban Forest Strategy 2017

This strategy provides a clear direction for the future care and management of trees in Yarra. It includes evidence of the cooling effect of the tree canopy cover in Yarra.

(xiv) City of Yarra Biodiversity Health Survey, Discussion Paper 2018

This study establishes a baseline for biodiversity values associated with open space. A total of 30 open spaces were assessed along with 10 pocket parks and 12 streetscapes.

(xv) Yana Ngargna Plan 2020-2023

The Plan clearly sets out the role of the Yana Ngargna working group who guide action and coordinate projects that build cultural awareness and confidence across Council. The plan has four

priority commitments which include protecting important places and improved health and wellbeing outcomes.

2.3 Planning scheme provisions

The Amendment applies to all land zoned for residential, industrial and commercial purposes in the City of Yarra.

2.4 Ministerial Directions and Practice Notes

Ministerial Directions

The Amendment is consistent with Ministerial Direction 9, Metropolitan Strategy as it:

- provides a greater understanding of public open space needs for the Yarra
- increases the availability, usability and access to public open space
- provides opportunities for social interaction
- greens the urban environment.

The exhibited Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments).

Planning Practice Notes

The following Planning Practice Notes (PPN) are relevant:

PPN13 – Incorporated and Background Documents

PPN13 provides guidance on when a document should be an incorporated or background document and describes the role of each. The Amendment has been prepared having regard to PPN13 and as such it is proposed to include the YOSS as a reference document, replacing the 2006 Strategy.

PPN70 – Open Space Strategies

PPN70 provides guidance on the preparation of an open space strategy, including open space classifications and undertaking analysis in relation to existing supply, future demand and gaps in the existing open space network. Council submitted that there is a high level of correlation between the methodology adopted in the YOSS and PPN70. PPN70 sets out a list of principles that an open space strategy should include. Council included an assessment of YOSS against these principles at Attachment D to its Part A submission (Document 22).

PPN70 does not provide guidance on the methodology for calculating an open space contribution rate, nor on apportioning costs of open space projects between residents and workers or between existing and new populations.

2.5 Discussion and conclusion

Some submitters contended that the Amendment lacked strategic justification. However, these submissions generally focussed on aspects of the Council's approach rather than the overall support in State and local policy for the provision of appropriate high quality open space, a matter which was either essentially supported or at least not challenged to the extent that is of concern to the Panel.

For the reasons set out in the following Chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following Chapters. However as set out in Chapter 8, finalisation of the Amendment should not occur until further work is undertaken by Council.

3 Yarra Open Space Strategy

This Chapter outlines the key elements in determining the need for and distribution of future open space in Yarra.

In Chapter 2, it was concluded that the Amendment is broadly strategically supported by State and local policy. Further there was little suggestion that the YOSS was not strategically supported by policy. In its part B submission, Council assessed the YOSS against the strategic principles in PPN70. Under cross examination by Ms Brennan, Mr Milner conceded that the YOSS was generally sound, well researched and laudable and broadly complies with PPN70. The Panel concludes that the YOSS is well supported in policy.

3.1 Projections of the new resident and worker population

(i) The issues

The issues are:

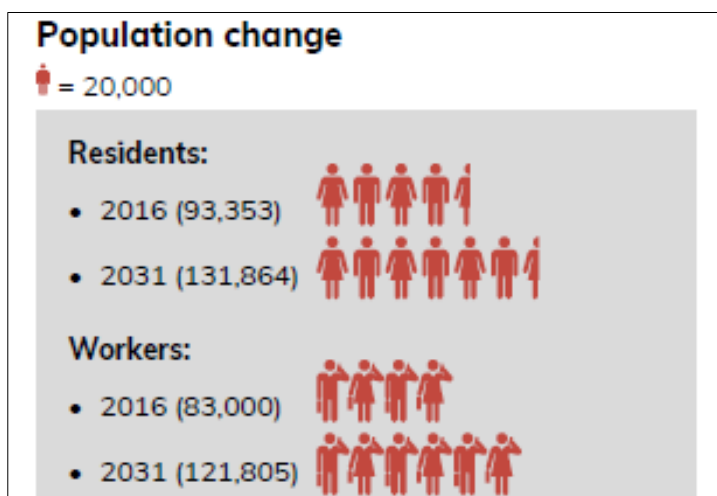
- whether the projections of new resident population are appropriate
- whether the projections of new worker population are appropriate.

(ii) Background

The resident population forecasts used in preparing the YOSS are based on data from .id Consulting dated 16 October 2018 which indicates that Yarra's resident population is expected to increase by about 40 per cent between 2016 and 2031. The worker population forecasts are based on the *Yarra Spatial Economic and Employment Strategy 2018* (SEES) prepared by SGS Economics and Planning which forecasts an increase in Yarra's worker population by about 47 per cent between 2016 and 2031.

These resident and worker populations are referred to collectively in this report as the "new population". These population changes are illustrated in Figure 5.

Figure 5 Components of population change



Source: Council Part A submission (Document 22) [44]

(iii) Evidence and submissions

Both forecasts were prepared prior to the impact of COVID19. Dr Eagleson prepared a memorandum canvassing the potential impacts of COVID19. On her assessment, the population growth for Yarra will still be met, albeit most likely three or four years later than forecast due to COVID19 impacts. This issue is discussed further in Chapter 3.4.

Some submissions questioned the accuracy of the data used and contended that the data was out of date referencing, in particular, the YOSS being based on data from the Council's Housing Strategy and the SEES both of which were produced using 2016 census figures.

The forecast changes in resident and worker populations were prepared at the municipality level and broken down at the precinct level used in the YOSS. The details of the forecast changes and implications on open space planning are explained in detail in Chapter 4 of the Technical Report (Document 15). The Housing Industry Association (HIA) questioned the accuracy of Council's significant resident population growth projection of 41 per cent over the period 2016 to 2031 in the context of its own economic modelling and the Victoria in Future forecasts, a falling dwelling completion rate based on its analysis, the COVID19 pandemic and the projections of transport modelling to 2036 on Melbourne's population growth. HIA submitted that its economic modelling forecasts that Yarra's resident population will grow by 33.9 per cent (31,802 people) over the period 2016 to 2031 and that the Victoria in Future forecast at 35.5 per cent (32,962 people) growth is closer to the HIA forecast.

Council rejected HIA's submissions that the new population forecasts used in the YOSS were not accurate. In oral submissions, Ms Brennan asserted that no better information than the forecasts prepared by .id Consulting are available and are as accurate as can be, given the impacts of COVID19.

Ms Kay noted in her evidence for Council that the population data cover the period 2016 to 2031, both of which are census years. She stated that census years are preferred because it is easier to go back to a census year to determine the accuracy of the original forecasts and thus the appropriateness of the open space program being implemented. Ms Kay expressed a high level of confidence in using data developed for the same time period, being 2016 to 2031, and viewed as significant the fact that the resident and worker population forecasts were prepared at the same time and using the same urban planning framework. She stated that:

I would have less confidence in the public open space contribution rate if data from different time periods were to now be substituted in the calculation, for example, the use of data prepared in both 2018 and 2021, or for different population forecast periods. I would view this as potentially being an "apples and oranges" situation. I note that the rate calculation directly results from the residential and worker forecasts, and from the 2020 Strategy needs assessment.⁸

Ms Thompson commented in oral evidence that the new population forecasts are linked to census years.

(iv) Discussion

Aside from the HIA which cited lower population forecasts, no other parties questioned the new population projections used by Yarra in preparing the YOSS. The HIA did not provide details of its economic modelling.

⁸ Document 24, [66].

The Panel notes that the .id Consulting resident population forecasts and the SEES employment forecasts are over the same timeframe as the YOSS, and are tied to census years which, as noted by Ms Kay, is an important factor in allowing ease of reference back to a census year to confirm the accuracy of the forecasts.

The Panel has no concern as to the accuracy and currency of the data used in the forecasting work which was done in 2018 based on 2016 census data, the most current and comprehensive data available at the time. The Technical Report sets out in some detail the analysis done to determine the new population forecasts and the Panel is satisfied that this analysis is robust and is the best available forecasting for the City of Yarra at the municipality level.

The impacts of COVID19 will most likely affect the timelines as to when the projected population levels will be met but in the Panel's view, this does not fundamentally call into question the quantum of the new population growth projections.

(v) Conclusion

The Panel concludes the projections of new resident and future worker populations are appropriate.

3.2 Quantum and distribution of proposed open space

(i) The issues

The issues are:

- whether the quantum of proposed open space is appropriate to the needs of the existing and new populations
- whether the open space proposed is appropriate given the open space hierarchy
- whether the treatment of barriers to accessing open space is appropriate
- whether the accessibility of existing open space in adjoining municipalities is appropriately allowed for
- whether the distribution of proposed open space is appropriate to the needs of existing and new populations.

(ii) Evidence and submissions

Ms Thompson gave expert evidence for Council on open space planning as the principal author of the YOSS and the Technical Report. Her evidence was that open space is important for a range of reasons including physical health, fitness and wellbeing, mental health and wellbeing, social connectedness, urban heat island effect (UHIE) mitigation, biodiversity, cultural heritage and character, and events and arts. On many occasions during her evidence and cross examination, Ms Thompson referred to the provision of open space that is easily accessible to all within the municipality as being one of the key underlying objectives of the YOSS.

She described the magnitude of forecast change of an extra 77,000 new population forecast in Yarra from 2016 to 2031 as 'substantial'.⁹

She stated that the overall directions that guide the detailed precinct analysis and actions that implement the YOSS over the next 15 years are to:

⁹ Document 25, [3.1.6].

- improve the quality of existing open spaces including the type of facilities and the overall character and condition
- provide open space within easy walking distance of where everyone lives and works to address the gaps in the existing network with priority given to locations where higher levels of growth is forecast to occur
- assist to mitigate urban heat island effect with a well distributed open space network through high density precincts that contain natural features which absorb moisture
- improve community health and wellbeing with a linked and accessible open space network that people can easily walk to
- increase urban greening.¹⁰

Ms Thompson explained that the methodology for the open space needs assessment that informed the YOSS included:

- visiting all existing open space reserves in the City of Yarra and documented their quality
- reviewing background documentation
- working with her in-house team to map and quantify the existing open space (Section 3 of the Technical Report)
- allocating the open space hierarchy and the walking catchment applicable to each existing open space to produce the Open Space Gap Analysis map (Figure 3F in the Technical Report)
- using the dwelling and population forecast data sourced and assembled by Ms Kay, assessed (with Ms Kay) the influence of the forecast change on open space needs, including population growth, increased urban densities, climate emergency and increased levels of use on the open space planning (Section 4 of the Technical Report)
- developing the open space hierarchy and criteria for open space based on her research (including a community engagement process) and applied this to the precincts as part of a precinct-based open space needs assessment
- preparing individual prioritised 'Actions' (or projects) for each precinct to address the open space needs identified
- preparing the YOSS POPC (which is described in Chapter 1.3).¹¹

To assess the needs of the existing population,¹² Ms Thompson relied on a range of factors including the outcomes of a community engagement process undertaken by Council (using questions and a survey prepared by Ms Thompson's firm). Ms Thompson stated the survey results were used in a more qualitative than statistical way and she took note of existing levels of use and satisfaction with the open space as expressed in the surveys.

To assess the needs of the new residential population, Ms Thompson relied on the projected population and its distribution within Yarra, as provided by .id Consulting, together with the projected spatial distribution of the residential population in the *Yarra Housing Strategy 2018* (Figure 4A in the Technical Report). For the new employment population, she relied on Tables 4, 5 and 6 of the SEES, in particular the spatial distribution of Employment and Retail Precincts (Figure 4B in the Technical Report).

¹⁰ Document 25, [3.1.7].

¹¹ Document 25, [2.1].

¹² Although the YOSS includes projects addressing the needs of both existing and forecast populations, Ms Thompson's evidence clarified that where the forecast population is not creating the need for a project, the project would not be eligible for a contribution. Document 25, [3.1.2].

Ms Thompson considered a range of factors in assessing the needs of the new population including:

- future population densities
- spatial distribution of existing open space
- the hierarchy, character and condition of the existing open space
- the proposed urban form. In locations where higher densities and concentrations of the new resident and worker population are proposed as shown in the Yarra Housing Strategy and the SEES. It is assumed there will be a greater demand placed on open space in the immediate vicinity of the new population. The increased number of residents and workers using existing open space creates additional demand for facilities such as seating areas, fitness equipment, picnic facilities, paths and playgrounds etc.
- urban layout including presence of any physical barriers to safe pedestrian access to open space.¹³

These factors were also used in the apportionment of costs between existing and new populations and are addressed further in Chapter 4.3.

Ms Thompson reviewed and assessed the above information and analysis and assessed the additional works that would be required for the new population beyond catering for the existing population for each precinct. These became the developed 'Actions' (or projects) which were then costed in the YOSS POPC.

Ms Kay gave expert planning evidence for Council on the strategic underpinnings of the YOSS and related documentation. She referred to the following aspects of Plan Melbourne as being particularly relevant:

- The 20-minute neighbourhood: Ms Kay noted that a *"key feature of the YOSS is to provide access to safely walkable public open space"*¹⁴
- Delivering local parks and green neighbourhoods: After referring to the need to ensure that open space across the municipality is of sufficient size and quality to support an appropriate mix of activities, to improve the environment and habitat, and to provide urban cooling, Ms Kay stated that *"This principle is further enhanced with Policy 5.4.1 to develop a network of accessible, high-quality, local open spaces that includes access for all members of the community"*.¹⁵

Ms Kay stated that *Open Space for Everyone* shifts focus from its predecessor strategy *"from regional parks to work toward more equitable access to open space across metropolitan Melbourne"* and that the themes of *Open Space for Everyone* had already been incorporated in the YOSS including *"strategy recommendations to deliver safe and walkable accessibility to open space; promote community health and well-being; maintain and enhance a healthy biodiversity; and address climate change resilience and sustainability"*.¹⁶

Council submitted that the YOSS meets the requirements of PPN70 and that despite challenges to specific aspects of the YOSS, the vast majority of the work undertaken for the YOSS had not been challenged.

¹³ Document 25, [3.3.3]. The Contributions Report states at p. 3: *"Major roads and other physical features can form 5 to safe and easy walking access to public open space, which is a key consideration in the open space needs analysis."*

¹⁴ Document 24, [27].

¹⁵ Document 24, [30].

¹⁶ Document 24, [34] & [35].

Mr Milner gave evidence that the Amendment “*should be recognised as generally sound strategic open space planning*”¹⁷ for a range of reasons. These included that it systematically documents Yarra’s existing current open space provision and identifies existing gaps, analyses expected open space demand having regard to population projections and socio-economic analyses and systematically identifies anticipated open space needs on a sub-precinct basis. However, he criticised the weight given to open space in adjoining municipalities (discussed further below) and the needs assessment’s failure to account for a wider range of open spaces such as streetscapes, school grounds and privately owned business open space. Under cross examination, Mr Milner stated that providing open space within safe and easy walking distance has strong strategic support.

Mr Black in evidence for Piedimonte, stated that the YOSS has been prepared generally in accordance with PPN70 and “*is in a form that is generally consistent with other public open space strategies that have been prepared for municipalities in the inner and middle ring municipalities of Melbourne*”.¹⁸ Under cross examination, Mr Black said that the planning underlying the YOSS was broken but then retracted that statement and said that the gap analysis was flawed.

Overall, the PPP group of clients submitted that Council’s needs assessment and the substantiation of the projects (the Actions in the POPC) was not satisfactorily undertaken. After acknowledging that Ms Thompson’s needs assessment had been informed by a variety of relevant factors, Mr Gobbo for the PPP group of clients submitted that the YOSS lacks an objective justification for *how* the open space projects said to be needed have been determined including:

- whether any given open space project is needed in a particular location or form
- which population is producing the need
- what type of open space within the open space hierarchy is justified.

Mr Shipp criticised Ms Thompson’s open space needs assessment:

While there is no doubt that the additional population and employment projected for the municipality will generate additional demand for open space, in my view it is difficult to determine from the exhibited material exactly how the quantum of projected growth has been translated into an estimate of open space need, and subsequently whether the recommended actions are needed by the existing or future populations, and in what proportions.¹⁹

Mr Shipp stated that the Actions specified for each precinct are “*as much designed to address existing gaps in provision [of open space] as they are to provide new open space for projected growth*” (noting that Mr Shipp also took issue with the apportionment of costs as between existing and forecast populations, which is discussed in Chapter 4.3).²⁰

Reliance on open space in adjoining municipalities

Mr Milner stated that it is unclear what weight had been given to Yarra’s access to open space on nearby land in adjoining municipalities in the open space needs assessment and the accounting for open space in adjoining municipalities had not been clearly or consistently applied. He provided examples where adjoining open space was considered in the precinct needs assessments and others where it was not.

¹⁷ Document 29, [9].

¹⁸ Document 31, [12] to [13].

¹⁹ Document 28, [85].

²⁰ Document 28, [145b].

Mr Milner concluded:

... greater weight should be given to the City's extraordinarily good access to a choice of substantial parks and river corridors of metropolitan significance located proximate in the adjoining municipalities. These open space assets, at the fringe of the municipality, enable integrated access through expansive parklands and extended trails without equal in many outer and middle-distance suburbs.

C286 accordingly lacks the balance and justification to levy what would be one of the highest open space contribution rates in the State to deliver public open space potentially well exceeding the City's reasonable open space requirements.²¹

Mr Gobbo questioned whether the need for Action 7.8A-2, a \$37,000,000 new Local Open Space in Fitzroy B, to the immediate east of the Carlton Gardens, had been adequately justified or whether a Small Local Open Space in the realm of \$7,000,000 would be sufficient. He submitted that Ms Thompson had given no recognition to the proximity of the Carlton Gardens, which he submitted is readily accessible across Nicholson Street.

Along similar lines, Piedimonte submitted that the YOSS overstates the need for open space, with one reason for this being the failure to consider existing public open space which is close to the municipal boundary. Mr Black stated that this failure "*sets unrealistic pressures on the open space needs within the municipality, and results in an inaccurate gap analysis*".²² He gave as an example the suburbs of Central Richmond and Cremorne which have large areas of open space adjacent to Yarra on the western side of Punt Road, yet the YOSS showed these areas as having large gaps in the provision of existing open space.

In its closing submission, Council rejected suggestions that the YOSS had not appropriately considered access to and use of open spaces outside the municipality and pointed to examples of where the Technical Report referred to adjoining and nearby open spaces such as Yarra Park, Princes Park, Northcote Park, Gosch's Paddock, Como Park, Hardy Gallagher Reserve, Fitzroy Gardens, Carlton Gardens and the Royal Botanic Gardens. Council also pointed to Figure 5A of the Technical Report, the 'Schematic plan illustrating the type and location of proposed new open space', which it submitted clearly showed adjoining open space and had been misinterpreted by Mr Black and the PPP group submission.

Crossing roads

Piedimonte submitted that the open space needs of Fitzroy North in particular but also more generally across Yarra are overstated because roads do not constrain access to open space as much as has been assumed in the YOSS, giving as an example the need for the new Fitzroy North small local park on the basis that crossing Brunswick Street would be a barrier. Mr Black gave evidence that roads do not constrain access to open space as much as indicated in the YOSS, although he did acknowledge that for some people crossing a main road can be a physical barrier to accessing open space.

Specific Actions

Action 7.5A-6 in Collingwood

The PPP group of clients questioned why a Small Neighbourhood Open Space rather than a Local Open Space was needed for Action 7.5A-6 in Collingwood C, submitting that the relevant

²¹ Document 29, [121] to [122].

²² Document 31, [172].

explanation in the POPC suggests that the population that justifies the larger open space is expected to come after 2031 and therefore outside the YOSS.

Under cross examination by Mr Gobbo on whether the Small Neighbourhood Open Space was justified by the population growth to 2031, Ms Thompson gave evidence that the strategy was to deliver a smaller area during the timeframe of the YOSS rather than waiting for the whole area to be delivered at a later date. She referred to the relevant population forecasts and confirmed that she had not applied a different methodology to this needs assessment. Council submitted that Ms Thompson had responded to cross examination on this point that the open space could be provided in a staged way. However, it submitted that if the Panel is not satisfied that a Small Neighbourhood Open Space is justified for the 2031 population, the Panel could recommend that this action (and related costs) be adjusted accordingly which would reduce the costs from \$59,000,000 to \$30,000,000 to be apportioned between the existing and new population on a 50:50 basis.

Action 7.8A-2 in Fitzroy B

As noted above, the PPP client submission questioned Action 7.8A-2 in Fitzroy B on the basis that insufficient account had been taken of access to Carlton Gardens.

Action 7.9A-1 in Fitzroy North

Piedimonte questioned the need for the proposed new Small Local Open Space in Fitzroy North B, using this as an example to illustrate its submission that the need for new open space has been overstated.

Ms Thompson gave evidence that there is an existing need for this open space and that Edinburgh Gardens is becoming overused. She said it would also be required for the new population and to take pressure off Edinburgh Gardens. Mr Black did not give evidence on this matter.

Action 7.5B-4 in Fairfield

Action 7.5B-4 is to “continue to implement the [Fairfield] masterplan including a major upgrade to the playground and picnic facilities at the park ... for both the existing and forecast populations”.²³

Porta submitted that there had been no explanation of the need for a full upgrade of the playground and picnic facilities, part of the Fairfield Masterplan, particularly where the increase in residential population in Fairfield is forecast to be only 57 people and the number of children in this forecast population would be considerably less. Furthermore, there had been no need for further improvement to the existing open space network for the existing population in Fairfield identified in the survey results.

Ms Thompson noted that there is no land acquisition proposed in Fairfield and the contribution required was to cover upgrades which would be targeted at neighbourhood use. Under cross examination, Ms Thompson would not agree that Fairfield and the area around the Porta site was overendowed with open space, but she did accept that it abuts public open space that even in 2041 would be over three times the standard aspired to by the Amendment. Council submitted that Porta did not challenge the Action *per se*, but merely the apportionment.

²³ Technical Report, p. 295.

(iii) Discussion

At the outset, the Panel notes the expert evidence of Mr Milner that the Amendment and supporting documentation should be recognised as generally sound strategic open space planning. All experts appeared to agree that the Amendment is generally in accordance with the statutory framework and PPN70. The Panel notes the evidence of Mr Black given under cross-examination by Ms Brennan that the planning underlying the YOSS was broken, and which was later retracted and confined to criticism of the gap analysis (8 February 2022). The Panel considers that Mr Black's evidence was not convincing in this regards.

The Panel notes that submitters did not question the open space hierarchy itself or the factors that Ms Thompson considered in the needs assessment, but instead focussed their criticism on how that assessment translated into specific Actions, or projects, including the particular open space type in the hierarchy was said to be required, and that it allegedly lacked an objective basis. The Panel has interpreted this as being an objection to the weight given to the various factors in the needs assessment and application of the methodology by Ms Thompson, including whether Ms Thompson should have quantified the relevant factors. Indeed, much of the disagreement between experts, Mr Shipp and Ms Thompson in particular, appeared to be a difference of approach: Mr Shipp clearly prefers a quantitative approach while Ms Thompson's approach is unashamedly qualitative. However, the statutory framework and PPN70 do not mandate, or even prefer, one approach over another. The YOSS and the open space needs assessment cannot fail on this point alone.

The Panel agrees that, in terms of the needs assessment and the resulting recommended Actions, a great deal rests on the qualitative judgement of one person, Ms Thompson. Her role in this respect is addressed further in Chapters 4.3 and 8. However, the Panel notes that while other experts questioned Ms Thompson's application of the YOSS methodology, there was no serious questioning of her expertise as an open space planner and her experience in the field. Further, the Panel also notes that Mr Milner and Mr Black, while planners, both agreed under cross examination that they were not expert open space planners. The Panel agrees that it may have been better to have a more thorough (peer) review built into the process and the Panel would recommend this to other planning authorities embarking on this exercise in the future. However, the Panel does not consider that this is fatal in terms of the needs assessment and the YOSS overall. The Panel discusses the role of a peer review in relation to the apportionment exercise in Chapters 4.3 and 8 below.

The Panel has carefully reviewed the way in which the Technical Report treats the issue of access to and use of adjoining open spaces in other municipalities and agrees with Council's submission that the issue was specifically considered as part of the needs assessment. The Panel takes note of the evidence of Ms Thompson that one of the key drivers of the YOSS was the desire to provide open space to all within the municipality and that it should be easily accessible to people of all ages and abilities. In many instances, use of open space in adjoining municipalities would require crossing of major roads. The Panel considers the weight given to this factor to be clearly justified by reference to the strategic direction for open space as set out in *Open Space for Everyone*. As a result, the Panel does not agree that the YOSS suffers from an over statement of the barriers of roads. The fact that Council has no control over the condition or continued existence of open spaces outside its municipality is important and that an over-reliance by Council on open spaces existing in adjoining municipalities would be open to the criticism that the strategy is 'undercooked'.

As a result, the Panel considers that there has been appropriate weight given to open space in adjoining municipalities.

In terms of the particular Actions that were questioned, the Panel makes the following comments:

- Action 7.5A-6 in Collingwood C: The Panel has reviewed the justification for the need for a Small Neighbourhood Open Space in this location rather than a Local Open Space and considered the evidence given by Ms Thompson under cross examination by Mr Gobbo on this point. Although the Panel considers that under cross examination Ms Thompson did not adequately clarify that the Small Neighbourhood Open Space was required by the forecast population up to 2031, that is the population to be considered within the YOSS timeframe, rather than being driven by later population growth (that is the population forecast between 2031 and 2041), the justification given in the Technical Report for the recommendation for a Small Neighbourhood Open Space in Collingwood C is clearly confined to the 2031 forecast population. The Technical Report notes that this open space will need to be increased in size between 2031 and 2041 to add a new Local Open Space and *“it is recommended that this be considered in the siting of this new Small Neighbourhood open space”*.²⁴
- Action 7.8A-2 in Fitzroy B: The Panel notes that one of the key reasons given by the PPP client submission for disputing the size of the proposed open space was that the gap analysis contained *no* recognition of the Carlton Gardens. As discussed above, the Panel considers that the needs assessment has properly considered adjoining open space in other municipalities.²⁵ A further reason given was that the Carlton Gardens is readily accessible across Nicholson Street. The Panel has considered the evidence given by Ms Thompson in response to cross examination by Mr Gobbo. The Panel acknowledges that there are several pedestrian crossings on Nicholson Street, an arterial road, that could be used to access the Carlton Gardens. However, the Panel has already noted above that it considers it appropriate that the YOSS and background documentation are premised on the strategy that open space must be accessible to all, regardless of ability, and that there has not been an overstatement of the barriers presented by roads. On this basis, the Panel considers that there is no compelling evidence to overturn the existing recommendation for a new Local Open Space in Fitzroy B.
- Action 7.9A-1 in Fitzroy North: The Technical Report states that Action 7.9A-1 is to be provided to address a gap in the existing open space network in the southern part of Fitzroy North B and so that the community living and working in Fitzroy North B can easily walk to open space nearby without crossing a major road. As noted above, given the clear strategic justification for making open space easily accessible to people of all ages and abilities, the Panel considers that appropriate weight has been given to the issue of crossing roads. More generally, the Technical Report states that new (and expanded) areas of open space in Fitzroy North will aim to cater to the local open space needs as suitable alternatives to Edinburgh Gardens, *“given the high levels of use and activity at the Gardens”*.²⁶ The Technical Report also identifies that in Fitzroy North the forecast new population will lead to pressures on existing open space and the risk of

²⁴ Technical Report, p. 254.(original emphasis)

²⁵ In relation to the Carlton Gardens, the Panel notes in particular that the Technical Report recognises that “Carlton Gardens in the adjoining City of Melbourne is valued and forms part of the open space network that is used by the community” (at p. 310).

²⁶ Technical Report, p. 332.

overcrowding. The Panel accepts the evidence of Ms Thompson that the Edinburgh Gardens is reaching its capacity, a proposition that was not generally challenged at the Hearing, and that a smaller area of open space in this area is required to take the pressure off Edinburgh Gardens and to provide an alternative, easily accessed area of open space in the southern part of Fitzroy North B.

- Action 7.5B-4 in Fairfield: The Panel notes that the open space and future need description for Fairfield in the Technical Report identifies the need to continue to implement the existing masterplan for Fairfield Park but does not provide any identifiable reason for the proposed major upgrade to the playground and picnic facilities at the park. Cross examination of Ms Thompson did not reveal any real justification for the major upgrade. The Panel has considered both the Fairfield Park Master Plan 2010 and the Fairfield Park Masterplan Summary Report 2010 (Documents 37 and 38) and considers that they shed no further light on why the upgrade is said to be needed. The Panel does not accept Council's submission that Porta did not challenge the need for the upgrade and considers that Porta challenged both the need for the Action and the apportionment.

The Panel notes that the above objections to the above specific Actions were given by submitters as examples of the YOSS having overstated the open space needs of the municipality, or in particular precincts or locations. The Panel considers that the specific Actions are strategically justified in all instances except Action 7.5B-4 in Fairfield. As detailed above, the overall methodology and factors considered by Ms Thompson in the needs assessment to be appropriate, including the weight given to open space in adjoining municipalities and the desire to provide open space that is accessible to all.

While the Panel would have preferred to have seen some kind of (peer) review of Ms Thompson's needs assessment and translation into specific Actions, on balance the Panel is of the view that the lack of peer review is not fatal on this point, and the quantum and distribution of proposed open space is appropriate to the needs of existing and new populations and is appropriate to the open space hierarchy proposed.

(iv) Conclusion

The Panel concludes that the YOSS and the Actions identified in the POPC are sound and strategically justified except that there is no strategic justification for Action 7.5B-4 in Fairfield and this item should be removed from the YOSS POPC.

3.3 Open space needs of new residents and workers

(i) The issues

The issues are:

- whether the open space needs of new residents and workers are appropriately assessed
- whether the open space needs of residents and workers should be regarded as equivalent for the purpose of calculating total future open space provision.

(ii) Evidence and submissions

As noted in Chapter 3.2, surveys and other forms of community engagement were used to understand what people value about open space and the current patterns of use of existing open space by residents and workers. The resident survey was a self-selecting survey with 1274

completed surveys received (out of 92,894 residents). The worker survey was an intercept survey in four different employment precincts in Yarra with 498 worker surveys completed. The survey findings are detailed in the Technical Report (Appendix B).

Ms Thompson stated that the research work done for the YOSS confirmed that workers use open space as well as residents and:

Based on the outcomes of the worker surveys and the aim of creating attractive and sustainable high density employment precincts in Yarra, I am of the opinion that addressing the local open space needs of the worker population is of equal importance to the resident population in the City of Yarra.²⁷

In oral evidence, Mr Milner stated that it was difficult to reconcile the resident and worker surveys and one cannot draw the link that the need for open space for workers and residents is the same. He noted that 25 per cent of residents worked in Yarra and a significant per centage worked and lived in the same precinct which in his view could amount to 'double counting'.

Mr Black noted in his evidence that the open space strategies of other councils do not appear to consider worker population growth to the same extent as has Yarra and while the impact of worker growth is considered in other strategies, *"this is not treated as equal to resident population growth in the context of calculating the need for new open space"*.²⁸ He concluded that the approach taken to treat residential and worker population growth separately results in an overestimation of demand for public open space. He added that approximately 9-10 per cent of residents also work in Yarra thus resulting in double counting. In oral evidence Mr Black expressed strong reservations about treating the need for open space of workers as the same as for residents.

Council submitted that:

... the research undertaken as part of the development of the YOSS indicates that there is no meaningful distinction between the demand for and use of public open space by residents v workers. Council notes that no contrary evidence has been filed that provides an empirical basis to refute the conclusions reached by Ms Thompson in this regard.²⁹

It added that the empirical evidence indicates that there has been a substantial change in workers' use of open space since 2006 (when workers needs were not accounted for) such that there is no longer a material distinction between the need for and use of open space between residents and workers and the frequency of use by each group is not materially different.

In closing submissions, Council argued that those experts who challenged the equivalence between residents and workers in the YOSS had approached the question in the wrong way by erroneously focussing on the differential usage of open space between residents and workers rather than asking whether the need for, or importance of, open space to residents is different to that of workers. Council submitted that the Panel was effectively being asked by these experts to treat the open space needs of residents and workers differently based on different usage and that this is not consistent with community focussed approach sought by *Open Space for Everyone* and the YOSS. Council also urged the Panel:

... not to fall into the trap of assuming particular patterns of usage in its assessment of the YOSS and resolving the question of 'equivalence' by reference to the language and conceptualisation of 'demand units'.³⁰

²⁷ Document 25, [3.6.4].

²⁸ Document 31, [198].

²⁹ Document 34, [154].

³⁰ Document 134, [39] to [42].

Council pointed out that there had been no challenge to the collective assessment of the needs of residents, nor a suggestion that the residential needs assessment should be discounted because some individuals use open space for shorter periods than others, that residents visit open space at different times, or that there is a difference in the type and duration of use between residents but this was what was being done in the context of worker's use of open space.

Council observed that no alternative assessment of equivalence had been put to the Panel by any of the experts and only Mr Shipp provided numbers by reference to the Precinct Structure Planning Guidelines which recommend public open space provision of 10 per cent for residential areas and 2 per cent for employment/economic activity areas, a differential rate of 5:1. Council noted that Mr Shipp did not suggest that this rate should be adopted for workers and residents in Yarra. Council submitted that the land areas associated with open space for precinct structure planning are not good proxies for resident and worker open space needs in a mixed use, established inner city municipality like Yarra.

While noting that the Development Contribution Plan (DCP) approach is not directly comparable to, and not appropriate for, a public open space contribution rate under Clause 53.01, Council drew the Panel's attention to the Arden draft DCP³¹ which contemplates the provision of open space using an equivalence ratio of 71 per cent between residential and commercial land uses. Council observed that the apparent basis for the 71 per cent ratio is that commercial uses are limited to business days, that is, only 5 out of 7 days per week. Council submitted that the Arden DCP example confirms that there is no set approach to worker and resident demand for open space and that it is not a suitable approach for this Amendment having regard to the different values based approach to open space used in the YOSS and the worker profile in Yarra.

Mr Gobbo submitted that Council had not established that workers make the same use of open space as residents or have an equal need for public open space. On this basis and that of common sense, he submitted, the Panel should reject the 1:1 assumption used in the YOSS. He noted that no in-workplace surveys were conducted and suggested that other data such as mobile phone data to verify the home location of park users could have been obtained and put before the Panel, but was not. He noted that Ms Thompson mistakenly assumed that the survey data suggested that more than 60 per cent workers visited open space daily whereas the survey said they visited open space at least once per week. Mr Gobbo submitted that Ms Thompson's conclusions therefore proceeded on an erroneous basis.

Mr Walker for Piedimonte also submitted that treating demand generated by a new worker as equal to one new resident is not justified and supported the submissions made by Mr Gobbo on behalf of the PPP group of clients.

In relation to the 'double counting' issue raised by Mr Milner and Mr Black, Council noted that while there are a proportion of workers who are also residents of Yarra, that is not say those people live and work in the same precinct such that there is no distinction between the times or reasons for using open space by those people or that they use the same open space when working or otherwise. It submitted:

Further, there is a distinction to be drawn between a 'residential' use for those people, such as walking the dog in the evening, and a 'worker' use such as eating lunch in a park, and those uses can reasonably be considered separate and distinct uses – those uses are for different purposes, may be in entirely different parts of the municipality, and in the Council's

³¹ Amendment C407 (Arden Structure Plan) to the Melbourne Planning Scheme.

submission, can both equally be considered as part of the needs assessment, and in considering equity between residents and workers.³²

Council submitted that it would be impossible to account for the disparate needs of all people that are both workers and residents, an assessment at that level of granularity would be impractical and unnecessarily complicated. It added that any risk of ‘double dipping’:

... is not a material issue which has any significant implications for the POSC. It is a fringe issue that can be discounted by the Panel.³³

Mr Walker, noting the estimate of Mr Black that around 9-10 per cent of residents also work in Yarra, submitted that adjusting for this in the apportionment of costs would result in a “significant reduction” in the overall cost and the resulting public open space contribution rate.³⁴

(iii) Discussion

Evidence that clearly establishes whether there is a significant difference in the level of use of open space between workers and residents was not presented to the Panel. The Panel considers that a strong point was made that the worker use survey did not establish that workers’ use of open space is equivalent to that of residents and the Panel is inclined to agree with Mr Gobbo that common sense suggests that the use of open space by workers will be of a different nature and probably less than that of residents.

However, it is unclear to the Panel whether any lesser use by workers would be significant and if so, how it would translate into the calculation of the overall future open space needs of workers. The Panel notes Council’s submission that just because workers may use open space less often than residents, workers’ need for open space is not of less importance than the need of residents and should be given equal weight. The Panel accepts the distinction between the use of and need for open space and agrees with Council that adopting need is the appropriate metric in calculating future of open space provisions. Adopting equal need and giving equal importance to the open space needs of all within the municipality underpins Council’s approach and is consistent with the community focus sought by *Open Space for Everyone*.

Other methods to take into account worker use of open space versus that of residents were canvassed during the Hearing, for example, the ratio adopted in the precinct structure planning for outer Melbourne and that proposed in the Arden DCP. Neither of these methods is appropriate for Yarra, it being an established, mixed use municipality rather than a ‘green fields’ area or a clearly delineated urban renewal area.

With regard to the issue of ‘double dipping’, the Panel notes that undoubtedly, some people live and work in Yarra and perhaps even in the same suburb or precinct. However, an analysis to determine the potential overestimation of the need for future open space on this account would be difficult and in the Panel’s view unnecessary. It would not be as straight forward as simply reducing the amount of future open space by the percentage of people who live and work in Yarra. For example, how would one calculate the need for open space for a worker who also lives in Yarra and uses open space during both work hours and after work and at weekends? It could be argued that that person would place more demand on open space than if they only worked in Yarra and lived elsewhere, but would that higher demand be twice the demand of a worker not residing in Yarra, 50 per cent higher, or some other amount? What if their workplace was at one end of Yarra

³² Document 76, [32].

³³ Document 135, [49].

³⁴ Document 127, [43].

and their home at the other? In any event, the Panel considers that ‘double dipping’ in so far as it may occur would be inconsequential and would not materially change the amount of additional open space that should be provided to meet the needs of the new population of Yarra.

(iv) Conclusions

The Panel concludes:

- the open space needs of new residents and workers are calculated appropriately
- the open space needs of new residents and workers can be considered as equivalent for the purpose of calculating future open space provision.

3.4 Proposed commencement and end dates for implementation of the Strategy

(i) The issues

The issues are:

- whether the proposed commencement date of 2016 and end date of 2031 for the strategy are appropriate
- whether the population growth impacts of the COVID19 pandemic are such that the proposed end date of the strategy is still appropriate.

This issue arose because with the Hearing being held in late 2021 and early 2022, if the Amendment was approved by mid-2022 (say), by that time six years of the 15-year time frame of the YOSS would have elapsed. Further, it is recognised that Melbourne’s population growth (in at least the short term) has been negatively impacted by the COVID19 pandemic and that should be considered in terms of any impact on the timeframe for the YOSS.

(ii) Evidence and submissions

Council submitted that the vagaries of the Victorian planning system are such that Amendments such as this can take a number of years to prepare. It further submitted that while the data sets used should be the latest available at the time of preparation of an Amendment, even at the commencement of a project they can already be some years old.

Council, supported by the evidence of Ms Thompson, submitted that this was not a significant issue. It explained that the key target metric that underpins YOSS is not the projected end date but rather the forecast increase of 77,000 new residents and workers between 2016 and 2031. Ms Thompson emphasised that the list of projects proposed under YOSS were geared to providing open space for an increase in new population of 77,000, not necessarily what would be required at a particular point in time. At the time of preparation of YOSS that increase was expected to be reached by 2031.

Under cross examination and questions from the Panel, Ms Thompson explained that the 15-year implementation period of YOSS needed to be understood in the context of a continuum, of growing need for open space as the population increases and revenue that will be collected before the commencement date and after the end date for the implementation of YOSS. She explained that the start and end dates need to be viewed in the context of that continuum.

Council further acknowledged that a key impact of the approval of the Amendment about six years after the nominal commencement date was that the anticipated revenue of \$25.5 million per year

from 2016 to 2022 resulting from a levy rate of 10.1 per cent would not be met because during this period the existing levy of 4.5 per cent had been charged.

Mr Gobbo rejected any contention that the start and end dates of YOSS are ‘fuzzy’. He was critical of the use of census years to define the start and end dates contending that *“the sanctity of the data and the maths should not be thrown out the window because it becomes too hard”*.³⁵ He submitted the end date should not be pushed out because the start date has already been pushed out. He submitted that the data used, and the contribution rate were for a defined 15-year period.

Mr Gobbo further submitted that five years of the strategy period have now passed and that contributions at the proposed higher rate have not been collected from subdivisions during that time. He suggested to account for this, adjustments should be made including adding a further five years of developable land to the denominator used in the contribution rate calculation. With no adjustment to the numerator this would have the impact of reducing the contribution rate.

In calling evidence from Ms Kay, Ms Brennan questioned her on the commencement date of the YOSS. In response, Ms Kay stated that she saw no need to deduct unspent funds collected for the implementation of the 2006 strategy from the total project costs for YOSS and that any unimplemented projects remaining from the 2006 strategy, if carried forward, would likely be in a different form because of the higher growth expected since the 2006 strategy was adopted.

In cross examination, Ms Pepler put to Ms Kay that since 2016 some of the projected new residents had become existing residents. In response, Ms Kay emphasised the rolling nature of the time period and the analysis undertaken.

Impact of the COVID19 pandemic

Prior to the Hearing, the Panel directed that Council address the likely impacts of the COVID19 pandemic on the forecasts of new populations upon which the implementation of YOSS was based. Dr Eagleson attached a memo prepared at the request of Council to her expert evidence dealing with this issue (Document 26).

In her memo, Dr Eagleson considered a range of resident population forecasts, not all of which were specific to Yarra, more recent than the forecasts underpinning the YOSS prepared by .id Consulting. She acknowledged that the rapid slowdown in international migration was likely to slow Yarra’s population growth in the short term, but its medium-term impact was less certain.

With respect to the future growth in non-residential floor space, Dr Eagleson stated that the pace of growth has been faster than projected in 2018 in the SEES and relied on in the YOSS, and that there is currently a considerable development pipeline. In her view it was not possible to know with any certainty how this would affect worker population forecasts to 2031.

Dr Eagleson concluded that her best estimate of the impacts of COVID19 was that the forecast increase of 38,500 new residents and 38,000 new workers might not be met until 2034 or 2035.

In her evidence, Ms Thompson outlined what she observed as a possible impact of the COVID19 pandemic on the demand for and use of open space, in particular that working from home had had an impact on the way open space is used.

³⁵ Document 88, [166].

(iii) Discussion

The Panel makes three observations at the outset. Firstly, many strategies and revenue raising mechanisms such as DCPs in the urban planning context start from scratch and are not a successor to a previous strategy as is the case here. Secondly, there is often a time lag between development of the strategy and approval and implementation, but six years from the base data point to implementation as is likely to be the case with this strategy is unusual. Thirdly, most strategies have a clearly defined end date and don't necessarily have any implied continuation of actions beyond that end date as is the case here.

In this instance, each of these factors have understandably caused some uncertainty and confusion amongst submitters.

While an end date of 2031, a census year, was specified in YOSS, the Panel understands and accepts that it is equally valid to specify that the YOSS is geared towards a population increase of about 77,000, rather than a particular year. While this was not made explicit in YOSS, it is quite understandable why this was not the case. Apart from being a census year, there is nothing inherently significant about a planned end date of 2031.

The Panel accepts that it is appropriate to view YOSS as a strategy set in a context of continuing population growth and therefore open space needs, a continuing revenue stream and a rolling but updated program of open space projects to meet growing needs. Viewed in this context, the YOSS does pose some challenges for clear accountability for revenue collection and expenditure but these are not insurmountable.

The Panel further accepts that some projects may be updated versions of unimplemented projects from the 2006 strategy and that there may also be unspent funds both from developer contributions and from Council sources that may be carried forward and expended during the implementation of YOSS. The Panel sees no compelling argument for adjustments to be made for either of these circumstances.

The Panel does not accept Mr Gobbo's argument that the start and end dates of the YOSS are not 'fuzzy'. Where there is a continuum of growth and therefore a continually growing need for open space together with a system whereby the approved levy continues past a strategy end date, in the Panel's opinion there will inevitably be some 'fuzziness' as a result of these continuums.

The work of Dr Eagleson which indicated that projected new populations might not be met until 2034 or 2035 was not seriously challenged by submitters and the Panel accepts this is as good an estimate as can currently be obtained.

(iv) Conclusions

The Panel concludes:

- the start and end dates proposed for the life of YOSS are appropriate
- viewing YOSS and the income and expenditure from contributions in the context of a rolling set of strategies is appropriate
- the adjustments to the likely timeframe for reaching population forecasts made because of the likely impact of COVID19 on future population and worker projections are appropriate.

3.5 Conclusions and recommendations

The Panel concludes that subject to other conclusions in this report that the *Yarra Open Space Strategy 2020* and the accompanying *Yarra Open Space Strategy 2020 Technical Report* are appropriate to be introduced into the Yarra Planning Scheme as background documents in the Table in at Clause 1 of the Schedule to Clause 72.08

The Panel recommends:

Delete Action 7.5B-4 in Fairfield from the *Yarra Open Space Strategy 2020*, the *Yarra OpenSpace Strategy Technical Report 2020*, and from Preliminary Opinion of Probable Costs.

Amend the Schedule to Clause 72.08 of the Yarra Planning Scheme to insert the following documents into the table at Clause 1.0:

- ***Yarra Open Space Strategy 2020* Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd**
- ***Yarra Open Space Strategy 2020 Technical Report* Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd (Technical Report).**

4 Open space contribution rate

The open space contribution rate which is proposed to be included in the Schedule to Clause 53.01 to the Planning Scheme is calculated using the following formula:

Contribution rate = $\frac{\text{Total allocation of open space project costs to the forecast population}}{\text{Total site value of the estimated land to accommodate the population increase}}$ multiplied by 100

This Chapter examines the appropriateness of the data used in calculating both the numerator and denominator in this formula. Chapters 4.1 to 4.3 address issues relevant to the numerator and Chapter 4.4 addresses issues relevant to the calculation of the denominator in the equation above.

4.1 Value of land to be developed for open space

(i) The issues

The issues are:

- whether the methodology used to value the land that will be acquired for open space is appropriate
- whether the values attributed to the land to be acquired are appropriate
- whether the 30 per cent allowance added to the value of land to cover Council's costs is appropriate.

(ii) Evidence and submissions

The value of land to be acquired to provide new or expanded open space is significant and as Mr Shipp stated in his evidence, it comprises 86 per cent of the cost of implementing YOSS. Based on the YOSS POPC (Document 6), Mr Shipp stated the total land acquisition cost as \$486.9 million.

Council submitted that the POPC was the metric commonly used in open space planning and is comprised of the sum of the land cost associated with new or expanded open space plus the capital costs associated with improvements to the land to provide appropriate open space facilities. The issues associated with the second of these are addressed in Chapter 4.2. The apportionment of these costs between existing and new populations is addressed in Chapter 4.3.

Calculation of land acquisition costs

The exhibited *Public Open Space Contributions* report (Contributions Report) describes the calculation of the land values as:

The cost of the land for proposed new open spaces is based on the average land area size for the hierarchy of open space. For example, a new Local open space has a minimum land area of 0.1 hectares and a maximum of 0.5 hectares. The average land area for a new Local open space is 0.3 hectares. This average land area is multiplied by the average (land) value for the sub-precinct in which the open space is proposed.³⁶

The average Capital Improved Value (CIV) of the relevant land was used as it was considered to be the measure that most appropriately reflects the market cost of acquiring land. CIV information was extracted from the Council rate data base by Dr Eagleson specifically for this purpose and assembled on a sub-precinct basis.

³⁶ Yarra Open Space Strategy 2020: *Public Open Space Contributions*, y Environment & Land Management Pty Ltd in association with Thompson Berrill Landscape Design Pty Ltd, 10 December 2020, p. 9.

In his evidence, Mr Shipp stated that it is not possible to undertake a detailed assessment of the reported cost of purchasing land for open space because all the information required was not available. Some of that information was provided by Council after Mr Shipp prepared his written evidence.

Mr Gobbo submitted that using average CIV on a sub-precinct basis overstates the actual cost of acquiring land for open space for three reasons. Firstly, the average for a precinct will include properties already developed to their highest and best use and which are not likely to be purchased for use as open space. Such properties will have a relatively high unit value and including them in the calculation of the average inflates that average figure.

Secondly, Clause 21.12 indicates that public open space is intended to be located away from main or secondary roads. Mr Gobbo submitted that activity centre properties, which are located mostly on main roads and already developed or have high development potential, and therefore higher unit land values, are also included in the average CIV calculations. He contended that this has the effect of further inflating the average CIV. He submitted:

A more nuanced exercise of determining the likely sub-area for purchase, or even a list of potential sites or areas within a precinct, would be justified, however the current approach is not.³⁷

The third reason given by Mr Gobbo for the overstatement of the total cost of acquiring land was that Council's approach ignores the repurposing of public land to open space use and assumes for the purposes of the cost calculation that all required land will be acquired on the open market. Mr Shipp pointed out that YOSS indicates that the land required for open space will be acquired through a number of methods including the conversion of land currently owned by Council or other government agencies. Mr Shipp stated:

The [YOSS] favours strategic, cost-effective acquisitions which are more practical to implement than large scale acquisition of developed sites – the latter option is effectively considered a 'last resort' by the Strategy, although it does note that a combination of several approaches may be necessary³⁸

To emphasise the potential to repurpose public land, Mr Gobbo identified a number of sites in proximity to the indicative location of open space projects. For example, Project 7.5A-4 in the Collingwood precinct is near the former Victoria Police workshop in Stanley Street and Project 7.5A-6 is located near Collingwood College. He cited a further example in Cremorne.

Council responded, submitting:

Council acknowledges that land acquisition will be a key strategy for delivery of the YOSS program of new open space. If there are other opportunities available, whether land contributions or conversion of publicly owned land, Council will act on those opportunities, as suggested in the Technical Report. However, there are obvious challenges in obtaining sufficient land to cater to the needs of the forecast populations and providing all of the projects recommend in the YOSS, whether from land contributions, or land conversions. As such, in order for Council to deliver the YOSS program, it will need to purchase land. The costings for the program have been undertaken on that basis.³⁹

Further, Council submitted that the evidence of Ms Thompson indicated that the 'low-hanging fruit' had already been picked and that opportunities for the conversion of public land are

³⁷ Document 88, [178].

³⁸ Document 28, [93].

³⁹ Document 76, [46].

becoming harder to find. Ms Thompson identified six projects proposed in the 2006 Strategy that had been implemented by repurposing public land.

Cost to Council of acquiring land

The Contributions Report further states that on the advice of the Council Property Office an amount was added to the average CIV to cover “*independent valuations, legal fees and other costs to Council*”. To cover these costs, a 30 per cent allowance was added to the land values.

As pointed out in the evidence of Mr Shipp, the amount of the allowance was not disclosed initially. The quantum of 30 per cent was only made clear in the evidence of Ms Thompson. Under cross examination, Dr Eagleson acknowledged that an amount had been added to the average CIV data she provided but that she was not involved in its calculation. Ms Kay stated under cross examination that the 30 per cent allowance had been added at the request of Council officers but that she had not been involved. She further stated that she was unable to comment on whether this had been the practice in other similar projects because she was usually given a land value figure and was not aware of what amounts may have been added to cover Council costs.

At the Hearing, Council produced a memo from the Property Services section of Council which indicated that the proposed add-on included an allowance to reflect the difference between CIV and market value (Document 64). Council also sought to table information in support which set out the difference between market value and CIV for a small selection of properties in Yarra (Document 65). Mr Gobbo strenuously objected to this information being provided so late in the proceedings but acknowledged that the Panel had initially quite correctly identified this as an issue and had requested further information from Council before the Hearing.

Mr Gobbo submitted that the Panel should reject the 30 per cent allowance and that the Council’s justification for the allowance gave rise to significant concerns about procedural fairness. He indicated that the 30 per cent allowance is significant and that if it was removed the open space contribution rate would fall from 10.1 per cent to 7.5 per cent. He submitted that:

The actual 30% isn’t justified in any or proper manner – whether it represents an administrative allowance, or some other broad kind of ‘add-on’ to the purchase costs.

If the 30% is an administrative allowance, it is quite clearly manifestly excessive. \$146M of administrative costs to purchase 31 properties amounts to an administrative cost of \$4.7M per project. This would be very difficult to justify by way of evidence, and there is no evidence to support this amount before the Panel.

But also, if the 30% is some kind of add-on to the purchase price, it isn’t justified.

As a matter of principle, it isn’t appropriate to simply ‘add’ 30% to the estimated average Capital Improved Values (CIVs) of the projects. The clear intent was to use average CIVs, based on the rationale that this represented an appropriate valuation. Average CIVs represent the ‘highest’ valuation method for contribution calculations that we are aware of. To add 30% on top of this to purportedly reflect ‘real market value’ is unprecedented.⁴⁰

Mr Gobbo noted that the sales ratio table put forward by Council (Document 65) does not appear to justify the 30 per cent allowance and added that ratios in the table show that “*for all the listed properties bar three, adding an allowance of 30% to CIV would result in more than the actual recent market value of the property*”.⁴¹

⁴⁰ Document 88, [150] to [153].

⁴¹ Document 88, [155]. Original emphasis.

After the submission of Mr Gobbo, the Panel requested that Council provide more detail on how the 30 per cent allowance had been calculated. Council subsequently advised that the officer who requested the 30 per cent allowance was no longer with the Council and that it was considering an alternative appropriate per cent allowance. The Panel issued a Direction on 20 December 2021 (Document 102) that this information be provided and that a revised contribution rate be calculated based on the revised per cent allowance. Further, the Panel directed that a sensitivity analysis be provided for a range of alternative allowances to cover costs to Council of acquiring land. The Panel also directed that Council provide an explanation as to how and why the 22 properties in the sales ratio table (Document 65) were chosen.

In response, Council tabled a letter from Westlink Consulting (Document 119) which stated that the criteria used to identify properties in the sales ratio table were:

- sales were selected from the 'commercial industrial retail' sector, from a total of 521 sales for the 2018 Council general revaluation
- the sales were chosen because they represented a broad geographic, property size and underlying zoning spread with the 'commercial industrial retail' sector chosen primarily as it satisfied the above criteria and included residential land (General Residential and Mixed Use)
- a focus on the areas of Yarra where most development is underway because those areas will have the greatest need for open space
- sales ratios ranged from 0.47 to 1.06 with most between 0.8 and 0.9 and were not chosen to fit the preferred Valuer General Victoria's preferred range (0.85 to 1.00) but rather to provide an actual reflection of the sale ratios generated.

Council also tabled a sensitivity analysis of applying revised percentage allowances (Document 117) and what the open space contribution rate would be for a '20 per cent allowance' and '10 per cent allowance' which showed rates of 9.35 per cent and 8.67 per cent respectively (Document 118).

In closing submissions, Ms Brennan submitted that an allowance above CIV should be included to reflect the costs that Council will actually incur in acquiring land on the open market. She stated that the allowance above CIV was always intended to capture property market values in addition to the administrative costs involved in buying property but Council now *"accepted that there is not sufficient justification for an allowance of 30% above CIV for the land acquisition component of the POSC rate calculation"*.⁴² Ms Brennan submitted, however, that there is legitimate justification for a 20 per cent allowance above CIV and this became Council's final position on this issue.

Piedimonte submitted in response to the memo and spreadsheet prepared by Westlink Consulting (Document 119):

The vast majority of properties set out in the spreadsheet were within a Commercial or Mixed use zone. These are properties with higher development potential and hence likely to have a higher market value. They are not likely to be representative of the average cost to purchase land for public open space.⁴³

(iii) Discussion

With respect to using average CIVs in calculating the costs of land to be acquired for open space projects, the Panel accepts that this is an appropriate, albeit imperfect, metric to use as a basis for

⁴² Document 135, [83].

⁴³ Document 131, at [6c].

calculations. The Panel does not accept that a measure based on average CIVs in small defined areas where it is proposed to provide new open space is a practical approach, both because of the difficulty of defining such areas in any useful way and the possible and unforeseen impacts on property values of closely identifying defined areas or even specific properties at an early stage.

In accepting average CIVs as the base for this calculation, the Panel acknowledges the submission of Mr Gobbo that the inclusion of already developed properties and higher value properties in activity centres are likely to have some, probably fairly small but difficult to assess, impact on the averages calculated. The Panel believes that for these reasons it is likely that the average CIVs calculated are probably on the high side but not by a significant amount.

Further, the Panel accepts that it is possible that some of the proposed open space projects may utilise, in full or part, repurposed public land. In this respect it accepts the submission of Mr Gobbo and the evidence of Mr Shipp. However, in saying this the Panel acknowledges the evidence of Ms Thompson and the submission of Council that the 'low hanging fruit' has to an unknown degree already been harvested in implementing the 2006 strategy.

The Panel notes the examples of public land in Yarra that might be available for public open space in the future as identified by Mr Gobbo. Two of these are education facilities that are in areas identified for significant growth and the Panel considers it highly unlikely that the relevant agencies would responsibly agree to proposals to give over part of these sites to public open space or to sell the land to Council at substantially less than market value. The Panel acknowledges that some shared space used by schools and the public have been developed and innovative approaches such as this should form part of the broader menu of approaches. It is not the Panel's role to provide detailed commentary on the best use of surplus public land.

The Panel acknowledges that any repurposing of Council-owned land will reduce the total land acquisition costs of the YOSS. However, the Panel accepts that the Council's approach in not assuming further repurposing of Council-owned land in preparing its cost estimates is prudent. If it did make such an assumption, it would leave itself open to the accusation of not properly funding the YOSS. In some respects, Council is in a no-win situation here. The Panel notes that the YOSS acknowledges that further repurposing of public land is an important part of the land acquisition mix and will be pursued when possible.

With respect to the allowance to cover Council's costs of acquiring land, the Panel considers that Council has not operated with full transparency. To include a 30 per cent allowance recommended by an officer no longer with Council without subjecting it to scrutiny is not acceptable. To have got to the Hearing without a clear, transparent and defensible justification for the inclusion of such a significant amount is at best difficult to understand. To have believed that such a significant cost element would not come under considerable scrutiny appears naïve.

The Panel agrees with Mr Gobbo that there is not sufficient evidence before it to justify 30 per cent as originally sought by Council, nor indeed the 20 per cent allowance that Council is now advocating. Such a higher allowance could only be reached if an uplift in the average CIV to match market values was considered an appropriate approach. However, some properties sell above their CIV but equally others sell below. The Panel considers that the 'best' and most transparent way to determine the cost of acquiring land for this purpose is to use CIV (averaged) and not to attempt to reflect what is purported to be 'market value' by adding on a selected allowance which has not in the Panel's view been justified.

The Panel accepts that there will be material administrative, conveyancing and other costs which will add to the cost of purchasing land and that these costs will vary depending on the method used. For example, direct purchase in a public auction will likely incur different costs to a compulsory acquisition as a result of applying a Public Acquisition Overlay (PAO). No evidence on the range of costs the Council is likely to incur was led by any party, so the Panel has little to guide it on the quantum of an appropriate allowance. In the absence of such information the Panel has opted to recommend 10 per cent allowance be added to CIV to cover Council's administrative and acquisition costs. In the Panel's view, such an allowance is likely to be generous.

(iv) Conclusions

The Panel concludes:

- on balance, the methodology used to value the land to be acquired for public open space is appropriate
- the values applied to the land to be acquired are appropriate overall
- an allowance of 10 per cent applied to the average CIV to reflect Council's administrative and land acquisition costs is appropriate.

4.2 Capital value of proposed open space projects

(i) The issues

The issues are:

- whether the methodology used to cost open space projects is appropriate
- whether the costings proposed are appropriate
- whether the 30 per cent uplift on the capital cost estimate of the open space projects is appropriate.

(ii) Evidence and submissions

The capital cost of the proposed open space projects is based on a methodology used by the landscape architectural profession to estimate the determine the POPC without a quantity surveyor. The YOSS POPC is the total cost of the projects listed in the Technical Report and includes the cost of capital works to build new, or upgrade existing, open space plus the cost of acquiring land for new open space. The land cost component is discussed in Chapter 4.1.

An explanation of the YOSS POPC methodology is set out in a memorandum prepared by Ms Thompson dated 17 November 2021 (Document 7). The POPC includes an allocation of costs to existing and future populations. This aspect of the POPC is discussed in Chapter 4.3.

In her evidence (Document 25), Ms Thompson stated she prepared the YOSS POPC based on draft average park costings for each level in the hierarchy of open space and that the Yarra Open Space Planning team provided input to these average park costings consistent with Council's typical park design and construction costs. She elaborated in oral evidence that not every park was costed but instead the average cost for each category of park was used to determine the POPC.

Mr Shipp did not question the methodology used to estimate the open space project costs. He considered the methodology to be sound but that some of the inputs lacked justification and clarity. In particular, details of the average park POPC, such as cost per square metre and components, were not made available and in his view, *"it is not possible to make a full assessment*

of all the quantitative information underpinning the Amendment in the absence of this information".⁴⁴ In oral evidence, Mr Shipp noted that the information he considered missing had subsequently been provided but he had not had sufficient time to determine that the POPC costs were appropriate although he could see how the costs flowed through to the calculation of the proposed open space contribution rate.

In cross examination by Ms Brennan, Mr Black acknowledged that he had no criticisms with the YOSS with respect to the costings of the proposed Actions.

As to the 30 per cent uplift, Ms Thompson stated it was standard practice for the landscape architectural industry when preparing POPCs to include a 10 per cent contingency for design, 10 per cent for construction and 10 per cent for survey (Document 80).

In response to a question from the Panel, Mr Macintosh commented that a 30 per cent contingency was typical for government projects but property developers would typically use a 5 per cent cost contingency once a project was 80 per cent documented.

In answering a question from the Panel, Mr Shipp considered that an allowance of 10 per cent each for survey and design and a 10 per cent construction contingency – in total 30 per cent – was not unreasonable.

Council stated in a memorandum dated 13 December 2021 (Document 81) that a 30 per cent contingency for high level planning is appropriate. Ms Brennan submitted that a 30 per cent contingency on capital costs was standard. She added that the 30 per cent contingency had been arrived at independently by Ms Thompson and subsequently confirmed by Council officers.

Mr Gobbo stated in oral submissions that a contingency in the order of 30 per cent was not opposed by the PPP group of clients.

(iii) Discussion

Leaving aside the cost of acquiring land for the open space projects (which is discussed in Chapter 4.1), the methodology for determining the capital cost of projects included in the POPC was not called into question in any substantive way by submitters or expert witnesses. Nor was the estimated capital cost of each project as described in the YOSS disputed.

There was also general agreement that the 30 per cent uplift applied to the project costs to allow for survey and design work and a contingency for construction costs was reasonable. The Panel considers that the 30 per cent uplift in capital project costs is appropriate, noting that this 30 per cent uplift is separate to the 30 per cent allowance applied to the CIV of the cost of land to be acquired for the open space projects.

The Panel is satisfied that the methodology used to determine the capital cost and the proposed capital costings are appropriate as one input for the purpose of calculating the proposed open space contribution rate.

(iv) Conclusions

The Panel concludes:

- the methodology used to cost the open space projects and the proposed costing for these projects are appropriate

⁴⁴ Document 28, [89].

- the 30 per cent uplift to the capital cost of the projects to allow for survey and design work and a contingency for construction costs is reasonable and appropriate.

4.3 Apportionment between existing and new populations

(i) The issues

The issues are:

- whether the apportionment methodology proposed is appropriate
- whether the apportionment between existing and new populations is appropriate
- whether there are particular precincts in which the apportionment proposed is inappropriate.

(ii) Evidence and submissions

Apportionment of the costs associated with new and enhanced open space projects between existing and new populations was a highly contested issue because the outcome has a significant impact on the quantum of the open space contribution rate eventually paid by developers.

In closing, Council submitted:

It is first appropriate for Council to acknowledge that the apportionment exercise undertaken by Ms Thompson has clearly not been an easy one for the Panel to understand.⁴⁵

The apportionment in the YOSS was undertaken by Mr Thompson. In her evidence, she identified eight factors which influence the need for open space by new (or future) populations. These are:

- future population densities
- spatial distribution of existing open space
- the hierarchy, character and condition of the existing open space
- proposed urban form
- urban layout including presence of any physical barriers to safe pedestrian access to open space
- the location and magnitude of forecast future resident and worker population growth
- the existing open space within the precinct
- the existing level of use and satisfaction with the open space.⁴⁶

Ms Thompson stated that the allocation of the total costs for each project involved a qualitative assessment based on each of these eight factors. At the direction of the Panel, as part of her evidence Ms Thompson provided a detailed description of the apportionment of project costs for the following three projects:

- 7.6A-2 Small local open space in the north-west part of Cremorne
- 7.6A-3 Small local open space in the south-west part of Cremorne
- 7.3B-9 Minor upgrade to the existing Quarries Park in Clifton Hill.

As indicated in Chapter 1.5, as a result of cross examination of Ms Thompson and submissions made by Mr Gobbo, the Panel requested further information on the apportionment methodology

⁴⁵ Document 135, [88].

⁴⁶ Document 25, [3.3.3 and 3.3.4]. This information was repeated in the information on apportionment requested by the Panel (Document 121).

used by Ms Thompson. Ms Thompson's response details the four-step process she used in determining open space needs and subsequently the apportionment of costs:

Step 1 Assess and understand the existing open space network including how it functions for the existing population who live and work there, and what changes are required to meet the needs of the existing population. This involves research, site visits and review of the community surveys (worker and resident surveys) to understand the existing patterns of use.

Step 2 Assess and understand the type and scale of the forecast change, to determine what open space needs will be generated by this change. Part of this assessment includes considering the impact of this change on the existing open space network. This includes a review of the population forecasts, analysis of the spatial distribution of the forecasts relative to the open space network, site assessments to understand the scale of the proposed change on the open space and a review of relevant background documents about the forecast change.

Step 3 Make recommendations about what changes are required to address the open space needs of the existing and the forecast population. This includes the Actions to provide new open space and also upgrades to the existing open space network, which are included in the YOSS POPC. Part of determining the actions includes site assessments to identify what is feasible to implement in the context of the existing development and urban layout. It is important to note that the Strategy also includes recommendations and actions for changes that are not included in the contribution rate but will benefit the existing and forecast population including changes to the Municipal open space network and guidelines regarding the future design and management of open space.

Step 4 For each eligible recommendation assess and determine the appropriate proportion of cost attributable to the existing and forecast population based on the assessment in steps 1 to 3.⁴⁷

Ms Thompson also provided a table which describes the relative importance of the eight factors in determining the apportionments. See Table 5.

Table 5 Apportionment ratios

Apportionment	Reasons for the apportionment
10/90	<ul style="list-style-type: none"> the need for the project is primarily driven by one group (i.e. either existing or forecast) of the population with some benefit (as distinct from the need) as a result of the project being delivered to the other group. typically this apportionment ratio applies where: <ul style="list-style-type: none"> in the case of 10 (existing) / 90 (forecast) the existing open space network adequately meets the open space needs of the existing population and the magnitude of forecast change of more than 350 people creates a high demand for new open space or major upgrades to existing open space. in the case of 90 (existing) / 10 (forecast) the existing population creates a high demand for new open space or major upgrades to existing open space and the forecast change is less than 350 people.
20/80	<ul style="list-style-type: none"> the need for the project is high for one group of the population with the other group having a low need for the project. typically this apportionment ratio applies: <ul style="list-style-type: none"> in the case of 20 (existing) / 80 (forecast) there is a low need for improvement to the open space network for the existing population and the magnitude of forecast change of more than 350 people

⁴⁷ Document 121, [2.1].

Apportionment	Reasons for the apportionment
	<p>creates a high demand for new open space or major upgrades to existing open space.</p> <ul style="list-style-type: none"> - in the case of 80 (existing) / 20 (forecast) the existing population creates a high demand for new open space or major upgrades to existing open space and the forecast change is less than 350 people.
30/70	<ul style="list-style-type: none"> • the need for the project is high for one group of the population with the other group having a moderate need for the project. • typically this apportionment ratio applies: <ul style="list-style-type: none"> - in the case of 30 (existing) / 70 (forecast) there is a moderate need for improvement to the existing open space network for the existing population and the magnitude of forecast change of more than 350 people creates a high demand for new open space or major upgrades to existing open space. - in the case of 70 (existing) / 30 (forecast) the existing community creates a high demand for new open space or major upgrades to existing open space and the magnitude of forecast change is less than 350 people with other factors having an influence on the need beyond the magnitude of the forecast change within that precinct. For example the need for the upgrade to larger open space reserves is created by the forecast change in adjoining precincts where there is a lack of larger open space reserves.
40/60	<ul style="list-style-type: none"> • the need for the project is high for both the existing and forecast population but with other factors resulting in a difference. • typically this apportionment ratio applies where the existing open space network requires major improvements to meet the needs of both the existing and forecast population, with additional factors also being relevant such as the magnitude of the change (i.e. substantially more than 350 people) or the implications of the change in urban densities.
50/50	<ul style="list-style-type: none"> • the need for the project is high for both the existing and forecast population. • typically this apportionment ratio applies where the existing open space requires major upgrade or where new open space is needed for both the both the existing and forecast population; or • alternatively, this apportionment ratio applies where the existing open space network is adequate with capacity for additional use and the forecast change is less than 350 people and can be accommodated in the existing open space network but will require consequential upgrades to the existing open space facilities.
95/5	<ul style="list-style-type: none"> • the need for the project is high for one group and will deliver a minor benefit to the other group. • typically this apportionment ratio applies where the need for the project is primarily driven by the existing population and a minor benefit will be provided to the forecast population. This may include the forecast population in adjoining precincts.

Source: Memorandum from Ms Thompson dated 31 January 2022, Table 1 (Document 121).

The Panel questioned Ms Thompson on how, in practical terms, a distinction could be made between say a 90/10 apportionment and an 80/20 apportionment. She explained this by reference to the relative importance of the eight factors listed above.

Further, Ms Thompson provided a detailed description of how, using the descriptors set out in Table 5, she arrived at the apportionment of costs for eight projects nominated in advance by the Panel.⁴⁸ These projects were selected to allow the Panel to better understand the apportionment used for similar types of projects within one precinct and similar types of projects between precincts. For each of these projects, Ms Thompson identified the relative importance of each of the eight factors set out above, by designating them as ‘very important’, ‘high level’, ‘important’, ‘less important’ and so on.

Questions from the Panel to Ms Thompson when she reappeared at the Hearing to present the further information requested by the Panel revealed the following:

- Ms Thompson has previously used this apportionment methodology in 10 to 12 open space strategies
- Ms Thompson acted alone in undertaking the apportionment exercise for the YOSS
- there was no peer review, or review by Council officers, of the apportionment outcomes
- Ms Thompson prepared the information set out in Table 5 for the express purpose of answering the Panel’s questions and it had not been used in previous apportionment exercises undertaken by her
- the apportionment exercise was an iterative process with checks back on the apportionments allocated.

Ms Thompson stated that the *“relative proportion of the overall existing and future population did not have a key role in determining the proposed apportionment of cost”*.⁴⁹

In describing the apportionment method, Ms Thompson stated:

For each individual open space project an estimate of the proportion of the total cost of the project that is attributable to the forecast development is made. The Yarra Open Space Strategy 2020 provides the basis for this estimate. The balance of the cost is attributed to the existing population.⁵⁰

The Panel questioned Ms Thompson on the logic of this statement, and she acknowledged that in making an estimate of the allocation to future population an allocation to existing population is a necessary part of that assessment.

Mr Gobbo submitted that the new population would make up 30.5 per cent of the total population in 2031 but is to be apportioned 67 per cent of the cost of delivering the YOSS. He described this situation - where approximately one-third of the 2031 population was being asked to pay for two-thirds of the costs of new open space - as a ‘flip’ and submitted that Council had not justified the flip. Mr Walker supported Mr Gobbo in this assessment.

With regard to the apportionment of costs, Mr Gobbo submitted:

⁴⁸ The eight projects were: Project 7.5A-1: Small local open space between Wellington and Smith Streets; Project 7.5A-5: Increase the size of the Peel and Cambridge Street reserves; Project 7.5A-6: Small neighbourhood open space in Collingwood sub-precinct C; Project 7.5A-7: New local open space between Gipps and Victoria Streets; Project 7.5B-2: Overlaps with project 7.5A-5; Project 7.5B-3: Major upgrade the McNamara Reserve in longer term; Project 7.6A-1: Small neighbourhood open space in Cremorne; and Project 7.6A-3: Small local open space in the western part of Cremorne.

⁴⁹ Document 121, [1.4].

⁵⁰ Document 121, [3.1].

- a very significant question for this Amendment is whether the proportional allocations have been undertaken in a credible manner
- the Submitters have serious concerns about how the proportional allocations have been designated, and say, most forcefully, that they have not been allocated appropriately
- those concerns have not been allayed by the evidence
- at the outset, it must be said that it is here nigh impossible to determine why the proportional allocation for any particular project has been set as it has, in the Strategy POPC
- despite Ms Thompson being directly asked by the Panel to address this question, and multiple attempts to explain the allocations in evidence in chief, and cross-examination, the methodology and allocations have become no clearer through the hearing process.⁵¹

Mr Gobbo described Ms Thompson's approach to apportionment as something of a 'black box', a claim repeated by Ms Peppler in response to the further information provided by Council. He acknowledged the use of the qualitative factors used by Ms Thompson but submitted that it was impossible to understand how each had influenced the apportionment. He pointed out that this is not a minor concern and that even a minor shift in the relative apportionments would have a material impact on the contribution rate.

Mr Gobbo submitted that an alternative approach of apportioning costs based on the proportions that existing and new populations comprise at 2031, the end date of the YOSS, would be a simpler approach and readily understandable. Mr Gobbo was supported in this position by the evidence of Mr Shipp who endorsed an approach based on the proportions of existing and new populations. Under cross examination by Ms Brennan, Mr Shipp acknowledged that his experience was mainly in the preparation and assessment of DCPs rather than open space, but he argued that many of the same principles applied. He further accepted that factors other than the relative proportions of the existing and new population could be relevant to the apportionment exercise.

In his expert evidence, Mr Milner offered no direct criticism of the specific factors influencing the apportionment exercise identified by Ms Thompson. While acknowledging the role played by these factors, Mr Milner set out the proportions of the existing and new populations would comprise the total at the end of the planning period.

Other than the evidence of Mr Shipp, who acknowledged that he is not an open space planner, no evidence was called to question the methodology used by Ms Thompson, nor did any submitter suggest an alternative. Mr Gobbo submitted:

The question is not whether the Submitters can put forward a more suitable alternative, or different numbers, or different solutions. This is not their role. The question is whether the Council has substantiated that the proposal *it* puts forward is justified.⁵²

In addressing the issue of apportionment of costs, Mr Walker cited the Eddie Barron principles as a starting point and submitted that they suggested that a fair and equitable apportionment was required. He submitted that the starting point was the proportions of the existing and new population in 2031 (adopting Mr Gobbo's 'flip' terminology) and that to deviate from those required an evidentiary base which, he submitted, was not provided by the evidence of Ms Thompson. He submitted that the departure from an apportionment based on populations proposed here was so significant that sound justification was needed.

⁵¹ Document 88, [55] to [59].

⁵² Document 88, [31].(original emphasis)

In terms of the factors which influenced the apportionment of costs, in cross examination Mr Gobbo pursued Ms Thompson in detail on the importance of two factors which he submitted appear to have had a disproportionate influence on the apportionment of costs. The first of these was the nature of future residential stock compared with existing residential stock. Mr Gobbo contended that Ms Thompson had relied on the assumption that new housing stock would have less private open space than existing housing stock and therefore would place greater reliance on public open space. Ms Thompson, while defending this as a legitimate and important factor in the apportionment, acknowledged that no analysis of access to private open space of existing residents had been undertaken.

The second factor is the impact of UHIE (urban heat island effect). Mr Gobbo pointed out that there were few references to UHIE in the POPC document as revised (Document 61). He submitted that while not being an expert in this area, Ms Thompson had used this factor, arising from the increased intensification of development likely in the future, to allocate a disproportionate cost burden to new populations compared with existing populations.

In arguing that an inappropriate apportionment of costs had occurred, submitters and Mr Shipp identified a small number of projects where they argued that the apportionment proposed was inappropriate. These included:

- Project 7.3A-1 where 50 per cent of the cost of land acquisition is apportioned to the new population but the Technical Report identifies it as a project to address an existing gap.⁵³
- Project 7.5A-6 which is a Small Neighbourhood open space in Collingwood with 50 per cent apportioned to new development. The Technical Report identifies this as an area of limited residential population increase but substantial worker increase, and that the main driver of demand is growth beyond the planning horizon.⁵⁴
- Project 7.9A-1 which is a Small Local open space with 60 per cent of costs allocated to the new population but is in an area designated for minimal and incremental change. Mr Walker submitted there was an existing need and but somewhat contradictorily an area well served by existing open space.⁵⁵
- Project 7.5B-4 which is a major upgrade to facilities in a playground in Fairfield Park. Mr Pitt noted the 30 per cent allocation to new residents who he said totalled 57 persons in 47 households and an expenditure of \$750,736. He submitted that if 47 households comprised only one adult that there could be only 10 children in the precinct resulting in an expenditure of more than \$75,000 per child.⁵⁶

The response by submitters to the further information provided by Council addressed specific apportionment in respect of projects 7.5A-5, 7.5A-7, 7.5A-1 and 7.5A-6⁵⁷ and 7.9A-1⁵⁸. In each case the submitters pointed out perceived inconsistencies between the criteria given for the apportionment as reproduced in Table 5, and reference to existing needs and existing gaps in provision in the relevant section of the Technical Report.

It is noted that no expert open space planning evidence was called to substantiate these claims nor was any alternative apportionment proposed.

⁵³ Document 28, [104].

⁵⁴ Document 28, [104].

⁵⁵ Document 88, [85e] and Document Mr Walker submitted 127, [35].

⁵⁶ Document 129, [9.12] to [9.1].

⁵⁷ Document 133, [7h].

⁵⁸ Document 131, [2b].

In closing, Council submitted:

Council accepts that the Panel is, to an extent, being asked to trust Ms Thompson's professional judgement, but the trust that the Panel is asked to have is based on Ms Thompson's acknowledged expertise and experience in open space planning, and on the detailed testing and examination of the methodology, and of Ms Thompson directly, by Council, the parties, and the Panel through this process.⁵⁹

Council further explained that:

- all actions described in the YOSS POPC (Doc 61) to meet the needs of the "existing and forecast" population are in the range 30:70, 40:60, 50:50; and
- all actions described in the YOSS POPC (Doc 61) to meet "primarily future" or "forecast" needs are in the range 30:70, 20:80, 10:90.⁶⁰

Council provided an Appendix B to its closing submission (Document 137) which presented information from exhibited and other previously tabled documents for all projects with apportionments of 90/10 or 10/90 (existing populations/ new populations) and 40/60 and 60/40 populations. This was intended to assist the Panel in better understanding the apportionments.

Further, Council submitted in closing that if the Panel had residual concerns about apportionment, two options available to the Panel were for it to:

- request further documentation
- request Council to engage a consultant to undertake a peer review.

(iii) Discussion

The further information on cost apportionment requested by the Panel and provided by Council, together with the information provided in Appendix B to the Council's closing submission, has informed the discussion here. In using that information, the Panel has been cognisant of the submission by Rigby Cooke that the further information provided by Council should not include any new information and explanation justification but should be limited to an explanation of what Ms Thompson considered in the original apportionment undertaken and as exhibited. The Panel notes that Ms Thompson acknowledged the information in Table 5 was prepared in fulfilling the Panel's request, but the Panel does not interpret it as new information and explanation as such.

At the outset, the Panel acknowledges:

- Ms Thompson has extensive experience in cost allocation in open space planning settings and this expertise was not questioned by any expert or submitter; nor is it questioned by the Panel
- the broad methodology used by Ms Thompson has been used in a number of other open space contribution settings in recent years
- the cost allocation methodology used by Ms Thompson has been used in other like amendments without, to the Panel's knowledge, extensive questioning of it or adverse comment by other panels
- no contrary evidence by open space planning experts was called to question the methodology used by Ms Thomson to allocate costs between existing and new open space users
- evidence which did question aspects of the methodology and outcomes of cost apportionment was given by witnesses with primarily DCP expertise

⁵⁹ Document 135, [96].

⁶⁰ Document 135, [100].

- the approach used by Ms Thompson in using professional qualitative judgment rather than a purely quantitative approach was not seriously challenged.

The Panel acknowledges the undoubted expertise and experience that Ms Thompson brings to this matter and that is born out through, in her estimate, the approach having been used around a dozen times in recent years in both Yarra and other municipalities.

The Panel first addresses the methodology used in apportioning costs between existing and future populations and secondly addresses the application of that methodology.

The Panel does not question the broad qualitative approach used. It considers that attempting quantification of relevant factors would most likely create more problems than it would solve. Hence the Panel rejects any suggestion that a quantitative approach is preferable or indeed possible. The Panel acknowledges the temptation to apply aspects of the DCP methodology to this issue but considers that such an approach is not appropriate.

Nor does the Panel question the eight factors listed above as being relevant to the apportionment exercise. While the interpretation of, and weight given to, some of the eight factors were questioned, the eight factors themselves were not seriously challenged. The impact that the nature of development and UHIE has on cost apportionment was questioned and is addressed separately below.

The Panel notes that the apportionment methodology appears, by Ms Thompson's own acknowledgment, to rest on her professional judgment alone. As stated above, her professional judgment is not questioned by the Panel. The Panel acknowledges that it does not possess specific expertise in this area.

However, the Panel understands the 'black box' label applied to the apportionment exercise by Mr Gobbo and Ms Pepler, and notes that neither it nor submitters are able to readily validate the apportionments made for particular projects. The apportionments made by Ms Thompson were, by her own acknowledgment, not reviewed either within her own firm or by Council officers. Further, the Panel is a little surprised that criteria for the apportionment between existing and new populations as used by Ms Thompson and reproduced at Table 5 were not already documented, in one form or another. It had assumed that there would be a rigorous and clearly documented set of guidelines or protocols underpinning such a qualitative exercise. The Panel notes the concession made by Council in its closing submission that the Panel is being asked 'to an extent' to take Ms Thompson's professional judgment on trust.

In light of this, the Panel has concerns about the professional judgment of one person, however expert and experienced, being used to apportion costs as part of the calculation of a levy intended to raise in the order of half a billion dollars over the planning period. Based on the revised POPC calculation tabled at the Hearing (Document 61), the overall apportionment to the new population was calculated at 67.1 per cent, that is \$379,973,479 of projects apportioned to new populations as per centage of the total cost of \$566,079,822.

For sake of argument, if the apportionment to new populations was reduced to 57.1 per cent, the total cost to new populations would be \$323,231,578, some \$56 million less, a significant amount.

The Panel is not suggesting that the methodology should not rely on the expertise and experience of one person. However, given the quantum of revenue to be collected it considers that there should be a transparent review process that ensures validation of the outcomes reached and a degree of transparency for external parties. That review process should be based on an

independent peer review. It is not the Panel's role to suggest an appropriate apportionment methodology.

In making these comments on Ms Thompson's methodology, the Panel is acutely aware that previous panels have either endorsed, or at least made no comment about, the methodology. The Panel recognises that in this respect it is departing from the outcomes reported by at least some previous panels. In doing this, the Panel comments that it is basing its observations on material before it and cannot know the full extent of material or submissions put before previous panels. The Panel notes that in this case the contribution rate proposed is an order of magnitude higher than any other existing open space levy in Victoria, and as such has attracted a level of scrutiny that may not have been applied before. The scrutiny is appropriate given the quantum of the contribution rate and the likely revenue it would generate.

The Panel now turns to the application of the apportionment methodology.

Both Mr Gobbo and Mr Walker placed emphasis on the so-called 'flip', that is approximately one-third of the new population being apportioned approximately two-thirds of the total costs. The Panel places little weight on this because the one-third and two-thirds ratios have emerged from the methodology used and are essentially coincidental. However, the broad point of apportionment of costs deviating significantly from the ratio of new to existing populations is relevant.

The Panel notes Ms Thompson's statement that relative proportions of existing and new populations did not have a significant influence on the apportionment between these two groups. The Panel finds this comment somewhat puzzling as the open space is provided to meet the needs of these populations. Ms Thompson acknowledged that her point could have been better stated.

The Panel considers that the fundamental problem is that neither it, nor submitters, are able to validate the apportionments made and therefore cannot have comfort that the apportionment of costs is appropriate.

The Panel notes that in applying the eight factors, Ms Thompson allocated an order of importance to each in the further information she provided to the Panel (Document 121). However, it is not clear to the Panel what weight was given to each factor in the apportionment of costs in each of the case studies provided. In the Panel's view, the indicators of 'very important', 'high level' 'important', 'less important' and so on were not used consistently and the distinction between 'very important' and 'high level' is not clear to the Panel. Despite further explanation by Ms Thompson, the Panel is still not clear what the relative weights applied to each of the factors was or their impact on particular apportionment outcomes.

With respect to the apportionment categories set out in Table 5, the Panel notes Ms Thompson's explanation of how an apportionment might be made by her at the margins. Despite this, the Panel considers that an external user (and indeed the parties to this Hearing or the Panel) have little in terms of practical guidance that allows validation of a particular apportionment.

In considering the nature of development and the impact of UHIE which Mr Gobbo submitted each had a disproportionate impact on the apportionment of costs to new populations, the Panel does not address these in any great detail. The reason for this is that despite extensive cross examination of Ms Thompson by Mr Gobbo, the Panel is not able to be certain of the weight given to each in the cost apportionment exercise. The Panel accepts that UHIE is relevant and is addressed in local policy. The Panel was presented with no convincing evidence as to its impact or the extent to which it has influenced particular apportionments. Further, it is not clear to the

Panel that the existing population has been allocated a fair share of the costs of this relatively recent factor in influencing the need for open space and greater tree canopy cover in particular. As an example of this, the Panel notes that for Project 7.8A-6 which has a 90 per cent apportionment to the new population, the description in the POPC (Document 61) includes reference to mitigating the UHIE. It is unclear to the Panel why the existing population should not be making a greater contribution in this respect.

Only a small number of projects were identified for which apportionments were questioned and proposed by experts and submitters as inappropriate. Mr Pitt set out in numerical terms how a particular apportionment in Fairfield resulted in an outcome that makes little logical sense in terms of the data which was presented in the exhibited documents. In the responses to the further information provided by Council and Ms Thompson, further projects were listed above where submitters perceived a bias towards over apportionment to new populations. The Panel accepts that despite its comments above that it is difficult to validate the apportionments proposed, it can understand the possible inconsistencies identified with respect to at least some projects.

No alternative apportionments were proposed in any instance. From this small number of examples, the Panel is unable to draw any firm conclusion on the appropriateness or otherwise of the apportionments. However, it acknowledges that some apportionments to new populations do appear to be higher than might be expected based on the information provided. The Panel is not in a position to suggest appropriate apportionments and submitters have not attempted this.

The different way the apportionment exercise was explained in Appendix B to the Council's closing submission has not added a great deal of clarity to the Panel's understanding of the apportionments made.

In attempting to understand particular apportionments, the Panel has asked itself whether it can be confident that the apportionment should not be one category or apportionment ratio (from Table 5) in either direction from that selected by Ms Thompson. In many cases, the way the apportionments are explained does not provide the Panel the comfort it would like. Where there is doubt, it seems to the Panel that there could be an over apportionment to new populations.

On this basis, the Panel cannot confidently conclude that the apportionments are justified. The Panel draws this conclusion somewhat reluctantly and despite two requests for information which it had hoped would add a greater level of transparency to the outcomes proposed.

The Panel is, however, surprised that the apportionment to new populations deviates to the extent it does from the proportion they comprise of the total population at the end of the planning period. Having said this, the Panel accepts that apportionment based on the proportion of new and existing populations is too simplistic and that other factors have legitimately been taken into account. It notes that the overall apportionment proposed (67.1 per cent to the new populations) has a significant impact on the comparatively high open space levy that is proposed.

In drawing these conclusions, the Panel acknowledges that given the qualitative methodology used it is not likely that a non-expert Panel or submitters would be able to comfortably validate outcomes. However, because of the magnitude of revenue involved, the Panel considers that validation of the apportionment outcomes through a suitably structured peer review is required.

(iv) Conclusions

The Panel concludes:

- a qualitative, as opposed to quantitative, methodology to apportion costs between existing and future populations is appropriate
- the basis of and factors influencing the qualitative approach used to apportion costs are appropriate
- the apportionment of costs should be the subject of a suitably structured peer review.

4.4 Value of land required to accommodate future residents and workers

(i) Issues

The issues are:

- whether the methodology used to calculate the value of land required to accommodate the new population is appropriate
- whether that methodology has been appropriately applied in calculating the value of land required to accommodate the new population.

(ii) Evidence and submissions

The value of land required to accommodate the new population is the denominator in the contribution rate calculation equation. The Contributions Report describes how the denominator was established:

The resident and worker population forecasts and the dwelling and non- residential floor space forecasts were apportioned spatially to the open space planning precincts based on the City of Yarra's forecast data. This provided the starting point for determining how much land would be needed to accommodate the forecast increases. The value of land estimated to redevelop was determined using site values based on Council's property rate valuations, as the public open space contribution rate is applied to site value only.⁶¹

Dr Eagleson, an expert in spatial modelling and author of the technical document titled 'Data for Residential and Non-residential Development to assist calculation of the Public Open Space Contribution Rate' (Document 8), gave evidence for Council on the methodology that she applied to determine the denominator. This involved:

- developing a model to estimate the land area required to support residential and employment growth in the City of Yarra small areas 2016 – 2031; and
- sourcing land valuations data from the City of Yarra and aggregating this data within a Geographical Information System (GIS) into the required spatial units to support the City of Yarra Open Space Strategy.⁶²

Dr Eagleson's evidence considered the impact of COVID19 on each of the inputs to the denominator calculation. She stated that the key impact of the pandemic was that development would likely be slowed in the short term (2022-2023) after which forecast growth is likely to resume, with the result that population forecasts for 2031 would be more likely to be achieved by 2034 or 2035. She said that for a range of other inputs, it was too early to predict what the longer-

⁶¹ Contributions Report, p. 10.

⁶² Document 26, p. 5.

term impact would be. The impact of the pandemic on the denominator calculation was not raised as a key issue at the Hearing and is dealt with more generally in Chapter 3.4.

The PPP group of clients took issue with two aspects of how Dr Eagleson had applied the methodology:

- how the population forecasts had been apportioned spatially to the open space planning precincts
- the use of 2016 median site values.

On the first point, Mr Gobbo submitted that there was a mismatch between where Ms Thompson assumed populations would go, according to strategic documents, and where Dr Eagleson assumed they would go, according to her predictions of market forces and land values. Dr Eagleson stated under cross examination that in terms of the spatial mapping exercise, she had looked at sites where development (or growth) would occur based on capacity and market forces rather than where proposed open space would occur based on relevant strategic planning documents.

On the second point, Mr Gobbo submitted that the costs in the denominator had been undervalued because median site values, assessed according to 2016 values, for the most undeveloped sites within Yarra had been used. He argued that the site values on which the contribution amount will be calculated when subdivision occurs will be higher than the 2016 values used in the calculation not only due to the passage of time, but also because site values of these undeveloped sites will go up once purchased for redevelopment, rise again when developed, and rise further when a subdivision permit is granted and a valuation done for the purposes of the subdivision contribution. Undervaluing site values in this way, he submitted, reduces the denominator, which in turn increases the overall contribution rate. He stated that an allowance could have been made for this undervaluing using, for example, evidence from an expert valuer.

Under cross examination and re-examination, Dr Eagleson gave evidence that the 2016 median site values had been used because:

- median values are more reliable (than average values)
- the 2016 values had been formally adopted and were the most authoritative available, as opposed to the 2018 values which were only pending and had not been formally adopted by Council at the time (and which she acknowledged would generally be higher than the 2016 values) and matched the census figures.

Under cross examination, Dr Eagleson generally agreed that the site value of land being developed would generally rise over time and as it was developed.

This part of the Mr Gobbo's submissions was supported and adopted by Piedimonte.

(iii) Discussion

The Panel notes that the overall methodology used to calculate the total site value of the land forecast to be developed (the denominator) itself was not seriously challenged at the Hearing. Rather, the key issues raised were about the application of the methodology.

It is not clear to the Panel what impact the suggested spatial 'mismatching' of forecast populations to precincts would have on the relevant site values and the denominator calculation. This was not drawn out in any of the submissions and in the Panel's view, no compelling argument was advanced to overturn Dr Eagleson's calculations.

In terms of the use of 2016 median values, the Panel acknowledges the arguments advanced by Mr Gobbo that at the time any given contribution is actually calculated, the site valuations will be higher than the 2016 median values used to calculate the rate. It is also accepted that it would be possible for the Council to have made an appropriate adjustment to the denominator on this basis. However, if such an adjustment exercise were to be undertaken, a similar exercise would need to be undertaken for other inputs to the rate calculation. If this had occurred, the Panel considers that each of these variations would most likely have been challenged and various competing adjustment methods or amounts put forward by relevant experts. There would also be the question of exactly what date the adjustment should be made up to and any date chosen would have an element of arbitrariness. On the basis that the majority of data informing the rate calculation has been taken as at 2016 (based on the most recent census data available at the time the relevant work was undertaken), the Panel is satisfied that the 2016 data set for site values is appropriate.

The Panel accepts Dr Eagleson's evidence that the use of the median values is most appropriate and notes that the use of the median (as opposed to the average, for example) is a common approach in this type of exercise.

(iv) Conclusion

The Panel concludes that the methodology used to calculate the value of land required to accommodate future residents and workers is appropriate and has been appropriately applied.

4.5 Recommendation

The Panel recommends:

Replace the 30 per cent allowance added to Capital Improved Value of land with 10 per cent, in calculating the cost of land to be acquired for future open space, in the calculation of the open space contribution rate.

5 Issues arising in calculating and applying the open space contribution

5.1 Proposed approach to acquiring land

(i) The issues

The issues are:

- whether the proposed approach to acquiring land required for open space is realistic
- whether the heavy reliance on acquiring land required for open space on the open market is appropriate
- whether the potential conversion to open space of publicly owned land has been given sufficient weight in the approach to acquiring land
- the role of PAOs in acquiring land for open space.

(ii) Evidence and submissions

The Technical Report states that the land required to deliver the YOSS will be acquired through a range of mechanisms:

- as a land contribution as part of future subdivision of land for large development sites
- conversion of Council-owned land from its existing use to open space
- conversion of land owned by another government agency to open space
- purchase of undeveloped land
- purchase of developed sites where no other opportunities are available.

Council submitted that its reliance on land acquisition on the open market as a key strategy for delivery of the YOSS is entirely appropriate because insufficient land will become available to deliver the YOSS from land contributions and land conversions. The Contributions Report refers to the experience of councils in inner and middle ring suburbs needing to purchase private land at market rates to meet the open space needs of forecast populations due to the limited number of redevelopment sites large enough to provide usable land contributions and that there are limited opportunities for Council-owned sites to be converted due their limited availability, size and location.

The evidence and submissions relating to repurposing of public land has been discussed in Chapter 4.1.

The Contributions Report states that Council is not proposing to use the PAO to purchase property to deliver the YOSS. Ms Thompson's evidence was that the PAO could be used by Council to acquire land for open space, but only after Council had undertaken a more detailed assessment at a sub-precinct level to identify potential land that meets the criteria for new open space (Table 5-2 in the Technical Report). Once this had been done, Council could prepare an action plan for each sub-precinct which would include various options including introducing a PAO over relevant land. Ms Thompson said that Council would be able to acquire the new open space in the sub-precincts identified to deliver the YOSS and that the timing of the acquisition and establishment of new open spaces would become clearer once the detailed assessment had been undertaken. She explained that the reliance on purchase on the open market is *"based on the understanding that*

there are only a limited number of redevelopment sites are large enough for the land contribution deliver suitable land contributions as open space”.⁶³

Mr Milner stated:

The identification of land at an early stage assists the affected landowners and others in the vicinity to make informed decisions about the use and development of their land.

Early ‘reservation’ also enables control of the use and development of land that will eventually be acquired, including insofar as all further use, development, or subdivision of the land will generally require a planning permit and permit applications must be referred to the acquiring authority.⁶⁴

Council submitted that delaying the imposition of PAOs until it had more clarity or certainty around which properties would be purchased would avoid “*significant uncertainty and angst for landowners and the community*”, particularly when PAOs are in place for long periods of time.⁶⁵ In contrast, Mr Gobbo submitted that uncertainty would be created by the existence of the YOSS (and associated documentation) itself because it generally identified the areas where open space would be delivered and properties acquired.

Mr Shipp stated that the lack of the use of PAOs in the YOSS was a factor in his view that the YOSS is ‘speculative’. In his opinion, the acquisition strategy of the YOSS was not guaranteed to be successful, and even if successful, would take a long time to achieve which could push acquisitions outside the timeframe of the YOSS. Mr Shipp said this was inequitable because developers were being asked to pay for open space that may never be delivered or would be delivered outside the timeframe of the YOSS.

Mr Shipp also considered that there is a ‘mis-alignment’ between the YOSS’s heavy reliance on the acquisition of ‘improved’ properties and the stated strategy for land acquisition which places acquisition of developed properties on the open market as the last option. In his opinion, the other methods identified in the YOSS are more practical to implement. Under cross examination by Ms Brennan, Mr Shipp stated that he accepted that land acquisition would be required to deliver the YOSS.

(iii) Discussion

The Panel considers that Council has taken a realistic and measured approach to the way in which it intends to acquire land to deliver the commitments of the YOSS. The Panel agrees that the Council will face considerable difficulties in acquiring suitable areas of open space using land contributions and repurposing of either Council-owned or other public land. As noted in Chapter 4.1, the Panel acknowledges the evidence of Ms Thompson and the submission of Council that the ‘low hanging fruit’ with respect to repurposing of public land has to an unknown degree been harvested in implementing the 2006 strategy and that it would not be appropriate for Council to rely too much on this method of acquiring land for open space. It considers that most larger development sites in Yarra have already been developed. For these reasons, the Panel considers that the acquisition of developed land on the open market, as the final method proposed by Council if other opportunities are not available, is appropriate and that the Council will need to rely heavily on purchasing privately held land on the open market to deliver the YOSS.

⁶³ Document 25, at [3.7.6].

⁶⁴ Document 29, at [28]-[29].

⁶⁵ Document 75, at [52].

The Panel notes the concerns of submitters about the challenges facing Council in acquiring and delivering open space on the scale contemplated by the YOSS. In this regard, the Panel notes the exhortation in *Open Space for Everyone* to be bold in planning for open space across metropolitan Melbourne.

The Panel supports Council's approach of not applying the PAO to land until it has properly assessed all potential land that meets the criteria for new open space in each precinct and whether a PAO is the most appropriate option. However, if a PAO is to be used, it should be applied as early as possible once that decision is made to ensure that the land is not further developed in a manner contrary to its future use as open space and potentially thereby increasing the compensation payable under the compulsory acquisition process.

(iv) Conclusions

The Panel concludes:

- the proposed approach to acquiring land for open space is measured and realistic
- the heavy reliance on acquiring land for open space on the open market is appropriate
- the potential conversion and use of publicly owned land has been given appropriate consideration
- it is appropriate for the Council to wait until it has identified properties for acquisition before applying PAOs to land.

5.2 Municipal-wide contribution rate

(i) The issues

The issues are:

- whether the appropriate principles have been applied in choosing to apply a single, municipal-wide rate
- whether a differential open space contribution rate can and should be applied
- whether the use of a single, municipal-wide contribution rate is appropriate.

(ii) Evidence and submissions

The Contributions Report states that the proposed uniform rate provides “*municipality consistency, policy neutrality and perceived equity*”.⁶⁶ Further:

The single public open space contribution rate is considered to meet the equity principle because a uniform rate provides an even benchmark, with clarity and simplicity about what the rate will be. All subdivisions are treated equally, the principles of need, nexus, accountability and equity having been established in the setting of the rate.

As the public open space contribution is determined as a per centage of the land or a per centage of the site value of such land, the actual land or cash contribution will vary, depending on the circumstances of the site.⁶⁷

Ms Kay gave evidence that applying a uniform rate across the municipality as a per centage of land value is fair. She said that it results in differing amounts paid by developers where a higher site value is likely to result from a higher density development. In addition, Ms Kay stated that a uniform rate is equitable because:

⁶⁶ Contributions Report, p. 5.

⁶⁷ Contributions Report, pp. 5-6.

Everyone will benefit from the new open space reserves as well as the improvements to existing reserves. Even precincts with a smaller number of open space projects will benefit from the public open space expansions and improvements in other parts of the city. There is less likely to be cross over demand from precincts where there is a large population increase if their local open space needs can be met within their own precinct.⁶⁸

In Ms Kay's view, equity in the rate also includes consideration of making open space accessible to everyone in the municipality and that there is equity in distributing costs across the municipality in an even-handed way. She noted that *Open Space for Everyone* has a focus on "more equitable access to open space across metropolitan Melbourne".⁶⁹

In her written evidence, Ms Kay provided a table which set out the results of her re-calculation of the rate on a precinct basis (reproduced here as Table 6).

Table 6 Open space contribution rate by precinct

Precinct	Total costs	SV of land to be developed	Open space contribution rate
Abbotsford	\$7,855,198	\$286,757,014	2.7%
Carlton North - Princess Hill	\$523,066	\$23,588,482	2.2%
Central Richmond	\$28,448,433	\$500,779,083	5.7%
Clifton Hill	\$1,024,000	\$68,930,172	1.5%
Collingwood	\$98,738,008	\$815,247,821	12.1%
Cremorne, Richmond South, Burnley	\$117,244,876	\$635,975,223	18.4%
Fairfield - Alphington	\$3,385,294	\$22,555,590	15.0%
Fitzroy	\$49,041,076	\$717,813,963	6.8%
Fitzroy North	\$11,123,980	\$158,903,603	7.0%
North Richmond	\$65,151,838	\$558,687,669	11.7%
City of Yarra	\$382,535,769	\$3,789,238,620	10.1%

Source: Expert evidence of Ms Kay, Document 24, [86]

Ms Kay opined that the differential in the highest and lowest rates, 1.5 per cent in Clifton Hill to 18.4 per cent in the Cremorne, Richmond South and Burnley precinct, would raise new equity issues and cancel out the benefits of a municipal-wide rate.

When cross-examined about a precinct-based rate, Ms Kay accepted that under a precinct-based rate, an area with a lower need would have a lower contribution rate but pointed out that, in her opinion, the context for the two-rate approach in *Melbourne C209*⁷⁰ (which was based on different levels of forecast growth) was very different to that in Yarra, because Melbourne has well defined very high growth areas and other areas with very limited change expected and this is not the case in Yarra. She did not agree with Mr Walker's proposition that there was a similar difference in Yarra between high growth areas and low growth areas that could justify two (or possibly three) different rates. Her evidence was that Yarra's expected growth across the municipality does not

⁶⁸ Document 24, [124].

⁶⁹ Document 24, [34].

⁷⁰ Melbourne C209 [2014] PPV 116.

have enough differential in terms of land use development and level of transformation for such an approach, and Yarra has a very different planning framework to that in Melbourne.

Mr Milner stated that the YOSS methodology, did not support a uniform, municipal-wide rate.

Mr Shipp stated that he did not support a single, municipal-wide rate, but his reasons focussed on whether the rate should be applied to both residential and non-residential land uses alike. Under cross examination, Mr Shipp stated that he did not believe that equity required a split rate between high growth and low growth areas.

Mr Black's evidence was that that a municipal-wide flat rate had not been adequately justified by the YOSS and was inequitable. In his opinion, a uniform rate is simple, but that does not necessarily mean that it is equitable. Mr Black took issue with the result of applying a flat rate, being that:

... developments in areas with abundant open space will be left paying disproportionately for open space in other parts of the municipality, [and] which its future residents or workers are likely to receive little to no benefit.⁷¹

He pointed out that about 80 per cent of forecast dwellings will be in Alphington/Fairfield, Richmond, Collingwood, Cremorne/Burnley and Abbotsford but that other suburbs with significantly less growth will end up paying more to reduce the amount paid by the higher growth suburbs. He said different rates should be applied to different precincts to reflect the public open space needs of each precinct more accurately and questioned why the detailed work in assessing the anticipated growth and open space needs on a precinct basis in the background documents to the YOSS had not flowed through to the rate.

Mr Black stated that it is not unusual to have a rate that varies, with different rates attaching to different circumstances including different levels of projected growth. He described the flat rate as a 'blunt instrument' and gave evidence that the background work undertaken by the Council supported a differential, or precinct-based, rate.

However, when cross-examined by Ms Brennan, Mr Black accepted that a precinct-based analysis does not necessarily result in a precinct-based rate. His evidence was that while he supported a 7 per cent rate for Fitzroy North, as set out in Table 6, he did not support a consequential rate of 18.5 per cent for Cremorne, 15 per cent for Fairfield, 12.1 per cent for Collingwood or 11.7 per cent for Richmond. He did not expect the rate in Clifton Hill to be 1.5 per cent. When Ms Brennan put to Mr Black that despite his expert witness statement saying so, he did not actually support a precinct-based approach, Mr Black replied that the planning for these areas was wrong. However, Mr Black retracted this when Ms Brennan pointed out that he had previously agreed that he had no criticism of the Actions, costings and apportionment in the YOSS and associated documents. Mr Black then stated that the gap analysis was incorrect.

When questioned by the Panel, Mr Black clarified that his evidence was that the methodology of the YOSS is sound, but its application went awry in the application of the methodology in the gap analysis. He added that, in his opinion, Yarra's planning framework provides clear statements about the differences between different areas within the municipality and applying a differential rate in a similar manner to Stonnington would produce a fair result. He acknowledged that a lot of the background work had been done by Council but thought Council could undertake further work to distinguish areas where growth is encouraged and where it is not (and potentially areas of

⁷¹ Document 31, [17].

medium growth), based on the work already undertaken, which could then be used as the basis for the application of differential rates.

Council submitted that Mr Black's evidence in this regard was "*simply untenable*"⁷²:

He cannot, on the one hand, advocate for a 7% rate for his client's precinct, on the basis of the precinct-based approach founded on the work done for the YOSS; and on the other hand, refuse to accept that it is consequently appropriate to accept much higher rates than 10.1% in the precincts that generate the most demand for new open spaces.⁷³

Council submitted that the Panel should give no weight to this aspect of Mr Black's evidence.

Council submitted that the adoption of a flat rate is equitable:

because all subdivisions captured by the Schedule to Clause 53.01 pay the same rate (whether in cash or land) regardless of location, and regardless of whether that location is or is not already well served by open space.⁷⁴

Council argued that this approach avoids the *inequitable* outcome where a development in a precinct where there is less need for new open space than others obtains an economic advantage through having to pay a lower contribution while still contributing to the population growth in the area. Council accepted that imposition of a single, municipal-wide rate would result in some cross-subsidisation within precincts and across the municipality. In its closing submission, Council also referred to several parts of *Open Space for Everyone* to argue that open space planning must encompass and be accessible to everyone. Council highlighted that in relation to funding models, *Open Space for Everyone* recognises the need to update funding and financing models and that the strategy states that "*funding arrangements must result in equitable access to quality open space for all Melburnians*".⁷⁵

Council relied on previous Panel reports including *Monash C148*⁷⁶ in which the Panel accepted that a council can validly adopt a single planning unit for the purposes of collecting a contribution under Clause 53.01:

The effect of a single planning unit is that future development in areas with adequate existing provision [for open space] may subsidise expenditure in areas where provision is poor.

...

The Panel notes that the concept of cross-subsidy is effectively built into the provisions of Clause 53.01 because it provides no direction on where the funds collected should be spent [and the] ... Panel agrees that, notwithstanding higher growth is expected in some areas of the municipality over other areas, the allocation of funds raised through an open space contribution is a matter for Council through its budget process.⁷⁷

In this respect it also relied on *Melbourne C209*⁷⁸ in which the Panel stated:

... the Panel considers that to ... conclude that because the Amendment may be inequitable to specific properties means that the Amendment must fail on equity grounds is overly simplistic and fails to accord any weight to the strategic view being taken by Council in the [Open Space Strategy].⁷⁹

⁷² Document 135, [117].

⁷³ Document 135, [118].

⁷⁴ Document 34, [125].

⁷⁵ Document 135, [20].

⁷⁶ *Monash C148* [2020] PPV 23.

⁷⁷ *Monash C148* [2020] PPV 23, p. 24 of 40. Refer to Document 34, [65].

⁷⁸ *Melbourne C209* [2014] PPV 116.

⁷⁹ [2014] PPV 116, pp. 44 - 45 of 68.

In oral submissions, Ms Brennan took the Panel to a range of provisions of the Planning Scheme which direct and encourage growth in various parts of the municipality. Council submitted that, unlike the City of Melbourne, Yarra does not have a clear delineation between areas for urban renewal and stable residential areas, but rather has some established areas with growth areas scattered throughout the municipality. For this reason, it was submitted, the Melbourne approach is not appropriate in Yarra.

Overall, Council submitted that a municipal-wide rate was justified given the following two factors:

- the significant benefits of a simple, clear, and easily applied flat rate approach; and
- the significant implications for development in areas with high growth and minimal (or no) existing open space of taking a precinct-specific approach where the contributions rates would be far more than 10 per cent.

Mr Walker submitted that a uniform contribution rate across the whole municipality would be inequitable, giving the following example:

Fitzroy North is already well served by open space and it is unreasonable to impose a relatively high contribution requirement to offset public open space upgrades for other areas within the municipality that are poorly served by public open space and that require significant upgrades. The amendment should provide a more sophisticated demand assessment for areas within the municipality where public open space upgrades are required, and adopt a suburb / precinct approach to contribution rates.⁸⁰

Along similar lines, Urban Development Institute of Australia (Victoria) (UDIA) submitted that the contribution rate should not apply as a 'blanket rate' to the entire municipality but should instead *"be varied for individual areas within the municipality, having regard to the open space available and the specific and projected needs of the future population in such areas"*.⁸¹ It argued that in this sense there should be a nexus between the areas that require public open space and those who pay for it, and recommended to the Panel the approach taken in Stonnington where broad areas were allocated differing rates reflecting the open space needs in those different areas. When questioned by the Panel, Mr Vorchheimer for the UDIA appeared hesitant to accept the high rates that a precinct-based approach (based on Table 6) would entail and suggested that the Council should cast the net differently to smooth out the results (as in Stonnington).

Mr Pitt submitted that while there will be a level of cross-subsidy as a result of applying a uniform rate, it is a matter of degree and where the divergence in outcomes becomes too great a flat contribution rate across the municipality is *"simply unfair and inequitable"*.⁸² He also contended that the argument about avoiding over burdening development in shortfall areas applies equally to well-provisioned areas if the contribution rate is uniform. He submitted that a flat rate is not simple, clear or easily applied as asserted by the Council because site values are assessed on the basis of differing facilities, location, topography and built form context within 12 months of statement of compliance under the *Subdivision Act 1988* and that just because a rate is equal does not mean that it is equitable. Porta's concluding position was that Fairfield should be excluded from the Amendment and continue to be subject to the current contribution rate of 4.5 per cent.

In response, Council submitted that to exclude Fairfield from the new, municipal-wide rate would result in an inequity for the balance of the municipality. In its closing submission, Council provided a table that set out the proportions of the total expenditure proposed by the YOSS POPC for each

⁸⁰ Document 127, p. 1

⁸¹ Document 53, [3.1].

⁸² Document 129, [9.70].

precinct (as a per centage of the total, and as a per centage of the apportionments to each of the new and existing populations). Council submitted that the table demonstrated that the expenditure proposed for Fairfield is only 1.19 per cent of the total cost of the YOSS, and only 0.96 per cent of the total cost apportioned to the new population. It submitted:

The point that Council seeks to make is that the YOSS does not overprovide for upgraded open space in Fairfield. The provision for Fairfield is less than 1% of the total costs apportioned to the new population. The vast majority of the costs of the YOSS relate to precincts that are underserved by open space, and where most development is expected to occur. In Council's submission it is entirely appropriate for the POSC to be levied at the municipal level so that the load is shared across the whole municipality, rather than disproportionately charging those precincts that, by contrast to Fairfield, do not benefit from substantial provision of open space, by accident of history.⁸³

The Housing Industry Association submitted that to apply a flat rate *“regardless of the differences in ‘need’ within the municipality would set an undesirable precedent”*.⁸⁴

A number of submissions asserted that the municipal-wide, flat rate was not justified. DCF Developing Group Pty Ltd and JCL Prime Development Pty Ltd submitted that a blanket contribution rate is unjustifiable because *“it overlooks significant site-specific contextual factors, such as easements and other site constraints that may affect yield of development”* and raised concerns about equity issues.⁸⁵

(iii) Discussion

The Panel considers that, while a consideration, the benefits of a simple, clear, and easily applied municipal-wide rate approach only take the matter so far.

The Panel has given considerable thought to whether a precinct-based approach would be more appropriate. However, the Panel is concerned that if differential, precinct-based rates were used, such as those in Table 6, there would be too high a burden on development taking place in some areas. While some experts and submitters were willing to accept a precinct-based approach for precincts where the rate would be in the middle of the rate range, there was little acceptance that the higher (or lower) rates were reasonable. The Panel is concerned that the level of disparity in contribution rates resulting from a precinct-based approach may have unintended consequences such as pushing development into other areas, preventing development of the areas with the highest rates or other impacts which have not been fully debated before the Panel and are not considered in the background reports.

The Panel has carefully considered whether a middle ground could be found as suggested by some submitters (for example, UDIA). It notes that the Stonnington approach recommended to the Panel applied a two-tiered approach, where a 5 per cent contribution rate was applied to areas in the east of Stonnington which had significantly greater areas of existing open space and 8 per cent applied to the three remaining suburbs (in the west) where the open space needs were greater and the highest population growth was set to occur.⁸⁶ The Panel considers that there is insufficient evidence before it that there is a similarly clear distinction between suburbs or

⁸³ Document 135, [126]. Council also submitted that since the calculations in the YOSS, Porta had lodged a planning permit application that would potentially bring more than 500 residents, and an additional number of workers to Fairfield, if approved, and which is far in excess of the 57 new residents on which the YOSS assessment is made: Document 135, at [135].

⁸⁴ Document 50, [12].

⁸⁵ DCF Developing Group Pty Ltd submission, p. 3. JCL Prime Development Pty Ltd submission, p. 3.

⁸⁶ *Stonnington C186 (PSA) [2015] PPV 9* referred to in Document 53, [3.6].

precincts in Yarra to support a two-tiered approach such as in *Stonnington C186* (or *Melbourne C209*). Instead, the Panel found the case presented by Council, backed by Ms Kay's evidence, that the growth areas in Yarra cannot be easily separated but instead are dispersed within suburbs and precincts, to be convincing. This is particularly so when considering the location of Major Activity Centres and Neighbourhood Activity Centres together with projected spatial distribution of the residential population in the *Yarra Housing Strategy 2018*. In this respect, the Panel notes Mr Black's evidence that under the Yarra Housing Strategy, approximately 80 per cent of the total planned dwellings forecast will be in the suburbs of Alphington/Fairfield, Richmond, Collingwood, Cremorne/Burnley and Abbotsford. However, this point takes no account of where worker populations will be accommodated.

The Panel considers that while not like Melbourne with its large, spatially discrete areas of new urban development and the balance of the municipality being largely minimal change (with some exceptions), there are, nonetheless, notable differences between precincts in Yarra in terms of how well they are currently provisioned for open space and where population growth is expected to occur. These differences do result in some inequity when applying a single, municipal-wide rate, not just on a property-by-property basis, but more generally at the precinct level. The Panel considers however, as did the Panel in *Melbourne C209*, some inequity to specific landowners and properties will not be fatal to the application of a uniform rate and that it is acceptable that there be some cross-subsidisation between areas or precincts.

Therefore, on balance, and mindful of the potential disadvantages of a precinct-based approach and the absence of a better model before it, the Panel considers that it is appropriate to take a municipal-wide, strategic approach to the setting of a contribution rate.

Unlike the existing open space contribution rate which only applies to residential development, the Amendment applies the uniform rate to both residential and non-residential development. The appropriateness of this was not seriously contested. Mr Shipp commented on it, as did Mr Milner but in the context of residential and non-residential resulting in different patterns of usage. The Panel accepts that the uniform rate should apply to both residential and non-residential land. It also notes that to an extent, this conclusion follows from the Panel's acceptance of an equal ratio for residential and worker needs, as discussed in Chapter 3.3.

(iv) Conclusions

The Panel concludes:

- the appropriate principles have been applied in choosing to apply a single, municipal-wide rate
- a differential open space contribution rate is not appropriate for Yarra
- the use of a single, municipal-wide contribution rate is appropriate
- the single contribution rate should apply to both residential and non-residential land.

5.3 Transitional provisions

(i) The issue

The issue is:

- whether the Amendment should provide for transitional provisions for development which is part way through the approval and development process at the time of approval of the Amendment.

(ii) Evidence and submissions

With respect to transitional provisions, Council submitted that:

... in the event there is an approved subdivision permit or an existing planning scheme provision (e.g. DPO) that contains a condition or provision specifying an open space requirement or per centage provision, that condition or provision will prevail, and the revised contribution rate of 10.1% would not apply⁸⁷

With respect to the reference to existing DPOs, Council tabled an updated version of the Schedule to Clause 53.01 (Document 60) at the Hearing and subsequently provided a further updated version (Document 139). This is discussed in Chapter 7.1.

Council submitted that for any existing permit for subdivision, the open space levy would be applied at the current rate of 4.5 per cent. No other transitional provision would be made.

Mr Gobbo submitted that a number of his clients had purchased land based on assumptions relating to costs likely to be incurred, including contributions to open space at the existing rate. Supporting this, he quoted the evidence of Mr Mackintosh who stated that in situations where development costs increase there would be downward pressure on land values. Where land has already been purchased, there is no opportunity for this to occur and, Mr Gobbo submitted, market pressures are such that the sale price of completed units cannot be increased to absorb increased costs. Mr Gobbo argued that in such circumstances transitional provisions should be applied and he suggested wording that could be added to the Schedule to Clause 53.01 to achieve this. He argued that the situation that these submitters find themselves is fundamentally unfair.

Mr Milner supported the inclusion of transitional provisions exempting any development that held a planning or subdivision permit at the time of approval of the Amendment, citing the case of the residential zones when a minimum garden area was introduced as an example of where this has occurred.

Similarly, Mr Black supported transitional provisions for development approved before the gazettal of this Amendment. He stated that it would have been unreasonable for Piedimonte to allow for a contribution rate of 10.1 per cent at the time the planning permit was considered by Council on 21 May 2020.

Mr Gobbo further submitted that special provision should be made for the Harry the Hirer site, for which DPO15 has been approved with a 4.5 per cent contribution, but for which no development plan had yet been approved. Mr Gobbo submitted that the Panel which considered DPO15 had effectively deferred the rate at which the open space contribution should be made to this Panel. It is currently proposed that the Harry the Hirer site contribute land as its contribution. The Panel was provided with an image that depicted proposed open space. Mr Gobbo submitted that if this Panel is so minded not to recommend a transitional rate, the Panel should recommend that any further contribution above the 4.5 per cent land contribution should be made by way of cash.

Mr Walker submitted that Piedimonte had obtained a planning permit while the Amendment was under preparation and that it was not fair or equitable to impose a 'retrospective development contribution.' He supported this on the basis that Piedimonte had applied for permit and undertaken project feasibility on the basis of a 4.5 per cent contribution for open space. He argued that the proposal was contrary to the principle that planning scheme amendments do not

⁸⁷ Document 34, [213]

affect existing development rights and cited Victorian Civil and Administrative Tribunal (VCAT) cases in support.

In its closing submission, Council submitted that the grant of a planning permit to Piedimonte does not give an accrued right to subdivide the property or to be issued with a statement of compliance. As a result, there is no sense in which the change to the contribution rate is being applied retrospectively.

Other submitters raising the issue of lack of transitional provisions were DPG Management Pty Ltd, Duke Ventures Pty Ltd, Zero Nine, and Fenwick 84 Pty Ltd, most commonly raising the unfairness of the lack of such provisions.

(iii) Discussion

The Panel notes that some changes to planning provisions are accompanied by transitional provisions but in other cases, including DCPs, transitional provisions are uncommon. The Panel acknowledges that this is a difficult position and understands the fairness argument where land has been acquired and costings undertaken based on a particular set of assumptions.

Three factors have influenced the Panel's consideration of this issue. Firstly, wherever the 'line' that separates development paying levies at a new, higher rate is drawn there will be perceptions of unfairness depending on which side of the line a particular development falls.

Secondly, choosing for example an approved planning permit as the cut-off for a levy at the existing rate, while superficially appealing, introduces complexities around amendments to that permit where they are later sought.

Thirdly, this Amendment, or at least the strategy which it implements, has been in preparation for a number of years and while the proposed rate may not have been known until relatively recently, prudent developers would have recognised that a significantly increased levy was likely and planned accordingly.

For these reasons, the Panel does not support providing transitional provisions other than those already provided for in the amended Schedule to Clause 53.01 (Document 139).

The Panel accepts the position of Council that there is no accrued right to subdivide implied by the grant of a planning permit and that as such there is no retrospectivity in applying the open space contribution rate in place at the time of subdivision.

With respect to the Harry the Hirer site, the Panel accepts Mr Gobbo's contention that the Panel considering DPO15 effectively deferred consideration of the appropriate rate at which open space is to be provided to this Panel. The Panel notes that the Yarra C223 Panel stated:

It would, however, be reasonable to tie the provision of public open space for this site to the controls at the point at which the site is redeveloped, so that if the Planning Scheme rate was to increase, the Proponent would be liable for a higher contribution.⁸⁸

The Panel sees no reason why the open space contribution rate in place at the time of subdivision should not apply to the Harry the Hirer site. However, the Panel accepts that at this stage of development it would be unnecessarily disruptive to require any provision above that provided for in development plans to be provided by way of extra land. For this reason, the Panel accepts Mr Gobbo's submission that any extra contribution should be made by way of a cash payment.

⁸⁸ Panel Report for Amendment C223 to the Yarra Planning Scheme, p. 48.

(iv) Conclusions

The Panel concludes:

- not including transitional provisions, other than those provided for, is appropriate
- any additional requirement above the open space provided for as a land contribution on the Harry the Hirer site should be made by way of a cash contribution.

5.4 Offsets for the provision of communal open space**(i) The issues**

The issues are:

- whether the Amendment has adequately considered the contribution of privately held, communal open space
- whether there should be a discount, offset or credit for provision of communal open space in new developments.

(ii) Evidence and submissions

Porta submitted that private communal open space in new developments should be taken into account in the Amendment. It argued that if assumptions about the forecast population having a greater need for public open space than the existing population (for example, because the existing population is more likely to have a backyard than the forecast population) were valid, then an allowance for private or communal open spaces must be made.

Mr Gobbo submitted that communal open space for apartments, now a requirement of the Better Apartment Design Standards (BADs), should be factored into the consideration of the open space needs assessment and in particular, the apportionment between existing and future populations.

Piedimonte submitted that the Amendment should make provision for the public open space contribution to be offset, or a credit provided, if a 'very high standard' of on-site communal open space is supplied. It submitted that this could be built into the Schedule to Clause 53.01.

Mr Black stated that:

There should be provision to reduce the required rate where it can be demonstrated that the open space provided within a development will reduce the reliance on public open space (i.e. substantial communal open space)⁸⁹

Mr Black referred to the 217 square metre communal roof top garden that his client was proposing to deliver as part of the redevelopment of the Piedimonte site in North Fitzroy as an example of such a situation.

Under cross examination by Ms Brennan, Mr Black stated in relation to the proposed Piedimonte development:

- the development would lead to close to 150 new residents in addition to an increase in workers from the commercial part of the development
- to access the communal rooftop open space, some residents would have to take a lift down to Level 6, then walk along a corridor and take a second lift to the roof. Similarly, others would have to take a lift up to Level 6 and take a second lift to the roof. Residents

⁸⁹ Document 31, [221].

of the townhouses would need to enter the apartment building to access lifts to the rooftop⁹⁰

- the communal rooftop space would not be open to the public, but Mr Black was not sure if it would be accessible to the workers in the commercial tenancies
- there was nothing to stop the rooftop open space being changed and there was no certainty or perpetuity (unless a legal agreement was in place to protect it) but changing the rooftop space would be unlikely because it would impact on the planning permit.

The UDIA submitted that the Amendment fails to adequately consider “... *the extent of restricted public open space or communally accessible private open space that would serve the open space needs of residents or workers in student accommodation, apartment, commercial, industrial or mixed-use developments*”.⁹¹

Relying on the evidence of Ms Thompson, Council submitted that there should be no discount, offset or credit for the provision of communal open space in developments. Ms Thompson stated that private open space can complement public open space but does not replace the need for public open space for the following reasons:

- Council has no influence over the protection and retention of the private open space on individual sites into the future. Over time, the private open space can be changed and redeveloped without consideration for the resultant impact this change may have on the public open space network. The private landowner can also restrict, change or place conditions on public access to private open space at any time. The purpose of the public open space is that the land is zoned for the purposes of public park and recreation and it is secured as a public asset into the future.
- Public open space has a range of important functions and roles that are articulated in the Strategy on pages 3 and 4. Many of these functions and roles are not achieved on private open space and public open space is an important part of the fabric of sustainable, social communities into the future. The City of Yarra encourages the provision and use of public open space as a place that is accessible to everyone irrespective of income level, cultural background, age, health and ability. The provision of open space and/or recreation facilities on private land does not necessarily provide for everyone.⁹²

Her evidence was that as a result, there should be no offset for private communal open space.

Under cross examination, Ms Thompson stated that communal rooftop areas were considered in her assessment, but not at a micro level, and more generally that it was fair to take into account the provision of communal spaces that would be available to workers and residents. She also accepted that communal areas can provide opportunities for the kind of activities associated with open space and make a contribution to the health and wellness of the workforce. However, Ms Thompson was firm in her evidence that communal open space that is open to the public does not replace the need for public open space because there is no certainty as to its availability to all of the public all of the time, and over the long term, or its condition over time. She gave an example of the possibility that the public may need to purchase a coffee in order to access the space and as a result the space might not be accessible to all. She confirmed that there had been no offsets for communal open space in this project.

⁹⁰ Council referred to *Piedimonte Properties Pty Ltd v Yarra CC* [2021] VCAT 428 which stated that Piedimonte had acknowledged that for 11 apartments out of 66, a resident would have to use three lifts to access the communal roof space, at [148].

⁹¹ Document 53, [8.1(e)].

⁹² Document 25, [4.3.1].

Council submitted that there is a qualitative difference in the type of open space provided in communal open spaces in private developments as compared the space in the public open space network. It submitted that communal open spaces on private land play a limited role in meeting some open space needs at certain times but are not guaranteed in perpetuity and are not *“an equivalent alternative to, and do not obviate the need for, new public open spaces as provided for in the YOSS”*.⁹³

Council submitted that the communal areas being required in multi-unit developments are relatively small and only required where there at least 10 dwellings⁹⁴ with the result that residents would still need to access public open spaces for activities such as walking the dog. Taking the proposed Piedimonte development as an example, Council submitted that the nature of the communal space with hard surfaces, no canopy trees, and noise from air-conditioning units which would be positioned there, meant that they were not a substitute for public open space and provide no assistance in combatting UHIE.

Council also submitted that communal open spaces in workplaces do not meet worker needs in terms of being away from work, do not provide areas for exercise and there is no canopy planting. Council submitted that such spaces are not enjoyed in perpetuity and provide no assistance in combatting UHIE. The limited benefits they do provide do not justify a discount or lower rate.

Porta challenged the position that communal open spaces would not provide canopy planting and assist to combat UHIE, referring to Clause 58 requirements for solar access, deep soil planting and setbacks that would apply. Mr Milner stated that the maximum amount of communal open space required under Clause 58.03 is smaller than the average size of a small local park and there is no certainty that such spaces would allow for the planting of canopy trees. He said that while an appropriately designed communal open space could contribute to managing urban heat island effect, there was no guarantee that it would do so.

In its closing submissions, Council rejected Piedimonte’s submission that a credit should be applied if a ‘very high standard’ of communal open space was provided in a development as being unworkable and too subjective, questioning how ‘very high standard’ would be assessed. It submitted that such an approach would place an unreasonable burden on Council in its application and would lead to significant challenges. It also questioned what would happen if a credit were given for a high quality communal open space which degraded over time due to lack of upkeep, given Council would have no ability to upgrade that open space or to require the owner to upgrade it, and no mechanism to require the owner to pay back the credit. Council also submitted that such an approach does not find any support in the Subdivision Act, the Planning Scheme, or PPN70.

(iii) Discussion

The Panel accepts that while communal open space is now required for certain developments, there is no certainty as to the quality, form and benefits that such communal open space will provide either to the development’s residents and/or workers, or to the wider-public (if any). There is also no guarantee that the open space will be maintained and Council has no way of monitoring or controlling this. Council could require the developer to enter into a legally binding

⁹³ Document 75 [68].

⁹⁴ The Panel notes that Clause 58.03-2 currently requires between 30 and 220 square metres depending on the number of dwellings, 30 square metres of which is required to be outdoors.

agreement, including a section 173 agreement, to secure the communal open space but no argument that this should be required for every communal open space was advanced by submitters (or at least for communal open space that would receive a 'credit'). Accordingly, it would be inappropriate for Council to rely on communal open space as a permanent part of its open space network.

Further, the type of communal open space provided in multi-unit developments generally is of a different nature to that sought to be provided in the public open space network. Importantly, communal open space is not provided based on it being easily accessible by all in the sense required under *Open Space for Everyone*. The Panel considers that the proposed Piedimonte communal open space is a good example of this as it will not be open to the public and it was unclear whether workers from the commercial tenancies would have access. Considering the indirect routes for many residents to the rooftop (three lifts for some), there may be barriers to it being accessed even by the residents of the development itself.

Clause 58.03-2 currently requires at least 30 square metres of communal open space to be outdoors but also Mr Milner's evidence that communal open spaces are not required to be such as to allow for the planting of canopy trees. While tree planting, including canopy tree planting, is possible, the Panel does not believe that communal open spaces provide the same opportunities for tree planting (in terms of number of trees and size of trees, for example) as the open space network. This, together with the likelihood that many communal open spaces will have hard surfaces rather than grass and could be fully or partly covered (such as in office building atriums or laneways), leads the Panel to the conclusion that while communal open spaces could provide some assistance against UHIE, in general they will not provide very much assistance in this regard, and it is not guaranteed.

The Panel considers that the range of activities in such areas is more limited than in the open space network.

Therefore, the Panel agrees with Council's submission that there is a qualitative difference in the type of open space provided in communal areas and accepts the evidence of Ms Thompson that these types of spaces do not replace or obviate the need for public open space.

The Panel also accepts Council's submission that the idea of an 'offset', 'credit' or 'discount' for communal open space of a 'very high standard' would be very hard to administer and place an unreasonable administrative burden on it. The Panel has no doubt that it would provide fertile ground for challenges. The Panel agrees that the concept of 'very high standard' is too subjective without any further guidance on the criteria according to which this test would be assessed and notes that no such criteria were advanced by submitters. The Panel notes the difficulties in assessing how much 'credit' or 'discount' would be given and that no evidence or submissions were received on this particular point or more generally on how the offsetting or credit would actually work in practice. As a result, the Panel does not accept the suggestion for an offset, credit or discount for the provision of communal open space.

(iv) Conclusions

The Panel concludes:

- the Amendment has adequately considered the contribution of communal open space
- it would be inappropriate for Council to rely on communal open space in new developments as a permanent part of its open space network

- there should not be a discount, offset or credit for provision of communal open space in new developments.

6 Impacts of the proposed open space contribution rate

6.1 Economic viability of projects and impact on housing affordability

(i) The issues

The issues are:

- whether the proposed contribution rate will have an unacceptable impact on the economic viability of proposed development projects
- whether the proposed open space contribution rate will lead to unacceptable impacts on housing affordability.

Because of the way submissions have been presented the two issues of project viability and impacts of housing affordability are addressed together.

(ii) Evidence and submissions

Council and the group of submitters represented by Mr Gobbo have approached these related issues from different perspectives: Council from the perspective of housing affordability and Mr Gobbo, drawing on Mr Mackintosh's evidence, on the impact of the increased levy on project viability and consequently its impact on housing affordability.

Council acknowledged that the increased open space contribution rate may have an economic impact on some developments in Yarra, where the land is already owned by the developer.

In his evidence, Mr Macintosh stated that there are three key variables in the development financial equation, being:

- the price which is paid for a development site
- the minimum margin that the developer requires for the project to be financially viable
- the price which the finished product will attract in the current market.

Mr Mackintosh stated that a developer will not proceed with a project with a development margin of less than 15 per cent, this being the level below which potential project financiers will not lend. Further, he stated that there is little upwards flexibility in the price for which a product can be sold due to the inherently highly competitive property market. He concluded that any increase in the open space levy would therefore flow through to a lower price being paid by the developer for a development site. Mr Mackintosh acknowledged under cross examination that one of the impacts of an increased open space contribution and downward pressure prices could be that some land holders would withhold development sites from the market.

Mr Gobbo submitted that a number of Mr Mackintosh's assumptions were questionable. Under cross examination by Mr Gobbo on the assumptions that he had made in the two case studies on which his expert evidence was based, Mr Mackintosh acknowledged that these assumptions vary from developer to developer and therefore impact the financial outcomes that might be achieved. They included costs such as insurance, the selling commission that might be paid, a range of other fees which might be applicable, and the development margin expected by the developer. He stated that he had taken a valuer's perspective and developers would take a range of different

approaches and use different assumptions. He stated that his assumptions were commonly used by valuers to ensure consistency in valuation approach. Mr Mackintosh confirmed under cross examination that a development margin of 15 per cent was a minimum needed to get finance but acknowledged that some developers would seek a higher margin where higher risks were involved.

Based on the evidence of Mr Mackintosh, Mr Gobbo contended:

If the projects don't happen, or landowners hold and don't sell, then supply goes down and prices go up.

In this way, there is a 'cost' to housing affordability by reason of the contribution.⁹⁵

UDIA submitted that the proposed increased open space contribution rate would impact housing affordability in Yarra. Based on an example development, it submitted that the proposed levy together with the recently approved DCP could add almost \$20,000 to the cost of an apartment.

The Housing Industry Association similarly submitted the increased contribution would have a significant impact on housing affordability. It cited indicative case studies sourced from the National Housing Finance and Investment Corporation which purport to show that developer contributions (including open space contributions) can add \$37,000 to \$77,000 to the cost of a dwelling in Victoria. This was not a Yarra specific example.

A number of other submitters listed the impact of the proposed increase in the open space levy on development costs and therefore impacting housing affordability as a reason for opposing the Amendment in their written submissions. These include: Millieu Property Pty Ltd, Outline JV Smith Pty Ltd, Nijon Nominees Pty Ltd, Dare Property Group Pty Ltd, Beulah International Holdings Pty Ltd, Salta Properties Pty Ltd, Goldfields Richmond Pty Ltd, Aheron Investments Pty Ltd, ACC Smith Pty Ltd.

Relying on the evidence of Mr Mackintosh, Council submitted:

Council does not, however, agree with submissions that the Amendment will have a significant adverse effect on housing affordability in Yarra. In Council's submission, the likely economic effect of the Amendment will not be to materially increase housing prices for the end purchaser by passing on the cost of the additional contribution rate or to reduce development margins for developers; the more likely outcome will be to reduce residual land values.⁹⁶

Further, Council quoted from the Panel Report for Amendment C137 to the Maribyrnong Planning Scheme which stated:

The Panel notes Mr Montebello's submission in reply in relation to housing affordability. The Panel agrees there is no evidence before the Panel of a substantive effect, and this it is difficult to conclude that the Amendment should be changed or abandoned on this basis. The submission does not fairly acknowledge that even if open space contributions do worsen housing affordability to some extent, again a point not proven to the Panel, then this should be offset over the life of a development or dwelling by improved quantity and quality of open space and its consequent positive effects on liveability.⁹⁷

A significant number of other submitters cited the negative impact of the proposed contribution rate increase on housing affordability as an issue of concern in their written submissions. These included the DJC Property Group Pty Ltd, Fortis Pty Ltd, Dare property Group Pty Ltd, Beulah International Holdings Pty Ltd, Vicinity Centres Ltd, JCL Prime Development Pty Ltd.

⁹⁵ Document 88 [207 and 208]

⁹⁶ Document 34 [166]

⁹⁷ Document 34, [84].

(iii) Discussion

Council and Mr Mackintosh both acknowledged that a development can be placed in a difficult position where land is already in the hands of the developer and there is no possibility of reducing the price paid for the development site. The Panel accepts this possibility and acknowledges that the financial viability of some developments currently underway may be adversely impacted by an increase in the contribution rate. There are a number of possible outcomes that could arise, but as they are not material to the Panel's conclusions they are not explored here.

Based on the information provided in Appendix A to Mr Gobbo's submission (Document 88), a significant number of the 22 sites covered by the submission have been held by the current owner for more than four years, and many, more than a decade. While the current owner may not be the developer and the arrangements between the developer and owner are unknown, it appears that not all current owners of land will be impacted in a way such that financial viability of the relevant project will be threatened. The Panel makes this observation based on the assumption that while the owner may have incurred significant holding costs, the increase in land values over significant periods in at least some cases, perhaps many, will exceed holding costs.

The Panel acknowledges that the project feasibility facing many developers is likely to be more complex than Mr Mackintosh's land valuation focussed case studies, a fact acknowledged by him.

It would be unwise for the Panel to conclude that the financial viability of some projects will not be under significant pressure if the open space contribution rate as proposed is approved. However, no evidence was presented to the Panel to convince it that this pressure will be such that a significant increase in the open space contribution rate cannot be supported.

With respect to housing affordability, the Panel acknowledges at the outset that this is a very significant, complex and on-going societal issue. Further, there is no agreement on the role of supply side and demand side contributors to the issue and therefore possible solutions. Nor is it this Panel's role to canvass those wider issues.

While accepting the broad thrust of Mr Mackintosh's evidence that an increase in the open space contribution is likely to put some downward pressure on the price paid for development sites, the Panel accepts that at least some of this increase may find its way into higher prices being paid for the finished product. How much is not known and likely to vary considerably given the complex financial calculations and risk assessment that accompanies development financing.

Consequently, the Panel accepts that there may be some negative impact on housing affordability, but how large is unknown. The Panel agrees with the conclusion drawn by the Maribyrnong C137 Panel that any negative impact on housing affordability must be offset against the undoubted increased liveability of the area resulting from increased or enhanced provision of open space.

No evidence was presented to the Panel that convinces it that any affordability impact is such that a significant increase in the open space contribution cannot be supported.

(iv) Conclusions

The Panel concludes:

- there may be some, but difficult to quantify, impacts on the financial viability of some projects where the land has been acquired recently
- there may be some, but difficult to quantify, impact on housing affordability

- neither of these impacts is demonstrably significant enough not to proceed with an increase to the open space contribution rate.

7 Statutory planning issues

7.1 Proposed changes to the Schedule to Clause 53.01

(i) Submissions and discussion

In addition to the proposed open space contribution rate, the revised Schedule to Clause 53.01 proposes contribution rates lower than the proposed rate for three sites as follows:

- Former Channel 9 site in Bendigo Street, Richmond (4.5 per cent)
- Former Amcor site in Heidelberg Road, Alphington (4.58 per cent)
- Former Fitzroy Gasworks site in Smith Street, Fitzroy (minimum of 8 per cent).

The Panel understands that these exceptions are the subject of agreements already in place under section 173 of the PE Act.

In the case of the Channel 9 and Amcor sites, some impacted landholders made written submissions to the Amendment but on the receipt of an updated Schedule (Document 60), each indicated that they were satisfied with the outcome, with some further minor change agreed by the Council. Consequently, these submitters indicated that they no longer wished to be heard by the Panel. The Panel accepts that the agreements in place are appropriate and makes no further comment in this regard.

In its closing submission, Council noted a further amendment to the Schedule to Clause 53.01 was required to ensure that the revised contribution rate applied to 'all other land'.

(ii) Conclusion

The Panel concludes that the exemptions to the proposed interim open space contributions rate set out in the Panel recommended version of the Schedule to Clause 53.01 at Appendix D are appropriate.

7.2 Public Open Space Contribution policy

(i) Submissions and discussion

It is proposed to replace the existing policy at Clause 22.12 with a new Clause 22.12 reflecting the YOSS. A number of submissions were made about the specific content of Clause 22.12, but these were generally in relation to broader issues associated with aspects of the YOSS or assumptions made in the calculation of the proposed open space contribution rate. These have been addressed in other sections of this report. As part of its Part B submission, Council tabled a revised version of its proposed Clause 22.12 to align its text with the evidence of Ms Kay and Ms Thompson (Document 45). No submissions were made making specific requests or recommendations to the wording of Clause 22.12 and the parties at the Hearing made no objection to the amendments suggested by Council. The Panel accepts Clause 22.12 as set out in Document 45.

(ii) Conclusion

The Panel concludes that Clause 22.12 should be adopted as set out in Document 45.

7.3 Recommendation

The Panel recommends to:

Replace the exhibited Clause 22.12 with the version at Appendix E

8 Interim open space contribution rate

As indicated in Chapter 4.3, the Panel has reservations about the apportionment of costs of open space projects between existing and new populations. These reservations are, however, held in the context of the YOSS not seriously being contested by submitters and which, in the Panel's view, is a generally sound open space strategy for Yarra. Further, all parties appeared broadly to acknowledge that Yarra's current open space contribution rate of 4.5 per cent and which applies to residential subdivision only, is inadequate to meet documented open space needs. The Panel believes that it has an obligation to keep the process moving towards a new and more appropriate open space contribution rate.

The Panel has considered two options:

- adjourn the Hearing indefinitely while further work recommended by it is undertaken and leave the existing open space contribution rate of 4.5 per cent in place
- accept the majority of the proposed Amendment, require some further work and recommend an interim open space contribution rate.

The Panel considers that concluding the Amendment as exhibited, subject to minor changes, is appropriate, and that an interim contribution rate (lower than that proposed) be set through a separate Planning Scheme Amendment, is the most appropriate way forward because it will generate at least some of the required revenue while further work is being undertaken. In recommending this path, the Panel notes that Mr Gobbo suggested that an option available to the Panel was to set an interim rate and recommend the Council do more work to justify a higher rate. Further, Council countenanced this possibility in its closing submission.

In Chapter 4.3, the Panel concluded that a peer review of the apportionment of costs between existing and future populations should be undertaken before a final open space contribution rate can be calculated and approved as part of this Amendment.

For these reasons, the Panel considers this to be an interim report on exhibited Amendment C286yara pending the completion of that extra work. A final report will be prepared after that work has been undertaken.

This Chapter sets out the rationale for an interim open space contribution rate proposed by the Panel, the process to be followed from here and the broad parameters for a peer review of the open space contribution rate calculation.

8.1 Process for setting an interim contribution rate

The Panel understands that an interim open space contribution rate can be introduced into the Yarra Planning Scheme, through a separate planning scheme amendment for which Ministerial approval can be sought under section 20 of the PE Act. This would be based on the interim rate recommended below and the Panel's conclusions that the YOSS and the large majority of the work undertaken in preparing it are sound.

After a peer review of the apportionment of open space project costs between existing and future populations, the Hearing for this Amendment will reconvene and finalise Amendment C286, with a recommended final open space contribution rate. This rate will be based on conclusions in this interim report and a recalculated contribution rate based on the reviewed apportionment of costs.

The Panel acknowledges that Council has the option of adopting the recommended interim open space contribution rate as the final rate without undertaking the peer review and ask the Panel to close the Hearing. In those circumstances the Panel would produce a brief final report acknowledging this.

8.2 Interim contribution rate

In previous Chapters, the Panel has considered factors which may have an impact on the quantum of the open space levy to be applied through the Schedule to Clause 53.01. Based on submissions and evidence, the Panel has identified only two factors which it considers should be varied significantly from that exhibited. Set out below are the Panel's conclusions on each of these as they input into the Panel's consideration of an interim open space contribution rate.

(i) Value of land to be developed for open space projects

As indicated in Chapter 4.1, the Panel does not accept that the allowance added to the average CIV in each precinct proposed by Council to cover the cost to it of acquiring land for new open space is justified. The Panel considers a 10 per cent allowance to be a fair amount to compensate Council.

Using a 10 per cent allowance, the total project cost across the municipality falls from \$566,079,822 to \$491,111,053.⁹⁸ In recalculating these costs, the Panel has not taken into account its recommendation in Chapter 3.3 that Action 7.5B-4 in Fairfield be deleted. This is because the deletion of this project is not likely to significantly impact the calculations and because the Panel regards these calculations as indicative only, in drawing a conclusion on the interim contribution rate.

(ii) Apportionment between new and existing populations

In Chapter 4.3, the Panel concludes that there is some indication that there may have been a higher than justifiable apportionment to new populations but is unable to conclusively determine that this was the case or what the level of over apportionment to new populations might be. It also concludes that it is not confident that apportionments might not be in the next lower apportionment category from that proposed, that is a 90/10 apportionment might be justified as an 80/20 apportionment for example. The Panel uses this as the basis to reduce the apportionment of costs to the new population for an interim open space contribution rate by 10 per cent.

In the revised POPC calculation tabled at the Hearing (Document 61), the overall apportionment to the new population was calculated at 67.1 per cent (\$379,973,479 divided by a total cost of \$566,079,822). The Panel reduces the apportionment to the new population by 10 per cent to 57.1 per cent.

The Panel acknowledges that there is no science behind this approach and that it is based purely on a pragmatic judgment by it to arrive at what it considers to be a fair and reasonable interim rate. The Panel leaves open that it may be convinced that a higher rate than the interim rate is a fair and reasonable final open space contribution rate. In coming to an apportionment of 57.1 per cent to new populations, the Panel has not attempted to reduce the apportionment on a project-by-project basis. To do so would risk attributing a higher level of science to this outcome than is

⁹⁸ See Document 117, Scenario 2 summary table on p. 17.

intended by the Panel. In saying this, the Panel acknowledges that it feels obliged to explain the basis of the interim rate it is proposing.

If 57.1 per cent of the reduced total project cost of \$491,111,053 is applied to the total value of the property that is to be developed for open space of \$3,789,238,620 (that is \$329,653,383 / \$3,789,238,620), an interim open space contribution rate of 7.4 per cent is generated.

8.3 Peer review

The Panel does not consider its role is to tightly specify the terms of a peer review of the apportionment exercise undertaken by Ms Thompson but does consider it appropriate to indicate some of the parameters of that review so that its expectations are met when the outcome of that review (if undertaken) is considered by the Panel.

The suggested parameters for the peer review are:

- The review should be undertaken by at least one suitably qualified person with open space planning experience.
- The review should be restricted to the apportionment of project-by-project costs between existing and new populations. Population forecasts and project costs should not be the subject of review.
- The qualitative methodology used in the apportionment of costs is acceptable and should not be the subject of review.
- The Panel concludes that the eight factors influencing the apportionment of costs listed in paragraphs 3.3.3 and 3.3.4 of Ms Thompson's expert witness statement (Document 25) and reproduced in Chapter 4.3 are acceptable and should not be the subject of review, although commentary on them and their relative importance could be considered.
- The extensive field work undertaken by Ms Thompson need not be repeated provided relevant records can be provided to the reviewer.
- Where the reviewer finds that the apportionment of costs is different to that proposed by Ms Thompson, the reviewer's recommended apportionment should be provided together with a clear rationale for the recommended change.

8.4 Conclusions

The Panel concludes:

- Council should prepare a new Planning Scheme Amendment which adopts the exhibited Amendment C286yara except for:
 - the application of an interim open space contribution rate of 7.4 per cent
 - the minor changes as set out in Appendices D and E
- Council should use an appropriate mechanism to submit this new Planning Scheme Amendment to the Minister for Planning for approval
- if the Council wishes to achieve a higher final contribution rate, Council should commission a peer review of the apportionment of costs between existing and new populations and subsequently request the Panel to reconvene the Hearing for Amendment C286 to allow the Amendment to be finalised.
- Council should use an appropriate mechanism to submit this interim position as a separate planning scheme amendment to the Minister for Planning for approval

- if the Council wishes to achieve a higher final contribution rate, Council should commission a peer review of the apportionment of costs between existing and new populations and subsequently request the Panel to reconvene the Hearing for Amendment C286 to allow the Amendment to be finalised.

8.5 Recommendations

The Panel recommends to:

Prepare and seek Ministerial approval under the *Planning and Environment Act 1987* for a new Planning Scheme Amendment which:

- a) includes an open space contribution rate of 7.4 per cent in the Schedule to Clause 53.01.**
- b) includes exemptions in the Schedule to Clause 53.01 as set out in the version of the Schedule at Appendix D.**

Commission a peer review of the apportionment of open space Action costs between existing and new resident and worker users of open space for the purpose of justifying a higher contribution rate than the interim rate recommended by the Panel.

Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Alison Clarke	30	Streets Alive Yarra Inc
2	Nicole Eckersley	31	Lendlease Apartments Pty Ltd as trustee for the Lendlease RL Richmond No. 2 Trust
3	Roisin Murphy	32	Milieu Property Pty Ltd
4	James Hanlon	33	UDIA
5	Angeline Sparks	34	Fortis
6	Candyce Presland	35	Glenville Developments
7	Amy Henson	36	Astrodome
8	Sam York	37	Piedimonte Properties Pty Ltd
9	Beth Anderson	38	Paul Cusmano
10	Aimee Mensink	39	Outline JV Smith Pty Ltd
11	Liam Skoblar	40	Nijon Nominees Pty Ltd
12	David Jorm	41	Dare Property Group Pty Ltd
13	Joel Wells	42	Caydon Property Group Pty Ltd
14	Leneen Forde	42(a)	Caydon Property supplementary submission
15	Sam Bailey	43	UEM Sunrise (Collingwood Development) Pty Ltd
16	Emmanuel Murphy	44	Porta Investments Pty Ltd (
17	Katerina Nemcova	45	Beulah International Holdings Pty Ltd
18	Dr Malachy Feeney	46	Salta Properties Pty Ltd
19	Xavier O'Shannessy	47	Zero Nine
20	Oliver Ramsay	48	Goldfields Richmond Pty Ltd
21	Daniel Inchincoli	49	288 Johnston Street Abbotsford Pty Ltd
22	Shawn Ashkanasy	50	Gurner TM
23	City of Darebin	51	Vicinity
24	Duke Ventures Pty Ltd	52	LPC 10 Nominee Pty Ltd
25	Alison Wirtz	53	Fenwick 84 Pty Ltd
26	Jane Brownrigg	54	JCL Prime Development Pty Ltd
27	Meredith Kefford	55	JCL Prime Development Pty Ltd
28	DPG Management P/L, Delpar Development Investments P/L	56	Aheron Investments Pty Ltd
29	DJC Property Group	57	Salta Properties

58	Development Victoria	65	Consulting Surveyors Victoria
59	Eva Fabian	66	David Balding
60	Alycia Ashcroft	67	DCF Developing Group Pty Ltd
61	Mary Keyser	68	U-Home Oceania Pty Ltd
62	ACC Smith Street Pty Ltd	69	The Marble House
63	Housing Industry Association Inc	70	Time and Place
64	Piccolo Investment Group Pty Ltd	71	Riverlee

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Yarra City Council	<p>Susan Brennan SC and Jordan Wright of Counsel instructed by Briana Eastaugh, solicitor of Maddocks Lawyers who called expert evidence on:</p> <ul style="list-style-type: none"> - Open space planning from Joanna Thompson of Thompson Berrill Landscape Design - Public open space contribution framework from Esther Kay of Environment and Land Management Pty Ltd - Residential and non-residential development data from Dr Serryn Eagleson of EdgResearch - Development feasibility from Luke Mackintosh of EY Australia
Urban Development Institute of Australia	David Vorchheimer of HWL Ebsworth
Association of Consulting Surveyors	Gerry Shone
Housing Industry Association	Roger Cooper
David Balding	
Salta Properties Pty Ltd, Gurner, Milieu Property Pty Ltd, Goldfields (Richmond) Pty Ltd, Nijon Nominees Pty Ltd, UEM Sunrise (Collingwood Development) Pty Ltd, Napier Street Developments Pty Ltd, Aheron Investments Ltd, ACC Smith Street Pty Ltd, Piccolo Investment Group Pty Ltd, Riverlee, Outline JV Smith, DPG Hawthorn Pty Ltd	<p>Jeremy Gobbo QC and Emma Pepler of Counsel instructed by Mark Naughton of Planning and Property Partners who called expert evidence on:</p> <ul style="list-style-type: none"> - Town planning from Rob Milner and /or Alison Milner of Kinetica - Urban economics from Paul Shipp of Urban Enterprise
Piedimonte Properties Pty Ltd	<p>Andrew Walker of Counsel instructed by Tamara Brezzi, solicitor of Norton Rose Fulbright who called expert evidence on:</p> <ul style="list-style-type: none"> - Town planning from Jason Black of Insight Planning Consultants
Porta Investments Pty Ltd	Ian Pitt QC instructed by Rhodie Anderson of Rigby Cooke

Appendix C Document list

No.	Date	Description	Presented by
1	27 October 2021	Letter – Notice of Directions Hearing	Planning Panels Victoria
2	5 November 2021	Email - from Council to Panel with late submissions	Mr Kyle Everett
3	11 November 2021	Directions and Timetable	Planning Panels Victoria
4	11 November 2021	Directions Version 2	Planning Panels Victoria
5	17 November 2021	Letter – from Council to Panel responding to Directions 3 and 7.	Council
6	17 November 2021	Yarra Open Space Strategy 2020 Strategy Preliminary Opinion of Probable Cost (POPC)	Council
7	17 November 2021	Additional information regarding the Strategy POPC	Council
8	17 November 2021	Data for Residential and Non-residential Development to assist calculation of the Public Open Space Contribution Rate (Appendix B of the Yarra Open Space Strategy 2020)	Council
9	17 November 2021	Email – from Rigby Cooke Lawyers to Panel – confirmation that will not call expert witness (Direction 11)	Ms Donna Bilke, for Porta Investments Pty Ltd
10	19 November 2021	Letter – from Planning Property Partners to Panel (Direction 10)	Mr Tyrone Rath, for PPP Group of Clients
11	22 November 2021	Email – from Best Hoopers Lawyers to Panel (Direction 10)	Ms Eliza Minney, for Best Hooper Group of Clients
12	23 November 2021	Letter and Version 3 Distribution List and Version 2 Timetable	Planning Panels Victoria
13	23 November 2021	Letter – from Council to Panel responding to Direction 4 and Direction 5	Council
14	23 November 2021	Letter – from Council to Panel regarding revised Yarra Open Space Strategy 2020 Technical Report	Council
15	23 November 2021	Yarra Open Space Strategy 2020 Technical Report revised mapping issues	Council
16	23 November 2021	Yarra Open Space Strategy 2020 Technical Report Appendix A	Council
17	23 November 2021	Yarra Open Space Strategy 2020 Technical Report Appendices B and C	Council

No.	Date	Description	Presented by
18	24 November 2021	Email – from Norton Rose Fulbright to Panel requesting update to contacts on the distribution list.	Mr Sebastian Withers, for Piedimonte Properties Pty Ltd
19	26 November 2021	Letter – from Norton Rose Fulbright to Panel confirming expert witness.	Ms Tamara Brezzi, for Piedimonte Properties Pty Ltd
20	29 November 2021	Map of submitters in accordance with Direction 28	Council
21	29 November 2021	Letter – from Council to Panel – Council Part A submission (Direction 9)	Council
22	29 November 2021	Council Part A submission	Council
23	1 December 2021	Letter – from Council to Panel – Expert Evidence	Council
24	1 December 2021	Expert Witness Statement - Esther Kay	Council
25	1 December 2021	Expert Witness Statement – Joanna Thompson	Council
26	1 December 2021	Expert Witness Statement – Dr Serryn Eagleson	Council
27	1 December 2021	Material referred to in Councils Part A Submission and Evidence <ul style="list-style-type: none"> 00 Index 01 Clause 11.01-1S (Settlement) 02 Clause 12 (Environment and Landscape Values) 03 Clause 12.05-2S (Landscapes) 04 Clause 15.01-3S (Subdivision Design) 05 Clause 15.01-4S (Healthy Neighbourhoods) 06 Clause 19.02-6S (Open Space) 07 Clause 19.02-6R (Open Space – Metropolitan Melbourne) 08 Clause 21.02 (Municipal Profile) 09 Clause 21.04 (Land Use) 10 Clause 22.12 (Public Open Space Contribution) 11 Clause 53.01 Public Open Space Contribution and Subdivision and the Schedule to Clause 53.01 Public Open Space Contribution and Subdivision 12 Clause 72.08 Background Documents and the Schedule to Clause 72.08 Background Documents 13 Ministerial Direction No 9 Melbourne Planning Strategy 14 Ministerial Direction No 11 Strategic Assessment of Amendments 	Council

No.	Date	Description	Presented by
15		Planning Practice Note 13 Incorporated and Background Documents	
16		Planning Practice Note 70 Open Space Strategies	
17		Yarra Open Space Strategy 2006-2016	
18		19 December 2006 Council meeting agenda and minutes	
19		19 June 2007 Council meeting agenda and minutes	
20		18 September 2007 Council meeting agenda and minutes	
21		Yarra Housing Strategy Adopted 4 September 2018	
22		Yarra Economic Development Strategy 2020-2025 Background Report	
23		The Emerging Inner East, Melbourne's Creative heart and its office market transformation	
24		Infrastructure Australian, Infrastructure beyond COVID-19, December 2020	
25		Open Space Strategy for Metropolitan Melbourne 2021, Victorian Government	
26		Melbourne Water presentation to Parliamentary Inquiry into Environmental Infrastructure, June 2021	
27		Parks Victoria submission to Parliamentary Inquiry into Environmental Infrastructure, November 2020	
28		Melbourne Planning Scheme Amendment C209 Panel Report, August 2014	
29		Eddie Barron Constructions Pty Ltd v Pakenham SC & Minister for Planning & Urban Growth [1990]	
30		Schedule 5 to the Development Plan Overlay (Yarra Planning Scheme)	
31		22 Bendigo Street, Richmond, Development Plan May 2012	
32		22 Bendigo Street, Richmond, Central and South Precinct Development Plan Rev A, August 2018	
33		Planning Permit SP13/0017, Yarra City Council	
34		Planning Permit SP18/0057, Yarra City Council	
35		Schedule 11 to the Development Plan Overlay (Yarra Planning Scheme)	
36		Alphington Paper Mill Development Plan, 2016	
37		Section 173 of the Planning and Environment Act 1987, 333 Bridge Road, Richmond, Alphington Developments Pty Ltd	
38		Schedule 16 to Clause 43.04 Development Plan Overlay, Yarra City Council	
39		Schedule 15 to Clause 43.04 Development Plan Overlay, Yarra City Council	
28	1 December 2021	Expert Witness Statement – Paul Shipp	Ms Hannah Wilson, for PPP Group of Clients

No.	Date	Description	Presented by
29	1 December 2021	Expert Witness Statement – Rob Milner	Ms Hannah Wilson
30	1 December 2021	Expert Witness Statement – Luke Mackintosh	Council
31	2 December 2021	Expert Witness Statement – Jason Black	Mr Sebastian Withers
32	2 December 2021	Letter and Version 4 Distribution List and Version 3 Timetable	Planning Panels Victoria
33	3 December 2021	Letter – from Council to Panel – Council Part B Submission (Direction 18)	Council
34	3 December 2021	Council Part B Submission	Council
35	3 December 2021	Council Part B Supporting Material	Council
36	3 December 2021	Cremorne Corporation Pty Ltd v Yarra CC [2008] VCAT 1202	Ms Rhodie Anderson, for Porta Investments Pty Ltd
37	3 December 2021	Fairfield Park Master Plan 2010	Ms Rhodie Anderson
38	3 December 2021	Fairfield Park Masterplan Summary Report 2010	Ms Rhodie Anderson
39	3 December 2021	Gesher Pty Ltd v Yarra CC [2015] VCAT 506	Ms Rhodie Anderson
40	3 December 2021	Yarra Development Contributions Plan 2017 - April 2019	Ms Rhodie Anderson
41	3 December 2021	Letter – from Council to Panel – Additional documents referred to in Shipp evidence	Council
42	3 December 2021	2018 Average CIV, average site value	Council
43	3 December 2021	City of Yarra Open Space Strategy 2019, Average Park Establishment and Upgrade, Neighbourhood Open Space	Council
44	6 December 2021	Dr Serryn Eagleson, Expert Witness Statement PowerPoint presentation	Council
45	6 December 2021	Exhibited Clause 22.12 Track Changes for Part B Submission	Council
46	6 December 2021	Architectural renders from Salta's Church Street development	Ms Hannah Wilson
47	7 December 2021	Letter – from Norton Rose Fulbright to Panel regarding Lend Lease no longer wishing to appear before the Panel	Mr Sebastian Withers

No.	Date	Description	Presented by
48	8 December 2021	Email – from Council to Panel and Excel Spread Sheet on Median site values per square metre data Part 1	Council
49	8 December 2021	Letter – from Norton Rose Fulbright to Panel requesting documents from Council	Mr Sebastian Withers
50	8 December 2021	Letter – from Housing Industry Association to Panel - submission	Mr Roger Cooper, Housing Industry Association
51	8 December 2021	Consulting Surveyors Victoria Submission	Mr Gerry Shone, for Consulting Surveyors Victoria
52	8 December 2021	David Balding Submission	David Balding
53	8 December 2021	UDIA Submission	Grace Bramwell, for UDIA
54	8 December 2021	Excel Spread Sheet on Median site values per square metre data Part 2	Council
55	8 December 2021	City of Yarra Open Space Strategy 2019 Average park establishment and upgrade POPC Draft V1 15 Nov 18	Council
56	8 December 2021	City of Melbourne Open Space Strategy Open Space Contributions Framework, 2012	Mr Sebastian Withers
57	9 December 2021	Luke Mackintosh Track Change Expert Evidence	Council
58	9 December 2021	Luke Mackintosh Final Expert Evidence	Council
59	9 December 2021	Letter – from Council to Panel on amended Clause 53.01 Schedule 1	Council
60	9 December 2021	Clause 53.01 Schedule 1 Post Exhibition	Council
61	9 December 2021	Yarra Open Space strategy 2020 POPC Updated 8 December 2021	Council
62	9 December 2021	Revised POPC Rate 9 December 2021	Council
63	9 December 2021	Melbourne Planning Scheme Figure 1 from Clause 21.04 and Figure from Schedule to Clause 53.01	Council
64	9 December 2021	Memorandum from Council dated 8 December 2021	Council
65	9 December 2021	Attachment to Council Memorandum (Advice to Council on Sales Ratios for 2018)	Council
66	9 December 2021	Glen Eira Amendment C218 – <i>Update of the Public Open Space Contributions Program (2 November 2020)</i>	Council

No.	Date	Description	Presented by
67	13 December 2021	Clause 02.03	Council
68	13 December 2021	Clause 02.04	Council
69	13 December 2021	Design and Development Overlay Schedule 16	Council
70	13 December 2021	Design and Development Overlay Schedule 18	Council
71	13 December 2021	Design and Development Overlay Schedule 23	Council
72	13 December 2021	Design and Development Overlay Schedule 36	Council
73	13 December 2021	Clause 21.04 from the Melbourne Planning Scheme	Council
74	13 December 2021	Schedule to Clause 53.01 from the Melbourne Planning Scheme	Council
75	13 December 2021	Email – from Best Hooper to Panel regarding the Amcor Papermill Site	Ms Eliza Minney
76	13 December 2021	Council Part B Supplementary submission?	Council
77	13 December 2021	Map Strategic Framework Plan and proposed additional Open Space with Clause 02.04	Council
78	13 December 2021	Map Strategic Framework Plan and proposed additional Open Space with Housing Strategy	Council
79	13 December 2021	Precinct Ranking Table	Council
80	13 December 2021	A memorandum prepared by Joanna Thompson, 10 December 2021 about Average Park Costings POPC and open space design projects	Council
81	13 December 2021	A memorandum prepared by Council, 13 December 2021 regarding the 30% contingency for the Average Park Costings POPC and open space design projects	Council
82	13 December 2021	Table containing POS collection since FY2011	Council
83	13 December 2021	Development Plan Overlay Schedule 15	Council
84	13 December 2021	Panel Report Yarra Planning Scheme Amendment C223yara	Council

No.	Date	Description	Presented by
85	13 December 2021	Email – from Arnold Bloch Leibler to Panel regarding the Amcor Papermill Site	Mr Andrew Low for U-Home Oceania Pty Ltd
86	13 December 2021	Email – from PPV to Ms Eliza Minney, for Best Hooper Group of Clients, regarding no need for submitters to be heard regarding Amcor Papermill Site	PPV
87	14 December 2021	Email – from PPV to Mr Andrew Low, U-Home Oceania Pty Ltd, regarding no need to be heard regarding Amcor Papermill Site	PPV
88	14 December 2021	PPP group of clients Submission	Ms Hannah Wilson
89	14 December 2021	Appendix A – Summary of submitter sites	Ms Hannah Wilson
90	14 December 2021	Appendix B – Nicholson Street	Ms Hannah Wilson
91	14 December 2021	Appendix C – Workings behind the 30% allowance	Ms Hannah Wilson
92	14 December 2021	Appendix D – HO map of Yarra	Ms Hannah Wilson
93	14 December 2021	Appendix E – Harry the Hirer	Ms Hannah Wilson
94	14 December 2021	Appendix F – 26-52 Queens Parade, Fitzroy North Landscape Plan	Ms Hannah Wilson
95	14 December 2021	VPA Metropolitan Open Space Network	Council
96	15 December 2021	Memorandum prepared by Ms Thompson dated 14 December 2021	Council
97	15 December 2021	Revised precinct rankings referred to in Document 79	Council
98	15 December 2021	The workings of average and median sale figures from Document 65	Council
99	15 December 2021	Table of population breakdowns	Ms Hannah Wilson
100	16 December 2021	Email – from HIA to Panel, supplementary comment for Panel consideration	Mr Roger Cooper
101	17 December 2021	Sensitivity Calculations	Ms Hannah Wilson
102	20 December 2021	Letter – Further Directions	Planning Panels Victoria

No.	Date	Description	Presented by
103	21 December 2021	Letter – from PPP to the Panel regarding Further Directions	Ms Hannah Wilson
104	22 December 2021	Letter – from Rigby Cooke Lawyers to Panel regarding further directions	Ms Alisa Gattini, Rigby Cooke Lawyers, for Porta Investments Pty Ltd.
105	22 December 2021	Email – from Panel Panels Victoria to Rigby Cooke Lawyers regarding further directions.	Planning Panels Victoria
106	22 December 2021	Letter – From Panel to PPP regarding further directions.	Planning Panels Victoria
107	23 December 2021	Letter – from Norton Rose Fulbright to Panel regarding further directions	Mr Sebastian Withers
108	23 December 2021	Email – from Panel Panels Victoria to Norton Rose Fulbright regarding further directions.	Planning Panels Victoria
109	23 December 2021	Letter – from Council to Planning Panels Victoria regarding further directions.	Council
110	23 December 2021	Email – from Panel Panels Victoria to Council regarding further directions.	Planning Panels Victoria
111	6 January 2022	Letter – further Directions 6 January 2022	Planning Panels Victoria
112	14 January 2022	Email - from Council to Planning Panels Victoria seeking clarification on further directions issued on 6 January 2022	Council
113	14 January 2022	Email – from Planning Panels Victoria to Council clarifying further directions issued on 6 January 2022	Planning Panels Victoria
114	25 January 2022	Email – from Council to Planning Panels Victoria requesting an extension to the further directions’ timeframes	Council
115	25 January 2022	Email – from Planning Panels Victoria to Council granting extension until 31 January 2022.	Planning Panels Victoria
116	27 January 2022	Letter – from Council to Planning Panels Victoria responding to further directions 27 January 2022	Council
117	27 January 2022	Memorandum prepared by Joanna Thompson dated 18 January 2022 regarding further information requested by the Panel	Council
118	27 January 2022	Memorandum prepared by Esther Kay dated 24 January 2022 regarding further information requested by the Panel	Council
119	27 January 2022	Sale selection letter to Maddocks 27 January 2022	Council
120	31 December 2022	Letter – from Council to Planning Panels Victoria responding to further directions 31 January 2022	Council

No.	Date	Description	Presented by
121	31 December 2022	Apportionment memorandum prepared by Joanna Thompson 31 January 2022	Council
122	31 December 2022	Map with YOSS and Strategy POPC actions identified	Council
123	3 February 2022	Email – from Best Hooper Lawyers to Planning Panels Victoria regarding no longer requiring to be heard on 8 February 2022	Ms Eliza Minney
124	4 February 2022	Email – from PPV to parties advising that the Hearing will conclude at lunchtime on 8 February 2022	Planning Panels Victoria
125	4 February 2022	Letter – from Council to Planning Panels Victoria responding to item 2 in Document 49	Council
126	4 February 2022	Memo Draft Strategy POPC Joanna Thompson 3 February 2022	Council
127	7 February 2022	Piedimonte Properties Pty Ltd Submission 7 February 2022	Mr Sebastian Withers
128	7 February 2022	Piedimonte Properties Pty Ltd Attachments to Submission 7 February 2022	Mr Sebastian Withers
129	8 February 2022	Porta Investments Pty Ltd Submission 8 February 2022	Ms Donna Bilke
130	8 February 2022	Porta Investments Pty Ltd Submission Attachment Household Data 8 February 2022	Ms Donna Bilke
131	16 February 2022	Letter – from Norton Rose Fulbright to Panel responding to the Panel 20 December 2021 further directions	Mr Sebastian Withers
132	16 February 2022	Rigby Cooke Lawyers response to Document 121	Ms Donna Bilke
133	16 February 2022	PPP response to additional material filed by the Council	Ms Hannah Wilson
134	17 February 2022	Letter – from Panel to all parties 17 February 2022 regarding reconvening the Hearing on 23 February 2022	Planning Panels Victoria
135	22 February 2022	Council closing submission 22 February 2022	Council
136	22 February 2022	Appendix A – List of open space strategies reviewed, referred to in closing submission	Council
137	22 February 2022	Appendix B - Summary of Apportionment of Strategy POPC Actions	Council
138	22 February 2022	Additional material for closing submission: a. Clause 19_02-6R-001 b. Arden Development Contributions Plan August 2021: VPA Part A	Council

No.	Date	Description	Presented by
		<ul style="list-style-type: none"> c. Arden Precinct Expert Evidence Statement by Chris DeSilva Development, Mesh, January 2022 d. Urban heat island effect documents referred to in closing submission <ul style="list-style-type: none"> i. Clause 02.03 Municipal Planning Strategy, Strategic direction preferred version Part C ii. Clause 15.02-1L preferred version Part C iii. Current Clause 15.02-1S iv. Current Clause 22.17 v. Current Clause 58.03 vi. Urban Forest Strategy, City of Yarra e. VCAT Amended Plans – P760-2021 Amended plans prepared by Hayball f. Applicant VCAT Ref P760-2021 Development Summary 	
139	5 April 2022	Further updated version of the Schedule to Clause 53.01	Maddocks

Appendix D Panel recommended version of the Schedule to Clause 53.01

30/07/2018
VC148

SCHEDULE TO CLAUSE 53.01 PUBLIC OPEN SPACE CONTRIBUTION AND SUBDIVISION

1.0

Subdivision and public open space contribution

Proposed
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Type or location of subdivision	Amount of contribution for public open space
Land in DPO5 (Channel Nine Site, Bendigo Street, East Richmond)	4.5%, comprising land and/or cash contribution in accordance with an approved development plan, planning permit SP13/007 issued on 12 June 2013 and planning permit SP18/0057 issued on 21 January 2019, as amended from time to time.
Land in DPO11 (Amarco Site, Heidelberg Road, Alphington)	4.58%, for the whole of the land in DPO11, comprising land in accordance with the development plan approved under DPO11, as amended from time to time, but excluding the 30 metre setback from the Yarra River required by Instrument AN278889H (agreement under section 173 of the Planning and Environment Act 1987 registered 15 November 2016)
Land in DPO16 (111 Queens Parade and 433 Smith Street, Fitzroy North (Former Fitzroy Gasworks))	A minimum of 8%, comprising land and/or cash contribution in accordance with an approved development plan, as amended from time to time.
All other land	7.4%

Appendix E Panel recommended version of Clause 22.12

22.12 PUBLIC OPEN SPACE CONTRIBUTION

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This policy applies to all applications for development or subdivision of land.

22.12-1 Policy Basis

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As an established inner urban municipality, the City of Yarra is experiencing significant change and growth. The analysis of the distribution of public open space in the Yarra Open Space Strategy 2020 has identified there are areas of the City where the community does not have any adequate open space within easy walking distance of where they live or work. The Strategy has identified and prioritised a series of new open spaces, with priority given to gaps in the network and locations where higher levels of growth is forecast to occur. The need for the proposed additional open spaces is based on a range of factors including:

- . Areas where the public existing open space is experiencing high levels of use or over- use. This includes providing new open space to take the pressure off existing spaces to meet everyone's needs.
- . Where there is a gap in the provision of any public open space.
- . Medium and high density precincts where the substantial change is forecast and the new community will create a need for additional public open space.
- . In medium and high density precincts where the provision of well distributed green public open space will assist to mitigate urban heat island effect.

The forecast development over the next 15 years is significant with a 41 per cent increase in the resident population and a 47 per cent increase in the worker population. This means there will be more people visiting and using open space, thereby increasing demand on the existing space and facilities. The extent of forecast growth changes across different parts of the City. Minimal growth is forecast in Princes Hill-Carlton North and Clifton Hill, compared to high Levels in North Richmond, Collingwood, Fitzroy and Cremorne. The [residential population growth figures are based on .id Consulting forecasts of August 2018 while](#) locations for where forecast residential growth will occur is based on the *Yarra Housing Strategy 2018*. The forecast employment growth and change is based on the *Yarra Spatial Economic and Employment Strategy 2018*.

A total of 85 per cent of Yarra's population live in medium and high density dwellings compared to 33 per cent in Greater Melbourne. This means that residents have less private open space available to them which increases their reliance on public open space. Typically, this adds to the amount of people using public open space and increases the diversity of reasons why they use it.

Many of the areas in the City that are forecast to change are [the activity centres and](#) former industrial and manufacturing areas. These areas are being redeveloped to mixed use precincts with a combination of residential, commercial and business use. Historically, the industrial areas did not have public open space. With the proposed changes, these areas are being redeveloped with increased building heights and a change to a predominantly office-based professional workforce. The Strategy found that more than 80 per cent of workers visit public open space during the day. With increased numbers of people working and living in the former industrial precincts there is a need to provide new areas of public open space.

As urban densities increase in the future this Strategy has identified opportunities to increase the local open space network to support and sustainably meet the open space needs of the existing and future community.

Public open space contributions from developers are one of a number of potential sources of funding towards the acquisition of land for public open space and improvement of existing facilities. Because public open space contributions can only be imposed at the subdivision stage,

it is important for developers to ascertain at the site analysis stage of the design process whether any part of the site might be required for public open space purposes where the site:

- is in an area where a land contribution may be required under Strategies in clause 22.12-3 or on Map 1.
- fits the selection criteria for public open space in clause 22.12-4.

This will ensure that public open space requirements are identified and allowed for at the earliest possible time.

22.12-2 Objectives

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- To fund a fair proportion of the open space projects contained in the Strategy that will meet the needs of the forecast residential commercial and business population.
- To contribute to improvements to existing public open space and provide new public open space on behalf of the forecast population.
- To expand the public open space network to accommodate the growth in population predominantly in medium to high density urban development located across the municipality.

22.12-3 Policy

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22.12-4 Policy Guidelines

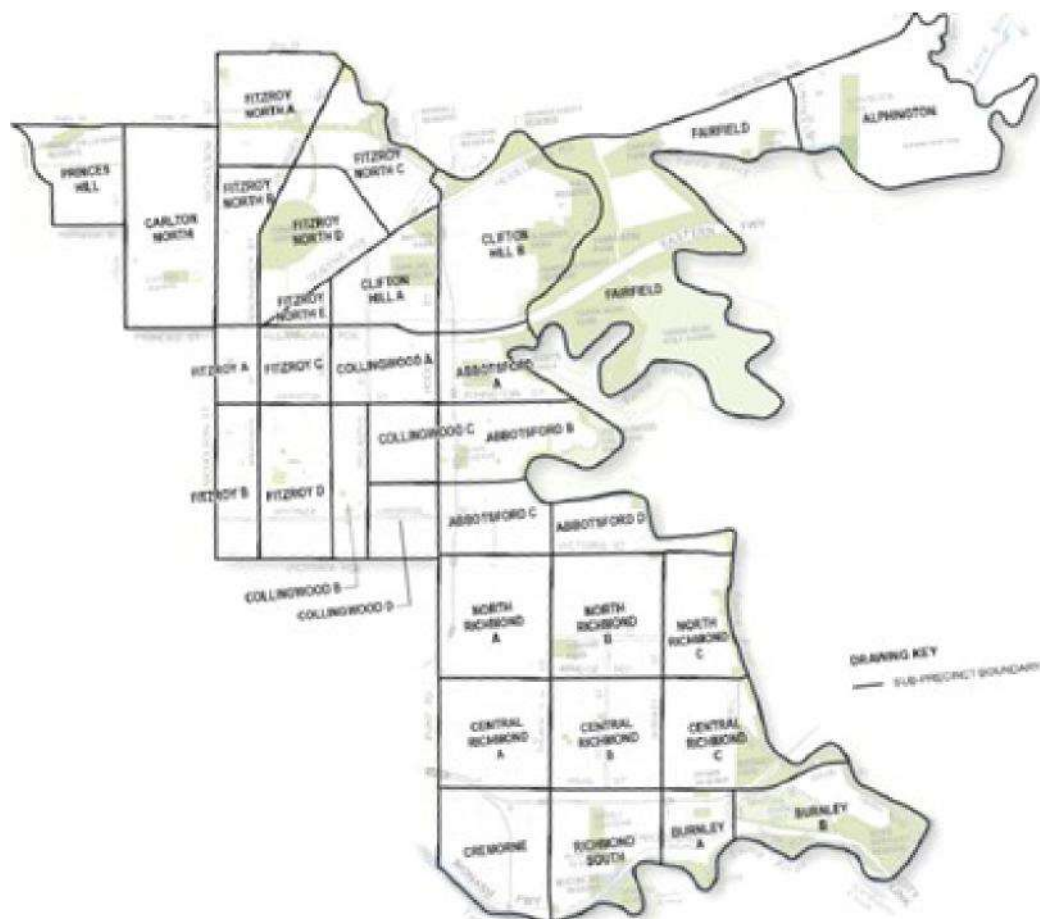
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Consider as relevant:

- The suitability of land to be contributed as public open space at the time of the subdivision of the land or building, should be consistent with the requirements of the Yarra Open Space Strategy 2020 including the following selection criteria:
- Land to be contributed:
 - Should be of a shape and size that will be adequate for the proposed [use and its position in the public open space hierarchy](#) having regard to the nature of [the public open space](#) ~~in an inner-city environment or~~ be able to meaningfully contribute to the assembly of a parcel of land with these attributes.
 - Should be free of structures and protrusions, such as balconies or other building projections that may encroach into the public open space reserve, except for historic buildings or structures relating to the designated public open space use.
 - Should be located or be capable of being designed to provide a high degree of casual surveillance.
 - Should be physically suitable for use as public open space including that there are no inherent issues such as contamination and significant financial or safety implications, including the land being open to the sky.
 - Should contribute to the connectivity and accessibility of the open space network. This includes consideration of the other strategic planning projects including linear open space corridors, and local links to improve accessibility within the local street network and links and connections to improve accessibility into existing or proposed future open space.
 - Should be free of services and easements that affects or encumbers the development and use of the land as public open space. This includes roadways, overhead structures, underground structures (e.g. underground car parking), water supply, power supply, gas supply, telecommunications, flood mitigation and drainage.
 - Must be accessible to people of all abilities.

- Should be visible from adjacent thoroughfares with at least two access points, local access streets to at least two sides and be provided on natural ground (not elevated or roofed structures).
- Must have no additional overshadowing beyond any 9 metre built form height between 10am and 3pm on June 21.
- Should be located away from major or secondary arterial roads.
- Should make a positive contribution to the urban context, character and attractiveness of the precinct.
- Should contribute to the cultural values of the community, protect biodiversity values and contribute to urban cooling and greening.
- Must be capable of being transferred to the City of Yarra and rezoned for public open space.
- . Whether any building on land adjacent to public open space set aside under this clause has been designed to accommodate public open space in a manner that meets the majority of the above selection criteria.

Open Space Contribution Plan (Yarra Open Space Strategy 2020 sub-precincts)



Policy references

Yarra Open Space Strategy 2020 Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd

Yarra Open Space Strategy 2020 Technical Report Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd

Yarra Open Space Strategy 2020 Public Open Space Contributions, Thompson Berrill Landscape Design Pty Ltd in association with Environment & Land Management Pty Ltd

22.12-5 Strategies

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Many of the areas in the City that are forecast to change are the activity centres and former industrial and manufacturing areas. These areas are being redeveloped to mixed use precincts with a combination of residential, commercial and business use. Historically, the industrial areas did not have public open space. With the proposed changes, these areas are being redeveloped with increased building heights and a change to a predominantly office-based professional workforce.

The Yarra Open Space Strategy 2020 has identified the need for new public open space and land contributions for public open space ~~will~~may be preferred over cash contributions in the following areas shown in the City of Yarra Open Space Sub-precincts plan to this clause.

- . Alphington
- . Abbotsford C and D
- . [Carlton North](#)
- . Central Richmond A and B
- . Collingwood A, B, C and D
- . Cremorne
- . Fitzroy A, B, C and D
- . Fitzroy North B and E
- . Richmond North A and C

In all other areas of the municipality, a cash contribution equal to the amount specified in Clause 53.01 is required.

In locations where a preference for a land contribution has been identified, set aside land for public open space early in the planning of a development or subdivision.

Design buildings adjacent to any public open space set aside under this clause and any existing open space to facilitate high quality and accessible public open space