

MELBOURNE PLANNING SCHEME AMENDMENT C209 PUBLIC OPEN SPACE  
CONTRIBUTIONS

2 July 2013

**Presenter:** David Mayes, Manager Strategic Planning

**Purpose and background**

1. The purpose of this report is to present the outcomes of the exhibition of *Melbourne Planning Scheme Amendment C209 Public Open Space Contributions*, proposed revisions to the Amendment C209 and to recommend the Committee request the Minister for Planning appoint a panel to consider the revised Amendment C209 and the submissions from its exhibition.
2. At its 31 July 2012 meeting Council endorsed the final City of Melbourne's *Open Space Strategy*, the *Open Space Strategy Technical Report* and the *Open Space Contributions Framework* and sought authorisation from the Minister for Planning to prepare and exhibit a planning scheme amendment to introduce public open space contribution provisions into the Melbourne Planning Scheme to implement the *City of Melbourne Open Space Strategy* and *Open Space Contributions Framework*.
3. The Minister authorised exhibition and Amendment C209 was exhibited in 2013 from 21 February to 28 March and 28 submissions were received. A summary of all submissions is at Attachment 2. An overall response to the main issues raised by the submissions is at Attachment 3.
4. Amendment C209 will amend the Melbourne Planning Scheme with a schedule of public open space contribution rates to clause 52.01 and a new local policy at clause 22. Clause 52.01 states that the proponent of a land subdivision must make a contribution to Council for public open space and the schedule specifies the contribution amount. The policy states where land may be sought in lieu of cash depending on the location of the subdivision.

**Key issues**

5. There is currently no open space contribution specified in the Planning Scheme under clause 52.01. Under the *Subdivision Act 1988* however the City of Melbourne does collect open space contributions from property subdividers at the time of subdivision negotiated on a site by site basis up to a maximum rate of 5 percent of the site's unimproved land value.
6. Amendment C209 specifies a mandatory contribution rate of 8 percent of the site's unimproved land value for subdivisions in the municipality's high growth areas and 5 percent in its remaining areas. These rates are determined in Council's *City of Melbourne Open Space Strategy* and *Open Space Contributions Framework* based on the estimated cost of providing the open space that will be needed by the future new resident and worker populations. Amendment C209 is estimated to raise \$408 million over 15 years.
7. Management has revised the Amendment in response to some of the issues raised by submissions. Clause 22.26 has been amended to simplify the criteria and clarify that it only applies where there is the potential for subdivision. The revised version of Amendment C209 is at Attachment 4.

**Recommendation from management**

8. That the Future Melbourne Committee resolve to:
  - 8.1 note Management's assessment of the submissions as set out in Attachments 2 and 3;
  - 8.2 request the Minister for Planning appoint an Independent Panel to consider the submissions to the Melbourne Planning Scheme Amendment C209; and
  - 8.3 note that the form of the Amendment to be presented to the Independent Panel will be in accordance with Attachment 4.

**Attachments:**

1. Supporting Attachment
2. Summary of submissions
3. Response to general points raised in submissions
4. Melbourne Planning Scheme Amendment C209 (revised version)

## SUPPORTING ATTACHMENT

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### Legal

1. Division 1 and 2 and part 3 of the *Planning and Environment Act 1987* (the Act) deal with Planning Scheme Amendments, setting out provisions for the exhibition and notification of proposed planning scheme amendments and consideration of submissions. Specifically, sub-section 23(1) of the Act provides that:

“After considering a submission which requests a change to the amendment, the planning authority must:

- (a) change the amendment in the manner requested; or
- (b) refer the submission to a panel appointed under Part 8; or
- (c) abandon the amendment or part of the amendment”.

The recommendation made in the report is therefore consistent with the Act.

### Finance

2. The cost associated with the recommendation to progress to an Independent Panel is estimated to be \$60,000 and has been provided for in Strategic Planning 2013-14 operating budget.

### Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

### Stakeholder consultation

4. Amendment C209 was exhibited in accordance with the Planning and Environment Act 1987 in 2013 between 21 February and 28 March. Public notices were placed in the Melbourne Leader (18 February 2013), Melbourne Times (20 February 2013) and Government Gazette (21 February 2013). Advertisements were also placed in the local papers.
5. The amendment and supporting information were available at the City of Melbourne Planning Counter (Council House 2) and on the City of Melbourne and department of Planning and Community Development websites.
6. The Property Council of Australia (PCA), Urban Design Institute of Australia (UDIA), Master Builders Association Victoria (MBAV), Housing Industry Association (HIA) and Real Estate Institute of Victoria (REIV) were each briefed and consulted on the Amendment. The PCA held an industry forum on 10 May at which the City Of Melbourne presented the Open Space Strategy and Amendment C209.
7. Notice of the amendment was sent to a range of stakeholders, authorities, industry associations/organisations and resident associations and to the prescribed Ministers. A notice was also sent to those who had previously made a submission to the Arden Macaulay, City North and Southbank Structure Plans.

### Relation to Council policy

8. The amendment is consistent with the City of Melbourne Open Space Strategy, The Open Space Strategy Technical Report and the Open Space Strategy Contributions Framework.

**Environmental sustainability**

9. Environmental sustainability issues have been a key consideration in the development of the Open Space Strategy and implementation through Amendment C209. The provision of open space can play a significant role in mitigating the urban heat island effect and adapting the municipality to climate change. The distribution of open space and inclusion of natural features such as large canopy trees and planted surfaces that absorb moisture can off-set the impacts of urban heat.

Planning Scheme Amendment C209

## Summary of Submission Received from the Exhibition

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| <b>Submitter</b>            | <b>1. Collie Pty Ltd</b>   |
| <b>Subject Land</b>         | Various Southbank properties   |
| <b>Key Issue/s</b>          | 8% contribution rate<br><br>Proximity and functionality of additional open space   |
| <b>Summary</b>              | <ol style="list-style-type: none"> <li>1. Generally supports the overall proposition of improving public open space.</li> <li>2. Says an 8% public open space contribution in the eastern part of the Southbank precinct is excessive because this precinct is very close to extensive open space including Alexandra Gardens, Kings Domain and the Royal Botanic Gardens amongst others.</li> <li>3. The proximity to this extensive open space has not been given sufficient consideration or weight in the determination of appropriate open space contributions for the abutting area. From observations and as a user of this open space many people regularly and easily cross over St Kilda Road and use the open space.</li> <li>4. Based on this, it is suggested that the Southbank precinct be divided into two areas with different contribution rates. The western part of the precinct to have a 8% contribution rate and the eastern portion to have a 5% contribution rate.</li> </ol> |
| <b>Management Response</b>  | These issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.  |
| <b>Recommended Change/s</b> | No changes recommended   |

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| <b>Submitter</b>            | <b>2. Kaye Oddie</b>   |
| <b>Subject Land</b>         | N/A  |
| <b>Key Issue/s</b>          | Supportive of the proposed Amendment & Framework.  |
| <b>Summary</b>              | <ol style="list-style-type: none"> <li>1. The submission suggests grammatical and wording changes.</li> <li>2. Clarification is sought regarding a “site’s value”, this requires definition, whether it is purchase cost, Council or State valuations or other measures of calculation.</li> <li>3. Clause 52.01 subdivision refers to ‘residential’, ‘industrial’ or ‘commercial’ uses, many other uses should be included. The application of the open space contributions should be clearly defined in relation to uses that may not necessarily meet strict definitions of ‘residential’, ‘industrial’ or ‘commercial’.</li> </ol> |
| <b>Management Response</b>  | <ol style="list-style-type: none"> <li>1. Under the legislation, the value is the unimproved value at the time of subdivision. The valuation is undertaken by Council’s valuer.</li> <li>2. As Clause 52.01 is not a local provision there is no opportunity under the Planning and Environment Act to amend it.</li> <li>3. Land use definitions are included in Clause 70 of the Planning Scheme.</li> </ol>   |
| <b>Recommended Change/s</b> | No changes recommended.  |

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| <b>Submitter</b> | <b>3. Woolworths Limited</b> |
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| <b>Subject Land</b> | The submission is made by Fabcot Pty Ltd (a property division of Woolworths Limited) the owner of land at 101-107 Canning Street, 168-190 Macaulay Road and 2-24 Vaughan Terrace, North Melbourne. |
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| <b>Key Issue/s</b> | 8% contribution rate<br><br>Proximity and functionality of additional open space<br><br>Private open space/ other options for open space<br><br>Use of open space by City workers<br><br>Financial implications of rezonings<br><br>Sunlight to open space provisions too onerous |
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| <b>Summary</b> | <ol style="list-style-type: none"><li>1. On 20 July 2012 the Minister for Planning issued a Notice of Decision to Grant a Planning Permit for the development of a mixed use building including a supermarket.</li><li>2. Fabcot Pty Ltd objects to the requirement of open space for the following reasons:</li><li>3. The 'Open Space Technical Report June 2012' appears to contain a number of incorrect assumptions. The North Melbourne area AM4 (location of the subject site), the Technical Report states "this sub-precinct is almost entirely state-owned and the site of the former Government Printer" and "it is assumed it would be (redeveloped) in the longer term, rather than within the 15 year timeframe of this strategy". The Strategy does not have regard to correct land ownership, live permit applications, or input from the CoM Strategic or Statutory Teams. A recommendation is made that the Planning Department review the report to verify the accuracy of assumptions.</li><li>4. Figure 1 – 'Data Used in the Open Space Rate Calculation' in the Open Space Contributions Framework shows an old version of the Future Framework, where area included in the Arden Macaulay Renewal Area has been expanded, but the data has not been updated.</li><li>5. A contribution rate of 8% is not supported for the subject site. There is no zone change for the subject site (currently Mixed Use). Land owners who experience an increase in land values are in a better position to contribute a higher contribution rate as part of their development.</li><li>6. At purchase, Fabcot Pty Ltd consideration of open space was made on the</li></ol> |
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basis of the existing rates (up to 5% of land value). This increase will impact on the viability of the development.

7. The Subdivision Act 1988 sets out a range of factors which Council must consider if there will be a need for more open space. In relation to the subject site:
  - a. it is co-located adjacent two large reserves, neither appear on the 'most frequently visited open space reserves', which implies that there is plenty of 'capacity' in these reserves to meet future needs.
  - b. The site is not located in an area where a 'gap' identified in open space provision.
  - c. The proposal includes a significant communal roof terrace and public urban plaza for the use of future residents and for the wider public.
  - d. The combined area of open space is 2,485sqm or 29% of the site area. While this is private land it significantly contributes to meeting the open space needs of future residents.
  - e. Where significant areas of land are provided these should be offset against higher contribution requirements.
  - f. Clarification is sought on two matters, firstly how the Open Space Contributions Framework will address these factors in applying the final contribution requirement and secondly, will contributions only be required by the residential component and not apply to commercial or retail land uses.
8. Clause 22.26 should have greater discretion to allow for urban spaces to also be considered as public open space.
9. Consider the sunlight to open spaces criteria to be onerous and recommend that these criteria are reviewed to provide greater flexibility and support a broader range of open spaces.

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**Management Response**

1. As is currently the case, the open space contribution applies whether or not a property has been rezoned. The contribution rates are based on the expected growth in a precinct.
2. The policy currently refers to "adequate levels of sunlight (a minimum of 3 hours of direct sunlight between 9am and 3pm on June 22 and at least 5 hours of direct sunlight between 9am and 3pm on September 22). This is in keeping with other provisions in the planning scheme.
3. Some issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

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**Recommended Change/s** No change recommended



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| <b>Submitter</b>    | <b>4. John Cicero, Principal Best Hooper Solicitors acting on behalf of Dynasty Falls Pty Ltd</b>  |
| <b>Subject Land</b> | Dynasty Falls is the owner of land at the corner of Power Street and Kavanagh Street, Southbank (currently vacant land).   |
| <b>Key Issue/s</b>  | 8% contribution rate<br><br>Nexus<br><br>Plans in the Open Space Strategy are schematic  |
| <b>Summary</b>      | <ol style="list-style-type: none"><li>1. The subject site is described in the Open Space Strategy as being included in a sub precinct for proposed neighbourhood open space. With the annotation which includes the subject site “establish a new Neighbourhood Park at the former Boyd School site including natural features, green space and a diversity of facilities for the local community”. These words refer to the Boyd School site and the shading appears to extend over the subject site. If that was not intended then the shading should be removed.</li><li>2. The subject site represents a significant development opportunity in Southbank. A neighbourhood park would seriously impact upon the redevelopment opportunities.</li><li>3. There is opposition to the inclusion of part of the subject site for Capital City Open Space and all Municipal Open Space.</li><li>4. The proposed 8% contribution rate has not been justified in any meaningful way. No analysis has been provided of how the total value and capital works for future population of \$350 million dollars has been arrived at.</li><li>5. The analysis of the value put on the land area to be developed is questioned. If the estimate is based on the analysis in the Southbank Structure Plan, it was clear that there is a serious flaw in the Structure Plan in the assumptions made as to the extent of redevelopment permissible within the Southbank area.</li><li>6. Whatever percentage is arrived at it needs to be justified with a robust analysis of what projects are included as open space projects.</li><li>7. Dynasty Falls is also the registered proprietors of 105 Franklin Street, 330-340 Spencer Street, West Melbourne, 550 Spencer Street, Melbourne, 1-7 Lloyd Street &amp; 50-60 Lloyd Street, Kensington and several properties in Carlton.</li><li>8. Specific concerns relate to the percentage of open space in excess of 5%, insufficient justification has been given to support what is a relatively high contribution rate.</li></ol> |

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9. Also concerned with the application to subdivision of commercial, industrial and retail properties. Insufficient justification has been given as to why a contribution of the subdivision of non-residential properties ought to be allowed without justification as to the nexus between the need for any additional open space for improvements to existing open space and the demand placed upon such space by blue or white collar workers.
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**Management Response**

See attachment.

1. The plans in the Open Space Strategy are schematic. However as the wording specifically refers to the Boyd School site, it is clear that the open space referred to is on the Boyd Street site. Similarly as stated in the Open Space strategy, the Capital City and municipal open space are proposed for the site created by the future decking of the entrance to the Burnley tunnel.
  2. The planning controls approved under amendment C171 and recent development approvals in Southbank show that there is extensive scope for redevelopment in Southbank.
  3. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.
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**Recommended Change/s**

No change recommended

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| <b>Submitter</b>    | <b>5. Allan Norman, Chairman, Association of Consulting Surveyors (Victoria) Inc</b>   |
| <b>Subject Land</b> | N/A  |
| <b>Key Issue/s</b>  | Mandatory nature of provisions<br>Alignment with Section 18 of the Subdivision Act 1988  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. The Subdivision Act 1988 was introduced to consolidate the legislative processes of subdivision into a single act.</li> <li>2. The need for amendments to public open space provisions of the Subdivision Act were considered necessary by Government to: <ol style="list-style-type: none"> <li>a. Resolve anomalies arising from the wording of the original act that had resulted in Councils seeking contributions in circumstances where they would not previously have been obtained.</li> <li>b. Clarify the intention that a contribution to public open space be paid only once.</li> <li>c. Introduce objectives provisions to clarify the circumstances under which a public open space requirement may be made, as adequate exemptions for boundary re-alignments, subdivisions of existing buildings and subdivisions to provide land for public authorities did not exist.</li> <li>d. Clarify the meaning of “capable of further division”</li> </ol> </li> <li>3. Prior to introducing these amendments the Minister considered removing all public open space provisions for the Subdivision Act and incorporating them into the planning system, due to the urgency resulting from an excessive number of claims for public open space contributions, it was decided to proceed with a “patch up” of the Subdivision Act.</li> <li>4. At the time of introduction of the Subdivisions (Miscellaneous Amendment ) Act 1991, most Councils had no guidelines or policies relating to public open space.</li> <li>5. The proposed Amendment C209 schedule is valuable in providing clarity as to the amount of Public Open Space Contribution required in a particular precinct. It also has the benefit of allowing for the early identification of potential public open space requirements that can be considered in the design of a development.</li> <li>6. The introduction or varying contribution rates is supported.</li> <li>7. The Association has some serious concerns with the inclusion of the schedule</li> </ol> |

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to clause 52.01 as it provides no opportunity for flexibility for either applicants or council. The schedule to clause 52.01 removes the ability for council to assess any application on its merits and take into consideration how a particular development may have addressed the objectives of the Open Space Strategy. It includes no consideration of the proposed land use or how that may impact on the need for open space generated by a particular subdivision.

8. The proposed amendment will further degrade the qualitative measures incorporated into the Subdivision Act, this type of concept and approach is out of step with the underlying principle of objective based planning.
9. Find it difficult to provide full support for an amendment that ignores the fundamental test in Section 18(1A), against which the assessment of all public open space contributions should be made, that Council may only make a public open space requirement if it considers that, as a result of the subdivision, there will be a need for more open space.
10. A public open space contribution should not be treated as a mandatory tax on all subdivision. There must be some ability to exempt some subdivisions which do not necessarily fit the limited exemptions listed under clause 52.01. These may include, but are not limited to, boundary re-alignment involving more than 2 lots, subdivisions of multiple existing parcels which result in a net decrease in the number of separately saleable parcels created or various subdivisions under section 32 of the Subdivision Act.

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**Management Response**

1. The principles on which the Amendment is based are consistent with the principles in the Subdivision Act.
2. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

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**Recommended Change/s**

No change recommended

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| <b>Submitter</b>    | <b>6. Meredith Withers &amp; Associates Pty Ltd acting on behalf of Bennelong Value Funds Pty Ltd.</b>   |
| <b>Subject Land</b> | Owner of 102-108 Jeffcott Street, 335-357 Spencer Street, 371-379 Spencer Street and 83-113 Batman Street, West Melbourne.   |
| <b>Key Issue/s</b>  | <p>Individual site concerns</p> <p>Policy seeks to encourage land contribution</p> <p>Mandatory nature of provisions</p> <p>Proximity and functionality of additional open space</p>   |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Objecting to Melbourne Planning Scheme Amendment C209.</li> <li>2. The subject land comprises several parcels of land and can be considered a strategic development site on the CBD fringe between Docklands and the Hoddle Grid.</li> <li>3. January 2012 a planning permit application was lodged for a major residential development comprising two towers with a total of 749 apartments at 371-379 Spencer Street and 83-113 Batman Street, West Melbourne. The application was lodged with DPCD.</li> <li>4. June 2012, the City of Melbourne advised the DPCD that it objected to the grant of a permit.</li> <li>5. Further to this if a permit was to be granted Council requested through condition in the permit amended plans to create an open space area to the north west corner of the lot with a frontage to Batman Street. This area is to measure 5% of the total site area.</li> <li>6. This requirement was completely unexpected and requires a redesign of the submitted development application and materially reduced the number of apartments to be developed.</li> <li>7. No mention was made during the 2011 pre-application consultation process by Council for a land contribution for public open space.</li> <li>8. A small public park on Batman Street is unlikely to be used and the community's interest would be best served by the allocation of a cash contribution for public open space at the subdivision stage to be used to improve existing facilities in the nearby Flagstaff Gardens.</li> <li>9. The Council and applicant remain in dispute over the requirement for land to be set aside for public open space in Batman Street, the permit application is yet to be decided by the Minister for Planning.</li> <li>10. The subject land is within a 5% mandatory contribution rate area as per</li> </ol> |

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Amendment C209. There is no discretion to reduce the amount of contribution and the submitter objects to this contribution rate.

11. The current discretionary/flexible approach to open space contributions should continue rather than a 'blanket' mandatory 5% contribution. Not all developments create the same demand for new public open space. The quality and quantity of private open space and recreation facilities provided within developments also varies and this should also be considered in deciding the public open space contribution.
12. When making a request for public open space contribution Council has to be satisfied that a particular development will generate a genuine need for more public open space having regard to a number of relevant factors. These factors should continue to be addressed for individual developments as the basis of a negotiated open space contribution at the time of subdivision of the land and buildings.
13. The submitter objects to the policy that seeks to encourage land contributions rather than cash contributions of up to 5% of the site value.
14. The subject development is well past the site analysis stage of the design development process and yet Council is relying on the open space strategy and the proposed amendment and policy to require land within the development to be set aside for public open space. This is an unfair and onerous.

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**Management Response**

1. The purpose of the Policy is to ensure that in the future when applicants consult with the City Of Melbourne prior to lodging an application for a permit it can be determined whether part of a site would be suitable for a land contribution. This will assist Council in the delivery of open space. The amount required would accord with the 5% or 8% rate depending on the location of the site.
2. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

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**Recommended Change/s** No change recommended.



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| <b>Submitter</b>    | <b>7. Environmental Resources Management Pty Ltd acting on behalf of Central Equity.</b>   |
| <b>Subject Land</b> | Owner of a number of land parcels throughout the Central City and Southbank precincts.   |
| <b>Key Issue/s</b>  | <p>Nexus</p> <p>Proximity and functionality of additional open space</p> <p>Mandatory nature of provisions</p> <p>Private open space/ other options for open space</p> <p>8% contribution rate</p>   |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. The CoM Open Space Strategy makes reference that <i>‘the purpose of the contribution is to provide for the open space needs of those who will occupy the development from which the contribution is collected’</i> There is no clear provision for a nexus between where the contribution is collected and where it will be spent.</li> <li>2. A key principle of the strategy is that funds collected must be spent on open space land acquisition and development works so the open space is accessible for the needs of new residents, this does not necessarily translate to the provision of open space on proximity of the land owner’s subdivision site.</li> <li>3. Supportive of providing open space areas within the City on the grounds of environmental, social, physical and visual amenity, however do not agree that Neighbourhood, Local and Small local open spaces will be an effective means to achieve such outcomes.</li> <li>4. It is reasonable to expect that Neighbourhood, Local and Small local areas of proposed open spaces will be unduly affected by overshadowing from surrounding new and existing high rise towers.</li> <li>5. Clause 22.26 and the open space strategy fail to acknowledge the recreational and communal open space facilities that new residential developments typically provide. A majority of future residential developments will provide on-site open space and gymnasiums/recreational facilities and/or are in easy walking distance of existing and established larger areas of open space.</li> <li>6. Do not object to the preparation of a Local Policy with the planning scheme relating to the provision of open space contributions however the mandatory nature of the contributions is not supported.</li> <li>7. There is insufficient justification provided for open space contributions in excess of 5%, in particular where facilities are provided on site to meet the recreational needs of new populations.</li> </ol> |

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**Management Response** 1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

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**Recommended Change/s** No changes recommended

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| <b>Submitter</b>    | <b>8. Comdain Property Pty Ltd</b>   |
| <b>Subject Land</b> | 70-90 Chelmsford Street Kensington   |
| <b>Key Issue/s</b>  | <p>Consultation</p> <p>8% contribution rate</p> <p>Proximity and functionality of additional open space</p> <p>Cost and impact on development</p>  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Subject site is located within a precinct bounded by the Moonee Ponds Creek, Craigieburn rail line, Arden Street and Chelmsford Street, the land is currently zoned for industrial purposes.</li> <li>2. Whilst the Arden Macaulay Structure Plan supports a change in zoning to support residential land uses it is noted the most recent version differs from past versions by generally retaining large areas of land in this precinct for business and industrial purposes rather than accommodating residential land use.</li> <li>3. The Open Space Strategy consultation process focussed on those aspects of the plan that deliver new parks and/or upgrades to existing reserves with limited information with landowners in relation to the Open Space Contributions Framework.</li> <li>4. The consultation that occurred in the Contributions Framework was confined to a select group of stakeholders, the submitter was never directly engaged.</li> <li>5. The Open Space Strategy still refers to the draft Municipal Strategic Statements July 2010 and indicated the whole precinct south of Macaulay Road as being part of an urban renewal area. This is at odds with the adopted version of the Arden Macaulay Structure Plan and latest version of the MSS which designates only a small part of this precinct as "proposed urban renewal".</li> <li>6. Submitter questions whether a new neighbourhood park is required to support the projected population of this precinct, given the limited area now designated for change. Open space along the creek is intended to be increased in size and upgraded significantly.</li> <li>7. Submitter considers that the Open Space Contributions Framework should be revisited to reflect the more limited demand for open space in this precinct.</li> <li>8. Council has not adequately considered the impacts of the proposed 8% contribution rate on housing affordability for the urban renewal areas. Insufficient justification has been used to substantiate the proposed 8% contribution rate and that the documentation does not justify any change to the</li> </ol> |

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maximum default rate of 5% currently available to Council under the Subdivision Act 1988.

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**Management Response**      1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

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**Recommended Change/s**      No change recommended

|                     |  |
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| <b>Submitter</b>    | <b>9. Daryl Chambers</b>   |
| <b>Subject Land</b> | 1 Barrett Street Kensington  |
| <b>Key Issue/s</b>  | <p>Consultation</p> <p>8% contribution rate</p> <p>Proximity and functionality of additional open space</p> <p>Cost and impact on development</p>  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Subject site is located within a precinct bounded by the Moonee Ponds Creek, Craigieburn rail line, Arden Street and Chelmsford Street, the land is currently zoned for industrial purposes.</li> <li>2. Whilst the Arden Macaulay Structure Plan supports a change in zoning to support residential land uses it is noted the most recent version differs from past versions by generally retaining large areas of land in this precinct for business and industrial purposes rather than accommodating residential land use.</li> <li>3. The Open Space Strategy consultation process focussed on those aspects of the plan that deliver new parks and/or upgrades to existing reserves with limited information and proactive engagement with landowners in relation to the Open Space Contributions Framework.</li> <li>4. The consultation that occurred in the Contributions Framework was confined to a select group of stakeholders, the submitter was never directly engaged despite being directly affected and being within an area subject to urban renewal. The process has been most unsatisfactory.</li> <li>5. The Open Space Strategy still refers to the draft Municipal Strategic Statements July 2010 and indicated the whole precinct south of Macaulay Road as being part of an urban renewal area. This is at odds with the adopted version of the Arden Macaulay Structure Plan and latest version of the MSS which designates only a small part of this precinct as “proposed urban renewal”.</li> <li>6. Submitter questions whether a new neighbourhood park is required to support the projected population of this precinct. Given the limited area now designated for change, there is no justification for a new park acknowledging the area’s proximity to existing parks and reserves. Open space along the creek is intended to be increased in size and upgraded significantly.</li> <li>7. Submitter considers that the Open Space Contributions Framework should be revisited to reflect the more limited demand for open space in this precinct.</li> <li>8. Council has not adequately considered the impacts of the proposed 8%</li> </ol> |

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contribution rate on housing affordability for the urban renewal areas. Insufficient justification has been used to substantiate the proposed 8% contribution rate and that the documentation does not justify any change to the maximum default rate of 5% currently available to Council under the Subdivision Act 1988.

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**Management Response** 1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

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**Recommended Change/s** No change recommended

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| <b>Submitter</b>    | <b>10. SJB Planning acting on behalf of Tenth Dula Pty Ltd</b>   |
| <b>Subject Land</b> | 212-224 LaTrobe Street Melbourne and 17-25 Little LaTrobe Street Melbourne   |
| <b>Key Issue/s</b>  | <p>8% contribution rate</p> <p>Mandatory nature of the provisions</p> <p>Nexus</p> <p>Applying a DCP would provide greater certainty and equity</p> <p>Operation of Clause 22.26</p>   |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Submitter objects to the amendment on the basis that a mandatory 8% contribution does not comfortably align with reasonable additional demand for open space. The proposed application of a mandatory 8% requirement which is a relatively crude tool that does not appropriately account for individual site or local context, or individual demand, use and equity considerations.</li> <li>2. Disconnect between the imposition of mandatory requirements in the proposed Schedule to Clause 52.01 and the discretionary criteria for the provision of public open space as a land versus monetary contribution.</li> <li>3. A key principle of this amendment is the relationship between the future developments and need for public open space. The contribution if collected is to provide for the open space needs of those who will occupy the development from which the contribution is collected and the rate applied must be consistent with equity and cost apportionment principles. Regard should be given to a project's contribution to public open space demand, timeframe for demand associated with future development and level of anticipated use by future users compared to exiting users.</li> <li>4. Submitter does not challenge the Melbourne precinct has and will continue to experience increases in population and therefore require appropriate provision for open space, the Framework does not quantify the link between the demand for more open space and a contribution rate of 8%, The Framework does not clearly explain the assumptions behind its selection of 8%.</li> <li>5. There is an absence of analysis around how much additional open space (sqm) is needed per resident/worker or similar target which would underpin the proposed 8% contribution rate.</li> <li>6. The Framework suggests that the 8% rate is comparable to existing open space contribution rates in metropolitan municipalities. It argues that a Development Contribution Plan (DCP) is not warranted for the City of Melbourne on the basis that the councils that do use them are planning for metropolitan growth.</li> </ol> |

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7. A DCP would provide greater certainty and equity around the investment in open spaces for all affected landowners as well as the implementation of the contributions system.
  8. Some land holdings are better able to make land versus cash contributions or a contribution at all. Larger land holdings able to generate extensive yield will theoretically contribute more to the future resident/worker population and therefore demand for open space facilities – this is not always measurable using site area, particularly where building height/development yield is influenced by external and internal amenity impacts or developable land area is affected by easements or other encumbrances. Land holdings able to generate greater potential open space demand should make a larger contribution to open space facilities.
  9. There is a disconnect between the Schedule at proposed Clause 52.01 and proposed policy at Clause 22.26. Where land does not meet the public open space criteria it is assumed that the policy intends a cash contribution will be required instead. It is recommended that Clause 22.26 be improved to explicitly note the criteria are to be used to determine only whether a land contribution or cash contribution would be more appropriate.
  10. The submitter’s land would not satisfy the majority of open space criteria as the amount of land required would result in the inefficient use of land given the site’s configuration, the fine grain existing pattern of subdivision, dual frontages to LaTrobe Street and Little LaTrobe Street.
  11. The criteria does not consider the location of existing and proposed open space and the capacity for these facilities to satisfy existing and future residents and employee’s open space needs.

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**Management Response**

1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

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**Recommended Change/s**

Clause 22.26 has been amended so that it is clear the criteria are to be used to determine only whether a land contribution or cash contribution would be more appropriate.



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| <b>Submitter</b>    | <b>11. SJB Planning acting on behalf of Mimcha Pty Ltd</b>  |
| <b>Subject Land</b> | 125-133 Walsh Street, South Yarra   |
| <b>Key Issue/s</b>  | <p>Limited opportunities for population growth in South Yarra</p> <p>Proximity and functionality of additional open space</p> <p>VCAT decision</p> <p>Mandatory nature of provisions</p>  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Subject land is located within a 5% mandatory contribution rate.</li> <li>2. A mandatory 5% contribution rate does not comfortably align with the additional open space that could reasonably be expected to be generated by any future development and subdivision. The following factors are most pertinent: <ol style="list-style-type: none"> <li>a. There are limited opportunities for significant population growth in South Yarra.</li> <li>b. South Yarra is served by a number of very high quality areas of public open space. There cannot be said to be a need for major improvements or upgrades to the existing open space infrastructure relied upon by South Yarra residents.</li> <li>c. The nearest open space to the subject site is the Royal Botanic Gardens which is not under the ownership or control of the City of Melbourne and will therefore not benefit from expenditure generated by the proposed amendment.</li> </ol> </li> <li>3. A permit was granted by VCAT in 2010 for a two lot subdivision at 125-133 Walsh Street, South Yarra. A condition on the permit sought a levy of 4% public open space contribution. The owner challenged the condition and the Tribunal found that a 2% contribution was more appropriate; having regard to the locational attributes and access to a range of high quality public open space facilities.</li> <li>4. The following excerpt from this decision encapsulates the submitters objection to the amendment...<i>"4% as a figure may potentially be called for where an area is deficient in open space, major improvements would be required and projections are for a vastly increasing population that would be contributed to by the subdivision. This sits comfortably with me."</i></li> <li>5. Data contained in the Open Space Strategy also supports the submitter's arguments that the proposed 5% contribution is inappropriate for this area of South Yarra.</li> <li>6. The Royal Botanic Gardens is the closest area of public open space to the subject site, the resident's survey summarised in the Open Space Strategy</li> </ol> |

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Technical report attests that the Royal Botanic Gardens is the most frequently utilised resource by South Yarra residents.

7. The Open Space Strategy explains that the intended focus for the future Council spending on open space upgrades and improvements proximate to South Yarra is on Fawkner Park. It also indicates that workers not residents represent the dominant user group of open spaces. The submitter makes the following statements:
  - a. The open space that will benefit most from subdivision contributions is not that most likely to be used by the future residents of our client's land; and
  - b. The subject land has no realistic prospect of accommodating commercial development which would contribute to the worker population of South Yarra, who would more regularly utilise the open space infrastructure.
8. The area of public open space which the Strategy identifies as most likely to be utilised by future residents of South Yarra will derive no benefit from the proposed contributions regime.
9. The proposed imposition of a mandatory 5% public open space contribution is unreasonable and it would be more appropriate for the contribution to be levied on a case by case basis. If Council is to pursue a mandatory rate of contribution it should be more reasonably aligned with the rate that VCAT has already determined to be appropriate for South Yarra.

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**Management Response**

1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.
2. The VCAT hearing occurred before Council has an adopted Open Space Strategy in place. The analysis was in relation to a particular site as there was no documented recognition of the open space needs of the South Yarra precinct. Even though South Yarra is a stable area, the Open Space Strategy identifies that it will have open space needs over the next 15 years.

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**Recommended Change/s**    No change recommended

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| <b>Submitter</b>           | <b>12. SJB Planning on behalf of Exchange Corner Pty Ltd</b>  |
| <b>Subject Land</b>        | 670-696 Bourke Street, Melbourne  |
| <b>Key Issue/s</b>         | <p>8% contribution rate</p> <p>Mandatory nature of provisions</p> <p>Proximity and functionality of additional open space</p> <p>Nexus</p>  |
| <b>Summary</b>             | <ol style="list-style-type: none"> <li>1. Subject land is located within the Capital City Zone – Outside the Retail Core and within the proposed 8% contribution rate.</li> <li>2. Objection is based on the higher developer contribution rates are mandatory and do not allow for an assessment of a proposed subdivision relative to the likely open space needs of building occupiers.</li> <li>3. Subject site is located within an area where investigation into the establishment of a new ‘small local open space’ is proposed.</li> <li>4. The potential provision of small local open spaces fail to correlate with the actual open space usage of the exiting population documented in the Technical Report, where the highest percentage of users frequent the Fitzroy and Flagstaff Gardens. The small open spaces proposed will not in any meaningful way cater to the actual demand for the anticipated population increase.</li> <li>5. There appears to be no established nexus between the proposed 8% mandatory contribution and the expected cost of works for the provision of ‘small local open space’.</li> <li>6. The subject building is on the Victorian Heritage Register within a block that consists of dense built form, the context of the site and surrounds limit almost to zero opportunities for the creation of any new meaningful open space.</li> <li>7. Any mandatory public open space contribution upon subdivision of buildings in the CCZ1 to be used to fund open space in other areas of the City of Melbourne that will not be proximate. Appears to be no nexus between the contribution and the provision of open space.</li> <li>8. A more equitable outcome would be to levy individual developments on a case by case basis in line with the actual new facilities that are intended to be provided and that the residents of any such areas may actually frequent.</li> </ol> |
| <b>Management Response</b> | <ol style="list-style-type: none"> <li>1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.</li> </ol>  |

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**Recommended** No change recommended  
**Change/s**

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| <b>Submitter</b>    | <b>13. ISPT Super Property</b>  |
| <b>Subject Land</b> | Number of sites across the CBD including 447 Collins Street, Melbourne  |
| <b>Key Issue/s</b>  | <p>8% contribution rate</p> <p>Mandatory nature of provisions</p> <p>Exemptions/ Reductions from the open space contribution rate</p> <p>Proximity and functionality of additional open space</p> <p>Land owner rights/transfer of land ownership</p> <p>Operation of clause 22.26</p> <p>Private open space/other options for open space</p>   |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. ISPT does not support the proposed increase in open space contribution to a mandatory 8% within the Capital City Zone. Of particular concern is the contribution is a mandatory requirement when subdivision occurs, regardless of the nature of the use and/or development involved. The 8% contribution rate is considered unreasonable and inappropriate.</li> <li>2. Currently there is discretion to reduce the quantum of contribution sought or to waive the requirement and this situation should remain.</li> <li>3. There could be situations where ISPT may be subdividing a property to rationalise its holdings or change a particular ownership structure, which may not involve a change of use or development. The requirement for a contribution in those circumstances would be highly inappropriate.</li> <li>4. Clause 22.26 will apply to all land and all development applications regardless of whether subdivision is proposed. This creates confusion and it is considered that if this clause is to be included it should be amended so that it is clear that where an application is made that does not include subdivision this clause does not apply.</li> <li>5. The submitters raises the following as concern: <ol style="list-style-type: none"> <li>a. The city is adequately provided with publically owned open space and the need to require private land has not been proven.</li> <li>b. The presumption that private land owners can be compelled to provide permanent public benefit based on the informal transfer of land rights to Council is a major disruption of owner's rights in title for land within the City.</li> <li>c. The identification of subject sites without consultation with affected owners is poor government policy.</li> </ol> </li> </ol> |

- d. There appears to be an expectation in the wording of the Local Policy that land be set aside informally pending future subdivision with no reference to acquisition of this land by the Council.
  - e. Lack of certainty in regard to future requirements as the local policy would provide Council with substantial discretion as to how open spaces may be provided within the CBD even where a trigger for a Public Open Space requirement does not exist.
  - f. Unclear how new open space would be maintained and improved over time and how such “burdens” would then impact on the assessment or property taxes and levies including GST, stamp duty, rates and land tax.
  - g. It is unclear how land owners could be protected from the increasingly wider interpretation of the provisions over time, in effect making the ownership of land in the City of Melbourne subject to the subjective application of land being informally set aside without compensation.
- 6. Unclear how existing clause 22.01 will operate in conjunction with the proposed new local policy clause 22.26.
  - 7. The submitters intends to redevelop various sites throughout the city and will consider the inclusion of privately owned and controlled open space for occupant amenity in any new development scheme a possible outcome.
  - 8. The submitter considers that transfer to Council ownership of such spaces is a highly inappropriate method of achieving the principal objectives of the strategy Council is seeking to implement.
  - 9. As example, 447 Collins Street, there is no intention to subdivide the land and hence no trigger for a contribution. The submitter would view any intention by Council to effectively require any portion of the site to be set aside for future open space through the application of the proposed local policy, on the assumption that a subdivision application will be made in the future. The proposals amount to an interference with the land owners rights in title and a substantial impediment to investment in the City of Melbourne.
  - 10. The provision of open space is a desirable outcome for all cities it is wholly undesirable to attempt to enshrine or otherwise bestow on Council the right to “resume” private land for public benefit via the mechanisms proposed. The proposed objectives of these changes would raise many concerns amongst investors, not least of which would be the “where appropriate” qualifier as to when land would deemed “required to be set aside”. Who would decide such an outcome and under what criteria and on what just compensation?

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**Management Response**

- 1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.
- 2. Clause 22.26 has been amended to make it clear that it only applies where there is the potential for subdivision. The land would only be acquired on

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subdivision. The amount of land would be consistent with the required contribution, either 5% or 8%.

3. The need for more land for open space in the City Of Melbourne has been demonstrated through the Open Space Strategy.
4. It is anticipated that new open space which is acquired in lieu of cash would be transferred to Council and would be maintained and improved by Council.

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**Recommended Change/s** Clause 22.26 has been amended to make it clear that it only applies where there is the potential for subdivision.

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| <b>Submitter</b>    | <b>14. Barry M Cusack, Director, Barcus Management Pty Ltd</b>   |
| <b>Subject Land</b> | 7 Barrett Street, Kensington   |
| <b>Key Issue/s</b>  | <p>Consultation</p> <p>8% contribution rate</p> <p>Proximity and functionality of additional open space</p> <p>Cost and impact on development</p>  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Object to the amendment.</li> <li>2. The precinct has been subject of much discussion as part of the Arden Macaulay Structure Plan. Whilst the Structure Plan supports a change in zoning to support residential land uses it is noted the most recent version differs from past versions by generally retaining large areas of land in this precinct for business and industrial purposes rather than accommodating any significant growth or residential land use.</li> <li>3. The Open Space Strategy consultation process focussed on those aspects of the plan that deliver new parks and/or upgrades to existing reserves with limited information and proactive engagement with landowners in relation to the Open Space Contributions Framework.</li> <li>4. The consultation that occurred in the Contributions Framework was confined to a select group of stakeholders, the submitter was never directly engaged despite being directly affected and being within an area subject to urban renewal. The process has been most unsatisfactory.</li> <li>5. The Open Space Strategy still refers to the draft Municipal Strategic Statements July 2010 and indicated the whole precinct south of Macaulay Road as being part of an urban renewal area. This is at odds with the adopted version of the Arden Macaulay Structure Plan and latest version of the MSS which designates only a small part of this precinct as “proposed urban renewal”.</li> <li>6. Submitter questions whether a new neighbourhood park is required to support the projected population of this precinct. Given the limited area now designated for change, there is no justification for a new park acknowledging the area’s proximity to existing parks and reserves. Open space along the creek is intended to be increased in size and upgraded significantly.</li> <li>7. Submitter considers that the Open Space Contributions Framework should be revisited to reflect the more limited demand for open space in this precinct.</li> <li>8. Council has not adequately considered the impacts of the proposed 8% contribution rate on housing affordability for the urban renewal areas, the</li> </ol> |



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imposition of an 8% contribution will be passed directly from the developer to the home buyer and will not facilitate the diversity in housing choices or affordability of housing. Insufficient justification has been used to substantiate the proposed 8% contribution rate and that the documentation does not justify any change to the maximum default rate of 5% currently available to Council under the Subdivision Act 1988.

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**Management Response**      1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

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**Recommended Change/s**      No changes recommended

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| <b>Submitter</b>            | <b>15. SJB Planning on behalf Windsfair Investments Pty Ltd.</b>  |
| <b>Subject Land</b>         | 25-27 Coventry Street, Southbank  |
| <b>Key Issue/s</b>          | <p>Individual site concerns</p> <p>Proximity and functionality of additional open space</p> <p>Nexus</p> <p>Mandatory nature of provisions</p>  |
| <b>Summary</b>              | <ol style="list-style-type: none"> <li>1. Subject land is located within the proposed 8% contribution rate.</li> <li>2. It appears the higher contribution rate has been levied on the basis of the growth anticipated by Amendment C171.</li> <li>3. In the Southbank Precinct there is a gap analysis of areas which are not within walking distance to open space. The subject site is not located within a sub-precinct for either proposal Local and Small Local open space, or the neighbourhood open space.</li> <li>4. The Open Space Strategy identifies 300metres as being a walkable distance to Local and Small Local open space and Major Road as being a barrier to limit walkable access. Based on this, the subject site will not benefit from the proposed open space, future residents are likely to utilise the high quality Capital City open space.</li> <li>5. There is no nexus between the subject site and the proposed open space in the Southbank precinct.</li> <li>6. Potential provision of these small local open spaces fails to correlate with the actual open space usage of the existing population documented in the Technical Report, where the highest percentage of users frequent the Royal Botanic Gardens and the Yarra River Open space.</li> <li>7. Small open spaces proposed will not in any meaningful way cater to the actual demand for the anticipated population increase.</li> <li>8. A more equitable outcome would be to levy individual developments on a case by case basis.</li> </ol> |
| <b>Management Response</b>  | <ol style="list-style-type: none"> <li>1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.</li> </ol>  |
| <b>Recommended Change/s</b> | No changes recommended  |



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| <b>Submitter</b>            | <b>16. HIA</b>  |
| <b>Subject Land</b>         | General   |
| <b>Key Issue/s</b>          | <p>8% contribution rate</p> <p>Mandatory nature of provisions</p> <p>Cost and impact on development</p>   |
| <b>Summary</b>              | <ol style="list-style-type: none"> <li>1. HIA is Australia's peak residential building industry association.</li> <li>2. HIA objects to the proposed amendment as it sets public open space contribution rates above the maximum 5% allowed under the Subdivision Act 1988.</li> <li>3. HIA also objects to applying a variable levy rate on a suburb by suburb basis and believes that such an approach will result in unfair and inconsistent outcomes across the municipality.</li> <li>4. HIA considers that an individual merit based approach would be more appropriate.</li> <li>5. The proposed amendment raises implications for achieving urban consolidation and reducing the housing affordability problem in inner Melbourne. HIA is concerned that excessive open space contribution rates will contribute towards an increase in overall land development costs and discourage the more intensive redevelopment of existing urban areas, resulting in inconsistencies with State and Local Planning Policy for urban consolidation and the provision of affordable housing stock in these areas.</li> <li>6. The proposed amendment will set an undesirable precedent for other local councils to follow and would contribute to inconsistent building requirements between planning schemes.</li> </ol> |
| <b>Management Response</b>  | <ol style="list-style-type: none"> <li>1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.</li> <li>2. The Open Space Strategy highlights the importance of open space in human well-being. Urban consolidation needs to be accompanied by high quality living environments and the most important factor is the provision of adequate open space to meet the needs of the population. Many other Councils have already introduced similar provisions into their planning schemes.</li> </ol>  |
| <b>Recommended Change/s</b> | No change recommended   |

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| <b>Submitter</b>            | <b>17. Stralliance</b>   |
| <b>Subject Land</b>         | Various properties in the area bounded by Arden Street, Dryburgh Street, Footscray Road and Moonee Ponds Creek   |
| <b>Key Issue/s</b>          | Amendment C190<br>8% contribution rate   |
| <b>Summary</b>              | <ol style="list-style-type: none"> <li>1. The rationale for requesting this increase is due to “anticipated growth and development in the subject area.</li> <li>2. Under Amendment C190 only certain aspects of the Arden-Macaulay Structure Plan were implemented due to uncertainty surrounding the proposed future Metro underground rail line.</li> <li>3. Council eventually determined that until the location of the proposed rail stations were finalised it was premature to increase permissible building heights and densities in the area south of Arden Street and west of Dryburgh Street.</li> <li>4. How can Council in 2012 effectively declare that there will be no increase in development opportunities in this particular part of the municipality, and then in 2013 put its hand out to demand an increase of 60% in Open Space Contributions on that basis that development opportunities will be increasing? Council cannot justify increasing Open Space Contributions in an area where it is currently limiting development opportunities, if Council were to implement an increase in permissible building heights and densities in this area, then it could be argued that an increase in contributions is logical.</li> <li>5. Stralliance represents numerous clients with property holdings in this particular precinct, object to this proposal and argue that the only logical course of action for Council at this point is to leave the Open Space Contribution rates in the area indicated at their present levels.</li> </ol> |
| <b>Management Response</b>  | <ol style="list-style-type: none"> <li>1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.</li> <li>2. Although Amendment C190 only applies to part of the Arden Macaulay Structure Plan area, high growth is anticipated across the precinct and particularly in the southern part of the Arden Macaulay Structure Plan area. The area is being considered in two stages while the State government refines its proposals for the Metro and the station.</li> </ol>  |
| <b>Recommended Change/s</b> | No changes recommended   |

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| <b>Submitter</b>            | <b>18. Environmental Resources Management Australia on behalf of Piccolo Developments</b>  |
| <b>Subject Land</b>         | Affected generally however this submission is in relation to 199-217 Peel Street North Melbourne.  |
| <b>Key Issue/s</b>          | <p>Consultation</p> <p>Restrictive height controls limit development potential</p> <p>8% contribution rate</p> <p>Mandatory nature of provisions</p>   |
| <b>Summary</b>              | <ol style="list-style-type: none"> <li>1. Submitter only made aware of the amendment recently which was not subject of direct notice to affected property owners.</li> <li>2. The subject site will be under the proposed mandatory 8% open space contribution.</li> <li>3. This area is presently subject of restrictive height controls which limit the potential for increases in population and therefore demand for public open space.</li> <li>4. The proposed 8% contribution is disproportionately high for an established urban area which is well serviced by existing infrastructure and access to public open space generally.</li> <li>5. The proposed contribution rates are mandatory and are not supported on the basis that they do not allow contributions to be offset by alternative initiatives or assessed on a 'case by case' basis. It is considered that there is insufficient justification provided for open space contributions sought.</li> </ol> |
| <b>Management Response</b>  | <ol style="list-style-type: none"> <li>1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.</li> </ol>   |
| <b>Recommended Change/s</b> | No change recommended  |

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| <b>Submitter</b>    | <b>19. HWD Australia on behalf of HWD Alfred Street Developments Pty Ltd.</b>  |
| <b>Subject Land</b> | 59-101 Alfred Street, North Melbourne  |
| <b>Key Issue/s</b>  | <p>Mandatory nature of provisions</p> <p>Proximity and functionality of additional open space</p> <p>Private open space/ other options for open space</p> <p>Consideration of “in kind” works</p> <p>Individual site concerns</p>  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. The proposed Schedule to Clause 52.01 is not sufficiently flexible and responsive for particular precincts and development proposals.</li> <li>2. The proposed Schedule to Clause 52.01 is too prescriptive and does not incorporate the discretions contemplated by the Open Space Strategy.</li> <li>3. The policy and schedule should expressly allow recognition and discretion for appropriate reductions in the prescriptive contribution rate of land or land value, particularly for strategic redevelopment sites, where the development itself provides significant community open space.</li> <li>4. The policy should be varied or refined to allow for an alternative to the Open Space Strategy “local” designated parks. Having regard to strategic development sites which provide significant community open space, there may be no need for a “local” park as designated rather a “small local” park.</li> <li>5. It is desirable that the policy also reflect variations or refinements which should apply in particular precincts such as the North Melbourne precinct and the Arden Macaulay Structure Plan area.</li> <li>6. Without appropriate additional flexibility and recognition of factors relevant to the North Melbourne Precinct the open space policy and the schedule to clause 52.01 may not achieve the most appropriate open space outcome and may unnecessarily constrain future development opportunities on larger sites.</li> <li>7. Recognition of “private” community open space provisions in developments and offsets through development agreements should be included in the policy and allowed for in clause 52.01.</li> <li>8. The policy should reflect the Open Space Strategy which contemplates not only a discretion between land contributions and cash contribution but also expressly contemplates “in kind” works constructed by the developer to the satisfaction of the City of Melbourne utilising development agreement or similar and the achievement of additional open space and improvements to be</li> </ol> |

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delivered through section 173 Agreements with developers and approved development plans.

9. Open space policy provisions should allow for variations such as may be proposed by development agreements or in structure plans.
10. The schedule to clause 52.01 be less prescriptive and also allow for satisfaction of an open space contribution rate not only either by land or cash but also by 'in kind' arrangements and also reductions in the contribution rates where an appropriate level of "private" community open space is provided within particular developments.
11. HDW is the owner of land at 59-101 Alfred Street North Melbourne. The site has an overall area of approximately 14,000sqm and currently vacant. The subject site is also subject to Amendment C190. The submitter has generally supported Amendment C190.
12. The submitter presently contemplates a redevelopment of the HDW land in a manner which will allow for the provision of a "small local" public open space area of approximately 1500sqm, it is evident that the future residents are most likely to use the development's community open space for their principal open space needs and that the development's community open space will be significant and will result in a lesser requirement for public open space in the area – this should be recognised in the public open space policy.
13. To the extent to which the submitter is prepared to provide public open space appropriate offsets and incentives should be allowed by the City of Melbourne, this should be recognised in the Planning Scheme.

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**Management Response**

1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

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**Recommended Change/s** No changes recommended



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| <b>Submitter</b>    | <b>20. SJB Planning on behalf of UAG Group Pty Ltd</b>   |
| <b>Subject Land</b> | UAG Group Pty Ltd is the purchaser under contract of sale of the land located at 19-35 Flemington Road and 23-35 Blackwood Street, North Melbourne.  |
| <b>Key Issue/s</b>  | <p>8% contribution rate</p> <p>Amendment C196</p> <p>Mandatory nature of provisions</p> <p>Proximity and functionality of additional open space</p> <p>Private open space/ options for open space</p>  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. The subject land is located within a proposed 8% public open space contribution area and within the area known as “City North”.</li> <li>2. It appears that the higher contribution has been levied on the basis of the growth anticipated by Amendment C196 which seeks to realise the objectives of the City North Structure Plan. This amendment was exhibited last year.</li> <li>3. The proposition of increasing the contribution relevant to the City North area is premature until such time as development densities for the area are confirmed by way of finalisation of Amendment C196 and the incorporation of DDO 61 into the Melbourne Planning Scheme.</li> <li>4. Submitter objects to the amendment on the basis that higher rates have been levied upon certain areas without appropriate recognition to existing areas of open space, and in some cases, their ongoing ability to provide for the recreation needs of new residents.</li> <li>5. Submitter was recently granted approval to develop their land with a mixed use building, including 400 apartments with private balconies and several significant and integrated areas of shared open space. The development was designed to respond to the needs of residents taking into account the existing open space and recreational resources present in the area.</li> <li>6. Submitter is very concerned about the proposition of the Council imposing mandatory public open space contributions on their land, particularly in the context of what are extensive areas of existing open space proximate to the site.</li> <li>7. The subject site is around 770 metres walking distance from Royal Park which is considered to be a more than feasible walking distance.</li> <li>8. The high density development which is likely to take place within City North is likely to attract younger more active residents, further supporting their likely use of Royal Park which is more suitable for running, cycling and walking, the usual pursuits of those within younger demographics. This demographic is also likely</li> </ol> |

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to be less deterred by crossing a major arterial road such as Flemington Road.

9. The subject land also appears to fall within the 200m radius of an area of "Small Local Open Space" located on the corner of Bedford and Courtney Street and within 450m of several other small parks.
10. Submitter is also concerned the focal points for improvements to and additions to public open space proposed for North Melbourne are for the most part contained to the far west. Within the City North area only two local parks are proposed proximate to the subject site, the level of contribution sought cannot reasonably relate to the level of benefit which will be derived from the new infrastructure by future residents.

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**Management Response**

1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

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**Recommended Change/s**

No change recommended

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| <b>Submitter</b>    | <b>21. SJB Planning on behalf of Austens Superannuation Services Pty Ltd &amp; Hercules Textiles Pty Ltd.</b>  |
| <b>Subject Land</b> | 61 & 65 Haig Street, Southbank.  |
| <b>Key Issue/s</b>  | <p>8% contribution rate</p> <p>Proximity and functionality of additional open space</p> <p>Mandatory nature of provisions</p>  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Subject land is located in Southbank, and to be subject to an 8% public open space contribution area.</li> <li>2. A higher contribution has been levied on the basis of the growth anticipated by the Southbank Structure Plan which is currently before the Minister for Planning as part of Amendment C171.</li> <li>3. The subject sites are located within sub precinct SB12 where it is identified that public open space opportunities are limited to improvements to the existing Normanby Road Reserve.</li> <li>4. The potential improvements to this existing open space and expected future demand for its use fails to correlate with the actual open space usage of the existing population where the highest percentage of users frequent the Royal Botanic Gardens and the Yarra River.</li> <li>5. Any such works to the existing open space are not of a scale that would warrant significant financial inputs by developers as contemplated by the proposed 8% mandatory contribution.</li> <li>6. The size and quality of the open space areas that are favoured by residents cannot be replicated on a local scale and any proposed upgrade works to the Normanby Road reserve will not in any meaningful way cater to the actual demand for the anticipated population increase in Southbank.</li> <li>7. Any mandatory public open space contribution within the wider CCZ1 will not necessarily fund open space within the municipality that is proximate to Southbank or that will therefore be utilised by Southbank residents.</li> <li>8. Existing public open space provisions are entirely appropriate.</li> <li>9. In the SB12 sub precinct the nexus between the quantum of the contribution and the actual provision of public open space is inadequately proven to justify the proposed 8% mandatory levy.</li> <li>10. The equitable outcome for all parties is for the assessment of individual developments to be undertaken on a case by case basis.</li> </ol> |

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11. The subject land should not be subject to either a mandatory or increased public open space contribution requirement.

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**Management Response**

1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

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**Recommended Change/s**

No change recommended

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| <b>Submitter</b>           | <b>22. SJB Planning on behalf of Stromart Trust &amp; The No. 14 Trust</b>   |
| <b>Subject Land</b>        | 51 Clarke Street, Southbank  |
| <b>Key Issue/s</b>         | 8% contribution rate<br><br>Proximity and functionality of additional open space<br><br>Nexus<br><br>Mandatory nature of provisions  |
| <b>Summary</b>             | <ol style="list-style-type: none"> <li>1. Subject land is within an 8% public open space contribution area within the Southbank precinct.</li> <li>2. It appears that the higher contribution rate has been levied on the basis of the growth anticipated by Amendment C171 which seeks to realise the objectives of the Southbank Structure Plan.</li> <li>3. The subject site is located within sub-precinct SB11 where a new small local open space is outlined in the Open Space Strategy Technical Report June 2012.</li> <li>4. The potential provision of these small local open spaces fails to correlate with the actual open space usage of the existing population documented in the Technical report where the highest percentage of users frequent the Royal Botanic Gardens and the Yarra River.</li> <li>5. Small open spaces proposed will not in any meaningful way cater to the actual demand for the anticipated population increase.</li> <li>6. Any mandatory public open space contribution will not necessarily fund open space that is proximate and therefore utilised by Southbank residents.</li> <li>7. The existing public open space contribution rate is entirely appropriate and will achieve the goals for the public open space without creating a significant financial burden on developers or on future purchasers. A nexus between the quantum of the contribution and the actual provision of public open space is not clear.</li> <li>8. The equitable outcome for all parties is for the assessment of individual developments to be undertaken on a case by case basis. .</li> <li>9. The subject land should not be subject to an increased open space contribution.</li> </ol> |
| <b>Management Response</b> | <ol style="list-style-type: none"> <li>1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.</li> </ol>   |

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**Recommended** No change recommended  
**Change/s**

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| <b>Submitter</b>    | <b>23. Rothe Lowman Architects &amp; Hayball Architects</b>   |
| <b>Subject Land</b> | 153 Sturt Street, Southbank and 117-135 Sturt Street, Southbank.  |
| <b>Key Issue/s</b>  | <p>8% contribution rate</p> <p>Proximity and functionality of additional open space</p> <p>Need for other types of community facilities rather than open space</p> <p>Exemptions where net community benefit is provided</p> <p>Private open space/ other options for open</p> <p>Operation of clause 22.26</p>   |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Fundamentally agree that quality open space is an important part of the urban framework of our cities. However the amendment should be rejected in its current form.</li> <li>2. The mandatory 8% public open space contribution is not supported.</li> <li>3. The Open Space Strategy Technical Report identifies the subject sites are located in sub-precinct SB7 of Southbank. The areas of open space provide good coverage to local populations but are not well utilised. There is not a strong link established between the need to provide new parks or upgrade parks in the local area.</li> <li>4. It is considered the key issue is the lack of utilisation is due to the relatively low density of development.</li> <li>5. There are only a limited number or redevelopment opportunities in this precinct which is unlikely to generate requirements for new open space in the longer term.</li> <li>6. The area is already well serviced with open space therefore it is considered that rather than a higher monetary contribution to open space provision in this area there are 'better bangs for the buck' which will ultimately provide the revitalisation of this area.</li> <li>7. Examples provided include: <ol style="list-style-type: none"> <li>a. Significant public realm upgrades in areas surrounding the site.</li> <li>b. Delivering private open space at ground level to expand land for retail and other community uses to create activity &amp; vitality.</li> <li>c. Potential for provision of community spaces, art spaces or other complementary uses to the arts precinct.</li> <li>d. High quality architectural development that establishes a high</li> </ol> </li> </ol> |

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benchmark for revitalisation of the area.

8. Council should provide exemptions or partial exemptions to the mandatory 8% contribution rate where development proposals include a degree of net community benefits.
9. Open space contributions should be reduced where good private (communal) open space is provided on site.
10. The Subdivision Act 1988 makes a clear link between the future residents' open space needs and whether this can be met either in existing open space or on-site or if additional open space is required.
11. Where a proportion of open space requirements can be met on-site, in communal or private/ quasi public open spaces the public open space contribution should be discounted.
12. Concerned about the lack of flexibility in criteria for public open space set out in clause 22.26. The proposed local policy needs to allow for a wider variety of open space typologies to be considered as suitable for hand over to Council as land contribution.
13. The criteria should provide greater flexibility to allow a broader spectrum to be classified as suitable public open space. Example: proposed link at 117-135 Sturt Street could be a positive contribution as a 'small local link' to the public open space network, however it may be excluded as suitable public open space on the basis of not being able to accommodate sufficient broad spreading canopy trees or insufficient sunlight.

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**Management Response**

1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.
2. Public open space is a basic need in urban areas for which other community facilities although beneficial cannot be substituted.
3. Clause 22.26 is a policy and is therefore inherently flexible. However the criteria for land are included to ensure that when Council does obtain land instead of money, the land provided is suitable for use as open space.

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**Recommended Change/s** No changes recommended



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| <b>Submitter</b>    | <b>24. City of Moonee Valley</b>   |
| <b>Subject Land</b> | General comments as well as specific comments relating to the common shared boundary along Racecourse Road and Epsom Road.   |
| <b>Key Issue/s</b>  | Supportive of amendment<br><br>Expenditure of funds on open space improvements in the Flemington and Kensington area.  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Generally supportive of the contents of the Amendment.</li> <li>2. Southern end of Moonee Valley City Council area has been the focus of extensive Strategic Planning initiatives to guide and manage future development.</li> <li>3. The area around Racecourse Road is one of the City of Moonee Valley's identified major Activity Centres and as such is expected to undergo significant population and commercial growth.</li> <li>4. Council is in the process of preparing the Racecourse Road Structure Plan and an Amendment (C118) to the Planning Scheme to introduce the Activity Centre Zone in the area. (This amendment is yet to be adopted by Council).</li> <li>5. Racecourse Road is at the interface of the two Council areas, there will be some crossover between activities and use of the open space facilities in both Council areas. This is expected to increase as a result of population growth.</li> <li>6. Amendment C209 does not identify the majority of the Flemington area as one of high growth with the exception of the Flemington Corridor and Moonee Ponds Creek Corridors. The Moonee Valley City Council envisages significant change to the north of Flemington Road as this is an Activity Centre.</li> <li>7. The City of Moonee Valley advocates that the elements identified within the Newmarket Reserve Master Plan should be a priority for the expenditure of funds.</li> <li>8. Clause 22.26 prioritises the provision of land rather than a cash contribution in certain locations. This is consistent with the Moonee Valley City Council's own Open Space contribution policy.</li> <li>9. There is the need to ensure that expenditure is focussed on the areas where there is a high demand for open space improvements, close to the location from which the initial contribution was collected.</li> <li>10. Council officers would like to see an emphasis towards expenditure of open space contributions that are collected through C209 on open space improvements in the Flemington and Kensington area.</li> </ol> |
| <b>Management</b>   | The Amendment is based on projected growth and the open space needs of the   |

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**Response** City of Melbourne. The Amendment does not address or prioritise where expenditure of money will occur. This is an operational issue to be addressed by the City Of Melbourne.

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**Recommended  
Change/s**

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| <b>Submitter</b>    | <b>25. Property Council of Australia</b>   |
| <b>Subject Land</b> | General  |
| <b>Key Issue/s</b>  | <p>8% Contribution rate</p> <p>Private open space/ other options for open space</p> <p>Proximity and functionality of additional open space</p> <p>Revenue and expenditure</p> <p>Contributions by ratepayers</p> <p>The rate only applies on subdivision and generally hospitals and universities don't subdivide prime medical and educational facilities.</p> <p>Schools, universities and hospitals</p> <p>Encumbered land</p> <p>The Parks Charge</p> <p>City of Melbourne's strategy for future growth</p> <p>Payments at a very late stage in the development process</p> <p>Many metropolitan Melbourne Councils are use the schedule to clause 52.01 of their planning schemes</p> <p>Distributed open space within easy walking distance of the community</p>  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. The Property Council supports the efforts of the City of Melbourne to improve and expand open spaces. High quality open space is an essential component of a liveable city.</li> <li>2. Property Council generally agrees with the overall direction of the strategy that seeks to maintain and expand a diverse open space network.</li> <li>3. The Property Council has several philosophical disagreements with the approach. The Strategy proposed represents a 20<sup>th</sup> century solution to the 21<sup>st</sup> century challenge. The City of Melbourne is only thinking about the outside of buildings and not the inside. The Strategy is only planning for open space at the street level, rather than above it, below it and on water. The definition in Clause 22.26 is too narrow and restrictive, focusing on publicly accessible nature at street level. The Open Space Strategy identifies a range of open spaces including reserves, waterways, sporting facilities and plazas; The Property Council encourages the City of Melbourne to adopt a broader definition.</li> </ol> |

4. The Property Council's concerns, recommended amendments and recommendations include:
  - a. Reviewing contribution rates;
  - b. Extending contribution requirements to include hospitals and universities;
  - c. Ensuring that open space contributions only relate to net developable land and should exclude encumbered land;
  - d. Exemptions and scope for reductions below the standard rate be allowed to recognise circumstances where an open space contribution at the standard rate is not appropriate;
  - e. Acknowledging the provision of high quality private open space as part of the total contribution;
  - f. Increasing the measure of access to open space from 500m to 2km to align with adjoining municipalities;
  - g. Providing accountability and transparency when dealing with contributions from developers;
  - h. Linking financial open space contributions to progress payments to the developer;
  - i. Preventing the City of Melbourne from selling open space landholdings that are obtained through open space contributions from the private sector;
  - j. Making better use of existing open space by encouraging development on sites with close proximity to high quality open space; and
  - k. Identifying alternative sources of funding, including the Parks Charge and a Metropolitan Improvement Levy.

*Issues with Amendment C209*

Contribution rates

5. Concern that the City of Melbourne is attempting to impose retrospective contributions to make up for an acknowledged deficiency in open space provisions across the municipality.
  6. The contribution rate is another tax on development that amounts to a 60% tax increase. It is wholly unreasonable to expect the property industry to continue to fund council projects and services that are primarily for the use of City of Melbourne residents.
  7. Open space contributions are a second tax on top of the Parks Victoria Parks Charge collected via water bills for essentially the same purpose.
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8. Setting standard contribution rates triggered by subdivision regardless of the nature of use or the type of development is incorrect. It is a blunt instrument. Best outcomes are achieved by using incentives rather than enforcing regulation.
9. Exemptions should apply particularly in the case where a site may be subdivided to rationalise landholdings without any change to the use of building or development proposals, it would be unreasonable to expect an open space contribution when the physical use of the building has not changed.

**Recommendation 1:** *That the proposed open space contribution rates of up to eight per cent of the development site's value constitute an excessive rise from the existing requirement. The rate should be aligned with neighbouring municipalities at no higher than five per cent.*

**Recommendation 2:** *That the open space contribution requirements be extended to include universities and private hospitals as they maintain significant landholdings in the City of Melbourne.*

**Recommendation 3:** *That open space contributions should only relate to net developable land and should exclude encumbered land.*

**Recommendation 4:** *That exemptions and scope for reductions below the standard rate be allowed to recognise circumstances where an open space contribution at the standard rate is not appropriate.*

#### Consideration of private open space

10. Concern that the City of Melbourne does not acknowledge the provision of private open space in the Open Space Strategy, promote its further uptake or give credit for it. Where developments include high-quality private open space, that open space should count towards the total contribution and the development should be offered a discount.
11. Good design includes the incorporation of private open space inside future buildings to alleviate pressure on public open space inside buildings to alleviate pressure on public open spaces outside buildings. Open space and recreational facilities do not necessarily need to be stand alone, they can be incorporated into buildings with multiple functions.

**Recommendation 5:** *That the City of Melbourne acknowledges the provision of high quality private open space as part of the total contribution and in these cases the development should be offered a discount of at least one to two per cent, or higher subject to circumstances.*

#### Open space distribution

12. The Open Space Strategy states that a key objective is to provide open space within easy walking distance for the majority of the community. This measure of access used as a driver of the open space contribution is ambit, unreasonable, unnecessary and unjustified. A reasonable comparison can be
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made with adjoining municipalities such as Stonnington and Yarra both have catchments of two kilometres for access to equivalent open space.

13. It is unrealistic to expect to provide equivalent high value open space across the City of Melbourne within walking distance of the residential population. It is unreasonable to expect to replicate Capital City, State and Regional open spaces using developers as the primary source of funding.
14. The City of Melbourne has excellent access to transport, it is reasonable to expect patrons of open space will be prepared to use methods other than walking to access high-value open space.
15. The Open Space Strategy states that many residents of the City of Melbourne live in the municipality because of the open space, these residents were referring to existing open space, not the provision of further open space in the future. The City of Melbourne should take caution against trying to replicate the open space of the suburbs.

**Recommendation 6:** *That the measure of access to open space be increased from 500m to 2kms to align with adjoining municipalities.*

#### Revenue and expenditure

16. The proposed contribution rates have the potential to provide the City of Melbourne with a substantial revenue stream. The Property Council expects transparency and accountability from the council when dealing with contribution from developers.
17. Expectation that any revenue obtained from the proposed contributions will be identified in all future budgets.
18. Where monetary contributions are made in lieu of open space it must be used in the immediate vicinity rather than to fund the establishment of open space elsewhere in the municipality.

**Recommendation 7:** *That the City of Melbourne provide accountability and transparency when dealing with contributions from developers.*

**Recommendation 8:** *That financial open space contributions be linked to progress payments to the developer, rather than an upfront financial contribution that is likely to stall or prevent a development going ahead.*

**Recommendation 9:** *That the City of Melbourne be prevented from selling open space landholdings that are obtained through the open space contribution from the private sector*

#### Make better use of existing open space

19. Encourage the City of Melbourne to better leverage areas with existing open space. Council should better direct residential development along boulevards with close proximity, or adjacent, to open space. Eg East Melbourne, Southbank and Royal Parade are prime locations for increasing residential
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development through lifting height limits and other development restrictions.

20. 21<sup>st</sup> Century Melbourne must grow taller and deeper to address the challenges facing Melbourne while maintaining the variety and quality of open spaces that define the city.

**Recommendation 10:** *That the City of Melbourne make better use of existing open space. This can be achieved through encouraging development on sites with close proximity to high-quality open space, especially along boulevards, by lifting height limits and other development restrictions.*

#### Calculating open space requirements

21. Using site value as the basis for calculating open space contributions is misleading and unlikely to achieve the overall aim of providing easy access to a range of quality open spaces. Eg a site may have a high value due to exceptional attributes but may not necessarily have a proposal for high density development. The development is being unfairly taxed due to the site value rather than the actual development proposal and potential contribution to increasing the population of the area.

#### Alternative funding mechanisms

22. Offer support for the City of Melbourne to request more funding from the State Government for the establishment of open space.
23. Additional funding sources to consider:
- a. Parks Charge – The annual Parks Charge in water bills that is collected on behalf of Parks Victoria could be expanded to include a contribution to the municipality for the purchase, development and maintenance of open space.
  - b. Metropolitan improvement Levy – The Metropolitan Improvement Levy has historically been used to pay for infrastructure. This levy has previously been used for expenditure on metropolitan parks

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#### **Management Response**

1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.
2. All ratepayers do in fact contribute to open space via their normal rates. The Open Space Strategy (OSS) determines a fair split between contributions from existing residents and contributions from new development. The deficiency that exists for existing residents and workers will be funded out of rates.
3. The rate only applies on subdivision and generally hospitals and universities don't subdivide prime medical and educational facilities.
4. Schools, universities and hospital grounds are termed ancillary open space for

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the purposes of the Open Space Strategy, especially where schools and universities can partner with the City Of Melbourne and allow public access to their facilities. However, university and hospital land is not reserved for open space, and it can be sold for other purposes or converted through building construction.

5. Contributions are based on the land value of the development site. Land which is encumbered and cannot be developed will have a lower land value than developable land.
6. All land areas proposed for new open space will be assessed against the criteria in the local policy to ensure that the land is fit for use as public open space. Encumbered land is often not desirable as public open space as its pre-existing uses affect the potential development and use of the land as open space.
7. The Parks Charge is collected once every year on behalf of the Department of Sustainability and Environment. Funds raised go to Parks Victoria, Zoos Victoria, the Royal Botanic Gardens and the Shrine of Remembrance for the development, management and maintenance of metropolitan regional parks, gardens, trails, waterways, and zoos. No funds are allocated directly to open space provision or improvement by Councils.
8. The planning scheme specifies that site value is the basis for calculating open space contributions. The planning scheme states that the contribution is to be a percentage of the land (being subdivided) or a percentage of the site value, or a combination of both.
9. Council's adopted Municipal Strategic Statement (MSS) outlines the City of Melbourne's strategy for future growth. The MSS states that future growth in the City will be concentrated in the Hoddle Grid area and in the urban renewal areas and that very little change will occur in the low rise residential areas with an established character.
10. Payments are made on lands provided within the subdivision processes – typically at a very late stage in the development process.
11. The contribution rates in Amendment C209 are aligned to both delivering the vision and directions of the City of Melbourne Open Space Strategy and to the location and rate of population growth anticipated in the City.
12. Many metropolitan Melbourne Councils use the schedule to clause 52.01 of their planning schemes to set an open space contribution rate for development, either as a municipal rate or as a set of rates which apply to defined geographic areas or types of developments. These rates range from a low of 0.25 per cent for specific suburbs in Glen Eira, to 20 per cent in Greater Dandenong.
13. A key overall direction of the Open Space Strategy is to provide distributed open space within easy walking distance of the community. The standards for provision in the Open Space Strategy were determined after consideration of a



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range of open space planning frameworks from Melbourne and internationally, including the Victorian Growth Areas Authority Precinct Structure Planning Guidelines. The Open space Strategy has adopted a combination of elements from the different frameworks to establish a use hierarchy system and character classification system that creates a specific open space framework for the City of Melbourne.

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**Recommended Change/s** No changes recommended

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| <b>Submitter</b>    | <b>26. Master Builders Association Victoria</b>  |
| <b>Subject Land</b> | General  |
| <b>Key Issue/s</b>  | <p>Allocation and expenditure of funds collected</p> <p>Proximity and functionality of additional open space</p> <p>Cost and impact on development</p> <p>Private open space</p> <p>Local and State Government funding</p> <p>New State development contributions framework</p>  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Master Builders urges the City of Melbourne to abandon Amendment C209.</li> <li>2. The amendment had significant consequences for: <ol style="list-style-type: none"> <li>a. Employment in our industry, Victoria's second largest source of full time jobs;</li> <li>b. Investment in new and upgraded buildings throughout the municipality;</li> <li>c. Driving up the costs for new developments thereby having a negative impact on housing affordability.</li> </ol> </li> <li>3. The provision of open space should be a shared responsibility between developers, council and government. This amendment shifts the balance of responsibility too far towards developers.</li> <li>4. The City of Melbourne should provide suitable accountability measures that can be publicly released that shows income generated through this measure is quarantined and how it has been expended on open space provisions.</li> <li>5. The amendment does not outline what new open spaces are required within the municipality. Residents and visitors in the City of Melbourne can already access some of the world's leading open spaces.</li> <li>6. The Open Space Strategy earmarks a range of new open spaces it wishes to create, there is no funding by either the City of Melbourne or other levels of government earmarked to meet this aim.</li> <li>7. People access open spaces the same way they access freeways and arterial roads. The State Government is responsible for funding these links as they have benefits beyond any one direct community. In this case, Council seeks to declare that it is solely the responsibility of the building and development industry and their intended customers to fund future open spaces or upgrades</li> </ol> |

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to existing open space assets.

8. The proposed amendment fails to account for or acknowledge the important role private open spaces play in ensuring residents in the municipality can access quality recreation, boost health and wellbeing, support cultural character and enhance liveability. The City of Melbourne should look to encourage and incentivise the provision of private open space.
  9. The building and development industry has suffered greatly in tough economic conditions. Imposing additional requirements will erode already extremely tight margins.
  10. The Victorian Government is currently undertaking a review of the state's development contributions framework do there is greater consistency across municipal borders.
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**Management Response**

1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.
  2. Importantly, the Amendment does not include funding for new Municipal or Capital City open space. This is because the land needed Municipal open space is already in public ownership and the view is that developers should not contribute financially toward the City of Melbourne acquiring this land.
  3. The rate also does not include the value of land for new Capital City open space, which will need to be delivered by the Victorian government and the City of Melbourne. The reason for this is that the use of Capital City open space by new residents and workers will be relatively small compared to use by the metropolitan population and by visitors.
  4. The premise on which the Amendment is based is that the population of new subdivisions in the City should contribute funds towards their open space needs. The City Of Melbourne will fund the needs of the existing population as well as the maintenance of all open space.
  5. In determining the rate the need for and benefit derived from each project is assessed and apportioned between the existing and forecast population. The proportion assigned to the future population is the dollar value to be raised by contributions and the proportion assigned to the existing population is funded from Council income.
  6. The Strategy apportions 55% of the new capital works to new populations and 65% of land acquisitions.
  7. With regard to the State review of the developer contributions framework, Amendment C209 is a mechanism provided in the planning scheme and the review currently being undertaken does not relate to Clause 52.01.
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**Recommended Change/s** No change recommended

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| <b>Submitter</b>    | <b>27. Cazz Redding</b>  |
| <b>Subject Land</b> | General – Arden Macaulay area  |
| <b>Key Issue/s</b>  | Amendment C190<br><br>Securing areas identified for open space<br><br>Use Public Acquisition Overlays  |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Rezoning land that has been identified as potential open space away from the current zoning to allow for mixed use through Amendment C190 does not send a clear message to the private development market.</li> <li>2. The relatively small sizes of land holdings and fragmented ownership of land within Arden Macaulay, the provision of open space in the locations identified in the strategic documents may well extinguish any development opportunity that landowners in those locations will have.</li> <li>3. Based on the drafted planning controls a developer may only realise that their land has been earmarked for public open space once they put forward an application for mixed use development to Council.</li> <li>4. Without a clear and comprehensive framework in the planning scheme which shows which parcels of land will be required for open space and when they will be acquired it is possible that no open space will ever be secured.</li> <li>5. The 8% open space contribution rate for Arden Macaulay has been proposed based on the level of redevelopment anticipated in the precinct and the quantum of open space that will be required to service the new community. Council can have a high level of confidence that over the development period, sufficient funds will be generated to be able to fund a significant proportion of the costs associated with acquisition of the new open spaces in Arden Macaulay.</li> <li>6. It is more logical to set aside the identified potential public open space land in the planning scheme controls and use the monies collected through clause 52.01 to compensate the property owners.</li> <li>7. Submitter believes it appropriate for Council to apply Public Acquisition Overlays on the future open space and hold the land in its current zoning rather than proceeding with a rezoning.</li> </ol> <p><i>Changes to Amendment C209</i></p> <ol style="list-style-type: none"> <li>8. Apply a PAO to the five areas of potential future open space in private ownership.</li> </ol> |

- 
9. Make necessary changes to the MSS to indicate land will be rezoned to PPRZ once acquired.
  10. Amend the proposed local policy 22.26 to indicate a preference for cash in lieu of land in the Arden Macaulay area.
- 

**Management Response**

1. Much of this submission addresses concerns with Amendment C190.
  2. Amendment C209 addresses amount of public open space contributions and where land would be preferred. The Arden Macaulay area is an area where more land for open space is required and for this reason it is designated as an area where land is preferred.
- 

**Recommended Change/s**    No change recommended

|                             |   |
|-----------------------------|---|
| <b>Submitter</b>            | <b>28. Kensington Association</b>   |
| <b>Subject Land</b>         | General – Arden Macaulay area   |
| <b>Key Issue/s</b>          | Amendment C190<br><br>Securing areas identified for open space  |
| <b>Summary</b>              | <ol style="list-style-type: none"> <li>1. The Kensington Association supports the collection of monetary contributions towards the purchase of public open space within the Arden Macaulay C190 area. The Association also supports the creation of additional public open space in Kensington in accordance with the Arden Macaulay Structure Plan and Open Space Strategy.</li> <li>2. The Open Space Strategy identifies an existing shortage in the distribution of public open space within part of the Arden Macaulay Urban Renewal Area.</li> <li>3. Kensington Association is concerned about securing the delivery of adequate and accessible public open space to existing and new residents and workers in Kensington.</li> <li>4. Amendment C190 does not secure the conversion of any privately owned land to public open space.</li> <li>5. The Association's preference is for public acquisition overlays. Amendment C209 gives preference to land contributions for public open space at Council's discretion, in lieu of cash contributions. In lieu of cash a more robust criteria for assessing the delivery of open space is required. It is requested the Open Space Strategy is amended to include requirement for the following provision of public open space within Kensington's Urban Renewal Area: <ul style="list-style-type: none"> <li>• Two neighbourhood parks, one each on the north and south of Macaulay Road, and</li> <li>• One local open space south of Racecourse Road.</li> </ul> </li> </ol> |
| <b>Management Response</b>  | <p>The Open Space Strategy includes a new Local and a Neighbourhood open space north of Macaulay Road and a neighbourhood park south of Macaulay Road.</p> <p>Other than Clause 22.26, methods of securing open space are not part of Amendment C209</p>  |
| <b>Recommended Change/s</b> | No change recommended.  |

|                     |  |
|---------------------|--|
| <b>Submitter</b>    | <b>28. Hellier McFarland</b>   |
| <b>Subject Land</b> | General  |
| <b>Key Issue/s</b>  | <p>Mandatory nature of provisions</p> <p>Cost and impact on development</p> <p>Alignment with Section 18 of the Subdivision Act 1988</p> <p>Exemptions where net community benefit is provided</p>   |
| <b>Summary</b>      | <ol style="list-style-type: none"> <li>1. Concerns relate to the implementation of the proposed two pronged flat rate system of public open space contribution application and the lack of flexibility.</li> <li>2. A 'broad brush' approach offers no room for flexibility, failing to take into account differing open space needs generated by various land uses and end users.</li> <li>3. Fails to consider the scenario of previous land uses occurring on a site and any changes in the demand for open space based upon the transition from one use to another.</li> <li>4. An open space contribution can only be required at the time of subdivision, the amendment focusses on planning for open space at the development stage where there is the propensity for subsequent subdivision. It does not adequately address subdivision before development.</li> <li>5. Query how the public open space apportionment calculation will operate. The submitter suggests applying the calculation as current may result in an unreasonable burden and is prohibitively expensive.</li> <li>6. Given the high land values experienced in the City of Melbourne, the application of such high flat rates will act as a disincentive to development to the detriment of achieving social and economic goals as well as the objective to provide additional and improved open space networks within the municipality to cater for the increasing open space needs of a growing population.</li> <li>7. The proposed amendment and supporting documentation did not envisage the changes to Section 18 of the Subdivision Act 1988 open space provisions proposed in the Planning and Environment Act (General) Amendment Act 2013.</li> <li>8. Submitter suggests that the proposed amendment, in particular the new schedule to Clause 52.01 should be expanded significantly to provide for flexibility in determining whether or not it is appropriate to impose an open space contribution in place of the soon to be repealed S18(1A) of the</li> </ol> |

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Subdivision Act 1988.

9. A public open space contribution is currently not applicable where the subdivision does not create an additional separately disposable parcel of land unless a requirement is specified in a planning scheme. The existing provisions enable Councils to use discretion as to whether or not to impose a requirement over a plan of subdivision.
10. In addition to introducing a list of appropriate exemptions where a public open space contribution would not apply, Council should consider the merits of introducing a sliding scale that provides for flexibility and fairness based in different types of subdivision scenarios and/or individual need for open space. This should be used in conjunction with a list of assessment criteria to assist in determining the appropriate apportionment of contribution.

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**Management Response**

1. Some of these issues were raised by other submitters. See attachment 3 for management response to issues raised by submissions.

---

**Recommended Change/s**

No changes recommended



## List of Submitters

| #  | Contact  | Address  | Acting on behalf/Affected property   |
|----|--|--|--|
| 1  | Collie Pty Ltd   | 29 Coventry Street<br>Southbank VIC 3006   | Various Southbank properties   |
| 2  | Kaye Oddie   | NORTH MELBOURNE VIC 3051   | General  |
| 3  | Woolworths Limited   | Private Bag 10<br>MULGRAVE NORTH VIC 3170  | Fabcot Pty Ltd (a property division of Woolworths Ltd) 101-117 Canning Street, 168-190 Macaulay Road and 2-24 Vaughan Terrace, North Melbourne.  |
| 4  | John Cicero<br>Principal<br>Best Hooper Solicitors                           | PO Box 13312<br>LAW COURTS VIC 8010  | Dynasty Falls Pty Ltd. Parcel of land on the corner of Power and Kavanagh Street.  |
| 5  | Alan Norman<br>Chairman, Association of Consulting Surveyors (Victoria) Inc. | Suite 204, 21 Bedford Street<br>NORTH MELBOURNE VIC 3051                                   | General  |
| 6  | Meredith Withers & Associates Pty Ltd  | Suite A, Level 4, 190 Bourke Street<br>MELBOURNE VIC 3000                                  | Bennalong Value Funds owner of 102-108 Jeffcott Street, 355-357 Spencer Street, 371-379 Spencer Street and 83-113 Batman Street, West Melbourne. |
| 7  | ERM Pty Ltd  | Level 3, Tower 3<br>World Trade Centre<br>18-38 Siddeley Street<br>DOCKLANDS VIC 3005      | Central Equity owner of a number of land parcels throughout the Central City & Southbank.  |
| 8  | Comdain Property Pty Ltd   | PO Box 53<br>IVANHOE VIC 3079  | 70-90 Chelmsford Street, Kensington.   |
| 9  | Daryl Chambers   | KENSINGTON VIC 3031  | Barrett Street, Kensington.  |
| 10 | SJB Planning   | Level 34, 360 Collins Street<br>MELBOURNE VIC 3000 Level 1, 80 Dorcas Street SOUTHBANK VIC | Tenth Dula Pty Ltd, owner of 212-224 LaTrobe Street Melbourne and 17-25 Little LaTrobe Street Melbourne  |

| #  | Contact  | Address   | Acting on behalf/Affected property   |
|----|--|---|--|
|    |  | 3006  |  |
| 11 | SJB Planning   | Level 1, 80 Dorcas Street<br>SOUTHBANK VIC 3006                                       | Mimcha Pty Ltd owner of 125-133<br>Walsh Street, South Yarra.  |
| 12 | SJB Planning   | Level 1, 80 Dorcas Street<br>SOUTHBANK VIC 3006                                       | Exchange Corner Pty Ltd owner of<br>670-696 Bourke Street, Melbourne.  |
| 13 | ISPT Super Property                                      | Level 13, 114 William Street<br>MELBOURNE VIC 3000                                    | Various properties across the<br>municipality, including 447 Collins<br>Street, Melbourne.   |
| 14 | Barry M Cusack<br>Director, Barcus Management Pty<br>Ltd | 21-23 Bella Vista Court<br>PLENTY VIC 3095  | 7 Barrett Street, Kensington.  |
| 15 | SJB Planning   | Level 1, 80 Dorcas Street<br>SOUTHBANK VIC 3006                                       | Windsfair Investments Pty Ltd owner<br>of 25 Coventry Street, Southbank.   |
| 16 | Housing Industry Assoc                                   | 70 Jolimont Street<br>JOLIMONT VIC 3002   | General  |
| 17 | Stralliance  | 81 City Road<br>SOUTHBANK VIC 3006  | Representing numerous clients in the<br>area bounded by Arden Street,<br>Dryburgh Street, Footscray Road and<br>Moonee Ponds Creek             |
| 18 | ERM Pty Ltd  | Level 3, Tower 3<br>World Trade Centre<br>18-38 Siddeley Street<br>DOCKLANDS VIC 3005 | Piccolo Developments, in relation to<br>199-217 Peel Street, North<br>Melbourne.   |
| 19 | HWD Australia  | PO Box 237<br>RICHMOND VIC 3121   | HWD Alfred Street Developments Pty<br>Ltd 59-101 Alfred Street, North<br>Melbourne.  |
| 20 | SJB Planning   | Level 1, 80 Dorcas Street<br>SOUTHBANK VIC 3006                                       | UAG Group Pty Ltd, the purchaser<br>under contract of sale of land at 19-35<br>Flemington Road and 23-25<br>Blackwood Street, North Melbourne. |
| 21 | SJB Planning   | Level 1, 80 Dorcas Street<br>SOUTHBANK VIC 3006                                       | Austens Superannuation Services Pty<br>Ltd and Hercules Textiles Pty Ltd<br>owners of 61 and 65 Haig Street<br>Southbank.                      |

| #  | Contact                             | Address  | Acting on behalf/Affected property  |
|----|-------------------------------------|--|---|
| 22 | SJB Planning                        | Level 1, 80 Dorcas Street<br>SOUTHBANK VIC 3006      | Stromart Trust & The No. 14 Trust owners of 51 Clarke Street Southbank.   |
| 23 | Hayball Pty Ltd                     | 4/135 Sturt Street<br>SOUTHBANK VIC 3006             | Rothe Lowman Architects owner of 153 Sturt Street Southbank & Hayball Architects owner of 117-135 Sturt Street Southbank. |
| 24 | City of Moonee Valley               | PO Box 126<br>MOONEE PONDS VIC 3039                  | General   |
| 25 | Property Council of Australia (Vic) | Level 7, 136 Exhibition Street<br>MELBOURNE VIC 3000 | General   |
| 26 | Master Builders Association (Vic)   | GPO Box 544<br>MELBOURNE VIC 3001                    | General   |
| 27 | Cazz Redding                        | KENSINGTON VIC 3031                                  | General – Arden Macaulay Area   |
| 28 | Kensington Association              | PO Box 1208<br>KENSINGTON VIC 3031                   | General – Arden Macaulay Area   |
| 29 | Hellier McFarland                   | 342 Hawthorn Road<br>Caulfield South VIC 3162        | General   |

**MELBOURNE PLANNING SCHEME AMENDMENT C209**

**Response to general points raised in submissions**

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## Introduction

Across the submissions a number of recurring issues were raised. Each of these have been summarised below under the headed sections and a management response provided to each.

The main substantive change to the Amendment as a result of the submissions has been to clarify Clause 22.26. Clause 22.26 has been reworded so that it is very clear that the criteria in the Policy are to be used to determine only whether a land contribution or cash contribution would be more appropriate. Clause 22.26 is a policy and is therefore inherently flexible.

## 1. The Mandatory Status of the Provisions

### Submission Summary

*The mandatory status of the proposed contribution rates is an issue many submitters objected to. Submissions were concerned with the lack of flexibility of such a system and state that in order for a fair assessment to be undertaken Council should consider each case for public open space on its merits.*

*It has also been stated that using the site value to calculate open space contributions is unlikely to achieve the aim of providing easy access to a range of quality open spaces. For example, a site may have a high value due to exceptional attributes (views, water frontage etc.) but may not necessarily have a proposal for high-density development. In this case, the development is being unfairly taxed due to the site value rather than the actual development proposal.*

---

### Management Response

Council's current process for collecting open space contributions is by negotiation with individual developers on subdivision. This is undertaken on a site by site basis with no strategic recognition of the location of the site in relation to the City's growth areas and open space needs into the future.

As a comprehensive Open Space Strategy has now been adopted by Council, it can assess and understand the municipality's open space needs into the future and how much of that need will be generated by new development. Through the Open Space Strategy Council has the basis on which to determine how much funding is required and how the funding will be spent. Council has therefore undertaken all the work required in order to apply Clause 52.01 in which the specified contributions become "mandatory". This mechanism provides certainty for developers and enables Council to plan for its future acquisition and development of open space.

## 2. The Justification of the 8% contribution rate

### Submission Summary

*The contribution rate of 8% is considered by submitters to be excessive and unreasonable and a substantial increase from the current maximum of 5%. A number of submitters consider that such an increase has not been adequately justified and the impacts of such an imposition have not been considered.*

---

### Management Response

The contribution rates in Amendment C209 are aligned to delivering the objectives of the City of Melbourne Open Space Strategy and factoring in the different rates of growth resident and worker population growth in different parts of the municipality.

The contribution rates are based on the estimated value of the land and works that will be required to cater for future populations. Therefore in high growth areas where the greatest population increases are anticipated, the rate is higher than in the other parts of the City. This is justified through the sound methodology of the Open Space Strategy, the Open Space Resource document and the Open Space Contributions Framework to determine the open space needs of future populations.

The planning scheme specifies that the unimproved site value is the basis for calculating open space contributions. The planning scheme states that the contribution is to be a percentage of the land being subdivided or a percentage of the site value, or a combination of both.

Many metropolitan Melbourne Councils use the schedule to clause 52.01 of their planning schemes to set an open space contribution rate for development, either as a municipal wide contribution rate or as a set of contribution rates which reflect varied geographic areas or types of developments. These rates range from a low of 0.25 per cent for specific suburbs in Glen Eira, to 20 per cent in Greater Dandenong.

## **3. The proximity and functionality of additional open space**

### Submission Summary

*The proximity to existing well established areas open space and the effectiveness of the creation of new Neighbourhood, Local and Small local open spaces was raised by submitters. There was some concern expressed over the benefit of establishing such spaces in areas with proximity to existing, large well established open space. It was raised by submitters that many developments in the City are already within easy walking distance of existing and established larger areas of open space.*

*Submitters also raised that the quality of Neighbourhood, Local and Small local areas will be compromised given their scale they would be more likely to be affected by overshadowing.*

---

### Management Response

The contribution will apply to all land uses except where otherwise stated in Clause 52.01.

The Open Space Strategy analysed the open space needs of current and future populations in the City of Melbourne. It demonstrates that a range of different types of parks are required to meet the public open space needs of the City. Different types of parks provide for different recreational and environmental needs and a sustainable urban environment will provide a range of open spaces from small quiet spaces for sitting for office workers and for small playgrounds, to spaces suitable for playing fields and large gardens.

There are also requirements to provide distributed open space within easy walking distance of residents and workers. The gap analysis in the Open Space Strategy shows locations where residents and workers lack easy walkable access to open space and areas where significant population growth is anticipated.

While a number of submitters refer to the location of their particular site in relation to existing open space, the Open Space Strategy addresses the provision and need for open space on a precinct by precinct basis and not on a site by site basis. All properties within a precinct will be required to contribute to the provision of open space based on the characteristics of, and the needs of the precinct in which they are located. For example, the Open Space Strategy shows that there is a serious lack of open space in parts of Southbank. A high growth rate is expected in Southbank and therefore the contribution rate across the suburb is 8%.

Overshadowing of open space will depend on a number of factors, including the width of the street the open space has frontage to as well as where in the street it is located. It is possible to design and locate small parks so that they do get sufficient sunshine during the day.

#### 4. The nexus between collection and expenditure of funds

##### Submission Summary

*Nexus, fairness and an equitable outcome has been raised by a number of submitters, in particular the relationship between future developments and the provision of public open space. Submitters state that monetary contributions must be used in the immediate vicinity rather than to fund the establishment of open space elsewhere in the municipality.*

---

##### Management Response

There is no statutory nexus specified or required between public open space income generated by a particular subdivision site and the expenditure of that money by Council. However a key principle is that any funds collected must be spent on open space land acquisition and capital works (open space establishment) within the City of Melbourne, for open space that is accessible and designed for the needs of the new residents and workers who will be located within the municipality. This includes land contributions from developers to create new Neighbourhood, Local and Small Local open space, and cash contributions for land purchase, open space establishment and upgrades.

#### 5. The role of private open space and other options for open space

##### Submission Summary

*A number of submitters raised the possibility of the policy allowing for greater discretion to allow for urban spaces to also be considered as public open space. They also stated that spaces provided for the use of residents of a development should be taken into account in assessing the open space requirement. A majority of residential developments provide on-site open space and gymnasiums/recreational facilities and/or private open space for the exclusive use of the occupants.*

*In a particular case a proposal includes a significant communal roof terrace and public urban plaza for the use of future residents and for the wider public.*

---

##### Management Response

Public open space is the publicly owned and publicly accessible land that is set aside primarily for recreation, nature conservation, passive outdoor enjoyment and public gatherings. This includes public parks, gardens, reserves, waterways, publicly owned forecourts and squares.

The provision of private open space in development is important and complimentary and can have some benefits in mitigation of the urban heat island effect and contribute to the character of an area however it is outside Council's public control and can be redesigned or changed at the private land owner's discretion. Public access to private open space is generally restricted and at the discretion of the property owner.

Public open space should be fully accessible to the public and have the capacity to be zoned PPRZ in the Melbourne Planning Scheme.

## 6. The cost impost on development

### Submission Summary

*There is some concern that the cost and impact of a public open space contribution on development will impact on the rate and cost of development.*

---

### Management Response

Developers may pass on the cost to the end owner/occupiers of the developments. The rates proposed reflect the cost to provide new open space for future populations. The proposed rates are also broadly within the range of rates that have been applied in other municipalities. The overall community, social and environmental benefit of providing quality, accessible areas of public open space for the existing and future population is important.

Sufficient and well distributed open space is essential to the liveability of the City. Open space provides numerous community benefits including contributing to, social connectedness, mental health and wellbeing, physical health and wellbeing, mitigation of urban heat, biodiversity, cultural heritage and character, economics and tourism and events and arts.

## 7. The consultation during exhibition

### Submission Summary

*Seven submitters stated that they were not notified of the amendment.*

---

### Management Response

Extensive consultation was undertaken as per the requirements of the Planning and Environment Act 1987 for Planning Scheme Amendments; in addition to formal notices, advertisements were placed in a number of publications advising of the amendment as well as letters and emails sent to industry, peak bodies and other interested parties. One-on-one briefings were held with peak bodies.

## 8. The operation of clause 22.26

### Submission Summary

*Concern has been expressed that clause 22.26 should apply only where there is potential for a development to be subdivided and that the requirements are too complex.*

---

### Management Response



Clause 22.26 has been amended to make it clear that it only applies where there is the potential for subdivision. The land would only be acquired on subdivision.

Clause 22.26 has also been reworded so that it is very clear that the criteria in the Policy are to be used to determine only whether a land contribution or cash contribution would be more appropriate. Clause 22.26 is a policy and is therefore inherently flexible. However the criteria for parks are included to ensure that when Council does obtain land instead of money, the land provided is suitable for use as open space. The need for more land for open space in the City Of Melbourne has been demonstrated through the Open Space Strategy.

## 9. The need for exemptions/reductions from the open space contribution rate

### Submission Summary

*Submitters raised the possibility of exemptions where net community benefit could be demonstrated and scope for reductions to recognise circumstances where an open space contribution at the standard rate is not appropriate for example, a site may be subdivided to rationalise landholdings.*

---

### Management Response

The need for open space is crucial to the liveability of the City and the requirements for open space as documented in the Open Space Strategy are relatively conservative. Therefore there is no scope for reduction in the rate; but under the Planning Scheme exemptions apply to the following:

1. It is one of the following classes of subdivision:
  - a. Class 1: The subdivision of a building used for residential purposes provided each lot contains part of the building. The building must have been constructed or used for residential purposes immediately before 30 October 1989 or a planning permit must have been issued for the building to be constructed or used for residential purposes immediately before that date.
  - b. Class 2: The subdivision of a commercial or industrial building provided each lot contains part of the building.
2. It is for the purpose of excising land to be transferred to a public authority, council or a Minister for a utility installation.
3. It subdivides land into two lots and the council considers it unlikely that each lot will be further subdivided.

## 10. The use of open space by workers

### Submission Summary

*Some submitters stated that workers should not be factored into open space calculations.*

---

### Management Response

The Open space Strategy surveyed all users of Council parks and found that workers are significant users. The Strategy states that workers in the City of Melbourne use open space more intensely than in outer suburban locations as evidenced by site visits and the park satisfaction surveys.

## 22.26 PUBLIC OPEN SPACE CONTRIBUTIONS

--/20--  
C209

This policy applies to all development proposals [where there is potential for future subdivision that would trigger an open space contribution under Clause 52.01.](#)

### 22.26-1 Policy Basis

--/20--  
C209

The Melbourne Planning Scheme sets out broad directions for open space planning in its MSS.

Public open space is highly valued within the City of Melbourne and fulfils a wide range of functions. The importance of public open space in the city environment is heightened by the intensity of development and the limited availability of private open space.

The City of Melbourne Open Space Strategy (CoMOSS) provides an overarching framework and strategic direction for open space planning. The Strategy identifies where new or improved open space will be required in the future, based on detailed research of population growth and development forecasts. The Strategy seeks to ensure that residents and workers have access to a diversity of quality open spaces within easy walking distance. This requires upgrading of existing open space and adding to the open space network into the future.

Public open space contributions from developers is one of a number of potential resources for the acquisition of land for public open space and improvement of existing facilities on behalf of new populations.

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 development design process whether any part of the land proposed to be developed is likely to be required for public open space.

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

22.26-2 Objectives

--/120--  
C209

- To implement the City of Melbourne Open Space Strategy.
- To identify when and where land contributions for public open space are preferred over cash contributions.
- To ensure that in areas where a land contribution is preferred, where appropriate, land suitable for public open space is set aside as part of the design of a development so that it can be transferred to or vested in Council to in satisfaction of the public open space contribution requirement under Clause 52.01.

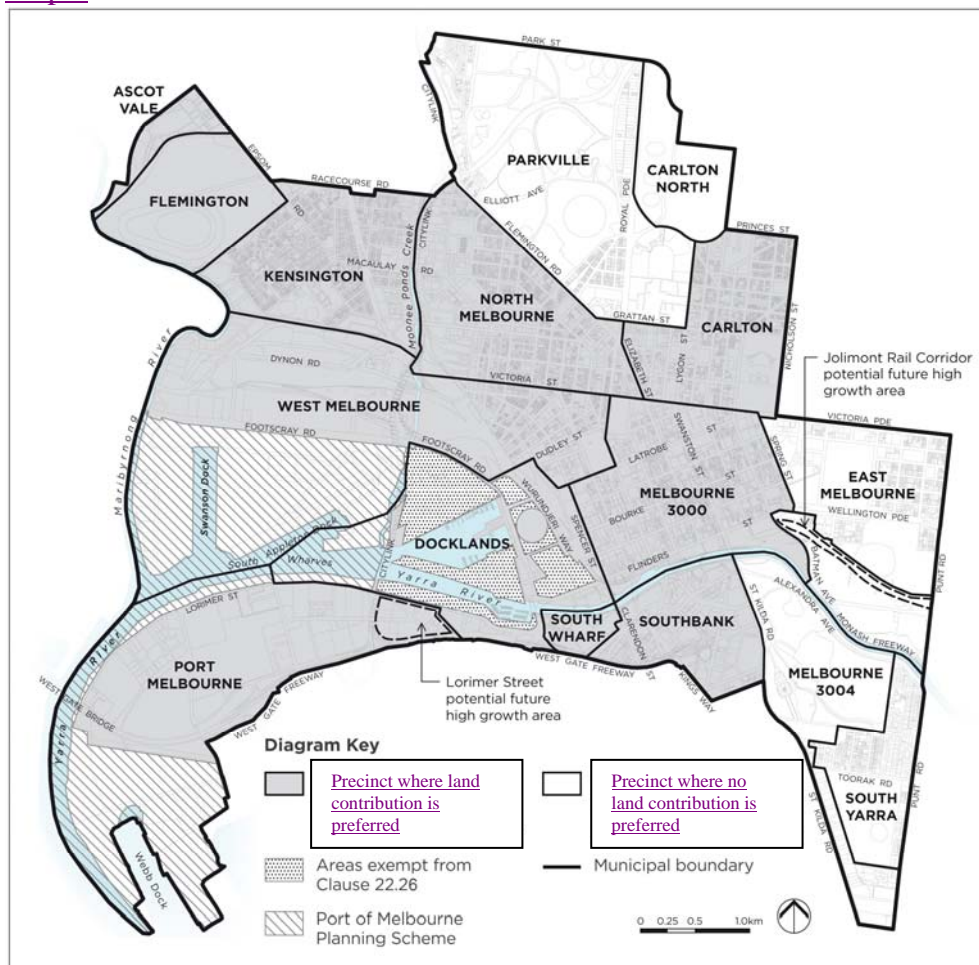
22.26-3 Policy

--/120--  
C209

It is policy that:

Location

Land contributions for public open space will generally be preferred at Council's discretion over cash contributions for the purposes of Clause 52.01 of the scheme where the for land proposed to be developed and subdivided is within an area identified as such on Map 1.  
Map 1



In all other areas of the municipality, a cash contribution equal to the amount specified in Clause 52.01 is preferred ~~at Council's discretion.~~

#### 22.26-4 Application requirements

All applications must be accompanied by a urban context and site analysis plan which demonstrates how the development meets the policy objectives of Clause 22.26-2 ~~22.??~~ and the criteria for public open space of Clause 22.26-5~~22.??~~

#### 22.26-5 Criteria for public open space

Before deciding on application for development in a precinct where land contributions may be required, as identified on Map 1, the responsible authority will ~~consider;~~

~~In determining e~~ whether part of the land proposed to be developed is appropriate for use as public open space, ~~Council will consider whether the potential public open space~~ having regard to:

- a) ~~the meets the minimum size of the area of land to be used for open space, as required under the Schedule to Clause 52.01~~ size for its intended purpose, on its own or in combination with adjoining land. ~~The minimum size parcels for each type of open space are as follows:~~  
Neighbourhood: minimum 1 hectare;  
Local: minimum 0.26 and up to 0.99 hectares;  
Small Local: minimum 0.03 and up to 0.25 hectares (with a minimum width of 20 metres in at least one direction);  
Small Local Link: minimum width of 5 metres.
- b) whether the open space area is located at ground level.;
- c) ~~the type of landscaping which might be use~~ provided, including whether the land is capable of supporting a large mature canopy trees, can incorporate sustainable water supply and reuse,; and moisture retention for passive cooling. and
- d) the potential to accommodate a range of (organised, unstructured and informal) recreational uses;;
- ~~dee)~~ whether the open space area is safe and accessible, ~~or has the potential to be accesible.~~ and its location having regard to a range of transport options and entry from a local street.
- ~~efd)~~ whether the open space area enhances the liveability of the neighbourhood by providing visual relief from built form and noise.;
- ~~fg)~~ and whether the open space area receives ~~providing~~ adequate levels of sunlight (a minimum of 3 hours of direct sunlight between 9am and 3pm on June 22 and at least 5 hours of direct sunlight between 9am and 3pm on September 22).
- ~~h) e)~~ can support long lived broad spreading canopy trees without encroachment onto adjoining land and has sufficient area to incorporate sustainable water supply and reuse, and moisture retention for passive cooling of the local micro climate including areas for long wave radiant cooling at night.

- ~~f) whether the open space area will remain useable and functional as open space with sea level rise and larger storm events.~~
- ~~g) is affected by the impact of adjoining land uses in a way that diminishes the ecological, social or cultural value of the open space.~~
- ~~h) is in good physical condition (eg free of contamination and weed infestation). whether the land, or adjoining land is contaminated.;~~
- ~~ik) the location of the site and open space areas having regard to biodiversity, habitat corridors, and the wider open space network; transport, its visual prominence and its location relative to streets, protects and enhances the biodiversity of the land and contributes to habitat corridors.~~
- ~~j) contributes to a wider open space network including forming open space corridor links.~~
- ~~kl) whether the open space is restricted by services or easements including roadways, overhead structures, water and power supply, and flood mitigation and drainage infrastructure.~~
- ~~l) has the potential to accommodate a range of organised, unstructured and informal recreational uses.~~
- ~~km) whether the open space contributes to the character and attractiveness of the neighbourhood.~~
- ~~n) n) is close to a range of transport options such as public transport, linear shared trails and major roads and the street network relevant to the size and catchment of the open space.~~
- ~~o) whether the open space is visually prominent to maximise its use.~~
- ~~o) whether the open space and contribution to the broader community— with at least two access points and roads to at least two sides, at natural ground level, from adjacent thoroughfares.~~
- ~~p) is located away from major or secondary arterial roads.~~
- ~~q) has an entry from a local street or is capable of being provided with such entry.~~
- is capable of being transferred to the Council and rezoned for public open space.
- ~~p) whether the open space is able to be obtained, improved, maintained and managed by Council.~~

### Early consideration of land contributions

An applicant should consult Council very early in the site analysis phase of a proposal to ascertain whether:

- the land proposed to be developed and subdivided is within an area identified in map 1 as an area where a land contribution is preferred over a cash contribution,
- part of the land proposed to be developed and subdivided is appropriate for setting aside as public open space having regard to the matters identified in this policy.

The design of a building on land which contains an area considered appropriate for public open space should accommodate the provision of public open space in a manner that facilitates and enhances the public open space.

If a contribution under Clause 52.01 is likely to be imposed as a land contribution, and Council is satisfied that an additional part of the land is appropriate for the public open space having regard to the matters identified in this policy, Council may consult with the applicant to determine whether the design of the building could be modified to enable provision of the additional land to Council at Council's cost.

*Policy references*

City of Melbourne Open Space Strategy, prepared by Thompson Berrill Landscape Design Pty Ltd in collaboration with Environment & Land Management Pty Ltd, et. Al., June 2012.

City of Melbourne Open Space Strategy, Technical Report, prepared by Thompson Berrill Landscape Design Pty Ltd and Environment & Land Management Pty Ltd in association with Professor Nigel Tapper and Dr Serryn Eagleston, June 2012.

City of Melbourne Open Space Strategy, Open Space Contributions Framework, prepared by Environment & Land Management Pty Ltd in association with Thompson Berrill Landscape Design Pty Ltd, June 2012.