PLANNING PANELS VICTORIA

IN THE MATTER OF AMENDMENT C235mbek TO THE MERRI-BEK PLANNING SCHEME

PART B SUBMISSIONS
ON BEHALF OF THE PLANNING AUTHORITY

INTRODUCTION

1. These submissions are made on behalf of the Planning Authority, the Merri-Bek City Council (**Council**) in relation to proposed Amendment C235mbek (**Amendment**) to the Merri-bek Planning Scheme (**Scheme**).

2. These submissions should be read together with Council's Part A submissions, filed on 16 February 2025.

3. In summary, Council submits:

   a) fully implementing the *Merri-bek Open Space Strategy* (**OSS**) is an essential component of Council's strategy to maintain standards of liveability in Merri-bek, in the face of significant forecast increases in resident and worker populations over the twenty-year time horizon to 2046;

   b) the introduction of the proposed contribution rate is an essential factor in the implementation of the OSS, as it is the critical mechanism for funding the public open space projects identified by the OSS;

   c) the proposed contribution rate is a conservative rate, arrived at following a comprehensive assessment of the comparative needs and demands for public open space of existing and forecast residential and worker populations in Merri-bek;

   d) the approach to apportionment of the costs of public open space projects from the OSS (as one of the inputs leading to the contribution rate) is logical, well-considered, transparent, and replicable;

   e) the proposed 27% contingency added to land acquisition cost estimates, another of the inputs to the contribution rate calculation, has a strong evidentiary basis, and is generally consistent with the guidance given in that regard by the State government;

   f) the use of land valuations as an input to the contribution rate calculation is appropriate and reasonable; and

   g) consequently, the Amendment, inclusive of the proposed contribution rate, has a strong strategic justification, and should proceed.

4. In support of the Amendment Council relies on the evidence of:

   a) Ms Jo Fisher, Veris, in relation to the approach to apportionment of the costs of proposed public open space projects; and

b) Mr Alex Hrelja, HillPDA, in relation to the calculation of the proposed public open space contribution rate, and inputs to that calculation.

KEY BACKGROUND DOCUMENTS

5. As explained in the Part A submissions, the two key background documents for the purposes of the Amendment are:

   a) the *Apportionment Methodology Report* by Mesh (August 2025) (**Apportionment Methodology Report**),[1] which sets out the method for apportioning the costs of the *Open Space Strategy* 20-year Projects List (January 2025) (**Projects List**)[2] between existing and the new populations; and

   b) the *Merri-bek Public Open Space Contributions Refresh, Open Space Contributions Schedule Report* by HillPDA (August 2025) (**Contributions Schedule Report**),[3] which sets out the basis for the calculation of the contribution rate of 8.68%.

6. Each of those reports is proposed to be listed in clause 72.08 of the Scheme as a background document. This will assist in informing the basis for the contribution rate included in the schedule to clause 53.01.

7. Those reports were informed by a number of other documents, as identified below.

8. The Apportionment Methodology Report relies on or had regard to inputs from:

   a) the Projects List;

   b) residential population growth forecasts provided in the *Merri-bek Planning for Population Growth* report prepared by Quantify (June 2024);[4]

   c) worker population forecasts provided in the *Worker Population Floorspace Forecasts* report prepared by Quantify (August 2024);[5] and

   d) the *Housing Capacity Study 2022*, prepared by Council.[6]

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1 Ms Fisher is the primary author of this report.

2 Derived from the *Merri-bek Open Space Strategy* (**OSS**) and the accompanying *Merri-bek Open Space Strategy Technical Report* (Mesh, January 2025) (**Technical Report**) which have been implemented into the Scheme by Amendment C231mbek.

3 Mr Hrelja is the primary author of this report.

4 Exhibited as part of the Amendment documents.

5 Exhibited as part of the Amendment documents.

6 Provided with Council's Part A submissions.

9. The apportionment methodology is explained in the evidence of Ms Fisher, and addressed below.

10. Additionally, together with the Apportionment Methodology Report, Mesh prepared a detailed spreadsheet setting out the costs and apportionment undertaken for each of the open space projects in the Projects List. This spreadsheet provides the detailed apportionment workings for each eligible project. A version of the spreadsheet is included as Annexure 3 to Ms Fisher's statement of evidence. The spreadsheet evidences the workings of the apportionment methodology.

11. The Contributions Schedule Report (and the rate calculation in that report) relies on:

    a) the output from the Apportionment Methodology Report, and the associated projects list and apportionment spreadsheet prepared by Mesh, specifically the total cost of the projects list that is apportioned to the new population (being $336,081,386);

    b) the *Public Open Space Land Acquisition Cost Review, Draft 15 July 2024*, Hill PDA,[7] which considered the costs of acquisition by Council of land for public open space between FY2013 and FY2024, to derive a strategically justified contingency amount to add to the purchase price of land to reflect the true cost of land acquisition to Council. This is the source of the 27% contingency amount that has been added to the land acquisition costs in the Projects List;

    c) rates valuation information for developable properties in Merri-bek, prepared by Council (August 2024), to determine the total value of developable land in Merri-bek (being $3,870,739,336).[8]

12. There are several additional documents that have been prepared by Council and have informed aspects of the Amendment, or that are relevant to public open space in the municipality, as well as State government policy documents that relate to public open space. These other documents are not directly relevant to the Panel's assessment of the Amendment, but a chronological list of the relevant documents, with a summary of the purpose of the document, can be found in Annexure A to these submissions.

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7 Provided with Council's Part A submissions.

8 For further detail see Tables 3-7 in Appendix A of the Open Space Contributions Schedule report, from PDF 16.

NEED FOR PUBLIC OPEN SPACE

Introductory

13. It is appropriate to address the need for and importance of public open space, which is fundamental to the strategic justification for the Amendment.

14. In late 2021, the State government published *Open Space Strategy for Metropolitan Melbourne: Open Space for Everyone* (**Open Space for Everyone**).

15. Open Space for Everyone has four goals:

    (a) improved community health and wellbeing

    (b) healthier biodiversity

    (c) enhanced climate change resilience

    (d) maximised economic and social benefits.

16. Open Space for Everyone recognises the critical importance of open space to liveability, and the challenges faced by population growth. For example, it states:[9]

> *The city's parks, gardens and waterways provide opportunities for Melburnians to stay active, connect with nature and have time out from urban life. The city's streets, laneways and public spaces are the backdrop to much of our daily lives.*
>
> *Open spaces connect Melburnians with our native plants and animals, and they provide us with an extraordinary diversity of landscapes – from the grasslands in the west to the coastal mangroves in the south-east – which provide valuable ecosystem services to the city. They provide a public stage for major events, tourist attractions and recreation, which support jobs and economic growth.*
>
> *However, the distribution of open space is not equal across the metropolitan area. This inequity reduces access for some to the benefits that communities derive from such critical green and blue infrastructure. Unless we act, this will only become worse.*
>
> *At the same time, our open space network faces unprecedented challenges. Melbourne is experiencing its third great wave of population growth.*
>
> *We are living longer with a greater burden of chronic health conditions. Climate change is making Melbourne hotter and drier, increasing the number and intensity of extreme rainfall events, causing sea levels to rise and worsening fire weather.*
>
> *Many cities around the world face the same issues and are grappling with the challenges of sustaining healthy, liveable landscapes. In response, nature based planning and design are increasingly guiding city development. The provision of high-quality, safe, green and blue open space – equitably available to all – is part of the solution to these challenges.*
>
> *The open space legacy we enjoy today is the result of bold vision and many small, incremental initiatives. The social, environmental and economic challenges the city and its people face mean we cannot continue to plan for open space as we have in the past.*

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9 *Open Space for Everyone*, pg 8.

The challenges are unprecedented in scale and complexity, and they present us with both the need and the opportunity to make the necessary changes so we preserve and extend our existing open space legacy for all future Melburnians.

17. Open Space for Everyone also recognises the link between need and demand for public open space, and the shift to medium and higher density housing:[10]

> *As Melbourne's population is growing, housing density is increasing. Melbourne's housing stock is mostly detached housing with private open space, but recent years have seen a shift to medium- and higher-density housing, notably in middle-ring suburbs, and high-rise apartment development in inner Melbourne continues.*
>
> …
>
> *With more people living in higher-density housing with no private open space, our existing open space will see more people using it, more often and for longer. There is often little opportunity to create large tracts of new open space in established areas.*

18. Further, Open Space for Everyone highlights the health, biodiversity and climate change benefits of public open space:[11]

> *Open space can help lessen inequality; its health benefits are equally accessible to all, and access to open space does not rely on a person's ability to pay.*
>
> *… open space in cities improves the mental and physical health of the people who live in them. Parks and open spaces create awe, delight, and inspiration for people living in urban places.*
>
> …
>
> *Open space provides opportunities to relax, set aside everyday problems, exercise and learn skills, all of which can help reduce the burden of disease.*
>
> *Access to open space improves mental health. Parks and open spaces delight and inspire people, particularly city-dwellers. They are places for children to play, and they connect us to nature and each other. Well-designed, accessible and safe open spaces are places where individuals, families and communities can interact and build relationships. Natural environments in cities have a calming effect, and they can reduce depression, anxiety and stress.*
>
> …
>
> *In a city where only fragments of native vegetation and natural habitat remain, our parks, gardens, waterways and urban forests support our remnant biodiversity, particularly if we can keep fragments connected with wildlife links and blue-green corridors.*
>
> *Biodiversity also supports stormwater filtration, pollination, nutrient cycling, pest regulation, soil health, seed dispersal and carbon sequestration.*
>
> …
>
> *Open space – including our urban forest, large parks and irrigated fields and waterways – increase thermal comfort and reduce heat stress on vulnerable people. Open space reduces the urban heat island effect by having trees to provide shade and evapotranspiration from trees, plants and grasses, irrigation and waterways that cool the air.*

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10 *Open Space for Everyone*, pg 20.

11 *Open Space for Everyone*, pg 22-25.

19. Similar issues are identified in the OSS and the accompanying Technical Report.

20. For example, the Technical Report identifies, *inter alia*, the following matters as relevant to the planning for open space in the municipality:[12]

    a) the challenges from increased population growth above forecasts, including the consequential increase in demand and competition for open spaces;

    b) urban densification, and the related decrease in provision of private open space;

    c) the concentration of settlement and new development in particular areas, and the demands for open space that result from this;

    d) changing expectations for a diversity of types and sizes of public open spaces;

    e) the need to provide sufficient open space for residents and workers, within a reasonable walking distance; and

    f) ensuring that open spaces are adaptive, biodiverse, cooling, healthy and resilient.

21. These themes are consistent with evidence presented to and accepted by a number of planning panels that have considered municipal open spaces strategies in recent years. Most recently, this includes the report of the Panel that considered Amendment C286yara to the Yarra Planning Scheme, which introduced the Yarra Open Space Strategy, and amended the schedule to clause 53.01 of the Yarra Planning Scheme.

22. Council notes that the OSS, the Technical Report, and the associated Projects List, have already been implemented into the Scheme by Amendment C231mbek, which was assessed and supported by a panel.[13] Accordingly, the appropriateness and strategic justification for that work, and specifically (and importantly) the list of projects that inform the contribution rate calculation, are not matters that are before this Panel for consideration. Those matters have already been determined by the Minister for Planning to be strategically justified, evidenced by the gazettal of Amendment C231mbek.

23. The Panel should not be in any doubt that adequate provision of public open space commensurate with population increase and the differential demands that arise from changing housing typologies, is an essential component of contemporary urban life. The issue that arises here is how, and on what basis, the proposed public open space projects are funded.

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12 Technical Report, see for example: PDF 13, 22, 24, 46,

13 Merri-bek PSA C231mbek [2024] PPV.

Source of authority to levy contributions

24. The ability for Council to levy a public open space contribution arises from the *Planning & Environment Act 1987* (**P&E Act**), through the mechanism of clause 53.01 in the Scheme, together with sections 18-20 of the *Subdivision Act 1988* (**Subdivision Act**).

25. While the applicable principles appear now to be settled, it is appropriate to briefly reiterate that, as a consequence of the dissenting judgment of Richter JA in *Maroondah CC v Fletcher* [2009] VSCA 250, the Subdivision Act was amended in 2013 to introduce section 18(1AA) and section 18A, and to clarify that section 18 of the Subdivision Act does not apply where a public open space contribution requirement is specified in a planning scheme.

26. The effect of this is that, while section 18(1A) is the 'default' mechanism for open space provisions, if a rate is specified in a schedule to Clause 53.01, then the provisions of section 18A of the Subdivision Act apply, and not the provisions (including the various criteria) in section 18(1A) of the Subdivision Act. Accordingly, those criteria are not relevant to the Panel's assessment of the Amendment and are not addressed in these submissions.

27. In relation to the contribution rates applied in the schedule to clause 53.01, contemporary practice is for the contribution rate to exceed 5%, in recognition of the fact that land acquisition and construction costs have substantially increased in recent times, meaning that the default rate of 5% is inadequate to meet contemporary needs for public open space. This submission is supported by the benchmarking exercise addressed below.

Benchmarking

28. To assist the Panel's understanding of where contribution rates sit for other metropolitan municipalities with open space strategies, Table 1 below provides, listed in reverse chronological order by gazettal date:

    a) the contribution rate and methodology (including date and author) used in each;

    b) the relevant planning scheme amendment and date of gazettal; and

    c) whether the amendment was subject to review by a planning panel.

TABLE 1

Municipality	Approved Contribution Rate	Date of Open Space Strategy	Amendment reference and gazettal date	Rate calculation method	Author	Panel assessment
Yarra	8.65%[14]	2020	C286yara 22 August 2024	Apportionment	Thompson/Kay	Yes
Monash	7.61% (all subdivision except one identified site)[15]	2021	C169 27 July 2023	Apportionment	Monash City Council	Yes
Greater Dandenong	20% (specific land) 6.3% (residential purposes other than an identified site) 2% (industrial/commercial purposes with exceptions)	2020	C228gdan 24 March 2023	Apportionment	Urban Enterprise	No
Glen Eira	8.3% (all subdivision, with limited exceptions)	2020	C218glen 9 March 2023	Apportionment	Thompson/Kay	Yes

14 A rate of 10.1% was initially sought by the Yarra City Council. This was reduced to 8.65% through the Panel process.

15 A rate of 10% was initially sought by the Monash City Council. This was reduced to 7.61% through the Panel process.

Municipality	Approved Contribution Rate	Date of Open Space Strategy	Amendment reference and gazettal date	Rate calculation method	Author	Panel assessment
Frankston	8% (All land within the Frankston MAC) 2% (all land shown as CR2) 5% (all other land)	2019	C127fran 24 October 2019	Cost recovery	SGS Economics and Planning	No[16]
Kingston	8% (all land within defined Activity Centres, and Strategic Redevelopment Sites) 5% (all other land)	2017	C153 26 April 2018	Cost recovery	SGS Economics and Planning	Yes
Manningham	8% (land affected by ACZ1, DDO8, DDO9 and DDO13) 5% (all other land)	2017	C123 19 April 2018	Cost recovery	SGS Economics and Planning	No
Maribyrnong	5.7%	2015	C137 4 August 2016	Apportionment	Thompson/Kay	Yes
Melbourne	8% (Fishermans Bend Urban Renewal Area) 7.06% (identified area, typically, within the	2012	C209 16 February 2016	Apportionment	Thompson/Kay	Yes

16 While a Panel was convened, the only objecting submission was withdrawn prior to the Panel hearing. The Panel's report notes that its recommendation that Frankston City Council adopt Amendment C127fran as exhibited is a formal recommendation "*made in the circumstances stated and the Panel has not considered the substance of the submissions referred to it or the merits of the Amendment*".

Municipality	Approved Contribution Rate	Date of Open Space Strategy	Amendment reference and gazettal date	Rate calculation method	Author	Panel assessment
	CCZ and urban renewal/growth areas) 5% (identified areas, typically established residential or commercial/industrial areas)		(not including Fishermans Bend Urban Renewal Area)			
Stonnington	8% (any subdivision in Armadale, Prahran, Windsor, Sth Yarra, and identified sites) 5% (any subdivision in Glen Iris, Malvern, Malvern East, Toorak, Kooyong)	2012	C186 2 July 2015	Cost recovery	SGS Economics and Planning	Yes
Merri-bek	Range from 2.5% to 6.8% depending on suburb (12 different rates)	2011	C122 10 October 2013	Apportionment	SGS Economics and Planning	Yes
Moonee Valley	5%	2013	C098 28 June 2012	Apportionment	Thompson/Kay	Yes

29. As can be seen, in more recent years, rates of around 8% and above have become typical for more intensely developed municipalities, and activity centre locations.

30. Accordingly, and setting aside for the moment the strategic justification arising from the OSS, Technical Report, Apportionment Methodology Report and the Open Space Contributions Schedule, the contribution rate of 8.68% is consistent with rates that have been approved by the Minister for Planning in the last few years.

31. Council acknowledges that a rate of 8.68% would be the highest rate in a metropolitan planning scheme. In that regard, however, Council notes that the most recent rate, that for Yarra at 8.65%, is essentially the same, albeit based on project costings that date from 2020, whereas the project costings for this Amendment date from 2025. It is commonly understood that land and construction costs have continued to rise over the last five years. Those costs are direct inputs into the rate calculation that has led to the 8.68% rate.

32. A further exercise that the Panel may find useful is a benchmarking exercise undertaken by HillPDA that compares the apportionment of public open space costs to new populations under a number of existing metropolitan open space strategies. The exercise was to derive a figure that showed the amount of public open space costs recovered under clause 53.01 (either apportioned to the new population, or under a cost recovery method) as a multiple of the new population's share of total population. This allows an 'apples with applies' comparison between different open space strategies to identify the proportion of open space costs recovered from the new population.

33. This exercise was documented in the *Merri-bek Public Open Space Contributions Refresh, Method Report* (Hill PDA, July 2024) (**Method Report**), which informed the preparation of the Amendment. The relevant table is Table 7, in Appendix A.[17] Mr Hrelja was asked to update that table to include the multiple for the proposed contribution rate for the purposes of this panel hearing. The updated table is provided below.

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[17] Method Report, from PDF 35.

TABLE 2

Case	Year of Public Open Space Contribution Report	Method	New Population Share of Total Population	Cost Apportioned to New Population / Cost Recovery	Multiple
Approved schedules					
Moonee Valley	2010	Apportionment	5.6%	31.6%	5.7
Melbourne (High Growth Areas and Remaining Areas)	2012	Apportionment	40.5%	59.3%	1.5
Stonnington	2013	Cost Recovery	18.7%	60.2%	3.2
Maribyrnong	2015	Apportionment	29.3%	73.3%	2.5
Kingston (Activity Centres and Other Areas)	2017	Cost Recovery	15.8%	85.9%	5.5
Manningham (Incremental Change Areas and Substantial Change Areas)	2017	Cost Recovery	16.3%	85.2%	5.2
Frankston (Frankston MAC and All Other Areas)	2019	Cost Recovery	15.2%	92.7%	6.1
Glen Eira	2020	Apportionment	14.3%	58.6%	4.1
Greater Dandenong (Residential Rate)	2020	Apportionment	14.1%	31.9%	2.3
Yarra	2020	Apportionment	29.2%	67.2%	2.3
Monash	2021	Apportionment	18.2%	48.9%	2.7
Averages of approved schedules					
Average of Cost Recovery Method			16.5%	81.0%	5.0
Average of Apportionment Method			21.6%	53.0%	3.0
Average of Both Methods Combined			19.7%	63.2%	3.7
Amendment C235mbek					
Merri-bek proposed via Amendment C235mbek	2025	Apportionment	20.4%	49.5%	2.4

34. Apportionment methodologies are those, like that adopted for the Amendment, where a contribution rate is calculated by reference to the costs of open space projects and a proportion 'attributable' to the new population. Cost recovery methodologies do not calculate a contribution rate by reference to apportionment to new population, but rather nominate a rate based on the cost of open space projects and anticipated revenue from open space contributions (with the intention of collecting an amount as close as possible to the costs of the open space projects).

35. In respect of the Amendment, as can be seen from the table above, at a multiple of 2.4, the approach proposed by the Amendment is toward the lower end of the range for other metropolitan LGA, and very similar to that of the Yarra LGA. The growth expected in Merri-bek is also similar to, albeit slightly lower than, that in Yarra (20.4% v 29.2%).

36. The use of 'multiples' as a benchmarking tool was discussed by the C286yara Panel, which stated (emphasis added):[18]

> *The Panel does not consider it appropriate to use the multiple to validate or verify the project-by project apportionment undertaken by Ms Thompson, or indeed the apportionment outcome, and has not done so. However, <u>the Panel has found comparisons of the various multiples calculated by Mr Hrelja a useful tool as an indicator to assess the fairness and reasonableness of the cost apportionment outcome in Yarra compared with other municipalities</u>. It accepts that this is not a precise test.*
>
> *<u>Comparison of the multiples demonstrates that the apportionment outcome in Yarra is not out of line with what has been accepted by panels and the Minister for Planning as appropriate and therefore presumably equitable in other municipalities</u>. It also demonstrates that it is not unusual for the cost apportionment to new populations to deviate considerably from the proportion they comprise of the total population at the end of the planning period, a matter about which the Panel expressed surprise in its Interim Report.*
>
> *The Panel reaches the above conclusions regardless of whether multiples derived from only apportionments based on cost apportionment methodologies are considered or whether multiples derived also from cost recovery methodologies, are used. The Panel notes that multiples derived from cost apportionments using cost recovery methodologies are significantly higher than those derived from cost apportionments using cost apportionment methodologies. <u>Even confining the comparison to only multiples derived from apportionments using cost apportionment methodologies, the Yarra multiples of 1.96 and 2.3 sit comfortably within the range of what has been considered acceptable in other municipalities.</u>*
>
> …
>
> *The Panel considers Maribyrnong to be a particularly good comparison because the expected growth in Maribyrnong is of a similar magnitude to that expected in Yarra, 29.3 per cent compared with 29.2 per cent. Having put Melbourne to one side, Maribyrnong and Yarra stand out in the group as big growth municipalities (refer Table 3). Maribyrnong's multiple is 2.5, which in the Panel's view further supports the higher rate of 8.65 per cent for Yarra.*

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[18] Yarra Planning Scheme Amendment C286yara, Final Panel Report, pg 22-23 of 155.

Although the multiple supports a rate of 8.65 per cent as being fair and reasonable, the Panel considers that it would not be appropriate to rely solely on this indicator to justify it as the recommended open space contribution rate for Yarra.

(iv) Conclusions

The Panel concludes:

- *<u>Comparison of multiples from other municipalities provides a useful indicator of whether a cost apportionment outcome is acceptable.</u>*
- *<u>Comparing the multiples derived from apportionments using cost apportionment methodologies demonstrates that the Yarra multiples of 1.96 and 2.3 are not out of line with what has been accepted as equitable in other municipalities.</u>*
- *<u>Maribyrnong provides a good comparison with Yarra because of similar urban form, population growth and a similar multiple.</u>*
- *A multiple of 2.3 sits more comfortably than a multiple 1.96 within the range of multiples calculated for comparator municipalities with approved outcomes.*
- *It is not appropriate to rely solely on the multiple to justify a recommended open space contribution rate for Yarra.*

37. Consistent with the approach taken by the Panel for Amendment C286yara, Council does not ask this Panel to rely on these benchmarking exercises as the sole justification for the proposed contribution rate.

38. Rather, these indictors provide secondary support of the acceptability of the Amendment, by reason of the fact that the proposed contribution rate is demonstrably in line with what has been accepted by the Minister for Planning as appropriate and equitable in other municipalities.

EDDIE BARRON PRINCIPLES

Introductory

39. Council notes that the factors of need, nexus, equity and accountability set out in the case of *Eddie Barron Constructions Pty Ltd v Shire of Pakenham* 6 AATR 10 are not strictly applicable to the assessment of a contribution rate, as that case was concerned only with the imposition of permit conditions that required a development contribution payment before the implementation of the statutory development contributions plan framework.

40. That said, Council acknowledges that the concepts of need, nexus and equity and accountability are relevant for the Panel to consider. Importantly, however, those

concepts are to be understood and applied by reference to the statutory framework pursuant to which the Amendment, and the contribution rate, are proposed.[19]

Need

41. The need to provide for new and upgraded public open space in the municipality, including as a consequence of the forecast increases in population through to 2046, is evidenced by the gazettal of Amendment C231mbek, and the implementation of the OSS, Technical Report and Projects List.

Nexus

42. Neither the Subdivision Act nor clause 53.01 mandate that financial contributions collected from subdivisions in a particular area have to be spent on open space in that area. Rather, all that is required is that the contributions be spent on open space (either to purchase land for open space, or to improve existing open space).

43. Accordingly, considerations of 'nexus' should not be taken to be a need for a *spatial* nexus, but rather a *causal* nexus – that is, that there be a link between the subdivision, and the consequential need to provide more or upgraded open space. This characterisation of nexus was accepted by the C286yara Panel.[20]

44. In Council's submission, the appropriate nexus between contributions collected, and the delivery of new and upgraded open space, is demonstrated by the OSS and Technical Report, which provide the detailed analysis of the open space needs across the municipality and the strategic justification for the introduction of the increased municipal-side contribution rate, subject to consideration of the apportionment methodology and the mechanics of the contributions rate calculation, as addressed in these submissions, and the evidence.

Equity

45. In Council's submission, the adoption of the proposed flat rate of 8.68%, based on a transparent and considered apportionment to the forecast 'new' population, is an equitable way to approach public open space contributions for the municipality. This is because all subdivisions captured by the schedule to clause 53.01 pay the same rate

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19 This interpretation was discussed and accepted by the Panel that considered Amendment C286yara. See Yarra Planning Scheme Amendment C286yara, Interim Panel Report (Corrected), pg 8-9 of 101 (PDF 24-25).

20 Yarra Planning Scheme Amendment C286yara, Interim Panel Report (Corrected), pg 8 of 101 (PDF 24).

(whether in cash or land) regardless of location, and regardless of whether that location is or is not already well served by open space.

46. This approach avoids the inequitable outcome whereby a developer who purchased (or purchases) land in one of the precincts where there is less of a need to provide new open space obtains an unfair economic advantage and a reduced need to contribute to open space, despite contributing to increased population in that area.

47. An alternative approach would be to adopt precinct based rates. However, as can be seen from Table 7 from the Contributions Schedule Report,[21] extracted below, applying the adopted apportionment methodology at a precinct level would result in rates ranging from 1.94% (in Gowanbrae) to 17.08% in (Coburg).

Table 7: Site Value Data and Public Open Space Contribution Rate

Suburb	Total Site Value (19)	Cost Apportioned (20)	Public Open Space Contribution Rate (21)
Brunswick	$698,808,142	$76,698,389	10.98%
Brunswick East	$329,731,186	$9,090,085	2.76%
Brunswick West	$205,663,327	$8,917,925	4.34%
Coburg	$536,396,892	$91,628,473	17.08%
Coburg North	$149,854,972	$21,170,150	14.13%
Fawkner	$212,098,658	$13,225,091	6.24%
Glenroy	$633,882,881	$41,308,101	6.52%
Gowanbrae	$12,978,184	$251,813	1.94%
Hadfield	$188,465,231	$24,028,078	12.75%
Oak Park	$234,380,683	$10,971,189	4.68%
Pascoe Vale	$506,844,818	$23,014,359	4.54%
Pascoe Vale South	$161,631,360	$9,740,736	6.03%
Total	**$3,870,736,336**	**$336,081,386**	**8.68%**

48. Under that approach, a developer of land in Coburg would be asked to contribute significantly more than a developer in Gowanbrae, as a consequence of the existing levels of open space available in each precinct, and the relative values of developable land.

49. In Council's submission, a flat municipal-wide rate approach is strategically justified, and any inequity in that approach is an appropriate trade-off given:

a) the benefits of a simple, clear, and easily applied flat rate approach; and

b) the significant implications for development in areas that are slated for intensification in the municipality, specifically, Brunswick, Coburg, and Coburg

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21 Open Space Contributions Schedule report, PDF 18.

North if a precinct specific approach were to be taken, resulting in contribution rates well above 10 per cent for those precincts.

50. The same approach was proposed in C286yara, and accepted as appropriate by the Panel, which stated (emphasis added):[22]

> *<u>The Panel has given considerable thought to whether a precinct-based approach would be more appropriate. However, the Panel is concerned that if differential, precinct-based rates were used, such as those in Table 6, there would be too high a burden on development taking place in some areas.</u> While some experts and submitters were willing to accept a precinct-based approach for precincts where the rate would be in the middle of the rate range, there was little acceptance that the higher (or lower) rates were reasonable. <u>The Panel is concerned that the level of disparity in contribution rates resulting from a precinct-based approach may have unintended consequences such as pushing development into other areas, preventing development of the areas with the highest rates</u> or other impacts which have not been fully debated before the Panel and are not considered in the background reports.*
>
> *The Panel has carefully considered whether a middle ground could be found as suggested by some submitters (for example, UDIA). It notes that the Stonnington approach recommended to the Panel applied a two-tiered approach, where a 5 per cent contribution rate was applied to areas in the east of Stonnington which had significantly greater areas of existing open space and 8 per cent applied to the three remaining suburbs (in the west) where the open space needs were greater and the highest population growth was set to occur. The Panel considers that there is insufficient evidence before it that there is a similarly clear distinction between suburbs or precincts in Yarra to support a two-tiered approach such as in Stonnington C186 (or Melbourne C209). Instead, the Panel found the case presented by Council, backed by Ms Kay's evidence, that the growth areas in Yarra cannot be easily separated but instead are dispersed within suburbs and precincts, to be convincing. This is particularly so when considering the location of Major Activity Centres and Neighbourhood Activity Centres together with projected spatial distribution of the residential population in the Yarra Housing Strategy 2018. In this respect, the Panel notes Mr Black's evidence that under the Yarra Housing Strategy, approximately 80 per cent of the total planned dwellings forecast will be in the suburbs of Alphington/Fairfield, Richmond, Collingwood, Cremorne/Burnley and Abbotsford. However, this point takes no account of where worker populations will be accommodated.*
>
> *The Panel considers that while not like Melbourne with its large, spatially discrete areas of new urban development and the balance of the municipality being largely minimal change (with some exceptions), there are, nonetheless, notable differences between precincts in Yarra in terms of how well they are currently provisioned for open space and where population growth is expected to occur. <u>These differences do result in some inequity when applying a single, municipal-wide rate, not just on a property-by-property basis, but more generally at the precinct level. The Panel considers however, as did the Panel in Melbourne C209, some inequity to specific landowners and properties will not be fatal to the application of a uniform rate and that it is acceptable that there be some cross-subsidisation between areas or precincts.</u>*
>
> *<u>Therefore, on balance, and mindful of the potential disadvantages of a precinct-based approach and the absence of a better model before it, the Panel considers that it is appropriate to take a municipal-wide, strategic approach to the setting of a contribution rate.</u>*

22 Yarra Planning Scheme Amendment C286yara, Interim Panel Report (Corrected), pg 65-66 of 101 (PDF 81-82).

51. Council notes that the situation in Merri-bek is similar to that in Yarra, wherein focus areas for development activity (current and intended) are dispersed around the municipality, and cannot easily by separated into discrete units. This supports the same approach being taken in respect of a flat municipal-wide rate.

Accountability

52. While Council accepts that as a general principle, accountability is relevant to the assessment of public open space contributions, what is clear is that the concept of accountability as it is understood in the infrastructure contributions context is not applicable in the public open space context.

53. This is because infrastructure contributions are subject to a comprehensive and strict regime imposed under Part 3AB of the P&E Act, which details how and where infrastructure contributions may be collected, and spent, by the collecting agency. A similar regime exists in relation to development contributions, under Part 3B of the P&E Act.

54. Public open space contributions, by contrast, are not subject to that regime, and what is meant by accountability in the public open space context is that all money collected pursuant to the schedule to clause 53.01 must be spent on public open space in accordance with section 20 of the Subdivision Act.

55. The proposed contributions rate has been intentionally calculated based on apportionment of a fair share of the total anticipated costs of delivery of the required open space to the forecast future resident and worker population of the municipality.

56. It is appropriate for the Panel to proceed on the basis that money collected by Council under the revised contribution rate will be spent on public open space as required by the Subdivision Act.

57. This submission is supported by the assessment and reconciliation of the implementation of projects under the Moreland Open Space Strategy 2012-2022 (**MOSS 2012-2022**), which is documented in the *Merri-bek Public Open Space Contributions Refresh, Strategy Implementation Review* (August 2023) (**Strategy Implementation Review**). This report was exhibited with the Amendment documents.

58. Relevantly, the Strategy Implementation Review identifies that between FY2012 and FY 2023, Council received $117.6m in open space contributions and spent $89.1m. Of the projects identified in the MOSS 2012-2022, at as August 2023:

a) approximately 32% have been completed;

b) 12% were near to completion; and

c) 32% were better than half completed.

59. This equates to 76% of the projects either having been completed or substantially progressed.

60. This demonstrates Council's commitment to implementing open space projects identified through an open space strategy, utilising public open space contributions.

61. It is also not a matter for the Panel to consider or direct the specifics of how Council will spend the money collected. This was addressed directly in the Monash C148 Panel, where the Panel concluded as follows (emphasis added):[23]

> *The Panel accepts Council's submission that the focus of the Amendment is on the provisions of the Schedule to Clause 53.01 which deals with the collection of open space levies. <u>How the funds collected are spent is a matter for the Council and neither the existing or proposed Clause 53.01 place any obligation on how and where the funds are to be spent. Nevertheless, if, over an extended period, the Council was spending considerably less on open space than it was collecting, in the Panel's view, it would be difficult to justify a considerable increase in the collection rate.</u>*
>
> *From the information provided by Council detailing its expenditure on open space for the financial years from 2014/2015 to 2018/2019, it is clear to the Panel that all of the funds were directed at improving and upgrading facilities on existing open spaces. The Panel notes that Council develops a capital works program as part of its annual budget and that this program identifies the open space works to be undertaken over the coming 12 months. In addition, Council has developed the Active Monash's Capital Works Priorities Framework to determine open space priorities over a ten-year period. Neither of these have been used in calculating the quantum of the levy.*
>
> *The Panel is satisfied with the capital works expenditure information provided by Council (Documents 13, 29 and 30) that demonstrates that over the past five years the Council has spent almost twice as much on open space than it has collected from the levy. That said, this is not necessarily an indication that this trend will continue going forward, particularly with an increase in the contributions sought under the Amendment.*
>
> *The Panel does not agree with Mr Milner and Mr Ainsaar that there is a requirement for the funds to be spent in the precinct in which they are collected.*
>
> *The Panel agrees with Council and the C129 Panel that it is not its role to determine whether specific areas of open space should be purchased. As discussed above, the MOSS does identify a number of key actions for each of the 12 precincts identified in the strategy.*

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23 Monash Planning Scheme Amendment C148, Interim Panel Report, 7 April 2020, pg 17-18 of 40 (PDF 25-26).

APPORTIONMENT

Introductory

62. There is no prescribed approach to determining a contribution rate in Victoria, and no one universally accepted methodology.

63. The Guide for Open Space Strategies provides guidance about the preparation, implementation and monitoring of an open space strategy, but does not address contributions under clause 53.01, or methodologies for determining a contribution rate.

64. As explained above, the contribution rates listed in Table 1 were derived using different methodologies, which included:

    a) apportionment methodologies, including methodologies that differ from the approach taken for this Amendment; and

    b) cost recovery methodologies that do not rely on an apportionment of costs between new and existing populations.

65. In recent years, however, apportionment methodologies have been adopted more consistently than cost recovery methodologies.

66. Other apportionment methodologies, and specifically the response to those methodologies in assessment by planning panels, have influenced the approach taken for the Amendment.

67. To highlight one example, the apportionment methodology that underpinned the contribution rate proposed by C286yara relied in large part on the judgment of the relevant open space planner. While the open space planner's expertise to undertake that assessment was accepted by the Panel, questions were raised about the methodology, specifically the qualitative nature of the approach used which relied on professional judgment and was not transparent or able to be interrogated and validated by other people.[24]

68. The Panel ultimately concluded that the use of a qualitative, as opposed to quantitative, apportionment methodology was appropriate, and supported the qualitative factors used by the open space planner, but considered that the approach should be independently peer reviewed. This led to the issue of an interim panel report.

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[24] See discussion in Yarra Planning Scheme Amendment C286yara, Interim Panel Report (Corrected), pg 50-54 of 101.

69. Subsequently, a peer review was undertaken, which was unable to replicate the apportionment approach (because of the qualitative nature of the factors used by the open space planner). Notwithstanding, the Panel was satisfied that the revised contribution rate of 8.65% was strategically justified. The reasons given by the Panel for its satisfaction about this included:[25]

(a) the 'multiple' exercise referenced above in Table 2 above;

(b) comparison to the contribution rates gazetted for other municipalities, and the fact that the rate of 8.65% was "*not unreasonable or out of line with what has been approved in other municipalities*";

(c) the increased costs of land acquisition and construction for public open space compared to other contribution rates implemented earlier in time; and

(d) the urban growth and context of Yarra, which included the population growth expected for Yarra, and the high proportion of medium and high-density dwellings expected.[26]

70. The difficulties associated with replicating the apportionment methodology for C286yara informed the approach taken for this Amendment, including a need for the methodology to be transparent and replicable, and accounting for both qualitative and quantitative elements. This is explained in the Apportionment Methodology Report and the evidence of Ms Fisher.

Methodology

71. The apportionment exercise is one of the key inputs to the contribution rate calculation.

72. The approach taken here is to apportion the costs of all 'eligible' projects on the Projects List between the existing and new populations. 'Eligible' projects are those that satisfy the requirements in section 20(2) of the Subdivision Act, which states:

> *(2) The Council must use any payment towards public open space it receives under this Act or has received under section 569B(8A) of the Local Government Act 1958 but has not applied under subsection (8C) of that section or the proceeds of any sale of public open space to—*
>
> *(a) buy land for use for public recreation or public resort, as parklands or for similar purposes; or*

25 Yarra Planning Scheme Amendment C286yara, Final Panel Report, pg 27 of 155.

26 Which are equally true for Merri-bek.

(b) *improve land already set aside, zoned or reserved (by the Council, the Crown, a planning scheme or otherwise) for use for public recreation or public resort, as parklands or for similar purposes; or*

(c) *with the approval of the Minister administering the Local Government Act 2020 , improve land (whether set aside on a plan or not) used for public recreation or public resort, as parklands or for similar purposes.*

73. Projects that are for maintenance of existing open space, for example, have been excluded from the apportionment assessment.

74. There are 240 open space projects in the Projects List. The total cost of those projects is estimated to be $683.5 million. The project costs include:

    a) land acquisition costs (where relevant), including a 27% contingency cost;

    b) capital costs;

    c) planning and design costs; and

    d) administrative costs.

75. Of those projects, Mesh determined that 231 were eligible to be funded by open space contributions. The estimated cost of those projects is $679.5 million.

76. Applying the apportionment methodology described in the Apportionment Methodology Report, Mesh determined that $336.1 million of the project costs should be apportioned to the 'new' resident and worker populations and therefore funded from open space contributions. This equates to 49.5% of the total cost of all open space projects. In total 49.5% of the project costs have been apportioned to the 'new' resident and worker populations.

77. The methodology, and reasons for the approach taken, are addressed in more detail in Ms Fisher's statement of evidence. Council relies on that evidence in support of the strategic justification for the methodology.

New Population – Residents and Workers

78. A factor in the calculation of the contribution rate that is important to address is that in undertaking the apportionment exercise, the 'new' population is made up of the forecast increases to both resident and worker populations.

79. The table below, adapted from Appendix 2 to the Apportionment Methodology Report, provides the relevant figures for the 12 precincts.

Precinct	2026 resident pop	2026 worker pop	2026 total pop	Additional resident pop at 2046	Additional worker pop at 2046	Total additional pop
Brunswick	32,415	14,546	46,961	10,882	4,653	15,535
Brunswick East	16,201	4,150	20,351	2,473	2,419	4,892
Brunswick West	16,599	1,670	18,269	2,026	893	2,920
Coburg	30,621	8,829	39,450	9,430	3,102	12,532
Coburg North	8,733	12,164	20,897	878	5,801	6,679
Fawkner	15,363	3,681	19,044	3,747	579	4,326
Glenroy	26,774	5,087	31,861	9,465	3,467	12,932
Gowanbrae	3,154	110	3,264	55	194	249
Hadfield	6,970	1,134	8,104	2,603	385	2,988
Oak Park	8,914	379	9,293	2,259	709	2,968
Pascoe Vale	18,393	2,568	20,961	4,619	1,516	6,135
Pascoe Vale South	11,006	1,603	12,609	1,671	1,130	2,801
TOTAL	**195,143**	**55,921**	**251,064**	**50,108**	**24,848**	**74,956**

80. The approach taken assumes that worker and resident *need* for public open space is equivalent. This is distinct from worker and resident *use* of open space being equivalent.

81. The Technical Report, the OSS, and the Projects List proceed on the basis of equivalence in need for public open space between residents and workers. For example, the Technical Report states:[27]

> *It is acknowledged that both residents and workers need open space. The Technical Report treats the open space demand of new residents and workers as equal when determining future open space provision.*

82. This approach is consistent with the findings of the C286yara Panel, wherein the issue of worker need and use of public open space was closely considered, and the subject of competing evidence and submissions.

83. That Panel stated of this issue:[28]

> *… it is unclear to the Panel whether any lesser use by workers would be significant and if so, how it would translate into the calculation of the overall future open space needs of workers. The Panel notes Council's submission that just because workers may use open space less often than residents,*

27 Technical Report, pg 30 (PDF 22).

28 Yarra Planning Scheme Amendment C286yara, Interim Panel Report (Corrected), pg 32 of 101.

workers' <u>need</u> for open space is not of less importance than the need of residents and should be given equal weight. The Panel accepts the distinction between the <u>use</u> of and <u>need</u> for open space and agrees with Council that adopting <u>need</u> is the appropriate metric in calculating future of open space provisions. Adopting equal need and giving equal importance to the open space needs of all within the municipality underpins Council's approach and is consistent with the community focus sought by Open Space for Everyone.

84. In Council's submission, it is appropriate to proceed from the basis that worker and resident need (or demand) for open space is equivalent, for purposes of the apportionment exercise.

Conclusion on the apportionment methodology

85. For the reasons given above, and in the evidence of Ms Fisher, Council submits that the apportionment methodology adopted for the Amendment is sound, transparent and replicable, and provides an appropriate input to the contribution rate calculation.

CONTRIBUTION RATE

Calculation

86. As explained in the Contributions Schedule Report, and Mr Hrelja's statement of evidence, the contribution rate has been derived using the following calculation:

Numerator - Cost of open space projects apportioned to new population	$336,081,386
	÷
Denominator - Total value of all developable land	$3,870,736,336
	x 100
	=
	8.68%

87. This calculation is the same approach as was taken for at least C286yara, C169mona, C228gdan, and C218glen (ie costs apportioned to new development/total value of all land to be developed), all of which were approved and have been implemented into the relevant planning schemes.

88. The numerator is derived from:

a) the costs of all 'eligible' projects from the Projects List, which includes a 27% contingency added to the costs of land acquisition projects (addressed below);

b) apportionment of those costs to the 'new' resident and worker population, using the methodology set out in the Apportionment Methodology Report.

89. The apportioned costs input addressed in the evidence of Ms Fisher. The contingency amount is addressed in the evidence of Mr Hrelja and discussed further below.

90. The denominator is the estimated value of all land in the municipality to 2046, based on rateable land values (CIV). The site value data was provided to HillPDA by Council and is summarised in Appendix A to the Contributions Schedule Report.[29] Council relies on the evidence of Mr Hrelja about the site value data.

Contingency

91. As indicated above, a 27% contingency amount was added to the land acquisition costs estimated for the relevant projects in the Projects List. This amount is intended to cover the additional 'on-costs' that Council incurs when acquiring land. The purpose of adding that amount is to ensure that the real cost of acquisitions can be funded from open space contributions.

92. The 27% contingency amount was identified by HillPDA in the *Public Open Space Land Acquisition Cost Review, Draft 15 July 2024*.[30] That report considers the actual costs of acquisition for 29 acquisitions by Council between FY2013 and FY2024.

93. That analysis revealed that on average Council pays total costs that are 27% higher than the capital improved value of the relevant land.

94. As the CIV is used estimating the acquisition costs for land in the Projects List, it is appropriate to make an adjustment to those values, to account for the true cost to Council of acquiring land. Hence the addition of the 27% contingency amount for each of the relevant projects.

95. Council notes that the Guide to Open Space Strategies contemplates a 20% contingency for open space actions, although the basis for that figure is not explained in the document.[31]

96. The issue of contingency for on-costs was explored in the C286yara panel hearing, where the Yarra Council had applied a 30% allowance on top of land acquisition costs. On interrogation, the Panel considered that there was insufficient evidentiary basis to justify

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29 Contributions Schedule Report. from pg 14 of 20 (PDF 16).

30 The report remains in draft form and has not been formally finalised.

31 Guide for Open Space Strategies, A guide to support open space managers in preparing local open space strategies, October 2025, pg 38 (PDF 40).

that figure, which it recommended be reduced to 10%.[32] Yarra Council accepted that recommendation, which is one of the reasons why the contribution rate proposed reduced from 10.1% to 8.65%.

97. That issue is why Council here engaged HillPDA to prepare the *Public Open Space Land Acquisition Cost Review, Draft 15 July 2024*, to provide an evidentiary basis that supports the 27% contingency figure.

98. This matter is addressed further in Mr Hrelja's statement of evidence.

99. Council submits that the application of a 27% contingency to land acquisition costs in the Projects List is acceptable and appropriate. In that regard Council notes that the Projects List was costed, inclusive of the 27% contingency, as part of the preparation of the OSS and Technical Report introduced into the Scheme by Amendment C231mbek.

RESPONSE TO SUBMISSIONS

Introductory

100. Seven submissions were received in response to exhibition of the Amendment.

101. Submissions 2, 3 and 6 were received from Yarra City Council, Moonee Valley City Council and Darebin City Council respectively. Each of those submissions supported the Amendment and the proposed contribution rate.

102. Submission 4 was from Melbourne Water, which did not object to the Amendment.

103. Submission 5 was from the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, which did not provide any comments on the Amendment.

104. Submissions 1 and 7 raised objections to the Amendment.

    a) Submission 1 was from a town planner, who relevantly raised an objection based on the economic impact on the development industry.

    b) Submission 7 was from a landowner and developer in Merri-bek, which objected on the following bases:

        i) unreasonable impact on the economic vitality of future/proposed developments;

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32 Yarra Planning Scheme Amendment C286yara, Interim Panel Report (Corrected), pg 41-42 of 101 (PDF 57-58).

ii) that the Amendment does not provide adequate justification to support an 8.68% contribution rate across all areas;

iii) that the contribution rate is excessive, especially for large infill/opportunity sites (such as the submitter's site); and

iv) that transitional provisions should be included.

105. The substance of those objections is addressed below.

Economic impact

106. Council accepts that increasing the contribution rate will have an economic impact on some developments, in that it will increase one cost component in the overall suite of development costs.

107. However, that is not the same as the Amendment having an unreasonable economic impact or rendering developments in Merri-bek unviable.

108. The question of development viability is highly complex and influenced by many factors, including the cost of land acquisition, construction costs, holding costs, purchaser willingness to pay, profit margins, increases in land value, and many other factors. None of these matters are the subject of evidence called by a submitter.

109. No evidence about those matters has been provide by submitters, and in the absence of such evidence, the Panel is not in a position to accept assertions about the economic impact of the Amendment.

110. In the C286yara Panel, these matters were the subject of expert evidence. The Panel ultimately concluded as follows:

> *The Panel concludes:*
>
> - *there may be some, but difficult to quantify, impacts on the financial viability of some projects where the land has been acquired recently*
> - *there may be some, but difficult to quantify, impact on housing affordability*
> - *neither of these impacts is demonstrably significant enough not to proceed with an increase to the open space contribution rate.*

111. Council respectfully submits that this Panel should, if it considers it appropriate to address this issue, reach the same conclusion. In that regard, it is salient that no submitter has asked to be heard by the Panel, notwithstanding the facts that Merri-bek has, for some time now been a hotbed of development activity, and that it has been known by the development community since at least September last year that Council was proposing to increase the contribution rate.

Justification for municipal wide rate

112. In relation to the appropriateness of the municipal-wide approach, Council refers to the discussion above about the principle of 'equity'.

Excessive rate

113. Council rejects the suggestion that the proposed contribution rate is excessive, including for large infill/opportunity sites.

114. As described in these submissions, and in the evidence of Ms Fisher and Mr Hrelja, the proposed contribution rate has been derived through a comprehensive, transparent and strategically justified process that has sought to appropriately apportion the costs of public open space projects that are attributable to needs or demands arising from the forecast increased population.

115. The new population, through the mechanism of subdivisions occasioned by new developments, is being asked to pay less than half the costs of the open space projects identified as required by the OSS and Technical Report.

116. Further, those costs are to be borne in equal proportion of site or land value across all relevant subdivisions in the municipality, so that developments in those areas that are the focus for intensification, and require comparatively more open space provision do not have to bear a larger burden than those areas that are better served by existing open space, or that are not a target for intensification.

117. As demonstrated by the benchmarking exercise described above, it also cannot reasonably be said that the proposed contribution rate is excessive. It is squarely in line with contemporary rates in other metropolitan planning schemes, which the Minister for Planning has determined to be acceptable.

118. There is also no warrant for applying a lower rate to large infill or opportunity sites. If anything, the typical approach to such sites is to levy greater contributions for larger strategic opportunity sites, for example 10%.[33] That is the outcome that was contemplated for strategic redevelopment sites and urban renewal sites by the Contributions Schedule Report and was originally proposed by the Amendment. This is the component that the Minster for Planning directed by removed from the Amendment before exhibition.

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33 See the examples given in this regard in the Contributions Schedule Report, pg 9 or 20 (PDF 11).

Transitional provisions

119. Council rejects the suggestion that the Amendment should include transitional provisions.

120. It is uncommon for the contributions regimes (generally) to include transitional provisions. In relation to clause 53.01, Council is not aware of, and has not been able to find, *any* metropolitan planning scheme that includes transitional provisions in the schedule to clause 53.01; it is not clear that it is even permissible to include transitional provision in the schedule.

121. Some schedules include specific rates to address the situation where there is some form or existing agreement or approval that specifies a particular percentage rate, for example under an approved development plan, or an existing permit. The Yarra Planning Scheme is an example of this. However, there is no suggestion by the submitter that such a situation applies in respect of the Amendment, rather, the objection is a general plea for transitional provisions.

122. Council notes that the issue of transitional provisions was argued in the C286yara Panel, and the Panel declined to include transitional provisions (except in relation to specific sites where specific rates were included in the schedule to clause 53.01 by the council). Relevantly, the Panel stated:[34]

> *The Panel notes that some changes to planning provisions are accompanied by transitional provisions but in other cases, including DCPs, transitional provisions are uncommon. The Panel acknowledges that this is a difficult position and understands the fairness argument where land has been acquired and costings undertaken based on a particular set of assumptions.*
>
> *Three factors have influenced the Panel's consideration of this issue. Firstly, wherever the 'line' that separates development paying levies at a new, higher rate is drawn there will be perceptions of unfairness depending on which side of the line a particular development falls.*
>
> *Secondly, choosing for example an approved planning permit as the cut-off for a levy at the existing rate, while superficially appealing, introduces complexities around amendments to that permit where they are later sought.*
>
> *Thirdly, this Amendment, or at least the strategy which it implements, has been in preparation for a number of years and while the proposed rate may not have been known until relatively recently, prudent developers would have recognised that a significantly increased levy was likely and planned accordingly.*
>
> *For these reasons, the Panel does not support providing transitional provisions other than those already provided for in the amended Schedule to Clause 53.01 (Document 139).*

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[34] Yarra Planning Scheme Amendment C286yara, Interim Panel Report (Corrected), pg 68-69 of 101 (PDF 84-85).

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

…

(iv) Conclusions

The Panel concludes:

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

RELEVANT STATE PLANNING INITIATIVES

123. There are three current State planning initiatives that have some relevance to the Amendment. These are described below.

124. *First*, the State government has set local government area housing targets for new dwellings to 2051. The housing target for Merri-bek is 69,000 new dwellings. The purpose of these targets is to assist in the delivery of more, and more affordable, housing. Local councils are obliged to ensure that their planning schemes provide sufficient capacity through the relevant planning controls so that these targets can be met.

125. If the housing target is met, there will be more housing in Merri-bek than is contemplated by the OSS and Technical Report, and therefore the proposed contribution rate. That is to say, the Amendment is directed to funding public open space projects to meet the needs of fewer people than may be living in Merri-bek by 2046, assuming the housing target is met.

126. However, it is important to note that:

    a) the housing targets are an aspirational target only, not a forecast, and while Council will ensure that the planning settings provide sufficient capacity for the target to be met, the actual delivery of housing is a matter for the development market to determine; and

    b) the forecast period for the OSS is to 2046 (not 2051); and as is always the case, Council will monitor population increases over time as it implements the OSS and delivers the open space projects. As and if needed, Council can update the OSS to adjust the project list, and amend the contribution rate, assuming there is a strategic justification to do so.

127. As such, Council does not consider that the housing target that has been set for Merri-bek requires any adjustment to the Amendment, or specifically the contribution rate. If that is to occur, it is a matter for a future time.

128. *Second*, is the Train and Tram Zone Activity Centres programme. The State government has established a program directed to delivering more homes in areas identified as "train and tram zones". These are largely existing activity centres close to public transport. New planning controls, including some rezoning and the introduction of new built form controls are being progressively introduced to those areas.

129. There are two activity centres in Merri-bek that are affected by the activity centres program: Brunswick and Coburg. These centres are part of Stage 1 of the programme, and current expectations are for the changes to be implemented sometime later this year.

130. The consequence of these changes are likely to be increased housing capacity in and around those two activity centres, which has not been forecast for purposes of the OSS, and proposed contribution rate.

131. However, as for the housing targets more broadly, this does not have any immediate implications for the Amendment. Rather, Council will need to monitor the outcomes from the activity centres programme over time and take any necessary steps to adjust the OSS and contribution rate as and if necessary.

132. *Third*, is the State government's reform to the Infrastructure Contributions regime. The State government is proposing a new standardised infrastructure contributions system that will be applied to the train and tram zone activity centres. The proposal is currently in the consultation phase and is currently expected to be rolled out in 2027.

133. As ICP funds can be used to fund open space projects, Council was concerned about the potential for 'double-dipping' in circumstances where the schedule to clause 53.01 also applied to the same ICP area.

134. In circumstances where the Amendment is before the Panel for consideration, Council specifically asked the Department of Transport and Planning (**DTP**) for confirmation that the proposed ICP for Merri-bek would avoid the issue of 'double dipping'. Council has been advised by DTP that the ICP will avoid this issue through the inclusion of a caveat in the ICP directed to that issue.

135. For present purposes, Council considers that there are no immediate implications for the Amendment from this programme of reform, and no basis to delay the implementation of the Amendment.

CONCLUSION

136. For the reasons addressed above, Council respectfully requests that the Panel:

a) conclude that the Amendment is strategically justified, including in respect of:

i) the apportionment methodology;

ii) the inputs to the contribution rate calculation; and

iii) the rate calculation itself; and

b) recommend that the Minister for Planning approve the Amendment with an 8.68% contribution rate.

Jordan Wright

Counsel for the Planning Authority

Instructed by Maddocks

20 February 2026

ANNEXURE A

Relevant Documents

No	Document	Date	Author	Purpose
1.	Open Space for Everyone – Open Space Strategy for Metropolitan Melbourne	2021	Victorian Government	Metropolitan-wide guidance establishing goals for health, biodiversity, climate resilience and funding of open space networks.
2.	Asset Plan 2022–23 to 2031–32	2022	Merri-bek City Council	Shows long-term expenditure commitments for open space assets that POS contributions help deliver.
3.	Housing Capacity Study	2022	Merri-bek City Council	Establishes how many additional dwellings could theoretically be delivered under current planning controls.
4.	Merri-bek Open Space Strategy	February 2023	Merri-bek City Council	Updated strategy reinforcing alignment between strategy and the exhibited rate, inserted as a background document on 12 February 2025 via C231mbek.
5.	Open Space Strategy Implementation Review Report	August 2023	HillPDA	Reviews delivery of the 2012–22 strategy and confirms effective use of past levies and ongoing need for additional open space investment.
6.	Merri-bek Open Space Strategy – Endorsed	10 April 2024	Merri-bek City Council	Establishes the strategic 20-year vision and project framework that C235 seeks to implement.
7.	Merri-bek Planning for Population Growth	June 2024	Quantify	Population projections to 2051 used to identify demand pressures and inform apportionment.
8.	Merri-bek Worker Population Floorspace Forecasts	August 2024	Quantify	Worker and floorspace forecasts informing the share of open space demand from future employees.
9.	Rates Valuation Spreadsheet	August 2024	Merri-bek City Council	Certified land valuation dataset underpinning the denominator in the 8.68% POS rate calculation.
10.	Open Space Land Acquisition Cost Review Report	15 July 2024	HillPDA	Validates land cost assumptions, ensuring rate calculations reflect contemporary acquisition pricing.
11.	Contribution Rate Method Report	October 2024	HillPDA	Reviews rate-setting approaches across councils and Panels, ensuring Merri-bek's method aligns with accepted practice.

No	Document	Date	Author	Purpose
12.	Amendment C231mbek – Panel Report	9 Dec 2024	Planning Panels Victoria	Confirms that the Strategy and Technical Report are appropriate background documents embedded in the Scheme.
13.	Open Space Strategy Technical Report	January 2025	Mesh (now Veris)	Detailed technical basis for supply/demand analysis, project list and needs that underpin apportionment and rate modelling.
14.	Open Space Strategy Projects List – Master Spreadsheet	March 2025	Merri-bek City Council (with inputs from Mesh and HillPDA)	Provides the full 20-year list of open space projects (acquisitions, upgrades, works), including project descriptions, locations, hierarchy, and cost estimates. It also contains the apportionment inputs used by Mesh and the cost-apportioned figures relied on by HillPDA to calculate the 8.68% contribution rate.
15.	Merri-bek Open Space Apportionment Methodology	August 2025	Mesh (now Veris)	Provides the step-by-step allocation of project costs to new development using need, nexus, equity and transparency.
16.	Merri-bek Public Open Space Contributions Refresh – Contributions Schedule Report	August 2025	HillPDA	Calculates the 8.68% contribution rate and recommends the single Schedule 53.01 rate applied municipality-wide.
17.	Plan for Victoria 2025	2025	Victorian Government	State strategy emphasising housing growth and need for green public spaces, supporting increased POS contributions.
18.	Guide for Open Space Strategies (DEECA)	2025	DEECA	Sets expectations on evidence, apportionment and cost transparency required to justify POS rate increases.
19.	Council Plan 2025–2029	2025	Merri-bek City Council	Commits to building and enhancing open spaces and cooling the city, local policy basis for levy increases.
20.	Council Action Plan 2025–26	2025	Merri-bek City Council	Includes the formal action to update open space and developer contribution models.