



Planning Panels Victoria

Department of Environment, Land, Water and Planning

1 Spring Street
Melbourne Victoria 3000
GPO Box 2392
Melbourne, Victoria 3001
Telephone (03) 8392 5115

9 December 2019

As addressed

Dear Submitter,

Monash Planning Scheme Amendment C148: Public open space contributions rates

The Panel held a Directions Hearing for the above matter on 25 November 2019 at Monash City Council, Glen Waverley. Please find attached:

- Panel Directions
- Distribution List
- Hearing Timetable.

The following dates apply:

| Time | Date | Action | Direction |
|---------|------------------|---|-----------|
| 4.00pm | 16 December 2019 | All parties to confirm experts | 1 |
| 4.00pm | 3 February 2020 | Council must circulate its Part A submission | 2 |
| 4.00pm | 7 February 2020 | Parties must circulate Expert witness reports | 4 |
| 10.00am | 17 February 2020 | The Hearing starts | |

At the Directions Hearing Ms Valente circulated a list of information she requested that Council make available (Document 1 – attached as Appendix A of this letter). Counsel for the City of Monash sought leave to seek instructions on a response to this request. On 2 December 2019, Ms Marshall of Maddocks on behalf of the City of Monash provided a response to Planning Panels Victoria opposing Ms Valente's request on the basis the information requested is not relevant to the Panel's consideration (Document 2 – attached as Appendix B of this letter).

The Panel has considered Ms Valente's request and Council's response, and has directed Council to provide some information, dealing with expenditure on open space, that it believes is relevant to the consideration of Amendment C148. Direction 10 details the Panel's requirements. The Panel considers that the remaining information requested by Ms Valente is not relevant to the Amendment and is therefore not required.

If you have questions, please contact Amy Selvaraj, Senior Project Officer at Planning Panels Victoria on (03) 8392 5120 or planning.panels@delwp.vic.gov.au.

Yours sincerely,

Michael Ballock
Panel Chair

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Privacy Coordinator, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002



Panel Directions

Monash Planning Scheme Amendment C148: Public open space contributions rates

Before the Hearing

Circulation of documents and Council Part A submission

1. All parties are to confirm experts by **4.00pm on Monday 16 December 2019**.
2. Council must circulate a Part A submission to parties on the distribution list by **4.00pm on Monday 3 February 2020** that includes:
 - a) background to the Amendment including chronology of events
 - b) strategic context and assessment
 - c) issues identified in submissions
 - d) any suggested changes to the Amendment in response to submissions

Note: Council's Part A submission will be taken as read by the Panel at the Hearing. Council should allow time for questions about its Part A submission on Day 1.

Expert witness reports

3. An expert witness report must:
 - a) comply with the Guide to Expert Evidence (<https://www.planning.vic.gov.au/panels-and-committees/planning-panel-guides>)
 - b) not refer to any individual submitter by name – if necessary, submitters should be referred to by submission number
 - c) be provided to the Panel as an unlocked document.
4. Parties must circulate their expert witness reports to parties on the distribution list by **4.00pm on Friday 7 February 2020**.
5. Council must publish all expert witness reports on its website and make them publicly available at its office.

At the Hearing

Submissions and information

6. If electronic information is presented at the Hearing, all files must be:
 - a) circulated to parties on the distribution list by 10.00am on the morning the information is to be presented
 - b) brought to the Hearing Room on a USB stick in a clearly marked folder half an hour before the start of the day's hearing, to allow it to be uploaded onto the Hearing Room laptop.
7. If a paper copy is presented at the Hearing, at least six (6) copies must be provided, two-hole punched and stapled (not bound).
8. After presenting to the Panel, submissions (preferably in MS Word) should be emailed to planning.panels@delwp.vic.gov.au.
9. All information presented at the Hearing is a public document unless the Panel directs otherwise.

Council Part B submission

10. At the Hearing, Council must provide a Part B submission that includes:

Directions:

Monash Planning Scheme Amendment C148: Public open space contributions rates

- a) all changes to the Amendment documentation made between the exhibited version and the modified Council preferred version (if applicable)
- b) its response to submissions and evidence
- c) its final position on the Amendment
- d) A detailed explanation of how the 10% contribution rate was calculated
- e) Further explanation of the *City of Monash – Open Space Contribution Rate Planning* - Figure 4: Current access to Open Space network
- f) A summary of Council's capital works expenditure on open space for the past 5 years.

Aerials and maps

11. At the Hearing, Council should arrange for:
- a) a large scale map showing the location of submitters by submitter number. This map:
 - (i) must not show submitter names
 - (ii) does not need to show the location of pro-forma submitters
 - (iii) must not be placed on the internet or replicated in any report
 - b) appropriate aerials and plans at large scale
 - c) access to the latest aerial photography of the municipality and access to GIS at the hearing.

Distribution list

Monash Planning Scheme Amendment C148: Public open space contributions rates

Use this list to circulate expert witness statements and other information requested by the Panel. It must not be used for any other purpose.

Note Parties in the table below marked with an asterisk () have requested that they do not want to be heard at the hearing but would like a copy of the timetable and any directions.*

Electronic documents

| Party | email address |
|---|--|
| Planning Panels Victoria | planning.panels@delwp.vic.gov.au |
| Monash City Council | briana.eastaugh@maddocks.com.au andre.schmid@monash.vic.gov.au |
| A. & S. Valente and Associates Pty. Ltd | silvana@valente.net.au |
| Housing industry Association | t.davis@hia.com.au |
| Friends of Scotchman's Creek and Valley Reserve | info@scotchmancreekfriends.org.au sally.walker55@bigpond.com |
| Golf Road Project Development Pty Ltd | planning@minterellison.com |
| Huntingdale Estate Nominees Pty Ltd | mmeyer@urbis.com.au |
| Association of Consulting Surveyors Victoria | acsv@acsv.com.au |
| George Saisanas | Georgesaisanas@yahoo.com.au |
| Ferntree Hill Project Pty Ltd; Make CRC Pty Ltd; Bewise (Clayton) Developments Pty Ltd; Salta Properties Pty Ltd; | iser@pppartners.com.au |
| Collie Pty Ltd (Jenny Collie)* | jlc@colliepl.com.au |

Timetable

Monash Planning Scheme Amendment C148: Public open space contributions rates

Timetable Version 1

Day 1: Monday 17 February 2020

Venue: Planning Panels Victoria, Hearing Room 2 (Ground Floor, 1 Spring Street, Melbourne)

| Time | Party | Sub No | Allocated |
|-------------------|--|--------|-----------|
| 10.00am – 10.15am | Preliminary matters | | 15 mins |
| 10.15am – 11.30am | City of Monash represented by Maria Marshall and Briana Eastaugh of Maddocks, calling the following expert evidence: <ul style="list-style-type: none">Marcus Spiller, SGS Economics & Planning on Open Space Contributions | | 1 Day |
| 11.30am – 11.45am | Break | | 15 mins |
| 11.45am – 12.45pm | City of Monash continued | | 1 Day |
| 12.45pm – 1.45pm | Lunch Break | | |
| 1.45pm – 3.00pm | City of Monash continued | | 1 Day |
| 3.00pm – 3.15pm | Break | | 15 mins |
| 3.15pm – 4.30pm | City of Monash continued | | 1 Day |
| 4.30pm | Day close | | |

Day 2: Wednesday 19 February 2020

Venue: Planning Panels Victoria, Hearing Room 2 (Ground Floor, 1 Spring Street, Melbourne)

| Time | Party | Sub No | Allocated |
|-------------------|---|----------------|-----------|
| 10.00am – 10.15am | Preliminary matters | | 15 mins |
| 10.15am – 11.30am | Ferntree Hill Projects Pty Ltd, Make CRC Pty Ltd, Bewise (Clayton) Developments Pty Ltd and Salta Properties Pty Ltd represented by Paul Chiappi of Counsel instructed by Mark Naughton and Andrew Iser of Planning Property Partners calling the following expert evidence: <ul style="list-style-type: none">TBATBATBA | 30 34 35 | 1 day |
| 11.30am – 11.45am | Break | | 15 mins |
| 11.45am – 1.15pm | Ferntree Hill Projects Pty Ltd, Make CRC Pty Ltd, Bewise (Clayton) Developments Pty Ltd and Salta Properties Pty Ltd continued | 30 34 35 | 1 day |
| 1.15pm – 2.00pm | Lunch Break | | |
| 2.00pm – 3.30pm | Ferntree Hill Projects Pty Ltd, Make CRC Pty Ltd, Bewise (Clayton) Developments Pty Ltd and Salta | 30 | 1 day |

Timetable Version 1:
Monash Planning Scheme Amendment C148: Public open space contributions rates

| | | | |
|-----------------|---|----------------|---------|
| | Properties Pty Ltd continued | 34 | |
| | | 35 | |
| 3.30pm – 3.45pm | <i>Break</i> | | 15 mins |
| 3.45pm – 4:30pm | Ferntree Hill Projects Pty Ltd, Make CRC Pty Ltd, Bewise (Clayton) Developments Pty Ltd and Salta Properties Pty Ltd continued | 30 34 35 | 1 day |
| 4.30pm | Panel close | | |

Day 3: Thursday 20 February 2020

Venue: Planning Panels Victoria, Hearing Room 2 (Ground Floor, 1 Spring Street, Melbourne)

| Time | Party | Sub No | Allocated |
|------------------------|---|--------|-----------|
| 10.00am – 10.15am | Preliminary matters | | 15 mins |
| 10.15am – 11.30am | Golf Road Project Development Pty Ltd represented by Phil Bisset of Minter Ellison <ul style="list-style-type: none"> • TBA • TBA | 18 | 3 hrs |
| 11.30am – 11.45am | <i>Break</i> | | 15 mins |
| 11.45am – 1.15pm | Golf Road Project Development Pty Ltd continued | 18 | 3 hrs |
| 1.15pm – 2.00pm | Lunch Break | | |
| 2.00pm – 3.30pm | A. & S. Valente and Associates Pty. Ltd. Represented by Angelo and Silvana Valente | 33 | 1.5 hrs |
| 3.30pm – 3.45pm | <i>Break</i> | | 15 mins |
| 3.45pm – 4:00pm | Housing Industry Association represented by Teresa Davis | 36 | 15 min |
| 4.00pm – 4:30pm | George Saisanas | 28 | 30 mins |
| 4.30pm | Panel close | | |

Day 4: Friday 21 February 2020

Venue: Planning Panels Victoria, Hearing Room 2 (Ground Floor, 1 Spring Street, Melbourne)

| Time | Party | Sub No | Allocated |
|-------------------|---|--------|-----------|
| 10.00am – 10.15am | Preliminary matters | | 15 mins |
| 10.15am – 10.25am | Friends of Scotchman's Creek and Valley Reserve represented Kallista Sears or Sally Walker | 24 | 10 mins |
| 10.25am – 11.25am | Huntingdale Estate Nominees Pty Ltd represented by Mick Meyers of Urbis | 15 | 1.5 hrs |
| 11.25am – 11.40am | <i>Break</i> | | 15 mins |

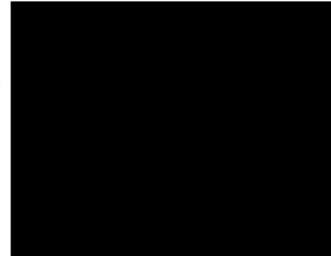
| | | | |
|-------------------------|--|----|---------|
| 11.40am – 12.10pm | Huntingdale Estate Nominees Pty Ltd represented by Mick Meyers of Urbis continued | 15 | 1.5 hrs |
| 12.10pm - 12.40pm | Association of Consulting Surveyors Victoria represented by Leo Bateman | 37 | 30 mins |
| 12.40pm – 1.40pm | Lunch Break | | |
| 1.40pm – 2.40pm | City of Monash – right of reply | | |
| 2.40pm | Panel close | | |

Hearing Timetable Notes:

1. The Panel may amend the timetable without notice.
2. Please arrive at least 15 minutes before your scheduled commencement time.
3. If you are unable to be present at your scheduled time, please contact Planning Panels Victoria as soon as possible.
4. If you have any questions about the timetable, please contact the Amy Selvaraj, Senior Project Officer on 8392 5120.
5. Getting to Planning Panels Victoria:
Planning Panels is on the 75 and City Circle tram lines and a short walk from the Collins Street trams 109, 112 and 48. It is also a short walk from Parliament Train Station.

Appendix A

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**PROPOSED MONASH PLANNING SCHEME AMENDMENT C148
PLANNING PANEL DIRECTIONS HEARING – 25TH NOVEMBER 2019
REQUEST FOR FURTHER DOCUMENTATION**

We advise that we act on behalf of Angelo and Silvana Valente, who are part owners of the property at, 23 Scotsburn Avenue, Oakleigh South and Angelo Valente, being the owner of the property at, 29 Scotsburn Avenue Oakleigh South.

We respectfully request that the Planning Panel, direct that Monash City Council provide us, with the following additional documentation, in order to assist us in preparing our submission to this Panel, at the hearings of the above matter:-

1. Although page 27 of the Monash Open Space Strategy October 2018, ("MOSS") specifies the amount of open space contributions collected from 2013 to 2018, we request a breakdown of how much was collected from each Precinct and where the collections were spent, over the past 20 years;
2. The amount of funds raised by Council from the sale of Council owned land and where those proceeds of sale, were spent over the past 10 years;
3. The amount expended from Council rates for each Precinct for the purchase of open space and /or upgrades to existing open space, over the past 20 years;
4. A list, detailing the name and address of current open space facilities in the City of Monash (whether owned by Council or other Government Authorities) which were former landfills/quarries/reclaimed land/flood prone land or encumbered land, as defined by Council;
5. Whilst the MOSS specifies "key actions" for each Precinct, it does not, in our view, have a detailed Implementation Program as specified in the Planning Practice Note 70, entitled "Open Space Strategies".

We request a copy of this Implementation Program (if it exists) which ideally, would identify properties for:

- (a) land acquisition for open space
- (b) upgrades to existing open spaces,

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together with Council budgeted cost estimates and priorities, to deliver these land acquisitions/upgrades, for the next 10 or 20 years.

6. The files that Monash Council inherited from the previous City of Oakleigh regarding the former Talbot Quarry site located at 1221-1249 Centre Road Oakleigh South, which, we believe, was ear marked by the former City of Oakleigh for open space prior to its amalgamation (in part) with the City of Waverley and now constituted as Monash City Council.

We submit that, without a detailed analysis of the above information, the SGS report dated October 2018 and the MOSS, does not provide sufficient and adequate information or confidence to this Panel and to members of the community/ratepayers/developers, that the Council will exercise its discretion to manage the open space funding, as per this Amendment, in a fair and equitable manner, the latter of which is a fundamental objective, of all Victorian Planning Schemes.



SILVANA VALENTE B.Ec. LL.B.(Monash)

Appendix B



Maddocks

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

Info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Email Letter

| | | |
|------------------------------------|--|--|
| From Kristin Richardson | Date 2 December 2019 | |
| Direct 03 9258 3558 | Email kristin.richardson@maddocks.com.au | |
| Partner Maria Marshall | | |
| To The Panel Coordinator | Organisation Planning Panels Victoria | Email planning.panels@delwp.vic.gov.au |

Our Ref MYM:KLR:7986362

Dear Panel Coordinator

Amendment C148 to the Monash Planning Scheme (Amendment C148)

We continue to act for Monash City Council (Council) in relation to the above panel hearing, listed for a hearing starting on 17 February 2020.

We refer to the Request for Further Documentation tabled by Ms Valente at the directions hearing on 25 November 2019 (Request). The Panel has provided Council with an opportunity to respond to Ms Valente's request.

We are instructed Council opposes Ms Valente's Request on the basis the information requested is not relevant to the Panel's consideration of Amendment C148.

As the Panel is aware, Amendment C148 seeks to amend the schedule to clause 53.01 to require all subdivisions of 3 lots or more to provide a public open space contribution at a rate of 10%, introduces new clause 22.15 (Public Open Space Contributions Policy) into the Scheme that sets out guidance for the process on when, where and how a public open space contribution will be required, and replaces clause 21.10 with a new clause 21.10.

The purpose of Amendment C148 is not to consider the future potential implementation of the Monash Open Space Strategy (MOSS) or past expenditure of Council's public open space contributions. Rather, Amendment C148 relates to the introduction of a rate for future public open space contributions, which itself will determine the open space implementation plan. The Valentines will be able to contribute to the development of that plan in due course. The information requested is irrelevant to the issues at hand and a distraction for all involved. A forensic analysis of past spending on public open space is not relevant in assessing the merits of Amendment C148.

Importantly, in relation to past public open space expenditure, we are instructed Council has allocated public open space contributions in accordance with:

- its capital works program;
- Council budget; and
- its legislative obligations under s 20 of the *Subdivision Act 1988*.

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In particular, Council submits (adopting the same numbering as Ms Valente's Request):

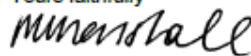
1. *a breakdown of how and where public open space contributions have been spent over the past 20 years is not relevant to the Panel's consideration of Amendment C148 and would require significant resourcing to locate and provide in a suitable format. In addition, we note the Panel has requested Council supply (in its Part B submission) a summary of Council's open space expenditure from the past 5 years. Council considers it is unnecessary and of no benefit to the Panel or the process, to provide the additional detail regarding past expenditure over and above the Panel's request;*
2. *the sale of Council owned land and where those proceeds of sale were spent over the past 10 years is not relevant to the Panel's consideration of Amendment C148 and would require significant resourcing to locate and provide in a suitable format. Council has land holdings in varying forms, not exclusively public open space. It is unclear to Council how this relates to a proposal to change the open space contribution for new development and how the information could be of benefit to the Panel in its consideration of Amendment C148;*
3. *the amount expended from Council rates for each precinct for the purchase of open space and /or upgrades to existing open space, over the past 20 years is not relevant to the Panel's consideration of Amendment C148 and would require significant resourcing to locate and provide in a suitable format. It is unclear to Council how this relates to a proposal to change the open space contribution for new development and how the information could be of benefit to the Panel in its consideration of Amendment C148;*
4. *the location of current open space facilities that are former landfills, quarries, reclaimed land/flood prone land or encumbered land is completely irrelevant to the Panel's consideration of Amendment C148. It is unclear to Council how this information relates to a proposal to change the open space contribution for new development and how this information could possibly be of benefit to the Panel in its consideration of Amendment C148;*
5. *a detailed 'Implementation Program' for the MOSS. The document Ms Valente requests is not presently available in the form requested. Even if it was, this may include confidential information relating to future land acquisition, or Council operations, that would not be appropriate to publicly release;*
6. *the files for the former Talbot Quarry site. Issues relating to the use of the privately owned former Talbot Quarry at 1221-1249 Centre Road, Oakleigh South were raised in considerable detail in Amendment C129 to the Monash Planning Scheme, which was ultimately abandoned. It is completely unclear to Council how this information relates to a proposal to change the open space contribution for new development and how this information could possibly be of any benefit to the Panel in its consideration of Amendment C148. Ms Valente states in her Request that she believes the quarry site was 'ear marked by the former City of Oakleigh for open space prior to its amalgamation (in part) with the City of Waverly and now constituted as Monash City Council'. Despite Council's view that this request is irrelevant, and a distraction, we are instructed that, at its meeting on 25 September 2019, when abandoning the proposed Amendment C149 – former Talbot Quarry that Council resolved:*

not to purchase part or all of the site for Public Open Space.

For the reasons set out above, Council opposes Ms Valente's Request and asks that the Panel refuse to make any directions relating to the production of the information requested by Ms Valente.

Please contact Kristin Richardson if you have any queries regarding the above.

Yours faithfully



Maria Marshall
Partner