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AGENDA

Planning Committee Meeting
held in the Council Chamber,
350 High Street Preston
Monday 9 October 2023 at 6.30pm.

This meeting is a scheduled hybrid meeting, at which both Councillors and members of the public may participate either in person or virtually.

The meeting will be livestreamed and may be accessed from Councils website www.darebin.vic.gov.au



ACKNOWLEDGEMENT OF TRADITIONAL OWNERS AND ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITIES IN DAREBIN

Darebin City Council acknowledges the Wurundjeri Woi-Wurrung people as the Traditional Owners and custodians of the land we now call Darebin and pays respect to their Elders, past, present and emerging.

Council pays respect to all other Aboriginal and Torres Strait Islander communities in Darebin.

Council recognises, and pays tribute to, the diverse culture, resilience and heritage of Aboriginal and Torres Strait Islander people.

We acknowledge the leadership of Aboriginal and Torres Strait Islander communities and the right to self-determination in the spirit of mutual understanding and respect.



English

This is the Agenda for the Council Meeting. For assistance with any of the agenda items, please telephone 8470 8888.

Arabic

هذا هو جدول اعمال اجتماع المجلس. للحصول على المساعدة في أي من بنود جدول الاعمال، يرجى الاتصال بالهاتف 8888 8470.

Chinese

这是市议会会议议程。如需协助了解任何议项，请致电8470 8888。

Greek

Αυτή είναι η Ημερήσια Διάταξη για τη συνεδρίαση του Δημοτικού Συμβουλίου. Για βοήθεια με οποιαδήποτε θέματα της ημερήσιας διάταξης, παρακαλείστε να καλέσετε το 8470 8888.

Hindi

यह काउंसिल की बैठक के लिए एजेंडा है। एजेंडा के किसी भी आइटम में सहायता के लिए, कृपया 8470 8888 पर टेलीफोन करें।

Italian

Questo è l'ordine del giorno della riunione del Comune. Per assistenza con qualsiasi punto all'ordine del giorno, si prega di chiamare il numero 8470 8888.

Macedonian

Ова е Дневниот ред за состанокот на Општинскиот одбор. За помош во врска со која и да било точка од дневниот ред, ве молиме телефонирајте на 8470 8888.

Nepali

यो परिषद्को बैठकको एजेन्डा हो। एजेन्डाका कुनै पनि वस्तुसम्बन्धी सहायताका लागि कृपया 8470 8888 मा कल गर्नुहोस्।

Punjabi

ਇਹ ਕੌਂਸਲ ਦੀ ਮੀਟਿੰਗ ਵਾਸਤੇ ਏਜੰਡਾ ਹੈ। ਏਜੰਡੇ ਦੀਆਂ ਕਿਸੇ ਵੀ ਆਈਟਮਾਂ ਸੰਬੰਧੀ ਸਹਾਇਤਾ ਵਾਸਤੇ, ਕਿਰਪਾ ਕਰਕੇ 8470 8888 ਨੂੰ ਟੈਲੀਫੋਨ ਕਰੋ।

Somali

Kani waa Ajandaha Kulanka Golaha. Caawimada mid kasta oo ka mid ah qodobada laga wada hadlay, fadlan la xiriir 8470 8888.

Spanish

Este es el Orden del día de la Reunión del Concejo. Para recibir ayuda acerca de algún tema del orden del día, llame al teléfono 8470 8888.

Urdu

یہ کاؤنسل کی میٹنگ کا ایجنڈا ہے۔ ایجنڈے کے کسی بھی حصے کے بارے میں مدد کے لیے براہ مہربانی 8470 8888 پر فون کریں۔

Vietnamese

Đây là Chương trình Nghị sự phiên họp Hội đồng Thành phố. Muốn có người trợ giúp mình về bất kỳ mục nào trong chương trình nghị sự, xin quý vị gọi điện thoại số 8470 8888.

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Agenda

1. MEMBERSHIP

Cr. Julie Williams (Mayor)
Cr. Susanne Newton (Deputy Mayor)
Cr. Emily Dimitriadis
Cr. Gaetano Greco
Cr. Tom Hannan
Cr. Tim Laurence
Cr. Trent McCarthy
Cr. Lina Messina
Cr. Susan Rennie

2. APOLOGIES

3. DISCLOSURES OF CONFLICTS OF INTEREST

4. CONFIRMATION OF THE MINUTES OF PLANNING COMMITTEE

Recommendation

That the Minutes of the Planning Committee Meeting held on 14 August 2023 be confirmed as a correct record of business transacted.

5. CONSIDERATION OF REPORTS

5.1 AMENDMENT C210DARE - OPEN SPACE CONTRIBUTIONS

Author: Acting Strategic Planning Coordinator

Reviewed By: General Manager City Sustainability and Strategy

EXECUTIVE SUMMARY

In late 2022 Council discontinued Amendment C186dare which proposed to increase the Open Space Contribution rate in the Darebin Planning Scheme to 10%. At the same time Council resolved to pursue an incremental, two-step approach to increasing contributions over time:

- Commence a new amendment to remove content within the schedule to Clause 53.01 and enable Darebin to require an open space levy of up to 5% for individual applications (up from the current 'capped' sliding scale of 2% to 5%).
- Revise the existing strategic work to develop a longer term (20 years+) open space strategy and associated contribution/funding mechanism to support a new, future amendment which may involve further increasing the open space levy.

The purpose of this report is to seek Council's decision to request the Minister for Planning to authorise commencement of Amendment C210dare, which will progress the initial step by proposing to remove the existing sliding scale from the scheme in order to default to the state-standard provisions in the *Subdivision Act 1988 (Subdivision Act)* for subdivisions creating less than 5 additional lots. The sliding scale artificially caps the contribution rate at 2, 3 or 4% for some subdivisions, while section 18 of the Subdivision Act allows a maximum 5% contribution.

Analysis suggests that Council is potentially forgoing in the order of \$2.5M per annum in open space contributions as a result of the ceiling imposed by the sliding scale.

In line with Council's endorsed approach, officers will undertake work to revise the strategic justification for a substantive contribution rate increase in the scheme while Amendment C210dare is progressing. This will lead to a longer-term amendment to ensure that Council's open space needs are adequately supported by developer contributions on a fair and equitable basis.

Officer Recommendation**That Council:**

- (1) Requests under section 8A (2) and (3) of the *Planning and Environment Act 1987* that the Minister for Planning authorise Darebin City Council to prepare Amendment C210dare to the Darebin Planning Scheme;
 - (2) When authorised by the Minister for Planning, exhibit Amendment C210dare for a period of one month and/or in accordance with notice requirements under section 19 of the *Planning and Environment Act 1987*;
 - (3) Seeks community and stakeholder feedback as part of the exhibition period, on the proposed changes to the planning scheme;
 - (4) Authorise the Manager City Futures to make alterations, corrections, and additions, as necessary to, Amendment C210 material as attached at **Appendix A** prior to lodgement of the authorisation request with the Minister for Planning and/or exhibition period.
-

BACKGROUND / KEY INFORMATION

Council has a strong commitment to the provision of high-quality, accessible open space and the protection and enhancement of biodiversity.

Breathing Space: The Darebin Open Space Strategy (2019) identifies areas within Darebin where access to open space is limited in terms of the proximity households and/or because not enough open space is available per person. A priority action to address identified future open space gaps and shortfalls is to increase available funding by increasing the open space contribution rate in the Darebin Planning Scheme.

The *Open Space Contributions Review* (SGS Economics and Planning 2019) was prepared to provide the methodology and strategic justification for the increased levy. The review found that an 18.2% rate is required to provide the future population with an optimum standard of public open space provision, but that a 10% rate is justified taking into consideration development feasibility. *Implementing Breathing Space* was prepared to provide further detail on implementing the actions in *Breathing Space*, including an estimate of the investment required to enhance the quality and quantity of open space. Analysis showed that a 10% levy would fund a proportion of the total estimated costs.

In 2019 Council commenced Planning Scheme Amendment C186dare to increase its open space levy to 10% for all subdivisions, up from the existing sliding scale of 2-5% in the Darebin Planning Scheme. C186dare proceeded through two statutory exhibition periods. However, uncertainties arising from panel outcomes for similar amendments (Monash C148 & C169, and Yarra C286), undermined the prospect of success and Council resolved not to proceed with C186dare.

As part of the decision to discontinue C186dare, Council endorsed a two-step approach to progressively increase the open space levy rate and address the significant strategic risks that have arisen since 2019:

- Commence a new amendment to remove content within the schedule to Clause 53.01 and enable Darebin to require a maximum open space levy contribution rate of 5% (up from the current sliding scale of 2% to 5%).
- Revise the existing strategic work to develop a longer term (20 years+) open space strategy and associated contribution/funding mechanism to support a new, future amendment which may involve further increasing the open space levy.

This current proposed Amendment C210dare implements the initial step, which will increase the contributions Council is able to require by removing the restrictive 'ceiling' imposed by the mandatory 2, 3 and 4% sliding scale and replacing it with the general 'cap' of 5% under the standard provisions of the *Subdivision Act*.

Previous Council Resolution

At its Planning Committee Meeting held on 12 September 2022, Council resolved:

'That Council:

- (1) *Note submissions received through the second round of public exhibition of Amendment C186dare*
- (2) *Resolve not to refer the additional submissions received to the Panel and to inform the Panel of this decision.*
- (3) *Further investigate the projected open space needs within Darebin for a longer period than previously modelled (through to at least 2041).*
- (4) *Notes the need to undertake further work on the implementation plan and costings methodology and to prepare an open space contribution rate based on this revised strategic work.*
- (5) *Refer consideration of funding for this further strategic work to the 23/24 financial year budget.*
- (6) *Immediately commences a new planning scheme amendment to remove content within the schedule to Clause 53.01.*
- (7) *Receives a report at a future Planning Committee meeting to formally request the Minister for Planning to authorise a new planning scheme amendment to remove the content within the schedule to Clause 53.01.*
- (8) *Write to all submitters and thank them for their submissions and advise of Council's proposed next steps.*
- (9) *Write to the Minister for Planning outlining the difficulties faced by Darebin and other councils in preparing an open space amendment, and the lack of any meaningful guidance from Panels or the State as to the methodology for establishing an open space levy and the impact of this on councils in regard to costs and infrastructure planning.'*

ALIGNMENT TO 2041 DAREBIN COMMUNITY VISION

Strategic Direction 2: Prosperous, Liveable and Flourishing

ALIGNMENT TO 2021-25 COUNCIL PLAN

Strategic Direction 2: Prosperous, Liveable and Flourishing

ALIGNMENT TO COUNCIL PLAN STRATEGIC OBJECTIVES

4.5 We will improve the sustainability, accessibility, and design of development on private land in our city

DISCUSSION

Breathing Space outlines the need for improved open space within Darebin to meet the needs of a growing population.

Without creation of new open spaces, there will be a further reduction in the open space per capita rates and an increase in the number of residents who do not have access to open space within 500 metres. Further, the projected increase in residents living in higher density development will mean that occupants have less private open space and rely more heavily on public open spaces for their needs. Improvements are needed to make existing open space work harder and meet the needs of diverse users.

The current open space contribution rate in the Darebin Planning Scheme is not sufficient to provide for the open space needs of the future population. While Amendment C186dare to set a rate of 10% was discontinued, the supporting adopted strategic work clearly signals that the required rate exceeds the current sliding scale of 2-5%.

The open space contributions framework

As part of the subdivision of land under both the *Subdivision Act* and Clause 53.01 of planning schemes, councils may require permit applicants to contribute a percentage of the land for public open space, or pay Council an equivalent value, or a combination of both.

Subdivision Act

Section 18(1) of the *Subdivision Act* provides that Council may require an open space contribution of up to 5% in relation to an application for subdivision, as follows:

'A Council acting as a responsible authority or a referral authority under the Planning and Environment Act 1987 may require the applicant who proposes to create any additional separately disposable parcel of land by a plan of subdivision to—

- (a) Set aside on the plan, for public open space, in a location satisfactory to the Council, a percentage of all of the land in the subdivision intended to be used for residential, industrial or commercial purposes, being a percentage set by the Council not exceeding 5 per cent; or*
- (b) Pay or agree to pay to the Council a percentage of the site value of all of the land in the subdivision intended to be used for residential, industrial or commercial purposes, being a percentage set by the Council not exceeding 5 per cent; or*

- (c) *Do a combination of (a) and (b) so that the total of the percentages required under (a) and (b) does not exceed 5 per cent of the site value of all the land in the subdivision.*

(underlined for emphasis)

The Darebin Planning Scheme

Clause 53.01 of the Darebin Planning Scheme is a state standard planning provision that allows councils to specify an open space contribution rate instead of relying on the standard provisions of the *Subdivision Act* which caps contributions at 5%.

At present, the local schedule of Clause 53.01 of the Darebin Planning Scheme specifies an open space levy of between 2% and 5% based on a sliding scale determined by how many additional lots are created (Table 1). In effect, Council has established a lower ‘ceiling’ on contributions than is in operation under the default provisions of the *Subdivision Act* and therefore is artificially constraining its ability to require contributions commensurate with identified public open space needs.

Type or location of subdivision	Amount of contribution for public open space
The subdivision of land that creates:	
1 additional lot	None specified
2 additional lots	2%
3 additional lots	3%
4 additional lots	4%

Table 1: Existing public open space contribution rates

The sliding scale was introduced with the schedule via Amendment C050 in 2004 and is a legacy of the *Victorian Code for Residential Development – Multi-Dwellings* which existed 10 years prior. It is a long-outdated tool that is no longer fit-for-purpose, particularly in the context of an inner-middle ring municipality like Darebin, where development density is increasing and opportunities for additional open space are more restricted.

Foregone revenue under current settings

Based on analysis of development applications over the past 5 years, Amendment C210dare could result in additional revenue of approximately \$2.5 million per annum, assuming a similar rate of future development.

While there is increasingly a move toward high density apartment applications within Darebin, the vast majority (85%) of all subdivision applications (for more than two lots) over the past five years have been for 5 lots or less. As these developments fall under the artificially restrictive sliding scale, they drive the potential forgone revenue position.

Amendment C210dare

Proposed Amendment C210dare will remove sliding scale content in the schedule to Clause 53.01 as shown in **Appendix A**, resulting in a default to the legislative framework within the *Subdivision Act* for all subdivisions outside of the Preston Market Precinct (excluding 30A Cramer Street Preston, and 102 St Georges Road Preston) creating less than 5 additional lots.

Once in place, Council will apply conditions on planning permits for subdivision which specify a percentage – potentially up to 5% - for an open space contribution for the individual development in accordance with the criteria set out in section 18 of the *Subdivision Act*. This is the same procedure as currently applied to planning applications, except that the percentage specified for 2, 3 and 4 lot subdivisions is less than 5%.

CONSIDERATION OF LOCAL GOVERNMENT ACT (2020) PRINCIPLES

Financial Management

Provision is made within the Strategic Planning operating budget to cover the costs of the amendment, including a small (1-day, single member) planning Panel.

If Council is successful at implementing the amendment, it will increase funds available for improvements and/or new open spaces as outlined above.

As the amendment reverts to discretionary provisions, any contribution rate officers specify is open to challenge through VCAT review. It is possible that Council may see a financial impact associated with resourcing representation at VCAT. This impact will be mitigated by the preparation and routine deployment of a standard response to claims based on existing strategic work which supports contributions greater than 5%.

Community Engagement

Public consultation will be undertaken for the planning scheme amendment, in accordance with Council's Community Engagement policy and the requirements of the *Planning and Environment Act 1987*.

Community members will have the opportunity to review the amendment documents and make submissions on the proposed changes to the Darebin Planning Scheme.

The Act provides an exemption from notifying every single person/household of an amendment if "... *it considers the number of owners and occupiers affected makes it impractical to notify them all individually about the amendment*" (s19). Given this exemption, and that the amendment affects the entire municipality and essentially defaults to the Victorian Government's standard rate of provision, it is not intended to give individual notice to every person/household.

Given the above, public notification and exhibition will include:

- Announcements through council's website and social media platforms
- Drop-in session with Council officers
- Formal notice in a local newspaper and Victorian Government Gazette
- Direct notice to previous submitters to Amendment C186dare
- Direct notice to regular users of the planning system (i.e. land surveyors and similar).

- Notice to current and recent permit applicants for developments that may experience a change in open space contribution.
- Amendment C210dare documents and supporting information will be available online at yoursaydarebin.com.au and DTP websites.
- Council officers will be available to discuss the details of the Amendment via direct phone or email.
- Communications in multiple languages and access to translation services.

A detailed communications and engagement plan will be prepared prior to exhibition of the amendment.

Other Principles for consideration

Overarching Governance Principles and Supporting Principles

- (b) Priority is to be given to achieving the best outcomes for the municipal community, including future generations.
- (d) The municipal community is to be engaged in strategic planning and strategic decision making.
- (g) The ongoing financial viability of the council is to be ensured.

Public Transparency Principles

- (a) Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act.

Strategic Planning Principles

- (b) Strategic planning must address the Community Vision.
- (c) Strategic planning must take into account the resources needed for effective implementation.

Service Performance Principles

- (a) Services should be provided in an equitable manner and be responsive to the diverse needs of the municipal community.

COUNCIL POLICY CONSIDERATIONS

Environmental Sustainability Considerations (including Climate Emergency)

Breathing Space reflects leading practice and actions regarding the climate emergency and how Darebin can influence and offset the effects.

Pursuing a planning scheme amendment to increase the open space levy will provide a funding mechanism that better reflects actual costs for the provision of required open space within Darebin.

The open space levy will help to mitigate the effects of climate change as the city grows.

Equity, Inclusion, Wellbeing and Human Rights Considerations:

Breathing Space considers creating spaces for all of Darebin's residents regardless of culture, gender, sexual orientation, age, socioeconomic condition, dis/ability and includes consideration of equitable access, mobility, amenity, and services across the municipality.

There is a clear link between health and wellbeing and access to quality open space. Pursuing an increased open space levy will fund improvements and acquisitions of open spaces.

Economic Development and Cultural Considerations

The amendment may result in additional costs for development, but not at a level that would be expected to impact viability.

Operational Impacts

Removing the existing mandatory contribution rates and deferring to the guidance of the *Subdivision Act 1988* will impact City Development as determination of an appropriate levy will occur on a case-by-case basis during assessment of subdivision applications. In practice, the impact will be minimal because the existing strategic work supporting a 10% levy is expected to provide justification to a greater contribution in most cases.

As outlined earlier, the amendment would allow for challenge of the specified rate through VCAT review. It is possible that Council may see an increase in the proportion of reviewed planning permits and representation, likely by Council officers, on these VCAT review matters would be an additional resource burden. This impact will be mitigated by the preparation and routine deployment of a standard 'defence' based on existing strategic work justifying contributions greater than 5%.

Legal and Risk Implications

If Amendment C210 is approved, and discretionary contribution provisions are enabled, it is possible that successful challenges to specified contribution rates will occur. However, it is projected that Council would still be financially better off overall.

The proposed amendment is novel in that it seeks to remove mandatory open space provisions from the planning scheme in favour of deferral to discretionary provisions. In most cases, amendments to the schedule to clause 53.01 are to seek an increased mandatory contribution. As a result, there is some uncertainty about the level of strategic justification required to successfully progress the amendment.

IMPLEMENTATION ACTIONS

Timing	C210dare action
October 2023	<ul style="list-style-type: none"> • Council resolves to request authorisation to commence Amendment C210dare • Prepare and submit request for authorisation
November - December 2023 (subject to timing of authorisation)	<ul style="list-style-type: none"> • Exhibit amendment (statutory 4-week period)
February 2024	<ul style="list-style-type: none"> • Consideration of submissions • Referral to independent Planning Panel.
April-May 2024	<ul style="list-style-type: none"> • Planning Panel hearing
July - September 2024	<ul style="list-style-type: none"> • Adoption of the planning scheme amendment. • Submission of amendment to Minister for approval. • Gazettal of amendment and finalisation of amendment.

Attachments

- Darebin C210dare (**Appendix A**) [↓](#) 

DISCLOSURE OF INTEREST

Section 130 of the *Local Government Act 2020* requires members of Council staff and persons engaged under contract to provide advice to Council to disclose any conflicts of interest in a matter to which the advice relates.

The Officer reviewing this report, having made enquiries with relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

Planning and Environment Act 1987

DAREBIN PLANNING SCHEME

AMENDMENT C210

EXPLANATORY REPORT

Who is the planning authority?

This amendment has been prepared by the Darebin City Council, who is the planning authority for this amendment.

The Amendment has been made at the request of Darebin City Council.

Land affected by the Amendment

The Amendment applies to all land in the municipality.

What the amendment does

The Amendment removes content from the schedule to Clause 53.01 to defer to section 18 of the *Subdivision Act 1988* for determining public open space contributions for all subdivision outside of the Preston Market Precinct (excluding 30A Cramer Street Preston, and 102 St Georges Road Preston) that creates less than 5 additional lots.

The Amendment:

- Amends the schedule to Clause 53.01 Public Open Space and Subdivision of the Darebin Planning Scheme to remove the mandatory sliding scale for contributions where 2, 3, and 4 additional lots are created.

Strategic assessment of the Amendment

Why is the Amendment required?

Access to open space is essential to people's health and wellbeing. *Breathing Space: The Darebin Open Space Strategy (2019)*, adopted by Council in September 2019, outlines the need for improved open space in Darebin to meet the needs of a growing population. It identifies areas within Darebin where access to open space is limited in terms of the proximity households and/or because not enough open space is available per person.

Darebin is projected to house an additional 55,000 people by 2041 (a 35%), to bring the total population to 215,000. Without creation of new open spaces, there will be a further reduction in the open space per capita rates and an increase in the number and proportion of residents who do not have access to open space within 500 metres. Further, the projected increase in residents living in higher density development will mean that occupants have less private open space and rely more heavily on public open spaces for their needs. Improvements are needed to make existing open space work harder and meet the needs of diverse users

The current open space contribution rate in the Darebin Planning Scheme is not sufficient to provide for the open space needs of the future population. The schedule to Clause 53.01 specifies an open space contribution of between 2% and 5% based on a sliding scale determined by how many additional lots are created. Two additional lots attract a 2% contribution, three lots 3%, four lots 4% and 5-plus lots a 5% contribution.

The sliding scale of was introduced by Amendment C050 in 2004 and replicates an earlier provision of the *Victorian Code for Residential Development – Multi-Dwellings* which existed 10 years prior. It is an outdated tool that is no longer fit for purpose. In effect the mandatory provision imposes an artificial cap on contributions when compared to the provisions of s18 of the *Subdivision Act 1988*, which allow a maximum contribution requirement of 5%.

Darebin is an established municipality where development is necessarily occurring at increasing densities and it is difficult to acquire enough land to ensure all occupants have good access to public open space. The current sliding scale artificially constrains the ability to require contributions that are more aligned with the public open space need generated by subdivision. Reverting to s18 of the *Subdivision Act 1988*, while reinstating discretionary provisions, provides a better mechanism to secure developer contributions on a fair and equitable basis and better meet community open space requirements.

The funds made available from the open space contributions will be used to invest directly back into open spaces to improve the quality of existing spaces and to acquire more open space to grow the network.

How does the Amendment implement the objectives of planning in Victoria?

The amendment implements the objectives of planning in Victoria contained in section 4(1) in the following ways:

- To provide for the fair, orderly, economic and sustainable use and development of land;
- To provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
- To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.

The amendment helps to implement these objectives by:

- Providing a fair and equitable method of collecting contributions for open space.
- Providing public open space to meet the needs of the present and future population.
- Providing for the protection of natural and man-made resources by increasing the funding method to support improvements to public open spaces.

How does the Amendment address any environmental, social and economic effects?

Environmental Effects

The amendment proposes a change to the funding mechanism to contribute to improving existing and acquiring new open spaces which will be conserved to support a cooler City, increased biodiversity and nature habitat corridors.

Social Effects

The amendment will provide a strong benefit for the community as there is a clear link between health and wellbeing and access to quality open space. The open space contributions will contribute to funding improvements for open spaces that cater for all of Darebin's residents regardless of culture, gender, sexual orientation, age, socioeconomic condition and disability.

Economic Effects

The amendment will result in more financial resources to fund new open spaces and improve existing open space. The amendment will provide an equitable collection of contributions from subdivisions across the municipality. The flat rate levy will provide greater certainty to developers and a more equitable means of distributing costs.

Does the Amendment address relevant bushfire risk?

The changes proposed in the amendment will not result in any increase to the risk to life as a priority, property, community infrastructure and the natural environment from bushfire.

Does the Amendment comply with the requirements of any Minister's Direction applicable to the amendment?

The amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes (section 7(5) of the Act).

In accordance with Section 12 (2) (a) of the Planning and Environment Act, The Minister's Directions relevant to the Amendment are:

Ministerial Direction No. 9 – Metropolitan Planning Strategy

The Amendment is consistent with the following aspects of Ministerial Direction No. 9 Metropolitan Planning Strategy, *Plan Melbourne 2017-2050*:

- Direction 5.1 – Create a city of 20-minute neighbourhoods. A 20 minute neighbourhood must offer high-quality public realm and open space.
- Direction 5.4 – Deliver local parks and green neighbourhoods in collaboration with communities.
 - o 5.4.1 – Develop a network of accessible, high-quality, local open spaces.
- Direction 6.4 – make Melbourne cooler and greener.
 - o 6.4.1 – support a cooler Melbourne by greening urban areas, buildings, transport corridors and open spaces to create an urban forest.
 - o 6.4.2 – Strengthen the integrated metropolitan open space network.
- Direction 6.5 – protect and restore natural habitats
 - o 6.5.1 – Create a network of green spaces that support biodiversity conservation and opportunities to connect with nature.

Ministerial Direction No. 11 – Strategic Assessment of Amendments

The requirements of Ministerial Direction No 11 are addressed in this Explanatory Report.

Ministerial No. 15 – The planning scheme amendment process

The requirements of Ministerial Direction No 15 are addressed through complying with the specified planning scheme amendment process and associated timeframes.

How does the Amendment support or implement the State Planning Policy Framework and any adopted State policy?

The amendment supports the following provisions of the Planning Policy Framework:

- Clause 11- *Settlement* 'Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure'.

The amendment supports this clause by requiring all new subdivisions to contribute to the future open space needs of the municipality.

- Clause 12 – *Environmental and Landscape Values*. The objective at clause 12.05-2S *Landscapes* is 'to protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments'.

The amendment supports this clause by improving valued open spaces in the municipality.

- Clause 15- *Built Environment and Heritage*. The objective at clause 15.01-3S *subdivision design* is 'to ensure the designs of subdivision achieves attractive, safe accessible, diverse and sustainable neighbourhoods'.

The amendment supports this clause by providing the funding to create a network of open spaces and by protecting and enhancing native habitat.

- Clause 19- *Infrastructure*. The objective at clause 19.02-6S *Open space* is 'to establish, manage and improve a diverse and integrated network of public open space that meets the

needs of the community'. The objective at clause 19.02-6R *Open space – Metropolitan Melbourne* is to strengthen the integrated metropolitan open space network'.

The amendment supports this clause by providing for funding to improve and acquire new open spaces that meet the needs of the community.

How does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?

The Amendment supports the following clauses of the Local Planning Policy:

Clause 21.02-2 Natural Environment – the amendment is consistent with objectives to protect, maintain and enhance Darebin's natural environment.

Clause 21.02-5 Open Space – the amendment is consistent with the objective to provide a safe, accessible and high quality open space network that is equitably distributed across the municipality.

Smart Planning

The Darebin Planning Scheme is scheduled for translation into the new planning scheme format later in 2023. As part of this translation, the above clauses in the Municipal Strategic Statement will be redrafted and/or relocated within the Planning Policy Framework.

Does the Amendment make proper use of the Victoria Planning Provisions?

The Amendment makes changes to the schedule to clause 53.01 that will facilitate a more equitable open space contributions regime which responds more appropriately to the need generated by subdivisions.

How does the Amendment address the views of any relevant agency?

The exhibition of the Amendment will provide a formal opportunity for all relevant agencies to comment on the Amendment. The Amendment does not create any new referral agencies or referral requirements.

Does the Amendment address relevant requirements of the Transport Integration Act 2010?

The requirements of the Transport Integration Act 2010 are not considered to be relevant to this Amendment.

Resource and administrative costs

What impact will the new planning provisions have on the resource and administrative costs of the responsible authority?

The amendment may have a small impact on the legal and administrative costs of the responsible authority. Removing the existing mandatory contribution rates and deferring to the guidance of the *Subdivision Act 1988* requires that a determination of an appropriate levy will occur on a case-by-case basis during assessment of subdivision applications. Contributions required through permit conditions may be challenged through VCAT and a response to appeal will need to be resourced should this occur.

Where you may inspect this Amendment

The Amendment is available for public inspection, free of charge, during office hours at the following places:

- City of Darebin (Planning Counter), Level 1, 274 Gower Street, Preston

The Amendment can be viewed online at www.yoursaydarebin.com.au

The Amendment can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at www.delwp.vic.gov.au/public-inspection.

Submissions

Any person who may be affected by the Amendment may make a submission to the planning authority. Submissions about the Amendment [and/or planning permit] must be received by [submissions due date to be inserted at time of exhibition].

A submission must be sent to:

Coordinator Strategic Planning
Darebin City Council
PO Box 91
Preston Victoria 3072

or via email to: planningservices@darebin.vic.gov.au

Panel hearing dates

In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

- directions hearing: [pre-set directions hearing date to be inserted when confirmed prior to exhibition]
- panel hearing: [pre-set panel hearing date to be inserted when confirmed prior to exhibition]

|

*Planning and Environment Act 1987***DAREBIN PLANNING SCHEME****AMENDMENT C210dare****INSTRUCTION SHEET**

The planning authority for this amendment is the Darebin City Council

The Darebin Planning Scheme is amended as follows:

Planning Scheme Ordinance

The Planning Scheme Ordinance is amended as follows:

1. In **Particular Provisions** – Clause 53.01, replace the Schedule with a new Schedule in the form of the attached document.

End of document

DAREBIN PLANNING SCHEME

31/07/2018
VC148

SCHEDULE TO CLAUSE 53.01 PUBLIC OPEN SPACE CONTRIBUTION AND SUBDIVISION

1.0 Subdivision and public open space contribution

07/09/2023 - / - / - -
C182 dare Proposed C210 dare

Type or location of subdivision	Amount of contribution for public open space
The subdivision of land that creates:	
1 additional lot	None specified
2 additional lots	2%
3 additional lots	3%
4 additional lots	4%
The subdivision of land that creates 5 or more additional lots	5%
Preston Market Precinct (excluding 30A Cramer Street Preston, and 102 St Georges Road Preston)	10%
30A Cramer Street, Preston and 102 St Georges Road, Preston	None specified

6. OTHER BUSINESS

6.1 APPLICATIONS DETERMINED BY VCAT - REPORT FOR PLANNING COMMITTEE

EXECUTIVE SUMMARY

The General Planning Information attached at **Appendix A** contains:

- A summary of decisions upheld by VCAT by financial year 2023-2024, to date at Table 1; and
- A summary of decisions issued since last reported to Council (financial year 2023-2024) at Table 2.

Officer Recommendation

That the General Planning Information attached as **Appendix A**, be noted.

Attachments

- Applications Determined by VCAT - Report for Planning Committee - 9 October 2023 (**Appendix A**) [↓](#) 

DISCLOSURE OF INTEREST

Section 130 of the *Local Government Act 2020* requires members of Council staff and persons engaged under contract to provide advice to Council to disclose any conflicts of interest in a matter to which the advice relates.

The Officer reviewing this report, having made enquiries with relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

PLANNING COMMITTEE MEETING

9 October 2023

TABLE 1: SUMMARY OF DECISIONS UPHELD BY FINANCIAL YEAR TO DATE - SEPTEMBER 2023

	Number of VCAT Decisions	Percentage of decisions upheld
Council decisions	1	0 (0/1)
Delegated decisions	5	100% (5/5)
All decisions	6	83% (5/6)

Comment on performance and trends

This financial year to date (at the time of reporting) there have been six VCAT decisions. The Statutory Planning Unit aims to continue the positive trend in Tribunal results that was achieved in the 2022 – 2023 financial year whereby 92% of decisions were upheld by VCAT. This is reflected in current results, which demonstrate 83% of decisions have been upheld this year thus far.

Notes on Table 1

Table 1 summarises VCAT decision types and outcomes required to be reported to the Local Government Performance Reporting Framework (LGPRF).

LGPRF reporting for 2023-24 includes mediated outcomes as a decision upheld. Decisions upheld are all decisions where the Tribunal has 'Not Set Aside' Council's decision and includes decisions that are upheld, varied, affirmed and resolved with the consent of all parties.

Some less common VCAT application types are also not reported to LGPRF (for instance applications to cancel a permit, obtain a declaration and enforcement proceedings). This financial year to date, there have been no decisions that are not captured in the above table.

Council decisions are decisions made by the Planning Committee. Delegated decisions are decisions made under Council's delegation instruments by Planning Officers in the Statutory Planning Unit.

PLANNING COMMITTEE MEETING

9 October 2023

TABLE 2: SUMMARY OF VCAT DECISIONS ISSUED SINCE LAST REPORT TO COUNCIL (COMMENCING FINANCIAL YEAR 2023-2024)

Council & VCAT references	Address & ward	Proposal	Council position	Council or Delegate decision?	VCAT application type*	Hearing type**	VCAT decision	Was Darebin's position upheld?
D/400/2019/A P440/2023	35 O'Connor Street Reservoir North West	Car parking waiver	Refuse	Delegate	S77	Hearing	No permit issued	Yes
<p>Discussion The Tribunal supported Council's refusal of a car parking waiver, agreeing that the site was not highly accessible and that car ownership rates may lead to adverse amenity impacts to the broader street network. It was considered inequitable to allow the development to absorb an unreasonable amount of on-street car parking spaces as a response to inadequate car parking being provided on the land.</p>								
Council & VCAT references	Address & ward	Proposal	Council position	Council or Delegate decision?	VCAT application type*	Hearing type**	VCAT decision	Was Darebin's position upheld?
D/846/2021 P847/2023	1 Gregory Grove PRESTON Central	Construct one additional dwelling	Support (NOD issued)	Delegate	S80	No hearing	Permit granted (with conditions)	Yes
<p>Discussion A mediated position was reached before the hearing where the applicant agreed to incorporate changes to address Council concerns by reducing the width of a vehicle crossing and constructing a landscape buffer.</p>								

PLANNING COMMITTEE MEETING

9 October 2023

Council & VCAT references	Address & ward	Proposal	Council position	Council or Delegate decision?	VCAT application type*	Hearing type**	VCAT decision	Was Darebin's position upheld?
D/465/2015 P467/2023	36-46 High Street PRESTON South Central	Amendment to a 12-storey mixed use building and a reduction in car parking	Support, subject to conditions	Council	S87A	No hearing	Varied	Yes
<p>Discussion A mediated position was agreed to before the hearing where the applicant agreed to incorporate changes as requested by Council, in order to ensure appropriate outcomes in terms of car parking, sustainable transport and Environmentally Sustainable Design.</p>								

Notes on Table 2

*VCAT appeal types explained:

S77 – Section 77 Application for review of Council’s refusal to grant a planning permit, by the applicant

S78 – Section 78 Application for review of notice or information requirements requested by Council, by the applicant

S79 – Section 79 Application for review of Council’s failure to determine the application within the 60 day statutory timeframe, by the applicant

S80 – Section 80 Application for review of Council’s conditions on a planning permit, by the applicant

S81 – Section 81 Application for review of Council’s decision to not extend a planning permit, by the applicant

S82 – Section 82 Application for review of Council’s decision to support a proposal, by objectors

S87A – Section 87A Application to amend a permit issued at direction of Tribunal

**VCAT hearing types explained:

PLANNING COMMITTEE MEETING

9 October 2023

Practice Day Hearing – Administration hearing - VCAT gives direction on how the case will proceed, sets dates, discusses preliminary legal issues, etc

Compulsory Conference – Prior to the full hearing, parties confidentially discuss ways to resolve the case with the help of a VCAT member, may result in a mediated outcome being reached

Hearing – VCAT hearing where parties present their case and the decision is made after consideration by VCAT

None (decision made on the papers) – decision reached without the need for a hearing, usually where parties reached a mediated outcome outside of the Tribunal or where an appeal is withdrawn or struck out for administrative reasons

Major Case – Major cases are heard sooner and can reach a resolution quicker than other planning cases. Most cases are eligible to be heard as a major case, but one of the parties must pay higher fees. Applications for review under Sections 77, 79, 80 and 82 are all eligible

Short Case – These are cases which are not complex and can be handled in a short amount of time, typically involving limited issue/s and less parties. These cases are heard sooner and decisions are typically made orally at the hearing

7. CONSIDERATION OF REPORTS CONSIDERED CONFIDENTIAL

Nil


8. CLOSE OF MEETING

**CITY OF
DAREBIN**

274 Gower Street, Preston
PO Box 91, Preston, Vic 3072
T 8470 8888 F 8470 8877
E mailbox@darebin.vic.gov.au
darebin.vic.gov.au

 **National Relay Service**
relayservice.gov.au

If you are deaf, or have a hearing or speech impairment, contact us through the National Relay Service.

 **Speak your language**
T 8470 8470

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