

C210dare BACKGROUND REPORT

1 SUMMARY

Darebin City Council is committed to providing sufficient, high quality, accessible open space. Council's adopted open space strategy, *Breathing Space: The Darebin Open Space Strategy (Breathing Space)*, outlines the open space need in Darebin and sets out strategies and actions for improving and expanding the public open space network in the City of Darebin over the 10 years to 2028.

At present, however, there is a large gap between the cost of delivering the open space improvements that the community needs now and into the future and the revenue Council receives through open space contributions. Currently the Darebin Planning Scheme requires open space contributions according to a sliding scale of 2-5 per cent, based on the number of lots being created by a given subdivision: 2 per cent for 2 additional lots, 3 per cent for 3 lots, 4 per cent for four lots and 5 per cent for 5 or more additional lots. As a result, for subdivisions creating less than 5 additional lots the sliding scale caps contributions at a lesser rate than the 5 per cent enabled through the state standard provisions of the *Subdivision Act 1988 (Subdivision Act)*.

Proposed Amendment C210dare will remove the restrictive sliding scale which applies to subdivisions creating 2-4 additional lots and revert to the default provisions under s18 of the *Subdivision Act*, enabling up to a 5 per cent open space contribution for subdivisions in this category.

C210dare is an initial step to enable open space revenue which more closely matches the need for improved and expanded open space in Darebin. It is Council's intention that a future amendment to set a revised mandatory rate in the Darebin Planning Scheme will supersede Amendment C210dare.

The rationale set out in this report provides the strategic justification for the amendment and relates to the following key objectives for C210dare:

- To avoid future forgone revenue resulting from the sliding scale and enable open space contributions more in line with open space need.
- To achieve community benefit by increasing funds available to service the growing open space need in Darebin.
- To decommission an outdated sliding scale contribution mechanism that is no longer fit for purpose.

2 BACKGROUND

2.1 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.

2.1.1 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.*

2.1.2 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 per cent.

At present, the local schedule to Clause 53.01 of the Darebin Planning Scheme specifies an open space contribution of between 2 and 5 per cent, for subdivisions creating more than 1 additional lot, except for land within the Preston Market Precinct (refer Table 1). In effect, Council has established a lower ‘cap’ on contributions than the default provisions of the *Subdivision Act*.

Table 1 Existing public open space contribution rates

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%
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
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2.1.3 Darebin Open Space Planning

Council has a strong commitment to providing high-quality, accessible open space and protecting and enhancing biodiversity. This commitment is reflected in *Council Plan 2021-2025* with its aim to implement reforms to open space contribution requirements in the Darebin Planning Scheme.

Considerable progress has been made towards this goal through Council endorsing *Breathing Space* which sets out the overarching framework and strategic direction for public open space in the City of Darebin for the 10 years to 2028. *Breathing Space* includes an action to amend the Darebin Planning Scheme to increase the open space contribution rate in order that development fairly and equitably contributes to provision of open space that meets the needs of the current and future population.

Implementing Breathing Space and *Enhancing Breathing Space* were prepared to prioritise and cost actions identified in *Breathing Space*. These documents were endorsed by Council in August 2021, and provide clear evidence that the existing planning scheme settings are insufficient to generate the funding required to meet open space needs. This is addressed in section 3.1.

2.1.4 Amendment C210dare: an incremental approach to increasing open space contributions

On 12 September 2022, Council endorsed a two-step approach to progressively increase the open space contribution rate over time:

- Step 1 – Commence a new amendment to change the Schedule to Clause 53.01, enabling Darebin to require up to a 5 per cent contribution (up from the current restrictive sliding scale).
- Step 2 – 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.

Proposed Amendment C210dare implements the first of these steps by removing the restrictive sliding scale for subdivisions creating 2-4 additional lots and instead deferring to the provisions of the *Subdivision Act* when requiring an open space contribution for applications outside of the Preston Market Precinct (excluding 30A Cramer Street Preston, and 102 St Georges Road Preston).

Under the new setting Council will apply planning permit conditions for subdivision which specify up to 5 per cent for an open space contribution in accordance with the criteria set out in section 18(1A) of the *Subdivision Act*.

The Amendment does not propose to change the mandatory 5 per cent contribution requirement for subdivision that creates 5 or more additional lots.

C210dare is a step to enable increased open space revenue while Council prepares a future amendment to set a new rate in the Darebin Planning Scheme which will supersede amendment C210dare.

3 RATIONALE

The following sections outline the rationale underlying the key objectives of C210dare:

- To enable open space contributions more in line with open space need, as demonstrated in *Breathing Space* and supporting implementation documents.
- To avoid future forgone revenue resulting from the sliding scale.
- To achieve community benefit by increasing funds available to service the growing open space need in Darebin.
- To decommission an outdated contribution mechanism in the sliding scale.

3.1 The need

Breathing Space is an adopted policy that documents 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. *Breathing Space* sets out the following Strategies and Actions to safeguard equitable access to quality open space into the future:

Strategies

S1.3 Increase funding for new and improved open space needs generated by population growth via an increased open space contribution rate delivered through the Planning Scheme.

Actions

A1.2 Implement a higher open space contribution rate as a schedule to Clause 53.01 in the Darebin Planning Scheme, across all land uses.

Implementing Breathing Space and *Enhancing Breathing Space* quantify and guide the open space investment required to deliver *Breathing Space* actions.

Implementing Breathing Space indicates that open space improvements, expansions and initiatives required to deliver *Breathing Space* objectives would cost around \$199 million, of which \$169 million is eligible for open space contributions. Costs include approximately \$92 million for the delivery of new open space, \$66 million in upgrades to existing open space and \$40 million in other open space improvements.

For the last 5 years (2018/19-2022/23), under the existing contributions settings, Council has collected around \$5 million dollars per year in open space contributions. Assuming the same rate of future development, the projected collection to the Breathing Space horizon (2027-2028) is around \$25million dollars, demonstrating the large gap (\$175 million) between open space investment need and contributions revenue under current settings.

Since *Breathing Space* was prepared, pressure on open space continues to increase, with housing consolidation and community expectations, while Council continues to be constrained by the existing restrictive and outdated sliding scale contributions provision in the Darebin Planning Scheme.

By reverting to the discretionary provisions of the *Subdivision Act*, Amendment C210dare enables Council to capture increased contributions (approximately \$2.5 million dollars per annum), according to need, while undertaking a further strategic review to support a future amendment to mandate an appropriate contribution rate in the Darebin Planning Scheme.

3.1.1 Retention of the 5 per cent rate for 5 or more lots

Proposed Amendment C210dare does not remove the requirement in the Schedule to Clause 53.01 for a 5 percent contribution for subdivisions creating 5 or more additional lots.

Retaining the existing mandatory requirement maintains certainty for Council on contributions for this category of development, rather than introducing the risk of reduced contributions through reversion to the discretionary provisions under the *Subdivision Act*. In the context of the shortfall in current open space revenue when compared to Council's identified future open space need, the potential for lesser funds to be collected would disadvantage the broader community and future population.

Development that incurs a 5 per cent contribution under the current scheme would be no worse off as a consequence of Amendment C210dare. Retention of the 5 per cent rate provides continuity and certainty regarding the financial obligations for larger developments to contribute to public open space improvements. Further, in the context of broader metropolitan Melbourne a 5 per cent levy is at the lower end of specified contribution rates. As shown in Table 2, council mandatory contribution rates typically range from around 5 to 8 percent.

Table 2 Open space contributions across planning schemes

Council	Rate
Banyule	5% (two or more additional lots) for all land.
Bayside	5% for all land.
Boroondara	Open space contribution guidance written into 19.02L which specifies a 5% contribution for all non-exempt land.
Brimbank	5% for all residential and commercial land.
Frankston	5% for all land.
Glen Eira	8.3% for all land (with exceptions).

Hobsons Bay	5-7.1% for specific precincts only. Defers to the Subdivision Act for all other land.
Kingston	8% in nominated Activity Centres. 5% for all other land.
Knox	Minimum 5% for lots greater than 725sqm. Minimum 8.5% for lots less than 725sqm.
Maribyrnong	Minimum 5.7% for subdivisions greater than 10 lots. 5.7% for all other land.
Manningham	8% for land in ACZ1. 5% for all other land.
Maroondah	5% for all land.
Melbourne	8% - Fishermans Bend. 5-7.06% for other precincts.
Merri-bek	Varying precinct contribution rates ranging from 2.5-6.8%.
Monash	10% in CDZ2. 7.61% for all other land.
Moonee Valley	Minimum 5% for subdivisions greater than 10 lots. 5% for all other land.
Port Phillip	8% - Fishermans Bend. 5% for all land.
Stonnington	Separate rates for east and west of the municipality. 5% (east) and 8% (west) based on need and anticipated demand.
Whitehorse	Minimum 4% for nominated strategic sites. 4% for all other land.
Yarra	Proposed Amendment C286dare proposes 8.67%. 4.5% for all land.

Lastly, maintaining the existing 5 per cent mandatory contribution avoids potential impact of increased administrative costs for Council resulting from:

- increased administrative burden in managing a discretionary rate for this development category.
- increased likelihood that conditions requiring contributions may be challenged through reviews by tribunal (VCAT).

3.2 Sliding scale is an outdated provision

The sliding scale was introduced with the schedule via Amendment C050 in 2004 and is considered to be a legacy¹ 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 such as Darebin, where development density is increasing and opportunities for additional open space are more restricted.

An analysis of open space planning scheme provisions across Melbourne shows that 5 per cent is akin to a 'base rate' in the metropolitan context, with rates below 5 per cent rate a

¹ [2011] VCAT 618 (Stupak).

rare exception – see Table 2. This provides further evidence that the 2-4 per cent sliding scale is outdated and not fit-for-purpose. As can be seen in Table 2, a sliding scale of this nature is not featured across other Victorian planning schemes.

3.3 Potential for community benefit uplift

As outlined above, the sliding scale currently in the Darebin Planning Scheme to determine open space contributions imposes a cap on contributions when compared with the provisions of the *Subdivision Act*, which enables up to 5 per cent for any given subdivision. This setting artificially constrains Council's ability to require contributions more aligned with identified public open space needs. As more housing is accommodated in established areas, and the cost of infrastructure upgrades and land acquisitions continue to escalate, it is the future community that is potentially impacted by this imbalance.

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. This is funding that enables council to reduce the existing shortfall for open space whilst an amendment to implement a revised rate is prepared and implemented, translating directly to community benefit.

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 are key to the potential revenue and community benefit upside of Amendment C210dare.