

## Strategic justification for cash-in-lieu of on-site parking provision



### Final report

Moonee Valley City Council  
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# 1 INTRODUCTION

## 1.1 Introduction

Moonee Valley City Council is in the process of developing a Parking Plan for the Moonee Valley Activity Centre.

The Parking Plan will include a cash-in-lieu of parking provision scheme for commercial development. Based on advice from AECOM, a cash-in-lieu amount of \$13,500 to \$19,000 per car space is might be applied. This amount is based on consideration of the cost of on-site provision, the likely higher rate of utilisation of off-site parking spaces, and the extent to which off-site parking might serve new vs existing businesses.

In the case of residential development, Council is exploring the potential to implement a further cash-in-lieu scheme where the funds in question go towards the provision of sustainable and active transport initiatives, including improved pedestrian links and a better bicycle network to service the Activity Centre and surrounds.

Advice from Maddocks Lawyers (dated 1 June 2015) suggests there is a legal basis for pursuing this approach. However, it must be demonstrated that a 'cash for sustainable transport in lieu of car parking' arrangement is warranted and appropriate in planning terms.

The requirement for proponents of development to provide car parking on-site – or the option provide cash-in-lieu of parking – is a form of 'inclusionary obligation': a specific type of development contribution that serves a particular planning purpose and has corresponding apportionment principles.<sup>1</sup> As such the strategic justification for cash-in-lieu of parking payments rests on:

1. Demonstrating that the Inclusionary Provisions themselves are reasonable and directed at a proper planning objective,
2. Demonstrating that the cash-in-lieu scheme will preserve, or augment, the net community benefit that would have been generated had development complied with the relevant development standards or Inclusionary Provisions, and
3. Demonstrating that the cash-in-lieu funds will be directed to a planning purpose appropriately related to the objectives underpinning the Inclusionary Provisions.

The strategic justification outlined in this paper does not therefore utilise the need/nexus justification approach. We note that Practice Note 57 (The Car Parking Overlay) suggest that "Any requirements for a financial contribution needs to be justified and *should* address the core principles of need, nexus, accountability and equity" (p.3 emphasis added). It is our view that the need/nexus justification is an appropriate test for 'user pays' development contributions but that it is not appropriate for 'inclusionary obligations'. Rather, we believe the appropriate test in this case is a net community benefit test that takes into account the specific circumstances of a 'cash for sustainable transport in lieu of parking' scheme in the Moonee Ponds Activity Centre.

<sup>1</sup> The distinction between the different types of development contributions is outlined in more detail in Chapter 2.

## 1.2 Report structure

The purpose of this report is to address items 1 and 2 listed in the above, that is, to appraise whether a cash for sustainable transport in lieu of parking scheme *is strategically justified in principle*, and whether there is sufficient evidence to conclude that it would result in a net community benefit and would therefore *be justified within the specific context of the Moonee Ponds Activity Centre*. These issues are addressed in chapters two and three respectively.

With respect to item 3, we understand that Council is in the process of developing a *Moonee Ponds Activity Centre Active Transport Implementation Plan*. This plan will draw on the content of the existing Activity Centre Structure Plan, the Walking and Cycling Strategy, as well as other capital works projects intended to support sustainable and active transport. A preliminary list of potential projects is provided below:

- Streetscape Improvements (i.e. widening footpaths, street furniture and improved pedestrian amenity)
- Laneway Improvements (i.e. improved pedestrian amenity/connectivity)
- Bus Stop Upgrades (i.e. seating, rubbish bins, other amenities where not already provided)
- Dean Street Underpass project (a specific project included in Walking and Cycling Strategy that formalises access to Moonee Ponds Creek shared path)
- Maintenance of Moonee Ponds Creek Path
- Shared Paths (along Dean and Wilson Streets)
- Wayfinding Signage
- On-road bicycle lanes (along Mt Road and potentially Ascot Vale Road)
- Intersection/roundabout improvements (this includes the Junction intersection)

Chapter 4 briefly touches on certain aspects of implantation, namely; the logic of the justification of waivers, application and monitoring, and the determining the amount of the cash-in-lieu contribution.

## 2 IN-PRINCIPLE STRATEGIC JUSTIFICATION

This chapter provides an overview of the strategic justification (2.1) and then sets out a series of propositions that elaborate on this strategic justification in more detail (2.2).

### 2.1 Overview of strategic justification

Our view is that, legal arguments aside, Council's proposed sustainable transport cash-in-lieu scheme makes sense from a planning principles point of view. We summarise this as follows:

1. In town planning, the obligation on proponents to cater for the parking demand generated by their projects is appropriately considered as an *Inclusionary Provision*.
2. Inclusionary Provisions, including cash-in-lieu payments, have different tests of reasonableness from those that apply to other forms of development contribution.
3. We assume that Council has adopted fair and reasonable car parking standards for Moonee Ponds to ensure that both residential and non-residential development proceeds without undue nuisance effects on on-street parking supply and vehicle circulation systems.
4. If a development were to proceed without incorporating the required number of car spaces, it can be assumed that the area in question will not function to the required standard; that is residents/visitors will suffer a loss of amenity or utility.
5. If developments which do not incorporate the required number of car spaces are to be granted approval to proceed, the lost utility must be replaced or compensated in some way.
6. This could occur through the proponent paying for the supply of an equivalent number of the required car spaces off-site (as is proposed for commercial development). Alternatively, the proponent may provide related facilities or services which ensure that the precinct enjoys the same or better levels of amenity and functionality in net terms.
7. It is therefore reasonable for a Council to facilitate this alternative solution by offering a cash-in-lieu option where funds collected are deployed on sustainable transport infrastructure.
8. The cost to proponents of this alternative solution could legitimately be less than the cost of supplying replacement off-site car parking, because active and sustainable transport cash-in-lieu contributions may deliver significant collateral benefits in the areas of health, environment and public domain amenity.

## 2.2 Detailed strategic justification

The following five propositions are discussed in turn:

- On-site parking requirements are an Inclusionary Provision
- Particular tests of reasonableness apply to Inclusionary Provisions
- Council has adopted fair and reasonable car parking standards for the Moonee Ponds Activity Centre
- Proponents that do not provide required parking spaces on site must supply them off site or deliver related facilities and services of an equivalent value
- Council has devised a cash-in-lieu option for improving active and sustainable transport options for Moonee Ponds.

### Parking requirements as an Inclusionary Provision

Parking requirements represent a 'development standard'. Proponents will be expected to incorporate these facilities in their projects if these developments are to be deemed consistent with the orderly and proper planning of an area.

In this sense, parking provisions are no different from any other development standard, including, for example, height limits, prescribed setbacks and sustainability requirements (e.g. incorporation of stormwater tanks or solar panels).

Having said this parking standards fall within a subset of inclusionary provisions where there may be the opportunity to satisfy the specific standard off site through a cash-in-lieu payment. Open space provision requirements and some drainage management requirements also fall into this category.

Where they are made, these cash-in-lieu payments represent a form of 'development contribution'. It is important not to conflate these cash-in-lieu payments with other forms of development contribution, namely, pro-rata 'user pays' contributions for shared off site infrastructure (collected via Development Contribution Plans), impact mitigation levies (collected via case by case permit conditions) and value capture exactions (like the Growth Areas Infrastructure Charge). The figure below describes the key features of, and difference between, these four types (or 'frames') of development contribution. The Inclusionary Requirements frame is highlighted.

TABLE 1. CONCEPTUAL FRAMEWORK FOR DEVELOPMENT CONTRIBUTION TYPES

Type	USER PAYS CONTRIBUTIONS FOR OFF-SITE INFRASTRUCTURE	IMPACT MITIGATION LEVIES	VALUE CAPTURE EXTRACTIONS	INCLUSIONARY REQUIREMENTS/ DEVELOPMENT STANDARDS/ CASH-IN-LIEU
Purpose	Ensure the efficient supply of shared infrastructure.	Address externalities generated by new development that are either unforeseen or specific to the unique characteristics of the site in question.	Capture part of the 'unearned' value uplift.	To ensure successive developments are efficient and sustainable.
Apportionment principle	Proponents pay according to share of usage of planned infrastructure.	Proponents responsible for 100% of the cost of making good unanticipated off-site effects, including infrastructure impacts.	Proponents are required to share part of the uplift in land value occasioned by rezoning or granting of a development approval.	Proponents must meet certain development standards on site or pay for these to be satisfied off site.
Example	DCPs for various infrastructure items, including open space.	Make good conditions on development approvals.	The Growth Areas Infrastructure Charge (GAIC).	Parking requirements and cash-in-lieu schemes. Open space requirements and cash-in-lieu schemes.

Source: SGS Economics & Planning Pty Ltd

#### Particular tests of reasonableness apply to Inclusionary Provisions

The tests of reasonableness regarding when cash-in-lieu payments may be taken from proponents who wish to satisfy inclusionary provisions off-site, and how these payments are deployed, are different from and, in our view, ought not be bound by the tests that apply to the other categories of contribution and, in particular, DCP charges.

DCP charges are premised on the user pays principle. Successive developments are 'charged' for planned infrastructure projects in their area according to their projected share of usage. Council is bound to supply the infrastructure projects in question within the life of the DCP.

Infrastructure projects nominated for funding via a DCP must be strategically justified according to the need/nexus principle. That is, it must be demonstrated that the infrastructure projects are truly required to support the development of an area, that they are designed to cost effective standards, and that they will actually be used by the developments being charged.

We are of the view that this type of need/nexus justification is not applicable for cash-in-lieu payments for the fulfilment of Inclusionary Provisions (despite the advice contained with Practice Note 57 to the contrary). Rather, the strategic justification for cash-in-lieu payments rests on:

- Demonstrating that the Inclusionary Provisions themselves are reasonable and directed at a proper planning objective,
- Demonstrating that the cash-in-lieu scheme will preserve, or augment, the net community benefit that would have been generated had development complied with the relevant development standards or Inclusionary Provisions, and
- Demonstrating that the cash-in-lieu payments will be directed to a planning purpose appropriately related to the objectives underpinning the Inclusionary Provisions.

**Council has adopted fair and reasonable car parking standards for Moonee Ponds**

We have taken as a given that Council has identified minimum acceptable parking ratios for different types of land use in the activity centre, taking into account the availability of public transport, on street parking, household structures and income distribution, car ownership rates, urban design and housing objectives.

Justification of these particular ratios is a matter for Council's engineering/urban design experts.

**Proponents that do not provide required parking spaces on site must supply them off site or deliver related facilities and services of an equivalent value**

Given that the parking standards are fair and reasonable, failure to provide the indicated number of car spaces in any given development project implies a loss of functionality and amenity in the area in question. We call this a loss of 'utility', 'amenity' or 'welfare' in the activity centre precinct. This could manifest in increased local traffic (and wasted time) as cars circulate for available on-street parking and illegal parking impeding access for local residents and visitors.

A cash-in-lieu scheme should ensure that alternative facilities and services are provided so that there is no loss of welfare in net terms. This could mean that an equivalent number of car spaces is supplied elsewhere in the neighbourhood at the expense of the development proponent. Alternatively, the proponent could help pay for other measures that address the same broad planning purpose, but which tackle the welfare loss in different ways. These alternative measures could include facilities and infrastructure which encourage active transport and suppress the demand for car parking in the area.

If these alternative measures generate sufficient utility per \$ invested, the cost to a development proponent could be lower than if they were to deal with the utility loss via a cash-in-lieu payment for replacement car spaces elsewhere.

**Facilitating alternative solutions via a cash-in-lieu scheme is warranted and efficient**

Provided there is no net loss of amenity in the precinct as a result, it makes sense for Council to allow development proponents to discharge their obligations under the parking Inclusionary Provision for via contributions to alternative sustainable transport scheme.

If for no other reason, such a scheme is useful because it offers developers and the buyers/occupiers of their projects more choices.

The key question from a planning point of view is whether adoption of the scheme will actually lead to a net improvement in amenity/welfare/utility compared to the scenario where proponents fully meet their parking requirements on-site or off-site. The next chapter of this report addresses this issue.



## 3 NET COMMUNITY BENEFIT TEST

### 3.1 Requirement for cost benefit analysis

Under the mandate of the VPPs and the Planning and Environment Act more generally, it is incumbent upon Council to demonstrate that the cash for sustainable transport in lieu of parking scheme will generate a 'net community benefit' (ncb).

This ncb test is applied to all proposed regulations in Victoria, including Planning Scheme amendments. In the planning system, ncb is typically scrutinised via the Panel review process, whereas in other fields of government policy a formal regulatory impact statement (RIS) must be prepared for stakeholder review. The principles outlined in the State Government's guidelines for the preparation of RISs are equally applicable to the assessment of whether a ncb is likely to arise from a Planning Scheme amendment.

These principles relate to conventional cost benefit analysis, the key elements of which are:

- Comparing the marginal costs and benefits generated by the proposed changes (in this case, introduction of a cash for sustainable transport in lieu of parking scheme) versus a business as usual scenario (in this case, full compliance with on-site parking provision or cash in lieu for off-site provision)
- Considering both traded effects (e.g. costs of parking and sustainable transport infrastructure construction) and externalities (e.g. reduced emissions, a more pleasant pedestrian environment), and
- Expressing future costs and benefits in present value terms by applying an appropriate discount rate for public policy programs and urban infrastructure (typically around 6% real).

### 3.2 Overview of costs and benefits of the sustainable transport cash-in-lieu scheme

The costs and benefits versus the base case of compliance with the parking provision requirements are summarised in the following table.

TABLE 2. COST AND BENEFITS OF CASH-IN-LIEU OF PARKING SCHEME

Marginal costs (versus full provision of car parking)	Marginal benefits (versus full provision of car parking)
1. Foregone parking utility	1. Saved parking construction costs
2. More VKT in hunting for on-street car spaces	2. More engagement with active transport modes (health benefits)
3. Greater nuisance from illegal parking	3. Improved street amenity for pedestrians
4. Cost of constructing sustainable/active transport infrastructure	4. Reduced VKT due to reduced car ownership
	5. Earlier provision of infill housing (due to lower unit costs)

Source: SGS Economics & Planning Pty Ltd

### 3.3 Scenarios and assumptions

We have conducted a cost benefit analysis of the proposed cash-in-lieu scheme for the Moonee Ponds Activity Centre. The analysis uses data on dwellings capacity for the Moonee Ponds Activity Centre provided by Council and assumes that an additional 160 per annum for the 30 years of the assessment period (a total of 4,800 additional dwellings). This scenario tested in the CAB assumes that 33% of these additional dwellings make a contribution to sustainable transport rather than providing on-site car parking (or equivalent off-site parking). The other principal assumptions in this analysis are set out in the appendix to this report.

### 3.4 Findings

The cost benefit analysis shown in Table 3 indicates that on conservative assumptions, the cash for sustainable transport in lieu of parking scheme of Moonee Ponds is likely to generate a ncb of some \$40 million in present value terms over a 30 year period at a discount rate of 6%. The cash in lieu scheme is estimated to have a benefit cost ratio of better than 2 to 1.

The major benefits generated by the scheme relate to improved health outcomes, with more people engaging in active transport, and reduced vehicle operating costs and externalities.

As the cash for sustainable transport in lieu of parking scheme in Moonee Ponds is appropriate from a planning principles point of view, and as it is most likely to deliver a net community benefit, it is strategically justified within the terms of the VPP and the Planning and Environment Act.

TABLE 3. COST BENEFIT ANALYSIS

	Marginal costs					Marginal benefits						
	1. Foregone parking utility	2a. VKT searching for parking (vehicle operating costs)	2b. VKT searching for parking (greenhouse, etc.)	3. Paying nuisance	4. Cost of constructing and maintaining sustainable transport infrastructure	5. Saved parking construction costs	6a. Health benefits (households with no car)	6b. Health benefits (all other households)	7. Improved street amenity	8a. Reduced vehicle operating costs	8b. Reduced greenhouse gas and other negative externalities	9. Earlier supply of in-fill housing
Year 1	-\$ 1,672,000	-\$ 1,000,000	-\$ 204,490	-\$ 48,371	-\$ 1,000,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298	not quantified	\$ 1,825,837	\$ 261,983	\$ 300,080
Year 2	-\$ 1,672,000	-\$ 1,000,000	-\$ 204,490	-\$ 48,371	-\$ 1,000,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 3	-\$ 1,672,000	-\$ 1,000,000	-\$ 204,490	-\$ 48,371	-\$ 1,000,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 4	-\$ 1,672,000	-\$ 1,000,000	-\$ 204,490	-\$ 48,371	-\$ 1,000,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 5	-\$ 1,672,000	-\$ 1,000,000	-\$ 204,490	-\$ 48,371	-\$ 1,000,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 6	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 7	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 8	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 9	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 10	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 11	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 12	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 13	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 14	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 15	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 16	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 17	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 18	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 19	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 20	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 21	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 22	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 23	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 24	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 25	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 26	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 27	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 28	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 29	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
Year 30	-\$ 1,672,000	-\$ 100,000	-\$ 204,490	-\$ 48,371	-\$ 100,000	\$ 1,489,928	\$ 1,245,582	\$ 378,298		\$ 1,825,837	\$ 261,983	\$ 300,080
NPV	-\$23,014,798	-\$5,167,611	-\$2,814,768	-\$665,813	-\$5,167,611	\$20,508,607	\$17,145,228	\$5,207,214	50	\$25,132,341	\$3,606,149	\$4,130,551
Discount rate	6%											
Total costs	-\$36,830,600											
Total benefits	\$15,717,000											
BCR	2.1											
Total NPV	\$36,869,489											

Source: SGS Economics & Planning Pty Ltd

Source: SGS Economics & Planning Pty Ltd



## 4 IMPLEMENTATION

This final chapter addresses a range of issues with regard to the implementation of the cash for sustainability transport in lieu of parking scheme.

### 4.1 Justification of waivers

Under the current practice of waiving parking requirements associated with a new development these waivers are 'awarded' based on a set of parameters outlined in the scheme regarding availability of public transport, availability of on-street car parking, etc.

The logic applied is this strategic justification is different from this. It is based on the assumption that the parking provision rates set out in 'Column B' already take into account these contextual factors. Therefore, proponents not providing the full amount of parking are impacting negatively on the community and this must be 'made up for' in some way, in this case, cash for sustainable transport infrastructure.

### 4.2 Application and monitoring

The scheme might work in much the same as the current waiver arrangements, except that proponents would not need to make a case for relaxation of parking requirements. Rather, proponents would apply for a discretionary waiver, which, if granted by Council, will require a cash-in-lieu contribution. Each successive application would be considered in the context of the current functioning of the centre in transport and traffic terms. If there is evidence that the functionality of the centre is beginning to suffer because of under-provision of parking, as evidenced in a higher incidence of illegal parking, greater traffic accidents, etc., Council may choose to ease back on the granting of waivers. On the other hand, if the centre continues to function well, with active transport taking over from car use, waivers would continue to be granted.

This approach would result in a 'first in first served' dynamic, but this is not problematic in our view. The marginal allocation process is more likely to lead to the optimal balance between waivers and on-site provision. Council could consider deciding in advance how many waivers might be issued across the centre, based on engineering advice, but this would be arbitrary in our view.

### 4.3 Amount of the cash-in-lieu contribution

The starting point here is that proponents should make up for the foregone utility in the parking which they are no longer providing. This utility is conservatively proxied by the construction cost of alternative off-site car parking – say \$15,000 per car space. However, it is reasonable for Council to provide a discount on this, because proponents will be generating collateral health and amenity benefits.

We would suggest an iterative approach whereby Council adopts an initial discounted figure, say \$7,500 per space, then models the cash flow from this and compares it to the actual cost of the sustainable transport works plus a safety margin. If a surplus is indicated, the amount can be scaled back, if a shortage is indicated, it can be scaled up. Or, more simply, the cost of the sustainable transport works would be spread over the anticipated flow of waiver provisions with result compared to the \$15k per space benchmark.





# APPENDIX

## Evidence and assumptions for CBA

### Research, evidence and assumptions used to estimate costs

1. Foregone parking utility	<p>The average 'parking premium' paid for dwellings with car space in recent developments in Moonee Ponds was assumed to be \$38,000 per space (based on findings of AECOM 2014 p. 19). This figure was used to estimate foregone parking utility.</p> <p>The reduction in number of car spaces per year was calculated to be 44, based on the rate of supply of dwellings (see below) and the assumption that 33% of dwellings will be constructed using the cash-in-lieu system.</p>
2. VKT searching for parking	<p>Research of downtown areas in cities across the world found that for each curbside parking space, cruising to find parking resulted in 30 extra minutes of vehicle travel per day (Shoup 2007).</p> <p>This figure was used to derive a conservative estimate for greater vehicle cruise time as a result of fewer parking spaces in the Moonee Ponds Activity Centre of 5 minutes per parking space per day.</p> <p>Vehicle operating costs were calculated to be \$0.47 per kilometre travelled, based on inflated estimates from Transport for New South Wales (TfNSW 2013: 241).</p> <p>AustRoads (2006) estimates of externality unit costs for passenger vehicles (including noise, air pollution, water pollution, greenhouse, nature and landscape and urban separation) were used to estimate the cost of negative externalities associated with additional cruise time as \$0.054 per VKT (with adjustments for inflation).</p> <p>There are 3,323 existing and proposed parking spaces in the Activity Centre (AECOM 2014) and an average cruising speed of 30km/h was assumed.</p>
3. Nuisance parking	<p>Nuisance parking (the incidence of people parking illegally in the search for a space) was proxied by estimates of parking fines in the Moonee Ponds Activity Centre.</p> <p>As per Council records, in 2014 a total 17,867 parking fines were issued across the suburb of Moonee Ponds. It was estimated that one half of these fines (8,934) could be attributed to the Moonee Ponds Activity Centre. The average parking fine in the Moonee Valley LGA in 2014 was \$100.33.</p>
4. Cost of constructing and maintaining sustainable/active transport infrastructure	<p>Council is in the process of identifying a range of appropriate sustainable/active transport infrastructure upgrade for The Moonee Ponds activity centre. The following is a draft list of projects that indicates the types and scale of projects envisaged:</p> <ul style="list-style-type: none"> <li>– Streetscape Improvements (i.e. widening footpaths, street furniture and improved pedestrian amenity)</li> <li>– Laneway Improvements (i.e. improved pedestrian amenity/connectivity)</li> <li>– Bus Stop Upgrades (i.e. seating, rubbish bins, other amenities where not already provided)</li> <li>– Dean Street Underpass project (specific project included in Walking and Cycling Strategy, formalises access to Moonee Ponds Creek shared path)</li> <li>– Maintenance of Moonee Ponds Creek Path</li> <li>– Shared Paths (along Dean and Wilson Streets)</li> <li>– Wayfinding Signage</li> <li>– On-road bicycle lanes (along Mt Road and potentially Ascot Vale Road)</li> <li>– Intersection/roundabout improvements (this includes the Junction intersection)</li> </ul> <p>The costs of new and upgraded infrastructure were estimated as follows:</p> <ul style="list-style-type: none"> <li>– Capital costs: \$1M per year for the first five years, and</li> <li>– Maintenance costs: \$100,000 per year for the remaining 25 years.</li> </ul> <p>Note: These estimates are quite broad as Council is yet to undertake detailed costing of projects.</p>

### Research, evidence and assumptions used to estimate benefits

5. Saved parking construction costs	<p>The <b>build cost per parking space was estimated at \$33,862</b> (AECOM 2014).</p> <p>The estimated reduction in parking spaces was calculated as above in 'Foregone parking utility'.</p>
6. Health benefits	<p>Coogan, Karash, Adler and Sallis (2007) found that those living in households with less than one car per adult have a walk mode share of 19%, compared to a walk share of 8% for those in households with at least one car per adult.</p> <p>Using VISTA (2009) results it was calculated that residents of Moonee Valley spend an <b>average 22 minutes walking per day</b> at present. Given the findings of Coogan et al (2007), it was conservatively estimated that this would double for residents in households without a car space (and thus a car).</p> <p>Estimates from Profile ID (2015), based on 2011 Census data, show that there are approximately 2.4 persons per household in Moonee Ponds. It was assumed that the average would be lower in households within the Activity Centre, and thus an <b>estimate of 2 persons per household</b> was used.</p> <p>Adjusted for inflation, <b>reduced public health costs per hour of physical activity is estimated as \$3.53</b> (Trubka et al 2008).</p> <p>It was estimated that <b>remaining households (ie. those owning one or more cars) would derive 10% of these health benefits</b>, given that the level of physical activity of these households would also likely increase in response to improved infrastructure in the area.</p>
7. Reduced vehicle operating costs, greenhouse gas and other negative externalities	<p>The literature indicates that higher levels of car ownership are linked to an increase in vehicle kilometres travelled (VKT) per year in a particular region. Moreover, it has been asserted car ownership itself leads to an increase in travel by car owners, with travel trends showing that VKT has increased at a rate greater than the increase in car ownership. Battellino and Raimond (2000) found that on an average weekday in 1997, a person living in a zero car household travels 14 kilometres, compared to around 33 kilometres per day for each person in a 3 car household. This figure was approximately 21 and 28 kilometres respectively in a 1 car and 2 car household.</p> <p>Studies have also shown that people who participate in car-sharing schemes are likely to travel fewer vehicle kilometres per year than those who do not. In a US study on the impact of car sharing on greenhouse gas emissions, the average observed VKT of respondents declined from 6468km per year to 4729 km per year, with a proportional decline of 27% (Martin and Shaheen 2011).</p> <p>From this research it was estimated that there would be a <b>27% decline in annual VKT as a result of the reduction in car spaces and car ownership</b> from the BAU scenario.</p> <p>The cost of reducing vehicle operating, greenhouse gas and other negative externalities associated with car ownership per VKT was estimated using AustRoads 2006 and TfNSW 2013 findings (as above in 'VKT searching for parking').</p>
8. Earlier supply of infill housing	<p>It is assumed that an additional <b>240 dwellings</b> (5% of the 'projected' supply for 30 years) might occur in Moonee Ponds as a result of reduced development costs.</p> <p>These additional dwellings would <b>reduce demand for greenfield dwellings by 62 dwellings per 100 infill dwellings</b> (SGS 2013). The benefit of additional infill development was monetised using the difference in infrastructure costs for infill and greenfield development of \$60,500 (based on a 2013 Infraplan study for Adelaide).</p>

### Growth projections for the Moonee Ponds Activity Centre

The following growth projections were used to inform the CBA. They are derived from capacity figures provided by Council. The capacity includes approved developments, Council's 'Expected Development Scenario', and most current estimates for the Leighton's site and Moonee Valley Race Course master plans. Assumptions were introduced to estimate the rate of supply of this capacity over a 30 year period.

	CAPACITY	ANNUAL RATE OF SUPPLY (CAPACITY REALISED PER YEAR)	ANNUAL SUPPLY	TOTAL SUPPLY AFTER 30 YEARS
<b>Dwellings</b>				
1 bed	4,100	2.5%	100	3,060
2 bed	2,000	2.5%	50	1,500
3 bed	300	2.5%	10	240
<b>TOTAL</b>	<b>4,800</b>		<b>160</b>	<b>4,800</b>
<b>Non-residential floor space (sqm)</b>				
Shopfront	194,800	1.0%	1,950	58,440
Non-shopfront	167,200	1.0%	1,670	50,160
<b>TOTAL</b>	<b>362,000</b>		<b>3,620</b>	<b>108,600</b>

The assumed rate of parking provision for new dwellings was based on the proposed 'Column B' rates as follows:

1 bed dwelling	0.7	spaces
2 bed dwelling	1	spaces
3 bed dwelling	1.5	Spaces
Visitor parking	0.1	per dwelling over 5 dwellings

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*Planning and Environment Act 1987*

Panel Report

Moonee Valley Planning Scheme Amendment C132

Moonee Ponds Activity Centre Parking

8 July 2016



*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

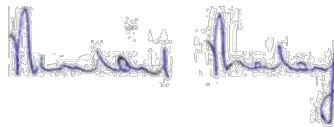
Moonee Valley Planning Scheme Amendment C132

Moonee Ponds Activity Centre Parking

8 July 2016



Con Tsotsoros, Chair



Michael Malouf, Member

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## List of Abbreviations

Activity Centre	Moonee Valley Activity Centre
Cash-in-lieu Report	Strategic justification for cash-in-lieu of on-site parking provision report, SGS, September 2015
Council	Moonee Valley City Council
DELWP	Department of Environment, Land, Water and Planning
LPPF	Local Planning Policy Framework
Parking Plan	Moonee Ponds Activity Centre Parking Plan, Aecom, October 2015
PO1	Parking Overlay Schedule 1
Racing Club	Moonee Valley Racing Club
SPPF	State Planning Policy Framework

## Overview

### Amendment Summary

<b>The Amendment</b>	Moonee Valley Planning Scheme Amendment C132
<b>Common Name</b>	Moonee Ponds Activity Centre Parking
<b>Subject Site</b>	Moonee Ponds Activity Centre land in the Activity Centre Zone Schedule 1, as shown in Figure 1
<b>Planning Authority</b>	Moonee Valley City Council
<b>Authorisation</b>	4 January 2016, subject to a condition shown in Section 1.4 of this report
<b>Exhibition</b>	4 February to 17 March 2016
<b>Submissions</b>	19 submissions were received from: Julie Vulin Francine Nicholson (withdrawn) Ian Wallis Fiona McIntyre John Ho Francesco Nesci Peter O'Meara Anonymous Bianca DeSensi Charles Sowerwine Caroline Chisholm Society SALT Moonee Valley Racing Club Rosanna Stepowy Kristen Bell Moonee Ponds Chamber of Commerce Heidi Fry Housing Industry Association Ltd Giovanni Gattini



Moonee Valley Planning Scheme Amendment C132 | Panel Report | 8 July 2016

Panel Process	
<b>The Panel</b>	Con Tsotsoros (Chair), Michael Malouf
<b>Directions Hearing</b>	Moonee Ponds, 28 April 2016
<b>Panel Hearing</b>	Moonee Ponds, 24 and 26 May 2016
<b>Site Inspections</b>	Unaccompanied, 11 May 2016
<b>Appearances</b>	<p>Moonee Valley City Council represented by Ms Louise Hicks of Counsel and calling the following expert witness:</p> <ul style="list-style-type: none"><li>- Mr Andrew Spencer of SGS Economics and Planning on Cash-in-lieu scheme and Development Contributions</li></ul> <p>Moonee Valley Racing represented by Ms Emily Porter of Norton Rose Fulbright and calling the following expert witness:</p> <ul style="list-style-type: none"><li>- Mr Chris Coath of GTA Consultants on traffic engineering</li></ul> <p>Ms Kristen Bell</p>
<b>Date of this Report</b>	8 July 2016

## Executive Summary

### (i) Summary

The Moonee Ponds Activity Centre is a large-scale centre located approximately seven kilometres from Melbourne's Central City Area. The Activity Centre is serviced by a train station, trams and buses and includes retail, commercial and residential land uses east of Mount Alexander Road and commercial, civic, recreational and residential land uses to the west.

Moonee Valley Planning Scheme Amendment C132 seeks to implement the Moonee Ponds Car Parking Plan. The *Strategic justification for cash-in-lieu of on-site parking provision report* was prepared because the Parking Plan did not include sufficient information required to support a separate accommodation financial contribution rate.

Key issues raised in submissions include strategic justification; methodology; car parking rates; degree of financial contributions; where Parking Overlay Schedule 1 should apply; and other issues such as car parking management and drafting of the provisions. The Panel considered all written submissions, as well as submissions presented to it during the Hearing.

The Panel concludes that the Amendment implements, and is supported by the relevant sections of the State and Local Planning Policy Framework subject to the Amendment. However, the Amendment has insufficient strategic justification, specifically in relation to:

- the mechanism for a financial contributions scheme
- the two financial contribution rates.

The Parking Plan and Maddocks' legal advice provide relevant and practical advice for implementing the car parking provisions. The Panel considers that following this advice may have resulted in a better prepared and better justified amendment. Council did not follow their advice.

In principal, the Panel acknowledges that financial contributions are an acceptable means to manage car parking requirements but found that the exhibited financial contribution rates were not sufficiently justified.

The Panel considered recommending Amendment C132 be abandoned because of the extent of the Amendment with insufficient justification. However, there is strategic justification for activating Column B rates found in Table 1 of Clause 52.06 through Parking Overlay Schedule 1.

The Panel agrees with Council's written submission that:

- Column B rates should be activated as a baseline for calculating the number of car parking spaces
- there should be the ability for a permit to reduce the number of car parking spaces.

The Panel finds Council's position on this matter confusing. The exhibited Parking Overlay Schedule 1 allows this flexibility and Council's written submission confirms that it seeks to

implement this flexibility. However, Council later tabled changes to Parking Overlay Schedule 1 that removed this flexibility.

The Parking Plan supports activating the Column B car parking rates through Parking Overlay Schedule 1. Allowing the ability for a permit to reduce the number of required car parking spaces addresses duplication issues associated between provisions in Parking Overlay Schedule 1 and Activity Centre Zone Schedule 1. This means that the Moonee Valley Racing Club land can remain in Parking Overlay Schedule 1 without the issues that would have resulted from what Council proposed through the Amendment.

Many issues raised by submitters relate to general car parking measures managed through a separate process beyond the *Planning and Environment Act 1987* and outside the Amendment process.

The Panel provides guidance on more specific issues raised in submissions, as discussed in the following chapters, to inform any future amendment that seeks to implement car parking in the Moonee Ponds Activity Centre.

**(ii) Recommendation**

**The Panel recommends that Amendment C132 to the Moonee Valley Planning Scheme be adopted as exhibited subject to amending Parking Overlay Schedule 1, as shown in Appendix B, to:**

- a) replace the provisions under Clause 2.0 (Number of car parking spaces to be provided) with:  
*For all uses listed in Table 1 of Clause 52.06-5, the number of car parking spaces required for a use is calculated using the Rate in Column B of that Table.*
- b) delete Clause 3.0 (Financial contributions requirement)
- c) replace all objectives in Clause 1.0 (Car parking objectives to be met) with:  
*To identify appropriate car parking rates for land uses in the Moonee Ponds Activity Centre.*

## 1 Introduction

### 1.1 The subject area

The Amendment applies to Moonee Ponds Activity Centre land in the Activity Centre Zone Schedule 1 as shown in Figure 1. The Activity Centre is serviced by a train station, trams and buses and includes retail, commercial and residential land uses east of Mount Alexander Road and commercial, civic, recreational and residential land uses to the west.

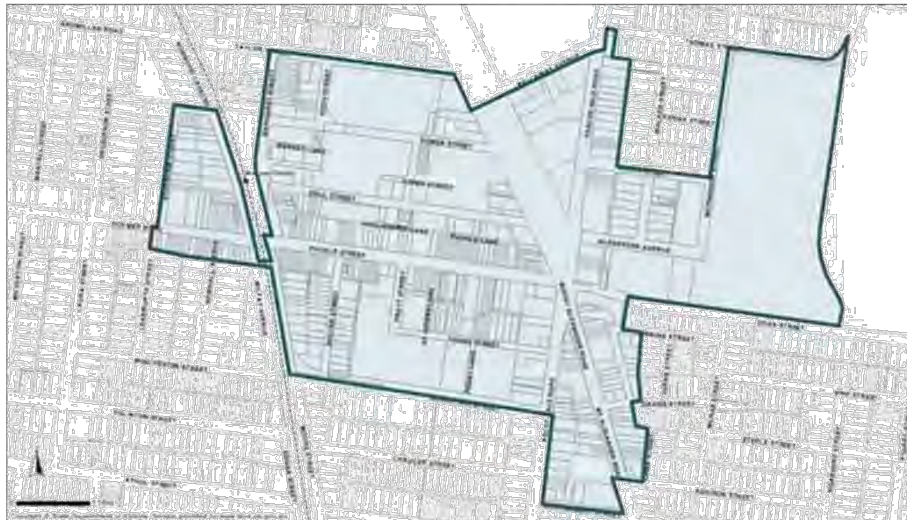


Figure 1 Subject area

### 1.2 The Amendment

The Amendment, as exhibited, seeks to implement the Moonee Ponds Car Parking Plan to provide improved statutory guidance for parking and transport in and around the activity centre by:

- introducing the Parking Overlay (Clause 45.09) into the Planning Scheme
- applying a new Parking Overlay Schedule 1 (PO1) to land in the Moonee Ponds Activity Centre.

### 1.3 Background to the proposal

<b>20 December 2011</b>	Council adopted the Municipal Parking Strategy
<b>September 2013</b>	Aecom was engaged to prepare the Moonee Ponds Activity Centre Parking Plan
<b>4 June 2015</b>	New standard car parking rates, parking provisions and a new Parking Overlay were introduced into the Victoria Planning Provisions [Amendment VC90]

<b>July 2015</b>	SGS Economics and Planning (SGS) was engaged to prepare strategic justification for cash-in-lieu of on-site parking provision
<b>September 2015</b>	Strategic justification for cash-in-lieu of on-site parking provision report was completed
<b>1 October 2015</b>	Moonee Ponds Activity Centre Parking Plan was completed
<b>24 November 2015</b>	Council endorsed the Moonee Ponds Activity Centre Parking Plan

#### **1.4 Authorisation**

The Amendment was authorised by the Minister for Planning on 4 January 2016 conditional to PO1 clearly stating the car parking objectives for the precinct under section 1. Council responded to this condition by adding the objectives shown in Section 2.2(iii) of this report before the Amendment was exhibited.

#### **1.5 Terminology**

The Panel found that parties were confused about how the proposed parking provisions are intended to operate and what was being sought. This confusion was predominantly due to the same terminology being applied with different interpretations and due to how the PO1 provisions were drafted.

The Panel has adopted the terminology in Planning Practice Note 22 (Using the car parking provisions) for the purposes of this report, as shown below.

##### **Car parking spaces**

This is the default number of car parking spaces that an applicant provides without the need for a permit. These spaces can be provided on the site or as a financial contribution. Unless specified otherwise in the schedule, a permit is required to reduce the default number.

##### **Financial contribution**

A financial contribution, previously known as a cash-in-lieu payment, is made in place of providing one or more of the obligated number of car park spaces.

##### **Column A rates**

Column A rates are the standard car parking rates specified in Column A of Table 1 in Clause 52.06 (Car parking) of the Victoria Planning Provisions and all planning schemes. The standard car parking rate that applies to all zones except where the Column B rates apply.

##### **Column B rates**

Column B rates are the standard car parking rates specified in Column B. They only apply when specified in a schedule to the Parking Overlay. 'Applying the Column B rates' means that the standard rates in Column B apply instead of the Column A rates. It allows the ability to reduce the number of car parking spaces through a planning permit process.

### **Reducing the number of car parking spaces**

This is where Council has approved a permit to reduce the number of car parking spaces that an applicant is obliged to provide. The reduced number of spaces can be provided on the site or as a financial contribution. The Parking Overlay enables a schedule to specify that a planning permit must not be granted to reduce the number of car parking spaces.

### **1.6 Parking Overlay Schedule 1 versions**

This report refers to the following versions of PO1:

- Exhibited version
- Version B – Post exhibited version included in Appendix F of Council's Part A Submission
- Version C – Version provided by Council in its closing submission that received comments from parties
- Version D – Council's revised version following 'without prejudice' discussion at the Hearing.

### **1.7 Issues dealt with in this report**

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

This report deals with the issues under the following headings:

- Planning context
- Strategic justification
- Parking Overlay Schedule 1
  - Car parking rates and number of spaces
  - Financial contributions
  - Where Parking Overlay Schedule 1 should be applied
- Other issues
  - Car parking management
  - Drafting of the proposed planning scheme provisions.

## 2 Planning Context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

### 2.1 Policy framework

Council submitted that the Amendment supports State and local planning policy. Table 1 shows the clauses referenced in the Explanatory Report.

Table 1 Policy Framework

State Planning Policy Framework	
<b>Clauses</b>	
<b>11 Settlement</b>	Council responded that the Amendment provides a framework to focus and control development in the Moonee Ponds Principal Activity Centre.
<b>15 Built Environment and Heritage</b>	Council responded that the Amendment encourages improvements to the centre and high quality urban design for the streetscapes incorporating an efficient and attractive environment for users of the activity centre.
<b>17 Economic development</b>	Council responded that the Amendment ensures that the centre has opportunities for commercial and residential growth, and providing a framework for the location and management of that growth within the activity centre in relation to managing car parking demand.
<b>18 Transport</b>	Council responded that the Amendment encourages and facilitates development and growth within the activity centre, which is integrated with easy access to the existing sustainable transport system and ensures an adequate supply of car parking that is appropriately designed and located.
Local Planning Policy Framework	
<b>Clauses</b>	
<b>21 Municipal Strategic Statement</b>	
<b>21.07 Activity centres</b>	<p>Vision: To develop the area into one of the region's most vibrant, pedestrian-centric, culturally diverse and historic areas.</p> <p>Objective: Ensure that any proposed use or development within the Moonee Ponds Activity Centre is generally consistent with the <i>Moonee Ponds Activity Centre Structure Plan 2010</i>.</p> <p>Policy guideline: Improve traffic management, car parking facilities and pedestrian networks within and surrounding the centre.</p>
<b>21.09 Transport</b>	The Explanatory Report specifies 'Transport and access' was changed to 'Transport' on 5 March 2015 through Amendment C134

## **2.2 Parking Provisions**

### **(i) Parking Overlay**

The Amendment proposes to apply Parking Overlay Schedule 1 and the purposes of the Parking Overlay are:

- To implement the State Planning Policy Framework and Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To facilitate an appropriate provision of car parking spaces in an area.
- To identify areas and uses where local car parking rates apply.
- To identify areas where financial contributions are to be made for the provision of shared car parking.

The Parking Overlay operates in conjunction with Clause 52.06 (Car parking).

### **(ii) Clause 52.06 (Car parking)**

The purposes of Clause 52.06 are to:

- ensure that car parking is provided in accordance with the State Planning Policy Framework and Local Planning Policy Framework.
- ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.
- support sustainable transport alternatives to the motor car.
- promote the efficient use of car parking spaces through the consolidation of car parking facilities.
- ensure that car parking does not adversely affect the amenity of the locality.
- ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

Clause 52.06 specifies:

- standard parking rates that apply to all zones (Column A)
- lower standard car parking rates that apply if specified in a schedule to the Parking Overlay (Column B)
- the parking measure that applies to each rate (Column C).

### **(iii) Parking Overlay Schedule 1**

The objectives of PO1 are to:

- appropriately manage the provision of car parking within the Moonee Ponds Activity Centre.
- improve both public car parking provision and sustainable transport infrastructure within the centre.
- provide for the collection of financial contributions in lieu of commercial car parking waivers to contribute to the construction of publicly accessible off-street parking facilities within the centre.



- provide for the collection of financial contributions in lieu of residential car parking waivers to contribute to the construction of sustainable transport improvements within the centre.

**Parking Overlay Schedule 1:**

- applies the lower standard car parking rates found in Column B of Table 1 in Clause 52.06
- specifies financial contribution rates in lieu of each car parking space being provided on-site
- specifies where all collected financial contributions will be spent.

## **2.3 Ministerial Directions and Practice Notes**

### **(i) Ministerial Directions**

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

- Ministerial Direction No 11 - Strategic Assessment of Amendments
- The Form and Content of Planning Schemes (s7(5)).

The Panel concludes that the Amendment is consistent with these Ministerial Directions.

### **(ii) Planning Practice Notes**

#### **Writing schedules, May 2000 – Planning Practice Note 10**

Planning Practice Note 10 provides guidance on how local schedules should be written. It includes eight principles for drafting and using local content in a schedule, irrespective of the task that the schedule is to perform:

1. *Schedules must be read with other planning controls.*
2. *Local content should help to implement State Planning Policy Framework (SPPF) objectives.*
3. *Local content should help to implement LPPF objectives.*
4. *Local content should not duplicate other provisions.*
5. *Local content can only do what its 'parent provision' enables it to do.*
6. *Local content should be strategically justified.*
7. *Local content should have a legally certain meaning.*
8. *Local content should be easy to read.*

#### **Using the Car Parking Provisions, June 2015 – Planning Practice Note 22**

Planning Practice Note 22 provides guidance about using the car parking provisions in Clause 52.06 and the Parking Overlay, including a summarised diagram, as shown in Figure 2. It explains how the car parking requirements are calculated and what information is required to be submitted with an application that includes car parking.

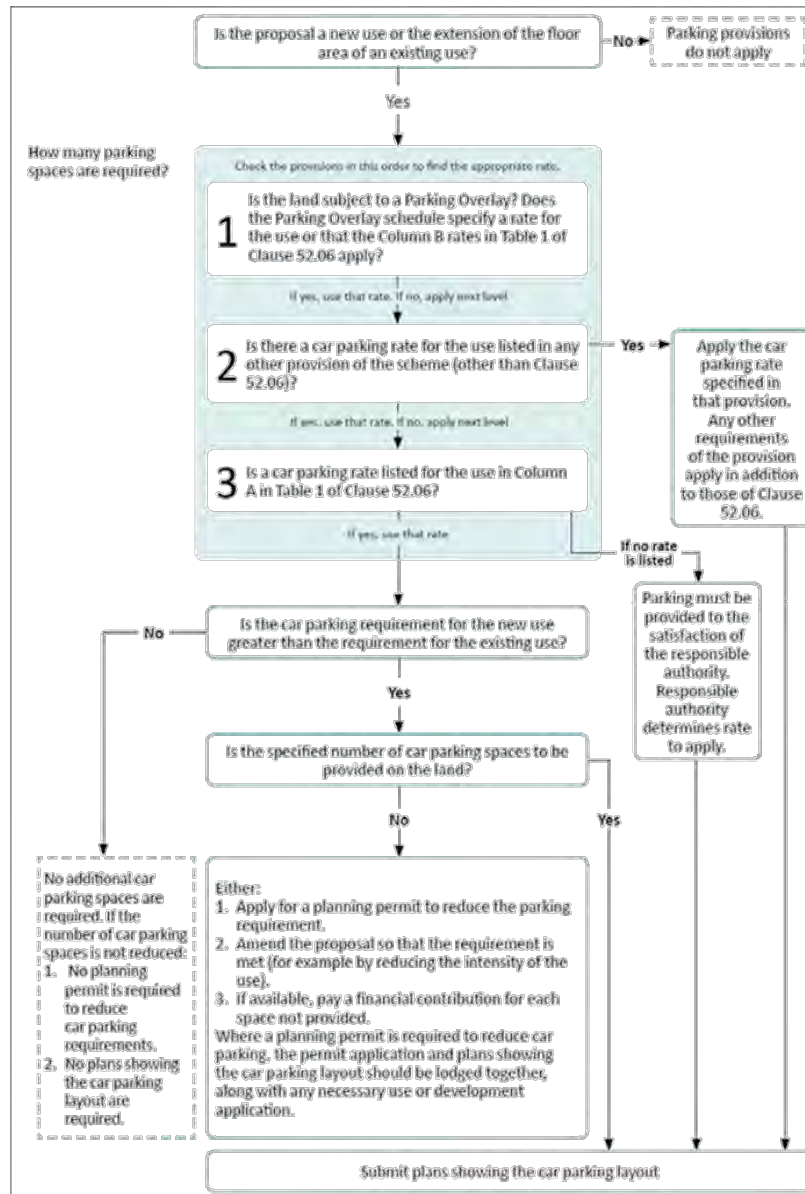


Figure 2 Using the car parking provisions

#### Strategic Assessment Guidelines, June 2015 – Planning Practice Note 46

Planning Practice Note 46 provides a consistent framework for preparing and evaluating a proposed planning scheme amendment and its outcomes.

### **The Parking Overlay, April 2013 – Planning Practice Note 57**

Planning Practice Note 57 provides guidance to councils about preparing and applying the Parking Overlay. It explains what the Parking Overlay is, what it does, when and how to use it and how to complete a schedule to the overlay.

## **2.4 Planning strategies and policies**

The *Moonee Ponds Activity Centre Parking Plan* (Parking Plan) prepared by Aecom and *Strategic justification for cash-in-lieu of on-site parking provision report* (Cash-in-lieu Report) prepared by SGS were prepared in 2015.

The Parking Plan includes 10 recommendations ranging from the extent of the Parking Overlay boundary and preparing a schedule to this overlay through to implementing and monitoring the Parking Plan.

Chapter 3 details the Parking Plan methodology.

### **Parking Plan**

Regarding non-residential parking rates when compared to parking rates in Columns A and B in Table 1 of Clause 52.06, the Parking Plan states:

*A review of the land use concentration characteristics in MPAC suggests that lower parking rates could potentially be adopted. Typically, if an area has a denser concentration of land uses, visitors will often go to more than a single destination during their visit. Accordingly, the demand for parking is shared by a number of land uses meaning that the overall parking demand for the location can be lower. In recognition of this, Clause 52.06 allows for the identification of rates to be adopted that better reflect the parking demands generated by the identified location.*

Regarding residential car parking rates, the Parking Plan states:

*As shown from the derived empirical parking rates above for MPAC the parking rates for one or two bedroom dwellings is similar to those set out in both Column A and B of Clause 52.06 of the Planning Scheme inside the MPAC PP boundary, as follows:*

- *0.7 cars to each one bedroom dwelling (although there was limited responders who owned a single bedroom dwelling).*
- *1.1 cars to each two bedroom dwelling.*
- *1.5 cars to each three bedroom dwelling.*

## **2.5 Planning Scheme Amendments**

### **(i) Moonee Valley Planning Scheme Amendments C120 and C124**

An advisory committee was appointed by the Minister for Planning to report on the redevelopment of the Moonee Valley Racecourse and submitted its report with recommendations in December 2013. Amendments C120 and C124 introduced

associated changes to the Moonee Valley Planning Scheme on 25 September 2014. Amendment C120 introduced, among other changes:

- design and development provisions related to parking and access (Design and Development Overlay Schedule 12)
- transport management requirements and the need to prepare a Transport Assessment and Management Plan and Integrated Transport Plan to the satisfaction of the responsible authority, VicRoads and Public Transport Victoria before a permit can be granted (Comprehensive Development Zone Schedule 1)
- the need for any permit to be consistent with the approved Transport Assessment and Management Plan and Integrated Transport Plan.

Amendment C124 introduced heritage related provisions.

**(ii) Amendment VC90**

Amendment VC90 changed the parking provisions in the Victoria Planning Provisions and all planning schemes in June 2012 by:

- revising standard car parking rates in Table 1 of Clause 52.06 (Car parking) including:
  - Shop: Number of spaces for each 100 square metres of leasable floor area changed from eight to four (3.5 if specified in a Parking Overlay)
  - Supermarket: Number of spaces for each 100 square metres of leasable floor area changed from eight to five
  - Restaurant: Number of spaces for each patron changed from 0.6 to 0.4 (3.5 to each 100 square metres if specified in a Parking Overlay)
- introducing the ability for a Council to apply reduced standard parking rates (Column B in Table 1 of Clause 52.06) where specified in a Parking Overlay schedule
- introducing new parking provisions.

Amendment C132 applies the reduced Column B rates in Clause 2.0 of PO1.

## 3 Strategic justification

### 3.1 Methodology

Aecom was commissioned by Council to prepare a Parking Plan to understand and improve the parking conditions in the Activity Centre. This detailed Parking Plan was developed over a two-year period and completed in October 2015.

Council based its methodology on the 10 recommendations in the Parking Plan, as summarised below:

- Adopt through the Planning Overlay the boundary as outlined in Figure 2 of the Parking Plan.
- Prepare a Planning Overlay Schedule for the Activity Centre so that future land uses provide parking at Column B rates as set out in Clause 52.06 of the Planning Scheme.
- Establish a 'Parking & Sustainable Projects Fund' for the following:
  - Adopt a cash-in-lieu payment will be required in respect of each commercial car parking space or part thereof which is not provided on the land. Council should nominate the appropriate sum for each car parking space for commercial properties from the \$13,500 to \$19,000 range. Funds collected to be distributed towards the provision of additional car parking (as per outlined as part of Recommendation 4).
  - The amount of cash-in-lieu payments is to be adjusted annually from 1 July 2014 using Construction Industry Output Price Indexes.
- Consider, as part of the Integrated Transport Plan review, the following:
  - Sustainable transport measures that aim to reduce the reliance on private car transport and encourage greater use of sustainable transport options. This could allow an estimate of the potential shifts in transport usage within the area to be made, allowing Council to estimate the potential benefits to local users and any potential uplift in houses prices.
  - Continue to work with residential developments that have a sustainability focus to identify where co-investment in sustainable transport infrastructure may add value to new residential developments and the likely added value to the community from undertaking these investments.
  - A detailed review of the feasibility and costs involved in providing a multi-storey car park facility at Pascoe Vale Road, further to the high level investigation in the Parking Plan. Following which a detailed cost / benefit analysis should be undertaken to aid in determining if a multi-storey car park should be taken forward.
  - Establish a 'Parking & Sustainable Projects Fund' for which the car park would be funded through cash-in-lieu, detailed in subsequent parking strategy.
  - Investigate with key stakeholders the improvement of services serving Moonee Ponds on the bus, train and tram networks.
- Produce a consolidated sustainable projects plan with the suggested hierarchy of schemes for implementation to improve sustainable accessibility to the Activity

Centre. Establish a 'Parking & Sustainable Projects Fund' for which these projects would be either fully/or part of funded for.

- Adopt through the Parking Overlay schedule that all 'major developments' produce a Green Travel Plan in the Activity Centre. Uphold the implementation and reviewing process of Green Travel Plans by developers.
- Review the proposed improvement arrangements at the Milfay / Holmes Street Car Park and Penny Lane Car Park to increase the existing capacity (a cost benefit assessment would most likely be required in order to establish if such proposals are worthwhile). If the costs of which produce little benefit monies to be offset towards sustainable transport improvements.
- As part of the Disability Action Plan implementation:
  - Review the design and allocation of accessible car parking at key buildings and in activity centres, so that design offers safe access to footpath amenity and sufficient spaces are provided.
  - Embed transparent transport decision making criteria to ensure disability is considered and disabled stakeholders are consulted, in processes compliant with the *Transport Integration Act 2010*.
- Ensure that an appropriate level of directional signage is available to guide motorists to parking facilities in the Activity Centre by:
  - Preparing and implementing a signage strategy in line with guidance set out in the Parking Plan, including the possible use of VMS signage.
  - Installing / rationalising directional signage to each existing and new public car park containing over 50 parking spaces.
  - Ensuring that new developments containing over 50 publicly available parking spaces provide adequate parking guidance signage to their parking facility.
- Ensuring ongoing monitoring of the parking recommendations and undertake a comprehensive review every three to five years in conjunction with the Municipal Strategic Statement to ensure consistency of local conditions and policies.

#### **Car parking supply and demand**

A car parking supply and demand survey was conducted in October 2013 to support the Parking Plan. This survey was compared with previous studies conducted in April 2009 and March 2012 and concluded:

- 3,431 parking spaces exist, of which 3,000 are publically available.
- Activity Centre parking rates are operating lower than the Column B rates of Clause 52.06 of the Planning Scheme.
- Overall parking occupancy in the Activity Centre is still high with the effective capacity being reached in a number of on-street and off-street car parking areas. This suggests the need for more parking in these areas and/or better management to facilitate the competing usage of spaces by residents, workers, visitors and commuters in the Activity Centre.
- Most of the spaces are still provided at no cost, however, the paid spaces are not as well used in on-street and private off-street car parking areas on the surveyed

days. The public off-street paid spaces on the surveyed Saturday in 2013 were also not very well used.

- Friday occupancy continues to peak at lunch time in the core area of the Activity Centre.
- Saturday occupancy also peaks at lunch time however with a significantly lower overall car parking demand on the Activity Centre.
- Parking demand on Mt Alexander Road, Davies Street and Hinkins Street is still high.

The car parking survey was complemented by a questionnaire to 850 local patrons, residents and businesses, which identified:

- 79% of patrons expected to stay less than 2 hours with the majority intending to shop at one of the major supermarkets.
- 79% of local business respondents thought that parking was insufficient to cater for all staff and customers with 86% believing that public car parking is not adequate.
- Local residents identified visitor parking was a problem.

#### Financial contribution rates

The Parking Plan responds to each of the four core principles of need, nexus, accountability and equity that are outlined in Planning Practice Note 57. The Parking Plan calculates the non-accommodation financial contribution rate by using the methodology shown in Table 2.

Council commissioned SGS Economics and Planning to provide the strategic justification for the on-site parking financial contribution rates.

This Cash-in-lieu Report calculates the residential financial contribution rate by using the commercial financial contribution rate as a baseline. The report concluded that there is little nexus between long term car parking associated with accommodation uses and short-term public car parks so collected funds should be spent on sustainable transport infrastructure within the Activity Centre. The Report conducts a benefit-cost analysis of this approach and concluded that there would be a benefit of greater than two to one. It therefore recommended a residential cash-in-lieu rate of \$7,500 after applying a further 50 per cent discount to the \$15,000 commercial rate.

Table 2 Cash-in-lieu rates methodology

	Seeking:	Calculated by:	Outcome
A	Land value	Source: Council	\$16,670
B	Construction cost	Source: Rawlinson's Construction Handbook)	\$15,310
C	Cost of providing a car parking space	Add A and B	<b>\$31,980</b>
D	Estimated wider economic flow on benefits to the community:	Discount the cost of providing the car parking space (C) by 30 per cent	(C) minus \$9,500 = <b>\$22,480</b>

E	A high and low cash-in-lieu range	Recognise that infrastructure provided by new developments will also service present demand from existing business and will vary depending on the estimated percentage of users rated to the new development	Between 40 and 15 per cent
F	Estimated percentage of users relating to new development	Discount the rate at (D) by a further 33 per cent	(D) minus \$7,480 = (G)
G	<b>Commercial cash-in-lieu rate</b>		<b>\$15,000</b>
H	Estimated benefit-cost	Discount the commercial cash-in-lieu rate by a further 50 per cent	(G) minus \$7,500 = (I)
I	<b>Residential cash-in-lieu rate</b>		<b>\$7,500</b>

Council compared the proposed commercial and residential financial contribution rates with those in other Parking Overlays, as shown in Table 3.

Table 3 Metropolitan Melbourne cash-in-lieu payment rates examples

Municipality	Activity Centre	Cash-in-lieu amount (ex GST)	Quarterly Median House Price
Monash	Glen Waverley	\$11,000	\$1,202,500
Monash	Oakleigh	\$6,000	\$1,090,000
Wyndham	Werribee	\$12,500	\$380,000
Casey	Berwick	\$16,935	\$425,000
Greater Dandenong	Springvale	\$19,000	\$635,000
Metropolitan Melbourne Average		\$13,087	\$746,500

Source: Council Submission Part A (Document 1) pp 12-13 \* propertydata.com.au

Council received legal advice from Maddocks on 1 June 2015 on collecting financial contributions in place of car parking. In response to a Panel Direction, Council provided the advice to all parties on 17 May 2016 and is summarised as follows:

*There is no reason, in principle, why the Parking Overlay cannot provide for different cash in lieu rates for different types of development for different purposes.*

*There is scope for the schedule to a Parking Overlay to provide for the collection of financial contributions for the purpose of funding sustainable transport initiatives. The challenge will be demonstrating the strategic basis for the proposal.*

*We do not recommend the use of a Development Contributions Plan to fund the proposed sustainable transport initiatives.*

*Council does not necessarily need to cover any shortfall in funding to deliver the infrastructure for which the funds were collected. This issue should be*



*addressed in any Car Parking Plan and any schedule to the Parking Overlay needs to be regularly reviewed.*

*The Car Parking Plan and schedule to the Parking Overlay need to address the matters outlined in Practice Note 57. These requirements seek to provide certainty about the objectives and strategies of the scheme rather than locking in detail about its implementation. Nevertheless, we consider the Economic Analysis of Commercial and Residential Parking Waivers prepared by Aecom does not provide Council with sufficient guidance or strategic justification to support the introduction of the Parking Overlay to the Moonee Ponds Activity Centre. We consider that this work needs to be reviewed or further work needs to be commissioned by Council.*

### **3.2 Evidence and submissions**

In its Part A submission, Council set out how the Amendment responded to the Strategic Assessment Guidelines as required by Ministerial Direction No 11 and the associated Planning Practice Note 46. Council submitted that the Activity Centre is currently experiencing a high level of development and the Amendment seeks to provide improved statutory guidance for parking and transport in and around the Activity Centre.

In its Part B Submission, Council responded to a Panel direction by expanding on reasons why need, nexus, accountability and equity are not appropriate for justifying inclusionary obligations. Council relied on expert evidence prepared by Mr Spencer of SGS Economics and Planning but highlighted that SGS also justified the Amendment by applying the four more commonly applied criteria.

During cross-examination, Mr Spencer acknowledged that the benefit-cost analysis applied a conceptual assessment prepared in-house by SGS. He added that he was not aware whether the conceptual framework has been relied on by a Panel, the Victorian Civil and Administrative Tribunal or by the Department of Environment, Land, Water and Planning.

In his evidence and in relation to Planning Practice Note 57, Mr Spencer stated:

- 18. In the Strategic Justification report Dr Spiller and I make the following statement: "We are of the view that this type of need/nexus justification is not applicable for cash-in-lieu payments for the fulfilment of Inclusionary Provisions" (emphasis added). In using the term 'need/nexus' the report is referring to the full list of criteria from the Practice Note.*
- 19. This comment was made on the basis of somewhat of a misinterpretation of the need/nexus criteria that were being referred to in the Practice Note. We had assumed that the Practice Note was referring to those specific tests that are routinely applied to Development Contribution Plans and described in the 2003 DCP guidelines.*

Having changed his view, Mr Spencer provided a response on the need, nexus, accountability and equity tests found in Planning Practice Note 57.

*Having demonstrated the validity of the cash-in-lieu scheme in the Strategic Justification report I believe its validity in relation to criteria set out in the Practice Note can also be demonstrated. My assessment of the scheme against the criteria is provided in the table below.*

Table 4 Mr Spencer's response to Planning Practice Note 57 equity tests

Criteria	Description	Response
Need	Is the cash-in-lieu scheme needed?	The scheme is needed to provide the opportunity for Council to seek due compensation for granting of parking waivers. Without compensation the utility and amenity of the Activity Centre will be negatively impacted.
Nexus	Is there a link between the proposals affected by the scheme and the infrastructure provision?	The affected proposals – those that seek waivers – will have a lower rate of parking provision. Residents of these developments will have reduced access to private vehicles. In particular, residents of dwelling without parking have transport needs that will be likely be satisfied through sustainable transport modes: walking, cycling and public transport. The transport needs of these residents will increase demand for sustainable transport infrastructure, providing a link between the affect proposals and infrastructure provision.
Accountability	What are the financial arrangements? How will the scheme be monitored and reviewed?	I would assume that contributions made under the two cash-in-lieu arrangements will be kept in separate accounts. Council can only use the contributions for the purposes described in the schedule to the Parking Overlay. I am not aware of the specifics of monitoring and reporting arrangements, however, there is no obstacle to Council institution regular reviews of the operation of the waiver scheme. Although it is difficult to predict the take up of the waivers, the notional of sustainable transport infrastructure costs and notional revenues are similar in magnitude. (This comparison is described in Section 1.6 of my evidence).
Equity	Is the scheme fair in terms of who is and who isn't required to	The scheme only requires those proponents of developments seeking access waivers to pay. As the rates are fixed in the schedules

Criteria	Description	Response
	pay? Would another method of collecting funds be more appropriate?	all proponents are equally impacted. The scheme provides compensation to the broader community by requiring proponents to provide compensation. Were it not for the scheme, the community would 'pay' through reductions in the amenity and utility of the activity centre.

Ms Porter for the Racing Club submitted that the methodology adopted for the other precincts in the Activity Centre should not be applicable to Precinct 9 (Racing Club) because:

- it is one of the largest precincts
- unlike other precincts, it is in sole ownership
- it will be developed as an entirely new community
- retail uses in this precinct will largely serve local walk up customers
- unlike the other precincts, this precinct requires a Transport Assessment and Management Plan and an Integrated Transport Plan with car parking rates, sustainable transport measures and infrastructure to be provided by way of a section 173 Agreement.

Ms Porter submitted that it would be very difficult to draft appropriate wording in the PO1 to prevent a potential 'double-dipping' scenario, as Precinct 9 is the only precinct where the zone control itself requires contribution.

### 3.3 Discussion

The Panel agrees that in principle, introducing a Parking Overlay for the entire Activity Centre is an appropriate strategic response to the car parking and transport challenges of the Activity Centre and that it implements, and is supported by the relevant sections of the State and Local Planning Policy Framework subject to the Amendment.

The Panel accepts the legal advice provided by Maddocks that there is no legal impediment to applying different financial contribution rates for the two proposed categories of accommodation and non-accommodation and that there is scope for PO1 to provide for funding of sustainable transport initiatives. As the legal advice suggests the major challenge for the Council will be to demonstrate the strategic basis for this proposal.

The Panel places significant weight on the Maddocks advice that the Parking Plan does not provide Council with sufficient guidance or strategic justification to support the introduction of the parking overlay. Maddocks recommended Council seek further work to meet this shortfall.

The Panel notes that Council relied upon the expert evidence of SGS, however, the Panel gives little weight to the methodology applied by SGS as set out in the Cash-in-lieu report. The Panel was not able to determine any prior use of this methodology in similar circumstances. The Panel considers the SGS expert evidence, which subsequently

assessed the validity of the financial contribution scheme against the four Practice Note criteria, to be insufficient in demonstrating support for PO1.

The Panel notes that the Cash-in-lieu report and evidence relates primarily to the accommodation scheme.

Council opted not to call an expert witness on traffic engineering or request its internal traffic engineer to support its submission. Instead, Council called Mr Spencer as an expert on accommodation car parking justification and development contributions, even though he has less than 10 years' experience in those fields and a predominantly urban design and planning background. Mr Spencer responding to a Panel question advised that although he had read the legal advice he did not believe that his evidence was responding to the Maddocks suggested further work.

The Panel considers that Council did not provide this recommended further work and therefore did not adequately provide sufficient guidance or the necessary strategic justification. Therefore, the Panel is not in a position to support the introduction of PO1.

The issues of parking rates and whether there should be an ability to reduce the number of car parking spaces through a permit are discussed in further detail in Chapter 4.1.

### **3.4 Conclusions and recommendation**

The Panel concludes that the Amendment:

- implements, and is supported by, the relevant sections of the State and Local Planning Policy Framework subject to the Amendment.
- has insufficient strategic justification to implement most exhibited changes.

**The Panel recommends that Amendment C132 to the Moonee Valley Planning Scheme be adopted as exhibited subject to changes recommended in this report.**

The Panel provides guidance on more specific issues raised in submissions, as discussed in the following chapters, to inform any future amendment that seeks to implement the Parking Plan.

## 4 Parking Overlay Schedule 1

### 4.1 Car parking rates and number of spaces

The Amendment applies Column B car parking rates in the Activity Centre and removes the ability for a permit to reduce the number of parking spaces to align with an empirical assessment.

#### (i) The issue

The issues are:

- whether the proposed car parking rates are justified and appropriate for the Activity Centre
- whether there should be an ability to reduce the number of car parking spaces to align with an empirical assessment through a permit.

#### (ii) Evidence and submissions

In its submission, Council provided an overview of the Parking Plan. The Parking Plan notes that if the car parking rates outlined in Clause 52.06 were upheld for all development that currently exists, the required parking supply for Column A is 4,229 and for Column B is 3,676. There are 3,431 available existing parking spaces so the Parking Plan concludes:

*Accordingly, this indicates that parking could be provided at either the Column B rate or lower.*

The Parking Plan reviewed the land use characteristics of the Activity Centre, which suggested lower parking rates could potentially be adopted. Higher density uses will require less parking because the demand for parking is shared by a number of land uses:

*In recognition of this, Clause 52.06 allows for the identification of rates to be adopted that better reflect the parking demands generated by the identified location.*

Council's submission referred to the analysis in the Parking Plan and guidance in Planning Practice Note 57 when justifying the car parking rates:

*It is noted that developers would still be able to apply to reduce the proposed Column B rates on a case by case basis, but that this would be subject to strategic justification through a car parking assessment.*<sup>1</sup>

*Upon review of the above analysis, it was determined that there was no data derived which provided strong enough justification for the application of unique parking rates for the Moonee Ponds Activity Centre, and that the Column B rates provide an appropriate baseline for the assessment of car parking demand in future development proposals.*

Council also referred to the 2011 Car Parking Advisory Committee Report which states:

<sup>1</sup> Emphasis added by the Panel

*... the Advisory Committee acknowledges that the assignment of parking rates is not an exact science, and notes that the proposed Clause 52.06 provides the opportunity for developers to present an argument for reducing these rates on a case by case basis.*

Ms Vulin, Ms Stepowy and Ms Fry sought higher car parking rates than what was proposed by the Amendment. Collectively, they considered applying the reduced Column B rates to be 'irresponsible' and 'short sighted' and were concerned that visitors and shoppers would go to other centres if easy access to parking was not provided.

Moonee Valley Racing Club (the Racing Club) and Salt considered the proposed car parking rates to be too high.

Ms Porter representing the Racing Club submitted that Precinct 9 is subject to a mix of height limits between 11 metres and 62 metres and that it will be intensively developed predominately for residential purposes with some retail. She added that a section 173 agreement is required before a permit to use, develop or subdivide land in Precinct 9 can be granted.<sup>2</sup> The section 173 agreement requires among other items, the provision of any identified transport mitigation measures and infrastructure identified in the Integrated Transport Plan. The Integration Transport Plan must include recommended car parking rates and the location of and layout of on-site parking areas.

Ms Porter submitted:

- Column B rates are generic state wide activity centre car parking rates which could have been applied without a Parking Plan.
- Council appear to have embarked on the kind of exercise to be expected if identifying locally specific rates.
- The Parking Plan did not recommend locally specific parking rates for this Activity Centre, and there is no sensible justification as to why not.
- The Parking Plan indicated that parking could be provided at either the Column B rate or lower and that there should be flexibility to consider various potential scenarios.
- Ms Porter summarised the Racing Club's position:

*So despite Aecom's recognition that the Activity Centre is currently providing car parking at less than Column B rates, and its recognition that future development within the Activity Centre is likely to result in more internally generated trips rather than external visitation, it ultimately recommended that Column B rates be adopted. However, it also recommended flexibility in the use of those rates – flexibility that is not to be found in proposed PO1.*

Mr Coath of GTA Consultants was called as an expert on traffic engineering by the Racing Club and provided evidence that:

- Car parking within the Activity Centre is currently at 25 per cent below the Column B Rates.

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<sup>2</sup> Activity Centre Zone Schedule 1, Clause 5.9-5

- The Parking Plan has empirically determined that the current parking requirements in the Activity Centre are lower than the Column B rates.
- The Amendment will result in an oversupply of car parking.
- The Activity Centre is highly accessible by public transport.

At the Hearing, Mr Coath stated that the Column B rates are more appropriate than the standard car parking rates, however, there should be an ability to apply for a permit to reduce the number of spaces if there is an empirical assessment to support a reduction.

**(iii) Discussion**

Council submitted that it endorsed the Parking Plan in November 2015. The Plan states that Activity Centre parking could be provided at either the Column B rates or lower in the current circumstances. The Panel considers that activating the Column B rates with the ability for a permit to reduce the required number of car parking spaces through an empirical assessment implements a fundamental aspect of the Parking Plan.

Council's submission and its expert witness did not provide sufficient strategic basis to prohibit a permit from reducing the required number of car parking spaces.

The Panel accepts that the current public car parking is at effective capacity and notes that activating Column B rates without a permit to reduce the number of required car parking spaces would result in a 25 per cent increase in capacity. The Panel acknowledges input from local patrons as expressed in the Parking Plan surveys that current parking is insufficient to cater for staff and customers and understands the impact of car parking availability on the economic capability of the Activity Centre, particularly in non-accommodation precincts.

The Parking Plan identifies that a vast majority of shoppers use short term two-hour car parking spaces. The Panel observed this itself during its site visit. While it is difficult to predict future parking demands for these shoppers without an analysis of the shopping catchment, the Panel considers that Column B rates are appropriate for the Activity Centre.

The Panel accepts that future car parking demand is likely to be less than current. For example, the Racing Club development will be predominately high-density residential which is different from the balance of the Activity Centre where commercial uses generate greater parking demand. This in itself will reduce parking demand.

Activating the Column B rates with the ability to consider reducing the number of car parking spaces to reflect an empirical assessment would be most effective to satisfy the current and potential range of future residential, retail and commercial uses. The Panel agrees with the Racing Club that Council could have sought to activate Column B rates only, which would have negated the need for a Parking Plan, as advised in Planning Practice Note 57. However, the Panel acknowledges that the Amendment seeks to implement other provisions in addition to Column B rates.

Requiring all proposals to provide the total number of calculated car parking spaces instead of numbers derived from empirical assessments is likely to result in Council receiving either more car parking spaces or financial contributions than the demand that

these developments will generate. Whether this results in an oversupply in car parking in the Activity Centre depends on how many financial contributions are collected in place of car parking spaces and the extent of existing parking issues in the Activity Centre.

Any car parking spaces and financial contributions that exceed future demand are therefore likely to be spent on addressing existing issues. The Panel considers it unfair and insufficiently justified to require future developments to provide more parking than the demand they would generate. The Panel would have taken a different view if the rates in the Parking Plan were similar or greater than the Column B rates.

The Panel therefore accepts Mr Coath's evidence that Column B rates are appropriate default standard rates for the Activity Centre.

**(iv) Conclusion**

The Panel concludes:

- The lower standard car parking rates in Column B of Table 1 in Clause 52.06 are appropriate and justified for the Activity Centre – an applicant can still apply to reduce the number of required car parking spaces through a permit.
- There is insufficient strategic basis to remove the ability for a permit to reduce the number of required car parking spaces that are calculated using Column B rates.
- More rigorous strategic justification is needed to demonstrate the exceptional circumstances for not allowing a permit to reduce the required number of car parking spaces.

**(v) Recommendation**

The Panel recommends:

1. **Amend Parking Overlay Schedule 1, as shown in Appendix B, to:**
  - a) **replace the provisions under Clause 2.0 (Number of car parking spaces to be provided) with:**

*For all uses listed in Table 1 of Clause 52.06-5, the number of car parking spaces required for a use is calculated using the Rate in Column B of that Table*

**4.2 Financial contributions**

The Parking Overlay specifies:

*A schedule to this overlay may allow a responsible authority to collect a financial contribution in accordance with the schedule as a way of meeting the car parking requirements that apply under this overlay or Clause 52.06.*

PO1 allows a financial contribution to be collected and includes details about how it would operate.

**(i) The issues**

Chapter 3 considers the methodology for strategically justifying the financial contributions rates. This chapter focuses on issues with the proposed financial



contributions payments scheme. PO1 Clause 3.0 requires the following financial contributions in place of each car parking space not provided on the subject land:

- \$7,500 (ex GST) for each car parking space associated with an accommodation use
- 15,000 (ex GST) for each car parking space not associated with an accommodation use.

Clause 3.0 specifies that funds collected from spaces associated with accommodation uses can be spent on the following projects within and around the activity centre:

- Streetscape improvements (for example widening footpaths, street furniture and improved pedestrian amenity).
- Laneway improvements (for example improved pedestrian amenity/connectivity).
- Public transport stop upgrades (for example seating, rubbish bins and other amenities not already provided).
- Dean Street underpass project (a specific project included in Council's Walking and Cycling Strategy, which formalises access to the Moonee Ponds Creek shared path).
- Maintenance of the Moonee Ponds Creek Path.
- Shared paths (for example along Dean and Wilson Streets).
- Way finding signage.
- On-road bicycle lanes (for example along Mt Alexander Road and potentially Ascot Vale Road).
- Intersection/roundabout improvements (this includes the Junction intersection).

It adds that funds collected from spaces associated with uses not associated with accommodation can only be spent on developing publicly-accessible off-street parking facilities in the Activity Centre.

The issues are whether the financial contribution provisions should be applied, whether the rates are appropriate and justified, and where collected funds should be spent.

## **(ii) Evidence and submissions**

### **Financial contribution rates**

Council's submission interpreted financial contributions in place of a car parking spaces as a reduction or waiver in the number of car parking spaces. This interpretation extends to the Explanatory Report and PO1 purposes. Council's expert, Mr Spencer, considered a financial contribution as compensation for not providing the space.

Council submitted that the financial contribution rates were developed through a robust methodology found in the Parking Plan and Cash-in-lieu report.

Council tabled correspondence from DELWP dated 31 March 2015 that was, to some extent, relied upon in Council's formulation of PO1 and its financial contributions.

The Parking Plan determined the non-accommodation financial contribution rates using a methodology that had been used to inform other similar financial contributions schemes. It firstly estimated the total cost for each parking space (including land and construction

costs) to be \$31,980. It then estimated an appropriate discount to be applied to the financial contribution amount.

The “*estimated flow on benefits to businesses*” is the concept where money is spent at local businesses; these businesses spend with other nearby businesses. The Parking Plan suggests that a 30 per cent discount is therefore reasonable.

The “*estimated percentage of users relating to new development*” is the concept that future infrastructure will not solely support the demand created by the new developments but also service the present demand from existing developments. The Parking Plan states that 67 per cent is appropriate and aligns with other approved financial contribution schemes in Melbourne.

Applying these two concepts discounts the total cost of the car park to the financial contribution rate of \$15,000 as shown in Table 5.

Table 5 Non-accommodation financial contribution rate calculation

Item	Amount (ex GST)
Estimated cost per parking space	\$31,980
Estimated Flow-on benefits to businesses (Cost discounted 30%)	-\$9,500
Estimated percentage of users relating to new development (Cost further discounted by 33%)	-\$7,480
Cash-in-lieu waiver amount	\$15,000

A methodology based on a combination of analysis from both the Parking Plan and Cash-in-lieu report was adopted to determine an appropriate accommodation financial contribution rate.

Council submitted that spending funds collected in place of accommodation parking on short-term consolidated public parking was not appropriate. It sought to spend these funds on improving sustainable transport infrastructure in the Activity Centre.

The Cash-in-lieu report stated that the accommodation financial contribution rate that would be used to fund sustainable transport projects should be less than the non-accommodation financial contribution rate because the improvements may deliver significant collateral benefits in the areas of health, environment, and amenity. SGS used a benefit-cost analysis to determine an appropriate discount. The analysis demonstrated a benefit-cost ratio of better than 2 to 1, which results in a financial contribution amount of \$7,500 as shown in the table below.

Table 6 Accommodation financial contribution rate calculation

Item	Amount (ex GST)
Cash-in-lieu waiver amount	\$15,000
Net community benefit discount (50%)	-\$7,500
Residential cash-in-lieu waiver amount	\$7,500

Council compared its proposed financial contribution rates with approved Parking Overlays in metropolitan Melbourne where the average financial contribution rate was calculated to be \$13,087.

Ms Porter for the Racing Club submitted that for non-accommodation uses there is no need for a financial contribution to be paid in place of car parking at a rate that is not currently being generated and that a financial contribution should be payable in place of each parking space that is empirically required. The Parking Plan and PO1 do not adequately specify where or when the off-street parking will be constructed and whether the Council will fund any shortfalls. Ms Porter noted that there is a clear risk that financial contributions from Precinct 9 will fund car parking that will never be used by traders or visitors using Precinct 9.

Ms Porter referred to the accommodation uses in Aecom's comments contained in Appendix A of their report:

*The methodology for residential waiver methodology [sic] will need to consider that there is little strong precedent to be absolutely confident in its successful adoption. The (unsuccessful) precedent that does exist points to the need to more clearly illustrate and justify the need, nexus, accountability and equity of a residential waiver...*

*Council will need to demonstrate a clear link between the specific non-car parking based initiatives that will support a reduction in car parking need. Only this can in turn facilitate a change of transport mode to more sustainable ones over time.*

*Any non-car parking initiatives must be implemented and the contributions spent within the Parking Overlay area and the demands of the principles of accountability and equity will require that an appropriate apportionment of these facilities will be funded through other (Council) means as both existing and future residents are likely to enjoy the benefits of these facilities.*

It was further submitted that there is no specific justification for the particular sustainable transport projects nominated in the PO1, how the projects support reduced car parking demand, and to what extent any of these projects are already funded.

Ms Bell submitted that Council has not justified the inclusion of the proposed requirements for financial contributions in PO1. She added that the financial contribution requirements in PO1 should be deleted so that only Column B rates apply to the Activity Centre. She submitted that pay parking should be extended as an alternative to financial

contributions and that no financial contributions for the off-street car parking apply until Council can demonstrate the feasibility of such a facility and fully commit to providing it.

Ms Bell submitted that a figure of \$7,500 grossly underestimates the cost of providing a car park in the Activity Centre. Ms Bell referred to Mr Spencer's evidence, who in determining this amount, emphasised that, his assessment is not a calculation that is empirically justified in any way. While accepting that some discount can apply no justification has been provided for the applied discount of 50 per cent, and even if this is accepted an appropriate starting point has not been used. Ms Bell accepted as reasonable, the two step reduction applied by Aecom in determining the non-accommodation amount of \$15,000 but questioned the first of these reductions being then made applicable in determining the accommodation amount of \$7,500.

Ms Bell submitted:

- *However, to determine the appropriate rate within this range consideration would need to understand what proportion of new centrally provided car parking is expected to provide for new development compared to meeting latent demand for parking in the activity centre." The Maddocks Advice at 5.1 confirms that Council needs to seek further guidance from AECOM or another consultant on the selection of this rate, and that it should be justifiable. Council has provided no evidence of any further work to justify the figure of \$15,000 proposed in this amendment, and has indicated that nothing further is available to the Panel to justify this figure. Based on Council's evidence it would appear that none of the relevant issues (location, size, time allowance and cost of the car parking facility) have been determined, and as such, an appropriate discount could not have been calculated.*
- *I additionally note in support of this point the Maddocks advice at 4.4 which states, "It is likely that a Planning Panel considering the merits of such a scheme would want to be satisfied that the projects for which the cash in lieu payments are being sought will ultimately be delivered.*
- *The car parking provisions are not drafted to allow financial contributions to be obtained as a trade off for reducing car parking requirements. They are an alternative way of providing the required car spaces.*

Mr Wallis supported financial contributions in place of parking spaces while Ms Fry and Mr Nesci supported them if funds were spent on new multi-level parking. Mr Nesci added that multi-level car parks should be provided to the east and west of the Activity Centre in advance. Moonee Ponds Chamber of Commerce, which provided conditional support to the Amendment, submitted:

*... our preferred position is to have Council mandate that all development in the activity centre meet the guidelines in place in respect to the number of car spaces required for residential and commercial developments.*

It submitted that four existing car parking areas were funded through previous special rate levies from Puckle Street traders and sought guarantee that the car parking provided

by the commercial levies collected through the financial contributions would be in addition to the resultant existing 353 spaces.

Other submitters opposed financial contributions for different reasons. Ms Vulin and Ms Stepowy, did not support financial contributions because they consider the Activity Centre needs more parking spaces. Ms Stepowy submitted:

*I would like to express my concerns about the waiving of car parking regulations for those developers who pay a "contribution" to the Council. Is it a contribution or a bribe? This sets a disturbing precedent for future transactions with the Council.*

Housing Industry Association submitted:

*... financial contributions collected in lieu of car parking spaces amounts to yet another tax upon the development industry that due to the need to pass this cost onto home buyers has a negative impact upon housing affordability.*

Sensational Kids considered the financial contribution rate to be unfeasible because it intends to expand its operation where it cannot provide nine car parking spaces on its land. It submitted that a cash payment in lieu of nine parking spaces would be \$135,000, equating to 7.5 times its monthly revenue. Ms McIntyre also considered the provisions to be unfeasible for commercial or residential developments while Mr Gattini submitted that the rates were 'over the top' and would force businesses to leave the Activity Centre. Business owner, Mr Ho, was not convinced that Council's approach would solve the Activity Centre's traffic congestion.

Mr Sowerwine considered the cash-in-lieu rate to be too low and submitted that a higher rate should be applied so that it could be used on projects such as bicycle and pedestrian infrastructure and public transport improvements.

#### **Funded projects**

Much of the evidence and submissions of the previous section are relevant in this section.

As outlined above, some submitters sought to spend financial contributions on multi-level car parks while another considered they should be spent on bicycle and pedestrian infrastructure and public transport improvements.

Mr Coath, a traffic expert called by the Racing Club, stated:

*I do not consider the current cash in lieu scheme for non-accommodation uses to be appropriately developed to ensure it suitably satisfies the financial contributions tests of need, equity or accountability. In this regard:*

- *The starting point from which funds are collected must be revised to reflect the empirical demands of the centre (not Column B rates), and*
- *The project to be funded must be further developed before funds are collected to ensure accountability and equity are satisfied.*

**(iii) Discussion**

**Financial contribution rates**

Planning Practice Note 57 defines a financial contribution as a payment in place of providing car parking spaces. The Parking Overlay specifies that a financial contribution is a way of meeting the car parking requirements that apply in a schedule to the overlay or Clause 52.06. A financial contribution therefore contributes towards the car parking requirement and it is not a reduction or waiver. It is certainly not compensation for not providing the spaces.

Planning Practice Note 57 states that the magnitude of the cash payments must be proportionate to the statutory right for which they are exchanged. The cost of the financial contribution must therefore reflect the cost of providing the parking space.

The Panel acknowledges the legal advice of 1 June 2015 from Maddocks that, in principle, there is no reason why different financial contribution rates can be provided for different types of development and that there is scope for PO1 to collect financial contributions to fund sustainable transport initiatives. It stated that the challenge was being able to demonstrate the strategic basis for the proposal. The Panel agrees with the legal advice and emphasises the importance of strategically justifying the proposal.

The Panel is not aware of any Parking Overlay schedule that includes two different financial contribution rates. However, it finds no issues with the broad-level logic behind this approach, where appropriate and justified.

The Parking Plan methodology for providing a non-accommodation financial contribution rate provides some basis for discounting the financial contribution rate. It provides a reasonable approach to discount the amount by allowing for an overflow of existing parking demand.

While the Panel is not entirely comfortable with the percentages arrived at by the Parking Plan to discount the financial contribution rate, the end result is an amount of \$15,000 that is considered reasonable in the context of other similar scheme in metropolitan Melbourne where the average amount is \$13,087.

The Panel agrees with Council that funds raised for non-accommodation uses should be set aside for a publically accessible centralised off-street car parking. This provides a clearer nexus between the development and the facilities provided and is a more practical, effective and efficient solution.

The Panel is more concerned with the accommodation financial contribution rate of \$7,500. It agrees with Ms Bell that \$15,000 is not an appropriate starting point to apply discounts for this use. The Panel does not consider the benefit-cost analysis in the Cash-in-lieu report to be an appropriate or accurate quantitative assessment to support discounting the accommodation financial contribution rate to half of the non-accommodation rate.

**Funded projects**

PO1 includes provision to construct publically accessible centralised off-street car parking but has provided no information as to when or where the facility will be constructed.

While Council's submission refers to potential locations, the Panel agrees with Mr Coath and considers the lack of specificity makes it difficult to satisfy the financial contributions tests of need, equity or accountability. It is in stark contrast to the example on page 13 of Planning Practice Note 57.

The Panel agrees that financial contributions from accommodation uses can, in principle, be appropriately used to reduce parking demand and improve health wellbeing by funding sustainable transport initiatives such as bicycle parking. However, the Cash-in-lieu report appears to have over-estimated the benefits, which has resulting in an unacceptably low accommodation financial contribution rate.

The Panel agrees with advice in the Parking Plan that the methodology will need to consider that there is little strong precedent for two different contribution rates in the same Activity Centre as proposed by the Amendment. Further, the (unsuccessful) precedent points should more clearly justify the need, nexus, accountability and equity of the accommodation contribution rate in particular. The Parking Plan concluded:

*Council will need to demonstrate a clear link between the specific non-car parking based initiatives that will support a reduction in car parking need. Only this can in turn facilitate a change of transport mode to more sustainable ones over time*

Importantly, Maddocks' legal advice to Council advises that the Parking Plan does not provide Council with sufficient guidance or strategic justification to support the introduction of PO1 and states:

*We consider that this work needs to be reviewed or further work need to be commissioned by Council.*

Maddocks' advice raised the issue of Council's contribution to the works:

*Nevertheless, we would expect that where funds are being raised for a particular project, then the basis of the scheme would be that Council would cover any shortfall between the funds collected and the actual cost of delivering the project. It is likely that a Planning Panel considering the merits of such a scheme would want to be satisfied that the projects for which the cash in lieu payments are being sought will ultimately be delivered.*

Council provided advice received from DELWP dated 31 March 2015<sup>3</sup>, which was useful to the Panel. DELWP qualified its advice by advising that it had not gone into the matter "in any great depth" and advised Council to take its own legal advice regarding the level of specificity required.

The Maddocks' advice as discussed above provided the Panel with a clear legal summary of the key matters in question.

Council subsequently engaged SGS to address some of the concerns raised. It is the Panel's view that the Cash-in-lieu report undertook this task with an unorthodox

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<sup>3</sup> Council Submission Part A, Appendix B

approach that did not meet the advice expressed by Aecom or Maddocks. In his expert evidence, Mr Spencer belatedly addressed the four core principles of need, nexus, accountability and equity. This evidence was not substantive enough or in enough detail to convince the Panel that the accommodation financial contribution rate was justified.

The Council advised the Panel that it did not intend to undertake any further work in respect of this matter.

While it is appropriate to establish a financial contribution for accommodation to fund sustainable transport initiatives, neither the \$7,500 rate nor the type of projects listed in PO1 have sufficient detailed information to justify their inclusion.

The Panel does not accept Council's comparison of other existing Parking Overlay schedules that showed limited project information to justify the lack of information in PO1.

Council did not demonstrate a clear link between the specific non-car parking based initiatives that will support a reduction in car parking need. Only this can in turn facilitate a change of transport mode to more sustainable ones over time.

For example, PO1 includes projects such as streetscape improvements and laneway improvements but provides no specifics as to the location of these works, whether council funds have been, or will be, allocated, nor even a general scope of the type of works required. Council was not therefore in a position to explain to the Panel's satisfaction how or to what extent car parking demand would be decreased.

Similarly, another PO1 project identifies *"intersection /roundabout improvements (including the Junction intersection)"*— while potentially a worthwhile and valid project to reduce car parking demand, it is lacking in sufficient specificity to enable the Panel to forecast its impacts. The Panel's site inspection observed the Junction and its exceptionally complex traffic engineering challenges, which reinforced its apprehension to accept this as an acceptable means of reducing car parking demand. Council, subsequently submitted PO1 Version C which qualified this project by relating it specifically to pedestrian /cyclist connectivity, which although an improvement did not significantly assist in the justification the Panel was seeking.

**(iv) Conclusion**

The Panel concludes:

- The principle of two differing financial contribution rates for accommodation and non-accommodation uses is acceptable but presents some practical issues.
- There is insufficient strategic basis to justify the \$7,500 accommodation financial contribution rate based on the methodology provided, its uniqueness and its comparatively very low amount.
- It is appropriate to spend funds collected from accommodation developments on specifically identified sustainable transport initiatives.
- There is insufficient specificity provided in PO1 or any associated document to align the sustainable transport initiatives with the core principles in Planning Practice Note 57.



- The \$15,000 non-accommodation financial contribution rate, while comparative to other similar schemes, is not justified.
- It is appropriate to spend collected funds from non-accommodation developments on specifically identified publically accessible off-street parking in the Activity Centre.
- There is insufficient specificity provided in PO1 or any associated document to align the off-street parking project with the core principles in Planning Practice Note 57.
- Deleting the financial contributions provisions will make the suite of PO1 objectives no longer be applicable.

**(v) Recommendation**

The Panel recommends:

2. **Amend Parking Overlay Schedule 1, as shown in Appendix B, to:**
  - a) delete Clause 3.0 (Financial contributions requirement)
  - b) replace all objectives in Clause 1.0 (Car parking objectives to be met) with:

*To identify appropriate car parking rates for land uses in the Moonee Ponds Activity Centre.*

**4.3 Where Parking Overlay Schedule 1 should be applied**

**(i) The issue**

The issue is whether PO1 should apply to Precinct 9 – a portion of the Racing Club land.

**(ii) Evidence and submissions**

The Racing Club submitted that its land should be excluded from PO1 because the parking requirements proposed by the Amendment might duplicate strategies in the Integrated Management Plan, as required by Activity Centre Zone Schedule 1. It added:

*Given the uniqueness of the Moonee Valley Racecourse development and the requirement for the Integrated Transport Plan, it is appropriate that the MVRC be excluded from the Parking Overlay boundary.*

Precinct 9 will be predominately an intensively redeveloped residential development with some commercial and retail uses. The required Integrated Transport Plan must include among other things, recommended car parking rates and a contribution towards physical and community infrastructure.

The Racing Club therefore submitted that it was a most likely candidate for 'double dipping'.

The Racing Club also submitted that the Column B rates with no flexibility to reduce the number of calculated car parking spaces, as proposed by the PO1, would result in an overprovision of car parks for a demand that does not exist and investment that will not be used.

In its submission, Council disagreed that the Racecourse land was unique to the Activity Centre.

It pointed to examples approvals for high density mixed use development in Hall Street and Ascot Vale Road within the Activity Centre.

Council submitted that the Integrated Transport Plan is required to be prepared before any planning permit is lodged on the Racecourse land and that it does not give implicit approval for car parking provision on the site nor does it allow for waivers under clause 52.06.

The Council conceded that there could be some overlap in projects under the Integrated Transport Plan and PO1 but where this did occur Clause 52.06 would allow these contributions to be counted towards any required financial contribution under PO1.

**(iii) Discussion**

It is acknowledged that the Amendment implements a recommendation of the Parking Plan by applying PO1 to the Racing Club land. The Panel considers that the recommendation is based on a broad level logic without a detailed understanding on how the statutory provisions for both the Activity Centre and Racing Club land could operate together. The Panel accepts the Racing Club's submission that requirements in provisions proposed by the Amendment may inadvertently duplicate those in Activity Centre Zone Schedule 1.

As discussed at the Hearing, the Panel considers that there are two options that may address this issue:

1. Remove PO1 from the Racing Club land if a permit cannot be granted to reduce the number of car parking spaces and if it is not clear whether any contribution does not duplicate those required in Activity Centre Zone Schedule 1.
2. Apply PO1 to the Racing Club land if there is an ability to reduce the number of car parking spaces and recognise an empirical assessment and any contributions required through provisions in Activity Centre Zone Schedule 1.

The Panel has earlier recommended that PO1 provide the ability for a permit to reduce the number of car parking spaces calculated when applying Column B rates. The Panel considers that this resolves issues raised by the Racing Club by:

- implementing more realistic car parking spaces that align with an empirical assessment
- recognising its contribution (financial or otherwise) through Activity Centre Zone Schedule 1
- when taking the above into account, avoid contributions being duplicated between two different mechanisms.

By providing flexibility, the provisions in PO1 and Activity Centre Zone Schedule 1 could operate together without duplication or conflicts. This aligns with Option 2.

**(iv) Conclusion**

The Panel concludes that the Racecourse Land should remain in PO1 with the ability for a permit to reduce the number of car parking spaces that is supported by an empirical assessment.

## 5 Other issues

### 5.1 Car parking management

#### (i) The issue

The issue is the extent to which the Amendment can respond to general car parking management matters raised during the Panel Hearing.

#### (ii) Evidence and submissions

Ms DeSensi submitted that the way in which parking is managed around her salon in Eddy Street affects her clients and staff. She added that most of her clients park across the street at the Coles car park because it is free but are unable to find a parking space during peak times. Ms DeSensi sought free parking permits for her staff.

Caroline Chisholm Society also sought free parking for its volunteers and 'not too expensive' parking for its workers. It submitted that future developments in the Activity Centre will increase demand for two hour, three hour and all day car parking which it believes reach capacity during certain times. It sought car parking to meet the needs of those getting in and out of cars with infants in prams or walking with infants in prams from traffic from a car or public transport.

Ms Bell considered that paid parking could manage parking demand more effectively if it was introduced where parking demand exceeded 85% of parking spaces. This may reduce the parking demand to the extent that the principle of 'need' is not met. Ms Bell referred to the 2011 Advisory Committee on Car Parking Provisions report, which viewed parking fees as a direct alternative to financial contribution schemes readily available to Councils.

Ms Bell submitted therefore that the Panel should recommend that Council consider extending the use of paid parking in the Activity Centre as an alternative to requiring financial contributions. In its closing submission, Council said that it had no intention to start charging for existing free car parking spaces in the commercial core area.

#### (iii) Discussion

How car parking is managed, such as time restrictions and fees, can influence land use impacts. For example, providing free parking in the commercial core and paid parking on the periphery of centre may result in one area experiencing higher congestion and parking occupancy rates than another part of the centre.

On its unaccompanied site visit, the Panel particularly noticed the various parking areas of the Activity Centre and noted the location of the short and long-term zones, the areas of free parking and fee parking and the relative demand for parking to better understand the dynamics of the Activity Centre. It was noted that generally, much of the Activity Centre core parking was free and at effective capacity and that, parking in the paid parking zones was below capacity. The Panel questioned the Council as to its propensity to extend paid parking to reduce demand. Council clearly responded that this matter had been considered in the past and it does not intend to raise this matter again.

The Panel makes no further comment about this matter because how Council manages its car parking is ultimately subject to a separate process administered under a different Act to the *Planning and Environment Act 1987*.

**(iv) Conclusion**

The Panel concludes that car parking is managed through a separate process beyond the *Planning and Environment Act 1987* and outside the Amendment process.

**5.2 Drafting of the proposed planning scheme provisions**

The Panel identified drafting related issues throughout the Hearing and in response, Council presented PO1 Version C with tracked changes. The Panel asked Council to explain what it sought to achieve through PO1 because the way in which they were drafted made it difficult to understand. Council sought advice from DELWP and an email with DELWP's advice was tendered on the final day of the Hearing.

The changes are outlined in Table 7.

There was 'without prejudice' discussion about the revised changes and the Panel provided each party with an opportunity to comment on the revised draft by 3 June 2016. Council responded with some further minor wording changes (Version D).

Table 7 Comparison of the exhibited and revised PO1 provisions

Exhibited provisions	Version C provisions	Version D provisions
<b>Car parking objectives to be achieved</b>		
Uses the term 'waivers'	Replaces 'waivers' with 'reductions'	Same as Version C
<b>Clauses 2.0 and 3.0</b>		
The lower standard car parking rates found in Column B of Table 1 in Clause 52.06 apply.	Moved to a new Clause 2.0 (Number of car parking spaces to be provided)	Replaced this provision with: The lower standard car parking rates found in Column B of Table 1 in Clause 52.06 are required, unless the following apply: - The number of car parking spaces required in this schedule for a new use of land is less than or equal to the number of car parking spaces required under this schedule for the existing use of the land; and - The number of car parking spaces currently provided in connection with the existing use is not reduced after the new use commences.
Nil	New Clause 3.0 (Permit requirement) A permit must not be granted to reduce (including reduced to zero)	Same as Version C

Exhibited provisions	Version C provisions	Version D provisions
	the number of car parking spaces required under this overlay unless financial contributions are provided in lieu of each space reduced.	
<b>Financial contributions requirement</b>		
A financial contribution of \$7,500 (ex GST) is required in lieu of... A financial contribution of \$15,000 (ex GST) is required in lieu of ...	The responsible authority may accept a financial contribution of ...	Replaced 'in lieu of each car parking space...' with: In-lieu of one or more car parking spaces being provided on-site ...
Maintenance of the Moonee Ponds Creek Path	Improvements to the Moonee Ponds Creek Path	Deleted: Improvements to the Moonee Ponds Creek Path
Intersection/roundabout improvements (this includes the Junction intersection)	Intersection/roundabout improvements which relate to pedestrian/cyclist connectivity (this includes the Junction intersection)	Same as Version C
Nil	Added: Other financial contributions received which are considered by the responsible authority to be for the same planning purpose will be applied as credit for car parking spaces.	Revised to: Other financial or in kind contributions may at the discretion of the responsible authority be offset against the financial requirements if they are to the satisfaction of the responsible authority.

**(i) Discussion**

During the Hearing, it became evident that Council did not appear to understand that a financial contribution can be made without a planning permit process. The Panel agrees with Ms Bell's observation that Council appears to have confused the fact that the car parking provisions are not drafted to allow financial contributions to be obtained as a trade-off for reducing car parking requirements. They are an alternative way of providing the required car spaces.

As shown in Figure 2 of this report, Planning Practice Note 22 states that if the specified number of spaces cannot be provided on the land, an applicant can either:

1. Apply for a planning permit to reduce the parking requirement.
2. Amend the proposal so that the requirement is met (for example by reducing the intensity of the use).
3. If available, pay a financial contribution for each space not provided.

Only one of the three options involves a permit process. The third option allows a financial contribution to be made as an alternative way of providing the required car parking spaces. It appeared to the Panel that Council misunderstood that a permit is required whenever a financial contribution is obtained. This confusion extended to Council's email to DELWP that shows that Council did not understand the Panel's query, and more importantly, did not appear to understand how Clause 52.06 operated.

With respect to the exhibited provision *“The lower standard car parking rates found in Column B of Table 1 in Clause 52.06 apply”*, a reasonable person would interpret this as meaning that the Column B rates are activated but can be reduced through a permit process. Council’s revised provision (PO1 Version C) which specifies that a permit cannot be granted to reduce the number of car parking spaces is a different provision. The latter may have been what Council intended but a reasonable person is unlikely to have been aware of this when considering the Amendment during its exhibition.

The Panel considers that the revised draft of PO1 provided during Council’s closing submission continues to have drafting issues that may affect its operation. An example is the introduction of a car parking credit scheme for the Racing Club land. The new provision provides no definitions or relevant provisions that would support its implementation. This provision would not necessary if the Racing Club land was able to apply for a permit to reduce the Column B rates to acknowledge an empirical assessment and associated circumstances.

**(ii) Conclusion**

The Panel concludes:

- PO1 has serious drafting issues that resulted in misinterpretation and would have affected its operation.
- Any future amendment that changes PO1 should apply drafting principles such as those contained in Planning Practice Note 10 (Writing schedules) to address interpretation issues.

## Appendix A Document list

No	Description	Presented by
<b>17 May 2016</b>		
1	Part A submission	Council
<b>24 May 2016</b>		
2	Submission – including Part B submission, appendices, and other relevant documents	Council
<b>26 May 2016</b>		
3	Parking Overlay Schedule 1 – Revised	Council
4	Submission on behalf of the Moonee Valley Racing Club	Ms E Porter
5	Submission	Ms K Bell
6	Explanatory Report – Revised	Council
7	Email dated 25 May 2016 advice from DELWP on interpretation of Clause 52.06	the Panel



## **Appendix B Panel recommended Parking Overlay Schedule 1**

MOONEE VALLEY PLANNING SCHEME

**SCHEDULE 1 TO THE PARKING OVERLAY**

Shown on the planning scheme map as **PO1**.

**MOONEE PONDS ACTIVITY CENTRE**

**1.0 Car parking objectives to be achieved**

To identify appropriate car parking rates for land uses in the Moonee Ponds Activity Centre.

**2.0 Number of car parking spaces to be provided**

For all uses listed in Table 1 of Clause 52.06-5, the number of car parking spaces required for a use is calculated using the *Rate* in Column B of that Table.



C:\Users\Public\Documents\ORDINARY COUNCIL MEETING\ITEM 9.6 - APPENDIX F

## Maddocks

### INTRODUCTION

1. Maddocks has been asked to review the Panel Report for Amendment C132 with a view to providing the information which the Panel addressed in its report. This relates primarily to what the Panel identified as the strategic basis of certain information.
2. For the purpose of responding to our instructions and to give the reader a better appreciation of the issues and responding to the Panel's concerns, we propose to set out the proposal which is at the heart of Amendment C132 and provide some further context.
3. We will then address the key concerns as raised by the panel. It is the intent of this report to respond to the concerns.

### The Proposal

4. At the heart of Amendment C132 is a proposal to introduce a Parking Overlay Schedule 1 (PO1) into the Moonee Valley Planning Scheme. (Scheme)
5. The purpose of PO1<sup>1</sup> is described as follows:
  - To appropriately manage the provision of car parking within the Moonee Ponds Activity Centre.
  - To improve both public car parking provision and sustainable transport infrastructure within the centre.
  - To provide for the collection of financial contributions in lieu of commercial car parking waivers to contribute to the construction of publicly-accessible off-street parking facilities within the centre.
  - To provide for the collection of financial contributions in lieu of residential car parking waivers to contribute to the construction of sustainable transport improvements within the centre.
6. The purposes are clear and concise. The purpose of PO1 is immediately evident from reading the provisions. To give effect to PO1, the following mechanisms are put in place:
  1. The rates in Column B of clause 52.06 are adopted as the standard rates for the purposes of the area to which PO 1 applies.

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<sup>1</sup> Reference is made to the exhibited version of PAO1.

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- Streetscape improvements (e.g. widening footpaths, street furniture and improved pedestrian amenity).
- Laneway improvements (e.g. improved pedestrian amenity/connectivity).
- Public transport stop upgrades (e.g. seating, rubbish bins and other amenities not already provided).
- Dean Street underpass project (Action 1.6 within Council's Walking and Cycling Strategy which formalises access to the Moonee Ponds Creek shared path).
- Shared paths (e.g. along Dean and Wilson Streets).
- Wayfinding signage.
- On-road bicycle lanes (e.g. along Mt Alexander Road and potentially Ascot Vale Road).

C O U N C I L   O F   M O O N E E   V A L L E Y

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- Intersection/roundabout improvements which relate to pedestrian/cyclist connectivity (this includes the Junction intersection).
5. The funds received as payment in kind on account of non-accommodation proposals are to be spent on an unspecified public car parking project. The relevant provision states:
- All financial contributions collected in lieu of car parking spaces associated with a use other than accommodation can only be spent on the development of publicly-accessible off street parking facilities within the activity centre.
7. The methodology employed by the PO1 is similar to the methodology of Parking Overlays employed in other municipalities to some extent. That said, it is different in that the Moonee Valley PO1 seeks to raise funds for
- a range of non-motorised transport initiatives designed to bring about mode shift away from the motor vehicle; and
  - publicly accessible off-street car parking facilities that will provide short term car parking.
8. The first of these purposes has not, as far as I am aware, been the subject of a Parking Overlay elsewhere although it has been the subject of commentary as to what is desirable on several occasions, as further outlined within this review.
9. The second of these purposes is a common approach as indicated in Table 2 of Council's Part B Submission repeated below for completeness

**Table 2 – Level of Detail within existing Parking Overlays**

Parking Overlay	LGA	Location	# of Spaces	Timeframe
Bendigo	Greater Bendigo	Not specified	Not specified	Not specified
Bridge Street	Greater Bendigo	Not specified	Not specified	Not specified
Springvale	Greater Dandenong	Balmoral Avenue Car Park	80 spaces	Not specified
Leongatha	South Gippsland	Public car park for the Leongatha Town Centre area	Not specified	To be reviewed no later than 5 years from the date of gazettal
Glen Waverley	Monash	Not specified	260 spaces	Not specified
Oakleigh	Monash	Not specified	195 spaces	Not specified
Werribee	Wyndham	Public parking projects within the Werribee City Centre or adjacent to the Werribee City Centre in accordance with the Consolidated Parking Master Plan as shown in Figure 1, including (where appropriate) multi storey facilities and provision of bicycle parking facilities.	Not specified	Not specified
Berwick	Casey	Not specified	246 spaces	Not specified

- The Moonee Ponds Car Parking Plan (**MPCPP**) by AECOM
- The Strategic Justification For Cash in Lieu of On-Site Parking Provision Report by SGS Economics and Planning.

C:\Users\maddocks\Documents\Appendix F - Moonee Ponds Activity Centre Structure Plan.docx

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- Moonee Ponds Car parking Supply and Demand Surveys April 2009
- Moonee Ponds Car Parking Supply and Demand Surveys March 2012
- Moonee Ponds Car Parking Supply and Demand Surveys October 2013
- Moonee Ponds Activity Centre Structure Plan
- Moonee Valley Walking and Cycling Strategy

11. Furthermore, the Amendment was supported by the further evidence of Mr Andrew Spencer of SGS Economics and Planning.

#### WHAT IS THE STRATEGIC ISSUE?

12. On several occasions, in the course of the Panel Report, the Panel expressed concern at the lack of what it described as the strategic basis of the Amendment. For example:

#### 3.4 Conclusions and recommendation<sup>2</sup>

The Panel concludes that the Amendment:

- implements, and is supported by, the relevant sections of the State and Local Planning Policy Framework subject to the Amendment.
- has insufficient strategic justification to implement most exhibited changes.

13. and further

#### (iv) Conclusion<sup>3</sup>

The Panel concludes:

- The lower standard car parking rates in Column B of Table 1 in Clause 52.06 are appropriate and justified for the Activity Centre – an applicant can still apply to reduce the number of required car parking spaces through a permit.
- There is insufficient strategic basis to remove the ability for a permit to reduce the number of required car parking spaces that are calculated using Column B rates.

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<sup>2</sup> Panel Report Page 19

<sup>3</sup> Panel Report Page 23



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- More rigorous strategic justification is needed to demonstrate the exceptional circumstances for not allowing a permit to reduce the required number of car parking spaces.

14. and further:

**(iv) Conclusion<sup>4</sup>**

The Panel concludes:

- There is insufficient strategic basis to justify the \$7,500 accommodation financial contribution rate based on the methodology provided, its uniqueness and its comparatively very low amount.
- There is insufficient specificity provided in PO1 or any associated document to align the sustainable transport initiatives with the core principles in Planning Practice Note 57.
- The \$15,000 non-accommodation financial contribution rate, while comparative to other similar schemes, is not justified. It is appropriate to spend collected funds from non-accommodation developments on specifically identified publically accessible off-street parking in the Activity Centre.
- There is insufficient specificity provided in PO1 or any associated document to align the off Street parking project with the core principles in Planning Practice Note 57.

15. From the above extracts from the Panel Report, it can be seen that the Panel's primary concerns related to lack of what it describes as the lack of "strategic" justification for the following:

- The removal of discretion in relation to further reductions beyond the Column B rates (which the panel found to be appropriate); and
- The adoption of \$7500 as the rate for the spaces required but not provided for accommodation uses.

16. A third issue which arises is the relationship between the Sustainable Transport Works and the reductions in the number of car parking spaces provided for accommodation uses.

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<sup>4</sup> Panel Report Page 31

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17. We deal with each of these issues below.

**ISSUE 1 – LACK OF STRATEGIC BASIS FOR THE REMOVAL OF THE DISCRETION**

18. In my opinion, the removal of the discretion from the PO1 concerning the further reduction of Column B rates is not a matter that calls for strategic justification so much as it requires a rigorous understanding of statutory planning and how contribution schemes work. For instance, in other examples within similar contexts where contributions schemes apply, one will invariably find that where accompanied by a requirement to make a monetary contribution, there is no discretion available to avoid the requirement.

19. The two obvious examples are:

- Development Contribution Plans; and
- Public Open Space Contributions Strategies.

20. In the case of Development Contribution Plans the drafting of the VPP<sup>5</sup> provision states:

A permit granted must:

- Be consistent with the provisions of the relevant development contributions plan.
- Include any conditions required to give effect to any contributions or levies imposed, conditions or requirements set out in the relevant schedule to this overlay.

21. Importantly, there is no discretion to try and avoid the contribution by arguing that your development does not benefit from the works financed by the Development Contributions Plan.

22. In the case of Public Open Space Contributions, the drafting of the VPP<sup>6</sup> provision states:

A person who proposes to subdivide land must make a contribution to the council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both). If no amount is specified, a contribution for public open space may still be required under section 18 of the Subdivision Act 1988.

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<sup>5</sup> At clause 45.06 of the VPPs

<sup>6</sup> At clause 52.01 of the VPPs

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23. Again, the requirement is mandatory. You cannot try and argue that your land is in an area that has adequate public open space.
24. In neither case does the provision admit of any discretion.
25. To illustrate the point further, in the case of the Monash Planning Scheme<sup>7</sup> which also implements a monetary cash in lieu scheme via the Parking Overlay Schedule 1, the drafting is as follows:
- Unless car parking credits exist, a permit cannot be granted to reduce the car parking requirement for:
26. Similarly for Parking Overlay Schedule 2, (which was heard by a panel <sup>8</sup>) the drafting is as follows:
- Unless car parking credits exist, a permit cannot be granted to reduce the car parking requirement for:
27. Similarly to the Casey Planning Scheme, in respect of Parking Overlay Schedule 1:
- A permit cannot be granted to reduce the car parking requirement for any other use determined by undertaking an empirical analysis under Clause 52.06, except in accordance with this Schedule.
28. The above provisions are all consistent in that they each remove the discretion available to adopt a site by site assessment of car parking where there is a contributions scheme involved.
29. Accordingly, the notion that one could implement a car parking contributions scheme in the context of a discretionary provision is challenging from a statutory planning perspective.
30. The proposition in relation to the need to remove discretion is more strategic in nature; namely the objective to avoid a case by case approach to car parking within a centre where the objective is to adopt a centre wide approach. In this regard, the MPCPP advises<sup>9</sup> that:

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<sup>7</sup> The Car Parking Provisions Advisory Committee notes at page 27 that:  
A total of nine Councils currently have cash-in-lieu schemes implemented through local policy or a schedule to Clause 52.06:

- Two Councils have local car parking policies included at Clause 22 that introduce cash-in-lieu schemes for a particular area;
- Seven of 12 Councils that have Parking Precinct Plans (Schedules to Clause 52.06 and include Incorporated Documents at Clause 81) have included cash-in-lieu schemes. Each scheme is for a nominated area but the schedules do not specify details of the number of spaces required for the scheme or any Council contribution.

<sup>8</sup> Panel Hearing Amendment C60 and C71 Monash Planning Scheme December 2007

<sup>9</sup> Page 1 Executive Summary

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AECOM developed the PP according to the requirements and guidelines of the Department of Transport, Planning and Local Infrastructure's 'The Parking Overlay' practice note 57 (April 2013).

The PP for MPAC has been produced with consideration of wider sustainable transport impacts to ensure consistency with MVCC, Plan Melbourne (and Melbourne@5million) and Victoria Transport Plan policy objectives which include the reduction on car dependency, increased use of public transport and the enhancement of pedestrianised areas in activity centres.

Importantly, AECOM advise that the requirements of the MPCPP were:

In accordance with MVCC requirements of the study this PP has:

- Assessed the existing and projected car parking supply and demand for the MPAC.
- More accurately reflected the actual demand rates for MPAC therefore restricting the case by case approach to car parking supply and provision.
- Outlined a cash in lieu contribution strategy for car parking provision to be validly imposed on planning permits.
- Planned to achieve an enduring balance between the demand and supply of parking spaces while allowing new uses and developments that generate new car parking demand to proceed.
- Sought to fund the cost of car parking infrastructure equitably.
- Determined sustainable transport projects that will reduce the demand for car parking (via MVCC consultation).

( our underlining for emphasis)

31. The advice provided by AECOM is consistent with the commonly referred to whole of centre approach to car parking. In an activity centre, the purpose of a Parking Overlay which implements a contributions scheme is to avoid a site by site assessment in preference for a whole of centre approach. This whole of centre approach to car parking is an underlying principle of activity centre planning. For example in the Car Parking Provisions Advisory Committee Report January 2012, the committee commented as follows<sup>10</sup>:

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<sup>10</sup> Page 16 Car Parking Provisions Advisory Committee January 2012.

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#### **Whole of centre approach**

The 2008 Advisory Committee commented that parking provision needs to be viewed on a whole of activity centre basis and that this should ideally be done as part of an integrated planning approach that considers all modes.

There are practical limitations in applying the parking provisions to individual development proposals as a centre-wide strategy may not exist and if it does there may be a time lag between the development and the supply of car parking, or development of other modes, to support the development. Integrated Transport Plans can require a considerable effort and not all Councils have the resources to do this level of strategic work. In this context the parking rates in Clause 52.06 become a useful 'default' rate to be used as a starting point for assessing the appropriate car parking requirements for a particular change of use or development proposal.

Submissions varied on this issue with some submitters arguing that car parking requirements should never be varied or waived, and others arguing that car parking requirements should not get in the way of encouraging local business. Some submitters described allowing car parking to restrict development as 'having the tail wag the dog'.

In practice, planning authorities will need to balance policies relating to economic development and supporting local business against the sometimes expensive requirements on a developer to provide parking. Individual site decisions will need to consider: the existing under or over supply of car parking; the history of the site (what is fair to other land owners); and a range of other matters in determining the appropriate response. Clause 52.06 sets out factors to consider in assessing any reduction in car parking requirements for a particular location.

The Advisory Committee agrees that car parking requirements should, ideally, be set on the basis of a 'centre-wide' analysis and concludes that this is best achieved by having the base or 'fallback' rates set in Clause 52.06, and providing the opportunity for Councils to further support 'centre-wide' policy and strategy via an overlay.

#### **32. The Advisory Committee further commented: 11**

Parking provision should be looked at holistically on an activity centre wide basis with an emphasis on ensuring centre viability and encouraging market based development. Tribunal decisions have consistently advocated a centre based approach and suggested that the car parking provisions in the scheme should reflect this approach;

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<sup>11</sup> Page 22 Car Parking Provisions Advisory Committee January 2012.

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33. With the above in mind, it is to be noted that the C132 Panel made the following observations<sup>12</sup>:

Council submitted that it endorsed the Parking Plan in November 2015. The Plan states that Activity Centre parking could be provided at either the Column B rates or lower in the current circumstances. The Panel considers that activating the Column B rates with the ability for a permit to reduce the required number of car parking spaces through an empirical assessment implements a fundamental aspect of the Parking Plan.

Council's submission and its expert witness did not provide sufficient strategic basis to prohibit a permit from reducing the required number of car parking spaces.

34. And further, the Panel comments:

The Parking Plan identifies that a vast majority of shoppers use short term two-hour car parking spaces. The Panel observed this itself during its site visit. While it is difficult to predict future parking demands for these shoppers without an analysis of the shopping catchment, the Panel considers that Column B rates are appropriate for the Activity Centre.

The Panel accepts that future car parking demand is likely to be less than current. For example, the Racing Club development will be predominately high- density residential which is different from the balance of the Activity Centre where commercial uses generate greater parking demand. This in itself will reduce parking demand.

Activating the Column B rates with the ability to consider reducing the number of car parking spaces to reflect an empirical assessment would be most effective to satisfy the current and potential range of future residential, retail and commercial uses. The Panel agrees with the Racing Club that Council could have sought to activate Column B rates only, which would have negated the need for a Parking Plan, as advised in Planning Practice Note 57. However, the Panel acknowledges that the Amendment seeks to implement other provisions in addition to Column B rates.

Requiring all proposals to provide the total number of calculated car parking spaces instead of numbers derived from empirical assessments is likely to result in Council receiving either more car parking spaces or financial contributions than the demand that these developments will generate. Whether this results in an oversupply in car parking in the Activity Centre depends on how many financial contributions are collected in place of car parking spaces and the extent of

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<sup>12</sup> Page 22 Panel Report

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existing parking issues in the Activity Centre. Any car parking spaces and financial contributions that exceed future demand are therefore likely to be spent on addressing existing issues. The Panel considers it unfair and insufficiently justified to require future developments to provide more parking than the demand they would generate. The Panel would have taken a different view if the rates in the Parking Plan were similar or greater than the Column B rates.

35. It is respectfully submitted that the above admits of an incorrect understanding of how a contributions scheme operates. As noted above, the issue of the mandatory application of the Column B rates can be seen to be traced back to the MPCPP by AECOM. One of the requirements of the MPCPP is:

- o More accurately reflected the actual demand rates for MPAC therefore restricting the case by case approach to car parking supply and provision.

36. The case by case approach to car parking supply and provision is a perennial issue. Permit applicants each essentially seek to persuade the responsible authority and on review the Tribunal that there is adequate provision of car parking in the public pool to accommodate the one extra use. We sometimes see this with applicants contesting permit conditions regarding public open space on a case by case basis.

37. In relation to car parking and the case by case contest to the required car parking, this is particularly of concern noting the following Parking Survey Results in Moonee Ponds, namely:

The traffic surveys indicated a total parking supply of some 3,431 parking spaces, 3,000 of which were publicly available, i.e. not permit, loading bays etc. Following parking demand analysis of publicly available parking bays the following peak occupancies were found over the three surveyed days of each respective parking provision type as follows:

- 76% (513) of on-street parking spaces occupied at 12:00pm on Friday 18 October 2013.
- 88% (928) of off-street public parking spaces occupied at 12:00pm on Tuesday 22 October 2013.
- 92% (1,166) of off-street private parking spaces occupied at 12:00pm on Friday 18 October 2013.

38. The Survey results show that it would be possible on a case by case basis to always show vacant spaces in the centre to justify a reduction on any given lot. On the other hand, the obvious purpose of the MPCPP is to apply a centre wide approach to

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- in relative terms, (relative to the increase in activity and floorspace as development occurs) maintain not less than the current vacancy rates in the centre and
  - improve the traffic conditions in the centre by deviating car based movements to other forms of movement through improvements to the public realm and sustainable transport infrastructure.
39. The insistence by the Panel to removing the fixed nature of the Column B rates is not consistent with the avoidance of a case-by-case approach to car parking supply and provision.
40. Furthermore, the maintenance of discretion in relation to the Column B rates ensures that the objective of the PO1, namely to raise funds for the provision of transport initiatives and a new consolidated car parking facility, will fail. The flow on effects to that absent other funding sources is a continual deterioration in the walkability and public realm of the activity centre due to the proliferation of traffic.
41. Given the currently adequate provision of car parking in Moonee Ponds Activity Centre we doubt whether any insistence on the Column B parking rates would be successful. We opine that on a case by case basis, development proponents would successfully argue that rates could be reduced below the Column B rates thus chipping away at the contributions scheme. In truth, it would suffer death by a thousand cuts as it were.
42. This insistence on making the Column B rates discretionary in the context of a contributions scheme, undermines the purpose of PO1 which is to, from this point forward, maintain the supply of car parking at a relative level somewhat similar to the current levels. As we have demonstrated above, similar schemes at Monash's Glen Waverley Activity Centre and Casey's Berwick Activity Centre, adopt mandatory measures where one of the objectives of the Parking Overlay is to raise funds for specific projects.
43. Accordingly, we respectfully submit that there is ample strategic justification and a statutory planning imperative for the removal of the discretion to reduce rates below the Column B rates.



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## ISSUE 2 – LACK OF STRATEGIC BASIS FOR THE \$7500 RESIDENTIAL RATE

44. The second of the two major issues identified by the Panel is the lack of strategic justification for the \$7500 residential rate. It must be kept in mind that the collection of the \$7500 per residential car parking space not provided is to be expended entirely on the sustainable transport initiatives expressly set out in the Parking Overlay. These are:

- Streetscape improvements (e.g. widening footpaths, street furniture and improved pedestrian amenity).
- Laneway improvements (e.g. improved pedestrian amenity/connectivity).
- Public transport stop upgrades (e.g. seating, rubbish bins and other amenities not already provided).
- Dean Street underpass project (Action 1.6 within Council's Walking and Cycling Strategy which formalises access to the Moonee Ponds Creek shared path).
- Shared paths (e.g. along Dean and Wilson Streets).
- Wayfinding signage.
- On-road bicycle lanes (e.g. along Mt Alexander Road and potentially Ascot Vale Road).
- Intersection/roundabout improvements which relate to pedestrian/cyclist connectivity (this includes the Junction intersection).

45. In its report, the Panel concluded<sup>13</sup>:

- There is insufficient strategic basis to justify the \$7500 accommodation financial contribution rate based on the methodology provided, its uniqueness and its comparatively low amount.

46. The Panel commented about the striking of the \$7500 at page 30 as follows:

The Panel agrees that financial contributions from accommodation uses can, in principle, be appropriately used to reduce parking demand and improve health wellbeing by funding sustainable transport initiatives such as bicycle parking. However, the Cash-in-lieu report appears to have over-estimated the benefits,

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<sup>13</sup> Panel Report Page 31

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which has resulting in an unacceptably low accommodation financial contribution rate.

47. Curiously, the Panel's concern here is that the \$7500 rate is too little, not that it is too much.

48. In contrast to the above, it is useful to observe what the Monash Amendment C 60 and C71 Panel said about the conservative approach of Council to fixing a cash-in-lieu rate that was substantially below the cost of providing a car parking space:<sup>14</sup>

### **The indicative cost per car space is determined**

Justification of test: The cost of spaces needs to be known to determine the appropriateness of the charge to be applied.

Council is only seeking to recover a relatively small portion of the cost of the spaces. The likely cost is in the order of \$18,000 to \$24,000 per space.

### **Appropriate financial management arrangements are established by Council**

Justification of test: It is important that the proper documentation is maintained.

Council has kept good records of previous schemes – we anticipate that this will continue.

Council has taken a conservative approach to the cash-in-lieu scheme. The scheme:

- will cater for only a part of anticipated growth – Council is not proposing a scheme for development that is unlikely to eventuate,
- the site has been identified and plans have been prepared – Council is seeking to fund a project, not just a pot of money, and
- only part of the cost of spaces will be recovered.

Had Council taken a less conservative approach we might have needed to consider some of these issues further.

There is a strong policy position in the planning scheme for shared parking. Council has taken a conservative approach to responding to this need. The scheme is clearly justified.

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<sup>14</sup> Car Parking Provisions Advisory Committee at Page 12

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49. As one would have expected, the fact that Moonee Valley City Council took a very conservative approach to the cash-in-lieu payment for car parking spaces not being provided would normally have suggested that the rate would not be challenged. It is curious to note that the Panel expressed concern that the rate was insufficient to finance car parking costs. This is so because:

- it is not consistent with established panel practice; and
- the levy is not to be used to fund the construction of residential car parking but rather to fund the cost of works to improve pedestrian and other non-vehicle movements throughout the centre.

50. In any event, it is quite apparent from the Panel Report that the \$7500 rate for residential car parking not provided was determined based on the methodology set out in the SGS expert evidence advanced by Mr Andrew Spencer. The evidence was uncontested save in cross-examination. The evidence of Mr Spencer further advanced and relied upon the earlier SGS report authored by both Mr Spencer and Dr Spiller of SGS Economics and Planning. The calculation of the \$7500 rate was explained in detail in the Part A submission by Council.

51. The Council's Part A submission gave the following explanation in response to submissions that:

- The cash-in-lieu amount is too low; and
- The cash-in-lieu amount is too high.

52. The proposed cash-in-lieu amounts were developed through the use of a robust methodology. The methodology for the commercial component was developed by AECOM and has been used to inform other cash-in-lieu schemes currently in operation, including that for the Leongatha Central Business District. The methodology for the residential component was developed by a combination of analysis from both AECOM and SGS. The details of the methodology are as follows:

**Estimating the cost of providing a car space in a multi-storey facility**

53. This is to develop the baseline figure of what it would cost a developer to provide a car parking space on their land within MPAC in a multi-level facility.

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Item	Estimated Cost (ex GST)	Source
Construction Costs	\$15,310	Rawlinson's Construction Cost Guide
Land Value	\$16,670	Moonee Valley City Council Land Valuation Database
Total Cost Per Space	\$31,980	

54. Once the baseline cost of constructing a carpark is established, that figure needs to be discounted according to the expected benefit the funded public infrastructure would provide to the new development. The starting point is to determine an appropriate contribution figure, taking into account factors which quantify the benefit received by the subject development to which the contribution applies.
55. The 'estimated flow-on benefit to businesses' is the concept that when money is spent at local businesses, these businesses purchase labour, goods and services from other nearby businesses. AECOM's recommended ratio is that for every \$1 of expenditure at a business in MPAC, an estimated \$0.30 increase in output is generated in other businesses in Moonee Valley.
56. The 'estimated percentage of users relating to new development' is the concept that the future infrastructure will not solely support the demand created by new developments, but rather also service the present demand from existing development. AECOM provided a range of percentages that they consider appropriate, from 60% to 85%. Considering factors such as the existing car parking facilities within the centre, the level of development that has already occurred within the centre and a preference for a figure in the middle of the range which generally aligns with other approved cash-in-lieu schemes around Metropolitan Melbourne, a 67% figure was determined to be appropriate.

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Item	Amount (ex GST)
Estimated cost per parking space	\$31,980
Estimated Flow-on benefits to businesses (Cost discounted 30%)	-\$9,500
Estimated percentage of users relating to new development (Cost further discounted by 33%)	-\$7,480
Cash-in-lieu waiver amount	\$15,000

#### **Applying further discount for residential cash-in-lieu amount**

57. As it was determined by Council that collecting cash-in-lieu funds for reductions of long-term residential parking for the purposes of providing short-term consolidated public car parking facilities was not appropriate, as there is little nexus between the long-term car parking associated with accommodation uses and short-term public car parking facilities (to cater primarily for visitors to the centre). It was therefore decided to instead collect funds for the purposes of improving sustainable transport infrastructure within the activity centre.
58. As outlined in the Strategic Justification for Cash-in-Lieu of On-Site Parking Provision report, SGS determined that the cash-in-lieu amount for residential reductions to improve sustainable transport infrastructure should be reduced from the cost of supplying replacement off-site car parking, because the sustainable transport improvements may deliver significant collateral benefits in the areas of health, environment and public domain amenity.
59. SGS then quantified these collateral benefits through a detailed cost benefit analysis of both the marginal costs (e.g. foregone parking utility and greater nuisance from illegal parking) and marginal benefits (e.g. improved street amenity for pedestrians and more engagement with active transport modes) of using funds for sustainable transport improvements. The results of the analysis demonstrated a benefit cost ratio of better than 2 to 1.
60. Council have determined that an appropriate discount for the proposed residential cash-in-lieu amount is 50% of the commercial cash-in-lieu amount, based on the significant external benefits to the activity centre (as outlined in the cost benefit analysis developed by SGS).

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Item	Amount (ex GST)
Cash-in-lieu waiver amount	\$15,000
Net community benefit discount (50%)	-\$7,500
Residential cash-in-lieu waiver amount	\$7,500

61. The proposed cash-in-lieu amounts are based on a methodology which seeks to balance the needs to offset reductions of car parking and fund public infrastructure with maintaining equity for new developers, considering the flow on benefits of the new infrastructure for existing residents, businesses and the overall function of the activity centre.

62. The proposed cash-in-lieu amounts generally align with the average of approved cash-in-lieu schemes for other Metropolitan Municipalities, as detailed below:

**Comparison against Metropolitan Melbourne examples**

63. When compared with approved Parking Overlays containing cash-in-lieu schemes around Metropolitan Melbourne, Council's proposed amount is generally aligned with the average.

Municipality	Activity Centre	Cash-in-lieu amount (ex GST)	Quarterly Median House Price (propertydata.com.au)
Monash	Glen Waverley	\$11,000	\$1,202,500
Monash	Oakleigh	\$6,000	\$1,090,000
Wyndham	Werribee	\$12,500	\$380,000
Casey	Berwick	\$16,935	\$425,000
Greater Dandenong	Springvale	\$19,000	\$635,000
Average		\$13,087	\$746,500

64. Although Moonee Valley City Council's proposed cash-in-lieu amount for commercial reductions in the Moonee Ponds Activity Centre Parking Overlay is slightly higher than the Metropolitan average, this can be accounted for through the higher property values within Moonee Ponds as compared to the average amongst the example suburbs, which is incorporated when calculating the estimated cost per space (according to AECOM's methodology).

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65. There is no other existing or proposed residential cash-in-lieu scheme in Victoria with which to compare this amendment.

66. In coming to the conclusion that the rate of \$7500 was too low, the Panel relied on the submissions of a submitter Ms Bell. For instance<sup>15</sup>:

Ms Bell submitted that a figure of \$7,500 grossly underestimates the cost of providing a car park in the Activity Centre. Ms Bell referred to Mr Spencer's evidence, who in determining this amount, emphasised that, his assessment is not a calculation that is empirically justified in any way. While accepting that some discount can apply no justification has been provided for the applied discount of 50 per cent, and even if this is accepted an appropriate starting point has not been used. Ms Bell accepted as reasonable, the two step reduction applied by Aecom in determining the non-accommodation amount of \$15,000 but questioned the first of these reductions being then made applicable in determining the accommodation amount of \$7,500.

67. After taking this into account, the Panel concluded in its discussion<sup>16</sup>:

While the Panel is not entirely comfortable with the percentages arrived at by the Parking Plan to discount the financial contribution rate, the end result is an amount of \$15,000 that [sic] is considered reasonable in the context of other similar scheme in metropolitan Melbourne where the average amount is \$13,087.

The Panel agrees with Council that funds raised for non-accommodation uses should be set aside for a publically accessible centralised off-street car parking. This provides a clearer nexus between the development and the facilities provided and is a more practical, effective and efficient solution.

The Panel is more concerned with the accommodation financial contribution rate of \$7,500. It agrees with Ms Bell that \$15,000 is not an appropriate starting point to apply discounts for this use. The Panel does not consider the benefit-cost analysis in the Cash-in-lieu report to be an appropriate or accurate quantitative assessment to support discounting the accommodation financial contribution rate to half of the non-accommodation rate.

[underlining ours for emphasis]

68. From the above, we make the following observations. First, the Panel appears to have given credence to Ms Bell's submissions in relation to the rate of \$7500 being insufficient to

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<sup>15</sup> Panel Report at Page 27.

<sup>16</sup> Panel Report at Page 29

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purchase car parking spaces. However, it is evident from the Amendment and PO1 that the purpose of the \$7500 contribution for residential car parking spaces not provided was not to provide car parking spaces. Rather it was as a contribution towards the cost of undertaking the various pedestrian related transport initiative projects each of which was aimed at reducing the demand for car parking by reducing the demand for car ownership.

69. Secondly, it is apparent that notwithstanding the conclusions that the \$7500 rate was “too low”, the Panel had earlier accepted that the rate of \$7500 was “considered reasonable” in the context of other similar schemes across Melbourne where the rates varied from between \$6000 to as high as \$19000.

70. A similar observation can be made in respect of the Panel’s conclusion in relation to the non-accommodation rate and its commentary on the non-accommodation rate. For instance:

**The conclusion**

The \$15000 non-accommodation finance contribution rate, while comparative to other similar schemes is not justified.

**The analysis**

While the Panel is not entirely comfortable with the percentages arrived at by the parking Plan to discount the financial contribution rate, the end result is an amount of \$15,000 that is considered reasonable in the context of other similar scheme in metropolitan Melbourne where the average amount is \$13,087.

71. From a strategic planning perspective, the above analysis as contained in the panel’s report does not provide adequate justification to found a recommendation to not proceed with the rate. Indeed, the Monash Panel Report adopted the complete opposite approach to a conservative rate notwithstanding that in that case it was to be applied to the construction of car parking at a much higher cost than the rate levied.

72. As a further matter, it is evident from the Panel’s report that it was concerned with the evidence of SGS concerning the tests to be applied. For instance, the Panel comments:

The Panel notes that Council relied upon the expert evidence of SGS, however, the Panel gives little weight to the methodology applied by SGS as set out in the Cash in lieu report. The Panel was not able to determine any prior use of this methodology in similar circumstances.



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73. In so far as the SGS evidence also included an assessment of cost benefits, it should be noted that SGS undertook a similar methodology in the Stonnington Panel Hearing that sought to introduce (for the first time) vertical zoning in the Chapel Street Activity Centre.
74. The concern with the SGS report appears to be the methodology. The key issue related to the opinion held by SGS Economics and Planning that with car parking contributions (and for that matter public open space contributions) the provisions of need, nexus, accountability and equity were not strictly speaking the only considerations due to the inclusory nature of the requirement. For instance<sup>17</sup>:

In its Part B Submission, Council responded to a Panel direction by expanding on reasons why need, nexus, accountability and equity are not appropriate for justifying inclusionary obligations. Council relied on expert evidence prepared by Mr Spencer of SGS Economics and Planning but highlighted that SGS also justified the Amendment by applying the four more commonly applied criteria.

During cross-examination, Mr Spencer acknowledged that the benefit-cost analysis applied a conceptual assessment prepared in-house by SGS. He added that he was not aware whether the conceptual framework has been relied on by a Panel, the Victorian Civil and Administrative Tribunal or by the Department of Environment, Land, Water and Planning.

In his evidence and in relation to Planning Practice Note 57, Mr Spencer stated:

*18. In the Strategic Justification report Dr Spiller and I make the following statement: "We are of the view that this type of need/nexus justification is not applicable for cash-in-lieu payments for the fulfilment of Inclusionary Provisions" (emphasis added). In using the term 'need/nexus' the report is referring to the full list of criteria from the Practice Note.*

*19. This comment was made on the basis of somewhat of a misinterpretation of the need/nexus criteria that were being referred to in the Practice Note. We had assumed that the Practice Note was referring to those specific tests that are routinely applied to Development Contribution Plans and described in the 2003 DCP guidelines.*

Having changed his view, Mr Spencer provided a response on the need, nexus, accountability and equity tests found in Planning Practice Note 57.

75. There is some difference of views among experts about what test is the right test to apply when dealing with contribution schemes such as this. For instance, in the Car Parking Provisions Advisory Committee Report, the Advisory Committee took legal advice from the

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<sup>17</sup> Panel Report page 16.



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76. To be clear, the legal advice of General Counsel to the Advisory Committee<sup>18</sup> confirms that there is no legal requirement to use the Eddie Barron principles.

12        We further conclude that:

- (i)        Cash in lieu schemes do not necessarily need to meet the requirements set out in *Eddie Barron Constructions Pty Ltd v Shire of Pakenham* (1991) 6 AATR 10 of need, equity, accountability and nexus (the **Eddie Barron principles**) in order to be legally valid<sup>19</sup>.

77. This accords with my own opinion that there is no exclusive test as explained in the Panel Report set out below.

78. In the case of Monash Planning Scheme Amendment C60 and C71, the Panel used yet a different test. For instance <sup>20</sup>:

The report of the Advisory Committee on the *Review of Parking Provisions in the Victoria Planning Provisions* identified a number of possible tests for the introduction of a cash-in-lieu scheme. Mr Montebello addressed these tests.

These tests have no formal status but can be considered as useful summary of the principles that might to be considered when assessing a cash-in-lieu scheme. Having considered the Advisory Committee's work (and noting that it has not been finalised) we have considered the proposal against the following tests.

- An area is clearly identified.
- An estimate is made of the development potential of the area.
- The car parking requirement of the proposed use and development is determined.
- A timeframe is identified for when development is likely to occur and when car parking would be supplied
- The indicative cost per car space is determined.
- There is a reasonable prospect of providing the car parking within the timeframe envisaged in the scheme.
- Appropriate financial management arrangements (parking and access fund) are established by Council.

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<sup>18</sup> At Appendix F of the Advisory Committee Report

<sup>19</sup>        The Eddie Barron principles have been developed by the courts to constrain the broad powers of responsible authorities to impose permit conditions. They do not constrain other powers under the Act (such as the power of a planning authority to make planning controls).

<sup>20</sup> Car Parking Provisions Advisory Committee Report page 10

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79. Notwithstanding the above, it seems that because Mr Spencer sought to justify the Amendment primarily on the basis of the reasonably well known SGS inclusory approach, but also perhaps as a back stop, carried out an assessment based on the common principles of need, nexus accountability and equality, the Panel lost confidence because Mr Spencer "changes his view".
80. Putting aside questions of fairness it is clear that from a legal perspective there is no one correct test to be applied and it would be wrong to dismiss a view simply because it different from one's own understanding of what the test should be.
81. SGS in giving evidence expressed what they consider to be the correct view, but also explaining the basis of an Amendment on the Eddie Barron basis.
82. It is important to note that, SGS Economics and Planning has expressed their view about the correctness of the inclusory approach to contributions in the context of another form of (but similar) contributions scheme. For instance the Stonnington Planning Scheme Amendment C186 concerned a (mandatory clause 52.01) Public Open Space contribution scheme. In that planning amendment the Panel observed:

***(v) Inclusory Approach***

Dr Spiller, Council's expert on the contribution rate, explained the methodology adopted in the Assessment Report and examined the consequences of the application of existing rates into the future, along with the possibility of increasing rates.

Dr Spiller found that a continuation of the current sliding scale contribution suggests that only about 25% of the cost of the projected **open space** acquisition and development works would be recouped over the period 2013 to 2033. In considering what the rate should be, SGS applied various contribution scenarios of between 5% and 10% over a 20-year period to gauge what might be required to cover the cost of proposed **open space** works and the purchase of additional **open space** through the schedule to Clause 52.01. Dr Spiller emphasised under cross-examination that:

*To recover the complete cost of implementing the **open space** strategy via public **open space** contributions alone would require a rate much higher than 10 %. Even with a rate as high as 10% a public **open space** contribution under clause 52.01 would collect only 87% of projected expenditure.*

According to Dr Spiller, the *Creating Open Spaces Strategy* suggests that the city could lower its **open space** aspirations aim to provide only the passive **open space** component of the State Government Guidelines, namely 10 square metres

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per person. <sup>[14]</sup> Mr **Finanzio** argued that the excess would be greater still if Dr Spiller's 'implied **open space** inclusionary requirement for lower density development' was adopted at 9 square metres per person.

Dr Spiller outlined that the sliding scale approach currently used by Council is not equitable in that need and demand should be the basis for the contribution as opposed to the size of development operation that is delivering the need and demand. It was noted that *8% is probably at the upper end of what is achievable in terms of amendment Clause 52.01*. Dr Spiller reiterated the view that **Stonnington** is forecast to experience strong and transformative population growth. He defined the term **open space services** relating to the flow of recreation and amenity services conceptually; a function of the area of **open space** and its quality. Council either improves the flow by providing more land or more investment.

Dr Spiller clearly articulated that the 'inclusionary requirements' for development standards was the appropriate mechanism for **open space**. He drew comparisons with other mechanisms, namely:

User pays contributions for off-site infrastructure;

Impact mitigation; and

Value capture.

Dr Spiller argued that the inclusionary requirements were:

- *consistent with original mandate in Subdivision Act;*
- *provides for flexibility in the development of **open space** contributions; whilst council has a plan, it has flexibility in prioritizing and responding to opportunities that may not have arisen. So long as it spends the dollars on **open space** it enjoys this flexibility.*
- *mitigates deterioration in **open space** levels as a result of new development;*
- and*
- *its administratively straightforward and transparent.*

83. And further:

Dr Spiller's rationale for adopting the 'inclusionary requirements' approach in determining public **open space** requirements was stronger for areas experiencing (or expected to experience) transformative growth. It was somewhat perplexing to the Panel that this argument seemingly weakens in areas not undergoing transformative growth and, as such, a variable rate would seemingly run stronger with this line of argument.

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The Panel notes and accepts the need to be careful with inclusionary assumptions as demonstrated by Mr Chessell, however, Council needed to form a starting platform and this approach formed the basis of the Amendment.

84. It is evident from the above, that the inclusionary assessment model that was dismissed by the Panel for want of having been used previously had in fact been used previously and had formed the basis of a planning scheme amendment which had a successful outcome.

85. Putting the above to one side, we have reviewed the Moonee Valley Planning Scheme Amendment C132 to test the methodology against the principles of:

- Need,
- Nexus,
- Accountability and
- Equity

86. In doing so, we have drawn from prior panel reports to sustain and support the conclusions expressed to provide a more robust review. The assessment is found in the attachment to this report.

87. It is evident from that review that the contributions scheme easily meets the Eddie Barron test.

88. To bring the above all together, the following observations can be made. The \$7500 rate for residential spaces which are required and not provided on site:

- Is a conservative rate having regard to the actual cost of providing a car parking space.
- Will be put towards reducing the need for car parking rather than towards the provision of car parking.
- The range of works that the funds are to be spent on compare favourably with examples identified by an expert Advisory Committee set up to consider the specific issue of car parking;
- The rate of \$7500 is a fair and reasonable rate having regard to the basis upon which it was determined by SGS.
- The rate is comparable albeit lower than similar rates in other councils. It is neither the lowest nor the highest rate.

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- SGS are experts at conducting the benefit – cost analysis referred which they undertook in this case to discount the rate by 50%. The firm's expertise was accepted by the Panel in the Stonnington C186 Amendment in which a member of the firm gave expert evidence of the firm's expertise in conducting cost benefit analysis.
- The car parking scheme was assessed by SGS on two basis, both the inclusory approach and on the commonly referred to Eddie Barron approach and found to comply on either basis.
- Maddocks assessment of the contributions scheme on the Eddie Barron approach shows that the proposal easily satisfies the Eddie Barron tests.

### ISSUE 3 – RELATIONSHIP BETWEEN THE SUSTAINABLE TRANSPORT WORKS AND THE REDUCTION IN CAR PARKING FOR ACCOMMODATION USES

89. In the Car Parking Provisions Advisory Committee Report, it is apparent that after having conducted a literature review, the Advisory Committee identified a number of ways of influencing traffic and parking, among them being making physical changes to streets. For instance<sup>21</sup>:

#### Examples of physical design responses:

Changing street geometry – many European cities have changed the geometry of streets to slow traffic or create protected cycling paths, sometimes using parked cars to create chicanes or barriers;

Shared spaces – the removal of on street car parking in favour of pedestrian zones is commonplace;

Physical restrictions – bollards have been used extensively in Paris and Madrid to prevent parking on footpaths and blocking of narrow streets.

90. The various sustainable transport initiatives which are expressly identified in the PO1 are clearly of the same kind as the initiatives identified in the Advisory Committee's literature review. The singular purpose of the various works is to make movement in and around the activity centre on foot or by bike more safe, efficient and convenient. The objective, as we understand it, is to encourage a shift in mode from motor car to active transport.

91. It is in this regard, difficult to find a direct numeric or quantitative relationship between the number of car parking spaces not provided and the extent of works undertaken. Frankly, we

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<sup>21</sup> Car Parking Provisions Advisory Committee Report Page 18

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doubt that there is any direct relationship in numerical terms. Rather, the philosophy behind the scheme is that for every car park not provided, this results in a lesser level of car ownership in the centre which places a higher level of reliance on ensuring that there are adequate facilities for pedestrians and cyclists, and access to public transport, for those who are now required (or encouraged) to walk or ride to destinations. Every space not provided (cumulatively) requires the Council to make expenditure on the improvement on pedestrian and cycling facilities including access to public transport. Thus, there is a direct relationship between the reduction in car parking spaces provided and the need to undertake the various sustainable transport works described in PO1.

92. Council's Part A submission, noted that the list of sustainable transport projects was derived from both Council's adopted Moonee Ponds Activity Centre Structure Plan and adopted Moonee Valley Walking and Cycling Strategy. Both of these strategic documents were prepared following extensive analysis and research into the needs of the centre. They focused on what was required to make the municipality (including the Moonee Ponds Activity Centre) more walkable and accessible.
93. The list of sustainable transport initiatives was derived following an internal Council workshop to determine a list of infrastructure categories, based on the following criteria:
- Must be a type of project included in either the *Moonee Ponds Activity Centre Structure Plan* or *Moonee Valley Walking and Cycling Strategy*.
  - Must relate to the local sustainable transport network within and around the Moonee Ponds Activity Centre.
  - Must be a type of project that Council can fund and deliver in the life of the plan (10 years).
  - Must directly assist in improving sustainable transport access for future residents of Moonee Ponds.
  - Must be a capital works improvement (other types of projects such as car share spaces and travel behaviour programs were deemed too difficult to administer).
94. A list of infrastructure categories was then developed which aligned with all of the relevant projects within both the Moonee Ponds Activity Centre Structure Plan and Moonee Valley Walking and Cycling Strategy, but was not restricted to the content of those plans should they be revised and/or another relevant strategy be created.
95. It was further noted that prior to implementation, Council would undertake further consultation with the community and other stakeholders regarding the exact location and design detail of any projects funded through the PO1 contributions. Accordingly, it appears that the various



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sustainable transport initiatives are considered, logical, and will be the subject of further particularisation through the detailed planning stage.

96. The above analysis establishes that the range of works proposed by Council are similar to the type of works considered in the literature review of the Car Parking Provisions Advisory Committee. The objective of each of the works is to make it easier, safer and more efficient for people to move by active transport rather than by motor vehicle.
97. To the extent that there is any residual concern regarding the numerical or quantitative relationship between the ongoing payment of levies consequent upon the reduction of car parking spaces, we would observe that:
- The payment of funds is not obligatory. That is to say, those that provide the required number of car parking spaces are not required to pay the levy.
  - It is very likely that developers would seek to pay the levy rather than incur the full cost of providing car parking spaces given the significant discount involved.
98. It would presumably be possible to estimate the total cost of the sustainable transport works and provide for a maximum number of accommodation-related financial contributions so that the actual amount collected is roughly equal to the cost of the works involved. This might be regarded as a way of providing a more direct quantitative relationship between the extent of the levies raised by accepting financial contributions in lieu of car parking reductions and the cost of the various works. However, this would tend to disproportionately favour the early developers of accommodation who would be able to take advantage of the cash-in-lieu scheme whereas later developers would presumably not be able to once the quota is met. We regard this as potentially unfair. Thus, this suggests that the levy should not be limited based on a number of financial contributions accepted by Council.
99. As a final observation, we note that Parking Practice Note 57 is heavily focussed on the provision of car parking or enabling reductions in car parking rather than the overall transport implications of higher levels of car ownership. We would suggest that a future review of Practice Note 57 should ideally turn its focus to the matters that were discussed in the Car Parking Provisions Advisory Committee in relation to how the Parking Overlay could be used to encourage mode shift. At present, it does not provide much assistance in that regard and consequently is of little assistance in considering the strategy adopted by Council in the formulation of PO1. This is clear when one has regard to the five functions of the Parking Overlay as referenced in Planning Practice Note 57, namely:

The car parking provisions in Clause 52.06 and the Parking Overlay provide five functions. They:

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100. What the Practice Note does not do is to illustrate and emphasise the important role that changing parking provisions can have on mode shift and the improved operation of local road networks.

- 74 In this case, the major dispute between the Council and the applicant in relation to traffic management and car parking relates to the quantum of car parking provided for this proposal<sup>151</sup>. The Council submits that excessive parking is proposed and the provision of car parking should be reduced and greater emphasis placed on encouraging sustainable transport options such as the use of bicycles and scooters, walking and public transport.

Parking availability is important for many people, however in Yarra unrestricted car use and parking is neither practical nor achievable. Car parking will be managed to optimise its use and to encourage sustainable transport options.

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[Underlining for emphasis]

## Conclusions

- There is a clear strategic basis for the removal of the discretion in the drafting of the Parking Overlay; and
- The rate of \$7500 for each residential car parking space required by not provided on site is a fair and reasonable rate and is conservative. Furthermore, it will be used to reduce the demand for car parking by improving walkability and other non-car based transport methods design to bring about a mode shift in personal transport. The rate is therefore strategically sound.
- There is a direct, strategic relationship between the reduction in car parking spaces and the need to improve the amenity of the centre for pedestrians, cyclists and public transport users through the carrying out of works such as the sustainable transport works.

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Criteria	Description	Response
Need	Is the cash in lieu scheme needed?	<p>The Car Parking Plan prepared by AECOM clearly establishes the need to address the issue of car parking and movement in the activity centre.</p> <p>The parking surveys clearly illustrate the current car parking scenario in the activity centre.</p> <p>The provision of reduced (Column B) rates in the activity centre must be met by a commensurate effort to:</p> <ul style="list-style-type: none"> <li>• ensure the whole of activity centre approach to the provision of car parking supply; and</li> <li>• reduce the demand for car parking spaces in the activity centre by reducing the level of traffic in the activity centre.</li> </ul> <p>The initiatives outlined in the Parking Overlay involve:</p> <ul style="list-style-type: none"> <li>• Constructing a new parking station in the activity centre; and</li> <li>• Undertaking the various transport initiatives described in the Parking Overlay.</li> </ul> <p>Council is now subject to a rate capping regime. The undertaking of specific place making and urban design initiatives is a costly process and it is fair and reasonable for part of the funds to be contributed by the users on a user pays basis to some extent.</p> <p>The tying of the levy to car parking spaces required but not provided creates a direct link between the activity and the levy. Evidently, car parking is required for commercial (visitors) and the reduction of traffic is a key policy imperative for activity centre planning to make the place more liveable and user friendly.</p> <p>It is clear that the activity of developing land for either commercial or residential creates a direct need for car parking spaces and streets and pedestrian movement which is safe, efficient, convenient and accessible.</p>
Nexus	Is there a link between the proposals affected by the scheme and the	<p>There is a direct nexus between the levy and development.</p> <p>Land which is not developed cannot be levied.</p> <p>Land which is developed requires car parking. To the extent that car parking is not provided on site it still must be</p>

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**END**