

From: Nick Vlahandreas <nickv@mountainplanning.com>
Sent: Thursday, 10 July 2025 11:30 AM
To: 'Nicole Embling' <nicole.embling@mansfield.vic.gov.au>
Cc: alex@peg.com.au
Subject: 240 Malcolm Street, Mansfield | Submission on Draft Condition 39

Dear Nicole,

On behalf of the landowner of 240 Malcolm Street, Mansfield we would like to make a submission on draft Condition 39 of the Planning Permit to issue for the 9 lot subdivision at 240 Malcolm Street, Mansfield.

This submission is separate, and additional, to the submissions already made by the landowner in relation to the other conditions.

Draft Condition 39 states:

Prior to the issue of Statement of Compliance, or such later time as may be agreed in writing by the Responsible Authority, the permit holder must provide a Public Open Space Contribution of 5% of the total land area to the Responsible Authority, which must comprise:

1. A cash contribution equivalent to 5% of the site value of the land of all land in the subdivision; and
2. Any costs associated with valuation of the land including valuers fees.

The permit holder must make a request to Council to commence the process involved with this condition.

Our Submission

Introduction

We seek that proposed Condition 39 be amended to reduce the public open space contribution required under Section 18 of the *Subdivision Act* 1988 from 5% to 2%.

This submission outlines the reasons this contribution should be reduced, based on planning policy context, site-specific considerations, and relevant VCAT case law.

Background and Site Context

The subject site is located on the urban-rural interface of Mansfield and is being developed to create nine (9) large rural residential lots in the Rural Living Zone (RLZ). The subdivision is low density, with each lot offering ample private open space.

Key characteristics include:

- Non-urban, fringe location with no walkable access to existing public open space;
- Sufficient on-site recreational capacity;
- Minimal population increase;
- No creation of a new urban community or shared recreational infrastructure.

Strategic Planning and Policy Considerations

The Mansfield Planning Scheme does not specify a mandatory public open space contribution for subdivisions in this location via a Schedule to Clause 53.01. This allows discretion under Section 18(1)(a) of the *Subdivision Act* 1988 to apply a contribution less than 5%.

Section 18(1)(a) states:

(1A) The Council may only make a public open space requirement if it considers that, as a result of the subdivision, there will be a need for more open space, having regard to—

- (a) the existing and proposed use or development of the land;
- (b) any likelihood that existing open space will be more intensively used after than before the subdivision;
- (c) any existing or likely population density in the area of the subdivision and the effect of the subdivision on this;
- (d) whether there are existing places of public resort or recreation in the neighbourhood of the subdivision, and the adequacy of these;
- (e) how much of the land in the subdivision is likely to be used for places of resort and recreation for lot owners;
- (f) any policies of the Council concerning the provision of places of public resort and recreation.

Having regards to the relevant matters of the *Subdivision Act* we submit the following:

(a) The existing and proposed use or development of the land

The subject land is located in the Rural Living Zone (RLZ) and used for low-intensity rural residential purposes. The proposed subdivision maintains this character by creating nine large lots consistent with the purpose of the zone. The proposed land use will be 9 dwellings within a low density context.

(b) Any likelihood that existing open space will be more intensively used after than before the subdivision

The large lot sizes provide ample on-site recreational opportunities, reducing reliance on municipal open space. Given the peripheral location and lack of pedestrian connectivity, the proposal is unlikely to increase use of existing public open space.

(c) Any existing or likely population density in the area of the subdivision and the effect of the subdivision on this

The subdivision results in a modest increase in dwellings, consistent with the RLZ. It does not materially alter population density in the area.

(d) Whether there are existing places of public resort or recreation in the neighbourhood of the subdivision, and the adequacy of these

While Mansfield has public open space, the subject site is located on the township fringe and lacks direct access to these areas. Given the low population increase, there is no measurable impact on the adequacy of existing open space.

(e) How much of the land in the subdivision is likely to be used for places of resort and recreation for lot owners

Due to the substantial lot sizes, a significant portion of each lot is expected to be used for private recreational purposes, such as gardens, walking areas, and informal outdoor activities.

(f) Any policies of the Council concerning the provision of places of public resort and recreation

There is no public open space contribution specified in Clause 53.01 of the Mansfield Planning Scheme. Therefore, Council has discretion to set a contribution rate below 5%. In the absence of a clear policy basis for a 5% contribution in rural subdivisions, a lower rate is justified.

When assessed against Section 18(1A), the proposed subdivision:

- Will not generate additional demand for public open space;
- Will not intensify use of Council-managed open space;

- Will provide for residents' recreational needs on-site;
- Is not in proximity to existing open space; and
- Sits within a planning framework that does not mandate a fixed contribution.

Accordingly, a 2% public open space contribution is considered lawful, proportionate, and consistent with the intent of the *Subdivision Act*.

Relevant VCAT Case Law

We submit that the reduction in the open space contribution to 2% is also justified having regards to case law in this matter.

1. *Warren Blight v Moorabool SC [2020] VCAT 623*

1. Concerned a subdivision of large lots within a rural township.
2. The Tribunal reduced the contribution from 5% to 2.5% based on:
 1. Lack of Clause 53.01 schedule specifying a set rate;
 2. On-site recreational capacity reducing reliance on public space;
 3. The subdivision being non-urban in nature.

2. *Chivers v Yarra Ranges SC [2017] VCAT 1427*

1. A six-lot rural subdivision where VCAT supported a 1% contribution.
2. The Tribunal acknowledged:
 1. The lots themselves provided sufficient recreational opportunity;
 2. The location and accessibility of public open space did not warrant a higher contribution;
 3. The increase in township population would not necessarily lead to increased public open space demand.

Conclusion and Recommendation

Given the rural nature, lot sizes, and minimal pressure on public open space, a 5% contribution is disproportionate.

We therefore respectfully request that Condition 39 be amended as follows:

Prior to the issue of Statement of Compliance, or such later time as may be agreed in writing by the Responsible Authority, the permit holder must provide a Public Open Space Contribution of 2% of the total land area to the Responsible Authority, which must comprise:

1. *A cash contribution equivalent to 2% of the site value of the land of all land in the subdivision; and*
2. *Any costs associated with valuation of the land including valuers fees.*

The permit holder must make a request to Council to commence the process involved with this condition.

Should you require any further information then please do not hesitate to contact me.

Regards,

Nick

NICK Vlahandreas

DIRECTOR

Direct: 0409 723 259

Office: 03 5713 7850

nickv@mountainplanning.com.au

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