

IN PLANNING PANELS VICTORIA

**‘PART A’ SUBMISSION  
ON BEHALF OF THE PLANNING AUTHORITY**

**AMENDMENT C218<sup>glen</sup> TO THE GLEN EIRA PLANNING  
SCHEME**

16 MAY 2022

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## INTRODUCTION

1. Glen Eira City Council (**Council**) is the Planning Authority for Amendment C218glen (**Amendment**) to the Glen Eira Planning Scheme (**Scheme**). Council has prepared, and is the proponent of, the Amendment.
2. This 'Part A' submission is made in accordance with the Panel's Directions dated 13 April 2022 (**Directions**).
3. This submission addresses the following matters in accordance with direction 3 of the Directions:
  - 3.1 background to the Amendment including chronology of events;
  - 3.2 strategic context and assessment;
  - 3.3 other amendments that may be under preparation or recently approved that may impact on the Amendment, including Amendment C220glen;
  - 3.4 a summary of the conditions of authorisation, and how those conditions have been met;
  - 3.5 a brief explanation of how the revised open space contribution rate was calculated, including cross references to relevant sections of the Open Space Strategy Refresh 2020 and/or the Open Space Strategy Refresh Update of the Public Open Space Contributions Program 2020;
  - 3.6 an explanation of whether Council has any revised population projections that update the projections on which the Open Space Strategy Refresh was based;
  - 3.7 a summary of the main issues raised in submissions;
  - 3.8 any suggested changes to the Amendment in response to submissions; and
  - 3.9 any other strategic material that Council intends to rely upon in support of the Amendment that has not yet been provided, or that might assist the Panel in its consideration of the Amendment.
4. In addition to this submission, at the hearing listed to start on 23 May 2022 via video conference, Council will:
  - 4.1 present its 'Part B' submissions; and
  - 4.2 rely on expert evidence provided by:
    - 4.2.1 Esther Kay of Environment and Land Management Pty Ltd on public open space contributions; and
    - 4.2.2 Joanna Thompson of Thompson Berrill Landscape Design Pty Ltd on public open space contributions.

## AMENDMENT

5. The Amendment seeks to update the Scheme to reflect the principles and requirements of the adopted refreshed Open Space Strategy for Glen Eira, the *City of Glen Eira Open Space Strategy Refresh 2020*.
6. More specifically, the Amendment proposes in broad terms to:
  - 6.1 update the policy at Clause 22.12 Public Open Space Contribution to reflect the principles and requirements of the *City of Glen Eira Open Space Strategy Refresh 2020* which Council adopted on 9 June 2020;
  - 6.2 replace the existing schedule to Clause 53.01 Public Open Space Contribution and Subdivision with a revised schedule that includes a flat public open space contribution requirement of 8.3% for all subdivisions. The new rate applies to all land other than areas in Caulfield Village and East Village that have pre-existing public open space contribution arrangements; and
  - 6.3 add the following two background documents at Clause 72.08:
    - *City of Glen Eira Open Space Strategy Refresh 2020* (adopted 9 June 2020); and
    - *City of Glen Eira Open Space Strategy Refresh 2020 Update of the Public Open Space Contributions Program* (2 November 2020).

## BACKGROUND TO AMENDMENT

7. A chronology of key events relevant to the Amendment and prior amendments as relevant to public open space contributions forms **Attachment A** to Council's submission.

### CURRENT PUBLIC OPEN SPACE CONTRIBUTION PROVISIONS

8. At Clause 53.01 of the Scheme, public open space contributions are required at the subdivision stage where there is a subdivision of three or more lots.
9. Clause 53.01 currently requires a 5.7% contribution for public open space to all land within the municipality, with the exception of:
  - 9.1 the area known as the Caulfield Village as delineated in the Caulfield Mixed Use Area Incorporated Plan February 2014; and
  - 9.2 the area generally south of Griffith Avenue and south of the existing electricity substation being part of the land known as East Village as shown on Plan 1 of the East Village Comprehensive Development Plan, May 2020 and shown as Main Catchment Area 1 in the East Village Development Contributions Plan, May 2020.
10. The contribution can be taken as either a percentage of the land (as a parcel of land) or as cash equivalent to a percentage of the site value (or a combination of both), at the percentage rate specified in the planning scheme. The land and/or funds are used to create more open spaces such as public parks, playgrounds and reserves and to improve the quality of existing public open space.

11. The policy basis behind this contribution is provided at Clause 22.12 Public open space contributions policy.
12. The current public open space contribution provisions, along with the methodology for determining these contribution rates<sup>1</sup>, were first introduced to the Scheme under Amendment C120 in 2015.
13. Since the gazettal of Amendment C120, Council officers have been:
  - 13.1 carrying out an ongoing review of the relevant indicators of the growth of the City's population, such as ABS census data from the 2016 census, permits issued by the Responsible Authority including dwelling numbers and information released by .id Consulting in November 2018 setting out projected resident population figures for the City; and
  - 13.2 tracking this data against the growth anticipated by the work that informed Amendment C120 (importantly including The *Glen Eira Open Space Strategy* 2014 (**2014 Strategy**)).

## PREVIOUS RELEVANT AMENDMENTS

### Amendment C120glen

14. Planning Scheme Amendment C120 was gazetted on 12 March 2015. Amendment C120 introduced:
  - 14.1 the current Public Open Space Contribution Policy into the planning scheme at Clause 22.12; and
  - 14.2 the revised public open space contribution rate of 5.7% to all land within the municipality with the exception of one designated precinct in the schedule to Clause 53.01.
15. The previous rate under the Schedule to Clause 52.01 (pre-Amendment C120glen) differed depending on a number of set criteria<sup>2</sup>. The contribution for each of the individual criteria ranged between 0% and 3.5%, noting that all applicable criteria were to be applied to each subdivision.
16. The 2014 Strategy provided the strategic basis for Amendment C120glen. The Strategy was adopted by Council in on 8 April 2014 and sought to guide the future planning, provision, design and management of public open space from 2013 to 2026. This included understanding and addressing the open space needs of the existing community and planning ahead to anticipate and meet the open space needs of the forecast population within the municipality.
17. The methodology and rationale behind the 2014 Strategy are well summarised under section 1.2 of the Panel Report prepared for Amendment C120glen<sup>3</sup>, which forms **Attachment E** of Council's submission.
18. In short, the methodology consisted of:
  - 18.1 extensive background research regarding current open space usage, future open space needs and anticipated population growth;

<sup>1</sup> With this methodology proposed to be retained through the current Amendment.

<sup>2</sup> Including the number of lots, suburb, distance to listed parks, number of bedrooms and provision of communal open space.

<sup>3</sup> Report dated 21 November 2014, with the summary commencing at page 1.

- 18.2 anticipating the manner in which future open space needs would be met by Council, including provision of new open space and improvements, management and maintenance of existing open space;
- 18.3 development of costings for acquisition of new open space and works on existing open space;
- 18.4 apportioning of costs between existing residents and future residents based on the assessed open space needs and community structure;
- 18.5 utilisation of the costs apportioned to future residents (only) to determine the amount of funding required, establishing the final rate required (5.7%) by dividing the cost of open space land and works for the new population (\$79,915,605) by the total estimated land value of areas to be developed (\$1,403,425,510); and
- 18.6 acknowledgement that funds for existing residents would be drawn from other Council sources.

#### **Amendment C155glen**

- 19. Amendment C155glen was gazetted on 31 March 2021. The purpose of Amendment C155glen was to facilitate the use and development of land within the *East Village Precinct*.
- 20. Of relevance to public open space contribution, Amendment C155 included an update to the Schedule to Clause 53.01 to 'exempt' subdivision within a designated part of the *East Village Precinct* from the standard contribution requirements, with contributions for this area picked up under a section 173 agreement.

#### **OPEN SPACE STRATEGY REFRESH 2020**

- 21. As identified in Council officer's ongoing review of the 2014 Strategy, population growth and change in the municipality occurred and is anticipated to continue to occur at a faster rate and in areas that were not anticipated to grow when the 2014 Strategy was prepared. Since then, some of the planning framework directions also changed, including:
  - 21.1 *Plan Melbourne 2017-2050* that forecasts higher levels of population growth compared to the previous *Melbourne 2030* with the focus of future change in Activity Centres;
  - 21.2 Introduction of *Open Space for Everyone – Open Space Strategy for Metropolitan Melbourne 2021* to the Scheme in February 2022, which included a renewed focus on equitable access to open space;
  - 21.3 The inclusion of higher density precincts, including Urban renewal areas in Carnegie and Elsternwick;
  - 21.4 Changing patterns of open space use including higher values placed on all types of open space including small areas of open space; and
  - 21.5 The release of Planning Practice Note 70 Open Space Strategy, June 2015, being released to provide more direction on the method of preparing open space strategies.
- 22. Council commissioned consultants to assist in preparing a draft Open Space Strategy Refresh as an update to the previous 2014 Strategy in response to issues identified as part of the ongoing review of the 2014 Strategy.

23. In preparing the draft Open Space Strategy Refresh:
  - 23.1 at its Ordinary Council Meeting of 4 February 2020, Council endorsed to proceed to community engagement on a draft Open Space Strategy Refresh;
  - 23.2 community feedback was sought between 10 February and 22 March 2020; and
  - 23.3 in response to consultation, minor changes to the draft strategy were made including reference to the Climate Change Act (2017) and inclusion of the Living Melbourne document.
24. At its ordinary meeting on 9 June 2020, Council adopted the Glen Eira Open Space Strategy Refresh 2020 (**Strategy Refresh**)
25. The Strategy Refresh provides a strategic direction for the future planning, provision, design and management of open space within the municipality over the next 15 year period based on the 2016 to 2031 forecasts. Part of the scope was to review the current public open space contribution rate.
26. The Strategy Refresh identifies the following key issues associated with open space in Glen Eira<sup>4</sup>:
  - 26.1 the lack of open space, particularly the gaps in provision of open space, meaning some people are not within reasonable walking distance to any open space;
  - 26.2 the impact of the forecast increase in urban densities and population growth on liveability and access to open space;
  - 26.3 the need to ensure an equitable balance between sporting, unstructured recreation and informal use and values of open space;
  - 26.4 the need to care for, protect and carefully trees, particularly mature trees; and
  - 26.5 the lack of diversity of open space, need to improve accessibility and sustainable design practices.
27. Section 4 of the Strategy Refresh provides an analysis the quantity of open space across the different suburbs. Table 4-1 identifies an average proportion of 4.4% of open space across the municipality. Table 4-4 shown below provides a comparison to adjoining municipalities and demonstrates Glen Eira has the lowest amount of open space as a proportion of land area available and per person, due to the high density of development and lack of large Regional open space within the municipally.

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<sup>4</sup> At page 14

**Comparison of Glen Eira open space quantity with adjoining municipalities**

Municipality	Total open space sqm	Total municipal land area sqm	Total Population estimated population 2013	Open Space sqm per person	% of open space as a proportion of total land area
Glen Eira	1,729,324	38,700,000	140,320	12	4.5%
Bayside	4,413,000	37,000,000	97,400	45	11.9%
Kingston	12,406,000	91,000,000	149,772	83	13.6%
Monash	7,770,000	82,000,000	177,999	44	9.5%
Port Phillip	3,881,000	20,620,000	96,922	40	18.8%
Stonnington	1,726,000	25,600,000	89,883	19	6.7%

**Notes:** The total quantity of open and municipal land area for municipalities other than Glen Eira have been sourced from the VEAC Metropolitan Melbourne Investigation Final Report. The population estimates are all sourced from the relevant links to .id forecasting from Council websites. The total sqm areas nominated in the table are approximate only.

28. Section 6 of the Strategy Refresh includes an individual Precinct Analysis and Recommendations for 13 open space planning precincts. The analysis includes mapping of open spaces and a discussion of how the open space network meets current and future needs in the precinct.
29. The analysis identifies where there are needed upgrades or expansion of existing open space and the provision of new open space. New open space is recommended where there is a gap in the open space network and/or significant population increase is forecast and the existing open space that is available in the local area will not be sufficient to adequately serve the needs of the community.
30. The Strategy Refresh uses the 2016 ABS Census and forecasts for the years 2016 to 2031 along with other strategic work undertaken by the Council to plan for increases in both the residential and worker populations. It plans for significant growth with a forecast increase of 24,809 additional residents and 17,185 additional workers over the 15 year forecast period. A comparison to the population projections of the 2014 Strategy and the actual change is provided at table 4-8<sup>5</sup>:

	Glen Eira Open Space Strategy 2014				Between 2013 and 2016 (23% of the time period)				
	2013	2026	No. increase 2013 to 2026	% increase	2013	2016	No. increase 2013 to 2016	% increase	% of total 2026 forecast population
<b>Small area/Precincts</b>									
Bentleigh	16,501	17,251	750	5%	16,501	17,828	1,327	8%	177%
Bentleigh East	26,922	28,978	2,056	8%	26,922	28,813	1,891	7%	92%
Carnegie	17,084	18,722	1,638	10%	17,084	18,228	1,144	7%	70%
Caulfield	5,514	5,861	347	6%	5,514	5,920	406	7%	117%
Caulfield North - Caulfield East	17,319	21,994	4,675	27%	17,319	17,849	530	3%	11%
Caulfield South	12,078	12,625	547	5%	12,078	12,536	458	4%	84%
Elsternwick - Gardenvale	11,358	13,148	1,790	16%	11,358	12,061	703	6%	39%
Glen Huntly	5,062	5,284	222	4%	5,062	5,318	256	5%	115%
McKinnon	5,981	5,954	-27	0%	5,981	6,605	624	10%	62400%
Murumbeena	9,891	10,539	648	7%	9,891	10,647	756	8%	117%
Ormond	8,386	8,599	213	3%	8,386	8,850	464	6%	218%
St Kilda East	4,224	4,545	321	8%	4,224	4,358	134	3%	42%
<b>City of Glen Eira Total</b>	<b>140,320</b>	<b>153,500</b>	<b>13,180</b>	<b>9%</b>	<b>140,320</b>	<b>149,013</b>	<b>8,693</b>	<b>6%</b>	<b>66%</b>

<sup>5</sup> At page 68 (or 84 of pdf)



31. A comparison to the population projections of the 2014 Strategy and the Strategy Refresh are provided table 4-9<sup>6</sup>:

	Glen Eira Open Space Strategy 2014				GEOSS Refresh forecasts			
			No. increase 2013 to 2026	% increase			No. increase 2016 to 2031	% increase
Small area/Precincts	2013	2026			2016	2031		
Bentleigh	16,501	17,251	750	5%	17,828	20,160	2,332	13%
Bentleigh East	26,922	28,978	2,056	8%	28,813	32,591	3,778	13%
Carnegie	17,084	18,722	1,638	10%	18,228	22,279	4,051	22%
Caulfield	5,514	5,861	347	6%	5,920	6,594	674	11%
Caulfield North - Caulfield East	17,319	21,994	4,675	27%	17,849	25,730	7,881	44%
Caulfield South	12,078	12,625	547	5%	12,536	13,479	943	8%
Elsternwick - Gardenvale	11,358	13,148	1,790	16%	12,061	14,007	1,946	16%
Glen Huntly	5,062	5,284	222	4%	5,318	6,193	875	16%
McKinnon	5,981	5,954	-27	0%	6,605	7,376	771	12%
Murumbeena	9,891	10,539	648	7%	10,647	11,621	974	9%
Ormond	8,386	8,599	213	3%	8,850	9,392	542	6%
St Kilda East	4,224	4,545	321	8%	4,358	4,400	42	1%
<b>City of Glen Eira Total</b>	<b>140,320</b>	<b>153,500</b>	<b>13,180</b>	<b>9%</b>	<b>149,013</b>	<b>173,822</b>	<b>24,809</b>	<b>17%</b>

32. The public open space contribution rate is recommended to be increased from 5.7% to 8.3% to achieve the quantity of open space relative to 2031 forecast population. It is further required to deliver the expansion of Glen Eira's public open space network and improvements (excluding maintenance and renewal) to existing open space.

## OPEN SPACE STRATEGY REFRESH 2020 - UPDATE OF THE PUBLIC OPEN SPACE CONTRIBUTION PROGRAM, NOV 2020

33. In conjunction with and following adoption of the Strategy Refresh, Council commissioned expert consultants to prepare the Update of the Public Open Space Contribution Program, November 2020 (**Strategy Refresh Update**).
34. The Strategy Refresh Update explains the rate and method used to establish the recommended public open space contribution rate. This is explained in further detail below.

## ADOPTION OF REVIEWS AND FORMATION OF AMENDMENT

35. Following adoption of the Strategy Refresh on 9 June 2020, Council at its ordinary meeting on 15 December 2020 resolved that it:
1. endorses the City of Glen Eira Open Space Strategy Refresh 2020 - Update of the Public Open Space Contributions Program November 2020 as a supporting background document to Amendment C218;
  2. seeks authorisation from the Minister for Planning in accordance with Section 8A of the Planning and Environment Act 1987 to prepare and exhibit planning scheme Amendment C218 to the Glen Eira Planning Scheme to increase the public open space contribution rate in the

<sup>6</sup> At page 68 (84 of pdf)

- schedule to Clause 53.01 from 5.7% to 8.3%, generally in accordance with Attachments 1 and 2;
3. authorises officers to make minor changes to the Amendment where the changes do not affect the purpose or intent of the Amendment;
  4. subject to receiving authorisation from the Minister for Planning, place the Amendment on public exhibition for a period of at least one month in accordance with the requirements of Section 19(1) of the Planning and Environment Act 1987, except Section 19(1)(b); and
  5. resolves that, pursuant to Section 19(1A) of the Planning and Environment Act 1987, notification of Amendment C218 will not include direct notification to all landowners and occupiers within the municipality under Section 19(1)(b) on the basis that it is impractical to do so. Notification of the Amendment in lieu of Section 19(1)(b) will occur in accordance with Section 19(1B) of the Act, in the form outlined in this report.

## MINISTERIAL AUTHORISATION

36. Following Council's resolution, Council's officers requested authorisation to prepare the Amendment.
37. On 15 March 2021, the Minister requested further information be provided prior to a decision on authorisation and advised that additional further information would be required prior to exhibition. The requested information related to:

### Pre-authorisation:

- 37.1 cost estimates for open space projects;
- 37.2 methodology used to determine apportionment;
- 37.3 methodology for determining area of new dwellings used to develop the total land area for redevelopment; and
- 37.4 Analysis of the role of the *Glen Eira City Plan*;

### Pre-exhibition:

- 37.5 analysis and justification for increased project costs per person;
  - 37.6 details of any carryover from projects identified under the *Open Space Strategy 2014*;
  - 37.7 details of the analysis on open space located within adjoining municipalities;
  - 37.8 tabulated date of contribution rates for each planning precinct;
  - 37.9 the amount of land acquired by Council; and
  - 37.10 explanation regarding the change in land value assignment for new small open spaces.
38. A comprehensive response was provided by Council on 29 June 2021. On 15 September 2021, the Minister authorised Council to prepare the Amendment, subject to conditions. The relevant correspondence forms **Attachment B** to this submission.

## EXHIBITION AND SUBMISSIONS

39. Council exhibited the Amendment between 11 November to 23 December 2021 in the form of:

- 39.1 direct notification by mail to frequent applicants for planning permits/subdivisions;
- 39.2 direct notification to statutory authorities;
- 39.3 publishing notice of the Amendment in:
  - 39.3.1 Government Gazette;
  - 39.3.2 The Age newspaper;
  - 39.3.3 the community engagement eNewsletter;
  - 39.3.4 *Glen Eira News* (distributed to all households in Glen Eira);
  - 39.3.5 Social Media (including Facebook);
  - 39.3.6 *Have Your Say* page and Council's website; and
- 39.4 uploading the Amendment documentation on Council's and the Department's websites.
- 40. Council's 'Have your Say' page included additional information and a summary of the amendment, with an explanation of how to be involved, make a submission, or seek further information.
- 41. The exhibition period was extended to cover a period of at least 6 weeks for it to coincide with the exhibition period for Amendment C220.
- 42. The Amendment documentation as exhibited comprised the following documents:
  - 42.1 the explanatory report;
  - 42.2 notice of preparation of an amendment;
  - 42.3 the instruction sheet;
  - 42.4 proposed clauses and schedules; and
  - 42.5 the *Open Space Strategy Refresh 2020* (adopted 9 June 2020) and *Open Space Strategy Refresh Update of the Public Open Space Contributions Program* (2 November 2020).
- 43. In response to exhibition, Council received 28 submissions:
  - 43.1 16 submissions objected to the Amendment and 3 requested specific changes;
  - 43.2 5 submissions supported to the Amendment; and
  - 43.3 3 submissions from government agencies expressed no objection.
- 44. One submission and some commentary contained in others was outside of the scope of the Amendment. Two of the 28 submissions were received outside the exhibition closing date and constitute 'late' submissions.
- 45. An opportunity for submitters to discuss their concerns with Council (internally described by Council as a "Planning Conference") was held via zoom on 9 February 2022. Six submitters attended and one question was taken on notice.

## STRATEGIC CONTEXT AND ASSESSMENT

46. This section provides an overview of the Amendment's strategic basis, supplementing the detail set out in the exhibited explanatory report.
47. Council submits the following policy forms the framework for the Panel's determination in this hearing:
  - 47.1 the overarching objectives set out at s 4(1) of the *Planning and Environment Act* that include:
    - (a) to provide for the fair, orderly, economic and sustainable use, and development of land
    - (b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity
    - (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
    - (d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value
    - (e) to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community
    - (f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);
  - 47.2 *Plan Melbourne (2017-2050)*<sup>7</sup> which includes key actions to 'prepare a metropolitan open space strategy that enhances recreation, amenity, health and wellbeing, species diversity, sustainable water management and urban cooling across Melbourne' and relevant directions including:
    - 47.2.1 Direction 4.1 to 'create more great public places across Melbourne';
    - 47.2.2 Direction 5.1 to 'create a city of 20-minute neighbourhoods', by providing a high quality public realm and open spaces within the 20-minute neighbourhood;
    - 47.2.3 Direction 5.3 to deliver social infrastructure to support strong communities';
    - 47.2.4 Direction 5.4 to 'deliver local parks and green neighbourhoods in collaboration with communities', including policy at 5.4.1 which seeks to develop a networks of accessible, high quality, local open spaces;
    - 47.2.5 Direction 6.4 to 'make Melbourne cooler and greener', by greening urban areas and open spaces to create an urban forest and by strengthening the open space network across Melbourne at policies 6.4.1 and 6.4.2;
    - 47.2.6 Direction 6.5 to 'protect and restore natural habitats; by creating a network of green spaces that support biodiversity conservation and opportunities to connect with nature at policy 6.5.1;

<sup>7</sup> [https://planmelbourne.vic.gov.au/\\_data/assets/pdf\\_file/0007/377206/Plan\\_Melbourne\\_2017-2050\\_Strategy\\_.pdf](https://planmelbourne.vic.gov.au/_data/assets/pdf_file/0007/377206/Plan_Melbourne_2017-2050_Strategy_.pdf).

- 47.3 *Open Space for Everyone, Open Space Strategy for Metropolitan Melbourne 2021*<sup>8</sup> which aims to strengthen the metropolitan open space network, with a focus toward more equitable access to open space across metropolitan Melbourne and recognition of the importance of land set aside specifically for public open space.
- 47.4 the Planning Policy Framework and particular provisions including:
- 47.4.1 clause 11 *Settlement* which establishes that planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure;
  - 47.4.2 clause 12 *Environment and Landscape Values* which seeks to protect, restore and enhance sites and features of nature conservation, biodiversity, geological or landscape value.
  - 47.4.3 clause 13 *Environmental Risks and Amenity* which aims to identify and manage the potential for the environment and environmental changes to impact on the economic, environmental or social wellbeing of society and to prepare for and respond to the impacts of climate change;
  - 47.4.4 clause 14 *Natural Resource Management* which supports the conservation and wise use of natural resources including energy, water, land, stone and minerals to support both environmental quality and sustainable development;
  - 47.4.5 clause 15 *Built Environment and Heritage* which seeks to protect heritage values and create places that:
    - are enjoyable, engaging and comfortable to be in;
    - accommodate people of all abilities, ages and cultures;
    - contribute positively to local character and sense of place;
    - Reflect the particular characteristics and cultural identity of the community;
    - Enhance the function, amenity and safety of the public realm.
  - 47.4.6 clause 16 *Housing* which encourages the long term sustainability of new housing, including access to services, walkability to activity centres, public transport, schools and open space;
  - 47.4.7 clause 19 *Infrastructure* which supports the development of social and physical infrastructure in a way that is efficient, equitable, accessible and timely. Planning authorities are to consider the use of contributions in the funding of infrastructure;
  - 47.4.8 clause 53.01 *Public Open Space Contributions and Subdivision* which establishes the ability for council to specify a public contribution rate;

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<sup>8</sup> [https://www.environment.vic.gov.au/\\_data/assets/pdf\\_file/0025/520594/Metro-Open-Space-Strategy-FA4-book-WEB.pdf](https://www.environment.vic.gov.au/_data/assets/pdf_file/0025/520594/Metro-Open-Space-Strategy-FA4-book-WEB.pdf).

- 47.4.9 clause 56 *Residential Subdivision* that seeks to provide quality, well-distributed and multi-functional public open space that includes local parks, active open space, linear parks and trails, that are managed in an environmentally sensitive way;
- 47.5 the focus of the Local Planning Policy Framework in the Scheme on the importance of open space in the City of Glen Eira, including:
- 47.5.1 the objectives under clause 21.03-3 being to:
- improve and protect the liveability, neighbourhood character and amenity of Glen Eira;
  - promote environmental, social and economic sustainability;
  - ensure integrated neighbourhood planning of Glen Eira's suburbs;
  - protect and enhance the natural environment – the combination of parks, gardens, trees and street trees which give Glen Eira a valued garden city atmosphere;
  - stimulate and improve the vitality of Glen Eira's commercial centres;
- 47.5.2 the objectives at Clause 21.13 (this clause forming **Attachment C** to Council's submission) which seek to:
- encourage development that will result in improvements to Glen Eira's public open space network.
  - encourage the protection of indigenous flora;
  - ensure that if land is subdivided, a public open space contribution is sought;
- 47.5.3 clause 22.12 (this clause forming **Attachment D** to Council's submission) which provides guidance on whether a land or cash public open space contribution is to be required and criteria for land contributions. The policy also encourages early coordination of land contributions with the site layout of development proposals. It identifies that the municipality has a deficiency in the amount of public open space when compared with metropolitan standards and the challenges which include the need to improve the amount and quality of public open space;
- 47.6 the strategic directions in the Council Plan 2021-2025 to create a liveable and well planned city and provide access to well designed and maintained open spaces and places. Strategic priorities include to increase the quantity and quality of public open spaces for residents; and
- 47.7 other relevant strategies including:
- (a) *Activity Centre, Housing and Local Economy Strategy* (2017)
  - (b) *Environmental Sustainability Strategy* 2016-2021
  - (c) *Integrated Transport Strategy* 2018-2031

(d) *Get Active – The Future of recreation ad Sport* 2019

(e) *Glen Eira Bicycle Strategy* 2010.

48. Council submits that the Amendment has been prepared having regard to Planning Practice Note 13 (Incorporated and Background Documents)<sup>9</sup> and as such proposes to include the *Strategy Refresh* and *Strategy Refresh Update* as background documents.

49. The Amendment and importantly the *Strategy Refresh* have been prepared having regard to Planning Practice Note 70 (Open Space Strategies)<sup>10</sup> which provides guidance on the preparation of an open space strategy. It states:

Public open space provides significant benefits to communities. These benefits include protecting biodiversity, improving psychological health and wellbeing, improving physical fitness, facilitating social interaction and cohesion, promoting community pride, and enhancing child development through play. Open space also provides a location for participating in civic life.

The importance and value of open space is likely to increase over time as a result of emerging pressures of population growth, demographic change, urbanisation and climate change. Urban change means access to private open space may alter over time and appropriately located, well designed and maintained public open space will become more important for future communities. Preserving existing open space is also important as it can be modified over time to perform different open space roles in response to changing community needs. Land that may appear to be of marginal benefit to one generation may be of critical importance to the next.

....

Preparing an OSS provides an opportunity for councils to take into account all of the current open space assets in their area and actively consider future needs for additional open space. It also encourages an examination of how existing open space could be managed more effectively.

50. In particular, the *Strategy Refresh* responds to the practice note by:

- 50.1 providing an overview of existing open space resources and future needs;
- 50.2 providing a basis for decision making about future open space provision and development;
- 50.3 assists with financial and resource planning and asset management;
- 50.4 identifying gaps and deficiencies in the open space network, along with strategies as to how these may be addressed;
- 50.5 facilitating a coordinated approach to open space planning; and
- 50.6 articulating aspirations for open space provision.

51. Further, the *Strategy Refresh* also adopts the same methodology that was previously supported by the Panel in Amendment C120glen.

<sup>9</sup> [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0030/96573/PPN13-Incorporated-and-Background-Documents.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0030/96573/PPN13-Incorporated-and-Background-Documents.pdf).

<sup>10</sup> [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0025/97333/PPN70-Open-space-strategies\\_Junes-2015.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0025/97333/PPN70-Open-space-strategies_Junes-2015.pdf).



## MINISTERIAL DIRECTIONS

52. The Amendment is consistent with the requirements of the following Ministerial directions:
- 52.1 Ministerial Direction on the Form and Content of Planning Schemes;
  - 52.2 Ministerial Direction No. 9 - Metropolitan Planning Strategy;
  - 52.3 Ministerial Direction No. 11 – Strategic Assessment of Amendments; and
  - 52.4 Ministerial Direction No. 15 – Planning Scheme Amendments.

## OTHER AMENDMENTS & STRATEGIC PROJECTS

### Amendment C220glen

- 52.1 Amendment C220glen replaces the Municipal Strategic Statement and the Local Planning Policy Framework at Clause 21 and Clause 22 of the Scheme with a Municipal Planning Strategy, local policies within the Planning Policy Framework and revised local schedules to zones, overlays, particular, operational and general provisions, consistent with the structure introduced by Amendment VC148.
53. As part of Amendment C220glen, open space policies are proposed to be updated to align with the *Strategy Refresh* and will primarily be located in Open Space Policy of the Scheme but will also support policies in the proposed Activity Centres, Landscaping and Building Design policies of the Scheme.

### Housing Strategy

54. Council is currently preparing a Housing Strategy that is intended to address matters of housing growth, capacity and neighbourhood character.
55. This work is, like Amendment C218glen, being prepared in response to the projected residential growth forecast for the City.
56. Preparation of the Housing Strategy has included:
- 56.1 engagement of demographic consultants to review whether the capacity of the land is sufficient to accommodate the anticipated growth in context of the forecasts provided in *Victoria in Future 2019*; and
  - 56.2 engagement of urban designers to update existing neighbourhood character assessments and prepare preferred character statements.
57. The Housing Strategy will result in updates to the Housing Framework Plan and updates to the schedules to residential zones through a proposed new amendment to the Scheme to reflect the updated neighbourhood character work.
58. The draft Housing Strategy recently concluded its consultation period (closed 15 May 2022), and it is anticipated that, subject to Council agreement, Ministerial Authorisation will be sought in early 2023.



## CONDITIONS OF AUTHORISATION

59. Below is a summary of the conditions of authorisation and description of how those conditions have been met

Conditions	How the condition has been met
1 Include Clause 22.12 - Public Open Space Contribution Policy as part of this amendment to include updated policy that reflect the new OSS. The amended Clause 22.12 must be in a format that is transferable to the new Planning Policy Framework format, similar to the proposed Public Open Space policy at Clause 19.02-6L via Amendment C220glen.	<b>Accepted</b>  An updated Clause 22.12 was included with the Amendment.
2 Amend the explanatory report by providing further explanation of the basis for calculating the total OSS project cost of \$434,720,870.	<b>Accepted</b>  The explanatory report was updated to include further explanation of the basis for calculating the total project costs under the 'Why is the amendment required heading?'.
3 Include the background documents City of Glen Eira Open Space Strategy Refresh 2020 and the City of Glen Eira Open Space Strategy Refresh Update of the Public Open Space Contributions program 2 November 2020 in the schedule to Clause 72.08. The background documents must be made available and form part of the amendment exhibition documents.	<b>Accepted</b>  The background documents were included as documents that were made available during exhibition of the Amendment.
4 Update all amendment documents, including the amendment description, to reflect the above conditions and lodged with DELWP for exhibition in Microsoft WORD format.	<b>Accepted</b>  All documents were amended to reflect conditions and were lodged in Word format.
5 All proposed ordinances must be authored in Amendment Tracking System including an interim publish completed and lodged for exhibition.	<b>Accepted</b>  All proposed ordinances have been authored in the Amendment Tracking System.

## HOW THE CONTRIBUTION RATE WAS CALCULATED

60. To supplement the information provided in the expert reports, this submission sets out a brief description of how the contribution rate was calculated. The *Strategy Refresh* identifies that, in review of the open space contributions program<sup>11</sup>:

....

A strategic based rate provides open space for the incoming population on whose behalf the rate is collected. The rate should allow Council to forecast the value of contributions

<sup>11</sup> At page 78 (94 of the pdf)

it expects to receive over the Strategy planning period so that it can be confident it can deliver the projects included in the Open Space Strategy Refresh.

...The current rate reflects the open space of the new population that was anticipated in April 2014. The population increase in Glen Eira during the past five years is significantly greater than was forecast at that time.

The Strategy is now planning approximately 24,800 new residents 12,500 new dwellings and 17,200 additional employees. In accordance with Council's planning framework, new opens pace projects will significantly benefit the Bentleigh/Bentleigh East, Carnegie and Elsternwick suburbs. A rate schedule that reflects this has been calculated as shown in Table 4-13.

**Table 4-13 Proposed change to public open space contribution rate**

Type or location of subdivision	Amount of contribution for public open space (proposed)
All subdivision with the exception of the area known as the Caulfield Village as delineated in the Caulfield Mixed Use Area Incorporated Plan February 2014.	8.3%

Note: the above wording reflects the current schedule in the Glen Eira Planning Scheme. The schedule will also include the open space contribution rate/s for subdivision in the East Village redevelopment site once these rates are approved.

61. Table 4-3 of the *Strategy Refresh* presents the quantity of open space relative to the 2031 forecast population<sup>12</sup>.

Please note that the estimated future population figures below are shown in the yellow column to differentiate them from the 2016 estimated population.

PRECINCT NAME	Total open space Ha	Total population 2016	Sqm of open space per person 2016	Forecast population 2031	Sqm of open space per person 2031
Bentleigh	13.40	17,828	8	20,160	7
Bentleigh East	32.98	28,813	11	32,591	10
Carnegie	21.07	18,228	12	22,279	9
Caulfield	0.05	5,920	0.08	6,594	0.07
Caulfield East	8.81	Incl. in Caul. Nth	20	Incl. in Caul. Nth	14
Caulfield North	26.33	17,849	20	25,730	14
Caulfield South	15.39	12,536	12	13,479	11
Elsternwick	3.55	12,061	3	14,007	3
Gardenvale	0.45	Incl in Elsternwick	3	Incl in Elsternwick	3
Glen Huntly	2.73	5,318	5	6,193	4
McKinnon	14.18	6,605	21	7,376	19
Murrumbeena	21.20	10,647	20	11,621	18
Ormond	9.39	8,850	11	9,392	10
St Kilda East	1.35	4,358	3	4,400	3
<b>TOTALS</b>	<b>170.89</b>	<b>149,013</b>	<b>11</b>	<b>173,822</b>	<b>10</b>

62. The *Strategy Refresh Update* explains the rate calculation method in detail.
63. The data used in calculating a new public open space contribution rate includes: the cost of providing the open space, the cost apportionment of projects to the new population, the estimate of the land area required to accommodate the population forecast for the planning period and the site value of the land estimated for redevelopment.

<sup>12</sup> At page 49 (65 of pdf)

64. This is further described as follows<sup>13</sup>:

The 8.3 per cent public open space contribution rate has been calculated using the same method as was used for Amendment C120. A description of the method formed part of the public exhibition material at the time (as for this amendment) and was the subject of a Planning Panel report dated 21 November 2014. The Amendment C120 Panel supported the adoption of the amendment. It accepted the open space methodology put forward and considered that it is consistent with Practice Note 70: Open Space Strategies.

The overall approach to public open space contributions is to fund a fair proportion of open space improvements in the Council's open space network in response to population growth and change. The method recognises that in areas where provision of existing open space is limited, including commercial areas that have not traditionally housed residential populations, future development will generate a need for additional open space. In these areas, contributions will be levied towards the provision of land and park establishment costs. In areas with open space that will experience a significant level of population change, additional open space will also be required. Where there is adequate open space to accommodate future populations, expansion and improvements to open space facilities will be able to accommodate the requirements of new residents and workers, and these improvements will also be funded in part by contributions. The formula for the public open space contribution rate calculation is:

The formula for the public open space contribution rate is:

$$\frac{\text{Project costs allocated to the new population}}{\text{Value of the land estimated to redevelop (based on forecast growth)}} \times 100 = \% \text{ contribution rate}$$

65. The projects included in the public open space contribution rate include<sup>14</sup>:

Acquisition of land for additional Local open space, Small Local open space and Small Local Links with a total of 38 new open spaces. Over 15 years this equates to approximately 2.5 new open spaces per year to be added to the network.

Unstructured recreation and informal facilities provided for the City of Glen Eira population within all open space including Regional, Municipal, Neighbourhood, Local, Small Local open space and Small Local Links.

66. The total dollar values used to determine project costs include<sup>15</sup>:

Capital works costs are based on an average park establishment or upgrade opinion of cost for each of the different types of open spaces. These average opinions of cost have been developed with the Council's open space capital works team.

Land values are based on the average land size for each hierarchy of open space and uses the average Capital Improved Values (CIV) supplied by the Council.

67. Relevant to calculating the contribution rate<sup>16</sup>:

67.1 the total cost of the Strategy Refresh Projects is **\$434,720,870**;

<sup>13</sup> At page 20 (24 of pdf)

<sup>14</sup> At page 21 (25 of pdf)

<sup>15</sup> At page 22 (26 of pdf)

<sup>16</sup> At page 23-25 (26-29 of pdf)

- 67.2 the total apportioned cost to the new population is **\$254,637,515** as the total value of public open space contributions sought by the Amendment;
- 67.3 the total Site Value of the land estimated to redevelop is **\$3,061,087,390** as based on an average 'per square metre' site value provided by Council's valuers; and
- 67.4 the rate is therefore calculated as follows:

$$\frac{\$ 254,637,515}{\$3,061,087,390} \times 100 = 8.3\% \text{ contribution rate}$$

## REVISED POPULATION PROJECTIONS

68. Council notes that the 2021 Census data will not be released until after June 2022. An explanation of the data used in the preparation of the strategic basis for the Amendment is set out in the expert evidence of Ms Esther Kay, filed and served on 16 May 2022.

## KEY ISSUES RAISED IN SUBMISSIONS

69. A detailed summary of, and response to, the submissions received in response to exhibition forms part of Council's meeting agenda dated 15 March 2022.
70. The key issues raised in the submissions are summarised as:
- 70.1 the proposed rate being inadequate, for reasons including to:
- 70.1.1 adequately supply increased open space;
  - 70.1.2 accommodate increasing population growth;
  - 70.1.3 reflect current population survey data;
- 70.2 proposed rate being excessive, for reasons including:
- 70.2.1 lack of sufficient strategic justification or implementation plan;
  - 70.2.2 financial burdens;
  - 70.2.3 potential effects on housing affordability and development opportunities;
  - 70.2.4 disagreement with a single rate applied across the whole municipality; and
  - 70.2.5 suggestions to look to other revenue sources instead.
71. Changes to the Amendment were requested, including to what rate ought to be applied, changes based on the use of the open space, rather than the rate, and that exemptions should be included.
72. Council will respond to these issues in its 'Part B' submission, including with reference to the expert opinions of Ms Esther Kay and Ms Joanna Thompson who will give evidence.

73. At its ordinary meeting on 15 March 2022, Council considered the submissions together with the Council officers' response to submissions, resolving that it:
1. receives and notes submissions received following the exhibition of Amendment C218 to the Glen Eira Planning Scheme;
  2. notes the officer report and Attachment 1 to this report – Amendment C218 Response to Submissions;
  3. requests that the Minister for Planning appoints an independent planning panel to consider:
    - a) all submissions received during the exhibition period for Amendment C218; and,
    - b) the late submissions received (submission 26 and 28) to Amendment C218 in accordance with Section 23 of the Planning and Environment Act 1987; and
  4. refers the submissions and the late submissions to the independent planning panel for its consideration

## CHANGES IN RESPONSE TO SUBMISSIONS

74. Each submission has been considered in detail by Council, as evidenced its report to Council in the abovementioned meeting.
75. Having considered the content of the submissions, Council does not submit any recommended changes to the proposed Amendment.
76. In some instances, the content of the submissions was out of the scope of the Amendment.

## OTHER STRATEGIC WORK

77. No further strategic work informs this Amendment aside from the material described in this submission.
78. This concludes Council's 'Part A' submission

## ATTACHMENT A - CHRONOLOGY OF EVENTS

DATE	EVENT
<b>Amendment C120glen</b>	
<b>Early 2012</b>	<ul style="list-style-type: none"> <li>Council commenced work on the 2014 Open Space Strategy.</li> </ul>
<b>8 April 2014</b>	<ul style="list-style-type: none"> <li>Council adopted the 2014 Open Space Strategy.</li> </ul>
<b>22 May 2014</b>	<ul style="list-style-type: none"> <li>Council exhibited the Amendment.</li> </ul>
<b>21 November 2014</b>	<ul style="list-style-type: none"> <li>Publishing of the Panel Report.</li> </ul>
<b>25 November 2014</b>	<ul style="list-style-type: none"> <li>Amendment adopted by Council and submitted for Department assessment (subsequent day).</li> </ul>
<b>12 March 2015</b>	<ul style="list-style-type: none"> <li>Planning Scheme Amendment C120 was gazetted, introducing the current Public Open Space Contribution Policy into the planning scheme at Clause 22.12 and a revised public open space contribution rate of 5.7% in the schedule to Clause 53.01.</li> </ul>
<b>March 2015 and on</b>	<ul style="list-style-type: none"> <li>Officers carry out ongoing review of 2014 Open Space Strategy and indicators of growth.</li> </ul>
<b>Amendment C218glen</b>	
<b>22 August 2017</b>	<ul style="list-style-type: none"> <li>Thompson Berrill Landscape Design Pty. Ltd. in association with Environment and Land Management Pty. Ltd engaged to prepare the draft Strategy Refresh and the scope of the strategy was presented to Council.</li> </ul>
<b>4 February 2020</b>	<ul style="list-style-type: none"> <li>At its Ordinary meeting, Council endorsed to proceed to community engagement for the draft Open Space Strategy Refresh.</li> </ul>
<b>10 February and 22 March 2020</b>	<ul style="list-style-type: none"> <li>Community feedback was sought and in response, minor changes to the Strategy Refresh were subsequently made.</li> </ul>
<b>9 June 2020</b>	<ul style="list-style-type: none"> <li>At its ordinary meeting, Council adopted the draft Open Space Strategy Refresh 2020.</li> </ul>
<b>Following 9 June 2020 meeting</b>	<ul style="list-style-type: none"> <li>Environment and Land Management Pty. Ltd (in association with Thompson Berrill Landscape Design Pty. Ltd.) were engaged to prepare the Open</li> </ul>

	Space Strategy Refresh 2020 - Update of the Public Open Space Contributions Program (November 2020)
<b>15 December 2020</b>	<ul style="list-style-type: none"> <li>▪ At its ordinary meeting, Council resolved to (among other things):               <ul style="list-style-type: none"> <li>- endorse the City of Glen Eira Open Space Strategy Refresh 2020 - Update of the Public Open Space Contributions Program November 2020 as a supporting background document to Amendment C218</li> <li>- seek authorisation from the Minister for Planning (<b>Minister</b>) to prepare and exhibit the Amendment; and</li> <li>- subject to receiving authorisation from the Minister for Planning, exhibit the Amendment.</li> </ul> </li> </ul>
<b>22 December 2020</b>	<ul style="list-style-type: none"> <li>▪ Council's officers requested authorisation to prepare the Amendment.</li> </ul>
<b>15 March 2021</b>	<ul style="list-style-type: none"> <li>▪ The Minister requested further information prior to a decision on authorisation.</li> </ul>
<b>29 June 2021</b>	<ul style="list-style-type: none"> <li>▪ Council officers submitted further information to the Minister.</li> </ul>
<b>15 September 2021</b>	<ul style="list-style-type: none"> <li>▪ The Minister authorised Council preparing and exhibiting the Amendment subject to conditions.</li> </ul>
<b>11 November 2021 to 23 December 2022</b>	<ul style="list-style-type: none"> <li>▪ Council exhibited the Amendment.</li> </ul>
<b>15 March 2021</b>	<ul style="list-style-type: none"> <li>▪ At its ordinary meeting, Council considered the submissions together with the Council officers' response to submissions, resolving to:               <ul style="list-style-type: none"> <li>- receive and note submissions received following the exhibition;</li> <li>- note the officer report response to submissions;</li> <li>- request that the Minister for Planning appoints an independent planning panel to consider all submissions, including late submissions; and</li> <li>- refer the submissions to the independent planning panel for its consideration.</li> </ul> </li> </ul>
<b>13 April 2022</b>	<ul style="list-style-type: none"> <li>▪ Directions hearing.</li> </ul>
<b>23 May 2022</b>	<ul style="list-style-type: none"> <li>▪ Panel hearing commences.</li> </ul>



# ATTACHMENT B – MINISTERIAL AUTHORISATION CORRESPONDENCE



## Department of Environment, Land, Water and Planning

8 Nicholson Street  
East Melbourne, Victoria 3002  
PO Box 500  
East Melbourne, Victoria 8002

Ms Rebecca McKenzie  
Chief Executive Officer  
Glen Eira City Council  
Email address: TMihalos@gleneira.vic.gov.au

Dear Ms McKenzie

### PROPOSED GLEN EIRA PLANNING SCHEME AMENDMENT C218GLEN

I refer to your council's application for authorisation to prepare an amendment to the Glen Eira Planning Scheme. The amendment proposes to increase the public open space contribution rate in the schedule to Clause 53.01 – Public Open Space Contribution and Subdivision from 5.7 percent to 8.3 percent to collect funds to support implementation of the *Glen Eira Open Space Strategy Refresh 2020* (OSS).

Under delegation from the Minister for Planning, in accordance with section 8A of the *Planning and Environment Act 1987* (the Act) I authorise your council as planning authority to prepare the amendment subject to the following conditions:

1. Include Clause 22.12 - Public Open Space Contribution Policy as part of this amendment to include updated policy that reflect the new OSS. The amended Clause 22.12 must be in a format that is transferable to the new Planning Policy Framework format, similar to the proposed Public Open Space policy at Clause 19.02-6L via Amendment C220glen.
2. Amend the explanatory report by providing further explanation of the basis for calculating the total OSS project cost of \$434,720,870.
3. Include the background documents *City of Glen Eira Open Space Strategy Refresh 2020* and the *City of Glen Eira Open Space Strategy Refresh Update of the Public Open Space Contributions program 2 November 2020* in the schedule to Clause 72.08. The background documents must be made available and form part of the amendment exhibition documents.
4. Update all amendment documents, including the amendment description, to reflect the above conditions and lodged with DELWP for exhibition in Microsoft WORD format.
5. All proposed ordinances must be authored in Amendment Tracking System including an interim publish completed and lodged for exhibition.

The amendment must be submitted to the Minister for approval.

The authorisation to prepare the amendment is not an indication of whether or not the amendment will ultimately be supported.

Please note that [Ministerial Direction No. 15](#) sets times for completing steps in the planning scheme amendment process. This includes council:

- giving notice of the amendment within 40 business days of receiving authorisation; and before notice of the amendment is given, setting Directions Hearing and Panel Hearing dates with the agreement of Planning Panels Victoria. These dates should be included in the Explanatory Report ([Practice Note 77: Pre-setting panel hearing dates](#) provides information about this step).

#### Privacy Statement

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

OFFICIAL



The Direction also sets out times for subsequent steps of the process following exhibition of the amendment.

The Minister may grant an exemption from requirements of this Direction. Each exemption request will be considered on its merits. Circumstances in which an exemption may be appropriate are outlined in [Advisory Note 48: Ministerial Direction No.15 – the planning scheme amendment process](#).

In accordance with sections 17(3) and (4) of the Act, the amendment must be submitted to the Minister **at least 10 business days** before council first gives notice of the amendment.

Please submit the amendment electronically using the Amendment Tracking System (ATS).

If you have any further queries in relation to this matter, please contact Donnie Lussier, Senior Planner, State Planning Services, Department of Environment, Land, Water and Planning, on (03) 8508 2769 or email [donnie.lussier@delwp.vic.gov.au](mailto:donnie.lussier@delwp.vic.gov.au).

Yours sincerely,



**Hayley Becker**  
Manager, State Planning Services

**15 September 2021**

## ATTACHMENT C – CLAUSE 21.13 OPEN SPACE

**21.13**  
12/03/2015  
C120

## **OPEN SPACE**

**21.13-1**  
12/03/2015  
C120

### **Overview**

Public open space is highly valued in the City of Glen Eira and fulfils a wide variety of functions. Glen Eira has approximately 70 parks and gardens comprising 173 hectares of open space. The diversity of open space in Glen Eira ranges from large reserves to historical gardens and smaller spaces with informal and urban characters.

Increasing levels of multi unit residential development has led to declining levels of private open space on residential lots in Glen Eira. This places increased pressure on Glen Eira's public open space network.

Glen Eira has a deficiency in the amount of public open space when compared to other metropolitan municipalities.

Current challenges within Glen Eira include the need to carefully plan for the optimum and balanced use of our highly valued larger open spaces, along with providing more open spaces, and improving our smaller open spaces, so that the community can easily walk to and enjoy the benefits of open space.

### **City of Glen Eira Open Space Strategy 8 April 2014**

The Open Space Strategy will direct future planning, provisions, design and management of open space in Glen Eira from 2013 – 2026. The strategy identifies the open space needs and expectations of the existing and forecast populations of the City, identifies the limitations and gaps of the existing open space system, determines potential opportunities available and develops a strategy plan for future open space provision and improvements to the quality of open space in Glen Eira.

The Strategy commits to a 13 year framework of actions that will be funded from a variety of sources. The Strategy also nominates areas where a land contribution for open space may be requested by Council and includes the criteria for land as open space. These criteria are set out in Clause 22.12 Public Open Space Contributions.

The Open Space Strategy, together with the City of Glen Eira Open Space Strategy: Public Open Space Contributions Program Paper 1 July 2014, sets a new, flat rate for open space contributions for all applicable subdivisions of 5.7% at Clause 52. 01 of the planning scheme.

**21.13-2**  
12/03/2015  
C120

### **Objectives and Strategies**

To improve the amount, distribution and quality of open space that meets the needs of Glen Eira's existing and future populations.

#### **Strategies**

- Implement the City of Glen Eira Open Space Strategy 8 April 2014.
- Encourage development that will result in improvements to Glen Eira's public open space network.
- Encourage the protection of indigenous flora.
- Ensure that if land is subdivided, a public open space contribution is sought.

#### **Implementation**

These strategies are to be implemented by:

#### **Policy and exercise of discretion**

- Ensuring that if land is subdivided, public open space contributions are sought via Clause 52.01 of the planning scheme.

- Requiring the provision of open space linkages in new subdivisions and large developments where possible.
- Ensuring siting and design of new development maximises community safety and provides opportunities for surveillance of public open space.
- Protecting existing and encourage further use of indigenous vegetation as appropriate.

### **Zones and overlays**

- Applying the Public Acquisition Overlay to sites identified as being required for the future provision of public open space in order to reserve land for that purpose and to ensure that changes to the use or development do not prejudice the purpose for which the land is to be acquired.
- Protecting existing and future public open space links by including them in the Public Park and Recreation Zone or by applying the Public Acquisition Overlay.

### **Other actions**

- Implementing the City of Glen Eira Open Space Strategy 8 April 2014.
- Encouraging the development of a connected bicycle network throughout the municipality.

### **Reference documents**

City of Glen Eira Open Space Strategy 8 April 2014

City of Glen Eira Open Space Strategy: Public Open Space Contributions Program 1 July 2014

## ATTACHMENT D – CLAUSE 22.12 PUBLIC OPEN SPACE CONTRIBUTION POLICY

**22.12**12/03/2015  
C120**PUBLIC OPEN SPACE CONTRIBUTION POLICY**

This policy applies to all subdivision of three lots or more except for subdivision within the area known as the Caulfield Village as delineated in the Caulfield Mixed Use Area Incorporated Plan February 2014.

**22.12-1**12/03/2015  
C120**Policy Basis**

Public open space is highly valued in the City of Glen Eira and fulfils a wide range of functions. Glen Eira has a deficiency in the amount of public open space when compared with metropolitan standards. Current challenges within Glen Eira include the need to improve the amount and quality of public open space.

The *City of Glen Eira Open Space Strategy 8 April 2014* identifies the open space needs of the existing and forecast population of Glen Eira. It identifies locations where public open space is lacking, additional open space will be needed and a range of improvements to the existing open space system will be undertaken. The strategy commits to a 13-year framework of actions that will be funded from a variety of sources.

Public open space contributions from developers are one of a number of potential sources of resources for the acquisition of land for public open space and improvement of existing facilities on behalf of new populations.

Because public open space contributions can only be imposed at the subdivision stage, it is important for developers to ascertain at the site analysis stage of the design process whether any part of the site might be required by council for public open space purpose where the site:

- is in an area where a land contribution may be sought on Map 1
- fits the selection criteria for public open space in this clause.

**22.12-2**12/03/2015  
C120**Objectives**

- To implement the *City of Glen Eira Open Space Strategy 8 April 2014*.
- To identify when and where land contributions for public open space are preferred over cash contributions.
- To ensure that where appropriate, land suitable for public open space is set aside as part of the design of a development so that it can be transferred to or vested in council, in satisfaction of the public open space contribution requirement.

**22.12-3**12/03/2015  
C120**Policy**

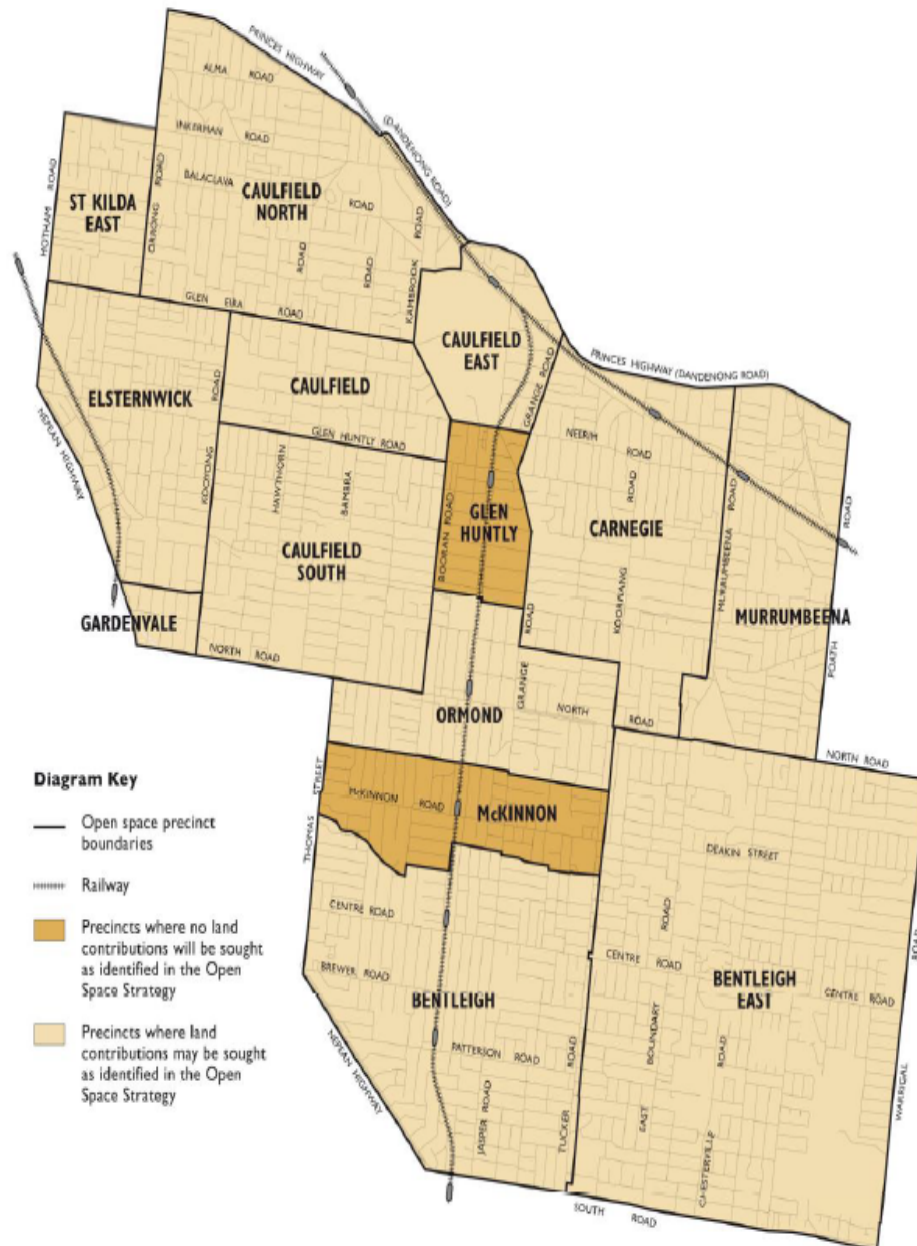
It is policy that:

**Location**

Land contributions for public open space will be preferred over cash contributions for the purposes of Clause 52.01 of the scheme within areas as identified in Map 1 of this policy. Land will be requested and accepted at council's discretion, in accordance with the open space land requirements in the *City of Glen Eira Open Space Strategy 8 April 2014*.



**Map 1: Preferred areas for land contributions for public open space**



### Selection criteria for public open space

Land to be contributed:

- Should be of a size to meet its intended purpose or be able to meaningfully contribute to the assembly of a parcel of land. Minimum size parcels for each type of open space are as follows:
  - Neighbourhood open space, minimum 1 hectare
  - Local open space, minimum 0.26 hectare (up to 0.99 hectare)
  - Small local open space, minimum 0.03 hectare (up to 0.25 hectare) with a minimum width of 20 metres in at least one direction

- Small local link space, with a minimum width of 5 metres.
- Should be accessible or have the potential to be accessible.
- Should not be affected by the adjoining land use in a way that diminishes the ecological, social or cultural value of the open space.
- Should receive a minimum of three hours of direct sunlight between 9 am and 3 pm during mid-winter and at least five hours of direct sunlight between 9 am and 3 pm on 22 September and be free from structures and protrusions.
- Should have the ability to incorporate sustainable water supply and provide long-lived broad spreading canopy trees.
- Must be physically suitable for use as public open space including that there are no inherent issues such as contamination and significant financial or safety implications for the Glen Eira City Council if the land becomes public open space.
- Should include the site's existing biodiversity values and the potential to contribute to the protection and enhancement of these values along with a site's contribution to existing or future ecological diversity.
- Should enhance any Indigenous and non-Indigenous heritage values.
- Should contribute to the character and attractiveness of the neighbourhood.
- Should take into consideration contribution to the wider open space network including forming open space corridors, links and connections to improve accessibility into existing or proposed future open space.
- Should have the ability to be re-zoned for open space purposes, for council to effectively maintain and manage the land as open space.
- Should accommodate a range of structured sport, unstructured recreation and informal uses applicable to the scale of the proposed open space.
- Should be close to a range of transport options such as public transport, linear and shared trails, and major roads and the street network appropriate to the catchment for the proposed open space.
- Should be visually prominent and generally accessible by at least two access points and local roads to at least two sides.

Land that does not meet all of the above criteria may still be appropriate as open space for the purposes of Clause 52.01.

### **Early consideration of land**

Early consideration of land contributions in locations where this policy has identified a preference for a land contribution rather than cash contribution is encouraged. An applicant should consult the responsible authority very early in the site analysis phase of a proposal to ascertain whether any part of the land might be suitable and required for public open space purposes should council wish to obtain a land contribution for open space.

The design of a building on land which will be required for public open space should accommodate the provision of public open space in a manner which meets the selection criteria for public open space.

### **Policy Reference**

City of Glen Eira Open Space Strategy 8 April 2014

City of Glen Eira Open Space Strategy: Open Space Contributions Program 1 July 2014

# ATTACHMENT E – PANEL REPORT FOR AMENDMENT C120glen



*Planning and Environment Act 1987*

# Panel Report

Glen Eira Planning Scheme

Amendment C120

Open Space Strategy and Contributions

**21 November 2014**

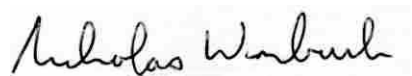


*Planning and Environment Act 1987*

Panel Report pursuant to Section 25 of the Act

Glen Eira Planning Scheme Amendment C120

Open Space Strategy and Contributions

A handwritten signature in black ink, reading "Nicholas Wimbush". The signature is written in a cursive style with a large initial 'N'.

Nick Wimbush, Chair

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## List of Abbreviations

DTPLI	Department of Transport, Planning and Local Infrastructure
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
OSS	Open Space Strategy
PAO	Public Acquisition Overlay
POPC	Preliminary Opinion of Probable Cost
POSCP	Public Open Space Contributions Program
SPPF	State Planning Policy Framework
VIF	Victorian in Future population forecasts
VPP	Victoria Planning Provisions

# 1 Background

## 1.1 The Amendment

Glen Eira Planning Scheme Amendment C120 was prepared by the Glen Eira City Council as Planning Authority. As exhibited, the Amendment:

- *Amends Clause 21.13 (Open Space) of the MSS to introduce policies of the City of Glen Eira Open Space Strategy 8 April 2014 and the City of Glen Eira Open Space Strategy: Public Open Space Contributions Program March 2014 paper as reference documents under this issue;*
- *Introduces a new local policy – Clause 22.12 Public Open Space Contributions – into the scheme. This policy includes guidance and criteria that Council will use to ascertain whether a land contribution will be sought to satisfy the open space contribution requirement;*
- *Inserts a revised, simplified schedule to Clause 52.01 that includes a flat open space requirement of 5.7% for all subdivisions.<sup>1</sup>*

The Amendment applies to all land within the City of Glen Eira with the exception of the area known as Caulfield Village and delineated in the *Caulfield Mixed Use Area Incorporated Plan* February 2014.

Glen Eira is located in the inner south-east region of metropolitan Melbourne and covers a total land area of approximately 38 square kilometres. It includes the suburbs of Bentleigh, Bentleigh East, Carnegie, Caulfield, Caulfield East, Caulfield North, Caulfield South, Elsternwick, Gardenvale, Glen Huntly, McKinnon, Murrumbeena, Ormond and part of StKilda East.<sup>2</sup>

According to the Open Space Strategy (OSS), Glen Eira has the lowest open space per capita and lowest amount of open space as a proportion of total land area when compared to adjoining municipalities.<sup>3</sup>

The public open space ranges from large sporting reserves to historical gardens along with some smaller informal spaces.<sup>4</sup> In 2012, Council appointed experts to research and develop a new open space strategy for Glen Eira.

## 1.2 The Open Space Strategy and funding

The OSS provides Council with a strategic open space program for the next 13 years. The methodology for preparing the OSS was provided in the expert witness statement of Ms Thompson and in summary included:<sup>5</sup>

- A household survey to inform future open space needs and use of existing open space;
- Site visits and inventory of existing open space;

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<sup>1</sup> Explanatory Report

<sup>2</sup> Open Space Strategy p17.

<sup>3</sup> OSS, p43.

<sup>4</sup> OSS, p18.

<sup>5</sup> Summarised from Joanna Thompson expert evidence pp7-11



- Background research and analysis of open space distribution including consultation with Council;
- Consultation on the draft strategy;
- Use of precinct level population projection figures provided by Council to forecast open space needs of the future population; and
- A precinct based review of planned new population, existing open space, existing level of use of that open space and then an assessment of future open space needs, both quantity and quality.

The OSS suggests that future open space needs will be met by a combination of:<sup>6</sup>

- Capital works to existing open space;
- Management changes to open space;
- Maintenance changes to open space; and
- The provision of new open space.

Costings for acquisition of new open space and works on open space were then developed in the Preliminary Opinion of Probable Cost (POPC) which uses land values provided by Council in conjunction with the predicted average land size required for new open space. Costings for capital works were based on typical average open space development costs which were developed in consultation with Council staff.

Costs were then apportioned between existing and future residents based on the assessed open space needs and community structure. The costs for future residents only were then used to determine the amount of funding required to deliver the open space land and improvements; this amount was then used to calculate the overall rate of open space contribution (5.7%).

The calculation to achieve this rate is shown in Ms Kay's evidence and is the calculated cost of open space land and works for the new population (\$79,915,605) divided by the total estimated land value of areas to be developed (\$1,403,425,510).<sup>7</sup>

Open space land and works for the existing population are included in the OSS, but are not included in the open space rate in clause 52.01, as this is only for the future population. Funding for the existing population will need to come from other Council sources such as rates and grants.

Funds collected will be expended in accordance with the *Subdivision Act* 1988 on both land acquisitions and open space development.

### **1.3 Exhibition and submissions**

The Amendment was placed on public exhibition between 22 May and 23 June 2014, with two objecting submissions received. At its meeting of 1 July 2014 Council resolved to refer the submissions to a Panel. As a result, on 21 July 2014 Mr Nick Wimbush was appointed as the Panel to consider submissions to the Amendment under section 153 of the *Planning and Environment Act* 1987.

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<sup>6</sup> Joanna Thompson expert evidence, p9.

<sup>7</sup> Esther Kay expert evidence, p4.

## 1.4 The Panel and Hearings

The Panel convened in the offices of Planning Panels Victoria on 20 October 2014 to hear submissions in respect of the Amendment. Those in attendance at the Panel Hearing are listed in Table 1 (including all submitters to the Amendment).

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Glen Eira City Council	Mr Terry Montebello of the firm Maddocks who called the following expert witnesses: <ul style="list-style-type: none"> <li>- Joanna Thompson in open space strategy and public open space contributions program</li> <li>- Esther Kay in public open space strategy and public open space contributions program</li> </ul>
Mr James Walker	
Dr Rosetta Manaszewicz	

## 1.5 Procedural issues

In his submissions Mr Walker provided a number of calculations of open space provision which were not put to the OSS author Ms Thompson in the Hearing. The Panel determined that it would be useful to have her comment on these calculations and a post-Hearing 'on the papers' process was undertaken.

This involved a written response from Ms Thompson received by the Panel on 27 October 2014 to Mr Walker's calculations on pages 20-22 of his submission; a further comment from Mr Walker received on 3 November 2014; and a 'right of reply' from Mr Thompson received by the Panel on 10 November 2014.

The issue and responses are discussed in Chapter 2.

## 1.6 Post-exhibition changes

Two errors were identified by submitters, being:

- In the exhibited clause 21.13, the OSS was incorrectly described as directing open space provision from 2013-2016 as opposed to the correct timing of 2013-2026 (13 years); and
- Murrumbeena was identified in the Public Open Space Contribution Program (POSCP) and proposed map to clause 22.12 as not requiring land contributions; when it actually should be included in the suburbs where land contributions are preferred.

Council and its experts acknowledged these errors and explained the approach to correcting them in the Hearing.

## **1.7 Issues in the Amendment**

### **1.7.1 Policy context and strategic justification**

Mr Montebello for Council outlined at length the policy context for the Amendment in his analysis of the strategic basis for the Amendment in his submissions starting at paragraph 91 and in Appendix 1 to the submission.

This analysis included consideration of relevant aspects of the State Planning Policy Framework (SPPF), Local Planning Policy Framework (LPPF), *Plan Melbourne* and a review of the position taken on open space by the SPPF Review Advisory Committee.

Mr Montebello submitted that the Amendment is necessary to implement Council's open space planning vision and '*...will result in a net community benefit to both the existing and future populations of Glen Eira*'.<sup>8</sup>

Mr Montebello correctly pointed out that the strategic justification for the Amendment was not questioned by submitters<sup>9</sup> in their original submissions; however they did question elements in their Hearing submissions. In general terms the need for open space planning and provision in Glen Eira is not questioned.

The Panel has carefully reviewed the planning policy context of the Amendment and its strategic justification and accepts Council's submissions on this issue. The Panel considers that the Amendment is appropriate and supported by relevant planning policy and is consistent with the relevant amendment practice notes and Ministerial guidelines.

### **1.7.2 Open Space Strategy Methodology**

The basic methodology for the OSS is outlined in Section 1.2 above. This methodology has been used for the preparation of other open space strategies and subsequent Amendments, most notably Melbourne C209. The Panel in that Amendment (chaired by Mr Wimbush) supported the methodology in principle although at the time of writing the Panel recommendations have not been considered by the Planning Authority.

Mr Montebello submitted for Council that there is a '*... high level of correlation between the Strategy methodology and the Practice Note*'.<sup>10</sup>

Subject to discussion of issues raised by submitters later in this report, the Panel generally accepts the open space methodology put forward and considers it consistent with Practice Note 70.

### **1.7.3 Issues raised by submitters**

Whilst there were only two objecting submissions, the submitters expanded on their original written submissions at length in the Hearing and raised a number of complex issues in relation to the OSS and its implementation. The Panel addresses these in Chapter 2.

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<sup>8</sup> Council submission, Appendix 1, para 3.

<sup>9</sup> Council submission, para 91.

<sup>10</sup> Council submission, para 68. Reference to the Practice Note is to *Practice Note 70 – Open Space Strategies*.

## 2 Issues raised in submissions

### 2.1 Population figures

#### (i) The issue and submissions

Dr Manaszewicz submitted that the population figures used in the OSS are out of date and population growth in Glen Eira is significantly higher. She submitted that the Victoria in Future 2014 (VIF) forecast predicts a population of 157,311 in 2026 compared to the 153,499 predicted in the OSS figures taken from .id Consulting.<sup>11</sup>

She further submitted that there are a number of elements in Glen Eira that exacerbate the underestimate of population growth including a building boom in the past three years; large increase in small apartments; increasing staff at the Monash Fusion Project; and a rapid increase in dwelling approvals.<sup>12</sup>

Dr Manaszewicz also submitted that the introduction of the new residential zones has been a key factor in accelerating development in Glen Eira and there are a significant number of larger properties that could produce large development yields under the new zones.

She concluded as a result of these perceived inadequacies in the population data that the open space levy would thus fall far short of what is required to meet open space needs in the municipality.<sup>13</sup>

Mr Montebello in his closing submission for Council submitted that the .id Consulting figures are the most reliable followed by VIF, because the VIF figures are susceptible to policy settings and thus are more likely to change over time.

He further submitted that even if you use the VIF figures, it results in a relatively small forecasted population increase. The end result of this he suggested may be more intensively used open space but the location of open space as identified in the OSS will not change. If development rates are faster than used in the OSS as submitted by Dr Manaszewicz, it will result in faster contribution inflows to provide open space or open space development. Similarly if land values are higher than predicted in the OSS, then Council will receive more valuable land which will not come with an increase in the costs of open space development.

Lastly he submitted that there has been a spike in development applications in recent times as applicants sought to 'beat' the new residential zone implementation. This he submitted, is common to most municipalities.

#### (ii) Panel response

If the Panel accepts the submissions of Dr Manaszewicz on this issue, it could conceivably recommend that the population and dwelling forecasts be recast to use the most up to date

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<sup>11</sup> Dr Manaszewicz Hearing submission, p5. Mr Walker also submitted on this issue on p22 of his Hearing submission.

<sup>12</sup> Ibid, p5-6.

<sup>13</sup> Ibid, p7

figures available. However, the Panel is concerned that doing this, and probably re-exhibition, would take some time and the same issue may well arise.

Planning scheme amendments for one reason or another often require considerable time from conception to completion. It is not practical or efficient to constantly revise the underlying inputs to the Amendment. The exception to this might be if the change in inputs (that is not changing them) fundamentally compromised the Amendment. The Panel is not convinced that is the case here.

That is not to say that the Panel rejects the submissions as put by Dr Manaszewicz; rather it accepts many of them in principle but does not believe they should lead to a change in the Amendment at this time. Revised inputs (population forecasts, land values etc...) probably would result in a change, albeit the Panel suspects minor, in the calculated contribution rate. It is also possible that depending on the input the rate may go up or down.

What is before the Panel is a well developed scheme at a point in time, and the Panel considers it would not be in the interests of sound planning to delay further while the latest population figures are fed back in to the Amendment. As Council pointed out there is also a considerable opportunity cost in delay, as the old contributions scheme continues to operate until such time as the Amendment is approved.

The Panel is given some comfort from Mr Montebello's submissions that because the rate is just that, a percentage rate, the ability to capture for example land value uplift is retained if development leads to higher values across the municipality.

Lastly, this is not a strategy for all time. It is Council's open space vision for the period to 2026 and between now and then the population forecasts used are unlikely to come exactly to fruition. The capacity to review the OSS at any time is retained if there are other substantial changes in policy settings and development rates.

## **2.2 Open space per individual**

### **(i) The issue and submissions**

Mr Walker and Dr Manaszewicz both submitted that the amount of open space per person in Glen Eira is low and the Amendment should aim to improve this situation<sup>14</sup>. For example Mr Walker submitted:<sup>15</sup>

*To get closer to the middle suburban mean for public open space would require Glen Eira to at least double its existing area of public open space from the present ratio of 1.2ha per 1000 people to 2.4ha per 1000 people. If that was achieved it would move Glen Eira from most deficient to second-most deficient in public open space ...*

He then calculated that to double the open space from the current 173ha to 346ha by 2046 would cost in the order of \$1.73 billion, or about \$870 per resident per year.<sup>16</sup>

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<sup>14</sup> A general comparison to other municipalities is shown in Table 4-4 of the OSS at page 43.

<sup>15</sup> Mr Walker Hearing submission, p22.

<sup>16</sup> Ibid, p22.

In her post Hearing supplementary witness statement dated 27 October 2014, Ms Thompson submitted that Mr Walker appeared to be relying on open space per person as the only success measure of the strategy. She submitted that:<sup>17</sup>

*In my opinion, determining the open space needs of the existing and forecast population in Glen Eira is made up of numerous influences. It is not merely a factor of quantity of open space, it is also the distribution, quality and urban context of the open space.*

She went on to submit that a qualitative approach had been taken in the assessment of the OSS and that as recommend in the OSS:<sup>18</sup>

*...expanding the network of local open space across the municipality so that in future, the majority of the community live and work within safe and easy walking distance of open space will improve liveability in Glen Eira. This network of new open spaces is part of an achievable program of works that is grounded in the reality of delivering new open space in the established urban areas of Glen Eira ...*

Ms Thompson, in consultation with Ms Kay, calculated the open space contribution rate for new development based on providing an additional 195.47ha of open space by 2026 to provide a benchmark of 24 sqm per person. The value of this land at the average land value of \$1,800/sqm was calculated at approximately \$3.5 billion. If the 43% apportionment rate in the OSS was applied this provides a value of approximately \$1.5 billion of open space value required, or a contribution rate of 107.8% when compared to the total value of land for development in the OSS of \$1,403,425,510.<sup>19</sup>

Ms Thompson went on to submit that the program of works and acquisition in the OSS is ambitious, but also practical and achievable.

In his further submission dated 3 November 2014, Mr Walker submitted that he was not advocating a particular target for open space per person, but rather is suggesting that more open space is required, rather than less. He submitted that the OSS should be moving towards an increase in open space per person and noted:<sup>20</sup>

*Again I question the methodology and the figures that this new response provides. It would seem the bottom line is that residents of Glen Eira can expect a decline in their available open space per person if this Amendment proceeds in its current form.*

He then went on to draw attention to a number of places in the OSS where quantity of open space was said to be important, both *in toto* and per person.

In her final response dated 10 November 2014, Ms Thompson submitted:<sup>21</sup>

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<sup>17</sup> Ms Thompson post Hearing supplementary statement dated 27 October 2014, p7.

<sup>18</sup> Ibid, p8.

<sup>19</sup> Ibid, pp8-9. Panel note: this would effectively mean a development on land valued at \$1,000,000 would need to provide \$1,007,800 in open space contributions. Mr Walker's own calculation in his further submission of 3 November was a need for 31.2ha of land for new residents costing \$526 million. On the Panel's calculations this would result in a contribution rate of nearly 40%.

<sup>20</sup> Mr Walker response to supplementary evidence of Ms Thompson dated 3 November 2014, p3.

<sup>21</sup> Ms Thompson post Hearing supplementary statement dated 10 November 2014, p3.

*The issue of increased population density and the impact this will have on the provision of open space relative to population density is addressed in two ways in the Strategy –*

- *By the provision of additional open space in proximity to locations where the forecast population is proposed.*
- *By improving the quality of the new and existing open space so that it can accommodate increased levels of use.*

**(ii) Panel response**

It seems to the Panel that the OSS and Amendment and the submitters are on parallel paths and unlikely to meet. The submitters have a clear preference for providing additional land for open space; and providing a quantum such that the open space per person level is increased.

The OSS and Amendment however, take the view that open space provision for a growing population can be a combination of additional open space, perhaps resulting in a small reduction per person overall; and improvements to existing and the new open space such as to meet the open space needs of the population. This approach is certainly countenanced in the *Subdivision Act* 1988 at section 20 where land improvement as well as land purchase is supported from open space contributions.

The Council approach has been to consider the distribution, amount and quality of open space, whilst working in the context of a highly developed municipality; a situation which requires some pragmatism in approach if the contribution rate is to be kept to a reasonable level.

Ultimately the Panel does not consider that this is an issue which should result in it recommending changes to the Amendment. The submitters have put forward a different philosophy, but it is not the philosophy that has been brought forward by Council in the Amendment.

In addition, and despite the thorough and considered submissions put forward by objectors, the submissions in the Panel's view do not go to challenging the depth and bulk of assessment work undertaken in the OSS itself to fully understand the open space picture in Glen Eira and assess future needs.

## **2.3 The accuracy of calculations**

**(i) The issue and submissions**

Mr Walker in his submission at the Hearing was critical of the accuracy of some calculations in the OSS and Amendment, particularly Table 4-3 in the OSS. In his supplementary submission Mr Walker reiterated his concerns in relation to apparent arithmetical errors in Table 4-3. He put his main concerns thus:<sup>22</sup>

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<sup>22</sup> Mr Walker response to supplementary evidence of Ms Thompson dated 3 November 2014, p2.



*If the figures used in the OSS were wrong then all the assumptions that follow are wrong and the Council and public were relying on wrong information to assess the strategy and Amendment C120.*

*My questioning of the data presented in the OSS 2014 is not intended to be a debate regarding the efficacy of either method – quantitative or qualitative. If the recommended open space levy is derived from figures which are at best dubious, and at worst, incorrect, then the recommendations made in the OSS and the resulting rate for the levy must also be suspect.*

In her further statement Ms Thompson responded to the issue of suggested arithmetic errors. In summary, she submitted that Table 4-3 of the OSS was intended to show the relative differences in open space per precinct rather than the specific numbers to one or two decimal places, rounding is employed in both the total amount of open space and open space per person.<sup>23</sup>

If the actual figures are used to two decimal places then the 'headline' figure of 12 sqm of open space per person is actually 12.32 sqm. The same approach was taken in her supplementary statement of 27 October 2014.<sup>24</sup>

## **(ii) Panel response**

Having reviewed Mr Walker's submissions, Ms Thompson's responses and the OSS and POSCP, the Panel is satisfied that there appear to be no fundamental errors in Ms Thompson's calculations identified by Mr Walker. This is not to suggest that the Panel has been through every calculation behind the OSS and Amendment and confirmed it; this is a matter that would take some weeks and detailed discussions with the consultants. The Panel does not consider this necessary or desirable at this point. The OSS and other documents have been prepared over a substantial period of time by an experienced team of professionals. The Panel thinks the likelihood of systemic failures in calculations is very low and there is nothing before this Panel that identifies such errors.

The other matter of a qualitative compared to quantitative approach was addressed by the Panel in Section 2.2.

## **2.4 Process issues**

### **(i) Issue and submissions**

Dr Manaszewicz submitted that there were flaws in the process of developing the strategy and Amendment and specifically that it '*...has not been based on open, transparent and informative consultation*'.<sup>25</sup>

She provided examples of this including:

- The levy (5.7%) was not finalised until late in the Amendment process with little information on how it was derived; and

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<sup>23</sup> Ms Thompson post Hearing supplementary statement dated 10 November 2014, p2.

<sup>24</sup> Ibid, p2.

<sup>25</sup> Dr Manaszewicz submission, pp17-19.



- How the Amendment will work in relation to commercial and industrial areas, the operation of the Subdivision Act and the approach to strategic sites.

Dr Manaszewicz was also critical of the move by Council to abandon the previous open space policy<sup>26</sup> which required all open space contributions to be spent on acquiring new open space rather than improvements to existing open space.

Council did not specifically respond to the issue of the consultation process in submissions but did address a number of specific points raised by Dr Manaszewicz.

In closing submissions Mr Montebello confirmed that the head clause Clause 52.01 (Public Open Space Contribution and Subdivision), includes subdivision for residential, industrial and commercial purposes so there is no need to add these purposes in explicitly elsewhere in the Amendment.

Mr Montebello also made submissions on the operation of Clause 52.01 and the *Subdivision Act* 1988. He outlined the elements of the Subdivision Act and noted that the approach to open space using Section 18A of the Act and Clause 52.01 of the planning scheme is '*quintessentially different*' to using the application by application approach countenanced in Section 20 of that Act.<sup>27</sup>

He also submitted in closing that the approach being pursued does not provide for a higher rate for strategic sites.

## **(ii) Panel response**

The Panel does not accept on the material before it that there have been procedural flaws in the process that should lead to a recommendation for significant changes, re-exhibition or abandonment of the Amendment.

The Panel does accept that truly understanding the Amendment and open space planning approach behind it is a demanding task that may defeat many in the community; but clearly not the two submitters. However in the Panel's view this is a reflection of the complexity of the issues rather than a flaw in the process or documentation.

The Panel is satisfied that the exhibition process, which is its central concern, has been satisfactory. The proposed rate of open space contribution was included in the Amendment documents including the figures from which it is derived.<sup>28</sup>

On other matters, including the operation of the Subdivision Act and the inclusion of industrial and commercial subdivision, the Panel is satisfied from Mr Montebello's submissions that these matters are appropriately dealt with in the Amendment or within the legislative framework.

In relation to Council's changing view on open space policy and move to a 'land and development' approach rather than just a 'land' approach, the Panel does not have a view.

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<sup>26</sup> Note this was a Council policy but not a planning policy in the Glen Eira Planning Scheme.

<sup>27</sup> Council submission, paras 60-64.

<sup>28</sup> In the *Public Open Space Contributions Program*.

The current position formed in September was a resolution of Council, and whilst it is strongly related to the Amendment, is not determinative of it.

The Panel notes the Council resolution makes Council's position consistent with the approach inherent in the OSS and Amendment.

## **2.5 Environmental 'de-emphasis'**

### **(i) Issue and submissions**

Mr Walker submitted that the Amendment through changes in particular to the local policy at Clause 21.13 removes a number of strategies and objectives related to environmental protection as opposed to open space.

He provided a detailed breakdown of these in his submission on pages 9-12 and also suggested Council should be doing more in terms of climate change and open space.

In response Mr Montebello submitted he did not fully understand Mr Walker's submissions on these points and that Glen Eira does not have much 'environmental' open space.

### **(ii) Panel response**

The Panel does understand Mr Walker's point; for example the removal of the objective in Clause 21.13-2 that reads *'To improve the environmental qualities of open space and enhance habitat potential'*.

It is possible that Council consciously wished to downplay 'environmental' open space but the Panel thinks this highly unlikely. The reason for this conclusion is that the implementation of the OSS is the first strategy in Clause 21.13-2 and the OSS will also become a reference document in the policy.

The OSS, particularly in Chapter 5, goes into considerable detail and provides numerous recommendations on open space development related to health and wellbeing, biodiversity and natural values, climate change, cultural values and more. The approach of a simpler policy with a comprehensive OSS is the approach being pursued by Council and it does not give the Panel any cause for concern that the environmental values of open space are being ignored.

## **2.6 Application of the Public Acquisition Overlay**

### **(i) Issue and submissions**

Mr Walker submitted that the Amendment does not include Public Acquisition Overlays (PAO) as the City of Stonnington have done in their open space Amendment and that this is a flaw as:<sup>29</sup>

*Public acquisition overlays for public open space included in the amendment would make it clear to everyone what council's proposals were, and whether they followed the amendment. As it is, no-one can know where the new open spaces will be.*

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<sup>29</sup> Mr Walker Hearing submission, p3.

In response Mr Montebello for Council noted the Amendment is about revenue, not expenditure. He submitted it would not be appropriate to apply the PAO at this point as specific land parcels have not yet been identified; but rather a general location of need.<sup>30</sup>

**(ii) Panel response**

The Panel notes the submission. It was clearly an option for the Council to identify specific land areas through the Amendment and use the PAO. That they have not done so is a choice of Council and in the Panel's view is not a fundamental flaw in the Amendment.

Using PAOs would arguably add some level of certainty; but would also remove a level of flexibility that Council may have in negotiating specific open space contribution locations within the general needs identified by the OSS. The PAO also triggers an expensive, time consuming legislative process that may be unnecessarily complex in a situation where a negotiated outcome within the parameters of the OSS is superior.

All that being said, Council can use the PAO as a planning tool in future if necessary.

## **2.7 Definition of open spaces**

**(i) The issue and submissions**

Both submitters raised the issue of definition and availability of open space. The primary contention is that the existing open space is overstated as it includes 'alienated' open space for sports pavilions, recreation reserves, bowling clubs and so on that may not be publicly available at all times.

**(ii) Panel response**

Council did not address this issue specifically in submissions. The Panel notes the definition of open space in the Executive Summary of the OSS, namely:<sup>31</sup>

*Open space for the purposes of this Strategy is the publicly owned land that is currently set aside, or has the potential in future to be set aside primarily for recreation, nature conservation and passive outdoor enjoyment. This includes parks, reserves, gardens, larger urban and civic spaces and forecourts.*

This definition is consistent with that experienced by the Panel in other such Amendments. The primary relevant requirements are public ownership and a recreational (passive or active) focus. The Panel does not consider that the inclusion of open space with, for example, a bowls club, should be excluded because it is not available to the broader public at all times.

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<sup>30</sup> Council submission, para 106.

<sup>31</sup> OSS, Executive Summary, p1.

## **2.8 Specific open space areas**

### **(i) The issue and submissions**

Mr Walker raised a number of specific open space areas for consideration. These included:

- Crown Allotment 2031 near the Caulfield Racecourse: he submitted that Crown Allotment 2031 should be used as open space as originally envisaged and the land swap recommend in the OSS not pursued.
- Parts of Rippon Lea could be made available as open space.
- Numerous areas of dysfunctional open space (for example Glen Rigney Reserve).

### **(ii) Panel response**

The Panel notes these submissions. The OSS has undertaken a thorough analysis of the existing open space and gaps in the municipality. Council's position on particular areas in the past is not necessarily determinative of their role in future. Council has adopted the OSS with the scheme for this area in place. Whilst there are clearly different ideas, the Panel is not satisfied on the submissions that they are superior to the researched approach in the OSS.

In relation to Rippon Lea this is an issue Council may wish to pursue but is outside the scope of the Panel's consideration.

The Panel notes the 'dysfunctional' open space areas identified by Mr Walker and the images of some of them displayed in the Hearing. Clearly, for example, the Glen Rigney Reserve does not have significant open space values, and the OSS did not seek to 'talk it up' in terms of role. However these open spaces do fit the definition in the OSS at face value and thus it is appropriate that they are included.

## **2.9 Cash contribution compared to land**

### **(i) Issue and submissions**

Dr Manaszewicz submitted that requiring a land contribution for 95% of the municipality may not provide the flexibility that Council requires and could lead to a proliferation of 'pocket parks' of limited value.

In closing Mr Montebello submitted that in reality cash will be provided most of the time rather than land, even in the 'land preferred' areas and this is possible under the policy framework. The approach in the Amendment provides the framework for negotiations on the best outcomes to implement the OSS.

### **(ii) Panel response**

The Panel notes the submissions on this issue. It is satisfied that a preference for land contribution across large areas of the municipality does not take away Council's capacity to negotiate a cash or land outcome in the particular circumstances. The 'land preferred' approach is not a mandatory control.

## 3 Conclusions and Recommendations

### 3.1 Conclusions

The Panel has considered the OSS, the Amendment and the two objecting submissions. The Panel notes that the two submitters have put in a considerable effort to understand open space in Glen Eira and the planning scheme amendment.

The Panel has reviewed the extensive range of issues and contentions put forward in the submissions and is left with the sense that although the submissions are extensive and well argued, they do not give rise to additional changes to the Amendment or as requested, to abandonment and reconsideration of the OSS and Amendment.

The submissions rather object at a high level on the issue of principle that Council is not doing enough to provide additional open space. Council's approach in commissioning professional open space planners to prepare the OSS, undertaking consultation and then preparing the Amendment is not satisfactory to the submitters but it is the approach Council has chosen. That process has resulted in the headline figure of a 5.7% contribution rate. There is no mandated rate that Council must seek, either for contributions or open space per capita. Council has however undertaken a clear, logical analytical process to arrive at the Amendment. This process in the Panel's view was not seriously challenged by the submissions.

The submissions also object on a number of specific issues as discussed in Chapter 2. Again in many instances the Panel does not consider the submitters are necessarily 'wrong' but rather their opinion does not accord with the approach being put forward by Council in the Amendment.

Wanting a different approach is not in the Panel's mind a sufficient reason to recommend against the Amendment, unless the different approach sought was demonstrably far superior in achieving the outcomes sought by the Amendment. That is not the case here.

### 3.2 Recommendation

For the reasons outlined in this report, the Panel recommends:

1. **Adopt Glen Eira Planning Scheme Amendment C120 as exhibited subject to the following agreed changes:**
  - a) In the map to Clause 22.12 and in the Public Open Space Contributions Program make it clear that the only precincts where a land contribution is not preferred are Glen Huntly and McKinnon.
  - b) On the exhibited page 1 of Clause 21.13, change the date in the third last paragraph to read '2013-2026'.