

**Glen Eira Planning Scheme Amendment C218glen
Public open space contributions**

Panel Report

Planning and Environment Act 1987

17 June 2022

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue, you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.
[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Glen Eira Planning Scheme Amendment C218glen

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17 June 2022



David Merrett, Chair

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Glossary and abbreviations

Council	Glen Eira City Council
HIA	Housing Industry Association
PE Act	<i>Planning and Environment Act 1987</i>
POSC	Public open space contribution
PPN70	Planning Practice Note 70 Open Space Strategies June 2015
the 2014 Strategy	Glen Eira Open Space Strategy 2014
the 2020 Strategy Refresh	City of Glen Eira Glen Eira Open Space Strategy Refresh 2020
the 2020 Strategy Refresh Update	City of Glen Eira Open Space Strategy Refresh Update of the Public Open Space Contributions Program

Overview

Amendment summary

The Amendment	Glen Eira Planning Scheme Amendment C218glen
Common name	Public open space contributions
Brief description	Increase the public open space contribution rate in the schedule to Clause 53.01
Subject land	All land in the municipality
Planning Authority	Glen Eira City Council
Authorisation	15 September 2021
Exhibition	11 November to 23 December 2021
Submissions	Number of Submissions: 28 Opposed: 19 Refer to Appendix A

Panel process

The Panel	David Merrett, Chair
Directions Hearing	13 April 2022
Panel Hearing	23 and 24 May 2022
Site inspections	Not required
Parties to the Hearing	<p>Glen Eira City Council represented by Adeline Lane of Jackson Lane Legal, calling the following expert evidence:</p> <ul style="list-style-type: none"> Esther Kay of Environment and Land Management Pty Ltd on public open space contributions Joanna Thompson of Thompson Berrill Landscape Design Pty Ltd on public open space contributions <p>Gordon Street Land Pty Ltd represented by Scott Edwards of Planning and Property Partners</p> <p>Dr Rosetta Manaszewicz</p> <p>Sullivan Properties Pty Ltd represented by Joe Fisher of Human Habitats</p> <p>Housing Industry Association represented by Mike Herman</p> <p>Association of Consulting Surveyors represented by Paul Murrirhy</p> <p>Metro Bentleigh Pty Ltd represented by Chris Pippo of The North Planning Consultants</p>
Citation	Glen Eira PSA C218glen [2022] PPV
Date of this report	17 June 2022

Executive summary

Glen Eira Planning Scheme Amendment C218glen (the Amendment) seeks to make changes relating to public open space contributions. It proposes to:

- replace the local planning policy at Clause 22.12 Public Open Space Contribution with a new Clause 22.12
- amend the Schedule to Clause 53.01 (Public Open Space Contribution and Subdivision) to increase the public open space contribution (POSC) rate from 5.7 per cent to 8.3 per cent for all subdivisions except Caulfield Village and East Village
- amend the Schedule to Clause 72.08 (Background Documents) to insert the following documents into the Table at Clause 1.0:
 - City of Glen Eira Open Space Strategy Refresh 2020 (the 2020 Strategy Refresh)
 - City of Glen Eira Open Space Strategy Refresh Update of the Public Open Space Contributions Program (the 2020 Strategy Refresh Update).

28 submissions were received. Key issues raised in submissions included:

- general support or no objection to the Amendment (9 submissions)
- support but wanted the public open space rate increased (10 submissions)
- object to the Amendment (9 submissions).

Objecting submissions considered the increase in the public open space contribution rate had not been justified. Other issues raised were:

- whether the use and source of data as inputs to the methodology is appropriate
- whether comparison to other open space strategies is useful
- impacts of COVID-19 on how public open space is used
- will the open space per person metric decrease?
- what should the planning period be?

The Panel accepted that both the 2020 Strategy Refresh and the 2020 Strategy Refresh Update were an update to the Glen Eira Open Space Strategy 2014 (the 2014 Strategy) introduced by Amendment C120 in 2015. In this sense the Amendment is not based on a 'day zero' strategy and the Panel found, as the Amendment C120 Panel did, that it is consistent with the guidance provided by Planning Practice Note 70 *Open Space Strategies June 2015* (PPN70).

The methodology and formula for calculating the public open space contribution rate used in the 2020 Strategy Refresh was the same as that used in the 2014 Strategy. It is the data input into this assessment that has changed and been updated. The Panel supports the consistent use of this methodology and the resultant increase in the rate.

On other issues, the Panel found:

- the use of data sources available at the time of the 2020 Strategy Refresh were well regarded and suitable for this Amendment
- there is no justification to wait for other data sources to become available such as the 2021 Census to update the 2020 Strategy Refresh
- further delays will be a significant disbenefit to the community and inhibit the ability of Council to fund public open space projects
- each municipality has its own open space issues and direct comparisons to other examples are of little benefit

- the 2020 Strategy Refresh contains an implementation plan that documents specific open space projects
- the long term impacts of COVID-19 are unknown at this stage for open space use
- the need to maintain the current rate of public open space per resident was not a goal of the 2020 Strategy Refresh. The POSC rate provides funds for open space for future population levels. Where the metric falls for this new population should not be informed by the current municipal provision of 11 square metres per resident
- the planning period for the 2020 Strategy Refresh should not be re-set to 2021-2036 as this would require a significant amount of work, re-exhibition and further delays. This would be a disbenefit to the community and undermine the ability of Council to fund open space projects.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Glen Eira Planning Scheme Amendment C218glen be adopted as exhibited.

1 Introduction

1.1 The Amendment

The Amendment proposes to increase the POSC rate by:

- replacing the local planning policy at Clause 22.12 Public Open Space Contribution with a new Clause 22.12
- amending the Schedule to Clause 53.01 (Public Open Space Contribution and Subdivision) to increase the POSC from 5.7 per cent to 8.3 per cent for all subdivisions, except Caulfield Village and East Village
- amending the Schedule to Clause 72.08 (Background Documents) to insert the following documents into the Table at Clause 1.0:
 - the 2020 Strategy Refresh
 - the 2020 Strategy Refresh Update.

The Amendment applies to all land in the municipality except for Caulfield Village and East Village that have their own public open space requirements.

1.2 Background

Glen Eira has an average proportion of 4.4 per cent of open space across the municipality which is the lowest in metropolitan Melbourne. Council advised this was *“due to the high density of development and lack of large Regional open space within the municipality.”*

The current Clause 53.01 POSC is 5.7 per cent. This was introduced by Amendment C120 on 12 March 2015. The Glen Eira Open Space Strategy 2014 (the 2014 Strategy) formed the strategic basis and provided the methodology for the calculation of this rate.

The POSC 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.

The policy basis behind the POSC is provided at Clause 22.12 Public open space contributions policy.

Council advised the methodology from the 2014 Strategy is the same methodology used for the 2020 Strategy Refresh, as follows¹:

- extensive background research regarding current open space usage, future open space needs and anticipated population growth
- 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
- development of costings for acquisition of new open space and works on existing open space
- apportioning of costs between existing residents and future residents based on the assessed open space needs and community structure

¹ Council Part A submission, pages 5-6, paragraph 18

- 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)
- acknowledgement that funds for existing residents would be drawn from other Council sources.

The methodology is shown in the following formula (Figure 1).

Figure 1 Public open space rate formula

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

From 2013 to 2019 Council received \$38,123,000 as POSC.

The 2020 Strategy Refresh used the 2016 ABS Census data. Between 2016 and 2031 the Glen Eira population is expected to grow by 24,809 residents (compared to 13,180 in 2013), 12,534 dwellings (compared to 6,881 in the 2014 Strategy) and 17,185 employees². Most of this growth is forecast to occur in the emerging major activity centres of Carnegie, Elsternwick, Moorabbin Junction, Bentleigh and Glen Huntly and urban renewal precincts at Caulfield Station and East Village. At the time of the 2014 Strategy Council supported an “urban village” planning framework with lower growth scenarios, however this has been replaced with the activity centre framework with higher growth forecast.

Council advised that five of the suburbs had reached their 2026 growth forecast by 2017/18. Development outpacing forecasts was a major driver of the 2020 Strategy Refresh together with the new activity centres framework, public open space impacts from the level crossing removal projects on the Dandenong and Frankston lines, an update to Plan Melbourne 2017-2050, the state government climate change framework and urban forest strategy.

Each suburb was reviewed, and open space projects were identified to 2031. Most of these are in Bentleigh/Bentleigh East, Carnegie and Elsternwick. For example, a new Local open space is proposed in Gap Area B1 for Bentleigh (defined by Patterson Road to the north, South Road to the south and between Jasper and Tucker Roads).

Costs were determined using average land sizes for open space multiplied by Capital Improved Value determined by Council’s valuers. They were then apportioned to the existing and future population cohorts for each open space project. The apportionment split typically varied between 80/20 (80 is for existing population) to 50/50 depending on criteria such as the amount of existing open space and location and density of forecast population growth.

The highest cost was for Elsternwick/Gardenvale at \$50,484,731 and lowest was for St Kilda East at \$1,446,774. A significant driver of costs was the cost to purchase land for new public open spaces.

Using the formula in Figure 1, the 2020 Strategy Refresh rate of 8.3 per cent was calculated by:

$$254,637,515 / 3,061,087,390 \times 100 = 8.3 \text{ per cent}$$

² Council advised tracking employment data was more difficult than population data depending on the source of the information

Monitoring of the 2020 Strategy Refresh will include annual reporting on the progress of the strategy, an internal review every 4 years for the duration of the strategy and a full review every 10 years or if circumstances change.

1.3 Draft Housing Strategy

Council is currently preparing a Housing Strategy *“in response to the projected residential growth forecast for the City.”* Council advised³:

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.

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.

Council advised it was likely that the outcomes of the Housing Strategy would be an input into the next review of the open space strategy.

1.4 Procedural issues

Mr Edwards from Planning Property Partners on behalf of Gordon Street Land Pty Ltd (Submitter 27) advised the Panel at the start of the Hearing that his client was satisfied with the exhibited Amendment and no longer wished to present to the Panel. The Panel does not consider the submission further in this Report.

Dr Manaszewicz (Submitter 16) provided a detailed 30-page submission (Document 11) that critiqued the Amendment and considered the POSC was too low. She referred in detail to more recent population and housing data that should be an input into the methodology and would likely indicate the rate should be higher. As this submission was received on Day 1 and contained much more detail than the one-page submission lodged in response to the exhibition of the Amendment, the Panel allowed further time for Council to consider its response and directed that this reply was to be received on 1 June 2020. A request from Council to extend this to 3 June 2020 was accepted by the Panel. The Council reply on this submission is Document 19.

1.5 Summary of issues raised in submissions

(i) Glen Eira City Council

The key issues for Council were:

- the 2020 Refresh Strategy uses the same methodology as the 2014 Strategy which was tested by and supported by a Planning Panel in 2015
- the 8.3 per cent POSC has been strategically justified and will lead to a net community benefit
- the Amendment is consistent with PPN70
- input data was appropriate at the time of preparing the 2020 Strategy Refresh.

³ Council Part A submission, page 16, paragraphs 57 and 58

(ii) Relevant agencies

South East Water (Submitter 5), Department of Environment, Land, Water and Planning (for Minister for Energy, Environment and Climate Change) (Submitter 8) and the Department of Transport (Submitter 25) noted the Amendment and either did not object to the Amendment or did not wish to make a submission.

(iii) Individual submitters or groups of submitters

The key issues for submitters were:

- support for the Amendment
- the POSC is too low and will not address the shortfall in open space in Glen Eira
- the POSC is too high
- there is a lack of strategic justification or implementation plan
- a tiered POSC across the municipality should be used
- other revenue sources should be used.

Submissions that sought to change the Amendment or objected to it, remain unresolved.

1.6 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

The Panel notes there were no submissions that considered there should not be a public open space contribution as there is a current POSC of 5.7 per cent. The key issues from submissions were the POSC is too high and has not been justified (10 submissions) and the POSC is too low and will not address the shortfall in open space across the municipality (9 submissions). The Panel also notes the other 9 submissions supported the Amendment or did not object.

This Report deals with the issues under the following headings:

- Planning context
- Strategic justification
- Data input and other issues
- The public open space contribution rate.

2 Planning context

2.1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The Amendment will broadly assist in implementing State policy objectives set out in section 4 of the PE Act.

Clause 11 (Settlement)

The Amendment supports Clause 11 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.

Clause 16 (Housing) encourages the long term sustainability of new housing, including access to services, walkability to activity centres, public transport, schools and open space.

Clause 19 (infrastructure) 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.

Clause 21 (the Municipal Strategic Statement)

The Amendment supports the Municipal Strategic Statement by meeting the objectives:

- under Clause 21.03-3 (Key land use visions) 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.
- under Clause 21.13 (Open space) 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 POSC is sought.

Clause 22 (local planning policies)

The Amendment supports Clause 22.12 (Public open space contribution policy) which provides guidance on whether a land or cash POSC 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 Glen Eira 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.

2.2 Other relevant planning strategies and policies

(i) Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. Outcomes that are particularly relevant to the Amendment are set out in Table 1.

Table 1: Relevant parts of Plan Melbourne

Outcome	Directions	Policies
Melbourne is a distinctive and liveable city with quality design and amenity	4.1 Create more great public places across Melbourne	Support Melbourne's distinctiveness Integrate place-making practices into road-space management Strengthen Melbourne's network of boulevards Protect and enhance the metropolitan water's edge parklands
Melbourne is a city of inclusive, vibrant and healthy neighbourhoods	5.1 Create a city of 20-minute neighbourhoods	Create mixed-use neighbourhoods at varying densities Support a network of vibrant neighbourhood activity centres
	5.3 Deliver social infrastructure to support strong communities	Facilitate a whole-of-government approach to the delivery of social infrastructure Create health and education precincts to support neighbourhoods Support not-for-profit community services to build social capital and stronger communities Provide and protect land for cemeteries and crematoria
	5.4 Deliver local parks and green neighbourhoods in collaboration with communities	Develop a network of accessible, high-quality, local open spaces Support community gardens and productive streetscapes
Melbourne is a sustainable and resilient city	6.5 Protect and restore natural habitats	Create a network of green spaces that support biodiversity conservation and opportunities to connect with nature Protect and enhance the health of urban waterways Protect the coastlines and waters of Port Phillip Bay and Western Port

(ii) Other strategies

Open Space for Everyone, Open Space Strategy for Metropolitan Melbourne 2021 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.

2.3 Ministerial Directions and Practice Notes

Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018. That discussion is not repeated here.

Other relevant Directions include:

- Ministerial Direction on the Form and Content of Planning Schemes
- Ministerial Direction No. 9 - Metropolitan Planning Strategy
- Ministerial Direction No. 15 - Planning Scheme Amendments.

Planning Practice Notes

Council submitted that the Amendment was prepared having regard to:

- PPN70 that guides the preparation of open space strategies
- Planning Practice Note 13 (Incorporated and Background Documents) by including the 2020 Refresh Strategy and 2020 Strategy Refresh Update as background documents.

3 Strategic justification

3.1 The issue

The issue is whether the strategic justification of the Amendment is sound.

3.2 Relevant policies, strategies and studies

Chapter 2 addresses the strategy and policy framework for the provision of public open space and POSC.

3.3 Evidence and submissions

Submissions 3 (Housing Industry Association - HIA), 13 (Walker) and 28 (C. Kairouz Architects) were concerned the proposed rate had not been justified.

The HIA considered the Amendment was not justified under the 'need' and 'nexus' principles of section 18 of the Subdivision Act 1988. It submitted:

Using the example cited in the strategy that **Caulfield North** requires additional open space facilities, to raise the open space contribution for subdivision in **Bentleigh East** from 5.7% to 8.3% is not justified under need-nexus principles.

The HIA considered increasing the POSC above 5 per cent provided for in the Subdivision Act 1988 was 'double dipping' and encouraged Council to find alternate sources of revenue, including increased borrowings to pay for open space infrastructure.

Council advised the Amendment and the 2020 Refresh Strategy have been prepared having regard to PPN70 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 Open Space Strategy 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.

Council advised the Amendment responded to PPN70 by:

- providing an overview of existing open space resources and future needs
- providing a basis for decision making about future open space provision and development
- assisting with financial and resource planning and asset management

- identifying gaps and deficiencies in the open space network, along with strategies as to how these may be addressed
- facilitating a coordinated approach to open space planning
- articulating aspirations for open space provision.

Ms Kay's evidence was that⁴:

The 8.3 per cent POSC rate that is proposed by Amendment C218 is based on the open space projects included in the 2020 Strategy Refresh. The strategy provides Council with a 15 year program for the protection, maintenance and enhancement of the municipal open space network. More specifically, the strategy provides direction about public open space provision, design and management with attention paid to the open space requirements in the areas where growth and change is occurring or is anticipated in future, and the rate of that change. The required quantity, quality and distribution of open space is clearly set out in the strategy in response to the needs of the existing and forecast new population including both residents and workers.

Council submitted that *“both ‘need’ and ‘nexus’ are established through the detailed analysis of the open space requirements of the existing and future population as set out in the Open Space Strategy Refresh 2020 and the resulting recommendations for new open space and improvements to existing open space reserves.”*

Council considered there was a clear net community benefit in support of the Amendment and Ms Kay addressed the following disbenefits if the Amendment did not proceed:

- Council will continue to use the schedule of rates currently included in Clause 53.01 of the Glen Eira Planning Scheme because the amendment has not proceeded.
- The municipal wide contribution rate of 5.7 per cent will no longer have a strategic basis now that the Strategy Refresh 2020 has been adopted and is being implemented. This is because the 5.7 per cent rate is based on the projects from the 2014 Strategy. Also, the population forecast that provided the basis for the 5.7 per cent rate has now been exceeded.
- Council is likely to under collect the contribution funds needed to provide open space for its growing population, including the acquisition of land to expand the municipal open space network.
- There will be a gap in the contribution funds collected by the Council and the funds needed to deliver the open space program to serve the needs of the new population. This gap can be expected to increase annually over the 15 year forward planning period. Council would need to meet the shortfall with other revenue or else trim the open space program if the funds needed to make up the shortfall are not available due to other budget priorities.

3.4 Discussion

The Panel has already noted there were no submissions that considered there should not be a POSC, although the HIA considered alternate funding sources should be considered.

The Panel accepts the proposition of Council that this Amendment focusses on a refresh of a 2014 Strategy and is not a ‘day zero’ strategy. The Panel that considered Amendment C120 for the 2014 Strategy agreed with Council that the open space strategy had been strategically justified and in how it responds to PPN70, which sets out the methodology and process for developing an open space strategy.

⁴ Kay evidence statement, page 16, paragraph 59

The 2020 Strategy Refresh retains much of the 2014 Strategy and at its basic level is a contemporary version of it. The individual open space projects for each suburb are identified and costed. Population and construction data from the latest sources, at the time in 2018, have confirmed a significant increase in resident and worker population cohorts. This is mainly derived from Council's revised policy where urban villages in 2014 with moderate levels of growth were replaced with higher levels of growth in activity centres and urban renewal sites at Caulfield Station and East Village. A distinction between open space projects that are related to the current and future population and cost are apportioned on this basis.

The Panel accepts that public open space will increase as more infill and activity centre redevelopment occurs in Glen Eira. The provisions of Clause 53.01 are currently used to address open space demand from a new resident and worker population. The Panel considers the 2020 Strategy Refresh is consistent with the 2014 Strategy.

The Panel agrees with Council that there is strong net community benefit in support of the Amendment, and with Ms Kay who outlined clear disbenefits if it were not to go ahead. The Panel has not been convinced an alternate approach is necessary or justified.

3.5 Conclusion

The Panel concludes the Amendment is supported by, and implements, the relevant sections of the PPF, and is consistent with the relevant Ministerial Directions and PPN70. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

4 Data input and other issues

4.1 The issues

As discussed in Chapter 1.4, Submitter 19 (Dr Manaszewicz) provided a very detailed submission at the Hearing that questioned the data input into the methodology and other issues. Other submitters referred more generally to similar concerns.

The issues are:

- whether the use and source of data as inputs to the methodology is appropriate
- whether comparison to other open space strategies is useful
- impacts of COVID-19 on how public open space is used
- will the open space per person metric decrease?
- what should the planning period be?

4.2 Data input

(i) Submissions

Dr Manaszewicz submitted that development is outpacing forecasts and the POSC should be higher. Dr Manaszewicz made a similar submission to Amendment C120. The POSC rate is considered in Chapter 5. The submission can be summarised as:

- new resident and employment populations should be sourced from the most recent data sets available today, not 2018 sources available at the time of the 2020 Strategy Refresh
- the 2020 Strategy Refresh should have included an updated user survey and not rely on the one conducted in 2013
- the Amendment should be delayed incorporating 2021 Census data and up to date land purchase valuations.

Council submitted:

The Strategy Refresh uses population data prepared by .id Consulting (November 2018) and employment population data prepared by Spiller Gibbon Swan (December 2018) to inform the projections, both considered to be reputable and experienced firms for providing this type of information.

Regarding the timing of data, Council referred to how the Amendment C120 Panel addressed this matter in 2014⁵:

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 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.

Dr Manaszewicz used housing data for McKinnon as an example to show development was outpacing forecasts. Council noted that:

⁵ Glen Eira Amendment C120 Panel Report, page 6

If a significant change in the forecast growth in McKinnon occurs when the updated .id Consulting forecasts are undertaken for Council based on the 2020 (sic) Census data (estimated to be available mid 2023), then an updated open space needs assessment can be undertaken for the specific precinct if it is required. Section 5.4.1 of the Strategy Refresh 2020 describes this process.

On other issues Council responded:

- There are several sources of data that demographers use. *id. Consulting* and *Victoria in Future* are two examples. The 2014 Strategy and 2020 Strategy Refresh used *id. Consulting* to ensure a consistent approach across the planning periods. Council noted⁶;
 - DELWP will accept forecasts by other forecasters such as .id Consulting. VIF forecasts often use different assumptions about growth than other forecasting models. Therefore, it is not unusual for demographers to differ in their forecast outcomes. It is important for the Panel to note that DELWP accepted the use of the .id Consulting data in the Strategy Refresh 2020 and the public open space contribution rate calculation of 8.3 per cent when it authorised the Amendment.
- The difference between *Profile.id* and estimated resident population in 2021 of around 4,000 residents is likely to be as a result of COVID-19 in the latter part of that period and “*that it is important to focus on the overall quantum of change anticipated in the Strategy Refresh 2020, not the exact year in which the population increase is reached.*”
- On waiting for the 2021 Census data to be become available, Council submitted:
 - Even if it is determined a new or updated Strategy is required based on analysis of 2021 census data, it will take 1 to 2 years to prepare. At the very earliest, that work would be available would be 2024/2025.
- The use of recent data from the Planning Permit Activity Reporting System for the quantum of lots created during a certain period is not just restricted to lots for residential, commercial and retail uses but for other uses and “*that the number of lots created by subdivision is unhelpful and potentially misleading information.*”
- East Village and Caulfield Village have its own POSC rate contained in master planning incorporated documents, and it is likely that Caulfield Station will once detailed planning is finalised. These precincts are not included in the POSC rate calculation.
- The draft 2020 Strategy Refresh was subject to community consultation and, while a repeat community survey was not conducted, this consultation phase confirmed that the 2013 survey could be relied upon and was not out of date. Council advised:
 - Given the scope of work for the update was to assess the changes since the 2014 Strategy, it was not necessary to undertake the full household survey and assessment of all the existing open space again.
- Using 2021 land valuation data is not supported as it would take considerable time to re-run the methodology and would, if a higher POSC is the outcome, require re-exhibition and likely Panel Hearing process.

(ii) Discussion

The Panel acknowledges the time and effort Dr Manaszewicz has put into the submission as an engaged community member. The basis of the submission is generally supportive of the need for more open space; a position that is shared with Council.

Strategic planning and its implementation in the Victorian planning system is a key component of justifying changes to planning schemes. For some changes, this may require relatively little background work. For others, this may require a significant suite of work to progress more

⁶ Council reply to Dr Manaszewicz submission, page 5, paragraph 22

substantive changes to the planning scheme. The Panel considers the Amendment falls into the latter category. The Panel agrees with the sentiments of the Amendment C120 Panel that for a range of reasons planning scheme amendments take considerable time from conception to completion. There does need to be a line drawn in the sand as to what data should be used so that Council can move into the implementation phase. For this Amendment, the most relevant data was taken from the 2016 Census supplemented by *id Consulting* forecasts for resident population and Spiller Gibbon Swan forecasts for employment population. There are many data releases that could be used, and Council could be tempted to wait for the next release of data or the one after that before progressing an amendment. The unfortunate result of this is strategic planning will stagnate and its implementation will slow and improvements and updates to planning schemes will take longer and longer. The Panel considers this would be a significant community disbenefit.

The release of the 2021 Census data is imminent and has not been considered in this Amendment. The Panel has considered waiting for its release, as requested by Dr Manaszewicz, and using this more recent data. However, this would inevitably result in further delays to a process started by Council in 2018, its likely re-exhibition and consideration by another Panel. Council may wish to consider timing the next review/refresh of its open space strategy with the release of data from the next census in 2026, unless circumstances determine another timeframe is appropriate. For this Amendment, the Panel considers use of data available in 2018 at the time was appropriate and provided important input into the methodology.

The data sources Council has used are well regarded however forecasting does have its limitations. There are many variables in land development including accelerated (or decelerated) population growth, impacts of COVID-19, changes in policy that impact future growth forecasting. An example of the latter point in this Amendment is the policy change from urban villages with moderate population growth to activity centres with higher population growth. It is rare that forecasting gets things exactly right all the time, but if a trend is clear and can be justified then it is an important part of the strategic justification equation. The Panel believes this to be the case for this Amendment.

Many of the specific matters raised by Dr Manaszewicz can be considered in the next refresh or as Council has noted for McKinnon, suburb-specific updates could be completed. As an update to the 2014 Strategy the Panel accepts the draft 2020 Strategy Refresh was the subject of community consultation as an alternate approach to re-running the community survey.

It is perhaps not surprising that more recent property purchase data referred to by Dr Manaszewicz indicated a higher per square metre sale figure than that considered in the 2020 Strategy Refresh. Macro-economic issues such as record low interest rates and investment into real estate during COVID-19 were drivers of this. Again, adjustments can be made at the next review of the strategy.

(iii) Conclusions

The Panel concludes:

- The use and source of data as inputs to the methodology is appropriate.
- The use of data sources available at the time of the 2020 Strategy Refresh were well regarded and suitable for this Amendment.
- There is no justification to wait for other data sources such as the 2021 Census to update the 2020 Strategy Refresh.

- Further delays will be a significant disbenefit to the community and inhibit the ability of Council to fund public open space projects.

4.3 Other examples of open space contributions

(i) Submissions

Dr Manaszewicz considered issues identified in the interim Panel Reports for Monash C148mona and Yarra C286yara are relevant to this Amendment and should be addressed now. Dr Manaszewicz highlighted the need for an implementation plan and precise land acquisition sizes.

Council considered comparisons to other municipal approaches were of no benefit and submitted⁷:

Each municipality's open space strategy will necessarily differ because each will need to address different characteristics of population growth, demography and change; land use, built form and density; the quantity, quality and distribution of the open space network; and environmental, social and economic factors that will influence strategy outcomes.

More specifically on the issues raised, Council submitted⁸:

- Contrary to Dr Manaszewicz's assertion on pages 26-27 of her submission, Glen Eira City Council completed the scope of work recommended by the Monash Interim Report as part of its Strategy Refresh 2020 preparation. As set out in paragraph 67 of Ms Kay's evidence, this is the usual scope of work adopted by TBLD and ELM when preparing open space strategies.
- ...
- On page 25 of her submission, Dr Manaszewicz suggests that further work is needed before the Glen Eira amendment can proceed. Council strongly disagrees. From the examples provided, it appears that the submitter recommends further work where the work has in fact already been completed. It is not an appropriate recommendation, Council submits, to delay progress of this Amendment without first reaching a conclusion that there is a fundamental flaw in the strategic work that needs to be resolved. It is not appropriate to recommend that the Amendment be delayed pending further work where that work simply comprises of a reorganisation of the same work already done in a different form, one perhaps that would be better understood by the submitter.

(ii) Discussion

The Panel appreciates there are other municipalities pursuing similar amendments. However, to say one amendment is directly comparable to another is overreach. Each municipality will have its own issues, distribution of open space and growth scenarios.

Planning Panels have accepted the integrity of the methodology used in Glen Eira now on two occasions. The key concern of Dr Manaszewicz seems to be the lack of an implementation plan which was the focus of the Monash C148mona interim Panel Report. The Panel has reviewed both the 2020 Strategy Refresh and 2020 Strategy Refresh Update and is satisfied there is an implementation strategy that identifies gaps, areas of need, new open space projects on a suburb-by-suburb basis.

⁷ Council reply to Dr Manaszewicz submission, page 10, paragraph 64

⁸ Ibid, page 13, paragraph 91 and page 14, paragraph 99

(iii) Conclusions

The Panel concludes each municipality has its own open space issues and direct comparisons are of little benefit.

4.4 COVID-19 impacts**(i) Evidence and submissions**

Dr Manaszewicz considered COVID-19 may have had the following impacts that should be considered further:

- reduced population growth in the short/medium term
- increased dog ownership and the need for dedicated exercise area
- increase in working from home may change the time of the day open space is used.

Council *“acknowledged that the full impacts of this is largely unknown at this point.”* Ms Kay and Ms Thompson were of the same opinion. Ms Thompson referred to the Parliament of Victoria Inquiry into Environmental Infrastructure for Growing Populations (February 2022). This found that *“there has been a significant increase in the demand for green infrastructure, particularly public open space across Melbourne and the demand has been accelerated by the COVID-19 pandemic.”* Ms Thompson re-checked the latest population data sources and confirmed they remain unchanged from that considered in the 2020 Strategy Refresh. Based on this, her evidence was:

Given there is no change to the forecast population, the only impact could be that the growth occurs at a slower pace. If this occurs, it will not change the Strategy recommendations, it will only mean that the recommendations would be delivered at either (sic) at a later date.

(ii) Discussion and conclusion

The Panel agrees with Council that the long term impacts of COVID-19 are unknown at this stage for open space use. Anecdotally, during the pandemic it seems the use of open space did increase. How this plays out in the future might then be a consideration of the next review.

The slowing of population growth may be a result of COVID-19, but the Panel agrees with Council and the experts that this would not change the recommendations of the 2020 Strategy Refresh, just that the recommendations may be delivered at a later date.

4.5 Will the open space per person metric decrease?**(i) Evidence and submissions**

Dr Manaszewicz considered the amount of open space per resident would decrease, even if all the recommendations of the 2020 Strategy Refresh were implemented, from around 11 sqm per resident to between 9.94 sqm or 4.96 sqm per resident.

Council responded with⁹:

A flaw in the submitter’s analysis arises because Dr Manaszewicz does not reference the key issue that the recommendations for new open space and upgrades to existing open space are for both the existing and forecast population.

⁹ Council reply to Dr Manaszewicz submission, page 10, paragraph 126

Regarding the rate per resident Council submitted¹⁰:

Fundamentally, the Strategy Refresh 2020 has not been prepared on the basis of retaining a target municipal wide average of 11 sqm per person. Rather, it has addressed the priority areas where there are significant gaps in the existing open space network, along with new open space in precincts where the forecast population growth and change will intensify the lack of open space. With the delivery of 31 new Small Local open spaces, 9 Local open spaces along with recommendations for expansion to selected existing open spaces and an additional Small Local Link over the 15 year planning period, there will be an improvement to the accessibility, quality and diversity of the open space network. This may also achieve a sustained rate of 11 sqm per resident in the future, but this has not been a key driver or influence on the recommendations.

(ii) Discussion and conclusion

The Panel accepts the need to maintain the current rate of open space per resident was not a goal of the 2020 Strategy Refresh. The POSC rate provides funds for open space for future population levels. Where the metric falls for this new population, it should not be informed by the current municipal provision of 11 square metres per resident.

4.6 What should the planning period be?

(i) Submissions

Dr Manaszewicz considered the planning period for the 2020 Strategy Refresh should be re-set from 2016-2031 to 2021-2036, as it was 2022 already, and should include the latest data available.

Council strongly objected to this as:

- it would require another review that could potentially take another 4 years to get to a Panel Hearing process
- Council is already implementing the 2020 Strategy Refresh recommendations and a further delay could result in Council not having sufficient funds to implement the recommendations.

(ii) Discussion and conclusion

The Panel has addressed the need for updated data in Chapter 4.2.

The Panel does not support the re-setting of the planning period. It is not as simple as changing the dates. Council has commenced implementing the 2020 Strategy Refresh and the Panel considers the submitter may not appreciate the amount of work involved in this. For the reasons outlined here and in other chapters of the Report any further delay to this Amendment would be a disbenefit to the community and undermine the ability of Council to fund open space projects. The Panel does not accept the planning period for the 2020 Strategy Refresh should be changed.

¹⁰ Ibid, page 18, paragraph 129

5 The public open space contribution rate

5.1 The issue

The issue is whether an 8.3 per cent POSC is appropriate.

5.2 Relevant policies, strategies and studies

Chapter 2 of this report addresses the strategy and policy framework for the provision of public open space and contribution rates.

5.3 Evidence and submissions

Submissions 3, 9, 11, 15, 18, 19, 20, 26, 27 and 28 objected to the increased public open space rate and how it is to be applied. Submission 3 (HIA) considered:

- the proposed rate was inconsistent with the Subdivision Act 1988 rate of no more than 5 per cent
- a payment under the Subdivision Act 1988 and the planning scheme is “*double dipping*”
- the proposed rate would contribute to the rising cost of development and decrease affordable housing in Glen Eira.

Submission 9 (Metro Bentleigh) considered the rate should be applied to where most development is to occur in and around activity centres and not to the whole municipality.

Submission 11 (Consulting Surveyors Victoria) considered:

- smaller subdivisions should not have to pay the same POSC rate as larger subdivisions
- boundary realignments that did not increase lot yield would be required to pay a POSC and requested additions be made to the schedule to Clause 53.01 that outline circumstances where it was not required (a Banyule Planning Scheme example was provided).

The Panel was advised Gordon Street Land Pty Ltd (Submitter 27) no longer wished to present to the Panel following further clarification it had received from Council. The Panel accepts this but notes for clarity that Clause 22.12 allows for the POSC to be taken in either cash or land or a combination of both.

Submissions 4, 7, 10, 14, 16, 21, 22, 23 and 24 considered the 8.3 per cent rate was not high enough and would not address the lack of public open space in Glen Eira.

The evidence of Ms Kay and Ms Thompson was that the calculation of the POSC was based on the same method as the 2014 Strategy and the same input sources with updated data. Ms Kay advised she had used this method for other municipalities, including Boroondara, Maribyrnong, Whitehorse, Moonee Valley, Whittlesea, Yarra and Melbourne. Ms Kay noted that all were approved except for Boroondara which did not proceed to a planning scheme amendment.

Council noted submissions that said the POSC would not address the deficit in public open space in Glen Eira were misconceived. This is because a Clause 53.01 POSC can only address the open space needs generated by future population levels, not an existing population. Council did note that the “*needs of the existing population in terms of open space will be met by Council but funded from other sources (not by public open space contributions acquired as part of the implementation*”

of the Amendment).” Ms Thompson confirmed the 2014 Strategy and the 2020 Strategy Refresh identified open space projects for both the existing and future population cohorts. The methodology included an apportionment of costs to each, which formed one of the metrics for calculating the POSC.

In response to the Consulting Surveyors Victoria submission:

- Council referred to the VCAT decision in *Stupak*¹¹ which found there was no justification to vary the proportion of a contribution under section 18 of the Subdivision Act 1987¹² for smaller subdivisions. As the contribution is based upon site value and larger developments will occur on larger, more valuable sites, these developments will pay proportionally more, and the smaller developments will pay proportionally less.
- A title or boundary realignment should not be required to pay the POSC as it would not create additional lots. Council referred to the Panel Report for Colac Otway C75 which considered the same issue and recommended an expressed exemption was not required.

5.4 Discussion

The key issue for the Panel is to ensure there is a consistent approach to the methodology for calculating the POSC. The Panel believes there is. The input metrics may have changed but the methodology has stayed the same. Each open space project is identified, costed and apportioned. The land has been valued and a percentage rate arrived at. The 2020 Strategy Refresh and 2020 Strategy Refresh Update both provide a sound basis for the calculation of POSC and how a figure of 8.3 per cent was arrived at.

The Panel does not share the view of the HIA that the POSC is inconsistent with the no more than 5 per cent requirement of the Subdivision Act 1988. A payment under the Subdivision Act 1988 only occurs when there is no requirement under the planning scheme. On this point there is no double dipping.

As a POSC rate that is tied to land valuation, the larger the subdivision the more in dollar terms that will be paid. Smaller subdivision already will pay less as the land valuation is likely to be less than that for larger subdivisions.

The use of Clause 53.01 is not the only method for Council to fund open space projects. This method includes the new or future population demands for open space. The existing shortfall of open space in Glen Eira is historic and applies to the existing population. Funding this gap will still occur but not through Clause 53.01.

On the issue of boundary realignments, the Panel understands the temptation to express a specific exemption in the schedule to Clause 53.01, however considers it is not required. *Subdivision* is an undefined term in the planning scheme and therefore use can be made of its definition in the Subdivision Act 1988:

the division of land into two or more parts which can be disposed of separately.

A boundary realignment that does not result in additional lots therefore cannot be considered as a subdivision for the purposes of Clause 53.01. A boundary realignment that does increase lot yield would be defined as a subdivision. The Ministerial Direction on the Form and Content of Planning

¹¹ *Stupak v Hobsons Bay CC* (2011) VCAT 618

¹² In this case Hobsons Bay CC did not require a contribution under Clause 52.01 (at the time)

Schemes would not support the addition of exemption into the schedule, as none are specifically allowed.

5.5 Conclusions

The Panel concludes the 8.3 per cent POSC rate is appropriate and justified.

Appendix A Submitters to the Amendment

No.	Submitter
1	Tim Lucas
2	Justin Swieboda
3	Housing Industry Association
4	David Dolan
5	South East Water
6	Gerard Regan
7	Warren Green
8	Department of Environment, Land, Water and Planning
9	Metro Bentleigh Pty Ltd
10	Jacinta Smith
11	Consulting Surveyors Victoria
12	Carolyn Eccleston
13	James Walker
14	Glen Eira Environment Group Incorporated
15	Sullivan Property Pty Ltd
16	Dr Rosetta Manaszewicz
17	Wenhong Lu
18	Sanjeev Mahajan
19	Dixit Rajpara
20	Nives Mellon
21	Ross Campbell
22	Bernadette Pearce
23	David Margetts
24	Beverly and Brendan Dillon
25	Department of Transport
26	Sainath Tavate
27	Gordon Street Land Pty Ltd
28	C. Kairouz Architects

Appendix B Document list

No.	Date	Description	Presented by
1	13 Apr 22	Panel Directions and Timetable	Planning Panels Victoria
2	3 May 22	Timetable Version 2	Planning Panels Victoria
3	16 May 22	Housing Industry Association submission	Housing Industry Association
4	16 May 22	Council Part A submission	Glen Eira City Council
5	16 May 22	Evidence statement from Esther Kay	Glen Eira City Council
6	16 May 22	Evidence statement from Joanna Thompson	Glen Eira City Council
7	20 May 22	Council Part B submission with appendices: <ul style="list-style-type: none"> - Colac Otway C75 Panel Report - Stupak v Hobsons Bay CC (Red Dot) 2011 VCAT 618 - Stubbs Street Kensington Pty Ltd v Melbourne CC (2019) VCAT 1947 - Trethowan v Mornington Peninsula SC & Ors (2002) VCAT 1377 - Capital Benefits (Mont Albert) Pty Ltd v Whitehorse CC (2008) VCAT 2436 - Planning Practice Note 70 - Glen Eira C120 Panel Report - Monash C148mona Interim Panel Report 	Glen Eira City Council
8	23 May 22	Submission for Sullivan Property Pty Ltd	Joe Fisher, Human Habitats
9	23 May 22	Submission	Carolyn Ecclestone
10	23 May 22	Submission for Metro Bentleigh Pty Ltd	Chris Pippo, The North Planning
11	23 May 22	Submission	Dr Rosetta Manaszewicz
12	23 May 22	Tracked change version of Clause 22.12	Glen Eira City Council
13	23 May 22	Clause 19.02-6L for Amendment C220glen	Glen Eira City Council
14	24 May 22	Tables 5 and 6 further detail for Esther Kay evidence	Glen Eira City Council

No.	Date	Description	Presented by
15	25 May 22	Post Hearing Direction from Panel	Planning Panels Victoria
16	25 May 22	Policies for charges on residential investment and government infrastructure	Housing Industry Association
17	30 May 22	Letter requesting further time to respond to Document 11	Glen Eira City Council
18	30 May 22	Letter responding to Council request for further time	Planning Panels Victoria
19	3 June 22	Response to Document 11	Glen Eira City Council
