

**Boroondara Planning Scheme Amendment C385boro
Serpells Lane Car Park**

Panel Report

Planning and Environment Act 1987

14 April 2023

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 Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Boroondara Planning Scheme Amendment C385boro

Serpells Lane Car Park

14 April 2023



Alison McFarlane, Chair



Kate Partenio, Member

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Glossary and abbreviations

Council	Boroondara City Council
C1Z	Commercial 1 Zone
DTP	Department of Transport and Planning
GTA	Glenferrie Traders Association
MPS	Municipal Planning Strategy
PE Act	<i>Planning and Environment Act 1987</i>
PPF	Planning Policy Framework
PUZ6	Public Use Zone Schedule 6
Structure Plan	<i>Glenferrie: Heart of Hawthorn Structure Plan</i> , December 2011
VPP	Victoria Planning Provisions

Overview

Amendment summary

The Amendment	Boroondara Planning Scheme Amendment C385boro
Common name	Serpells Lane Car Park
Brief description	Rezone the Serpells Lane Car Park in the Glenferrie Activity Centre from Public Use Zone 6 (Local Government) to Commercial 1 Zone.
Subject land	399 Burwood Road, Hawthorn
Planning Authority	Boroondara City Council
Authorisation	17 August 2022
Exhibition	22 September to 24 October 2022
Submissions	Number of Submissions: 60 (57 opposing) Refer Appendix A

Panel process

The Panel	Alison McFarlane (Chair), Kate Partenio
Directions Hearing	31 January 2023 by Video Conference
Panel Hearing	Planning Panels Victoria, 27 February 2023 and Video Conference 28 February 2023
Site inspections	Unaccompanied, 21 February 2023
Parties to the Hearing	Boroondara City Council represented by John Rantino and Chloe Henry-Jones of Maddocks Lawyers and Nick Brennan, Senior Strategic Planner Antonia Fleming Montserrat Pezzimenti Glenferrie Road Shopping Centre Association Incorporated (trading as Glenferrie Traders Association) represented by Tony Stolarek, Romano Del Beato, Sam Aldemir and Montserrat Pezzimenti
Citation	Boroondara PSA C385boro [2023] PPV
Date of this report	14 April 2023

Executive summary

Serpells Lane is located directly south of Glenferrie Train Station in the heart of the Glenferrie Activity Centre. The Serpells Lane Car Park (the site), located at 399 Burwood Road, Hawthorn, is owned and operated by the City of Boroondara (Council) and provides 89 free public car parking spaces. Council has resolved to undertake site investigations and other preparations to enable the future sale of the land.

Boroondara Planning Scheme Amendment C385boro (the Amendment) proposes to rezone the site from Public Use Zone 6 (Local Government) to Commercial 1 Zone. Public exhibition of the Amendment attracted 60 submissions, most of which opposed the Amendment. Opposing submissions largely objected to the sale of public land and the loss of car parking.

The Panel appreciates that for the community, the rezoning and sale are matters that are inextricably linked and that the rezoning advances the possibility of sale. However, while this may be the case, the role of the Panel is to consider whether the Amendment is strategically justified having regard to the Boroondara Planning Scheme. It is not the role of Panel to review any decision of Council to dispose of the land.

The Panel finds the Amendment is consistent with the strategic intent for the land expressed in the *Glenferrie: Heart of Hawthorn Structure Plan*, December 2011 (the Structure Plan) which has been given effect in the Boroondara Planning Scheme. The Structure Plan provides explicit support for redevelopment of the site for a high scale mixed use development. The Commercial 1 Zone is an appropriate zone to support this outcome because its purpose is to create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses. The Commercial 1 Zone is an appropriate zone irrespective of whether the site is publicly or privately owned.

The merit of a development proposal for the site is a matter separate to the rezoning and will be assessed through a future planning permit application process. The Boroondara Planning Scheme provides comprehensive provisions to guide future development of the land, consistent with the Structure Plan. The impact of any lost parking on the functionality of the Glenferrie Activity Centre will be a relevant consideration as part of the future permit assessment.

Recommendation

Based on the reasons set out in this Report, the Panel recommends:

- 1. Boroondara Planning Scheme Amendment C385boro be adopted as exhibited.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to rezone land at 399 Burwood Road, Hawthorn known as the Serpells Road Car Park (the site), which the City of Boroondara (Council) is preparing for sale. Specifically, the Amendment proposes to rezone the site from Public Use Zone 6 (Local Government) (PUZ6) to Commercial 1 Zone (C1Z).

(ii) The subject land

The location of the site is shown in Figure 1. It is 2,950 square metres in area and currently provides 89 at-grade car parking spaces, including two disabled spaces, three loading zone spaces and one flexi-car space.

The site is located immediately south of Glenferrie Station. Swinburne University campus buildings and facilities are located east of the car park and extend across both sides (north and south) of the railway line.

There is a single vehicle entry and exit point to the car park via Burwood Road to the south. Pedestrian access to Railway Arcade and the Glenferrie Train Station is available via ramps located in the northeast and northwest corners of the site.

Figure 1 Locality Plan



1.2 Background

The Amendment was initiated following a Council resolution of 7 July 2022 to rezone and initiate the process to sell the land.

As part of this resolution, Council established the following project objectives to guide the future outcomes on the site:

- Enable a high quality, integrated development that responds to site features and constraints and is consistent with the Glenferrie Structure Plan and Boroondara Planning Scheme.
- Create a positive interface with adjacent public realm, considering issues of safety and surveillance.
- Achieve the optimal commercial return for the land to enable investment in new projects to the benefit of the Boroondara community.

Preparation of the Amendment was authorised by the Minister for Planning in August 2022. The Amendment was exhibited from 22 September to 24 October 2022. Council received a total of 60 submissions, including 12 late submissions. All submissions were referred to the Panel.

1.3 Submissions

Of the 60 submissions received, two submissions supported the Amendment, and one was a statement of no objection. The remaining 57 submissions objected to the Amendment. Key issues raised in submissions were:

- objections to the sale of the land
- objections to the loss of car parking
- Glenferrie Trader's Association's contribution to purchase of the land
- objections relating to the future development of the site or the design of any future building on the site
- objections to the notice provision exemptions within the C1Z.

1.4 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 Boroondara Planning Scheme (Planning Scheme).

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from the site visit, and submissions and other material presented to it during the Hearing. The Panel has been 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.

This Report deals with the issues under the following headings:

- Planning context summary
- Strategic justification
- Issues raised by submitters.

1.5 Limitations

The Glenferrie Traders Association (GTA) suggested the Amendment was prepared hastily and there was insufficient community consultation on the proposal. In response, Council advised it followed the statutory notice requirements set out in the PE Act. Ultimately, it is not the role of a Panel to make legal rulings about the validity or otherwise of an amendment or procedure. A person who is substantially and materially affected by a technical defect can refer the matter to the Victorian Civil and Administrative Tribunal for resolution.

The GTA further suggested the rushed timing of the Amendment may be due to Council's desire to avoid windfall gains tax liabilities that may soon apply if the land is rezoned. Taxation matters are not relevant to the Panel's considerations and have not been considered by the Panel in the preparation of this Report.

2 Strategic issues

2.1 Planning context summary

Table 1 lists relevant planning provisions and policies applicable to the Amendment. Appendix C provides a more detailed explanation of these provisions.

Table 1 Planning context

	Relevant references
Victorian planning objectives	- section 4 of the PE Act
Municipal Planning Strategy	- Clause 02.01-5 Transport - Clause 02.03-1 Settlement - Clause 02.03-6 Transport - Clause 02.04 Strategic framework plans
Planning Policy Framework	- Clause 11.02-1S Supply of Urban Land - Clause 11.02-2S Structure Planning - Clause 11.03-1S Activity Centres - Clause 11.03-1L-02 Hawthorn-Glenferrie Road Major Activity Centre - Clause 17.02-1S Business - Clause 18.02-4S Roads
Other planning strategies and policies	- Plan Melbourne Direction 4, Policies 4.1, 4.2 - <i>Glenferrie: Heart of Hawthorn Structure Plan</i> , December 2011
Planning scheme provisions	- Commercial 1 Zone - Public Use Zone 6 - Design and Development Overlay Schedule 15 Glenferrie Activity Centre
Ministerial directions	- Ministerial Direction Form and Content of Planning Schemes - Ministerial Direction 11 (Strategic Assessment of Amendments)
Planning practice notes	- Planning Practice Note 46: Strategic Assessment Guidelines, August 2018

2.2 Planning strategies and policies

(i) Glenferrie Structure Plan

The vision for the Glenferrie Activity Centre expressed in the *Glenferrie: Heart of Hawthorn Structure Plan*, December 2011 (Structure Plan) is:

The Glenferrie Activity Centre will be the vibrant learning and community village hub of Boroondara. As a thriving retail and commercial centre, it will provide for the needs of the local community, students, academics and commercial operators.

The streetscapes will maintain their character and vibrancy by blending the older buildings with cutting edge architecture, small quirky shops and larger format office buildings.

Car based travel to the centre will be reduced as the centre will be easily accessible by public transport, cycling and walking. Glenferrie will also be a pleasant place to walk around, shop, meet, conduct business or relax.

A range of well connected community facilities and public spaces will support a growing community.

The Structure Plan provides objectives for land use and development under the themes of 'activities', 'buildings', 'spaces' and 'access'.

The car park is included in Activity Area 2 - Glenferrie and Burwood Roads Mixed Use (Figure 2, red oval outline).

Figure 2 Glenferrie Structure Plan Activity Areas



The Structure Plan recognises there is a limited amount of available space within the Glenferrie Activity Centre for expansion. Strategies for Area 2 include redeveloping surface car parks for a mix of uses, with office or retail at the ground level, office or residential uses above and underground or internal deck car parking.

The car park forms part of the 'High Scale Cluster' on the 'Buildings' plan (Figure 3, red oval outline).

Figure 3 Glenferrie Structure Plan Buildings Plan



The design considerations for this area are:

Cluster high scale buildings within this small and confined area, creating a district difference in scale to the low-medium rise scale of the rest of the centre.

Where possible, construct new buildings around the Telstra tower to improve long range views to this cluster of tall buildings.

Allow an overall height of up to 12 storeys (42.5 metres).

The car park is recognised as one of several key opportunity sites in the Glenferrie Activity Centre. The opportunity for this land is described as follows:

... high scale development to accommodate residential, retail, office or educational uses may be suitable. The car park also presents opportunities to provide long-term parking to service the needs of visitors to the centre and to provide a pick up/drop off point for commuters using the Glenferrie train station.

Replacement car parking provided underground or as a deck car park.

Provide active frontages facing the car park similar to the rear of shops at Camberwell Junction.

Under the access theme, the Structure Plan states:

- the Glenferrie Activity Centre is well served by a variety of transport options
- there is significant potential to reduce the number of short trips taken by car
- there is high demand from the ageing population and students for transport options other than car
- there is increasing awareness of how sustainable transport choice can achieve a healthier lifestyle.

The background to the Structure Plan's approach to car parking is:

Firstly, the demand for future car parking is based only on the requirements for retail activity. This is because office and residential development (aside from student housing) is normally able to provide on-site car parking. It is predicted that if retail floorspace expands an additional 4,300 square metres, 129 spaces will be required.

Secondly, it is assumed that modal split for trips to the centre can be achieved. This means that in moving towards a greater degree of sustainability, more people will rely on other methods of transport than the car. Therefore, Council may choose to waive some of these spaces, instead of providing the exact amount of additional car parking required by the Planning Scheme.

In developing a car parking plan for the area, a key consideration will be to ensure that commercial car parking does not overspill into residential streets and open space areas. Currently there are a number of off-street surface car parking areas within the centre. While these car parks are well used, they are unattractive, poorly laid out and a poor use of valuable land within the centre. These spaces present opportunities for new activities or public spaces within the centre, whereby replacement parking is provided underground or as a deck parking.¹

The Structure Plan gives detailed consideration to land in three 'Action Areas'. The car park is in the 'Swinburne and Surrounds' Action Area. The concept plan for this area (Figure 4, red outline) identifies the site as a multi storey car park with office/retail/education on frontages to Serpells Lane and along the walkway to the train station, with the potential for residential above.

¹ D6, page 33

Figure 4 Glenferrie Structure Plan Swinburne and surrounds action area concept plan**(ii) Draft place plan for revitalising Glenferrie**

The draft *Glenferrie Place Plan* (undated) includes guidance for the revitalisation and improvement of the public realm in Glenferrie Activity Centre, including through consolidated parking facilities, improved laneway connectivity and activation and a focus on sustainability.

Council undertook community consultation on the draft plan from 26 October to 7 December 2021. Following that consultation, Council has been reviewing and updating the draft plan to address concerns raised by the community.

The vision for Glenferrie in the draft plan is:

Glenferrie will be a vibrant and accessible place where everyone feels welcome.

The streets and public spaces will offer more greenery and opportunities for people to meet, shop, learn and hold events.

The local economy and community will flourish, with people and businesses representing the area's rich diversity.²

The draft plan includes place making initiatives to achieve this vision. The site is located along a 'innovation spine'. This is to be a focus for mixed used activity set amongst a network of laneways. The draft plan explains:

Rundown and unloved urban spaces like surface car parks and laneways would be transformed over time into exciting hubs of creativity, industry and learning.

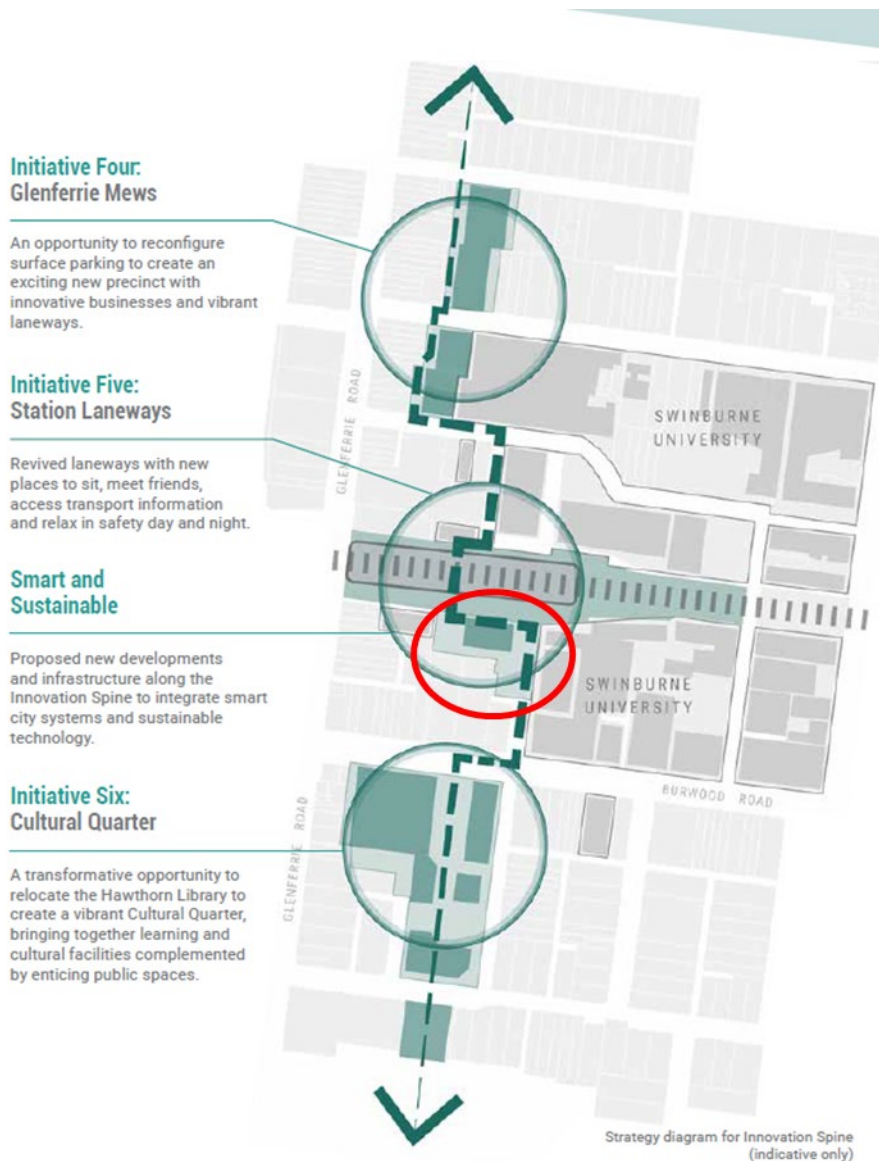
Car parking would be consolidated into multi-level public car parks that offer improved security and weather protection.

The proposal aims to leverage the quality education opportunities in the area by enabling pathways to employment and facilitating connections between business and tertiary education.

² D7

The concept image for the innovation spine is shown in Figure 5. The site is shown with a red outline.

Figure 5 Draft Place Plan for Revitalising Glenferrie concept image for innovation spine



2.3 Boroondara Planning Scheme

The Glenferrie Structure Plan is given effect by Clause 11.03-1L-02 and Design and Development Overlay Schedule 15 Glenferrie Activity Centre (DDO15) of the Planning Scheme. Other relevant provisions are identified in Table 1 and summarised in Appendix C.

(i) Hawthorn-Glenferrie Road Major Activity Centre

The Glenferrie Structure Plan is listed as a policy document to Clause 11.03-1L-02 (Hawthorn-Glenferrie Road Major Activity Centre). Clause 11.03-1L-02 contains a map (Figure 6) that is consistent with the Activities Area Plan (Figure 2).

The objectives for the centre expressed in Clause 11.03-02 are:

To maintain and enhance the centre's role as a mixed-use shopping strip.

To ensure that the centre is an attractive, vibrant and functional place to visit, work and live.
To enhance the centre's amenity and sense of safety at all hours and to minimise amenity impacts of night time uses on surrounding businesses and residents.

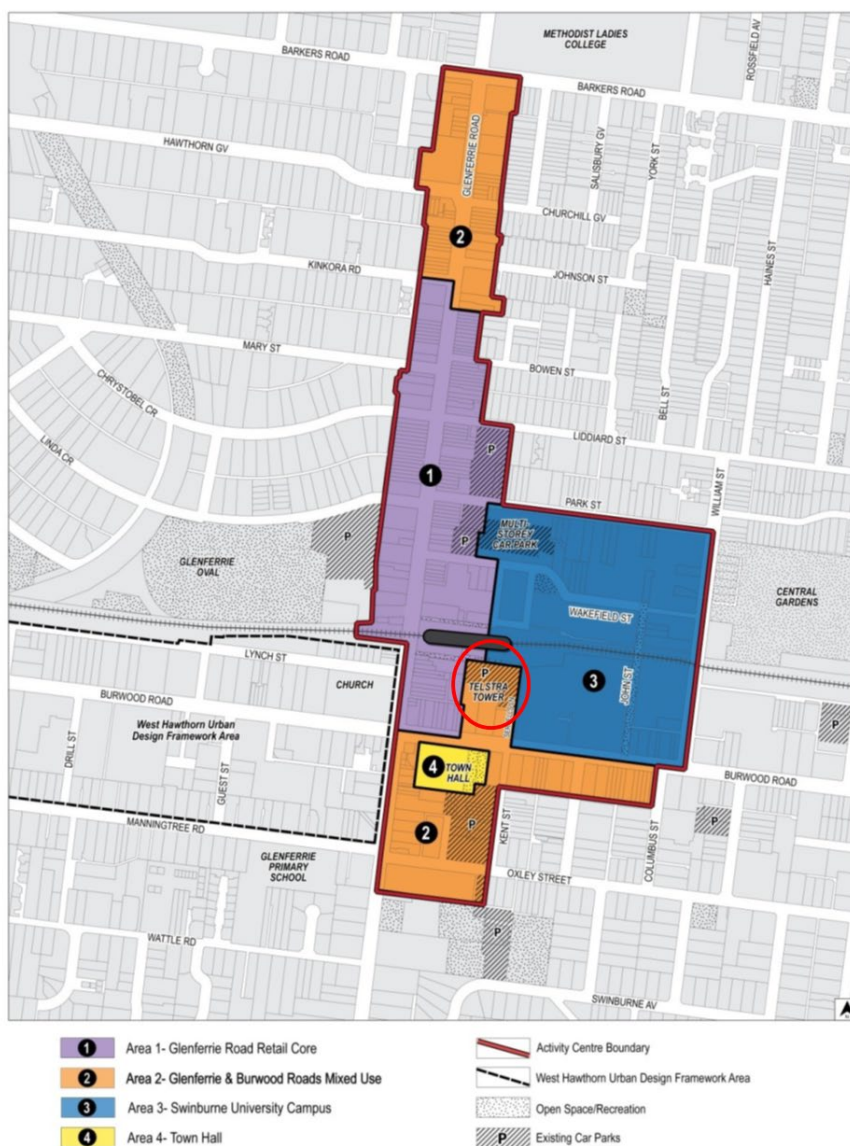
Relevant strategies are:

Support mixed-use development comprising of retail at ground level, and offices or residential uses on upper levels to locate within the retail core and mixed-use areas (Figure 10).

Ensure use and development makes the best use of available land and provides opportunities for additional retail, commercial or housing.

Encourage use and development to incorporate measures to reduce private vehicle travel to and around the centre and encourage people to use public transport, walking and cycling as alternate modes of transport.

Figure 6 Clause 11.03-11-02 Hawthorn-Glenferrie Road Major Activity Centre Structure Plan



(ii) Design and Development Overlay Schedule 15

The schedule to clause 74.01 (Application of zones, overlay and provisions) states DDO15 applies to implement the Glenferrie Structure Plan. Map 1 in DDO15 (Figure 7) replicates the Buildings

Plan contained in the Structure Plan (Figure 3) for all land excluding the Swinburne University Campus. The site is in 'Precinct 4 High Scale Cluster' on Map 1.

The design objectives for Precinct 4 are:

To create a distinct character, distinguishable from the low to medium scale development in the rest of the centre by clustering high scale buildings within a defined area.

To improve long range views of the cluster of tall buildings around the Telstra Tower.

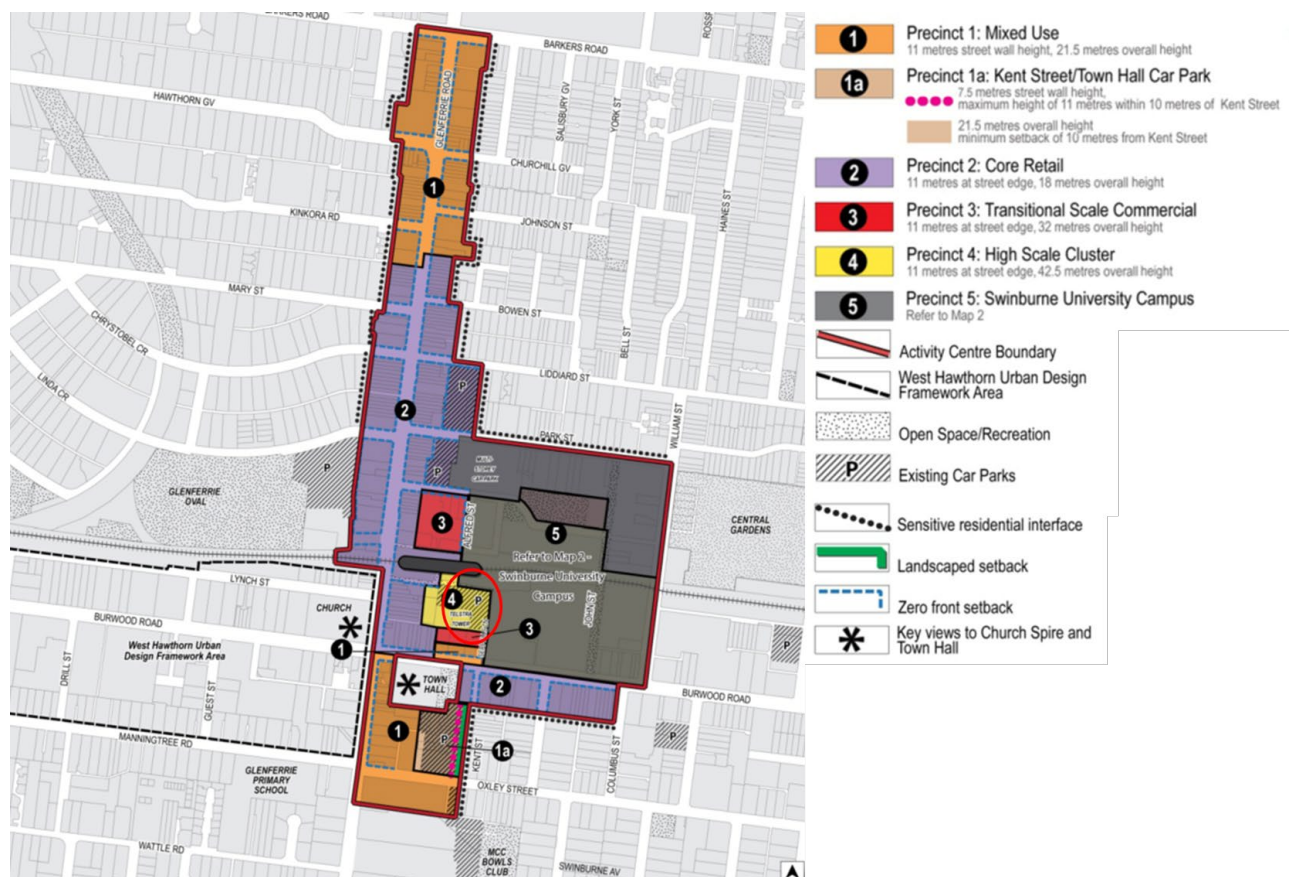
To enhance the pedestrian environment of the pedestrian walkways to the railway station.

The requirements for Precinct 4 are:

Development should not exceed an overall building height of 42.5 metres.

Any redevelopment of the Serpelle's (sic) Lane car park should provide passive surveillance of the pedestrian walkway to the railway station. Space for commercial uses to the pedestrian walkway should also be considered to activate pedestrian links to the train station.

Figure 7 DDO15 Map 1 Building heights and setbacks



2.4 Strategic justification

(i) Submissions

Council submitted the Amendment is consistent with Plan Melbourne, the Municipal Planning Strategy, the Planning Policy Framework and the Structure Plan. The latter establishes the specific strategic land use and development objectives for the Glenferrie Activity Centre, including the site. Based on the policy direction set out in the Structure Plan, the C1Z is the most appropriate zone to achieve the outcomes sought for the car park site.

Council also noted the C1Z would provide consistency with the zoning of surrounding commercial properties. A car park is a section 2 use (permit required) in the C1Z, however given that the site has been in continuous use as a car park for more than 15 years, existing use rights exist and use of the site a car park would be permitted to continue without additional planning permission.

Council submitted little weight should be given to the draft *Glenferrie Place Plan* because it is in the early stages of development and has not been adopted by Council. While the plan reflects 'new thinking' it remains broadly consistent with the Structure Plan.

GTA submitted the Amendment is not consistent with the strategic planning for the current conditions in Glenferrie and has not properly considered the parking and access requirements of the centre.

Ms Fleming submitted Council had relied on select extracts of the planning framework to support the Amendment but had overlooked relevant provisions of Plan Melbourne and the Municipal Planning Strategy that encourage active transport and development of high quality open spaces, which are both appropriate public uses of the site. In response, Council submitted the car park site *"is not open space of the type sought to be advanced by Council's open space policies"*.³

(ii) Discussion

The Amendment is entirely consistent with the Glenferrie Structure Plan, which has informed Clause 11.03-1L-02 and DDO15 of the Planning Scheme. Together these provide unequivocal policy support for redevelopment of the car park site for a high scale mixed use development. The C1Z is an appropriate zone to support this outcome because its purpose is to *"create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses"*.⁴ It is an appropriate zone irrespective of whether the site is publicly or privately owned.

There is no risk that the Amendment will compromise Council's strategic approach to access and movement set out in the Structure Plan. This recognises:

- expansion of the centre will need to be supported by increased parking supply
- modal shift will potentially reduce future demand
- there is an opportunity to redevelop at grade public car parks to make better use of and improved the presentation of public land.

Importantly, the Amendment will not result in a loss of car parking within the Glenferrie Activity Centre. It simply includes the land in the appropriate zone to support the development outcome sought for the site by the Planning Scheme. The centre wide impacts of any loss of parking supply can be considered at a permit stage. This is discussed further in Chapter 3.

While provision of high quality and useable open space is central to the objectives of Plan Melbourne and Council's Municipal Planning Strategy, the site is not identified as a preferred location for open space within the Structure Plan. No weight can be given to the 'opportunity' to develop the site for open space given the clear planning strategy expressed for the site in the Structure Plan.

³ D23, paragraph 35

⁴ Commercial 1 Zone

The Panel agrees with Council that little weight should be given to the draft *Glenferrie Place Plan* given it is still a draft document and yet to be adopted by Council. Regardless, the Panel observes general alignment between this plan and the Glenferrie Structure Plan.

(iii) Conclusions

The Panel concludes the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Issues raised by submitters

3.1 Sale of the land

(i) The issues

The issues are whether:

- the car park should be retained by Council for a public purpose
- the land should not be rezoned before Council formally resolves to sell it.

(ii) Submissions

Council submitted a decision to sell or transfer the car park site has not been made or predetermined and no contract of sale had been entered into. The *Local Government Best Practice Guidelines for the Sale, Exchange and Transfer of Land*, June 2009 set out the 'rules' Council is required to follow when considering whether to sell, transfer or exchange council land.

The guidelines provide:

Councils should ensure that land is offered for sale in a manner that will ensure the maximum price is achieved while protecting both the council and the public interest. Land zoned for public purposes must be appropriately rezoned prior to public sale.

The Amendment was initiated for consistency with this guidance. Council also noted this sequencing (rezoning before sale) has been recognised as best practice by previous Panels, including the Panel for Macedon Ranges Planning Scheme Amendment C126macr.

Council emphasised the potential land sale and the Amendment are separate matters. This is a position consistently held by previous Panels, and summarised by the Panel for Greater Geelong Planning Scheme Amendment C299ggee, as follows:

The focus of the Panel is to consider the most appropriate zoning of the site if the sale is ultimately approved by Council in accordance with the proper statutory process.⁵

Community submitters opposed the rezoning because it would lead to the loss of a public asset, and it pre-empts a decision to sell the land.

(iii) Discussion

The Panel appreciates that for the community, the rezoning and sale are matters that are inextricably linked and that the rezoning progresses the possibility of sale. However, while this may be the case, the role of the Panel is to consider whether the Amendment is strategically justified having regard to the Planning Scheme (as discussed in Chapter 2). It is not the role of Panel to review any decision of Council to dispose of the land. Guidance requires Council to ensure land is appropriately zoned for sale. The Amendment has been pursued in accordance with this guidance.

⁵ D23, paragraph 9

(iv) Conclusion

The Panel concludes:

- The potential sale of the land is a matter separate to the Amendment and is outside the remit of the Panel.
- Rezoning surplus government land prior to sale is consistent with the guidance in *Local Government Best Practice Guidelines for the Sale, Exchange and Transfer of Land*, June 2009.

3.2 Loss of car parking**(i) The issue**

The issue is whether loss of car parking is acceptable.

(ii) Submissions

Council acknowledged the concerns GTA and other community submitters hold about the loss of car parking. However, Council submitted the Amendment does not propose to make any changes to the operation of the existing car park and these concerns are more appropriately considered as part of the sale of land process and are outside the scope of the Amendment.

GTA submitted the demand for car parking in the Glenferrie retail core is very high to extreme in busy times. The car park is zoned PUZ6 which means it is for public use. The Amendment will worsen the shortage of public parking places at busy times as there is no other suitable site which can be used to replace the lost 89 car spaces. Further, the impacts of lost parking would be exacerbated by an anticipated reduction in on-street parking to accommodate grade separated tram stops and dedicated cycling lanes.

GTA submitted the rezoning was premature until the outcomes of the following actions were known:

- improved management of the car park by Council, including enforcement of parking restrictions and installation of directional signage to increase public awareness of the car park
- development of a sustainable parking strategy to reach agreement on improved car parking provision between Wakefield and Liddiard Streets.

Based on its observations over January and February 2023, GTA submitted the car park is mostly used by Swinburne staff and students.

In reply, Council observed the GTA parking survey is not accompanied by expert evidence and should be weighted accordingly by the Panel. In any event, Council noted the findings of the survey align with Council's understanding that the car park is used in the main by university staff and students rather than short term visitors to the activity centre.

(iii) Discussion

Rezoning from PUZ6 and C1Z will not immediately change parking supply in the Glenferrie Activity Centre.

There will be two future opportunities to consider whether a loss of public car parking from the site is acceptable. Firstly, this will be considered in a future planning permit application to

redevelop the site, particularly having regard to the objective and strategies in Clause 18.02-4S (Roads) which require consideration of parking supply and demand. Secondly, loss of parking will be considered by Council before it decides to offer the land for sale. Both processes are separate to the Amendment and cannot be considered by the Panel.

(iv) Conclusions

The Panel concludes:

- The Amendment will not result in a loss of car parking.
- Matters associated with a future planning permit application to redevelop the site are separate to the Amendment and beyond the remit of the Panel.

3.3 Ownership

(i) The issues

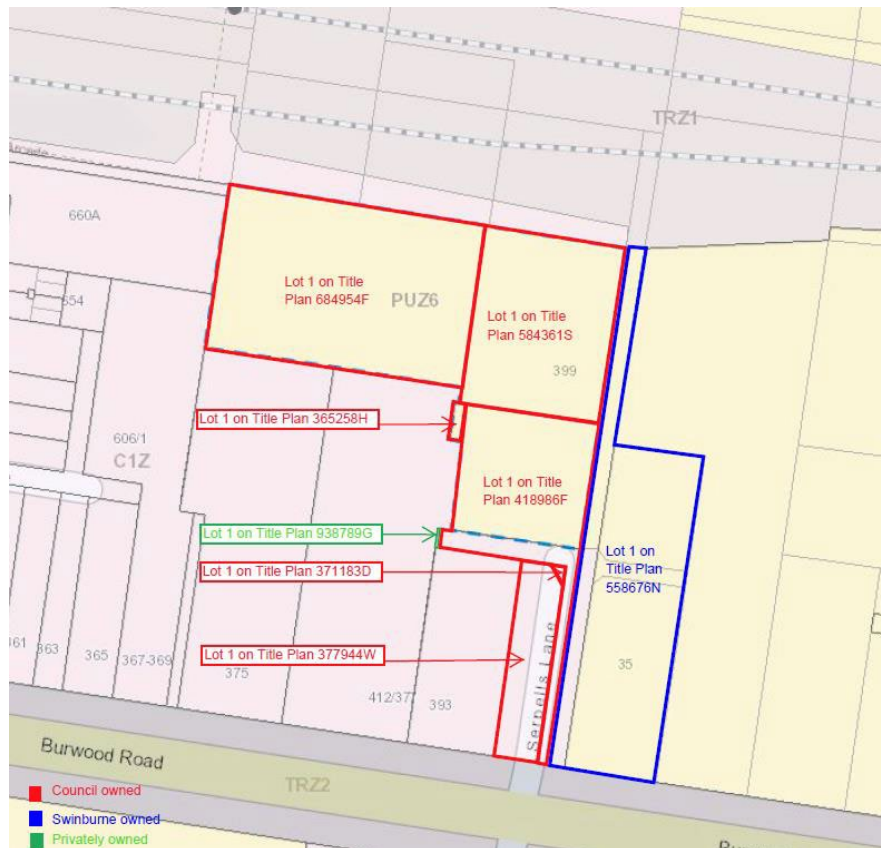
The issues are:

- whether land secured through a special rates scheme should be rezoned or sold
- the impact on access to the Barrett Apartments and 377-383 Burwood Road, Hawthorn.

(ii) Evidence and submissions

Ms Pezzimenti advised the lot providing access to the car park (Lot 1 on Title Plan 377944W (Figure 8)) was purchased through a special rates and charges scheme in the mid 1960's. The land is a *"tangible asset gifted by past traders and councillors as public land to the present and...future residents of the area"*.⁶

⁶ D17

Figure 8 Title particulars of Serpells Lane Car Park and surrounding land

GTA submitted their “financial and legacy interests in the Serpells Land Car Park have been overlooked in the Council decision to rezone and sell it”.⁷

In its closing submission, Council accepted a compelling case had been made out that Lot 1 on Title Plan 377944W was acquired by Council using money raised by a separate rate scheme. However, Council noted this lot is already zoned C1Z and therefore the Panel should “place no relevance or weight on the funding of the acquisition”.⁸

A number of submitters noted the sale of the land would impact on the access provided from the site to the Barrett Apartments and 377-383 Burwood Road, Hawthorn. Council provided title plans confirming the access is protected by a carriageway easement on Title Plan 418986F.⁹ Council advised the Amendment would not change existing access arrangements and this is a matter to be addressed as part of a future land sale.

(iii) Discussion

Lot 1 on Title Plan 377944W forms most of the land known as Serpells Lane and provides access to the site. Based on the material before it, the Panel agrees the lot appears to have been acquired by Council with funds generated through a special rates scheme. The land is zoned C1Z and is not part of the Amendment.

⁷ D18, paragraph 7

⁸ D23, paragraph 5

⁹ D10

The Amendment will not have a material impact on any rights of access that might exist to the Barrett Apartments and 377-389 Burwood Road. Any change to these arrangements is a matter to be considered as part of the land sale rather than this Amendment.

(iv) Conclusion

The Panel concludes:

- The Amendment does apply to Lot 1 on Title Plan 377944W which appears to have been secured by Council as part of a special rates scheme.
- The Amendment will have no impact on the access to the Barrett Apartments and 377-389 Burwood Road, Hawthorn.

3.4 Future development of the site

(i) The issues

The issues are whether:

- future development of the site will be acceptable
- a future application should be exempt from public notice.

(ii) Submissions

Council submitted the design and impact of any future development of the site are outside of the scope of the Amendment. These matters are considered through the statutory planning permit assessment process.

Council identified the provisions of the Planning Scheme that provide permit requirements, application requirements, decision guidelines, objectives and strategies for the development of land, including:

- Clause 15.01-1L-01 (Urban Design and Built Form Outcomes), which ensures that development is designed to sensitively manage interfaces
- Clause 15.01-2S (Building Design), which provides direction for the design of buildings, including consideration of impacts on adjacent properties
- DDO15, which provides built form guidance for future redevelopment, including building heights, setbacks and other design aspects
- C1Z, which provides decision guidelines for applications for use and development.

In response to submissions concerned that a future development application would be exempt from public notice, Council noted the exemption under the C1Z¹⁰ does not apply to land within 30 metres of an education centre. The Amendment will therefore not result in the loss of public notice and review rights.

GTA submitted existing planning rules and overlays provide little protection against a developer producing a large box development with little public parking or interaction with the Glenferrie retail core.

¹⁰ Clause 34.01-7

(iii) Discussion

Any future development proposal for the site will be subject to assessment under the provisions of the Planning Scheme of the day. This is separate to the rezoning process, and it is not the role of the Panel to speculate on the nature or merits of applications that may come forward in the future.

Controls that apply to the land give effect to the Glenferrie Structure Plan. These controls were subject to a previous planning scheme amendment process and were considered appropriate to guide future development of the Activity Centre, including the site. Layered together, the controls encourage a high scale mixed use outcome for the site, that strongly relates to its interface to a key pedestrian link and the Glenferrie Station.

The Panel accepts Council's advice that the site does not benefit from exemptions from notice and review available under the C1Z due to the proximity of Swinburne University to the land.

(iv) Conclusions

The Panel concludes:

- The Planning Scheme provides policy and controls to guide future development of the land, consistent with the Glenferrie Structure Plan.
- The merits of a proposal to redevelop the site will be assessed through the statutory planning permit process.
- The site does not benefit from exemptions from notice and review available under the C1Z due to the proximity of Swinburne University to the land.

Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	John Curtin	31	Adwin Dermawan
2	Susan McKenzie	32	Diana Payne
3	Kristie Ismail	33	Asuka Sugimoto
4	Nicole Davis	34	Nana Utsugi
5	Elizabeth Gleisner	35	Gemma Parker
6	Elodie Thilliez	36	Nicholas Watson
7	Robert Twigg	37	Abrar Patel
8	Prabhu Tholkappian	38	Glenferrie Road Shopping Centre Association Incorporated (trading as Glenferrie Traders Association)
9	Megan Fisher	39	Department of Transport
10	Dalal Mansour	40	Jeremy Gray
11	Samantha Lilly	41	Charles Miscamble
12	Julie Dickson	42	Anthea Valanidas
13	Janet Cheng	43	Alexander Del Frate
14	VicTrack	44	Kerri Stoddard
15	Mark Switzer	45	Lucas Hipkins
16	Sandra Kucan	46	Reina Utsugi
17	David Mead	47	Clayton Lynch
18	John Y D Chan	48	Aiji Zhan
19	Adrienne Kellock	49	Michelle Wheeler
20	Stephen Fennell	50	Andrew Glow
21	Eunice Blanchard	51	Des & Sue Bunworth
22	Yvonne Dang	52	Natalie Jackson-Adams
23	Montserrat Pezzimenti	53	Anonymous
24	Vincent Chan	54	Jo Harold
25	Tristan Huliganga	55	Helen Wolff
26	Jason Chee	56	Amy Chan
27	Felipe Monteiro Caldas	57	Sharla Cartner
28	Antonia Fleming	58	Kerryn Rozenbergs
29	Wendy Garrett	59	Mary Curnow
30	Christopher Short	60	Melissa Thomas

Appendix B Document list

No.	Date	Description	Provided by
1	1 Feb 23	Panel Directions and Timetable Version 1	Planning Panels Victoria (PPV)
2	3 Feb 23	Distribution List Version 2	PPV
3	14 Feb 23	Panel letter to parties confirming no late requests to be heard	PPV
4	20 Feb 23	Council letter to parties on Direction 4	Boroondara City Council (Council)
5	20 Feb 23	Council Part A submission	Council
6	20 Feb 23	<i>Glenferrie: Heart of Hawthorn Structure Plan, 2011</i>	Council
7	20 Feb 23	Draft Place Plan for Revitalising Glenferrie, undated	Council
8	20 Feb 23	Register Search Statement Lot 1 on Title Plan 938789G	Council
9	20 Feb 23	Register Search Statement Lot 1 on Title Plan 584361S	Council
10	20 Feb 23	Register Search Statement Lot 1 on Title Plan 418986F	Council
11	20 Feb 23	Register Search Statement Lot 1 on Title Plan 684954F	Council
12	20 Feb 23	Register Search Statement Lot 1 on Title Plan 365258H	Council
13	20 Feb 23	Register Search Statement Lot 1 on Title Plan 371183D	Council
14	20 Feb 23	Register Search Statement Lot 1 on Title Plan 377944W	Council
15	20 Feb 23	Register Search Statement Lot 1 on Title Plan 558676N	Council
16	24 Feb 23	Council Part B submission with Attachments: <ul style="list-style-type: none"> - <i>Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land</i> - Macedon Ranges Planning Scheme Amendment C126macr Panel Report - <i>A Practitioner's Guide to Victoria's Planning Schemes</i> Version 1.5, April 2022 - Banyule Planning Scheme Amendment C76 Panel Report 	Council
17	26 Feb 23	M Pezzimenti submission	M Pezzimenti
18	26 Feb 23	Glenferrie Traders Association submission with Attachment: <ul style="list-style-type: none"> - Additional material 	Glenferrie Traders Association (GTA)
19	27 Feb 23	Extracts Hawthorn Council Minutes 11 November 1966, 14 June 1967 and 12 July 1967	M Pezzimenti
20	27 Feb 23	Photographs Serpells Lane Car Park	GTA
21	27 Feb 23	Revised submission Glenferrie Traders Association	GTA
22	27 Feb 23	Antonia Fleming submission	A Fleming

No.	Date	Description	Provided by
23	28 Feb 23	Council Part C submission with Attachments: <ul style="list-style-type: none">- Marked titles on Vicmap plan- <i>Pembroke Development Corporation Pty Ltd v Boroondara City Council</i> [2002] VCAT 998	Council

Appendix C Planning context

C:1 Planning policy framework

Victorian planning objectives

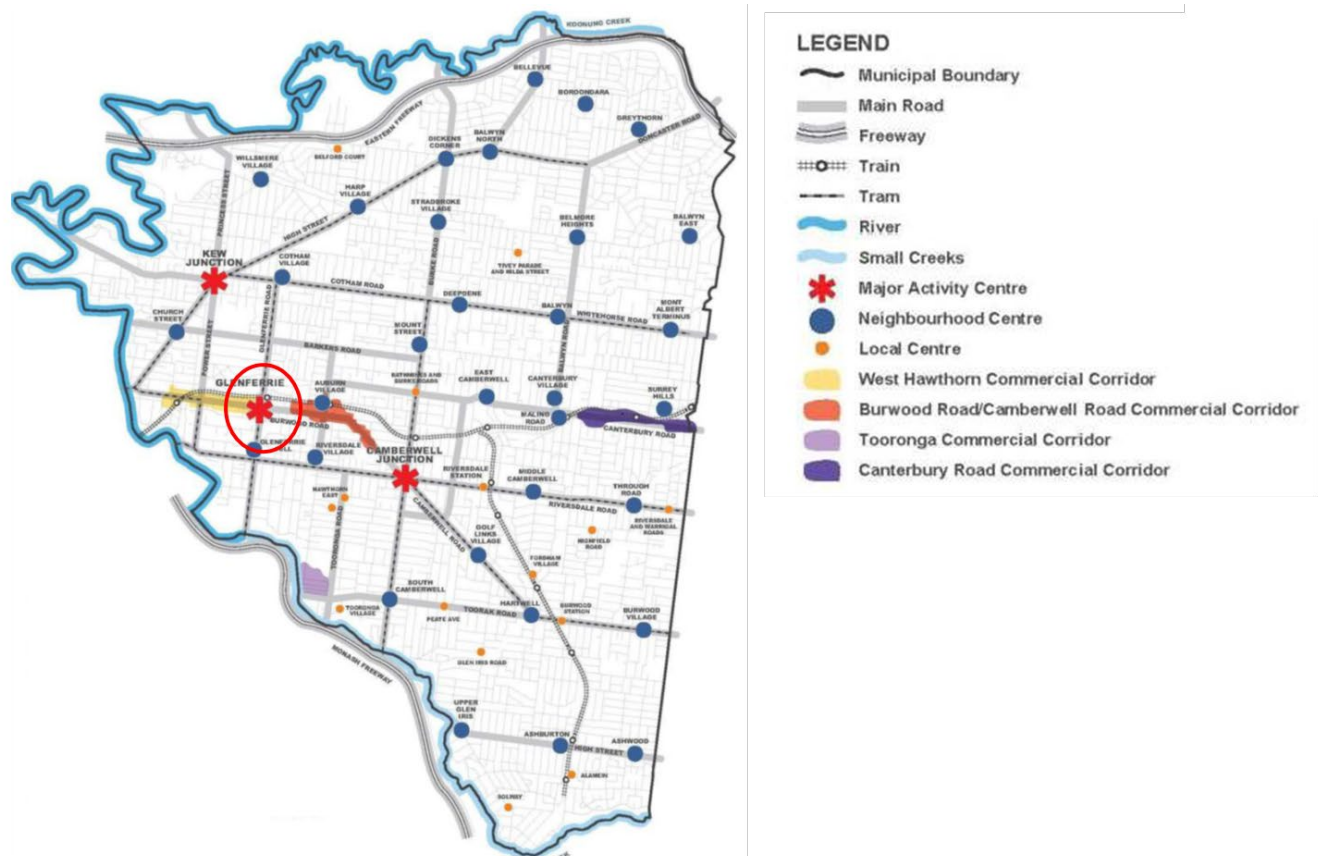
The following objectives set out in section 4 of the PE Act are relevant to the Amendment:

- a) To provide for the fair, orderly, economic and sustainable use and development of land
- c) To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- f) To facilitate development in accordance with objectives set out in paragraphs (a), (b), (c), (d) and (e).

Clause 2 (Municipal Planning Strategy)

Glenferrie is identified as a Major Activity Centre on the Activity centres network framework plan at Clause 02.04-2.

Figure 9 Boroondara activity centre network framework plan



Clause 02.01-5 (Transport) provides:

Boroondara is home to a diverse mix of residential, commercial, recreational, educational and other precincts. This brings a varying demand for car parking across the municipality that needs to be carefully managed.

Clause 02.03-1 (Settlement) recognises Hawthorn-Glenferrie Road as a major activity centre and education precinct. Council's strategic directions for activity centre are:

Maintain and strengthen the network of activity centres, neighbourhood centres, local centres and commercial corridors.

Ensure major activity centres, neighbourhood centres, local centres and commercial corridors retain a commercial focus with regard to land use and built form outcomes.

Ensure residential development complements the commercial focus of activity centres, neighbourhood centres, local centres and commercial corridors, particularly at the upper levels of development.

Minimise the impacts of development on sensitive residential interfaces by way of visual bulk, noise, traffic and vehicle access.

Clause 02.03-6 (Transport) provides:

Increasing private vehicle ownership has resulted in parking and access pressures around activity centres, health and education institutions and community facilities. This includes amenity impacts in residential areas and potential safety concerns from parking overspill.

Council's strategic directions for transport are:

- Manage competing transport demands of walking, cycling, private vehicles and public transport.
- Support a shift towards healthy and sustainable transport modes.
- Ensure provision of sufficient car parking.

Clause 11 (Settlement)

The objective of Clause 11.02-1S (Supply of Urban Land) is:

To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses.

Relevant strategies are:

Ensure the ongoing provision of land and supporting infrastructure to support sustainable urban development.

Ensure that sufficient land is available to meet forecast demand.

Planning for urban growth should consider:

- Opportunities for the consolidation, redevelopment and intensification of existing urban areas.
- Neighbourhood character and landscape considerations.
- The limits of land capability and natural hazards and environmental quality.
- Service limitations and the costs of providing infrastructure.

The objective of Clause 11.02-2S (Structure Planning) is:

To facilitate the fair, orderly, economic and sustainable use and development of urban areas.

Relevant objectives are:

Ensure effective planning and management of the land use and development of an area through the preparation of relevant plans.

Undertake the preparation of a hierarchy of structure plans or precinct structure plans that:

- ...
- Provide the broad planning framework for an area as well as the more detailed planning requirements for neighbourhoods and precincts, where appropriate.
- ...

The objective of Clause 11.03-1S (Activity Centres) is:

To encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community.

Relevant strategies are:

Support the role and function of each centre in the context of its classification, the policies for housing intensification, and development of the public transport network.

Undertake strategic planning for the use and development of land in and around activity centres.

Give clear direction on preferred locations for investment.

Encourage a diversity of housing types at higher densities in and around activity centres.

Reduce the number of private motorised trips by concentrating activities that generate high numbers of (non-freight) trips in highly accessible activity centres.

Improve access by walking, cycling and public transport to services and facilities.

Support the continued growth and diversification of activity centres to give communities access to a wide range of goods and services, provide local employment and support local economies.

The objectives of Clause 11.03-1L-02 (Hawthorn-Glenferrie Road Major Activity Centre) are:

To maintain and enhance the centre's role as a mixed-use shopping strip.

To ensure that the centre is an attractive, vibrant and functional place to visit, work and live.

To enhance the centre's amenity and sense of safety at all hours and to minimise amenity impacts of night time uses on surrounding businesses and residents.

Relevant strategies are:

Support mixed-use development comprising of retail at ground level, and offices or residential uses on upper levels to locate within the retail core and mixed-use areas.

Ensure use and development makes the best use of available land and provides opportunities for additional retail, commercial or housing.

Encourage use and development to incorporate measures to reduce private vehicle travel to and around the centre and encourage people to use public transport, walking and cycling as alternate modes of transport.

Clause 17 (Economic development)**The objective of Clause 17.02-1S (Business) is:**

To encourage development that meets the community's needs for retail, entertainment, office and other commercial services.

Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.

Relevant strategies are:

Plan for an adequate supply of commercial land in appropriate locations.

Clause 18 (Transport)**The objective of Clause 18.02-4S (Roads) is:**

To facilitate an efficient and safe road network that integrates all movement networks and makes best use of existing infrastructure.

Relevant strategies are:

- Plan an adequate supply of car parking that is designed and located to:
 - Protect the role and function of nearby roads.
 - Enable the efficient movement and delivery of goods.
 - Facilitate the use of public transport.
 - Maintain journey times and the reliability of the on-road public transport network.
 - Protect residential areas from the effects of road congestion created by on-street parking.
 - Enable easy and efficient use.
 - Achieve a high standard of urban design.

- Protect the amenity of the locality, including the amenity of pedestrians and other road users.
- Create a safe environment, particularly at night.
- Allocate land for car parking considering:
 - The existing and potential modes of access including public transport.
 - The demand for off-street car parking.
 - Road capacity.
 - The potential for demand-management of car parking.
- Consolidate car parking facilities to improve efficiency.

C: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.

Hawthorn-Glenferrie Road is identified as both a Major Activity Centre and Education Precinct in the Plan. Major Activity Centres are:

Suburban centres that provide access to a wide range of goods and services. They have different attributes and provide different functions, with some serving larger subregional catchments. Plan Melbourne identifies 121 major activity centres.

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.

Table 2 Relevant parts of Plan Melbourne

Outcome	Directions	Policies
1 Melbourne is a productive city that attracts investment, supports innovation and creates jobs	1.1 Create a city structure that strengthens Melbourne's competitiveness for jobs and investment	1.1.4 Support the significant employment and servicing role of health and education precincts across Melbourne.
	1.2 Improve access to jobs across Melbourne and closer to where people live.	1.2.1 Support the development of a network of activity centres linked by transport.

C:3 Planning scheme provisions

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the Planning Policy Framework.

i) Zones

The land is zoned PUZ6. The purposes of this zone are:

To recognise public land use for public utility and community services and facilities.
To provide for associated uses that are consistent with the intent of the public land reservation or purpose.

The land is proposed to be zoned C1Z. The purposes of this zone are:

To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.

To provide for residential uses at densities complementary to the role and scale of the commercial centre.

ii) Overlays

The land is subject to DDO15. The purposes of the Overlay are:

To identify areas which are affected by specific requirements relating to the design and built form of new development.

The design objectives of DDO15 are:

To protect and enhance the identity and character of the centre.

To ensure development respects the significance of heritage sites and precincts.

To respect the character and amenity of adjacent residential areas.

To achieve a high standard of architecture and urban design.

To encourage development that is ecologically sustainable.

To encourage development that supports alternative modes of travel such as walking, cycling and public transport.

To create a safe environment that is conducive to walking, cycling and public transport use at all times of the day.

Land surrounding the site is included in Parking Overlay Schedule 1 (Activity Centres). The purposes of the overlay are:

To facilitate an appropriate provision of car parking spaces in an area.

To identify areas and uses where local car parking rates apply.

To identify areas where financial contributions are to be made for the provision of shared car parking.

The parking objective of PO1 is:

To identify appropriate car parking rates for land uses in various activity centres throughout the municipality.

C:4 Ministerial Directions, Planning Practice Notes and guides

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 (PPN46). That discussion is not repeated here.

Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the VPP in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.