



GLEN EIRA CITY COUNCIL

ORDINARY COUNCIL MEETING

TUESDAY 20 SEPTEMBER 2022

MINUTES

**Meeting was held in the Council Chambers,
Corner Hawthorn & Glen Eira Roads, Caulfield
at 7.30pm**

Present

The Mayor, Councillor Jim Magee
Councillor Tony Athanasopoulos
Councillor Margaret Esakoff
Councillor Sam Parasol
Councillor Sue Pennicuik
Councillor Li Zhang
Councillor Simone Zmood
Councillor David Zyngier

INDEX

1.	ACKNOWLEDGEMENT	4
2.	APOLOGIES.....	4
3.	REMINDER TO DECLARE ANY CONFLICTS OF INTEREST IN ANY ITEMS ON THE AGENDA	4
4.	CONFIRMATION OF MINUTES OF PREVIOUS COUNCIL MEETINGS	5
5.	RECEPTION AND READING OF PETITIONS AND JOINT LETTERS	6
	5.1 Petition: Housing Strategy Bentleigh Heritage	6
6.	REPORTS BY DELEGATES APPOINTED BY COUNCIL TO VARIOUS ORGANISATIONS	6
	Nil	
7.	REPORTS FROM COMMITTEES AND RECORDS OF ASSEMBLY	6
	7.1 Advisory Committees	6
	7.1.1 Advisory Committee Minutes	6
	7.2 Records of Assembly.....	7
	7.2.1 Records of Assemblies of Councillors	7
	10.5 Written public questions to Council.....	8
8.	OFFICER REPORTS (AS LISTED).....	16
	8.1 Financial Management Report (31 August 2022)	16
	8.2 Final Caulfield Structure Plan 2022	16
	8.3 Amendment C231 - Caulfield South Neighbourhood Activity Centre Consideration of Submissions	18
	8.4 Inclusion of 5 Trees in the Classified Tree Register.....	18
	8.5 Foundation For Youth Excellence Awards - 3rd Quarter 2022.....	19
	8.6 VCAT Watch	19
	8.7 Quarterly Services Performance Report (2021-22 Quarter 4).....	19
	8.8 Audit & Risk Committee Minutes (2 Sept 2022).....	20
9.	URGENT BUSINESS.....	20

10. ORDINARY BUSINESS 20

 10.1 Requests for reports from a member of Council staff 20

 10.2 Right of reply 20

 10.3 Notice of Motion 20

 10.4 Councillor questions..... 20

 10.5 Written public questions to Council 21

11. CONFIDENTIAL ITEMS..... 21

 Nil

12. CLOSURE OF MEETING..... 22



1. ACKNOWLEDGEMENT

The Mayor read the acknowledgement.

Glen Eira City Council Acknowledges the peoples of the Kulin Nation as Traditional Owners and Custodians, and pay our respect to their Elders past, present and emerging. We Acknowledge and uphold their continuing relationship to land and waterways. Council extends its respect to all Aboriginal and Torres Strait Islander peoples.

2. APOLOGIES

Nil

Reminder: Cr Anne-Marie Cade is on a Leave of Absence

3. REMINDER TO DECLARE ANY CONFLICTS OF INTEREST IN ANY ITEMS ON THE AGENDA

Councillors were reminded of the requirement for disclosure of conflicts of interest in relation to items listed for consideration on the Agenda, or any item that was considered at this meeting, in accordance with Section 130(2) of the *Local Government Act 2020* and Rule 60(3) of the Glen Eira City Council Governance Rules. Councillors were then invited to indicate any such conflict of interest.

Nil

Procedural Motion

Moved: Cr Magee

Seconded: Cr Parasol

That Council:

1. considers the meeting to be adjourned for 10 minutes from the commencement of any technical problem which prevents Council from livestreaming the meeting; and
2. adjourns the meeting in the event livestreaming cannot be resumed within 30 minutes from the commencement of the technical problem which prevents livestreaming on Council's website with the meeting to be reconvened on Wednesday 21 September 2022 at 7.30pm.

CARRIED UNANIMOUSLY

Suspend Standing Orders**Moved: Cr Magee****Seconded: Cr Parasol**

That Council:

1. suspend standing orders at 7.33pm to offer our condolences on the passing of Her Majesty Queen Elizabeth the II; and
2. honour the life of Her Majesty Queen Elizabeth the II, with one minute of silence.

CARRIED UNANIMOUSLY**Resume Standing Orders****Moved: Cr Magee****Seconded: Cr Pennicuik**

That Council resumes standing orders at 7.35pm.

CARRIED UNANIMOUSLY**4. CONFIRMATION OF MINUTES OF PREVIOUS COUNCIL MEETINGS****Moved: Cr Parasol****Seconded: Cr Zmood**

That the minutes of the Ordinary Council Meeting held on 30 August 2022 be confirmed.

CARRIED UNANIMOUSLY

5. RECEPTION AND READING OF PETITIONS AND JOINT LETTERS**5.1 PETITION: HOUSING STRATEGY BENTLEIGH HERITAGE****Moved: Cr Zhang****Seconded: Cr Zmood**

That Council:

1. receives and notes the petition; and
2. refers the petition to the relevant officer for appropriate action including a detailed response to the submitter.

CARRIED UNANIMOUSLY**6. REPORTS BY DELEGATES APPOINTED BY COUNCIL TO VARIOUS ORGANISATIONS**

Nil

7. REPORTS FROM COMMITTEES AND RECORDS OF ASSEMBLY

7.1 Advisory Committees

7.1.1 ADVISORY COMMITTEE MINUTES**Moved: Cr Zyngier****Seconded: Cr Zhang**

That the minutes of the Advisory Committee meeting as shown below be received and noted and that the recommendations of this Committee be adopted.

1. Youth Advisory Committee Meeting Minutes – 18 August 2022

CARRIED UNANIMOUSLY

7.2 Records of Assembly

7.2.1 RECORDS OF ASSEMBLIES OF COUNCILLORS**Moved: Cr Parasol****Seconded: Cr Zmood**

That the Records of the Assemblies as shown below be received and noted.

1. 16 August 2022 Assembly;
2. 23 August 2022 Assembly; and
3. 30 August 2022 Pre-meeting

CARRIED UNANIMOUSLY

There were no requests for Public Participation

Procedural Motion**Moved: Cr Magee****Seconded: Cr Zmood**

That Council changes the order of business to bring forward item 10.5 – Written Public Questions to Council to be heard at this stage if the meeting.

CARRIED UNANIMOUSLY

10.5 Written public questions to Council

<p>Ross Campbell Elsternwick</p>	<p><u>Question 1</u></p> <p>In Relation to Recording and Reporting of Resident’s Complaints: In the VCAT Decision Report for the Woolworths development in Selwyn St Elsternwick, when discussing the proposed bottle shop, the Members wrote:</p> <p><i>“Further, Ms Marcus informed the Tribunal that the Council had no record of any complaints relating to amenity impacts from the existing late night venues in this activity centre.”</i></p> <p>There have been complaints such as:</p> <ul style="list-style-type: none"> • In an email from Lynette Campbell dated 2/2/21 to all Councillors and members of the Planning Department with a log of noise issues from Upstairs Cellar. Council supplied sound recordings for the VCGLR review held 29/6/22. • Earlier complaints against 313 Glen Huntly Rd resolved by Doug Taylor and previously against the Caulfield RSL and Maxi’s Restaurant. <p>Is there a need for Council to review their recording, filing and retrieval of residential complaints and/or their process of advising legal representatives of complaints made when relevant to legal or other proceedings?</p> <p>Response:</p> <p>The relevant paragraph from the VCAT order provides useful context to the Tribunal’s consideration of this matter. As a whole, the paragraph reads:</p> <p><i>44. In this proceeding, none of the parties that appeared before us provided any evidence of a current social impact being experienced in this location arising from a misuse of alcohol. Further, while Mr Campbell identified the location of some nearby late night venues, and the noise he hears from one venue, no evidence was presented of the amenity of this area being impacted by the cumulative impact of existing licensed premises, and the associated consumption of alcohol. Further, Ms Marcus informed the Tribunal that the Council had no record of any complaints relating to amenity impacts from the existing late night venues in this activity centre.</i></p> <p>Council’s submission is correct and responded to whether there were complaints relating to amenity impacts from existing <u>late night venues</u> and the associated consumption of alcohol, rather than complaints about any venue selling liquor. A late night venue is one that trades beyond 11pm, as referenced in the State Government guidance - <i>Planning Practice Note 61 Licensed premises: Assessing licensed premises.</i></p>
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	<p>The complaints referenced in the question to Council are not in relation to late night venues.</p> <p>There is no need for Council to review or alter its practices in relation to the recording or communication of residential complaints.</p>
<p>Ross Campbell Elsternwick</p>	<p><u>Question 2</u></p> <p>In Relation to Enforcement of Loading Bay Permit Conditions: Woolworths Loading Dock Permit conditions include reduced hours Monday to Saturday to reduce impacts of noise and headlights and preserve residential amenity. VCAT found this would provide sufficient time for unloading up to 11 trucks daily that service the supermarket.</p> <p>VCAT didn't accept alternate views that more trucks would be needed to service this supermarket, at paragraph 176, writing: <i>"we need to rely on.... the enforcement opportunity provided to Council in the event that the parameters of a Loading Bay Management Plan are not complied with."</i>177, <i>"it is paramount the Loading Bay Management Plan is implemented and enforced.</i> In the event of breaches by Woolworths such as:</p> <ul style="list-style-type: none"> • Opening the door for deliveries outside permitted hours, • Queueing trucks in Sinclair St, • Trucks circling the road network, waiting for loading bay availability. <p>How will Council enforce Permit conditions and ensure deterrents are sufficient to maintain residential amenity sought by VCAT?</p> <p>Response:</p> <p>It is expected that the operator will comply with the conditions of the permit, however if Council is informed or becomes aware that there is a potential breach of the condition, it will enforce in its usual way. This is to act reasonably and to provide procedural fairness to all parties. Enforcement action may include educating the permit holder of their requirements, issuing warnings, fines or taking action through a Tribunal or Court.</p>

<p>Rosetta Manaszewicz McKinnon</p>	<p><u>Question 3</u></p> <p>Amendment C228 removed the existing DDO's from our Major Activity Centres and replaced them with new DDO's. The C228 Explanatory Report stated that these new DDO'S apply to 'land in the commercial cores only'. C228 also removed 'DDO8, DDO9 AND DDO10 from land zoned Residential Growth Zone and General Residential Zone'. Does this mean that streets such as Mimosa and Toolambool in Carnegie, sections of Mavho, Lorraine, Mitchell, and Robert streets in Bentleigh, and countless streets in Elsternwick are now back to their original zoning of 4 storeys instead of the previously lower heights established by amendment C157? If so, then is it accurate to say that developers can now submit applications for 4 storeys in such streets given that the zoning has not been addressed by council and will remain so until at least June 2023 and probably longer?</p> <p>Response:</p> <p>Applications can be submitted for 4 storey developments in those areas zoned RGZ. In late 2021, as the three interim DDOs for Carnegie, Elsternwick and Bentleigh Activity Centres were set to expire, Council requested an 18-month extension. In March 2022, the Minister agreed to the extension to June 2023 but only for land zoned commercial and mixed use. Therefore, land zoned RGZ was removed by the Minister from the DDOs. The heights and setbacks for that land are now controlled by the residential zones, as is standard practice.</p> <p>No applications for 4-storey buildings have yet been received for the RGZ areas formerly covered by a DDO.</p> <p>A Housing Strategy will soon be considered by Council. This will set a framework for future residential zones and planning controls.</p>
<p>Rosetta Manaszewicz McKinnon</p>	<p><u>Question 4</u></p> <p>Item 8.2 of the agenda is recommending councillor endorsement of the draft Caulfield Station Structure Plan. Given that this precinct will potentially house up to 8000+ individuals and contain the tallest building forms, the decision carries great import for the municipality. Asking councillors to therefore endorse a plan that will set the aspirational vision for the future, should be based on clear, hard 'evidence'. At any stage throughout this long process, were councillors provided with hard copy research and documentation as to the following - overshadowing data; set back requirements; traffic analysis; the complete survey responses? If so, what is/are the precise date(s) that councillors were given access to each of these nominated items? If not, and if councillors have as yet not been provided with all of the above, then I respectfully submit that they are in no position to complete what should be 'informed decision making'!</p>

	<p><u>Response:</u></p> <p>The draft Caulfield Structure Plan, which was presented at the 22 February 2022 Ordinary Council Meeting, was accompanied by a Housing and Economic Analysis prepared by consultants Charter Keck Cramer.</p> <p>In response to your specific questions:</p> <ul style="list-style-type: none"> • Councillors were provided with overshadowing data prior to the 20 September 2022 Council Meeting. • Building heights and setback requirements and guidelines have formed a significant component of the structure plan. This work and other content of the structure plan were the subject of several Councillor briefings ahead of the draft structure plan being endorsed for consultation. • The draft and final Caulfield Structure Plan have been informed by traffic assessments prepared by consultants at the request of both the Victorian Planning Authority and Council. Further review has been conducted by Council's strategic transport and traffic engineering officers. The data shows that the activity centre road network has capacity for the extent of growth envisaged. Traffic analysis and traffic management is an ongoing process and will continue to be reviewed as the structure plan is implemented. • Councillors have been provided with the summary of consultation responses. Copies of all survey responses and all written submissions received during consultation were issued on September 13.
<p>Warren Green Bentleigh</p>	<p><u>Question 5</u></p> <p>Previous advice from officers was that the final Housing Strategy was to be considered by the Council on the 20th of September. Noting that this has not occurred, can you please advise why the final Housing Strategy has not been tabled at this meeting and when it will be tabled for Council consideration?</p> <p><u>Response:</u></p> <p>The Housing Strategy is now scheduled to be presented to Council on 12 October. Given the extensive community consultation program, number of submissions and final drafting of the document, further time was required, and the report pushed back one meeting cycle.</p>
<p>Warren Green Bentleigh</p>	<p><u>Question 6</u></p> <p>Last week I provided a written question to the Mayor. The question related to the public release of community submissions for the Draft Housing Strategy as this has not occurred. This is despite the CEO's commitment to involve the community in the Housing Strategy process and Officer's advice that the process has been totally transparent. Can you please advise when I will receive a response from the Mayor regarding these questions? Thanks.</p>

	<p>Response:</p> <p>A response was emailed yesterday. The response reads;</p> <p>The public submissions have been summarised and, in most circumstances, responded to in the consultation report attached to the August 9 Council report on the Housing Strategy consultation outcomes. This consultation report contained direct survey outcomes (to questions) and data presented in a series of graphs and tables, it also tabled numerous verbatim responses from the community, both positive and negative. The very fact that this 100 page report was presented to Council and the community ahead of presenting the final Housing Strategy demonstrates a high level of transparency and communication with the community. In addition, officers presented the survey outcomes through an online presentation and a drop in session in which you attended. With what has been made available to the community, it is not considered necessary to make each submission available publicly.</p>
<p>Therese Green Bentleigh</p>	<p><u>Question 7</u></p> <p>Council has advised that it will be tabling a revised draft Structure Plan for Bentleigh in early 2023. Can you please advise what community consultation will occur for this process prior to this time and when it will commence?</p> <p>Response:</p> <p>Community consultation will commence following Council's formal consideration of the draft structure plan. This is currently scheduled for February/March 2023. There was considerable consultation undertaken for the 2018 structure plan which is being considered as part of the revisions now being progressed.</p>
<p>Max Deacon Elsternwick</p>	<p><u>Question 8</u></p> <p>As part of the Fabcot (Woolworths) decision handed down by VCAT, Fabcot must now remove 15 apartments from their development as VCAT have ruled that they do not comply to Clause 58.04-1 of the Glen Eira Planning Scheme.</p> <p>Clause 58.04-1 states in part that any new buildings must:</p> <p>Avoid direct views into habitable room windows and private open space of new and existing dwellings. Developments should avoid relying on screening to reduce views.</p> <p>Why did Council not comply with their own planning scheme when reviewing these plans?</p>

	<p>Response:</p> <p>Council did comply with the planning scheme when reviewing the plans.</p> <p>Clause 58.04-1 of the Glen Eira Planning Scheme is a subjective consideration and does not contain a prescribed measurement to quantify whether there is an overlooking impact.</p> <p>The planning process requires the balancing of many different and often conflicting considerations. In this situation, VCAT considered that a different outcome was appropriate. It does not mean that Council did not comply with the planning scheme.</p>
<p>John Denmead Elsternwick</p>	<p><u>Question 9</u></p> <p>Given the recent VCAT ruling granting Fabcot (Woolworths) a permit with various conditions that vary from their submitted plans to Council for Selwyn Street including reducing the Southern tower by 3 stories, will their revised plans to Council be made public so that the neighbours and community can see what the final project will be.</p> <p>Response:</p> <p>When plans are endorsed under the various conditions of the planning permit, they will be able to be viewed by the public upon request. The process of making plans available is legislated under the <i>Planning and Environment Act 1987</i>.</p>
<p>Lyn Campbell Elsternwick</p>	<p><u>Question 10</u></p> <p>Planners and Councillors accepted Woolworths clearly to us deceptive and distorted photo of the Southern Tower from our garden and argued that the setbacks were acceptable when this was the most Sensitive Interface set out in DDO10 map and none of the planners had visited our property. VCAT, who did visit our property, didn't agree and set the tower 14.2m from our boundary and removed 3 storeys to reduce the overlooking into our private open space.</p> <p>Key to the Woolworths VCAT finding was the to-scale photo montages which showed a very different outlook of the Southern Tower over Glenmoore house from those images supplied by Woolworths to council. Does Council require applicants to provide to-scale drawings/images of VCAT standards in their planning applications, and given the accurate scale photos recently supplied to VCAT, would council officers also have rejected the proposal if they had them available when assessing the application?</p>

	<p>Response:</p> <p>The proposal included proper scaled drawings which formed the basis of the assessment. There is no requirement for fully scaled photo montages to accompany an application, however they can be a useful way to visualise what a development will look like.</p> <p>Council does not accept that there were any deceptive or distorted images that it relied on as part of the assessment the application. Council would also like to highlight that staff involved in preparing the recommendation had been on site and understood the context from the Glenmoore property.</p> <p>Council stands behind the decision made. The availability of scaled photo montages would not have led to a rejection of the application.</p>
<p>Lyn Campbell Elsternwick</p>	<p><u>Question 11</u></p> <p>Considering the very different views of VCAT as stated to those of Council Planners, will Councillors and Planners in future follow VCAT's lead and give greater weight to the Clause 58.04-1 setback objectives of the Glen Eira Planning Scheme and its Standard B14 Decision Guidelines that relate to the issue of overlooking and work to protect residential amenity and the private open space of residents when assessing developments rather than rely heavily on the reference to restricting overlooking within 9.0 metres, as occurs under the Clause 55 provisions?</p> <p>Response:</p> <p>Council will consider every planning application on its own merits. This will include consideration of the particular layout of a proposal, how it relates to any adjacent private open space and the relevant planning controls for the land.</p>
<p>Kathy Deacon Elsternwick</p>	<p><u>Question 12</u></p> <p>Can the Council please explain why the planning officers recommended that the Council approve the recent Woolworth's Selwyn Street plans and in turn were then supported by the councillors ignoring the resident's concerns regarding the heights and the setbacks as per the Glen Eira Planning Scheme leaving the residents to fight this at an 11 day VCAT Hearing resulting in 3 storeys and approximately 30 apartments being removed?</p>

	<p>Response:</p> <p>Council had regard to residents' concerns regarding heights and setbacks, however resolved to support the amended proposal because Council considered that on balance it was an acceptable outcome, having regard to the broad range of planning considerations.</p> <p>The VCAT decision included modifications to the height and setback of the southern tower to reduce the impact of the development upon one residential property, being Glenmoore.</p> <p>It considered that the height and setbacks of the building were acceptable in all other respects, including in relation to the heritage surrounds and the residential interface along Sinclair Street.</p>
<p>Anne Kilpatrick Caulfield South</p>	<p><u>Question 13</u></p> <p>The Draft Caulfield Structure Plan is being considered without the benefit of a contemporary heritage study of the area for Councillors, residents and others to be informed by an up-to-date heritage assessment. Council has been working on a Heritage Review of the area covering Caulfield East and Glen Huntly for some years now. When will at least a draft of that Review be made publicly available so residents, Councillors etc can factor that in when considering heights and setbacks?</p> <p>Response:</p> <p>Heritage reviews have been undertaken for specific precincts within the Caulfield Activity Centre which has helped guide the development of the Caulfield Structure Plan.</p> <p>With regards to the heritage reviews for Caulfield East and Glen Huntly, these are being finalised and the timing of their release will be communicated shortly. We will advise the Glen Eira Historical Society of this directly.</p>
<p>Anne Kilpatrick Caulfield South</p>	<p><u>Question 14</u></p> <p>In relation to the Draft Caulfield Structure Plan, please specify the details including the exact location of the north western area of Caulfield Racecourse which has Aboriginal cultural heritage sensitivity.</p> <p>Response:</p> <p>This area encompasses the grandstand area to the northwest of the racecourse reserve. A plan of this area will be forwarded by email.</p>

8. OFFICER REPORTS (AS LISTED)

8.1 FINANCIAL MANAGEMENT REPORT (31 AUGUST 2022)

Moved: Cr Pennicuik**Seconded: Cr Zhang**

That Council notes the Financial Management Report for the period ending 31 August 2022.

CARRIED UNANIMOUSLY

8.2 FINAL CAULFIELD STRUCTURE PLAN 2022

ALTERNATE RECOMMENDATION (CR ATHANASOPOULOS)

That Council:

1. Adopts the Caulfield Structure Plan 2022 with the following changes:
 - a) Reduce the preferred maximum height for the land at 964-972 Dandenong Road and 4 Grange Road Carnegie to a preferred maximum height of nine (9) storeys by altering the height for the sites on:
 - i) Figure 15 Built Form Framework Plan reduced to nine (9) storeys with a four (4) storey street wall height.
 - ii) Figure 29 Grange Road Precinct Plan reduced to nine (9) storeys with a four (4) storey street wall height.
2. Notes that officers will prepare draft planning scheme controls to implement the Caulfield Structure Plan 2022.
3. Receives a further report for endorsement on the draft planning scheme controls and planning scheme amendment to implement the Caulfield Structure Plan 2022.

For the Motion: Crs Athanasopoulos, Magee, Parasol and Zhang (4)

Against the Motion: Crs Esakoff, Zmood, Zyngier and Pennicuik (4)

Chair: Mayor Cr Magee used casting vote For the Motion

CARRIED

Extension of Speaking Time

Moved: Cr Magee

Seconded: Cr Parasol

That Cr Athanasopoulos be granted a four minute extension of speaking time.

CARRIED UNANIMOUSLY

Extension of Speaking Time

Moved: Cr Zmood

Seconded: Cr Magee

That Cr Zyngier be granted a three minute extension of speaking time at 8.20pm.

CARRIED UNANIMOUSLY

Extension of Speaking Time

Moved: Cr Magee

Seconded: Cr Zyngier

That Cr Esakoff be granted a three minute extension of speaking time at 8.25pm.

CARRIED UNANIMOUSLY

Extension of Speaking Time

Moved: Cr Zmood

Seconded: Cr Zyngier

That Cr Pennicuik be granted a three minute extension of speaking time at 8.31pm.

CARRIED UNANIMOUSLY

Extension of Speaking Time

Moved: Cr Magee

Seconded: Cr Zyngier

That Cr Zmood be granted a three minute extension of speaking time at 8.40pm.

CARRIED UNANIMOUSLY

**8.3 AMENDMENT C231 - CAULFIELD SOUTH NEIGHBOURHOOD ACTIVITY CENTRE
CONSIDERATION OF SUBMISSIONS**

Moved: Cr Zmood**Seconded: Cr Athanasopoulos**

That Council:

1. Receives and notes submissions received following the exhibition of Amendment C231 to the Glen Eira Planning Scheme;
2. Notes the officer report and Attachment 1 to this report – Amendment C231 Response to Submissions;
3. Requests that the Minister for Planning appoints an Independent Planning Panel to consider all submissions received during the exhibition period for Amendment C231; and,
4. Refers the submissions to the Independent Planning Panel for its consideration.

CARRIED UNANIMOUSLY

8.4 INCLUSION OF 5 TREES IN THE CLASSIFIED TREE REGISTER

Moved: Cr Zmood**Seconded: Cr Pennicuik**

That Council:

1. includes the following trees in the Classified Tree Register:
 - a) Yellow Gum (*Eucalyptus leucoxylon*) located at Caulfield Junior College, 186 Balaclava Rd, Caulfield North – 114/CTR/2021;
 - b) English Oak (*Quercus robur*) located at Caulfield Junior College, 186 Balaclava Rd, Caulfield North – 114/CTR/2021;
 - c) Bunya Pine (*Araucaria bidwillii*) located at Glen Eira College, 37-71 Booran Rd, Caulfield – 134/CTR/2021;
 - d) Lilly Pilly (*Syzygium smithii*) located at 44 Teak St, Caulfield South – 349/CTR/2022;
 - e) Southern Blue Gum (*Eucalyptus globulus*) located at 5 Hawthorn Rd, Caulfield North – 357/CTR/2022;
2. notifies each person who nominated a tree detailed in this report;
3. notifies all relevant landholders of the trees detailed in this report; and
4. authorises a notice to be published in the Victorian Government Gazette of the decision to include the trees outlined in this report in the Classified Tree Register.

CARRIED UNANIMOUSLY

8.5 FOUNDATION FOR YOUTH EXCELLENCE AWARDS - 3RD QUARTER 2022

Moved: Cr Zhang**Seconded: Cr Esakoff**

That Council approves the following Foundation for Youth Excellence grants for the 3rd Quarter 2022:

- \$1200 to Alexandra Kiroi-Bogatyrev to compete in Gymnastics at the Maccabi Games in Tel Aviv, Israel.
- \$600 to Brooklyn Riwaka to compete in the Baseball Australia 2022 Australian Junior League Championships in West Beach, Adelaide.
- \$600 to Denver Lund to compete in Basketball at the Australian Junior Championships in Mackay, Queensland.

CARRIED UNANIMOUSLY

8.6 VCAT WATCH

Moved: Cr Esakoff**Seconded: Cr Pennicuik**

That Council notes the update on Victorian Civil and Administrative Tribunal matters.

CARRIED UNANIMOUSLY

**8.7 QUARTERLY SERVICES PERFORMANCE REPORT
(2021-22 QUARTER 4)**

Moved: Cr Zmood**Seconded: Cr Esakoff**

That Council notes the Quarterly Service Performance Report for the period ending 30 June 2022 (Attachment 1 to this report).

CARRIED UNANIMOUSLY

8.8 AUDIT & RISK COMMITTEE MINUTES (2 SEPT 2022)

Moved: Cr Parasol**Seconded: Cr Pennicuik**

That the minutes of the Audit & Risk Committee meeting held on 2 September 2022 as shown in Attachment 1 to the report be approved.

CARRIED UNANIMOUSLY

9. URGENT BUSINESS**10. ORDINARY BUSINESS****10.1 Requests for reports from a member of Council staff**

Nil

10.2 Right of reply

Nil

10.3 Notice of Motion

Nil

10.4 Councillor questions**Cr Zyngier: (question from 30 August 2022 OCM)**

The paragraph below is an extract from the Officers Report in relation to Item 8.7 Cultural Arts Precinct p.184

Extensive traffic analysis indicated a combined left and right turn out of Selwyn Street is appropriate and functional. Some members of the advisory committee were keen to investigate a separated left and right turn out onto Glen Huntly Road. This was considered and has not been incorporated;

The clause below is from the permit conditions in relation to the Woolworths proposal for Selwyn Street presented by council to the VCAT appeal. This was considered and has not been incorporated for the following reasons;

- Council's vision is to promote the pedestrian usage and character of the street and widening the entrance is not in line with that aspiration;
- Three lanes do not fit under the awnings at the intersection of Glen Huntly Road and Selwyn Street, and risk collision of trucks into the awning;
- The queue length in Selwyn Street during peaks times has been determined to be acceptable with a combined left and right lane; and
- Footpath width has been identified at Glen Huntly Road and Sinclair Street as critical areas as part of the security assessment.

41. Before the development starts, functional layout plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be prepared by a suitably qualified engineer and must be drawn to scale and dimensioned. The plans must:

Include the signalisation of Selwyn Street and Glen Huntly Road with any associated widening of the Selwyn Street carriageway to facilitate separate left and right turn lanes on the south approach;

Could you please explain as to what is the Council's actual position in relation to this matter? It is of some concern to residents and to me that there could very well be legal ramifications as a result of these opposing and contradictory views of Council.

Answer:

Council officers have been consistent with advice about the two separate processes relating to the consideration of a planning application. The first is as the Responsible Authority under the Planning and Environment Act 1987. Second, and separate, is the process to the design and implement a cultural precinct under local government and road management legislation.

A planning decision can only consider discrete matters. A council's role is to consider whether a planning permit application that is applied for, represents an acceptable planning outcome. It is not the role of the Responsible Authority to consider whether there is an alternative or better outcome, or whether the outcome aligns with or should align with a capital works project.

The Woolworths application detailed a particular road layout function that was proven to functionally work and Council provided draft conditions as part of the VCAT process to give effect to this.

If Council had imposed conditions to align the development with the cultural precinct capital works project, then this could have resulted in legal consequences as Council would have considered matters not relevant to the planning application.

VCAT confirmed the separation of the two processes during each of the VCAT hearings and in each of the decisions, including the most recent decision where their members noted:

"The future form of the Elsternwick Cultural Precinct is a matter that is completely within the control of the Glen Eira City Council. That is, the future design and layout of Selwyn Street to facilitate the creation of a cultural precinct are not matters that are before us. Rather, they are matters that the Council has been pursuing for some time, has recently made resolutions in respect of, and as we understand it, will continue to pursue".

There are no legal ramifications that flow from this matter.

10.5 Written public questions to Council

This was responded to at an earlier stage of the meeting.

11. CONFIDENTIAL ITEMS

Nil

12. CLOSURE OF MEETING

The meeting closed at **9.28pm**.

Confirmed this 12 October 2022.

Chairperson.....