

*Planning and Environment Act 1987*

**Panel Report**

# Glen Eira Planning Scheme Amendment C181glen and Permit Application GE/PP31418/2017

**30 July 2019**

*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Glen Eira Planning Scheme Amendment C181glen and Permit Application GE/PP31418/2017

30 July 2019

A handwritten signature in black ink, appearing to read 'Con Tsotsoros'.

Con Tsotsoros, Chair

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## Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
Council	Glen Eira City Council
draft Permit	draft Permit GE/PP-31418/2017 to use and develop 259 Glen Eira Road, Caulfield North for an education centre and associated matters
the School	Shelford Girls' Grammar

## Overview

### Amendment summary

<b>The Amendment</b>	Glen Eira Planning Scheme Amendment C181glen and Permit Application GE/PP31418/2017 to vary a covenant applying to the land
<b>The Permit</b>	Permit GE/PP-31418/2017 to use and develop the land for an Education centre and related matters
<b>Common name</b>	Education Centre at Shelford Girls' Grammar
<b>Subject land</b>	259 Glen Eira Road, Caulfield North
<b>Planning Authority</b>	Glen Eira City Council
<b>Proponent</b>	Shelford Girls' Grammar
<b>Authorisation</b>	5 October 2018, subject to the following conditions: <ul style="list-style-type: none"> <li>- delete red outlines on development plans before exhibition to avoid confusion</li> <li>- provide a list of all beneficiaries of the Covenant</li> <li>- ensure all beneficiaries and VicRoads receive notice</li> </ul>
<b>Exhibition</b>	22 November to 24 December 2018
<b>Submissions</b>	Submissions were received from: <ol style="list-style-type: none"> <li>1. Stanley and Carol Kennett</li> <li>2. Nicole Spiegel</li> <li>3. Lynne Lewis</li> <li>4. Terry and Celia Laragy</li> <li>5. Belinda Feldman</li> <li>6. Tamir and Shira Katz</li> <li>7. Ruth Belleli</li> </ol>

## Panel process

<b>The Panel</b>	Con Tsotsoros from 17 May 2019 Sarah Carlisle, 18 March to 17 May 2019
<b>Directions Hearing</b>	Glen Eira City Council, Caulfield, 1 April 2019
<b>Panel Hearing</b>	Planning Panels Victoria, Melbourne, 30 April 2019 Glen Eira City Council, Caulfield, 24 and 25 June 2019
<b>Site inspections</b>	Accompanied in part, 24 April 2019
<b>Appearances</b>	<ul style="list-style-type: none"> <li>- Glen Eira City Council represented by Mimi Nuciforo, Urban Planner</li> <li>- Shelford Girls' Grammar represented by Andrew Natoli of Equipe Lawyers, calling expert evidence on:                             <ul style="list-style-type: none"> <li>- Planning from Robert Kelderman of Contour Consultants</li> </ul> </li> <li>- Lynne Lewis represented by Mr and Mrs Lewis</li> <li>- Nicole and David Spiegel represented by James Livingston of JLP Town Planning</li> <li>- Ruth Belleli represented by David Ng of Belleli King &amp; Associates</li> <li>- Tamir and Shira Katz represented by Mr Katz</li> <li>- Terry and Celia Laragy represented by Mr Laragy</li> </ul>
<b>Citation</b>	Glen Eira PSA C181glen [2019] PPV
<b>Date of this Report</b>	30 July 2019

## **Executive summary**

### **(i) Background**

“Helenslea” was an estate located on Glen Eira Road, Caulfield North, in 1863. While the original two-storey Italianate villa remains, the land was subdivided over the years to create the properties on Hood Crescent, Helenslea Road and Merton Street. Shelford Girls’ Grammar (the School) first operated from a small house on Glen Eira Road in 1898.

As part of a later subdivision, Covenant 0888051 (the Covenant) was registered on all lots that remained in the parent title (Certificate of Title Volume 3985 Folio 796891) when Lot 3 was transferred out on 14 April 1919. The covenant states that the owner of the land:

...will not erect or allow to be erected on the said Lot Three or any part thereof any building other than one private Dwelling with a roof of slates tiles or other material except iron at a cost of not less than FIVE HUNDRED POUNDS (inclusive of the cost of outbuildings)...

The largest property to be subdivided was around the Helenslea home. The School purchased that property and has operated a school from this land since 1923. Dwellings in the Covenant area which were constructed during that time can be characterised as moderately scaled, single storey with tiled gable roofs, eaves and low fences to present their front gardens. The Covenant did not seek to capture this built form character, except for prohibiting iron as a roof material.

The Covenant area has since transformed into a mixture of architectural styles and built form ranging from the 1960s to more recent times. Many of the dwellings constructed since the 1960s are larger, have less articulation, larger external glazed areas, tall fences, different building materials, flat concrete roofs and reduced front garden areas through larger driveways and reduced setbacks.

The post 1960s dwellings were constructed before Clause 54 (commonly referred to as ResCode) or its previous iterations were introduced into the Planning Scheme. Many of the dwellings in the Covenant area have elements which do not meet current community aspirations sought through the objectives of Clause 54.

A striking feature of neighbourhood character is the large, and consistently planted, mature trees which complement visible front gardens.

### **(ii) The combined Amendment and permit application**

The School purchased 259 Glen Eira Road, Caulfield North (the subject land), which abuts the existing school site, to use and develop it as an education centre. The subject land is one of the properties with the Covenant. The proposed education centre comprises a two-storey building with four classrooms and ancillary facilities for up to 70 students and eight staff.

The School applied for a combined planning scheme amendment and permit application to facilitate its proposal. Glen Eira Planning Scheme Amendment C181glen (the Amendment) proposes to vary the Covenant to allow the subject land to be developed and used generally in accordance with Permit Application GE/PP31418/2017. The Permit Application is supported by technical reports and seeks to use and develop the land for an education

centre, reduce car and bicycle parking, enable business signage and alter access to a main road.

The combined Amendment and Permit Application were exhibited from 22 November to 24 December 2018. This included Council directly contacting all property owners affected by the Covenant. Seven submissions were received and all objected to the proposal. Issues raised in submissions included insufficient strategic justification to vary the Covenant, net community benefit, neighbourhood character, amenity, land use, business design, height, scale and form, setbacks, site coverage, permeable area, landscaping, overshadowing, overlooking, noise, odour, hours of operation, traffic, parking, signage, a lack of master planning and security.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from its site visits, and submissions, evidence and other material presented to it during the Hearing to reach its conclusions.

### **(iii) Conclusions**

#### *Neighbourhood character and amenity*

Using and developing the subject land, as proposed by the Permit Application and subject to the Panel's recommendations, reasonably responds to potential neighbourhood character and amenity issues. The proposed use is supported by the Planning Policy Framework and zone provisions, and will not unreasonably impact surrounding residents.

The Panel considers that the proposed building design, height, scale, form, setbacks and site coverage will not unreasonably impact on local amenity. The proposed building has been sensitively designed to harmoniously respond to neighbourhood character.

The proposed development can accommodate sufficient and suitable landscaping, however, it should be guided by a landscape plan prepared by a suitably qualified professional.

The proposed development will not unreasonably overshadow surrounding properties. The Panel preferred draft Permit includes changes such as solid and taller balustrading and higher windows which will ensure no unreasonable overlooking to neighbouring properties.

The draft Permit and plans presented to the Panel would ensure that any potential noise associated with the proposed use and development will not unreasonably impact on the amenity of neighbouring properties. However, the Panel acknowledges that additional measures proposed following further consultation with affected parties may provide some further benefit.

#### *Other issues*

The proposed use reasonably responds to traffic and parking because it will reduce existing traffic accessing the subject land and will not generate new demand for car or bicycle parking. While not needed, the subject land would benefit from additional bicycle parking.

Extending the expiry date for the proposed sign from 15 to 30 years more appropriately reflects its discreet location, relatively small scale and purpose.

Whether a master plan is needed for the School or whether the education centre should be located in an alternative location are not within the scope of the Amendment or permit



application. The combined application was supported by comprehensive information which enabled the Panel to assess the proposal on its own merits.

Increased passive surveillance resulting from students and teachers using the subject land may potentially improve the security of individual properties and the street during operating hours. However, the School and adjoining residents would benefit from 1.8 metre security gates to restrict access between each side of the building and the fence. The Panel considers that the School is best placed to decide when the gates should be locked.

#### *The Covenant variation*

The Panel considers that it is appropriate and justified to vary the Covenant. The Amendment will further the objectives of planning in Victoria. Enabling Shelford Girls' Grammar to improve its educational program in an accessible main road location will balance the interest of present and future generations. The interests of affected parties, including the beneficiaries of the Covenant, have been considered through the proposal's exhibition and the Panel process. The proposed use and development, in its exhibited and revised form, complies with the Planning Scheme. When balancing policy objectives, the Panel considers that the proposal will result in net community benefit and sustainable development.

#### **Recommendations**

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

- 1. Glen Eira Planning Scheme Amendment C181glen be adopted as exhibited.**
- 2. Permit Application GE/PP31418/2017 be granted as exhibited subject to modified permit conditions set out in Appendix C.**

# 1 Introduction

## 1.1 The Covenant

The subject land is at 259 Glen Eira Road, Caulfield North, and is formally known as Lot 3 on Plan of Subdivision PS6946. The property title includes Covenant 0888051 (the Covenant) which benefits all lots that remained in the parent title (Certificate of Title Volume 3985 Folio 796891) when Lot 3 was transferred out on 14 April 1919. According to legal advice prepared for the School, this includes all of the land in the parent title other than the unshaded lots shown in Figure 1 (these lots had already been transferred out by the time Lot 3 was transferred out).

The Covenant states that the owner of the land:

... will not erect or allow to be erected on the said Lot Three or any part thereof any building other than one private Dwelling with a roof of slates tiles or other material except iron at a cost of not less than FIVE HUNDRED POUNDS (inclusive of the cost of outbuildings) ...

The Covenant enables an existing building to be reused for non-residential purposes but prohibits the construction of a building other than a dwelling.

## 1.2 The proposal

### (i) Proposal description

Shelford Girls' Grammar proposes to use and develop the subject land for an education centre. The proposed education centre comprises a two-storey building with four classrooms and ancillary facilities for up to 70 students and eight staff. It includes a media/technology room, a darkroom, a culinary arts room, a gallery/café space, a meeting room and toilet facilities on the ground floor, and a creative studio, design and technology room, a collaboration space, staff office and terraces on the first floor.

### (ii) Combined Amendment and Permit

The proposal is enabled through the combined permit and amendment process in section 96A of the Act and comprises:

- Glen Eira Planning Scheme Amendment C181glen (the Amendment)
- draft Permit GE/PP-31418/2017 (the draft Permit).

The Amendment proposes to vary the Covenant through Clause 52.02 of the Glen Eira Planning Scheme (Planning Scheme). Specifically, it proposes to add the following requirement to the schedule to Clause 52.02:

Vary the Restrictive Covenant as follows:

After the words "erect or allow to be erected on the said Lot Three or any part thereof of any building other than one private Dwelling with a roof of slate tile or other material except iron at a cost of not less than FIVE HUNDRED POUNDS (inclusive of the cost of outbuildings)" insert the words "except that the said Lot Three may be developed and used generally in accordance with planning permit no. GE/PP-31418/2017."

The draft Permit seeks to:

- use and develop the land for an education centre
- reduce car and bicycle parking
- enable business signage
- alter access to a main road.

The permit application is supported by:

- Planning report, June 2018, prepared by Maureen Jackson Planning
- Tree identification statement prepared by Galbraith & Associates
- Traffic impact assessment, 24 May 2018, prepared by One Mile Grid
- Noise impact assessment, 9 March 2018, prepared by Octave Acoustics.

### 1.3 Subject land and surrounds

The subject land (shown in Figure 1) is rectangular, with a frontage of about 18 metres along Glen Eira Road and a depth of about 46 metres. It shares a rear boundary with the main school campus.

Figure 1 Subject land



Source: [mapshare.vic.gov.au/vicplan/](http://mapshare.vic.gov.au/vicplan/) and information from the School's lawyer

The subject land currently accommodates a double storey dwelling, garage and swimming pool in an established garden setting. The Neighbourhood Residential Zone applies to the subject land and its surrounds.

Single and double-storey dwellings are located to the east, west and northwest of the subject land. The Shelford Early Learning Centre is located to the northeast. Land on the southern side of Glen Eira Road includes a single-storey dwelling and double-storey apartment building. A church and a medical centre are located on the corners of Hood Crescent and Glen Eira Road. There is a double-storey child care centre under construction diagonally opposite the subject land at 296 Glen Eira Road.

## 1.4 Background

<b>1919</b>	
14 April	The Covenant was created by a transfer of land
<b>2017</b>	
21 March	The School submitted a permit application (GE/PP-30455/2017) to vary the Covenant to use and develop the subject land for an education centre – similar to the current proposal
10 April	The application was withdrawn after beneficiaries of the Covenant objected – the Act requires Council to refuse a permit application that seeks to vary or remove a covenant if a beneficiary of the Covenant objects, as long as the objection is made in good faith and is not vexatious
5 December	The School submitted a combined permit and Amendment application through section 96A of the Act to enable an education centre on the subject land
<b>2018</b>	
6 February	Council requested further information – traffic and acoustic reports and additional justification in the planning report
20 April	The School provided the specified information and a revised building design
24 July	Council resolved to request authorisation from the Minister for Planning to prepare and exhibit the combined draft Permit and Amendment
25 October	The Minister for Planning authorised the combined draft Permit and Amendment
22 November	Exhibition commenced
24 December	Exhibition ended and Council received seven objections – objections from beneficiaries do not preclude an amendment that seeks to vary or remove a covenant
<b>2019</b>	
30 January	Council held a planning conference, attended by the School and submitters
26 February	Council resolved to refer submissions to a Planning Panel

## 1.5 Procedural matters

There were procedural matters which related to notice of the Amendment, additional parties to the Hearing, requests to adjourn the Hearing and the calling of evidence. These matters are detailed in Appendix A.

On 25 June 2019, at the conclusion of the Hearing, the Panel directed that:

- the Proponent provide a 'without prejudice' version of the draft Permit with tracked changes to all parties by 2 July 2019
- any party seeking to make 'without prejudice' comments on the tracked changes, may provide a response to all parties on the circulation list by 9 July 2019.

Mr Katz and Mr Spiegel responded on 22 July 2019. Council and the School were provided with an opportunity to make any final comment.

## 1.6 The Panel's approach

The key issues raised in the submissions to the Amendment and draft Permit, and at the Hearing, can be broadly grouped into the following:

- design concerns (visual bulk, overdevelopment, impacts on neighbourhood character, inadequate landscaping opportunities, lack of detail about plant and equipment)
- amenity concerns (traffic and parking issues, overlooking, overshadowing, reduction in privacy and security)
- issues relating to varying the Covenant (beneficiaries purchased their land knowing the Covenant would restrict development, varying the Covenant would set a bad precedent).

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from its site visit, and submissions, evidence and other material presented to it during the Hearing. 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 report applies the following terminology:

- Exhibited draft Permit – exhibited version which submitters responded to
- School preferred draft Permit – version which was circulated to parties on 2 July 2019 after the School further consulted with parties
- Council preferred draft Permit – version which was circulated to parties on 9 July 2019.

The Report deals with the issues under the following headings:

- Planning context
- Neighbourhood character and amenity
- Other issues
- The Covenant variation.

## 2 Planning context

### 2.1 Objectives of planning in Victoria

#### (i) Background

The objectives of planning in Victoria are set out in section 4 of the Act. They include (as relevant):

- To provide for the fair orderly, economic and sustainable use and development of land
- To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- To facilitate development in accordance with [these objectives]
- To balance the present and future interests of all Victorians.

#### (ii) Evidence and submissions

Council submitted that the Amendment is consistent with these objectives because:

- it varies a covenant that is no longer consistent with the desired planning outcomes for the land as set out in the Planning Scheme
- the Covenant would unreasonably limit the use and development of the land for an education facility which has been assessed in terms of its planning merits by Council
- it facilitates a use of the land that is consistent with the strategic context and built form characteristics of the area
- it would deliver net community benefit by providing for a new school facility adjacent to the existing school in the form of a building that has been designed to minimise its impacts on the adjoining residential properties.

### 2.2 Planning policy framework

#### (i) Background

The following clauses in the Planning Policy Framework are relevant to the proposal:

##### **Clause 11 (Settlement)**

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.

...

Planning is to prevent environmental and amenity problems created by siting incompatible land uses close together.

##### **Clause 15 (Built Environment and Heritage)**

Planning should ensure all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context.

##### **Clause 15.01-2S (Building design)**

To achieve building design outcomes that contribute positively to the local context and enhance the public realm.

### **Clause 15.01-5S (Neighbourhood character)**

To recognise, support and protect neighbourhood character, cultural identity, and sense of place.

### **Clause 21.01 (Municipal Profile)**

Glen Eira residents enjoy access to a wide variety of transport, shopping, health, education, religious and cultural and leisure services ...

### **Clause 21.03-5 (Framework plan)**

The Strategic Land Use Framework Plan illustrates Council's key strategic directions for future land use planning and development.

### **Clause 21.08 (Institutional and Non-Residential Uses in Residential Areas)**

To ensure that non-residential uses are successfully integrated into residential zones with minimum impact and minimum loss of residential amenity.

To ensure community awareness and input into the long term expansion plans of large institutions in residential areas.

### **Clause 22.02 (Non Residential Uses in Residential Zones Policy)**

To encourage the development or extension of non-residential uses, in suitable locations which comply with orderly and proper planning principles.

To successfully integrate non-residential uses into residential areas with minimal impact to the residential streetscape and the character of the area.

To respect the garden character of the neighbourhood.

To minimise the effect of non residential uses on the residential amenity.

To allow adequate and appropriate signage.

### **Clause 22.08 (Minimal Change Area Policy)**

Council's Housing and Residential Development Strategy identifies the areas where housing diversity should be encouraged (housing diversity areas) and areas where the existing low intensity, low-rise character should be protected and enhanced (minimal change areas).

Development outcomes that contribute positively to local neighbourhood character while minimising adverse impacts on neighbouring properties are fundamental objectives for residential development.

## **(ii) Evidence and submissions**

Council submitted that the proposal is supported by the Planning Policy Framework because:

- the Amendment seeks to vary the Covenant to facilitate enhanced education services provided by Shelford Girls' Grammar, addressing the community need for excellence in education facilities servicing the neighbourhood as well as the wider community (Clause 11)
- the Amendment facilitates use and development that addresses the community aspirations and cultural identity of the area, including having a variety of high-quality education establishments which contribute to the local urban character (15)
- the Amendment will facilitate the development of a building of high architectural quality that complements the existing and emerging streetscape of the area (15.01-2S)

- Shelford Girls' Grammar has been a part of the local cultural context of Caulfield North since 1898 and the proposed school building will provide a main road presence for the school with a Glen Eira Road frontage (15.01-5S)
- the proposal advantages the municipality by contributing to an excellent range of education and health and community facilities (21.01)
- the site is appropriate for a school as it consolidates the presence of the school and provides a main road frontage (21.03-5)
- the Amendment supports the integration of non-residential uses into a residential zone with a building of an appropriate scale that will not cause an unreasonable reduction in residential amenity (21.08)
- the proposed development is a high-quality classroom building that is in a preferred location (on a main road) and has been designed and sited to minimise residential amenity impacts (22.02)
- the proposal complements Council's policy to retain the existing low intensity, low-rise built form character typical for a Minimal Change Area (22.08)
- the development of a two-storey building on a conventional lot retains the existing subdivision pattern and spacing of buildings typical for the Glen Eira Road streetscape (22.08).

## **2.3 Relevant strategies**

### **(i) Activity Centre, Housing and Local Economy Strategy**

The Activity Centre, Housing and Local Economy Strategy (adopted in July 2017) provides a new activity centres framework and direction for place-making, local economy and housing. It encourages providing employment opportunities in the education sector.

### **(ii) Plan Melbourne and Ministerial Direction 9**

Council submitted that the proposal is consistent with the following outcomes and directions within Plan Melbourne 2017-2050:

- Outcome 5 – Melbourne is a city of inclusive, vibrant and healthy neighbourhoods
- Direction 5.3 – Deliver social infrastructure to support strong communities
- Policy 5.3.2 – Create health and education precincts to support neighbourhoods.

Council submitted that the proposal consolidates and supports Shelford Girls Grammar's historic role of providing education in the Caulfield North neighbourhood, in close proximity to public transport, services and other infrastructure.

## **2.4 Planning scheme provisions**

### **(i) Clause 52.02 (Easements, restrictions and reserves)**

Clause 52.02 enables an easement or restriction to be removed or varied to enable a use or development that complies with the Planning Scheme after the interests of affected people are considered. It requires a permit before a person proceeds to vary or remove a covenant under sections 23 or 24A of the *Subdivision Act 1988*, unless the removal is authorised by the Clause 52.02 Schedule.



The Amendment proposes to amend the Clause 52.02 Schedule so that a plan can be lodged under section 23 before removing the Covenant. The Covenant would be removed when the plan is registered at the Titles Office.

## **(ii) Neighbourhood Residential Zone**

The Neighbourhood Residential Zone applies to the subject land and its purposes are:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

No Planning Scheme overlays apply to the subject land.

## **2.5 Principles for varying a covenant**

In its Direction Letter dated 3 April 2019, the Panel directed that Council include in its Part B submission *“the relevant principles that apply when assessing an amendment to vary or remove a covenant.”* The Panel referred parties to the following panel reports:

- Mornington Peninsula PSA C46 [2004] PPV
- Manningham PSA C72 [2008] PPV
- Hobsons Bay PSA C116 Part 2 [2018] PPV.

There are no specific tests in the Act for a planning scheme amendment which seeks to vary or remove a covenant. Mornington Peninsula PSA C46 [2004] PPV sets out principles which have since become widely accepted:

First, the Panel should be satisfied that the Amendment would further the objectives of planning in Victoria. The Panel must have regard to the Minister’s Directions, the Planning Provisions, MSS, strategic plans, policy statements, codes or guidelines in the Scheme, and significant effects the Amendment might have on the environment, or which the environment might have on any use or development envisaged in the Amendment.

Second, the Panel should consider the interests of affected parties, including the beneficiaries of the Covenant.

Third, the Panel should consider whether the removal or variation of the Covenant would enable a use or development that complies with the Planning Scheme.

Finally, the Panel should balance conflicting policy objectives in favour of net community benefit and sustainable development. If the Panel concludes that there will be a net community benefit and sustainable development it should recommend the variation or removal of the Covenant.

Council and the School adopted these principles in their submissions and no party proposed an alternative suite of principles.

The Panel has adopted these principles for the purposes of its assessment in Chapter 5.

## **3 Neighbourhood character and amenity**

### **3.1 Background**

Clause 54 of the Victoria Planning Provisions (commonly referred to as ResCode) does not apply, by default, because the proposed building is not associated with a dwelling. However, Clause 22.02 (Non-residential uses in residential zones) of the Planning Scheme, which does apply, uses ResCode clauses as performance measures to assess a proposal.

Clause 22.02-3 (Siting and design) seeks to successfully integrate non-residential uses into residential areas with minimal impact to the residential streetscape and the character of the area. In the clause, it is policy to, among other things, ensure that the streetscape character of the neighbourhood is respected and maintained, particularly in terms of building height, length, location, setbacks (front, side and rear), front fences and appearance.

Neighbourhood character and amenity issues raised in submissions related to:

- land use
- building design, height, scale and form
- building setbacks and site coverage
- landscaping
- overshadowing
- overlooking
- neighbourhood character
- noise, odour and hours of operation.

### **3.2 The overarching issue**

The issue is whether using and developing the subject land, as proposed by the exhibited permit application, reasonably responds to potential neighbourhood character and amenity issues.

### **3.3 Land use**

#### **(i) The issue**

The issue is whether using the subject land for an education centre will unreasonably impact on the local amenity.

#### **(ii) Background**

A purpose of the Neighbourhood Residential Zone is:

To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

Clause 22.02-2 (Preferred location) seeks:

To encourage the development or extension of non-residential uses, in suitable locations which comply with orderly and proper planning principles.

In the clause, it is policy to:

- encourage non-residential uses to locate on, among other preferred locations, main roads – Glen Eira Road is identified as a main road on Map 1 of that clause
- direct uses to locate where there will be minimal impact on the local amenity, including through the introduction of traffic and parking of cars
- promote these uses within easy walking distance of public transport.

### **(iii) Evidence and submissions**

Submitters opposed the subject land being used as an education centre. Reasons were predominantly based on the understanding that the Covenant prohibited any use other than a dwelling and because of the negative impacts it may have on local amenity.

Submitters explained that they purchased their properties on the basis that the Covenant would protect them from non-residential uses establishing within the Covenant area. They added that Shelford Girls' Grammar purchased the subject land knowing that the Covenant prohibits all uses other than a dwelling.

Mr Livingston represented Mr and Ms Spiegel at the Hearing. Mr Livingston noted that the subject land and surrounding residential properties are in the Neighbourhood Residential Zone Schedule 1. He acknowledged that one of the purposes of the zone is to allow, among other uses, educational uses to serve local community needs in appropriate locations. Some of the relevant decision guidelines for non-residential use and development which he included in his submissions were:

- Whether the use or development is compatible with residential uses.
- Whether the use generally serves local community needs.
- The scale and intensity of the use and development.

The School called planning evidence from Mr Kelderman of Contour. Mr Kelderman considered the proposed use of the subject land as an education centre to be consistent with the purpose of the Neighbourhood Residential Zone. He added that the subject land is an appropriate location to accommodate this use, noting that the land abuts the existing school site which is in the same zone. Mr Kelderman said that relevant planning policies acknowledge main roads as appropriate locations for non-residential uses. He explained that non-residential uses already exist in the area.

Mr Kelderman also referred to State planning policy which includes, Clause 19.02-2S (Education facilitates) that seeks to *"assist the integration of education and early childhood facilities with local and regional communities"*.

The School relied on Mr Kelderman's evidence and submitted that the proposal will *"improve infrastructure and operating conditions of an existing educational facility that is currently serving the local community"* without unreasonably impacting local amenity.

### **(iv) Discussion**

Shelford Girls' Grammar has abutted residential properties since it was established in 1898.

The proposed use aligns with planning policy, including Clause 22.02-2 which encourages non-residential uses on a main road such as the subject land. It discourages non-residential uses from locating on local residential streets. Shelford Girls' Grammar has opted to use

land which meets this policy. Locating an education centre on a main road with access to public transport also aligns with the Clause 19.02-2S objective which seeks to “assist the integration of education and early childhood facilities with local and regional communities.” The Panel has no doubt that using the subject land for an education centre will serve local community needs.

The subject land, existing Shelford Girls’ Grammar school site and surrounding residential properties are in the Neighbourhood Residential Zone Schedule 1. The proposed use is consistent with the zone’s purpose which seeks to allow an educational use and its provisions which enable such a use to be assessed through a planning permit application. As a land use specifically identified in the zone’s purpose, an education centre is generally a use which is compatible with residential uses subject to managing potential amenity impacts. Conditions related to operational hours and noise control shown in draft Permit in Appendix C seek to ensure that the two land uses reside harmoniously.

While the Panel acknowledges submissions to the effect that people in the area purchased their land on the understanding that the Covenant would prohibit non-residential uses, this is based on a misconception. The Covenant does not regulate the use of the land. Although it prohibits the construction of a building other than a dwelling, it would not prevent an existing building from being reused for non-residential purposes.

The Panel considers that using the subject land as an education centre, in line with the exhibited permit subject to changes recommended in this report, is consistent with the local policy, zone and other relevant provisions of the Planning Scheme.

#### **(v) Findings**

The Panel finds:

- Using the subject land for an education centre would not unreasonably impact surrounding residents.
- The subject land is an appropriate location for an education centre according to the Planning Policy Framework.
- The zone provisions support using the subject land as an education centre.

### **3.4 Building design, height, scale and form**

#### **(i) The issue**

The issue is whether the proposed building design, height, scale and form will unreasonably impact on local amenity.

#### **(ii) Background**

Relevant requirements are set out in Table 1.

**Table 1 Building height provisions and proposal**

Clause 22.02-3	NRZ	Clause 54	Proposal
<b>Assessment criteria</b>	<b>Mandatory provision</b>	<b>Standard A4</b>	<b>Tallest height</b>
Any buildings are not greater than the mandatory maximum height specified in the relevant residential zone applying to the subject land.	The building height must not exceed 9 metres and the building must contain no more than 2 storeys at any point.	The maximum building height should not exceed 9 metres.	8.6 metres

**(iii) Evidence and submissions**

Several submissions opposed the proposed building's design, height, scale and form.

Mr and Ms Katz submitted that the proposed building has not been designed to minimise the detrimental impact on neighbouring properties. They considered that the exhibited elevations depict significant visual bulk and mass. Similarly, Ms Spiegel was concerned that the building's limited articulation, high internal ceilings and low-pitched roofs would result in significant bulk.

Several submitters considered that the proposed building presented more like a commercial building than a dwelling. In response to a question from the Panel, one submitter said the extent of glazing was one element which made it appear commercial.

Mr Kelderman stated that proposed building's height of 8.22 metres satisfies the mandatory maximum building height of 9 metres and two storeys. It therefore meets local policy at Clause 22.02. He considered the building's elevations to be well articulated.

**(iv) Discussion**

The proposed development is lower than the maximum building height specified in the Neighbourhood Residential Zone, as sought by Clause 22.02-3. Unlike other buildings on the existing school site, the proposed building has been consciously designed to appear like a dwelling. Elements which create that appearance include its scale, articulation, double-fronted form, front door entrance, angled roof, colours and materials. The Panel agrees that the front elevation has more glazing than many typical dwellings, however, the building continues to read like a dwelling.

**(v) Finding**

The Panel finds that the proposed building design, height, scale and form will not unreasonably impact on local amenity.

**3.5 Building setbacks, site coverage and permeability****(i) The issue**

The issue is whether the proposed setbacks, site coverage and permeability will unreasonably impact on local amenity.

**(ii) Background**

Relevant requirements are set out in Table 2.

**Table 2 Building setbacks provisions and proposal**

Clause 22.02-3	NRZ	Clause 54	Proposal
<b>Building setbacks</b>			
<b>Assessment criteria</b> Front walls of buildings to be set back from street frontage in accordance with Clause 54.03-1.	<b>Minimum street setback</b> Clause 54 Standard A3	<b>Standard A3</b> The average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser.	The proposed building is set back approximately 9 metres from the front boundary
Side walls of buildings to be set back from boundaries in accordance with Clause 54.04-1.	<b>Side and rear setbacks</b> Clause 54 Standard A10: Rear setback 4 metres	<b>Standard A10</b> A new building not on or within 200mm of a boundary should be set back from side or rear boundaries at least the distance specified in a schedule to the zone.	The proposed building is set back approximately: - 1.32 to 6.31 metres from the eastern side boundary - 1.68 to 3.38 metres from the western side boundary - 7.7 metres from the rear boundary
<b>Site coverage</b>			
-	For a new dwelling, 50%	Specified in NRZ1 so not applicable	approximately 42%
<b>Permeability</b>			
-	For a new dwelling, 25%	Specified in NRZ1 so not applicable	39.3% (329 square metres)

**(iii) Evidence and submissions**

Several submissions considered that the propose development:

- was insufficiently set back from the adjoining properties
- absorbed an excessive amount of the subject land.

Mr and Ms Katz submitted that, while the proposed building would occupy less than half of the subject land, it represents a significant over-development of the subject land compared to surrounding residential properties. They considered the proposed education centre would not have an adequate buffer where it interfaces with abutting residential properties.

Mr Kelderman stated that proposed building's front, side and rear setbacks satisfy Standards A3 and A10. It therefore meets local policy at Clause 22.02.

**(iv) Discussion**

The proposed development meets the building setbacks and site coverage sought through Clause 22.02. While not applicable, it exceeds the extent of permeable land sought through NRZ1. The development, which achieves these standards, does not represent an overdevelopment of the subject land. While not applicable, the Panel notes that the proposed development achieves street setback and siting policies in Clause 22.08 – the applicable policy for surrounding residential properties in the Covenant area.

**(v) Finding**

The Panel finds that the proposed building setbacks and site coverage standards will not unreasonably impact on local amenity.

**3.6 Landscaping****(i) The issue**

The issue is whether the proposed development includes sufficient and suitable landscaping.

**(ii) Background**

**Table 3 Landscaping provisions and proposal**

Clause 15.01-1S	Clause 22.02	NRZ	Proposal
Ensure that development provides landscaping that supports the amenity, attractiveness and safety of the public realm.	<b>Assessment criteria</b> The width of a driveway landscape buffer be 300 - 500mm in addition to the driveway width.	<b>Decision guideline</b> The proposed landscaping for non-residential use and development in the local neighbourhood context.	The landscape concept plan, prepared by Clarke Hopkins Clarke Architects as part of the permit application, shows new landscaping along part of the subject land's boundary. The plan integrates an existing peppercorn tree into the new landscaping. No car parking is proposed in the subject land's frontage.

**(iii) Evidence and submissions**

Council referred to the landscape concept plan and considered that there was sufficient space around the proposed building to plant vegetation that will complement the garden character of residential properties surrounding the subject land.

Mr and Ms Katz and Ms Spiegel submitted that there is no proposal for landscaping and foliage along the western boundary of the subject land to soften the hard scaping between the fence and the building's western elevation. Mr and Ms Katz noted that trees previously lined the subject land's western boundary.

Ms Spiegel considered the proposed 3-metre deep front landscaping to not be in keeping with neighbourhood character of "*substantial front yard garden area*".

Mr Kelderman considered that additional landscaping was needed in the 1.68 metre setback area between the proposed building and the subject land's western boundary. He stated:

This would also provide a suitable response to the existing neighbourhood character, otherwise noting that significant landscaping within rear yards is not a key feature of the neighbourhood.

He said that the proposed 1.68 metre setback was sufficient to accommodate both a garden bed along the proposed acoustic fence and a pathway in the other half of the setback area. Mr Kelderman recommended planting which could extend above the fence such as Banksia or other suitable species which match the planting theme shown in the landscape concept plan.

### **Revised draft Permit**

After further discussion with affected parties, the School circulated a revised draft Permit which required, before development starts, a detailed Landscape Plan prepared by a suitably qualified landscape architect to be submitted to the satisfaction of Council. The Plan, which would ultimately become an endorsed plan, would be required to include:

- a survey, including botanical names, of all existing vegetation to be retained
- buildings and trees on neighbouring properties within 3 metres of the boundary
- a planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways
- landscaping and planting within all open space areas of the site
- additional screen planting, comprising a Pittosporum or Lilly Pilly hedge or similar screening species capable of achieving a mature height of 4.5 metres:
  - along the eastern and western boundaries of the subject land
  - along the northern boundary of the subject land and the western boundary of the Early Learning Centre land for the extent of their interface with 2 Helenslea Road.

Council agreed to the landscaping related conditions subject to consolidating them into one location, drafting changes and deleting reference to the western boundary of the Early Learning Centre land for the extent of their interface with 2 Helenslea Road. Council explained that this land is outside the title boundary and beyond the permit's power.

Mr and Ms Spiegel reinforced the need for a landscape architect in their response to the revised draft Permit.

### **(iv) Discussion**

The Panel agrees with Mr and Ms Katz and Ms Spiegel that the proposal, as exhibited, does not adequately soften the hard scaping between the western elevation and the property boundary. It also agrees with Mr Kelderman that vegetation which exceeds the height of the proposed fence should be planted in the area between the proposed building and the western boundary fence.

The Panel agrees with Council that the permit cannot specify conditions beyond the subject land. Such conditions would not be enforceable. The School can continue to plant along the western boundary of the Early Learning Centre without this condition.



#### **(v) Findings and recommendation**

The Panel finds that the proposed development:

- can accommodate sufficient and suitable landscaping
- should be guided by a landscape plan prepared by a suitably qualified professional.

The Panel recommends:

**Amend draft Permit GE/PP31418/2017, as shown in Appendix C, to introduce conditions 2 and 3 related to landscaping.**

### **3.7 Overshadowing**

#### **(i) The issue**

The issue is whether the proposed development will unreasonably overshadow surrounding properties.

#### **(ii) Background**

##### **Clause 54 Standard A14**

Where sunlight to the secluded private open space of an existing dwelling is reduced, then at least 75 percent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3pm on 22 September each year.

If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.

#### **(iii) Evidence and submissions**

Several submissions considered that the proposed development would unreasonably overshadow surrounding properties.

Mr Kelderman stated that the proposed development meets Clause 54.04-5 Standard A14 and will not result in unreasonable overshadowing. He explained that on 22 September:

- for 257 Glen Eira Road:
  - at 9am (worse-case for this property), about 180 square metres or 54 per cent of the rear yard (excluding outbuildings) would have no overshadowing
  - overshadowing is likely to be significantly less by 10am and significantly less again by 11am
- for 259 Glen Eira Road:
  - at 3pm (worse-case for this property), about 244 square metres or 88 per cent of the rear yard (excluding outbuildings) would have no overshadowing
  - overshadowing is likely to be significantly less at 2pm and significantly less again at 1pm.

#### **(iv) Discussion**

Standard A14 specifies the default standard for not unreasonably overshadowing surrounding properties. Having reviewed the shadow diagrams supporting the permit

application, the Panel agrees with Mr Kelderman that the proposed development meets Standard A14 and that it would not unreasonably overshadow surrounding properties.

**(v) Finding**

The Panel finds that the proposed development will not unreasonably overshadow surrounding properties.

### **3.8 Overlooking**

**(i) The issue**

The issue is whether the proposed development will unreasonably overlook surrounding properties.

**(ii) Background**

**Clause 22.02 assessment criteria**

Where overlooking adjoining properties, screening treatment must accord with Clause 54.04-6.

**Clause 54 Standard A15**

A habitable room window, balcony, terrace, deck or patio with a direct view into a habitable room window of existing dwelling within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio should be either:

- offset a minimum of 1.5 metres from the edge of one window to the edge of the other, or
- have sill heights of at least 1.7 metres above floor level, or
- have obscure glazing in any part of the window below 1.7 metres above floor level, or
- have permanently fixed external screens to at least 1.7 metres above floor level and be no more than 25 per cent transparent.

Obscure glazing in any part of the window below 1.7 metres above floor level may be openable provided that there are no direct views as specified in this standard.

Screens used to obscure a view should be:

- perforated panels or trellis with a maximum of 25 per cent openings or solid translucent panels
- permanent, fixed and durable
- designed and coloured to blend in with the development.

This standard does not apply to a new habitable room window, balcony, terrace, deck or patio which faces a property boundary where there is a visual barrier at least 1.8 metres high and the floor level of the habitable room, balcony, terrace, deck or patio is less than 0.8 metres above ground level at the boundary.

**(iii) Evidence and submissions**

Abutting property owners were concerned that the proposed development would enable unreasonable overlooking to their property. They were particularly concerned about potential overlooking from the proposed external stairs and terrace along each side of the building.

Council submitted that the design and layout of the classroom building would ensure that the overlooking on the adjoining properties would not unreasonably reduce amenity. It considered that the 1.7-metre balustrades which screen views from the east and west elevation terraces would minimise overlooking.

Mr Kelderman stated that the proposed development meets Clause 54.04-6 Standard A15 and will not result in unreasonable overlooking. He explained that the first-floor level:

- has no windows on the eastern elevation other than one behind the terrace with the 1.7-metre metal clad screen
- has a 1.7-metre perforated metal balustrade to screen views from the terrace on the western elevation at the top of the stairs
- has windows on the western elevation (other than the one behind the terrace) with sill heights higher than 1.7 metres
- has full height perforated screens on the northern elevation to restrict views to the main School site
- has an oblique view over the internal void from the design technology room, but this is over the roof of the rear garage at the very rear (north-west corner) of 261 Glen Eira Road.

The School relied on Mr Kelderman's evidence that the proposed development meets relevant standards and would not unreasonably overlook abutting properties.

At the Hearing, Mr Katz requested that the proposed 1.7-metre perforated metal balustrade on the western elevation be changed to a solid screen like the one proposed for the eastern elevation. The School agreed to replacing the perforated screen with a solid finish.

As directed by the Panel, the School met with the parties and circulated a revised preferred draft Permit and Council respond with its preferred version. Their proposed changes are show in Table 4.

## Revised draft Permit

**Table 4 The School and Council preferred overlooking related permit conditions**

The School	Council
Require the final plans to be modified to:	
- confirm that all screening of the first-floor windows must be no more than 25 per cent transparent, in accordance with Standard A15 of Clause 54.04-6	- agreed, subject to deleting reference to Standard A15 of Clause 54.04-6 to avoid confusion because the condition duplicates that standard
- delete the terrace at the south-east corner of the first floor	- did not agree because the terrace abuts a driveway which is not a sensitive interface and there will be adequate screening through landscaping and high fencing to protect amenity
- raise the height of any window facing east to at least 1.7 metres above the first-floor level to prevent overlooking into the adjoining property	
- add angled perforated screens to north facing windows at the first-floor level of the void above the student entry to limit overlooking into the property to the east, in accordance with Standard A15 of Clause 54.04-6	- agreed subject to deleting reference to Standard A15 of Clause 54.04-6 to avoid confusion because the condition duplicates that standard
- reduce the western terrace to a landing	- agreed, but did not consider the condition to be necessary
- increase the screen to 2.1 metres and specify a solid finish to prevent any overlooking into the property to the west	

In his written response, Mr Katz agreed to the changes proposed in the revised draft Permit. He added that the School advised him that its architect confirmed that all windows facing west would be at a minimum sill height of 2.1 metres above the first-floor level. Council responded that it upheld the position in its revised version of the draft Permit but agreed that the sill height of the high sill windows on the western elevation could be dimensioned as 2.1 metres.

Mr and Ms Spiegel agreed to the proposed changes subject to removing the east terrace and having a perforated angled screen on the north facing east side 'void window' to block any view into their backyard.

### (iv) Discussion

The exhibited plans and elevations show a concerted effort to prevent unreasonable overlooking to neighbouring properties. They go beyond the extent of overlooking prevention measures normally associated with a dwelling. This is reasonable considering that the proposal will intensify use of the subject land with more potential overlooking opportunities.

The Panel agrees with 1.7 metre solid balustrading on the western terrace because it would entirely remove the ability to overlook the abutting property. This balustrading and the centre's proposed hours of operation remove the need to reduce the western terrace to a

landing or increase the height to 2.1 metres. However, the Panel acknowledges these agreed outcomes and does not oppose them.

The Panel agrees adding angled perforated screens to north facing windows at the first-floor level of the void above the student entry to limit overlooking into the property to the east, as sought by Mr and Ms Spiegel.

The Panel does not consider it necessary to delete the terrace at the south east corner. Unlike the western terrace, the south-eastern terrace would ordinarily have overlooked a driveway. However, the proposed solid 1.7 metre balustrading and landscaping will prevent unreasonable overlooking. For the same reason, the Panel does not support having windows adjacent to this terrace raised to 1.7 metres. The Panel agrees with Council on these matters.

Irrespective, there would be no students or teachers present on weekends or outside restricted weekday hours.

The Panel agrees with the other overlooking related conditions proposed by the School, and agrees with Council that they should simply specify what is sought without referring to Standard A15 of Clause 54.04-6.

#### **(v) Finding and recommendation**

The Panel finds that the proposed development will not unreasonably overlook neighbouring properties if the draft Permit is revised to require the final plans to further limit opportunities for overlooking.

The Panel recommends:

**Amend draft Permit GE/PP31418/2017, as shown in Appendix C, to introduce conditions 1(f), 1(j), 1(k) and 1(l) related to potential overlooking.**

### **3.9 Neighbourhood character**

#### **(i) The issue**

The issue is whether the proposed development aligns with neighbourhood character sought through the Neighbourhood Residential Zone and planning policy, including Clause 22.08 (Minimal Change Area).

#### **(ii) Background**

The Neighbourhood Residential Zone seeks:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise areas of predominantly single and double storey residential development.
- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.

Clause 22.08 applies to all residential development requiring a permit on land in a Neighbourhood Residential Zone which is identified by the policy's Framework Plan as a minimal change area. The subject land is identified as a minimal change area in the

Framework Plan in Clause 22.08, and as having a 'Interwar Garden Suburban Base with modern overbuilding' neighbourhood character in the Neighbourhood Character Areas figure. Clause 22.08 also designates the subject land and its surrounding area as 'St Kilda East – Caulfield North (south of Balaclava)' and provides a detailed description of the prevailing style.

### **(iii) Evidence and submissions**

Several surrounding residents highlighted that the subject land and its surrounding properties were in the Neighbourhood Residential Zone and identified as a minimal change area in local planning policy. Mr Katz submitted that if a proposal sought an exception to Clause 22.08 (Minimal Change Area), it should be overly sensitive and respectful to neighbouring properties. He considered that the proposed education centre was not sensitive nor respectful for reasons expressed throughout his submission.

Council responded that:

It is considered the proposal would not significantly change the character of the neighbourhood. The height, massing and appearance of the classroom building would adequately respect the mixed streetscape character of this part of Glen Eira Road. The building would have adequate front and side setbacks that would be compatible with the built form character of the surrounding residential area which comprises a mixture of building types and architectural styles from a range of eras.

The Hood Crescent campus of Shelford is an established non-residential land use and is one of several non-residential uses in the area and has a noticeable influence on the character of the neighbourhood.

The School acknowledged that the proposed building is non-residential and will change the existing streetscape. It is submitted that the degree of change would not unreasonably disturb the existing built form or neighbourhood character. The School relied on Mr Kelderman's evidence who considered that the proposed building would sit comfortably along that section of Glen Eira Road, between two 'attic' style two-storey detached dwellings.

### **(iv) Discussion**

Strictly speaking, Clause 22.08 does not apply because the permit application does not propose a residential development. However, the Panel has referred to:

- Clause 22.08 to understand how it describes existing neighbourhood character
- Clause 22.02 – the applicable policy for understanding how non-residential developments should respond to preferred character.

The Character 3 Area description in Clause 22.08 accurately describes the character of the Covenant area. The Covenant area is predominantly residential and has a mixed character with a range of development eras, from interwar to contemporary dating from the 1960s onwards. The Covenant, which only requires an affected property to have a dwelling with a roof not made of iron and costing more than 500 pounds, has enabled this transformation. The mixture of interwar and contemporary dwellings comprises single, double and triple storey dwellings with gabled and flat roofs, moderately varying front building setbacks and short and tall front fences constructed with building materials ranging from brick, stone, steel and rendered concrete.

The Panel considers that the area's strongest neighbourhood character is the substantial and uniformly planted street trees which are complimented by established front gardens. A considerable number of properties have tall solid fences that obscure the view to their front garden, however, when viewed as a streetscape, the remaining viewable front yards read as a garden-based neighbourhood. These elements are captured in the Character 3 Area description.

The earlier part of Chapter 3 outlines how the proposed development has been designed and sited to not unreasonably impact on the local amenity of surrounding residents. This has been predominantly achieved by meeting objectives, zone provisions and Clause 54 standards sought through Clause 22.02. The proposed development's careful and sensitive design harmoniously responds to preferred neighbourhood character sought through the relevant zone and local planning policies.

**(v) Finding**

The Panel finds that the proposed development has been sensitively designed to harmoniously respond to neighbourhood character.

### **3.10 Noise, odour and hours of operation**

**(i) The issue**

The issue is whether potential noise associated with the proposed use and development will unreasonably impact on the amenity of neighbouring properties.

**(ii) Background**

#### **Clause 22.02 assessment criteria**

Acoustic treatment and screening should be incorporated into the design to minimise noise impacts associated with car parking, access, indoor/outdoor recreation areas, plant/equipment and/or similar, dependent upon the intensity of use and number of practitioners.

Hours of operation (excluding any ancillary functions or uses):

- Mon-Fri 7.00am to 6.30pm
- Saturdays 8.00am to 6.00pm
- Sundays/Public holidays Closed

These hours may be varied depending on proximity to sensitive residential areas.

#### **Noise impact assessment**

The noise impact assessment prepared by Octave Acoustics, which supported the permit application, states that:

- it has adopted the criteria in State Environment Protection Policy *Control of Noise from Commerce, Industry and Trade No N-1* (SEPP N-1) for the purposes of its assessment
- external plant comprising a kitchen exhaust fan, toilet exhaust fan and air conditioning condensers can meet day and evening SEPP N-1 requirements with minimal acoustic treatment

- incorporating a 1.8-metre high acoustic fence on the subject land's boundary abutting residential land uses to control noise emissions is consistent with Victorian Civil and Administrative Tribunal decisions
- resulting noise impacts will not adversely affect the amenity of the local area.

**(iii) Evidence and submissions**

Several submissions were concerned about the potential noise which the proposed education centre would generate. Ms Spiegel considered that the proposed outdoor chairs and tables which may be used by a portion of the 70 students would increase noise. An abutting resident submitted that pedestrian traffic within metres of her fence would increase noise to an unacceptable level.

The School submitted that no submission criticised or challenged the recommendations of the noise impact assessment.

Mr Kelderman acknowledged that noise is a relevant issue because the outdoor area would enable students to congregate 8am to 5pm, Monday to Friday near three adjoining residential properties. He referred to the noise impact assessment which did not address whether acoustic fencing was needed at the rear of the 2 and 4 Helenslea Road properties. He was unable to comment on whether this should be required because it was not within his area of expertise.

Ms Feldman attached a letter prepared by Dianne Williams of SLR acoustic engineers to her Hearing submission. Ms Williams considered that the outdoor dining area would be 9 decibels higher than the level than specified in the noise impact assessment. She used different approaches to predict that the outdoor dining area would generate between 93 and 102 dBA. The 102 dBA, which Ms Williams described as "*unlikely*" was based on about 80 people in an 80 square-metre beer garden.

In addition to noise, Mr Katz was concerned about odours arising from using the proposed education centre.

As directed by the Panel, the School met with the parties and circulated a revised preferred draft Permit. Council responded with its preferred version. Their proposed changes are show in Table 5. Council considers the 3 metre acoustic fence to be unnecessary but did not oppose it being specified as a permit condition.



## Revised draft Permit

**Table 5 The School and Council preferred noise related permit conditions**

The School	Council
<p>Require the final plans to be modified to:</p> <ul style="list-style-type: none"> <li>- replace the northern boundary fence of the Subject Land and the western boundary fence of the Early Learning Centre for the extent of its abuttal with 2 Helenslea Road with: <ul style="list-style-type: none"> <li>- a sleeper retaining wall of up to 1 metre in height</li> <li>- 2.1 metre wooden fence above, in accordance with Section 6 of the Noise Impact Assessment report prepared by Octave Acoustics dated 9 March 2018, save that the barrier must be not less than 12 kg/sqm at any point</li> <li>- 600 mm of lattice above</li> </ul> </li> <li>- replace the eastern and western boundary fences of the Subject Land with a 3 metre wooden fence above, in accordance with Section 6 of the Noise Impact Assessment report prepared by Octave Acoustics dated 9 March 2018, save that the barrier must be not less than 12 kg/sqm at any point</li> </ul>	<p>Require the final plans to be modified to:</p> <ul style="list-style-type: none"> <li>- replace the northern boundary fence of the Subject Land for the extent of its abuttal with 2 Helenslea Road with a 3 metre high fence in accordance with Section 6 of the Noise Impact Assessment report prepared by Octave Acoustics dated 9 March 2018, but with the barrier to be at least 12 kg/sqm at any point</li> <li>- replace the eastern and western boundary fences of the Subject Land with a 3 metre high fence (except for the front setback where the fence should be 1.8 metres high), in accordance with Section 6 of the Noise Impact Assessment report prepared by Octave Acoustics dated 9 March 2018, but with the barrier to be at least 12 kg/sqm at any point</li> </ul>

### (iv) Discussion

The proposal seeks to restrict the education centre's operating hours to 8am and 5pm during weekdays – well within the hours and days sought through policy. The Panel considers the potential noise impacts in the letter prepared by Ms Williams of SLR to be overstated, especially the figure related to adults consuming alcohol in a beer garden. The Panel prefers the predicted noise level in the noise impact assessment.

The Panel considers that the 1.8 metre acoustic fence specified in the Octave Acoustics report will satisfactorily address potential noise issues. Schools and residential properties co-exist harmoniously in residential areas throughout Melbourne. Large-scale acoustic fences are generally erected next to properties which would otherwise emit unreasonable emissions such as industry or freeways. Additional fence height would be of limited benefit because a 1.8 metre fence would achieve the intended outcomes.

While not necessary, the Panel does not oppose a 3 metre fence, but it suggests that the affected property owners view several examples of what a fence of this scale would look like before it is constructed to ensure that they understand the impact. A fence of this height would potentially add to the visual bulk of the development – an outcome submitters were keen to avoid.

While outside the scope of this matter, the affected property owners should also consider the potential cost implications of having to pay half the cost of a 3 metre acoustic fence at the time when it needs to be replaced.

**(v) Finding and recommendation**

The Panel finds:

- Potential noise associated with the proposed use and development will not unreasonably impact on the amenity of neighbouring properties if an acoustic fence of at least 1.8 metres is constructed along abutting properties.
- A 3 metre fence is not required, however, permit conditions 1(h) and 1(i) should be worded so that this option is not excluded.

The Panel recommends:

**Amend draft Permit GE/PP31418/2017, as shown in Appendix C, to introduce conditions 1(h) and 1(i) related to potential noise.**

### **3.11 Neighbourhood character and amenity conclusion**

The Panel concludes that using and developing the subject land, as proposed by the exhibited permit application and subject to the Panel's recommendations, reasonably responds to potential neighbourhood character and amenity issues.

## **4 Other issues**

### **4.1 Traffic and parking**

#### **(i) The issue**

The issue is whether the proposed use reasonably responds to traffic and parking.

#### **(ii) Background**

The exhibited draft Permit includes a permit condition which requires 14 bicycle parking spaces, no car parking spaces, and the existing crossover to be restricted to emergency vehicles only with appropriate signage.

The standard requirement for an education is:

- 0.4 car parking spaces to each student that is part of the maximum number of students on the site at any time (Clause 52.06 of the Planning Scheme)
- one bicycle to each 20 employees and one bicycle to each 20 full-time students (Clause 52.34).

A permit is required to reduce (including to zero) the standard requirement.

#### **(iii) Traffic impact assessment**

The traffic impact assessment, which supported the permit application, acknowledged that Shelford Girls' Grammar would not increase its existing student or staff numbers. On that basis, it states that:

- it is appropriate to not provide:
  - the nine car parking spaces required by Clause 52.06
  - the five bicycle parking spaces required by Clause 52.34
- the proposed development is not expected to have a material impact on the road operation or public safety.

#### **(iv) Evidence and submissions**

Five of the seven objecting submissions were concerned about the potential for the proposed education centre to increase traffic and parking. For example, Mr and Ms Kennett submitted:

Our traffic flow from Shelford School is quite horrendous and even though this property is in Glen Eira Road, we feel that the turn-around traffic would definitely affect us. At the moment, it's extremely difficult to pull out of our driveway in the mornings and afternoons.

At the Hearing, Mr and Ms Lewis confirmed that they experienced similar circumstances. Mr and Ms Katz were concerned about traffic congestion and on-street parking impacts on Glen Eira Road residents resulting from students, parents and staff using the proposed development as an access point to the school.

The School submitted that the proposed education centre would not increase traffic or parking impacts. It referred to the permit application which confirms that student and staff numbers would not increase. It also referred to the Traffic Report which concluded that:

- changing an existing cross-over from residential use to one reserved for emergency vehicles would actually reduce traffic to the subject land
- it is appropriate not to provide onsite car and bicycle parking.

Mr Kelderman stated that, based on the traffic impact assessment, he did not envisage the proposed use would have a notable impact on local amenity.

The School submitted that submitter concern about parking related to *“existing school operations and are typical of the access management issues that are generally associated with schools within residential areas across Melbourne.”* It noted that several submitters resided *“some distance”* north of the subject land. The School added:

Towards proactively managing these issues the School undertakes regular consultation with residents to identify strategies to manage ongoing access and School operational issues.

#### **(v) Discussion**

The Panel agrees with the traffic impact assessment that the proposed development is not expected to have material impact on the road operation or public safety. The proposal activates Clauses 52.06 and 52.34 because the subject land is adding new classroom space with 70 students and 8 staff to land previously used for residential purposes. However, when considering that Shelford Girls’ Grammar proposes to have students and teachers from its existing campus use the new education centre, the proposed use and development will not generate demand for new car parking. The Panel acknowledges that ordinarily, the new entrance may encourage student drop offs and pickups in front of the subject land. However, there are restrictions along this section of Glen Eira Road during morning and afternoon school drop off and pick up times.

#### **(vi) Findings**

The Panel finds:

- The proposed use will respond reasonably to traffic and parking because it will reduce existing traffic accessing the subject land and not generate new demand for car or bicycle parking.
- While not needed, the subject land would benefit from 14 additional bicycle parking spaces, as specified in exhibited draft Permit condition 1(e).

## **4.2 Sign**

### **(i) The issue**

The issue is whether the proposed sign is appropriate and whether its expiry date on the permit should be 30 years rather than the exhibited 15 years.

**(ii) Background**

The permit application proposes a sign measuring 2 by 2 metres in the form of the school logo on a wall at the front entrance which is perpendicular to Glen Eira Road. Clause 22.02-6 (Advertising signage) seeks to allow adequate and appropriate signage. Clause 32.09-14 of the Neighbourhood Residential Zone refers to the Sign requirements at Clause 52.05 and categorises the zone as Category 3 (High amenity areas). Clause 52.05 requires a permit to construct or display a sign. It requires that:

A permit for a sign that includes an expiry date must include a condition that provides that on expiry of the permit the sign and structures built specifically to support and illuminate it must be removed.

The draft Permit specifies a 15-year expiry date for the sign.

**(iii) Evidence and submissions**

Mr Kelderman stated that the 15-year timeframe on the draft Permit is unnecessary and unfounded. He added:

In my experience, a 15-year timeframe is typically applied to major promotion signs; not a small innocuous sign such as this that is associated with a school. Even then under Clause 52.05-9, it is possible for a permit to be granted for up to 25 years to display a major promotion sign.

He saw no reason for the School to have to apply for a permit to extend the sign for a further 15 years. He recommended that condition 19 be changed to enable a 30-year timeframe for the advertising sign.

Council subsequently agreed to extend the expiry date to 30 years. This was reflected in the School and Council preferred versions of the draft Permit.

**(iv) Discussion**

The Panel accepts Mr Kelderman's evidence on this matter and agrees with the revised preferred version of the permit. Expiry dates are appropriate for major promotion signs because of their scale and significant consumption of space. Over time, the land they are on may be designated within a strategic redevelopment area through new planning policy. In this circumstance, it is unlikely the permit would be extended. None of these circumstances apply for the subject land.

**(v) Finding and recommendation**

The Panel finds that a 30 year expiry date for the proposed sign is more appropriate, as it reflects its discreet location, relatively small scale and purpose.

The Panel recommends:

**Amend draft Permit GE/PP31418/2017, as shown in Appendix C, to extend the expiry date for the advertising sign from 15 years to 30 years.**

## 4.3 Master plan and location

### (i) The issue

The issue is whether master planning and alternative locations are within the scope of the Amendment.

### (ii) Evidence and submissions

The School submitted that it had no further expansion plans beyond the exhibited proposal.

No submission to the exhibited combined application requested that a master plan be prepared for Shelford Girls' Grammar school or that the Amendment and permit not progress until a master plan is prepared.

Mr Livingston referred to the overview in Clause 21.08 which comments about institutions growing over time and the need to develop master plans. Mr and Ms Katz's original submission noted a Clause 21.08 objective which seeks to "*ensure community awareness and input into the long term expansion plans of large institutions in residential areas.*" They submitted that they were not aware of any consultation regarding the School's expansion plans to expand into the subject land or otherwise.

Mr Livingston also referred to Clause 22.02-2 which states that it is policy to, among other things:

- Encourage the location of non-residential uses in "preferred locations" including main or secondary roads and on corner sites with vehicular access from a service or side road (see map on page 2 of policy for locations of main and secondary roads in Glen Eira).
- Consider other locations where it can be demonstrated that residential amenity will not be unreasonably compromised.

While not in Ms Spiegel's original submission, Mr Livingston submitted:

The policy also includes a map and it is evident that the site is on a main road, which provides a 'tick' for the proposal, but it's not the only consideration.

Interestingly, the policy asks applicants to consider 'other locations'. Going through the submission so far, including Mr Kelderman's evidence, there is no analysis of 'other locations'.

Based on his submission about Clauses 21.08 and 22.02, Mr Livingston submitted:

Before one considers whether it is acceptable to allow the school to extend a finger of development beyond the current boundaries to in between two existing dwellings and removing one in the process. We say it is important to look at what opportunities exist with the current site, whether there's a more logical site, as opposed to one that fragments the residential streetscape along Glen Eira Road.

And its clear that site, which does not have a Master Plan approved by council has not done this exercise, as required to by policy.

From this what is clear is that although a planning permit can be granted for the proposal, given the absence of compliance with councils own policy framework for the site, a permit ought not be granted, on policy grounds alone.

Mr Kelderman stated that while master plans are generally sought for private schools, it was not needed for Shelford Girls' Grammar because they had no expansion plans envisaged in

the foreseeable future. He added that the combined Amendment and permit process has enabled the proposal to be assessed on its merits.

In its closing submission, the School said that the proposal represents a small and orderly expansion involving only one land holding. A master plan is not warranted because proper regard has been had to the subject land's context.

### **(iii) Discussion**

#### **Location**

The first of the five policies in Clause 22.02-2 is the only one which encourages a certain action. Through this policy, Council encourages the proposed education centre to locate in a preferred location such as a main road. The subject land is on a main road. Clause 22.02-2 also discourages a non-residential use such as the education centre from locating on local streets, presumably so that residential amenity in those more sensitive locations are not unreasonably compromised.

Through its second policy, Council will consider a non-residential use in a non-preferred location where it can be demonstrated that residential amenity will not be unreasonably compromised. As the subject land is in a preferred location (not an 'other location'), the second policy does not apply. For this reason, the Panel does not agree with Mr Livingston's interpretation that there is a need for an analysis of other locations.

The Panel considers that Mr Livingston's submission is largely overstated. The Panel does not accept that the proposed education centre, which has been thoughtfully designed to sensitively integrated itself into its surrounding context, will fragment the residential streetscape.

The Amendment and permit application specify that the land being considered is 259 Glen Eira Road – the subject land. It is not the role of the Panel to consider or recommend alternative sites. The Panel has considered the Amendment and permit on the merits of the proposal on the subject land.

#### **Master plan**

The Panel was somewhat surprised that Mr Livingston considered that his submission regarding a master plan reflected issues raised in Ms Spiegel's original submission. There is no mention of the need for a master plan in Mr Spiegel's original submission.

The Clause 21.08 overview is just that – an overview. The relevant strategy encourages the development of master plans involving community consultation. Mr Livingston considers that Council has not "*complied*" with their policy framework and is requesting that the permit not be granted on policy grounds alone. The Panel does not agree with Mr Livingston's interpretation of how the planning policy framework operates.

The Panel agrees with submitters to the extent that a master plan can benefit a school. A master plan generally provides an opportunity to consider potential future issues and solutions.

However, the Panel was persuaded that a master plan is needed to inform the School's expansion into the subject land – a standard residential property. The combined application,

its many supporting reports, and the Panel process, have provided comprehensive insight and context. The Panel therefore finds no reason to stall the Amendment and permit until a master plan has been prepared for Shelford Girls' Grammar.

**(iv) Finding**

The Panel finds that master planning and alternative locations are not within the scope of the Amendment.

## **4.4 Security**

**(i) The issue**

The issue is whether the proposed use and development will negatively affect the security of individual properties and the street.

**(ii) Submissions**

Three submissions were concerned that the proposed use and development would negatively affect the security of individual properties and the street. Two of the submitters resided about 170 and 180 metres from the subject land respectively, separated by the existing school and another residential property. At the Hearing, one of these two submitters confirmed that they had a general concern, but they personally would not be affected.

An abutting resident considered that the increasing pedestrian traffic within a few metres of her fence would increase access to the rear of her property.

### **Revised draft Permit**

After further discussion with affected parties, the School circulated a revised draft Permit which required the final plans to be modified to show security gates of at least 1.8 metres between the new building and the eastern and western boundaries. The permit also required that the gates be locked after operating, cleaning, maintenance and administration hours to prevent access from Glen Eira Road through the subject land to the School.

Council agreed to the security gate but did not support requiring it to be locked after school hours to prevent access. It explained that the condition would be difficult to enforce.

**(iii) Discussion**

No submitter provided information which demonstrated how the proposed education centre would negatively affect security in the street.

The Panel does not consider that the proposed use and development will affect the two submitters located between 170 and 180 metres from the subject land. Regarding the abutting resident concerned about security, there is an existing playground located next to the same fence where increased pedestrian traffic is proposed. The playground provides some passive surveillance which would deter potential trespassers. The proposed education centre would increase passive surveillance through:

- the new pedestrian walkway and outdoor dining area



- the first-floor windows of the proposed education centre through their restricted views across the subject land and existing school site.

That said, the School and adjoining residents would benefit from security gates which restrict access from Glen Eira Road outside operating hours. The Panel agrees with Council that specifying when the gates should be locked would be difficult to enforce. The Panel considers that the School is best placed to decide when the gates should be locked.

**(iv) Findings and recommendation**

The Panel finds:

- Increased passive surveillance resulting from the proposed use and development may potentially improve the security of individual properties and the street during operating hours.
- Requiring security gates to restrict access from Glen Eira Road would improve security outside operating hours.
- The School is best placed to decide when the gates should be locked.

The Panel recommends:

**Amend draft Permit GE/PP31418/2017, as shown in Appendix C, to introduce condition 1(g) which requires plans to show 1.8 metre security gates on the east and west side of the building.**

## 5 The Covenant variation

### 5.1 The issue

The Amendment proposes to vary the Covenant to allow the subject land to be used and developed generally in accordance with planning permit GE/PP-31418/2017. The issue is whether it is appropriate and justified to vary the Covenant in this way.

### 5.2 Background

As outlined in Chapter 2.5, the Panel has applied the following four principles for assessing a proposal to vary a covenant, derived from Mornington Peninsula PSA C46 [2004] PPV:

- Principle 1: Will the amendment further the objectives of planning in Victoria?
- Principle 2: Have the interests of affected parties, including the beneficiaries of the Covenant, been considered?
- Principle 3: Will the proposed use and development comply with the Planning Scheme?
- Principle 4: When balancing policy objectives, will there be net community benefit and sustainable development?

In terms of Principle 3, the relevant decision guidelines in the Neighbourhood Residential Zone and NRZ1 require the Responsible Authority to consider:

- the Planning Policy Framework
- the purpose of the zone
- in the local neighbourhood context:
  - whether the use or development is compatible with residential use
  - whether the use generally serves local community needs
  - the scale and intensity of the use and development
  - the design, height, setback and appearance of the proposed buildings and works
  - the proposed landscaping
  - the provision of car and bicycle parking and associated accessways
  - any proposed loading and refuse collection facilities
  - the safety, efficiency and amenity effects of traffic to be generated by the proposal
- opportunities to avoid a building being visually obtrusive, particularly for developments with overall building heights taller than 8 metres
- the layout and appearance of areas set aside for access and loading and unloading.

Relevant to Principles 3 and 4, Clause 71.02-3 (Integrated decision making) of the Planning Scheme requires the proposal to be assessed against the principles of net community benefit and sustainable development.

### 5.3 Evidence and submissions

Submitters objected to the Covenant being varied because it has applied to the estate for 98 years and has protected the area's single dwelling character. They explained that they purchased their properties knowing that the Covenant existed and that it would protect the

character and prevent inappropriate development. They highlighted that the School was also aware of the Covenant when it purchased the subject land.

Submitters were concerned that varying the Covenant would set a precedent and weaken the Covenant's ability to limit development and protect the area's character. For example, Ms Lewis submitted:

The application seeks to make a fundamental change to the urban residential landscape of the area covered by the covenant. The purpose of the 98 year old covenant was – and still is – to protect the owners from development which would change the urban landscape.

Mr and Ms Laragy submitted:

Without this Covenant it is highly likely that commercial and multi-unit development will gradually take over the area.

**(i) Principle 1: Will the amendment further the objectives of planning in Victoria?**

Council and the School submitted that Principle 1 has been met.

Council submitted that there is sufficient strategic justification to vary the Covenant. It explained that the Amendment will meet the objectives of planning in Victoria because:

- it is consistent with the principles of orderly and proper planning to vary a covenant that is no longer consistent with the desired planning outcomes for the subject land in the Planning Scheme
- the Covenant would unreasonably limit the use and development of the subject land for an education facility which Council has assessed on its planning merits
- it would further the objectives of planning in Victoria and provide a net community benefit.

The School submitted that the proposed education centre would offer significant benefits to the School's operation and its ability to accommodate its existing curriculum. It considered that the centre clearly supports the objectives of the Act and the Planning Policy Framework by "*consolidating and enhancing the educational infrastructure of an established, thriving and well-located school*".

**(ii) Principle 2: Have the interests of affected parties, including the beneficiaries of the Covenant, been considered?**

Council and the School submitted that Principle 2 has been met.

Council submitted that it comprehensively considered and responded to the interests of affected parties and beneficiaries. It explained that the key concerns of submitters were considered through the exhibition and panel process, including in Hearing submissions and throughout the Hearing (as reflected in this report). Council added that its assessment of the draft permit demonstrates that varying the Covenant will allow a building that does not have any unreasonable amenity impacts and is significantly similar to the built form of a single dwelling.

The School submitted:

When read as a whole, the purpose of the Covenant is to establish and maintain a residential estate, to be characterised by substantial, higher quality dwellings.

Having regard to this purpose and the benefits which the Covenant offers to the beneficiaries, it is clear that the Amendment would allow some departure from the outcomes sought to be achieved.

The School considered that the proposed development would maintain the physical character and amenity of the buildings which the Covenant seeks to achieve. It added that the proposed building:

- will not present as a “private dwelling”, however its scale and quality of presentation will not differ significantly
- will be an improvement to the existing dwelling in many respects
- will be smaller than some surrounding dwellings.

The School submitted that the proposed building would not generate more built form or amenity impacts than a new ResCode (Clause 54) compliant dwelling which could be established on the subject land without a planning permit. It added:

... even if it could be established that disbenefits will flow to beneficiaries as a consequence of the proposed breach, they do not differ in any objective sense from what could be generated by a single dwelling that complies with its terms. Indeed, as the evidence of Mr Kelderman and the assessment of Council officers show, the amenity impacts of a single dwelling constructed without a permit could well be greater than those generated by the proposed building.

**(iii) Principle 3: Will the proposed use and development comply with the Planning Scheme?**

Council and the School submitted that Principle 3 has been met. It submitted that using and developing the subject land for an education centre:

- meets the purpose of the Neighbourhood Residential Zone Schedule 1
- is appropriate in the zoning and neighbourhood character context, given it is located adjacent to the existing School and on a main road.

Council added that:

The built form and design of the proposed building complies with the height, rear setback, site coverage and permeability standards for a dwelling or residential building in this zone.

Council noted that no planning permit would be needed to use and develop the land for a two-storey dwelling.

Relying on Mr Kelderman’s evidence, the School concluded that the proposed development is strongly supported by policy and objectives of the Neighbourhood Residential Zone and “*demonstrates an excellent level of compliance with all relevant and accepted amenity standards*”.

**(iv) Principle 4: When balancing policy objectives, will there be net community benefit and sustainable development?**

Council and the School submitted that Principle 4 has been met.

Council submitted that when considering the policy context of the area and the proposed built form, on balance, the Amendment proposes a net community benefit. It added:

Shelford Girls Grammar School is an important community asset and its expansion is supported in State and local planning policy objectives which identify education facilities as being appropriate in suitable locations. Given that the amendment is combined with a planning permit application, Council considers that there is certainty about the proposed building and assurance that amenity impacts to adjoining properties and the surrounding neighbourhood (including areas outside of the extent of the covenant) are mitigated.

and

The amendment is expected to have positive economic and social effects by enhancing the ability of the school to facilitate the further expansion of a curriculum that specifically promotes STEAM (Science, Technology, Engineering, Arts and Mathematics).

The proposed site is an efficient and effective use of existing infrastructure given it adjoins the main school premises. It is located on a main road close to public transport and other facilities in the community thereby making more efficient use of nearby infrastructure.

The amendment is not expected to have any significant impacts on the environment.

The School acknowledged that the proposed development would introduce changes to the subject land which may have some impact on abutting or neighbouring properties. It submitted that some of these impacts may flow from the proposed variation to the Covenant and added:

However, having regard to the Subject Land's physical and strategic context, it is submitted that these impacts are entirely consistent with community expectations. The Victorian community values conveniently located, high quality educational facilities and expects that schools can establish and grow within existing residential communities in an orderly and proper manner.

In the present case, the scale and intensity of the proposed building are also entirely consistent with accepted amenity standards and permit conditions will ensure that its ongoing use is managed in an orderly and respectful manner.

The School submitted that, when balancing the various policy objectives and the interest of beneficiaries, the Amendment and proposed development will provide a net community benefit.

Mr Livingston submitted that there would be no net community benefit resulting from varying the Covenant to allow an education centre. He said:

But here we have a private Anglican school, in a suburb recognisable for its high Jewish population, with a school body that is restricted to girls only, and with year 12 fees in the vicinity of \$28,000 a year.

He submitted that a more direct net community benefit is needed because the proposal is *"going against the tide"* by a varying a covenant. He considered any community benefit from the proposal to be distant and indirect.

The School responded that the Planning Scheme does not differentiate schools by private or public sector, gender or religion.

## 5.4 Discussion

### **Principle 1: Does the Amendment further the objectives of planning in Victoria?**

The Panel agrees with Council and the School that the Amendment will further the objectives of planning in Victoria for reasons outlined in their submissions and in this report. It will provide for the fair, orderly, economic and sustainable use and development of the subject land. Specifically, and in line with local planning policy, the School has directed the proposed education centre to the main road and away from surrounding local streets. The subject land forms part of the existing School site, which is preferable to locating its facilities sporadically in isolated locations throughout the broader area. This aligns with orderly and sustainable planning.

The Panel agrees with the School that, from a policy and planning response perspective, the Planning Scheme does not differentiate between public and private schools. State policy at Clause 19 directs planning to recognise social needs by providing land for, among other things, education facilities. It adds:

Providers of infrastructure, whether public or private bodies, are to be guided by planning policies and should assist strategic land use planning.

Clause 21.01-1 highlights that *“Many of Melbourne’s best private schools are located in Glen Eira”*. Enabling Shelford Girls’ Grammar to improve its educational program in an accessible location will balance the interest of present and future generations.

### **Principle 2: Have the interests of affected parties, including the beneficiaries of the Covenant been considered?**

Council contacted all affected parties and provided them with an opportunity to express their views. The Panel considers that Shelford Girls’ Grammar has gone to considerable lengths to consider the interests of all affected parties – well beyond the seven submitters who took up the opportunity. The proposed education centre’s built form, colours and materials will integrate harmoniously within its residential environs which addresses many concerns about neighbourhood character.

The exhibited and revised draft Permit have considered the interests of affected parties, including beneficiaries of the Covenant who did not participate in the Amendment process. While the exhibited version of the draft Permit was satisfactory, the revised version in Appendix B considers the interests of affected parties beyond what would normally be afforded to residents with properties outside a covenant area. It is for this reason the Panel has applied greater scrutiny to this proposal than a permit application for land without a covenant.

The Panel empathises with residents who purchased their property on their understanding that the Covenant would exist on all affected properties indefinitely. However, in Victoria, there are multiple ways to apply to vary or remove an existing covenant for different reasons. These range from its restrictions no longer being applicable through to the restrictions no longer aligning with modern community aspirations. All available processes comprehensively assess each proposal on their own individual merits. These processes do not enable the School’s covenant variation to establish a precedent for future variations.

Irrespective, there have been several previous variations, therefore the School's proposal could not be regarded as a precedent case.

**Principle 3: Will the use and development comply with the Planning Scheme?**

For reasons outlined in Chapters 3 and 4 of this report, the Panel considers that the proposed use and development will comply with the Planning Scheme. Notably, the School could have sought approval to vary one or more of the standards in Clause 54 of the Planning Scheme and continued to have complied. This is commonly requested for dwelling proposals which are subject to this clause.

The School opted to apply the default standards to propose a more conservative building. This is more stringent than the standards that would apply to a dwelling proposed in the Covenant area which would not be subject to a planning permit or third-party objections.

The Neighbourhood Residential Zone seeks to allow educational uses to serve local community needs in appropriate locations subject to a permit. The Panel has already determined that planning policy encourages such a use on a main road location.

**Principle 4: When balancing policy objectives, will there be net community benefit and sustainable development?**

The Panel considers that, when considering the policy context and the proposed built form, on balance, the Amendment proposes a net community benefit. The only key potential conflict appears to be policy seeking increasing housing and policy seeking educational facilities in appropriate locations. The net community benefit of educating existing students in a specialist teaching stream far outweighs the loss of one dwelling which can be replaced through redevelopment of other land in Caulfield. Expanding the existing school site to accommodate the education centre will result in a sustainable development outcome.

## **5.5 Conclusions and recommendation**

The Panel concludes:

- The Amendment is strategically justified and supported by the relevant sections of the Planning Policy Framework.
- It is appropriate and justified to vary the Covenant.

The Panel recommends:

**The Panel recommends that Glen Eira Planning Scheme Amendment C181glen be adopted as exhibited.**

## Appendix A Procedural matters

### A1 Notice

Additional notice requirements apply to an amendment that authorises the variation or removal of a restrictive covenant. Notice must include:

- owners and occupiers of land that may be materially affected by the amendment
- direct notification of all benefitting landowners and occupiers
- signs placed on the land.

The authorisation for the Amendment was subject to a condition that Council complied with these notice obligations.

At the Directions Hearing, Mr Belleli expressed some doubt as to whether all of the beneficiaries of the Covenant had received notice of the Amendment. The Panel directed Council to provide material (including a plan) identifying the land benefitting from the Covenant, and confirmation that Council has met its notification obligations under the Act.

Council confirmed that it directly notified all beneficiaries of the Covenant, as well as the two properties directly opposite the subject land on Glen Eira Road. Council provided photographic evidence (Document 1) of the sign displayed on the subject land.

The Panel is satisfied that Council has met its notice obligations and complied with the conditions of authorisation.

### A2 Addition of parties

The Panel received requests from two additional submitters to be joined as parties after the Directions Hearing:

- Nicole Spiegel represented by Mr Spiegel, received on 12 April 2019
- Lynne Lewis represented by Mr Lewis, received on 24 April 2019.

The Panel granted both requests. Ms Spiegel was joined as a party on 18 April 2019 and Ms Lewis was joined as a party on 30 April 2019.

### A3 Adjournment

#### The requests and submissions

Shortly before the Hearing commenced on 30 April 2019, the Panel received two requests to adjourn the Hearing:

- from Mr Spiegel on behalf of Ms Spiegel, received on 18 April 2019 (Document 2)
- from Mr Lewis on behalf of Ms Lewis, received on 24 April 2019 (Document 6).

The Panel circulated these requests to all parties on 23 and 24 April 2019 respectively, indicating that the requests would be dealt with as a preliminary matter at the start of the Hearing.

When the Hearing commenced, the Panel invited submissions from all parties on the adjournment requests. All parties other than the School either supported or did not oppose the requests.



Mr Spiegel supported his application on the following grounds:

- as a lay person it was imperative, and his right, to be represented at the Hearing
- he received notice from Planning Panels Victoria about the Directions Hearing on 29 March 2019, the Friday before the Directions Hearing (which took place on Monday 1 April 2019)
- he did not submit a Request to be Heard form and did not attend the Directions Hearing (it was unclear why), and therefore he received no further notice of the process from Planning Panels Victoria
- he did not appreciate the significance of either the Request to be Heard form or the Directions Hearing
- he had spoken to an urban planner and a barrister approximately three to four weeks before the start of the Hearing (it was unclear exactly when), but had not engaged either
- he did not engage the urban planner because the planner indicated he would need at least six weeks to prepare an expert witness report.

Mr Lewis supported his application on the following grounds:

- he was in hospital at the time he received notice from Planning Panels Victoria about the Directions Hearing, and then spent some time recovering – he did not check his mail during this time
- he did not submit a Request to be Heard Form, and received no further notifications from Planning Panels Victoria about the process
- he only became aware of the Hearing when a neighbour asked him on 23 April 2019 if he was attending
- by that stage, a neighbour provided him with a copy of Council's Part A Submission and Mr Kelderman's expert witness statement
- he had insufficient time to absorb the materials, which were technical in nature, and decide about his participation in the Hearing, including whether to engage representation or expert assistance
- he expected to have been more proactively informed about the Panel process, as the School and Council both knew he and his wife objected strongly to the proposal.

Other parties supported the adjournment requests on the following grounds:

- Mr Katz noted that he and Mr Spiegel, as direct neighbours of the subject land, were uniquely affected by the proposal. An adjournment would be the only fair and equitable way forward, recognising the interests of Mr Lewis and in particular Mr Spiegel.
- Mr Belleli indicated that it would be helpful to the Panel to hear from an expert for the submitters, as well as an expert for the School.

Mr Natoli opposed the adjournment on the following grounds:

- While the School acknowledged the Panel's obligation to afford natural justice and a fair process to all parties, and the rights of Mr Spiegel and Mr Lewis to be heard, procedural fairness also involves a right for the School to not have the Hearing unreasonably delayed.

- An adjournment was not necessary in order to afford natural justice to Mr Spiegel and Mr Lewis.
- The Hearing provides them with the opportunity to test the School's evidence through cross examination, and the opportunity to make submissions against the proposal.
- The Amendment was exhibited in late 2018 with notice of the pre-set dates, which indicated that the Hearing was to commence in week of 22 April 2019.
- All submitters had been engaged in the process since that time – some earlier – and had a reasonable opportunity to engage expert assistance or advice.
- The Council resolution in February 2019, where Council resolved to refer submissions to a panel, effectively provided further notice to submitters of the panel process.
- At least one of the submitters, Mr Belleli, is a lawyer who is presumably experienced in engaging experts and should know how long to allow.
- It was unclear why the requests for adjournment were not filed earlier.
- Mr Spiegel had provided no documentary evidence of his attempts to engage an expert or representation, indicating who he had approached, or when.
- In the absence of evidence to the contrary from Mr Spiegel, it was reasonable to infer that he had been unable to secure an expert who would support his case.
- Mr Kelderman's evidence is that the proposal complies substantially with the standards for residential development – these are objective measures, and it is difficult to see how another expert could conclude differently.
- Any evidence to be called by Mr Lewis would not likely assist the Panel because his property is located some distance from the subject land and he will not be directly affected by matters such as overlooking and overshadowing.
- The School had filed and served its evidence in accordance with the Panel's directions. If the Hearing is adjourned, the School's interests would be prejudiced because opposing parties would have two or more months to consider and respond to the School's evidence.
- While acknowledging that the timeframes for the Panel process were somewhat challenging, the School had managed to retain Mr Kelderman after the Directions Hearing when it became clear that its original expert, Mr Glossop, would not be available. If the School had sufficient time after the Directions Hearing to engage an alternative expert, so should the other parties.

## **Discussion**

The primary principle guiding the Panel in making its determination was the rule of natural justice. A Panel is required to ensure that all matters on which a decision will be based are revealed to all parties, and that all parties are given a reasonable opportunity to be heard.

A decision on whether or not to adjourn the Hearing required a balance between the interests of the submitters to present their cases opposing the proposal with the benefit of expert evidence or advice, and the interests of the School to have the matter resolved. Other considerations included the Panel's responsibility to assist in meeting the timeframes set out in Ministerial Direction 15 and to ensure its role in operating an efficient planning system.

The Panel considered the prejudice that may be suffered by the School if the matter was further delayed (through no fault of the school), and the prejudice that may be suffered by the submitters in potentially being denied the opportunity to put their most effective case to the Panel.

The Panel was not satisfied that Mr Spiegel acted as promptly as he could have on becoming aware that the Hearing was progressing and on requesting an adjournment. That said, the one month between the Directions Hearing and the Hearing included the Easter holidays and Anzac Day. The Panel accepted that this may have made it more difficult for the submitters to retain an expert witness or representation in time for the Hearing.

The Panel accepted that Mr Spiegel was in a somewhat unique position as a direct neighbour of the subject land. He and Ms Spiegel will be among the most impacted by the proposal, and they may have been prejudiced without the opportunity to put their case to the Panel with representation, expert evidence or advice.

Mr Lewis provided sound reasons as to why he was not aware that the Hearing was occurring and why he had not had sufficient time to prepare.

The Panel determined an adjournment of the Hearing was justified to best balance the competing interests of the parties, and to ensure that all parties were afforded natural justice and a reasonable opportunity to be heard.

### **Outcome**

The Panel determined to allow an adjournment.

## **A4 Acoustic report supporting Ms Feldman's submission**

### **Background and submissions**

Dr Feldman, representing Ms Feldman, originally sought 15 minutes for to be heard at the Hearing. Following the Hearing being deferred to 24 June 2019, he advised that may not be able to attend. The Panel:

- provided any party who cannot attend with the opportunity to make a further written submission by 21 June 2019
- directed that a party intending to call an expert witness notify parties of each expert's name and field of expertise by 28 May 2019.

On 7 June 2019, Dr Feldman contacted Planning Panels Victoria to:

- advise that Joanne Lardner of Counsel would be representing Ms Feldman at the Hearing
- advise that he was intending to call acoustic engineering evidence from Dianne Williams
- request 1.5 hours for Ms Lardner to present at the Hearing.

The Panel informed parties of these proposed changes through a revised directions letter on 13 June 2019. On 14 June 2019, Mr Natoli emailed Planning Panels Victoria and all parties to state:

- it is unfair that Dr Feldman provided no previous notice to call expert evidence and only requested 15 minutes to make a submission on behalf of Ms Feldman

- the Panel's direction to notify parties of any expert witness by 28 May 2019 was not met
- Ms Feldman's submission briefly raises noise as an issue without specific allegations or submissions about the inadequacy or otherwise of the noise assessment that accompanied the permit application
- the Panel adjourned the Hearing so that the Spiegels could engage an expert planning witness and so Mr Lewis (a new party) could prepare for the Hearing
- no directions were made anticipating that other parties would call evidence from other expert witnesses
- had proper notice had been given from when requests to be heard were filed, the School would have made further submission related to scheduling and timing of reports
- the School may have sought directions to require the noise experts to meet and identify matters not in dispute to assist the Panel
- for these reasons, the Panel should not read Ms Williams' evidence until the issues is considered as a preliminary matter at the Hearing
- should the Panel decide to accept Ms Williams' evidence, the School would seek to file and serve expert noise evidence by the specified due date for expert evidence.

On the same day, the Panel directed that Dr Feldman and the School not circulate any acoustic engineering evidence until further directions on Monday. Dr Feldman emailed a response to Planning Panels Victoria and the School which stated, among other things:

Given Andrew Natoli's concerns and the time constraints however, I will not be proceeding with preparation of acoustic engineering evidence.

The Panel emailed all parties on 17 June 2019 to inform them that, given that no acoustic engineering evidence will be circulated, it would make no further directions on this matter.

On 21 June 2019, Dr Feldman circulated his written submission, prepared by Joanne Lardner of Counsel, to all parties. It included a report title *Shelford Girls Grammar Consideration of Voice Noise Impacts* which he described as "*Expert Report prepared by Dianne Williams of SLR Consulting Australia Pty Ltd*".

At the beginning of the Hearing and in its written submission, the School submitted:

The SLR advice was attached to the submission despite the Panel earlier directing the parties not to circulate any expert acoustic evidence and this party agreeing not to do so. It is submitted that the conduct of this party in seeking to rely on the SLR [report] is unfair and the Panel should not give this advice any weight in assessing acoustic issues.

## **Discussion**

In its letter to submitters dated 21 March 2019, the Panel stated:

An expert witness gives evidence in a field of expertise. They are required to circulate Expert Witness Reports before the Hearing, and may be subject to cross examination at the Hearing.

You need to state on the Request to be Heard Form whether you will be calling expert evidence. If evidence is being called, the Panel will make directions about the exchange of expert reports. These reports will need to be circulated at least five working days before the Hearing or as directed by the Panel.

All parties were required to disclose information relating to their case before the Directions Hearing so that they could be discussed at the Directions Hearing. During the Directions Hearing, each party had the opportunity to vary its request and seek to call additional expert witnesses after being informed about what others are proposing. A party is responsible for preparing its own case based on its original submission irrespective of how others prepare their case. However, the Panel agrees with the School that early notice would enable it to make relevant directions such as requesting experts with similar expertise to meet and prepare a report.

Where a party has not sufficiently prepared itself to disclose expert witness details at the Directions Hearing, the Panel generally sets a deadline for all parties to provide this information. The Panel made such a direction to enable a fair process for all participants in the process.

A party that does not follow the Panel's direction can give themselves an advantage above others. Relevantly, the Act states:

The panel may refuse to hear any person who fails to comply with (a) a direction of the panel; or (b) a direction of the directions panel. [section 159]

A person who – ... (e) without lawful excuse disobeys a direction of a panel – is guilty of an offence. [section 169]

However, the Panel considers that the report attached to Ms Feldman's submission is not expert evidence because it is not described or presented in that form and it does not include the required expert witness declaration. The SLR Consulting Australia report was not circulated within the directed timeframe for an expert witness statement and Ms Williams was not called to be cross-examined.

### **Outcome**

The Panel has considered the SLR Consulting Australia report as information supporting Ms Feldman's submission and has weighted information in that report accordingly.

## **A5 Further written submissions**

Towards the close of the Hearing, the School requested that the Panel keep the hearing process open to enable further discussion with neighbouring property owners. After considering submission on this request from other parties, the Panel agreed and directed that:

- the School provide a 'without prejudice' version of the draft Permit with tracked changes to all parties on the circulation list by 2 July 2019
- any party seeking to make 'without prejudice' comments on the tracked changes, response by 9 July 2019
- Council have a final right of reply.

## Appendix B Document list

No.	Description	Provided by
<b>8 April 2019</b>		
1	Response to Direction 1 (evidence of notice provided of the Amendment and draft Permit)	Council
<b>18 April 2019</b>		
2	Request – from Mr Spiegel for adjournment	Mr Spiegel
<b>23 April 2019</b>		
3	Submission – Part A submission and attachments	Council
4	Expert witness statement – Robert Kelderman	Mr Natoli
<b>24 April 2019</b>		
5	Email – from A Natoli dated 24 April 2019 attaching documents relating to the engagement of Robert Kelderman, Contour Consultants	Mr Natoli
6	Request – from S Lewis to be a party to the Hearing and for an adjournment	Mr Lewis
<b>1 May 2019</b>		
7	Panel rulings and further directions	Panel
<b>21 June 2019</b>		
8	Submission – Belinda Feldman, with acoustic report prepared by SLR Consulting	Dr Feldman
<b>23 June 2019</b>		
9	Submission – Lynne and Sam Lewis	Mr Lewis
<b>24 June 2019</b>		
10	Part B submission	Council
11	Submission – Shelford Girls' Grammar	Mr Natoli
12	Shelford Girls' Grammar planting plan	Mr Natoli
13	Review decision – Preston v Glen Eira CC [2017] VCAT 2056	Mr Natoli
14	Submission – Rob Brown of Octave Acoustics responding to the acoustic report prepared by SLR Consulting supporting Ms Feldman's submission dated 21 June 2019	Mr Natoli
15	Submission – Nicole and David Spiegel	Mr Livingston
16	Review decision – Hill v Campaspe SC (includes Summary) (Red Dot) [2011] VCAT 949	Mr Livingston
<b>25 June 2019</b>		
17	email – Planning history for 263 Glen Eira Road, Caulfield North	Council

No.	Description	Provided by
<b>2 July 2019</b>		
18	The School preferred revised draft Planning Permit GE/PP-31418/2017	Mr Natoli
<b>9 July 2019</b>		
19	Council preferred revised draft Planning Permit GE/PP-31418/2017	Council

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## Appendix C Panel preferred version of Planning Permit GE/PP-31418/2017

[Tracked Added](#)

~~Tracked Deleted~~



**PLANNING PERMIT**  
**GRANTED UNDER SECTION 96I OF THE PLANNING AND ENVIRONMENT ACT 1987**  
**GLEN EIRA PLANNING SCHEME**  
**RESPONSIBLE AUTHORITY: GLEN EIRA CITY COUNCIL**

<b>PLANNING PERMIT NUMBER:</b>	GE/PP-31418/2017
<b>ADDRESS OF THE LAND:</b>	259 Glen Eira Road, Caulfield North
<b>APPLICANT:</b>	Maureen Jackson Planning
<b>THE PERMIT ALLOWS:</b>	Development and use of the land for the purpose of an Education Centre, reduction of the car and bicycle parking requirements, display of a business identification sign and alteration of access to a road in a Road Zone, Category 1 in accordance with the endorsed plans.

**THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:**

1. Before the commencement of the development, amended plans to the satisfaction of the Responsible Authority must be submitted to, and approved by, the Responsible Authority. The plans must be drawn to scale with dimensions and must generally accord with the plans submitted with the application (identified as TP05A, TP06A, TP07A, TP08A, TP10A, TP11A, ~~TP16A~~ and TP17 prepared by Clarke Hopkins Clarke and dated November 2017 and March 2018) but modified to show:
  - (a) Notes detailing the specifications for acoustic boundary fences to replace the existing boundary fences, generally in accordance with Section 6 of the Noise Impact Assessment report prepared by Octave Acoustics, dated 9 March 2018.
  - (b) Appropriate signage installed on the proposed gate that the access is for emergency vehicles only.
  - (c) The proposed gate to be an automatic or remote-controlled one.
  - (d) Corner sight splays to be adequately clear of visual obstructions to provide a clear view of pedestrians on the footpath of the frontage road as well as a clear view for oncoming cyclists of vehicles exiting the site.
  - (e) The provision of 14 bicycle spaces designed in accordance with Clause 52.34-4 of the Glen Eira Planning Scheme.
  - (f) Notations to confirm that all screening of first floor windows (where shown) must be no more than 25 per cent transparent.
  - (g) Security gates of at least 1.8 metres in height between the new building and the eastern and western boundaries.
  - (h) Replacement of the northern boundary fence of the Subject Land for the extent of its abuttal with 2 Helenslea Road with a fence at least 1.8 metres high in accordance with Section 6 of the Noise Impact Assessment report prepared by Octave Acoustics dated 9 March 2018, but with the barrier to be at least 12 kg/sqm at any point.

- (i) Replacement of the eastern and western boundary fences of the Subject Land with a fence at least 1.8 metres high (except for the front setback where the fence should be 1.8 metres high), in accordance with Section 6 of the Noise Impact Assessment report prepared by Octave Acoustics dated 9 March 2018, but with the barrier to be at least 12 kg/sqm at any point.
- (j) Addition of angled perforated screens to the north facing windows at first floor level of the void above the student entry to limit overlooking into the property to the east.
- (k) Reduction of the west facing terrace at first floor to a 'landing' and increase in the height of the balustrade adjacent to the stairs and landing to a height of at least 2.1 metres and replacement of the balustrade with a solid finish (ie. no perforations) to limit any overlooking into the property to the west.
- (l) The window sill of the high-sill windows on the western elevation at least 2.1 metres above the first floor level to limit any overlooking into the property to the west.

When approved, the plans will be endorsed and will then form part of this Permit.

- 2. Before the development starts, a detailed Landscape Plan must be prepared by a suitably qualified landscape architect and submitted to Council, to the satisfaction of the Responsible Authority. When the Landscape Plan is approved, it will become an endorsed plan forming part of this Permit. The Landscape Plan must be generally in accordance with the planting plan prepared by Clarke Hopkins Clarke Architects, drawing no. TP16B, dated April 2019, and incorporate the following:
    - (a) A survey, including botanical names, of all existing vegetation to be retained.
    - (b) Buildings and trees (including botanical names) on neighbouring properties within 3 metres of the boundary.
    - (c) A planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways.
    - (d) Landscaping and planting within all open space areas of the site.
    - (e) Additional screen planting, comprising a Pittosporum or Lilly Pilly hedge or similar screening species capable of achieving a mature height of 4.5 metres in the following locations:
      - (i) Along the eastern and western boundaries of the Subject Land.
      - (ii) Along the northern boundary of the Subject Land for the extent of their interface with 2 Helenslea Road.
  - 3. The landscaping as shown on the endorsed Landscape Plan must be carried out, completed and maintained to the satisfaction of the Responsible Authority and any dead, diseased or damaged plant replaced in accordance with the landscaping plan to the satisfaction of the Responsible Authority.
- 24** Not more than seventy (70) students may be on the premises at any one time.
- 35** Not more than eight (8) staff members / employees may be on the premises at any one time.

- 46** Unless otherwise allowed with the written approval of the Responsible Authority, the use allowed under this permit (excluding cleaning, maintenance and administration) must be within the following times:
- Monday to Friday 8:00am to 5:00pm.
- 57** The gallery/café must only be for the use of the school community (ie. students, staff members/employees and parents).
- 68** Privacy screening must be in accordance with the endorsed plans, and must be installed prior to the occupation of the development. The privacy screens must be maintained to the satisfaction of the Responsible Authority.
- ~~7 The landscaping as shown on the endorsed Planting Plan must be carried out, completed and maintained to the satisfaction of the Responsible Authority.~~
- 89** No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building/s without the prior written consent of the Responsible Authority.
- 910** Prior to the commencement of any site works including demolition and excavation, the owner must submit a Construction Management Plan to the Responsible Authority for approval. No works including demolition and excavation are permitted to occur until the Plan has been approved in writing by the Responsible Authority. Once approved, the Construction Management Plan will be endorsed to form part of this permit and must be implemented to the satisfaction of the Responsible Authority. The Plan must be to the satisfaction of the Responsible Authority and must provide details of the following:
- Delivery and unloading points and expected frequency;
  - Truck haulage routes, circulation spaces and queuing lanes;
  - Details how traffic and safe pedestrian access will be managed. These must be in the form of a Traffic Management Plan designed by a suitably qualified traffic practitioner;
  - A liaison officer for contact by owners / residents and the Responsible Authority in the event of relevant queries or problems experienced;
  - An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
  - Any requirements outlined within this permit as required by the relevant referral authorities;
  - Hours for construction activity in accordance with any other condition of this permit;
  - Measures to control noise, dust, water and sediment laden runoff;
  - Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
  - Any construction lighting to be baffled to minimise intrusion on adjoining lots.
- ~~1011~~ Before the use starts, a Waste Management Plan (WMP) with respect to the collection and disposal of waste and recyclables associated with the proposed use must be submitted to and approved to the satisfaction of the Responsible Authority. The WMP must provide for the following:

- (a) The collection of waste associated with the uses on the land, including the provision of bulk waste collection bins or approved alternative, recycling bins, the storage of other refuse and solid wastes in bins or receptacles within suitable screened and accessible areas to the satisfaction of the Responsible Authority. Commercial waste bins being placed or allowed to remain not in view of the public, and receptacles not emitting any adverse odours.
- (b) Designation of methods of collection including the need to provide for private services or utilisation of council services. If private collection is used, this method must incorporate recycling services and must comply with the relevant EPA noise guideline relating to the time of collection.
- (c) Appropriate areas of bin storage on site and areas of waste bin storage on collection days.
- (d) Details for best practice waste management once operating.

Once approved the WMP will be endorsed to form part of this permit and must be complied with to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.

~~44~~12 Disabled persons' access to the building must be provided to the satisfaction of the Responsible Authority. All work carried out to provide disabled persons' access must be constructed in accordance with AS 1428.1, or otherwise, to the satisfaction of the Responsible Authority.

~~42~~13 All outdoor lighting must be baffled and/or located to prevent light from the site causing detriment to the locality to the satisfaction of the Responsible Authority

~~43~~14 Prior to the occupation of the development, the acoustic fences and privacy screening must be constructed and installed in accordance with the endorsed plans.

~~44~~15 Noise from the use must not exceed the permissible noise levels stipulated in State Environment Protection Policy N-1 (Control of Noise from Commerce, Industry and Trade).

~~45~~16 All security alarms or similar devices installed on the land must be of a silent type approved by the Standards Association of Australia and be connected to a registered security service.

~~46~~17 No external sound amplification equipment or loudspeakers are to be used for the purpose of announcements, broadcasts, playing of music or similar purpose, other than for any emergency related requirements.

~~47~~18 The location of the sign (including the size, nature, panels, position and construction) shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority. Note: This does not obviate the need for a permit where one is required.

~~48~~19 The sign must be constructed and maintained to the satisfaction of the Responsible Authority.

~~49~~20 This Permit expires thirty (30) years from the date of issue in relation to the advertising sign only.

~~20~~21 No buildings or works are to be constructed over any easement or other restriction on the land or any sewers, drains, pipes, wires or cables under the control of a public authority without the prior written consent of the relevant authority and the Responsible Authority.

~~21~~22 The layout of the site and size, design and location of buildings and works as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority. Note: This does not obviate the need for a permit where one is required.

~~22~~23 This permit does not come into effect until Covenant 0888051 has been varied to enable the development and use authorised by this permit to proceed.

~~23~~24 This Permit will expire if:

- The development and use does not start within two (2) years from the date of this Permit; or
- The development is not completed within four (4) years of the date of this Permit.

The Responsible Authority may extend the time referred to if a request is made in writing before this Permit expires or within six (6) months after the expiry date if the use/development has not commenced.

If the development has commenced, the Responsible Authority may extend the time referred to if a request is made in writing within twelve (12) months of the expiry date.

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Conditions End

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