

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11383/2021
PERMIT APPLICATION NO. GE/DP-34187/2021

CATCHWORDS

Glen Eira Planning Scheme; Design and Development Overlay Schedule 10; Heritage Overlay; Amendment VC204; Two towers over a podium and multi-level basement car park; Repeat application for review; Acceptability of land uses; Acceptability of built form having regard to DDO, HO and amenity impacts; Car parking provision and traffic generated by vehicles and loading bays; Heat island effect and capacity of building to accommodate landscaping; Supermarket loading bay location; Changes necessary to built form to address unacceptable amenity impacts.

APPLICANT	Fabcot Pty Ltd
RESPONSIBLE AUTHORITY	Glen Eira City Council
RESPONDENTS	Glen Eira Historical Society, Ms F Bailey, Mr K Gore, Mr R Campbell & others and Ms K Deacon & others
SUBJECT LAND	10-16 Selwyn Street, Elsternwick
HEARING TYPE	Major Case Hearing
DATE OF HEARING	23, 24, 25, 26, 27, 30 & 31 May, 1, 2, 3 and 17 June 2022
DATES OF INTERIM ORDERS	7 June, 10 June, 20 June and 8 July 2022
DATE OF FINAL ORDER	7 September 2022
CITATION	Fabcot Pty Ltd v Glen Eira CC [2022] VCAT 1025

ORDER

Permit granted

- 1 In application P11383/2021 the decision of the responsible authority is set aside.
- 2 In planning permit application GE/DP-34187/2021 a permit is granted and directed to be issued for the land at 10-16 Selwyn Street, Elsternwick in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows the demolition of existing buildings, the development of a podium and two towers over a multi-level basement comprising shops, a supermarket, a place of assembly, dwellings and the sale and consumption of liquor (packaged liquor), and the construction and display of advertising signage with the following planning permissions:

- Use of the land for a shop and a place of assembly (function centre, hall, library, museum, restricted place of assembly (excluding gaming))
- Use of the land to sell or consume liquor
- To demolish buildings
- To construct two or more dwellings on a lot
- To construct a building and construct or carry out works
- To construct and display internally illuminated business identification signage

Rachel Naylor
Senior Member

Michael Deidun
Member

APPEARANCES

For applicant	<p>Chris Townshend QC and Emily Porter SC, Barristers instructed by Corrs Chambers Westgarth</p> <p>They called the following witnesses:</p> <ul style="list-style-type: none">• Amanda Ring, Town Planner of UpCo Urban Planning Collective• Mark Sheppard, Urban Designer of Kinetica• Mark O’Dwyer, Architect and Urban Designer of H2o Architects• Bryce Raworth, Heritage Consultant of Bryce Raworth Pty Ltd• Jason Walsh, Traffic Engineer of Traffix Group• Darren Atkinson, Landscape Architect of Urbis
For responsible authority	Mimi Marcus, Solicitor of Marcus Lane Group
For Glen Eira Historical Society	<p>Ms A Kilpatrick</p> <p>She called the following witness:</p> <ul style="list-style-type: none">• John Briggs, Heritage Consultant of John Briggs Architects Pty Ltd
For Mr Gore	Mr K Gore
For Mr Campbell & others	Mr R Campbell and Ms L Campbell
For Ms Deacon & others	<p>Ms N Blok, Barrister instructed by S & K Planning Lawyers</p> <p>She called the following witnesses:</p> <ul style="list-style-type: none">• Prof Jennifer Oxley, Psychologist of Monash University Accident Research Centre• John-Paul Maina, Traffic Engineer of Impact Traffic and Transport Engineering
For Ms Bailey	<p>Ms F Bailey appeared in person at start of hearing on day one. She was content for the other respondents to speak about the concerns that she has expressed.</p>

INFORMATION

Land description

The review site is part of the Elsternwick Major Activity Centre and is identified as an Urban Village in local planning policies.

It has frontages to Sinclair Street of 40.6m (to the north), Selwyn Street of 107.5m (to the west) and a right of way (to the south).

On the east side of the review site are a number of residential properties including Glenmoore, an individually significant heritage property at 1 St Georges Road, which is adjacent to the southeastern end of the review site.

The review site is irregular in shape with an area of approximately 5,746sqm. It contains a number of buildings and car parking areas/structures that were formerly used by the Australian Broadcasting Corporation including the former Elsternwick Fire Station (a heritage building listed on the Victorian Heritage Register).



Extract from Ms Ring's evidence statement (page 18) illustrating the site and its surrounds

Description of proposal	<p>Construction of a podium with two towers over 4 basement levels of car parking.</p> <p>The podium is effectively two storeys in height. The towers are separated in the order of 15 metres and are set back from all of the review site’s boundaries. Each tower has a building height of nine storeys and contains eight levels of dwellings. Communal facilities are provided on level 1, including outdoor open space and an enclosed swimming pool. Two loading bays are provided. One for the supermarket adjacent to Sinclair Street and the other for the bottle shop and residential deliveries adjacent to the right of way on the south side of the review site.</p> <p>The proposal includes a supermarket, a bottle shop selling packaged liquor, two small shops, a place of assembly that will contain offices, library/museum space, a café and function space</p> <p>Internally illuminated business signage is proposed for the Woolworths supermarket and BWS packaged liquor shop.</p>
Nature of proceeding	<p>Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.</p>
Planning scheme	<p>Glen Eira Planning Scheme</p>
Zone and overlays	<p>Mixed Use Zone</p> <p>Design and Development Overlay Schedule 10</p> <p>Heritage Overlay Schedules 72 and 81 (part) at the time of the hearing, then on 7 July 2022 Amendment C204 was gazetted including most of the review site, save for the former fire station, in a new HO180, Elsternwick Commercial and Public Precinct.</p> <p>Parking Overlay Schedule 2</p>

Permit requirements

Clause 32.04-2 to use land within the Mixed Use Zone for a 'shop' with a floor area exceeding 150 sqm and for a 'place of assembly'

Clause 32.04-6 to construct two or more dwellings on a lot on land within the Mixed Use Zone

Clause 32.04-9 to construct a building and construct or carry out works associated with a section two (permit required) uses (i.e., shop and place of assembly) on land within the Mixed Use Zone

Clause 43.01-1 to demolish a building, construct a building, construct or carry out works and display signage on land to which the Heritage Overlay applies

Clause 43.02-2 to construct a building and construct or carry out works on land to which the Design and Development Overlay applies

Clause 52.05-13 for the display of internally illuminated business identification signage

Clause 52.27 to use land for the sale or consumption of liquor (packaged liquor)

Tribunal inspection

The Tribunal conducted an unaccompanied inspection of the review site and surrounding area, including a number of abutting residential properties between scheduled hearing days, on 16 June 2022. Observations from the inspection were shared with the parties when the hearing resumed on 17 June 2022.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Fabcot Pty Ltd (the ‘Applicant’) seeks to review the decision of the Glen Eira City Council (the ‘Council’) to refuse to grant a planning permit for the use and development of land at 10-16 Selwyn Street, Elsternwick (the ‘review site’) with a mixed use development, comprising a supermarket and other uses at ground floor, and apartments above.



Architectural render of this proposal along Selwyn Street

- 2 This is a repeat appeal, following the previous decision of the Tribunal in *Fabcot Pty Ltd v Glen Eira CC* [2020] VCAT 957 (the previous decision) to refuse to grant a permit for an earlier version of a similar scheme. In the previous decision, the Tribunal considered a proposal that contained a podium and two towers, with the southern tower rising to a maximum height of 14 storeys.



Architectural render of the previous proposal along Selwyn Street²

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

- 3 The previous decision ultimately determined that a planning permit should not issue, due to the height of the southern tower being above the discretionary height limit in DDO10, and the visual impact of the southern tower when viewed from the heritage environment of Glen Huntly Road, and the residential abuttal at 1 St Georges Road.
- 4 This planning application seeks permission for a similar proposal including a southern tower that is lower in height. This proposal received many objections and the Council originally decided to refuse it. The grounds of refusal cited concern with the acceptability of the design response to the context, DDO10 and the heritage precinct. The grounds also included a specific concern about the traffic movements through Selwyn Street and within local streets to the north of the site.
- 5 Since the lodgement of the application for review, there has been a number of discussions between the Council and the Applicant. As a result, an amended set of plans were prepared, and the Council now consents to the grant of a planning permit. The amended plans now propose a maximum tower height of 9 storeys, and a southern tower with increased setbacks from the south and east boundaries.
- 6 The application for review continues to be contested by a number of Respondents, who oppose the grant of a permit. They do so having regard to the proposed built form, the impact on the surrounding heritage places, the suitability of the proposed land uses, the amenity impacts on nearby residential properties, and the traffic impacts of the proposal.
- 7 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all the submissions, evidence and materials presented with regard to the applicable policies and provisions of the Glen Eira Planning Scheme, we have decided to grant a permit subject to conditions. These conditions include changes to the design of the southern tower. The key issues we have considered in reaching this decision are:
 - a. Are the proposed land uses appropriate?
 - b. Is the proposal an appropriate response to the heritage places?
 - c. Is the proposed built form an appropriate response to its context?
 - d. Are there any unreasonable off-site amenity impacts?
 - e. Is an appropriate level of internal amenity achieved?
 - f. Does the design acceptably respond to building design policies, including the energy performance of buildings and the achievement of landscaping to assist in the cooling and greening of urban areas?

² Render extracted from Exhibit RA-6, being some of the material and evidence considered by the Tribunal in the previous decision.

- g. Does the proposal appropriately provide for car parking and traffic movements?

8 Our reasons follow.

HOW DO WE APPROACH THIS REPEAT APPLICATION FOR REVIEW?

- 9 This is a repeat application for review. The previous decision contained comprehensive findings on all aspects of what was, in many ways, a very similar proposal. For example, the supermarket, place of assembly, loading bay on Sinclair Street, residential dwellings and a design containing a podium with two towers are all similar to the previous proposal. Pertinent differences in this proposal include the design of the southern tower and the location of the basement car park entry.
- 10 Many of the Respondents sought to reagitate a number of issues that the previous decision had made findings about. The Applicant's closing submission highlights examples of this and points out a second VCAT hearing should not be about forum shopping and relitigating previously determined matters in the hope of securing a different outcome. The Applicant also highlights that the previous Tribunal comprised experienced legal and planning members and their reasoning was considerable in explaining why particular issues were acceptable.
- 11 As is the circumstance in any review application, we must consider the proposal on its own merits and reach a decision as to whether it is acceptable. A previous decision is a relevant consideration. The relevance and weight that we place upon it or parts of it will depend on a range of factors, including changed circumstances.³
- 12 We do note that the surrounding physical context of the review site is largely unchanged, except for the Planning Permit that was issued in September 2021 for 7 Selwyn Street Elsternwick. This permit grants permission for a 9 storey building to be used for the purposes of an office and place of assembly (to house a new Jewish Museum of Australia, performing arts centre, the Kadimah National Library and co-working space). The Council provided the following artistic impression of the proposed building.

³ Potential factors that may change are explained further in *Reichert v Banyule City Council* [1996] VICCAT 44



- 13 In terms of the Glen Eira Planning Scheme and its planning policy framework, there have been a number of changes since the previous decision. For example, the content of DDO10 has undergone some changes, albeit relatively minor in the context of this review site and this proposal. Also, the Heritage Overlay applying to 1 St Georges Road has extended from the area surrounding the Glenmoore mansion to include the rear tennis court area on the property as well. The Glen Huntly Road commercial precinct has been separated out of the broader Elsternwick Estate and Environs heritage precinct and now has its own heritage precinct and citation about its significance. The Council is pursuing Amendment C220 to replace clauses 21 and 22 in the planning scheme with a new Planning Policy Framework. The Council is also working on a housing strategy to underpin its proposal for permanent DDOs over its activity centres, including DDO10.
- 14 We accept the Applicant’s submission that it has endeavoured to ‘correct’⁴ the proposal by addressing the failings or flaws identified in the considerations of the previous decision. Our decision does not focus just on these corrections but on the merits of the whole of the proposal in light of the relevant physical and planning policy contexts. We have considered the issues raised by the parties in this case afresh as well as in the context of what the previous decision determined. It will become apparent from reading the remainder of these reasons that we have given consideration and weight to the previous decision.

Balancing planning considerations

- 15 Some of the parties’ submissions suggest either directly or indirectly that there could be conflict between the expectations of the various planning controls and policies relevant to this site, its surrounds and the details of this proposal. For example, the site is zoned Mixed Use that encourages high density residential development as well as a range of non-residential uses and the surrounding residential properties in Sinclair Street, St Georges

⁴ This is explained further in *Sprut Pty Ltd v Stonnington CC* [2012] VCAT 1675

Road and May Street are zoned Residential Growth. However, all these properties are also within a Heritage Overlay (generally heritage precincts with 1 St Georges Road having a site specific heritage control and the former Elsternwick Fire Station being on the Victorian Heritage Register). The Heritage Overlay is about conserving and enhancing the elements that contribute to the significance of a heritage place. Also, the review site is within DDO10 that provides for increased development up to a preferred maximum height of 10 storeys whilst also being within a heritage precinct. To the extent that there is conflict between the various planning controls and policies, the decision to be made must ‘balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations’.⁵

- 16 The review site is within a major activity centre and the surrounding residential properties are at the interface and are earmarked as having residential growth potential in addition to their heritage significance. The heritage significance of these residential properties may impact upon their development potential for residential growth, particularly as the majority of the immediately surrounding properties are identified as being significant and contributory. The existing physical context combined with their heritage significance means we have proceeded to consider the acceptability of the site’s residential interfaces on the basis of the existing context rather than any potential residential growth. This is consistent with the approach taken by the Applicant and the Applicant’s expert witnesses.
- 17 We are not persuaded by some of the submissions and evidence that suggest a potential conflict between the expectations of DDO10 and the Heritage Overlays that affect the heritage precincts, 1 St Georges Road and the former Elsternwick Fire Station. The DDO design objectives clearly state that any development has to be cognisant and respectful of the heritage significance of the area. We agree with the previous decision that the building heights contained in DDO10 are not a given, and that any new development needs to be a contextual response to the physical conditions and the planning policies and controls. The acceptability of the proposed design response is a matter that we make detailed findings about later in these reasons.

ARE THE PROPOSED LAND USES APPROPRIATE?

- 18 The Respondents submit that the proposed land uses on the review site are not consistent with the intent for Selwyn Street to become a cultural precinct, or the policy discouragement for retail land uses in this location. They argue that the supermarket in particular is a land use that is not suitable for this location, based on the mix of other uses that are found in Selwyn Street, and the off-site impacts that will result. Mr Campbell also submits that a bottle shop is not appropriate, noting the noise impacts he already endures from a nearby late night venue.

⁵ Clause 71.02-3 of the Glen Eira Planning Scheme

- 19 The proposal intends to establish a mixed use development comprising a bottle shop, supermarket and 'kiosks' on the ground floor, a place of assembly on part of the ground and first floors, and apartments above the other land uses.
- 20 We questioned what a 'kiosk' is given that it is a term that is not found in the planning scheme. Mr Townshend described it as 'a shandy' between a shop and a food and drink premises (both defined land use terms). The Council agreed with this. Both parties agreed that the kiosk term should be removed from the plans and replaced with 'shop or food and drink premises'. This is included in the permit conditions.

- 21 The review site is located within the Mixed Use Zone, two of the purposes of which are:
- To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.
 - To provide for housing at higher densities.
- 22 A planning permit is required to use part of the review site for the purpose of a place of assembly. A planning permit is also required to use land for a shop, where the leasable floor area exceeds 150 square metres. As a supermarket is nested under the definition of a shop, the proposal includes more than 150 square metres of shop floor area consisting of the supermarket, kiosks (shop or food and drink premises) and bottle shop, so a planning permit is required.
- 23 Under the provisions of Clause 52.27 of the Glen Eira Planning Scheme, a planning permit is required to use land to sell or consume liquor if a licence is required under the *Liquor Control Reform Act 1998*. In this case, such a licence is required to sell packaged liquor. Therefore, a permit is therefore required under this Clause with respect to the proposed bottle shop.
- 24 The guidance provided by the Glen Eira Planning Scheme in the discretion to grant a planning permit for these land uses, includes the Council's Non-residential uses in residential zones policy at Clause 22.02. This policy includes the following:
- It is policy to:
- 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.
 - Direct uses to locations 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.
 - Discourage the location of non-residential uses on local streets.
- 25 In relation to the policy, we note that the review site is one which:
- a. Is not on a main or secondary road but must be considered as a preferred location for non-residential land uses, having regard to the strategic decision to apply the Mixed Use Zone to the review site that provides for a range of land uses including industrial, commercial and residential land uses.

- b. As per our analysis later in these reasons, we find that this is a location where residential amenity will not be unreasonably compromised by the proposed mix of land uses.
- c. This is a location where there can be minimal impact on the local amenity, given the review site is within the boundaries of a higher order activity centre, and there are non-residential land uses already along Selwyn Street. Further, all car parking will be contained on site without a reduction of the standard car parking rates, and the additional traffic can be accommodated on the surrounding road network, as per our findings set out later in these reasons.
- d. The review site is within a very easy walking distance of both tram stops and a railway station.
- e. While the proposed land uses will generate traffic on local streets, the majority of traffic will only travel along a small stretch of Selwyn Street, on its way to and from the main road environment that is Glen Huntly Road. We consider this to be consistent with the policy intent.

26 For these reasons we find that the review site is an acceptable location to host a range of non-residential uses, which is consistent with the policy guidance. We will now assess the proposed uses that require a planning permit individually.

Shop uses

27 The previous Tribunal decision supports the establishment of a full line supermarket on the review site, a finding that we give some weight to in our analysis. This finding was reached by the previous Tribunal for the following reasons.

[248] We have already discussed further above how more recent strategic reports in relation to EMAC have recognised the potential benefits for this activity centre of a second supermarket. The BWEC report expressly notes the possibility of a second supermarket on the subject land. At page 71 of the ESP, there is reference to various policy aims for this MAC, including "...a minimum of (or demonstrated capacity to accommodate) approximately two supermarkets or similar fresh food markets". With the western part of the core area of the EMAC⁶, it is very hard to see any other obvious location for a potential second supermarket, other than the review site.

[249] We note that in presenting their expert oral evidence, all of Mr Negri, Mr Biles, Mr Iles and Ms Hodyl were supportive of the basic concept of a second supermarket locating on the subject land.

⁶ Still focusing on that area east of the railway line.

[250] Whilst taking Mr Townsend's point that some relevant policies or strategic reports are discouraging retail uses in Selwyn Street/this cultural precinct, equally it is clear to us that other such policies or reports say the opposite e.g. see our discussion two paragraphs above. Where at the last page of Clause 22.05 there is express policy discouragement of retail activities occurring on Selwyn Street, we find that this carries limited weight, as we understand that Clause 22.05 is closely aligned to structure planning work done over 20 years ago.

[251] For these reasons, we accept that on 'first principles' the applicant has a persuasive case that the use of the subject land for a supermarket would be a good planning outcome.

- 28 In addition to the analysis set out above, we observe the review site's location in a higher order (major) activity centre, and the following policy support at both a State and local level for core retail activities to be positioned in this location.

Locate commercial facilities in existing or planned activity centres.

Provide new convenience shopping facilities to provide for the needs of the local population in new residential areas and within, or immediately adjacent to, existing commercial centres.⁷

Encourage new and innovative retail and commercial activities to establish in the municipality having regard to the hierarchy of centres as well as opportunities to develop appropriate freestanding sites for suitable retail or commercial use.

Ensuring retailing is the predominant ground floor use in the core of centres designated on the Framework Plan, particularly Bentleigh, Carnegie and Elsternwick, and encouraging offices to upper floors.

Ensuring new supermarkets and retail developments are located within existing centres (consistent with the identified retail hierarchy) rather than on freestanding sites.⁸

- 29 The final policy reference set out above would strongly encourage this new supermarket to be located within the existing activity centre, which includes the review site. Of the potential available redevelopment sites within this activity centre, it is not apparent that any other site is of a sufficient size to accommodate a full line supermarket. Therefore, the review site is key in realising this policy statement, in the context of the establishment of a second full line supermarket within the Elsternwick Activity Centre.
- 30 We also acknowledge the employment benefit to be gained from the proposed development, with such employment opportunities strongly encouraged by a range of policy to be provided in activity centres, close to where people live, and also close to public transport.

⁷ Clause 17.02-1S of the Glen Eira Planning Scheme.

⁸ Clause 21.06-2 of the Glen Eira Planning Scheme.

- 31 The Respondents in their opposition to the use of the land for a supermarket point to the designation of land along Selwyn Street as a Cultural and Entertainment Precinct at Clause 22.05-3 of the Glen Eira Planning Scheme, which is provided with the following policies.

Where a permit is required for use or development, it is policy that:

- There be a mix of residential and commercial activity in Selwyn Street.
- No retail activities occur along Selwyn Street.

- 32 The Council is currently undertaking the process of introducing a new format Planning Policy Framework under Amendment C220 to the Glen Eira Planning Scheme. The Amendment has been exhibited and the subject of a Panel hearing. No Panel report had been released during this hearing, but we note it is now publicly available.⁹ From our research, we observe that Amendment C220 will make the following policy guidance changes to the review site:

- a. Locate the review site within a ‘Major Activity Centre with Urban Renewal’ under the Strategic Framework Plan at Clause 02.04-1. As such, the following policies are proposed to apply to the review site.

In urban renewal precincts identified on the Activity Centres Hierarchy Plan in Clause 02.04-2:

- Support the integrated development of land to deliver employment and housing growth of significant urban density and scale.
- Support land use and development that delivers community outcomes, including social and affordable housing, public open space, community facilities, public realm improvements and publicly accessible parking.
- Facilitate new pedestrian connections and laneways to create high levels of walkability and accessibility within the precinct and to connect with adjoining retail areas.¹⁰

- b. Essentially remove the existing Urban Villages Policy currently found at Clause 22.05 and replace it with the following policies that relate to the entire Elsternwick Activity Centre at Clause 11.03-1L.

⁹ We note is available on the Council’s website and the Panel Report is dated 22 June 2022. The Council’s website notes the next step is for the Panel Report to be considered at a future Council meeting. Whilst this document has not been discussed with the parties, we have decided to check its content merely to the extent that we have quoted material referred to during the hearing.

¹⁰ We note these policies are not recommended for change in the Panel Report.

Elsternwick major activity centre

Strengthen the role of Elsternwick activity centre as a safe, accessible and liveable centre that embraces its historic character and strong cultural and village feel.

Support opportunities to enhance arts and cultural offerings within the centre.¹¹

Support development that complements and preserves the heritage features and distinctive fine-grained character of the Glen Huntly Road retail strip.

Facilitate a new cultural precinct.¹²

Support a new public space above the railway line connecting Elsternwick Station to the cultural precinct.

Support redevelopment of the existing car park between Staniland Grove and Orrong Road to facilitate a new community hub and improved car parking.

Support reuse of the former ABC studio site for employment uses and public open space.¹³

- 33 As such, the current policy encouragement that no retail activities occur along Selwyn Street is not, at this stage, intended to appear in the new format Planning Policy Framework of the Glen Eira Planning Scheme. As the new format Planning Policy Framework has been adopted by Council, we have given it some weight.
- 34 Instead, the policy seeks to, “*Facilitate a new cultural precinct,*” without identifying, either by words or a map, where the new cultural precinct is to be located. Even if we assume that the review site is to form a part of the new cultural precinct, we find that the proposed land uses on the review site are consistent with this intent. We make this finding as the proposed shop floorspace is to include kiosks (shop or food and drink premises) along the frontage to Selwyn Street. It is our understanding that these kiosks will be offered to parties associated with the Jewish community, to trade items that reflect or represent their culture. As set out below, it is also our understanding that the proposed Place of Assembly will also be used in a manner that is consistent with the broader cultural precinct. For these reasons we consider that the proposed mix of land uses is consistent with this policy intent. Furthermore, the Council advised us during the hearing that Mr Glossop’s evidence to the Panel was to modify this wording to refer to Selwyn Street, and we note in our footnote below that that is recommendation that the Panel has made.

¹¹ We note the Panel Report recommends this be changed to ‘Support opportunities to enhance arts and cultural offerings within the centre including a new cultural precinct in Selwyn Street’.

¹² We note the Panel Report recommends this policy be deleted.

¹³ It was clarified during the hearing that this ABC reference is not referring to the review site.

- 35 Returning to the current policy guidance that, “*No retail activities occur along Selwyn Street,*” we have chosen to give this policy encouragement little weight, for the following reasons. Firstly, this policy guidance is not consistent with the remainder of the policies in the Glen Eira Planning Scheme, which encourage core retail activities to be located within the existing higher order activity centres. Secondly, it appears that this policy guidance is not intended to remain in the Glen Eira Planning Scheme, as part of the new Planning Policy Framework being pursued under Amendment C220. Thirdly, the Respondents have failed to provide any new material or information that would encourage us to depart from the findings of the previous Tribunal decision, a matter to which we attribute weight.
- 36 Finally, Ms Blok submits that the proposed supermarket should not be supported, as there is no policy encouragement for a supermarket in this location. We are not persuaded by this submission, for the following reasons. Firstly, the policy context we have already explained includes very clear encouragement for new supermarkets to be sited within the existing activity centres, which includes on the review site. Secondly, we do not consider that there needs to be specific policy encouraging a supermarket on this particular site, in order for the land use to be acceptable. In our view, policy does not need to be so specific as to encourage particular land uses on particular sites, for us to conclude that policy as a whole supports the proposed land use on the review site.
- 37 For these reasons and having regard to our earlier analysis in relation to Council’s policy at Clause 22.02 of the Glen Eira Planning Scheme, we find that a permit can be granted for the proposed shop land uses on the review site.

Place of assembly

- 38 The proposed Place of Assembly is a land use that is consistent with the creation of this area as a cultural precinct. Ms Ring describes the manner in which the proposed Place of Assembly will play an important role in the cultural precinct in the following manner in her written evidence.

[88] Consistent with the applicant’s proposition in Fabcot, I am instructed that the place of assembly and kiosks are to form part of the Elsternwick Cultural Precinct.

[89] More specifically, the place of assembly (which will comprise offices, library / museum space, café and function space) will accommodate activities that currently occur at the Kadimah Jewish Cultural Centre. The space will also be available for use by the nearby Sholem Aleichem College.

[90] I am instructed that the future ownership and occupation of the space is the subject of a Heads of Agreement with the permit applicant. In essence, I understand the agreement provides for the purchase of the space at a significantly discounted price.

[91] The ability to decant activities from the Kadimah Centre on the western side of Selwyn Street will allow the centre to accommodate the relocation of the Jewish Museum from Alma Road, St Kilda when the Kadimah site is redeveloped over the next two years.

[92] I understand that, typically, there will be no more than 100 visitors to the place of assembly at any one time. However, school assemblies and other school-related activities from time to time are anticipated to attract up to 250 staff and students.

39 In general terms and having regard to the above description, a Place of assembly land use is acceptable on the review site and supports the strategic objectives for this locality.

40 During the hearing, we expressed some concern about the proposed description of this land use utilising the broad land use term of Place of assembly without qualification. This is because Place of assembly includes all of the following land uses:

- Amusement parlour
- Carnival
- Cinema
- Cinema-based entertainment facility
- Circus
- Drive-in theatre
- Exhibition centre
- Function centre
- Hall
- Library
- Nightclub
- Place of worship
- Restricted place of assembly

41 Our concerns are particularly focussed on how different forms of a Place of assembly, such as a function centre or nightclub, could impact the amenity of the nearby residential area. The Applicant agreed that the permitted activities should be limited to the following – function centre, hall, library, museum and restricted place of assembly (excluding gaming). Ms Ring's evidence is that the permit conditions will maintain an acceptable impact on the residential amenity including the acoustic conditions and the requirement for a venue management plan. Subject to these conditions, this land use is acceptable.

Sale of packaged liquor

42 Guidance in the discretion to grant a planning permit to use land to sell or consume liquor is found at Clause 52.27 with the following decision guidelines.

- The Municipal Planning Strategy and the Planning Policy Framework.
- The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.
- The impact of the hours of operation on the amenity of the surrounding area.
- The impact of the number of patrons on the amenity of the surrounding area.
- The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.

43 The application of these decision guidelines in the context of a proposed packaged liquor outlet was explored by Deputy President Dwyer in the Tribunal decision of *Hunt Club Commercial Pty Ltd v Casey City Council* (includes Summary) (Red Dot) [2013] VCAT 725. That decision made the following observations, which are relevant to our decision making task in this proceeding.

[14] ... as a matter of general principle, a broad concern about the social harm caused by alcohol, the accessibility of alcohol in the community generally, or the potential for the abuse or misuse of alcohol, will rarely (if ever) be a relevant consideration in the exercise of discretion for a particular licensed premises under clause 52.27. These matters are more commonly relevant to the complementary regulatory framework under the *Liquor Control Reform Act 1998*, albeit that there is some overlap between the liquor licensing and town planning frameworks.

[15] Town planning is not a panacea for all perceived social ills, nor is planning decision-making a forum for addressing all issues of social or community concern. At its heart, planning is about the use, development and protection of land. It has a spatial context that is primarily concerned with the fair, orderly, economic and sustainable use and development of land¹⁴. Town planning does not involve itself in moral judgements nor, subject to this locational or spatial perspective, in the operation of a competitive market economy in which certain goods and services are lawfully made, sold or consumed. Whilst town planning seeks to secure a pleasant, efficient and safe working, living and recreational environment, it is not the role of town planning to address all issues of public health, nor to regulate

¹⁴ See, for example, clause 10 of the State Planning Policy Framework

the pricing or general availability of a product to manage the health and well being of a society.

...

[20] Insofar as licensed premises is concerned under clause 52.27, a significant social concern about the accessibility of alcohol in an area will be even harder to establish as a relevant town planning consideration than the accessibility of gaming premises, particularly for the sale of packaged liquor where the location of the ‘point of sale’ and the alleged social harm caused by the availability of alcohol are spatially disconnected. There would usually need to be evidence of very high probative value (rather than a mere assertion) demonstrating a particular and significant social effect that is relevant in a planning context, arising from the particular location of the proposed licensed premises in question. In suburban Melbourne, I find it difficult to conceive of a situation where the social harm caused by the availability of alcohol within a local community might ever be of such significance to warrant it being a relevant planning consideration in considering the location or size of a packaged liquor outlet in a dedicated retail/activity centre. However, given the regulatory framework I have outlined, and the ‘never say never’ opinion I have expressed about what may be relevant in a given case, this is ultimately a matter for the member hearing the merits of the case based on the evidence and submissions before her.

[21] Even if relevant as a planning consideration, a concern raised about the significant social effects of alcohol is not an over-riding concern that would necessarily, of itself, dictate the outcome of a planning decision. As clause 10 of the state-wide planning schemes indicates, integrated planning decision-making is a balancing exercise with the aim of achieving net community benefit and sustainable development. To this end, a person alleging that there was a particular and significant negative social effect relevant to a decision about licensed premises under clause 52.27 would ordinarily need to provide evidence of that negative effect within the context of a balanced socio-economic assessment of all relevant positive and negative effects so that a balanced ‘net community benefit’ decision could be made.

44 In this proceeding, none of the parties that appeared before us provided any evidence of a current social impact being experienced in this location arising from a misuse of alcohol. Further, while Mr Campbell identified the location of some nearby late night venues, and the noise he hears from one venue, no evidence was presented of the amenity of this area being impacted by the cumulative impact of existing licensed premises, and the associated consumption of alcohol. Further, Ms Marcus informed the Tribunal that the Council had no record of any complaints relating to amenity impacts from the existing late night venues in this activity centre.

- 45 The proposal is to sell packaged liquor from a 150 square metre bottle shop. The bottle shop is proposed to operate between the hours of 9:00am and 10:00pm seven days per week.¹⁵ We concur with the following extract of the written evidence of Ms Ring:

[215] Within the Woolsworths 'stable', I expect the BWS bottle shop to be well-managed. Unlike some other types of licensed premises, it will not host entertainment, play amplified music, offer food, have heavy concentrations of customers or late-night trade. Absent these characteristics, and irrespective of some other licensed premises being in the activity centre and within proximity of the site, I consider the bottle shop presents a very low risk of adverse impacts on the safety and amenity of the area.

- 46 For all of these reasons, we find that a planning permit can be granted to sell liquor from the review site.

IS THE PROPOSED BUILT FORM AN APPROPRIATE RESPONSE TO ITS CONTEXT?

- 47 The built form considerations in this case are extensive. We do not intend to be exhaustive in itemising this, but in summary acknowledge that there is planning permission required for demolition under the HO, for the construction of buildings and works under the Mixed Use Zone, the HO and DDO10, and for building apartments pursuant to clause 58. The relevant planning policies need to be considered and balanced as necessary pursuant to all of these planning permissions. We are required to consider and determine that each planning permission required is acceptable and, in doing so, to balance all relevant planning policies in favour of sustainable development and net community benefit. Some of the considerations relating to the interface of the proposal with the adjoining residential properties are dealt with later in regard to the amenity impacts including visual bulk and overlooking. Other considerations relating to the internal amenity to be created are also dealt with later in these reasons.
- 48 Having regard to the submissions and evidence presented, there are two key planning controls related to the acceptability of the proposed built form. One is the Heritage Overlay, and the other is the Design and Development Overlay, and specifically Schedule 10. As mentioned earlier, some submissions suggested these two planning controls are in conflict with each other in this case. For the reasons below, we are satisfied that the proposed built form is an appropriate response to this planning policy (and planning control) context.

¹⁵ As per the agreed position reached between the Council and the Applicant prior to the hearing.

Is the demolition acceptable?

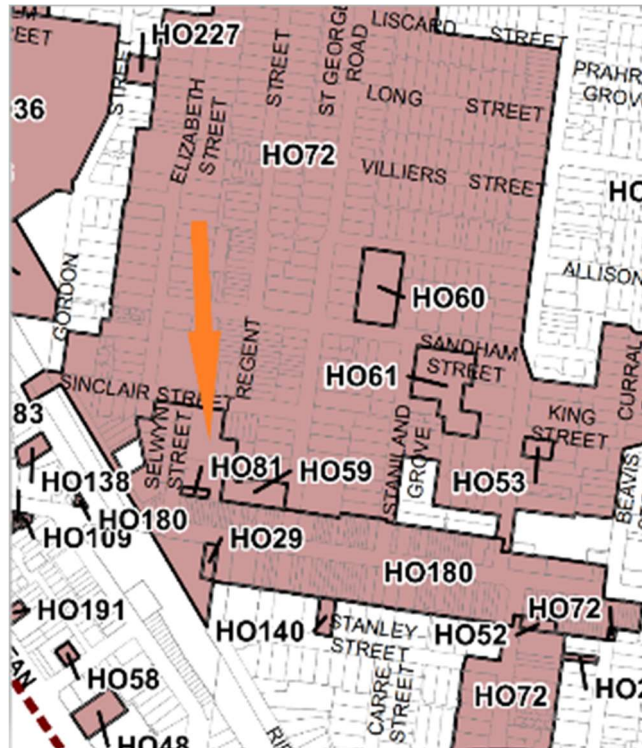
- 49 The proposal is to demolish all existing buildings on the review site other than the former Elsternwick Fire Station. The proposed demolition includes the brick wall that is built adjacent to the tennis court on 1 St Georges Road.
- 50 Mr Briggs and Mr Raworth do not oppose the demolition of the existing buildings on the review site. None of these buildings are identified as having any heritage significance other than the former Elsternwick Fire Station, hence their demolition will not have an adverse impact on the significance of the heritage precinct.
- 51 There was some focus during the hearing on the works shown in the plans relating to the former fire station. These are not works which are being granted planning permission by us, as no permit is required to develop a heritage place included in the Victorian Heritage Register.¹⁶ The former Elsternwick Fire Station is registered as VHR H2376.
- 52 Nevertheless, planning permission is required for other reasons including the shop land use and the associated building and works. Furthermore, the integration of this land use and its associated building and works with the balance of the proposed development is a relevant consideration.
- 53 Mr Raworth explained that some consultation has already occurred with Heritage Victoria regarding the scope of works proposed, including the extent of demolition by retaining the original extent of the fire station building and demolishing the rest. Presuming this is supported by Heritage Victoria, the demolition will enable the integration of the former fire station into the balance of the development in an acceptable design response.
- 54 The Campbell family is concerned about the demolition of the brick wall that effectively forms the western boundary of their tennis court and the rear boundary of their property. This concern is not presented as a heritage consideration per se. Rather, it is an existing condition that has been in place for a very long time. Often, in considering demolition proposals, it is appropriate to also consider what the future development will be if demolition is permitted. In this case, the proposal is to effectively replace that existing wall with a new wall that is of a similar height. There is nothing in the Statement of Significance for 1 St Georges Road that suggests this wall, or this boundary interface is a feature of heritage significance. As such, the demolition and replacement of this wall with another similar wall is acceptable as it will not have an adverse impact on the significance of the heritage place.

Is the proposal an appropriate response to the heritage places?

- 55 Since the hearing, the Heritage Overlay affecting the review site has changed. During the hearing, it was part of the broad Elsternwick Estate

¹⁶ Clause 43.01-3 of the Glen Eira Planning Scheme

and Environs heritage precinct HO72. Now the commercial precinct along Glen Huntly Road and in Selwyn Street has been separated into its own heritage precinct HO180. As shown on the extract of the Heritage Overlay Map 1HO below, the review site is now located at the boundary between HO180 and HO72 as well as adjacent to HO59 that recognises the heritage significance of the Glenmoore mansion at 1 St Georges Road.



Extract of HO map with orange arrow added pointing to review site

Former fire station

- 56 The previous decision considered the former fire station being developed and used for the purpose of a café and residential lobby within the overall development. This time it is proposed to develop and use the former fire station for the purpose of a bottle shop. This may involve minor alterations to the building, including in the front façade such as the detail of the street opening(s) which may involve the curved fire door. It may also involve some advertising signage. The Glen Eira Historical Society is concerned about any potential works affecting the fire station's heritage significance. The Society also expressed concern about the proximity of the south tower and the basement entry/exit ramps to the former fire station. Mr Raworth is confident any works to the former fire station will be undertaken without adversely affecting its heritage significance. This is not a matter that we need to consider or determine. Any changes to the building or the inclusion of any signage is a matter for Heritage Victoria to consider and determine. If approval cannot be obtained from Heritage Victoria, it may mean some amendments will need to be made to this planning permit in order to give

effect to whatever changes to the overall development may be necessary. If that occurs, any changes will be considered on their own merits. At this point in time, we can proceed to determine the merits of the overall development with an appreciation as to how the former fire station is intended to be integrated into the proposal.

- 57 Mr Raworth has no concern with the proximity of the former fire station to the south tower or the basement entry/exit. Mr Raworth advises the location of the south tower is a matter that has been discussed already with Heritage Victoria. In regard to the basement entry/exit, Mr Raworth points out this proposal is set back from, and is recessed behind the former fire station. Hence, there will be an appreciable side return to the fire station building and it will be a prominent element as it will sit forward of basement entry/exit as well as being separated from the balance of the Selwyn Street podium. We accept this evidence and find the juxtaposition of the new development around the former fire station has been sensitively designed.

Elsternwick Estate and Environs heritage precinct HO72

- 58 The Elsternwick Estate and Environs heritage precinct HO72 wraps around the north and east sides of the review site now (as a consequence of the recent Amendment C204) and includes the residential properties in Sinclair Street and St Georges Road.
- 59 Mr Briggs and Mr Raworth agree that the height and setbacks of the north tower in proximity to the lower scale residential properties in Sinclair Street and adjacent to the review site are appropriate from a heritage perspective. Mr Briggs expressed concern about what he described as the ‘skeletal’ architectural detail of the north tower. He suggested this architectural detailing gives the north tower an institutional feel. Mr Raworth disagrees and considers the north tower has a residential feel.



Extract of photomontage V9 view from corner of Selwyn & Sinclair Streets

- 60 As evidenced in the photomontage extract on the previous page, the podium comprises a primarily face brickwork two storey form, and the tower has a contemporary glass and lightweight appearance with a few vertical elements of face brickwork anchoring it to the podium. We adopt Mr Raworth's opinion that it is a well-established design approach with a podium and tower for the podium to be respectful as it 'belongs' to the existing lower level streetscape containing heritage fabric, whilst the upper levels in a tower are able to be quite different to the podium.
- 61 The Statement of Significance for HO72 identifies (amongst other things):
- Late nineteenth century 'Boom' development of residential subdivisions ...
 - The Edwardian residential ... development associated with the economic revival of that period
 - The pattern of residential development over time leading to a diverse socioeconomic profile expressed in the range of house sizes and types.
- 62 Having regard to these elements and the reasons explained above, we are satisfied that the proposal will not adversely affect the significance of this heritage place.

Elsternwick Commercial and Public heritage precinct HO180

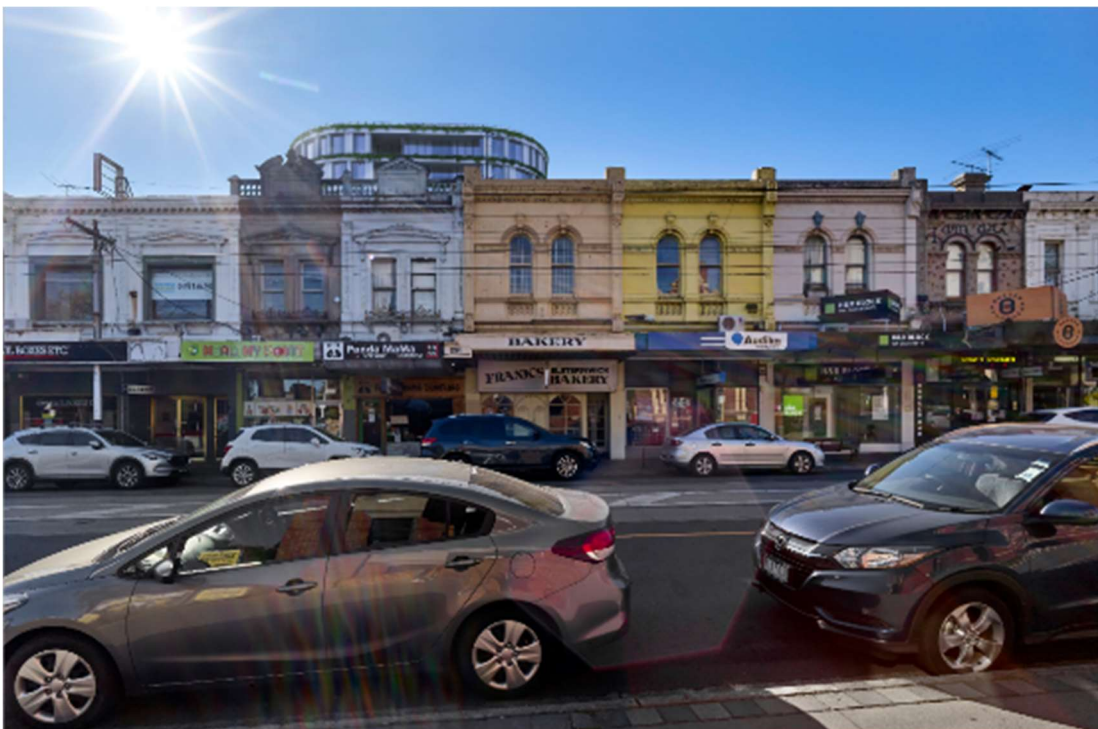
- 63 The previous decision found the north side of Glen Huntly Road and its western section feature highly intact period commercial facades, which in turn was found to have a high level of heritage value and significance making it quite a sensitive heritage interface.¹⁷ The previous decision determined the southern tower at 14 storeys was excessive and a 'fatal flaw' in the proposal. It was found to be excessively visually dominant and overbearing in contrast to the fine grain and sensitive nearby two storey commercial heritage facades on the north side of Glen Huntly Road.
- 64 The earlier HO map illustrates that this new heritage precinct includes both sides of Selwyn Street and both sides of Glen Huntly Road between the railway line and Beavis Street. The Statement of Significance describes the features that contribute to the significance. These refer to intact one and two storey buildings of late Victorian, Federation and Interwar periods; intact parapets to single storey buildings; intact first floors and parapets; visible roofs; and original wall finishes, decorative elements, timber windows, shop fronts and cantilevered canopies. The explanation as to why this precinct is significant includes the following¹⁸:

¹⁷ Paragraphs 150-151 of the previous decision.

¹⁸ Extracted from Mr Raworth's Supplementary Memorandum to VCAT dated 5 August 2022.

The Elsterwick Commercial and Public Precinct is of representative significance for the high proportion of largely intact, contributory commercial buildings dating from the Late Victorian, Federation and Interwar periods. These buildings form consistent streetscapes with many fine buildings that are evocative of their respective periods. Many of the buildings are part of larger groups. The Late Victorian buildings display a variety of classicising details and tend to be rendered. This layer includes a few buildings designed in the Anglo-Dutch style, which are a distinguishing feature of the precinct. Many of the Federation period and most of the Interwar period buildings display an Arts and Crafts aesthetic, commonly with a combination of brick (red and clinker) and render (smooth or roughcast). Unusually many of this type also have expressed tile clad roofs. A few early 20th century shopfronts remain, and some pressed metal soffits to the canopies. (Criterion D)

- 65 Mr Briggs’ evidence at the hearing and some of the submissions including from the Glen Eira Historical Society consider the clear sky views above the northern side of Glen Huntly Road (that is to the south of the review site) to be a feature of the heritage significance that should be conserved. This is particularly the case given the findings of the previous decision.
- 66 During the hearing photomontages were prepared that demonstrate the extent of visibility of this proposal from various locations generally along the south side of Glen Huntly Road, including the following montage taken directly opposite the general location of the proposed south tower.



Extract from photomontage V12 of the proposal’s visibility above the north side of the Glen Huntly Road commercial heritage precinct

- 67 Ms Deacon’s submission at paragraph 204 highlights (amongst other things) that:

The Tribunal emphasised that it was the “unimpeded skyline” which gave “emphasis and strength to the highly consistent streetscape scale

of this area” and which in turn was “part of the valued character and presentation of this substantially intact historic commercial street”.

- 68 Mr Raworth points out that neither the new heritage precinct HO180 Statement of Significance nor the broader *Glen Eira Heritage Review of Elsternwick Structure Plan Area* 2019 Part 2 Report from which the Statement of Significance is taken elevates the importance of any particular portion of the Glen Huntly Road streetscape. He also points out the Statement of Significance does not imply that any portion of the precinct is of special or of elevated significance above and beyond the presence of individually notable buildings. There is no mention of the skyline view in the Statement of Significance. There is no suggestion that this precinct or any part of it is of unique heritage importance in broader Melbourne because of its existing skyline view above the heritage buildings, which was a viewpoint expressed by Mr Briggs.
- 69 The photomontage extract on the previous page illustrates that it is effectively the top two levels of the south tower that are visible above the Glen Huntly Road commercial premises. This visible element is well set back from these commercial premises, and we agree with Mr Raworth’s evidence that having visible new and taller buildings set back behind heritage streetscapes is a relatively common feature throughout broader metropolitan Melbourne. The fact that it has not yet happened here in Glen Huntly Road is fortuitous. The approval of a 9 storey building at 7 Selwyn Street will begin to change the backdrop to the Glen Huntly Road commercial heritage precinct.
- 70 Some parties referred to specific performance based requirements in DDO10 that apply to the Glen Huntly Road properties in considering the visibility of possible additions to these heritage buildings. We are not persuaded this is an acceptable tool by which to consider the merits of this proposal. DDO10 is a separate planning overlay with its own planning permission requirements and considerations. The requirements referred to do not apply to the review site. Whilst the content of DDO10 refers broadly to the heritage significance of the activity centre, its considerations are separate to and distinct from the consideration of heritage significance specifically. DDO10 focuses on providing guidance about future built form amongst the heritage character of the Glen Huntly Road shopping strip.
- 71 There is nothing in the Heritage local planning policy at clause 22.01 that requires a new building to be invisible. Rather, the policy for Commercial Heritage Areas encourages higher building additions to be well set back from the front wall of a building. This is achieved in this proposal. The policy also contains a performance measure to avoid visually intrusive design which confronts the established architecture of the centre and dominates the surroundings. The significant separation between the Glen Huntly Road commercial frontages and the proposed south tower achieves this performance measure. Furthermore, the architecture of the south tower

has a simplicity to it that does not dominate or overwhelm the recognised features in the Statement of Significance for the commercial precinct.

- 72 For all of these reasons, the proposed south tower does not adversely affect the significance of this heritage precinct.

1 St Georges Road (Glenmoore) HO59

- 73 The previous decision noted that the tennis court at the rear of 1 St Georges Road did not form part of the individually significant heritage place HO59. This was one of several ‘positive heritage considerations’ identified in paragraph 137 of the previous decision explaining why the interface was ‘challenging, but not fatal in itself’.¹⁹ This circumstance has now changed as HO59 has been amended to include the tennis court. However, for reasons that we will explain, the proposal including a south tower is an acceptable interface that will not adversely affect the heritage significance of Glenmoore.

- 74 We agree with the previous decision that there is a ‘very noticeable’ separation between the review site and Glenmoore. Indeed, Glenmoore is quite centrally located on its property with generous front and rear setbacks. The front garden features mature, tall trees as well as a reasonably high solid front fence. These features limit the visibility of Glenmoore from St Georges Road. As such, we are not persuaded that the concern expressed by Mr Campbell of an adverse impact upon the St Georges Road view with the south tower being visible behind and above the roof top of Glenmoore is significant. We also agree with Mr Raworth’s evidence that the central location of Glenmoore means it will remain a distinctive element in any views from the east.

- 75 The proposed new boundary wall alongside the tennis court will be of a similar scale to the existing masonry wall and it can be constructed of a single building material with creepers growing on it (as was sought by the Campbell family). This change would not have an adverse impact on the heritage significance of Glenmoore.

- 76 Mr Raworth considers the south tower will be of a visually higher scale but a neutral backdrop. He is of the view the curved form will further reduce the visual dominance of the tower.

- 77 The Statement of Significance for Glenmoore²⁰ explains it is:

...locally significant as a surviving mid nineteenth century villa residence with grounds in the then fashionable bi-chromatic brick form. It is also important as the home of Hugh Moore who built several shops in nearby Glen Huntly Road, and which remains as important contributors to the architectural character of the Elsternwick Shopping Centre.

¹⁹ The conclusion reached in the previous decision at paragraph 139.

²⁰ From the Victorian Heritage Database and tabled in Exhibit A-13.

- 78 The physical description focuses upon the mansion’s architectural details and interior ‘important surviving elements’. It then mentions timber outbuildings and a spacious front garden including early palm trees.
- 79 Based on the identified features of significance combined with the setting of Glenmoore and the other reasons already explained, we find the proposal will be visible, but we are not persuaded its visibility will adversely affect the identified heritage significance of Glenmoore.

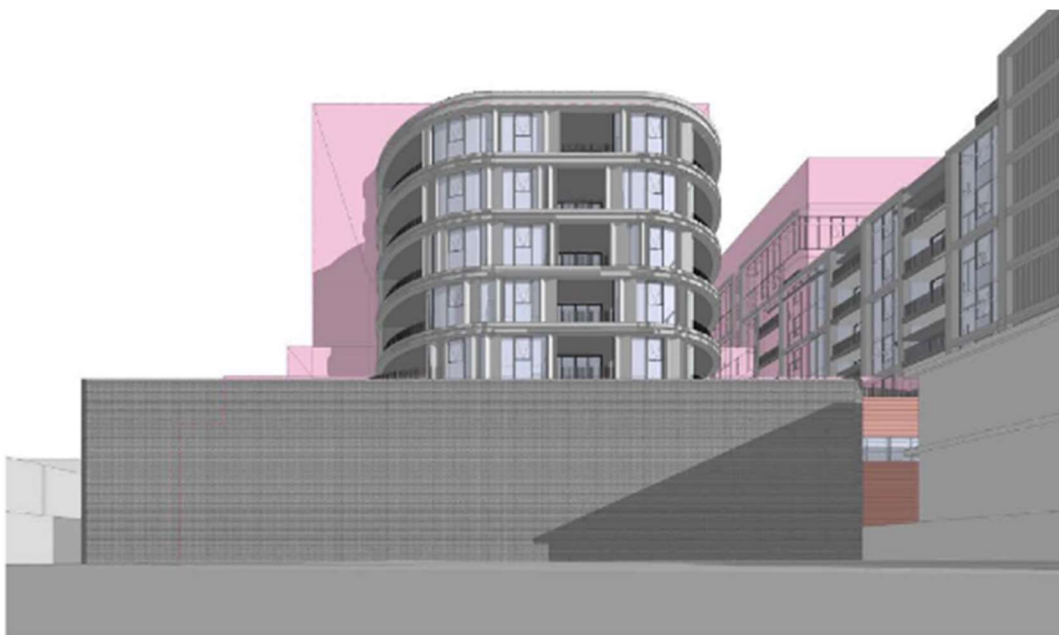
Is the proposal an appropriate response to Design and Development Overlay Schedule 10 (DDO10)?

- 80 DDO10 applies to the Elsternwick Activity Centre. It specifies preferred maximum building heights, setbacks from streets and setbacks from side and rear boundaries. The design objectives are:
- To preserve and enhance the heritage character of the Glen Huntly Road shopping strip.
 - To encourage well designed mixed-use development, that supports the housing and economic needs of the Elsternwick activity centre.
 - To ensure an appropriate design response to sensitive interfaces, such as heritage or residential sites and open space.
 - To encourage developments in urban renewal areas and on strategic sites that provide a significant benefit for the Elsternwick community.
- 81 DDO10 is an interim built form overlay control that initially came into effect in August 2018 whilst the Council undertook further strategic work including a Housing Strategy to inform the future growth needs of the municipality including in its activity centres. Since that time, the cessation date in the interim control has been extended and it will now cease to have effect after 30 June 2023. Since it was first introduced, the extent of area that is affected by it and the requirements contained within DDO10 have been amended (or perhaps adjusted is a better turn of phrase). The nature of the amendments made over the last few years are not significant on the one hand but do have an impact on the manner in which it is considered. For example, as part of the previous decision, the applicable DDO10 included the residential properties surrounding the review site (albeit there were no specific heights or setbacks specified for them). Now, the residential properties are excluded and no longer form part of DDO10.
- 82 What has not changed since the previous decision is:
- i the preferred maximum building height for this site at 37m, comprising up to 10 storeys; and
 - ii the nomination of the interfaces with the adjoining residential properties to the east of the review site as a sensitive interface with recommended setbacks for all levels of a new development.

- 83 The previous decision acknowledges that just because DDO10 nominates a preferred maximum building height does not mean any particular proposal is going to be acceptable at that height. In this proposal, the two towers are less than preferred height as both reach 9 storeys. Also, and significantly, in this proposal, the south tower is 9 storeys in height with roof plant above rather than the 14 storey height sought in the previous decision.
- 84 The language contained in DDO10 includes the following relevant statements in regard to the height and form adjacent to the residential properties to the east in St Georges Road, May Street and Sinclair Street:
- A building should not exceed the maximum building height and the number of storeys specified ...
 - Building setbacks should provide an appropriate response to sensitive interfaces.
 - Building setbacks should ... provide significant separation of tower forms from sensitive interfaces.
 - Buildings should ... where adjacent to sensitive interfaces, provide a transition in scale from larger buildings to areas of smaller scale.
- 85 The Applicant acknowledges DDO10 gives the most site and area specific indication of the development objectives and strategic aspirations for land within the Elsternwick Activity Centre. It also informs what the Applicant describes as the ‘reasonable expectations of land within it’. As the Respondents point out, this proposal does not meet the ‘reasonable expectation’ of setbacks associated with the preferred building heights. The Applicant submits DDO10 must be applied having regard to the specific physical context of the review site and the design response of the proposal.
- 86 The Applicant points out the review site is in Precinct D, a precinct identified as one of three ‘strategic sites’ on which the greater building height of up to 37 metres or 10 storeys is expressly contemplated. The Applicant’s closing submission analyses the design response to each of DDO10’s decision guidelines, none of which articulate any specific reference to the sensitive residential interface to the east. The Applicant submits DDO10 outlines how built form in this activity centre is envisaged to change over time, including on the review site. This means, says the Applicant, that any notion of a taller built form on a strategic site in this activity centre being invisible is absurd. We agree with this, and so too do many of the Respondents. The Respondents say what should be provided on the review site is a built form that achieves not only the preferred height but also the recommended setbacks in DDO10.
- 87 The Applicant points out the setback provisions include that building setbacks should provide an ‘appropriate response’ to sensitive interfaces. The Applicant stresses that if the drafters had meant an ‘appropriate response’ was only the setbacks contained in Tables 2 and 3 of DDO10, then this general provision of providing an appropriate response would be redundant and the setbacks could have been made mandatory. We are not

persuaded of this. Mandatory controls are used generally infrequently in planning schemes. It is often preferable for building controls on height and setbacks to be discretionary so that a design can respond to its particular interfaces without being unduly or unnecessarily constrained by prescriptive planning controls. The recommended setbacks are clearly a guide as to what would be considered an acceptable built form outcome.

- 88 The Applicant acknowledges the setbacks of the southern tower do not meet the setbacks outlined in Table 2 of DDO10. The Applicant submits the graphically depiction of these setbacks in Table 3 envisages a more typical interface and fence condition than that that exists at 1 St Georges Road. Of course, the nominated setbacks are, to a degree, generic in application. That is an example as to why often planning controls are discretionary rather than mandatory. Nevertheless, the nominated setbacks in DDO10 provide a guide about what is envisaged to be an acceptable new built form. This proposal does not achieve these setbacks.
- 89 The Applicant relies upon an illustration from Mr Sheppard's evidence of the proposal with the DDO10 heights and setbacks (in the pink) to support its position about the acceptability of the built form response adjacent to 1 St Georges Road:



- 90 The Applicant submits:
- 42. While a literal application of the DDO10 envelope would be set further back, it would also be broader and have less opportunity to conceal taller built form from the closest/most sensitive vantage points. By holding levels 1 to 6 forward of the DDO10 envelope, the architects have ensured that levels 7 and 8 will be concealed in views from the eastern edge of the tennis court.
 - 43. The architectural response to the southern tower also recognises the sensitivity of the residential interface by enclosing the apartment balconies. This can be contrasted with the more

“open” apartment balconies facing the public realm on Selwyn Street.

44. It is relevant also that the proposal represents a holistic built form solution for this strategic site, meaning that height and setbacks can be understood by reference to the whole site, where some components of built form are well within the DDO10 envelope.²¹

91 Whilst some components of the overall proposal are well within the DDO10 envelope, the setbacks in proximity to 1 St Georges Road are not. There is no doubt that there is a judgement call to be made about what is an acceptable outcome in the context of discretionary height and setback requirements in DDO10. The fact that they are discretionary does not mean they have no purpose to serve. Their purpose and relevance need to be considered on a case by case basis. For reasons that we will explain next, the orientation of the adjoining properties and their principal living and outdoor secluded private open space areas together with the existing interfaces with the review site including existing boundary walls all come into play in considering the acceptability of the design response to the sensitive residential interfaces.

ARE THERE ANY UNREASONABLE OFF-SITE AMENITY IMPACTS?

92 Off-site amenity impacts to surrounding residential properties are generally measured in terms of visual bulk, overlooking and overshadowing. In this proceeding, Mr Campbell also raised the prospect of acoustic impacts from various plant and equipment to the Campbell families’ residential properties. In addition, Ms Blok and other Respondents raised concerns regarding the potential amenity impacts from trucks utilising the supermarket truck loading bay, by way of noise and headlights from exiting vehicles. We will address each of these issues in turn.

Visual bulk

93 The previous proposal included a 14 storey south tower on the review site, closest to 1 St Georges Road (as shown on the following page).

²¹ Extracted from the Applicant’s closing submission in Exhibit A-45.



Extract of architectural render from the previous proposal showing southern tower behind 1 St Georges Road²²

94 The previous decision was concerned with the visual bulk impact on the site at 1 St Georges Road (the Glenmoore mansion interface).

[208] Finally, we turn to the Glenmoore mansion interface with the proposed southern tower. We note that this interface is with the taller eastern side of the southern tower – the maximum height on this eastern side would be 47.9 metres to the top of the roof-top plant.

[209] Some more benevolent considerations here are that it is Glenmoore’s tennis court that sits closest to the common boundary, that the whole of Glenmoore is an unusually large residential lot and that the Glenmoore mansion sits some distance back from the common boundary. Whilst acknowledging scope for different views about this issue, we see a legitimate argument that a tennis court is a less sensitive area, as it would typically be used for more active/sporting purposes, rather than somewhere you would more passively sit to eat/drink and take in the available views/amenity. Plus it is a north-south oriented tennis court, so when actually playing tennis, your main focus will be to the north or south, not to the west.

[210] On the other side of the ledger, the very fact that the Glenmoore property directly abuts the proposed southern tower makes this a particularly sensitive interface. We accept that the

²² Render extracted from Exhibit RA-6, being some of the material and evidence considered by the Tribunal in the previous decision.

owners/occupants of Glenmoore (the Campbell family) have raised the following legitimate range of amenity concerns about the impact of the southern tower on Glenmoore:

- The southern tower's tallest point is roughly four storeys higher than the northern tower.
- The eastern side of the southern tower is roughly three storeys higher than the western side.
- The southern tower facades do not involve any stepping-in, but are (from a vertical perspective) sheer walls.
- The eastern side of the southern tower rises straight up 14 storeys²³, with a modest setback from the common boundary with Glenmoore of approximately 5 horizontal metres.
- The day-to-day use of the more sensitive Glenmoore backyard (viewed objectively) does, we accept, have a very westwards orientation, towards the southern tower.

[211] Hence for these reasons, we accept that the day-to-day use of the Glenmoore backyard will be likely to experience a very high extent of 'visual bulk', when the main outlook of Glenmoore's back yard is westwards towards a 14 storey tower merely set 5 horizontal metres back from the common boundary. We see this 'visual bulk' issue as the more relevant amenity issue here – we consider that 'privacy', 'overshadowing' and 'noise' issues with this interface to be within more confined parameters.

...

[232] We are mindful of the submissions of the Campbell family, who we understand acknowledge that the site's locational and planning policy context means that any redevelopment of it will probably involve some form of multi-storey development that will be a real change to this setting. However, they say that even allowing for this, the starting point should still be that the DDO10 discretionary height and setback provisions are met vis-à-vis Glenmoore.

[233] Our findings above address the issue of the southern tower and its height above 10 storeys, in terms of the operation of the DDO10 and the interface with Glenmoore. Hypothetically then, are we saying that reducing the height of the southern tower down to 37 metres will then pursuant to the DDO10 make that tower acceptable as a whole with the DDO10?

[234] We say the answer to this question is 'No', for the following reasons. We say 'No' because we see the DDO10 as requiring a contextual consideration of both building height and building

²³ Mr Campbell memorably submitted that the nearest façade of the southern tower would rise up like a 'cliff face', when viewed from his Glenmoore back yard.

setbacks. This is reinforced by the DDO10 providing both preferred height and building setback measures.

[235] We start by acknowledging that the setback variations from those preferred in the DDO10 occur across many elevations. We accept that some extent of divergence from these preferred boundary setbacks may be acceptable because of the existing walls on boundary (e.g. for the Sinclair street properties), or because of the primary orientation in a different direction of the main private open space areas of adjacent properties (e.g. for 1 and 3 May Street), or on the basis of the design response chosen for the northern tower (which adopts the ‘wedding cake’ recessive form).

[236] However, with the southern tower’s interface with the abutting Glenmoore property, we would still have issues with a 10 storey southern tower which retained the current design approach of sheer walls and a uniform setback to Glenmoore of 5.1 metres at the closest point. Notably, we would still see this scenario as a poor response to the DDO10 setback objective (with our emphasis) of “Provide significant separation of tower forms from sensitive interfaces”. Similarly, we would also see a tension here with the DDO10 design objective of “Where adjacent to sensitive interfaces, provide a transition in scale from larger buildings to areas of smaller scale”.

[237] We accept that the existing taller than normal extent of masonry wall on the common boundary alongside the Glenmoore tennis court reduces the expectation that the ground and first floor setbacks expressed in the DDO10 should be applied to the southern tower with rigour.

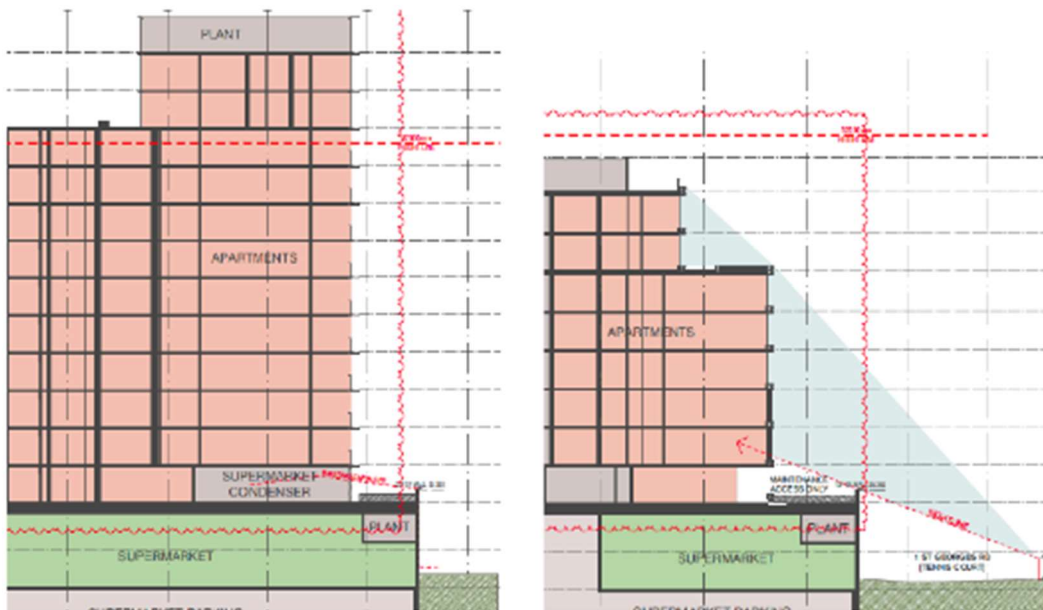
[238] However, we are unpersuaded that the southern tower’s extent of exceedance of the ‘DDO10 discretionary setbacks for a sensitive interface’ above these floors is satisfactory. By way of example, the DDO10 provides that the fourth level of the southern tower should be setback from the common boundary with the Glenmoore property (being a sensitive interface) by 14 metres. However, the actual proposed setback at this level is 5.1 metres to the closest edge of the tower. For the storeys higher above, the preferred setback is 20 metres and the provided setback is still 5.1 metres.

[239] It also counts against this aspect of the proposal that the setback of the closest section of the southern tower’s façade to Glenmoore also fails to comply with Standard B17²⁴.

[240] In summary, with how the southern tower would interface to Glenmoore, we consider there to be a lack of proper contextual consideration and application of the DDO10 discretionary building setbacks, being a third individually fatal aspect of the proposal.

²⁴ This is acknowledged at page 25 of Mr Blade’s report.

- 95 The proposed development that is before us has made a number of changes to the design of the proposed southern tower including:
- A reduction in height of the southern tower from 47.9 metres to 32.78 metres.²⁵
 - A reduction in the width of the southern tower as measured from north to south, and as would be apparent on views from the property at 1 St Georges Road.
 - An increase in the setbacks of the tower form, from 5.1 metres in the previous proposal, to 7.17 metres in the proposal that is now before us.
 - An increased setback of 14.7 metres provided to the two upper levels in the proposal that is before us, which effectively makes the two most upper levels not visible from views at certain locations on the adjoining property at 1 St Georges Road.
- 96 The Applicant provided a few comparisons of the design in the previous decision and this proposal in its opening submission including this comparison of section B-B that captures the south tower and the tennis court at 1 St Georges Road.



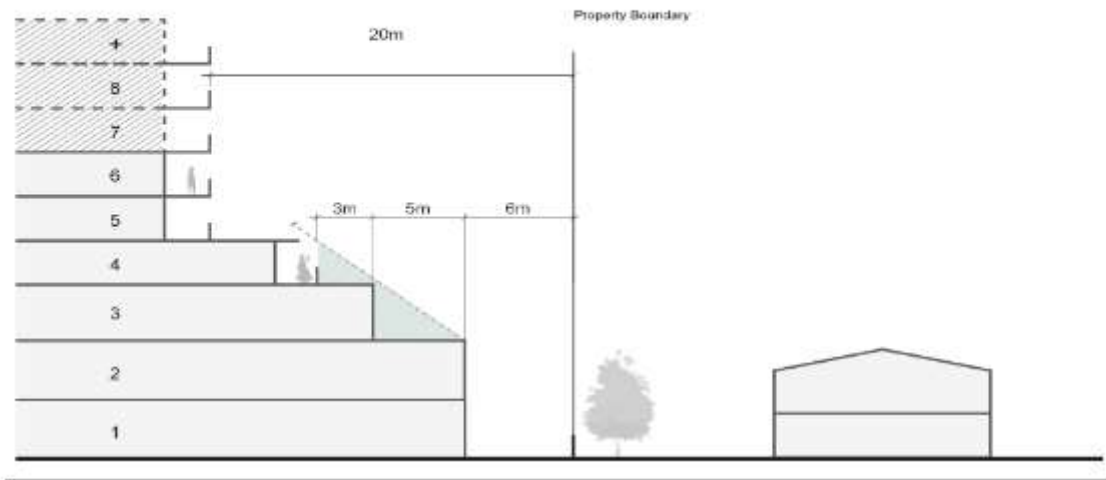
Excerpt from previous TP250 – section BB

Excerpt from current TP250 – section BB

²⁵ This height of 32.78 metres is measured to the top of the top floor parapet as depicted on plan TP202. While we acknowledge that the height of 47.9 metres provided for the previous proposal was to the top of the roof plant, we consider that to be a fair comparison given that in the earlier proposal, the parapet to the roof plant was continuous with the parapet of the remainder of the building, whereas in the proposal that is before us the roof plant to the southern tower is set in from the parapet of the tower below, such that it will not be a visible element.

- 97 Despite the changes made to the design of the southern tower, the proposed setbacks still do not comply with those envisaged in DDO10, which are set out below.

Precincts C, D, E & F Setbacks

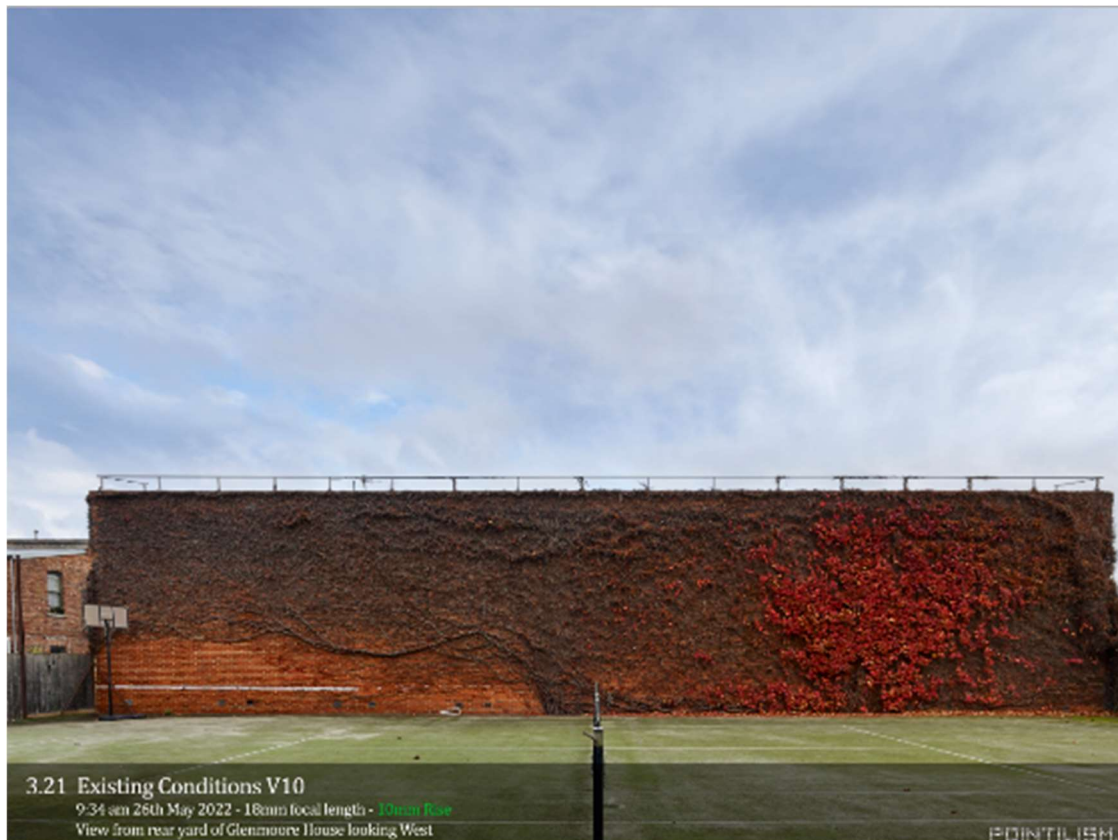


- 98 Mr Campbell highlighted that the 6m ground level setback and the 20m setback of the upper levels are not provided. We note (like in the design considered in the previous decision) this proposal seeks to replicate the existing high boundary wall to the adjoining property at 1 St Georges Road, beyond which are the setbacks as is pictured in the image below, which is taken from the south elevation on plan TP201 (ignore the white building elements on this elevation, as they are parts of the proposed north tower in the background).



- 99 It is the evidence of Mr Sheppard that the proposed southern tower will not present unreasonable levels of visual bulk to 1 St Georges Road. He forms this view having regard to the recessed nature of the upper two levels, which results in the southern tower being perceived as having a height of around 25.5 metres when viewed from the eastern edge of the adjacent tennis court. He also forms this view having regard to the narrow form of the southern tower, the curved footplate at the interface, and the siting of a tennis court on 1 St Georges Road at the immediate interface with the review site.

- 100 It is the evidence of Ms Ring that the proposed development has made significant changes to the previous proposal. She notes that the previous proposal had 13 sheer tower levels at a 5 metre setback from 1 St Georges Road, whereas this proposal has only six visible tower levels, with an increased setback. Ms Ring opines that the proposal now provides an appropriate transition in scale, having regard to its slender form, deeper setbacks, lower height and, “*quieter residential aesthetic.*”
- 101 We are not persuaded by this evidence, and instead find that the proposed southern tower will still present an unacceptable built form interface to the adjoining property at 1 St Georges Road. Principally, we make this finding as we consider that a tower form, that rises in part to 26.0 metres in height, at a setback of 7.17 metres to an adjacent residential property, presents an unreasonable extent of built form in this context. When we say the words ‘in this context’ we are having regard to a range of factors that both support and mitigate the potential scale of development on the review site.





- 102 In support of the construction of a large building on the review site is the location of the land within a higher order activity centre, the discretionary height limit that is applied to the review site under DDO10 of 37.0 metres, and the zoning of the residential properties to the east of the review site (including 1 St Georges Road) within a Residential Growth Zone, which would normally indicate that development of some scale could be anticipated on these residential properties. In addition, we agree with the observations of Mr Sheppard and Ms Ring that the tennis court, which is the immediate residential interface at this part of the review site is not as sensitive to built form as a principal area of secluded private open space. It is also true to observe that the siting of this tennis court does not allow the establishment of landscaping within the property at 1 St Georges Road where it interfaces with the review site, and therefore this adjoining property relies on any built form and landscaping within the review site in order to assist to provide an appropriate interface outcome.
- 103 Mitigating against the extent of built form proposed is the siting of the review site in a Mixed Use Zone that is nested amongst the residential zones in the planning scheme, as opposed to the Commercial 1 Zone that is often found on sites within an activity centre. In addition, while the adjoining property at 1 St Georges Road is within a Residential Growth Zone, it is also an individually significant heritage property, so it is therefore unlikely to realise the development potential of other land in this zone. It is therefore likely to present in the future in a similar manner to

that which currently occurs. Finally, the manner in which the property at 1 St Georges Road is developed, means that broad and direct views are available to a proposed development of the review site from a large area of secluded private open space and the rear habitable rooms of the mansion.

- 104 Another relevant part of the context is the existing high boundary wall that exists along the common boundary between the review site and 1 St Georges Road, which is sought to be replicated, albeit at a slightly lower height, in the design that is before us. The effect of this boundary wall is that the ground floor setback that is sought under DDO10 is not provided at this interface.
- 105 The setbacks sought by DDO10 seek to achieve separation between tower forms, and sensitive residential interfaces. The nominated setbacks are not for us to review and interpret, such as whether they are generous or even onerous. Rather, DDO10 outlines what would be an acceptable design outcome. These setbacks are discretionary, so we need to decide whether the proposed lesser setbacks are acceptable in this case. Mr Sheppard did acknowledge in cross-examination that greater setbacks mean a reduced visual impact.
- 106 We do not regard the proposed 7.17 m setback to levels 2 to 6 inclusive, to comprise the type of separation to a tower form that is clearly encouraged along this sensitive interface. Furthermore, we consider that the photomontages that were prepared prior to the final day of the hearing, demonstrate that the proposed southern tower will loom large, and at a relatively close distance, to the area of secluded private open space at 1 St Georges Road. For these reasons we find that the proposed southern tower in its current design, will result in an unacceptable level of visual bulk to be visible from the adjoining property at 1 St Georges Road. Before we come to assess whether we can resolve our concerns by way of permit conditions, we will continue to assess the other potential off-site amenity impacts on this residential interface.
- 107 Turning to the other residential properties that abut the review site, we note that the previous Tribunal decision raised no concerns with the prospect of visual bulk impacting these adjoining properties. As the design and layout of the northern tower has not altered from the proposal that was previously before the Tribunal, and as the parties that oppose the grant of a permit in Sinclair Street have not addressed the Tribunal as to facts or matters that the Tribunal did not properly consider in its previous decision, we are not inclined to depart from the findings in the previous decision.
- 108 Mr Campbell submits that the proposed development will result in unreasonable visual bulk impacts to the property at 3 May Street, in particular on views from the west and north facing windows of that dwelling. We note that the dwelling at 3 May Street has been constructed in a manner where it has very small setbacks to its western and northern boundaries. Further, these setbacks have not been used to provide any

landscaping that may soften views to the review site. As such, the upper level bedroom windows in the dwelling at 3 May Street currently have clear views at close range to the review site in a northern and western direction.

- 109 We acknowledge that the proposed development of the review site will appear as a large building from these first-floor windows. However, that is largely to be a result of the choices made in the design of 3 May Street. It is a building at the interface to a large site in the Mixed Use Zone, with expansive windows on all sides and minimal setbacks, and absent of adequate opportunities for landscaping within its own site.
- 110 We find that the proposed development appropriately responds to this interface. It does so with boundary walls of between 3.0 and 3.25 metres in height that wrap around the common boundaries with 3 May Street. Beyond which are setbacks of between 2.5 and 4.4 metres to the floor above. In addition to these setbacks, the northern tower does not sit adjacent to the northern boundary of the site at 3 May Street, having regard to the setbacks provided from the review site's eastern boundary. Further, the dwelling at 3 May Street, and its western outlook, is perfectly aligned with the break provided between the northern and southern towers that are proposed for the review site. These design techniques effectively reduce the potential for visual bulk to be caused on views from the existing property and dwelling at 3 May Street.
- 111 While we acknowledge that the ground floor setbacks encouraged under DDO10 for a sensitive interface are not proposed for the review site, we do not consider such setbacks to be necessary in order to achieve an appropriate built form interface to 3 May Street that reduces the visual bulk, for the reasons set out above.
- 112 For these reasons we find that the proposed development will not result in unreasonable levels of visual bulk to the residential interface, aside from our concerns that we have expressed with the interface at 1 St Georges Road.

Overlooking

- 113 It is the evidence of Ms Ring and Mr Sheppard that overlooking from the proposed apartments is appropriately restricted in accordance with the provisions of Clause 58 of the Glen Eira Planning Scheme. In respect of the prospect for overlooking of the adjoining property at 1 St Georges Road, both experts rely on a cross-section that depicts that overlooking of areas of secluded private open space on that property cannot occur within 9.0 metres of the proposed balconies and habitable room windows.

114 As the development comprises an apartment development of five or more storeys, it is the provisions at Clause 58 of the Glen Eira Planning Scheme that apply.²⁶ Clause 58.04-1 contains the Building setback objectives, which includes:

To limit views into habitable room windows and private open space of new and existing dwellings.

To provide a reasonable outlook from new dwellings.

115 This objective is accompanied by the following components of Standard B14 and Decision Guidelines that relate to the issue of overlooking:

Standard D14

Buildings should be set back from side and rear boundaries, and other buildings within the site to:

- Avoid direct views into habitable room windows and private open space of new and existing dwellings. Developments should avoid relying on screening to reduce views.
- Provide an outlook from dwellings that creates a reasonable visual connection to the external environment.

Decision Guidelines

Before deciding on an application, the responsible authority must consider:

- The impact of overlooking on the amenity of existing and proposed dwellings.
- The existing extent of overlooking into existing dwellings and private open space.
- Whether the development meets the objectives of Clause 58.

116 Importantly, the objectives, standard and decision guidelines that apply under Clause 58.04-1 to this development, do not contain a reference to restricting overlooking within 9.0 metres, as occurs under the Clause 55 provisions. Instead, a development is expected to limit views or avoid direct views into private open space. The proposed development comprises three apartments, on each of levels 2 to 6 inclusive of the south tower, which will be setback 7.17 metres from the boundary with the adjoining residential property at 1 St Georges Road. The layout of these three apartments on each level will allow views from a combined three balconies, three internal living areas, and one master bedroom to the adjoining property. As a result, 15 apartments will have direct views from their most heavily utilised outdoor and indoor living spaces, towards 1 St Georges Road.

117 The property at 1 St Georges Road is an individually significant individual heritage place that is developed with a large two storey dwelling setback approximately 33.5 metres from the common boundary with the review site.

²⁶ As set out at Clause 32.04-6 of the Glen Eira Planning Scheme.

In the intervening space, this adjoining property is developed with a tennis court at the immediate abuttal with the review site, beyond which is a landscaped garden comprising a pool, and a slightly elevated deck. The 15 aforementioned apartments that are proposed within the south tower of the review site will have a largely unobstructed view of the area of secluded private open space at 1 St Georges Road.

- 118 We do not consider that this outcome represents a limiting of views into private open space, or an avoidance of direct views into private open space, referencing the words used in the relevant objective and standard quoted earlier. Instead, we find the proposed development will allow for frequent and regular views that will unreasonably impact the privacy of the adjoining property. In short, we consider that the proposed development presents an unacceptable outcome in terms of overlooking of the adjoining property, that is not consistent with the objective, standard and decision guidelines quoted above.
- 119 We note with interest that the relevant provisions at Clause 58.04-1 are contained within a set of controls that seek to guide appropriate building setbacks from boundaries. We also note that the standard seeks to avoid relying on screening to reduce views. For these reasons, we consider that the answer to limiting the overlooking of 1 St Georges Road is to be found in providing for an increased setback of the proposed southern tower from the eastern boundary of the review site. While the provision of a greater setback will not eliminate all potential views, it will assist to reduce the privacy impact on the area of secluded private open space at 1 St Georges Road.
- 120 DDO10 also encourages generous setbacks in such sensitive locations in order to reduce amenity impacts from the type of development that is now proposed for the review site. It is because of the unacceptable visual bulk and overlooking impacts that we consider that an increased setback should be provided between the proposed southern tower and the eastern boundary of the review site. We address the question of what an appropriate setback is later in these reasons.
- 121 In relation to the other interfaces that the review site has with adjoining residential properties, the proposed development comprises a range of setbacks, and a responsive positioning of windows and balconies that will sufficiently restrict overlooking. In making this finding we note the following:
- a. A minimum setback of 13.0 metres is provided from the level 2 balconies and east facing windows to the adjoining property boundary at 1 May Street. Given that only one balcony and one apartment face east from each level of the northern tower towards this adjoining property, we consider that the proposed design and setback appropriately limits views into this adjoining property.

- b. A northern boundary setback of 10.5 metres is provided from the north facing windows in the single apartment at each level that faces north towards the area of secluded private open space at 16 Sinclair Street. As views into this space are also limited by the height of the boundary wall, and the limited depth of the area of secluded private open space, we consider that all of these factors acceptably limit views to a single apartment at this setback, appropriately achieving the relevant standard and objective. As greater setbacks will be provided to the nearby areas of secluded private open space at the rear of the properties at 18, 20, and 22 Sinclair Street respectively, we also consider, for the reasons set out above, that an unreasonable level of overlooking will not occur to these properties.

Overshadowing

- 122 Clause 58 of the Glen Eira Planning Scheme does not contain any specific objectives or standards in relation to overshadowing of surrounding properties.
- 123 We find that the proposed development will not unreasonably overshadow the areas of secluded private open space on the adjoining properties. We make this finding for the following reasons.
 - a. At the equinox, the area of secluded private open space at the rear of the property at 16 Sinclair Street will start to experience a degree of overshadowing at 2:00pm and will be completely overshadowed at 3:00pm. The location of the site at 16 Sinclair Street is immediately adjacent to a higher order activity centre along two of its boundaries and is within a Residential Growth Zone where development of up to 4 storeys in height is encouraged in a form that will of itself restrict solar access. For these reasons, we consider that the extent of shadows that will be cast at the equinox is an acceptable impact on the amenity of this adjoining property.
 - b. The area of secluded private open space²⁷ at the rear of 18 Sinclair Street will experience a degree of overshadowing at 3:00pm at the equinox, but not earlier in the day. Again, for the reasons set out above, we consider that this extent of shadows is an acceptable impact on the amenity of this adjoining property.
 - c. The property at 1 May Street has a large front yard and sizeable side boundary setback, however its principal area of secluded private open space is located at the rear of the dwelling. The proposed development of the review site will cause a small amount of overshadowing at 2:00pm at the equinox, with most of the side

²⁷ Secluded private open space is defined in the Glen Eira Planning Scheme as – That part of private open space primarily intended for outdoor living activities which enjoys a reasonable amount of privacy.

and front yards overshadowed at 3:00pm at the equinox. However, the principal area of secluded private open space at the rear of the dwelling at 1 May Street will remain free from shadows between 9:00am and 3:00pm at the equinox. For the reasons set out above, we consider that the extent of overshadowing to this adjoining property is acceptable, and importantly maintains sunlight to the most valued area of secluded private open space on the property.

- d. The property at 3 May Street has its principal area of secluded private open space sited along the eastern half of its northern boundary. While it also has setback areas along its western half of the northern boundary, and along its western boundary, these setback areas are very narrow, and clearly do not perform the function of a principal area of secluded private open space. The principal area of secluded private open space at 3 May Street will experience a limited amount of additional overshadowing at 2:00pm at the equinox and will be completely overshadowed at 3:00pm at the equinox. Again, for the reasons set out above, the extent of solar access that will be protected to this principal area of secluded private open space is an acceptable outcome.
- e. The final interface is to the adjoining property to the east at 1 St Georges Road. This property will experience a small amount of overshadowing to part of its tennis court at 2:00pm at the equinox, and a greater amount of overshadowing to its tennis court and rear area of secluded private open space at 3:00pm at the equinox. At both of these times, parts of the area of secluded private open space will remain free from shadows, including the deck at the rear of the property, the adjacent swimming pool, and part of the landscaped garden area. For these reasons we find that the proposed development will provide for an acceptable level of solar access to this adjoining property. Mr Campbell submits that larger shadows will occur at different times of the year, and later in the day at the equinox. While we agree that increased shadows will occur at these times, they are not relevant times for an assessment of shadows on areas of secluded private open space under the provisions of the Glen Eira Planning Scheme. Indeed, for a site that exists at the direct abuttal to land within a higher order activity centre at which a 37.0 metre discretionary height limit applies, the times put forward by Mr Campbell are not times that one should expect to receive solar access in this context.

Noise

124 Mr Campbell raises a concern in relation to the potential for noise impact from the various plant and equipment associated with this mixed use development upon the amenity of his families' adjacent residential properties. The planning permit application was accompanied by an

acoustic report, and the amended plans circulated prior to the hearing contained updated advice from an acoustic expert. Together, these documents demonstrate how noise from the proposed mixed use development can be limited in accordance with the relevant legislation. We also note that the Council has drafted a number of permit conditions that collectively require a further acoustic report, acoustic measures to be employed in the design and construction of the building, and for noise from the building to comply with relevant legislation.

- 125 We consider that the conditions as drafted by Council provide an acceptable mechanism to ensure that unreasonable noise impacts do not occur to the adjoining residential properties.
- 126 The other aspect of the potential noise from the site arises from trucks accessing the supermarket loading bay off Sinclair Street. By way of permit condition, this loading bay is intended to operate between 7:00am and 9:00pm Monday to Saturday, and between 9:00am and 5:00pm on Sunday. We acknowledge this proposal contains design measures that seek to limit the impact of truck noise on the nearby residential area. This has occurred through the design of a turntable in the loading bay that enables trucks to enter and exit the site in a forward motion, thus avoiding trucks performing lengthy and awkward reversing manoeuvres into the site accompanied by a reversing beeper. It has also occurred through the design of the loading bay that will be fully enclosed once a truck has entered it.
- 127 We also note that the acoustic report lodged with the planning permit application²⁸ sets out a range of procedures and design aspects that will be employed in order to reduce the acoustic impact of the supermarket truck loading bay, to what they say is an acceptable level.
- 128 While we acknowledge these design techniques and procedures, we are still concerned that the proposal will result in multiple trucks arriving in this area opposite residential properties, on six evenings a week. Such truck movements late into the evening will likely create a significant noise impact on the residential properties that are sited immediately opposite the proposed supermarket truck loading bay. For these reasons, we consider it appropriate to require the supermarket truck loading bay to cease operations at 7:00pm in the evening, Monday to Saturday. We consider that these additional two hours absent of truck movements in Sinclair Street opposite residential dwellings to be significant in providing an appropriate residential environment in which people can experience a reasonable degree of residential amenity, and not be unreasonably impacted by noise in the evening.
- 129 Amendment C220 to the Glen Eira Planning Scheme intends to introduce a new format Planning Policy Framework, including a revised Non-residential uses in residential areas policy at Clause 13.07-1L. This policy

²⁸ 10-16 Selwyn Street, Elsternwick Acoustic Report (Marshall Day Acoustics, 12 February 2021), page 19.

provides preferred hours of operation of a non-residential land use, including deliveries and waste collection, between the hours of 7:00am and 6:30pm Monday to Friday, and 8:00am and 6:00pm on a Saturday.²⁹ While this policy and the broader Amendment is still subject to potential change before finally being gazetted, it is instructive as to the type of loading hours that might be encouraged by the Glen Eira Planning Scheme in this location in the future. In short, we find this is a matter that supports our intent to restrict loading hours to not extend beyond 7:00pm on any day.

- 130 We note that this will mean that the supermarket truck loading bay is open for 12 hours a day on Monday to Saturday, during which it is anticipated that up to 11 trucks will visit the loading bay. Having regard to the intended closure of the loading bay during school drop-off and pick-up times, and the evidence of Mr Walsh regarding the time required to unload different sized vehicles, we anticipate that these available hours will be sufficient to service the supermarket of this size, subject to the efficient scheduling of deliveries.

Headlights from trucks

- 131 Ms Blok also raises a concern with the potential for headlights from trucks exiting the supermarket truck loading bay, to impact the dwellings on the opposite side of Sinclair Street. We consider that our finding set out above, to restrict the operation of the supermarket truck loading bay such that it closes at 7:00pm in the evening, effectively limits the potential impacts from headlights to just a few hours in the early evening in the winter months. We consider this to provide for a reasonable level of residential amenity in this interface location between an activity centre and residential properties.

Changes required to address 1 St Georges Road amenity impacts

- 132 For the reasons set out above, we find that the proposed development will not unreasonably impact the amenity of all but one of the surrounding residential properties. Our one concern is the visual bulk and overlooking impact on the property at 1 St Georges Road. For the reasons set out above, we consider that both of these amenity impacts can be addressed by the provision of a reduced building height and an increased setback of the southern tower from the common boundary with 1 St Georges Road. These changes including a greater setback will reduce such impacts and is consistent with the guidance provided by DDO10, and by Clause 58.04-1 of the Glen Eira Planning Scheme.
- 133 The more difficult assessment is to determine what an appropriate height and setback will be to sufficiently reduce the current unacceptable levels of visual bulk and overlooking impacts on this adjoining property. We

²⁹ We note the Panel Report that is now publicly released does not change these hours. It merely recommends the inclusion of an additional item that on Sundays and Public Holidays the preferred hours of operation are 'Closed'.

acknowledge that the provisions of DDO10 illustrate a 20 metre setback for tower forms over a partially stepped four-storey podium. At this interface location, we consider that a 20 metre setback is not necessary for the mid-levels of a tower, given the existing site conditions at the interface and given our decision to lower the building height. These existing site conditions include a high existing boundary wall, and a tennis court at the immediate interface at 1 St Georges Road, which has a reduced level of sensitivity compared to other areas of secluded private open space. However, we are at this stage persuaded that a setback in the order of 20 metres is appropriate for upper elements of the southern tower that sit closer to the discretionary height limit within DDO10 of ten storeys.

- 134 At the same time, we need to be cognisant of the various elements of the design that is before us, as well the need to be certain of the built form and internal amenity outcomes when drafting permit conditions that require additional setbacks. To that end, we note that levels 7 & 8 of the proposed southern tower have an internal layout that provides a 14.2 metre setback, and that also provides an articulated and varied façade that presents appropriately to a residential interface. As such, there is a clear potential to require additional levels to be setback this distance, while being certain of the design outcome in terms of its layout and appearance/elevations, by adopting the layout that is presently before us for level 8.



Extract of level 8 floor plan of south tower from TP109 Rev 04

- 135 However, much uncertainty exists around any permit conditions that might require a setback that is greater than 14.2 metres, as it will potentially either expose the lift and stair core to views from the east or necessitate a relocation of the lift and stair core, with consequential but at this stage unknown changes to every level of the proposed building. For these reasons, we consider that a set of permit conditions that could be drafted to address the interface with the property at 1 St Georges Road, could require additional setbacks to 14.2 metres from the eastern boundary, while being certain of the impacts this will have both on the external appearance of the building, and the internal layout. We do not feel that we have at our disposal an option to require elements of the southern tower to be setback a distance greater than 14.2 metres, due to the level of uncertainty we have regarding the impacts of this change on the external appearance of the southern tower, as well as the internal layouts. This has influenced our decision to also reduce the overall height of the southern tower.
- 136 During the hearing, we asked the Applicant its views on whether it would prefer a final decision potentially with changes to the design of the southern tower, or an interim decision allowing for some changes to it, or a refusal if we had concerns about the design of the southern tower. The Applicant advised that it preferred a final decision with any changes that we considered necessary to the design.
- 137 Working within these parameters, we consider that an appropriate interface outcome can be achieved by requiring the deletion of levels 6, 7 & 8 from the southern tower, and requiring levels 2, 3, 4 & 5 to adopt the 14.2 metre eastern boundary setback and the internal layout previously proposed at level 8. These changes will appropriately reduce the potential for overlooking to the adjoining property to the east, by increasing the setback between the southern tower and the eastern boundary, while reducing the number of apartments that have an easterly view. We note that the internal layout at level 8 which we will require to be applied to levels 2-5 inclusive, has only one east facing apartment on each level with a single living area and adjacent balcony. This change will, when combined with the increased boundary setback, constitute a suitable reduction of the potential for overlooking, compared to the currently proposed three apartments on each level at a reduced setback.
- 138 In response to our concerns regarding the extent of visual bulk currently visible from the adjoining property to the east, the changes set out above will reduce the overall scale to one that comprises five levels, above a boundary wall with an equivalent height of two storeys. The level immediately above the eastern boundary wall (level 1) can retain its existing 7.5 metre setback, as it is barely visible on sightlines from most locations on the adjoining property to the east. The remaining levels will create a lower building form that is set back in a manner which is closer to that encouraged along sensitive interfaces in DDO10.

- 139 While DDO10 also provides a preferred height limit of 10 storeys, it does so with a setback from a sensitive interface of 20 metres for the top 6 storeys of the building. We consider that a different design which comprises a setback of this nature (that is, 20 metres or so), could extend close to this preferred height limit. However, based on the aforementioned parameters of the design that is before us, we are concerned about the consequential changes that would result from a condition on a permit that requires a setback in the order of 20 metres for the southern tower from the east boundary, and the level of uncertainty we have about the visual and internal layout outcomes from such a change. As such, based on the parameters of the proposal that is before us, we consider that a reduction in height is necessary in order to achieve an outcome that successfully reduces the likely overlooking and visual bulk impacts on the adjoining property to the east of the review site, while also providing certainty as to the design outcome arising from those permit conditions.
- 140 For these reasons, we find that an appropriate level of amenity is achieved for the properties that surround the review site, subject to the changes outlined above to the proposed southern tower.

IS AN APPROPRIATE LEVEL OF INTERNAL AMENITY ACHIEVED?

- 141 The Council, having undertaken a thorough assessment, has found that the proposed apartments will achieve an appropriate level of internal amenity, subject to some more minor matters being addressed by permit conditions.
- 142 The evidence of Ms Ring identifies two matters pertinent to the considerations in regard to internal amenity. The first relates to the separation of towers, where DDO10 encourages development to:
- Provide adequate separation between towers of buildings to achieve a high level of internal amenity for existing and future occupants of adjacent towers and to avoid the appearance of a continuous built form when viewed from the public realm.
- 143 Ms Ring notes that parts of the southern and northern towers at levels 2 and 3 are separated by distance of 7.5 metres, which is slightly less than the separation distance that was previously before the Tribunal. She opines that an appropriate amenity outcome is still achieved for the affected apartments, having regard to their primary orientation being to the west towards Selwyn Street, rather than internally towards the separation distance. We are persuaded by this evidence and find that the more narrow separation distance between the northern and southern towers for the extent of one apartment, does not result in any reduced internal amenity outcomes.
- 144 The second matter relates to the size of the balcony areas provided as secluded private open space for some of the apartments. Ms Ring notes in her evidence that some of the apartments in the southern tower have balconies that do not meet the minimum dimensions, which is mainly a function of the curved shape of this tower. We concur with the evidence of

Ms Ring that these apartments will still enjoy an appropriate level of amenity, having regard to the overall sizes of these balcony spaces, and the access that is available to the generous area of communal open spaces throughout the proposed development.

- 145 Ms Ring also notes some other more minor internal amenity matters, such as the lack of accessible bathrooms, which she agrees can be appropriately addressed through the permit conditions that have been drafted by the Council.
- 146 Having regard to these matters, we find that the proposed development will achieve an appropriate level of internal amenity for future residents. We make this finding having regard to the size of the individual rooms, their orientation, the ability for habitable rooms to receive an adequate amount of daylight access, the range of communal amenities proposed to be provided on the review site, and the excellent access that will be provided to all of the services and facilities that can be enjoyed in this activity centre.

DOES THE PROPOSAL APPROPRIATELY PROVIDE FOR CAR PARKING AND TRAFFIC MOVEMENTS?

- 147 The Respondents submit that the proposed development will result in inappropriate traffic impacts to the surrounding road network, having regard to the following impacts of the proposal:
- a. The amount of traffic generated by the proposed uses and development, having regard to the current ‘gridlocked’ nature of Glen Huntly Road at peak hour;
 - b. The proposal to construct two exit lanes from Selwyn Street into Glen Huntly Road, and have some traffic turning right out of the review site and head north along Selwyn Street, both of which will conflict with the future design and intent for the Selwyn Street Cultural Precinct;
 - c. The location of the supermarket truck loading bay in Sinclair Street introducing truck movements into a primarily residential street, as well as St Georges Road. Further, the supermarket truck loading bay is close to a school, which will create safety concerns for school children as pedestrians; and,
 - d. The location of a loading bay for the bottle shop and residential waste off the laneway to the south of the review site, will increase truck movements along this narrow laneway, and adjacent to 1 St Georges Road.
- 148 The evidence of Prof Oxley supports the safety concerns expressed by the Respondents, particularly having regard to the increase in truck movements created by the proposal, and the potential conflicts with pedestrians. Prof Oxley’s evidence is based on research that confirms the added risk of accidents and injuries associated with increased traffic movements,

particularly those associated with truck movements. It is the evidence of Prof Oxley that the supermarket truck loading bay should not operate during school times, that is from 8:15am to the end of the school pick up time.

- 149 The evidence of Mr Maina focusses on the capacity of Glen Huntly Road to accommodate the additional traffic associated with the proposed development of the review site. It is his evidence that as a result of the proposed development, Glen Huntly Road will operate above capacity, with unreasonable delays and queues. He forms this opinion as he considers that the additional traffic and the addition of traffic lights at the intersection of Glen Huntly Road and Selwyn Street will cause the pedestrian lights on Glen Huntly Road at the Elsternwick Railway Station to operate in a manner where it gives significant pedestrian priority.
- 150 We are not persuaded by these submissions and evidence, and instead find that the proposed traffic movements and associated safety are acceptable. We make this finding for the following reasons.

Transport Policy

- 151 Amendment VC204 was gazetted on 9 December 2021 amending the Transport policy found at Clause 18 of the Glen Eira Planning Scheme, among other changes. The Explanatory Report for Amendment VC204 sets out the following explanation of why the amendment is required.

The amendment is required to align clause 18 (Transport) in the VPP and all planning schemes with the Transport Integration Act 2010 and adopted state transport policy.

This amendment improves consistency between the objectives and strategies of the Transport Integration Act 2010 and state planning policy in the Planning Policy Framework (PPF), allowing for more integrated land use and transport planning decision making, a greater understanding of interaction between land use planning and transport planning, and better transport and land use outcomes for Victorians. The updated clause 18 also creates greater clarity and consistency in planning policy for transport and places a much greater emphasis on safety and sustainability.

- 152 We agree with the submissions of Ms Blok that the effect of Amendment VC204 and the revised transport policy is not policy neutral. Rather, we agree with the findings of the Tribunal in *Brunswick Investment Project Pty Ltd v Moreland CC* [2022] VCAT 387, as to the guidance now provided by the revised policy framework on an integrated planning approach.

[191] The future growth in metropolitan Melbourne is recognised in planning policy at a State and local level in Victoria's planning schemes, with strategic policy directions for the metropolitan area also articulated in documents such as Plan Melbourne. Activity centre growth and the creation of 20 minute neighbourhoods are important aspects of the future growth

aspirations. The Tribunal has, in previous decisions, commented on the implications of metropolitan growth for sustainable transport, such as in *Ronge v Moreland CC*:

We have already referred to what can only be described as the massive increase in Melbourne’s population projected through until 2050. Our roads are already congested and will be unimaginably so if a ‘business-as-usual’ approach is accepted through until 2050. The stark reality is that the way people move around Melbourne will have to radically change, particularly in suburbs so well served by different modes of public transport and where cycling and walking are practical alternatives to car based travel.³⁰

[192] The planning scheme policies require consideration of the integration of land uses and transport, including sustainable transport options.³¹ The planning scheme policies place particular emphasis on the opportunities for a variety of land uses and the use of sustainable transport options in activity centres, including this activity centre. For example:

- Reduce the number of private motorised trips by concentrating activities that generate high numbers of trips in highly accessible activity centres (clause 11.03-1S);
- Support urban development that makes jobs and services more accessible by taking advantage of all available modes of transport (clause 18.01-1S); and
- Improve local travel options for walking and cycling to support 20 minute neighbourhoods (clause 18.01-3R).

[193] The planning scheme policies also provide particular aspirations to move away from car dependency and maximise alternative sustainable transport modes, including protecting and prioritising these sustainable transport modes. A range of relevant transport policies are summarised and contained in Appendix A to these reasons. They include, for example:

- i Improve access by walking, cycling and public transport to services and facilities;
- ii Prioritising the use of sustainable personal transport;
- iii Planning the transport system to be safe by separating pedestrians, bicycles and motor vehicles, where practicable;
- iv Reducing the need for cyclists to mix with other road users;

³⁰ *Ronge v Moreland CC* (Red Dot) [2017] VCAT 550 at [64]

³¹ Clause 11 - Planning is to recognise the need for and as far as practicable contribute towards land use and transport integration.

- v Designing development to promote walking, cycling and the use of public transport, in that order, and minimise car dependency; and
- vi For metropolitan Melbourne, to improve local transport options for walking and cycling to support 20 minute neighbourhoods.

...

[195] As mentioned earlier, these transport policies in the planning scheme were updated and changed by Amendment VC204 in December 2021. The applicant submits a close examination of the changes in the amendment show ‘their effect is not significant insofar as transport planning considerations are concerned’. We are not persuaded of this and prefer the submissions of the Council and community members. They emphasise the description in the Amendment’s Explanatory Report that the amendment updates the policies ‘to focus on integrated decision making that considers the transport system rather than a specific mode’ of transport. The planning scheme general decision guidelines now requires consideration of the current and future operation of the transport system. The strategy about designing development to promote walking, cycling, public transport and to minimise car dependency is clear and unambiguous about where development priorities regarding transport (including traffic) should focus.

153 In addition to this analysis, we note that the decision guidelines set out at Clause 65.01 of the Glen Eira Planning Scheme now includes the following:

- The impact the use or development will have on the current and future development and operation of the transport system.

154 As such, it is the impact on the entire transport system that must be our focus in our decision making task.

155 The evidence of Mr Maina in part focusses on the Council’s *Integrated Transport Strategy 2018-2031* (Glen Eira City Council, June 2018), which identifies Glen Huntly Road as a ‘great walking and shopping street’³² and therefore one where pedestrian priority should prevail.

156 It is the submission of Ms Blok that, having regard to the effect of the new transport policy, and the designation contained in the Council’s *Integrated Transport Strategy 2018-2031*, that a car based land use such as a supermarket is not appropriate in this location. She submits that such a car based land use is inconsistent with the policy intent at Clause 18.01-3S of the Glen Eira Planning Scheme to:

Design development to promote walking, cycling and the use of public transport, in that order, and minimise car dependency.

³² Page 21 of the *Integrated Transport Strategy 2018-2031* (Glen Eira City Council, June 2018).

157 We are not persuaded that the policy framework currently in place, coupled with the Council's strategic work, would act to discourage a land use such as a supermarket, which primarily relies on car based access, to be sited on a site such as this. As we have already identified, the review site is a large site within the boundaries of a higher order activity centre, and within a short walk of both trams and trains. When we read the relevant planning policy framework as a whole, we identify such activity centre locations as places where core retail activities, including supermarkets, are strongly encouraged to be sited. That proposition is particularly supported by the policies set out below.

Locate commercial facilities in existing or planned activity centres.

Provide new convenience shopping facilities to provide for the needs of the local population in new residential areas and within, or immediately adjacent to, existing commercial centres.³³

Encourage new and innovative retail and commercial activities to establish in the municipality having regard to the hierarchy of centres as well as opportunities to develop appropriate freestanding sites for suitable retail or commercial use.

Ensuring retailing is the predominant ground floor use in the core of centres designated on the Framework Plan, particularly Bentleigh, Carnegie and Elsternwick, and encouraging offices to upper floors.

Ensuring new supermarkets and retail developments are located within existing centres (consistent with the identified retail hierarchy) rather than on freestanding sites.³⁴

158 The last of the policy statements quoted above is directly relevant to the proposal that is before us and confirms the policy support for supermarkets to establish in existing activity centres. One reason for this policy support, is that activity centre locations such as this, within easy reach of a broad population and multiple forms of public transport, are key locations where realistic alternative travel options away from car based travel exist, and where more sustainable forms of transport can be utilised. While we appreciate that the motor car will still likely be the preferred form of transport for those with a large family who do a weekly shop, this only applies to a proportion of the population. There are others from smaller households, or who do more regular shopping, who will potentially take advantage of the convenient public transport connections to the review site, and the proposed supermarket.

159 We also note that the proposal that is before us does not only have potential negative impacts on the nearby transport system, but rather also has a range of potential positive impacts. This mixed use proposal intends to place a large number of dwellings in a location rich with public transport. As a result, the households that establish here can be less dependent on travel by

³³ Clause 17.02-1S of the Glen Eira Planning Scheme.

³⁴ Clause 21.06-2 of the Glen Eira Planning Scheme.

car, than would be the case if those new dwellings were instead placed in a location less endowed with public transport options, such as a growth suburb. Further, the proposal is reliant on the establishment of traffic signals at the intersection of Glen Huntly Road and Selwyn Street, which will provide for an additional safe pedestrian crossing along Glen Huntly Road, thus improving pedestrian movements throughout this activity centre.

- 160 Ultimately, the implementation of the new transport planning policies can only occur while having regard to the actual transport impacts of a proposal, which in this case is centred on the traffic impacts on the surrounding road network. That is an assessment which we come to next.

Traffic generation

- 161 In relation to the increased traffic flows that will occur from the proposed development of the review site on Glen Huntly Road, we are not persuaded that the evidence of Mr Maina has been conducted on an appropriate basis. We make this finding as Mr Maina has assumed that the existing pedestrian signals at the Elsternwick Railway Station will operate in a manner in the future that is different to its current operation, by giving pedestrian priority for 65% of the run time of the signals and limit the time during which vehicles can pass through the signals to 35% of the time. This compares to the current operation of these signals, which has been confirmed by observation by staff directed by Mr Walsh, to comprise a 67/33 split in favour of vehicle movements.
- 162 The evidence of Mr Maina relies on the future operation of these pedestrian signals as being weighted in favour of pedestrians on a 65/35 split. That is, without this pedestrian crossing in the future causing such an impediment to traffic flow, the model relied upon by Mr Maina completely fails, and the traffic congestion predicted by Mr Maina would not prevail. Mr Maina quite rightly acknowledged during his evidence in chief the problems with his analysis. He apologised for these problems. We are persuaded that the extent of pedestrian priority relied upon to support Mr Maina's model and evidence is unrealistic and is unlikely to occur in the future. We make this finding for the following reasons.
- a. The proposed signals at the intersection of Glen Huntly Road and Selwyn Street as part of the development of the review site, will provide another opportunity for pedestrians to safely cross Glen Huntly Road. These new signals will therefore reduce the future pedestrian demand on the existing pedestrian signals and reduce the demand for increased pedestrian priority that is predicted by Mr Maina.
 - b. We are persuaded by the evidence of Mr Walsh, that the pedestrian split of 65/35 relied upon by Mr Maina is unrealistic, and will likely never happen, as it requires certain scenarios to exist in unison. Firstly, it requires a pedestrian to push the button to cross

Glen Huntly Road, at the right phase in every single cycle across a peak hour. Having regard to the existing pedestrian demand at this crossing, and the additional pedestrian crossing opportunity that will be provided as a result of the proposed development of the review site, we agree with the evidence of Mr Walsh that this is not likely to occur. Secondly, it requires vehicles to ‘gap and waste’ on every cycle of the pedestrian signals across a peak hour. It is the evidence of Mr Walsh that this will not occur, as the existing pedestrian signals are linked to those at the intersection of Glen Huntly Road and Nepean Highway, so as to provide a connected traffic flow across the two intersections. Thirdly, the model adopted by Mr Maina fails to consider the trams travelling along Glen Huntly Road, which will likely always have the priority that is currently afforded to them by the operation of these pedestrian signals. This existing priority allows trams to trigger a sensor and cut the pedestrian phase early, and also extend the time of the green light for vehicular traffic. It is the evidence of Mr Walsh that 8 trams travel in each direction along Glenhuntly Road every hour, and therefore up to 16 of the signal cycles every hour will have a tram travelling through them. This existing and continued future presence of trams on their own, will make Mr Maina’s model unlikely, if not impossible. For these reasons, the existing pedestrian signals will never likely operate in the manner predicted by Mr Maina.

- c. Transport for Victoria has ultimate control over all traffic and pedestrian signals across Victoria, including all existing and proposed signals along this part of Glen Huntly Road. We are persuaded by the evidence of Mr Walsh that Transport for Victoria will be highly unlikely to allow the existing pedestrian signals to operate a manner that causes the extent of traffic congestion along Glen Huntly Road, that is predicted by Mr Maina. Therefore, even if this scenario predicted by Mr Maina did prevail, we agree with the opinion of Mr Walsh that this scenario would cause the Transport for Victoria to modify the operation of the existing pedestrian signals, to provide roughly the same level of pedestrian and vehicular/tram priority as currently occurs.
- d. The scenario predicted and relied upon by Mr Maina would also cause significant delays to trams travelling along Glen Huntly Road. We note that for some time there has been a priority on improving tram travel times and reliability across metropolitan Melbourne. We therefore consider that the delays that would occur to trams under the model adopted by Mr Maina, is sufficient of itself to prompt Transport for Victoria to modify the future operation of the existing pedestrian signals, to provide the

acceptable levels of service to both pedestrian and tram priority as currently occurs.

- e. Finally, we note that to achieve the pedestrian priority that is sought by Council's *Integrated Transport Strategy 2018-2031*, does not necessarily require a 65/35 split as modelled by Mr Maina. Instead, we adopt the evidence of Mr Walsh, that the provision of the existing and proposed pedestrian crossing points along Glenhuntly Road will provide a level of pedestrian priority. We also note that an additional level of pedestrian priority would also be provided by the existing pedestrian signals operating on a 51/49 split. Therefore, the reliance by Mr Maina on a specific 65/35 split in order to achieve his predicted levels of traffic congestion, is a significant weakness in his evidence.

163 For these reasons we prefer the evidence of Mr Walsh, which contains a model that predicts that the surrounding road network, including Glen Huntly Road, will be able to accommodate the additional traffic generated by the proposed development of the review site, without causing an unreasonable level of congestion or queues. At the hearing Mr Walsh presented a revised model which is based on the model adopted by Mr Maina but includes the existing phasing of the existing pedestrian crossing. Under this revised model the surrounding road network will also continue to operate in a satisfactory manner. This includes Glen Huntly Road, which will experience degrees of saturation of under 0.8, and acceptable queues on all stretches of Glen Huntly Road and on all nearby approaches to Glen Huntly Road. In addition, this revised model has a maximum queue length of 14 metres in Selwyn Street, as it approaches Glen Huntly Road.

164 We are persuaded that the model presented by Mr Walsh in his evidence is appropriate to rely upon, for the following reasons:

- a. It is the evidence of Mr Walsh, and agreed to by Mr Maina, that the traffic generation rates adopted by Mr Walsh for the proposed supermarket on the review site is conservatively high. This therefore accentuates the potential traffic impact on the surrounding road network and means that the actually likely traffic impact will be less than that depicted in the models presented by Mr Walsh.
- b. The traffic generation rates relied upon by Mr Walsh also do not adopt a diverted trip discount. This refers to the extent to which customers of the proposed supermarket are already passing by this location on another trip, before diverting down Selwyn Street to visit the supermarket. Instead, Mr Walsh's model has assumed that all customers to the supermarket are undertaking additional and individual³⁵ vehicle trips. In comparison, Mr Maina adopts a diverted trip discount of 28% to inform his traffic generation rates.

³⁵ That is, not combined with a trip that would have occurred in any case.

- c. The traffic generation rates adopted by Mr Walsh do not account for people now within walking distance of the review site and the proposed supermarket, who are currently driving to the nearest supermarket and adding to the traffic levels on Glen Huntly Road and other streets.
- d. The traffic generation rates also do not account for people who will be living in one of the proposed apartments on the review site as being future customers of the supermarket, who will clearly not have to drive to shop at the supermarket.
- e. The traffic model presented by Mr Walsh also does not remove from the surrounding road network the existing traffic movements generated by the review site at present, and which have historically been generated by the review site.

165 Mr Campbell is particularly critical that in his view, the model presented in Mr Walsh's evidence is based on surveys on a single day in May 2019. We do not share this concern given that:

- a. Mr Walsh and the other parties have had access to traffic surveys conducted on five other days by other firms that were presented as part of expert evidence in the earlier Tribunal proceeding. These other surveys confirm that the existing traffic counts that form a base to Mr Walsh's model are representative of the counts that have been recorded on other days.
- b. Mr Walsh has compared his counts in May 2019 to counts captured by the existing pedestrian crossing in Glen Huntly Road on 17 March 2022, which confirmed that current traffic levels remain below that recorded pre-Covid.
- c. Mr Maina adjusted the available traffic counts to model the traffic that would occur on the 30th busiest day of the year, in accordance with the guidance provided in *Transport Modelling Guidelines (Volume 5) Intersection Modelling* (Department of Transport, June 2020). That model of Mr Maina's was then replicated by Mr Walsh, absent of the error that affected Mr Maina's evidence. In this model of the traffic that would occur on the 30th busiest day of the year, Mr Walsh's evidence demonstrates that the surrounding road network would still operate well within capacity, with acceptable queues.

166 For these reasons we find that the proposed development will generate a level of traffic that will be able to be accommodated safely and efficiently on the surrounding road network.

Truck loading from Sinclair Street

167 In relation to the proposed supermarket truck loading bay in Sinclair Street, an appropriate starting point is the lengthy analysis conducted in the previous Tribunal decision, which is set out below.

[263] In the situation where Sinclair Street is of a generous width for a local street, we are satisfied that the creation of a new 6.8 metre wide crossover to Sinclair Street (which will provide access to a fully enclosed loading bay to the supermarket) is reasonable and also consistent with the ABC already utilising an existing vehicle crossover on this northern boundary.

[264] We are satisfied that:

- Noise that may arise from delivery vehicles will be suitably minimised, due to the fact that the loading bay is fully enclosed.
- Should a permit be issued, the Loading Bay Management Plan proposed will suitably manage the delivery times and frequencies, so as to acceptably limit any amenity issues that may arise from delivery times and waiting periods.

[265] A truck turntable will be provided that will allow all delivery vehicles to be able to enter and exit the site in a forward direction, where the applicant indicated that the loading bay would be suitably supervised. We consider this an appropriate outcome that will ensure safe truck movement in and out of the loading bay, bearing in mind that Sinclair Street is a highly pedestrianised street with the presence of the local school and the route to the train station.

[266] With the school, we agree with the applicant that it is a real plus that the loading bay would be to the east of the school and school pedestrian crossing. This is in the context of most experts in the traffic conclave supporting trucks coming and going to and from St Georges Street to the east, which we agree is sensible. We accept this situation will provide a good degree of physical separation of truck movement compared to student movement on the street. In addition, the applicant agreed at the hearing to a permit condition that the times for supermarket deliveries Monday-Friday could exclude the main school drop-off and pick-up times.

[267] The traffic experts generally agree that subject to the debate about managing the operation of the St Georges St intersection with Glen Huntly Road, there is no physical road capacity issues that are fatal for the proposal and that it is in-principle reasonable for the supermarket loading bay to be located in Sinclair Street. This is an important factor – it needs to be said that the extent of disagreement between all of the expert traffic witnesses was quite confined. Where a key part of Mr Townsend's opposition to the proposal was the allegedly unworkable 'supermarket truck delivery' aspects, it is difficult to

give this concern any major ‘traffic engineering’ weight, when it is contrary to the consensus position reached by the conclave of traffic experts.

[268] In our view, it is inevitable in an inner city context that vehicles, including delivery vehicles, will to some extent use local streets. We note that Sinclair Street is currently used by buses accessing the Kadimah Centre and the school. We are satisfied that the management regime proposed by the proponent, such as limiting the size of delivery vehicles and the window of times in which deliveries would occur, together with the other favourable features discussed immediately above, suitably addresses the amenity implications of trucks using Sinclair Street for deliveries to the supermarket.

[269] In the situation where school buses of a considerable size already readily move along Sinclair Street and St Georges Road and already utilise the Glen Huntly Road/St Georges Road intersection, we are struggling to see how the introduction of a limited extent of delivery truck activity in these same areas (with a limit on the size of the trucks involved) changes the status-quo in any fundamental way. We note the comment by Ms Dunstan that St Georges Street is designated as a ‘collector road’, rather than an ordinary local street. The existing real presence of buses in this locality is reinforced by the submission of Mr Hofmann that (at least pre-coronavirus) around 400 buses bring visitors to the Holocaust Museum each year.

168 It is evident therefore that the previous Tribunal decision found that the proposal to locate the supermarket truck loading bay off Sinclair Street to be an appropriate aspect of the proposed development. The plans that are before us continue to locate the supermarket truck loading bay off Sinclair Street. The loading bay is intended to operate between the hours of 7.00am to 9.00pm, Monday to Saturday, and 9.00am to 5.00pm on Sunday. It is the evidence of Mr Walsh that the supermarket loading bay is intended to be utilised by up to 11 vehicles per day, comprising seven articulated trucks, up to 3 smaller trucks, and one waste vehicle.

169 The siting and design of the supermarket truck loading bay is supported by the evidence of Mr Walsh. Key to our consideration are the design elements that provide for the inclusion of a turntable that enables all trucks to enter and exit the site in a forward motion, and the ability to entirely enclose the loading bay once a truck has entered, so as to limit the noise impacts on the surrounding environment. The position of the supermarket truck loading bay on Sinclair Street is also supported by Mr Maina, who in response to the questions of the Tribunal is satisfied with its location, and the resultant truck movements, so long as the scheduling of trucks is managed appropriately to avoid queueing.

170 We also consider that the design of this proposal, with a truck loading bay that will result in a limited extent of additional traffic on local roads, is

consistent with the Council's Transport policy at Clause 21.12, which includes the following strategy at Clause 21.12-2:

Encourage new development adjacent to local roads, which is appropriate to neighbourhood amenity and the volumes of traffic able to be accommodated.

- 171 As set out earlier in these reasons, it is the evidence of Prof Oxley that the truck movements associated with the supermarket loading bay will cause added safety concerns for the surrounding road environment. The basis for and implications of the evidence of Prof Oxley was explored through questions from the Tribunal. As a result of those questions, it is the Tribunal's understanding that Prof Oxley's concerns are in relation to truck movements generally throughout Melbourne's suburbs, and that her evidence is equally attributable to any truck loading bay in any activity centre throughout Melbourne. The only element of the proposal, and the context that surrounds the review site, that raises a particular concern for Prof Oxley, is in relation to the proximity of the proposed truck loading bay to the nearby school, and therefore the mixing of truck movements with school children as pedestrians.
- 172 In relation to the more generalised evidence provided by Prof Oxley, the mix of uses that are encouraged by the Glen Eira Planning Scheme³⁶ in activity centres, inevitably will result in truck movements occurring in activity centres, where pedestrian movements are also high. It is the role of road management authorities to ensure that such truck movements which are necessary to facilitate the various uses that are strongly encouraged in activity centres, are provided with a road network that appropriately protects pedestrian safety. It is not realistic to adopt or apply Prof Oxley's evidence in a manner which would deny the types of land uses in activity centres that rely on truck movements and are otherwise supported by planning policy.
- 173 In relation to the specific concern identified by Prof Oxley regarding this location, we note that the applicant proposes to cease truck movements during school drop-off and pick-up times. While Prof Oxley opines that the cessation of truck movements should occur at all times of school operation, we consider that this is unnecessary given the limited pedestrian movements that would occur outside of the school drop-off and pick-up times. We also consider that if such an approach was adopted as standard across metropolitan Melbourne, it would essentially shut down truck movements associated with any land use close to the numerous schools across the suburban landscape. We do not consider that such an approach is consistent with either the transport policy that is found in the Glen Eira Planning Scheme, or a common sense approach.
- 174 The concept plans being considered as part of the creation of the Elsternwick Cultural Precinct, including the works to Selwyn Street,

³⁶ Relying on the policy references previously referred to.

contemplate moving the school crossing on Sinclair Street from the west side of Selwyn Street to the east side, closer to the proposed loading bay facility. This is not a desirable outcome, albeit the planning permit conditions supported by the Council do not envisage trucks moving any further west along Sinclair Street beyond the loading bay itself. This is a matter of detail that the Council may need to consider as it continues to finalise its plans for the creation of the Cultural Precinct in Selwyn Street.

- 175 We also note that the streets that will provide access to the proposed supermarket truck loading bay, being Sinclair Street and St Georges Road, currently already experience a degree of truck movements. The data provided by Mr Walsh demonstrates that Sinclair Street experienced 194 truck movements on the week that was surveyed, including 2 articulated vehicles, and 8 heavy rigid vehicles. The data also reveals that St Georges Road experienced 653 truck movements on the week that was surveyed, including 18 articulated vehicles and 17 heavy rigid vehicles. It is therefore evident that both Sinclair Street and St Georges Road cannot be fairly described as quiet residential streets, but rather already contain a mix of residential and commercial traffic. We consider that the limited extent of additional commercial traffic added by the supermarket loading bay, of up to 11 vehicles per day, would not result in an unreasonable traffic or amenity impact to these existing roads.
- 176 Mr Campbell in his written submission provides surveys of the truck movements at an existing Woolworths supermarket in Church Street Brighton³⁷. He has used this data to predict the number of truck movements that he says is likely from the proposed supermarket truck loading bay. While we acknowledge the effort made by Mr Campbell to quantify the likely number of truck movements, we consider that there are too many variables involved in his analysis, to be able to rely on his material. For example, Mr Campbell has relied upon the number of truck movements to the proposed supermarket on the review site being proportionally greater than the supermarket he surveyed, having regard to their relative floor areas, when there is no evidence before us that this would occur. Mr Campbell also relies on there being a certain number of separate deliveries of Kosher food, based on a survey of a nearby Coles supermarket, without a real understanding of how such deliveries will be managed for a Woolworths supermarket. Finally, Mr Campbell could not inform the Tribunal as to whether the supermarket he surveyed provides home deliveries, which would have inflated the truck numbers he surveyed, when compared to the supermarket that is proposed for the review site which will not provide for home deliveries. For these reasons, we cannot rely on the surveys and predictions provided by Mr Campbell of the number of truck movements that will occur to the review site. As such, we need to rely on the material provided by the applicant, the expert evidence of Mr Walsh,

³⁷ That is described in the Campbell families' submission as being smaller in size and not providing the choice of specialty Kosher goods that the proposed supermarket will provide.

and the enforcement opportunity provided to Council in the event that the parameters of a Loading Bay Management Plan are not complied with.

- 177 We agree with the evidence of Mr Maina that the key aspect to the success of this truck loading facility in a mixed commercial/residential area, is in the scheduling of truck movements so that trucks are not queueing in Sinclair Street, or moving around the surrounding road network, while waiting for the loading bay to become available. In our view it is paramount that the Loading Bay Management Plan, as required by a condition of permit, is drafted, implemented and enforced in a manner to ensure that the scheduling of truck arrivals at the loading bay avoids these outcomes.
- 178 During the hearing, the content of the draft Loading Management Plan prepared by Stantec (Issue B dated 5 April 2022) was discussed. It does contain some statements that suggest the supermarket operator can increase the truck movements during peak trading times and prior to public holidays. We agree with the Council that such statements should be deleted. Our decision has considered and decided what is an acceptable level of traffic, the route of the traffic via Sinclair and St Georges Road and the hours of use of the loading bay. Any changes to this in the future needs to be subject to further consideration and approval by the Council.

Truck loading from the southern laneway

- 179 There is an additional proposed truck loading bay accessed via the laneway to the south of the review site, to be utilised by trucks delivering to the proposed bottle shop, and removing waste associated with the residential uses on the review site. As part of the previous decision, this loading dock was to service the residential dwellings and was located much closer to the boundary with 1 St Georges Road. In relation to this southern loading bay, we note that the Tribunal previously made the following findings.

[272] Finally, the Campbells are concerned that entry to the proposed south tower residential loading bay is via the unnamed laneway that runs along the southern property boundary and which extends along the side of the Glenmoore property.

[273] We are satisfied that the use of a laneway for access to a residential loading bay within the site is an acceptable planning outcome. There is no traffic evidence that demonstrates that vehicles are unable to satisfactorily access the site via this route and its use for this purpose is consistent with this laneway's current use as the 'back of house' entry to the existing commercial properties in Glen Huntly Road.

- 180 In this proposal the shared loading dock for use by the bottle shop and the residential dwellings is located further away from 1 St Georges Road. Mr Campbell continues to oppose the siting of a loading bay off the laneway that runs to the south of his site, on the basis of the amenity impacts that would occur to his residence. Mr Campbell's dwelling is sited at the direct

interface with land within a Commercial 1 Zone that fronts Glen Huntly Road. This southern laneway separates the commercial properties from Mr Campbell's dwelling.



Extract from Ms Rings' evidence statement (page 31) looking east along the southern laneway from Selwyn Street

- 181 Given the different zonings that are applied to the various parcels of land, and the commercial form and use of the land that abuts this laneway, it is reasonable to expect that truck movements will occur along this laneway, in a manner that has a level of impact on the amenity of nearby residential properties.
- 182 The evidence of Mr Walsh contains swept path diagrams that demonstrates that trucks using the loading bay can enter and exit the laneway from its entrance point at Selwyn Street. If this occurs, then these truck movements will not pass Mr Campbell's dwelling and will cause a very limited level of noise that could be experienced on parts of Mr Campbell's property. Under this scenario, there would be a negligible impact on the amenity of Mr Campbell's property. However, we also acknowledge that the occasional truck may traverse the length of the laneway between St. Georges Road and

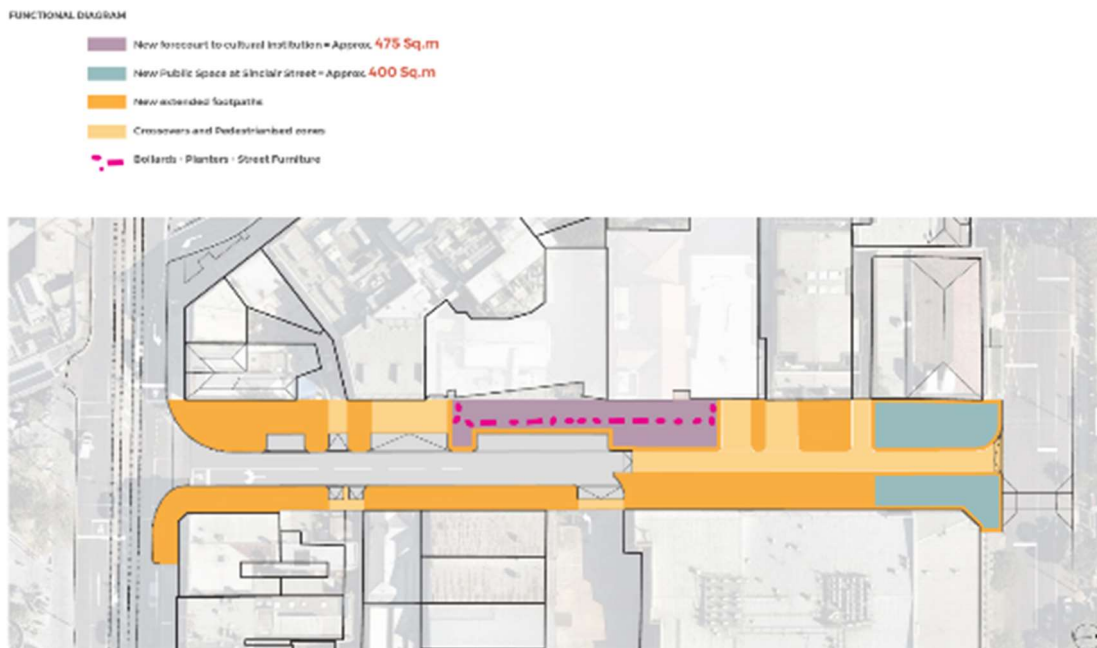
Selwyn Street, particularly if a truck exiting the loading bay encounters another truck entering the laneway from Selwyn Street. In such a scenario, while there will be a noise impact on Mr Campbell's property, we consider the level of impact to be reasonable having regard to this edge of activity centre location.

Elsternwick Cultural Precinct

183 The Elsternwick Cultural Precinct is intended to further enhance the existing land uses and planning permits issued for the west side of Selwyn Street.



184 The parties that oppose the grant of a permit argue that the vehicle movements associated with the proposed use and development of the review site are inconsistent with the long term vision to turn Selwyn Street into a cultural precinct. The development of Selwyn Street as a cultural precinct is intended to create a pedestrian focused space, in which people can congregate and where various events can be held. In particular, the respondents argue that the proposal to have two lanes of traffic exiting Selwyn Street southbound into Glen Huntly Road, and the potential for vehicles to turn right out of the review site and travel north along Selwyn Street, are aspects that are inconsistent with the latest concept plans for the Elsternwick Cultural Precinct. The Council's submission included the following diagram of its most recent endorsed position in regard to the concept plan.³⁸



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

186 It is therefore instructive that at the same time as pursuing the creation of a cultural precinct in Selwyn Street, the Council has supported the establishment of this mixed use development on the review site including a supermarket, that will result in the creation of two lanes exiting Selwyn Street into Glen Huntly Road, and will also provide for traffic to exit the

³⁸ Extract from page 37 of the Council's background submission

review site and travel north up Selwyn Street to Sinclair Street. Insofar as our role is concerned, we note that the existing traffic conditions within Selwyn Street will allow both the creation of two lanes exiting Selwyn Street into Glen Huntly Road and will provide for traffic to exit the review site and travel north up Selwyn Street.

- 187 We note the Council's vision for the cultural precinct is continuing to evolve as the design appears to have changed over time from total closure at the northern end to now a single lane, low speed northern access route. In addition, we understand that either one or two lanes for southbound traffic to Glen Huntly Road is possible. The final outcome is completely in the hands of the Council. The current concept plans for the cultural precinct appear to allow for two traffic lanes to exit Selwyn Street onto Glen Huntly Road, even though it would require a narrowing of the proposed wide footpaths at the southern end of Selwyn Street to accommodate the additional lane for exiting traffic. The current concept plans also allow for some traffic to move north through the entire length of Selwyn Street, and we note the evidence of Mr Walsh that the predicted traffic volumes from the proposed development of the review site can be accommodated in a low speed shared pedestrian and vehicular zone.
- 188 We are persuaded by the evidence of Mr Walsh that the traffic associated with the proposed use of the review site can still be accommodated on the surrounding road network, even if only one lane exited Selwyn Street into Glen Huntly Road, and even if all traffic had to turn left out of the review site into Selwyn Street. We note that in these scenarios, all traffic accessing the proposed basement car park on the review site would be contained to the southern third of Selwyn Street and would therefore not mix with the more pedestrian focused form of street improvements that are proposed for the northern half of Selwyn Street.
- 189 On this basis, we cannot support the submissions made to the Tribunal by the various respondents that the proposal for the review site is inconsistent with the concept for the future Elsternwick Cultural Precinct.

Car parking

- 190 None of the parties that appeared before us raised any concern in relation to the proposed level of car parking on the review site. It is the evidence of Mr Walsh that the proposal generates a statutory car parking requirement of 407 car parking spaces (comprising 228 commercial spaces for the supermarket, shops and place of assembly and 179 residential spaces). The proposed development comprises 419 car parking spaces. As such, the proposal meets and exceeds the statutory demand for car parking set out at Clause 52.06 of the Glen Eira Planning Scheme, and no permit is required to reduce the car parking supply.
- 191 We are cognisant that the changes we are seeking to the southern tower will result in a lesser car parking requirement, however we have not imposed

any permit conditions requiring the car parking provision to be reduced. The proposal is perfectly entitled to provide a surplus of residential car parking if it wishes to. This is a matter of detail that can be left to the Applicant and the Council to resolve.

Conclusion

192 While we have in our traffic analysis above focussed on the potential traffic impacts of the proposed development, we also need to acknowledge that the proposal will also bring a number of transport related benefits. These include:

- a. The provision of a significant amount of additional housing in a location which provides choice between forms of public transport, only a short walk from the review site. This enables the new residents of the review site a realistic choice to avoid or reduce using motor vehicles.
- b. The provision of a significant amount of additional housing in an activity centre location, where people can walk or cycle to a wide range of services and facilities.
- c. The provision of generous bicycle parking facilities on the review site, to encourage workers at the supermarket and residents to cycle to the review site, rather than drive.
- d. The provision of a supermarket in a convenient location, which provides nearby residents an opportunity to choose to do more frequent and smaller shops, that can be done while walking or on public transport, rather than rely on driving to a supermarket.
- e. The design of loading bays on the review site where trucks can enter and exit the site in a forward direction. This contrasts with most loading bays which require trucks to reverse in and perform awkward reversing manoeuvres of the kind depicted by Mr Campbell in his various videos of another loading bay, while blocking traffic in local streets.

193 For these reasons, we find that the proposal appropriately responds to Transport and related policy and will provide for appropriate car parking and traffic impacts in the surrounding neighbourhood.

DOES THE DESIGN ACCEPTABLY RESPOND TO BUILDING DESIGN POLICIES, INCLUDING THE ENERGY PERFORMANCE OF BUILDINGS AND THE ACHIEVEMENT OF LANDSCAPING TO ASSIST IN THE COOLING AND GREENING OF URBAN AREAS?

194 Before the last hearing day, Amendment VC216 was gazetted on 10 June 2022 that made changes to the Planning Policy Framework of the Glen Eira Planning Scheme to support environmentally sustainable development. This amendment included changes to clause 15.01-2S Building design including the following strategies:

Improve the energy performance of buildings through siting and design measures that encourage:

- Passive design responses that minimise the need for heating, cooling and lighting.
- On-site renewable energy generation and storage technology.
- Use of low embodied energy materials.

Ensure the layout and design of development supports resource recovery, including separation, storage and collection of waste, mixed recycling, glass, organics and e-waste.

Encourage use of recycled and reusable materials in building construction and undertake adaptive reuse of buildings, where practical.

Encourage water efficiency and the use of rainwater, stormwater and recycled water.

Minimise stormwater discharge through site layout and landscaping measures that support on-site infiltration and stormwater reuse.

Ensure development provides landscaping that responds to its site context, enhances the built form, creates safe and attractive spaces and supports cooling and greening of urban areas.

195 This consideration had already been raised by Mr Gore earlier in the hearing. He was complimentary of this proposal's inclusion of a variety of landscaping throughout the development, including trees on the podium and the greening of the southern tower. Mr Gore's submission included a detailed analysis of the greening design solutions incorporated into the proposal and various questions or concerns about the detail contained in the proposal. For example, the adequacy of the planter soil volumes and depths for the proposed trees in light of the current provisions of clause 58.03-5. Mr Gore highlights that this concern goes hand in hand with the weight of a mature tree:

As large canopy trees grow and develop, they pose a health and safety risk because the canopy creates leverage on the root system. In addition, wind gusts catching the canopy will add extra force to the supporting roots within limited soil where the root system is not sufficiently anchored.

196 The first finding that we need to make is to acknowledge that the version of clause 58 contained in the Tribunal book is the version as it existed at the time of the hearing. As such, it includes:

- The changes made by Amendment VC174 that came into effect on 6 April 2022 to implement the revised better apartment design standards regarding external amenity and design outcomes for apartment developments; and

- The changes made by Amendment VC210 that came into effect on 4 May 2022, which included correcting errors associated with the implementation of Amendment VC174.³⁹

197 As the amended planning permit application form for this proposal was received by the Council on 30 June 2021, this proposal's consideration is to be based upon the version of clause 58 that was in force immediately before the approval date of Amendment VC174.⁴⁰ This earlier version of clause 58 is contained in the Council's materials filed before the hearing. None of the parties or the expert witnesses specifically referred to this earlier version in considering and responding to Mr Gore's submissions. Instead, the version in the Tribunal book was referenced.

198 Victorian planning schemes are increasingly being updated to have regard to the urban heat island impacts and as evidenced in clause 15.01-2S, building design is being encouraged to improve the energy performance of buildings through siting and design measures and to support the cooling of urban areas. This proposal is contributing positively to achieving such policy aspirations. The southern tower is wrapped in landscaping and the podium levels have been designed by Mr Atkinson to contribute significant landscaping including canopy trees. Mr Atkinson shares Mr Gore's expectations for the achievement of the greening of this proposal. His intention is to comply with the clause 58 standards in regard to soil volumes and depths as well as having a comprehensive landscape management plan for the overall development and for the southern tower in order to facilitate the ongoing contribution of this landscaping to the greening and cooling of this particular part of Elsternwick Activity Centre.

199 In response to the Tribunal's questions, Mr Atkinson was unaware of any other building in Melbourne that has an ongoing maintenance regime for maintaining its greenery. He further elaborated on his expectations for the ongoing landscape management in this proposal as including:

- An overall landscape management plan for vegetation maintenance in both the private and the communal open space areas; and
- Anticipation that access to apartments may be needed 1-2 times per year or, alternatively, an external landscape maintenance regime akin to an external window cleaner using ropes etc on the building facades. Mr Atkinson acknowledges this will have an ongoing cost implication for the future owners corporation(s), but it is an expectation derived

³⁹ The Explanatory Report for Amendment VC210 explains that one of the changes made is to clause 58.03-5 'to correct administrative errors associated with Amendment VC174 and to align with the current Apartment Design Guidelines for Victoria (Department of Environment, Land, Water and Planning, 2021). We also note that the current version of clause 58.03-5 has written below it 'VC210' with the date '4/5/22'. However, there is a different date in the list of amendments in the online version of the planning scheme, with a gazettal date of 29/8/22. This anomaly is of no significance in regard to our decision on the merits of this proposal.

⁴⁰ Refer to clause 32.04-6 of the Mixed Use Zone provisions.

from the Planning Policy Framework now found in Victorian Planning Provisions.

200 In response to Mr Gore's submissions and Amendment VC216, the applicant has also provided the following material⁴¹:

- A memorandum from WSP that prepared the Sustainable Management Plan submitted with the substituted amended plans, which confirms that the changes made by VC216 do not alter the degree of ESD compliance required and demonstrated by this proposal; and
- A statement from Joe Venuto, principal of Fender Katsalidis (Aust) Pty Ltd explaining that the landscape concept has been integrated with the architectural response and appropriate spatial allowances have been made. This explanation is accompanied by a section SK01 dated 8 June 2022 illustrating the structural allowances, and a letter from Paul Malady, director of Webber Design Consulting Engineers dated 10 June 2022. This letter confirms the top of the podium structure has the capacity to support in excess of 30kPa (equivalent to 3t/m²) which is well in excess of the proposed loads to be applied, including trees and planting. The letter also states the various terrace planting areas and the façade planter details to the apartment levels all have the structure spatial allowances necessary to accommodate the loads associated with the landscaping details.

201 Mr Gore's closing submission questioned whether risk based decision making of the heat island effect that is now in all planning schemes has been acceptably dealt with in this proposal. It is not the responsibility of this proposal to achieve 'a perfect score' in every aspect of its design. As Mr Gore acknowledged, the planning scheme requires a balancing of all relevant policies and considerations in order to achieve a net community benefit and sustainable development. The proposal must achieve 'acceptable' outcomes in regard to each of the planning permissions and relevant considerations. The submissions, evidence and material presented during the hearing in response to Mr Gore's submissions satisfy us that this proposal incorporates design measures that address the energy performance of the overall development as well as landscaping that supports cooling of the urban area. We are satisfied that an acceptable balance has been achieved.

WHAT CONDITIONS ARE APPROPRIATE?

202 Throughout these reasons we have identified matters that are being incorporated into the permit conditions. In addition, there was a detailed discussion about the draft permit conditions at the end of the hearing. After the hearing, we gave leave for the Applicant and the Council to draft further conditions to give effect to the greening of the development and particularly the southern tower. All of the submissions and discussions about the draft

⁴¹ Refer to Exhibit A-45.

permit conditions have been considered in our decision to grant a permit. Obviously, not all of the suggested conditions or suggested changes to the conditions have been incorporated into our final decision.

CONCLUSION

203 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Rachel Naylor
Senior Member

Michael Deidun
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	GE/DP-34187/2021
LAND	10-16 Selwyn Street, Elsternwick

WHAT THE PERMIT ALLOWS

The demolition of existing buildings, the development of a podium and two towers over a multi-level basement comprising shops, a supermarket, a place of assembly, dwellings and the sale and consumption of liquor (packaged liquor), and the construction and display of advertising signage in accordance with the endorsed plans and with the following planning permissions:

- Use of the land for a shop and a place of assembly (function centre, hall, library, museum, restricted place of assembly (excluding gaming))
- Use of the land to sell or consume liquor
- To demolish buildings
- To construct two or more dwellings on a lot
- To construct a building and construct or carry out works
- To construct and display internally illuminated business identification signage

CONDITIONS

- 1 Before the development starts, amended plans and documents to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The amended plans must be drawn to scale with dimensions and must be generally in accordance with the plans identified as TP002, TP003, TP096, TP097, TP098, TP099, TP101, TP102, TP103, TP104, TP105, TP106, TP107, TP108, TP109, TP110, TP200, TP201, TP202, TP203, TP204, TP205, TP250, TP251, TP252, TP253, TP254, TP255, TP400, TP401 and TP500, Revision 04, dated 25.03.2022, TP220 and TP111, Revision 03 dated 25.03.2022 and TP004 and TP100, Revision 05, dated 25.03.2022 prepared by Fender Katsalidis but further modified to show:

Southern tower changes

- (a) Deletion of levels 6, 7 & 8 from the southern tower;

- (b) Modification of levels 2, 3, 4 & 5 of the southern tower, so that they comprise the setbacks and internal layout depicted in the level 8 floor plan contained on Drawing TP109 dated 25 March 2022;
- (c) All balconies at podium level to comply with Clause 58.05-3;
- (d) Detailed design plans of support structures, materials and drainage measures associated with the tower levels, demonstrating that they are integrated into the design and architecture of the building;

Northern tower changes

- (e) Modifications to the Level 5 communal terrace in the northern tower to limit overlooking impacts to Apt. 503-N;

Podium changes

- (f) The areas currently shown as 'kiosk' to be shown as 'Shop or Food and drink premises';
- (g) The Place of Assembly modified to achieve activation along Selwyn Street in proximity to the internal lift;
- (h) The boundary wall adjacent to 1 St Georges Road to have a red brick appearance.
- (i) The boundary wall adjacent to the Sinclair Street properties and 1 May Street to have a bagged concrete treatment/appearance.
- (j) The brick material at Level 1 above the residential entrance of the northern tower reduced and replaced with glazing consistent with that provided at the Mezzanine Level to achieve a more distinguishable entrance;
- (k) Clear glazed shop fronts to the supermarket, shops and the place of assembly open to the street and not be screened by opaque advertising, opaque materials or internal placement of fittings (including refrigeration/freezer/display units) to the satisfaction of the Responsible Authority;
- (l) The fire booster to Selwyn Street to be glazed;
- (m) The rear of the small shop spaces to be glazed;
- (n) Any amendments to the eastern façade at ground level required to accommodate the tree protection zone for Tree 2 (Pencil Pine) at 1 May Street if necessary pursuant to Condition 12(b) including access for maintenance purposes;
- (o) Details of how access from the supermarket loading bay to the substation will be facilitated without impacting the use of the supermarket loading bay and Basement 01 vehicle accessway;
- (p) The supermarket loading dock and plant area in the north-eastern corner of the site must be fully enclosed along the northern and

eastern elevations, with the exception of the loading dock entrance door;

- (q) Line marking for the supermarket loading bay turntable to guide vehicles accessing to be centrally aligned;
- (r) The residential loading area in the northern tower to be free of any columns unless evidence from a suitably qualified structural engineer is provided demonstrating that columns within the residential loading area in the northern tower is acceptable to the satisfaction of the Responsible Authority;
- (s) Access to be provided directly from the bike lobby to the shared loading dock to allow for movement of bins transferred from the northern tower bin storage area;
- (t) Detailed advertising signage plans demonstrating how they are integrated into the development;
- (u) Detailed elevations at a scale of 1:50 and sections at a scale of 1:20 showing the podium level streetscape detailing (including window reveals, door profiles and architectural features) along Selwyn Street and Sinclair Street, and to demonstrate all site services are treated in a way that is integral to the design of the building;
- (v) Provision of at least 2.1m headroom beneath overhead obstructions, calculated for a vehicle with a wheel base of 2.8 metres in accordance with Figure 5.3 of AS2890.1:2004 must be provided;
- (w) Ramp kerbs must have minimum of 300mm width and maximum of 150mm height;
- (x) At ground level, the structure on the exit side of the driveway setback a further 550mm to achieve a full 2.5 metre long sight triangle compliant with Clause 52.06 of the Glen Eira Planning Scheme;
- (y) The basement ramp gradients modified as follows:
 - i 1 in 16 for 12m measured from the Selwyn Street title boundary;
 - ii 1 in 10 for the next 12m;
 - iii 1 in 7 for the next 8m; and
 - iv 1 in 8 for the next 2m;
- (z) The support columns within the pedestrian pathway to the east of the travelators in the retail car parking areas reorientated 90 degrees;
- (aa) 20% of bicycle spaces in Basement Level 3 to be horizontal rails in accordance with AS2890.3;
- (bb) The location of the barrier mechanism that limits access to the residential and staff parking areas clearly shown on Basement Level 02 and in a location to not impact on useability of retail car spaces;

Communal open space

- (cc) Subject to advice from a suitably qualified wind expert confirming the outside area would result in an acceptable environment in terms of wind, the outside area located east of apartment 106-S and 107-S included as open space for the abutting apartments, with any screening measures to limit overlooking to 1 St Georges Road and 3 May Street;
- (dd) The outside area located east of apartment 105-N included as open space for this apartment;
- (ee) A detailed Level 01 Communal Open Space Plan clearly demonstrating the following:
 - i Design measures limiting overlooking and noise impacts from the communal open space areas to the Level 01 apartments with direct interface to the communal open space.
 - ii Lighting details ensuring that the lighting does not impact on the amenity of the apartments facing directly onto the communal open space.
 - iii Areas delineated where people will be able to use the open space for recreational or place gathering activities, ensuring they are not located immediately adjacent to habitable rooms of adjoining apartments.

Privacy

- (ff) The externally accessible area and east facing windows of the ‘Supermarket Plant’ room and ‘Retail – Supermarket Office’ screened in accordance Standard D14 (Building Setback) to avoid views onto the secluded private open space and/or habitable room windows of numbers 1 and 3 May Street;
- (gg) Overlooking impacts from the Level 01 communal open space areas, including the pool and secluded private open space of apartment 105-N, screened in accordance with Standard D14 (Building Setback) to avoid direct views to the secluded private open space and/or habitable room windows of the following sites:
 - i 1 St Georges Road;
 - ii 1 and 3 May Street; and
 - iii 16, 18 and 20 Sinclair Street.
- (hh) Additional information demonstrating how overlooking impacts from apartment to apartment is limited in accordance with Standard D15 (Internal views) of the Glen Eira Planning Scheme; and
- (ii) A sectional diagram depicting details of how the material chosen for screening (black steel picket balustrade) prevents overlooking. Details of angling and spacing of pickets is required.

On-site amenity

- (jj) Detailed and dimensioned floor layout plans of each apartment typology demonstrating that the following objectives are met of Clause 58 of the Glen Eira Planning Scheme, as in place before Amendment VC174:
 - i Clause 58.05-1 (Standard D17 – Accessibility);
 - ii Clause 58.05-3 (Standard D19 – Private open space);
 - iii Clause 58.05-4 (Standard D20 – Storage);
 - iv Clause 58.07-1 (Standard D24 – Functional layout);
 - v Clause 58.07-2 (Standard D25 – Room depth);
 - vi Clause 58.07-3 (Standard D26 – Windows); and
 - vii Clause 58.07-4 (Standard D27 – Natural ventilation);

Other requirements

- (kk) The Car Parking Schedule in the Project Summary (TP004) amended to separate the 30 ‘Place of Assembly’ car spaces from the retail allocation;
- (ll) The identification of the place of assembly car spaces on the basement floor plans;
- (mm) The location of the rainwater tanks as detailed in the Sustainability Management Plan;
- (nn) A physical materials board showing all external façade materials, colours and finishes.

Changes resulting from other conditions

- (oo) Any requirement of the Public Lighting plan required under Condition 6;
- (pp) Any requirement of the Landscaping Plan required under Condition 8;
- (qq) Any requirement of the Landscaping Management Plan required under Condition 10;
- (rr) Any requirement of the Tree Protection Management Plan as required by Condition 13;
- (ss) Any requirement of the Waste Management Plan under Condition 17;
- (tt) Any requirement of the Loading Bay Management Plan under Condition 21;
- (uu) Any noise attenuation measures or requirement of the Acoustic Report under Condition 24;
- (vv) Any requirement of the Environmentally Sustainable Design Report under Condition 29;

- (ww) Any requirements of the Wind Assessment Report under Condition 32; and
- (xx) Any requirement of the Public Realm Management Plan under Condition 36.

Layout not to be altered

- 2 The layout of the uses and the development as shown on the endorsed plans, including the location and details of the signs must not be altered or modified (unless the Glen Eira Planning Scheme specifies a permit is not required) without the prior written consent of the Responsible Authority.

Engaged Architect and Landscape Architect

- 3 As part of the ongoing consultant team:
 - (a) Fender Katsalidis Architects or an architectural firm to the satisfaction of the Responsible Authority must be engaged to oversee the design and construction to ensure that the design quality and appearance of the approved development is realised or otherwise to the satisfaction of the Responsible Authority.
 - (b) Urbis or a landscape architectural firm to the satisfaction of the Responsible Authority must be engaged to oversee the design and implementation of the landscaping to ensure the design quality and appearance of the approved landscaping is realised or otherwise to the satisfaction of the Responsible Authority.

Communal Areas Management Plan

- 4 Before the development starts a Communal Areas Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Communal Areas Management Plan will be endorsed and will form part of this permit. The Plan must include:
 - (a) Hours of operation for all communal areas. Pool and communal terrace areas must operate only between the hours of 6am to 10pm Monday to Sunday;
 - (b) Lighting of communal spaces; and
 - (c) Details of the use of the terraces on Levels 5 and 6.
- 5 The provisions, recommendations and requirements of the endorsed Communal Areas Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Public Lighting Plan

- 6 Before the development starts, a Public Lighting Plan must be submitted to and approved by the Responsible Authority. When approved, the public

lighting plan will be endorsed and will form part of this permit. The public lighting plan must include:

- (a) Lighting at the entrance to the supermarket and residential lobbies;
- (b) Lighting along the Sinclair and Selwyn Street interfaces;
- (c) Lighting to loading docks; and
- (d) Lighting must be directed, shielded and of an appropriate intensity as to not impact neighbouring residence.

7 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, all external lighting must be provided on the subject site in accordance with the Public Lighting Plan.

Landscaping

8 Before the development starts, a detailed Landscape Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and will then form part of the permit. The Landscape Plan must be prepared by a person suitably qualified or experienced in landscape design and must be drawn to scale with dimensions. All species selected must be to the satisfaction of the Responsible Authority. The detailed Landscape Plan must be consistent with the Landscape Concept Design, prepared by Urbis, dated 30.03.2022, Revision D and show:

- (a) Details of substantial landscaping in line with TP220 Revision 03, dated 25.03.2022 that will provide privacy to the terrace spaces that boarder the communal terraces;
- (b) A planting schedule of all proposed vegetation including botanical names, common names, pot sizes, sizes at maturity, planters' volume of soil and depth of planter soil for each tree, quantities of each plant, and details of surface finishes of pathways and driveways;
- (c) Landscaping and planting within all outdoor areas (level 1 podium, level 5 communal terrace, level 6 communal terrace, planter boxes and green walls);
- (d) Details of the landscaping assets to be installed including details of:
 - i An automated irrigation system for all landscaped areas.
 - ii The irrigation sources, supply and connections points.

The development allowed under this permit must be located clear of any easements, septic and soakage areas to the satisfaction of the Responsible Authority.

- (e) Notes and diagrams detailing the establishment of all proposed trees, shrubs and ground covers.

- 9 Before the building is occupied, or by such later date as approved in writing by the Responsible Authority, the landscaping works shown on the endorsed Landscape Plan must be carried out and completed to the satisfaction of the Responsible Authority.
- 10 Before the development starts, a detailed Landscape Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and will then form part of the permit. The detailed Landscape Management Plan must be prepared by a person suitably qualified or experienced in landscape management and must be consistent with the Landscape Concept Design, prepared by Urbis, dated 30.03.2022, Revision D. The Landscape Management Plan must include:
 - (a) Details of a maintenance program for the irrigation systems including flushing, checking systems integrity, monitoring sensors and calibration settings.
 - (b) The allocation of responsibility to the owners corporation for the ongoing maintenance of the irrigation systems and all landscaping unless otherwise to the satisfaction of the Responsible Authority, including specific measures relating to:
 - i maintenance of the proposed on-structure landscaping wrapping around the southern tower; and
 - ii obligations on the owners corporation to ensure consistent maintenance and matching themes for the landscaping into the future;
 - (c) Notes and diagrams detailing the maintenance of all proposed trees, shrubs, and ground covers.
 - (d) Protocols for gaining access for maintenance purposes to privately owned land.
- 11 The landscaping shown on the endorsed Landscape Plan must be maintained to the satisfaction of the Responsible Authority in accordance with the endorsed Landscape Management Plan including by:
 - (a) Implementing and complying with the provisions, recommendations and requirements of the endorsed Landscape Management Plan.
 - (b) Not using the areas set aside on the endorsed Landscape Plan for landscaping for any other purpose.
 - (c) Replacing any dead, diseased, dying or damaged plants.

Street Trees

- 12 Before the development is completed, the existing street trees (Trees 9, 15 and 16 as identified in the Arboricultural Assessment and Report, prepared by Glenn Water Arboriculture and dated 19 November 2020) must be removed and replaced at no cost to Council. The street trees will be

replaced with the species, maturity and location of which will be selected by Council's Parks Services Department.

Tree Management

- 13 Before the development starts, including any demolition and excavation, a Tree Protection Management Plan (TPMP) in respect of Tree 2 (Pencil Pine) and Tree 6 (Crimson Bottlebrush) located within 1 May Street and Tree 7 (Washington Palm) located within 18 Sinclair Street (as identified in the Arboricultural Assessment and Report, prepared by Glenn Water Arboriculture and dated 19 November 2020) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The TPMP must show:
 - (a) The specification of tree protection zone (TPZ);
 - (b) If considered necessary by a suitably qualified arborist, any required alterations to the eastern façade at the ground level of the development adjacent to 1 May Street to accommodate the tree protection zone for Tree 2 (Pencil Pine, Glen Eira Classified Tree number 28/CTR/2020) to the extent necessary as advised by a suitably qualified arborist, including access for maintenance purposes;
 - (c) The type, installation and maintenance of tree protection fencing;
 - (d) Vehicular or pedestrian access within a tree protection zone;
 - (e) The protection of the canopies and trunks of the specified tree;
 - (f) Specific details of any works proposed in any TPZ and how impacts will be mitigated;
 - (g) How canopies will be managed, including pruning;
 - (h) Excavation within or near a tree protection zone;
 - (i) Maintenance, including mulching and watering, of tree protection zone;
 - (j) Schedule of Project Arborist inspections; and
 - (k) A program to implement the proposed measures before, during and on completing construction (including demolition).
- 14 The tree protection measures set out in the endorsed Tree Protection Management Authority and must not be altered unless with the prior written consent of the Responsible Authority.

Construction Management

- 15 Before the development starts, including any demolition and excavation, a Construction Management Plan (CMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the

Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The CMP must show:

- (a) Delivery and unloading points and expected frequency;
 - (b) Truck haulage routes, circulation spaces and queuing lanes. Truck haulage routes must exclude Sinclair Street unless agreed to in writing by the Responsible Authority;
 - (c) Details how traffic and safe pedestrian access will be managed, particularly during the drop-off and pick-up times of the Sholem Aleichem College. These must be in the form of a Traffic Management Plan designed by a suitably qualified traffic practitioner;
 - (d) A liaison officer for contact by owners / residents and the Responsible Authority in the event of relevant queries or problems experienced;
 - (e) An outline of requests to occupy public footpaths or roads, or anticipated disruptions to local services;
 - (f) Any requirements outlined within this permit as required by the relevant referral authorities;
 - (g) Hours for construction activity must only occur within the following hours:
 - i 7am to 6pm – Monday to Friday;
 - ii 9am to 3pm – Saturdays;
 - iii No construction on Sundays or public holidays;
 - (h) Measures to control noise, dust, water and sediment laden runoff;
 - (i) Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
 - (j) Any construction lighting to be baffled to minimise intrusion on adjoining lots; and
 - (k) Measures to prevent vehicles blocking the laneway adjoining the property to the south (rear of properties fronting Glen Huntly Road).
 - (l) Vibration intensive activities be conducted away from adjacent vibration sensitive buildings as practical or, where not avoidable, undertake vibration monitoring, with appropriate stop-work triggers, should vibration thresholds be exceeded.
- 16 All construction (including demolition and excavation) must be carried out and complied with in accordance with the approved Construction Management Plan to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.

Waste Management

- 17 Before the development starts, a Waste Management Plan (WMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions. The WMP submitted to Council must be consistent with the Waste Management Plan prepared by Irwin Consult, Revision 12, dated 4 April 2022, but modified to include the provision of a food organic collection service is to be provided through a private contractor.
- 18 The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.

Venue Management

- 19 Before the use of the Place of Assembly (function centre, hall, library, museum, restricted place of assembly (excluding gaming)) starts, a Venue Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and will then form part of the permit. The plan must include:
 - (a) A description of the nature, frequency and size of activities on the site;
 - (b) Layout plans of the various intended land uses and activities;
 - (c) A limitation on patron numbers as follows:
 - i 100 persons at all times except when used for school assemblies and school activities by Sholem Aleichem College; and
 - ii 250 persons for school assemblies and school activities for the Sholem Aleichem College;
 - (d) Operating hours limited to the following:
 - i 7am to 10pm Monday to Friday;
 - ii 9am to midnight Saturdays; and
 - iii 10am to 10pm on Sundays.
 - (e) Noise management measures appropriate for the proposed uses of the Place of Assembly, including any measures required by the Acoustic Report approved under Condition 23.
- 20 The provisions and requirements of the endorsed Venue Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.

Loading Bay Management

- 21 Before the buildings are occupied, a Loading Bay Management Plan for all loading bays (commercial and residential) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale and dimensioned and generally in accordance with the Draft Loading Management Plan, prepared by Stantec, Issue B and dated 5 April 2022, but modified to include the following:
- (a) The statement ‘By notification to the Responsible Authority, reasonable additional Supermarket vehicle movements can occur during selected peak trading periods and prior to public holidays (e.g. Christmas and Easter)’ deleted from Table 2.3;
 - (b) Noise attenuations measures complying with Condition’s 23 to 27;
 - (c) Routes travelled on the local road network by commercial vehicles to the supermarket loading bay (to be via Glen Huntly Road, St Georges Road and Sinclair Street only between St Georges Road and the loading bay);
 - (d) Details of commercial vehicle parking areas while waiting for the loading bay to become available with this not to occur within residential streets including in Sinclair Street;
 - (e) Details of the supermarket loading bay entry door which must be acoustically rated and designed in accordance with the acoustic report at Condition 23 and which must remain closed during loading and unloading;
 - (f) Specifications of commercial vehicles ensuring they do not exceed 14.7m in length;
 - (g) Commercial vehicles are to enter and exit the supermarket loading bay in a forward direction at all times;
 - (h) Frequency of commercial deliveries and details of the management of such deliveries, including limiting commercial deliveries/collection by semi-trailers to no more than one in any half hour period and any other measures required by the Acoustic Report approved under Condition 23;
 - (i) That there will be no home delivery service vehicles;
 - (j) Maintenance and cleaning of all loading bays;
 - (k) The expected frequency and duration of maintenance of the substation via the supermarket loading dock, including details of how supermarket deliveries will be managed throughout such maintenance periods;

- (l) Operational details of the residential loading bays including the management of new residents and bulky goods deliveries;
 - (m) Loading and unloading may only take place between the following hours, except during the drop-off (Monday to Friday: 8.15am to 9.00am) and pick-up (Monday to Friday: 3.15pm to 4.00pm) times of the Sholem Aleichem College (excluding school holidays), when no deliveries are to occur:
 - i 7.00am-7.00pm, Monday to Saturday; and
 - ii 9.00am-5.00pm, Sunday except with the written consent of the Responsible Authority.
- 22 The provisions, recommendations and requirements of the endorsed Loading Bay Management Plan must be implemented and thereafter complied with at all times to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.

Trolley Management

- 23 Before the supermarket use starts, a Trolley Management Plan to the satisfaction of the Responsible Authority detailing measures for the efficient management of shopping trolleys including collection and storage must be submitted to and approved by the Responsible Authority. Once approved, the plan will be endorsed and will then form part of the permit. The Trolley Management Plan must be implemented and complied with in association with the supermarket use at all times to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.

Acoustic attenuation measures

- 24 Before the endorsement of the Condition 1 plans, an Acoustic Report prepared by a suitably qualified acoustic engineer and to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the report will be endorsed and will then form part of the permit. The report must prescribe the form of acoustic treatment to:
- (a) Prescribe measures (whether acoustic treatment or management measures) necessary to protect nearby dwelling occupants and future residents within the building with a direct interface to commercial tenancies above, next to or below from associated commercial noise sources, including but not limited to loading dock and reversing beepers, supermarket, place of assembly (including patron and music noise), plant and equipment;
 - (b) Prescribe measures (whether acoustic treatment or management measures) necessary to address noise from use of the outdoor residential communal areas;

- (c) Prescribe acoustic treatment to the mechanical plant equipment and ventilation mechanisms installed or constructed as part of the development.
- 25 Before the development starts, a Mechanical Services Report must be submitted to the satisfaction of the Responsible Authority. The Mechanical Services Report must provide comment on suitability of supermarket equipment noise control measures set out in the Acoustic Report, including with respect to air-flow and ventilation.
- 26 Before the development starts, a further acoustic report prepared by a suitably qualified acoustic engineer to the satisfaction of the Responsible Authority must be submitted. Once approved, the further acoustic report will be endorsed and will then form part of the permit. The further acoustic report must nominate the specific acoustic design and attenuation to address the place of assembly and supermarket land uses and activities and any other plant and equipment (including the condenser area) and demonstrate that the requirements of Condition 27 can be achieved, to the satisfaction of the Responsible Authority.
- 27 Within two months of all of the uses commencing, an updated acoustic report prepared by a suitably qualified acoustic engineer and to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The updated acoustic report must demonstrate compliance with Condition 27 and that the required level of noise attenuation has been achieved in accordance with Conditions 23, 24 and 25 of the permit or, if not, what works must be undertaken to achieve the required levels of noise attenuation. Compliance testing must be undertaken with plant equipment operating at practical worst caseloads (as could occur during hot weather in summer during the evening and night).
- 28 Noise levels to and from the development must not exceed those required to be met under the Environment Protection Regulations 2021 and EPA Publication 1826.4 noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues, or any other equivalent or applicable State or relevant policy and should meet accepted sleep disturbance criteria, EPA Publication 1254.2 and any other relevant guideline or Australian Standard.

Environmentally Sustainable Design

- 29 Before the development starts, an Environmentally Sustainable Design Report to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the report will be endorsed and will then form part of the permit. The report must outline how the development complies with Standards D6 and D13 of Clause 58 of the Glen Eira Planning Scheme. Any Environmentally Sustainable Design features within the report must be included and shown on the plans.

- 30 The provisions, recommendations and requirements of the endorsed Environmentally Sustainable Design Report must be implemented and complied with to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.

Wind Assessment

- 31 Before the development starts, a Wind Assessment Report (WAP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and will then form part of the permit. The WAP submitted to Council must be consistent with the Wind Assessment Report provided with the application (Wind Impact Assessment, Vicpac, 11 February 2021) and the letter that accompanied the VCAT substituted amended plans dated 4 April 2022, but modified to include an assessment of the amended design reflected on the plans in Condition 1 of the permit.
- 32 All works must be undertaken in accordance with the endorsed Wind Assessment Report to the satisfaction of the Responsible Authority. No alterations to the endorsed Wind Assessment Report may occur without the written consent of the Responsible Authority.
- 33 Before any use hereby permitted commences, a report from the author of the Wind Assessment Report, approved under this permit, or similarly qualified person or company, must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm all measures specified in the endorsed Wind Assessment Report have been implemented in accordance with the approved Plan.

Car Parking and Bicycle Parking Management Plan

- 34 Before the buildings are occupied, a Car Parking and Bicycle Parking Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale and dimensioned. The plan must include:
- (a) The allocation of car spaces to residential and place of assembly uses within the development;
 - (b) The number and location of the car spaces in the basement retail car park. All these spaces must be available for public use;
 - (c) Details of any intended sharing of retail and place of assembly car parking;
 - (d) Barrier mechanisms and/or paid parking arrangements, including license plate recognition measures detailed in Section 5.3 of the Transport Impact Assessment prepared by Stantec and dated 5 April 2022;

- (e) Details of the access arrangements through the barrier mechanisms for resident car parking, ensuring they are convenient and efficient;
 - (f) Details of the system to be installed to manage car parking time restrictions and any payment for the car park;
 - (g) Bicycle parking facilities including end of trip facilities and public access arrangements;
 - (h) An internal signage plan for the retail carpark including directional arrows and signage, informative signs indicating location of disabled bays, small parking bays, bicycle parking, exits, restrictions, pay parking system etc;
 - (i) The security arrangements for occupants of the development;
 - (j) Details of way finding, cleaning, security of end of trip bicycle facilities; and
 - (k) Any policing arrangements and/or formal agreements.
- 35 The provisions, recommendations and requirements of the endorsed Car Parking and Bicycle Parking Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority and must not be varied except with the written approval of the Responsible Authority.

Public Realm Management

- 36 Before the development is completed, a Public Realm Management Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and will then form part of the permit. The plan must be prepared by a suitably qualified urban design professional and must be drawn to scale and dimensioned. The plan must include:
- (a) Plans, elevations, treatments and materials schedules prepared in conjunction with the responsible authority for the following public areas:
 - i Selwyn Street between Glen Huntly Road and Sinclair Street (frontage of the subject site);
 - ii Sinclair Street between 16 Sinclair Street and Selwyn Street (frontage of the subject site); and
 - iii Laneway south of the subject site between 277 and 297 Glen Huntly Road;
 - (b) Description of proposed works, including proposed landscaping, surface treatments, street furniture (including signage, bins, seats, bicycle facilities, gates, fences and the like);
 - (c) Details of water sensitive urban design;
 - (d) A plan defining the area the works are to be undertaken; and

(e) Vehicle and pedestrian access arrangements including any signage or safety measures.

37 Before the buildings are occupied, the requirements of the endorsed Public Realm Management Plan must be carried out and completed to the satisfaction of the Responsible Authority.

May Street is not a road

38 The development hereby approved must not commence on the land shown as part of Lot 1 on TP896250M and labelled 'May Street' until evidence is provided to the satisfaction of the Responsible Authority that May Street (part of Lot 1 on TP896250M) is not a road at law.

Environmental investigation

39 Before the development starts (other than for necessary demolition and investigation works forming part of the environmental site assessment process), a Preliminary Risk Screen Assessment Statement to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The Preliminary Risk Screen Assessment Statement must be prepared by a suitably qualified environmental professional in accordance with the Potentially Contaminated Land General Practice Note (Department of Environment, Land, Water and Planning, July 2021). The report must include recommendations as to whether the condition of the land requires an Environmental Audit to be conducted taking into account the proposed uses. The permit holder must comply with the findings of the Preliminary Risk Screen Assessment Statement to the satisfaction of the Responsible Authority, including if required the preparation of an Environmental Audit.

40 If, in accordance with Condition 38, an Environmental Audit is required, then before the development starts (other than for necessary excavation, demolition and investigation works) an Environmental Audit must be undertaken pursuant to section 208 of the Environment Protection Act 2017 and an Environmental Audit Statement prepared and provided to the Responsible Authority:

41 Where an Environmental Audit Statement is issued for the land in accordance with Condition 39:

(a) The buildings and works and the use(s) of the land that are the subject of this permit must comply with all directions and conditions contained within the Statement to the satisfaction of the Responsible Authority;

(b) Before the use or development starts (other than for necessary excavation, demolition and excavation works) and before the issue of an Occupancy Permit under the Building Act 1993, a letter prepared by an Environmental Auditor appointed under Division 1 of Part 8.3 of the Environment Protection Act 2017 must be submitted to the

Responsible Authority to verify the directions and conditions contained in the Environmental Audit Statement are satisfied; and

- (c) Where any condition of that Statement requires any maintenance or monitoring of an ongoing nature, the Owner must enter into an Agreement with Council under section 173 of the Planning and Environment Act 1987. Where a section 173 Agreement is required, the Agreement must be executed before the development starts. All expenses involved in the drafting, negotiating, reviewing, lodging, registering and execution of the Agreement, including those incurred by the Responsible Authority, must be met by the Owner.

Engineering Requirements

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

- (a) Include the signalisation of Selwyn Street and Glen Huntly Road with any associated widening of the Selwyn Street carriageway to facilitate separate left and right turn lanes on the south approach, generally in accordance with that shown on the Concept Plan identified as DWG No. G24495-01-01, dated 23 October 2019 and set out at Appendix A to the GTA Consultants Transport Impact Assessment, Issue D and dated 12 February 2021;
- (b) Minimum 600mm clearances to be provided to existing canopies on both sides of Selwyn Street, with the two exit lanes each narrowed to no less than 2.9m in width if required;
- (c) The measures required to the St Georges Road and Glen Huntly Road intersection as shown in the Appendix D. Swept Path Assessments – External Intersections section of the Draft Loading Management Plan, prepared by Stantec, Issue B and dated 5 April 2022; and
- (d) If required by Council, a ‘Keep Clear’ on Glen Huntly Road at the intersection with Riddell Parade.

43 Before the development is completed, the requirements of the endorsed functional layout plans must be carried out and completed at no cost to the Responsible Authority and to the satisfaction of the Responsible Authority.

General Amenity

44 Before the development is completed, all screening shown on the endorsed plans must be erected and thereafter maintained in accordance with the endorsed plans. The screening measures as shown on the endorsed plans are not to be altered or removed without the written consent of the Responsible Authority.

- 45 The amenity of the area must not be adversely affected by the uses or development including through the:
- (a) Transport of materials, goods or commodities to or from the land;
 - (b) Appearance of any building, works, stored goods or materials;
 - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil;
 - (d) Traffic generated by the use, or in any other way, to the satisfaction of the Responsible Authority.
- 46 All security alarms or similar devices installed on the land must be of a silent type.
- 47 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
- 48 All pipes, fixtures, fittings and vents servicing any building must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.
- 49 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.
- 50 Before the buildings are occupied, the walls on the boundary of adjoining properties must be cleaned and finished in a manner to the satisfaction of the Responsible Authority. Painted or bagged walls must be finished to a uniform standard and unpainted or unrendered walls must have all excess mortar removed.
- 51 Before the building is occupied, any wall located on a boundary facing public property must be treated with a graffiti proof finish to the satisfaction of the Responsible Authority.

Restrictions on the use of the land

- 52 The supermarket use must operate only between the hours of 7am and midnight, seven days a week (Monday through Sunday).
- 53 The bottle shop must operate only between the hours of:
- (a) 9am to 10pm Monday to Sunday;
 - (b) 12pm to 10pm ANZAC Day;
 - (c) No trading on Good Friday or Christmas Day.

Car and Bicycle Parking

- 54 The car parking allocation for the approved development must be:
- (a) Not less than one car space per one or two bedroom dwelling;
 - (b) Not less than two car spaces per three or more bedroom dwelling;

- (c) Not less than five car spaces to each 100 square metres of leasable floor area for the supermarket use; and
 - (d) Not less than 30 spaces for the place of assembly.
- 55 The bicycle allocation for the approved development must be:
- (a) Not less than 13 spaces for the supermarket (at least six for employees and at least seven for shoppers);
 - (b) Not less than four spaces for the place of assembly (at least one of employees and at least three for visitors); and
 - (c) Not less than 46 for the dwellings (at least 31 for residents and at least 15 for visitors).
- 56 Before the building is occupied, the areas set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
- (a) fully constructed;
 - (b) properly formed to such levels that may be used in accordance with the plans;
 - (c) surfaced with an all-weather surface or seal coat (as appropriate);
 - (d) drained and maintained in a continuously usable condition;
 - (e) line marked to indicate each car space, loading bay and/or access lane;
 - (f) clearly marked to show the direction of traffic along access lanes and driveways, all to the satisfaction of the Responsible Authority.
- 57 Vehicular crossings must be constructed to the road to suit the proposed driveways to the satisfaction of the Responsible Authority and any existing crossing or crossing opening must be removed and replaced with footpath, naturestrip and kerb and channel to the satisfaction of the Responsible Authority.
- 58 Before the buildings are occupied, all bicycle parking facilities must be installed and thereafter maintained to the satisfaction of the Responsible Authority.

Signage

- 59 The signs must be constructed and maintained to the satisfaction of the Responsible Authority.
- 60 External sign lighting must be designed, baffled and located to the satisfaction of the Responsible Authority.
- 61 The signage light source must be designed to minimise light spillage onto surfaces other than the sign to the satisfaction of the Responsible Authority.

Permit Expiry

- 62 This permit will expire if one of the following circumstances applies:

- (a) The development is not started within four years of the date of this permit.
 - (b) The development is not completed within six years of the date of this permit.
 - (c) The use is not started within six years of the date of this permit. The Responsible Authority may extend the permit if a request is made in writing in accordance with section 69 of *Planning and Environment Act 1987*.
- 63 The permit as it relates to the display of signs will expire fifteen years from the date on which the use commences, at which stage all signs and structures built specifically to support and illuminate the signs must be permanently removed from the land.

– End of conditions –