

27 February 2025

The Hon. Sonya Kilkenny  
Minister for Planning  
[sonya.kilkenny@parliament.vic.gov.au](mailto:sonya.kilkenny@parliament.vic.gov.au)

**Planning Permit Application No.:** PA2403410  
**Address:** 10-16 Selwyn Street, Elsternwick

### Request for referral of application to Standing Advisory Committee

Dear Minister,

I refer to the above planning permit application that has been submitted to you under Clause 53.23 (Significant residential development with affordable housing) of the Glen Eira Planning Scheme (the **Scheme**).

Council was given notice of this application under Section 52(1)(b) of the *Planning and Environment Act 1987* (the **Act**) on 29 January 2025, whilst affected residents were given notice under Section 52(1)(a) of the Act on 12 February 2025. The closing date for objections is 27 February 2025.

Council considered this application at its Ordinary Council meeting on 25 February 2025, whereby it resolved to make a submission to the Department of Transport and Planning (**DTP**) which has been done today. As part of this consideration by Council, it resolved to also write to you separately to request that the application be referred to a Standard Advisory Committee (**SAC**) before it is determined. The following sets out Council's reasons for this request.

#### Standard Advisory Committee purpose

Council notes that the purpose of the SAC as set out in the Terms of Reference dated June 2023 is to 'provide timely advice to the Minister for Planning on projects referred by the Development Facilitation Program (**DFP**)'. The DTP website that sets out the scope of the DFP recognises that applications under Clause 53.23 of the Scheme is an assessment pathway under the DFP. We therefore submit that application can be referred to the SAC under the application pathway chosen by the Applicant.

The application can be referred to the SAC to seek expert advice on whether the project achieves acceptable planning outcomes, which can be further confined to specific aspects of an application.

#### Background

This site has been the subject of an exhaustive planning process since 2018. This has involved two separate planning permit applications being submitted to and considered by Council for very similar proposals to that in the current application. In summary, the applications have consistently sought approval of a full line Woolworths supermarket, a place of assembly to be occupied by a component of the Jewish Arts Quarter, shops and dwellings. The scale of the development has been a two storey podium with two residential towers above up to a maximum height of 14 storeys.

The first application was refused by Council with this decision upheld by the Victorian Civil and Administrative Tribunal (**VCAT**). The second application was refused by Council, however following the submission of amended plans through the subsequent VCAT process, Council resolved to support the application. VCAT determined to approve the second application, subject to a number of conditions that modified the built form and restricted aspects of the land uses proposed.

#### Reasons for referral to SAC

The current application before the DTP is very similar to that proposed in the plans considered by VCAT in the second application. It is noted that in determining to approve the second application, VCAT included conditions with respect to:

- Deletion of the top three levels of the southern tower;
- Increased setbacks for levels 2 to 5 of the southern tower from the eastern boundary;
- A requirement for a Loading Bay Management Plan for the supermarket use, which restricted delivery vehicles routes to limit use of local streets in particular Sinclair Street, deliver vehicle numbers and hours of deliver; and
- A requirement for a Construction Management Plan that required all construction vehicles to only access the site via Selwyn Street not from other local streets.

The proposal that was before VCAT was for building heights of nine storeys for both the northern and southern towers. The conditions listed above reduced the height of the southern tower to six storeys.

The current application seeks to wind back all of these requirements that were imposed by VCAT.

In the absence of the new planning control of Clause 53.23 of the Scheme, the application would have been considered a 'repeat appeal/application', with a dispute to be had as to whether this was a 'correcting' or 'classic' repeat appeal. A 'correcting' repeat appeal is when an applicant makes changes through a similar application to respond to the issues raised by VCAT. A 'classic' repeat appeal is where an applicant just seeks to try their luck again with the same or very similar proposal.

Whilst the introduction of Clause 53.23 is a relevant change that has occurred to the Scheme since the permit was issued at the direction VCAT, Council submits that this change enables a fast track application process, rather than a change to the relevant considerations, permit triggers or anything else that VCAT had to consider. In other words, in your capacity as the Responsible Authority, you will be required to consider the application against the same planning controls that VCAT was required to.

In light of these matters, Council considers that this application should be referred to a SAC for expert advice on the following matters:

1. The increased building heights of both the southern and northern towers and whether the changes incorporated into the development have resolved the concerns of VCAT as set out in paragraphs 97 to 106, 113 to 120 and 132 to 140 of the VCAT Order dated 7 September 2022.
2. The supermarket delivery truck route listed in the Traffic Report submitted with the current application to allow for vehicles to drive past the supermarket loading bay further along Sinclair Street to Gordon Street, contradicts that required by VCAT in Condition 21 (c) of the Permit.
3. The construction management plan conditions set out in the Planning Report provided with the application seeks to use the surrounding local street network of St Georges Road and Sinclair Street for construction vehicles, contradictory Condition 15 (b) of the Permit.

Council further requests that as part of the SAC, the SAC is directed to seek the independent advice of experts in the fields of Planning, Traffic Engineering and Urban Design.

### **Participation in the SAC**

Council requests that along with the Applicant, it and any resident that was a party to the second VCAT proceeding and who has lodged an objection to the current application on grounds relating to the above matters be included as parties to the SAC hearing and able to make written and verbal representations. This is on the basis that in determining to include conditions in the permit, VCAT relied on submissions from both Council and affected residents in reaching its decision on these matters.

### **Conclusion**

Council acknowledges the need for increased housing in metropolitan Melbourne, including Glen Eira. This is reflected in Council's recent decisions regarding both the subject site (ie. Supporting the second application) and the work it has undertaken in preparation of Planning Scheme Amendment C256glen (Elsternwick Structure Plan 2023) which is now on exhibition.

Notwithstanding this, Council considers the current application before DTP has a complicated and extensive history, including VCAT history which is at the core of the very significant matters raised by both Council and objectors in their submissions to DTP.

Whilst VCAT decisions are not rigid and changes can be sought to resolve matters set out by VCAT in previous applications for similar proposals, the decision of VCAT clearly has relevance to the current application. In the absence of a change to the relevant planning considerations set out in the Scheme, a rigorous assessment by an independent committee supported by independent experts it appoints must be undertaken.

I look forward to hearing from you.

Regards,

A handwritten signature in black ink, appearing to read 'RM', with a stylized flourish at the end.

Rebecca McKenzie  
**Chief Executive Officer**  
**Glen Eira City Council**