

**Glen Eira Planning Scheme Amendment C247glen  
Bentleigh East Neighbourhood Activity Centre**

**Panel Report**

*Planning and Environment Act 1987*

**8 March 2024**

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### How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

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

### *Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the PE Act

Glen Eira Planning Scheme Amendment C247glenglen

Bentleigh East Neighbourhood Activity Centre

**8 March 2024**



Sarah Raso, Chair

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## Glossary and abbreviations

|                      |   |
|----------------------|---|
| Activity Centre      | Bentleigh East Neighbourhood Activity Centre                      |
| the Amendment        | Glen Eira Planning Scheme Amendment C247glen                      |
| Built Form Framework | Bentleigh East Neighbourhood Activity Centre Built Form Framework |
| Council              | Glen Eira City Council  |
| DDO                  | Design and Development Overlay                                    |
| DDO13                | Design and Development Overlay Schedule 13                        |
| PE Act               | <i>Planning and Environment Act 1987</i>                          |
| subject land         | All land within the Bentleigh East Activity Centre                |

## Overview

### Amendment summary

|                    |   |
|--------------------|---|
| The Amendment      | Glen Eira Planning Scheme Amendment C247glen  |
| Common name        | Bentleigh East Neighbourhood Activity Centre  |
| Brief description  | Implements the Bentleigh East Neighbourhood Activity Centre Built Form Framework by applying a new Design and Development Overlay Schedule 13 to the Bentleigh East Neighbourhood Activity Centre   |
| Subject land       | <p>All land within the Bentleigh East Neighbourhood Activity Centre including:</p> <ul style="list-style-type: none"> <li>- 619 – 801 Centre Road (odd numbers)</li> <li>- 658 – 730B Centre Road (even numbers)</li> <li>- 157 – 177 East Boundary Road (odd numbers)</li> <li>- 12-16 Heather Street (even numbers)</li> <li>- 1A Omeo Court</li> <li>- 24 Becket Avenue</li> <li>- 53 Browns Road</li> </ul> |
| Planning Authority | Glen Eira City Council  |
| Authorisation      | 24 May 2023, with conditions  |
| Exhibition         | 21 September to 23 October 2023   |
| Submissions        | <p>Number of Submissions: 5   Opposed: 3</p> <ul style="list-style-type: none"> <li>- Karen Magrath</li> <li>- South East Water</li> <li>- Greg Howden</li> <li>- Department of Transport and Planning – Transport</li> <li>- Glen Eira Historical Society</li> </ul>   |

### Panel process

|                     |   |
|---------------------|---|
| The Panel           | Sarah Raso                              |
| Directions Hearing  | Not required                            |
| Panel Hearing       | Not required (considered on the papers) |
| Site inspections    | Unaccompanied, 21 December 2023         |
| Citation            | Glen Eira PSA C247glen [2024] PPV       |
| Date of this report | 8 March 2024                            |

## Executive summary

The Bentleigh East Neighbourhood Activity Centre (Activity Centre) is located approximately 800 metres east of the Bentleigh Major Activity Centre. It extends 750 metres along Centre Road and includes a range of specialty retail uses and services, and some hospitality uses.

Glen Eira Planning Scheme Amendment C247glen (the Amendment) seeks to introduce a new Design and Development Overlay Schedule 13 (DDO13) which includes built form objectives and requirements to guide new development in the Activity Centre. DDO13 is underpinned by the Bentleigh East Neighbourhood Activity Centre Built Form Framework. The Amendment introduces it as a Background Document at Clause 72.08.

DDO13 divides the Activity Centre into three precincts and provides centre wide and precinct specific height, setback and built form controls.

Council exhibited the Amendment from 21 September to 23 October 2023 and received five submissions. Key issues raised in submissions included:

- building heights
- upper-level setbacks and shadows
- heritage.

The Panel concludes the Amendment is strategically justified and appropriately translates the Bentleigh East Neighbourhood Activity Centre Built Form Framework into planning controls proposed through well-structured design and development overlay schedule provisions.

### Recommendations

Based on the reasons set out in this Report, the Panel recommends that Glen Eira Planning Scheme Amendment C247glen be adopted as exhibited subject to the following:

- 1. Amend Design and Development Overlay Schedule 13 to delete provisions which duplicate other similar provisions.**

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The purpose of the Amendment is to implement the Bentleigh East Neighbourhood Activity Centre Built Form Framework (September 2021) (Built Form Framework) by applying DDO13 to the Activity Centre.

Specifically, the Amendment proposes to:

- amend Planning Scheme Map Nos. 3DDO and 4DDO to apply the DDO13 to land within the core of the Activity Centre
- introduce DDO13 at Clause 43.01
- amend the Schedule to Clause 72.08 (Background Documents) to insert the Built Form Framework.

### (ii) The subject land

The Amendment applies to all land within the Activity Centre shown in Figure 1 (subject land) which includes:

- 619 – 801 Centre Road, Bentleigh East (odd numbers)
- 658 – 730B Centre Road, Bentleigh East (even numbers)
- 157 – 177 East Boundary Road, Bentleigh East (odd numbers)
- 150 East Boundary Road, Bentleigh East
- 10-16 Heather Street, Bentleigh East (even numbers)
- 1A Omeo Court, Bentleigh East
- 24 Becket Avenue, Bentleigh East
- 53 Browns Road, Bentleigh East.

**Figure 1** Subject land



Source: Explanatory Report

## 1.2 Background

Glen Eira City Council (Council) provided a detailed background to the Amendment in its Part A submission, including a chronology of events which the Panel has summarised in Table 1.

**Table 1** Background

| Date                     | Event   |
|--------------------------|---|
| <b>Background work</b>   |   |
| 23 February 2021         | Commencement of the built form framework plans for Caulfield South, Caulfield Park and Bentleigh East   |
| 27 April 2021            | Council resolved to release the draft built form framework plans for community consultation   |
| 3 May – 14 June 2021     | Consultation  |
| 21 September 2021        | Built form framework plans finalised  |
| 23 November 2021         | <p>Council resolved to:</p> <ul style="list-style-type: none"> <li>- adopt the built form framework plans</li> <li>- request that the Minister for Planning grant authorisation to prepare and exhibit Amendment C231glen in accordance with Section 8A of the <i>Planning and Environment Act 21987</i> (PE Act)</li> </ul> <p>The resolution also noted that requests for authorisation of amendments relating to the remaining two built form framework plans (Caulfield Park and Bentleigh East) would follow</p> |
| <b>Amendment process</b> |   |
| 22 November 2022         | Council resolved to request the Minister for Planning grant authorisation to prepare and exhibit the Amendment in accordance with Section 8A of the Act   |
| 24 May 2023              | Minister for Planning authorised Council to prepare the Amendment in accordance with section 8A of the Act, and subject to conditions   |
| 21 Sept to 23 Oct 2023   | Exhibition of the Amendment   |
| 28 November 2023         | <p>Council resolved to:</p> <ul style="list-style-type: none"> <li>- receive and note the submissions</li> <li>- note the Council officer's report considering the submissions</li> <li>- request the Minister for Planning appoint an independent planning Panel in accordance with Section 23 of the PE Act</li> <li>- refer all submissions to the Panel for its consideration</li> </ul>  |

## 1.3 Procedural issues

The Panel decided to consider the Amendment 'on the papers' given no submitter indicated it wished to be heard at a Hearing. The Panel gave Council an opportunity to file further written submissions. Council filed Part A and Part B submissions.



## 1.4 The Panel's approach

Key issues raised in submissions were:

- building heights
- upper-level setbacks and shadows
- heritage.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making).

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from its site visit and further submissions filed by parties. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Strategic issues
- Built form controls
- Other issues.

## 2 Strategic issues

### 2.1 Planning context

This chapter identifies the planning context relevant to the Amendment (as shown in Table 2). Appendix B highlights key imperatives of relevant provisions and policies.

**Table 2** Planning context

|   | Relevant references   |
|---|---|
| <b>Victorian planning objectives</b>          | - section 4 of the PE Act   |
| <b>Municipal Planning Strategy</b>            | - Clauses 02.03-1 (Settlement and activity centres), 02.04-1 (Strategic Framework Plan)   |
| <b>Planning Policy Framework</b>              | - Clauses 11.03-1S (Activity Centres), 11.03-1L (Activity Centres)<br>- Clauses 15.01-1S (Urban Design), 15.01-2S (Building Design), 15.01-2L-01 (Building Design), 15.01-5S (Healthy Neighbourhoods – Metropolitan Melbourne), 15.01-5S (Neighbourhood Character), 15.03-1S (Heritage Conservation), 15.03-1L (Heritage)<br>- Clauses 16.01-1S (Housing Supply), 16.01-2S (Housing affordability), 16.01-L-01 (Housing Supply) |
| <b>Other planning strategies and policies</b> | - Plan Melbourne Direction 4.1 and 5.1<br>- Integrated Transport Strategy 2018<br>- Glen Eira Social and Affordable Housing Strategy 2019-2023<br>- Open Space Strategy Refresh 2020<br>- Glen Eira City Plan 2020<br>- Climate Emergency Response Strategy 2021-2025<br>- Glen Eira Housing Strategy 2022  |
| <b>Planning scheme provisions</b>             | - Commercial 1 Zone<br>- Public Use Zone<br>- Mixed Use Zone<br>- Heritage Overlay (HO99)<br>- Parking Overlay  |
| <b>Ministerial directions</b>                 | - Ministerial Direction 11 (Strategic Assessment of Amendments)   |
| <b>Planning practice notes</b>                | - 46: Strategic Assessment Guidelines<br>- 58: Structure planning for activity centres<br>- 59: The role of mandatory provisions in planning schemes<br>- 60: Height and setback controls in activity centres   |

### 2.2 Strategic justification

#### (i) Issue

The issue is whether the Amendment is strategically justified.

**(ii) Evidence and submissions**

There was no dispute amongst the parties that the Amendment is strategically justified.

The Explanatory Report provides a clear strategic basis for the Amendment:

Bentleigh East as one of the neighbourhood activity centres in Glen Eira will continue to experience significant growth and development. Permanent built form controls will manage the anticipated growth of the centre and guide the scale of future development. This will provide certainty about development outcomes.

The Bentleigh East Built Form Framework sets out preferred development outcomes and requirements for building heights, setbacks and other design considerations for development within the core of this activity centre. These requirements are supported by rigorous analysis and guided by sound urban design principles appropriate to the context of the centre. This amendment introduces these requirements through a new schedule 13 (DDO13) to Clause 43.02 Design and Development Overlay.

Council submitted the Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework. It submitted:

The planning controls introduced by this amendment are underpinned by a detailed built form analysis, which has considered the local context of the Bentleigh East NAC and how development responds to that context. The controls aim to guide and manage development to be constructed in a way that is responsive to the centre and its surrounds while positively contributing to the character of the area.

...

The Bentleigh East NAC falls within a Substantial Change area, and this amendment introduces built form controls to set clear guidance for the height and scale of new development in the commercial centre. DDO13 allows development up to 21 metres (6 storeys). These controls will manage new development in an appropriate manner while still providing opportunities for increased housing in an area well-located to shops, services, and transport.

**(iii) Discussion and conclusions**

The Panel finds there is strong support under the PE Act, the Planning Scheme and other strategic reports and documents that justifies the strategic basis for the Amendment. Bentleigh East is an area that has undergone change and will continue to change further into the future. State, metropolitan, and local planning policy encourage higher density development in activity centres that capitalise on their location near public transport, shops, leisure, and community facilities.

There has been a clear progression in policy from a broader city-wide focus through to a more detailed activity centre specific built form framework. The Built Form Framework has been accurately translated into planning provisions through well-structured provisions in the proposed DDO13.

The Panel concludes the Amendment is well founded and strategically justified, and should proceed subject to addressing some minor drafting matters discussed in Chapter 4.2.

## 3 Built form controls

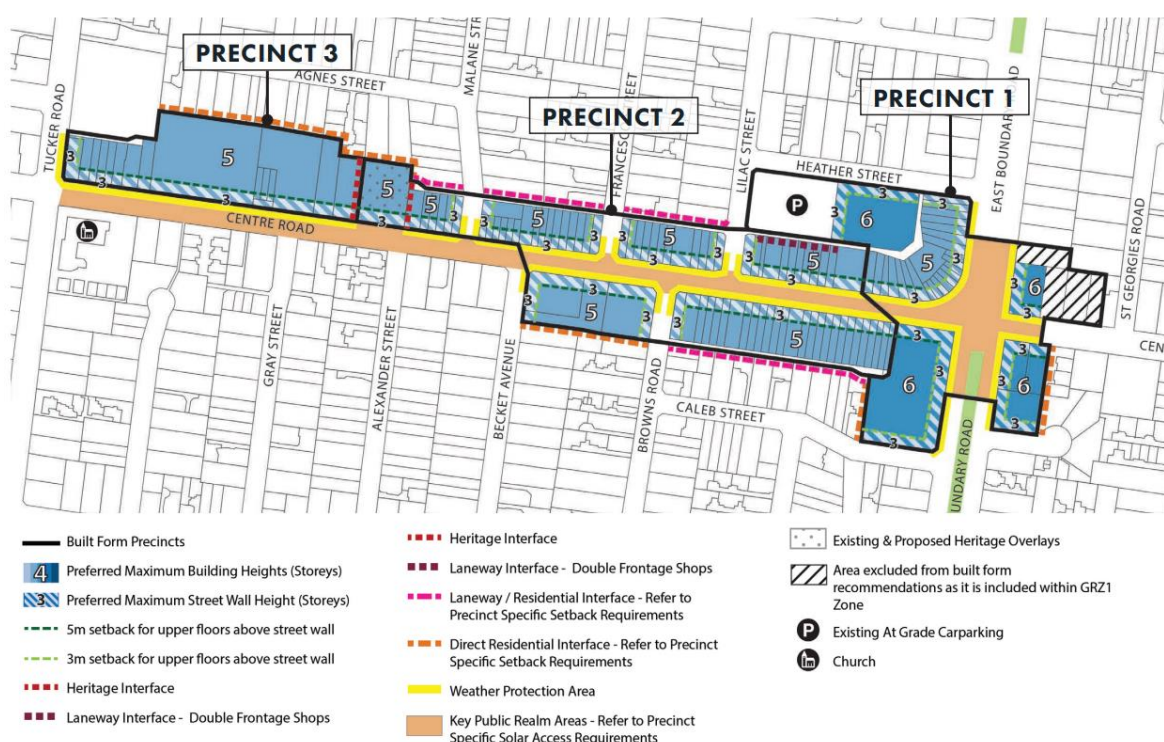
### 3.1 What is proposed:

The Built Form Framework breaks the Activity Centre into three precincts (as shown in Figure 2):

- Precinct 1 – Eastern Junction
- Precinct 2 – Centre Road retail
- Precinct 3 – Centre Road west.

All precincts include different built form requirements, with these requirements translated into the proposed DDO13 ordinance. These include building height, setback and street wall requirements.

**Figure 2** Bentleigh East Neighbourhood Activity Centre Built Form Framework Plan



Source: Built Form Framework, p37

### 3.2 Height

#### (i) The issue

The issue is whether the proposed building heights are too high.

#### (ii) Submissions

Three submitters were concerned the proposed heights are too high. Submitter 1 strongly opposed a height of five storeys and considered three storeys would be more appropriate.

Council submitted:

The Bentleigh East Neighbourhood Activity Centre is an area where substantial change and greater housing diversity is envisaged. The Centre provides good access to shops, services and public transport, with high levels of existing infrastructure to support growth. These strategic attributes have played a significant role in Council's decision making about built

form scale in the Amendment. Council's consideration of the Amendment has also taken into account the findings of Council's Housing Strategy (adopted by Council in 2022) that describes activity centres in Substantial Change Area 3 and describes the strategic growth ambitions for these areas.

Council submitted:

- the discretionary heights will produce an acceptable outcome that balance the strategic attributes of the Activity Centre and the desire to establish a future scale and intensity which will achieve a high quality public realm with human scale
- the heights have been influenced by reference to the activity centre hierarchy for the municipality and how built form frameworks for other neighbourhood activity centres have managed future preferred heights through Design and Development Overlays.

### **3.2.2 Discussion and conclusions**

The Panel considers the proposed height provisions will manage the future growth of the Activity Centre appropriately. The Built Form Framework adopts a precinct-based approach, and the analysis has properly considered relevant factors in establishing the mix of preferred maximum building height provisions.

The Amendment is founded on detailed strategic work which underpins the proposed building height provisions. This includes the Built Form Framework which provides sufficient justification for the proposed height provisions, the City Plan and the Planning Policy Framework more generally.

The building heights have been derived from a detailed urban design and built form analysis in the Built Form Framework. The Built Form Framework considers the existing form of the Activity Centre and its surrounds, including the relevant interfaces with the surrounding residential areas. This has been balanced against the role of the Activity Centre to deliver commercial and residential growth within the municipality, in a manner that responds to its local context. The height provisions are not aimed at restricting built form, but appropriately seek to facilitate a good design outcome.

No submitter specifically took issue with the discretionary nature of the height provisions and the Panel agrees with the approach taken. There will be circumstances where mandatory requirements will provide certainty and ensure preferable and efficient outcomes and some examples include areas of high heritage value, and strong and consistent character themes. This is not the case in Bentleigh East and the Panel agrees with Council that there is no justification for a mandatory maximum building height provision in the Activity Centre.

The Panel concludes:

- The Built Form Framework provides strategic justification for the building height provisions proposed in DDO13.
- The proposed height provisions are appropriate and justified.

## **3.3 Upper-level setbacks and solar access**

### **(i) The issues**

The issues are whether the:

- proposed upper-level setbacks are appropriate and justified
- built form provisions will appropriately manage solar access to footpaths.

## **(ii) Submissions**

Submitter 3 said the proposed five metre upper-level setback is flawed, does not make sense, and will have no practical effect on shadows cast on the majority of footpaths.

Submitter 5 submitted:

Solar access is stated as important, but there is no assessment and/or diagrams of the impact of the heights at the winter solstice. Council officers have elected to use the September Equinox date to gauge solar access even though they have emphasised the importance of solar access to the south side of Centre Road for pedestrians and traders, declaring the footpaths key public spaces. There is no reason given for not choosing the Winter Solstice. Requests Council officers provide assessment of solar access to the south side of Centre Road at the Winter Solstice plus their reasons for not choosing this option with this to be done prior to Councillors making a decision on Amendment C247glen.

Council submitted the upper-level setbacks will:

- reinforce the street wall as the dominant architectural feature
- ensure new development doesn't overwhelm the street
- allow for good solar access for the footpath.

Council noted a five metre upper-level setback is used in several activity centres across Bayside<sup>1</sup>, Boroondara<sup>2</sup> and Stonnington<sup>3</sup>, and already in Glen Eira through Design and Development Overlay Schedules 11 and 12.

In relation to solar access Council referenced its officer's response:

Winter solstice overshadowing controls limit development considerably and are generally reserved for areas of environmental significance such as foreshores or areas of State significance. Pursuing winter shadow protection for the southern footpath of Centre Road cannot be pursued as many forms of redevelopment would be severely limited, which is contrary to the role of the Bentleigh East NAC to accommodate future growth. For this area, the equinox shadow controls is the standard control to apply

Council submitted the approach to the protection of sunlight access in the Amendment represents the correct and preferable approach.

## **(iii) Discussion and conclusions**

The Panel finds that the proposed setback requirements are strategically justified by the analysis in the Built Form Framework. They are appropriate, common and what would ordinarily be expected.

The Panel was not presented with any evidence or compelling submissions to support alternative or varied setback requirements.

In terms of solar access, the Built Form Framework's recommendations have been appropriately integrated into DDO13 with the provisions drafted to ensure sunlight to the streets will be protected. In particular, the Built Form Framework includes detailed shadow diagrams at the equinox which demonstrate the proposed heights and setbacks will retain sunlight to the southern footpaths of Centre Road from 10am.

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<sup>1</sup> Design and Development Overlay Schedules 8, 10, 11 and 12

<sup>2</sup> Design and Development Overlay Schedule 15

<sup>3</sup> Design and Development Overlay Schedule 21

The Panel concludes:

- The preferred upper-level setbacks are appropriate and justified.
- The built form provisions will appropriately manage solar access to footpaths.

## 4 Other issues

### 4.1 Heritage

#### (i) The issues

The issues are whether:

- the proposed discretionary six storey height limit on the land 730 Centre Road is appropriate and justified in the context of potential heritage values
- it is appropriate to apply a mandatory four storey building height to the land at 675-677 Centre Road located within the Heritage Overlay.

#### (ii) What does the Amendment propose?

The proposed DDO13 includes a discretionary height of:

- six storeys for the land at 730 Centre Road
- five storeys for the land at 675-677 Centre Road.

#### (iii) Evidence and submissions

Submitter 5 considered a Heritage Study is required to assess the significance of the Boundary Hotel at 730 Centre Road. It submitted the application of a discretionary 6 storey height limit on the land *“is a specific invitation to redevelop the site”*.

Council said it has a heritage program in place and the program for Bentleigh East will likely occur in the coming years. Council noted it had however sought advice in relation to the Boundary Hotel and had ultimately concluded:

- it will not be seeking to include the hotel in the Heritage Overlay
- the provisions proposed for the hotel land are appropriate.

Submitter 5 submitted a mandatory four storey building height for the land at 675-677 Centre Road was appropriate and justified. It said a three storey limit might be more appropriate for the site but settled on a four storey mandatory limit in recognition of the *“detrimental current setting of the heritage place”*. The building occupying the land is the East Bentleigh Hall and the land is subject to the Heritage Overlay (HO99).

Submitter 5 referenced the City Plan which suggests a four storey limit for commercial areas with Heritage Overlays.

Council submitted:

- much of the relevant policy content from City Plan was translated into the refreshed Planning Policy Framework
- the City Plan’s recommendation for a four storey limit in commercial areas affected by Heritage Overlays was not included in the Planning Policy Framework
- height limits are best considered as part of a built form framework where the context of the whole centre is examined and should not applied on a blanket basis.

Council noted the Built Form Framework:

- states *“development on land at 675-677 Centre Road should respect the heritage protected East Bentleigh Hall”*



- includes a map which notes that the land at 675-677 Centre Road has a heritage interface and that this same map is included as Map 1 to DDO13.

It submitted:

The land at 675-677 Centre Road has already been developed. If a future development were to be considered for the hall, the DDO would note that there is a heritage interface, and the Heritage Overlay identifies that the hall is individually significant. Council's Heritage Policy at Clause 15.03-1 would support development that respected the existing scale, rhythm, massing, form and siting of the building, protect its setting, would not dominate the building, avoid new openings in the façade and use materials that reflected the heritage character among other things.

A mandatory four storey height control is not required to manage future development at this site. The DDO in combination with the Heritage Overlay and the relevant policy at Clause 15.03-1L is sufficient to manage future development outcomes that are sympathetic to the heritage place at 675-677 Centre Road.

#### **(iv) Discussion and conclusions**

Currently no Heritage Overlay applies to the Boundary Hotel land at 730 Centre Road. Equally, after obtaining heritage advice Council has indicated it will not be seeking to include the hotel in the Heritage Overlay. Without evidence-based supporting information, there is no justification to support the lower height.

The Panel considers a mandatory four storey building height should not be applied to 675-677 Centre Road. A mandatory provision does not meet the criteria set out in Planning Practice Note 59 and the Heritage Overlay sets out an appropriate planning framework for assessing future permit applications.

Again, without evidence-based supporting information, there is no justification to support the lower height or to apply the height limit as a mandatory provision. Evidence-based information would ordinarily include modelling to demonstrate that certain heights would dominate the existing heritage fabric.

The Panel concludes:

- The proposed discretionary 6 storey height limit on the land 730 Centre Road is appropriate and justified.
- There is insufficient strategic justification to support a mandatory height limit of four storeys on the land at 675-677 Centre Road.

## **4.2 Drafting matters**

### **(i) Duplication with existing Planning Scheme Provisions**

In its Part B submission Council identified duplication between the proposed DDO13 provisions and other Victoria Planning Provisions (VPP) clauses. Council submitted:

- when the Built Form Framework was prepared, Amendment C220glen (which introduced the new Planning Policy Framework on 20 April 2023) had not been approved and included in the Planning Scheme.
- because the new Planning Policy Framework is now included in the Planning Scheme the text dealing with the same issues in DDO13 should now be deleted.

Council identified each duplicated provision to be deleted as shown in Table 3.

**Table 3** DDO13 provisions proposed to be deleted in response to duplication

| Clause 2.0 Provision in DDO13  | Local Policy Clause:  |
|--|---|
| <b>Heritage design</b>   |   |
| <p>The following applies to development within or abutting an existing Heritage Overlay.</p> <p>Design street wall façade details for infill buildings and new buildings to:</p> <ul style="list-style-type: none"> <li>- Be simple and not compete with the detailing of the adjoining heritage buildings.</li> <li>- Respect the vertical proportions of the heritage streetscape and adjoining buildings.</li> <li>- Avoid large expanses of glazing except for ground floor shopfronts.</li> </ul> | <p>15.03-1L, except <i>“Avoid large expanses of glazing except for ground floor shopfronts”</i></p> <p>There is other text in the Heritage Policy such as avoiding new openings in the façade, respecting the exiting form, using appropriate materials and finishes and discouraging the introduction of features that were not originally present which would address the issue of reflective glazing</p> |
| <p>Adaptation and reuse of heritage buildings should:</p> <ul style="list-style-type: none"> <li>- Maintain existing openings and avoid highly reflective glazing in historic openings.</li> <li>- Encourage the retention of solid built form behind retained facades and avoid balconies behind existing openings.</li> <li>- Maintain the inter-floor height of the existing building and avoid new floor plates and walls cutting through historic openings.</li> </ul>                            | 15.03-1L  |
| <p>Design development above the street wall to:</p> <ul style="list-style-type: none"> <li>- Be visually recessive and not dominate the heritage building and streetscape.</li> <li>- Use materials and finishes that provide a visually recessive appearance.</li> <li>- Incorporate simple architectural detailing that does not detract from the heritage buildings and streetscape.</li> <li>- Reflect the fine-grain pattern of subdivision of the streetscape.</li> </ul>                        | 15.03-1L  |
| <p>Where development adjoins a heritage building, match the existing street wall height of the heritage building.</p>  | 15.03-1L  |
| <b>Interface with public realm and weather protection</b>  |   |
| <p>Provide a minimum of 80 per cent of the building façade at ground floor level with a permeable façade incorporating windows and door openings with clear glazing to areas identified as 'Key Public Realm Areas'.</p>   | 15.01-2L-01   |

| Clause 2.0 Provision in DDO13  | Local Policy Clause:   |
|--|--|
| Design verandahs on all buildings located in the 'Weather Protection Areas' as shown in Map 1 to this schedule to: <ul style="list-style-type: none"> <li>- Be located at a height above the footpath that provides effective weather protection, generally between three metres and four metres and consistent with adjoining sites.</li> <li>- Have a minimum setback of 750 millimetres from the kerb line.</li> <li>- Avoid damage from passing vehicles.</li> </ul> | 15.01-2L-01  |
| Design verandahs to minimise the potential for visual clutter by concealing light fittings and service cables, and limiting under awning signage.  | Not covered – but can be addressed at permit application stage |
| Design development on corner sites to actively address both frontages at street level.   | 15.01-2L-01  |
| Design upper levels of buildings to provide habitable rooms with windows or balconies that overlook the public realm.  | 15.01-2L-01  |
| Encourage buildings fronting laneways to provide passive surveillance with a permeable façade, including windows and door openings.  | 15.01-2L-01  |
| Ensure car parking is not visible from the street by incorporating design measures such as sleeving or providing basement parking.   | 18.02-4L-02  |
| <b>Access and services</b>   |  |
| Provide pedestrian entries to buildings that are clearly visible and easily identifiable from the street and accessible for all abilities.   | 15.01-2L-01  |
| Provide loading, service access and car park access from laneways and secondary streets.   | Clause 58  |
| Avoid building services and utilities at ground floor street frontages to prioritise active frontages at these locations.  | 15.01-2L-01  |
| <b>Landscaping</b>   |  |
| Encourage communal garden spaces at podium and roof top levels that take into consideration aspect, materials and solar orientation  | Clause 58  |

The Panel agrees with Council's proposed changes to DDO13 which seek to remove duplication with existing Planning Scheme provisions.

## (ii) Building height measures

DDO13 specifies maximum building heights in metres and storeys. *Planning Practice Note 60: Height and setback controls in activity centres* encourages reference to heights in metres and not storeys. It states that reference can also be made to height in terms of storeys, however the definitive control should be in metres. It adds:

Where references to both metres and storeys are used, adequate allowance should be made for greater floor- to-floor heights needed to support employment uses where the zoning supports these uses.

Expressing maximum building height in metres provides a certain measure and this does not need to be supported by a secondary measure in storeys. The Panel considers all building heights should be referenced in metres only. This will avoid any confusion and is the preferred approach. However, if Council seeks to use both measures, it should ensure adequate allowance has been made for greater floor to floor heights needed to support commercial uses. The Panel has not undertaken this exercise.

**(iii) Recommendation**

The Panel recommends:

- 1. Amend Design and Development Overlay Schedule 13 to delete provisions which duplicate other similar provisions.**

## Appendix A Document list

| No. | Date      | Description  | Provided by                      |
|-----|-----------|--|----------------------------------|
| 1   | 5 Dec 23  | Directions Hearing Letter                            | Planning Panels Victoria (PPV)   |
| 2   | 9 Jan 24  | Further written submission                           | Submitter 3                      |
| 3   | 15 Jan 24 | Letter to Council proposing an on the papers process | PPV                              |
| 4   | 23 Jan 24 | Panel Directions                                     | PPV                              |
| 5   | 26 Feb 24 | Council Part A submission, including Annexures       | Glen Eira City Council (Council) |
| 6   | 28 Feb 24 | Council Part B submission                            | Council                          |

## Appendix B Planning context

### B:1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

#### **Victorian planning objectives**

The Amendment will broadly assist in implementing State policy objectives set out in section 4 of the PE Act.

#### **Clause 2 (Municipal Planning Strategy)**

The Municipal Planning Strategy includes a map at that outlines the Activity Centre Hierarchy and identifies Bentleigh East as a Neighbourhood Activity Centre, one of 11 such centres in Glen Eira.

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

Clause 11 (Settlement) provides context and implements the key principles of Plan Melbourne, which includes providing for housing choice and affordability by planning for expected housing needs and reduced ongoing living costs by increasing housing supply near public transport and services. The Amendment supports Clause 11 by providing a framework for the orderly planning of the Activity Centre in a manner consistent with the directions of Plan Melbourne.

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

Clause 15 (Built Environment) seeks to create urban environments that are safe, functional and provide good quality environments with a sense of place and cultural identity. This clause also sets out the importance of ensuring the conservation of places which have identified heritage significance. The Amendment supports this clause by providing appropriate built form guidance to ensure that development is site responsive and appropriate.

#### **Clause 16 (Housing)**

Clause 16 (Housing) emphasises the importance of providing enough quality and diverse housing that meets the growing diverse needs of Victorians in locations in or close to activity centres and sites that offer good access to jobs, services and transport. It requires Councils to identify areas that offer opportunities for more medium and high-density housing near employment and transport in Metropolitan Melbourne. The Amendment provides strategic guidance on the appropriate scale of development including housing within the Activity Centre.

#### **Clause 17 (Economic Development)**

Clause 17 (Economic Development) seeks to encourage development which meets the community's needs for retail, entertainment, office and other commercial services and provides a net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities. The Amendment supports this clause by facilitating opportunities for a mix of office, retail and residential uses throughout the Activity Centre.

## B:2 Other relevant planning strategies and policies

### i) Plan Melbourne

*Plan Melbourne 2017-2050* sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The relevant Outcomes are supported by Directions and Policies (as shown in Table 4), which outline how the Outcomes will be achieved.

**Table 4** Relevant parts of Plan Melbourne

| Outcome  | Directions   | Policies  |
|--|--|---|
| Melbourne is a distinctive and liveable city with quality design and amenity | 4.1 Create more great public places across Melbourne | Support Melbourne's distinctiveness<br>Integrate place-making practices into road-space management<br>Strengthen Melbourne's network of boulevards<br>Protect and enhance the metropolitan water's edge parklands |
| Melbourne is a city of inclusive, vibrant and healthy neighbourhoods         | 5.1 Create a city of 20-minute neighbourhoods        | Create mixed use neighbourhoods at varying densities<br>Support a network of vibrant neighbourhood activity centres   |

### ii) Bentleigh East Neighbourhood Activity Centre Built Form Framework

The Activity Centre is located approximately 800 metres east of the Bentleigh Major Activity Centre. It extends for a length of 750 metres along Centre Road and includes a range of specialty retail and services, and limited hospitality uses. The study area for the Built Form Framework generally aligns with the existing Commercial 1 zoning.

The vision for the Activity Centre is provided in the Glen Eira City Plan:

Bentleigh East will be a welcoming and connected centre that caters for all. The centre will be enhanced by a range of retail and dining options to meet the everyday needs of its local community..

The 'project overview' provides a succinct summary of the purpose of the Framework Plan:

This built form framework for the Bentleigh East Neighbourhood Activity Centre (NAC) is one of three built form frameworks being prepared towards addressing an existing policy void.

The other centres forming part of the project are the Caulfield Park Neighbourhood Activity Centre and the Caulfield South Neighbourhood Activity Centre.

The Built Form Frameworks set out preferred development outcomes in each centre. This will ensure new development provides for the continual revitalisation of the shopping strips with high quality design whilst maintaining the valued character of each centre and protecting the amenity of adjoining residential areas.

The Frameworks provide guidance for building heights, setbacks and other design considerations. These frameworks are supported by rigorous analysis and guided by sound urban design principles appropriate to the context of each centre.

The design principles formulated for the Activity Centre are:

- A vibrant neighbourhood centre with a mid-rise character that values heritage
- An enjoyable and safe place to shop, work, gather, dine and exercise
- A centre that emerges sensitively from the surrounding neighbourhood and considers residential interfaces both within and outside the centre
- A well serviced and accessible centre.

The Built Form Framework breaks down the Activity Centre into two different precincts:

- Precinct 1 – Eastern Junction
- Precinct 2 – Centre Road retail
- Precinct 3 – Centre Road west.

All precincts include different built form requirements, with these requirements translated into the proposed DDO13 ordinance. These include differing building height, setback and street wall requirements.

The Built Form Framework was informed by or prepared in conjunction with the following Council documents:

- Integrated Transport Strategy 2018
- Glen Eira Social and Affordable Housing Strategy 2019-2023
- Open Space Strategy Refresh 2020
- Glen Eira City Plan 2020
- Climate Emergency Response Strategy 2021-2025
- Glen Eira Housing Strategy 2022.

### **iii) Integrated Transport Strategy**

The Integrated Transport Strategy sets out Council's priorities for transport.

It identifies a 'walkable activity centre' place type, the key objectives of which are to:

- ensure appropriate parking is provided in suitable locations to support the economic vitality of the shopping strip
- provide a safe and comfortable walking environment during the day and night and create attractive places that people want to visit and linger longer.

The Integrated Transport Strategy includes the following two 'Places' policies of relevance:

- Policy 1.1 - Support and promote increased dwelling density at key transport hubs; and •
- Policy 1.2 - Focus employment and office development within major activity centres and strategic sites.

### **iv) Open Space Strategy Refresh**

The Open Space Strategy Refresh guides the future planning, provision, design and management of public open space within the municipality. A key issue identified in the strategy is the impact of the forecast increase in urban densities and population growth on liveability and access to open space.

Section 4.4 Future Growth Planning identifies what overall changes to the open space network are required to meet the anticipated population increase in the areas that experience growth and change, including Neighbourhood Activity Centres.



## **v) City Plan**

The City Plan seeks to establish a revised strategic plan to manages change over the next two decades to benefit the whole community.

The City Plan reflects the 20-minute neighbourhood concept outlined in Plan Melbourne and identifies all of Glen Eira’s activity centres as areas of substantial change:

These are locations with good access to shops, services, jobs and public transport, with high levels of existing infrastructure suitable to support growth. Approximately 75 per cent of all new housing from 2016 to 2036 is expected to be located within activity centres.

Three relevant actions include:

2. Undertake structure plans (or similar precinct planning approach) for Glen Eira’s activity centres.
13. Carry out detailed consultation with the community about building design and development guidelines.
14. Undertake a precinct by precinct review of development controls for each neighbourhood.

## **vi) Climate Emergency Response Strategy**

The Climate Emergency Response Strategy identifies ‘densification and apartment living’ as a key challenge for the municipality with associated pros and cons. Notwithstanding this, the strategy acknowledges that Glen Eira is densifying to make space for a growing population.

## **vii) Glen Eira Housing Strategy**

The Glen Eira Housing Strategy was adopted by Council in November 2022.

The strategy provides its purpose as:

This Housing Strategy provides Glen Eira City Council’s framework for managing population and housing growth over the next 15 years, with provision for continued growth beyond this timeframe. It will guide appropriate future residential development to the right locations.

It will identify projected population and housing growth and will ensure sufficient land is available for housing to accommodate projected growth over the next 15 years. A glossary of words and acronyms is provided at the end of the document.

The Strategy provides a link between the Glen Eira Council Plan 2021–2025, Plan Melbourne, and state planning policy as they relate to housing.

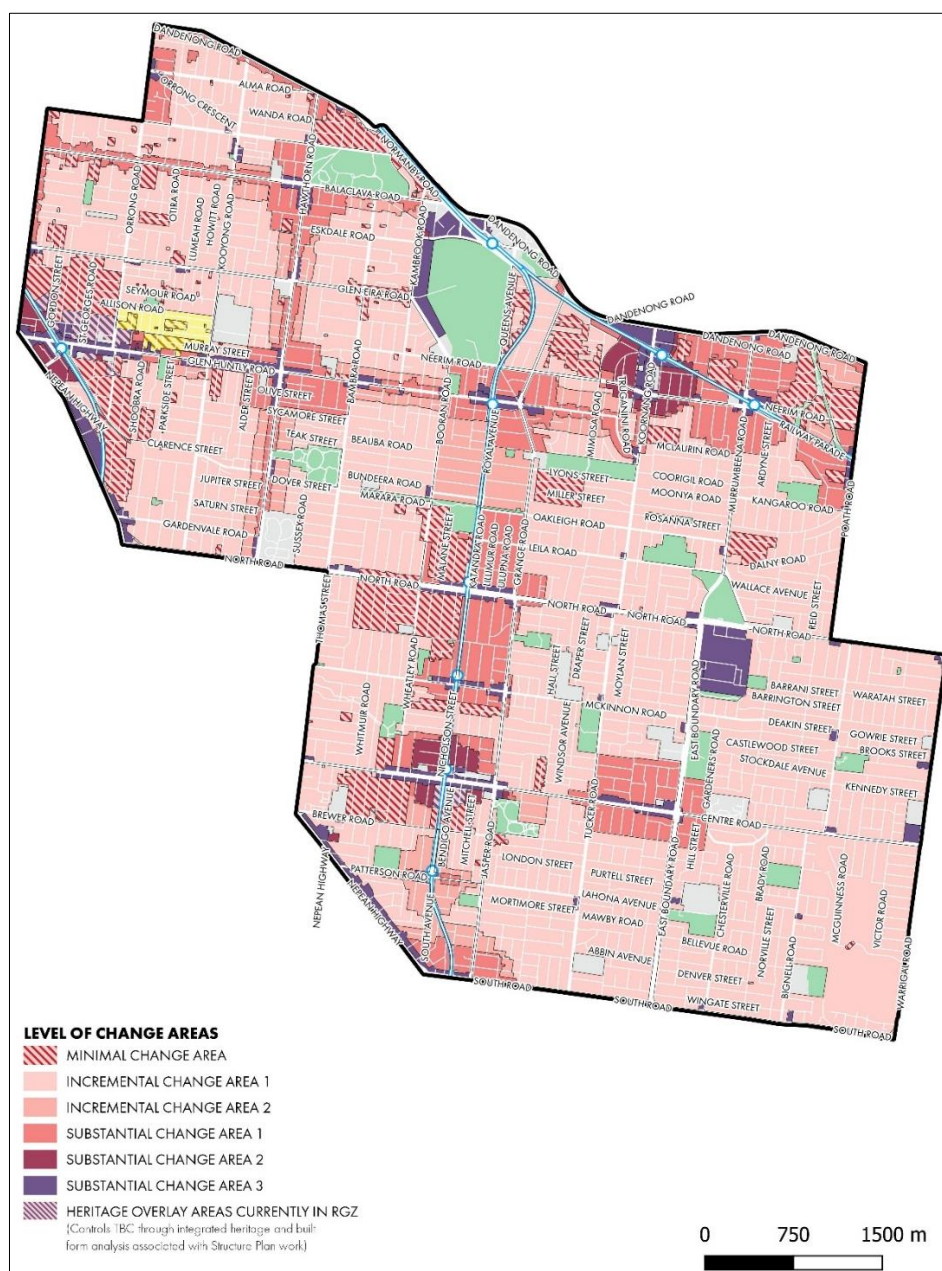
The strategy identifies the need to plan for the predicted population growth of approximately 30,000 additional people within the municipality between 2021 and 2036 and a subsequent need for an additional 12,000 to 13,000 dwellings to accommodate this growth.

It seeks to manage the additional dwelling requirements by splitting the residential areas within the municipality into six ‘change areas’, distributed in a manner that contributes to:

- Housing diversity — Identifying locations where genuine medium-density development can occur.
- Sustainable land use — Directing the highest forms towards activity centres and transport connections to provide access to existing amenities.
- A framework to achieve quality character, built form and landscape outcomes in each area — being a predominantly Garden Suburban municipality, the majority of the municipality will continue to be identified as either Minimal Change Area or Incremental Change Area (1), which both align with the Neighbourhood Residential Zone (max. two storeys). Additional change is identified for some locations where the locational advantages and present character and policy suggest it would be appropriate.

The strategy provides Council's framework for managing population and housing growth over the next 15 years. It includes the framework plan shown in Figure 3.

**Figure 3** Housing framework plan



Each area includes further future character and built form precincts. The land affected by the Amendment is identified as being with 'Substantial Change Area 3'.

The strategy does not include any specific requirements for Substantial Change Area 3, deferring these to structure plans, design and development overlays, built form framework plans, comprehensive development plan overlays or individual application assessments.

## B:3 Planning scheme provisions

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

### i) Zones

The subject land is in the Commercial 1, Mixed Use and Public Use zones. The purposes of these zones are:

#### Commercial 1 Zone:

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

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

#### Mixed Use Zone:

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.

To encourage development that responds to the existing or preferred neighbourhood character of the area.

To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.

#### Public Use Zone:

To recognise public land use for public utility and community services and facilities.

To provide for associated uses that are consistent with the intent of the public land reservation or purpose.

## B:4 Ministerial Directions, Planning Practice Notes and guides

### Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and Planning Practice Note 46: Strategic Assessment Guidelines. That discussion is not repeated here.

### Planning Practice Notes

The following Planning Practice Notes are relevant:

- PPN59: The Role of Mandatory Provisions in Planning Schemes which sets out the circumstances under which mandatory provisions may be applied and criteria for making that judgment.
- PPN60: Height and Setback Controls for Activity Centres which states that controls should be based on facilitating good design outcomes. Gives guidance on when it is appropriate to use mandatory and discretionary height and setback controls.

### Practitioner's Guide

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

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy

- a provision is necessary and proportional to the intended outcome and applies the VPP in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.