October 14, 2013.

The Principal Registrar

VCAT - Planning & Environment List

55 King Street

Melbourne, VIC., 3000

Dear Principal Registrar,

**Re: VCAT Reference No: P830/2013, for 8, 10, 12 and 14 Everton Grove, Surrey Hills, VIC., 3127.**

**1 Application to strike out the appeal.**

Earlier this year, the Whitehorse Council refused under delegation to grant a permit to Gardencity Australia Pty Ltd to build a four storey 20 apartment and 5 three storey and 1 two storey town houses development on the blocks at 8, 10, 12 and 14 Everton Grove. Subsequently, Gardencity has appealed to the Victorian Civil & Administrative Tribunal (VCAT) against that Council refusal, and in support of their appeal have submitted extensively revised plans for that site.

The plans submitted on October 1, 2013 for consideration at VCAT include:

* a 4 storey apartment block of 26 apartments, an increase of 6 on the 20 listed in the original application;
* four two storey town houses instead of 6 proposed; but
* a total of 30 dwellings on the four sites – an overall **15% increase** on the numbers of dwellings proposed previously.
* The plans submitted on October 1, 2013 show a significantly different building configuration and land use to that rejected by the Whitehorse Council.
* The developer has submitted a listing of 68 changes they have made to the proposal rejected by Whitehorse Council.
* The developer has advised (in the ninth point of their 68 advised changes) that

“The design response has been completely revised to reflect the design intent of the new architect.”

These 68 changes are so extensive that the development submitted to VCAT and to the parties to the appeal is that of a new development proposal and not merely changes to the original proposal.

Planning decisions in the City of Whitehorse are the role and responsibility of the Whitehorse Council. The development provided on October 1, 2013 is so significantly different from the one rejected by Whitehorse Council, including its significant increase in dwelling numbers and extensive other changes proposed, that it is a new proposal and one we think should be first considered by that Council.

Accordingly, we respectfully request that VCAT strikes out the appeal P830/2013.

**2 Application to VCAT to refuse the substitution of plans**

If VCAT decides to strike out the applicationP830/2013, for 8, 10, 12 and 14 Everton Grove, Surrey Hills, VIC., 3127, this request does not apply, but if VCAT chooses to continue the hearing, the undersigned accordingly respectfully request that the VCAT refuse to allow the substitution of plans.

Our reasons for this request follow directly VCAT’s Practice Note PNVCAT9 [March 2012] which states:

“3 As a guiding principle, amendments should not be used to materially increase the scale or intensity of a proposal or to introduce significant new aspects that have not been considered by the responsible authority or primary decision-maker at first instance.”

As the applicant advises, their proposal of October 1, 2013 has:

1. Increased the number of dwellings in the development by 15% - a material increase in the scale and density of a proposal; and
2. “The design response has been completely revised to reflect the design intent of the new architect.” and so has introduced significant new aspects that have not been considered by the responsible authority or primary decision-maker at first instance.
3. The developer has submitted a listing of 68 changes they have made to the proposal refused by the responsible authority, the Whitehorse Council.

Accordingly, as the plans of October 1, 2013 are a material increase in the scale and density of the plans considered by the responsible authority, substitution should not be permitted.

We understand, as the Practice Note indicates, the appeal can still continue and can consider the original plans that the responsible authority refused.

**3 Saving time and resources for all parties**

The Practice Note also states that:

 “2 Permit applicants sometimes seek to amend an application or the plans that form part of an application. The ability to amend plans introduces certainty to the planning and environmental approval process and saves time and resources of authorities, applicants, objectors and the Tribunal by enabling improvements to be made to a proposal without a new application being required.

Key elements of this principle are that the applicant has made genuine efforts to compromise and improve the development.

We consider the increased density, increased scale, almost unchanged visual bulk, unchanged monolithic appearance of an extensive block in a distinctly different streetscape, retained four storey apartment block, and the overall 15% increase in dwellings do not comply with this principle.

The responsible authority (the Whitehorse Council) and the other parties to the appeal must all commit extensive time, resources and money to review the new proposal. Accordingly, the proposal submitted by the applicant fails to meet the Practice Note’s requirements of introducing certainty by saving time and resources. On these further grounds, the undersigned respectfully request that VCAT refuse the applicant permission to substitute plans for those initially considered by the Whitehorse Council.

Yours sincerely,

West of Elgar Residents Association Inc

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