

SALE OF LAND - PART 9A TINARRA COURT, KILSYTH

Report Author: Coordinator Property
Responsible Officer: Director Environment and Infrastructure
Ward(s) affected: Walling;

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

This item has been included in the public agenda to facilitate openness and transparency in Council's decision making. A confidential attachment has been included with the report which contains personal information of community members that is not to be disclosed whilst the meeting is open to the public and is considered to be confidential information in accordance with the definition included in Section 3(1) of the *Local Government Act 2020*.

Any disclosure of the information included within the confidential attachment to this report could be prejudicial to the interests of the Council or other parties. If discussion of this information is required, the Council is recommended to resolve that the item be deferred to the confidential section of the agenda when the meeting is closed to members of the public in accordance with Section 66(2)(a) of the *Local Government Act 2020*.

SUMMARY

On 5 April 2022, Council gave notice of its intention to sell four properties, including a 2600sq.m. section of land at 9A Tinarra Court, Kilsyth. All four properties are residentially zoned, designated as reserves on title, and all are located within Walling Ward.

Proceeds from the sale of the land would be used to facilitate the purchase of 3.6 hectares of open space (former Yarra Hills Secondary College) at 150 Cambridge Road, Kilsyth, and make necessary improvements to the land, in line with Council's resolution of 8 March 2022. Any remaining funds would be directed to Public Open Space Fund for future open space improvement works or other recreation or cultural projects allowable under the provisions of the *Subdivision Act*.

By the submission closing date on 9 May, 2022, thirty-eight (38) submissions had been received, two (2) of which relating to Part 9A Tinarra Court specifically, and thirteen (13) relating to Council's proposal to sell land more generally. One (1) of those submitters elected to speak in support of their submissions to a Delegated

Committee of Council at a Submission Hearing meeting held on 15 June 2022.

Having heard submissions, the Delegated Committee's recommendation is that all submissions be noted, that the proposal to sell the land (including 9A Tinarra Court) be reported to a Council meeting with a recommendation to sell, and that future procedures relating to the sale of the land be undertaken individually.

If Council resolves to sell the land, an application would be made under section 24A of the *Subdivision Act 1988* to have the reservation removed from the land, prior to the land parcel being sold.

RECOMMENDATION

That

- 1. Council, having advertised its intention to sell land, and having considered all submissions received, and having considered the recommendations of the Delegated Committee from the Hearing of Submissions Committee Meeting on 15 June 2022, and being of the opinion that the land is no longer required by Council, resolves to sell a 2600sq.m. section of Council land at 9A Tinarra Court, Kilsyth (Part Reserve 1 on LP91601);***
- 2. The land be sold by public auction or Expression of Interest process for a price no less than a valuation held by Council;***
- 3. Council make an application under section 24A of the Subdivision Act 1988 for the removal of the reservation from the land prior to its sale;***
- 4. All documents relating to the sale of the land be sealed by the Council; and***
- 5. The confidential attachment to this report remains confidential indefinitely as it relates to matters specified under section 3(1)(a) and (f) of the Local Government Act 2020.***

RELATED COUNCIL DECISIONS

Council Meeting (26 February 2019) - Proposed Sale and Future Planning Controls - 150 Cambridge Road, Kilsyth - Former Yarra Hills Secondary College

Council Meeting (26 February 2020) - Decision to support Department of Treasury & Finance proposal for re-zoning and sale of 150 Cambridge Road, Kilsyth.

Council Meeting (5 May 2020 and 8 September 2020) - Elizabeth Bridge Reserve Master Plan draft and final endorsement.

Council Meeting (23 March 2021) – Councillor Motion to investigate the processing costs to purchase 150 Cambridge Road, Kilsyth for the purpose of public open space.

Council Meeting (27 April 2021) – Council resolved to write to the state government with a formal expression of interest for the purchase of the former Yarra Hills Secondary College School site at 150 Cambridge Road, Kilsyth.

Council Forum (3 August 2021) - A report was brought to a Councillor briefing highlighting cost and a possible process for the purchase of the land at 150 Cambridge Road Kilsyth.

Council Forum (3 November 2021) - A report was brought to a Councillor briefing that reviewed local parcels of Council owned land that were considered as surplus to Council's long-term requirements and could potentially be sold to contribute towards the purchase price of 150 Cambridge Road Kilsyth.

Council Meeting (8 February 2022) – Council provided in-principal support for the purchase of land at 150 Cambridge Road, Kilsyth, with a formal decision to be made at the 8 March 2020 Council Meeting after the tabling of feedback from the community following consultation.

Council meeting (8 March 2022) – Having considered the results of community engagement on the proposed purchase of Cambridge Road, Kilsyth and the proposed funding model to facilitate the purchase, Council resolved to, in part:

- In accordance with Section 112 of the Local Government Act 2020, agree to the formal offer from the Department of Treasury and Finance to acquire the northern 3.581ha of land at 150 Cambridge Road, Kilsyth for its ongoing use as public open space at a cost of \$6.44 million (exclusive of GST);
- Approve that the funding of the purchase of 150 Cambridge Road, Kilsyth be undertaken utilising the current balance of Public Open Space Funding available to Walling Ward of \$2.97 million in combination with funding from cash reserves of \$3.47 million;
- Propose that the replacement of cash reserves used for the land purchase occur through; and
 - Investigating and progressing the sale of four parcels of Council land in the area that are considered of limited community benefit and surplus to needs at;
 - 182-184 Cambridge Road, Kilsyth;
 - 9A Wannan Court, Kilsyth;
 - 16 Ellis Court, Mooroolbark; and
 - 9A Tinarra Court, Kilsyth.
 - Future Public Open Space contributions generated from the Walling Ward.
- Approve the commencement of the statutory processes required for the investigation of the future sale of the four parcels of land aforementioned in accordance with Section 24A of the *Subdivision Act 1988* and Section 114 of the *Local Government Act 2020*.

Hearing of Submissions Committee Meeting (15 June 2022) – This meeting was held to hear those submitters who indicated their intention to speak in support of their submission to the committee, made up of Councillors and chaired by the Mayor. The Committee’s recommendation has been incorporated into this report for Council decision.

DISCUSSION

Context to the proposed land sale

Increasing population growth in the urban area of the municipality requires Council to strategically identify opportunities for increasing public open space in the area to meet social needs into the future.

Council’s currently endorsed Recreation & Open Space Strategy 2013-2023 indicates adequate open space within precinct E (Kilsyth). However, analysis of open space provision for the Kilsyth precinct as part of updating the Recreation and Open Space Strategy identifies a significant shortfall of linear (15.4ha) and social recreation open space (6.1ha) in 2020. Based upon current trends, this shortfall will increase to 17.9ha and 9.6ha respectively by 2041. Furthermore, the provision of open space for structured sport in Kilsyth will be below the preferred provision by 2037.

Research generally shows that large parks over 1600sq.m. have proven to encourage people to walk further distances, and diversity of activity within parks attracts greater numbers to use the space. Providing access to large parks can be used by Council as a mechanism to assist in reducing obesity and improving the overall health and wellbeing of the community.

The Recreation and Open Space Strategy contains an action to explore partnerships to jointly use school sports reserves and facilities in the Kilsyth area and establishes the structure for identifying the need for additional Public Open Space and use of contributions received in lieu of land through subdivisions for improving existing open space or acquiring new open space. The strategy also recognises the need to plan for open space needs in the urban area of the municipality.

Council’s purchase of the 3.6 hectare former school land at 150 Cambridge Road represents a rare opportunity to acquire a large parcel of land that will contribute to addressing future open space needs, which would not be available should this land be sold and developed for residential purposes.

With consideration of financial challenges brought about by Council’s Covid response and following the storm event of 9 June 2021, Council resolved at its meeting on 8 March 2022 that it would purchase the site at 150 Cambridge Road using the current balance of Public Open Space Funding available to Walling Ward of \$2.97 million. The remaining shortfall of \$3.47 million would be funded initially through the use of cash reserves, which Council would then seek to reimburse through:

- Investigating the sale of four parcels of surplus Council land in the local area that are considered to be of limited broad community benefit; and/or

- Future Public Open Space contributions generated from the Walling Ward.

Council has resolved to seek reimbursement of the cash reserves within a maximum of four years.

As the cash reserves are being raised to fund the acquisition of land to be used for public open space, in allocating the proceeds of the sale of the Council Land towards the repayment of this debt, legal opinion obtained by Council confirms that these funds will be used for a purpose permitted under section 24A(8)(b)(iii) of the Subdivision Act.

The property being considered for sale

A review of all open space land in Walling Ward was undertaken by Council officers, which identified a number of Council owned properties within Walling Ward as providing limited broader community benefit against the principles of Council's Strategic Property Assessment Framework, and Public Open Space Strategy (ROSS).

The properties, initially defined in Council's resolution of 8 February 2022, are:

- 182-184 Cambridge Road, Kilsyth;
- 9A Wannan Court, Kilsyth;
- 16 Ellis Court, Mooroolbark; and
- 9A Tinarra Court, Kilsyth

This report considers the potential sale of one of those properties; 9A Tinarra Court, Kilsyth.

Property details: 9A Tinarra Court, Kilsyth

Also known as:	Tinarra Reserve
Area:	2400sq.m. of the reserve to be sold – The existing walkway between Tinarra Court and Belinda Close to be annexed from the reserve and retained by Council.
Lot description:	Reserve 1 LP91601 Part Crown Allotment 41B Parish of Mooroolbark
Zone:	Neighbourhood Residential Zone 1 (NRZ1)
Overlays:	Significant Landscape Overlay Schedule 23 (SLO23)

9A Tinarra Court (Tinarra Reserve) is zoned Neighbourhood Residential Zone 1 (NRZ1) for residential purposes, which it has in common with other residential properties in Tinarra Court. It has a connection via gravel walkway through to a smaller reserve fronting Belinda Close (1139sq.m.), which is not subject of this

proposal to sell and so would remain accessible as an open space. It is intended to retain this connectivity between Tinarra Court and Belinda Close by having the walkway separated from the reserve via a Plan of Subdivision, which it would then retain in Council ownership.

The property is a passive reserve, comprising predominantly grassed, vacant land and containing a cluster of mature trees and shrubs at its northern end. The land is not used for formalised sporting or recreational purpose and does not contain a playground or recreational infrastructure.

An alternate open space exists on Orchard Street (2221sq.m. passive reserve connecting Orchard Street and Belinda Close), located within 250m as the crow flies, or around 365m using the footpath network. No main road or other barrier is required to be crossed by residents of Tinarra Court to get to either of the alternate open spaces.

Kilsyth Recreation Reserve (Pinks Reserve), which lies within 136m of Tinarra Reserve as the crow flies (514m using the footpath network), is a large regional sporting precinct containing a sporting stadium, sporting fields and facilities for a number of different sporting activities. However, this facility is located on the other (eastern) side of busy Liverpool Road which may act as a physical barrier.

The land has reserve status on title. If Council decides that it will sell the land, it would initiate a separate planning application process under s24A of the Subdivision Act to remove the reserve status, prior to it being sold. This process would have its own public engagement process, with the planning scheme requiring Council to consider the interests of any affected parties when determining the result.

If Council resolves to sell and the reserve status on the land is removed, the land would be sold by competitive process, either by public auction or Expression of Interest process, and sold for a sum no less than an independent valuation held by Council.

A local agent would be engaged to market the property.



Location of 9A Tinarra Crt in relation to other nearby open spaces

Assessment against principles of the Recreation Open Space Strategy

Tinarra Reserve is classified a 'local park' by meaning of the Recreation & Open Space Strategy. The aim of local parks is to "provide a picnic area, play space and open park area for informal ball games and activities and a variety of settings from open parkland and gardens to bushland".

The Recreation & Open Space Strategy 2013-2023 outlines a number of principles in relations in relation to the characteristics of local parks, as listed below:

Principle - Local Park	Officer Comment relating to 9A Tinarra Crt
Not on encumbered land	Tinarra Reserve meets this principle.
In urban areas, provide within 400 - 500 m of every household (without having to cross a major road/railway or other major physical barrier)	All residences within Tinarra Court lie within 70 metres of Tinarra Reserve. If the 2600sq.m. section subject of this proposal were to be sold, residences would still be located within 125 metres of Belinda Reserve (1139sq.m.), which is adjacent to Tinarra Court Reserve but not subject of this proposal to sell.

	<p>All residences within Tinarra Court also lie with 400 metres of an alternative local park, Belinda Walkway; A passive open space of approximately 2170 sq.m. containing similar informal play / ball sport opportunities.</p> <p>Tinarra Reserve's sale and therefore removal from the Open Space network would not cause any property (including those within Tinarra Court) to fall outside the parameters of this principle. Properties located further to the south of Tinarra Reserve (bordering Canterbury Road) would be the most impacted by this proposal, with their closest open space (Belinda Reserve) becoming marginally further away, at up to 500m as the crow flies, or 735m using the footpath network.</p> <p>Tinarra Court residents would not be required to cross a major road or other physical barrier to alternate open spaces.</p>
<p>Centrally located in community activity node e.g. adjacent to sports, shop or community meeting facilities</p>	<p>Tinarra Reserve's location within a cul-de-sac does not strictly align with this principle as it does not optimise accessibility to a wide user group. However, its connectivity through to Belinda Close and adjacency to Belinda Reserve means that it currently services a wider user group than Tinarra Court residences alone.</p>
<p>Minimum size of one hectare</p>	<p>Tinarra Reserve, in combination with Belinda Reserve (at 4243sq.m. total) does not meet this principle. Other nearby open spaces (including Belinda Walkway) also do not meet the minimum one hectare criteria.</p> <p>The closest >1 hectare open space to Tinarra Court is Pinks Reserve (though separated by busy Liverpool Road acting as a physical barrier), which lies within 136m of Tinarra Reserve as the crow flies (514m using the footpath</p>

	network).
Minimum dimensions of 70 m in any direction	With boundaries of approximately 60m at each side, Tinarra Reserve does not meet this criteria.

Next steps – If Council resolves to sell

The land has been set aside on a plan of subdivision as a reserve for recreation or similar purposes, and therefore can be characterised as public open space for the purposes of the Subdivision Act. Prior to selling, Council would therefore be required to procure a plan of subdivision under section 24 of the Subdivision Act which will remove the reserve status from each parcel, at which time the land will no longer be considered to be public open space.

The subdivision process would include enable the realignment of the western boundary to exclude the existing walkway from the land to be sold.

An application under 24 of the Subdivision Act would involve its own community engagement process, which would include opportunities for interested parties to view and make comment on the application once it has been exhibited.

Any proceeds of sale of land which was public open space must be applied in accordance with the provisions of Section 24A(8) of the Subdivision Act

Options considered

1. Sell the property as proposed

Council could resolve to sell the property, then commence procedures under section 24 of the Subdivision Act to remove the reserve status of the land before it is sold. Proceeds from the sale of the property would be used to replenish cash reserves required to facilitate the purchase of 150 Cambridge Road, in line with Council’s resolution of 8 March 2022.

The independent valuation obtained for this property is available in the Confidential attachment to this report.

2. Not sell the property

Council could elect to not sell the property and retain it as an area of Public Open Space.

With approximately \$2.97 million of the Public Open Space Fund for Walling Ward for allocated the purchase of 150 Cambridge Road, the shortfall (around \$3.47 million) will be covered by cash reserves which Council resolved to replenish through land sales and future developer contributions for Walling Ward.

If Council chooses not to sell the property, there would be a greater reliance on the future open space contributions of developers to replenish the cash reserves, thus prolonging the time taken to replenish the cash reserves, and limiting Council’s

ability to progress other open space improvement projects within Walling Ward (including remediation works at 150 Cambridge Road) for a prolonged period of time.

Council's resolution of 8 March allows for such a scenario, however it should also be recognised that the land being acquired at 150 Cambridge Road will require significant remediation and improvement works, with basic remediation estimated to cost around \$200,000.

Recommendations of the Delegated Committee

On 15 June 2022, a meeting of a Delegated Committee assembled under section 63 of the Local Government Act 2020 was held to hear submissions from those submitters who had requested to speak in support of their submissions. The meeting heard submitters in relation to all four properties being subject of Council's original notice of intention to sell.

The Delegated Committee was made up of all Councillors and chaired by the Mayor. Cr McAllister was absent from the meeting.

All members of the Delegated Committee received full, un-redacted copies of all submissions received, as well as a summary of key themes raised in submissions and officers' responses.

In total, five (5) submitters spoke in support of their submissions, with one (1) of those speaking specifically in relation to the potential sale of 9A Tinarra Court. A summary of the hearings relating to 9A Tinarra Court is included in the Community Engagement section of this report.

Having read all written submission and having heard those speaking to their submissions, the Delegated Committee recommends that:

- Submission be noted.
- Each of the four properties subject of Council's Notice of Intention be presented to a future Council meeting for decision with recommendations to:
 - Sell the land, and
 - undertake applications under 24A of the Subdivision Act to have reservation statuses removed prior to sale.
- The four properties to progress through future stages of the sale and planning processes individually.

Recommended option and justification

In line with the recommendation of the Delegated Committee, officers' recommended option is that the land at 9A Tinarra Court, Kilsyth be sold, and that an application under 24A of the Subdivision Act be undertaken to remove the reserve status from the land prior to the land being sold. In line with Council's resolution of 8 March 2022, the proceeds of sale would be directed toward facilitating the purchase of 3.6 hectares of community open space at 150 Cambridge Road, Kilsyth.

Officers are of the belief that the sale of 9A Tinarra Court is justified for the following reasons:

- Both Belinda Reserve and the walkway connecting Tinarra Court to Belinda Close would remain open and available for community use. The area surrounding Tinarra Court also contains alternative social recreational space (Belinda Walkway), located within 365m using the footpath network, which meets the open space requirements of the local residences.
- On balance, the value held in the land could be better served contributing toward the purchase of larger, centralised open space which will be more accessible and provide recreational opportunities to a broader user group.

Directing proceeds from the sale toward the purchase of a larger, centralised open space at 150 Cambridge Road will create a net gain in open space in the area, therefore working toward addressing significant open space deficiencies projected for the area in the future and helping meet objectives of the Recreation Open Space Strategy.

FINANCIAL ANALYSIS

The Council resolution of 8 March 2022 approved the purchase 3.581ha of land at 150 Cambridge Road, Kilsyth at a cost of \$6.44 million (exclusive of GST). This is to be paid utilising the current balance of Public Open Space Funding available to Walling Ward of \$3.14 million (as of June 2022) in combination with funding from cash reserves of \$3.47 million.

As part of that resolution, Council committed to commencing statutory processes to explore the potential sale of the four parcels of land as a means of replacing cash reserves, which if all four were sold would be expected to realise around \$4.5 million.

Following purchase of the 150 Cambridge Road site, minor landscaping works will initially be carried out to allow the area to be generally maintained as open parkland, at a cost estimated at around \$200,000, which would need to be referred to Council's Capital Expenditure Program for consideration of its allocation. Any funds realised from land sales over and above the amount required to purchase the site would be directed to the Walling Ward Public Open Space Fund balance or for master planning and/or further improvements to the site purchased at 150 Cambridge Road.

Any proceeds of sale of public open spaces (including 9A Tinarra Court) must be used for a purpose permitted under section 24A(8) of the Subdivision Act, which includes purchasing land to be used for public recreation or public resort, as parklands or for similar purposes, or to improve land already set aside for the same purposes. It cannot be used for other Council purposes.

In addition to funding raised through land sales, should any further funding be required to replace the amount utilised from cash reserves for the purchase, Council has resolved that it be achieved through future Public Open Space contributions generated from developments within the Walling Ward, which at the current rate of development is around \$1 million per annum.

The independent valuation obtained for this property is available in the Confidential attachment to this report.

Use of proceeds from the sale of open space to replenish cash reserves

Due the timing difference between the date on which settlement of the purchase of 150 Cambridge Road is due to take place and the proposed date on which the Council Land will be sold, Council's resolution of 8 March 2022 included that \$3.47 million of the purchase price will be funded from Council's cash reserves.

As the internal debt is being raised to fund the acquisition of land to be used for public open space, in allocating the proceeds of the sale of the Council Land towards the repayment of this debt, the funds will be used for a purpose permitted under s 24A(8)(b)(iii) of the Subdivision Act.

Council Funding pressures

As a result of the 9 June 2021 storm event, Councillors have identified the need to review Council's budget to respond to funding challenges. It has been necessary for Council to consider deferring works within the Capital Expenditure Program and reducing operational costs. The long-term benefits of purchasing the land at 150 Cambridge Road are considered significant and of merit, however, to achieve this purchase required Council to assess options to fund the purchase other than through borrowings or rate revenue.

The purpose of Public Open Space Funding is to buy available land for use for public recreation or to improve land already set aside for use for public recreation, as parklands or for similar purposes and is therefore well suited for the proposed land purchase. There is however insufficient funding available to fully fund the purchase and therefore it was necessary for Council to consider other options for meeting this shortfall. Due to the competing organisational needs resulting from Covid and the June 2021 storm event, Council is not able to utilise borrowings or rate revenue, and therefore it has been necessary to seek other options.

APPLICABLE PLANS AND POLICIES

Council's guiding documents relating to the sale of land are:

Local Government Act 2020, provides the legislative framework for Council's consideration of the sale of land, and applicable consultative procedures to be undertaken.

Subdivision Act 1988, provides the legislative framework for the removal of reserve designation from land, and the way in which Councils must use of proceeds realised from the sale of public open spaces.

Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land, provides the guidelines to principles by which Council should consider when selling land

Council's Strategic Property Assessment Framework provides a framework by which Council identifies properties which it may consider to be potentially surplus and candidates for disposal.

The Recreation and Open Space Strategy contains an action to explore partnerships to jointly use school sports reserves and facilities in the Kilsyth area and establishes the structure for identifying the need for additional Public Open Space and use of contributions received in lieu of land through subdivisions for improving existing open space or acquiring new open space. The strategy also recognises the need to plan for open space needs in the urban area of the municipality.

The proposal to support the purchase of 150 Cambridge Road supports the implementation of the strategic objectives 'Connected and Healthy Communities' and 'Quality Infrastructure and Liveable Places' in the Council Plan 2021-25, and Health and Wellbeing Plan 2021 – 2025, including "Increase active living - People in Yarra Ranges have capacity to walk and be physically active through accessible footpaths, trails, parks, play spaces and an inclusive culture that supports participation in all forms of physical activity".

RELEVANT LAW

The sale of Council land must be undertaken in accordance with section 114 of the Local Government Act 2020.

As this lot has Reserve designation, additional processes under section 24A of the Subdivision Act 1988 would need to be undertaken to remove the reserve designation, which would involve its own consultative processes.

Council's obligations regarding the use of proceeds from the sale of public open spaces are defined under section 20 of the Subdivision Act 1988.

SUSTAINABILITY IMPLICATIONS

Environmental Impacts

The property at 9A Tinarra Court contains several large, mature trees and bushes, several of which could potentially be lost if the land is sold and developed for housing.

Vegetation losses caused by the development of the lots would be offset by plantings at the 150 Cambridge Road site (3.6 hectares) being purchased by Council. Isolated green spaces, such as 9A Tinarra Court, provide only limited habitat value on their own. Large green spaces can assist with storm water management and can act as heat sinks thereby reducing heat in surrounding environments.

Large tracts of forested land, which could be achieved through plantings at the Cambridge Road site, can increase urban biodiversity and planting trees in non-forested areas of open space can assist Council in achieving its targets of 30% canopy cover within Council's Tree Policy.

Social Impacts

Open space provides a much-needed place for people to exercise and escape from their homes supporting both physical and mental health. It also offers opportunities for social connection. As Covid restrictions eased, parks allowed for small groups to socially distance outdoors and further supported reconnection and the increased physical and mental health of people.

Parks are often used as gathering places for people of all ages, further demonstrating their value in social connection. Large parks over 1600sq.m. have proven to encourage people to walk further distances and diversity of activity within parks attracts greater numbers to use the space.

Research indicates that only approximately 44% of our community are currently meeting physical activity guidelines. Providing access to large parks should be used by Council as a mechanism to assist in reducing obesity and improving the overall health and wellbeing of the community, thus highlighting the long-term importance of Council's acquisition of 3.6 hectares of open space at 150 Cambridge Road Kilsyth.

Local social parks, provide areas for families and friends to meet and socially gather and offers environments for play, relaxation and informal recreation activities. The Open Space Design Standard Guidelines (Appendix 2 of Council's Recreation and Open Space Plan– Strategic Framework 2013-2023) advises that social parks in urban area should, amongst other things, occur within 400-500m of every household (without having to cross a major road/railway or other major physical barrier), be centrally located and be at least 1 hectare in size.

All properties in the near vicinity of Tinarra Court are located within 400m of an alternate recreational open space option. The removal of 9A Tinarra Court from the open space network would not strictly cause any property to fall outside the Proximity parameters, particularly as the Belinda Reserve is proposed to remain. However, it should be noted that a number of properties located to the south (bordering Canterbury Road) would have their already difficult proximity to nearest open space further compromised (marginally), becoming up to 500m as the crow flies. This distance increases to up to 735m if using the footpath network.

Economic Impacts

There are no economic impacts linked directly to the sale of 9A Tinarra Court

COMMUNITY ENGAGEMENT

Section 114 of the *Local Government Act 2020* requires that before selling or exchanging land, Council must at least 4 weeks prior to selling or exchanging land publish notice of intention to do so on the Council's Internet site and undertake a community engagement process in accordance with its Community Engagement Policy.

Council's Community Engagement Policy recognises that community engagement plays a critical role in ensuring Council decisions reflect the needs and expectations

of the community and other stakeholders. The policy is guided by the International Association of Public Participation (IAP2) Spectrum. This identifies five levels of engagement and details Council's commitment to the community for each level of engagement ensuring that both the community and Council have shared expectations.

Council published notice of its intention to sell four properties within Walling Ward (including 9A Tinarra Court) in six local newspapers circulating in the municipality and on Council's website via a 'Shaping Yarra Ranges' page which ran from 5 April 2022 to 9 May 2022. On that page, interested parties were invited to make submissions on the matter, either via the webform provided on the web-page, or by direct mail/email to Council.

A mail-box drop for residents nearby to each of the four properties was undertaken ahead of the commencement of the engagement period which invited submissions from community members considered to be most affected by the proposal. Signage was also installed at each site to alert nearby resident, site users and those passing by to Council's proposal and engagement opportunity.

General Facebook posts from Council's main account as well as paid localised advertising also drove engagement with the Shaping Yarra Ranges page. Two posts highlighting the matter reached 30,563 users, generating 34,348 views, and 450 clicks on the link leading users to the Shaping Yarra Ranges page.

As a result of Council's various methods of reach out to the community, the Shaping Yarra Ranges page received a total of 1952 views, with 931 visits (end user sessions from a single user) and 858 unique users.

The page relating specifically to 9A Tinarra Court received 156 visits from 137 unique users.

Summary information from the Shaping Yarra Ranges Page

Top Visited Pages Summary information for the top five most visited Pages.			
Page Name	Visitation %	Visits	Visitors
Notice of intention to sell Council land	94.94%	881	782
182-184 Cambridge Road, Kilsyth	24.14%	224	200
16 Ellis Court, Mooroolbark	20.26%	188	173
9A Wannan Court, Kilsyth	18.1%	168	154
9A Tinarra Court, Kilsyth	16.81%	156	137

By the close of the submissions period on 9 May 2022, thirty-eight (38) individual written submissions received, fifteen (15) of those relating either to 9A Tinarra Court specifically, or to Council's proposal to sell the four lots subject of this proposal more generally (ie all four properties).

The breakdown of submissions is as follows:

Property submitted on	# Submissions	# Supporting sale	# Opposing sale	No opinion given
General comment relating to all four properties subject of Council's Notice of Intention to sell	13	7*	5	1
9A Tinarra Court, Kilsyth	2	1	1	-

***Note:** 3 submitters indicated their support in-principle to Council selling the land, but on the condition that the funds realised from sale are to cover the purchase price of 150 Cambridge Road only, and excess funds are not collected as a revenue raising opportunity.

All Councillors have been provided full, un-redacted copies of all submissions received. Redacted copies of submissions are included as Attachment 2 to this report.

Key themes of submissions

Theme	Officer Response
The land could be used to support a Tiny House community, thus helping to address housing affordability problems. This lot provides the best opportunity for such a purpose, though any Council land would be considered.	<p>If Council determines to sell the land, it would be sold by competitive process (either by public auction or Expression of Interest process) for a price no less than a valuation held by Council.</p> <p>Any person interested in acquiring the land would have an opportunity to express an interest, or make a bid on the land, at the time. Any future use of the land would be subject to ordinary planning restrictions applicable to the residential zoning on the land, like any other land in the area.</p> <p>Individuals interested in securing the land must make their own enquiries as to whether their intended use of the land is allowable under planning rules.</p>

<p>Tinarra Reserve is used by people who access it, walk through it, exercise on it, and play with their children and animals. It is important as a passive space.</p>	<p>Council acknowledges that pocket parks or small parks can play an important role as ‘green breaks’ in the urban landscape, with their value being they are often within 5-10mins walk of where people live. Location is an important factor in the useability of these parks, with main roads, steep hills and railways often seen as barriers which may inhibit people from walking to their local park.</p> <p>Accordingly, Council seeks to acquire and/or retain and improve open spaces which provide good access for optimal usability and broad community benefit.</p> <p>The location of this reserve, being toward the end of a cul-de-sac, is not optimal in terms of providing a social recreational space which is accessible and inviting to a broad range of community users. Its location lends it to being used primarily by those residing in or around Tinarra Court itself, or potentially by those backing on to the land. It does, however, provide a reasonably large, grassed open space for informal play and ball sports, and its adjacency to Belinda Court creates connectivity from one cul-de-sac to the other.</p> <p>Other open spaces nearby, though arguably better/more centrally located, are of lesser size and so do not provide the same potential for casual play/sports as Tinarra Reserve.</p> <p>Also to be noted is that Belinda Reserve (1139sq.m. of open space adjacent to Tinarra Reserve) is not subject to the sales process and would remain accessible for community use.</p>
<p>Supports purchase of 150 Cambridge Road, but not the sale of 9A Tinarra Crt, so seeks alternate funding model for the purchase.</p>	<p>Due to competing organisational needs resulting from Covid and the June 2021 storm event, Council is unable to utilise borrowings or rate revenue for the purchase of 150 Cambridge Road, and</p>

	<p>therefore it has been necessary to seek other options.</p> <p>Council's proposed funding model was released for community consultation in February 2022, inviting submissions on the matter, before it was endorsed by Council at its meeting on 8 March 2022.</p> <p>This funding model included the possible sale of a number of Council land parcels to contribute to replenishing cash reserves required to assist the purchase of the land. Each of the 4 properties subject of Council's Notice of Intention to sell have undergone statutory process in accordance with section 114 of the Local Government Act, and in line with its Community Engagement Policy.</p> <p>A decision will be made in respects of each of the four properties entirely on their merits.</p>
<p>The reserve has contributed to improved mental health and wellbeing.</p>	<p>Open spaces undoubtedly play a role in supporting both physical and mental health. Parks provide opportunities for recreation, quiet contemplation, and social connection.</p> <p>Large parks over 1600sq.m. have proven to encourage people to walk further, and diversity of activity within parks attracts greater numbers to use the space. Providing access to large parks should be used by Council as a mechanism to assist in reducing obesity and improving the overall health and wellbeing of the community, thus highlighting the long-term importance of Council's acquisition of 3.6 hectares of open space at 150 Cambridge Road Kilsyth.</p>
<p>Future development of the site would cause vegetation loss, thus reducing the environmental value of the land.</p>	<p>Officers acknowledge that there are several large, mature trees and shrubs at the norther end of this site, some of which could potentially be lost if sold</p>

	<p>and developed for housing.</p> <p>Any development occurring at the site would be subject to planning provisions which would seek to protect existing trees where possible, or implement offset requirements. Plantings and improvements works at 150 Cambridge Road will also offset vegetation lost through the sale of this land.</p>
<p>Parks are community assets and not Council's to sell. They should be left alone. Selling would set dangerous precedent.</p>	<p>Tinarra Reserve was created by subdivision and transferred to Council, likely as part of a developer open space contribution requirement at the time of subdivision. Council has the discretion and right to review its land holdings and distribution of open spaces to meet strategic needs.</p> <p>A strategy within Council's Recreation & Open Space Strategy (Implementation Plan) is that Council 'Conduct an analysis into the effectiveness of all open spaces identifying areas oversupplied or under-served that will inform future investment'. Part of the purpose of such review is to allow for the strategic redistribution of open spaces, where required, to ensure open space provision needs are being met.</p> <p>Council's Recreation & Open Space Strategy Design Guidelines provides that the provision of Local Parks in urban areas should occur within 400 - 500 m of every household (without having to cross a major road/railway or other major physical barrier).</p> <p>Though the sale of Tinarra Reserve would not cause there to be an undersupply of open space to this pocket when applying principles of the Recreation Open Space Strategy, it would marginally exacerbate already difficult access to open space for a number of properties bordering Canterbury Road to the south. Access to nearest open space would become</p>

	<p>up to 500m for some properties as the crow flies, or up to 735m is using the footpath/road network.</p> <p>Any funds realised from the land of the land would be directed toward the purchase of 3.6 hectares of new open space at 150 Cambridge Road, Kilsyth – adjacent to Elizabeth Bridge Reserve. As of early 2022, Walling Ward’s Open Space Fund reserve contained \$2.97 Million – far short of the \$6.44M required to purchase the Cambridge Road site.</p> <p>The Walling Ward Open Space Fund is expected to grow by approx. \$1M per annum (according to current patterns) which along with proceeds received for the potential sale of land, could assist with the replenishment of cash reserves required for purchase in the first instance – in line with Council’s resolution of 8 March.</p>
<p>Would support the sale of small open spaces on the basis they are superfluous and unused.</p>	<p>Tinarra Reserve is a passive open space with no formalised active sport or recreational facilities. The vacant, openness of the land provides opportunities for informal play and ball sports and is likely to be used to some extent for this purpose.</p> <p>All lots subject to Council’s Notice of Intention have Reserve designation on title, with evidence suggesting that all were acquired through developer open space contribution requirements at the time of subdivision.</p> <p>Any proceeds realised from the sale of these lots would be used to replenish cash reserves used as a contribution toward the purchase of additional open space at 150 Cambridge Road.</p> <p>Excess funds realised through the sale of public open spaces would be directed to the Open Space Fund for Walling Ward or to further</p>

	<p>improvement/rehabilitation of the 150 Cambridge Road site (as parkland or recreational space). Council's intended use of proceeds from the sale of 'public open spaces' meets Council's obligations under the Subdivision Act.</p>
<p>Increasing residential density in the area (through dual occupancy subdivisions) increases the importance of maintaining and improving passive and active recreational open spaces.</p>	<p>Developers are required to provide to Council a Developer Open Space Contribution amounting 5% of the land area, which Council may opt to accept in land (as was common in the past), or as a cash equivalent, which it has opted to do in more recent times.</p> <p>Rather than accept many smaller land parcels which service only a relatively small section of the community, Council's preference is often to receive and accumulate developer contributions in cash so that it may strategically acquire land for larger, centralised open spaces which create greater opportunity for diverse uses and activities. As with its purchase of 150 Cambridge Road, Council would seek land suitably located to service a broader section of the community. Legislation dictates that funds raised through this scheme must be used for the acquisition of open spaces, or for the improvement of public open spaces.</p> <p>Over the last five years Council has approved approximately 350 dwelling applications, indicating 290 additional houses have been constructed in the Kilsyth area, most being one or two dwellings constructed to the rear of an existing house within the Neighbourhood Residential Zone or up to 12 units within the General Residential Zone. All additional dwellings result in reduced access to private open space, intensifying the need for access to high quality public open space.</p> <p>Council acknowledges that pocket parks or small parks can play an important</p>

	<p>role as ‘green breaks’ in the urban landscape, with their value being they are often within 5-10mins walk of where people live. Location is an important factor in the useability of these parks, with main roads, steep hills and railways often seen as barriers which may inhibit people from walking to their local park. Accordingly, Council seeks to acquire and/or retain and improve open spaces which provide good access for optimal usability and broad community benefit.</p>
<p>Agrees with selling land to cover the purchase price (of 150 Cambridge Road) only. Would not like to see Council generate excess funds to be received through this process.</p>	<p>Once the balance of the Open Space Fund reserve for Walling Ward has been expended, approximately \$3.65m is still needed for Council to secure the purchase of the Cambridge Road site, which it has resolved it will initially cover using cash reserves. Funds realised through the sale of 9A Tinarra Court would contribute to replenishing those cash reserves.</p> <p>If all four properties subject of Council’s Notice of Intention were sold, Council could stand to receive around \$4.5M, based on recent valuations.</p> <p>Any amount raised over and above that which is needed to purchase 150 Cambridge Road (including purchase price and associated costs), would be either directed to the Open Space fund, or used for additional improvements to the land, noting that the land requires significant remediation at an estimated cost of around \$200,000 to bring it up to just a basic level of service. Master planning and development/ construction would come at additional cost.</p> <p>Funds realised from the sale of public open space must be used to purchase or improve open spaces (in accordance with section 20(2) of the Subdivision Act).</p>
<p>Larger consolidated Open Space (such as 150 Cambridge Road) does not</p>	<p>Council’s currently endorsed Recreation & Open Space Strategy 2013-2023</p>

<p>provide the same community benefit as diverse and distributed Open Spaces.</p>	<p>indicates adequate open space within precinct E (Kilsyth). However, analysis of open space provision for the Kilsyth precinct as part of updating the Recreation and Open Space Strategy identifies a significant shortfall of linear (15.4ha) and social recreation open space (6.1ha) in 2020. Based upon current trends, this shortfall will increase to 17.9ha and 9.6ha respectively by 2041. Furthermore, the provision of open space for structured sport in Kilsyth will be below the preferred provision by 2037.</p> <p>Research generally shows that large parks over 1600sq.m. have proven to encourage people to walk further distances and diversity of activity within parks attracts greater numbers to use the space. Providing access to large parks can be used by Council as a mechanism to assist in reducing obesity and improving the overall health and wellbeing of the community.</p> <p>Given current development patterns within the Kilsyth area, it is unlikely that large, relatively flat parcels of land such as 150 Cambridge Road will be available for acquisition in the future, making the provision of additional structured and un-structured recreational facilities impossible.</p>
<p>Parks are community assets and should be left alone. They are not Council's to sell.</p>	<p>Council has the ability to sell public open spaces on the provision that proceeds for the sale be used to purchase additional open spaces or improves existing open spaces. This allows Council to redistribute its public open space provision as needed, by divesting surplus or open spaces of lesser strategic value, and/or strategically purchase spaces where community benefit will be greatest.</p> <p>In this case, proceeds from the sale of 9A Tinarra Court would be used to help fund the purchase of a larger,</p>

	centralised open space which will create a net increase in open space within the Walling Ward. This undertaking would be in line with the strategic objectives of the Recreation and Open Space Strategy by helping to address projected deficiencies in future open space provision in the area.
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Submissions Hearing Meeting (15 June 2022)

On 15 June 2022, a meeting of a Delegated Committee assembled under section 63 of the *Local Government Act 2020* was held to hear submissions from those submitters who had requested to speak in support of their submissions. Submitters were given five minutes to speak in support of their written submission.

At the meeting, one (1) submitter spoke in support of their submissions in relation to 9A Tinarra Court. A summary of hearing is listed below.

Submitter	Summary of hearing
# 20 Paul Baker	<ul style="list-style-type: none"> • Represents a collective proposing affordable housing development; • Explained that his organisation is seeking to address / facilitate solutions to housing affordability and rental disadvantage; • Seeking to commence an open conversation with Council about Council making available either this lot, or other land within the Shire for development of an affordable housing project; and • Of the four properties advertised in Council’s Notice of Intention to sell, he has a preference for Tinarra Court land as the most suitable location for such development, and so therefore supports Council’s proposal to sell the land.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

No collaboration with other Councils, Governments or statutory bodies was sought in relation to Council’s proposal to sell land. The report does not raise any issues of innovation.

RISK ASSESSMENT

If Council resolves to sell the land proposed for sale, it would then instigate a separate process under provisions of the *Subdivision Act 1988* to have the reserve status removed from the land. This would involve a separate community consultative

process. If though that application process Council is unable to justify the removal of reserve status from the land, it would not be able to be sold for residential purposes.

Increasing land values in the area could preclude the acquisition of such land in the future. The offsetting of cash reserves recommended to be used for the purchase is reliant on the continued generation of Public Open Space contributions through development in the Walling Ward. Current trends indicate that approximately \$1 million per annum is generated through Public Open Space contributions however if there was a downturn in the property market this could reduce.

Contamination risk

As part of its due diligence in relation to the land, Council engaged environmental risk management firm Prensa Pty Ltd to undertake a Preliminary Site Investigation (PSI) in order to understand land contamination risks relating to current and past uses of the site. The objective of the investigation was to provide an indication of the potential for significant environmental risk issues associated with the historical or current use of the site that may represent a liability to a potential purchaser, in light of Council's possible divestment of the land.

Prensa's initial review of the site history highlighted land uses which are considered to constitute a medium potential for contamination, with the land having been formerly used as a Poultry Farm (northern portion) and stock grazing (southern portion).

Planning Practice Note 30 and Ministerial Direction No. 1 requires that a Preliminary Risk Screening Assessment (PRSA) or audit be undertaken to support a residential development in light of the site's historical uses, which would likely be a conditional requirement on any future planning permit application. Accordingly, Council engaged Steven Bos, an Environmental Auditor (Contaminated Land) to conduct a PRSA of the site.

The auditor, having reviewed the available desktop environmental settling and site history information, and having inspected the site, did not identify any on-site sources of contamination. However, a number of potential off-site sources of groundwater contamination were identified, including:

- Regional contamination of the area from its historical agricultural use (as evidenced by previously completed environmental audits in the area);
- The former operation of a poultry farm on the land immediately north of the site (potential for burial pits or septic system(s); and
- The operation of septic systems to service surrounding properties which were present prior to the establishment of mains sewer in the area (pre-1978).

As these sources date back over 40 years, there is potential for attenuation to have occurred to such extent that groundwater at the site may not impact on environmental values which could be realised in light of the proposed future residential use of the Site.

Based on the findings, the Auditor considered it suitable to conduct a groundwater assessment as part of the PRSA to assess their hypothesis that groundwater is not likely to warrant the site being considered 'contaminated land' as defined in the Environmental Protection Act 2017. Accordingly, a well was installed on in the north-east corner of the site and samples taken using low-flow methods.

An analysis of sample results did not return evidence of contaminated land.

Given the findings, officers are now satisfied that contamination risks do not pose an impediment to the potential sale of the land.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

1. Property Plans/Images
2. Submissions Received (Including Officer Comment)
3. Confidential Attachment