

## **SALE OF LAND - 9A WANNAN COURT, KILSYTH**

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

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*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 land at 9A Wannan 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, ten (10) of which relating to 9A Wannan 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 Wannan 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 the land at 9A Wannan Court, Kilsyth (Reserve 1 on LP96923);***
- 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 Wannan Court, Kilsyth.

***Property details: 9A Wannan Court, Kilsyth***

Also known as:	Dorothy Olsen Reserve
Area:	1044sq.m.
Lot description:	Reserve 1 LP96923 Part Crown Allotment 40A Parish of Mooroolbark
Zone:	General Residential Zone 1 (GRZ1)
Overlays:	Design & Development Overlay Schedule 8 (DDO8), Significant Landscape Overlay Schedule 23 (SLO23)

9A Wannan Court (Dorothy Olsen Reserve) is zoned General Residential Zone 1 (GRZ1) for residential purposes, which it has in common with other residential properties in Wannan Court. Its location within a cul-de-sac off Liverpool Road, with no connecting roads or laneways to other residential streets means users of the land would primarily be residents on Wannan Court, or potentially those whose properties back onto the reserve. Submitters have indicated, however, that the property is accessed on occasion by residents of the Aged Care Home located on the western side of Liverpool Road, which would require the crossing of a busy road to access the land.

The property is a passive reserve, predominantly grassed and containing a number of established trees and shrubs, particularly at its frontage and along its eastern boundary. It does not contain any formal pathway, playground or recreational infrastructure. It's neat and well maintained appearance (lawn and vegetation) suggests that it is well cared for and likely receives a certain level of use, though officers are unable to quantify the extent of this.

The formal naming of the land 'Dorothy Olsen Reserve' was officially registered on 29/3/2001 2001 by notice in the Victorian Government Gazette (G13, page 553), and commemorates Dorothy Olsen, an earlier land holder who had created Wannan Court through subdivision.

Dorothy Olsen reserve has been mowed and broadly maintained for a number of years by residents of Wannan Court, which has resulted in it being omitted from Council's routine mowing schedule. Though officers cannot verify the exact duration of this arrangement, it has been for a substantial number of years.

Alternate public open space is available on Palm Grove, located within 68m as the crow flies of the reserve, or around 365m using the footpath network. Kilsyth Recreation Reserve (Pinks Reserve), which lies within 750m of Wannan Court is a large regional sporting precinct containing a sporting stadium, sporting fields and facilities for a number of different sporting activities. No main road or other barrier is required to be crossed by residents of Wannan Court to get to either of the alternate open spaces.

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 Wannan Crt in relation to other nearby open spaces

### **Assessment against principles of the Recreation Open Space Strategy**

Dorothy Olsen 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 relation to the characteristics of local parks, as listed below:

Principle - Local Park	Officer Comment relating to 9A Wannan Crt
Not on encumbered land	Dorothy Olsen 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 in Wannan Court lie within 145 metres of Dorothy Olsen Reserve.  All residences within Wannan Court also lie with 400 metres of an alternative

	<p>local park, Palm Grove Reserve; An active play space of approximately 2170 sq.m. containing playground equipment and informal play / ball sport opportunities.</p> <p>Palm Grove Reserve is better located (on the corner of Palm Grove and Kilsyth Avenue) to provide more convenient access and good recreational opportunities to a broader number of local residents than is the case at Dorothy Olsen Reserve.</p> <p>Dorothy Olsen Reserve's sale and therefore removal from the Open Space network would not cause any property (including those within Wannan Court) to fall outside the parameters of this principle.</p> <p>Wannan Court residents would not be required to cross a major road or other physical barrier to alternate open spaces.</p>
Centrally located in community activity node e.g. adjacent to sports, shop or community meeting facilities	<p>Dorothy Olsen Reserve's location within the cul-de-sac does not align with this principle.</p> <p>Palm Grove Reserve's location on the corner of Palm Grove and Kilsyth Avenue, and adjacent to Palm Grove Pre-school makes it more inviting and accessible to a wider range of community users than does Dorothy Olsen Reserve.</p>
Minimum size of one hectare	<p>Dorothy Olsen Reserve (at 1044sq.m.) does not meet this principle. Other nearby open spaces (including Palm Grove Reserve) also fail to meet the minimum one hectare criteria.</p> <p>The closest &gt;1 hectare open space to Wannan Court is Kilsyth Recreation Reserve at approximately 500m (though separated by busy Liverpool Road), or Pinks Reserve which lies approximately</p>



	750 metres to the south.
Minimum dimensions of 70 m in any direction	Dorothy Olsen 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 the land, at which time the land will no longer be considered to be public open space.

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 developer open space contributions 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 three of those speaking specifically in relation to the possible sale of 9A Wannan Court. A summary of the hearings relating to 9A Wannan 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; and
  - 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 Wannan 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 Wannan Court is justified for the following reasons:

- The area surrounding Wannan Court contains an alternative social recreational space (Palm Grove Reserve), located within 365m using the footpath network, which meets the open space requirements of the local residences, including those within Wannan Court;
- The reserve's location within the cul-de-sac acts to limit its accessibility to a broad range of community users, effectively limiting its use primarily to those residing in Wannan Court, or backing onto the reserve; and
- 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 the 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 Wannan 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 section 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 Wannan 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. Smaller isolated green spaces, such as 9A Wannan 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 the 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 areas 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 vicinity of Wannan Court are located within 400m of an alternate recreational open space option. The removal of 9A Wannan Court from the open space network would not cause any property to fall outside the Proximity parameters.

## ***Economic Impacts***

There are no economic impacts linked directly to the sale of 9A Wannan 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 Wannan 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 Wannan Court received 168 visits from 154 unique users.

### ***Summary information from the Shaping Yarra Ranges Page***

<b>Top Visited Pages</b> Summary information for the top five most visited Pages.			
<b>Page Name</b>	<b>Visitation %</b>	<b>Visits</b>	<b>Visitors</b>
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, twenty-three (23) of those relating either to 9A Wannan Court specifically, or to Council's proposal to sell the four lots subject of its Notice of Intention 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 Wannan Court, Kilsyth	10	0	10	-

**\*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 two neighbouring property owners have maintained the property (mowing and planting) for over 30 years.	<p>Council's Parks and Bushland Officers have advised that routine maintenance of 9A Wannan Crt, including mowing, has been undertaken by community for a substantial period of time.</p> <p>Accordingly, Council's maintenance regime for that park is very occasional and not tied to a regular schedule, unlike other open space lots of similar size.</p>
The land had environmental value. Future development of the site would cause vegetation loss, thus reducing the environmental value of the land	<p>Officers acknowledge that there are several large, established trees and shrubs on this site, some of which would likely be lost if the land is sold 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</p>



	<p>offset requirements. Plantings and improvements works at 150 Cambridge Road will also offset vegetation lost through the sale of this land.</p>
<p>Council has no right to sell the land, nor profit from its sale.</p>	<p>Dorothy Olsen Reserve was created by subdivision and acquired by Council in 1975, likely as part of a developer open space contribution requirement. Lots created through such process are transferred to Council and become Council owned. 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 &amp; 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>The sale of Wannan Crt Reserve would not cause there to be an undersupply of open space to this pocket when applying principles of the Recreation Open Space Strategy.</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</p>

	<p>with the replenishment of cash reserves required for purchase in the first instance – in line with Council’s resolution of 8 March.</p>
<p>Increasing unit development in the Court would mean the already problematic parking issue would be worsened.</p>	<p>If sold, any future development application would be subject to the planning restrictions relevant to its residential zoning. This would include the provision of onsite parking and an assessment of parking and traffic impacts on the street.</p> <p>Any current parking congestion issues should be raised with Council’s Traffic team who may be able to further investigate the issue and possible solutions.</p>
<p>There is limited open space availability in the area (particularly the Wannan Court side of Mt Dandenong Road)</p>	<p>Wannan Crt residences are adequately served by social recreation parks, with alternative open spaces and recreation reserves in near proximity, including Palm Grove Reserve (open space and playground - 70m as the crown flies, or 365m by road), Geoffrey Drive Reserve (open space and small playground 490m), and Pinks Reserve (major sporting and recreation precinct – 660m by road).</p> <p>Council’s Recreation &amp; 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>Dorothy Olsen Reserve’s removal from the Open Space network would not cause any property (including those within Wannan Court) to fall outside the parameters of this principle.</p>
<p>The land is well used by dog walkers and local children.</p>	<p>The level of maintenance undertaken on the reserve and its neat and tidy appearance suggests that it does receive some level of use. Its location</p>

	<p>within a quiet cul-de-sac, however, means this use would likely be limited to a relatively narrow user group, being the adjacent residences and others who reside in the court, and potentially those backing on to the reserve.</p>
<p>The land is visited by elderly residents of a nearby residential aged care facility.</p>	<p>Dorothy Olsen Reserve is the closest social recreational space to the Gracedale Grange residential aged care facility, with it situated approximately 230m from its Pleasant St entrance.</p> <p>Given its proximity to the aged care facility, and its quiet, well-maintained character, it is entirely possible that Dorothy Olsen Reserve is used on occasion as a quiet contemplative space by residents of the facility. However, the land is situated on the opposite side of busy Liverpool Road to the facility, which acts as a physical barrier and making access to the land more difficult.</p> <p>Two alternative open spaces, Palm Grove Reserve and Geoffrey Drive Reserve, are situated approximately 330m from the facility, both of which are also on the other side of Liverpool Road making access equally difficult.</p> <p>Open space provision on the western (aged care facility) side of Liverpool Road includes Kilsyth Recreation Reserve at 330m as the crow flies (415m by footpath network) and Kevin Court Reserve at 157m as the crow flies (365m using the footpath network).</p>
<p>Would support the sale of small allotments on the basis they are superfluous &amp; unused.</p>	<p>Dorothy Olsen Reserve's neat and well-maintained appearance shows evidence that it is cared for by local residents and likely used to some extent, particularly by those directly adjoining, or residing close by the land.</p> <p>From a strategic perspective, however, consideration must be given to whether the land is appropriately located to</p>

	<p>provide good and convenient access to a broad number of users (which we ideally seek from our local parks), or rather does it service only a small number of users? Council's Recreation &amp; Open Space Strategy (ROSS) Design Guidelines states that Local Parks (such as Dorothy Olsen Reserve) should be 'centrally located in a community activity node'. The Reserve's relatively isolated location within a cul-de-sac with no interconnectivity to surrounding neighbourhood, means the land does not meet this principle.</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 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>The land would likely be purchased by a developer and used for high density development.</p>	<p>Council does not intend to subdivide the property into smaller residential parcels prior to proposed sale. Upon sale (should Council resolve to sell), the land would be subject to ordinary planning controls applicable to its zoning.</p> <p>9A Wannan Court is zoned as General Residential Zone 1 (GRZ1) which it has in common with other properties located within the Court.</p>

Increasing residential density in the area (through dual occupancy subdivisions) increases the importance of maintaining and improving passive and active recreational open spaces.

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.

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 cash contributions 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 which is suitably located to provide good access to a broad 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.

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.

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

	<p>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>Locals should not have to lose their park to pay for Council's purchase of a large park which is more difficult to get to.</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 therefore it has been necessary to seek other options.</p> <p>The current funding model (which involves using the proceeds of (potential) land sales to contribute to funding the purchase) was put out for public engagement, before being adopted by Council on 8 March 2022. The funding proposal was strongly supported at the time.</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 Wannan 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</p>

	<p>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 provide the same community benefit as diverse and distributed Open Spaces.</p>	<p>Council's currently endorsed Recreation &amp; 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.</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 (former) public open spaces on the condition that proceeds from the sale are used for a permitted purpose under the provisions</p>

	<p>of the Subdivision Act, which can include purchasing additional open spaces, or improving 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 Wannan Court would be used to help fund the purchase of a larger, 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.</p>
<p>The community's maintenance regime (therefore little investment required by Council) aligns with Council's stated ambitions of "achieving best value and sustainable outcomes" with regard to open spaces.</p>	<p>Officers acknowledge the local community's contribution toward the ongoing maintenance of this land, and that this undertaking has saved Council in maintenance costs over a number of years, which in itself can be viewed as a value outcome at an operational level.</p> <p>From a strategic standpoint, Council also needs to consider whether the value tied up in the land represents best value to broader community as a local park (considering its limited accessibility to community, and the adequate open space provision in this area), or whether that value could be better served contributing toward the provision of a larger, more central and multi-functional open space which services a much broader user group, such as at 150 Cambridge Road.</p>



### ***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 Wannan Court. A summary of hearing is listed below.

<b>Submitter</b>	<b>Summary of hearing</b>
# 37 Colin Matheson	<ul style="list-style-type: none"><li>• Advised he is a 36 year resident of Wannan Court – located directly adjacent the reserve.</li><li>• Questions Council’s assertion that the land holds ‘limited community benefit’. Contends that Council failed to notify the community that the land is a park, as opposed to being underutilised land. The land is “actually used”.</li><li>• The land is well used and was planted out by him and other adjacent neighbour from tube stock, with trees now 50-60 ft tall.</li><li>• The land is visited by residents of Liverpool Road aged care facility (one having installed a seat). Many dog owners and children use the park also.</li><li>• Abutting owners have gate access onto the park. The land is mowed and maintained by him and other adjacent neighbour.</li><li>• The land attracts abundant bird/animal (possums etc) life – The submitter cited the loss of vegetation throughout the municipality due to 2021 storms as a reason to protect vegetation at this location.</li><li>• A prevalence of higher density residential in the area leads to the park being needed even more.</li><li>• Residents have purchased in the street with knowledge of the existence of the park – removing it would affect land values and local amenity.</li><li>• Council are the custodians of the park, and the land represents good value and meets the needs of the community.</li><li>• The land is place of recreation, relaxation – An open space for general use. The land doesn’t need swings on it – as there is an alternative park with swings 500m away, though kids can’t kick a ball around on that land.</li></ul>

	<ul style="list-style-type: none"> <li>• The land was originally given to Council as part of subdivision and should and should be retained - not given up for other land. The purchase of 150 Cambridge should not disadvantage another community. The submitter stated that he supported 150 Cambridge Road purchase, but he does not support selling Wannan Crt reserve as a way of securing that land.</li> <li>• Asserted that when you sell land, you can't get it back.</li> <li>• The submitter questioned the legitimacy of Council's legislative process.</li> <li>• The site being purchased by Council (150 Cambridge Road) is around 2.7km from the aged care facility and Wannan Crt residents. Residents can't be expected to walk there.</li> <li>• Expressed concern that vegetation would be lost if developed, which is contrary to Council statements around the importance of flora and fauna.</li> </ul>
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## **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.

The desktop review undertaken by Prensa identified that the site has been owned by Council since at least 1975 and comprised undeveloped vacant land prior to this time, as evidenced by aerial photographs reviewed dating back to 1962. Prensa's review found that the northern part of the site, and a large section of land north of the site was historically owned by a grocer and his wife (Olsen) from 1947 until 1976. The land appeared to have been historically subjected to land clearing, and may have historically been used for stock grazing. From 1975, the land was subdivided and the subject site listed as a reserve. Prensa's inspection of the site identified observations consistent with their desktop review and did not identify evidence of potentially contaminating features or land filling.

Based on the findings of the desktop and history review and Prensa's observations made during the site inspection, it was considered unlikely that previous activities have existed on site that would represent a high potential for contamination, or medium potential for contamination as described in PPN30 (Department Environment, Land, Water and Planning (DELWP) *Potentially Contaminated Land, Planning Practice Note 30, July 2021*). It was therefore considered that there is a low potential for historical and/or contamination to be present at the site. Contamination is unlikely to pose a risk of significant environmental liability based on the intended residential use of the site.

Given that further invasive ground testing was not a recommendation of the report, officers are satisfied that the low contamination risk does 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