

## **SALE OF LAND - 16 ELLIS COURT, MOOROOLBARK**

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Report Author: Coordinator Property  
Responsible Officer: Director Environment and 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 16 Ellis Court Mooroolbark. 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 Collage) at 150 Cambridge Rd, 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 the 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 Ellis Court specifically, and thirteen (13) relating to Council's proposal to sell land more generally. Three (3) 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 16 Ellis 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 16 Ellis Court, Mooroolbark (Reserve 1 on LP96049);***
- 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 a 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 hectares of 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 entirely appropriately, 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 3 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; 16 Ellis Court, Mooroolbark.

### ***Property details: 16 Ellis Court Mooroolbark***

Also known as:	Ellis Reserve
Area:	2343sq.m.
Lot description:	Reserve 1 LP96049 Part Crown Allotment 22C1&C2 Parish of Mooroolbark
Zone:	Low Density Residential Zone (LDRZ)
Overlays:	Significant Landscape Overlay Schedule 22 (SLO22)

The location of the reserve at 16 Ellis Court at the end of the cul-de-sac is such that it is likely that only residents of Ellis Court would enjoy access to the land. The area has a number of smaller open spaces, with Luke Polkinghorne Memorial Reserve (currently receiving a play space upgrade) located just 90 metres west of the entrance to Ellis Court and Tiverton Reserve located 80 metres to the east.

A Melbourne Water owned drainage pond/easement located less than 200m from the entrance to Ellis Court provides an additional open space containing fauna habitat opportunities and perimeter walking path. In addition, lying approximately 240m to the north of Tiverton Reserve, Pacific Reserve provides an additional 1.2 hectares of vegetated green space easily accessible by residents of Ellis Court.



*Location of 16 Ellis Court in relation to other nearby open spaces*

The land is located within a Low-Density Residential Zone (LDRZ), which it has in common to all other properties within Ellis court. The purpose of the LDRZ is to ensure land within that zone remains committed to low density, single dwelling residential use as the primary function. This effect of the LDRZ zoning protects the larger backyards of established properties (roughly ½ acre in size) in this location, making access to open space less critical from a recreational perspective. If sold, 16 Ellis Court would be afforded similar protections under the zoning.

There are a number of well-established trees and shrubs on the land, some of which would likely be lost to development if the land were sold. As the land is isolated (i.e. has no adjacency to other bushland reserves) it is therefore not considered to be of significant habitat value as an individual lot.



Council last undertook an engagement process in respect of this land in 2015, where it lodged an application under 24A of the Subdivision Act to remove the reserve status from the land. A separate statutory process would have been instigated to determine whether the land should or should not be sold. Unlike current proceedings however, the proceedings of 2015 were not tied to a broader recreation open space objective and so was not considered to hold a solid enough strategic basis to support the potential sale at that time. The application to remove the reserve status was withdrawn accordingly.

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.

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

Council's currently endorsed Recreation & Open Space Strategy 2013-2023 (Precinct D – Chirnside Park and Mooroolbark Action Sheet) in describing the adequacy of open spaces within the precinct provides in part:

*"There is an oversupply of local pocket parks in Mooroolbark. A review into the need for these park areas is required to ensure investment is targeted in valuable social recreation parks and that the future of surplus land is considered."*

Though no particular reserve is mentioned in relation to this statement, Ellis Reserve's less-than-optimal location at the end of a cul-de-sac, limited opportunity for broader community usage largely brought about by its location, and its relatively close proximity to a number of other more accessible community open spaces mean that it could reasonably be seen to fall within the meaning of that statement.

Ellis 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 16 Ellis Court
Not on encumbered land	Ellis Reserve meets this principle.
<p>In urban areas, provide within 400 - 500 m of every household (without having to cross a major road/railway or other major physical barrier)</p>	<p>All residences in Ellis Court lie within 250 metres of Ellis Reserve.</p> <p>All residences within Ellis Court also lie with 400 metres of alternative local parks, being:</p> <ul style="list-style-type: none"> <li>• Luke Polkinghorn Reserve - an active play space; and,</li> <li>• Tiverton Reserve - a passive recreational space</li> </ul> <p>Both alternative open spaces are better located (fronting Taylor Rd) to provide more convenient access and good recreational opportunities to a broader group of residents than is the case at Ellis Reserve.</p> <p>Due to Ellis Reserve's location (at the end of a cul-de-sac), its sale and therefore removal from the Open Space network would not cause any property (including those within Ellis Court) to fall outside the parameters of this principle.</p> <p>Ellis Court residents are not required to cross a major road or other physical barrier to access either of these alternate open spaces. Although Taylor Road must be crossed by residents of Ellis Court to access to Tiverton Reserve, it is not considered a Major Road in this context.</p>
Centrally located in community activity node e.g. adjacent to sports, shop or community meeting facilities	<p>Ellis Reserve's location at the end of the cul-de-sac does not meet this principle.</p> <p>Luke Polkinghorn Memorial Reserve and Tiverton Reserve do not strictly meet this criteria either, however both are located on a thoroughfare (Taylor Rd) making them more inviting and accessible to a broader range of community users than Ellis</p>



	Reserve.
Minimum size of one hectare	<p>Ellis Reserve (at 2343sq.m.) does not meet this principle. Likewise, Luke Polkinghorn Reserve (2015sq.m.), and Tiverton Reserve (at just over 0.5 hectares) being the nearest alternate open spaces, also do not meet the minimum one hectare criteria.</p> <p>Victoria Reserve, a largely vegetated, passive recreation open space of 1.19 hectares is located 335m by road to the north of the Ellis Court entrance, and easily accessed by residences nearby Ellis Reserve..</p>
Minimum dimensions of 70 m in any direction	<p>As a rectangular shaped lot, Ellis Reserve has side boundary dimensions of approximately 65 metres but front and rear boundary dimension of around 34 metres.</p> <p>Similarly, Luke Polkinghorn Reserve (side boundary dimensions of 68, but front and rear at approx. 31m) fails to meet the criteria. Tiverton Reserve has a road frontage of 118 metres, but a depth varying between 15 metres and 55 metres). Neither of these nearby alternates strictly meet the ideal size parameters.</p> <p>Victoria Reserve, however, located 335m to the north of Ellis Court and easily accessed by nearby residents of Ellis Reserve, meets this criteria for a 'local park'.</p>

***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 would remove the reserve status from each parcel, 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 Rd, 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 (3) of those speaking specifically in relation to the possible sale of 16 Ellis Court. A summary of the hearings relating to 16 Ellis 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 16 Ellis Court, Mooroolbark 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 16 Ellis Court is justified for the following reasons:

- The area surrounding Ellis Court contains a number of active open spaces (including the upgraded Luke Polkinghorn Memorial Reserve play space), and passive, green open spaces which meet the open space requirements of the local residences, including those within Ellis Court. Existing half acre properties within Ellis Court (which include covenants restricting subdivision) reduces the necessity of recreational open space (local parks) provision within the street;
- The reserve's location at the far end of the Ellis Court acts to limit its accessibility to a broad range of community users, effectively limiting its use to those residing in Ellis Court;
- The general amenity of the area would not be significantly impacted by the sale with any future development on the site subject to planning controls under the Low Density Residential Zone, which promotes low density, single dwelling residential use as the primary function. At just over ½ acre, the lot size is similar to established properties on the street and as such, officers are satisfied the land could be developed in a way that positively contributes to neighbourhood character and does not significantly exacerbate traffic issues in the street; 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 therefore 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 Council's 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 16 Ellis Court) must be used by Council either to buy land for use 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 16 Ellis Court contains several large, mature native 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 land would be offset by plantings at the 150 Cambridge Road site (3.6 hectares) being purchased by Council. Smaller isolated green spaces, such as 16 Ellis 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 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 one hectare in size.

All properties within Ellis Court (nearby to Ellis Reserve) are located within 400m of other alternative active and passive recreational open space options. The sale and therefore removal of 16 Ellis 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 16 Ellis 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 16 Ellis 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 16 Ellis Court received 188 visits from 173 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 had been received, twenty-three (23) of those relating either to 16 Ellis Court specifically, or to Council's proposal to sell the four lots subject of its Notice of Intention more generally (i.e. all four properties).

The breakdown of submissions is as follows:

<b>Property submitted on</b>	<b># Submissions</b>	<b># Supporting sale</b>	<b># Opposing sale</b>	<b>No opinion given</b>
General comment relating to all four properties subject of Council's Notice of Intention to sell	13	7*	5	1
16 Ellis Court, Mooroolbark	10	1	9	-

**\*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 Rd 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
<p>There are legal defects in Council’s statutory process – including:</p> <ul style="list-style-type: none"> <li>• No resolution of Council to authorise giving notice of intention to sell</li> <li>• Improper use of sale proceeds - Council proposes using the proceeds of sale of an open space to repay an ‘internal debt’ (cash reserves used to part fund the purchase of 150 Cambridge Rd as per funding model adopted by Council 8 March 2022)</li> </ul>	<ul style="list-style-type: none"> <li>• Council has sought legal advice in relation to its process and is satisfied that it has at all times acted in accordance with its statutory obligations.</li> </ul> <p>At its meeting on 8 March 2022, Council resolved, amongst other things, to (emphasis added):</p> <p>‘Approve the <b>commencement of the statutory processes</b> 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 <b>Section 114 of the Local Government Act 2020.</b>’</p> <p>Council considers that by resolving to approve ‘the commencement of the statutory processes required’ for the sale of the Council Land in accordance with s 114 of the LGA, Council has authorised officers to carry out the actions specified in s 114(1), including publication of a notice of intention to sell the Council Land in accordance s 114(1)(a).</p> <p>Notwithstanding this, Council’s Chief Executive Officer has the delegated power to issue a public notice under s 114(2)(2) of the LGA, thus negating the requirement for a Council resolution to do so; and</p>

	<ul style="list-style-type: none"> <li>• Due to 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 resolved on 8 March 2022 that \$3.47 million of the purchase price will be funded from Council's cash reserves, creating the 'internal' debt' referred to by a submitter – to be later repaid partly through the sale of (former) public open spaces.</li> </ul> <p>As the internal debt is being raised to fund the acquisition of land to be used for public open space, allocating the proceeds of the sale of the Council Land towards the repayment of this debt is a legitimate and permitted use of these funds under section 24A(8)(b)(iii) of the Subdivision Act.</p> <p>Legal advice received by Council re-affirms its position on this matter.</p>
<p>Sale of this land is inconsistent with Council's Planning Scheme.</p>	<p>The land is zoned as Low Density Zone, which it has in common with other properties in Ellis Court. The purpose of the LDRZ is to ensure land within that zone remains committed to low density, single dwelling residential use as the primary function, therefore protection the larger backyards of ½ acre blocks at this location. This similarly applies to 16 Ellis Court. 16 Ellis Court, however, is not encumbered with the same restrictive covenant affecting building form as other properties in the street.</p>
<p>It is highly important to retain trees, particularly given recent storm damage and nearby development causing loss of vegetation.</p>	<p>Officers acknowledge that there are several large, established trees and shrubs on this site, some of which would likely be lost if sold and developed for housing. Any development occurring at the site would be subject to planning provisions which would seek to protect existing trees</p>

	<p>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>Biodiversity and contamination aspects have not been considered as part of this process.</p>	<p>Similarly to its investigation of 2015, Council's current investigations into the possible sale of this site has included a Preliminary Site Investigation report undertaken by Prensa Pty Ltd, which has concluded that there is low potential for historical and/or current contamination to be present at the site based on their desktop and site observations and investigations into the site history, meaning that contamination is unlikely to pose a risk of significant environmental liability based on the intended residential use.</p> <p>Further invasive ground testing was not a recommendation of the report.</p>
<p>Sale of this land would be inconsistent with Council's commitment to 'Living Melbourne'.</p>	<p>Living Melbourne is aspirational and focused on building capacity in the public and private sectors for improved urban greening outcomes. It does not instruct on the sale of public open space.</p> <p>Though the principle of Living Melbourne should be a consideration when open spaces are being considered for sale, it is equally important to understand why the land is being considered for sale and what the funds generated from the sale will be used for.</p> <p>If the land is being sold strategically to fund the acquisition or enhancement of other open space in the local area, and this acquisition will produce a net gain for community health, biodiversity, and environment, it can be strongly argued that Council is in-fact acting in accordance with the goals of Living Melbourne.</p>

<p>Repeated investigations into the potential sale of this land are a vexatious attempt to wear down local residents, and breaches past commitments by Council to put a halt to sale procedures.</p>	<p>Council last undertook an engagement process in respect of this land in 2015, where it lodged an application under 24A of the Subdivision Act to remove the reserve status from the land. A separate statutory process would have then followed to determine whether the land should or should not be sold.</p> <p>Unlike current proceedings however, the proceedings of 2015 were not tied to a broader recreation open space objective, and so was not considered to hold a strong enough strategic basis to support the potential sale at that time. The application to remove the reserve status from the land was withdrawn accordingly.</p> <p>Importantly, the current processes are based on current circumstances, and any historical proposals in relation to the land should not preclude Council from undertaking fresh/periodic assessments of its landholdings.</p>
<p>Council has engaged in stealth by removing and not replacing playground equipment and park furniture on the land, therefore changing the character of the land. The usability of the land should be improved improving access from the road and reinstating basic amenities.</p>	<p>Council's 'Play space Plan 2019-2029' provides a framework for assessing service need and provision over time, considering numerous factors including geographic spread and siting, demographic data and other Council strategies relating to health, wellbeing, access, and equity. The plan also identified gaps in play space provision and strategies to meet current and future needs.</p> <p>The plan did not identify 16 Ellis Court as a site required to address a known gap in play space provision. It did, however, recommend the renewal of the Luke Polkinghorn Reserve play space, (located less than 90 metres from the entrance to Ellis Court). Play space improvement works are being undertaken at that reserve currently.</p>
<p>Council has failed to prepare and adopt</p>	<p>The contract of sale for 150 Cambridge</p>

<p>a revised budget as required by section 95 of the Local Government Act 2020.</p>	<p>Road provides for payment of a deposit of 10% on exchange, with the balance of \$5,796,000 due on settlement, which is due to occur toward the end of 2022.</p> <p>As this payment is due during the year ending 30 June 2023, the expenditure is correctly accounted for, as expenditure on the purchase of a new Council asset, in Council's budget for the year ending 30 June 2023 (page 71). No budget revision was necessary.</p>
<p>Council's prior commitment to a funding model which includes the sale of land means it cannot fulfil its obligations to consider submissions without bias.</p>	<p>Council's resolution of 8 March approved the commencement of statutory processes to investigate the sale of the four properties to be undertaken in line with provisions of the Local Government Act and Council's Public Engagement Policy. Despite Council adopting a funding model and nominating the four properties to become subject to sale procedures, no decision regarding whether or not the subject land parcels would be sold had been made at that time.</p> <p>It is clear from the wording of the 8 March resolution that Council intended complying with the requirements set out in s 114 of the Local Government Act 2020 before entering into any contract for the sale of the Council Land, and any such contract will be valid.</p> <p>Council's adoption of its funding model (8 March 2022) included land sales comprising one element (subject to statutory process), with the use of future Public Open Space contributions generated from the Walling Ward providing a further option. This means the purchase of 150 Cambridge Road is not entirely dependent upon the sale of land, thus allowing Councillors to consider the potential sale of each property entirely on its merits without bias.</p>
<p>The sale of the land would exacerbate</p>	<p>A traffic investigation has commenced</p>

<p>the current peak traffic chaos in Ellis Court.</p>	<p>into traffic movements along Taylor Road at peak school pick-up/drop-off hours which may result in changes to traffic flow or parking availability in that area.</p> <p>Though not specifically part of the trial, if Ellis Court is seen to be impacted by traffic and parking during this investigation, Council's Traffic Engineers can look at congestion mitigation measures in that court.</p> <p>With the Low Density Residential zoning of the land supporting single dwelling development, and its size reasonably able to accommodate parking on-site, it is unlikely that the future development of the land would negatively impact parking congestion in the street.</p>
<p>Council cannot legally apply either the open space contributions it receives or the proceeds of the sale of former open space to make up for past deficiencies in open space - which it gave as its rationale for buying 150 Cambridge Road</p>	<p>Council's report of 8 March stated, in part:</p> <p>"Analysis of open space provision for the Kilsyth precinct as part of recent work for updating the Recreation and Open Space Strategy identified 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>From this it is clear that in considering whether or not to purchase 150 Cambridge Road, Council has had regard to <b>current</b> and <b>future</b> open space needs in the Kilsyth area, in which 150 Cambridge Road is located, and accordingly the purchase is consistent with the Recreation and Open Space Strategy.</p>
<p>The land has been maintained by</p>	<p>Ellis Court is serviced by Council on a three week cycle of mowing, brush</p>



<p>adjacent owners for over 16 years.</p>	<p>cutting, weed spraying and litter collection. The frequency of service, however, can fluctuate through seasons where grass growth is restricted.</p> <p>Given its interface to neighbouring properties (particularly to #14 where no dividing boundary fence exists), it is quite possible that adjacent owners have contributed to maintaining the land over time.</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>16 Ellis Court is zoned as Low Density Zone (LDRZ), which it has in common with other properties located within Ellis Court. The purpose of the LDRZ is to ensure land within that zone remains committed to low density, single dwelling residential use as the primary function.</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 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 Rd, Council would seek land suitably located to service a broader section of the community.</p>

	<p>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, such as Council's upgrade of the play space at Luke Polkinghorn Reserve, located less than 100 metres from the entrance to Ellis Court.</p> <p>Over the last five years Council has approved approximately 350 dwelling applications, with 290 additional houses having 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 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>In favour of selling the land to purchase 150 Cambridge Rd based on:</p> <ul style="list-style-type: none"> <li>• Despite living nearby, they didn't know the land was there;</li> <li>• There are other active and passive open space alternatives nearby; and</li> <li>• They would get more use from the Cambridge Rd site</li> </ul>	<p>The Ellis Reserve's location in the bowl of the court means that it is likely to be accessed exclusively by residents of Ellis Court.</p> <p>Luke Polkinghorn Memorial Reserve, located on Taylor Rd 90m from Ellis Court, is more suitably located for broader community use and is currently subject to a play space upgrade. Tiverton Reserve, located 95 metres west of the entrance to Ellis Court, also</p>

	<p>fronting Taylor Road, provides an additional passive recreational open space opportunity.</p>
<p>Agrees with selling land to cover the purchase price of 150 Cambridge Rd only. Would not like to see Council generate excess funds to be received through the sale 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 Rd site, which it has resolved it will initially cover using cash reserves. Funds realised through the sale of 16 Ellis 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 Rd (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 of the Subdivision Act).</p>
<p>Council has not considered any alternative funding proposal for the purchase of 150 Cambridge Rd.</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 Rd, 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</p>

	<p>public engagement, before being adopted by Council on 8 March 2022. The funding proposal was strongly supported at the time.</p> <p>The funding proposal was endorsed by Council on 8 March 2022</p>
<p>Larger consolidated Open Space (such as 150 Cambridge Rd) 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 Rd 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 of the Subdivision Act, which can</p>

	<p>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 16 Ellis 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>
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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, three (3) submitters spoke in support of their submissions in relation to 16 Ellis Court. A summary of hearings is listed below.

Submitter	Summary of hearing
# 35 Stephen Wyatt	<ul style="list-style-type: none"> <li>• Advised of his industry experience, being a former employee of Yarra Ranges Council and Shire of Lillydale;</li> <li>• Asserts that Council should not sell any open space;</li> <li>• Ellis Reserve should improve the site for better use as a passive park, and tree canopy retained;</li> <li>• Asserts 5 minute time limit cannot do justice to his submissions and constitutes a breach of procedural fairness. Stated he would focus on 4 of 12 objections contained in his written submission relating to legal defects in Council’s process; <ul style="list-style-type: none"> <li>○ Council did not resolve to give notice of intention to sell. Staff authority does not extend to investigating /</li> </ul> </li> </ul>

	<p>advertising sale;</p> <ul style="list-style-type: none"> <li>○ Council's proposal to use, and then replenish cash reserves through the sale of open spaces is an illegal use of the proceeds of sale of open spaces – which amounts to Council repaying debt;</li> <li>○ Council cannot apply either the open space contributions or the proceeds of the sale of open space to make up for past deficiencies in open space. Council's position is made clear on pg 32 of Council's Public Open Space Contributions Policy; and</li> <li>○ Council has not revised and adopted its budget through proper process – as required under the Local Government Act.</li> </ul> <ul style="list-style-type: none"> <li>• By the time the land becomes available to actually sell (following planning procedures/appeals etc) an additional \$3M will have come into the Open Space fund;</li> <li>• This is Council's 3rd attempt to sell the site. After 2nd attempt, residents were advised there would be community consultation regarding the land and that sale/planning procedures were unlikely to resume;</li> <li>• Advised of a 2015 email from the Ward Councillor who said he'd 'do anything possible' to stop procedures at the time;</li> <li>• Mentioned current FOI appeal process which has caused a document regarding Council's past reserve removal procedures;</li> <li>• Referred to past community survey which saw strong support for the purchase of Cambridge Rd. By contrast, he asserts 100% of affected residents are opposed to the sale of their reserves; and</li> <li>• Advised that the land should be retained and improved as a passive reserve. The area does not need another playground as there is one nearby.</li> </ul>
<p>#25 Timothy Heemskerk</p>	<ul style="list-style-type: none"> <li>• Has lived in the municipality his whole life, but is recent resident of Ellis Court;</li> <li>• Advised he has 7 primary areas of concern (as outlined in his submission) but chose to focus on 3 due to time constraints; and <ul style="list-style-type: none"> <li>○ Disingenuous consultation. Council has not engaged in an open and genuine approach, effectively making the issue a popularity contest between supporters of purchasing 150</li> </ul> </li> </ul>

	<p>Cambridge Rd and opposers of land sales; and</p> <ul style="list-style-type: none"> <li>○ All open spaces should be kept. Increasing densification of the neighbourhood and no new open spaces are being made available to local community.</li> <li>▪ Queries the social justification for local parks contained in the report which is contrary Council's proposal to sell;</li> <li>▪ Cites increase development in the local Kilsyth area; and</li> <li>▪ Does Council really expect people to drive to Cambridge Rd land, to then walk – or does it expect people to walk there?</li> <li>○ Land contains significant vegetation; and</li> <li>○ Loss of canopy in the area.</li> </ul> <ul style="list-style-type: none"> <li>• Asserts the land should be retained and improved for the benefit of future generations</li> </ul>
<p>#28 Jill Jackson</p>	<ul style="list-style-type: none"> <li>• Has been a resident of Ellis Court since 1970s;</li> <li>• Objects to proposed sale and asserts there is a perceived bias with council linking the purchase of 150 Cambridge Rd to the four land sales. Council is not able to consider the future of each land parcel on its merits;</li> <li>• Noted that previous attempts by Council to remove reserve status and sell the land has been opposed;</li> <li>• Disagrees with Council's assertion that the land has limited community benefit. The land provides an environmental benefit; <ul style="list-style-type: none"> <li>○ Trees, grasses, birds, animals, powerful owl in the area; and</li> <li>○ Vegetation, tree canopy, environmental diversity</li> </ul> </li> <li>• Council's Environmental Strategy prioritises improvement of vegetation in urban forests – Selling this land is in conflict with this;</li> <li>• A focus on greening suburbs is required;</li> <li>• Significant vegetation losses occurring have been further impacted by June 2021 storms. 3.8% loss of vegetation 2004-2018. The Age newspaper describing vegetation loss in Yarra Ranges Council greater than any other municipality</li> </ul>



	<ul style="list-style-type: none"> <li>• Small parks provide respite for the community;</li> <li>• Council's assertion that vegetation lost at the reserve would be offset at 150 Cambridge Road is not reasonable. The establishment of tree canopies takes a long time to develop;</li> <li>• Ellis Reserve is one block away from Melba Ward, which is a high development area. Ellis Reserve serves as a place at which residents from those developments will visit and play;</li> <li>• The land provides a community and public health benefit. The submitter's children played there;</li> <li>• Luke Polkinghorn Reserve is nearby, but provides a different purpose to Ellis Reserve. People need quiet, passive, contemplative spaces; and</li> <li>• Elderly residents can't walk to the Cambridge Road land.</li> </ul>
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***Supplementary Submitter Enquiry***

Following the Submissions Hearing Meeting, a submitter forwarded a supplementary comment as an adjunct to their original submission, summarised as follows. Note: this was received after the conclusion of the original Submission period.

Submitter Query	Officer Response
<p>The submitter questions the validity of Council's reporting of \$2.97 million being available in Walling Ward Public Open Space funds, when its Budget documentation indicates that at the end of 2021, \$10,705,000 was available in Open Space funds available for open space purchase, with \$2,936,000 having been accumulated through the year.</p> <p>The submitter contends there must be better funding options.</p>	<p>The figure of \$2.79 million stated in Council's reports of 8 February, 8 March and 15 June, reflects the Open Space Fund availability for Walling Ward. It does not represent the Open Space Fund availability across the municipality as a whole.</p> <p>Council has adopted the practice of funding the purchase of land for public open space with public open space contributions derived from the Ward in which that land is located. The rationale behind this practice is that the Public Open Space (POS) contributions collected in areas which have experienced increased housing density through subdivision (as is the case in Walling Ward) will enjoy the benefits of new or improved open spaces funded by the POS Contributions collected from developers subdividing land in those</p>

	<p>areas.</p> <p>Although not referred to in Council's POS Strategy, there is nothing in the POS Strategy which is inconsistent with this practice. That is, there is nothing improper in Council's decision to apply only POS Contributions collected in respect of subdivisions in the Walling Ward towards the cost of purchasing 150 Cambridge Road, which is located in that Ward.</p> <p>Estimates (based on recent trends) are that the Open Space Fund for Walling Ward is expected to grow by around \$1M per annum, with those funds to be used within Walling Ward.</p>
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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 through 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 for residential purposes.

The desktop review undertaken by Prensa identified that the site has been owned by Council since at least 1973 and comprised undeveloped vacant land prior to this time, as evidenced by aerial photographs reviewed dating back to 1964. Prensa's observations indicated that the site was vacant and that the land use did not have 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