

Submissions [Personal Information Redacted]

Relating to 16 Ellis Court, Mooroolbark

| No. | Name of Submitter | Submission | Summary | Officer comment |
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| 1. | [REDACTED] | Are these blocks going to be subdivided? If so how big would they be and how much? | <i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i> Received via web-form | Council does not intend to subdivide the lots into smaller residential parcels prior to proposed sale (aside from annexing 2600m ² of the Tinarra Crt site to allow for the retention of a public walkway). Upon sale, each land parcel would be subject to ordinary planning controls applicable to its zoning. |
| 2. | [REDACTED] | Selling any reserve land should NOT EVEN BE CONSIDERED. | <i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i> Received via web-form | |
| 3. | [REDACTED] | I find it disturbing that these parcels of land will probably be sold to developers for high density living projects. From looking at the photos, they seem to be perfectly suited green spaces for locals to use for recreation and for habitat for animals. The trees also seem to be significant, and private owners would most likely remove them, reducing the environmental value of the area. | <i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i> Received via web-form <ul style="list-style-type: none"> Blocks hold recreational & environmental value | Council has no intention of subdividing the land into smaller parcels prior to sale. Each of the land parcels are zoned consistently with the underlying residential zone of the area in which they are located, and so are subject to the same planning restrictions and/or development opportunities as neighbouring properties. Any proposal to remove trees/vegetation would be subject to ordinary planning controls and restrictions for properties within that residential zone. |
| 4. | [REDACTED] | <i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i> I think it's the best option to sell the above 4 parcel of land to be able to buy 150 Cambridge Road site. | <i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i> Received via web-form | |
| 5. | [REDACTED] | I support the sale of small allotments assuming they are superfluous & unused, but note that for any land taken as a public open contribution the proceeds must be directed to the provision of public resort & recreation...other parks & public space | <i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i> Received via web-form | All lots subject to this proposal are Reserves on title with evidence suggesting that all were acquired through developer open space contribution requirements at the time of subdivision. 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. 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 Rd site (as parkland or recreational space). Council's intended use of proceeds from the sale of 'public open spaces' meets Council's obligations under section 20(2) of the Subdivision Act 1988. |

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| 7. | [REDACTED] | <p>Do Not sell this land.</p> <p>It will go to developers and be littered with shit units straight away. Keep the land vacant and green. The council owes this to us. You should be ashamed for even considering selling this land</p> | <p><i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i></p> <p>Received via web-form</p> | <p>Any future application to develop any of the properties would be subject to the planning controls and restrictions applicable under the residential zoning of the land.</p> |
| 8. | [REDACTED] | <p>I am in favour of selling any or all of these parcels of land.</p> | <p><i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i></p> <p>Received via web-form</p> | |
| 12. | [REDACTED] | <p>Stop selling our green spaces. There is less impact selling 150 Cambridge Rd than the four smaller parcels of land. Your just robbing Peter to pay Paul. Our rates are already exorbitant - you do not need to sell these blocks to purchase 150 Cambridge Rd.</p> <p>We need the reserves - do not turn us into an urban space. Apart from the residents that enjoy the reserves the trees provide nesting hollows for wildlife. Council has not made an effort to remove dangerous trees in this area, yet now you are more than happy to cut down the healthy trees that remain. There are still dead trees leaning on one another along Cambridge Rd that could fall at any minute.</p> <p>The extra traffic cannot be accommodated, it is already extremely dangerous trying to cross Cambridge Rd near Pembroke Rd due to traffic flow. It's just a matter of time before someone gets hit by a car or a falling tree on Cambridge Road - how about you focus on the safety of the existing residents.</p> | <p><i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i></p> <p>Received via web-form</p> <ul style="list-style-type: none"> • Rates money should be used to purchase Cambridge Rd • Council should prioritise tree safety and traffic issues along Cambridge Rd | <p>As of early 2022, Councils Open Space Fund reserve for Walling ward (from which it can purchase and/or improve open spaces) held a balance of \$2.79 million, which is some way short of the purchase price for the former school site at 150 Cambridge Rd.</p> <p>Council's purchase of the land will save the former school site from future residential development of significant scale, thus lessening traffic impact on the Cambridge Road / Pembroke road. Council's ownership of the land will over time allow for significant improvement and planting opportunities.</p> |
| 15. | [REDACTED] | <p>I am in favour of the proposal to sell all these blocks</p> | <p><i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i></p> <p>Received via web-form</p> | |
| 16. | [REDACTED] | <p>I live within walking distance to Ellis Court and I often park there at school pick up time. I had not realised that there was an empty block there that was publicly usable until I heard of it in the consultation about the Cambridge Rd plans. I had previously walked past, looking for a walk-through to the court behind or to the school, and didn't enter the block to investigate further because the block appeared to me that it could be privately owned already.</p> <p>I am in support of selling this land to assist in funding the purchase of Cambridge Rd. If I am looking for parkland for recreation there is a small park available very close by on Taylor Rd, along with other bushy areas near the school and in the Blue Ridge neighbourhood. I will get more use of the land at Cambridge and therefore if you propose selling the Ellis Court block to fund it then I support the proposal. Thank you.</p> | <p><i>Submitting on: 16 Ellis Crt, Mooroolbark</i></p> <p>Received via web-form</p> <ul style="list-style-type: none"> • Support on the basis the land currently looks to be privately owned • Would get more use from Cambridge Rd site | <p>Luke Polkinghorn Memorial Reserve, which is more centrally located to allow for broader community use and is currently subject to a playspace upgrade, is located only 90m from the entrance to Ellis Crt.</p> |

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| 21. | [REDACTED] | <p>Objection to the Notice of Intention to sell 16 Ellis Court, Mooroolbark.</p> <p><i>A written submission was sent as an attachment via the webform and is attached to this document as <u>Submission 21</u></i></p> | <p><i>Submitting on: 16 Ellis Crt, Mooroolbark</i></p> <p>Received via web-form.</p> <ul style="list-style-type: none"> • Growing prevalence of multi-unit developments with little/no green space provision • Questions Council use of Open Space Contributions from developers • Smaller parks are often preferred by locals for picnics/kicking footy etc. • Loss of open spaces and approval of new estates are damaging to the character of the Yarra Ranges and are inconsistent with the Council's commitment to Living Melbourne. • Repeated attempts to sell the land create emotional distress and is a breach of trust to residents | <p>Developers are required to provide to Council a Developer Open Space Contribution amounting to 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 numerous smaller land parcels which service only a relatively small section of the community, Council's preference is often to accumulate funds so that it may strategically acquire land for larger, centralised open spaces which create greater opportunity for diverse uses and activities, and which are located appropriately 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 the nearby Luke Polkinghorn Reserve play space redevelopment on Taylor Rd. The Open Space Fund reserve for Walling ward currently contains approx.\$2.79M, which is far short of the \$6.44M purchase price for the former school site at 150 Cambridge Rd.</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 investigate 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 strong enough strategic basis to support the potential sale at that time. The application to remove the reserve status was withdrawn accordingly.</p> <p>Further officer response as per response to submitter 35.</p> |
| 22. | [REDACTED] | <p>I agree with Council's intention to sell 1 or more of the 4 council owned small blocks of land, hopefully only 182-184 Cambridge Road, Kilsyth, as well as the block at 'Part (2600m2) of 9A Tinarra Court, Kilsyth will be needed to be sold. Below I explain why I particularly mention those 2.</p> <p>The small block at 182-184 Cambridge Road, Kilsyth is fairly insignificant as it is only used as a 'short cut' through' to Morrisson Crescent which is fully accessible only a few metres further along plus this site is underutilized as it contains no play equipment, no drive through, no public toilets, taps, buildings nor any public amenities upon it at all and should 150 Cambridge road become a Reserve or similar, considering it is only a very short walk from 182-184 Cambridge Road, will provide and offer countless more lifelong outdoor public social benefits and positives than any negatives that may result from the sale of 182-184, which is around 14 times smaller in size than 150 Cambridge.</p> <p>Also, the sale of 'Part (2600m2) of 9A Tinarra Court, Kilsyth will still leave residents with close and easy access on foot to use and enjoy</p> | <p><i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i></p> <p>Received via web-form</p> <ul style="list-style-type: none"> • Agrees in principle to selling of land to help fund the purchase of 150 Cambridge Rd, though contends only 2 need to be sold to raise adequate funds (182-184 Cambridge Rd, and Part 9A Tinarra Crt). • Does not agree with Council raising more funds than is needed for the purchase. | <p>Once having expended the balance of the Walling ward Open Space Fund reserve, Council would still require an additional \$3.65m to secure the purchase of the 150 Cambridge Rd site, which it will fund initially using cash reserves.</p> <p>The four properties being investigated (if all were to be sold) would realise around \$4.5m. As proceeds 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). Any amount raised over and above that which is needed to purchase 150 Cambridge Rd (purchase price and associated costs), would be either directed to the Open Space fund, or used for additional improvements to the land.</p> <p>Council will consider and make a decision regarding whether it is to sell each of the four land parcels separately, and entirely on their own merits.</p> |

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| | | <p>the adjoining open space block that runs into Belinda Close-from 9A Tinarra Court as only part of the 9A Tinarra block is intended for sale</p> <p>The sale alone, of the 2 addresses mentioned above, according to calculated and relevant advice received will comfortably raise enough funds, more than is needed it appears, to comfortably meet the purchase price of 150 Cambridge rd, taking into consideration the financial status of the Walling Wards open space purse combined with accumulating compulsory developer financial contributions.</p> <p>I also agree with Council's proposed intention to sell, only if need be though, of 1 or more of the other 2 small blocks of council owned land mentioned as neither of these other 2, addressed at: 9A Wannan Court, Kilsyth and 16 Ellis Court, Mooroolbark, have any play equipment on them, nor public amenities nor public toilets nor any building what so ever on them either and all of which are surrounded on 3 sides by existing residential properties, near all fenced.</p> <p>I am just not sure as to whether it could be justified that the need be there to have to sell all 4 as in my opinion, I don't think that we should take and use too much more than is needed to effect the purchase of 150 Cambridge road and immediate associated costs.</p> <p>Regards [REDACTED]</p> | | |
| 23. | [REDACTED] | <p>I agree with Council's intention to sell 1 or more of the 4 council owned small blocks of land, hopefully only 182-184 Cambridge Road, Kilsyth, as well as the block at 'Part (2600m2) of 9A Tinarra Court, Kilsyth will be needed to be sold. Below I explain why I particularly mention those 2.</p> <p>The small block at 182-184 Cambridge Road, Kilsyth is fairly insignificant as it is only used as a 'short cut' through' to Morrison Crescent which is fully accessible only a few metres further along plus this site is underutilized as it contains no play equipment, no drive through, no public toilets, taps, buildings nor any public amenities upon it at all and should 150 Cambridge road become a Reserve or similar, considering it is only a very short walk from 182-184 Cambridge Road, will provide and offer countless more lifelong outdoor public social benefits and positives than any negatives that may result from the sale of 182-184, which is around 14 times smaller in size than 150 Cambridge.</p> <p>Also, the sale of 'Part (2600m2) of 9A Tinarra Court, Kilsyth will still leave residents with close and easy access on foot to use and enjoy the adjoining open space block that runs into Belinda Close-from 9A Tinarra Court as only part of the 9A Tinarra block is intended for sale</p> <p>The sale alone, of the 2 addresses mentioned above, according to calculated and relevant advice received will comfortably raise enough funds, more than is needed it appears, to comfortably meet the purchase price of 150 Cambridge rd, taking into consideration the financial status of the Walling Wards open space purse combined with accumulating compulsory developer financial contributions.</p> <p>I also agree with Council's proposed intention to sell, only if need be though, of 1 or more of the other 2 small blocks of council owned land mentioned as neither of these other 2, addressed at: 9A Wannan Court, Kilsyth and 16 Ellis Court, Mooroolbark, have any play</p> | <p><i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i></p> <p>Received via web-form</p> <ul style="list-style-type: none"> • Agrees in principle to selling of land to help fund the purchase of 150 Cambridge Rd, though contends only 2 need to be sold to raise adequate funds (182-184 Cambridge Rd, and Part 9A Tinarra Crt). • Does not agree with Council raising more funds than is needed for the purchase. | Officer response as per response to submitter 24. |

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| | | <p>equipment on them, nor public amenities nor public toilets nor any building what so ever on them either and all of which are surrounded on 3 sides by existing residential properties, near all fenced.</p> <p>I am just not sure as to whether it could be justified that the need be there to have to sell all 4 as in my opinion, I don't think that we should take and use too much more than is needed to effect the purchase of 150 Cambridge road and immediate associated costs.</p> <p>Regards [REDACTED]</p> | | |
| 24. | [REDACTED] | <p>I have no objection to Yarra Ranges Council's intention to sell 'Up' or 'Some' of the four small blocks of mentioned land in Kilsyth and Mooroolbark, in order to raise a comfortable & necessary amount of funding to HELP FUND THE PURCHASE of the former school site at 150 Cambridge rd.</p> <p>It seems obvious that all four are not needed to be sold in order to HELP FUND THE PURCHASE of the former school site at 150 Cambridge rd, Kilsyth?</p> <p>I say that because below the heading 'Notice of Intention to Sell Council Land' (displayed at the following site address) https://www.yarraranges.vic.gov.au/Council/Latest-news/Notice-of-intention-to-sell-Council-land It mentions: selling four smaller blocks of land to help fund the purchase of the former school site.</p> <p>And the same is mentioned at the address: https://shaping.yarraranges.vic.gov.au/notice-intention-sell-council-land</p> <p>It just seems not clear whether or not council actually do intend selling all four. Having said that, I believe that proceeds from the sale of 'all four' could raise around \$10 million (based on the current median cost per square metre of vacant land within the Kilsyth Mooroolbark area with a residential zoning).</p> <p>Also recent reports mention the use of the current balance of the Walling Ward's open space contribution kitty (from the 5% compulsory developer open space contributions), being at around \$3million currently and raising approximately a further \$1million annually.</p> <p>Assuming all those figures mentioned above are fairly accurate, I do hope council are not intending selling all four because, in my opinion it would seem not right at all to sell all four if proceeds from the sale of 2 were easily enough to HELP FUND THE PURCHASE of the former school site at 150 Cambridge rd, Kilsyth and other costs 'associated with the purchase'.</p> <p>I think that when the PURCHASE of 150 Cambridge road Kilsyth is all paid for and complete, that it would just not be right nor fair for certain local small open space blocks be sold if that needed to not be so. Nor should the Walling Ward open space 'kitty' grow from the monies</p> | <p><i>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</i></p> <p>Received via web-form</p> <ul style="list-style-type: none"> • No objection in-principle to selling land to help fund the purchase of 150 Cambridge Rd • Not clear from Council's communications if it intends to sell all four lots • Believes selling all 4 (approx. \$10m) would far exceed the amount required, therefore would like to see only 2 of the lots sold | <p>Though intending to expend the balance of the Walling ward Open Space Fund, Council would still require an additional \$3.65m to secure the purchase of the 150 Cambridge Rd site. The sale of the four properties subject to Council's Notice of Intention to sell (if all were sold) would realise around \$4.5m. As funds realised from the sale of public open space must be used to purchase or improve open spaces, any amount raised over and above that needed to purchase 150 Cambridge Rd (purchase price and associated costs), would be used for improvements to the land.</p> <p>Council will consider and make a decision on each of the four land parcels individually on their own merits.</p> |

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| | | <p>left over from all 4 sales, taking into consideration that sure funding will be needed for works and like as time passes, but that is what the accruing open space purse is for as well as various State and federal funding that has been granted and can be applied for, not dissimilar to that related to the Chirnside Park Parkland government grant.</p> <p>It is of my opinion that no more needs to be taken than is actually required and if one or 2 of the smaller blocks are able to be left untouched, then the less disgruntled and unnecessarily affected people there will be and all considered, righteously so I think.</p> <p>Thank You [REDACTED]</p> | | |
| 25. | [REDACTED] | <p>Please find my objection to the proposal of sale of the reserve at 16 Ellis Court attached herein.</p> <p><i>A written submission was sent as an attachment via the webform and is attached to this document as <u>Submission 25</u></i></p> | <p><i>Submitting on: 16 Ellis Crt, Mooroolbark</i></p> <p>Received via web-form.</p> <ul style="list-style-type: none"> • Council has not engaged in an open, genuine, and unbiased consultation methodology. • Council has given no alternative funding proposal for consideration. • It is ironic that the State Government's offer (re 150 Cambridge) is contingent on its retention as open space, when removing open space (through sale) is what Council is seeking to do through this process. • Densification of the immediate adjacent neighbourhood necessitates that any and all available Open Space in the vicinity be kept and maintained to a user-friendly standard. • The land at 16 Ellis Crt. contains environmentally significant remnant vegetation, and no effort has been made by Council to replenish storm damaged trees. • Consolidation of Open Space into a singly located mega park does not provide the same community or ecological benefit as diverse and distributed Open Space options. • Passive open green space is vitally important to wildlife and the community. • Multiple previous unsuccessful attempts by to sell 16 Ellis Court can only be interpreted as a bullying tactic by Council, in an effort to wear down impacted residents. • Tying the sale of 16 Ellis Court (plus the 3 other properties) to the | <p>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 to fund the purchase of 150 Cambridge Rd. A funding proposal was put out for public engagement, which involved the possible sale of some land parcels, which was strongly supported at the time.</p> <p>Council's resolution of 8 March approved the commencement of statutory processes to investigate the sale of the four land parcels following a public engagement process to be undertaken in line with the Local Government Act and Council's Public Engagement Policy. No decision has yet been made regarding whether or not any of the land parcels will be sold. Council will consider the matter at Council meeting, taking into consideration all submissions received and having heard submitters who chose to speak to their submissions. Only then will a decision be made on each of the properties individually.</p> <p>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 undertaken 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 1600m2 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. Given current development patterns within the Kilsyth area, it is unlikely that large, relatively flat parcels of land such as 150 Cambridge Rd will become available for acquisition in the future, making the provision of additional structured and un-structured recreational facilities impossible.</p> |


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| | | | <p>purchase of 150 Cambridge Road, Council is disingenuously attempting to use a popularity contest to then claim wide community support for the sale.</p> | <p>Over the last five years Council has approved approximately 350 dwelling applications, indicating 290 additional houses have been constructed in the Kilsyth, 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. Additional dwellings result in reduced access to private open space, intensifying the need for access to high quality public open space.</p> <p>Pocket parks or small parks can play an important role as 'green breaks' in the urban landscape, with their value being that they are often within 5-10mins walk of where people live. Main roads, steep hills and railways are often seen as barriers to accessing open space and may inhibit people from walking to their local park.</p> <p>Further officer response as per response to submitter 35.</p> |
| 26. | [REDACTED] | <p>Opposition of sale and rejection of council plan. I object to the sale of a valuable local community resource when council has not put forward any alternative funding proposals. This also impacts the environment for the native animals and birds living in this space as well as encroaching on neighbours peaceful liveability, a key feature of the Yarra Ranges.</p> | <p><i>Submitting on: 16 Ellis Crt, Mooroolbark</i></p> <p>Received via web-form.</p> <ul style="list-style-type: none"> No alternate funding method proposed Impacts environment for native animals and neighbours' peaceful liveability | <p>Council's proposed funding model was released for community consultation in February 2022, inviting submissions on the matter, before being endorsed by Council at its meeting on 8 March 2022.</p> <p>Further officer response as per response to submitter 35.</p> |
| 27. | [REDACTED] | <p>I object to the sale of this land. An important green space with environmental and social importance to the local area. Council has not clearly outlined other reasonable options or proposals for funding that would allow appropriate community dialogue. It feels like council is not acting in the best interests of the long term future of that ward and the shire.</p> | <p><i>Submitting on: 16 Ellis Crt, Mooroolbark</i></p> <p>Received via web-form.</p> <ul style="list-style-type: none"> No alternate funding method proposed Not acting in best interests of long term future | <p>Refer to Officer response for Submitter 35.</p> |
| 28. | [REDACTED] | <p><i>A written submission was sent via direct mail/email and is attached to this document as <u>Submission 28</u></i></p> | <p><i>Submitting on: 16 Ellis Crt, Mooroolbark</i></p> <p>Received via direct mail/email.</p> <ul style="list-style-type: none"> Supports submission made by Submitter 35 Sale (causing loss of trees) would be hypocritical given Cr Child's quotes in press release "<i>Council's election call for greener suburbs</i>" High importance on quiet contemplative, passive, free creativity play areas given increase development in the area. Proposes it be part of a mini urban forest model, as part of Council's Greener suburbs push. | <p>Refer to Officer response for Submitter 35.</p> |

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| | | | <ul style="list-style-type: none"> Seeks improvements be made by Council, with better access, indigenous planting and seating. | |
| 29. | [REDACTED] | A written submission was sent via direct mail/email and is attached to this document as <u>Submission 29</u> | <p>Submitting on: 16 Ellis Crt, Mooroolbark</p> <p>Received via direct mail/email.</p> <ul style="list-style-type: none"> Local (most affected) residents need to be heard more strongly than those who have advocated for the Cambridge Rd purchase. Owners purchased with knowledge the Reserve existed No indication that the covenant affecting properties (restricting to single dwelling) would be applied to this lot. Green spaces must be retained, given increased and new development in the area. Queries Council reviving sale process only 7 years after previous attempt – community objection. Adding dwellings would increase traffic congestion Reinstating basic amenities would enhance its overall use and appeal. | <p>Council's community engagement process has sought engage with those potentially most affected/impacted by the proposal to sell. Local letterbox drops, site signage and targeted social media posts have been undertaken in a deliberate effort to allow near-by residents to have their voices and opinions heard. Though Council has nominated four properties for sale in prior Council report, and has advertised its intention to sell in line with provisions of the Local Government Act, no Council decision has yet been made on whether or not the land will or will not be sold.</p> <p>Council currently has no intention of applying the restrictive covenant which applies to neighbouring properties to this land. The Low Density Zoning applying to the neighbourhood would have the effect of restricting the type and density of future development to be in keeping with surrounding properties.</p> <p>Further officer response as per response to submitter 35.</p> |
| 33. | [REDACTED] | A written submission was sent via direct mail/email and is attached to this document as <u>Submission 33</u> | <p>Submitting on: 16 Ellis Crt, Mooroolbark</p> <p>Received via direct mail/email.</p> <ul style="list-style-type: none"> Supports submission of submitter 35 Reiterates their objection provided in February 2022 consultation regarding Council's proposal to purchase 150 Cambridge Rd. | Refer to Officer response for Submitter 35. |
| 34. | [REDACTED] | A written submission was sent via direct mail/email and is attached to this document as <u>Submission 34</u> | <p>Submitting on: 9A Tinarra Court, Kilsyth, 9A Wannan Court, Kilsyth, 16 Ellis Court, Mooroolbark, 182-184 Cambridge Road, Kilsyth</p> <p>Received via direct mail/email.</p> <ul style="list-style-type: none"> Parks are community assets and not Council's to sell – should be left alone Selling would set dangerous precedent Seeks more responsible management of Council funds | <p>Council has the ability to sell public open spaces on the condition that proceeds realised from the sale are used for specific purposes in line with section 20 of the Subdivision Act, which includes purchasing additional open spaces, or improving existing open spaces. This allows Council the opportunity to redistribute its public open space network when and where needed through selling surplus or open spaces of lesser strategic value, and strategically purchasing new open spaces where need and/or community benefit will be greatest.</p> <p>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 for the purchase of 150 Cambridge</p> |

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| | | | | Rd, and therefore it has been necessary to seek other funding options. Council's resolution of 8 March committed it to the current funding model, which in part considers the possible sale of land amongst its options. |
| 35. | [REDACTED] | A written submission was sent via direct mail/email and is attached to this document as <u>Submission 35</u> | <p>Submitting on: 16 Ellis Crt, Mooroolbark</p> <p>Received via direct mail/email.</p> <ul style="list-style-type: none"> • Error in Council's statutory process - no resolution to give notice of intention has been issued by Council and proposed funding model proposing replenishment of cash reserves not legal under provisions of the Subdivision Act. • Sale is inconsistent with Council's Planning Scheme • Importance of retaining trees given recent storm damage and nearby development causing loss of vegetation • Biodiversity aspects have not been considered • Sale would be inconsistent with Council's commitment to 'Living Melbourne' • Repeat investigations into sale seen are a vexatious attempt to wear down local residents • Current process breaches of past undertakings to stop sale procedures. Not being undertaken in good faith • Council has engaged in stealth by removing and not replacing playground equipment and park furniture on the land and thereby changing the character of the land • Council is not proposing to use sale proceeds for a legal purpose and has failed to prepare and adopt a revised budget • Council cannot fulfil its obligations to consider submissions without bias and the appearance of bias • Council has failed to maintain its Policy on the Sale of Land. • The sale of the land would adversely impact the amenity of the area including exacerbating the current peak traffic chaos | <p>Council's resolution of 8 March 2022 included a decision to "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."</p> <p>Officers have sought legal advice, and received confirmation that its Council issuing of its Notice of Intention was done with proper authority and in keeping with legislative requirements.</p> <p><i>"Council's resolution of March 2022 authorises officers to commence the statutory process under section 114 of the Local Government Act 2020, which includes authority to publish a notice of intention to sell"</i></p> <p>Each of the four lots are reserves on title and considered public open spaces. Section 20 of the Subdivision Act 1988 requires that Council use the proceeds of sale of public open spaces to buy land for use for public recreation or public resort, as parklands or for similar purposes; or improve land already set aside, zoned or reserved (by the Council, the Crown, a planning scheme or otherwise) for use for public recreation or public resort, as parklands or for similar purposes. Council may also seek approval from the Minister to improve land (whether set aside on a plan or not) for the purposes of recreation and/or parkland. It is Council intention and obligation to use proceeds accordingly.</p> <p>Legal opinion sought by officers confirms the validity of Council's endorsed funding mode (resolution of 8 March), which includes the replenishment of cash reserves through the proceeds of from the sale of public open spaces is legally sound and in keeping with the provisions of the Subdivision Act.</p> <p><i>"If the internal debt was raised to fund the acquisition of public open space, then the allocation of the proceeds of sale towards the repayment of this debt is to fund the acquisition of land for public open space. This is consistent with Council's obligation under section 20(2) of the Subdivision Act."</i></p> <p>The same rationale and logic can be used against similar provisions under s24A of the Act.</p> <p>Similar to its investigation with regard to the land in 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</p> |

| | | | | |
|--|--|--|--|--|
| | | | | <p>investigations into the site history, meaning that contamination is unlikely to pose a risk of significant environmental liability based on the intended residential use. Further invasive ground testing was not a recommendation of the report.</p> <p>The land is zoned as Low Density Residential Zone, which it has in common with other properties within Ellis Crt. 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, which acts to protect the larger backyards of ½ acre blocks at this location. This similarly applies to 16 Ellis Ct. The land at 16 Ellis Court, however, is not encumbered with the same restrictive covenant affecting building form as other properties in the street.</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. Though the principle of Living Melbourne should be a consideration when open spaces are being considered for sale, equally, it is also important to understand <u>why</u> the land is being sold and what the funds generated from the sale will be used for. If the land is being sold strategically to fund the acquisition or enhancement of other open space in the local area, and this will cause a net gain for community health, biodiversity, and environment, it is argued that Council is in-fact acting in accordance with the goals of Living Melbourne.</p> <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. Any development occurring at the site would be subject to planning provisions which would seek to protect existing trees where possible, or implement offset requirements. Plantings and improvements works at 150 Cambridge Road will also offset vegetation lost through any of the subject land parcels.</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 designation from the land. A separate statutory process would have been instigated under the (then 1989) Act 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 strategic 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 was withdrawn accordingly. Importantly, the current processes are based on current circumstances and future needs as identified by Council's Recreation & Open Space Strategy, and any historical proposals in relation to the land does not preclude Council from undertaking new/periodic assessments of its landholdings.</p> |
|--|--|--|--|--|

| | | | | |
|-----|------------|--|--|--|
| | | | | <p>Council's Playspace Plan 2019-2029 provides a framework for assessing play space 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, (less than 90 metres from the entrance to Ellis Crt), which is currently being undertaken.</p> <p>Council's resolution of 8 March approved the instigation of statutory processes for the possible sale of the four land parcels, to be decided by Council following a public engagement process to be undertaken in line with the Act and Public Engagement Policy. No decision with regard to any of the four lots subject of Council's Notice of Intention has yet been made.</p> <p>Council will consider all submissions received before making a decision on whether each of the four lots will or will not be sold.</p> <p>A traffic investigation has commenced 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. Though not specifically part of the trial, if Ellis Crt is seen to be negatively by traffic and parking during this investigation, Council's Traffic Engineers can look at congestion mitigation measures in that court.</p> |
| 38. | [REDACTED] | A written submission was sent via direct mail/email and is attached to this document as <u>Submission 38</u> | <p>Submitting on: 16 Ellis Crt, Mooroolbark</p> <p>Received via direct mail/email.</p> <ul style="list-style-type: none"> • As an adjacent owner, has mowed the land for over 16 years • Well used by families within the court, then playground removed • Surrounding properties are 1/2 acre and have covenants preventing subdivision. Reserve is a vital part of original subdivision. • The land contains hard rock just below the surface. | <p>Though Ellis Court is on Council's routine maintenance schedule for mowing/slashing, it is quite possible and not unusual that adjacent owners may contribute to maintenance of the land.</p> <p>Further officer response as per response to submitter 35.</p> |



Ms Tammi Rose
Chief Executive Officer
Shire of Yarra Ranges
PO Box 105
Lilydale 3140

May 6th 2022

Objection to the Sale of Land at 16 Ellis Court, Mooroolbark.

I am writing in response to your Notice of Intention to Sell Council land at 16 Ellis Court, Mooroolbark.

I vehemently object to the sale of this land.

This land is valuable green space in an area where residents are in desperate need of green space due in part to the council's seemingly never-ending approval of split/ multi dwellings that offer homeowners no personal yard space. It is my understanding that these high density housing developments are required to pay a specific levy to contribute to the establishment of green space due to the fact that they provide very little within people's properties. I would challenge the council to ask where are those funds going? We cannot continue the trend of building more and more properties providing no open green space on site, whilst simultaneously removing any public space that they should have access to, and which the council is required to provide.

I cannot fathom how council could suggest that the purchase and development of green space in Kilsyth should lead to the removal of green space more than 2 kms away. This is not space able to be easily utilised by the young families in this area. Council should be providing an abundance and variety of green space for use by citizens. Not everyone wants to go to a playground; some people like to picnic/ play footy in a quiet space surrounded by trees which is exactly the kind of location that 16 Ellis Court provides. It is an ideal community space for such activities and is often used for such purposes.

With recent major development in the Shire, such as Kinley and Cloverlea Estate's in recent years, this council is running the risk of creating an environment that no longer reflects that values that make the Yarra Ranges so appealing. People have always loved the character of this beautiful area, lots of space, lots of trees, lots of wildlife; the sale and removal of yet another piece of open space whilst simultaneously building another high-density housing estate is damaging to the character of the area. This proposal is entirely inconsistent with the council's commitment to Living Melbourne.

We have recently moved into this area and honestly are quite shocked to learn that the council has attempted and failed to sell this land on two previous occasions. This to me is a

blatant measure to wear down the local community and take advantage of the local resident's emotional distress caused by dealing with this issue. This is highly distressing for the local community. As a government agency that is charged with representing the interests of the local community, this is a total breach of the trust of the local residents.

Regards,

A solid black rectangular redaction box covering the signature area.



Public Submission
The Chief Executive Officer
PO Box 105
Lilydale, 3140

9th May, 2022

Re: Objection to the notice of intention to sell Council land at 16 Ellis Court, Mooroolbark (the Proposal)

In regard to the above topic, I am writing to register my strong opposition and objection to the proposed sale of land at 16 Ellis Court. I would also welcome the opportunity to be heard in this regard.

The land is vitally important and valuable to local residents and should be retained by council for ongoing availability as an open space reserve. Having recently moved to the local area, the proposed sale would have a direct impact on my young family. My specific objections are outlined forthwith:

1. Council has not engaged in an open, genuine, and unbiased consultation methodology. In Council's proposal to purchase 150 Cambridge Rd., and subsequent communications and social media posts on the subject, it has positioned the purchase as being contingent on the sale of four proposed reserve sites, of which 16 Ellis Court is one. As such, it has negatively positioned the future of the identified properties, including 16 Ellis Court, in the minds of the public.

This is exacerbated and reinforced by the pejorative language used in the descriptions of the properties. Throughout the shaping.yarranges.vic.gov.au landing page dedicated to the combined purchase / sale proposals, the reserve at 16 Ellis Court is referred to as; a "small block of land" despite it's 2343m2 size, as an "empty parcel of land" despite it being an active, designated reserve space, and of being "deemed to hold limited community benefit" where it is clear Council has made no effort to beautify or improve the state of the space.

Since the brief community consultation period for the purchase of the 150 Cambridge Rd. site, communication from council has indicated a vast majority of support for the funding method proposed. Given Council has inextricably linked the sale of the 4 land parcels to the purchase of 150 Cambridge Rd., and given no alternative funding proposal for consideration, this is hardly surprising.

Furthermore, the imagery and language used throughout the shaping.yarraranges.vic.gov.au landing page on the proposal seem to suggest the sale of the 4 land parcels is fait accompli.



- In Council's own description of the State Government's offer conditions for the purchase of 150 Cambridge Rd. it is stated that " *This offer from the State Government is provided on the basis that the land must be for Restricted Community Use (e.g. open space) only.*" It is ironic that the State Government's offer is contingent on the one thing that council is now proposing to do (ie removing reserve status to sell land for private purposes) with the current sale of land proposals.

One can only wonder how long council will wait before taking steps to profit off the opportunity afforded it by the State Government by selling small portions of the Cambridge Rd. site it deems "are of limited community benefit". When the original subdivision development for Ellis Court was undertaken, the requirement for developments of this size was, and remains that 5% of the land value must be provided as public open space – in either actual land or via cash equivalent. Having the land parcel at 16 Ellis Court set aside for this purpose and passed to Council's custodianship for

the use of residents in the immediate vicinity, moving to sell such an asset reeks of opportunistic profiteering at its worst.

3. Densification of the immediate adjacent neighbourhood necessitates that any and all available Open Space in the vicinity be kept and maintained to a user-friendly standard. Council has made no new Open Space available to the residents in the Taylor Rd./Blackburn Rd./Carronvale Rd./Pembroke Rd. precinct despite the proliferation of dual and multiple occupancy developments. It is frankly disingenuous of council to claim that the purchase and development of 150 Cambridge Rd. would be of service to these residents given their proximity.

Under the heading of "How would the community benefit?" of Council's webpage for the proposal to purchase 150 Cambridge Rd., the Social Impacts section states:

"Residents have come to depend on their local parks and open spaces more than ever during the recent Covid lockdown periods. These spaces play an important role in our mental health, providing opportunities for people to connect socially and outdoors with nature.

Large parks encourage people to walk further and meet their physical activity targets while helping reduce obesity. They also encourage many different activities within the space and help support the health and wellbeing of our community."

While I cannot agree more with the first paragraph quoted above, is council seriously proposing that residents in the vicinity of 16 Ellis Crt. should drive to this "large park" to then go for a walk? Or are they suggesting residents engage in the 5km round trip walk just to get to/from the park from their houses – before presumably going for a walk around the park? Despite the seemingly unlimited energy of my small children, this would certainly be beyond them!

4. The land at 16 Ellis Crt. contains environmentally significant remnant vegetation. The proposed change in land use from public reserve to private residential purposes, would necessitate the removal of many of the mature trees to accommodate the dwelling and associated outbuildings envelope, as well as any landscaping works.

The existing vegetation are home to a diverse range of native bird and wildlife. Kookaburra's, king parrots, crimson and eastern rosella's, rainbow lorikeets, wattlebirds, magpies, and more can all be found and heard in 16 Ellis Court.

Despite the ever-present birdlife, it is also evident that council has made absolutely no effort to replenish fallen and storm damaged trees. A quick walk through the space I counted no less than a dozen major tree stumps or stump hole where mature remnant trees once stood. This has significantly impacted the original tree canopy and I am frankly stunned that over the years council has done nothing to address this situation. The cynic would assume this is not an accident.

5. Consolidation of Open Space into a singly located mega park does not provide the same community or ecological benefit as diverse and distributed Open Space options. Isolated, dedicated reserves such as 16 Ellis Court enable and sustain wildlife corridors when considered in addition to neighbouring managed residential lots. Such corridors are essential in maintaining thriving wildlife populations.

Consolidation of Open Space also does not consider potential mobility or social limitations of affected residents. Small scale Open Space reserves can provide a sanctuary for those who do not wish to partake in a mass outdoor gathering spaces, or who simply cannot travel to such areas.

6. Passive open green space is vitally important to wildlife and the community. While I am encouraged to see the improvement works being undertaken at the nearby Luke Polkinghorne Memorial Reserve, it saddens me to hear passive Open Spaces referred to as of “limited benefit to the community” or other such narrow interpretations.

As residents of the Yarra Ranges, we should be incredibly proud of our passive open spaces. They are a place for our children to understand and appreciate their natural environments. They provide opportunities for unstructured and creative play, without the stimuli of added playground furniture. As a child growing up in Mt. Evelyn, I fondly recall looking for small grubs and lizards, picking up small rocks to look for what might be underneath, building a tepee out of fallen branches and other such activities. With the increasing density of nearby residential housing blocks and the subsequent loss of ‘backyard’, passive open spaces can fill this gap. Having recently moved to the neighbourhood, we were pleased to have an open green space reserve such as 16 Ellis Court so close for our young children to enjoy.

7. Lastly, as a new resident to the area, I was shocked to learn that there have been multiple previous unsuccessful attempts by Council to sell 16 Ellis Court – with the most recent barely 7 years ago! To the outsider, this latest attempt can only be interpreted as a bullying tactic by Council, in an effort to wear down impacted residents. I can only imagine the distress this is causing the long-term residents (again) as surely the reasons for previous attempts not proceeding are still valid. It also seems Council are going back on, and breaching assurances given to the residents that Council will not undertake such proceedings in the future.

This latest attempt to sell 16 Ellis Court by packaging it together with other reserve spaces is no more than an attempt to ‘sneak one through’ on residents. By tying the sale of 16 Ellis Court (plus the 3 other properties) to the purchase of 150 Cambridge Road, Council is disingenuously attempting to use a popularity contest to then claim wide community support for the sale.

The overwhelming support for the purchase of the Cambridge Road site should reinforce to council the deep community desire to retain and gain more Open Space however, this cannot and should not be at the loss of other existing sites. As outlined in my first objection point, Council has offered no alternative funding proposals.

For the reasons listed above, I strongly encourage Council to reconsider it's proposal to sell 16 Ellis Court, Mooroolbark and consider alternate funding strategies for the purchase of the Cambridge Road site. I also reserve the right to register further opposition on the subject and put forward further submissions as additional details come to light.

Furthermore, I would welcome the opportunity to discuss with the relevant members of the Council team potential improvement opportunities on 16 Ellis Court to further improve on the amenity the site provides the local resident community.

Best Regards,





8th May, 3138

Ms Tammi Rose
Chief Executive Officer
Shire of Yarra Ranges
PO Box 105
Lilydale 3140

Objection to Council’s Proposed Sale of Reserve at 16 Ellis Court Mooroolbark

(Submission in response to notification of sale proposal to residents 31 March 2022, by Phil Murton Acting Director Environment and Infrastructure)

Council’s recent purchase of 150 Cambridge Road Kilsyth has attracted solid support from the community, however we are vehemently opposed to the proposal that this be part funded by sale of the Reserve at 16 Ellis Court Mooroolbark. [REDACTED] has widely circulated a comprehensive paper embracing the valid concerns of Ellis Court residents and we lend our voice of unequivocal support to the 12 stated objections he has raised.

Our particular concern relates to the consideration for sale (revisited from two former failed attempts) of the Reserve at 16 Ellis Court Mooroolbark which according to correspondence from the Director of Environment and Infrastructure has “...limited community benefit” The last proposed sale was successfully opposed by residents and withdrawn some 6 years ago. The current proposal appears to be based on an alleged rationalisation of Council’s property assets with no justification of the alleged “limited community benefit” or meaningful consultation with residents. We believe that in the current environment of diminishing open space that our local government should be working creatively with residents to utilise small reserves in new and exciting ways for the benefit of all. This superb site boasts 30 established trees and large shrubs. Any attempt to wilfully promote their loss (i.e. sale for housing) would be nothing short of environmental vandalism and instant fodder for a vigorous media campaign. The stance would be perceived as hypocritical when set alongside the detailed fulsome observations of Mayor Jim Child on 3rd May in lauding Yarra Ranges proposal for a Greening The Suburbs program.

Quoting from his press release “Council’s election call for greener suburbs” Mayor Child observes:

“We know that as the climate changes and our urban areas evolve, severe weather events such as storms and heat waves will become more common, our tree canopy will continue to decline ... In the June 2021 storms, we estimate that 25,000 trees fell in Yarra ranges alone, permanently changing the landscape. Before this, from 2014-18, our built-up areas lost 186 hectares of tree canopy cover- roughly the surface area of 104 MCG’s ... We’re asking all federal parties and candidates to commit to Greening Our Suburbs. This project will have a direct benefit for community members, in improving public spaces; to our environment, by providing better habitat and protecting the biodiversity of the region and; visitors, who come out to enjoy our beautiful and renowned environment.

This project is one of council’s key advocacy projects for the federal election”

The profile of our area is changing significantly due to greatly increased population density. Available land is almost exhausted and dual occupancy accelerating. During the necessary restrictions on movement during COVID **we have focussed inward on our local facilities (within a short walk) in a fashion never before experienced.** We have had many conversations with residents in the vicinity that we have met casually whilst tramping our streets. The foot traffic in our Court increased significantly and again many expressed surprise that such a little gem existed at the end. An almost universal expression is the value we place on open space and the reluctance for older people to visit playgrounds where clusters of people gathered, unfortunately the only place where seating seems to be available locally.

Hence the concept of **contemplative spaces** as a tool in fostering mental health has arisen, quiet spaces defined thus “In today’s urban realm, we can understand a contemplative space more specifically as one joining esthetic and environmental values with mental health benefits for its visitors...” (*Agnieszka A.Olszewska et al SAGE Journal, 2016*). This places our reserve, in a quiet location away from traffic noise, and surrounded by treed properties, as a prime location for such use. This Reserve, although sadly never adequately resourced by the Shire over the years, brought much pleasure to the children and adults of Ellis Court and surrounds as a passive area, space for free creative play and a place of peace and tranquillity. We recall fondly picnics with our children on the site and would like other families to continue experiencing this along with our own grand children

Its continued use into the future **does not require intensive redevelopment** but rather embracing the philosophy of a mini **urban forest**. That is, enhancing tree and vegetation populations in urban settings for the purpose of improving the urban environment. As so ably expressed by Mayor Jim Child in his press release the devastation by storm damage of our tree stock throughout our urban settings and our national parks will require action on many fronts in the immediate and foreseeable future. Hence the vital importance of Council’s “Greener Suburbs” push. This small reserve setting, already well set for enhancement, could well be developed by Yarra Ranges as a model that may be replicated and modified in other small settings throughout our municipality.

Other groups are pushing the same message. We noted a recent report in The Age of the launch of a new book and initiative by Clive Blazey founder of Australia’s largest gardening

club and a non-profit dedicated to sustainable gardening and biodiversity. He is touring the country to convince Australians to plant more trees.

He said: "If we all plant 160 trees over 10 years – about 12 to 16 a year – we can solve the problem of climate change ...Clive and his wife Penny are also encouraging the public to protest...and do more to prevent trees from being destroyed before the world is intolerably hot and barren. Most deforestation was happening in backyards, said Penny. If you have got neighbours doing that try to persuade them not to chop down trees. The residents of Ellis Court are doing just that – trying to persuade the Shire from launching an unnecessary act of environmental vandalism!

Adding to our net loss of vegetation and associated increase in temperature is **the formation of heat islands.** [REDACTED] has documented this in his submission and in our walks through the area we see that this is accelerated locally by dual occupancy and smaller allotments in subdivisions removing existing vegetation and precluding replacement of trees on allotments. Large impermeable concrete or asphalt pads seem to be fostered and allowed under existing guidelines.

We also note that property owners in Ellis Court are well aware of the protections afforded to them in strict covenants on their titles setting out fencing, setback, single dwelling construction, type of activity etc. **None of these apply if the Reserve is offered for sale,** potentially devaluing properties, and amenity. in one of the Shire's highest rating areas. These concerns were well canvassed 6 years ago, heeded and contributed to the resultant withdrawal of the proposal.

What is required to promote and enhance 16 Ellis Court:

- A commitment by Council to foster a new model for small reserves and not view them all as repositories for look-alike playgrounds
- Provide a better access to this land so that people can reach the apex easily and maintenance is facilitated
- Implement an aesthetic planting scheme of indigenous trees and vegetation to supplement the existing canopy
- Provide appropriate seating areas in both shaded and sunny areas to facilitate passive use.

We request that Council explores other avenues of funding for purchase of 150 Cambridge Road Kilsyth and assure the residents of Ellis Court that our Reserve will be enhanced and not form part of a cheap solution to an inadequately articulated funding issue. As ratepayers we deserve respectful, meaningful consultation and the fostering of a partnership in the continued use of precious, treed, open space.

We reserve the right to further pursue opposition to the sale of 16 Ellis Court, Mooroolbark both in writing and in Council/community consultations.



Phil Murton
Acting Director Environment &
Infrastructure

[REDACTED]
Mooroolbark 3138
[REDACTED]

9th April 2022

Dear Phil and Council Members,

We write to you to present our objection to the sale of the land at 16 Ellis Court Mooroolbark. As residents of Ellis Court we are extremely disappointed with the proposal of this sale and the degree of pressure being applied to sell this precious piece of land. We feel our voices have not been adequately heard or responded to thus far and are in disbelief that planning has proceeded, despite both past and more recent efforts to voice our desire to conserve this land reserve and concerns regarding sale and development.

There are various reasons we object to this sale which we are outlined below:

- As residents of the court, we believe we would be the most impacted by the sale and feel our voices need to be heard, acknowledged and considered 'more strongly' in the context of those most affected by the sale of land.

Recent community consultation was sought regarding the sale of this land to help fund the purchase of land on Cambridge Road. The apparent result was overwhelming support to sell this land in order to purchase the Cambridge Road site. We are concerned this was not carefully-considered consultation, with skewed results in favour of those least impacted by the sale of this land. Surely sale of land in Mooroolbark should be based on the feedback of local residents, not those who live in Kilsyth! The Cambridge Road site, for which funding is needed, is not even within walking distance for residents in Ellis court and surrounding streets. We would therefore sacrifice access to green space withing walking distance. Does this align with council's goals?

- All properties in Ellis court were purchased with the knowledge that a reserve existed at the end of the court. This was part of the court's attraction and is commonly used by residents (e.g. exercising dogs, picnics, as a quiet contemplation space). In effect this increased the original purchase price residents paid to be in close proximity.
- All properties in the court are covered by a covenant which ensures consistency of setback, dwelling type and housing density. This is of paramount importance in this estate and must be retained for every

property in the court. There has been no indication a covenant would apply to 16 Ellis Court. Not having a covenant would significantly devalue existing properties in the court.

- The rapidly decreasing vegetation in Mooroolbark is of great concern. This is particularly evident with the development of new housing estates where vast numbers of trees have been removed (e.g. Kinley Estate) The parcel of land in Ellis Court maintains a leafy green environment for this area. Green spaces such as this must be retained. Once sold they will never be reclaimed.
- This block of land was previously considered for sale in 2015. At that time the residents of Ellis Court and surrounding streets worked tirelessly, unanimously objecting to the sale and presenting their case at a Council meeting. As a result, Council abandoned its plan to sell the land. It is incredibly disappointing that after all the time and effort exerted only 7 years ago, we are back at the same point yet again.
- Ellis Court is already incredibly busy during peak times. Both at school drop off and pick up times the traffic is chaotic and quite often dangerous. The consideration of adding further dwellings to the street is not feasible.
- Any noticeable decline in use of this land of late is associated with the lack of amenities which have been repeatedly removed by council. In the past, the land in question contained amenities which complemented the space, making it more usable. Playground equipment and seating has been installed and then removed on two occasions, thus reducing the degree to which it might be used by varying community groups. Reinstating basic amenities would enhance its overall use and appeal.

Under no circumstances should 16 Ellis Court be sold for development. We are concerned the voice of the local residents has not been heard equitably and insist any further conversations must involve us, the resident of Ellis Court who are most impacted by this proposal. We would appreciate being updated with any further developments as soon as possible.

Yours sincerely,

A solid black rectangular box redacting the signature of the sender.

Craig Sutherland

From: [REDACTED]
Sent: Tuesday, 3 May 2022 1:51 PM
To: mail
Subject: Re Sale of 16 Ellis Court, Mooroolbark

Chief Executive Officer
Shire of Yarra Ranges
Dear Sir / Madam

We write in support of our previous objection to the sale of 16 Ellis Court Mooroolbark made in February 2022, pursuant to the purchase of 150 Cambridge Road Kilsyth.
We reiterate our objections outlined and further support the further submission by [REDACTED] forwarded recently.

Thanking you for your consideration

[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Saturday, 30 April 2022 1:36 PM
To: mail
Subject: Notice of intention to sell Council land

Under no circumstances should any of these parcels of land be sold. They are given to the community when land is developed and belong to the community not the council to sell off as they please. A dangerous precedent would be set and rate payers further enraged after the wasted money spent on new council buildings, trying to take over Swinburne site etc. This is going too far and typical of council money grabs and greed. Stop wastage in council and manage your funds better-like we all do and leave community assets for their intended purposes.

[REDACTED]

Sent from my iPhone



9 May 2022

Ms Tammi Rose
Chief Executive Officer
Shire of Yarra Ranges
P O Box 105
Lilydale 3140

Objection to the Sale of Land at 16 Ellis Court, Mooroolbark

I refer to your Notice of Intention to Sell Council land at 16 Ellis Court, Mooroolbark (Proposal).

I write to object to the sale of this land and wish to be heard in relation to this objection.

Council should retain the land and, in conjunction with residents, improve it with park furniture, better access and supplementary vegetation to assist in offsetting the massive loss of tree canopy in the area to create a passive park to address the health and wellbeing aspirations Council has espoused.

The objections are as follows:

1. Council has not resolved to give notice of intention to sell the subject land and notice issued by Council staff is not in accordance with Council's resolution.
2. Sale for development of 16 Ellis Court, Mooroolbark is inconsistent with the provisions of Council's Planning Scheme.
3. Council should not sell the public open space at 16 Ellis Court given:
 - a. the rapid increase in the density of adjacent residential development occasioned by the huge growth of dual occupancy subdivisions;
 - b. the massive loss of established trees and associated tree canopy following major windstorms; and
 - c. the huge loss of established trees allowed to occur in the Kinley subdivision in Hull Road, Mooroolbark;and the resultant need for passive areas planted to create an optimum tree canopy, providing green space to promote Council's aspirations for health and wellbeing.
4. Council has failed to consider the biodiversity aspects of its Proposal.
5. The sale of 16 Ellis Court, Mooroolbark is inconsistent with Council's commitment to *Living Melbourne*.

6. Council has on two previous occasions sought unsuccessfully to sell the land at 16 Ellis Court and the present Proposal is nothing more than a vexatious attempt to wear down local residents.
7. Council has previously given undertakings and other assurances that it would:
 - not likely undertake planning processes which are necessary to enable it to sell the land;
 - undertake consultation on the future of the land; and
 - stop the sale of 16 Ellis Court.
 and the Council's present action is a breach of those undertakings and is not being conducted in good faith.
8. Council has engaged in stealth by removing and not replacing playground equipment and park furniture on the land and thereby changing the character of the land.
9. Council is not proposing to use the proceeds of any sale for a legal purpose and has failed to prepare and adopted a revised budget.
10. Council cannot fulfil its obligations to consider submissions on the proposed sale of 16 Ellis Court, Mooroolbark without bias and the appearance of bias.
11. Council has failed to comply with its own policies and to maintain its Policy on the Sale of Land.
12. The sale of the land would adversely impact the amenity of the area including exacerbating the current peak traffic chaos.

Each of these objections is detailed below.

Objection 1: Council has not resolved to give notice of intention to sell the subject land

As Council is aware section 114 of the Local Government Act 2020 (the Act) provides, in part:

- (2) *Before selling or exchanging the land, the Council must—*
 - (a) *at least 4 weeks prior to selling or exchanging the land, publish notice of intention to do so—*

However, the Council resolution of 8 March 2022 approves "*investigating and progressing the potential sale...*". Council has not resolved to publish notice of intention pursuant to section 114 of the Act. Council staff have proceeded in this matter without adequate authority.

In response to one of my written questions to the Chief Executive Officer, Council's Director Environment and Infrastructure, Mark Varmalis said that the "*Council is investigating the possible sale of 16 Ellis Court.*" (Underlining added). Giving Notice of Intention to Sell is well outside the scope of "investigating".

When Council last sought to sell the land at 16 Ellis Court in 2015 it resolved that:

Council undertake procedures to appropriately re-zone, then give public notice pursuant s223 of the Local Government Act 1989 of its intention to sell the properties at..... (Underlining added)

With the current Proposal there is no such resolution to support the giving of public notice.

Where the process under the legislation is defective then the resulting sale will not be valid.

Decisions made without proper authority can therefore put Council at financial and legal risk.

If Council proceeds it risks any contract for the potential sale of the land being found void.¹

¹ See *Bycon Pty Ltd & Byham v Moira Shire Council*

Objection 2: Sale for development of 16 Ellis Court, Mooroolbark is inconsistent with the provisions of Council's Planning Scheme

The land in Ellis Court, Mooroolbark and surrounding area is subject to a Significant Landscape Overlay (Overlay) and its sale for development is inconsistent with the provisions of Council's Planning Scheme.

The objectives of the Significant Landscape Overlay in Schedule 22 to Clause 42.03 of the Planning Scheme include -

To maintain vegetation as a dominant element of the landscape and encourage retention and regeneration of native vegetation

Council, as the owner of land subject to this Overlay, has an obligation to retain (the land) and regenerate the native vegetation.

Council has an opportunity to play a lead role in promoting the objectives of its Overlay.

Alternatively, the objectives of Council Planning Scheme are merely meaningless words.

Objection 3: Need to Maintain all Available Open Space

- a. the rapid increase in the density of adjacent residential development occasioned by the huge growth in dual occupancy subdivisions and the need to maintain and improve passive recreational space as well as active open space**

In the last few years, the development of dual occupancy subdivisions in the area abutting 16 Ellis Court has surged.

In the area immediately to the north of Ellis Court many dual occupancy developments have been approved by Council. This number will continue to grow as the previous minimum sized subdivision allotments have ensured that most allotments can, under current standards, accommodate a second dwelling. Further, with the growth of 'knockdown rebuild' developments the density grows up three to four times in the number of dwellings and the corresponding increase in population and heat radiating paving. With the extent of this development the population in this area will at least double in the next few years.

In the area of Taylor Road, Carronvale Road, Hull Road and Blackburn Road (originally the J P Lillis's, Carronvale Estate) 86 dual occupancies have already been developed. Many other such developments have occurred to the west.



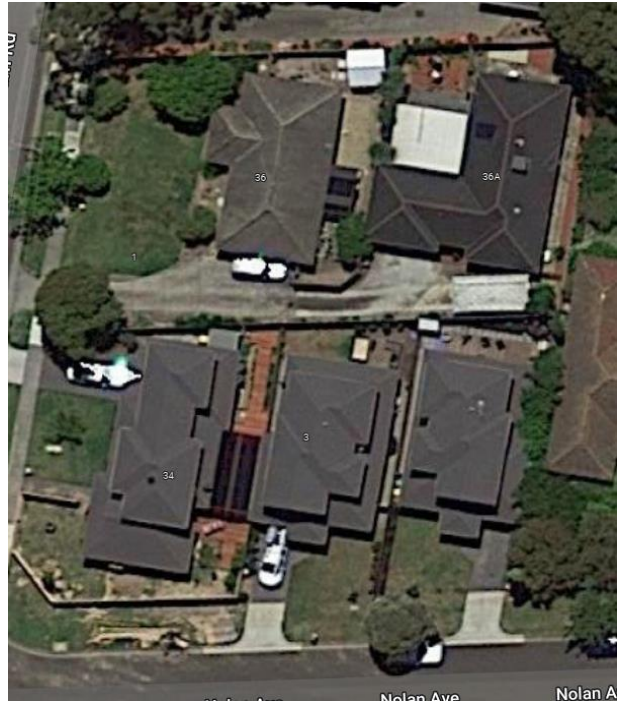
Examples of the concrete driveways and parking aprons which have proliferated in the area

A reference to available aerial photography will demonstrate the loss of tree canopy occasioned by dual occupancy developments.

Council has made no provision for additional public open space in this area – but is now proposing to eliminate a potential area which should be improved to provide tree rich passive open space and help meet Council’s aspirations for health and wellbeing in an area of increasing population density.

It is noted that much of the Open Space ‘cash in lieu of reserves’ which Council accumulated has come from the dual occupancy development and Council has an obligation to the new residents to provide accessible open space.

The land at 150 Cambridge Road is 2.5 kms from the land at 16 Ellis Court. It is not practically accessible to residents by foot. Hopefully Council does not expect residents to use motor vehicles to access it.



Effectively Council has used the funds generated from areas which will receive no benefit from the Cambridge Road land purchase. The price these new owners have paid for their dwellings has embedded in it the cash in lieu fees levied by Council.

In many cases established trees have been removed to allow for the dual occupancy developments significantly reducing the extent of the tree canopy and allowing little space for replacement vegetation to offset the impact. It is insufficient to allow meaningful shade trees to be grown.

These developments have also aggravated the impact on the environment by replacing natural surfaces with areas of concrete and asphalt driveways and parking aprons. These areas produce radiating heat and hence a need to improve the tree canopy.

Even Council’s redevelopment of the Luke Polkinghorne Memorial Playground in Taylor Road contains expansive paved areas.



Current redevelopment of the Luke Polkinghorne Memorial Playground

- b. the massive loss of established trees and associated tree canopy following major windstorms and the need to take all possible action to offset such loss.**

Council's website records that the storm event in June 2020 saw an estimated 25,000 trees fall throughout the Yarra Ranges. Among the trees lost were a large number in the adjacent Mooroolbark East Primary School grounds and at the Luke Polkinghorne Memorial Playground. Natural regeneration of these areas is unlikely to occur and recovery of the previous canopy needs a serious planting effort.

The land at 16 Ellis Court provides an ideal opportunity for Council to achieve some level of planting and canopy development.

Just a tiny portion of the massive loss of tree canopy



- c. huge loss of established trees allowed to occur in the Kinley subdivision in Hull Road, Mooroolbark, and the need to take all possible actions to offset such loss locally.**

Local residents watched in horror as hundreds of 60 to 80-year-old trees over the 143 hectare site at the Kinley subdivision were bulldozed.

The deplorable and wanton loss of trees on the Kinley Estate north of Hull Road further aggravated the loss of the canopy and will also take decades to replace.

There is a resultant need for passive areas planted to create an optimum tree canopy, providing green space to promote Council's aspirations for health and wellbeing.



143-hectare Kinley site in Hull Road, Mooroolbark denuded of hundreds of 60 to 80 year old trees

Council in its submission to the *Inquiry into Environmental Infrastructure for Growing Populations*² on 28 September 2020 and prepared by Phil Murton, Manager - Recreation, Projects & Parks says, in part, that:

- *Yarra Ranges is highly cognisant of the importance of environmental infrastructure and the benefits it provides to both our community and the environment.*
- *The impact of COVID 19 has further reinforced the importance of environmental infrastructure and the need to plan for future provision as popularity increases and populations grow.*
- *Providing the community with access to a variety of environmental infrastructure to undertake active and passive recreation can assist in increasing community levels of health and wellbeing. This is particularly important in Yarra Ranges community as statistics show more people in Yarra Ranges are overweight, less are meeting the physical activity guidelines and more are suffering from psychological distress when compared to the Victorian average. (Underlining added)*

If ever there was a case for maintaining land that can be used to improve community health and wellbeing with a passive park with some park furniture, better access and appropriate plantings it is, in Council's own terms, here at 16 Ellis Court, Mooroolbark.

Similarly, Council's *Yarra Ranges Health and Wellbeing Plan 2021–2025* says, in part:

Optimal health and wellbeing are fundamental to a thriving community and prosperous municipality. Residents are generally healthy but not in every way -

Compared to all of Victoria, Yarra Ranges adults have poorer health and wellbeing related to:

- *Anxiety, depression and other mental health-related problems*
- *Diagnosis of multiple chronic diseases*

The *Yarra Ranges Health and Wellbeing Plan 2021–2025* also says:

During recent incidents relating to climate change in Victoria, the main loss of life has occurred through extreme weather events leading to bushfires, storms and floods; and high heat days causing heat stress amongst residents.

Interventions by Councils that could reduce illness and deaths from heatwaves include to:

- *implement urban greening and cooling strategies*
- *plan for and invest in cooler and cleaner air spaces to provide community respite.*

The land at 16 Ellis Court provides an ideal opportunity for Council to live up to its health and wellbeing aspirations and create a passive park to address the health and wellbeing aspirations Council has espoused.

Also consider that in its *Yarra Ranges Council Environment Strategy 2015–2025* Council quotes C Maller from '*Healthy Parks, Healthy People, A Review of Relevant Literature*' who says:

"In terms of health, parks and other natural environments have been viewed almost exclusively as venues for leisure and sport. Yet recent research shows that 'green

² The Inquiry was set out to inquiry into the current and future arrangements to secure environmental infrastructure, particularly parks and open space, for a growing population in Melbourne and across regional centres.

nature' such as parks can reduce crime, foster psychological wellbeing, reduce stress, boost immunity, enhance productivity and promote healing. In fact, the positive effects on human health, particularly in urban environments, cannot be over-stated.

Council agrees with the resident's position on improving amenity by planting more trees. In its 3 May 2022 press release on the forthcoming election Council has called for greener suburbs and said:

Yarra Ranges Mayor, Jim Child, said the proposal is to plant more than 130,000 trees – a mix of street planting and planting in bushlands and reserves – throughout all parts of the municipality.

"We know that as the climate changes and our urban areas evolve, severe weather events such as storms and heatwaves will become more common, and our tree canopy will continue to decline," Cr Child said.

"Trees provide sun protection for pedestrians and help to reduce heat in urban areas, while supporting the beautiful natural environment we're known for.

"This project will have a direct benefit for community members, in improving public spaces; to our environment, by providing better habitat and protecting the biodiversity of the region and visitors, who come out to enjoy our beautiful and renowned environment."

Please make your proposal to plant more trees meaningful and plant out 16 Ellis Court.

Objection 4: Council has failed to consider the biodiversity aspects of its Proposal

Council has failed to consider the biodiversity aspects of the land at 16 Ellis Court, Mooroolbark.

Council purports to a leader on environmental Issues. In its *Yarra Ranges Council Environment Strategy 2015–2025* Council says:

It is through the Environment Strategy 2015–2025 that Council will not only demonstrate leadership on environmental issues but will also work closely with other agencies and the community to foster environmental stewardship across the municipality.

Consider these three aspects of the local biodiversity:

1. The Victorian Biodiversity Atlas records that in the immediate area of 16 Ellis Ct there was a recording of the Vulnerably listed Powerful Owl (*Ninox strenua*) in 2020. The Powerful Owls are listed on the Flora and Fauna Guarantee Act – Threatened List. Powerful owls may not be nesting in the reserve, but they may well use the trees to roost in and to search for food.
2. As Council has discovered the very rare Buxton Gum / Silver Gum (*Eucalyptus crenulate*) tree is growing in Mooroolbark. There are fewer than 670 plants remaining in only two wild populations north-east of Melbourne. The Buxton Gum is listed as Endangered under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and threatened under the Victorian Flora and Fauna Guarantee Act 1988.
3. The late Bob Edwards who lived adjacent to 16 Ellis Court had recorded the following birds on the land:
 - White Cockatoos
 - Corellas
 - Tawny Frogmouth
 - Bronze Winged Pigeons
 - Noisy Minors
 - Magpies
 - Butcher Birds
 - Black Cockatoos
 - Kookaburras
 - Owls
 - Currawongs
 - Wattle Birds
 - Galahs
 - Eastern Rosellas
 - King Parrots
 - Doves
 - Crows
 - Peewees
 - Crested Pigeons

Council has not undertaken the necessary studies of the land to determine its biodiversity values. Yet one of the goals of Council's *Environment Strategy 2015–2025* expressed as:

Our native plants and animals are protected and their habitat is enhanced. This goal aims to preserve unique and indigenous ecosystems, remnant vegetation, and threatened species and communities. By protecting our natural environment and promoting a range of self-sustaining ecosystems, we enhance the quality and long-term sustainability of Yarra Ranges biodiversity.

The existing 30 trees and large native shrubs at 16 Ellis Court are 60+ years old and should be retained. If the vegetation of this site was to be supplemented with further plantings will it only takes 10-15 years for those trees to get to a good size.



Objection 5: The sale of 16 Ellis Court, Mooroolbark is inconsistent with Council commitment to *Living Melbourne*.

The Yarra Ranges Shire Council has signed up to and fully endorsed '*Living Melbourne*' and supports *Living Melbourne*'s vision, goals and actions. The vision for *Living Melbourne* is to increase tree canopy targets, not decreased canopy cover.

*Living Melbourne: our metropolitan urban forest*³ – is described as a bold new strategy for a greener, more liveable Melbourne.

Council has endorsed this Strategy which includes the following commitment:

Living Melbourne: our metropolitan urban forest is bringing together councils, state government agencies, non-government and community organisations, residents, and other partners, to work towards a shared vision for the urban forest: our thriving communities are resilient, connected through nature. This strategy focuses on improving the quality and quantity of trees and vegetation in the urban forest – whether on public or private land. (Underlining added)

Again, Council has an opportunity to demonstrate in very practical terms the reality of its commitment to *Living Melbourne*.

Alternatively, its commitment will be meaningless.

³ An Urban Forest made up of native and exotic trees, shrubs, grasslands and other vegetation, growing on public and private land across metropolitan Melbourne, and the soil and water that supports them. This includes vegetation in parks, reserves and private gardens; along railways, waterways, main roads, and local streets; and on other green infrastructure such as green walls and roofs

Objection 6: Council has on two previous occasions sought unsuccessfully to sell the land at 16 Ellis Court and the present Proposal is nothing more than a vexatious attempt to wear down local residents

Council has on two previous occasions proposed to sell the land at 16 Ellis Court. On both occasions Council was met with strong objections from the residents and on the first occasion withdrew its proposal to sell and on the second withdrew its Planning Application which sought to remove the reservation status on the land (as a preliminary step to selling).

In the 1980's the predecessor Council, the Shire of Lillydale, first proposed the sale of the land at 16 Ellis Court Mooroolbark. That proposal was based on an alleged rationalisation of Council property assets.

At the time there was treated pine play equipment, park furniture and considerable foliage on the land (see later Council's actions in removing assets and changing the character of the land). The residents demonstrated that the land was in regular use. A senior Council officer told residents who objected at the time "don't worry I'll take care of that". The Shire of Lillydale subsequently withdrew the land from the list of properties it had proposed to sell.

In 2015 Council, without any prior consultation, made application to remove the reservation status on the land pursuant to the Subdivision Act 1988.

Council initially refused to provide a copy of the Planning Application (Application) and did so only after the breach of section 51 of the Planning and Environment Act 1987 was drawn to its attention.

Residents strongly opposed this Application, prepared detailed submissions and attended a hearing at Council to consider the Application. As such Applications function Council was both the Applicant and also the Responsible Authority – both roles were represented at the hearing by Council Officers. No Councillors were present.

Residents were told at the planning hearing that Council had a large unfunded capital works program and were selling the land at 16 Ellis Court to help fund that program.

Residents were united in their opposition to this proposal and made a detailed presentation to a planning hearing.

The residents were subjected to a most unedifying display as the Council Officer representing the Applicant proceeded to dictate to the young female Planning Officer how the process should be conducted. Frankly, he bullied her and endeavoured to gag the planning officer representing the Responsible Authority. This argument in front of the residents was most undignified (I later apologised to my neighbours for the reflection this display cast on local government).

The Planning Officer made it clear after the meeting that 'we' will not be supporting the Application and she expected it to be withdrawn. We note that in 2015 Council also abandoned its Planning Applications for the other properties it had proposed to sell at that time.

After two previous attempts to sell the land Council's Proposal for a third attempt can only be described as vexatious. It is both exasperating and distressing for residents.

Objection 7: Council has previously given undertakings and other assurances that it would:

- a. not undertake planning processes which are necessary to enable the sale of sale of the land;**
- b. undertake consultation on the future of the land; and**
- c. stop the sale of the land**

and Council's present action is a breach of those undertakings and is not being conducted in good faith.

At the planning hearing on 20 August 2015 the Council Planning Officer (for the Responsible Authority) canvassed with objectors alternative uses for the land and undertook to refer the residents aspirations to Council's strategic recreation planning staff.

On 9 October 2015 Planning Officer, Susan Hartley, advised that the Council had withdrawn its Application and also said:

The applicant will be seeking further community consultation on this matter in the future.

Residents are still awaiting that consultation.

A letter was also received from Council's Craig Sutherland, as Acting Executive Officer Property & Facilities Management, dated 13 November 2015 in which he said:

Having reflected upon the nature of community objections received, a decision has been made to withdraw the planning application.

The nature of the community's objections has not changed so why would Council –

- a. not respect the local community's views; and
- b. fail to undertake engagement before launching another attempt at sale.

More significantly after Council withdrew its Planning Application all the residents signed a joint letter on 19 October 2015 seeking to establish Council's future intentions for the land.

In response to our question -

Does the Applicant intend to submit another Application for a planning permit pursuant to section 47 of the Planning and Environment Act 1987 for a permit to remove the reservation on title status on the subject land pursuant to section 24A of the Subdivision Act 1988?

Council's then Manager, Built and Active Spaces, Robyn Mansfield responded on 9 November 2015 that:

It is unlikely that Council would re-commence procedures pursuant to section 47 of Planning and Environment Act for this property. (Bolding added)

Council could not have been any clearer.

So, what has changed to cause Council to go back on this undertaking without first engaging with residents?

We encourage Council to honour its previously undertakings.

Residents are also aware that Council obtained legal advice before withdrawing its Planning Application. I have successfully sought access to documents related to the withdrawal of the Application pursuant to the Freedom of Information Act 1982 and material will be released to me after the 60-day VCAT appeal period. I therefore request that Council not consider submissions on this matter until that material is released to me.

The Residents' objection also raised concerns about traffic safety in the Court associated with school drop-off and, more significantly, pick-up times. The situation in Ellis Court at school

pick-up time from the adjacent Primary School is chaotic and unsafe with parking of often large vehicles both sides of the court, over driveways and on nature strips. It is sensible to use the Court for school pickup, but the process just needs to be organised. A solution may save a life.

In this regard Ms Mansfield advised that:

Your traffic concerns have been relayed to the appropriate Council department for their response, which shall be provided in due course.

Nearly seven (7) years later residents are still awaiting that response too.

The residents had been fortunate to enjoy the support of Councillor Len Cox who, in regard to the sale of 16 Ellis Court, said in an email to me on November 6, 2015, in part:

..... However, if anything comes out of it I am very happy to do whatever I can to stop it.

All the best Len.

Cr Cox had earlier agreed to meet a deputation of residents. The proposal for the deputation was abandoned after Council withdrew its Planning Application.

Objection 8: Council has engaged in stealth by removing and not replacing playground equipment and park furniture on the land and thereby changing the character of the land.

Various Councillors had undertaken to improve the land at 16 Ellis Court as a playground.

Until late 2013 there was play equipment on the subject land (the soft fall material is still on the land). Council has removed that equipment – again without any consultation - and not replaced it. Council actions in removing the equipment suddenly and mysteriously gave the appearance of an attempt to ‘smooth the way’ for sale of the land.

Residents purchased properties in Ellis Court prior to the removal of the playground equipment on the understanding that this facility would be available to their families. One purchaser inspected the land on 25 May 2013 and the play equipment was gone when they moved into the adjacent property they had purchased on 12 October 2013.

Council then separately removed the park benches again without consultation. These were in place at least until 6 November 2014.

Council should research the undertakings given by Councillors and honour those undertakings.

Council’s staff in their report on the purchase of 150 Cambridge Road describe 16 Ellis Court as of ‘*limited community benefit*’.

This is an absurd claim – first Council removes the limited play equipment and park furniture then it fails to honour an undertaking to consult on the future of the land, fails to make any improvements to the land and then declares that the land is of limited benefit.

If you denude the land of improvements it will by definition be of limited benefit. Improve the land and as demonstrated earlier, it can be of huge benefit.

Objection 9: Council is not proposing to use the proceeds of any sale for a legal purpose and failed to prepare and adopt a revised budget.

Council is proposing to remove the reservation on title pursuant to section 24A of the Subdivision Act 1988. Subsection 8 of that section says:

(8) *If a body sells land under this section that was public open space, it must apply the proceeds—*

- (a) first, in paying the expenses of or incidental to the sale;
- (b) secondly, for any of the following recreational or cultural purposes—
 - (i) halls and public buildings.
 - (ii) sport, recreation, leisure and arts;
 - (iii) parks, gardens and reserves.
 - (iv) libraries and museums;
 - (v) historic buildings and places;
 - (vi) public entertainment.

The report to Council on the purchase of land at 150 Cambridge Road on 8 March 2022 says, in part, that:

It is recommended that Council utilise the current balance of Public Open Space Funding available to Walling Ward of \$2.97 million with the remaining amount initially being drawn from existing cash reserves, (which is funding allocated for other future projects that are yet to commence).

It is proposed that the cash reserves are then replaced through the sale of Council owned open space land in Walling, which is considered to be of limited community benefit and surplus to requirements

Council has therefore borrowed internally to fund the purchase of the land at 150 Cambridge Road. The purpose of the proposed sales is therefore not to buy land for the purposes defined in the Subdivision Act but rather to repay a debt.

In response to one of my written questions to the Chief Executive Officer, Council Director Environment and Infrastructure, Mark Varmalis said that the funds from a potential sale would be used to “replenish cash reserves”.

The repayment of a debt is not a legal purpose for the use of proceeds pursuant to section 24A of the Subdivision Act 1988.

Council is therefore not proposing to use the funds in a manner which complies with the Subdivision Act but rather to pay off an internal debt which it says it has generated by ‘borrowing’ from its cash reserves.

There is one further very significant issue Council needs to consider in respect to both its Proposal to sell land at 16 Ellis Court and its decision to buy land at 150 Cambridge Road.

Council cannot use Open Space funds to make up for past deficiencies in open space.

Council says in its Report to its meeting of 8 March 2022:

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 (underlining added)

Council’s *Recreation and Open Space Plan Strategic Framework 2013-2023* incorporates in Appendix 3 its Policy on Public Open Space Contributions which correctly says, in part:

Public open space contributions cannot be used to pay for historical open space deficiencies for people living in the municipality. (underlining added)

And further:

Similarly, the same controls apply to the proceeds from the sale of surplus land if Council sells land that has been specifically reserved as public open space.

In Council’s own words the proceeds of the sale of 16 Ellis Court cannot be used to rectify past deficiencies in open space and therefore – nor for that matter can funds in the Open Space Contribution fund be likewise used.

Further, Council has also failed to comply with section 95 of the Act and prepare a revised budget.

This section requires that Council must prepare and adopt a revised budget before it –

(c) can make a change to the budget that the Council considers should be the subject of community engagement.

In its purchase of land at 160 Cambridge Road Council clearly considered that the Proposal required community engagement and accordingly undertook that engagement.

However, Council has failed to prepare and adopt the required revised budget notwithstanding that it varied its budget by at least \$6,440,000 and probably a good deal more.

I trust that Council will refer this aspect to its Audit and Risk Management Committee.

Objection 10: Council cannot fulfil its obligations to consider submissions on the proposed sale of 16 Ellis Court, Mooroolbark without bias and the appearance of bias.

Council has committed itself to repaying its internal borrowings made to enable it to purchase land at 150 Cambridge Road. Council has therefore made a commitment which:

- prevents it from being genuinely open minded when considering submissions on the sale of 16 Ellis Court, Mooroolbark; and
- causes it to have prejudged any representations which are at variance with its need to raise funds.

Council has prejudged the matter of the sale of 16 Ellis Court and cannot without bias consider the submissions as it is required to.

Further, Council cannot appear unbiased when the need to repay the debt is upon it and has failed to identify any other options for its commitment to ‘repay’ debt. Council is now literally between a rock and a hard place.

In this regard a right-thinking person would form the view that Council is no longer able to discharge its statutory duty to consider submissions with fairness.

The Local Government Best Practice Guideline for the Sale, Exchange and Transfer of Land (Guidelines) refers to Councils being genuine in matters of property sales. The Guidelines say that *the public notice given in compliance with the Local Government Act must be genuine (and be seen to be genuine)*. How can the section 114 process be genuine when it has already been pre-empted?

In the words of the Guidelines how can “*Councillors have a genuinely open mind when considering [section 114(2)(b)] submissions*” if they have already resolved to sell the reserve to fund an incurred debt.

Objection 11: Council has failed to comply with its own policies and to maintain its Policy on the Sale of Land

Council has policies on both Community Engagement (described on its website as a draft Policy) and Public Transparency. It has not adhered to these Policies.

Further, Council has also allowed its policy on the Sale of Land to lapse and deprived residents of a structure and a set of fair principles against which Council can assess its current Proposal and residents can consider such an assessment.

Council’s Policy on Community Engagement embraces the International Association for Public Participation’s *Spectrum of Public Participation* (Spectrum) and contains the following table:

| | INFORM | CONSULT | INVOLVE | COLLABORATE | EMPOWER |
|----------------------------------|--|--|---|---|--|
| PUBLIC PARTICIPATION GOAL | To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions. | To obtain public feedback on analysis, alternatives and/or decisions. | To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered. | To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution. | To place final decision making in the hands of the public. |
| PROMISE TO THE PUBLIC | We will keep you informed. | We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision. | We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision. | We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible. | We will implement what you decide. |

Council’s commitment to this Spectrum is very clear when it says:

We will apply our DELIBERATIVE ENGAGEMENT PRINCIPLES across ALL LEVELS of the PUBLIC PARTICIPATION SPECTRUM (sic)

The Policy on Community Engagement commits Council to informing the community with the goal:

To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.

Council had failed this goal in every way possible.

Council has provided minimal information on the proposed sale of 16 Ellis Court. It has only provided a single Notice of Intention on its website and a single letter which deals as much with the purchase of 150 Cambridge Road as it does with the Proposal to sell 16 Ellis Court.

Contrast this to the detail provided in 2015 when Council last proposed to sell the land and commissioned an independent assessment of the land from Environmental Consultants, Prensa Pty Ltd (Prensa Report) *prior to divestment* (by Council) that covered details including:

- environmental considerations
- site investigation/contamination
- history of the site
- geology

Council also developed and made available in 2015 an assessment of its proposal against the criteria set out in its Sale of Land Policy (see below)

The 33-page Prensa Report informed Council’s understanding of aspects of the land, its past improvements uses and factors that may affect it future use. Residents were able then to point out where Council’s understanding (based on the Prensa Report) was erroneous and based on misconceptions. This included matters such as:

- use of the land over time
- removal of treated pine playground equipment
- existence of a private quarry on the abutting allotment (later used as a rubbish tip)
- the reference to the certificate of title which incorrectly said the land was in the name of the Shire of Healesville
- subdivision which was contemplated by Council notwithstanding that the land was already smaller than allowed under the Planning Scheme.
- fencing of the land which was incorrectly described

In the current Proposal residents have been deprived of such basic information as the Prensa Report provided.

Council's Community Engagement Policy claims to be founded on Council's meaningful engagement. You say:

We empower stakeholders with relevant, objective and plain English information and resources to allow informed participation

Engagement cannot be meaningful if Council fails to provide the necessary information to allow residents to fully understand the Proposal and its implications. In this regard Council needs to provide residents with:

- an upgraded and competent version of the Prensa Report with corrections to the errors and misconceptions identified by residents when Council last attempted to sell this land
- an evaluation of the other options /alternatives Council has to achieve its objective of raising funds to reimburse its cash reserves
- an informed justification as to why the land is considered by Council to be of '*limited community benefit*'
- details of the permitted use of the land under the Yarra Ranges Planning Scheme and a plain English interpretation of the implications of the Planning Scheme
- an assessment of the alternative uses for the land
- a genuine cost/benefit analysis of Council's Proposal.

Similarly, the Community Engagement Policy commits Council to informed decision making. If the community only has a small part of the story then decision making simply cannot be informed.

The Deliberative Principles in Council's Community Engagement Policy includes **Transparency + Trust**. The Policy says:

We will act in an honest, transparent and respectful way to build strong relationships, partnerships and trust with our community and other stakeholders. People know what is happening and how their input is being used. They will also have access to the right, objective and relevant information to inform their participation.

Residents have not enjoyed transparency. If only partial information is available to it then the community is not experiencing transparency.

Equally how can the community trust Council if the first it hears of Council's Proposal to sell 16 Ellis Court is when it is linked to the purchase of another distant piece of land.

As to 'strong relationships, partnerships' as demonstrated above nothing in Council's actions suggests that in any way it has endeavoured to form strong relationship, partnerships.

The Principle, "Inform", in the table above says Council's goal is:

To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions. (Underlining added)

Residents have not received "balanced and objective information" but rather scant details of the Council Proposal.

Further under the Principle "Empower" in the table Council says its goal is:

To place final decision making in the hands of the public.

The residents of Ellis Court and surrounding areas welcome this Principle and look forward to Council placing the final decision in their hands.

Council Policy on Public Transparency is required by section 57 of the Local Government Act to '*give effect to the public transparency principles*'.

The public transparency principles are set out in section 58 of the same Act requires that:

- *Council decision making processes must be transparent*
- *Council information must be publicly available*
- *Council information must be understandable and accessible to members of the municipal community*
- *public awareness of the availability of Council information must be facilitated*

As demonstrated above Council has failed these requirements in every regard. It has not:

1. been transparent
2. made the relevant information publicly available
3. provided information in an accessible form to the community
4. made the public aware of the availability of relevant information.

In the last fortnight of the consultative process for this Proposal as a result of written questions to the Chief Executive Officer I have become aware that Council has “*commissioned an environmental safety and risk consultant to undertake a Preliminary Site Investigation*” on risk issues.

Again, this is another document not made available to inform residents.

Further, when Council last proposed selling the land at 16 Ellis Court it had in place a *Sale of Land Policy* which provided a structure for considering land sales and included some protections for the community. The Policy has vanished along with the protections for the community in the process. It appears to have just been allowed to expire in June 2017 and has not been reviewed as proposed in the Policy itself.

The Council *Sale of Land Policy* contained a set of Principles for identifying and proceeding with the sale of Council owned property. It also committed Council to adhere to the Local Government *Best Practice Guidelines for the Sale and Exchange of Land*.

The Principles covered the following components:

- Economic
- Environment
- Social
- Physical Works
- Recreation
- Town Planning

Without such Principles Council has not had to provide residents with any substantive material necessary to allow a reasonable assessment of Council’s Proposal to sell the land.

Residents were also not made aware of a document titled *Strategic Property Assessment Framework* which uses different set of Key Assessment Principles. This document only became known (to one resident) as a result of written questions asked of the Chief Executive Officer in the last fortnight of consultation and after the Notice of Intention was published.

This document is not on Council’s website.

That’s another example of failed transparency.

Council has not provided residents with an assessment of 16 Ellis Court, Mooroolbark against this different set of Key Assessment Principles, if such an assessment exists.

The *Strategic Property Assessment Framework* also says in part that:

A Sale of Land and Building Policy will also be developed to support the implementation of this Framework.

This is the same Policy that has been allowed to lapse.

At the very least Council should reinstate its Sale of Land Policy before it proceeds with further consideration of its Proposal. It should then adhere to its Policy.

Objection 12: Sale of 16 Ellis Court would adversely impact the amenity of the area

The sale of 16 Ellis Court, Mooroolbark would allow for different and inconsistent standards of development of the land. All allotments in Ellis Court except No 16 are subject to restrictive covenants. These covenants require that:

1. Only one single dwelling can be constructed
2. The single dwelling must be constructed with external walls of brick, stone, glass or timber (and timber is restricted to only infill material and cannot exceed 25% of the total external area)
3. Paling fencing constructed on side boundaries is prohibited.

The land at 16 Ellis Court is not subject to these restrictive covenants. The original owner, Elizabeth Ellis, did not anticipate that the allotment designated *Recreation Reserve No 1* would ever be anything else.

Nowhere in its Proposal has Council acknowledged that these covenants exist, and no proposals are made to ensure that these covenants are applied to the subject land.

The land is zoned Low Density Residential, and the uses permitted without a permit include a Bed and Breakfast for up to 10 persons and up to 5 car parking spaces or a medical centre

With a permit the land could be used for two dwellings of two stories each, domestic animal boarding and even a market.

Council's Proposal to sell 16 Ellis Court has not taken into account the potential uses of the land.

Further, the entire street is used by the parents of students at the adjacent primary school as a drop off and pick up area. The traffic situation is diabolic and must be addressed by Council. The following images show that up to 30 vehicles each afternoon block the street. Cars are parking on both sides of the street, across driveways and on nature strips.

Many of the uses permitted under the Planning Scheme (with and without a permit) would further exacerbate the present peak traffic problem which Council has failed to act on despite undertakings that it would do so (see earlier).



History tells us that once the land at 16 Ellis Court is sold it is gone forever along with the opportunity to serve future generations.

I strongly encourage Council to rethink its Proposal to sell 16 Ellis Court, Mooroolbark and look for an alternative means of funding its Cambridge Road commitment elsewhere.

Finally, I reserve my right to further pursue opposition to the sale of 16 Ellis Court, Mooroolbark and to raise further objections as further details of Council's Proposal become available.

Yours faithfully

A solid black rectangular box used to redact the signature of the sender.

[REDACTED]
Sent: Friday, 22 April 2022 4:08 PM

To: mail <mail@yarraranges.vic.gov.au>

Subject: 16 Ellis Court

Public Submission,
The Chief Executive Officer,
PO Box 105,
Lilydale. Vic. 3140

My husband and I built next to the reserve (16 Ellis Court) and moved there in 1980. Bob planted several bushes around the perimeter of the park, and he and our children mowed it for about 16 years, as the Council seemed to be unaware of its existence!! It was well used by our family and the families in the court, but some years ago the play equipment was dismantled, and then the Council tried to sell the property (2015). This led to a well-attended protest meeting, and the idea was shelved, only to reappear this year.

Various residents of our court have already recently submitted detailed and well-reasoned arguments as to why the reserve should not be sold.

All of our properties are 1/2 acre in size, and there is a covenant preventing us from sub-dividing. It is not fair of the Council to try to have the reserve status removed, as it was a vital part of the original subdivision.

It should be noted that there is a layer of hard rock just below the surface, and we had to remove 100 tip-truck loads of rock to excavate for a parking area and pool!

Yours sincerely,

[REDACTED]

(I do not wish to talk to my submission at a meeting)