



WHITEHORSE  
CITY COUNCIL

# Whitehorse City Council

## MINUTES

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### **Council Meeting**

held on

**Monday 13 February 2023 at 7.00pm**

at

**Nunawading Civic Centre**

**Council Chamber**

**379-399 Whitehorse Road, Nunawading**

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Meeting opened at 7:00pm

**Present:** Cr Mark Lane Mayor  
Cr Prue Cutts Deputy Mayor  
Cr Blair Barker  
Cr Andrew Davenport  
Cr Tina Liu  
Cr Denise Massoud  
Cr Amanda McNeill  
Cr Andrew Munroe  
Cr Trudy Skilbeck  
Cr Ben Stennett

**Officers:** Simon McMillan Chief Executive Officer  
Stuart Cann Director Corporate Services  
Jeff Green Director City Development  
Lisa Letic Director Community Services  
Steven White Director Infrastructure  
Siobhan Sullivan Executive Manager Transformation  
Vivien Ferlaino Manager Governance and Integrity  
Kerryn Woods Coordinator Governance  
Sharon Lozsan Senior Governance Officer  
Neale Jones IT Systems Analyst

**1 WELCOME**

**Prayer for Council**

We give thanks, O God, for the Men and Women of the past whose generous devotion to the common good has been the making of our City.

Grant that our own generation may build worthily on the foundations they have laid.

Direct our minds that all we plan and determine, is for the wellbeing of our City.

**Amen.**

**Aboriginal Reconciliation Statement**

“Whitehorse City Council acknowledges the Wurundjeri Woi-wurrung people of the Kulin Nation as the traditional owners of the land we are meeting on and we pay our respects to their Elders past, present and emerging and Aboriginal and Torres Strait Islanders from communities who may be present today.”

**2 APOLOGIES**

Cr Carr is an apology for tonight’s meeting.

**COUNCIL RESOLUTION**

Moved by Cr Cutts, Seconded by Cr McNeill

That the apology from Cr Carr to seek a leave of absence be granted for tonight’s council meeting 13 February 2023.

**CARRIED UNANIMOUSLY**

**3 DISCLOSURE OF CONFLICTS OF INTEREST**

None disclosed

**4 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

Minutes of the Council Meeting held 30 January 2023

**COUNCIL RESOLUTION**

Moved by Cr Skilbeck, Seconded by Cr Massoud

That the minutes of the Council Meeting held 30 January 2023 having been circulated now be confirmed.

**CARRIED UNANIMOUSLY**

**5 URGENT BUSINESS**

Nil

**6 PUBLIC PRESENTATIONS**

6.1 A Tsatsos, Burwood – Smart Cities

6.2 J Zimmerman, Blackburn South – Item 8.1 Petition regarding Held Street and Marie Street Vermont to be Designated as Local Traffic Only Zones

**7 PUBLIC QUESTION TIME**

Nil

**8 PETITIONS AND JOINT LETTERS**

8.1 Held Street and Marie Street Vermont to be Designated as Local Traffic Only Zones

A petition signed by 37 signatories has been received requesting Council to designate Held Street and Marie Street Vermont as Local Traffic Only zones.

**COUNCIL RESOLUTION**

Moved by Cr Cutts, Seconded by Cr Massoud

That the petition/joint letter be received and referred to the Director City Development for appropriate action and response.

**CARRIED UNANIMOUSLY**

**9 NOTICES OF MOTION**

Nil

**10 COUNCIL REPORTS**

10.1 Tender Evaluation (Contract 30414) Delivery of Concrete Paving,  
Minor Asphalt Works and Pavement Marking

ATTACHMENT

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**SUMMARY**

This report considers tenders received for the Delivery of Concrete Paving, Minor Asphalt Works and Pavement Marking and to recommend the appointment of 13 qualified contractors to a preferred supplier panel to undertake specified paving and pavement marking works for Council under a Schedule of Rates contract.

The report recommends the acceptance of the tenders from the following:

- Lazzaro Concrete Works Pty Ltd
- Parente Paving Civil Pty Ltd
- Prestige Paving Pty Ltd
- Statewide Civil and Maintenance
- Victorian Infrastructure Services Pty Ltd
- AA Asphalt Constructions Pty Ltd
- Civil Asset Management Services Pty Ltd
- InfraFirst Pty Ltd
- Pavers Plus Pty Ltd
- Roadside Services and Solutions Pty Ltd
- Roma Bros Pty Ltd
- Tompsett Asphalt Pty Ltd
- VCrete Concrete Contractors Pty Ltd

The contract is for a fixed term of three years with an option to extend the contract for one further two year period.

The estimated contract expenditure over the three years of the fixed contract term is \$21,000,000 excluding GST.

**10.1**  
(cont)

**MOTION**

Moved by Cr Barker, Seconded by Cr Massoud

That Council:

1. Accepts the tender and sign the formal contract document for Contract 30414 Delivery of Concrete Paving, Minor Asphalt Works and Pavement Marking received from:
  - The Trustee for Lazzaro Family Trust, trading as Lazzaro Concrete Works Pty Ltd (ABN 11 798 654 054)
  - The Trustee for Parente Paving Civil Unit Trust, trading as Parente Paving Civil Pty Ltd (ABN 86 889 709 374)
  - Prestige Paving Pty Ltd (ABN 84 140 970 912)
  - The Trustee for the Asphalt Trust, trading as Statewide Civil and Maintenance (ABN 61 868 782 480)
  - Victorian Infrastructure Services Pty Ltd (ABN 34 618 155 927)
  - AA Asphalt Constructions Pty Ltd (ABN 27 116 015 733)
  - The Trustee for Civil Asset Management Services Trust, trading as Civil Asset Management Services Pty Ltd (ABN 98 552 701 184)
  - InfraFirst Pty Ltd (ABN 89 642 366 685) excluding asphalt works
  - Pavers Plus Pty Ltd (ABN 45 053 807 015)
  - Roadside Services and Solutions Pty Ltd (ABN 33 137 851 837)
  - Roma Bros Pty Ltd (ABN 29 004 334 114)
  - Tompsett Asphalt Pty Ltd (ABN 12 625 912 772)
2. Authorises the Director Infrastructure under the delegation of the Chief Executive Officer to award the contract and any extension of this contract, subject to a review of the Contractor's performance and Council's business needs, at the conclusion of the initial three year contract term.

**AMENDED MOTION**

Moved by Cr Munroe, Seconded by Cr Skilbeck

That Council:

1. Accepts the tender and sign the formal contract document for Contract 30414 Delivery of Concrete Paving, Minor Asphalt Works and Pavement Marking received from:
  - The Trustee for Lazzaro Family Trust, trading as Lazzaro Concrete Works Pty Ltd (ABN 11 798 654 054)
  - The Trustee for Parente Paving Civil Unit Trust, trading as Parente Paving Civil Pty Ltd (ABN 86 889 709 374)

**10.1**  
(cont)

- Prestige Paving Pty Ltd (ABN 84 140 970 912)
  - The Trustee for the Asphalt Trust, trading as Statewide Civil and Maintenance (ABN 61 868 782 480)
  - Victorian Infrastructure Services Pty Ltd (ABN 34 618 155 927)
  - AA Asphalt Constructions Pty Ltd (ABN 27 116 015 733)
  - The Trustee for Civil Asset Management Services Trust, trading as Civil Asset Management Services Pty Ltd (ABN 98 552 701 184)
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  - Pavers Plus Pty Ltd (ABN 45 053 807 015)
  - Roadside Services and Solutions Pty Ltd (ABN 33 137 851 837)
  - Roma Bros Pty Ltd (ABN 29 004 334 114)
  - Tompsett Asphalt Pty Ltd (ABN 12 625 912 772)
  - VCreate Concrete Contractors Pty Ltd (ABN 40 055 492 683)
2. Authorises the Director Infrastructure under the delegation of the Chief Executive Officer to award the contract and any extension of this contract, subject to a review of the Contractor's performance and Council's business needs, at the conclusion of the initial three year contract term.
- LOST**

**PROCEDURAL MOTION**

Moved by Cr Davenport, Seconded by Cr Stennett

That the Motion as moved by Cr Barker and seconded by Cr Massoud be put.

**CARRIED**

**COUNCIL RESOLUTION**

Moved by Cr Barker, Seconded by Cr Massoud

That Council:

1. Accepts the tender and sign the formal contract document for Contract 30414 Delivery of Concrete Paving, Minor Asphalt Works and Pavement Marking received from:
  - The Trustee for Lazzaro Family Trust, trading as Lazzaro Concrete Works Pty Ltd (ABN 11 798 654 054)
  - The Trustee for Parente Paving Civil Unit Trust, trading as Parente Paving Civil Pty Ltd (ABN 86 889 709 374)
  - Prestige Paving Pty Ltd (ABN 84 140 970 912)
  - The Trustee for the Asphalt Trust, trading as Statewide Civil and Maintenance (ABN 61 868 782 480)
  - Victorian Infrastructure Services Pty Ltd (ABN 34 618 155 927)

**10.1**  
(cont)

- AA Asphalt Constructions Pty Ltd (ABN 27 116 015 733)
  - The Trustee for Civil Asset Management Services Trust, trading as Civil Asset Management Services Pty Ltd (ABN 98 552 701 184)
  - InfraFirst Pty Ltd (ABN 89 642 366 685) excluding asphalt works
  - Pavers Plus Pty Ltd (ABN 45 053 807 015)
  - Roadside Services and Solutions Pty Ltd (ABN 33 137 851 837)
  - Roma Bros Pty Ltd (ABN 29 004 334 114)
  - Tompsett Asphalt Pty Ltd (ABN 12 625 912 772)
2. Authorises the Director Infrastructure under the delegation of the Chief Executive Officer to award the contract and any extension of this contract, subject to a review of the Contractor's performance and Council's business needs, at the conclusion of the initial three year contract term.
- CARRIED**

**KEY MATTERS**

Council maintains approximately 1,176 kilometres of footpaths, 1,182 kilometres of kerb and channel, 605 kilometres of roads and 32 kilometres of laneways.

A range of suitably qualified and experienced contractors is required to undertake works and enable Council to offer quality and safe assets to the community. The panel of contractors will provide an efficient and cost effective service to programmed and reactive maintenance to these assets.

**STRATEGIC ALIGNMENT**

This report is consistent with Council's procurement policy and aligns with Council's commitment to social and environmental sustainability and support to local business.

**Background**

The specification for this Contract includes concrete paving, minor asphalt works and pavement marking works which were previously provided under three different contracts.

Tenders were advertised in The Age newspaper on Saturday 22 October 2022 and were closed at 3pm, Friday 11 November 2022. Thirteen tenders were received.

The 13 conforming tenders were evaluated against the following criteria:

- The Tender Offer (Schedule of Rates) 50%
- Capability 25%

**10.1**  
(cont)

- Credibility (Reputation, experience and qualifications) 15%
- Local Content 5%
- Social and Environmental Sustainability 5%
- Occupational Health & Safety, Equal Opportunity (Pass/Fail)

A comprehensive analysis of the 13 conforming submissions was undertaken by the Tender Evaluation Panel using a 'Weighted Attribute Method'. Scores were based on the quality of the tender response and the level of compliance with the contract requirements to determine the overall capability of contractors and best value outcome for Council.

As a Schedule of Rates contract, estimates of annual contract expenditure were developed using recent workloads for reactive, programmed and capital works multiplied by the tendered rates for labour and materials. This allowed the Tender Offer to be equitably scored.

Contractors could apply for all or some of the works in the contract.

At the conclusion of the evaluation period it was determined that in order for Council to meet the high demand for these types of contractors to meet Council's programmed and reactive works, a panel of 13 contractors should be appointed. All of the submissions considered were competitive in all elements of the weighted criteria so it is recommended to appoint all of the contractors with conforming submissions. The contractors were all deemed to have experience, credibility in Local Government service provision and value for money and able to demonstrate the resources, response time and expertise required to undertake the service and works within the specification at a competitive market price. The recommended contractors have all required insurances, risk management/OHS plans and other required documents in place.

## **SUPPORTING REPORT DETAILS**

### **Legislative and Risk Implications**

There are no legal or risk implications arising from the approval of this tender evaluation.

### **Consultation**

Consultation on the structure and specifications for this contract occurred with representatives from City Services and Project Delivery and Assets so this contract will meet the current needs of all areas within Council.

The tender evaluation panel was made up of representatives from, Procurement, Finance, Project Delivery and Assets, and City Services

Council's Procurement team has been consulted extensively to ensure that the procurement is compliant with the Procurement Policy.

Prior to works commencing on any project, community consultation is undertaken in accordance with the Policy.

**10.1**  
(cont)

**Collaboration**

Collaboration with the Northern Regional Procurement Network was sought to investigate the potential joint procurement. The neighbouring municipalities have current contracts in place which negated the opportunity to collaborate immediately. However, the opportunity will be further investigated during the term of this contract.

**Financial and Resource Implications**

The contract for the provision of Delivery of Concrete Paving, Minor Asphalt Works and Pavement Marking is based on a Schedule of Rates. The rates are subject to a CPI adjustment on each anniversary of the contract.

The services delivered under this contract will be primarily funded from the City Services annual Operational and Capital Works budgets.

The estimated total Council wide expenditure over the initial three year term of the contract estimated to be \$21,000,000 excluding GST exclusive with \$35,000,000 excluding GST over the five year period should the contract be extended.

**Discussion and Options**

The recommended contractors provide a high level of expertise as well as knowledge into best practice processes and products.

The successful contractors:

- Provide a high level of products that are certified/recognised as environmentally safe.
- All suppliers have policies on Social and Environmental Sustainability.

For each engagement, an assessment of value will be undertaken based on the schedule of rates provided by the contractors, including requesting quotations from contractors appointed to the panel. An assessment of contractor capability relevant to each particular engagement will be undertaken to manage quality and risk. Some contractors are suited to smaller jobs, others suitable for larger and complex work.

**Conflict of Interest**

Council officers involved in the preparation of this report have no conflict of interest in this matter.

**Conclusion**

The next steps are to gain endorsement from Council for the panel contract as per the above recommendation and then execute the contractual documents with the preferred contractors. It is intended that the contract commence from 15 February 2023.

**ATTACHMENT**

- 1 Contract 30414 Delivery of Concrete Paving, Minor Asphalt Works and Pavement Marking Evaluation Matrix Signed

**Whitehorse City Council designates this attachment and the information contained in it as CONFIDENTIAL INFORMATION**

10.2 Endorsement of Draft Interaction with Developers and Lobbyists  
Policy for Consultation

ATTACHMENT

**SUMMARY**

The *Interaction with Developers and Lobbyists Policy* (Policy) supports Council in its ongoing drive for good governance and the importance of open and accountable conduct.

The draft Policy serves to preserve the integrity of Council by ensuring that interaction is conducted in accordance with the highest standards of transparency, integrity and honesty and is open to public scrutiny. The draft Policy aims to prevent actual or perceived conflicts of interest and mitigate lobbying-related risks to minimise opportunities for misconduct or corrupt behaviour.

The draft Policy has incorporated recommendations issued by the Local Government Inspectorate (LGI) in late 2022 and recommendations from an Internal Audit undertaken in April 2022 on Council's Corporate Governance where one of the findings of the audit addressed lobbying-related risks and recommended that guidance concerning the management of lobbying be documented. Council is required to report back to Council's Audit and Risk Committee on the implementation of any recommendations.

The draft Policy places obligations on developers and lobbyists, Councillors and staff.

This report seeks Council endorsement of the draft Policy and approval for community consultation to commence in March 2023.

**COUNCIL RESOLUTION**

Moved by Cr Liu, Seconded by Cr Stennett

That Council

1. Endorse the draft Interaction with Developers and Lobbyists Policy as attached to this report.
2. Approve community consultation on the draft Interaction with Developers and Lobbyists Policy to commence in March 2023 for a period of 21 days.
3. Note that a report will be presented to Council in April 2023 to consider and adopt the final Interaction with Developers and Lobbyists Policy.

**CARRIED**

**KEY MATTERS**

- Council is committed to accountability and transparency and Council representatives are expected to uphold the highest standard of professionalism and integrity in relation to contact with property developers and lobbyists.

**10.2**

(cont)

- Strong lobbying by both proponents and opponents to planning and development initiatives has become subject to increased scrutiny and media attention in recent times, both within Victoria and elsewhere in Australia.
- The key integrity agencies; the Independent Broad-based Anti-corruption Commission (IBAC), Victorian Ombudsman (VO) and the LGI, have undertaken investigations or issued guidance material. The themes and recommendations of these have been consistent, with key items summarised below:
  - In 2020 IBAC, in collaboration with key integrity agencies including the LGI, identified key corruption risks facing council staff during emergencies and crisis situations, associated warning signs or 'red flags', and suggested prevention measures that can help minimise risk. This led to IBAC issuing a Local Government Information Sheet - Building Public Sector Integrity during Emergencies that recommended:
    1. Contact with lobbyists complies with the Victorian Professional Lobbyist Code of Conduct and that lobbyists are registered with the Victorian Public Sector Commission Register of Lobbyists.
    2. Local government staff and councillors maintain appropriate record keeping of all meetings with industry advocates and lobbyists.
  - IBAC undertook an investigation known as Operation Sandon, which resulted in Councillors at Casey City Council being dismissed in 2020 as a result of allegations of serious corrupt conduct in relation to planning and property development. Public hearings were held with issues being highlighted as:
    - Donations or in-kind assistance to election candidates
    - Donations, gifts, pro bono services or other hospitality
    - The use of professional lobbyists or planning consultants
  - In 2021 the VO investigated Kingston City Council's planning approval processes for the Patterson Lakes marina area following concerns from residents and allegations a senior planning officer and two former councillors had corrupt and improper dealings with property developers. The findings concluded that improper dealings were not sustained, however noted critical matters and made recommendations relating to lobbying and interactions with developers.
  - In 2022 the LGI issued Guidelines on Interactions with Developers for Councils (extract attached) to improve transparency and minimise the risk of corruption in relation to planning and property development decisions in their own communities.

**10.2**  
(cont)

- Council's Internal Auditors have recommended that Council develop a policy on Lobbying and Interactions with Developers after an Internal Audit was undertaken in 2022 on Corporate Governance. The Audit took into consideration the IBAC 2020 information sheet Integrity during Emergencies. Council is required to report on the progress of recommendations at each Audit and Risk Committee meeting.

**STRATEGIC ALIGNMENT**

In adopting this policy, Whitehorse City Council would be proactively promoting public transparency and strengthening controls against potential fraud and corruption in accordance with Objective 8.3.4 of the Council Plan.

**Policy**

The draft policy aims to mitigate the risk to Council of potential misconduct or corrupt behaviour arising from contact with developers and lobbyists, and will ensure that interaction is conducted according to the highest standards of transparency, integrity and honesty.

Developers and lobbyists are required to observe Council requirements when interacting with Council including not approaching Councillors directly or offering gifts and hospitality. Any requests for meetings with Councillors will require senior officers of Council to attend.

The policy also places requirements on Councillors and officers with regards to conflicts of interest, not accepting any gifts or hospitality and ensuring that any lobbyist is registered on the Register of Lobbyists maintained by the Victorian Public Sector Commission prior to any meeting.

The policy will achieve transparency in planning and development decision making and avoid perceptions of bias or undue influence.

**SUPPORTING REPORT DETAILS**

**Legislative and Risk Implications**

This policy aligns with the Public Transparency Principles prescribed by Section 58 of the *Local Government Act 2020* and addressed the risks associated with lobbying and interactions with developers.

**Equity, Inclusion, and Human Rights Considerations**

In developing this report to Council, the subject matter has been considered in accordance with the requirements of the *Charter of Human Rights and Responsibilities Act 2006*.

**Community Engagement**

Community consultation of the draft *Interaction with Developers and Lobbyists Policy* will be undertaken in March 2023 for a period of 21 days.

**10.2**  
(cont)

**Financial and Resource Implications**

There are no associated financial implications; resource implications will be undertaken within business as usual.

**Innovation and Continuous Improvement**

The adoption of this policy will promote greater public transparency and improve fraud and corruption controls at Whitehorse City Council.

**Collaboration**

Collaboration with relevant internal departments was undertaken in preparation of the policy.

**Conflict of Interest**

Council officers involved in the preparation of this report have no conflict of interest in this matter.

**Conclusion**

It is proposed by Whitehorse City Council to go beyond the minimum requirements set out in legislation and commit themselves to a policy that will demonstrate a higher standard of transparency in the highly important functions of proposed and actual land use planning and development decision-making.

In adopting this policy, Council would be proactively promoting public transparency and strengthening controls against potential fraud and corruption in accordance with Objective 8.3.4 of the Council Plan and addressing an internal audit recommendation to give confidence to Council's Audit and Risk Committee that Council is mitigating its risks in relation to developers and lobbyists.

Following the conclusion of the draft *Interaction with Developers and Lobbyists Policy* being on public exhibition for a period of 21 days, a report will be presented to Council in April 2023 to consider any feedback received and adopt the final *Interaction with Developers and Lobbyists Policy*.

**ATTACHMENT**

- 1 Draft Interaction with Developers and Lobbyists Policy 
- 2 LGI Guidelines on Interactions with Developers for Councils (extract from Winter 2022 Newsletter) 

### 10.3 Community Engagement Results - 20 Neil Court, Blackburn South

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#### **SUMMARY**

Council resolved at its meeting on 26 September 2022 that the Council owned property known as 20 Neil Court, Blackburn South had been identified as surplus to Council's future needs and requirements.

Council also authorised the manager of Council's Property & Leasing Department to undertake the mandated participatory engagement (community engagement) and upon completion of the community engagement prepare a report for Council's consideration.

Council undertook the community engagement process in accordance with its Community Engagement Policy, with the following consultation goal:

*"To obtain feedback on analysis, alternatives and/or decisions."*

Council's Property & Leasing Department completed the following engagement processes:

1. Wrote to identified nearby owners and occupiers of 20 Neil Court, Blackburn South inviting them to participate in the consultation process
2. Conducted an on-site "drop in" session on Thursday 20 October 2022
3. Via "Your Say Whitehorse" platform had a survey open for four (4) weeks

The results of the community engagement process broadly found that:

- 49% of the 39 respondents opposed disposal
- 33% of the 39 respondents supported disposal
- 13% of the 39 respondents being "unsure"
- 5% of the 39 respondents being "not applicable"

Council's Leisure and Recreation Department confirmed that the 20 Neil Court, Blackburn South property was inappropriate to pursue as an open space parkland.

Having completed the participatory engagement process in accordance with Council's Community Engagement Policy and in accordance with Section 114(2)(b) of the *Local Government Act 2020* and having not received definitive opposition to potential disposal, it is recommended that Council advertise its intention to dispose of 20 Neil Court, Blackburn South in accordance with Section 114(2)(a)(i)&(ii) of the *Local Government Act 2020*.

**10.3**  
(cont)

**COUNCIL RESOLUTION**

Moved by Cr Skilbeck, Seconded by Cr Munroe

That Council:

1. Having completed the mandated participatory engagement in accordance with Section 114(2)(b) of the Local Government Act 2020, gives notice of its intention to sell 20 Neil Court, Blackburn South by an expression of interest (EOI) process in accordance with Section 114 of the Local Government Act 2020.
2. Authorise the manager of Council's Property & Leasing Department to undertake all remaining statutory processes in accordance with Section 114 of the *Local Government Act 2020* and upon completion of all remaining statutory processes prepare a report for Council's consideration.

**CARRIED UNANIMOUSLY**

**KEY MATTERS**

- Effective 1 July 2021, in accordance with Section 114(b)(2) of the Local Government Act 2020, Council is required to undertake a community engagement process in accordance with its community engagement policy prior to resolving to dispose of Council owned land
- In accordance with Section 55 of the Local Government Act 2020, Council adopted its Community Engagement Policy in 2019
- Under the Community Engagement Policy, Council is mandated to undertake participatory engagement and this level of engagement requires Council to consult with the community
- Having completed mandated community engagement this report seeks permission for Council officers, to in accordance with Section 114(2)(b) of the Local Government Act 2020, give notice of Council's intention to sell 20 Neil Court, Blackburn South by an expression of interest (EOI) process in accordance with Section 114 of the Local Government Act 2020.

**STRATEGIC ALIGNMENT**

The completed community engagement aligns with "Strategic Direction 3" of the Whitehorse City Council Plan 2021-2025: Strategic Direction 3: Our Diverse and Inclusive Community.

The objectives of "Strategic Direction 3", in particular 3.1, are "increase social inclusion, community participation and access to community services".

**10.3**  
(cont)

**Policy**

Council's Community Engagement Policy applies to the participatory engagement permission sought by this report.

**BACKGROUND**

**DISCUSSION AND OPTIONS**

Subject Property: 20 Neil Court, Blackburn South (Subject Property) Legal  
Description: Lot 11 LP55140 Volume 8345 Folio 915  
Lot 11 LP55140 Volume 8345 Folio 916  
Land Area: 1,535m<sup>2</sup> approximately  
199m<sup>2</sup> approximately  
Use: Vacant Kindergarten  
Zoning: Residential Growth Zone 1

*Photograph #1: 20 Neil Court, Blackburn South*



Council has owned the two parcels of land contained within the Subject Property since 1962.

In 1965 Council (the former City of Nunawading), via a land only lease, leased the Subject Property to Yooralla Society of Victoria (Yooralla).

Yooralla vacated the Subject Property in September 2019.

**10.3**  
(cont)

*Site Map #1: 20 Neil Court, Blackburn South*



Council was not involved in the construction of the kindergarten building in 1966 and Council has never occupied the Subject Property.

Council at its meeting held on 26 September 2022 resolved that the Subject Property was surplus to Council's future needs and requirements.

Council also authorised the manager of Council's Property & Leasing Department to undertake the community engagement process and report the results back to Council for consideration.

The results of the community engagement are shown below.

**10.3**  
(cont)

**Results of the Community Engagement**

In accordance with Council’s Community Engagement Policy, the Property & Leasing Department notified, via mail, approximately 160 nearby owners and occupiers of the Subject Property inviting them to participate in the consultation process.

The residents were also invited to attend an on-site “drop in” session, held on Thursday 20 October 2022; along with sharing their views via Council’s “Your Say Whitehorse” web based portal.

The “Your Say Whitehorse” survey closed on 10 November 2022.

The on-site “drop in” session opened at 5:00pm and closed at 7:00pm on Thursday 20 October 2022, with five (5) nearby residents attending the session over the two hours.

The “Your Say Whitehorse” survey received 56 visitors and 39 contributions, representing a 24.5% response rate of the approximately 160 nearby owners and occupiers written to by Council’s Property & Leasing Department.

The majority of contributions (92%) were anonymous. See Table #1 below for a summary of visitors.

*Table #1: Summary of visitors and response rate*

VISITORS					
56					
CONTRIBUTORS			RESPONSES		
39			39		
3	0	36	3	0	36
<small>Registered</small>	<small>Unverified</small>	<small>Anonymous</small>	<small>Registered</small>	<small>Unverified</small>	<small>Anonymous</small>

The following questions were asked:

1. “Keeping in mind that 20 Neil Court, Blackburn South is currently zoned Residential Growth (RGZ1) under the Whitehorse Planning Scheme, what ideas do you have for the future of the property?”

The table below lists a variety of ideas respondents have for the future of the Subject Property.

Ten (10) respondents did not answer and the majority of those that did provide a response provided multiple answers.

**10.3**  
(cont)

*Table #2: Question 1: What ideas do you have for the property?*

\*Multiple answers provided

	Respondents*
Did not answer	10
Open Space or Playground	9
Community Centre or Senior Citizens	9
Social / Affordable / Crisis Housing	7
Overdevelopment [NB: It is unclear what is meant by this response]	6
Residential	2
Kindergarten / Childcare	2
Link to the Brickworks	2

2. Would you support Council selling 20 Neil Court, Blackburn South?

Nineteen (19) of the 39 respondents oppose disposal, thirteen (13) support disposal, five (5) respondents are unsure and two (2) respondents did not answer. (See Table #3 below)

*Table #3: Question 2: Would you support Council selling 20 Neil Court, Blackburn South?*

	Yes	No	Unsure	N/A
Would you support Council selling the land?	13 (33%)	19 (49%)	5 (13%)	2 (5%)

3. Why don't you support Council selling the land?

Of the nineteen (19) respondents who would not support Council selling the land, twelve (12) respondents are unsupportive because they would prefer the property be retained for the community including open space, six (6) respondents are concerned about overdevelopment and parking issues and one (1) respondent did not answer. (See Table #4 below)

**10.3**  
(cont)

*Table #4: Question 3: Why don't you support Council selling the land?*

If no, then why not?*	Retain for the Community	12
	Parking issues & Over-development	6
	Not Applicable	1

*Do you have any other comments about this consultation?*

One respondent was positive about the consultation process and requested a copy of her submission.

In accordance with Section 114(b)(2) of the *Local Government Act 2020* Council undertook a community engagement process in accordance with its community engagement policy.

Council relies on the International Association for Public Participation (IAP2) Public Participation Spectrum to define its levels of engagement and the amount of influence participants can expect to have in the process.

Under the IAP2 Public Participation Spectrum the following applies to participatory engagement (Consult):

**Consult Goal:**

*“To obtain feedback on analysis, alternatives and/or decisions.”*

**Promise to target participants:**

*“We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.”*

**Role of target participants:**

*“Contribute”*

As mentioned above, of the nineteen (19) respondents opposed to disposal, twelve (12) indicated that they would prefer that the Subject Property be retained for the community.

In response to Question #1 above, nine (9) respondents indicated “Open Space or Playground” as an alternate use.

Council’s Leisure and Recreation Services Department deemed the Subject Property to be inappropriate to pursue as an open space parkland due to the below:

*“The size of the property (approx. 1500m<sup>2</sup>) would be a small local park and would only have a limited catchment that would be further limited due to its location at the end of the court and physical barriers including:*

### 10.3

(cont)

- Abutting brickworks developments and other residential properties to the south and east block pedestrian travel to the site
- Eley Road to the north and Middleborough Road to the west create barriers for pedestrian travel to the site”

In response to Question #1, nine (9) respondents indicated “Community Centre” or “Senior Citizens [Club]” as an alternative use.

However, as the Warrawong Annex of the Eley Park Community Centre is located approximately 500 metres from the Subject Property, an additional “Community Centre” in the Blackburn South area was not considered to be a viable alternative use.

The “Senior Citizens [Club]” option was not considered a viable alternative use because of the Subject Property’s lack of proximity to public transport.

Additionally, in response to Question #1, seven (7) respondents indicated “Social / Affordable / Crisis Housing”. Whilst the Subject Property’s current zoning, Residential Growth Zone 1, supports the suggested housing options; the housing option was not considered because Council has a pre-existing commitment to affordable housing in Bruce Street, Box Hill.

It is acknowledged that nineteen (19) respondents opposed Council disposing of the Subject Property; however, it also needs to be acknowledged that thirteen (13) respondents supported Council disposing of the Subject Property, with five (5) respondents being unsure.

Given the low response rate (24.5%) and the high number of anonymous survey responses (92%), combined with the lack of an obvious and genuine alternative use for the Subject Property, it is considered that the earlier finding that the Subject Property is surplus to Council’s future needs and requirements is confirmed.

The Property & Leasing Department will advise in writing all of the approximately 160 nearby owners and occupiers of Council’s decision.

## **SUPPORTING REPORT DETAILS**

### **Legislative and Risk Implications**

There are no legal or risk implications arising from the recommendation contained in this report.

By undertaking community engagement in accordance with Council’s Community Engagement Policy there are no legal or risk implications relating to Section 114(2)(b) of the *Local Government Act 2020*.

Having completed Section 114(2)(b) of the *Local Government Act 2020*, Council now has the option to resolve to commence the other statutory obligations also contained in Section 114 of the *Local Government Act 2020*; which states the following:

### 10.3

(cont)

“Restriction on power to sell or exchange land

- 1) *Except where section 116 applies, if a Council sells or exchanges any land it must comply with this section.*
- 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—
    - i. On the Council's Internet site; and
    - ii. In any other manner prescribed by the regulations for the purposes of this subsection; and
  - b) Undertake a community engagement process in accordance with its community engagement policy; and
  - c) Obtain from a person who holds the qualifications or experience specified under section 13DA(2) of the Valuation of Land Act 1960 a valuation of the land which is made not more than 6 months prior to the sale or exchange.”

To reduce any risk associated with undertaking the other statutory obligations contained within Section 114 of the *Local Government Act 2020*, an independent Probity Advisor will be appointed to oversee completion of these statutory obligations.

### **Equity, Inclusion, and Human Rights Considerations**

In developing this report to Council, the subject matter has been considered in accordance with the requirements of the *Charter of Human Rights and Responsibilities Act 2006*.

It is considered that the subject matter does not raise any human rights issues.

However, by undertaking community engagement Council is recognising every individuals' right to express their opinion regarding the future use of the Subject Property.

### **Financial and Resource Implications**

The recurrent budget of Council's Property & Leasing Department funded the cost of the community engagement and will fund all future costs associated with Section 114 of the *Local Government Act 2020*.

In accordance with Section 114(2)(c) of the *Local Government Act 2020*, Council will appoint an independent Valuer to provide a valuation report and this valuation report will be presented to the Councillors when the future report is prepared by Council's Property & Leasing Department.

As the Subject Property is included in Council's "Key Strategic Sites Program" it is recommended that Council resolve that any future and potential sale proceeds be credited to, the soon to be established, "Key Strategic Sites Reserve Fund".

**10.3**  
(cont)

**Innovation and Continuous Improvement**

There are no Innovation and Continuous Improvement matters arising from the recommendation contained in this report.

**Collaboration**

Council's Property & Leasing Department collaborated with Maddocks Lawyers, Council's Strategic Communications & Customer Service Department and Council's Community Engagement & Development Department, ensuring that the process undertaken was compliant with the desired outcomes of Council's Community Engagement Policy.

Council's Property & Leasing Department collaborated with Council's Leisure and Recreation Department to determine if the Subject Property was suitable for open space.

**Conflict of Interest**

Council officers involved in the preparation of this report have no conflict of interest in this matter.

**Conclusion**

As the Subject Property was identified as surplus to Council's needs and requirements, participatory engagement (Consult) was undertaken in accordance with Council's Community Engagement Policy and Section 114(2)(b) of the *Local Government Act 2020*.

The results of the community engagement process found the community did not definitively support or definitively oppose Council disposing of the Subject Property.

Additionally, Council's Leisure and Recreation Department confirmed the site does not meet the criteria for open space.

Consequently, based on the results of the community engagement process, it is recommended that Council reaffirm that the Subject Property is surplus to Council's future needs and requirements and give notice of its intention to sell by an expression of interest (EOI) process in accordance with Section 114 of the *Local Government Act 2020*.

10.4 Records of Informal Meetings of Councillors

**COUNCIL RESOLUTION**

Moved by Cr Davenport, Seconded by Cr Munroe

That the records of Informal Meetings of Councillors be received and noted.

**CARRIED UNANIMOUSLY**

<b>Councillor Informal Briefing 30 January 2023 – 6.30pm-6.46pm</b>		
<b>Matter/s Discussed:</b>	<b>Councillors Present</b>	<b>Officers Present</b>
<ul style="list-style-type: none"> <li>• Notice of Rescission – Cr Davenport – Customer Service Centres</li> <li>• Notice of Motion – Cr Davenport – Box Hill &amp; Forest Hill Customer Service Centres</li> <li>• Council Agenda Items 30 January 2023</li> </ul>	Cr Lane (Mayor & Chair) Cr Cutts (Deputy Mayor) Cr Barker Cr Davenport Cr Liu Cr Massoud Cr McNeill Cr Munroe Cr Skilbeck Cr Stennett	S McMillan J Green L Letic S Cann S Sullivan S White C Altan V Ferlaino K Woods S Lozsan
<b>Disclosures of Conflict of Interest</b>	None Disclosed	
<b>Councillor /Officer attendance following disclosure</b>	None Disclosed	

<b>Councillor Briefing 6 February 2023 – 6.30pm-9.20pm</b>			
<b>Matter/s Discussed:</b>	<b>Councillors Present</b>	<b>Officers Present</b>	
<ul style="list-style-type: none"> <li>• Child Safety Training</li> <li>• 2022/2023 Capital Works Program – December Quarter Review</li> <li>• MPCRG Quarterly Report</li> <li>• Aquatics Review - Update</li> <li>• Council Agenda Items</li> </ul>	Cr Lane (Mayor & Chair) Cr Cutts (Deputy Mayor) Cr Barker Cr Davenport Cr Liu Cr Massoud Cr McNeill Cr Munroe Cr Skilbeck Cr Stennett	S McMillan J Green L Letic S Cann S Sullivan S White C Altan N Brown D Comazzetto V Ferlaino	T Jenvey M Lythgo T Peak J Schoof K Woods
<b>Disclosures of Conflict of Interest</b>	None Disclosed		
<b>Councillor /Officer attendance following disclosure</b>	None Disclosed		

**11 COUNCILLOR DELEGATE AND CONFERENCE / SEMINAR REPORTS**

11.1 Reports by Delegates

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(NB: Reports only from Councillors appointed by Council as delegates to community organisations/committees/groups)

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|--|
| <ul style="list-style-type: none"><li>• Cr Massoud attended the Disability Advisory Committee meeting on 1 February 2023. and minutes have been distributed to Councillors. Cr Massoud also attended the informal meeting 8 February 2023.</li></ul> |
| <ul style="list-style-type: none"><li>• Cr McNeill attended the Metropolitan Transport Forum on 1 February 2023.</li></ul>   |
| <ul style="list-style-type: none"><li>• Cr Davenport attended an informal Whitehorse Manningham Regional Library Corporation Board discussion on 8 February 2023.</li></ul>  |
| <ul style="list-style-type: none"><li>• Cr Skilbeck attended an informal Whitehorse Manningham Regional Library Corporation Board discussion on 8 February 2023.</li></ul>   |

**COUNCIL RESOLUTION**

Moved by Cr Munroe, Seconded by Cr Liu

That the reports from delegates be received and noted.

**CARRIED UNANIMOUSLY**

11.2 Reports on Conferences/Seminars Attendance

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<ul style="list-style-type: none"><li>• Cr Cutts reported attendance at the Media Training session on 6 February 2023.</li></ul>
<ul style="list-style-type: none"><li>• Cr Lane reported attendance at the Media Training session on 6 February 2023.</li></ul>
<ul style="list-style-type: none"><li>• Cr Massoud attended the Inspiring Women seminar hosted by Deakin University</li></ul>
<ul style="list-style-type: none"><li>• Cr Skilbeck attended McCrindle Research Top 8 Trends on 2 February 2023.</li></ul>
<p><b>COUNCIL RESOLUTION</b></p> <p>Moved by Cr McNeill, Seconded by Cr Massoud</p> <p>That the record of reports on conferences/seminars attendance be received and noted.</p> <p style="text-align: right;"><b>CARRIED UNANIMOUSLY</b></p>

**12 CONFIDENTIAL REPORTS**

Nil

**13 CLOSURE OF MEETING**

The Council Meeting was closed at 8.08pm.

*These minutes are circulated subject to confirmation by Council at the next Council Meeting to be held on 27 February 2023.*